UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 101st CONGRESS
SECOND SESSION

VOLUME 136—PART 25

OCTOBER 27, 1990
(PAGES 36007 TO 37193)

GENERAL SERVICES ADMINISTRATION
9/16/97
LAW LIBRARY
CENTRAL OFFICE

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1990

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 101st CONGRESS, SECOND SESSION

SENATE—*Saturday, October 27, 1990*

(Legislative day of Tuesday, October 2, 1990)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable JEFF BINGAMAN, a Senator from the State of New Mexico.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Baruch Ha'Shem! Blessed be the name of the Lord!

God of Abraham, Isaac, and Israel, on this Sabbath we celebrate Thee in all Thy glory.

God is our refuge and strength, a very present help in trouble. Therefore will not we fear, though the earth be removed, and though the mountains be carried into the midst of the sea; Though the waters thereof roar and be troubled, though the mountains shake with the swelling thereof. There is a river, the streams whereof shall make glad the city of God, the holy place of the tabernacles of the most High. God is in the midst of her; she shall not be moved: God shall help her, and that right early. The heathen raged, the kingdoms were moved: he uttered his voice, the earth melted. The Lord of hosts is with us; the God of Jacob is our refuge. Come, behold the works of the Lord, what desolations he hath made in the earth. He maketh wars to cease unto the end of the earth; he breaketh the bow, and cutteth the spear in sunder; he burneth the chariot in the fire. Be still, and know that I am God: I will be exalted among the heathen, I will be exalted in the earth. The Lord of hosts is with us; the God of Jacob is our refuge.—Psalm 46.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 27, 1990.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEFF BINGAMAN, a Senator from the State of New Mexico, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BINGAMAN thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

CLEAN AIR ACT AMENDMENTS—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of the conference report on S. 1630, which the clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.

The Senate resumed consideration of the conference report.

The ACTING PRESIDENT pro tempore. The time for debate until 11:15 a.m. is controlled by the Senator from Idaho, Mr. SYMMS.

Mr. SYMMS. Mr. President, I yield myself such time as I may consume to make some opening remarks. I have

NOTICE

A final issue of the Congressional Record for the 101st Congress, second session, will be printed after the sine die adjournment of the Congress. Members may submit manuscript for printing to the Official Reporters of Debates no later than November 2, 1990.

None of the material printed in the Congressional Record after adjournment may contain subject matter, or relate to any event, which occurred after the date that Congress officially adjourned.

No provision herein shall be construed to supersede the two-page rule.

All material must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates, Room HT-60 or S-220 of the Capitol. These offices are open Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m.

Members of Congress desiring to purchase reprints of material submitted for printing in the Congressional Record during the adjournment may do so through the Congressional Printing Management Division located at the Government Printing Office. This office may be reached by telephoning 275-2226 between the hours of 8:00 a.m. and 4:30 p.m. daily.

By order of the Joint Committee on Printing.

WENDELL H. FORD, *Chairman.*

● This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

some time reserved, I might say to my colleagues, for other Senators who have asked to speak on the bill.

I might say to those staffs or Senators who may be listening, if there are Senators who wish time to speak in opposition to this bill that there should be some time available between now and 11:15.

As I rise here this morning the other body has now passed the tax increase on the American people and the American economy. They have passed the clean air regulatory package also.

So we will be able to give the American people a double whammy today. We can raise their taxes on the incomes of their households and interfere with the progress of their savings accounts and their educational funds for their children, so the Government can continue to grow and profligate spending will not have to be interfered with.

As a matter of fact the package that passed the House this morning, and I assume the votes are here in the Senate, I think allows for the Government growth in spending to go up somewhat around the neighborhood of $100 billion-plus. So there is really no savings in spending that are appreciable in the eyes of this Senator and most of the American people. It is really business as usual by the Congress.

The reason I say that is oftentimes there is an impermeable wall around the beltway and somehow people inside the beltway just refuse to listen and watch and see what is happening and think somehow actions taken here under this dome, in this Capitol, have no impact on the rest of the Nation when, really, there is a cause and effect relationship, Mr. President. The actions we take here have a traumatic and dramatic impact on the American people and the way they live their lives. It impacts the costs of their lives and so forth.

For the strength of the American economy, in this Senator's opinion, the right thing for us to do from a fiscal policy would be to hold the line on Federal spending, not increase taxes on the producers, the savers, the investors, and the workers of America but hold the line on the Government side on spending, and freeze the budget, if you will, so we will live within the revenues that we have. That would be the right thing to do fiscally.

Then we could have the Federal reserve do the right thing monetarily, which in this Senator's view would be to have a very sound policy with respect to stability of the dollar, watch the prices of commodities and protect the dollar, so to speak, so we do not have a weak dollar and follow the follies of those economies in the banana republics south of our borders but have a sound, strong policy.

But we oftentimes forget the business cycle is not dead. We have had 8 years of unprecedented growth. Somehow in this country we are just not satisfied. But even if everything was perfect fiscally and monetarily, the bill that is before this Senate, the so-called Clean Air Act of 1990, in my opinion will be able to put this country in a regulatory recession all on its own right because of the lack of productivity, the lack of competitiveness.

I am not pleased to be here in this situation this morning. I had originally hoped, when President Bush made statements in his 1988 campaign, that he would favor some clean air amendments, that by the time we had reached this point I would be able to rise on the floor and voice strong support for a bill which would have drawn on the history and the knowledge here in the United States for solutions to air quality problems; a bill which would truly accomplish improvements in controlling air pollution; and a bill which would do so while we are still preserving, to the greatest extent, the freedom and ability of Americans to work, to build and to manufacture so as to maintain a strong economy. Unfortunately, I have to say I am afraid we failed in that test.

I do not think anyone can say this Senator has not tried to steer this legislation in a direction of moderation; to moderate the negative impact on the American economy that I believe this bill is going to bring about. The Senator from Montana who has worked long and hard on this remembers well that although I was not a member of the subcommittee that originally marked up the bill, I asked to sit in on many of those hearings.

He was generous enough to allow me to do so and to ask some questions of different witnesses. I did not ignore the bill during the full committee markup even though, in my opinion—and the Senator from Montana knows this—I thought at that time it was a railroad job. They rammed it through the committee. I tried to offer 36 amendments. I did not get them all offered because there seemed to be no willingness on the part of the committee at that time to entertain those amendments.

Incidentally, I might just say, the majority of those 36 amendments that I raised at the committee meeting have later been accepted into this leadership package which was presented on the Senate floor after the bill came to the floor, after the Environment and Public Works Committee realized that there was a limit as to even how far this Senate would go and they could not move the bill that came out of committee. We went back behind the closed doors in the majority leader's office and worked for weeks, and we did come out with a bill.

I did the best I could, Mr. President, during the floor work on the bill. But now what we have before us, having said all that, is a conference report on what the majority leader of the Senate, Mr. MITCHELL, calls the most technical bill ever considered by this body. He has also described it as the most sweeping environmental law in more than a decade. Before we pass such a law, I hope the Senate will bear with me as I contrast what we have learned about clean air in America and what we are about to do in this bill.

The President's Council on Environmental Quality reported just this year that looking back over the last 20 years of history in the United States, the Nation has seen improvement in almost every ambient air pollutant. Some air pollutants are down dramatically, including lead, carbon monoxide, and oxides of nitrogen.

In general, it is true that the United States is making significant strides toward eliminating inner-city pollution almost everywhere, with Los Angeles being about the only exception. At the same time other countries around the world have experienced just the opposite, increasing emissions and declining air quality.

One of the biggest factors in that, Mr. President, is not the laws that have been passed in the Congress. It is that we have had a growing, healthy, vibrant economy and people have been able to afford to purchase new automobiles which, because of our economic system, the market has produced automobiles that are more fuel efficient, they burn cleaner, 20 times cleaner than the cars of 20 years ago.

When we see one of the old cars, 20 years-old, run through the recycling process in a family that is able to buy and afford a new car, we are one step closer to better and high quality clean air.

I just have to say oftentimes things are not as they may seem, and the perception oftentimes in politics becomes the reality and it is perceived that if you do not vote for this bill, you are not for clean air. I do not think that is true. I think all Senators are for clean air, but there is a point where we have to be realistic about what really is going to help Americans have the ability to afford clean air. Or are we going to have an excessive regulatory environment and economy with excessive regulations coming from Government?

What we have done has been very successful. From the very beginning of this debate, I have identified three facets of the U.S. air quality improvement. It is done in three ways:

No. 1, a reliance on sound science.

No. 2, leave the maximum for local flexibility.

No. 3, which is probably one of the vitally important parts, is we need to have a strong economy.

At no time during any of these discussions and debates on this bill has anyone denied the validity of those three principles. So I take it that there is a general concurrence in my argument that they are, in fact, the basic important aspects as to any effort of further improvement of our Nation's air quality.

So how does this conference report reflect these three principles? I think that is really the core of why I intend to vote against the conference report.

Does it rely on sound science, or does it legislate based on superstition? Does it provide for local flexibility, or does it have Federal mandates that override local flexibility? Is it campatible with a sound economy, or is it going to make the Environmental Protection Agency the purveyor of an industrial policy for the United States which will help this economy become less and less competitive and we will hear the cries more and more of those people in the Congress from restraint of trade to protectionism, that we are not competitive with our foreign competition, and interfere with the economies.

We will also hear, Mr. President, the efforts on the part of some of those at Treasury to try to bad mouth the American dollar so that we will become more competitive in trade.

I would say to my colleagues that if we regulate our economy hard enough so that we are not competitive, tax the producers hard enough so they do not have the incentives to work and produce any more, and then try to solve our problems by bad mouthing the American dollar and talking it down, we will be just like Brazil and Argentina, two great countries that have tremendous wealth and resources and good people, and they have managed their economies through their Government policies so where they are all poor when they should all be very wealthy.

I fear, Mr. President, that we are starting down a path that leads to a bad ending for the economy of the United States of America.

I have to recall that back in my college days that we had an economics professor at the University of Idaho who always used to say, "Remember, you young people in the class, the highways to hell are paved with good intentions." I say to my colleagues, Mr. President, I know their intentions are noble, they have the highest ideals in the passage of this legislation, but the fact of the matter is a great deal of this legislation is not based on sound science. It is legislating in superstition. It is not based on a sound economy. It is going to be very destructive to our economy, and it is not based on local control. It is going to centralize power here and make the EPA one of the most powerful agencies that this Republic has ever seen in history and they will be interfering with the ability of people in the marketplace to produce goods and services for the rest of our citizens.

First off, let us talk about sound science. Does this bill, Mr. President, adhere to sound science? I say absolutely not. In fact, scientists have tried a number of times to try to inject some common sense into the clean air debate in this Congress, and they have been spurned by the politicians time and time again. For example, when scientists told the Environment Committee that ozone nonattainment was a localized problem, that our current method for monitoring and ranking the ozone problem is too crude to be effectively used and that there are too many factors outside of human control that contribute to ozone layers, did we listen? Did this Congress listen? No. There is an impermeable membrane that goes around the Capitol people who will not listen to sound scientists outside the Capitol because if it sounds like it is not going to be popular politically, they are not for it. Instead, they forged ahead crying 150 million Americans breathe dirty air. That is hogwash. That is baloney.

One hundred fifty million Americans do not breathe dirty air. There are no scientists, Mr. President, who support the statement that I have heard over and over in this Chamber that 150 million Americans have to breathe dirty air. In fact, it is fair to say that there is no American who breathes dirty air all the time or even most of the time or even 10 percent of the time.

I ask unanimous consent that a list of the Nation's top ozone exceeding cities be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

MONITOR HOURS ABOVE AND BELOW OZONE STANDARD FOR SELECTED CITIES, 1981–1985

[Percent of monitored hours]

Area	Above 0.12 ppm	At or below 0.12 ppm
Los Angeles, CA	2.67	97.33
Houston, TX	.53	99.47
Atlantic City, NJ	.49	99.51
New York, NY	.36	99.64
Providence, RI	.33	99.67
Portland, ME	.31	99.69
Atlanta, GA	.30	99.70
Dallas, TX	.17	99.83
Denver, CO	.10	99.90
Washington, DC	.10	99.90
Boston, MA	.08	99.92
Allentown, PA	.05	99.95
Baton Rouge, LA	.04	99.96
Portsmouth, Dover, Rochester, NH	.04	99.96
Memphis, TN	.04	99.96
Richmond, VA	.04	99.96
Detroit, MI	.04	99.96
Cincinnati, OH	.03	99.97
Indianapolis, IN	.02	99.98
Kansas City, MO	.02	99.98
Portland, OR	.02	99.98
Tampa, FL	.02	99.98

Source: "Battling Smog: A Plan for Action," by Kenneth Chilton and Anne Sholtz, Center for the Study of American Business, September 1989, p. 5.

Mr. SYMMS. Mr. President, I want to read just some of these cities so people can see these are the cities about which outrageous statements are made by the proponents of this legislation that 150 million Americans are somehow having their health jeopardized by breathing dirty air.

The worst, of course, is Los Angeles, CA, because of the massive population in the Los Angeles basin; 97.33 percent of the time the people in Los Angeles are breathing clean air. Only 2.67 percent of the time is the air supposedly, under the classification of the law, dirty, and it is not actually dirty then. It just means that one monitor, one monitoring station has triggered and has gone above the level.

It goes on through Houston, Atlantic City, New York, Providence, RI; Portland, ME. I hope the people from those cities realize how much this bill is going to cost them because their elected officials are making political hay about the fact that they live in dirty air.

Washington, DC, Allentown, PA; Baton Rouge, Portsmouth, NH, and so on, down to Tampa, FL, and it is only above .12 parts per million which trips one monitor. That is all it takes, just trip one monitor in one of those cities. And 99.98 percent of the time the air there does not trip a monitor, yet these are the people who supposedly live in this dirty air environment.

As anyone can see from the list, Los Angeles is by far the worst city for ozone levels and it exceeds the very stringent health-based standards for ozone only 2.67 percent of the time, meaning that there are no monitors exceeding that level in Los Angeles 97.33 percent of the time.

Furthermore, it is fair to say that there is only a handful of monitors in Los Angeles that register those exceedences when they occur. There are several monitors in that area that never exceed this. Does that mean that Los Angeles has good air? No. It means Los Angeles does have problems and they may be caused by an aggregate of natural air shed conditions and local emissions resulting in bad air for certain residents at certain times. But it is not true to say that everyone in Los Angeles breathes bad air all the time.

Mr. President, if this is the case of Los Angeles, then it must certainly be more so in New York which, according to the list, exceeds the ozone standard only .53 percent of the time—less than 1 percent, almost less than one-half of 1 percent.

In other words, Mr. President, the claim that Americans are breathing bad air is nothing but a political slogan, a scare tactic used to push a political agenda, a contrived justification for this bill or the bandwagon that allows Members of this body to say, "My constituents, I have delivered you clean air."

Well, Mr. President, those kinds of statements make political fodder. But as far as sound science, they do not; it is not backed up with sound science. They lack a foundation in sound science and they make for terrible policy for us to be passing in the Nation's Capitol.

Donald H. Steadman, professor of chemistry at the University of Denver, has spent years studying the aspects of automobiles, most responsible for pollution. This fellow is an expert, this Ph.D. His insight has been completely ignored. Professor Steadman argues that most of the pollution from automobiles comes from just a few individual cars, usually the older, tampered-with vehicles, vehicles that people have, for example, knocked out the insert in the gas tank and run on regular gas, a car that was built to use unleaded fuel, which then messes up the catalytic converter, and they are then polluters. His research is supported by a new in-transit monitoring technology that EPA has not yet been able to incorporate in their computer models. Consequently, according to the professor, the cost of the clean air amendments is very high and the benefits of extremely stringent new tailpipe standards are much less than predicted in several areas.

What he is saying is EPA does not know how to measure what is actually emitted from an automobile when the automobile is moving. The fact is there have been some great studies done which show that if we would raise the speed limit in some of these heavily traveled areas, automobiles would pollute much less.

That is just one example, Mr. President. But let me give you another one. Perhaps the greatest example of absolute blind ignorance towards science is in this bill's acid rain title. I come from a clean air State and some of my colleagues have said, "Symms, why are you worried about this?" I tell you why I am worried about it. I am a Senator from the State of Idaho, but I am also concerned about the United States of America and the people in the Midwestern part of the United States are going to pay an arm and a leg for nothing. That is right, Mr. President.

I challenge any Senator to tell me one other Senator in this Chamber who has the basic scientific understanding, background, and training and personal experiences that JOHN GLENN has. He spoke eloquently on this floor for 2 or 3 hours during the debate on this bill and talked about how we are absolutely pouring money down a rat hole with the acid rain part of this bill. For what? For the possibility that maybe in 50 years 75 lakes in New England will have a lower acidic level and that instead of spending $8 billion a year, if I recall Senator GLENN's speech correctly—and I will correct these numbers in the RECORD, but I think my figures are right—I believe he said that for one-half million a year we could lime all of the lakes in New England now and have instant results but that 50 years from now, as the scientists testified before the Environment Committee, maybe 75 lakes will have a lower acidic level than they have now after we have spent $8 billion a year on this venture.

We paid good taxpayer dollars to fund a NAPAP study but, we legislated on the bill before we received the study. Dr. Lawrence Kulp, former director of the National Acid Precipitation Assessment Program, NAPAP, sent me this letter earlier this year. I want to quote from it.

"I have recently returned from the NAPAP International Conference at which the results of the ten year $500 million research effort on acid rain were thoroughly reviewed by over 700 experts in the field. The basic conclusions were:"—This is not what you read in the headlines or the newspapers of America or see on the evening news, because it is a lot more jazzy to talk about how we have acid rain and it is destroying New England. Here is what their conclusions were. We paid $500 million, Mr. President, to get this information. But the basic conclusions are these: First, there is no crisis, no crisis; second, at present levels of acid rain there will be little or no change in the extent of the effects over the next half century; third, advanced technology for control of the precursers of acid rain, mainly SO2, has emerged which make it possible over time to almost completely eliminate the effects of acid rain at no net cost to our society.

That is what we have the scientific capability to do. The economics of gas infusion in the process of burning high sulfur coal is getting cleaner and cleaner and cleaner under the market system that now works. But no, that is not good enough for Congress. We are going to scrub it. We are going to make them scrub out so-called 10 millions tons per year, which will mean that we will have 30 millions tons of sludge every year. I would like to have the first Senator stand up and volunteer before his constituents that he wants to build a sludge dump-so they can pile it up in his State or her State.

Mr. President, I would like to make another observation here.

"Acid Rain and Acid Lakes: The Real Story," by Edward C. Krug, a soil scientist with the Illinois State Water Survey, participated in the National Acid Precipitation Assessment Program's 1990 conference, offers evidence that acid rain is not killing lakes or forests in the Northeast. He urges that the small environmental impact from manmade emissions of sulfur can be corrected for less than 1 percent of the cost of the Clean Air Act approach.

I want to quote one paragraph. I would like to insert his statement in the RECORD.

The public belief in the acid rain "problem" was created by repetitive and unproven assertions from ostensibly authoritative sources in U.S. government programs and agencies. This misinformed public opinion has, in turn, dominated the politics of acid rain. The U.S. is now on the verge of adopting a Clean Air Act which, among other things, seeks a multibillion dollar reduction of acid rain emissions to restore lakes and streams. Yet most of this concern is not based on scientific fact. Policy makers who ignore the evidence on acid rain will waste billions of dollars and, in the long run, cast doubts on the credibility of environmental concerns.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ACID RAIN AND ACID LAKES: THE REAL STORY

(by Edward C. Krug)

For more than a dozen years, the conventional wisdom held that rain in the Northeast U.S. was acidified by Midwest electric utilities' coal burning, creating an aquatic "silent spring"—thousands of Northeast lakes were allegedly dead with thousands more soon to die. President Jimmy Carter endorsed a report by his Council on Environmental Quality in 1980 calling acid rain one of the two most serious environmental problems of the century. Such fear was understandable given the widespread claims of disaster. For example, the Congressional Office of Technology Assessment in 1984 claimed that 809 percent of Northeast lakes were or would be acidified by acid rain. The U.S. Environmental Protection Agency in 1980 claimed that acid rain had increased the acidity of Northeast lakes 100-fold over the last 40 years. In 1981 the National Academy of Sciences claimed that, at then current levels of acid rain, the number of acidified lakes would more than double by 1990.

These initial claims of disaster were unsubstantiated and have been refuted by extensive research of the past ten years. Yet, the authority and consistent repetition of these claims establish a belief which persists to this day.

The ten-year National Acid Precipitation Assessment Program (NAPAP), however, proves that the claims of an aquatic "silent spring" are unsubstantiated hyperbole. NAPAP's comprehensive national lake survey found only 240 lakes of 7,000 Northeast lakes, or 3.4 percent of the total, to be "acid-dead", although this was assumed to be due to acid rain. And this percentage was found to be stable. Furthermore, most of these dead lakes have little recreational value simply because they are small and hard to get to.

Pressure for Politically Desired Results. When NAPAP published these lake survey results in its 1987 Interim Assessment, environmentalists and their allies in Congress were outraged. NAPAP's director, Lawrence Kulp, left in the midst of the turmoil. Members of Congress demanded that the new director produce the politically desired results. This furor diverted public and political attention from the expensive survey results showing no aquatic "silent spring" and allowed policy makers to proceed with plans to deal with a "problem" of far greater mag-

nitude than the one that actually existed. Thus, last October 5, NAPAP's new director, Dr. James R. Mahoney, told the Senate Subcommittee on Environmental Protection that deacidification of about half of the acidic lakes over the next 50 years might conceivably justify the potential $300 billion cost of proposed acid rain controls. But his own NAPAP report admitted that all 240 acid-dead lakes could be deacidified simply by adding acid-neutralizing limestone for just $20 million, one fifteen-thousandth of the cost of the proposed acid rain bill.

The February 1990 NAPAP conference on the final results of this $600 million research program reduced aquatic effects to a trivial issue. While it was previously reported by NAPAP that most of the existing "acid-dead" lakes are acidic because of acid rain, additional study of Adirondack lakes (considered to be the lakes most severely acidified by acid rain) showed that over half of the fishless acidic lakes were acidified by natural organic acids. Most of today's acidic lakes were probably naturally acidic before acid rain. The existing models do not yet incorporate these types of natural acidity.

These new research findings on the widespread importance of natural acidity were further supported by lake sediment analyses showing that, while some Adirondack lakes have recently become more acidic, the average Adirondack lake is more alkaline now than it was 150 years ago, not more acidic. New research shows that land-use change is almost universal in the Northeast. Only 60,000 of over 60,000,000 acres of forest have not been cut and regrown, or 0.01 percent. Land-use changes can result in either alkalinization or acidification of lakes and streams. This introduces major uncertainties about any changes there have been in acidity or alkalinity.

"Rivers of Hunger" Predating Industrial Activity. The notion that acid rain is responsible for acidity in lakes and streams is also contradicted by the existence of highly acidic surface waters in regions without acid rain. Fraser Island, Cooloola National Park, and Tasmania in Australia, and the Westland area of New Zealand have no acid rain, yet are filled with highly acidic lakes and streams. Indeed the magnitude of acidic surface waters in areas without acid rain dwarfs that of areas supposedly "devastated" by acid rain. In the Amazon basin, a river system the size of the Mississippi, the Rio Negro is naturally acidic and fishless. The naturalist and explorer Alexander von Humbolt wrote about these "rivers of hunger" nearly 200 years ago, definitely pre-dating industrial activity in that part of the world.

The public belief in the acid rain "problem" was created by repetitive and unproven assertions from ostensibly authoritative sources in U.S. government programs and agencies. This misinformed public opinion has, in turn, dominated the politics of acid rain. The U.S. is now on the verge of adopting a Clean Air Act which, among other things, seeks a multi-billion dollar reduction of acid rain emissions to restore lakes and streams. Yet most of this concern is not based on scientific fact. Policy makers who ignore the evidence of acid rain will waste billions of dollars and, in the long run, cast doubts on the credibility of environmental concerns.

Edward C. Krug, soil scientist with the Illinois State Water Survey and participant in the National Acid Precipitation Assessment Program's 1990 Conference, offers evidence that "acid rain" is not killing lakes or forests in the Northeast. He argues that the small environmental impact from manmade emissions of sulfur can be corrected for less than one percent of the cost of the Clean Air Act approach.

Mr. SYMMS. What does it take to penetrate the impenetrable membrane of the beltway or the Capitol Grounds? What does it take to get Senators to read what the facts are? It escapes this Senator.

A half-billion dollar study, Mr. President, and here we are, at the same day that we are passing a bill that will cost people $8 billion a year in regulatory costs and higher electricity costs, we are going to also bring a bill in to raise their taxes another $200 billion to $300 billion. It is no wonder that the cry is out there in America to throw the incumbents out. It is no wonder when you look at the quality of the legislation that we stand in here and brag about and talk about how wonderful it is for our constituents.

What they get is they get to hire a bigger regulatory agency, then they are going to get to hire more people to fill out the forms in their little companies and businesses, then they are going to find out that they may be subject to criminal penalties if something has gone wrong in the process of them trying to do what they have tried to do to serve their customers in a good fashion and run a fair, sound business.

Then they will get to hire a lawyer to defend themselves. Then the thanks that they get from Congress is we will raise their taxes so we can hire more people to harass them. That is what is happening.

Do not worry about it. I mean a half-billion dollar study, that we ignored? I wish Senator Proxmire were here to talk about the golden fleece. This is a golden fleece. The American people have been fleeced to pay a half-billion for the best scientific study they could get. The results of the study are that there is no problem, there is no crisis, we are winning the battle on the acid rain problem. It is a scandal.

Mr. President, it is an absolute scandal that we in the U.S. Senate could spend a half-billion dollars for the best scientific study, and then totally ignore it and go right ahead because we think it is going to be popular to go home and tell everybody we are cleaning up your air. They can pay $8 billion a year in higher electricity costs.

It is going to decimate the Midwest. They are going to be in the predicament for years to come. Those people that come from other States, if they think that you can have great States like Ohio, Indiana, and Kentucky, throughout the Ohio Valley, be in severe depression, and not have an impact on those other States, you are whistling Dixie.

But do not worry about that half-billion dollars, my colleagues, as I said. Do not worry about it because later today you are going to have a chance. You can vote to raise everybody's taxes. You can hire EPA cops to harass all these people. They have even got a section in this bill to measure sheep and cattle flatulence. It is unbelievable. In fact, I find it rather interesting that that happened.

I see my good friend from Montana is off the floor. But I recall that I offered an amendment and we struck the part about methane emissions from livestock in this bill. They did not have it in the other body.

Lo and behold, it comes back from conference, out of the scope of the conference, and it is back in this bill. I do not know how these things happen. But it is here. If anybody doubts it, you go get one of these and dig through this big mess, which I did last night. It is in here, Mr. President. The American people are going to laugh through their teeth. I hope they laugh all the way to the voting box on some of these people.

It just amazes me that on page 55—I will give you the facts here—I see some extraordinary, tenacious person has once again inserted the study of "an inventory of methane emissions associated with livestock production."

As I said, if my memory is correct on this, the Senate unanimously struck that provision when the bill was pending before the Senate. The House had no similar title in the bill. So how does it reappear? How does it reappear? This issue came up in the context of the farm bill where it was tossed out as a $19 million item.

Fortunately, the House, in the farm bill conference, wisely struck the provision from the bill. The chairman of the House Commerce Committee tells me that he did not insist on incorporating this language in the bill.

How did it get in there? Perhaps the managers of the bill on the Senate side can explain this to the rest of the Congress, to the Senate, how they put it back in the bill. It was struck on the House side. It was struck from the farm bill. But it shows up here.

Mike Royko, from the Chicago newspaper, I am sure will be happy to write about this again. He did once before this year, poking fun at Congress for spending all this money. I hope some of the Senators would be willing to sponsor an amendment to strike this from the legislation next year.

I understand that points of order have been raised. I personally think, Mr. President, that a point of order would lie against this bill, because what they have done here is an outrage. It is an outrage and all Senators should be outraged about it, to just go put something back in that was not even in the scope of the conference.

Mr. President, I have a letter from the Center for Atmospheric Studies,

Oregon Graduate Institute of Science and Technology:

DEAR SENATOR SYMMS: I have heard that Congress is considering spending large amounts of money to study methane production by cattle as it relates to global warming. In my opinion such money will be completely wasted since even if the emissions from cattle could be controlled, it would have no practical or perceptible effect on global warming.

Enclosed is some correspondence that provides more details about my point of view.

It is signed, "Sincerely yours," by the professor.

Mr. President, I ask unanimous consent to have printed in the RECORD this backup material.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OREGON GRADUATE INSTITUTE
OF SCIENCE & TECHNOLOGY,
Beaverton, OR, August 28, 1990.

Senator STEVE SYMMS,
Boise, ID.

DEAR SENATOR SYMMS: I have heard that Congress is considering spending large amounts of money to study methane production by cattle as it relates to global warming. In my opinion such money will be completely wasted since even if the emissions from cattle could be controlled, it would have not practical or perceptible effect on global warming.

Enclosed is some correspondence that provides more details about my point of view. Please call me if I can be of any assistance.

Sincerely yours,

M.A.K. KHALIL,
Profession, Department of Environmental Science and Center for Atmospheric Studies.

INSTITUTE OF
ATMOSPHERIC SCIENCES,
Beaverton, OR, March 16, 1989.

Re the Workshop on Methane Emissions From Ruminants.

Dr. MICHAEL J. GIBBS,
ICF, Inc.,
Universal City, CA.

DEAR MR. GIBBS: Thank you for inviting Dr. Rasmussen and me to the workshop on methane emissions from ruminants. What we learned will be very useful in our work. My purpose in writing this letter is to convey an atmospehric science perspective on the role of ruminants in the global methane cycle.

(1) By all counts rumninants are 14%-23% of the present global emissions amounting to 60-120 Tg/yr (Appendix 1).

(2) The global warming expected from increasing methane can be written approximately as:

$$\Delta T(^{\circ}C) = 7.2 \times 10^{-4} \, ^{\circ}C\text{-yr/Tg} - \Delta S \, (Tg/yr)$$

based on Lacis et al. (1981) and Wang et al. (1986) and including 0_3 feedback. ΔS is the additional emissions of methane in the future in Tg/yr.

One way to look at the environmental (greenhouse effect) return on controlling methane emissions from cattle is to assume that we do nothing and let cattle populations double. The addition to global warming will be 0.04-0.08 degrees C ($\Delta S = 50$-100 Tg/yr). It is important to keep in mind how small these benefits are in terms of reducing global warming.

(3) When we first published our work on the increase of methane, many of our colleagues were skeptical because they found it hard to understand what would cause such a trend. This feeling survives to this day, and it is often said that while we know methane is increasing, the causes are not well understood. The original ideas on the increase of methane were based on the atmospheric chemistry of OH. It was thought that CO would deplete OH and cause methane to increase. The observed rate of increase, however, was too difficult to explain in these terms, and so we argued from the very beginning that the causes were increasing cattle and rice production. The concentrations of methane in ice cores have lent considerable support to the importance of increasing emissions on the global trends (Khalil & Rasmussen, 1985).

In view of this history, it may appear ironic that now I am arguing that future increases of methane may not come from more and more cattle and rice production. There are two reasons:

First, limitations on resources are likely to prevent large or rapid increases in cattle and rice agriculture (see Khalil & Rasmussen, 1982; 1985). Already we see that these sources are not increasing as rapidly as in the decades before.

Second, and more important, there are potential feedbacks that are very poorly understood at present and may be triggered by global warming. The principal feedback we are working on is the release of methane from permafrost. It has been estimated that there are 2,000,000 teragrams of methane in permafrost. There are only 4000 tG in the atmosphere. Obviously a small perturbation of the huge permafrost reservoir can have a very large effect on global methane. Therefore, the methane budget in the future may be more affected by feedbacks in a warmer world than by cattle, rice fields, and other anthropogenic sources. The global warming that can trigger such changes cannot be caused by methane but would come mostly from increases of CO_2.

I want to emphasize that the ideas on the role of feedback from permafrost are no more than speculations and hypotheses at present, and much work has to be done to understand what may happen. But my reason for going into this matter is to point out that the future concentrations of methane may depend on entirely different processes from those that explain the past concentrations so that controlling one or two small sources now may have a negligible effect on future concentrations of methane.

Because of the reasons discussed above, I believe that the effect of controlling methane emissions from cattle, even if it can be done, will provide little or no benefit from the point of view of global atmospheric chemistry and global warming.

I am sending a copy of this letter to the other participants since many of them may not be familiar with the atmospheric perspective on the role of ruminants in the global methane cycle. I thought they may be interested in what I have said here.

Sincerely yours,

M.A.K. KHALIL,
Professor.

TABLE FROM KHALIL & RASMUSSEN'S PAPER IN PREPARATION DEALING WITH AN ANALYSIS OF RECENT GLOBAL BUDGETS OF METHANE

Simplified budgets (chronological order)	Ehhalt & Schmitt (1978)	Donahue (1979)	Sheppard et al. (1982)	Crutzen (1983)	Khalil & Rasmussen (1983)	Blake (1984)	Seiler (1986)	Bingemer & Crutzen (1987)	Cirerone Oremland (1988)
Ruminants	160	160	90	60	120	115	85	79	80
Rice paddy fields	280	210	39	45	95	165	120	54	115
Biomass burning	0	0	60	70	25	68	78	65	55
Other anthropogenic	83	233	135	45	105	106	82	103	120
Swamps and marshes	245	250	39	125	150	150	48	82	115
Other natural	24	27	882	150	83	256	25	15	55
Total anthropogenic	523	603	324	220	345	454	364	301	370
Total natural	269	277	921	275	233	406	73	97	170
Total	791	880	1245	495	578	860	437	398	540

Notes: (1) The budgets have been adjusted (to 1988) for the changes in the global emissions that may have taken place since the budgets were published. If increasing anthropogenic sources are the main cause of increasing methane the anthropogenic sources should be increasing at about 5 Tg/yr. (2) All budgets are not equally successful in explaining the global space and time distributions of methane.

REFERENCES

M.A.K. Khalil and R.A. Rasmussen (1982) Secular trends of atmospheric methane, "Chemosphere 11," 877-883.

M.A.K. Khalil and R.A. Rasmussen (1985) Causes of increasing methane: depletion of hydroxyl radicals and the rise of emissions "Atmospheric Environment 19," 397-407.

A. Lacis et al. (1981) Greenhouse effect on trace gases: 1970-1980, "Geophysical Research Letters 8," 1035-1038.

W-C. Wang et al. (1986) Trace gases and other potential perturbations to global climate "Reviews of Geophysics 24," 110-140.

Mr. SYMMS. I think it is interesting. I hope the Senators later on in their explanation of this bill will be able to explain to the rest of the Senate how this provision got back in this bill.

My colleagues will ask, "How is it that such a disregard for science can happen?" Here we are. We are regulating, we are going to regulate very extensively for acid rain, when the ex-

perts say the sky is not falling in; there is no problem. We are going to spend millions and millions of the taxpayers' dollars which we will be asking people to be voting for today to raise the money from the working people in this country to pay to study the methane emissions from livestock when the experts say even if you could control it, it is no problem on global warming? How is it that this can happen?

Let me quote what the "Sierra Club" author, Steplen Schneider said:

This is a very important point of why legislation of this nature passes the Congress.

We need to get broad-based support to capture the public imagination. That, of course, means getting loads of media coverage, so we have to offer up scary scenarios, make simplified dramatic statements and little mention of any doubts one might have. Each of us has to decide what the right balance is between being effective and being honest.

That is quite a statement.

In other words, scare the heck out of the public. The networks are not going to check the facts; they want a big jazzy story they can put on the evening news. Go out and say 150 million Americans are breathing dirty air, even though it is not true, but you know, we can justify it and rationalize it. In other words, Mr. President, scare people, get the gullible media hooked in with you, and then pass laws on sound superstition. Do you know what that sounds like? It sounds like tribalism, to this Senator. Yet, it is going on here in America, the land of the free and the home of the brave, and the American people seem to be taking it without even a whimper.

The basis of the clean air bill is not for science, not for clean air, not for economics; it is for politics. It is pure and simple politics. That is all it is. And the goal was to be politically effective but not necessarily honest.

I have to say that both parties can share in the pride of this political endeavor, because even though I happen to think the President had a very moderate idea in mind when he talked about clean air legislation, he chided and chided and chided the Congress for not moving the clean air bill. All the time he said that, "If that bill is over $22 billion in costs, I am going to veto it." I do not know whether they have it costed out yet, but all the studies I have seen indicate to me that this bill is going to cost somewhere between $35 billion and $76 billion, Mr. President, per year, annually. And it will cost a job loss of somewhere between 500,000 and 1.5 million.

I do not know what the President's intention is on vetoing the bill, but I would be quite surprised, frankly, if the bill did not get vetoed. So I would have to say that neither party can plead "not guilty," when in 3, 4 or 5 years from now they look up and find out that all their investment capital at that time in the chemical industry, steel industry, the petrochemical industry, pharmaceutical industry, and many others, has been invested in Europe, in the Pacific Rim, in Mexico, invested in Canada, and the United States is all of a sudden finding out that people do not want to invest here any more. I hope at that time, when that happens, Senators will look back at legislation such as this.

Second, Mr. President, we have talked about the politics of it, and sound science, but now let us talk about this bill stacks up in terms of providing local flexibility, the prevention and control of air pollution at its source. I am quoting now from the existing Clean Air Act. "The prevention and control of air pollution at its source is primarily the responsibility of the State and local government."

A pollution problem, Mr. President, is Grandma Kravitz's 1956 Oldsmobile that needs a tuneup, or the family down the road that has an old wood stove with no modern catalyst on it, or good old Fred or Tom's body shop on the corner that cannot afford a new airtight paint room.

We here in Washington like to talk about national problems, but Grandma Kravitz and the family down the road and Fred and Tom with the auto body shop are not national problems. They are local people who have their own unique problems and whose solution to pollution cannot be dictated successfully from here in Washington. Mr. President, if you think it can, I only invite those colleagues of mine, who believe that we can dictate all of these mandates from Washington successfully, to look at what Mr. Gorbachev is trying to do over in the Soviet Union. They are trying to get away from making all the decisions in Moscow and spread them out to the people.

All we are doing here is passing laws to grant power to the EPA police force. But we are not going to be tuning up cars; we are not going to be fixing the little auto body shop or paint shop down the street. What we are going to do is drive the cost of everything up, so it will make it more difficult for them to do it.

This is how the Congressional Research Service described the earlier version of the bill, this bill we are discussing today:

Even where it grants EPA significant new authorities as in the acid rain and air toxics title, the current act contains authorities that could be used. The bill forces EPA decisions and actions by setting up deadlines, specifying procedures and spelling out stringent legislative standards.

This is a blueprint for a mass of regulations coming out of Washington to be imposed on our people. In fact, Mr. President, it could be argued that the entire purpose of this bill was to remove local flexibility that is built into the existing Clean Air Act. It is true that during the committee hearings on this bill, several State and local air pollution control officers actually asked for this bill. Listen to their reason: "Without a Federal mandate, it is doubtful that the States and localities would be willing to impose upon themselves the stringent controls that are needed."

Mr. President, I could hardly believe my ears. These people would be arguing against democracy if they were in the Soviet Union today; they would be fighting Mr. Gorbachev in his efforts with perestroika. They would say that local people do not know what is good for them. We want the people in Moscow to rule us and tell us what to do.

In this case, we want the people along with banks of the Potomac to try to go out along the banks of the Missouri River in Great Falls, MT, and tell people what is good for them. I will tell you, I will put my stake on those people. They have better sense on what to do for themselves than anybody along the banks of the Potomac. I have long said, give me the folks along the banks of the Snake River to take care of their environment, and they will do a better job than any bureaucrat at EPA along the banks of the Potomac. Local people do not know what is good for themselves, is basically what we are saying, that local people do not know what is good for themselves, so they want Congress to impose what is good for them.

Mr. President, that is what the democratic republic in the United States is all about. Frankly, communities where air pollution is a real concern are already accepting very stringent standards. Look what California is imposing on itself. That argument is specious in itself. California is imposing very strict standards on themselves without this legislation. The fact is, I heard Congressman DANNEMEYER, a great Congressman from the other body, make the statement that under the current Clean Air Act, by 1995, most of the areas in the United States that are out of ambient standards now would be in ambient standards, and in California they are making the change to get them in without this legislation.

I have said it before, and I will say it again, this bill is nothing but a national industrial policy. It is a centralized control over the industrial sector of our economy to the worst degree. Those countries of the world where decisions of this kind are centrally planned also have some of the worst air quality problems in the world.

I just cite an example to my colleagues. Remember when the Berlin Wall came down and the cars from East Berlin started driving into West Berlin? Guess what happened? The cars from East Berlin did not meet the

standards of West Berlin. They had to waive the clean air standards to allow their friends from East Germany to drive into West Berlin.

I say again, who cares the most about the air quality in Sandpoint, ID, if it is not the people who live and breathe it themselves. It is the people in Sandpoint, ID. They are the ones who care the most. And if we expect some bureaucrat along the banks of the Potomac to appreciate those concerns of the local people, it is foolhardy.

This conference report before us thrusts the heavy hand of the Federal Government into extremely local situations. In fact, in this respect, it is even worse than the bill which passed the Senate earlier. In the Senate bill, a "major source," that is, a business to be heavily regulated, was defined as one that emitted 100 tons per year. But the conferees, by the Senate's recession to the House, reduced that threshold to 50, 25, and even 10 tons.

Mr. President, at 10 tons it takes a source with emissions of 2.3 pounds per hour to exceed that threshold. What does this mean to Senators? What it means is that the mom and pop dry cleaners, printers, bakeries, painters, auto body shops, hospitals, and dozens of other small businesses are going to be regulated and called technically in this law a major source of emissions with all the controls, paperwork, and permitting that accompany that designation.

So, Mr. President, there is no way, in my opinion, that it can be said that this bill promotes local flexibility in dealing with pollution problems. So if you vote for this bill, and I know most Senators will, you need to fully understand that you are voting for centralized industrial policy run from Washington, DC. The history of that throughout the world is that planned economies fail and free economies survive.

So this means that, of the three main principles of America's air pollution control success, this conference report fails on at least the first two. It fails on sound science, it is legislating superstition, and fails on local flexibility.

I looked to the third principle. I went to the third principle and I thought maybe somehow we can find something here where it will give us a stronger economy. There are some people I heard, say it is going to create a whole new industry to go out here and cleanup the atmosphere.

I quote for you from the July 24 letter from Michael Boskin, the President's top economist, who wrote to Chairman DINGELL:

> The President has asked CEA to coordinate administration cost over clean air legislation. Speaking on behalf of colleagues throughout the administration, let me state emphatically that we do not share the view that a major extension of the Clean Air Act can have low, zero or even negative cost. Assertions instead to the effect that expanded clean air programs would, on balance, create jobs, increase productivity and make the U.S. economy more competitive in world markets are at best wishful thinking.

That is Michael Boskin, Mr. President; that is the President's top economist speaking.

Mr. President, it reminds me of the story of someone saying that it was good for the economy to get a lot of glass broken out of the windows because then you had to hire people to fix the windows and buy the glass and produce it. It is only good if you go down the street and break out all the windows if you happen to be the guy who has the glass to sell the people, but it is not good for the society.

That is basically what we are saying. There are no free lunches, no environmental free lunches; there are no free lunches anywhere. It may well be that people think it is worthwhile to spend this much money, but the interesting thing is we could probably clean up 98 percent of what this bill will clean up for half of what the cost of this bill is.

I think also we have to understand the connection between a strong economy and good air quality. But I want to give you a few quotes from our chief environmentalist in the United States, our EPA Administrator, Bill Reilly. He understands the concept that I have outlined very well from a recent article that he wrote. And I am quoting now from Bill Reilly.

> [Little] has been said about the environmental benefits of a prosperous, growing economy. First, growth raises expectations and creates demands for environmental improvement. Within our own country, demands for better environmental protection (for example, tighter controls on land development and the creation of new parks) tend to come from [the] affluent. On the other hand, environmental issues have never ranked high on the agenda of the economically disadvantaged. As income levels rise, people can afford to pay attention to the quality of their lives and the condition of their habitat.

Mr. President, I digress for a moment to say that when I accompanied Senator CHAFEE on a trip to the Brazilian rain forest, one of the things that we observed was the poorer the people were, the less concerned they were about whether they clearcut an acre of rain forest and destroyed forever 300 species in one acre. They were not concerned about it, because of their economic situation. They were desperately fighting to try to get enough to eat.

So I want to say again, Mr. President, a sound strong economy is the best way that we can ensure having a sound, good, clean environment in this country. We are going at it exactly backwards. We are going to raise people's taxes and then going to have centralized industrial policy; going to raise their taxes to discourage more work and production and drain the money from the economy that needs to be spent in the private sector; feed it into the wasteful profligate habits of the Federal Government; and then we are going to turn around and have a centralized, planned economy through the Environmental Protection Agency to administer the Clean Air Act.

Mr. President, I will go ahead here.

> Ecomomic expansion contributes on the supply side as well—by generating the financial resources that make environmental improvements possible. In the United States, for example, economic prosperity has contributed to substantial progress in environmental quality. It was not good luck that substantial environmental progress occurred during a period of economic prosperity. Our healthy economy paid for our environmental gains; economic expansion created the capital to finance superior environmental performance.

Administrator Reilly goes on further to point out that a growing, thriving economy can be the cradle of the technology that will solve our environmental problems and, as he put it, and I quote:

> The development of cleaner, more environmentally benign technologies clearly makes up for the central element in the transition to the sustainable patterns of growth.

Mr. President, what he is saying, and that is not STEVE SYMMS saying it, that is William Reilly, former president of the Conservation Foundation, a true, in my opinion, professional environmentalist, who devoted his life to addressing environmental problems.

To put in my words what he is saying is that the solution to pollution is design, it is better technology, it is the advancement of what mankind can see in terms of cleaner, simpler, ways to do things. The electric generator, for example, the simple electric generator and electric motor, what advancement it has made in terms of the environment. The solution to pollution is better design, simpler design, which comes from economic capital, freedom of people to be able to work and compete and achieve a better way to do things.

So I would hope that my colleagues would consider this and not dispute that economic growth in the environment and progress are tied together. You cannot damage one without damaging the other.

Unfortunately, the economics of this bill gets the biggest "F."

Let me list a few provisions which make no sense and, like I say, again I do not know what it takes to penetrate the Beltway. I say I tried hard on this bill to plead for common sense. Let me list some of the things in this bill that absolutely make no economic sense: Nonattainment provision, perhaps the most costly title of the bill, the Senate receded entirely to the House position

on this title with smog control from stationary sources.

In doing so, we have accepted far stricter provisions designed for Los Angeles-style pollution problems. For 4 days Senators worked behind the closed doors in the majority leader's office to come up with the nonattainment provisions in the bill that passed the Senate and in a heatbeat the conferees yielded to the House because they thought the House had a stricter and more restrictive provision, I assume.

Offsets. The bill forces new modified sources to obtain offsets—emission reductions in some other source—for any new construction or modification which will increase air emissions. While the Senate bill required one-for-one offsets, the House bill may require offsets up to 1½ times greater. This will force cities to consume offsets so that even minor growth or modernization quickly will deplete the cities entire pool. After a metropolitan area pool of offsets is depleted, no new growth or modernization may occur. It is just economic insanity to do this.

The combination of high offset ratios, coupled with the inclusion of more small businesses competing for those offsets, could produce severe inner-city economic collapse.

My good friend, Jay Powers of the AFL-CIO said it this way. I think it is a classic comment, but it is so true. He said this title should be called the neutron bomb title. And I said why is that, Jay? He said because the buildings will be left but there will not be any people in them. The workers will be gone. The neutrom bomb to our inner cities.

In fact, Governor Deukmejian of California recently lamented that 5,000 jobs a month are leaving the Los Angeles area every month as a result of their strict clean air plans that the State imposed. We are going to impose it on the whole country.

The wood stoves. In the dash to recede to the House title, the Senate negotiators let drop completely one of the Senate provisions to create regulatory and financial incentives for modernizing homes with new clean-burning wood stoves in areas that have particulate problems.

This is an amendment that I had inserted in the bill. It had been accepted by the committee. It was an excellent amendment. It would reward people in these areas where they have nonburning days when the pollution—most particulates get high because of wood burning particularly. Now there is no incentive for people to buy a new, modern stove, because on nonburning days, the way the bill is written, you will not be able to burn your modern clean-burning wood stove.

What I wanted to do was, if people invested the money to buy a new, modern cleanburning wood stove that then, on days that are called nonburning days in areas that come out of attainment, they would still be allowed to burn their good new, clean investment in their stoves so more people would invest in them. But no, the U.S. Senate and the House of Representatives said, we are not going to take any sound common economic sense to reward people for cleaning things. We will just burn them all. And they cannot burn them on nonburning days, so they might as well as have a dirty burning fire. And then on the days it is not out of attainment they burn their dirty fire.

What we ought to be doing is encouraging everybody to get a clean burning wood stove so that they can all burn them all the time.

The Outer Continental Shelf provision. The Senate receded completely to the House without even an effort to seek a compromise position. Under House provisions, State and local governments have unprecedented regulatory authority over Federal territory outside of their own borders, resulting in a virtual veto over OCS oil development.

I guess if that is what the Senate and House want to do, and they want to continue to be held hostage by people like Saddam Hussein, that is a decision that can be made.

Title II, tailpipe standards. Existing vehicle emissions controls remove 96 percent of the emissions at a cost of $1,200 per vehicle. But we are getting 96 percent, 96 percent of emissions we are taking out of our vehicles today.

I said at the beginning, the best way to clean up the air for the quickest bang for the buck will be if we could all afford to pitch in and help everyone that has a car that is over 10 years old buy a new car, or a more modern car. We would do more for cleaning up the air than any other single thing we can do in America by helping those people that do not have the money to buy a new car to get a new car today.

The President proposed to ratchet control to 98 percent. Ninety-eight percent, 2-percent improvement, which is a lot. In other words, it would cut out 50 percent of what cars are now emitting. It would cost $150 more. I thought that was reasonable. I was willing to support that. The House proposal would have raise the level to 98.4 percent, an added cost of $350.

Now, Mr. President, I think it is important to note here that most of the people who live in rural areas will receive absolutely no benefit from that for the return of this cost. But the conference mandates such controls and then imposes a tier II standard which, if it ever is kicked in, will go up to 98.7 percent at a further cost of $500 per car. At the present time—even though it is in the bill and it may not happen because some of the studies that are in the bill—it is contingent upon whether the cities are in or out of containment and we will have to wait and see how that comes out.

If we have the kind of recession that I think the Congress is pushing on the American people by rasing their taxes and excessively regulating them, many of the people will not buy new cars. They are going to drive their old cars that are polluting more and it will take longer to clean up the air than it would have been.

How I wish and how I pray Congress would just adjourn today before they pass these two pieces of legislation so the country would have an opportunity to survive economically without these additional burdens. But I know that will not happen.

Now, if the tier 2 does kick in, it is going to cost a total of $2,200 per car, another $1,000 added to the $1,200 we now pay.

Another little point people have not thought about, precious metals availability. The current catalyst configuration uses 0.006 ounces of rhodium per catalyst. Tier II standards, if technologically possible, would require at least a doubling of that amount to 0.0126 onces per catalyst. Ninety-six percent of all the rhodium in the world comes from South Africa. The metal is currently undergoing extreme demand pressures and prices have now reached up to $4,400 an ounce, up 400 percent from where they were a year ago today.

Mandated sales. This is a real doozy, Mr. President. This is one that is amazing. I wonder what our friends in Eastern Europe, who are trying to pattern their economies after the United States, would think of this one when we talk of all of this free enterprise business. This bill mandates sales of a certain number of low emission vehicles with no consideration of what customer acceptance will be. In California, even if they have to manufacture and sell these automobiles at a loss, there is a mandated provision in the bill—I think it is 300,000 vehicles that must be sold, even if they lose money.

So what that means is that the distinguished Senator from New Mexico, who is the occupant of the Chair, and some of the people who live in the high clean skies of New Mexico, they will get to pay a higher price for the car that they buy because General Motors will be required to sell cars at a loss in Los Angeles to make it go. People in Idaho will do the same thing. People in Rexburg, ID, and Boise, ID, and other places will end up paying for this because we are forcing and mandating sales. It is a very unheard of concept in the United States to mandate sales even with no regard to cost.

Recall costs. Over 15 million vehicles have been recalled over the past 5 years because of inability to meet the

current standards. The conference report is vastly going to expand the likelihood of more recalls which means more inconvenience, and a very, very costly exercise for the American economy.

(Mr. AKAKA assumed the chair.)

Mr. SYMMS. Title III, Mr. President, air toxics. This is the part where were we have the theology.

If we inject these rats full of chemicals and if the chemical we inject into the rat is not poisonous, then the rat does not die. If you jam enough of them in there and you get the rat to get a cancer, then you can go out and make these theoretical studies of what the most exposed individual will be and technically you can have all kinds of problems related to jobs, to the workplace, and you can actually close businesses down. It is what I call the theology. It is not based on facts. It is just based on the rats. It must be kept in mind it is theoretical risks, other than accidental release injuries. Routine emissions of most substances under this title are not proven to have caused serious health effects in the United States.

The technology mandate section. The conference provision requires sources to adopt the maximum achievable control technology, known as MACT, defined as at least 90 percent control of emissions. The President's bill imposed this MACT standard on only the top 50 percent of such sources. The conference report imposes it on all: 100 percent, meaning that very small and very insignificant emitters will be burdened with the same technology mandates as major corporations.

So, for example, the corporation spends millions of dollars because they do hundreds and hundreds of cars, say, at Ford or Chrysler or Chevrolet. They are going to impose the same standards on Joe's Auto Body Shop. It is going to be very costly, I think, for Joe's Auto Body Shop and we may find the cost of having a car painted is going to go up enormously or we may not be able to get it done.

Unfortunately, if my opinion is correct about how this is going to work out, what will happen is that people are going to want to paint their old cars because they are going to be too poor to buy a new car. And we will slow down the rate at which we are reaching attainment now.

The conference bill also imposes MACT requirements, regardless of whether the hypothetical risk is large, small, or negligible.

Early reductions. The Senate bill exempted from MACT sources who early on reduced toxics emissions by 90 percent even before technology standards were imposed by EPA. The conference deleted the provision. This means that currently clean plants will be penalized and earlier reductions on the part of other sources are less likely.

What I am talking about is, let us say you have a plant in your State, Mr. President, and they spent $10 million on a cleanup program to reach the MACT standards. Now what happens is that they will have 6 years to amortize that out. If other technology comes along—even though they have spent all this money—they are going to have to do it all over again.

What are they going to do? Sound investors are going to take a look at the United States and say we do not think the United States really wants our business any more. We will go offshore and invest our money offshore to manufacture chemicals, to manufacture fertilizer, to do these other kinds of things. We are going to make it so difficult on people they will not want to do it.

Senator DOLE offered some amendments that dealt with agriculture pesticides. The Republican leader of the Senate—they threw his amendments out, too. The Congress deleted the important provision in the Senate bill to clarify the new regulatory regime in this title would not overlap farm chemical use that is already regulated under FIFRA. Without that protection, farmers would be deemed sources of toxic air emissions.

So if we have farmers in our States who use pesticides, aerial applications, ground applications, they may be found by EPA to be major source emitters and may have to go in and get all kinds of permits and go through a permit process. They are really going to love it. They are really going to love it, Mr. President. I hope they remember who gave it to them.

Residual controls. The House standard for risk remaining after imposition of MACT are tied to the EPA's interpretation of vinyl chloride court decision by Judge Bork. While Bork's decision was reasonable, the Agency has interpreted it in an unreasonable way. Their EPA regulatory interpretation could prove as costly as the original Senate "bright line" shutdown standards, the only difference being that EPA has a slightly greater discretion when the science is questionable and where risks are "close to the bright line"—which is their current procedure. That sometimes is called "the bright band."

Under the bright band, it is possible for a standard to be developed that shuts down an entire industry and, to a certain extent, the economic consequences of the standard cannot be considered.

So it is true, and the proponents of this will say "the bright line is out," but the bright band is still in there. They could rule closer than 1 to the 10,000 or a little further away, maybe 1 to the 20,000 or something so you would have a little more flexibility. But you would still have the situation that exists in the bill that EPA has the power to go in, and if that most exposed individual who theoretically stands at the gate of the property for 70 years, naked, and based on all these chemicals they have shoved in these rats, they can extrapolate out that he might or might not have a chance of 1 in 10,000 of getting one more cancer in 70 years, which would be 1 in 700,000, they can close the plant down. That is what is in this bill. This is here in the United States. That is the kind of legislation we are passing here at the last hour of the 101st Congress.

I wish Harry Truman was around to run the 101st Congress as he did against the 80th, because I think the Americans would be quite upset.

Acid rain. As far as the economy goes, this is probably the least scientifically supportable area of the bill. It is very costly. The sulfur dioxide allowance trading system, the title's central mechanism, may be completely unworkable. Nearly 200,000 additional allowances were thrown in the pot in conference. EPA's modeler, ICF, has not ascertained whether or not the allowance values will be seriously degraded by this addition.

This is the part that I mentioned earlier in my remarks where Senator GLENN so carefully outlined earlier this year on the Senate floor how, instead of spending $8 billion a year, which this title will cost in the bill alone, that we could spend $500,000 a year to lime the lakes of New England and we get instant results to improve the environment. But that is not the choice Congress has made.

The WEPCo fix. The conferees, in spite of letters from 27 Senators, refused to correct the antimodernization dilemma—known as WEPCo policy—which threatens to impose a tighter standard on utilities attempting to adopt tighter technology than on utilities that make no such effort.

If you spend enough money to improve your production plant, you may have to go clear back through and start over and get a new permit process even though you have made it cleaner. In other words, what this does is penalize people for cleaning things up. I think it will have a negative impact.

Allowances not property. This is another serious problem. One of the reasons many people have liked the bill is because it injects some private property mechanism in the bill with respect to trading allowances so there is a value to these allowances and they can be bought and sold. That is a good concept.

But the conference agreement contains a clause defining "allowances" as not "private property" so EPA can "take" allowances without paying util-

ities or the ratepayers who financed such allowances any compensation.

What makes the Congress think if they are not going to allow the allowances to be privately owned and have the respect of private property, what makes us think people are going to want to invest and buy and sell them? It is not unusual for Congress to have an antiprivate property mentality, but it really is harmful, I think, to one of the parts of the bill that was based on some market solutions that Administrator Reilly had originally pushed when he introduced the President's original bill.

Title V: Permitting. Between 50,000 and 150,000 new businesses will be required to get Federal permits in addition to the State permits they already get. The average cost of these permits has been estimated at around $100,000, meaning that this provision alone could add at least $5 billion to the cost of this bill, costs that are not included in any of the estimates.

Now, $5 billion may not sound like a lot of money to the Senate, in view of the fact of how easy it seems to be for Congress to raise taxes on the people. As the late Everett Dirksen said, a billion here, a billion there, after a while it adds up to real money. I think he would be saying this morning, $5 billion here and $5 billion there and the cost of regulation adds up to tons of money.

Lack of flexibility: The conference agreement prohibits EPA from tailoring or phasing in new operating permit programs to areas and sources which need it most. Every area and source is subject to the entire program whether it is needed or not.

Enforcement: This conference bill imposes sanctions for paperwork errors; criminal sanctions, Mr. President, criminal sanctions for paperwork errors, recordkeeping errors, and other omissions.

I can tell my colleagues that the people who are going to be impacted by this bill are going to be outraged when they find out that we are imposing criminal penalties if they do not do all of the paperwork exactly right in the operation of their mom and pop dry cleaners, their little paint shop, some small business that may require a permit.

The title of self-audit programs omits the language protecting companies from being penalized if they discover their own noncompliance situations and correct them in good faith.

Mr. President, I do not know how far off the base we have gone, but, in other words, if you have a business that may be out of compliance and you discover yourself or try to bring yourself into compliance, EPA will still have the power to find and penalize you for it even if you are trying to fix it up yourself.

Mr. President, does this sound like an economically viable bill? I do not think so. All through the deliberations on this bill, the Congress has ignored the voices of warning against a bill that is so costly that probably it will do more damage to the economy than the good that it may do for the air.

Here is what Paul Portney, the vice president of Resources for the Future, cautioned:

> The U.S. may be spending $29 billion to $30 billion more each year on air pollution control than it is today. Annual benefits of the proposed changes range from $6 billion to $25 billion. I would speculate that the most likely estimate is about $14 billion or so. If these estimates are even close to correct, Congress and the President are about to shake hands on a landmark piece of environmental law for which costs may exceed benefits by a considerable margin.

Mr. President, I would like to read a letter to my colleagues to the President dated October 12:

> DEAR MR. PRESIDENT: Few Americans are opposed to the concept of clean air. We laud your efforts, and those of members of Congress, to ensure that health standards in this country remain high. But we believe that the clean air bill presently being considered in Congress is an unwise, ill-advised patchwork of legislation that should not be enacted.
>
> The cost of the bill will be very high: a report to the Business Roundtable places the cost at more than $50 billion a year, while a vice president at Resources for the Future estimates each American household could spend an additional $300 to $400 annually. Yet, there is little evidence that these new regulations would actually improve the quality of air.
>
> Moreover, there is widespread agreement that our economy is currently in a fragile and vulnerable condition. This, added to the crisis in the Middle East, raises the prospects that Americans could face some very difficult economic times ahead. The Clean Air Act's unduly stringent and extremely costly provisions could seriously threaten this nation's economic expansion.
>
> Mr. President, now is not the time to enact legislation with questionable benefits but certain and serious economic costs. We urge you to prevent enactment of the Clean Air Act of 1990.

Mr. President, that is quite a letter. You would think somebody who was opposed to the bill in the Chamber might have written it. This is not the case. This is a letter signed by James Buchanan, Nobel Laureate, George Mason University; Robert Crandall, senior fellow, economic studies, The Brookings Institution; Milton Friedman, Hoover Institution, Nobel Laureate; Manuel H. Johnson, former Vice Chairman of the Federal Reserve Board; James C. Miller, former Director of the OMB; William Niskanen, former Chairman of the Council of Economic Advisers; and George Stigler, University of Chicago, Nobel Laureate, economics.

Mr. President, I do not know what we have to do, how do we penetrate the impermeable wall for sanity and common sense so that we can have a moderate move toward cleaner air without throwing the baby out with the bathwater, without killing the goose that lays the golden egg.

But in summary, Mr. President, the conference report fails all three tests for what have been proven successful in the past. It is not based on sound science. It does not provide local flexibility, and it will not contribute to a strong economy. These three things have come together over the past decade to deliver improving air quality to most areas of the Nation. That is what is happening now under the current Clean Air Act. We have basis for sound science. We have local flexibility and we have a sound economy. This bill runs right into the face of all three of those basic principles. I fear that by leaving those principles by the wayside, the net result will be worse, not better, and America will not be as good a place to live as it should be.

In some parts of the country, we may even see a deterioration of air quality because if people cannot afford to buy new automobiles and they continue to drive the old clunkers, we are going to have a longer, slower period of getting these cities into compliance.

I, for one, Mr. President, cannot stop this bill from passing. I am only one Senator. And there may be very few votes against this report because all Senators want to be recorded as being for clean air.

Let we warn my colleagues who vote for this bill: If you want a nationalized industrial policy, go ahead and vote for it; if you really believe Americans do not value their freedoms, go ahead and vote for it; if you believe Washington, DC should end up telling every small business and local government how to operate, go ahead and vote for the bill; if you want to drive the country further into recession that looms in front of us, vote for the bill, by all means; and if you want to vote for what is politically expedient, I would say definitely vote for it because, as I said, who wants to be the candidate for dirty air?

But do not vote for the bill if you are under the guise of reality that you think somehow this bill really is going to give America cleaner air. It does everything but guarantee cleaner air for the American people.

Mr. President, I have another article that I would like to print in the RECORD. I would like to make a summary of I think some very good and important quotes to remember concerning the clean air conference report.

"This bill is the most sweeping environmental law in more than a decade." That is our distinguished majority leader who said that.

"The cost will be very large. I hope the bill will be cost beneficial." That is

JOHN DINGELL, the distinguished chairman on the House side.

"The most likely [annual benefits of the Clean Air Act amendments are] about $14 billion * * * if these estimates are even are close to correct"—and I have already said this once but I will repeat it—"Congress and the President are about to shake hands on a hallmark piece of environmental law for which costs may exceed benefits by a considerable margin." Paul Portney, vice president, Resources for the Future.

"The air toxic title will directly affect 1.6 to 2.21 million workers. An estimated 2.8 to 5.51 million workers throughout the United States are expected to be indirectly impacted."

"The acid rain title will impact 1,719 plants in energy-intensive industries employing 232,000 workers whose jobs may be affected by those proposed amendments." This is CONSAD Research Corp.

"The permitting title is expected to directly and substantially impact 143,000 small facilities with over 2,019,000 employees. For well over 150 counties in the United States, the number of jobs affected will exceed 8 percent of the total employment in this country." This is another quote from CONSAD Research Corp.

"We find that environmental regulation has been an important contributor to the growth slowdown. We also find that pollution abatement has emerged as a major claimant on the resources of the U.S. economy." Dale W. Jorgenson and Peter J. Wilcoxen, Environmental Regulation and U.S. Economic Growth, the Harvard Institute of Economic Research.

Mr. President, I ask unanimous consent that these quotes be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

QUOTES TO REMEMBER CONCERNING THE CLEAN AIR CONFERENCE REPORT

This bill is the most sweeping environmental law in more than a decade. (Majority Leader George Mitchell, press conference, Oct. 22, 1990).

The cost will be very large. I hope the bill will be cost beneficial. (House Commerce Committee Chairman, John Dingell, press conference, Oct. 22, 1990).

The most likely [annual benefits of the proposed Clean Air Act Amendments are] about $14 billion . . . If these estimates are even close to correct, Congress and the President are about to shake hands on a landmark piece of environmental law for which costs may exceed benefits by a considerable margin. (Paul R. Portney, vice president, Resources for the Future, Economics and the Clean Air Act).

[The Air Toxics Title] will directly affect 1.66 to 2.21 million workers. An estimated 2.80 to 5.51 million workers throughout the United States are expected to be indirectly impacted. (Analysis of the Air Toxics Provisions Contained in the Proposed Clean Air Act Amendments, CONSAD Research Corp., Sept., 1990).

[The Acid Rain Title] will impact 1,719 plants in energy-intensive industries; employing 232 thousand workers whose jobs may be affected by these proposed amendments. (Analysis of Jobs-at-Risk and Job Losses Resulting from the Proposed Clean Air Act Amendments, CONSAD Research Corp., Feb., 1990).

[The Permitting Title] is expected to directly and substantially impact 143,200 small facilities with 2,019,000 employees. For well over 150 counties in the United States, the number of jobs affected will exceed eight percent of the total employment in the county. (Analysis of Small Facility Job Impacts Resulting from the Permitting Provisions Contained in the Proposed Clean Air Act Amendments, CONSAD Research Corp., July, 1990).

We find that environmental regulation has been an important contributor to the growth slowdown. We also find that pollution abatement has emerged as a major claimant on the resources of the U.S. economy. (Dale W. Jorgenson and Peter J. Wilcoxen, Environmental Regulation and U.S. Economic Growth, Harvard Institute of Economic Research, 1990).

Mr. SYMMS. Mr. President, I would like to read the clean air politics editorial of October 19 from the Wall Street Journal. I think it is very appropriate to our colleagues today. It is entitled "Clean Air Politics."

Many of President Bush's aides concede the Clean Air Act delivers only trace benefits in return for enormous costs but claim it would be political suicide to veto it. There is evidence that the kind of near zero risk environmental limit the Clean Air Act represents is losing support as recession threatens.

This week's California poll shows that State's antipesticide Big Green initiative in a dead heat and slipping. In New York, a $2 billion environmental bond issue is in danger of losing. How loud does the roar from the country have to get before it penetrates the beltway cocoon?

Working with cotton stuffed in their ears, House and Senate conference committee members are close to an agreement on the Clean Air Act—

And they have made it since this editorial was written—

which will force as many as 150,000 American businesses to get specific EPA permits for any one of 191 pollutants. This loaded legislation needs only President Bush's signature before it is thrown onto the back of an already stumbling economy.

This week a group of noted economists, including Nobel Prize winners George Stigler, Milton Friedman, and James Buchanan, made an unusual appeal to President Bush to veto the act. They point out that Paul Portney, a vice president for the environmental group Resources for the Future, has estimated the act could cost each American household $300 to $400 a year. "The Clean Air Acts's unduly stringent and extremely costly provisions could seriously threaten this Nation's economic expansion," the economists wrote.

Republican backers of the Clean Air Act argue that President Bush has to sign the current legislative hash, or he will face an even worse bill next year.

That is it, a worse bill next year.

But why? given the public's growing concerns about jobs and economic growth, we'd be willing to bet that the political and intellectual climate will shift strongly in favor of a more balanced approach. Industrial policy was discredited during the 1980's. It has dressed itself up as environmentalism in the 1990's and will soon be knocking on Mr. Bush's door for a contribution.

Mr. President, one last article that I think is worthy of note—I ask unanimous consent that it be printed in the RECORD, "Costs of the Clean Air Act," by a columnist who has done, in my view, the Nation a great service by writing a series of articles throughout this year on the subject of clean air. He has gone through a lot of what has been said here this morning.

This article is by Warren Brookes, "Forthcoming Clean Air Depression?"

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times]

FORTHCOMING CLEAN AIR DEPRESSION?

(By Warren Brookes)

For the past two weeks, the American economy has been in a race for its very life against the insanity of Washington politics and a leadership vacuum in the White House over the two most dangerous issues, higher taxes and the Clean Air Act.

Fortunately for the nation, not to mention President Bush, Michigan Rep. John Dingell, Democratic chairman of the House Energy and Commerce Committee, has apparently decided that protecting the economy is more important than destroying Republicans. But even his "damage control" on Clean Air is much too little and far too late, as the White House has not signaled its willingness to sign an outrageously expensive bill.

Even as Mr. Bush prepared to sign off on a "deficit reduction" plan that allows $100 billion in higher spending for fiscal 1991 in return for $35 billion a year in higher taxes, congressional environmental extremists like Rep. Henry Waxman, California Democrat, and Sen. Dave Durenberger, Minnesota Republican, tried to send him the most costly possible Clean Air bill to embarrass him with the "greens."

White House sources admitted to this columnist last week that if the president is forced to deal with this bill before the election, he will sign it—just to protect Republican Sen. Pete Wilson, who is running for governor of California where as many as 14 Republican seats could be gained. On the other hand I was told, "If he gets it too late for the election he might veto it." Already that threat is vanishing.

The only good news is that Mr. Dingell managed to get the conference to agree to cut at least $12 billion to $16 billion of the costs of this madness by backing away from "bright line" standards on air toxics in both House and Senate versions.

Those standards calling for reducing the residual risks on all air (189 compounds) to 1 in 1 million risk to the most exposed individuals (MEI) would have forced the closure of at least 14 major steel plants and all coking ovens and have cost up to $40 billion, by themselves. The impact of these "bright lines" on the Michigan auto economy would have been incalculably high, with total costs of at least $800 million to $1.6 billion.

Instead, under Mr. Dingell's guidance, both House and Senate versions of those "bright lines" were killed in favor of return-

ing to the original Environmental Protection Agency-administered "ample margin of safety" standard, changing "bright lines" into "bright bands".

Unfortunately, this essentially modest concession has apparently convinced the president to sign a bill that is still at least $15 billion more costly than his supposed veto line of $2 billion.

As three Nobelist economists James Buchanan, Milton Friedman and George Stigler warned Mr. Bush in a letter last week, "The Clean Air Act's unduly stringent and extremely costly provisions could seriously threaten this nation's economic expansion."

Thus, as important as Mr Dingell's achievement on air toxics was, there are still massive economic costs in the remaining sections.

ACID RAIN

The $5 billion to $8 billion cost per year will involve electricity rate increases of from 15 percent to 30 percent in approximately 11 Central states, with a likely lost-job impact (direct and indirect) of between 40,000 and 50,000 jobs, to achieve a 10 million ton reduction in sulfur dioxides (SO2) by 1999. That same SO2 reduction could be achieved by 2010 for no job loss or rate increase.

This program might recover 75 lakes from acidity over 50 years, with an average area of 10 acres each, or 750 acres in all. Linear costs are more than $300 million per acre recovered. The 50-year cost of liming these lakes (as recommended by scientists of the National Acid Precipitation Assessment Project [NAPAP]) is $1,250 per acre. While Michigan's costs are slight, the auto industry will be severely affected.

OZONE NON-ATTAINMENT

This $19 billion to $48 billion section requires $600 per automobile in more advanced tailpipe designs and the reformulation of gasoline and the marketing of alternative fuels. It also requires the installation of point-source controls on all stationary sources of volatile organic compounds and of nitrogen oxides, from local dry cleaners up to factories.

The benefits are unquantifiable since higher-cost new cars will slow retirement of the heaviest ozone-contributing old cars, and because of the weakness of the link between VOCs and ozone non-attainment, especially in the Eastern half of the United States. The health benefits are estimated at from negligible to thousands of lives. Most real epidemiology suggests under 200 lives per year.

PERMITTING

One of the sleepers in this bill will require at least 143,000 small businesses (up to 6,000 in Michigan) for the first time to go through federal point-source pollution-permitting processes. A study by CONSAD Economics says annual costs per small plant will be $8,000 to $22,000, or $1 billion to $3 billion per year. That's $40 million to $120 million to the struggling Michigan economy, alone.

In his letter to Mr. Dingell last July, White House Economic Adviser Michael Boskin admitted that because of this bill, "productivity growth will be reduced. Growth in worker's average real income and in productivity will thus both slow. Domestic industries that are required to spend intensively on pollution controls will definitely become less competitive in world markets, and some jobs will move offshore as a consequence."

Worse, the bill will increase U.S. energy consumption of natural gas by 6 percent to 19 percent, oil by 2 percent and total electricity by 1.5 percent, all during a Middle East Crisis.

To put it bluntly, despite Mr. Dingell's best efforts, the House/Senate Clean Air bill is a wasteful, costly, assault on an economy already plunging out of favor with world investors.

The fact that the president will apparently now sign the bill even though it breaks every parameter that he originally set forth reveals an administration without direction or vision.

Mr. SYMMS. Mr. President, I see that my distinguished colleague from Wyoming is here. I will be happy to yield him 10 minutes.

The PRESIDING OFFICER (Mr. FORD). The Senator from Wyoming is now recognized for 10 minutes.

Mr. WALLOP. Mr. President, I thank the Senator from Idaho. I thank him for much of what he has pointed out to us here this morning.

I would say that when he said the bill before us was not based on sound science, it is reasonably obvious why, and that is because sound science confronts it. We purposely did not pay attention to the $600 million national acid precipitation assessment project. We passed the first versions of this bill before that report was even out because it was known from early drafts precisely how badly it would confront the prevailing political wisdom.

So sound science was a direct confrontation to sound politics.

I think it is also true, Mr. President, that we ought to be aware in this country, even as we stand on the threshold of passing this bill, that the United States spends more on environmental protection per capita or by any measure that you would like to cite than any other industrial nation in the world.

I would also say to my friend from Idaho, as he has pointed out, the 101st Congress will have apparently avoided Armaggedon. All the things we have done this year to avoid something worse next year would simply not have been tolerable for a modern political democracy.

But, Mr. President, the Senate will soon vote on the reauthorization of the Clean Air Act. As others have stated, the legislation has been 13 years in the drafting. There are several reasons for this lengthy gap between reauthorization bills. One major factor has been the pact with the devil made between environmentalists and Midwest politicians back in 1977. This was their agreement to protect polluters while penalizing the Western States for having clean air.

Back in 1977, I served on the Environment and Public Works Committee. That year the committee drafted its first reauthorization of the 1970 Clean Air Act. I eventually opposed that legislation because it was not a good bill for the environment. The mistakes we made back then are the cause for the current extended debate on clean air.

The flaw legislated back in 1977 was the provision which grandfathered all the dirty coal-fired plants in the Midwest. None of these plants had to comply with the clean air standards in the act. Instead, the amendments required the newer and cleaner western powerplants to meet much stricter control standards for the new source pollutants. We were subjected to tough engineering—that is, technical—standards regardless of the quality of the air in which the activity was taking place.

Robert Crandall of the Brookings Institution has written that clean air legislation was shaped by "an unusual coalition of defenders of declining industries, high-sulfur coal producers, and environmentalists."

The 1977 reauthorization was the blatant attempt to punish high-growth Western States. The bill amended section 111 to require that all new sources of sulfur dioxide must install scrubbers regardless of whether they burned clean or dirty coal, and regardless of the standard to which the rest of the country may have been put.

In other words, it did not seek to meet a pollution requirement. It sought to meet a regional economic requirement. The result is that today many Midwestern powerplants have sulfur dioxide emission levels that are 4 to 5 times the allowable levels for a new western plant of the same size. For this reason, I voted against that antienvironmental legislation. It was also the source of my skepticism about the current reauthorization bill.

Three events have propelled the drafting of a clean air reauthorization this year. The first has been the emotional debate over the threat of acid rain. The National Acid Precipitation Assessment Project literally laid down the nature of that threat, and it is virtually nonexistent.

What threat exists is not a consequence of the production of sulfur dioxides from powerplant emission. One of the areas of greatest acid deposition in America in the form of rain is in Florida, which has no powerplant deposition to add to it.

So the debate has been emotional and there has been questionable scientific basis behind the issues. Nonetheless public passion has been aroused. The press will ignore the science generally that has been produced to the contrary because the West had already cleaned their utilities. The focus has been on the dirty powerplants in the Midwest. But once again an effort has been made to protect both the coal and the power interests in the Midwest.

The second event is that the Western States have protected their environment. The air is clean, even pristine in many areas. Acid rain is not an issue in the West, and the provisions should have little impact on the West. We have scrubbers, we use the low-sulfur coal, yet the proponents of this legislation believe that we should yet be punished for those efforts. They propose that the clean Western States should be billed for the new cleanup costs in the Midwest. So we should pay both for ourselves and their clean air. They actively sought to deny us allowances for the efforts that we had already made on clean air.

The third event was the decision by President Bush to propose a clean air policy that deals with real issues. He moved us away from a technological mandate to a program that allowed for competitive solutions. He proposed an allowance system that rewarded regions for their past efforts, and the President argued for a program that was a reasonable cost to American industry. The original Senate bill was a minor step toward the President's position, but its costs were also excessive. I would not and did not support this bill, and now we have to decide what to do about the conference report.

I say, Mr. President, that the bill that lies before us as the conference report is a better bill than the bill which left either House over which the conference occurred. It is probably less expensive. But one of the most distracting parts of it is that the administration positively refuses to give us cost estimate projections, positively refuses. In fact, they positively refuse to give cost estimate projections on the Senate-passed bill. So it is something of a shot in the dark to accept the fact that it is probably less expensive to the economy than the bill which left this body some months ago.

I say also, Mr. President, that it is very fortunate for the Western States that my colleague from Wyoming, AL SIMPSON, served on the conference committee. He did an absolutely masterful job in protecting the interests of the Western States over and above those which had occurred in the 1977 reauthorization.

Let me take just a moment to outline several issues of particular interest to our State of Wyoming that Senator SIMPSON successfully negotiated. First, he fought for the preservation of the full pollution credit allowances that the clean States would receive to allow for future economic expansion. There was a moment in time when those of us who had been clean were to have been penalized against our future growth forever.

Senator SIMPSON basically protected the rights of the clean air States to have some opportunity for economic growth. Some Members of the House had sought to transfer a portion of those credits to help finance new pollution control projects in the Midwest, new pollution control projects in the Midwest required by the pacts with the Devil made between the environmentalists and the Midwestern utilities back in 1977.

Senator SIMPSON also prevailed on the language regarding the language of the radionuclides. This is a vital issue for the future of nuclear power development in America and Wyoming's working uranium mining industry.

Senator SIMPSON also prevented the imposition of unnecessary air standards, so-called visibility provisions, which would have stifled future economic growth in most Western States.

Lastly, he fought for a workable alternative fuels program. The original language would have limited new fuels to ethanol blends or corn gas. I say that while the press widely praised this prospect of these alternative fuels, it is a fact that, if we were to devote the entire State of Iowa solely to the production of corn for ethanol, we would in the end produce less than 1 percent of America's daily energy needs.

So while the concept of alternative fuels is sexy as promoted by its proponents and as promoted by the press, the reality is, and it ought to be known by Americans, it holds not much promise, especially in the area of ethanol blends.

So the final provision arranged with the efforts of Senator SIMPSON provides for real competition. This is of great interest to Wyoming since new facilities are being developed there to provide one of these new competitive fuels, MTBE.

There are still problems with this bill, Mr. President, such as the cost issue that I mentioned. However, I think my State and other clean States will finally be recognized for their past efforts to control air pollution. Because we produce uranium, because we produce low-sulfur coal, and soon MTBE, Wyoming will also be able to contribute to the clean air in every region of the country.

I say this, Mr. President: One of the things that is most distracting—and the current occupant of the Chair may well remember that when we passed the Global Climate Change Act in the Senate Energy Committee, we were not allowed, out of fear to the environmental world, even to mention nuclear power as one of the prospects for providing cleaner air.

Mr. President, whatever one may think of nuclear power, to assume that you are a devotee of clean air and can ignore it as one of the factors in the equation, is to assume that something will rain down out of Heaven and will not be acid precipitation to provide clean fuel for America. The fact of it is that no matter how you end out making combustionable fuel, you will add ultimately to the depletion of the air quality standards of the world, and only through nuclear power can you make major reduction while making a major production of electricity.

Mr. President, I have to say that as a colleague and as a friend and as one who has known Senator SIMPSON now for probably 30 years, and legislated with him for now a quarter of a century, I applaud the efforts of Senator SIMPSON on behalf of our State. I applaud the efforts of Senator SIMPSON on behalf of our country. The bill has many flaws, but it has many fewer flaws because of his effort.

I yield the remainder of my time.

Mr. SYMMS. Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, one of the things that happened in this whole process with respect to my remarks earlier is that there is a general concept that this bill must pass because we will get a worse bill next year. I often wonder how that momentum starts up.

I appreciate the remarks of the distinguished senior Senator from Wyoming, and I share his remarks about Senator SIMPSON and his efforts on this bill.

But it is an Armageddon theory that somehow if we do not pass the law now it will be worse next year. That has always escaped this Senator.

Last night when they started the process on this bill here, we did not even have printed copies of the bill on every desk by the time it started. We were able to get them, but very little time to read them. I often wonder how it is big captains of industry get buffaloed and cajoled, whatever, by the environmental movement so that they allow themselves to be a party to the excesses of forcing and creating an environment, as I mentioned earlier.

Even though it may not be true, you want to put the scare tactics out there. As Mr. Schneider of the Sierra Club said, you have to use your own personal judgment and how far you want to go with shading and distorting the truth in order to gin up, and stir up the controversy.

Besides this hype, such as slogans stating, "150 million Americans are breathing dirty air," the national environmental establishment has a true vested interest in promoting this type of bill.

This bill demands that the Environmental Protection Agency promulgate literally hundreds, if not thousands of rules and regulations for differing industries and individuals to live by. Many of these promulgations are under tight deadlines that EPA has often criticized as unworkable. Since the bill expressly provides for citizen

suits against those who violate even the slightest provisions of the bill, and since the Agency itself is subject to suit if it misses even one deadline or falls short on even one regulation, the real driving force behind this bill will be the National Environmental lobbies with their army of attorneys. This means that many of the priority calls, the decisions that determine who gets fines where, what industry gets regulated first, or how burdensome the regulation will be, is not in the hands of Government professionals, nor in the hands of elected representatives of the people, but at the discretion of the national environmental special interest groups.

It has always been amazing to me how they can get all this money out of the pockets of the captains of industry.

How does this fill the pockets of the environmental lobby? Dr. Jo Kwong Echard, an associate fellow of the Institute for Humane Studies at George Mason University described it well in her book, "Studies in Organization Trends Protecting the Environment." Let me quote her briefly.

I know the distinguished occupant of the chair, coming from the great State of Kentucky, will appreciate this. This is out of the section on Politics, Activism and Litigation:

Other corporations are well aware of the environmental activist agenda but have found that settlement seems to be the least harmful and least costly course to pursue. Under the citizen suit provisions of the Clean Air Act and Clean Water Act, as we have seen, environmentalists can negotiate substantial out-of-court settlements merely by threatening to sue. The Acts' goals and deadlines, established with little regard to industry's ability to achieve them or the EPA's ability to enforce them, have given environmentalists a convenient tool to use in selectively enforcing the "law" [32] The Endangered Species Act provides a similarly open-ended weapon against business and industry.

Although it is difficult to substantiate, it is widely felt that corporations contribute heavily to environmental activist organizations hoping to buy protection from the overzealous uses of these laws. Contributors to the National Wildlife Federation, for example, include ARCO Foundation, Amoco Foundation, Mobil Oil Foundation, Baltimore Gas and Electric Company, Dow Chemical, du Pont, Exxon, General Motors, Monsanto, Pennzoil, and Weyerhaeuser.

I find that fascinating, Mr. President. That is one of the reasons why the Armageddon theory seems to prevail in Washington. "Pass the bill this year, or you will get a worse one next year."

I complement the National Association of Manufacturers, because at 6:47 p.m. last night I received the following letter:

DEAR SENATOR SYMMS: The Clean Air conference agreement for the Clean Air Act amendments of 1990 is expected to be offered for a floor vote. The National Association of Manufacturers [NAM] urges you to oppose this conference agreement due to our concerns about factory modernization and permitting.

NAM is particularly disturbed that the full conference agreement language is not available for review. We feel it is irresponsible for Congress to vote for such important legislation when one cannot fully evaluate the impact of the conference agreement prior to voting.

NAM believes that we are on the verge of a recession and face fierce international competition, both of which will make it extremely difficult to maintain healthy economic growth and job creation. This legislation will impose unnecessary cost burdens that will worsen the recession, damage our international competitiveness, and further slow economic growth.

The full societal impacts and costs of this legislation have not been assessed by the Congressional Research Service, the Congressional Budget Office, Council of Economic Advisors, or the party leaders. Economic estimates vary as broadly as $21 billion to more than $50 billion per year. Neither the Environmental Protection Agency nor the White House can substantiate any cost estimates. In fact, NAM believes that the costs will likely run $30 billion to $50 billion per year.

Congress has struggled for over 10 years to reauthorize the Clean Air Act. We agree that the act needs some major improvements—particularly in the area of urban smog and air toxics. But NAM does not believe that Congress should vote on a bill, which is bad public policy, simply because of the time invested in a long and exhausting process.

NAM went into the reauthorization process with its eyes wide open. We fully expected small businesses and large businesses to install new and expensive pollution control equipment to control urban smog and air toxics. That is the only way we can improve our Nation's air quality and protect human health. But that is not what prevents us from supporting the bill.

NAM bases its opposition on the proposed act's failure to even come close to balancing environmental progress and economic growth. In addition, the new factory modernization, modification and permitting requirements are, in our view, unworkable and will impede manufacturers' ability to grow.

Simply put, the new permitting requirements will delay the modernization of existing factories and cause owners to seriously rethink installation of new equipment to change the way products are made. These delaying and bureaucratic permitting requirements send a terrible signal to our manufacturing and banking sectors at a time when manufacturers of all sizes face tightened credit conditions.

Despite our opposition to the bill, we are committed to working with the State and Federal agencies during rule-making.

NAM hopes that common sense and the long-term environmental and economic issues will direct you to oppose the bill. We stand ready to work with you and your colleagues to draft an improved act in 1991.

Sincerely yours,

JERRY J. JASINOWSKI,
President, National Association of Manufacturers.

Mr. SYMMS. Mr. President, the acid rain provisions of the Clean Air Act amendments are designed to reduce air emissions by providing incentives for generating power at cleaner powerplants. The Boardman coal-fired powerplant, located in the Pacific Northwest and owned by Idaho Power Co., Portland General Electric, and the Pacific Northwest Generating Cooperative, is one such facility that operates cleanly and efficiently. In fact, its current emissions of sulfur dioxide are substantially below the 1.2 lbs/mmBtu standard contained in phase II of the bill's acid rain program. Yet, it may not be able to operate at its normal capacity under the new Clean Air Act amendments, without acquiring additional allowances, because it did not operate as a baseload plant during the period used to establish baseline emissions data. A question has arisen of concern to the Senators from Washington, Oregon, and Idaho. I would ask the chairman of the subcommittee on Environmental Protection, Mr. BAUCUS, this question: "Do the Clean Air Act amendments before us allow the Administrator of the Environmental Protection Agency to provide special consideration in allocating allowances to deal with circumstances such as is the case with the Boardman plant?

Mr. BAUCUS. Mr. President, I thank my colleagues from the Pacific Northwest for their question. It is my understanding that, although the Boardman facility was built as a baseload plant, the power supply situation in the Pacific Northwest during the years in question resulted in Boardman operating only for a fraction of the time. It is my understanding that, under title IV, section 402 of the bill, the Environment Protection Agency can consider the special circumstances of the Boardman plant during the 1985–87 baseline period in calculating the number of allowances to allocate to the plant. The discretionary language of section 402 permits the EPA to address this type of situation. Does that answer the Senator's questions?

Mr. SYMMS. I would like to thank the Senator from Montana for this response, it is indeed adequate. I would just add that the Boardman plant is an extremely clean coal-fired power plant and that we should recognize it as a valuable resource in meeting our long-term energy needs in a cost-effective manner.

Mr. SYMMS. Mr. President, I note that it is 2 minutes until the hour of 11. The distinguished senior Senator from Illinois has requested time. Under the order, the time of the Senator from Idaho will expire at 11:15. I do not know if the Senator from Illinois will be here prior to that, but I see the Senator from North Carolina is on the floor. I might inquire if there are any Senators who wish to speak for the bill, proponents, and I might reserve the remainder of my time for the distinguished Senator from Illinois.

The PRESIDING OFFICER. The Senator is informed that at the hour of 11:15, his time will expire.

Mr. SYMMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SYMMS. Mr. President, I yield 1 minute to the Senator from North Carolina so he might proceed as though in morning business.

ORDER OF PROCEDURE

The PRESIDING OFFICER. We will let the Senator from North Carolina make the motion.

The Senator is recognized for 1 minute.

Mr. SANFORD. Mr. President, I ask unanimous consent that I may be allowed to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

PETROLEUM PRICES

Mr. SANFORD. Mr. President, I rise today to express my concern over the rising prices for petroleum products. Since the August 2d Iraqi invasion of Kuwait, the price of petroleum products in the United States has escalated. While the price has risen to some extent as a result of the fluctuating supply and demand of the petroleum market, a greater percentage of the increase, I believe, reflects the speculation and profits oil companies have made based on a manipulated threat to the petroleum market. The administration has allowed this speculation to thrive and has sacrificed each and every American to certain greedy profiteering oil companies.

The American people are ready and willing to support actions in the Middle East in defense of their great Nation. We are willing to do our fair share, to sacrifice in ways we can for the United States of America. However, certain big oil companies have seen the growing crisis in the Middle East as one in which they could take advantage of for their own profit. As the news travelled of the United States' action in the gulf, oil companies greedily raised their prices under the guise of an emergency shortage in the supply of petroleum products.

It is unforgivable that many of the oil companies in America are profiteering and taking advantage of this national economic crisis. I believe that the administration must take drastic steps to reduce this profiteering and that Congress should enact legislation that would establish civil penalties for those who are guilty of profiteering during times of national economic crisis.

It is inconceivable that we in this body could consider raising the tax on gasoline while we allow such profiteering actions to continue. Instead of a 5-cent tax on gas, the citizens of the United States are paying a 30-cent gas tax directly into the pockets of the oil companies. Rather, I support efforts that would penalize oil companies which have taken advantage of this crisis situation for profit. I encourage the Senate to enact legislation which would require oil companies guilty of profiteering to forfeit their profits to the citizens of the United States of America.

For this reason I am offering this sense of the Senate resolution. In my resolution I take issue with what are akin to ill-gotten gains made by the profiteering oil companies by instituting civil penalties. This resolution requires that twice the amount of the unwarranted profits be forfeited and returned to the citizens of the United States. These amounts recovered as penalties for profiteering should be paid to the Department of the Treasury and used for the reduction of the deficit.

Mr. President, the actions of the oil companies are inexcusable. We cannot allow this to continue, nor can we ignore the oil companies' past transgressions to the citizens of the United States. Repercussions of the profiteering are being witnessed not only at the gas pumps, but at the airline ticket counters, at the grocery stores, at road construction sites, and in the homes of those who rely on heating oil.

I demand that we bring justice to the American people by taking to task the profiteering oil companies.

Mr. President, I send a resolution to the desk and ask for unanimous consent for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. SYMMS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SANFORD. I yield the floor and thank my colleague.

The PRESIDING OFFICER. The resolution will be placed on the calendar under Resolutions and Motions Over, Under the Rule.

THE CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT OF 1990

Mr. SANFORD. Mr. President, I am very pleased to come here today to add my support for the quick passage of the conference report of the Cranston-Gonzalez National Affordable Housing Act of 1990.

First, I want to commend my Senate colleagues who served as conferees on this housing legislation. They have worked very hard over the last several weeks to mold the proposals and goals of numerous Senators and Congressmen into a final piece of legislation which would best suit this country's housing needs.

Especially, I want to express my appreciation to the chairman of the Senate Banking Committee, Senator RIEGLE, and the chairman of the Housing Subcommittee, Senator CRANSTON, for their contributions. For the past 3 years, they have remained at the helm of a bipartisan effort to create a new comprehensive housing policy for this country, and they deserve much of the credit for getting us to where we are today.

It is certainly time that Congress reassesses and reformulates its housing agenda. During the 1980's, the Congress and the administration turned their backs on the housing needs of this country and slashed housing assistance by 80 percent in real terms—a more substantial cut than any other major segment of the budget.

This type of irresponsible action by the Federal Government has driven countless individuals to find shelter in the streets and denies many others the dream of homeownership. Still more Americans who pay excessive amounts of their income for rent or live in overcrowded, substandard housing have also become drawn into our Nation's housing crisis.

By sending this legislation to President Bush, we will send a signal to the American people that we are ready to renew the commitment of the Federal Government to ensure no citizen is denied access to decent and affordable housing.

The new HOME Investment Partnership Program authorized in this legislation, which incorporates most of the HOP Program from the Senate bill, will provide flexible funds to States and localities who submit substantial housing assistance strategies. The HOME Program will catalyze housing partnerships between all levels of government, private industry, and nonprofit organizations.

Equally important, the legislation addresses the special needs of the homeless, the elderly, and the disabled by reauthorizing programs specifically designed to meet their needs. In addition, this legislation reauthorizes the Community Development Block Grant Program—a proven housing development tool that has been used effectively throughout the Nation.

This bill permanently resolves the prepayment crisis among privately owned, HUD subsidized housing in a manner which represents a balanced and workable compromise between the rights of owners and the need to preserve low-income housing.

I am particularly pleased that this legislation addresses the desperate housing crisis facing the rural parts of our country. More than 4.3 million rural households are burdened with severe housing problems in this country, and more than 2 million families in rural areas are forced to reside in substandard housing. Despite these facts, housing problems of rural America have been overlooked and its victims underserved.

In 1989, I introduced S. 1371, the Rural Housing Revitalization Act, as a means of addressing these serious rural housing needs. I was very pleased when the chairman incorporated many of the provisions of that legislation into the National Affordable Housing Act, and I am extremely pleased that the conference report also includes many of the provisions from S. 1371.

The conference report recommends reauthorization of Farmers Home rural housing programs at substantial funding increases. For years, these programs have provided cost-effective, successful housing assistance to rural areas. Yet over the last decade, FmHA rural housing programs have suffered from funding cuts of over 50 percent. Higher authorization levels will allow FmHA to better meet housing needs in rural communities and help to alleviate the billions dollars' worth of backlogs in applications for FmHA housing assistance.

I am also pleased that the conference report retains provisions for an underserved areas program which will allow FmHA to target the needs of poverty-stricken communities that have previously been underserved. The bill builds upon a successful FmHA demonstration program that set aside funding for 100 counties with severe unmet housing needs and poverty rates of over 20 percent and substandard housing rates over 10 percent, and it also establishes a grant program to assist organizations in these counties to apply for and administer rural housing loan funds.

The National Affordable Housing Act also will provide additional assistance for low- and moderate-income borrowers through the authorization of a section 502 loan guarantee program and a deferred mortgage program which would authorize FmHA in certain cases to defer the repayment of up to 25 percent of the payment due on section 502 loans.

Finally, the provision to set aside rural rental housing funds for nonprofit organizations will effectively encourage the development of nonprofit housing assistance capacity in rural areas by assisting qualified nonprofit organizations who have the capacity to develop and adequately maintain rural rental housing projects.

Mr. President, we stand at the brink of enacting a revitalized national housing policy which will establish housing as a funding priority for the Federal Government. We are ready to implement a housing policy which offers innovative and comprehensive programs to address the housing shortage and affordability problems that plague our country and reduce the quality of life for its citizens. And we stand ready to renew our commitment to the American people to protect their undeniable rights to decent and affordable housing.

We have waited long enough. I ask my colleagues to swiftly pass and President Bush to quickly sign this monumental piece of legislation.

CLEAN AIR ACT AMENDMENTS—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. SYMMS. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mr. SYMMS. Mr. President, I yield 11 minutes to the distinguished senior Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DIXON. Mr. President, I thank my colleague, the distinguished junior Senator from Idaho, soon to be the senior Senator from Idaho.

I rise in connection with the conference report on the Clean Air Act.

Mr. President, during Senate debate on the Clean Air Act, I came to the floor many times to express my views on this bill as it went through many changes. As the bill evolved, I called for balance and fairness, expressing my strong concern about inequities in the acid rain title, and the resulting economic impact on my State of Illinois. The bill, as it left the Senate, was not a balanced bill, and I was forced to vote against it.

It is true that this bill has gone through many transformations which have lessened the devastating impact on the industrial heartland. I want to make sure that my friends, the majority leader, the floor managers, and others who labored to craft this bill, know that I am profoundly grateful to them. But the truth is that my State continues to face an enormous, and I believe disproportionate, economic burden as a result of the acid rain provisions.

Mr. President, significant changes were made to the first three titles of the bill, and I believe the compromises reached on air toxics, mobile sources, and ozone nonattainment effectively spread the economic burden while achieving significant emissions reduction. Unfortunately, title IV, the acid rain title, did not receive the same treatment. The acid rain title is without doubt the most divisive issue in the bill, and I sincerely appreciate the leader's and the floor managers' willingness to listen to the problems this section creates for the Midwest. However, despite the months of work and untold number of staff hours devoted to finding an equitable solution for the Midwest, a fair compromise for the Midwest was not reached.

Though the conference agreement moved in the right direction, I still cannot support the way it has allocated the costs among States for cleaning up our national acid rain problem. The agreement continues to get 90 percent of acid rain reductions in the first phase from just nine States. As I have stated on many occasions, that would be fair if these nine States were responsible for all of that pollution, but these States contribute only 51 percent of the total sulfur dioxide emissions.

Mr. President, I am not overlooking the fact that the conference agreement provided additional emissions credits to Illinois, Ohio, and Indiana, and this will, indeed, allow our coal-dependent utilities to spread their costs over a longer period. However, the agreement also continues to allow 18 States to increase their sulfur dioxide utility emissions. I note that 8 of these 18 States are represented on the Senate committee that reported the bill, and that the 9 States required to make excess reductions are not represented on that committee.

Fairness, therefore, has not been achieved. Nine States will make a disproportionate share of this country's investment in acid rain control, and the other beneficiaries of this investment will not share in the cost. Illinois is being targeted for big reductions under the principle that polluters should pay. The problem with that is that only some polluters have been identified and asked to contribute to the solution.

If we are going to target just a few of the emitters of acid rain precursors, then we must spread the burden nationally. This is no different than the savings and loan bailout. Very few States were actually responsible for the S&L crisis, yet the entire country paid to bail out the industry. We did this because the vitality of the thrift industry is important to the whole country—not just California or Texas. The whole country wants clean air, and we cannot expect my folks in Illinois and a few other States to pay the whole cost while other States get to increase their emissions.

My colleagues from the Midwest and I offered proposals to share the cost for the cleanup through generation fees, excess emission fees, industrial emission fees, and through tax credits for those that were required to make disproportionate reductions. Any of these proposals would have restored a little bit of equity to the acid rain re-

duction plan the bill lays out, but we were defeated at every turn.

The State of Illinois has estimated that job loss statewide has not changed from the 16,000 expected under the original administration bill, and coal usage is expected to decrease by 30 percent, due primarily to the loss of out-of-State sales. In addition, statewide average rate increases are predicted to 4 percent, with total cost to State utility ratepayers nearly $300 million a year for 10 years. In areas served by highly coal-dependent utilities, average rate increases could still be 15 percent or more.

Mr. President, it gives me no pleasure to cast my vote against a bill that will surely benefit the entire country. But I cannot, in good conscience, support a measure that asks my State to carry a disproportionate share of the economic burden created by a truly national problem.

Mr. President, I will vote "no" on the conference report on the clean air bill.

I thank my colleague.

Mr. SYMMS. I thank my distinguished colleague from Illinois.

The PRESIDING OFFICER. The Senator from Idaho is recognized. He has 5 minutes.

Mr. SYMMS. I thank my colleague from Illinois.

I think that I might just say, Mr. President, to my friend from Illinois, through the Chair, that a bill of this kind will not only hurt States like Illinois, it will be negative to the entire economy. So I think that his vote will look in good stead in a few years when people see what they have done.

I see the distinguished manager of the committee on this issue, Senator BAUCUS, is on the floor. I asked a question earlier to the distinguished Senator. The inquiry I would make is, on page 55, one of the page 55's of the bill, and there are several, I see some extraordinarily tenacious person has once again inserted the study an inventory of methane emissions associated with livestock production.

I understand if I can make a parliamentary inquiry, that no points of order are in order; is that not correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. SYMMS. Unfortunately, since a point of order could not be in order at this point, I cannot make a point of order. But I would like to note to the managers of the bill, both Senator BAUCUS and Senator CHAFEE, that we struck the part on methane emissions from the bill. There was no methane emissions section in the House side. And now all of a sudden, it is back in the bill, and it was costed out when it was the same language that was in the farm bill which was stricken from the farm bill in conference as a $19 million endeavor. I would just be curious to know how that got back in the bill. I hope it can be brief because I do not have much time.

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. BAUCUS. Mr. President, I would like to answer the question of the Senator from Idaho. The Senator is correct. This is a provision that was debated here in the Senate that was not included. When the Senate went to conference with the House, this was a matter, after many hours of discussion and listening to the House insistence of the inclusion of this provision, given the totality of all the provisions that we got the House yielded on, we felt it made sense to finally acquiese to the House.

Mr. SYMMS. I appreciate that. I want to say, and then the Senator can respond again because my time is about to expire, it was not in the House bill. And we did not have it in our bill. But lo and behold, it comes back from conference. I think that is rather interesting to this Senator. I personally think that if a point of order would still be alive, I would make a point or order. I know just to make the point to the Senate that the conferees I think had great latitude. I want to also say in my last minute——

Mr. BAUCUS. Will the Senator yield on that point?

Mr. SYMMS. In just in one second. My time is just about to expire.

I want to thank my colleagues for their indulgence and the leadership of the committee for their indulgence. I had a difference point of view than my colleagues, but I say that my conclusion of how I come down on that bill no lessens my respect for the hard work the Senator from Montana, the Senator from Rhode Island, and others put into the bill.

I suppose that I would have to be totally candid, Mr. President, and say I wish they had not worked so hard to pass what I consider to be such an extreme measure to our economy. But I do have to say that they deserve some commendation for their tireless efforts to see that this legislation got through to this point. I hope that it will not be as negative on the American economy as this Senator believes it will be.

I think my time has expired, Mr. President.

The PRESIDING OFFICER. The Senator has 20 seconds.

Mr. SYMMS. I yield my 20 seconds to my distinguished colleague from Montana.

Mr. BAUCUS. Mr. President, I appreciate that.

I would like to remind the Senator that the conference also included section 177, which is not included in either bill, which gives State discretion with respect to the so-called third car problem. In addition, we include the phosphoric gypsum provision, the desulfurization provision, and the rapeseed study.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SYMMS. I thank the distinguished Senator.

The PRESIDING OFFICER. Under the previous order, the senior Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I yield 1 minute to the senior Senator from Florida.

KISSIMMEE RIVER, FL, FLOOD CONTROL PROJECT

Mr. GRAHAM. Mr. President, I ask unanimous consent that Senate proceed to the immediate consideration of S. 3262, the Kissimmee River Environmental Restoration Act; that a statement which I will submit be printed in the RECORD; that the bill be taken to third reading, passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. The clerk will read the bill for the information of the Senate.

The assistant legislative clerk read as follows:

A bill (S. 3262) to modify the authorities for a flood control project on the Kissimmee River, Florida, and for other purposes.

Mr. GRAHAM. Mr. President, I am pursuing immediate consideration of this bill, the Kissimmee River Environmental Restoration Act, because I refuse to allow the Office of Management and Budget to make Florida wait another day to begin a true rescue mission, a comprehensive environmental restoration of the Kissimmee River.

Originally, this bill was made a part of the Senate's version of Water Resources Development Act, the major water projects bill we have passed every 2 years since 1986, with the gracious support of our subcommittee chairman, the senior Senator from New York. It was then included in the House version of the bill through the good work of my friend from south Florida, Mr. BILL LEHMAN.

However, when the conferees' staff met with the Office of Management and Budget, threatened to veto the whole package if the Kissimmee River project was kept in there.

This, apparently, was OMB's position all along, for the Army Corps of Engineers, the agency that has nearly destroyed the Kissimmee, advised OMB in writing that it, and I quote, "strongly opposed" this project.

Their position confounded us because President Bush himself identified the Kissimmee as one of his two top wetlands restoration projects. Mr. President, I ask unanimous consent that a January 14, 1990, article from the Chicago Tribune be included in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune, Jan. 14, 1990]

ENGINEERS UNDER SIEGE AT VICKSBURG

VICKSBURG, MISS.—The most rock-ribbed offices of the U.S. Army Corps of Engineers lie within a massive redstone "castle" just below the bluffs of a Civil War battlefield.

The setting is appropriate. For here in these stony battlements sit the Corps' most devoted advocates of wetland drainage, and they are under siege.

Their time-honored drainage policies are being challenged on every front—from Mississippi landowners who supposedly would benefit from enforced "flood control" and reclamation to the governor and attorney general and an environmentally sensitive President of the United States.

The Corps' formidable castle is headquarters to the Vicksburg District and its parent Lower Mississippi Valley Division, which runs from a point south of Quincy, Ill., to the Gulf of Mexico. Here policymakers formulate strategies to save a way of thinking that has guided their service for more than 130 years. In that time, they have strived to redo nature's construction of the Mississippi River.

Thanks in large part to Vicksburg planners, this vast river has been squeezed into a broad, unruly drainage ditch that hurries away half the nation's groundwater, brown with the topsoil of farmland erosion. The Vicksburg District has drained most of the delta wetlands as far as Louisiana, turning miles and miles of lush hardwoods into miles and miles of muddy farms and recurrently flooding oxbow lakes.

At issue is whether the Corps can, should or will change its approach to the environment, which has been—shall we say?—tepid over the years.

A signal event occurred in this out-of-the-way spot last fall when Robert Page, assistant secretary of the Army for civil works and boss of the Corps, announced a change in strategy.

"The Corps had a reputation as an environmental rapist," he conceded. "That's not tolerable in this world today."

Page went on to declare that the era of Corps dam-building is done. He said the service must begin to focus upon a new role as environmental engineer, such as repairing past environmental damage, cleaning hazardous waste sites and tackling massive projects such as coastal erosion.

"Dredging versus wetlands is one of the most difficult issues we have today," Page said. "Every single one of those dredging projects is going to be a tremendous problem." Many, he said, may have to be shelved.

Page said the Corps no longer can afford to be viewed as an environmental enemy, that it could cease to exist if unable to change.

He said he chose to make these statements during a change in command at Vicksburg because this is the seat of the hottest drainage controversy in the nation.

For more than 50 years, the Vicksburg District has promoted a massive plan to drain some 2 million acres in the Mississippi Delta along the Yazoo River and connecting Steele and Black Bayous. In 1987 figures, this would cost $1.3 billion and would affect some 112,000 acres of floodplain and bottomland hardwoods in addition to the 270,000 acres that already have been cleared.

This project, the largest drainage project in U.S. history, mainly would enable farmers to clear more hardwoods for agricultural purposes despite national agricultural and environmental policies aimed at preventing that kind of destruction. The Corps responds that these plans were approved before national policy changed and therefore should go ahead. If so, Mississippi will lose untold square miles of nature along with half the habitat in its No. 1 wintering waterfowl area, home to one-fourth of the mallard population of the Mississippi Flyway and hundreds of non-game species, according to the U.S. Fish and Wildlife Service.

Wildlife experts contend that loss of this habitat would jeopardize the $1.5 billion North American Waterfowl Management Plan of the U.S., Canada and Mexico, which has been called critical for maintaining the status of ducks.

Massive destruction already has been done, including degradation of the Yazoo National Wildlife Refuge near Haliandale, where the Corps cleared, burned and leveed a 1,600-foot wide swath of hardwoods through the refuge to accommodate a trickle of water, draining much of the welands and threatening a nearby state park.

This, however, had the salutary effect, unusual in drainage-happy Mississippi, of producing an uproar that has forced the Corps to scurry for temporary cover. For the first time in Mississippi's long and sordid drainage history, the people have said "no more" to the Corps of Engineers.

A new coalition of Mississippi farmers, landowners, sportsmen and environmentalists forced Gov. Ray Mabus to appoint a commission that told the Corps, in effect, to shut down the Yazoo projects until they can be radically reformulated for environmental purposes.

"The whole thing is absolute madness," said Jim Carroll, a Jackson attorney and member of the governor's commission. "When you think about it, it makes your blood boil. This is the last of the great pork barrel projects. It makes the Tennessee-Tombigbee Waterway look like a drop in the bucket."

In the meantime, a national coalition of environmental groups led by Chicagoan Charles S. Potter Jr., head of the North American Wildlife Foundation, has pressured Congress and Corps officials in Washington, including President Bush, to halt it, if necessary.

Mr. GRAHAM. When Senator MACK and I learned of OMB's stance, we met personally with the Associate Director of OMB who has the responsibility to advise the President directly on whether to veto the water bill. He hinted strongly that if we tried to put the Kissimmee project back into the compromise bill he had negotiated, he would recommend killing the whole package: $2.5 billion worth of projects benefiting over half of the States in the country, including Florida.

Not wanting to jeopardize such an important piece of legislation, I spoke with my distinguished colleague from New York [Mr. MOYNIHAN], and asked him if he thought we had a chance to offer our project as a separate bill so late in the session. I was delighted when he agreed.

Thus Mr. President, on this, the last day of the 101st Congress, I stand before my colleagues to urge them to support a project which scientists, engineers, and environmentalists the world over are watching with great interest, for when it is completed it will be the most ambitious environmental restoration of a damaged river basin undertaken in the history of man.

The Kissimmee, the main river feeding Lake Okeechobee and thus essentially the headwaters of the whole south Florida Everglades, once snaked back and forth across a 1 to 2 mile floodplain and along a 103-mile course before emptying into Lake Okeechobee.

To provide flood protection for a growing central Florida community, the Army Corps of Engineers was authorized to "channelize" the river by cutting a straight 56-mile canal to the lake. Over 45,000 acres of wetlands were drained, and the resulting increase in agriculture and development in the river basin has contributed to severe nutrient loading of the lake.

If Lake Okeechobee is the heart of the whole Everglades ecosystem, the Kissimmee is the main artery. Strangle it, and you strangle the Everglades. Unfortunately, for over 30 years that is exactly what we have been allowing to happen. It is past time to start our rescue mission.

Dechannelizing the river and returning it largely to its original sheet flow path would restore a functioning river-floodplain ecosystem, fully revitalize two-thirds of the original wetlands, and significantly improve most of the remaining wetlands. It would also greatly improve the capacity of the system to filter nutrients and contaminants going into the lake.

In 1985 the corps completed an environmental restoration feasibility study of the river. The recommendations of this report were never processed because environmental enhancement projects which lacked a formal benefit to cost calculation were not supported by the Secretary of the Army for funding at that time.

In recognition of the need for the corps to engage in environmental restoration of existing projects, Congress added section 1135 to the Water Resources Development Act of 1986 which authorized $25 million for such projects over 2 years, with the Kissimmee as a primary focus. Under the Water Resources Development Act of 1988, Congress extended the section 1135 environmental demonstration program for an additional 3 years.

Under section 1135, $6.3 million has been appropriated for the Kissimmee to date, but that section limits the corps' role to those environmental activities consistent with the project's original design, that is, navigation and flood protection.

This bill is a response to the time, scope, and funding limitations of section 1135. It modifies the original authorization of the project that channelized the river by authorizing a com-

prehensive environmental restoration of the Kissimmee River. The restoration shall include, but not be limited to, filling of the existing canal, removal of spillways and locks, and increasing the storage in the upper Kissimmee basin. The environmental restoration must also minimize to the fullest extent possible its effects on the original project's flood control and navigation purposes.

The restoration is authorized at an estimated total first cost of $270 million. Not a dime of Federal money will be spent on construction, however, until the Secretary of the Army approves a Chief of Engineers final project report. The Chief of Engineers report shall be based on the level II backfilling plan prepared by the local sponsor, the South Florida Water Management District, in its report entitled "Kissimmee River Restoration, Alternative Plan Evaluation and Preliminary Design Report."

The non-Federal interests shall provide all land, easements, rights-of-way, relocations, and dredged material disposal areas and operate and maintain the project. Their share will be at least 25 percent, but no more than 40 percent, of the total project first cost. Total project first cost includes all land, easements, rights-of-way, relocations, and dredged material disposal areas the cost of which shall be the responsibility of the non-Federal interests up to the 50-percent maximum.

I would like to note that the State has passed its own comprehensive Kissimmee River legislation, committee more than $40 million and spent over $25 million on this effort. The local sponsor currently estimates the State's share of the project will be over $100 million.

By approving this project the Senate will send an incontrovertible message to the Corps of Engineers that it is time to chart a new course, one in which the corps utilizes its extensive expertise for the restoration and protection of the environment.

Mr. President, the chairmen and ranking members of the committee and subcommittee of jurisdiction have given me their approval to move this bill as quickly as possible. Thus I ask my colleagues to join us in the fight to preserve our environment.

The PRESIDING OFFICER. Without objection, the bill is deemed read a third time and passed.

So the bill (S. 3262) was passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. KISSIMMEE RIVER, CENTRAL AND SOUTHERN FLORIDA.

(a) SHORT TITLE.—This Act may be cited as the "Kissimmee River Environmental Restoration Act".

(b) DEFINITION.—As used in this Act, the term "Secretary" means the Secretary of the Army.

(c) IN GENERAL.—The flood control project for Central and Southern Florida, authorized by section 203 of the Flood Control Act of 1948 (62 Stat. 1176), is modified to provide for restoration of the Kissimmee River for environmental purposes, at an estimated total cost of $270,000,000. Such restoration includes filling of Canal C-38, removal of spillway structures and locks, and increasing the storage in the upper Kissimmee basin and shall minimize to the fullest extent possible any effect on the project's flood control and navigation purposes.

(d) REPORT OF CHIEF OF ENGINEERS.—The Secretary may undertake restoration of the "Kissimmee River under this subsection only in accordance with a final report of the Chief of Engineers, including such modifications as the Secretary may recommend, which is based on the Level II Backfilling plan recommended by the South Florida Water Management District in the report entitled "Kissimmee River Restoration Alternative Plan Evaluation and Preliminary Design Report".

(e) NON-FEDERAL SHARE.—Non-Federal interests shall provide without cost to the United States all lands, easements, rights-of-way, relocations, and dredged material disposal areas necessary for the project authorized by this subsection, except that the aggregate non-Federal share for the project shall not exceed 50 percent of the total cost of the project. In the event that the value of lands, easements, rights-of-way, relocations, and disposal areas is less than 25 percent of the total first cost of the project, non-Federal interests shall pay, during the period of construction, such amounts as may be necessary to make the total non-Federal contribution equal 25 percent. The non-Federal interests shall provide 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs of the project. In addition, the non-Federal interests shall hold and save the United States free from damages due to the construction, operation, and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.

Mr. GRAHAM. I appreciate the courtesy of the Senator from New York.

CLEAN AIR ACT AMENDMENTS—CONFERENCE REPORT

The Senate continued with the consideration of the bill.

Mr. MOYNIHAN. Mr. President, as the hour approaches when we will enact the Clean Air Act of 1990, it may be useful to call attention to two features of this legislation which are unique—a word to be used with care—and of far larger consequence than might at first appear. As the bill is long—four inches thick here on our desks, and without consecutive page numbers—and the report is brief, it would be easy to overlook these features. This, in turn, could impair the importance they would otherwise have. And so I rise to call attention to them.

The two matters can be stated succinctly.

To begin with, the acid rain title of the Clean Air Act of 1990 is the first environmental legislation in history to be based on extended and intensive environmental research. It is the direct result of the Acid Precipitation Act of 1980 and the half billion dollar National Acid Precipitation Assessment Program that followed.

Secondly, the Clean Air Act of 1990 is the first environmental legislation in history to require extended and intensive cost benefit analysis. This provision, section 812, analyses of costs and benefits, is a direct outcome of the NAPAP enquiry, and so the two features of the bill are directly linked.

New Yorkers will want to know that trout fishermen in the Adirondacks and scientists at Cornell were present at the creation of both features, as you might say.

It all began in the 1970's. For no apparent reason, trout were mysteriously disappearing from lakes in the high Adirondacks. Now nothing interests fishermen more than the disappearance of fish. Similarly, nothing interests scientists more than something for which there is no apparent explanation. Soon scientists at Cornell had cracked the problem. The lakes had turned acidic beyond a point that could sustain a trout population—acid released aluminum from granite which collected in gills. So far, so good. Next question. Where did the acid come from? Next answer: as a precipitant brought by winds from the midwest. Last question: how did the precipitant get up there? Answer—well, we know the answer now.

We did not understand this in the 1970's. And so in 1980 we enacted the Acid Precipitation Act of that year. If it received any attention in the press or otherwise, this escaped my notice. But no matter, the work commenced. It was to have been a modest enterprise. $50 million over 10 years. It is perhaps just as well no one did notice, as 10 years seems a lifetime in public debate. But to say again we got started, and soon something wholly unexpected happened. The administration in office began to be pressed on the issue of acid rain, a new issue with a graphic imagery about it. The administration resisted by increasing the research budget by an order of magnitude. $50 million became $500 million and a world-class enterprise was underway.

I will not here discuss the results of the NAPAP enquiry. Section 901(j) of title IX providing for the continuation of the National Acid Precipitation Assessment Program indicates our judgment that as much as we have already learned, we need to learn still more. And to do so in the only way such matters can be learned, which is to say by patient measurement over time. We are going to track this legislation and see what it does. We are even going to keep a registry of acidified lakes to see how we are doing.

The cost-benefit analysis of the acid rain program logically suggested that we extend such analysis to the entire bill, and we have done. I would urge all who might hear or read these words to keep in mind the need for patience, something life in the wild will teach you. Answers don't come quickly in these matters. Almost three decades ago I become an Assistant Secretary of Labor in the administration of John F. Kennedy, with a nominal responsibility for the work of the Bureau of Labor Statistics, founded in 1884. If there is one thing those brilliant mathematicians and public servants taught me, it is that fashioning economic indicators takes time. It has taken them a half century to learn to measure the unemployment rate. But they were patient, meticulous, and in the end they succeeded. And in succeeding they changed the way we think about an industrial, or postindustrial, society. We should entertain no lesser hopes for the activity that now commences, and which will be lodged in the Bureau of Environmental Statistics that will be created in the new Department of the Environment when we get to that measure in the next Congress.

To say again, what is important about the NAPAP studies is that they were conducted in advance of legislation, rather than afterwards, the first time ever we have done this. We now have a precedent. The current intensive program of research into global climate change is a good sign. Ten years from now, perhaps sooner, we may know enough to legislate intelligently on the subject, to name but one.

The history of the environmental movement, particularly during the 1980's, is characterized by a certain distrust, even fear, of research. Or rather, distrust, first and foremost, of the Government, and more particularly, the executive branch.

This disposition was not without foundation. During this period, several EPA officials including the agency's Administrator resigned in disgrace. An Assistant Administrator served in Federal prison. Work came to a halt. Deadlines were ignored.

In the years that followed, any suggestion in the Congress that the EPA be allowed discretion in setting environmental standards was seen as the greatest folly. This cynical wisdom applied equally to another of the Reagan administration's favorite dodges: the authority to consider compliance costs when issuing new regulations.

What is left of Newtonian mechanics tells us that for every action there is a reaction, and in this instance it was an unfortunate one. When the first modern environmental statutes were enacted in the early 1970's, there was no hope of knowing the costs these would impose. There was no data, nor could it be reasonably expected that there should be. This was an altogether new endeavor.

As to the benefits, they were unquantified, but obvious. Simply put, air and water were filthy, and should be cleaned up. And so standards enacted by the Congress made no mention of the costs of reaching a desired outcome. Section 109 of the Clean Air Act of 1970 directed the EPA to set standards for air pollutants that—

> Allowing an adequate margin of safety, are requisite to protect the public health . . . [and] requisite to protect the public welfare from any known or anticipated adverse effects.

The cost of meeting these standards was not to be considered. Nor was there any sustained effort to measure benefits. Not surprising, because there was no agreed upon metric for these benefits.

But in the 1980's what should have been a natural progression of learning was interrupted. We began to know more about the costs and the benefits of environmental laws, and a debate should have ensued. In a sense it did, but it became a debate of ideology rather than one of science.

In the first salvo, less than one month after entering office, President Reagan signed Executive Order 12291. It stipulated that—

> [r]egulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society.

Ten years later, this does not sound as threatening as it did then. However, rather than advancing the debate about the science of benefits and costs, this effectively ended it.

The major environmental statutes of the mid-1980's were shaped in a direct reaction to this policy. They forbade consideration of costs, and assumed benefits. The Resource Conservation Recovery Act of 1984 set standards for the disposal of hazardous waste:

> The Administrator shall promulgate regulations * * * applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste * * * as may be necessary to protect human health and the environment.

No mention of the benefits this would bring, or of the costs.

The Superfund Amendments Reauthorization Act of 1986 set a specific standard for the level of clean up that must be achieved at abandoned hazardous waste sites. Each standard would "be set at the level at which no known or anticipated adverse effects on the health of persons occur, and which allows an adequate margin of safety * * * as is feasible." In most cases, the chemicals at these Superfund sites are thought to be carcinogens, and for the suspected carcinogen, the only level of exposure for which there are no "anticipated adverse effects on health" is zero exposure. In common language, this standard means that anything you can do, you must do. No matter the cost. This is the central point. The attitude has been that no cost is too high. This gave us laws so stringent as to be impossible to enforce. Total clean up is impossible. The Superfund Program bears this out.

Later today, we will reauthorize the Superfund tax for 4 years. Next year I hope to add benefit-cost analysis to that program as well. We all know that it has fallen into considerable disrepute. It is not unusual to hear that most of the benefits go to lawyers. It is time we learned.

And so, this bill, we hope, will mark the coming of age of environmentalism.

Until now, we have too often feared facts. This fear has not seved as well. Environmental programs that prohibit the EPA from taking the costs of compliance into account have, more often than not, resulted in deadlock. My Executive order, the agency cannot issue a rule where costs outweigh benefits, yet the only allowable regulations cannot take cost into account. As a result, no regulations are issued.

Early in the next Congress, as noted earlier, it is my hope that the Senate can pass legislation that creates a Department of the Environment. Part of this Department will be a Bureau of Environmental Statistics, patterned after the Bureau of Labor Statistics. Before public government can deal rationally with a problem, it must learn to measure it. EPA Administrator William Reilly knows this, and hopes to move the EPA toward an environmental policy based on science and on rational consideration of priorities.

As a convenience to layman and specialist alike, I ask unanimous consent section 812, analyses of costs and benefits be printed in the RECORD at this point. I hope that all will agree that our statutory language is straightforward, unambiguous and unequivocal. I know that the Committee on Environment and Public Works will welcome any comments or suggestions.

There being no objection, the section was ordered to be printed in the RECORD, as follows:

SEC. 812. ANALYSES OF COSTS AND BENEFITS.

(a) ECONOMIC IMPACT ANALYSES.—Section 312 of the Clean Air Act is amended to read as follows:

"SEC. 312. ECONOMIC IMPACT ANALYSES.

"(a) The Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis (as established under subsection (f) of this section), shall conduct a comprehensive analysis of the impact of this Act on the public health, economy, and environment of the United States. In performing such analysis, the Administrator should consider the costs, benefits and other effects associated with compliance with each standard issued for—

"(1) a criteria air pollutant subject to a standard issued under section 109;

"(2) a hazardous air pollutant listed under section 112, including any technology-based standard and any risk-based standard for such pollutant;

"(3) emissions from mobile sources regulated under title II of this Act;

"(4) a limitation under this Act for emissions of sulfur dioxide or nitrogen oxides;

"(5) a limitation under title VI of this Act on the production of any ozone-depleting substance; and

"(6) any other section of this Act.

"(b) In describing the benefits of a standard described in subsection (a), the Administrator shall consider all of the economic, public health, and environmental benefits of efforts to comply with such standard. In any case where numerical values are assigned to such benefits, a default assumption of zero value shall not be assigned to such benefits unless supported by specific data. The Administrator shall assess how benefits are measured in order to assure that damage to human health and the environment is more accurately measured and taken into account.

"(c) In describing the costs of a standard described in subsection (a), the Administrator shall consider the effects of such standard on employment, productivity, cost of living, economic growth, and the overall economy of the United States.

"(d) Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, shall submit a report to the Congress that summarizes the results of the analysis described in subsection (a), which reports—

"(1) all costs incurred previous to the date of enactment of the Clean Air Act Amendments of 1990 in the effort to comply with such standards; and

"(2) all benefits that have accrued to the United States as a result of such costs.

"(e) Not later than 24 months after the date of enactment of the Clean Air Act Amendments of 1990, and every 24 months thereafter, the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, shall submit a report to the Congress that updates the report issued pursuant to subsection (d), and which, it addition, makes projections into the future regarding expected costs, benefits, and other effects of compliance with standards pursuant to this Act as listed in subsection (a).

"(f) Not later than 6 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator, in consultation with the Secretary of Commerce and the Secretary of Labor, shall appoint an Advisory Council on Clean Air Compliance Analysis of not less than nine members (hereafter in this section referred to as the 'Council'). In appointing such members, the Administrator shall appoint recognized experts in the fields of the health and environmental effects of air pollution, economic analysis, environmental sciences, and such other fields that the Administrator determines to be appropriate.

"(g) The Council shall—

"(1) review the data to be used for any analysis required under this section and make recommendations to the Administrator on the use of such data;

"(2) review the methodology used to analyze such data and make recommendations to the Administrator on the use of such methodology; and

"(3) prior to the issuance of a report required under subsection (d) or (e), review the findings of such report, and make recommendations to the Administrator concerning the validity and utility of such findings.".

(b) GAO REPORTS ON COSTS AND BENEFITS.—Commencing on the second year after the date of the enactment of the Clean Air Act Amendments of 1990 and annually thereafter, the Comptroller General of the General Accounting Office, in consultation with other agencies, such as the Environmental Protection Agency, the Department of Labor, the Department of Commerce, the United States Trade Representative, the National Academy of Sciences, the Office of Technology Assessment, the National Academy of Engineering, the Council on Environmental Quality, and the Surgeon General, shall provide a report to the Congress on the incremental human health and environmental benefits, and incremental costs beyond current clean air requirements of the new control strategies and technologies required by this Act. The report shall include, for such strategies and technologies, an analysis of the actual emissions reductions beyond existing practice, the effects on human life, human health and the environment (including both positive impacts and those that may be detrimental to jobs and communities resulting from loss of employers and employment, etc.), the energy security impacts, and the effect on United States products and industrial competitiveness in national and international markets.

Mr. MOYNIHAN. Mr. President, I see the distinguished chairman of our committee is on the floor and has risen. I am sure we will want to hear from the Senator from North Dakota. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. BURDICK. Mr. President, as chairman of the Senate Committee on Environment and Public Works and clean air conferee, I rise to address the Senate about the Clean Air Act Amendments of 1990. These amendments have been a long time in the making. The amendments are complex and far reaching in their effects. This is an important moment for the United States and a landmark occasion for environmental legislation.

The dedication of conferees and staff to finish this product cannot be fully described by words. Many individuals are due recognition, Members of Congress and their staff.

Senator BAUCUS deserves special commendations for his tireless devotion and leadership in developing this legislation. Senator BAUCUS spent many long days and nights working toward today's product.

Senator CHAFEE, the ranking minority member of the Committee on Environment and Public Works, and of the Environmental Protection Subcommittee, also is to be highly commended for his efforts and leadership. This bill has been a truly bipartisan effort, and Senators CHAFEE and BAUCUS deserves much credit for this.

We would not be here today without the leadership of the majority leader, Senator MITCHELL, who also is a member of the Environment and Public Works Committee. Ever since he came to the Senate over a decade ago, Senator MITCHELL has been working toward the passage of clean air legislation. Much of the groundwork for today's bill was laid by Senator MITCHELL during these efforts.

Senator MITCHELL was instrumental in bringing many diverse interests to the bargaining table, and in creating a bill that is fair for all Americans. Senator MITCHELL's perseverance and leadership has made the quality of our air and the health of all Americans much better.

I also would like to thank the other conferees, Senators MOYNIHAN, DURENBERGER, and SIMPSON. These Senators made important contributions to the Senate bill and to the final conference agreement. In particular, Senator DURENBERGER deserves special credit for his efforts on the air toxics title of the bill.

Finally, the Environment and Public Works Committee staff deserves the appreciation of the U.S. Senate and the public for whom they serve. The staff spent many days and nights, sometimes all day and all night, working for this bill. They have been true public servants.

From the majority staff, I thank David Strauss, Kate Kimball, Mike Shields, Joe Goffman, Jennifer Hess, Cliff Rothenstein, Lynn Schloesser, Zack Church, Dan Berkovitz, Roy Kienitz, Larry Cupitt, Janice Nace, Ingrid Utech, Karen Spence, Judy Campbell, Elizabeth Thompson, Emily Berman, Margie Wright, Paul Chimes, and Jean Brodshaug of my personal staff.

From the minority staff, I thank Bob Hurley, Kathy Cudlipp, Jimmie Powell, Steve Shimberg, Steve Roady, Brent Erickson, Karen Field, Donna Campbell, Irene Sarate, Marie Balderson, and Carolyn Streeter.

After 8 years of administration opposition to efforts to address air quality concerns, a new President came forth with a very positive proposal to amend the Clean Air Act. His action reversed nearly a decade of administrative apathy on the subject and led to constructive dialogue with Congress as we developed this clean air package.

There are four major components to S. 1630. The bill addresses ambient air quality; motor vehicle emission; toxic air pollutants; and acid rain.

First, the bill's phased reduction of motor vehicle emissions is a critical element in controlling air pollution. To accommodate anticipated growth in the number of vehicles on the road, a two-stage reduction in tailpipe emissions of nitrogen oxide, carbon monoxide and hydrocarbons avoids increas-

ing ozone pollution. The bill requires the first set of standards to be met starting with the 1994 model year. These first round requirements are based on standards that are already being implemented for new vehicles sold in California. The second phase standards may become effective in 2003.

I am particularly interested in the bill's provisions regarding municipal waste incineration. The bill addresses concerns associated with incinerator emissions. I have long believed that incineration, if properly regulated, can be a viable option in addressing our growing solid waste problems. We are rapidly reaching the limit of landfill capacity in many areas of the country. The municipal incinerator provisions should assure that incineration of municipal waste will take place in a manner which is environmentally sensitive and which protects public health.

Mr. President, many Members have devoted a great deal of time over the past decade grappling with the problem of acid rain. It is one of the most perplexing that I have encountered in my 30 years in Congress. In the early 1980's many of the acid rain proposals focused on the 31-State region east of the Mississippi. Following the Clean Air Act Amendments of 1977, many States, primarily in the west, invested substantial amounts of money in air pollution control.

My State has spent over $750 million in capital investment and over $23 million in annual operating costs for utility plant scrubbers. Seventy-five percent of North Dakota's coal-fired electric generation is produced by scrubbed powerplants. North Dakota emits about 130,000 tons of sulfur dioxide from its powerplants annually. In comparison, one State emits over 2 million tons annually and currently scrubs only 3 percent of its coal-fired electric generation. Because many Midwestern utilities have avoided adding air pollution controls or switching to lower sulfur fuels, they have enjoyed huge cost savings over the last decade. In many instances, the amounts saved in just the last 5 years exceeds their estimated cost of compliance under the acid rain title of this bill.

The acid rain title of the bill generally embraces the polluter pays principle. The bill's acid rain provisions are largely those of the President. Acid rain reductions will be accomplished through a system of marketable allowances. This system will ensure that emission reductions are achieved in a cost-effective and flexible manner. We have debated acid rain for many years, and I believe this title adequately addresses this complex problem.

Section 405(b)(3) concerns unscrubbed lignite-fired powerplants in attainment States. These powerplants in my State burn low-sulfur lignite coal at the mine.

Lignite coal cannot be economically transported any great distance. It is a fuel that is heavily relied upon to provide electricity in my region of the country.

Seventy-five percent of the electricity generated from lignite-fired powerplants in North Dakota is from scrubbed units. North Dakota has already paid a high price to keep its air clean and is one of just three of four States that is in attainment.

Lignite-fired powerplants are not owned and operated by utilities that have units subject to first phase sulfur dioxide reductions. These utilities therefore do not have an opportunity within their own systems to overcontrol some units to create enough allowances to continue operations at current levels.

Lignite units in Canada are in the same international power pool as the North Dakota lignite units. Yet no coal-fired powerplant in Canada is scrubbed and none of the Canadian units west of the Manitoba-Saskatchewan border are required to reduce emissions or participate in an allowance system.

By freezing emissions at the current level, this provision prevents economic losses in a State that has already endured considerable economic hardship. This seems only fair to people who have already paid a heavy price for clean air and made North Dakota an attainment State.

I thank the conferees for retaining the provision on lignite-fired units in attainment States.

Under section 402(r), "allowable 1985 emission rate" is defined in such a way as to cause concern for the newest and cleanest and most efficient coal-fired powerplants allocated allowances under sections 405(d)(4) or 405(g). My expectation is that these units will not be short-changed in allowances when the Administrator calculates the annual equivalent rate. For purposes of this determination, it is expected that the Administrator will use the highest sulfur content coal that is permitted to be burned by the unit, and consider whether the unit is scrubbed and, at minimum, the federally enforceable rate limitation stated in the permit.

Under section 407, oxides of nitrogen will be reduced from coal-fired units in two phases. The first phase begins in 1995 for phase I dry-bottom, wall-fired and tangential units. The second phase reductions begin in 2000 for other coal-fired units. Cyclone and wet-bottom boilers may be required to reduce nitrogen oxide emissions only if the costs of such reductions are as cost effective as reductions from installation of low NO_x burners on other types of boilers. The Administrator must make this decision for existing cyclone and wet-bottom units before January 1, 1997. This provision is carefully worded to make cost considerations the determinative factor in consideration of NO_x reductions from cyclone and wet-bottom boilers. The Administrator's cost considerations should be so thorough as to consider total life-of-unit capital and operating costs including differentials in fuel costs to control NO_x emissions. Further, once the January 1, 1997 deadline has passed, the Administrator should not revisit the issue. Cyclone and wet-bottom units are no longer built and as time passes, these aging units will be removed from service when the full effect of the reductions required under this bill takes place.

I am pleased that the conference report makes special mention of the cost considerations that the Administrator must undertake when reviewing cyclone and wet-bottom boilers for NO_x reductions.

The $2.7 billion Federal clean coal program provides important assistance to industry in the development of clean coal technologies, many of which can make use of western, low-sulfur coal. Because of the potential of the clean coal program to benefit all ranks and grades of coal, it was critical for us, as conferees charged with crafting a workable acid rain abatement program, to assure that all potential participants, in all geographic regions of the country, continue to have the opportunity to participate in the program.

I am pleased that my colleagues on the conference did not restrict clean coal program participation to owners and operators of phase I affected sources. Had this restriction stood, I believe the country would have forgone the important benefits that are promised by the successful commercialization of pre- and post-combustion technologies to improve the environmental performance of low sulfur coal.

The conference package also includes incentives for certain clean coal technologies defined as repowering technologies. The conferees adopted the Senate definition of repowering technologies which includes a number of specifically named repowering technologies. In addition, the EPA Administrator, in consultation with the Secretary of Energy, can make derivatives of the above-listed technologies and other technologies "capable of controlling multiple combustion emissions with improved boiler or generation efficiency and with significantly greater solid waste reduction * * *" eligible for the repowering incentives.

This authority will provide critical encouragement to industry to commercialize such techologies, many of which can benefit low-sulfur coal. It is important to note that the administration, which worked closely with the

Senate leadership in developing the definition of repowering that is included in the conference package, did not intend that replacement of an existing boiler be a prerequisite to a multipollutant control technology's qualification as a "repowering" technology.

I ask unanimous consent that a letter from Energy Secretary Watkins, to Congressman RALPH REGULA setting forth the administration's intent with respect to the eligibility of multipollutant control technologies be included in the RECORD following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BURDICK. Mr. President, we agree that the utilization of a multipollutant control technology should not necessarily include replacement of the boiler to qualify as repowering technology.

Section 402(1) is intended to make clear that technologies eligible for repowering need not necessitate the replacement of the boiler. However, it is intended that all of the criteria are met, that "improvements in efficiency" not necessarily be equivalent to increases in efficiency, and the "multiple combustion emissions" to be controlled extend beyond the acid rain precursors and address other pollutions regulated under the act. Control approaches which string together otherwise separate processes—for instance scrubbers and electrostatic precipitators—should not qualify under the criteria of "controlling multiple combustion emissions simultaneously."

During the Senate consideration of S. 1630, the committee accepted an amendment to the definition of the term "repowering."

The amendment added a set of decision criteria so technologies other than those originally listed could qualify for the phase II time extension. This amendment is intended to encourage innovative technologies that can prevent or otherwise address many combustion pollutants (SO_x, NO_x and trace elements) simultaneously and in an integrated manner.

The intent of adding the criteria was to allow innovative technology, which may or may not require boiler replacement, to qualify if the criteria were met.

The House committee amended H.R. 3030 in a similar manner.

I am pleased the conference report carries this provision, based on the Senate language, and I am confident that new technology will be developed. This is particularly important to me for the future of the lignite coal mining industry in my State.

The conference report includes a number of provisions that will assure that industry and the Government, through the Federal Clean Coal Program, continue to move these technologies into the commercial marketplace as quickly as feasible.

Under section 112(n) utility emissions are exempt from air toxics regulation until studies are completed and the Administrator determines, based on the studies, that air toxics regulation is warranted. The hazardous substance of greatest concern here is mercury. The Senate bill required mercury reductions from coal-fired units. The Senate provision could not be sustained by the scientific facts. What little is known of mercury movement in the biosphere, suggests that its long residence time makes it a long-range transport problem of international or worldwide dimensions. Thus, a full control program in the United States requiring dry scrubbers and baghouses to control mercury emissions from coal-fired power plants would double the costs of acid rain control with no expectation of perceptible improvement in public health in the United States.

I am pleased the conferees adopted the House provision on hazardous air pollutants with respect to utility units.

Mr. President, at this time I would like to explain the provisions in the Clean Air Act that address the regulation of radionuclides from facilities licensed by the Nuclear Regulatory Commission [NRC]. These are important provisions and I believe it would be worthwhile to provide some background and details concerning these provisions.

First, I would like to explain current law, as exists prior to the enactment of these amendments. Much of this explanation is found in the report of the Committee on Environment and Public Works on S. 1630, the Senate Clean Air bill (S. Rept. No. 101-228).

Under current law, emissions of radionuclides from facilities licensed by the NRC are regulated under both the Atomic Energy Act and the Clean Air Act. The Atomic Energy Act of 1954, as amended, and the Reorganization Plan No. 3 of 1970 provide the Environmental Protection Agency [EPA] with the authority to establish generally applicable environmental standards for the release of radioactive materials regulated under the Atomic Energy Act. The standards established by EPA under this authority must be adequate to protect the public health and safety and are not to consider cost.

Using this authority, EPA has promulgated environmental standards for the operation of uranium fuel cycle activities, which include nuclear powerplants, uranium mills, and nuclear fuel fabrication facilities. EPA also has established generally applicable environmental standards for high-level and transuranic waste storage and disposal facilities.

The NRC enforces these standards at NRC-licensed facilities by promulgating regulations governing the operation of those facilities. Additionally, the NRC requires that radionuclide emissions from facilities under its jurisdiction be as low as reasonably achievable.

At present, these same radionuclide emissions also are regulated under the Clean Air Act. In 1979, the EPA listed radionuclides as a hazardous air pollutant under section 112 of the Clean Air Act. The courts have interpreted the existing Clean Air Act to require EPA to issue standards for all substances that are classified as hazardous air pollutants, regardless of whether or not they are already adequately controlled. Thus, the EPA has been required to regulate air emissions of radionuclides under the Clean Air Act in addition to the existing regulation under the Atomic Energy Act.

In November 1989, after years of litigation, the EPA promulgated, under court order, an emission standard under section 112 for radionuclides. These section 112 standards cover various sources of radionuclides, including all NRC licensees.

The EPA's standard did not impose any new controls on NRC Licensees. EPA stated that the existing emission levels from all NRC licensees protect the public health with an ample margin of safety. Thus, the EPA's Clean Air Act standard was generally comparable to the NRC standard that already existed under the Atomic Energy Act.

The EPA noted, however, that "[w]hile the level of health protection achieved under the NRC standard is generally comparable to that required by EPA's rule, the two standards are very different in form, and the means of demonstrating compliance with each standard impose significantly different regulatory requirements."

One reason that it took so long for EPA to issue emission standards for radionuclide emissions from NRC licensees was that the EPA believed that the regulation under the Atomic Energy Act of radionuclide emissions from NRC licensees already protected the public health with an ample margin of safety, and so that additional regulation was unnecessary. For example, in 1984 the EPA stated that to issue an emission standard for uranium fuel cycle facilities in addition to the Atomic Energy Act standard would be duplicative and * * * would not offer any additional public health protection.

Similarly, with respect to other NRC licensees, such as medical facilities, the EPA stated that:

> The EPA continues to believe existing emissions from these sources are already so low that the public health is already protected with an ample margin of safety, even without regulations. * * * Since the beginning of regulation under section 112, EPA has interpreted this section as not requiring

regulation in cases where the risks from a category of sources do not exceed a certain minimum threshhold. Indeed, contrary interpretations lead to results that are hard to defend from any logical or policy perspective.

In fact, every responsible governmental agency that has examined the existing radiation protection standards and procedures under the Atomic Energy Act for NRC licensees has concluded that these standards more than adequately protect the public health and safety and the environment.

The NRC has consistently and strenuously objected to dual regulation under the Clean Air Act. NRC commented that the EPA's rule of last November "is not necessary as a matter of health risk, regulatory policy, or law." The NRC stated that the rule will impose "a considerable duplicative regulatory burden * * * just to demonstrate compliance, and with no attendant significant improvement in public safety."

The National Council on Radiation Protection, a congressionally chartered council to review and make recommendations concerning Federal radiation standards, believes that the program under the Atomic Energy Act more than adequately protects the public. In a recent study of this issue the NCRP concluded that "releases are small because regulations are stringent and control measures are effective." (NCRP Rept. No. 92, Public Radiation Exposure From Nuclear Power Generation in the United States, 1987).

The National Institutes of Health has stated that the existing regulatory program, under the Atomic Energy act, for medical treatment and research facilities protects the public health with an ample margin of safety. (NIH Comments on EPA radionuclide emission standards; May 11, 1989; February 9, 1990).

The Department of Health and Human Services has stated that "dual regulation of the nuclear medicine community—under two separate statutes, with two separate monitoring, recordkeeping, and reporting requirements—is unnecessarily burdensome and provides no additional protection to the public health and safety."

The Conference of Radiation Control Program Directors, an organization consisting of the radiation control officers in each of the 50 States, has stated that "the present regulations for radionuclide emissions to the air, as authorized by the Atomic Energy Act, and which are enforced by the NRC and the Agreement States, are adequate to protect the public health and safety of our citizens." Thus, the conference supported the Senate's provision to "remove from EPA the regulation of radionuclide emission for facilities licensed by the NRC and the Agreement States."

The empirical evidence supports these conclusions. The National Cancer Institute recently completed a study of cancer deaths in counties surrounding nuclear facilities in the United States. The National Cancer Institute found no evidence that an excess occurrence of cancer has resulted from living near nuclear facilities.

Mr. President, I find this pretty persuasive. It is clear that the existing regulatory program under the Atomic Energy Act protects the public health with an ample margin of safety. Under these circumstances, additional or dual regulation under the Clean Air Act does not make any sense.

Accordingly, section 112(d)(9) of the Clean Air Act amendments of 1990 provides that section 112 of the Clean Air Act does not require the regulation of emissions of radionuclides from facilities licensed by the NRC if the Administrator of the EPA determines that the regulatory program established by the NRC protects the public health with an ample margin of safety.

The conference agreement on radionuclides altered the Senate bill in several major respects. First, the Administrator must make the ample margin of safety to protect the public health determination by informal rulemaking. This is to ensure that the Administrator specifically consider, after notice and an opportunity for public comment, whether the Atomic Energy Act regulations are adequate.

Second, the Administrator's determinations may be made source category by source category, or by subcategory. For example, the Administrator may examine the regulatory program for uranium fuel cycle facilities to make the determination for that source category alone. Similarly, the Administrator may examine the regulatory program for medical facilities to make the determination for that source category.

Third, in section 112(q), the conference agreement stays for up to 2 years the application of the emissions standards for various medical licensees that the EPA may impose under existing section 112. Presently, these standards have been stayed pending reconsideration by EPA. The stay under the bill is necessary to avoid the imposition of dual regulation during the period in which EPA is determining, under section 112(d)(9), whether or not such emissions standards are required under section 112.

The bill specifically provides this 2-year stay for medical research and treatment facilities. This is intended to encompass all NRC licensees which possess or use radioactive materials for medical research, diagnosis, or therapy purposes.

Clearly, it would be wasteful to require NRC licensees to make capital expenditures for monitoring, recordkeeping, and reporting, and for them to obtain personnel to comply with Clean Air Act regulations, at the same time that EPA is considering whether or not those regulations are necessary. Of course, during this period the Atomic Energy Act standards will still apply. The EPA already has stated that these standards provide an ample margin of safety to protect the public health. Thus, there will be no diminished protection to the public health and safety while the EPA is making its determination.

Finally, the bill does not affect existing States' rights. Section 112(d)(9) states that "Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitations respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 111 or [this] section [112]."

This statement parallels the statement in section 116 of the Clean Air Act that "nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants * * * ."

Thus, section 112(d)(9) provides for State authority for radionuclide emissions in the same manner and to the same extent as does existing section 116.

Mr. President, the conference agreement is good policy. It retains the policy underlying the original Senate provision—that there will be no duplicative regulation where one set of regulations is adequate. It includes procedural safeguards sought by the House—that the Administrator's determination regarding the adequacy of existing regulations must be made pursuant to informal rulemaking, and that the Administrator may examine the regulatory program for each source category.

The dual regulation provision adopted by the conference does not provide any special exemptions for the nuclear industry. The nuclear industry and other users of nuclear materials must meet the same health and safety standards as every other industry that is regulated under the air toxics part of the bill.

The fact is, however, that the nuclear industry already meets, and, in many cases surpasses, these standards. I have already detailed the findings and conclusions of governmental and scientific agencies that have reviewed this issue. Nonetheless, at this time I would like to place these risks in perspective.

The NRC's limit on emissions from nuclear powerplants is set at 5 millirems. A millirem is a measure of the dose of radiation. The National Coun-

cil on Radiation Protection found that emissions from nuclear powerplants were generally below the 5 millirem level.

In comparison, the Clean Air Act emissions standards for nuclear powerplants that were promulgated last November by the EPA set 10 millirems as the level required to provide an ample margin of safety. Thus, the NRC's radionuclide standards for nuclear powerplants are twice as stringent as the EPA's standards.

The NRC's 5 millirem limit is very small in comparison to the average annual amount of radiation received by persons living in the United States, both from natural sources and from voluntary activities.

For example, the average person living in the United States is exposed to 300 millirems annually. the average person receives approximately 200 milirems from breathing, mostly from radon gas in the atmosphere. The average individual receives another 55 milirems from radiation from outer space and from the minerals in the earth. The human body itself exposes each individual to approximately 40 millirems each year.

A person living in Denver will receive approximately 50 millirems more than an individual living in Washington, DC, or most other cities at sea level. A chest x ray provides a dose of about 10 millirems. One round trip by airplane from Washington to California will expose a person to about 7 millirems.

It is clear that the risks to the public from radiation released from nuclear powerplants and nuclear medical facilities are extremely low. EPA calculates that nuclear power will contribute only one excess cancer every 10 years to cancer incidence in the United States. By contrast, approximately 470 persons die each year from tripping and falling. Natural background radiation—the radiation we are all typically exposed to just from living on this planet—is calculated to cause approximately 10,000 cancers per year. Natural radon in homes is calculated to cause anywhere from 5,000 to 20,000 cancers per year. Everyday risks, many of which we accept voluntarily, are far greater than the risks from routine emissions from nuclear powerplants.

Because, as the EPA acknowledges, unnecessary and costly standards under existing section 112 currently apply to many facilities licensed by the NRC, and because medical research and treatment facilities are given only a 2-year stay of unnecessary and costly standards that have been promulgated but have not yet taken effect, the EPA should proceed expeditiously to make the determination regarding the adequacy of NRC's regulatory program under the Atomic Energy Act.

Ultimately, the costs of unnecessary regulation are borne by the public. Utilities, doctors, hospitals, and industries that use nuclear materials will pass any cost increases onto the public. It clearly is in the public interest to reduce these unnecessary costs as much as possible. Accordingly, the EPA should make the determination under section 112(d)(9) as quickly as possible.

Mr. President, I also would like to briefly explain new section 112(r)(7)(D), which states that "Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate—including requirements for hazard assessment—the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission. This provision has been retained from the bill originally reported from the Committee on Environment and Public Works.

Because this paragraph states that nothing in section 112(r) provides any authority for the regulation of or the imposition of requirements affecting the accidental release of radionuclides from facilities licensed by the NRC, such radionuclides may not be considered or listed by the Administrator as a regulated substance under section 112(r). Thus, none of the provisions applicable to regulated substances under this subsection are applicable to radionuclides from facilities licensed by the NRC.

It therefore follows that neither the regulatory nor the investigatory provisions in this subsection are applicable to releases of radionuclides from facilities licensed by the NRC. The Chemical Safety Board does not possess any authority to investigate releases of radionuclides from NRC-licensed facilities, and the Administrator has no authority to impose any requirements respecting such releases.

The NRC is the Federal agency charged with protecting the public health and safety from accidental releases of radionuclides from facilities licensed by the NRC. We do not need another Federal agency to duplicate the activities of the NRC in this area. This would impose an additional, unnecessary, and potentially conflicting layer of regulation upon NRC licensees. Accordingly, the accidental release program established by the bill does not provide new authority to any Federal or State agency with respect to the release of radionuclides from facilities licensed by the NRC.

Mr. President, I would like to conclude by putting these nuclear issues into perspective. We are about to pass the Clean Air Act to reduce air pollution. If we are to fully solve our nation's air quality problems, or to take effective measures to prevent the buildup of greenhouse gases, we will need to rely upon nuclear power.

Nuclear power does not pollute the air. Nuclear power does not emit sulfur dioxide. Nuclear power does not emit nitrogen oxides. Nuclear power does not emit greenhouse gases. Properly managed, it can be safe and economical. Nuclear waste should not be an insurmountable problem.

We should not impose needless costs upon any technology that can help solve our energy and environmental problems. Significantly, the Congress, in enacting the Clean Air Act Amendments of 1990, has recognized that unnecessary burdens should not be imposed upon nuclear powers. This is a very important step in the right direction for nuclear power as this bill is a major step forward for the quality of America's air.

EXHIBIT 1

THE SECRETARY OF ENERGY,
Washington, DC, July 2, 1990.

Hon. RALPH REGULA,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN RALPH: Thank you for apprising me of your intent to clarify in the Clear Air Act amendments that clean coal technologies which simultaneously control multiple pollutants are eligible for the extension of the Phase II compliance deadline. You specifically focused on the eligibility of technologies not requiring boiler replacement for consideration as repowering technologies.

The Administration worked closely with the Senate leadership in developing the definition of repowering which was adopted in S. 1630 and was thereafter incorporated into H.R. 3030. The intent of the language is to include in the definition of repowering any technology capable of controlling multiple combustion emissions simultaneously, so long as the two criteria specified (i.e., increased boiler efficiency and significantly greater waste reduction) are met. For this class of technologies, boiler replacement is not intended to be a precondition to being considered a repowering technology. Accordingly, the Administration does not believe that further clarification of the definition is required.

The Department is aware of two projects in the Clean Coal Technology Program which control multiple pollutants and which may meet the remaining two preconditions described above. These projects, neither of which requires boiler replacement, are the Low NO_2/SO_2, Burner Retrofit for Utility Cyclone Boilers Project and the Advanced Slagging Combustor Utility Demonstration Project. Both involve replacement of burners with sophisticated slagging combustors for NO_2 control and use of alkaline reagents for SO_2 control. Data for these two technologies responsive to the questions in your letter are included in the enclosed fact sheets. Please note that the definition of repowering in both H.R. 3030 and S. 1630 prescribes that final determinations regarding the applicability of the repowering definition to technologies like these will be made on a case-by-case basis by the Environmental Protection Agency in consultation with the Department of Energy.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the President's program.

Thank you for your inquiry on this important matter.

Sincerely,

JAMES D. WATKINS,
Admiral, U.S. Navy (Retired).

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, the first reauthorization and strengthening of the Clean Air Act in 13 years will be one of the major achievements of the 101st Congress.

This Congress has seen the renewal of national debate on many neglected domestic priorities. None is more important than the debate over the air that we breathe. For more than 10 years, the need for stricter emissions controls was denied; the effects of acid rain were minimized; the health threat of toxic emissions was set aside; and the growing evidence of global climate change was ignored.

All Americans have paid a price for that delay.

The gains made in cleaning up the air over urban areas during the decade of the seventies were gradually eroded, as our cities grew, more autos crowded our roads, and more industrial and powerplants were built to serve our growing population.

The gradual acidification of lakes, streams, and freshwaters in the Northeast proceeded. Some timber growth was arrested.

The failure of the Environmental Protection Agency to make a credible start on controlling toxic emissions for 13 years meant that millions of Americans were exposed to airborne gases that pose potential cancer risks as well as other severe health hazards. If the States had not acted during that time to impose controls on over 700 hazardous chemicals, we can only imagine the potential health damage to millions of our people.

Inattention to the dangers of ozone depletion has meant a loss of time and of American leadership in confronting what may be the world's greatest environmental threat in the next century.

The measure before us will not correct all these problems overnight. No legislation could do so.

But for the first time in more than a decade, it sets us on a course where credible, measurable, and effective improvements will be made in the years ahead.

The bill is a comprehensive, broadly based approach which reflects the hard work and difficult compromises that were needed to bring it to successful conclusion.

It is a complex and lengthy measure. Its size and complexity reflect the scope and difficulty of the issues with which it deals.

If clean air were easily attainable, we would not have needed almost 2 years to develop an effective way to achieve it.

If the costs of doing so were minimal, we would not have required lengthy and vigorous give and take between industries, regions, and citizens over the best way to pay those costs.

Polluted air is pervasive in its effect, because the many processes and activities of people in an advanced industrial society are pervasive. How we produce goods, travel, build homes, grow food, and live our lives affects virtually every aspect of our world.

Finding reasonable ways to modify those effects is not possible without affecting the activities from which they stem. This bill is complex because, in many direct ways, it goes to our social arrangements and every activity of our daily lives.

What we must recognize, however, is that because our activities affect our environment, we will not be able to clean our environment without changing some of our activities.

Changing the way in which a whole nation produces its goods and uses them is not a simple task. Change must be moderate if it is going to be sustainable. Change must be real if it is going to be effective.

Finding the balance between those two goals has not been easy. Some have said too much was compromised for the health of our economy. Others have claimed that too much was compromised for the health of our environment. That is inevitable in the case of legislation as far reaching as this bill.

But the important fact is that with this bill we are once again moving forward in a realistic and effective way. Today, we end a decade of stalement.

An important lesson of this process has been that we cannot again permit another decade to pass before we work to deal with pollutants as they become significant. Our economy grows too fast, our technology moves too swiftly for that.

We cannot again in the future risk squandering the advances made in cleaning the air in the past.

We must preserve the momentum which this bill creates and maintain a consistent and continued effort to prevent new hazards developing as we clean up the pollutants that already exist.

In the past month, the Congress has heard many debates over the priorities our Nation faces as the threat of the cold war diminishes, as economic competition with trading partners heats up, as our own work force faces an increasingly technological and sophisticated workplace. All those debates touch on important issues that will affect our national status and our standard of living in the future.

But no single factor is as critical to our future as the health of the American people. And no single factor potentially undermines the health of every single American more than the quality of the air we breathe.

Three-fifths of our people today live in areas where they are forced to breathe air that is not clean. They are, therefore, exposed to a health hazard, not intermittently or as a result of personal choice, but virtually around the clock.

The American Public Health Association estimates that 50,000 premature deaths each year are due to air pollution. That's a death rate as great as our traffic fatalities.

It is an annual death rate that virtually equals the toll of a decade of war in Vietnam. It is a premature death rate that should be intolerable in the world's most advanced society.

One Harvard researcher estimated that between 2 and 5 percent of all illness and death nationally is linked to polluted air. At a time when our Nation's health care bill outpaces the rate of inflation, outruns the ability of millions of workers and businesses to bear the cost, avoidable health damage must be avoided.

The damage that polluted air poses is a risk to which Americans are now exposed before birth—through carbon monoxide concentrations which affect fetal development—throughout the vulnerable childhood years, and into old age.

We know that children's lungs are still developing and cannot handle the load of pollutants to which they are now exposed. We know that persons with pulmonary problems face impaired lung capacity and efficiency. We know that even healthy lungs cannot cope with the load of pollutants that can build up in our cities on hot summer days.

Studies have demonstrated that the oldest and youngest Americans are particularly vulnerable to health damage from polluted air. But decreased lung function affects us all, healthy or not.

There are costs to cleaning up our air. But there are also costs to doing nothing. The question is how those costs are borne and who is to pay for them.

The bill before us seeks to share the costs broadly across the Nation because the damage to health and the costs of health care are broadly shared across the Nation as well.

More important, the bill before us recognizes that we are all potentially at risk. Air that is too polluted for children to play in or for adults to go jogging in is air that undermines the health of every man, woman or child who has to breathe it.

With the passage of this legislation, we will take a long overdue step to renewing our national commitment to an active, effective and aggressive program of controlling the pollutants

that threaten the air we breathe. It deserves the support of every Senator.

Mr. President, I ask unanimous consent that a detailed legislative history be printed in the RECORD at the close of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MITCHELL. Mr. President, there are many persons to thank for the success we are about to achieve. I cannot possibly name them all. There are literally hundreds. But I want to name four people who I think deserve special credit.

First is President Bush, who decisively altered the policy of the previous administration by supporting clean air legislation. That was a very important factor in our being able to get a bill passed here today.

The other three people are present on the Senate floor at this time. They include the distinguished ranking member of the committee, Senator CHAFEE, who has devoted much of the past 10 years to an effort to protect the health of Americans and the American environment and who was a major contributor to this bill. And Senator BURDICK, the chairman of the full committee, who has consistently supported this and other environmental legislation. And, most importantly, and I think due the greatest credit is Senator BAUCUS, the chairman of the subcommittee, who chaired the conference and whose persistence and patience and determination has made this bill possible. All Americans owe Senator BAUCUS a great deal of gratitude, most importantly Americans yet to be born. Generations to come will feel the positive results of his efforts.

One person who also deserves great credit who does not ordinarily receive it is Kate Kimball, of the staff of the committee, who I think all will agree more than any other single person wrote this bill and deserves enormous credit for her efforts in that regard, along with all of the other staff involved who deserve our gratitude today.

I thank the Chair. Mr. President, I yield the floor.

EXHIBIT 1

This is a massive piece of legislation. It will push the resources of the Environmental Protection Agency to the limit. But the commitment of the dedicated agency staff will make it possible for this country to effectively implement the legislation. It is imperative that the agency and the States have adequate resources with which to carry out the responsibilities. The demands are many. The timelines are short and the need is great. Federal and State budgets must provide enough resources.

Not the least of the needs is the needs for adequate enforcement and oversight. One of the problems that has plagued the Clean Air Act is the "gaming" that has continued in the form of paper trails starting everywhere and leading to no emissions reductions. We addressed some of these problems in the legislation, but it is up to the implementing agencies to carry out the mandate. Facilities subject to the requirements of the Act must know that compliance is the best and least expensive route for them to choose. Aggressive enforcement is key.

Title I of the bill addresses stationary sources of urban smog. Section 182(c)(2)(B) of the Act requires at least a 3% reduction annually in emissions of volatile organic compounds (VOCs). Less than 3% each year is required under section 182(c)(2)(B)(ii) if all feasible measures have been implemented. The annual percent reduction requirement is essential to achieving clean air in our nation's cities. An area should be excused from the 3 percent reduction requirement only if it has already implemented the most stringent of control requirements for other nonattainment areas. If other areas require a measure, it should be considered feasible.

Section 182(c)(2)(C) acknowledges the key role that emissions of oxides of nitrogen play in ozone formation, particularly in transport areas. NO_x reductions are to be the same as those required for VOCs in order to maximize reduction in ozone levels. NO_x has received less attention than other pollutants, but is a key contributor to both urban smog and acid rain formation. Its control is essential, particularly as background ozone levels are rising.

NOs controls are most meaningful in long-range transport of ozone. The eastern corridor provides ample opportunity for multi-day ozone episodes. Models show that NO_x controls can be key to controlling these types of episodes. While some are concerned that controlling NO_x may increase spikes in one-hour peak ozone levels in downtown urban areas, such as New York and Washington, data suggest that NO_x controls are beneficial for the more harmful multi-hour episodes and in situations that are NO_x-limited. Recent health research suggests that it is the longer term, lower levels of ozone exposure that cause the most damage to the human respiratory system, particularly that of children.

Information about the transport of smog has grown dramatically in recent years with the development of sophisticated computer models. The legislation creates an Ozone Transport Commission. This is an important development as transport of ozone interferes with areas' abilities to attain the ambient air quality standard for ozone. I expect the members of the Commission to fairly but vigorously press for pollution control measures, particularly in upwind areas, so that downwind areas like Maine will be able to achieve cleaner air.

The conference committee addressed a new issue in Title II regarding mobile sources, and that was the issue of how section 177 of current law should operate for States that choose to opt into the California motor vehicle program. The conferees clarified that such States cannot mandate production of a third car, beyond a 49-State Federal car and a California car. States are able, however, to enforce the California standards—consistent with California protocols and testing—to assure that the California cars meet the California standards when operated in the opt-in State. This can be important as conditions in the op-in State may be different from those in California. The legislation is a mere clarification of current law and was not intended to provide any preemption of State authority under section 177.

Section 202(g) requires a tighter tailpipe standard beginning in model year 1994. Section 202(i) requires a second round to tailpipe standards beginning in model year 2004. EPA can set aside the standards only if the agency finds that such standards are necessary, available and cost-effective. In making this determination, EPA should consider the need for nationwide reductions in emissions, particularly in transport areas where effective controls in all upwind areas is essential if downwind areas are ever to attain the air quality standards. EPA should also consider the need to maintain the air quality standards, in light of increased background ozone levels. These standards are feasible if they or similar standards are applied in California. And they are cost-effective taking into account how equivalent total other reductions would be achieved.

The conference agreement deletes language from the Senate bill that would have authorized EPA to establish regulations permitting heavy-duty engine manufacturers to undertake averaging, banking or trading of emission reduction credits for particulate matter, nitrogen oxides, and other pollutants. Emissions standards specified for heavy-duty engines in the final legislation should be met without averaging, banking, or trading.

Title II provides an alternative fuels program that can be essential in pushing technology to control emissions from motor vehicles, which currently account for over half of the emissions that cause urban smog. Section 205 provides civil penalties for violations of the fuels program of $25,000. Clearly a mere $25,000 penalty for failure to produce even one vehicle in the alternative fuels and fleets program would be inadequate. This would put auto manufacturers in the peculiar position of economically benefitting from non-compliance, which is not the intent. This does not mean that the penalties should be unreasonable, however.

Title III of the bill moves forward our controls on air toxics by requiring Maximum Achievable Control Technology, or MACT. This is an important development. It is essential that EPA promulgate meaningful MACT standards on time. We have postponed the health test under section 112 of current law in the expectation that MACT will be effective. A weak MACT standard would cause more sources to trigger the residual risk standard. This would postpone needed health protection and would increase costs of toxics controls. The best solution is an aggressive MACT program that protects public health and the environment.

The synthetic organic chemical manufacturing and use industry is one of the largest emitters of air toxics in the nation. The health and welfare of millions of Americans is threatened when they are exposed to emissions from this industry everday. Early and effective regulation of this industry is vitally important to the success of the air toxics program because of the sheer size of this industry and its importance in the overall profile of air toxics emitted in the nation.

EPA has much of the information needed to regulate this industry within the first two years after this bill is enacted. It is the intent that EPA use such data to promulgate effective and stringent regulations applicable to this industry within the first two years after the bill is signed into law. The language agreed upon in the conference committee referring to the source categories that will be regulated within two years after

enactment of this bill is based upon the regulation of this industry. The accomplishment of these regulations will be a major step on the road to successful implementation of this bill and will go a long way to make the air safer to breathe.

The radionuclides provisions of the conference agreement are different than those contained in the Environment Committee bill. That bill had the effect of preempting States from establishing their own radionuclide standards. The conference agreement legislation in no way preempts States from protecting their citizens from exposure to radionuclides. This is the authority that currently exists under the Act and has not been set aside.

I am also pleased that the conferees retained Senate study on Great Lakes and coastal pollution from air toxics. I am especially concerned about the impacts of air toxics on Casco Bay in Maine and hope that EPA will include this area in its study. Recent data on contaminants in the Bay suggest that some may be due to long-range transport of air toxics. The impact on Maine's economy of toxic pollution of our fishing waters could be dramatic. Prevention is the best course and this study could provide the data necessary to prevent further degradation.

The acid rain title is critically important to protect the public health and the environment. Sulfate exposure can overwhelm our respiratory system and may cause as many as 50,000 premature deaths annually.

The case for sulfur dioxide is well known. As I stated earlier, NO_x is an often overlooked pollutant and I am pleased that we have included strong NO_x control provisions in the acid rain title. The legislation requires NO_x controls on phase I units that can more easily be controlled. We postpone controls on boilers that are more difficult to control. During this time, innovations in NO_x controls could reduce the cost of such controls. Before setting emission standards for the second phase of NO_x controls, EPA should carefully review all the available control technologies to determine the most effective means of NO_x Control.

The conference committee deleted the so-called "WEPCO" provisions without prejudice. There has been much miscommunication about WEPCO, for WEPCO is not one issue but many. In 1970, the Clean Air Act required that new sources meet tight emission standards. At that time, it was assumed that electric utility units had an average lifetime of 30 years. But many utilities are now choosing to extend the life of their plants rather than meet the new source performance standards mandated under current law. This development has exacerbated our pollution problems and made national acid rain controls even more necessary.

Some approaches to the WEPCO problem would again shield utilities from meeting new source standards—and postponing needed emission reductions—even though such utilities may in essence be rebuilding their units. Local and national air quality impacts and the need to control emissions would be avoided under some formulations.

I urge EPA to propose clarifications on the matter of what kind of changes constitute a modification to an existing source that will continue to protect local air quality while responding to some of the issues raised in the WEPCO debate. In particular, EPA can quickly revise the Prevention of Significant Deterioration rules so that pollution control projects and fuel switching projects that are intended to reduce emissions at a particular source, would not be subject to new source review, unless of course these projects would increase emissions—an unlikely occurrence given their nature.

Earlier this year we heard a lot about the EPA's proposed interpretative rule and I ask unanimous consent to have a copy, as well as related correspondence printed in the RECORD. I am not sure why it has not been finalized, but I suspect it is due to restraint during the legislative process. It is not the intent to encourage a sweeping change in the new source review program that would undermine the intent of the Prevention of Significant Deterioration program and new source performance standard program. I trust that EPA will elucidate the underlying problems and craft only careful changes that neither undermine current law nor bias the allowance market under the acid rain program.

This year we repeal the percent reduction requirement. This is an important change from the 1977 law. I support this change, as it is my understanding that repeal of percent reduction would not allow the use of intermittent or seasonal controls for power plants or other source categories. This concept has always been rejected under the act, and repeal of percent reduction would not affect this policy. Such controls could have adverse effect on local air quality protection. New Source Performance Standards and Best Available Control Technology determinations are not intended to be weaker than before repeal of percent reduction, as the author of this provision, Senator BAUCUS, has so eloquently stated previously.

Enclosed is a letter from William G. Rosenberg, Assistant Administrator for Air and Radiation of the Environmental Protection Agency dated October 17, 1990 that explains EPA's views on repeal of percentage reduction. As the letter notes, the emissions cap on sulfur dioxide is not enough, in and of itself, to fully protect local and regional air quality. The system of allowances and the national cap on sulfur dioxide emissions are appropriate tools for an acid rain control program, but they do not fully address other air quality needs. I ask unanimous consent that the letter be printed in the RECORD.

The Clean Air Act Amendments of 1990 will improve our nation's ability to function in an economically efficient manner. There are significant economic benefits and productivity gains that will result directly from the measures proposed as amendments.

There will be reduced health care expenditures, reduced numbers of sick days and improved worker productivity. Peer reviewed and published studies indicate reduced ambient concentrations of ozone will improve the ability to work while on the job; particulate matter will decrease lost work days; carbon monoxide will result in improved reaction time, enhanced mental activity and will slow the onset of angina.

Reduced damage to the environment will result in greater productivity of our biological resources. Polluted lakes, streams, and coastal waters will rebound as will related recreational activities as toxic pollutant levels, acid deposition, nitrogen loadings and siltation rates are reduced.

Crop and forest yields and quality should increase as concentrations of criteria air pollutants are reduced. For ozone alone, yield increases for some cultivar's could approach 20 percent. Annual attainment of the present ozone national standards could generate increases valued in the billions of dollars.

Urban and rural visibility should increase markedly, thus restoring the value of the Nation's scenic wonders. The value of a pristine environment cannot be understated; both as an amenity to every individual who enjoys clean air and to the economy which benefits from the tourism and recreational market associated with a clean environment.

Reduced damage and soiling to physical assets will result in extended life and decreased maintenance costs. Buildings, materials, and statues are at risk. Studies by Brookhaven National Laboratory and others have shown that material damage amounts to billions of dollars every year. Painted products such as cars, homes, and many other exterior surfaces are severely damaged by acidic and other particles. For example, Ford Motor Company recently began to apply a protective temporary coating to their new cars to avoid damage to the paint that dealers were reporting as the cars sat in lots waiting to be sold.

Not least of all, pollution control can actually increase a company's productivity. Pollution control requires a firm to rethink its production process, which is an important stimulation to modernization. As examples, 3M and DuPont addressed some of the environmental problems while increasing their productivity.

Pollution control is a strong growth industry in this country. A recent survey of the Manufacturers Emissions Control Association (MECA) found that member companies expect to spend over $150 million in research and development in the United States in the next 10 years. MECA companies plan to invest $300 million in capital in the United States in the next 10 years.

MECA companies currently employ about 10,000 persons and expect a job increase of about 25 percent to 30 percent over the next 10 years if clean air legislation is enacted. Without such legislation, they expect reductions in the number of employees.

Studies show that investments in pollution control equipment mean new jobs. It is estimated that for every $1 billion in investment in pollution control, up to 20,000 jobs—and good jobs—are created.

The legislation is cost-effective. Full costs of the program will not be incurred by this legislation until the year 2005, and there will be virtually no costs until 1992. At full phase in, the estimated $25 billion cost will be much less than 1 percent of the $7 to $8 trillion economy at that time.

Economic growth clearly does not depend upon a dirty environment, or Eastern Europe would be in far better economic condition. Both Japan and West Germany already control power plant emissions to levels tighter than this legislation. A large international market is developing in pollution control equipment and the United States should be a leader in this field. West Germany, for example, reduced power plant emissions of sulfur dioxide 30% between 1980 and 1986 with no loss in productivity.

Small businesses will not be disadvantaged due to special provisions designed to attend to their unique needs. The permitting requirements are necessary to ensure compliance with the law. The permitting provisions will not cost between $6 and $14 billion as some have claimed as the provisions do not require continuous emissions monitors, EPA has discretion to select the most cost-effective monitoring systems.

EPA estimates, conservatively, that only 15,000 to 23,000 sources could be subject to the permitting program. Many of these sources are already covered under existing

State permit programs, as 80 percent of the States already have an operating permit program.

This legislation also makes good energy sense. By the year 2005, the legislation could save up to 1 million barrels of oil per day. At $35 per barrel today this is a savings of $35 million. The acid rain allowance system reduces costs of complying with a ten million ton reduction in sulfur dioxide by 20 percent to 30 percent.

I have instructed my staff to prepare periodic implementation reports for my review on this legislation to assure that EPA, the States and affected industries are adequately complying with the requirements of the legislation. We have a good beginning in this conference agreement, but it is only a beginning. Much work needs to be done if this legislation is to fulfill its promise of cleaner air for all Americans.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, March 3, 1990.

Hon. RICHARD G. LUGAR,
U.S. Senate,
Washington, DC.

DEAR SENATOR LUGAR: I appreciate the February 20, 1990 opportunity for our staffs to meet with representatives of Northern Indiana Public Service Company to discuss their concerns regarding the clean coal technology (CCT) project at the Bailly Generating Station. Please find enclosed copies of the recent letters we have sent to the Indiana Department of Environmental Management providing the Environmental Protection Agency's (EPA's) comments on this forthcoming CCT project. As these letters indicate, it is EPA's interpretation of current rules that CCT projects demonstrating retrofit control technologies which reduce pollution, including the project at the Bailly Generating Station, are not subject to new source requirements under the Clean Air Act (CAA).

The Agency supports the CCT program. I trust that the enclosed letters resolve any concerns that you or your staff may have concerning the new source requirements under the CAA as they apply to the CCT project at the Bailly Generating Station.

Sincerely,

WILLIAM G. ROSENBERG,
Assistant Administrator
for Air and Radiation.

ENVIRONMENTAL PROTECTION AGENCY,
Chicago, IL, January 30, 1990.

Mr. TIMOTHY J. METHOD,
Assistant Commissioner, Office of Air Management, Indiana Department of Environmental Management, Indianapolis, IN.

DEAR MR. METHOD: The purpose of this letter is to comment on the permit proposed by the Indiana Department of Environmental Management (IDEM) for Northern Indiana Public Service Company's (NIPSCO) Bailly generating station. The permit provides for the construction of an air pollution control device and directly related improvements under the Clean Coal Technology (CCT) program. The Environmental Protection Agency (EPA) agrees with the determination of IDEM that the State and EPA rules for prevention of significant deterioration (PSD) and new source performance standards (NSPS) are not intended to apply to the CCT project at Bailly. In other words, the project should not be considered a "major modification" under new source review (NSR) or a "modification" as set forth under NSPS provided certain requirements are met. In a separate but related issue, EPA also agrees with the determination by IDEM that the addition of a diesel generator as a backup power supply to the scrubber to be installed at Bailly is not a major modification if the limits on operating the generator agreed to by NIPSCO are federally enforceable.

INTRODUCTION

For NSPS purposes, a modification is defined as any physical change in, or change in the method of operation of, a stationary source which increases (in terms of hourly emissions capacity) the amount of any air pollutant regulated under the Clean Air Act (Act) which is emitted by such source, or which results in the emission of any air pollutant not previously emitted. For NSR purposes, a major modification is a modification which results in a significant net emissions increase (in terms of actual annual emissions).

The EPA has become aware that these definitions can be interpreted in such a manner as to subject to NSR or NSPS, or both, certain environmentally desirable activities at existing stationary sources which neither Congress nor EPA intended to be covered by the Act's new source requirements. Moreover, NSR or NSPS coverage would, in some instances, have the effect of discouraging such activities. The EPA believes that such activities, including CCT demonstration projects, are not physical changes or changes in the method of operation, so long as they meet certain criteria discussed herein and EPA issues an applicability conclusion. Hence, such activities are not "modifications" for NSPS purposes, or "major modifications" for NSR purposes.

Over the past several months, EPA has held numerous internal meetings to discuss the Clean Air Act regulatory issues raised by the CCT program. As a result of these discussions, the EPA has decided to issue an interpretative ruling as soon as possible to provide guidance on the definition of a physical or operational change as it applies to new source requirements. In a letter dated January 5, 1990, EPA advised NIPSCO of this intention.

Essentially, this ruling would clarify that if a source solely adds or enhances systems or devices whose primary functions are the reduction of air pollution, and that are determined to be not less environmentally beneficial (as determined by the Administrator) than any emission control system or device it replaces, if any, such activities would not constitute a physical or operational change triggering new source requirements. Consequently, NSPS and PSD and nonattainment new source review would not apply to these types of activities. This interpretative ruling would include permanent, as well as temporary projects under the CCT program. However, it would not extend to projects that primarily are intended to extend the life of a plant or increase capacity. In addition, any changes, permanent or temporary, which are expected to significantly increase emissions to the atmosphere, such as changes which increase a source's hourly operating capacity (e.g., eliminating a bottleneck), hourly emissions rate (e.g., one pollutant decreases but another increases), or utilization rate (e.g., an anticipated increase in hours per year of operation resulting from the installation of controls) would still be subject to NSR and NSPS.

Based on our review of the draft permit, we believe that the Bailly project is consistent with the provisions EPA is developing for its interpretative ruling. On this basis, we have reached the conclusion that this project in particular is not subject to NSPS or major NSR requirements, so long as it continues to meet the criteria discussed herein.

The balance of our comments outlines the grounds for EPA's conclusion and contains a discussion of the anticipated terms of EPA's upcoming interpretative rule. The EPA is still deliberating the specific terms and provisions of its interpretative ruling. While today's comments reflect EPA's current expectations of what will be contained in that document, the actual terms of the ruling may differ from those discussed herein.

BACKGROUND

A. The NSR AND NSPS Provisions of the Clean Air Act.—The NSR And NSPS provisions of the Act apply to wholly new facilities, and to modifications at existing facilities, when certain conditions are met. The rules governing the applicability of NSR and NSPS to modifications at existing facilities are described in detail in the EPA regulations (see 40 CFR 51.165 and Appendix 8, 52.21, 60.14 and 60.15). In general, the modifications that would trigger these new source requirements are those involving physical or operational changes which increase emissions over baseline levels. (In addition, for NSPS purposes under EPA regulations, a reconstruction occurs and a source is considered "new" if the physical or operational change costs more than 50 percent of the replacement cost of the affected facility, regardless of whether an emissions increase occurs). The term "physical or operational change" is construed broadly and may include the installation, use, or dismantling of pollution control equipment.

1. Background of the NSPS and NSR Modification Provisions.—The 1970 Amendments to the Act required EPA to promulgate technology-based new source performance standards applicable to the construction or modification of stationary sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. 7411(b)(1)(A). Congress decreed that, in addition to wholly raw sources, NSPS would apply to the modification of an existing source, defined broadly as: any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Clean Air section 111(a)(4), 42 U.S.C. 7411(a)(4).

The NSPS provisions were "designed to prevent new [air] pollution problems" by regulating both newly constructed sources of pollution and existing sources that increase their emissions. National Asphalt Pavement Assoc. v. Train, 539 F.2d 775, 783 (D.C. Cir. 1976) [see also M.R. Rep. No. 1146, 91st Cong., 2d Sess. 3, reprinted in 1970 U.S. Code Cong. & Admin. News 5356, 5358]. The affect of including modified sources as well as newly-constructed sources under the provisions of section 111 was to establish a current level of emissions above which an existing source may not pollute without becoming subject to the NSPS. In August 1977, Congress adopted further extensive changes to the Act (Pub. L. 95-95). These included review-and-permitting programs for new and modified sources combining the technology-based approach of NSPS with specific measures to insure that ambient air quality goals under the Act are met.

Congress intended NSR to apply "where industrial changes might increase pollution in an area." Alabama Power Co. v. Costle, 636 F.2d 323, 400 (D.C. Cir. 1979). Part D applies to areas which have not met national ambient air quality standards (NAAQS) under section 109. To receive a permit in such areas, major new and modified sources must (among other things) obtain emissions offsets that assure reasonable progress toward attainment of the NAAQS and must comply with the "lowest achievable emission rate," which can be no less stringent than an applicable NSPS (see sections 171-173). The 1977 amendments also added a new Part C to the Act including, in sections 160-169, an NSR program for the prevention of significant deterioration of air quality (the "PSD" program) in areas which have attained the NAAQS. To receive a PSD permit, a prospect major new or modified source must (among other things) show that it will not exceed the available air quality "increment" (designed to prevent pollutant concentrations from deteriorating beyond certain levels), and will use the "best available control technology", which must be at least as stringent as any applicable NSPS. Both the Part D NSR program applicable to nonattainment areas and the Part C NSR program applicable to attainment areas adopted the NSPS definition of "modification," but not all the exclusions to that definition [see sections 171(4) and 169(2)(C)].

It is evident from the structure of the NSR and NSPS programs that Congress sought to focus air pollution control efforts at an efficient and logical point: the making of substantial capital investments in, or other long-term decisions regarding, pollution-generating facilities. In adopting NSR measures in particular, Congress sought to reconcile the legislative goal of environmental protection with a concurrent desire for continued economic growth [see sections 160(1)-(4)]. Consequently, a key theme of the NSR program is the careful evaluation of, and public participation in, "any decision to permit increased air pollution" [see section 160(5)]. As discussed below, the current regulations implementing NSPS and NSR were designed to apply these programs in a manner consistent with their respective statutory purposes. Today's comments represent our interpretation of these existing regulations under the facts presented by the Bailly project. The EPA expects that its upcoming interpretative ruling will further focus EPA's position on the basic legislative intent of these important programs.

2. The Two-Step Test for Modifications.—The modification provisions of the NSPS and NSR programs grow from a single statutory trunk, the very broad definition of "modification" in section 111(a)(4). Under both respective programs, EPA developed a two-step test for determining whether activities at an existing facility constitute a modification subject to new source requirements. In the first step, which is largely the same for NSPS and NSR, EPA determines whether a physical or operational change has occurred. If so, EPA proceeds in the second step to determine whether the physical or operational change will result in an emissions increase over baseline levels. In this second step, the applicable rules branch apart, reflecting the fundamental distinctions between the technology-based purposes of NSPS and the technology and air quality concerns of NSR. Briefly, the NSPS program is concerned with hourly emissions rates, expressed in kilograms or pounds per hour. [An hourly emissions rate is the product of the instantaneous emissions rate, i.e., the amount of pollution emitted by a source, after control, per unit of fuel combusted or material processed, (such as pounds of sulfur dioxide emitted per ton of coal burned) times the production rate (such as tons of coal burned per hour)]. Emissions increases for NSPS purposes are determined by changes in the hourly emissions rates at maximum capacity. The NSR is concerned with total annual emissions to the atmosphere, expressed in tons per year. (Annual emissions are the product of the hourly emissions rate, which is the sole concern of NSPS, times the utilization rate, expressed as hours of operation per year). Emissions increases under NSR are determined by changes in annual emissions to the atmosphere.

3. Physical or Operational Change.—The very broad definition of physical or operational change in section 111(a)(4) could, standing alone, encompass the most mundane activities at an industrial facility—even the repair or replacement of a single leaky pipe or a change in the way that pipe is utilized. The definition certainly is broad enough to encompass the addition or enhancement of pollution control equipment. However, EPA has always recognized that Congress obviously did not intend to require every activity to be potentially subject to new source requirements, and that it would be administratively impracticable to do so. Accordingly, EPA has substantially narrowed this term in its NSPS and NSR regulatory definitions through the adoption of common-sense exclusions. For example, both sets of regulations contain similar exclusions for routine maintenance, repair, and replacement; for certain increases in the hours of operation or in the production rate; and for certain types of fuel switches [see 40 CFR 60.14(e); see also, e.g., 40 CFR 52.21 (b)(2)(iii)]. In addition, with respect to pollution control equipment, the NSPS regulations contain an exclusion for: The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial [40 CFR 60.14(e)(5)].

The EPA has held that this exclusion does not apply to a source which, upon original construction, employed wet scrubbers, but later (upon relaxation of a State plan under section 111(d)) desired to remove the control equipment, which would have resulted in much higher levels of pollution than the plant had ever emitted [National Southwire Aluminum Co. v. EPA, 838 F.2d 835 (6th Cir.), cert. denied, 109 S.Ct. 390 (1988), herein after National Southwire]. In the past, EPA has taken various views as to whether the exclusion in section 60.14(o)(5) should apply for NSR purposes. As noted earlier, the NSR statutory definitions of modification simply adopt the NSPS definition in section 111(a)(4). In addition, the legislative history reflects that, as a general matter, Congress intended to conform the meaning of "modification" for PSD purposes to usage under NSPS [see 123 Cong. Rec. H11957 (Nov. 1, 1977)]. For this reason, EPA initially ruled that the NSPS exclusion for addition of control devices applied automatically to PSD (Memorandum from Edward E. Reich, OAOPS, and William F. Pedersen, CGC, to EPA Region VI, April 21, 1983). The EPA reversed course in a 1986 applicability determination issued for both PSD and nonattainment NSR purposes, noting that the NSPS exclusion was highly qualitative, and failed to give due account to either the air quality management component or the largely quantitative orientation of the NSR applicability regulations. (Memorandum from Gerald A. Emison, Director, OAOPS, to Regional Air Division Directors, July 7, 1986).

COMMENTS ON NEPS APPLICABILITY

An NSPS modification is any "physcial or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies" (40 CFR 60.2). Under NSPS, emissions increases, for applicability purposes, are calculated by comparing the hourly emission rate immediately before and after the physical or operational change. All operating parameters which may affect emissions must be the same to the maximum feasible degree for the before and after testing, and tests must be conducted under representative conditions. Absent the exclusions from modifications specified at 40 CFR 60.14(e), any increase in emissions to the atmosphere over the previous emissions rate will subject the modification to NSPS [see section 60.14(a) and (b)]. In addition, modifications which would cost 50 percent or more of the cost of a comparable raw facility are classified as reconstruction (see 40 CFR 60.15) and are subject to NSPS as a new source even if there is no emissions increase.

Thus, unless the reconstruction provisions come into play, it is clear that under the existing regulations NSPS would not apply to the installation or improvement of emission control equipment which reduces hourly emissions rates. If the reconstruction provisions do apply, then such changes would trigger NSPS.

Based on NIPSCO's premit application and representations made by NIPSCO's September 14, 1989 and December 4, 1989 information submittals to EPA, NSPS would not apply to the Bailly Station if the new scrubber is not removed (i.e., if it is a permanent demonstration) because hourly emission rates will not increase as a result of the addition of these CCT controls. As a permanent CCT demonstration project, it would satisfy the requirements of the exemption contained in 40 CFR 60.14(e)(5) for the addition or use of any control system or device whose primary function is the reduction of air pollution. (The definition of "modification" for NSPS is found at 40 CFR 60.14). In addition, the Bailly project would not qualify as a reconstruction under 40 CFR 60.15.

However, the NSPS provisions could also apply to major facilities with temporary OCT demonstration projects at the end of the demonstration when the control equipment is removed and emissions rise back to the level that existed before the demonstration. Thus, while the placement of CCT controls at Bailly will reduce the hourly sulfur dioxide (SO_2) emission rate, if NIPSCO later dismantles the CCT controls, this would result in an increase in hourly SO_2 emissions up to pre-demonstration levels and the source could be considered subject to NSPS.

Today's comments reflect EPA's position that the Bailly plant would not be subject to NSPS at the conclusion of the project, if NIPSCO decides to make it only temporary, as the result of an increase in emissions rates back up to the levels which existed before the changes were made to accommodate the temporary demonstration project. The EPA expects that its forthcoming interpretative rule will take this position with re-

spect to all temporary CCT and similar demonstration projects which reduce emission rates. Unlike the situation presented in *National Southwire*, it is clear that the addition of pollution control in a temporary CCT demonstration was never intended to result in permanent emissions reductions. In addition, removal of temporary controls will not result in a level of emissions higher than that experienced in the past. (Reconstruction provisions, however, could subject both temporary and permanent CCT demonstration projects, and certain other emission control system installations or improvements, to NSPS. Still as indicated by the Bailly project, the reconstruction provisions of the Act should rarely, if ever, apply to the type of activity which would be considered for exclusion from the definition of a physical change or a change in the method of operation. Thus, the triggering of the reconstruction provision is an indication that the proposed activities are more extensive than just the addition, or replacement, of an emission control system or device, and so are not appropriate for exclusion.)

COMMENTS ON NSR APPLICABILITY

Modified sources are subject to NSR if the modification is "major." Major modifications must consist of a physical change or change in the method of operation of a major stationary source [40 CFR 52.21(b)(1)] which results in a net emissions increase of any pollutant subject to regulation under the Act that is significant. Significant levels are expressed in tons per year and differ for each pollutant [40 CFR 52.21(b)(23)]. Net emissions increases are determined [40 CFR 52.21(b)(3)] by summing all contemporaneous creditable actual emissions increases and decreases. The definition of "actual emissions" is such that generally the comparison is between actual emissions before the physical or operational change in question and the potential to emit of the facility afterwards [40 CFR 52.21(b)(21)]. If the source has not been operating near full capacity, even the addition of a control device could be considered a significant net emissions increase when comparing historic actual emissions with a new potential to emit, even though there may be a substantial reduction from historic actual emissions.

Specifically, actual emissions before the change at a facility are generally determined by averaging the emissions for the 2 years prior to submittal of the permit application (or some other period if the last 2 years are not representative of normal unit operation) [see, e.g., section 52.21(b)(2)(ii)]. Since the emissions rate after a physical or operational change cannot be predicted in advance, EPA regulations assume that a source's actual emissions will equal its maximum "potential to emit", which is based on constant full load operation for an entire year (unless restricted by federally enforceable limitations) [see, e.g., sections 52.21(b)(21)(iv); 52.21(b)(4)]. Thus, a physical or operational change will trigger NSR if the annual potential to emit of the source is significantly greater after the change than its representative actual annual emissions before the change, unless the company agrees to federally enforceable operational restrictions which limit its potential to emit to levels not significantly greater than its actual emissions before the change. This actual-to-potential methodology applies to physical or operational changes at new or "modified" (i.e., altered or changed) emissions units [see 45 FR 52676, 52677, 52718 (1980)].

As explained below, EPA believes that this methodology generally serves the purposes of NSR because it subjects to review projects that might lead to an increase in actual pollution. However, the NSR provisions in the existing regulations could be interpreted to apply to major facilities simply installing or improving control equipment, including CCT demonstration projects, under circumstances where a permanent increase in pollution is highly unlikely.

Under EPA's prospective interpretative ruling, existing sources which would otherwise become subject to NSR only because they decide to install or improve emission controls, or participate in the CCT program or similar demonstration projects approved by EPA, would instead be excluded from NSR coverage, so long as certain criteria intended to ensure that permanent increases in actual emissions do not occur, are met.

With respect to the Bailly project in particular, it appears that the plant has been operated at a rather high level of approximately 60 percent of capacity, reflecting baseload utilization of the plant. There is no indication that NIPSCO intends to increase this level of usage at any time following installation of the CCT controls. In addition, it appears that the Bailly project will meet the criteria EPA expects to set forth in its interpretative ruling for both temporary and permanent projects.

The EPA now believes it is appropriate to devise and apply such criteria both for the Bailly project and for the upcoming interpretative ruling. The EPA has recommended the position taken in its 1986 memorandum, discussed earlier, regarding use of the NSPS exclusion in 40 CFR 60.14(e)(5). While EPA continues to believe that this exclusion does not apply automatically for NSR purposes, the criteria discussed herein provide due consideration of air quality management concerns and the need for quantitative analyses.

CONDITIONS FOR PERMANENT CONTROLS OR DEVICES TO BE CONSIDERED NOT LESS ENVIRONMENTALLY BENEFICIAL

As noted above, EPA is preparing an interpretative ruling which will clarify that if a source solely adds or enhances systems or devices whose primary functions are the reduction of air pollution, and which are determined to be not less environmentally beneficial, such activities would not constitute a physical or operational change triggering new source requirements. At this time, EPA anticipates that its ruling will provide that such pollution controls will be considered not less environmentally beneficial, with respect to permanent controls, if they meet at least the following criteria:

(1) The source will continue to meet all current requirements and standards applicable to existing sources under the Act. This includes meeting applicable NAAOS, PSD increments, permit conditions, and State implementation plan (SIP) limitations.

(2) There is no enviromental harm resulting from the proposed activities. This includes conditions that the proposed activities would not cause the source to;

(a) increase the maximum hourly actual emissions rate of any pollutant regulated under the Act;

(b) increase the annual emissions of any pollutant regulated under the Act as a result of an increase in capacity utilization rate;

(c) adversely impact an air quality related value (e.g., visibility) in any Class I area; or

(d) allow an increase in emissions of toxic pollutants not regulated by the Act which would cause an adverse health or welfare impact.

Based on the information provided by NIPSCO, it appears at this time that the Bailly project, if it is made permanent, will meet the above criteria. Accordingly, as to the Bailly project in particular, EPA believes that major NSR requirements clearly will not apply if the project is made permanent, so long as these criteria are in fact met.

TEMPORARY CCT CHANGES

In its upcoming interpretative ruling, EPA expects to follow criteria for "temporary" CCT projects which are somewhat different from those for permanent projects. The EPA likely will consider a project to be temporary if it lasts less than 5 years from the date the project commences construction. However, the ruling probably will provide that the Administrator would consider an additional period of time, up to 5 additional years, in certain cases. At the end of a temporary project, the facility would be returned to pre-demonstration conditions and hourly emission rates (or lower). It is not clear if the proposed Bailly station permit is for a permanent or temporary CCT project. It is our understanding that NIPSCO considers the first 3 years of the CCT demonstration project to be "temporary" and will view the changes as "permanent" for the following 17 years if they are continued after the 3 year period.

The EPA expects that its interpretative ruling will provide that for temporary demonstration projects, the conditions relating to actual emissions increases and hours of operation criteria under 2a, b and d above would not apply to minor, temporary variations from nominal operating conditions. Temporary increases may occur due to testing procedures or some failure in unique but unproven equipment, but should not willfully contribute to adverse health or welfare impacts. The EPA believes that the benefits inherent in CCT and other similar technology demonstration projects counterbalance the limited, temporary impacts that may occur during these temporary projects. Under the ruling, temporary demonstration project applications likely would have to meet all of the other criteria applicable to the permanent projects discussed above. This interpretation would provide the flexibility to encourage temporary demonstration projects which are considered to be environmentally beneficial overall, despite unpredictable, temporary increases in emissions of some pollutants or in the hours of operation that may occur during the course of a demonstration.

The EPA expects the ruling to state that temporary changes would become permanent at any time during or at the end of a demonstration period if the owner/operator seeks a revised applicability determination addressing all criteria applicable to permanent air pollution control system improvements. In admitting these comments, EPA is applying the above criteria in its review of the Bailly project. If NIPSCO ultimately decides that the Bailly CCT project is to become a permanent CCT demonstration, the project should meet all the criteria discussed earlier for permanent projects at the time the project is to be converted to permanent status (i.e., after 3 years).

PROCEDURES FOR ENVIRONMENTALLY BENEFICIAL EXCLUSIONS FROM APPLICABILITY

The EPA expects that under its forthcoming interpretative rule, an owner or operator proposing to make an environmentally ben-

eficial change in an air pollution control system will be called upon to request an applicability determination from the appropriate NSR/NSPS permit authority. The request should include a general description of the facility and the proposed activity, information on the current and projected use of the facility, and sufficient information to justify a nonapplicability determination. For any air pollution control system improvement, the request should include a rationale for why the emission control system or device should be considered equal to or more efficient than existing control technology at the source.

The EPA also anticipates that its interpretative ruling will state that in providing information to the reviewing authority, an owner or operator should submit sufficient modeling to demonstrate that any new or increased emissions of unregulated toxic pollutants resulting from the change in control equipment will not cause or contribute to adverse health or welfare impacts. The owner or operator should also demonstrate that the source will not operate at greater hourly emissions rates, or for more hours, than it has been during the most recent 2 years (or some other period, if the last 2 years are not representative of normal operation). In assessing whether actual emission increases of any pollutant are likely to occur, the reviewing agency should consider the economic incentives to increase production rates or hours of operation associated with the change. Any change which could reasonably result in increased emissions due to possible increased utilization of the facility as a result of the changes should not be considered environmentally beneficial. The authority reviewing the proposed change should explicitly determine, based on consideration of these and other relevant criteria, that the net effect will not be one of environmental harm.

OPERATING LIMITS ON NEW DIESEL GENERATOR

The EPA considers the addition of a backup diesel generator at Bailly not to be an integral part of the CCT demonstration, in that the generator could serve multiple functions once installed. In general, EPA views changes to be subject to NSR and NSPS if such changes are not strictly related to the addition of the improved air pollution control system and the changes have any possible additional application. However, EPA agrees with IDEM that the addition of a new diesel generator does not constitute a "major modification" if the State's limits on the generator's hours of operation, preventing concomitant increases in emissions from exceeding significance levels, are federally enforceable.

In closing, EPA agrees with the State that NSPS and NSR do not apply if the conditions outlined in this letter are met. If you have any further questions, please contact Mr. Ron Van Marsbergen at (312) 886-6056 or Mr. Don Abella at, (312) 886-6543.

Sincerely yours,

DAVID ROE,
Director, Air and Pollution Division.

ENVIRONMENTAL PROTECTION AGENCY,
Chicago, IL March 8, 1990.

Mr. TIMONTHY J. METHOD,
Assistant Commissioner, Office of Air Management, Indiana Department of Environmental Management, Indianapolis, IN

DEAR MR. METHOD: Please be advised that my January 30, 1990, letter to you regarding the Clean Coal Technology (CCT) project at Northern Indiana Public Service Company' (NIPSCO) Bailly Generating Station, should be modified. While the Environmental Protection Agency (EPA) continues to agree with the State that Clean Air Act (CAA) provisions for new source performance standards (NSPS) and new source review (NSR) do not apply if the conditions outlined in my January 30, 1990, letter are met, some revisions are necessary.

On page 8, the section on "Conditions for Permanent Controls or Devices To Be Considered Not Less Environmentally Beneficial" should be changed as follows:

In first paragraph, second sentence (change underlined)

"At this time, EPA anticipates that its ruling will include a presumption that such pollution controls will not result in an environmental harm, with respect to permanent controls, if the source demonstrates that:"

In the second condition (change underlined)

"2. There will be no environmental harm resulting from the proposed activities. This includes conditions that the proposed change would not be itself:

(a) . . . (no change) . . . ;

(b) increase the annual emissions of any pollutant regulated under the CAA;" (delete the phrase "as a result of increased capacity utilizaton rate)

Insert new paragraph after condition 2d—"Changes which are expected to increase emissions to the atmosphere, such as changes which increase a source's hourly operating capacity (e.g., eliminating a bottleneck), hourly emissions rate (e.g., one pollutant decreases but another increases), or utilization rate (e.g., an anticipated increase in hours of operation resulting from the installation of controls) would not be affected by this interpretation and would continue to be potentially subject to NSR and NSPS. The EPA will presume, however, that the addition of a control device will not, by itself, result in an increase in capacity utilization. However, this presumption will be overcome if there is a clear likelihood that operating hours or production rates will increase because of the installation of the device.

On page 10, a corresponding change should also be made to amend the first full paragraph as follows (change underlined):

"The EPA also anticipates that its interpretative ruling will . . . In assessing whether any net increase in actual emissions of any pollutant, over representative actual emissions rates, is likely to occur as a result of the addition of controls, the reviewing agency should consider the economic incentives to increase production rates or hours of operations associated with the installation and use of the control device. Where increased emissions due to increased utilization of the facility are clearly a likely result from addition of the device, the change should not be considered environmentally beneficial." (Delete last sentence of paragraph starting with "The authority . . .).

If you have any further questions, please contact Mr. Ron Van Mersbergen at (312) 886-6056.

Sincerely yours,

DAVID KEE,
Director, Air and Radiation Division.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC.

MEMORANDUM

Subject: Interpretative Ruling on Air Pollution Control System Improvements—ACTION MEMORANDUM.

From: William G. Rosenberg, Assistant Administrator for Air and Radiation (ANR-443).

To: The Administrator (A-100).

PURPOSE

Attached for your approval is an interpretative ruling entitled "Applicability of New Source Review and New Source Performance Standards Requirements." This ruling responds to Department of Energy (DOE) concerns that a new source performance standards (NSPS) and new source review (NSR) requirements are impeding the implementation of the clean coal technology (CCT) program. The action clarifies the definitions of "major modification" and "modification" to provide exclusions from NSPS and NSR requirements for retrofit CCT projects and other approved, add-on emissions control system improvements including the use of less polluting fuels where applied as pollution control measures.

BACKGROUND

The Environmental Protection Agency (EPA) has become aware that the definitions of "major modifications" in 40 CFR Parts 51 and 52, and "modification" in 40 CFR Part 60, can be interpreted in such a manner as to subject certain environmentally-desirable activities at existing stationary sources to NSR or NSPS, or both. Neither Congress nor EPA intended these desirable activities to be covered by the Clean Air Act's (CAA's) new source requirements. These desirable activities consist of the addition or use of systems or devices whose primary function is the reduction of air pollutants, and which are not less enviromentally-beneficial than any emissions control systems or devices they replace. This ruling explains EPA's position that such activities, which include CCT demonstration projects, are not physical changes or changes in the method of operation if they meet certain criteria, and thus are not modifications for NSR or NSPS purposes.

The electric utility industry has generally been reluctant to allow the use of its plants for CCT and similar EPA projects because of the concern that, by so doing, those plants could become subject to NSR and NSPS, even when the CCT or similar demonstration project is temporary in nature and the source is returned to its pre-project condition after the project is completed. The EPA, DOE, and the Department of Commerce are also concerned, both as a matter of equity and because these concerns could restrict the availability of CCT demonstration sites.

The EPA initially attempted, with only limited success, to alleviate industry concerns by issuing "no action assurance" letters to specific utilities, stating that EPA would not undertake civil enforcement action against the company under NSPS or NSR provisions that might have applied by virtue of the company's participation in a temporary CCT project. This interpretative ruling provides more certainty by stating, in a generic fashion, EPA's legal interpretation that, under current regulations, sources which add or improve air pollution control systems, whether as a compliance measure or pursuant to a CCT or similar EPA-approved control technology demonstration

project, or for some other reason, will not be subjected to NSR or NSPS coverage, so long as the appropriate reviewing authority determines that the criteria discussed in this ruling are met. For those States with approved State implementation plans, this interpretative ruling, as it applies to NSR rules, is only advisory in nature. Those States are not obliged to follow EPA's lead in allowing this exclusion, although EPA encourages them to do so.

This ruling represents the maximum extent to which EPA can interpret the current regulations and statutes to exempt environmentally-beneficial projects from NSR and NSPS. Thus, it does not generally provide exclusions from NSR and NSPS for CCT projects which involve more than the addition of a control system or device (e.g., repowering and new coal-fired cogeneration facilities). Such projects are clearly the sort of "modification" or "new source" that Congress intended to cover under new source requirements where they increase emissions over baseline levels.

The NSR and NSPS provisions of the CAA apply both to new sources and to modifications of existing sources. The criteria governing whether modifications are subject to these provisions are specified in the EPA regulations. In general, modifications that trigger these new source requirements are those involving physical or operational changes which increase emissions over baseline levels. The term "physical or operational change" is construed broadly and may include the installation, use, or dismantling of pollution control equipment.

The EPA has always recognized that Congress did not intend to require every actvity to be potentially subject to new source requirements, and has substantially narrowed this term in its NSPS and NSR regulatory definitions through the adoption of common-sense exclusions.

The existing regulations [see 40 CFR 60.14(e)(5)] contain an exclusion from NSPS for the addition or use of any device whose primary function is the reduction of air pollutants. Thus, NSPS would not apply to the installation or improvement of emissions control equipment which reduces hourly emissions rates. However, the NSPS provisions could apply to major facilities at the conclusion of temporary CCT demonstration projects, when the control equipment is removed and emissions rise back to the level that existed before the demonstration.

The NSR regulations do not have a similar exclusion, and net emissions increases are determined by summing all contemporaneous, creditable, actual emissions increases and decreases. The definition of "actual emissions" is such that, generally, the comparison is between actual emissions before the modification and the potential to emit of the facility after the modification. A physical or operational change will trigger NSR if the annual potential to emit of the source after the change is greater than its representative actual emissions prior to the change. Dismantling the control equipment at the conclusion of a temporary demonstration project, and returning the source to its pre-project condition, could also trigger NSR. The EPA believes that this methodology generally serves the purposes of NSR, for most situations, because it subjects to review projects that might lead to an increase in actual emissions. However, the NSR provisions could be interpreted to apply to major facilities simply installing or improving control equipment, including CCT demonstration projects, under circumstances where a permanent increase in pollution is highly unlikely.

RECOMMENDED INTERPRETATIVE RULING

The interpretative ruling is designed to accomplish two goals. First, it announces EPA's interpretation that, under current regulations, NSR and NSPS modification provisions generally do not apply to the installation or improvement of emissions control systems or devices, whether these changes be temporary or permanent. Second, it provides certain safeguards to ensure that these projects are not environmentally harmful before excluding them from the coverage of the new source requirements. Thus, the result of this interpretative rule should be to encourage sources to install or demonstrate improved emissions controls and, therefore, facilitate the replacement or improvement of less efficient emissions control systems with more environmentally-beneficial systems.

The interpretative ruling applies only to the addition of emissions control systems or devices at existing sources, including CCT and similar emissions control demonstration projects and compliance-related requirements. For the purpose of this ruling, the term "emissions control system or device" generally means an "add-on" type of emissions control equipment. It does, however, include alterations that allow the use of less polluting fuels where such use constitutes an emissions control system. It does not otherwise include a switch to a different fuel or raw material, a different method of operation, or a different type of process equipment. However, the appropriate reviewing authority will determine on a case-by-case basis if a project is designed primarily to reduce air pollution. The interpretative ruling does not include changes which would restore or increase original capacity of the facility.

The interpretative ruling is intended to apply only to activities that are determined to be environmentally beneficial. Also, for those States with approved State implementation plans (SIP's), today's interpretative rule, as it applies to NSR rules, is only advisory in nature.

An applicant's request for an applicability determination must contain a general description of the facility and the proposed activity, information on current and projected usage of the facility, and sufficient information to justify applying this exclusion. For a temporary CCT demonstration project, for example, a rationale would be needed for why the emissions control system or device to be tested should be considered to be advanced control technology. In addition, the request must demonstrate the following:

1. The source will, during and after the proposed change, continue to meet all current requirements and standards applicable to existing sources under the CAA. This includes demonstrations that the source will continue to meet applicable national ambient air quality standards, prevention of signficant deterioration (PSD) increments, permit conditions, and SIP's.

2. There will be no environmental harm resulting from the proposed activities. This includes conditions that the proposed change would not by itself:

(a) increase the maximum hourly actual emissions rate of any pollutant regulated under the CAA;

(b) increase the annual emissions of any pollutant regulated under the CAA;

(c) adversely impact an air quality related value (e.g., visibility) in any Class I area; or

(d) allow an increase in emissions of toxic polutants not regulated by the CAA which would cause a health or welfare impact.

Changes which are expected to increase emissions to the atmosphere, such as changes which increase a source's hourly operating capacity (e.g., eliminating a bottleneck), hourly emissions rate (e.g., one pollutant decreases but another increases), or utilization rate (e.g., an anticipated increase in hours of operation resulting from the installation of controls) would not be affected by this interpretation and would continue to be potentially subject to NSR and NSPS. The EPA will presume, however, that the addition of a control device will not, by itself, result in an increase in capacity utilization. However, this presumption will be reversed if there is a clear likelihood that operating hours or production rates will increase because of the installation of the device.

ISSUES

There are no major outstanding issues within the EPA. It should be noted, however, that this interpretative ruling does not respond to all of DOE's interests in CCT projects. Some CCT and other demonstration projects will continue to be subject to NSR and NSPS when their emissions trigger applicability provisions of these rules. These projects involve the construction and operation of new emission units, such as repowering, and there is no latitude for interpretation of the existing regulations, regardless of the ultimate merit of the project.

Another potential issue is the utility industry's continued efforts to portray EPA's actions in the Wisconsin Electric Power Company (WEPCO) case as affecting CCT projects, which it does not.

REPOWERING AND NEW FACILITIES

Since repowering projects and new facilities involving replacement or construction of essential steam-generating facilities, they implicate the core concerns of the NSPS and PSD "modification" and "new source" provisions under current legislation. Consequently, they cannot simply be excluded from coverage by administrative action but only by legislative changes to the CAA. To the extent that repowering projects decrease emissions of each regulated pollutant over baseline levels, they are not subject to new source requirements in any event. It appears, however, that for some technologies and some pollutants, repowering will result in increases in maximum hourly emissions or annual actual emissions, mostly due to capacity increases and expanded utilization. In these instances, sources utilizing these technologies must address emission increases through NSR and NSPS requirements.

WEPCO

There is no direct linkage between the WEPCO decision and CCT projects. Some representatives of the utility industry have confused the WEPCO project and CCT projects, suggesting that EPA's decision on WEPCO would discourage utilities from participating in CCT projects. In fact, the WEPCO decision addressed the application of EPA's NSPS and NSR rules to a nonroutine change, in which WEPCO was replacing a major component of its steam-generating facility. It did not involve the addition of pollution control technology or a CCT demonstration project. Therefore, it is clear that the WEPCO project and the CCT pro-

gram can and should be addressed separately.

ENVIRONMENTAL, ECONOMIC, AND ENERGY IMPACTS

There should be no negative environmental, economic, or energy impacts from this interpretative ruling. The action applies to those projects which install or improve add-on emissions control systems and show that these changes will not be less environmentally beneficial. The ruling is intended, in part, to facilitate the installation of CCT projects whihc potentially provide environmental, economic, and energy improvements relative to existing systems.

RESOURCE REQUIREMENTS

No additional EPA, State, or local resources will be required for this action as procedures for implementing the ruling are currently in use of determining applicability of NSPS and NSR regulations to modifications at sources.

REPORTING AND RECORDKEEPING REQUIREMENTS

There are no new reporting and recordkeeping requirements associated with this action.

PUBLIC PARTICIPATION

As this is an interpretative ruling rather than a rulemaking, it is not subject to notice and comment rulemaking provisions of 5 U.S.C. 533. However, the substance of this ruling has been provided in our comments on a permit issued by the State of Indiana for a CCT project at the Northern Indiana Public Service Company's Bailly station, and in a response to a letter by DOE expressing concerns over NSR and NSPS consequences for CCT projects. The ruling itself was sent to DOE for their review concurrent with review by the Office of Management and Budget.

ANTICIPATED REACTIONS

No strong opposition is expected to result from this action.

CHANGES SINCE RED BORDER

All offices participating in Red Border review for this action concurred. Several offices concurred with mostly minor editorial comments. Two comments did suggest possible substantive changes to the interpretative ruling. In one comment, the Office of Policy, Planning and Evaluation suggested that utility emissions be considered on a "system-wide" basis, thereby ignoring changes in emissions (and modifications) at individual power plants. This suggestion was rejected since "system-wide" averaging for utilities has broader applications than air pollution control system improvements and should be considered in a separate rulemaking.

The second comment, by the Office of General Counsel (OGC), suggested the use of less polluting fuels (e.g., natural gas) in retrofit pollution control projects be considered as "add on" control systems exempt from NSR and NSPS under the interpretative ruling. This office agrees with this position and OGC's recommended change has been added to the ruling.

RECOMMENDATIONS

Given the considerable interest by DOE and others for prompt action for NSPS and NSR exclusions for CCT retrofit projects, we recommend that you sign the attached Federal Register notice as soon as possible.

[Environmental Protection Agency]

(40 CFR Parts 51, 52, and 60)

[AD-FRL-]

APPLICABILITY OF NEW SOURCE REVIEW AND NEW SOURCE PERFORMANCE STANDARDS REQUIREMENTS

Agency: Environmental Protection Agency (EPA).

Action: Interpretative Ruling.

Summary: This ruling clarifies the definition of "major modification" in 40 CFR Parts 51 and 52, and "modification" in 40 CFR Part 60. The clarification establishes that certain activities at existing stationary sources of air pollution are not "physical changes" or "changes in the method of operation" and, hence, are not subject to either new source review (NSR) requirements or new source performance standards (NSPS). This ruling does not apply to the construction of new emissions units.

The result of this interpretation is that the improvement of existing add-on emission control systems or devices at a source, the installation of new add-on emissions sytems or devices, and use of less polluting fuels where applied as pollution control measures, do not subject the source to NSR or NSPS, provided EPA or the appropriate reviewing agency determines that certain criteria are met. For those States with approved State implementation plans (SIP's), today's interpretative rule is only advisory in nature as it applies to the NRS program. Those States are encouraged to follow EPA's lead in allowing this exclusion. This interpretation extends to the addition of control devices for compliance-related purposes, for Department of Energy (DOE) clean coal technology (CCT) demonstration projects and similar projects funded or approved by EPA for reducing emissions, and for other voluntary purposes.

Dates: This ruling is effective immediately.

Addresses: Supporting information used in developing the interpretative ruling is contained in Docket No. A-90-96. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., weekdays at EPA's Air Docket (LE-131), Room M-1500, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

For Further Information Contact: William Lamason or Eric Noble at Mail Drop 15, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5374 (FTS 629-5374) or (919) 541-5362 (FTS 629-5362).

Supplementary Information:

I. SUMMARY OF TODAY'S ACTION

This interpretative ruling sets forth EPA's interpretation of the definition of "major modification" in 40 CFR 51.165, 51.166, 52.21, 52.24 and Part 51 Appendix S, and "modification" in 40 CFR 60.2 and 60.14. For NSPS purposes, a modification is defined by regulation as any physical change in, or change in the method of operation of, a stationary source, which increases (interms of hourly emissions capacity) the amount of any air pollutant that a NSPS applies emitted by such source, or which results in the emission of any air pollutant to which an NSPS applies not previously emitted. For NSR purposes, a major modification is defined by regulation as a modification which results in a significant net emissions increase (in terms of actual annual emissions).

The EPA has become aware that these definitions can be interpreted in such a manner as to subject to NSR or NSPS, or both certain environmentally-desirable activities at existing stationary sources which neither Congress nor EPA intended to be covered by the new source requirements of the Clean Air Act (CAA). Moreover NSR or NSPS coverage could, in some instances, have the effect of discouraging such activities. These desirable activities consist of the addition or use of a system or devices whose primary function is the reduction of air pollutants, so long as that system or device is not less environmentally beneficial, as determined by the Administrator, than the emissions control system or device it replaces, if any. Today's ruling explains EPA's position that such activities, including CCT demonstration projects, are not physical changes or changes in the method of operation, so long as they meet the criteria discussed herein and the reviewing authority issues an applicability exclusion. Hence, such activities are not modifications for NSR or NSPS purposes, although they may still be subject to State or local agency minor source permitting requirements.

II. BACKGROUND

The NSR and NSPS provisions of the CAA apply to wholly new facilities, and to modifications at existing facilities, when certain conditions are met. The rules governing the applicability of NSR and NSPS to modifications at existing facilities are described in detail in the EPA regulations (see 40 CFR 51.165 and Appendix S, 52.21, 60.14 and 60.15). In general, the modifications that would trigger these new source requirements are those involving physical or operational changes which increase emissions over baseline levels. [In addition, for NSPS purposes under EPA regulations, a reconstruction occurs and a source is considered "new" if the physical or operational change costs more than 50 percent of the replacement cost of the affected facility, generally excluding the cost of air pollution control systems not integral to process equipment, regardless of whether an emissions increase occurs.] The term "physical or operational change" is construed broadly and may include the installation, use, or dismantling of pollution control equipment.

A. Background of the NSPS and NSR Modification Provisions

The 1970 CAA required EPA to promulgate technology-based NSPS applicable to the construction or modification of stationary sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare [see 42 U.S.C. § 7411(b)(1)(A)]. Congress decreed that, in addition to wholly new sources, NSPS would apply to the modification of an existing source, defined broadly as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any pollutant not previously emitted" [see CAA section 111(a)(4), 42 U.S.C. 7411(a)(4)].

The NSPS provisions were "designed to prevent new [air] pollution problems" by regulating both newly-constructed sources of pollution and changes at existing sources that result in emissions increases [see *National Asphalt Pavement Assoc.* v. *Train*, 539 F.2d 775, 783 (D.C. Cir. 1976); see also H.R. Rep. No. 1146, 91st Cong., 2d Sess. 3, reprinted in 1970 U.S. Code Cong. & Admin. News 5356, 5358]. A result of including modified sources, as well as newly-construct-

ed sources, under the provisions of section 111 was the need to establish a "baseline" level of emissions above which an existing source may not pollute without becoming subject to the NSPS.

In August 1977, Congress adopted further extensive changes to the CAA (Pub. L. 95-95). These included review-and-permitting programs for new and modified sources combining the technology-based approach of NSPS with specific measures to ensure that ambient air quality goals under the CAA are met. Congress intended NSR to apply "where industrial changes might increase pollution in an area" [see *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 400 (D.C. Cir. 1979)]. Part D of the 1977 amendments applies to areas which have not met national ambient air quality standards (NAAQS) under section 109. To receive a permit in such areas, major new and modified sources must (among other things) obtain emissions offsets that assure reasonable progress toward attainment of the NAAQS and must comply with the "lowest achievable emission rate," which can be no less stringent than an applicable NSPS (see sections 171-173). The 1977 amendments also added a new Part C to the CAA including, in sections 160-169, an NSR program for the prevention of significant deterioration of air quality (the "PSD" program) in areas which have attained the NAAQS. To receive a PSD permit, a prospective major new or modified source must (among other things) show that it will not exceed the available air quality "increment" (designed to prevent pollutant concentrations from deteriorating to the specified levels), and that it will use the best available control technology (BACT), which must be at least as stringent as any applicable NSPS. Both the Part D NSR program applicable to nonattainment areas and the Part C NSR program applicable to attainment areas adopted the NSPS definition of "modification" [see sections 171(4) and 169(2)(C)].

It is evident from the structure of the NSR and NSPS programs that Congress sought to focus air pollution control efforts at an efficient and logical point: the making of substantial capital investments in, or other long-term decisions regarding, pollution-generating facilities. In adopting NSR measures in particular, Congress sought to reconcile the legislative goal of environmental protection with a concurrent desire for continued economic growth [see sections 160(1)-(4)]. Consequently, a key theme of the NSR program is the careful evaluation of, and public participation in, "any decision to permit increased air pollution" [see section 160(5)]. As discussed below, the current regulations implementing NSPS and NSR were designed to apply these programs in a manner consistent with their respective statutory purposes. Today's ruling represents a further focusing of these existing regulations.

B. The Two-Step Test for Modifications

The modification provisions of the NSPS and NSR programs grow from a single statutory basis, the very broad definition of "modification" in section 111(a)(4). Under both respective programs, EPA developed a two-step test for determining whether activities at an existing facility constitute a modification subject to new source requirements. In the first step, which is largely the same for NSPS and NSR, the reviewing authority determines whether a physical or operational change will occur. If so, EPA proceeds in the second step to determine whether the physical or operational change will result in an emissions increase over baseline levels. In this second step, the applicable rules branch apart, reflecting the fundamental distinctions between the technology-based purposes of NSPS and the technology and air quality concerns of NSR. Briefly, the NSPS program is concerned with hourly emissions rates, expressed in kilograms or pounds per hour.[1] Emissions increases for NSPS purposes are determined by changes in the hourly emissions rates at maximum physical capacity. The NSR regulations are concerned with total annual emissions to the atmosphere, expressed in tons per year (tpy).[2] Emissions increases under NSR are determined by changes in annual emissions to the atmosphere.

C. Physical or Operational Change

The very broad definition of physical or operational change in section 111(a)(4) could, standing alone, encompass the most mundane activities at an industrial facility—even the repair or replacement of a single leaky pipe, or a change in the way that pipe is utilized. The definition certainly is broad enough to encompass the addition or enhancement of pollution control equipment. However, EPA has always recognized that Congress obviously did not intend to require every activity to be potentially subject to new source requirements, and that it would be administratively impractical to do so. Accordingly, EPA has substantially narrowed this term in its NSPS and NSR regulatory definitions through the adoption of common-sense exclusions. For example, both sets of regulations contain similar exclusions for routine maintenance, repair, and replacement; for certain increases in the hours of operation or in the production rate; and for certain types of fuel switches [see 40 CFR 60.14(e); see also, e.g., 40 CFR 52.21(b)(2)(iii)]. In addition, with respect to pollution control equipment, the NSPS regulations contain an exclusion for:

"The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emissions control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial [see 40 CFR 60.14(e)(5)]."

The EPA has held that this exclusion does not apply to a source which, upon original construction, employed wet scrubbers, but later [upon relaxation of a State plan under section 111(d)] desired to remove the control equipment, which would have resulted in much higher levels of pollution than the plant had ever emitted [see *National Southwire Aluminum Company* v. *EPA*, 838 F. 2d 835 (6th Cir.), cert. denied, 109 S. Ct. 390 (1988)]. In the past, EPA has taken various views as to whether the exclusion in section 60.14(e)(5) should apply for NSR purposes. As noted earlier, the NSR statutory definitions of modification simply adopt the NSPS definition in section 111(a)(4). In addition, the legislative history reflects that, as a general matter, Congress intended to conform the meaning of "modification" for PSD purposes to usage under NSPS [see 123 Cong. Rec. H11957 (Nov. 1, 1977)]. For this reason, EPA initially ruled that the NSPS exclusion for addition of control devices applied automatically to PSD (see memorandum from Edward E. Reich and William F. Pedersen to EPA Region VI, April 21, 1983). The EPA reversed course in a 1986 applicability determination, issued for both PSD and nonattainment NSR purposes, noting that the NSPS exclusion was highly qualitative and failed to give due account to either the air quality management component or the largely quantitative orientation of the NSR applicability regulations (see memorandum from Gerald A. Emison to Regional Air Division Directors, July 7, 1986).

D. NSPS Applicability

An NSPS modification is any "physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies" (see 40 CFR 60.2 and 60.14). Under NSPS, emissions increases, for applicability purposes, are calculated by comparing the hourly emission rate, at maximum physical capacity, immediately before and after the physical or operational change. All operating parameters which may affect emissions must be the same before and after testing to the maximum extent feasible [see 40 CFR 60.14(b)(2)]. Absent the exclusions from modifications specified at 40 CFR 60.14(e), any increase in emissions to the atmosphere over the previous emissions rate will subject the modification to NSPS [see section 60.14(a) and (b)]. In addition, physical or operational changes which would cost 50 percent or more of the cost of a comparable new facility, generally excluding the cost of air pollution control systems not integral to process equipment, are classified as reconstruction (see 40 CFR 60.15) and are subject to NSPS as a new source, even if there is no emissions increase.

Thus, it is clear that under the existing regulations, NSPS would not apply to the installation or improvement of emissions control equipment which reduces hourly emissions rates, because it is unlikely that the reconstruction provisions come into play. In the unlikely event that the reconstruction provisions do apply, then such changes would trigger NSPS.

The NSPS provisions could, however, apply to major facilities with temporary CCT demonstration projects at the end of the demonstration when the control equipment is removed and emissions rise back to the level that existed before the demonstration. For example, the placement of temporary CCT controls which reduce the hourly sulfur dioxide (SO_2) emissions rate at a source would not be an NSPS modification (assuming the costs of the modification are under 50 percent). The dismantling of the CCT controls at the conclusion of the demonstration project would result in an increase in hourly SO_2 emissions (up to pre-demonstration levels) and the source could be considered subject to NSPS.

Today's interpretative ruling is that temporary CCT and similar demonstration projects are not subject to NSPS (as the result of an increase) at the conclusion of these projects. Increases in emissions up to levels which existed before the temporary demonstration project do not trigger NSPS provided the appropriate reviewing author-

[1] An hourly emissions rate may be determined by a stack test or calculated from the product of the instantaneous emissions rate, i.e., the amount of pollution emitted by a source, after control, per unit of fuel combusted or material processed (such as pounds of sulfur dioxide emitted per ton of coal burned), times the production rate (such as tons of coal burned per hour).

[2] Annual emissions may be calculated from the product of the hourly emissions rate times the utilization rate, expressed as hours of operation per year or from the product of an emissions factor (e.g., from "Compilation of Air Pollutant Emission Factors," AP-42, 4th Ed. and subsequent supplements) in units of mass emitted per unit of process throughput and the annual throughput.

ity determines that the criteria within this ruling are met. Reconstruction provisions, however, could subject both temporary and permanent CCT demonstration projects, and certain other emissions control system installations or improvements, to NSPS. Still, the reconstruction provisions of the CAA should rarely, if ever, apply to the type of activity which would be considered for exclusion from the definition of a physical change or a change in the method of operation.[3] Thus, the triggering of the reconstruction provisions is an indication that the proposed activities are more extensive than just the addition, or replacement, of any emissions control system or device, and so are not appropriate for exclusion.

E. NSR Applicability

Modified sources are subject to NSR under Parts C or D of the CAA if the modification is "major." Major modifications must consist of a physical change or change in the method of operation of a major stationary source [see 40 CFR 52.21(b)(1)] which results in a "significant" net emissions increase of any pollutant subject to regulation under the CAA.[4] Significance levels are expressed in tpy and differ for each pollutant [see 40 CFR 52.21(b)(23)]. Net emissions increases are determined [see 40 CFR 52.21(b)(3)]. Net emissions increases are determined [see 40 CFR 52.21(b)(3)] by summing all contemporaneous creditable actual emissions increases and decreases. Actual emissions before the change at a facility are generally determined by averaging the emissions for the 2 years prior to submittal of the permit application (or some other period, if the last 2 years are not representative of normal unit operation) [see, e.g., 40 CFR 52.21(b)(21)(ii)]. The definition of "actual emissions" is such that, generally, the comparison is between actual emissions before the modification and the potential to emit of the facility after the modification [see 40 CFR 52.21(b)(21)]. Since the emissions rate after a physical or operational change cannot be predicted in advance, EPA regulations assume that a source's actual emissions will equal its maximum "potential to emit," which is based on constant full load operation for an entire year (unless restricted by federally-enforceable limitations) [see, e.g., sections 52.21(b)(21)(iv); 52.21(b)(4)]. Thus, a physical or operational change will trigger NSR if the annual potential to emit of the source is significantly greater after the change than its representative actual annual emissions before the change, unless the company agrees to federally-enforceable operational restrictions which limit its potential to emit to levels not significantly greater than its actual emissions before the change. If the source has not been operating near full capacity, even the addition of a control device could be considered a significant net emissions increase when comparing representative actual emissions with a new potential to emit, even though there may be a substantial reduction from representative actual emissions.

This actual-to-potential methodology applies to physical or operational changes at new or modified emissions units [see 45 FR 52676, 52677, 52718 (1980)]. Recent decisions by two courts of appeals have addressed EPA's modification provisions, *Puerto Rican Cement Co.* v. *EPA*, 889 F.2d 292 (1st Cir. 1989), and *Wisconsin Electric Power Company (WEPCO)* v. *Reilly*, No. 88-3264 and 89-1339 (7th Cir., slip op. January 19, 1990). In Puerto Rican Cement, the First Circuit upheld EPA's method of calculating emissions increases for new or modified (i.e., physically or operationally changed) units. In WEPCO, the Seventh Circuit stated that this method is inappropriate in the case of "like-kind replacements" at existing units.

As explained below, EPA believes that this methodology generally serves the purposes of NSR because it subjects to review industrial changes that might lead to an increase in actual pollution [see *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 401 (D.C. Cir. 1979)]. However, the NSR provisions in the existing regulations could be interpreted to apply to major facilities simply installing or improving control equipment, including CCT demonstration projects, under circumstances where a permanent increase in pollution is highly unlikely as a result of that action.

Suppose, for example, that an existing source with a potential to emit of 5000 tpy of SO_2 has operated at 30 percent capacity for the last 2 years, emitting 1500 tpy of actual SO_2 emissions. It elects to participate in a CCT project which will reduce the hourly SO_2 emissions rate by 60 percent. For NSR applicability purposes, absent today's ruling, actual SO_2 emissions before the change would be compared to its full potential to emit after the change to determine the net emissions increase, because the source might decide to operate at full capacity after the change. Potential SO_2 emissions at full capacity operation after the change would be 5000 tpy, less the 60 percent decrease, for a total of 2000 tpy. Thus, the prior actual emissions of 1500 tpy would be compared to the future potential emissions of 2000 tpy, resulting in a net increase of 500 tpy, even though there is no increase in the hourly emissions rate. Under NSR regulations, this is a significant increase (a significant net SO_2 emissions increase is defined as 40 tpy or more and would make a modification "major"), so the source could be considered subject to NSR requirements.

Also, if the capacity utilization during the demonstration project remained at 30 percent (and the source took no federally-enforceable permit restrictions), dismantling the CCT control equipment at the conclusion of the demonstration and returning the source to its pre-project condition could trigger NSR. Using the above example, SO_2 emissions would increase from either 600 tpy (1500 tpy, less 60 percent better control during the demonstration, equals 600 tpy) or 1500 tpy (if the pre-demonstration actual emissions were deemed more representative of "normal" operations) to potential emissions of 5000 tpy.

Under today's interpretative ruling, existing sources which could otherwise become subject to NSR only because they decide to install or improve emission controls, or participate in the CCT program or similar demonstration projects approved by EPA, would instead be excluded from NSR coverage, so long as the appropriate reviewing authority determines that the criteria discussed herein are met. The central premise of this ruling is that the addition of a control device will not, by itself, result in an increase in capacity utilization and, hence, an increase in annual actual emissions.

III. DISCUSSION

Today's ruling is designed to accomplish two goals. First, it announces EPA's interpretation that, under current regulations, NSR and NSPS modification provisions generally do not apply to the installation or improvement of emissions control systems or devices. Second, it provides certain safeguards to ensure that these projects are not environmentally harmful before excluding them from the coverage of the new source requirements. Thus, the result of this interpretative rule is to not discourage sources from installing or demonstrating improved emission controls and, therefore, facilitate the replacement or improvement of less efficient emissions control systems with more environmentally beneficial systems.

This ruling applies only to the addition of an emissions control system or device to existing emissions units or affected facilities at existing sources, including CCT and similar emissions control demonstration projects and compliance-related requirements. It does not apply (1) to wholly new sources or (2) to new emissions units or new affected facilities at existing sources.

For purposes of this ruling, the term "emissions control system or device" generally means an "add-on" type of emissions control equipment, such as fabric filters, scrubbers, absorbers, catalysts, and thermal reduction/oxidation. This may also include the use of a less polluting fuel where the appropriate reviewing authority determines from all available information that the project is designed primarily to reduce air pollution and that there is no reasonable cause to expect an increase in utilization of the source solely due to the project. For example, some physical changes to accommodate a new fuel could be properly characterized as pollution control systems [e.g., a CCT demonstration of nitrogen oxides (NOx) reburning technology using natural gas on a coal-fired utility boiler; or projects to convert to natural gas or to gas/coal cofiring implemented to comply with an environmental regulatory requirement].[5] Such determinations will be made by the appropriate reviewing authority on a case-by-case basis.

Changes which restore original capacity, or are made primarily to improve the operational efficiency of the facility, are not considered to be the installation or improvement of an "emissions control system or device" for purposes of this ruling, even if such changes also involve the installation or improvement of an emissions control system. Specifically, this interpretative ruling does not apply to "life extension" or "repowering" projects, both of which involve extensive changes to the pollution generating equipment at a stationary source, and are intended primarily to improve operating capability, capacity, or efficiency, rather than reduce emissions. Both life extension and repowering projects implicate the core concerns of the statutory new source requirements, and both types of projects provide a direct incentive to increase capacity utilization over current levels. As such, EPA believes they are fun-

[3] See memorandum from John B. Rasnic, Acting Director, Stationary Source Compliance Division, U.S. EPA, to James T. Wilburn, Chief, Air Compliance Branch, Region IV, U.S. EPA, on "Interpretation of Reconstruction," November 25, 1986.

[4] The determination of "significant net emissions increase" also includes any source which would "construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 microgram per cubic meter" regardless of emission rate [see 40 CFR 52.21(b)(23)(iii)].

[5] See letter from Patrick W. McCarter, Colorado Public Service Co. to William K. Reilly, Administrator, US EPA, regarding CCT projects at the Arapahoe and Cherokee generating stations, May 9, 1990. This letter is included in the docket.

damentally different from the addition of a pollution control device.

Today's ruling contains EPA's legal interpretation of certain existing regulatory provisions that govern NSR and NSPS applicability, and sets forth criteria that EPA generally intends to use in issuing specific NSR and NSPS applicability determinations and advisory opinions to States having authority to make such determinations. Consequently, EPA believes that today's ruling does not constitute a final agency action that is ripe for judicial review under section 307(b)(1) of the CAA. Rather, the impact of the views embodied in this ruling, if any, can only be measured in the factual context of a specific applicability determination or related final Agency action, and EPA believes that it is only in such circumstances that judicial review of the matters addresed in the ruling would be appropriate.

A. Condition for Exclusion by the Interpretative Ruling

The interpretative ruling is intended to be a narrow interpretation apply only to activities that are determined to be environmentally beneficial, but which would likely not occur should the owner or operator be subject to NSR or NSPS for taking such action. On the other hand, there are many activities that take place at existing sources where the intent of both the CAA and EPA's regulation is to require a full and rigorous NSR analysis [including application of BACT or lowest achievable emission rate (LAER)] or adherence to NSPS. The EPA realizes that certain CCT (and other demonstrations) and compliance-related projects involve the construction of new emissions units or could result in increased emissions of a pollutant (although decreasing emissions of the specific pollutant of interest). The exclusion of such projects from NSR and NSPS, regardless of their ultimate benefit, is clearly in conflict with the regulations and, therefore, beyond the scope of an interpretative rule. The resolution of possible exclusions for such projects depends on the outcome of deliberations on the amendments to the CAA submitted to Congress to address this issue.

An owner or operator proposing to conduct activities to which this interpretative ruling may apply should request an applicability determination from EPA (or agency to which such authority has been transferred). [For those States with approved SIP's, today's interpretative rule is only advisory in nature as it applies to the NSR program. Those States are encouraged to follow EPA's lead in allowing this exclusion for NSR purposes and must do so with respect to the NSPS program.] The request must contain a general description of the facility and the proposed activity, information on current and projected usage of the facility, and sufficient other information to justify applying this exclusion.

In addition, the request must demonstrate: (1) that the source will, during and after the proposed change, continue to meet all current requirements and standards applicable to existing sources under the CAA; and (2) that there is no environmental harm resulting from the proposed change.

The first criterion, that the source continue to meet all current requirements and standards for existing sources, includes demonstrations that the source will continue to meet all applicable NAAQS, PSD increments, permit conditions, and SIP limitations.

The intent of the first criterion is to clarify that EPA cannot, through an interpretative ruling, waive NSR and NSPS requirements which are clearly applicable to existing sources under provisions of the CAA. For example, consider two scenarios. Suppose that a source proposes to add a control device to control one pollutant that will (1) result in emissions exceeding a permit limit for another criteria pollutant, or (2) although meeting all existing permit limits, result in a NAAQs or PSD increment violation. In either case, the source must show that such effects will not occur.

The second criterion, that there is no environmental harm resulting from the proposed change includes a requirement that the proposed change, by itself does not:

(a) increase the maximum hourly emissions rate of any pollutant regulated under the CAA;

(b) increase the annual emissions of any pollutant regulated under the CAA;

(c) adversely impact an air quality related value (e.g., visibility) in any Class I area; or

(d) allow an increase in emissions of any toxic pollutant not regulated by the CAA which may cause a health or welfare impact.

In making such a finding, the appropriate permitting authority reviewing the proposed activities must explicitly determine, based on consideration of these and other relevant criteria, that the net effect will not be one of environmental harm.

The intent of the first and second criteria is to ensure that activities which implicate the core concerns of NSR and NSPS remain subject to new source requirements. To that end, the interpretative ruling does not extend to changes which are likely to increase emissions to the atmosphere, such as changes which increase a plant's overall hourly operating capacity (e.g., eliminating a bottleneck), hourly emissions rate (e.g., one pollutant decreases but another increases), or utilization rate (e.g., an anticipated increase in hours per year of operation). The constraints on annual emissions is intended to prevent increases that can be readily attributed to the proposed activity. It does not preclude increases which might result solely from cyclic fluctuations in product demand. Thus, EPA will presume that the addition of a control device will not, by itself, result in an increase in capacity utilization. However, this presumption may be overcome if, based on the information submitted, EPA concludes that there is a clear likelihood that operating hours or production rates will increase because of the installation of the device. The protection for Class I air quality related values and the requirement for no overall environmental harm provide additional safeguards.

In providing information to the reviewing authority, an owner or operator should conduct sufficient modeling to ensure that any new or increased emissions of unregulated toxic pollutants resulting from the addition or replacement of control equipment, will not cause or contribute to adverse health or welfare impacts. The owners or operators should also explain whether they intend to operate the source at greater hourly emissions rates, or for more hours, than during the most recent 2 years (or some other period, if the last 2 years are not representative of normal operation). In assessing whether any net increase in actual emissions of any pollutant, over representative actual emissions rates, is likely to occur as a result of the addition of controls, the reviewing agency should consider the economic incentives to increase production rates or hours of operation associated with the installation and use of the control device. Where increased emissions due to increased utilization of the facility are clearly a likely result from addition of the device, the change should not be considered environmentally beneficial.

Because of the benefits inherent in CCT and similar control technology demonstration projects, the conditions relating to increases in maximum hourly emissions and annual emissions should be waived for such projects, if the projects are temporary in duration. This special consideration provides the flexibility to encourage temporary demonstration projects which are considered to be environmentally beneficial overall, despite increases in hourly emissions of some pollutants or in the annual hours of operation that may occur during the course of the demonstration. Temporary demonstration project applications must meet all of the other criteria applicable to the permanent projects discussed above.

"Temporary" projects are those which last less than 5 years from the date of start-up of that project (as defined in 40 CFR 60.2, "the setting in operation of an affected facility for any purpose"). At the end of a temporary project, the facility must be returned to pre-demonstration conditions and hourly emission rates (or lower). The return of the facility to its pre-demonstration physical and operational condition would not result in the "surrender" of the margin between pre-demonstration actual emissions rate and SIP-allowable emissions rates for that facility. Rather, EPA would treat the facility as if the temporary demonstration project had never occurred. [This would be the case even if there were small but negligible differences in the post-demonstration physical and operational conditions due to a technical inability to restore the unit to its precise pre-demonstration condition, or due to normal variability in the coal used.] Thus, EPA would not seek to apply NSPS or PSD due to a post-demonstration emissions increase attributable solely to an increase in the hours of operation or production rate of the unit (subject to the NSPS limitation that the production rate increase must be accomplished without a capital expenditure). Today's ruling does not extend to emissions increases which are unrelated to the conduct of temporary demonstration projects. Emissions increases (above the pre-demonstration levels) that are attributable to physical or operational changes, other than those necessary to restore that unit to its predemonstration condition may render the facility subject to NSPS or PSD and are beyond the scope of this interpretative ruling.

A temporary demonstration project may be converted to a permanent status at any time, provided it meets all of the permanent change criteria at the time of conversion. Thus, for example, if hourly or annual emissions had increased because of the temporary demonstration, after the change to permanent status, these emissions can be no greater than those which existed prior to initiation of the temporary demonstration project.

B. Current Provisions in the CAA for Innovative Control Technologies

If an existing source undertakes an innovative addition or improvement of an emissions control system or device, in good faith, but does not obtain an applicability exclusion from NSR and NSPS under this interpretative ruling, it may still apply for use of one or more innovative control technology

provisions in the CAA. Section 111(j) of the CAA allows a waiver to be granted for a new or modified source that wishes to use innovative control technology that is likely to produce greater emissions reductions, or achieve at least equivalent emissions reductions at less cost in terms of energy, economies, or environmental impact other than on air quality. This section provides up to 4 years from startup or 7 years from granting of the waiver (whichever is earlier) for the source to comply with applicable NSPS emissions limits. If the innovative technology fails, the source may have up to 3 more years to install conventional technology to meet the standards. The PSD innovative control technology regulations [e.g., 40 CFR 51.166(s) are essentially similar to section 111(j) of the CAA]. [However, before waiver approval can be granted, the consent of the governors of the other affected States must also be obtained.] Other provisions in the current NSPS regulations are designed to encourage the use of innovative control technolgoy. Commercial Demonstration Permits (Subpart Da, 40 CFR 60.45a) provide relaxed NSPS emission limits, but the same compliance time (180 days from startup) for a limited number of demonstrations of four listed control technologies. The listed technologies are: solvent refined coal, 80 percent SO_2 reduction; coal liquefaction, 0.70 lb Nox/million British thermal units (MMBtu); atmospheric fluidized bed, 85 percent SO_2 reduction; and pressurized fluidized bed, 85 percent SO_2 reduction.

These provisions may be useful to CCT participants. For example, a permanent addon project to demonstrate SO_2 control result in an increase in particulate matter emissions. For purposes of NSPS, this could be exempted from becoming a modification by the provisions of 40 CFR 60.14(e)(5). However, if the conditions of 60.14(e)(5) are not met, the NSPS standards would apply. In such a case, the source owner or operator may apply for an innovative technology waiver under section 111(j) of the CAA. These provisions can be combined. For example, if a permanent repowered source needs to comply with both NSPS and PSD requirements and needs a relaxed emission limit and more time to comply with emissions limits, a Commercial Demonstration Permit and a 111(j) waiver could be issued by the Administrator, providing relaxed emissions limits and more time to comply with NSPS, repsectively.

C. The WEPCO Decision

1. Background.—In a series of applicability determinations in 1988 and 1989, EPA ruled that NSR and NSPS applied to a life extension program proposed by the WEPCO [see letters dated Sept. 9, 1988, from Don R. Clay, EPA Assistant Administrator for Air and Radiation, to David A. Kee, EPA Region V; October 14, 1988 from Lee Thomas, EPA Administrator, to John W. Boston, V.P., WEPCO; and February 15, 1989 letter from Don R. Clay to John W. Boston]. Those rulings have engendered considerable concern among industry groups.[6] The following discussion presents some background information on the WEPCO decision and explains why, despite concerns expressed by industry, EPA does not feel that the decisions made for that project are germane to the interpretative ruling set forth today.

In the WEPCO decision, EPA emphasized that substantial physical or operational changes at existing facilities may render those facilities subject to NSR or NSPS, if they increase emissions over representative or current baseline levels, respectively, despite the fact the original design capacities, and associated emissions levels, are not exceeded. The WEPCO life extension project, as it was presented to EPA, involved a substantial financial investment in pollution-generating facilities that would restore "lost" capacity. This recovered capacity, if used, would significantly increase emissions from the source over a long period of time.

The WEPCO's life extension project would have increased pollutant emissions over the NSR and NSPS baselines as a result of the replacement of steam drums, air heaters, and other major components that are integral to the continued economic viability (and, in part, the physical operability) of the source. The proposed work would not simply maintain the facilities in their current state but, in some cases, would significantly and permanently enhance their present physical capacity, and substantially extend their useful economic life (up to 20 years beyond the previous planned replacement date). In addition, because of the higher efficiency projected for the renovated facility, WEPCO planned to increase capacity utilization from about 10 percent currently to 50 percent. Accordingly, EPA concluded that WEPCO's project was precisely the sort of long-term investment in pollution-generating equipment which Congress intended should be subject to NSR and NSPS. In a similar case, the court of appeals upheld EPA's NSR regulations [see *Puerto Rican Cement Co.* v. *EPA*, 889, F.2d 292 (1st Cir., 1989)]. In that case, modifications at a cement plant, that would not increase the source's current design capacity or potential to emit, but would, through modernization and increased efficiency, provide direct incentives to increase production and, possibly, representative levels of actual emissions. In reviewing EPA's decision regarding WEPCO, a different court of appeals distinguished the "like-kind replacements" at the WEPCO plant in that case from the change in production process involved in Puerto Rican Cement. The court held that EPA should not assume, for PSD purposes, that the company would operate at full capacity following the renovations. Hence, the court remanded EPA's calculation of PSD emissions increases to the Agency for further action. In all other respects, EPA's NSPS and PSD applicability determinations were upheld [see *Wisconsin Electric Co.* v. *Reilly*, Nos. 88-3264 and 89-1339 (7th Cir., slip op. Jan. 18, 1990)]. As noted above, EPA is still studying that portion of the decision which ordered a remand.

2. Differences Between WEPCO and Today's Interpretative Ruling.—The major differences between the WEPCO project and projects within the scope of today's interpretative ruling are that:

(a) The WEPCO modifications were designed mainly to restore "lost" capacity and extend the useful life of the facility, rather than to reduce emissions. The interpretative ruling does not exclude such changes at a source from NSPS or NSR, even if concurrent with a change to which the ruling does apply.

(b) The WEPCO modifications were clearly intended to increase utilization of the facility, from about 10 to 50 percent. This substantial increase in operating rates and operating hours would lead to an increase in emissions for at least some pollutants.

IV. ADMINISTRATIVE

A. Docket

The docket is an organized and complete file of all information considered in the development of this ruling. The docket is intended to allow the public to identify and locate documents related to this ruling.

B. Paperwork Reduction Act

No additional public reporting burden will result from this interpretative ruling. All information collection requirements of the Federal NSR and NSPS regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., and have been assigned OMB control numbers 2060-0003 for NSR, and 2060-0023, 2060-0026 and 2060-0072 for NSPS. The effect of the interpretative rule would be a reduction in paperwork related to complying with NSR and NSPS requirements, since this ruling provides additional clarification as to modifications that may be excluded from these requirements.

C. OMB Review

Under Executive Order 12291 (E.O. 12291), EPA must judge whether a rule is "major" and therefore subject to the requirement of a regulatory impact analysis. The interpretative ruling is not a major rule, because it will not result in an adverse economic effect set forth in section 1 of E.O. 12291 as grounds for finding an action to be major. This interpretative ruling was submitted to OMB for review as required by E.O. 12291. Any written comments from OMB to EPA and any EPA response to those comments are included in Docket A-90-06.

D. Effective Date

As stated earlier in this notice, this interpretative ruling is effective immediately upon publication in the FEDERAL REGISTER. The EPA has concluded that the requirements of section 4(d) of the Administrative Procedures Act (APA), 5 U.S.C. 553(d), for a 30-day waiting period before making a substantive rule effective is not applicable, because this is an interpretative ruling not subject to the notice-and-comment rulemaking requirements of the APA [see 5 U.S.C. 533(b)(A)].

E. Regulatory Flexibility Act

This action is not subject to the provisions of 5 U.S.C. 605(b), because interpretative rulings are exempt from notice-and-comment requirements of 5 U.S.C. § 553.

LIST OF SUBJECTS

40 CFR Part 51.—Administrative procedure and practices, intergovernmental relations, air pollution control, new source review, clean coal technology demonstrations, sulfur oxides, particulate matter, nitrogen dioxide, carbon monoxide, hydrocarbons, lead.

40 CFR Part 52.—Air pollution control, new source review, clean coal technology demonstrations, sulfur oxides, particulate matter, nitrogen dioxide, carbon monoxide, hydrocarbons, lead.

40 CFR Part 60.—Air pollution control, new source performance standards, clean coal technology demonstrations, sulfur oxides, particulate matter, nitrogen dioxide, carbon monoxide, hydrocarbons, lead.

Date: ——

WILLIAM K. REILLY,
Administrator.

[6] EPA's decision has been reviewed by the court of appeals. Wisconsin Electric Power Co. v. Reilly, No's 88-3264 and 89-1339 (7th Cir., slip op. Jan. 19, 1990).

For reasons set forth in the preamble, Parts 51, 52, and 60 of Chapter 1 of Title 40 are amended as follows:

PART 51—REQUIREMENTS FOR THE PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

A new appendix is added at the end of Part 51 as follows:

APPENDIX V—EXCLUSIONS FROM NEW SOURCE REVIEW REQUIREMENTS FOR THE INSTALLATION OR IMPROVEMENT OF EMISSIONS CONTROL SYSTEMS

This appendix sets forth the Environmental Protection Agency's (EPA's) interpretative ruling on the definition of "major modification" in 40 CFR 51.165 and 51.166 and Appendix S. This ruling describes a number of activities regarding emissions control systems or devices which are not considered by EPA to be a "physical change" or "change in the method of operation" of stationary sources within the meaning of sections 51.165 and 51.166 and Appendix S. This ruling clarifies EPA's interpretation that the installation and use of clean coal technology and other EPA-approved control technology demonstration projects, the removal of temporary demonstration emissions control systems or devices, and the addition or improvement of an emissions control system or device on a voluntary basis or for compliance-related purposes, is not a "major modification" subject to the new source review provisions of section 51.165 or 51.166, or Appendix S, provided such installation and use meets the conditions specified below and the appropriate reviewing authority issues an applicability exclusion. The principal condition is that the installation or operation of the emissions control system must be designed primarily to improve the control or prevention of air pollution emissions. If the installation of an emissions control system or approved control technology demonstration project by a source would trigger new source review because any applicable "significant" net emissions increase threshold would be exceeded [as defined at 40 CFR 51.166(b)(23)], the source should not commence installation of the control system or demonstration project until the reviewing authority notifies the source that it qualifies for an exclusion.

The purposes of this ruling, the term "emissions control system or device" generally means an "add-on" type of emissions control equipment, such as fabric filters, scrubbers, absorbers, catalysts, and thermal reduction/oxidation. This also includes the use of a less polluting fuel if such change is properly determined to be a pollution control system. Such determinations will be made by the appropriate reviewing authority on a case-by-case basis. For example, some physical changes to accommodate a new fuel could be properly characterized as pollution control systems (e.g., a CCT demonstration of nitrogen oxides (NO_x) reburning technology using natural gas on a coal-fired utility boiler; or projects to convert to natural gas or to gas/coal cofiring implemented to comply with an environmental regulatory requirement).

Other types of changes, such as process changes, are not considered emissions control systems or devices. The EPA will exclude from review only the type of change specified; other changes, even if planned in conjunction with an excluded change, will be excluded from the definition of a physical change or change in the method of operation. The appropriate reviewing authority will make the determination of nonapplicability, on a case-by-case basis, but within the general framework of this ruling, applying the principal test that the system is primarily designed and installed to reduce air pollution.

The ruling is applicable to both temporary demonstration projects and permanent emissions control system or device changes. Owners or operators should provide a description of the proposed activity and a justification for why they should qualify for an exclusion from the definitions of a "physical change" or a "change in the method of operation" of a source under this interpretative ruling. The owner or operator should demonstrate that the proposed emission control system or device will consist of the replacement of an existing emissions control system or a device with an improved or upgraded emissions control system or device, or the installation of a new emissions control system or device at an existing uncontrolled source. Physical or operational changes which restore original capacity, or are made to improve the operation or efficiency of the source, are not considered an emissions control system installation or improvement, even if conducted in conjunction with the installation or improvement of an emissions control system. The owner or operator should demonstrate that the proposed emissions control system or device will meet the following conditions:

Condition 1.—The replacement or addition of the emissions control system will not cause or contribute to a violation of a State implementation plan, a condition in a permit issued pursuant to regulations approved or promulgated under the Clean Air Act (CAA), or any applicable national ambient air quality standard or prevention of significant deterioration increment;

Condition 2.—The replacement or addition of the emissions control system will not result in an environmental harm. This includes the following criteria:

A. There will be no increase in the maximum hourly emissions rate (kilograms per hour or equivalent) of any pollutant subject to regulation under the CAA, as determined by 40 CFR 60.14(b). This includes not only the emissions unit directly affected, but also the entire source, if the activities would cause such increase elsewhere within the source.

B. There will be no increase in annual emissions of any pollutant subject to regulation under the CAA as a result of the activities. An increase in annual emissions of one or more pollutants (not necessarily those for which the controls have been installed) can be anticipated when there is a clear likelihood that the addition of the control system or device would increase the utilization of the source (e.g., more hours of operation per year), and when such increased utilization is not offset by a corresponding decrease in hourly emissions rate(s).

C. There will be no adverse impact on an air quality related values (e.g., visibility) in any Class I area.

D. Any net increases in emissions of any toxic pollutant not subject to regulation under the CAA, resulting from the change in control equipment, will not cause or contribute to any adverse health or welfare effects.

For temporary control technology demonstration projects, conditions 2.A and 2.B above may be waived, in whole or part, if the reviewing authority determines that the demonstration project is environmentally beneficial. Temporary demonstration projects are projects which will last no more than 5 years (including the time required to restore the source to its original condition) from the date on which startup of the project begins (as defined at 40 CFR 60.2). However, two additional criteria which must be met are that:

Condition 3.—The project is a temporary project to demonstrate an emissions control system or device, and the project is either (a) federally funded or (b) EPA approved.

Condition 4.—The source will be returned to its pre-project physical and operational condition, and hourly emissions rate (in kilograms per hour or equivalent) and annual emissions rate, or to an even lower emissions rate, when the demonstration is completed, or at the end of the "temporary" time period approved by EPA, whichever is earliest (allowing for very small negligible differences in the post-demonstration physical and operational condition due to a technical inability to restore the unit to its precise pre-demonstration condition, or due to normal variability in the coal used).

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

A new appendix is added at the end of Part 52 as follows:

APPENDIX F—EXCLUSIONS FROM NEW SOURCE REVIEW REQUIREMENTS FOR THE INSTALLATION AND IMPROVEMENT OF EMISSIONS CONTROL SYSTEMS

This appendix sets forth the Environmental Protection Agency's (EPA's) interpretative ruling on the definition of a "major modification" in 40 CFR 52.21 and 52.24. This ruling describes a number of activities regarding emissions control systems or devices which are not considered by EPA to be a "physical change" or "change in the method of operation" of stationary sources within the meaning of sections 52.21 and 52.24. This ruling clarifies EPA's interpretation that the installation and use of clean coal technology and other EPA-approved control technology demonstration projects, the removal of temporary demonstration emissions control systems or devices, and the addition or improvement of an emissions control system or device on a voluntary basis or for compliance-related purposes is not a "major modification" subject to the new source review provisions of sections 52.21 or 52.24, provided such installation and use meets the conditions specified below and the appropriate reviewing authority issues an applicability exclusion. The principal condition is that the installation or operation of the emissions control system or device must be designed primarily to improve the control or prevention of air pollution emissions. If the installation of an emissions control system or EPA-approved control technology demonstration project by a source would trigger new source review because any applicable "significant" net emissions increase threshold would be exceeded [as defined at 40 CFR 52.21(b)(23)], the source should not commence installation of the control system or demonstration project until the reviewing authority notifies the source that it qualifies for an exclusion.

For purposes of this ruling, the term "emissions control system or device" generally means an "add-on" type of emissions control equipment, such as fabric filters, scrubbers, absorbers, catalysts, and thermal reduction/oxidation. This may also include the use of a less polluting fuel if such change is properly determined to be a pollution control system. Such determinations will be made by the appropriate reviewing

authority on a case-by-case basis. For example, some physical changes to accommodate a new fuel could be properly characterized as pollution control systems (e.g., a CCT demonstration of nitrogen oxides (NO_x) reburning technology using natural gas on a coal-fired utility boiler; or projects to convert to natural gas or to gas/coal cofiring implemented to comply with an environmental regulatory requirement).

Other types of changes, such as process changes, are not considered emissions control systems or devices. The EPA will exclude from review only the type of change specified; other changes, even if planned in conjunction with an excluded change, will not be excluded from the definition of a physical change or change in the method of operation. The appropriate reviewing authority will make the determination of nonapplicability, on a case-by-case basis, but within the general framework of this ruling, applying the principal test that the system is primarily designed and installed to reduce air pollution.

The ruling is applicable to both temporary demonstration projects and permanent emissions control system or device changes. Owners or operators should provide a description of the proposed activity and a rationale for why they should qualify for an exclusion from the definitions of a "physical change" or a "change in the method of operation" of a source under this interpretative ruling. The owner or operator should demonstrate that an emissions control system or device installation will consist of the replacement of an existing emissions control system or device with an improved or upgraded emissions control system or device, or the installation of a new emissions control system or device at an existing uncontrolled source. Physical or operational changes which restore original capacity, or are made to improve the operation or efficiency of the source, are not considered an emissions control system installation or improvement, even if conducted in conjunction with the installation or improvement of an emissions control system. The owner or operator should also demonstrate that an emissions control system or device installation will meet the following conditions:

Condition 1.—The replacement or addition of the emissions control system will not cause or contribute to a violation of a State implementation plan, a condition in a permit issued pursuant to regulations approved or promulgated under the Clean Air Act (CAA), or any applicable national ambient air quality standard or prevention of significant deterioration increment;

Condition 2.—The replacement or addition of the emission control system will not result in an environmental harm. This includes the following criteria:

A. There will be no increase in the maximum hourly emissions rate (kilograms per hour or equivalent) of any pollutant subject to regulation under the CAA, as determined by 40 CFR 60.14(b). This includes not only the emissions unit directly affected, but also the entire source, if the activities would cause such increase elsewhere within the source.

B. There will be no increase in annual emissions of any pollutant subject to regulation under the CAA as a result of the activities. An increase in annual emissions of one or more pollutants (not necessarily those for which the controls have been installed) can be anticipated when there is a clear likelihood that the addition of the control system or device would increase the utilization of the source (e.g., operation more hours per year), and when such increased utilization is not offset by a corresponding decrease in hourly emissions rate(s).

C. There will be no adverse impact on an air quality related value (e.g., visibility) in any Class I area.

D. Any net increase in emissions of any toxic pollutant not subject to regulation under the CAA, resulting from the change in control equipment, will not cause or contribute to any adverse health or welfare effects.

For temporary control technology demonstration projects, conditions 2.A and 2.B above may be waived, in whole or part, if the reviewing authority determines that the demonstration project is environmentally beneficial. Temporary demonstration projects are projects which will last no more than 5 years (including the time required to restore the source to its original condition) from the date on which startup of the project begins (as defined at 40 CFR 60.2). However, two additional criteria which must be met are that:

Condition 3.—The project is a temporary to demonstrate an emissions control system or device, and the project is either (a) federally funded or (b) EPA approved.

Condition 4.—The source will be returned to its pre-project physical and operational condition, and hourly emissions rate (in kilograms per hour or equivalent) and annual emissions rate, or to an even lower emissions rate, when the demonstration is completed, or at the end of the "temporary" time period approved by EPA, whichever is earliest (allowing for very small negligible differences in the post-demonstration physical and operational condition due to a technical inability to restore the unit to its precise pre-demonstration condition, or due to normal variability in the coal used).

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

A new appendix is added at the end of Part 60 as follows:

APPENDIX J—EXCLUSION FOR TEMPORARY CONTROL TECHNOLOGY PROJECTS

This appendix sets forth the Environmental Protection Agency's (EPA's) interpretative ruling on the definition of "modification" in 40 CFR 60.14. The definition lists a number of emissions control system changes which are not considered by EPA to be "physical changes" or "changes in the method of operation" of stationary sources, and therefore not a modification. This ruling clarifies EPA's interpretation that temporary clean coal technology and other approved temporary control technology demonstration projects are not subject to section 60.14 (subject to the conditions specified below).

Temporary control technology demonstrations are projects which will last no more than 5 years including the time required to restore the source to its original conditions from the date on which starting of the project begins (as defined in 40 CFR 60.2). Such temporary technology demonstration projects must be approved by EPA prior to the demonstration.

As applied to the definition of modification in 40 CFR 60.14, the following shall not, by itself, be considered a modification under this part: "a physical change to, or change in the method of operation of, an existing facility for the sole purpose of cessation, or removal, of an air pollution control technology demonstration project that results in an emissions increase of any pollutant to which a standard applies, up to the pre-demonstration level.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, October 17, 1990.

Hon. HENRY A. WAXMAN,
Chairman, Subcommittee on Health and Environment, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your August 8, 1990 letter requesting clarification of certain assumptions used in EPA's analysis of the acid rain control and related amendments in the House and Senate Clean Air bills. Enclosed are our comments concerning these assumptions.

The Office of Management and Budget has advised us that there are no objections to the presentation of these views from the standpoint of the President's program.

I thank you again for your sustained interest and support. We have all worked long and hard to see final passage in the 101st Congress. Please do not hesitate to call if you have any further questions.

Sincerely,

WILLIAM G. ROSENBERG,
Assistant Administrator for Air and Radiation.

ENCLOSURE

The questions you ask concern proposed changes to the definition of "standard of performance" in section 111, the New Source Performance Standards (NSPS) and to the definition of "best available control technology" in section 169, the Prevention of Significant Deterioration (PSD) provisions. Together with the National Ambient Air Quality Standards (NAAQS), the PSD and NSPS regulations protect local and regional air quality. The amendments to these provisions were initiated in the Senate mark-up of the acid rain control title of their bill. In general the amendments seem to be designed to permit more choice and flexibility in how companies meet the substantive requirements of these two sections.

Based on a review of the Senate Environment and Public Works Committee Report of December 20, 1989, the Administration concludes that the Senate's proposed changes are not meant to weaken the environment protection offered by those programs, only to make technology and fuel choices less restrictive. This is consistent with the Administration's position that the acid rain control program is meant to complement the existing programs by addressing problems caused by long-range transport of air pollution, specifically acid rain.

CHANGES TO SECTION 111

You asked us to explain the assumptions the Administration made in analyzing the House and Senate bill amendments to section 111 that eliminate the percent reduction requirement from the New Source Performance Standard for SO_2. You asked what impact these assumptions have on regional emissions and control costs.

Both bills amend the definition of the term "standard of performance" in section 111, the New Source Performance Standards, by removing the percent reduction requirements returning to the definition in the 1970 CAA requirements.

Both bills require the EPA to promulgate new NSPS regulations for future electric utility units which will require that SO_2 emissions be "at a rate not greater than would have resulted from compliance by such source with the applicable standards of

performance prior to such revision." According to section 403(b) of S 1630 and section 502(b) of House bill. In other words, the standard is not to strictly require a particular type of technology control with a specified percentage removal but it is to be at least as stringent as the standards currently in effect, at least so far as future new electric utility units are concerned.

As written, the requirement to set a new standard at least as stringent as the existing one applies only to electric utility plants (which commence construction after the new NSPS is proposed). It does not on its face appear to apply to other NSPS source categories covered by the proposed change in definition to term "standard of performance."

The NSPS regulations would be revised basd on a thorough analysis of current emission rates at NSPS sources permitted under current law and all other relevant factors, and in accordance with the Clean Air Act requirements for public notice and comment. However, EPA had to make assumptions as to the outcome of that process in order to model the impact of these amendments. In reality when revising the standards, we will have to make decisions concerning many factors in order to promulgate a standard at least as stringent as the current one: the magnitude of the emission rate, whether that rate should vary geographically and/or according to input sulfur content, the averaging time and averaging frequency of the new standard.

MODELING ASSUMPTIONS

The simplified assumptions we used in the acid rain control analysis were based on an examination of the actual emission rates at utility NSPS sources subject to the requirements of 40 CFR Subpart Da, the current NSPS for utility boilers applicable when construction commenced after September 18, 1978. We found that in the eleven Western States new units were emitting no more than 0.20 pounds per million Btu (lb/mmBtu) on an annual basis while new plants in the 37 Eastern states were meeting an effective annual 0.48 lb/mmBtu rate. I use the terms "annual basis" and "effective annual rate" because the current NSPS regulations limit emissions on a 30-day rolling average basis, which ensures continuous compliance with the standard. However, for modeling purposes, an annual equivalent is easily calculated from the shorter term standard recognizing that shorter averaging times allow less variability and lead to lower emissions for any given emission rate.

Actual and permitted emissions at a number of utility plants are even lower due to State NSPS' or BACT determinations. For purposes of the analysis we assumed that the revised NSPS for utility boilers (however specified in the regulations) would prohibit an annual emission rate greater than 0.20 pounds per million Btu in the west and 0.48 pounds per million Btu in the east. Wherever a more stringent state limit is in force, the state's limit applied.

In addition, we revised the model to include an option for new sources to be built and operated with scrubbers capable of removing 95 percent of the input sulfur instead of simply sized to remove enough SO_2 to meet the 0.48 and 0.20 lb/mmBtu annual limit in the east and west, respectively. The effective annual emissions rate in the West with 95 percent removal is in the 0.05 to 0.10 lb/mmBtu range, and in the East it is 0.25 lb/mmBtu on average, or less. Thus, in the acid rain control analysis new capacity could be built to either just meet the new (presumed) NSPS limit or it could be built to minimize the number of offsetting allowances required by investing in greater scrubber capacity sufficient to achieve 95 percent removal.

The model revision reflects the higher scrubber costs associated with these options for certain combinations of fuel sulfur content and removal efficiency. Nonetheless, in most cases companies were forecast to invest the additional money to build scrubbers capable of achieving 95 percent removal instead of the minimum removal capacity needed to avoid exceeding the new (presumed) NSPS. This result obtains because the marginal cost of control associated with going from partial to full SO_2 removal with a scrubber is less than the marginal cost of allowances in the market. Appendix C of the Comparison report discusses scrubber costs for new and retrofit sources.

Note that for technical reasons the analysis includes fewer control options than the utility industry will, in fact, have available. A wide range of pollution control options for coal-fired boilers exist besides wet scrubbing, including dry scrubbing, sorbent injection, and a range of repowering technologies such as fluidized bed combustion and integrated gasification combined cycle. Under the revised NSPS, a greater number of coal/technology combinations will be competitive which should help keep control costs down and encourage further maturing of pollution control industry.

The new NSPS limits would in effect require owners to choose some sort of control technology whether it is add-on like a scrubber, built in like sorbent injection, or inherent in the technology such as fluidized bed combustion, to use in combination with whatever quality of coal can meet the applicable limitations.

INDUSTRIAL SOURCES

All industrial source categories for which EPA sets new source performance standards seem to be covered by the proposed amendments despite the fact that the changes are based on the continuation of the cap on utility SO_2 emissions. It is not clear how emissions would be affected if the NSPS for future non-utility sources were revised. The impact depends on whether EPA would be able to extend the "at least as stringent" notion to all source categories for which we set or revise NSPS.

NO_x EMISSIONS

NO_x emissions from utility boilers would not be expected to change relative to our forecast under the acid rain control program. In our analysis we assume that the NSPS could be met with low-NO_x burners which are very cost-effective and we do not try to model where BACT determinations may require use of more efficient NO_x control technology. To date, BACT determinations for coal-fired boilers have not required additional NO_x control measures beyond combustion modification and low NO_x burners.

CHANGES TO SECTION 169

Your first question concerns the Senate bill's amendment to the definition of "best available control technology" (BACT) which is found in section 169 of the current law. Specifically you asked us to explain the assumptions that the Administration made in analyzing this amendment.

The Senate bill would amend the Act by adding the words "clean fuels" to the definition of "best available control technology" in section 169 such that BACT would be defined as:

"an emission limitation based on the maximum degree of reduction of each pollutant * * * which the permitting authority on a case by case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each such pollutant.

In analyzing the impact of the Senate bill on the electric utility sector, EPA assumed that the additional language would have no real impact on BACT determinations. In determining what BACT should be for a particular facility, the permitting authority would take into account the inherent "cleanliness" of a fuel (i.e. a naturally low sulfur content) just as the permitting authority currently takes into account the "cleanliness" of a fuel achieved through fuel cleaning or treatment in making BACT determinations. EPA views this amendment as merely codifying its present practice, which holds that clean fuels are an available means of reducing emissions to be considered along with other approaches in identifying BACT level controls.

You asked us to analyze the impact on national and regional SO_2 emissions if the Senate amendment were interpreted by states to equate BACT with use of low-sulfur coal.

As stated above, the revised NSPS itself will result in sources needing to use some degree of SO_2 removal, although no particular technology will be specified. As the NSPS is the floor in every BACT determination, the use of low sulfur coal alone is unlikely.

EMISSIONS UNDER THE 8.9 MILLION TON CAP WITHOUT NSPS AND BACT

"We believe that the NSPS and BACT programs play a vital role in protecting air quality, especially in areas such as the West with relatively clean air. Could you analyze what the impact would be on national and regional SO_2 emissions if these provisions were weakened, as some have suggested, so that the only restriction on SO_2 emissions were the 8.9 million top cap on ulitity sources."

To estimate the potential impact of the hypothetical case of broadly relaxed NSPS and BACT requirements given a national ceiling on utility SO_2 emissions, EPA asked ICF Resources Inc. to perform the following sensitivity analysis on the acid rain control report you recently reviewed: [1]

Repeal of NSPS requirements (state and federal) such that new coal-fired powerplants would not be required to install SO_2 removal equipment, nor would they be required to meet plant-specific emissions limitations.

Existing units subject to BACT requirements would not be allowed to relax their permit limitations to remove or bypass the equipment but no new coal-fired utility

[1] "Comparison of the Economic Impacts of the Acid Rain Provisions of the Senate Bill (S. 1630) and the House Bill (S. 1630)", July 1990, prepared by ICF Resources Incorporated for the U.S. Environmental Protection Agency. We ran the sensitivity relative to the Senate bill analysis because it has fewer plant-specific constraints than the House bill analysis. In analyzing the House bill we included the visibility protection amendment from Title I which, together with the DOE-plant provision, requires 9 GW of scrubbing at specific plants.

plants would be required to install and operate such equipment.

New powerplants would be required to obtain allowances sufficient to offset emissions and could obtain such allowances from other sources regardless of geographic location.

Total utility SO_2 emissions would not exceed 8.9 million tons per year.

We did not try to evaluate the effect on local ambient air quality if the NSPS and BACT limitations were substantially less stringent. Nor did we interpret your question to assess the impact if the only restriction was 8.9 million tons of SO_2 nationally with no short-term SIP limits to ensure attainment with the SO_2 NAAQS. The NSPS and BACT requirements contribute to the attainment and maintenance of the NAAQS. Without these emissions limitations, or if they were weakened to allow intermittent or seasonal controls for example, ambient concentrations of pollutants would be higher in some places and lower elsewhere as compared to what would be expected under the Act as written.

The net result of the above assumptions for the NSPS and BACT regulations would be an increase in western emissions of 500,000 tons per year in 2010—an increase of 700,000 tons per year relative to 1985 levels. Emissions would also increase significantly in Florida. Elsewhere in the east and midwest emissions would decrease by a commensurate level as more plants in the east switched fuels or added additional retrofit SO_2 control equipment to create allowances for sale to and use at uncontrolled new plants in the West and Florida. As required, total SO_2 from the utility sector would be no more than 8.9 million tons.

Net annual utility compliance costs would decrease by an estimated $100 million ($4.8 billion vs $4.9 billion) in 2010 because the marginal cost of scrubbing a low sulfur coal plant is somewhat more expensive than the marginal cost of reducing more emissions at existing plants in the east and midwest. If a low-sulfur coal plant does not have to use SO_2 control technology for any other reason then there is some cost savings shifting the reduction in SO_2 emissions from western plants to existing plants in the east and midwest. This is in contrast to the expected result under the amendments where the revised NSPS is set stringent enough to require some degree of technological control, as discussed in the NSPS section above. Details on the emissions, costs, and coal-market impacts of the sensitivity analysis can be found in the attached ICF memo dated August 28, 1990 to my staff.

I must emphasize that we undertook the above analysis at your request to illustrate the relative importance of the various provisions of the Act that affect emissions levels. The extreme assumptions made for this exercise do not reflect the Administration's or ICF's interpretation of the proposed amendments in the Senate and House bills as passed earlier in 1990.

ICF RESOURCES, INC.
Fairfax, VA, August 27, 1990.

MEMORANDUM

To: Nancy Kete, EPA.
From: Bruce Braine, ICF Resources, Ed Miller.
Subject: Senate Bill (S. 1630) No NSPS Sensitivity Analysis.

We have conducted, at your request, a follow-up to the analysis of the acid rain titles of the proposed amendments to the Clean Air Act in order to examine the emissions and cost impacts of relaxed NSPS or BACT determinations, given the existence of the 8.9 million ton national cap on SO_2. The analysis has been conducted using the Senate allowance allocation, the EPA scrubber cost assumptions, and EPA high case assumptions for 2010.[1] Note that the assumptions used in this analysis are not EPA's or ICF's interpretations of the proposed changes to Section 111 (NSPS) in both bills or Section 169(3) (PSD) in the Senate bill.

The following additional assumptions were made for this sensitivity analysis:

The "complete" repeal of federal NSPS for SO_2 would mean that no new coal fired powerplants would be required to install scrubbers or any other SO_2 removal equipment, and no new plant by plant regional emission limitations would be set.

Current state level NSPS or potential PSD requirements were assumed to be repealed or to no longer apply for new coal fired powerplants. However, existing units subject to NSPS limits were not allowed to relax those limits.

New powerplants would still be required to obtain allowances per the language of the Senate bill such that total SO_2 emissions and allowances would still be capped at 8.9 million tons.

Note, of course, that these assumptions, particularly the repeal of state NSPS, represent very much an upper bound case on the regional emission impacts of the complete removal of NSPS. This is because many Western states currently have tight state NSPS regulations which would effectively require new sources to scrub and emit at relatively low rates unless these too were repealed. It is quite possible (and perhaps very likely) that these states would continue to require tight emission limits even if federal NSPS were repealed. Further sensitivity analysis could be conducted to assess the implications of no federal NSPS, with state NSPS limits maintained.

National and broad regional emissions, cost, and coal market impacts are presented in the Summary Tables I–II below and are briefly discussed in the remainder of this memorandum. Forecasts of state level SO_2 emissions, scrubbed coal capacity, and net utility compliance costs after interstate trading are presented in Tables A–1 through A–3 in Appendix A. Scrubber cost assumptions (for 95 percent removal technology) are presented in Appendix B (obviously for those powerplants choosing not to scrub under the No-NSPS scenario none of these costs would apply).

SUMMARY FINDINGS

Under the No-NSPS sensitivity total scrubbed capacity (including scrubbing at new coal fired sources and retrofit scrubbing at existing sources) is forecasted to decrease by about 40 gigawatts relative to the Senate bill case. This reflects net effect of, (a) the displacement of new scrubbed capacity (about 68 gigawatts) by new unscrubbed capacity utilizing low sulfur coals in the West and Southeast, and (b) an increase in retrofit scrubbed capacity (of about 28 gigawatts) in the East. New unscrubbed capacity is built in lieu of new scrubbed capacity in these regions because the costs are somewhat cheaper for plants using low sulfur coals even when taking into account the costs of purchasing offsetting allowances. Thus, a number of new low sulfur coal powerplants are built without scrubbers (particularly in the West and in Florida). Increased emissions at these new unscrubbed sources are offset by additional emissions reductions at existing powerplants (in some cases through the addition of retrofit scrubbers on high sulfur coals), as compared with the Senate bill analysis.

Because there are fewer scrubbed powerplants in the West SO_2 emissions are forecasted to increase in the West by about 0.5 million tons (relative to the Senate bill), for a total increase of 0.7 million tons from 1985 levels. These increased emissions are offset in the East through increased fuel switching and retrofit scrubbing at existing coal sources.

National net utility compliance costs are forecasted to decrease by about $0.1 billion. Increased emissions from new unscrubbed sources primarily in the West and Florida (about 1.3 million tons relative to the Senate bill) are offset by increased fuel switching and retrofit scrubbing in the East at an average net cost savings of roughly $100 per ton SO_2 removed. This occurs because the marginal cost of scrubbing a lower sulfur coal powerplant (i.e., those built primarily in the West and in some Eastern states) is somewhat more expensive (about $900–$1,000 per ton SO_2 removed) than the marginal cost of reducing emissions at existing plants under the Senate bill (about $600–$900 per ton SO_2 removed).

Coal production impacts under the No-NSPS case are significantly different compared to the Senate bill. High sulfur Midwestern coal production is forecasted to decrease by 32 million tons, and low sulfur Western coal production is forecasted to decrease by 24 million tons. This production swing is primarily a result of (1) fuel switching to low sulfur Western coals from Midwestern high sulfur coals at existing plants to offset emission increases at new plants, and (2) more low sulfur Western coals being used at new powerplants in lieu of scrubbing Midwestern high sulfur coals.

The No-NSPS case yields a net savings of only about $0.1 billion on the overall costs of the Senate acid rain bill.

TABLE I.—SUMMARY IMPACTS, (SO_2 REDUCTIONS, COSTS, AND SCRUBBING)

	Base case	Changes from high base 2010—Senate bill sensitivity	
		With NSPS	Without NSPS
Utility [2] reductions (millions of tons below 1980 levels):			
37—East	19.9	−8.7	−9.2
11—West	0.9	+0.1	+0.6
Total	20.8	−8.6	−8.6
Utility annualized costs (billions of 1988 $/yr.)		+4.9	+4.8
Scrubbed capacity [2] (change in gigawatts from future levels):			
New powerplant:			
37—East	183.6	+0.0	−40.4
11—West	55.0	+0.0	−27.0
Total United States	238.6	+0.0	−67.4
Retrofit scrubber:			
37—East	0.0	+20.5	+46.5
11—West	0.0	+0.0	+1.2
Total United States	0.0	+20.5	+47.7
Total scrubbed:			
37—East	183.6	+20.5	+6.1
11—West	55.0	+0.0	−25.8

[1] See "Comparison of the Economic Impacts of the Acid Rain Provisions of the Senate Bill (S. 1630) and the House Bill (S. 1630)", July 1990, for further description and discussion of these assumptions.

Total United States	238.6	+20.5	−19.7

[1] Scrubbed capacity includes new unplanned capacity, and existing capacity forecasted to install retrofit scrubbers in response to acid rain legislation.

TABLE II.—SUMMARY IMPACTS (FUEL CONSUMPTION, AND COAL PRODUCTION)

	Base case	Changes from high base 2010—Senate bill sensitivity	
		With NSPS	Without NSPS
Utility fuel consumption (change in quads from future levels):			
Low sulfur	9.66	+2.49	+4.34
Low-medium sulfur	5.44	+.031	+0.31
High-medium sulfur	7.69	−0.52	−0.89
High sulfur	7.86	−2.21	−3.10
Total coal	30.65	+0.08	+0.04
Oil	1.51	−1.00	−1.05
Gas	5.45	+0.97	+1.02
Regional coal production impacts (millions of tons shift from future levels):			
Northern Appalachia	290	−29	−29
Central and Southern Appalachia	359	+65	+69
Midwest	306	−85	−117
West	675	+51	+75
Total	1,629	+2	−2

APPENDIX A

TABLE A–1.—TOTAL SULFUR DIOXIDE EMISSIONS BY STATE/REGION, SENATE BILL SENSITIVITY

[In thousands of tons]

	High base case 2010	Change from base, Senate bill—	
		With NSPS high 2010	Without NSPS high 2010
Maine/Vermont/New Hampshire	99	−51	−54
Massachusetts/Rhode Island	322	−130	−242
New York	523	−337	−378
Pennsylvania	1,192	−555	−859
New Jersey	135	−52	−67
Maryland/Delaware	425	−293	−292
Virginia	289	−150	−150
West Virginia	1,001	−416	−681
North and South Carolina	868	−435	−402
Georgia	1,346	−928	−965
Florida	904	−639	−76
Ohio	2,630	−1,999	−2,083
Michigan	456	−52	−71
Illinois	1,341	−1,003	−997
Indiana	1,489	−913	−961
Wisconsin	391	−206	−181
Kentucky	850	−452	−510
Tennessee	1,117	−774	−873
Alabama	727	−359	−447
Mississippi	143	−62	−41
Minnesota	143	−49	−49
North and South Dakota	238	−37	−132

TABLE A–1.—TOTAL SULFUR DIOXIDE EMISSIONS BY STATE/REGION, SENATE BILL SENSITIVITY—Continued

[In thousands of tons]

	High base case 2010	Change from base, Senate bill—	
		With NSPS high 2010	Without NSPS high 2010
Iowa	313	−180	−164
Missouri	1,326	−1,062	−1,063
Kansas/Nebraska	347	−139	−94
Arkansas	152	−57	−29
Oklahoma	216	−98	−12
Louisiana	105	−28	−28
Texas	774	−183	−283
37—East	19,863	−11,641	−12,185
Montana	155	−94	18
Wyoming	133	−44	−45
Idaho	0	0	0
Colorado	140	−32	−113
New Mexico	63	−10	−1
Utah	65	−23	103
Arizona	155	−19	194
Nevada	101	−10	3
Washington/Oregon	107	−5	−76
California	0	0	0
11—West	919	−236	308
Total United States	20,782	−11,877	−11,877

TABLE A–2—TOTAL UTILITY SCRUBBED CAPACITY BY STATE/REGION [1]—SENATE BILL SENSITIVITY

[In gigawatts]

	High base retrofit scrubbed	High base new scrubbed	Change from base					
			With WSPS			Without WSPS		
			Retrofit scrubbed	New scrubbed	Total scrubbed	Retrofit scrubbed	New scrubbed	Total scrubbed
Maine/Vermont/New Hampshire	0	4.0	0	0	0	0	0	0
Massachusetts/Connecticut/Rhode Island	0	4.0	0	0	0	.8	0	.8
New York	0	8.3	0	0	0	.1	0	.1
Pennsylvania	0	5.4	2.5	0	2.5	7.5	0	7.5
New Jersey	0	3.1	0	0	0	.1	0	.1
Maryland/Delaware	0	4.5	1.4	0	1.4	1.4	0	1.4
Virginia	0	4.7	0	0	0	0	0	0
West Virginia	0	.5	.9	0	.9	6.8	0	6.8
North and South Carolina	0	19.2	0	0	0	0	−1.9	−1.9
Georgia	0	13.9	1.7	0	1.7	1.7	0	1.7
Florida	0	24.1	.7	0	.7	2.7	−22.6	−19.9
Ohio	0	3.0	5.0	0	5.0	6.7	−.1	6.6
Michigan	0	4.3	0	0	0	0	0	0
Illinois	0	7.3	2.7	0	2.7	2.7	0	2.7
Indiana	0	4.5	3.0	0	3.0	5.3	−3.9	1.4
Wisconsin	0	2.3	0	0	0	.6	−2.3	−1.7
Kentucky	0	.1	1.0	0	1.0	2.7	0	2.7
Tennessee	0	16.5	.3	0	.3	.9	0	.9
Alabama	0	5.7	.7	0	.7	2.7	0	2.7
Mississippi	0	5.1	0	0	0	0	−1.9	−1.9
Minnesota	0	0	0	0	0	0	0	0
North and South Dakota	0	8.4	0	0	0	1.1	0	1.1
Iowa	0	.5	0	0	0	0	−.5	−.5
Missouri	0	4.6	.5	0	.5	.5	0	.5
Kansas/Nebraska	0	2.0	0	0	0	0	−2.0	−2.0
Arkansas	0	1.7	0	0	0	0	−.9	−.9
Oklahoma	0	4.6	0	0	0	0	−3.1	−3.1
Louisiana	0	0	0	0	0	0	0	0
Texas	0	21.0	0	0	0	2.3	−1.2	1.1
37—East	0	183.3	20.5	0	20.5	46.5	−40.4	6.1
Montana	0	7.8	0	0	0	0	−5.3	−5.3
Wyoming	0	13.9	0	0	0	0	−.4	−.4
Idaho	0	0	0	0	0	0	0	0
Colorado	0	6.3	0	0	0	0	−6.3	−6.3
New Mexico	0	1.5	0	0	0	0	−.3	−.3
Utah	0	7.4	0	0	0	0	−5.4	−5.4
Arizona	0	8.8	0	0	0	0	−8.8	−8.8
Nevada	0	9.5	0	0	0	0	−.5	−.5
Washington/Oregon	0	.1	0	0	0	1.2	0	1.2
California	0	0	0	0	0	0	0	0
11—West	0	55.3	0	0	0	1.2	−27.0	−25.8
Total United States	0	238.6	20.5	0	20.5	47.7	−67.4	−19.7

[1] Scrubbed capacity includes new unplanned coal capacity and existing capacity forecasted to retrofit scrubbers in response to acid rain.

TABLE A–3A.—UTILITY COST AND EMISSIONS TRADING BY STATE/REGION, HIGH CASE 2010 SENATE BILL WITH/WSPS

	Allowable SO_2 emission (million tons)	Affected source SO_2 emissions (million tons)	Net trades (million tons)	Marginal cost of trade (dollars per ton)	Case trading costs (millions of dollars)	Case compliance costs (millions of dollars)	Case total costs (millions of dollars)
Maine/Vermont/New Hamsphire	47	48	1	589	1	30	31
Massachusetts/Connecticut/Rhode Island	266	192	−76	589	−43	135	92
New York	278	186	−92	589	−54	135	81
Pennsylvania	582	639	57	589	34	236	270
New Jersey	72	83	11	589	6	33	39
Maryland/Delaware/District of Columbia	196	131	−65	589	−38	152	114
Virginia	132	139	7	589	4	82	86
West Virginia	440	584	144	589	85	170	255
North and South Carolina	400	433	33	589	19	287	306
Georgia	468	418	−50	589	−29	294	265
Florida	451	265	−186	589	−110	341	231
Ohio	689	632	−57	589	−34	529	495
Michigan	380	404	24	589	14	19	33
Illinois	408	338	−70	589	−41	339	298
Indiana	489	575	86	589	51	349	400
Wisconsin	184	186	2	589	1	72	73
Kentucky	379	398	19	589	11	147	158
Tennessee	299	343	44	589	26	250	276
Alabama	338	368	30	589	18	144	162
Mississippi	67	80	13	589	8	47	55
Minnesota	107	94	−13	589	−7	20	13
North and South Dakota	150	200	50	589	29	17	46
Iowa	115	133	18	589	11	47	58
Missouri	288	264	−24	589	−14	248	234
Kansas/Nebraska	170	208	38	589	22	67	89
Arkansas	83	95	12	589	7	31	38
Oklahoma	102	118	16	589	10	55	65
Louisiana	106	78	−28	589	−17	4	−13
Texas	624	592	−32	589	−19	254	235
Total 37—East	8,310	8,224	−86	589	−51	4,534	4,483
Montana	30	60	30	589	18	42	60
Wyoming	81	90	9	589	6	60	66
Idaho	0	0	0	589	0	0	0
Colorado	93	108	15	589	9	49	58
New Mexico	70	53	−17	589	−10	24	14
Utah	37	42	5	589	3	34	37
Arizona	140	136	−4	589	−2	58	56
Nevada	75	91	16	589	9	43	52
Washington/Oregon	46	102	56	589	33	3	36
California	25	0	−25	589	−14	30	16
Total 11—West	596	682	86	589	51	343	394
Total United States	8,906	8,906	0	589	0	4,877	4,877

TABLE A–3B.—UTILITY COST AND EMISSIONS TRADING BY STATE/REGION HIGH CASE 2010—SENATE BILL WITHOUT/WSPS

	Allowable SO_2 emissions (million tons)	Affected source SO_2 emissions (million tons)	Net trades (million tons)	Marginal cost of trade (dollars per ton)	Case trading costs (millions of dollars)	Case compliance costs (millions of dollars)	Case total costs (millions of dollars)
Maine/Vermont/New Hampshire	47	5	−2	888	−2	29	27
Massachusetts/Connecticut/Rhode Island	226	80	−186	888	−165	154	−11
New York	278	145	−133	888	−118	164	45
Pennsylvania	582	333	−249	888	−221	461	240
New Jersey	72	68	−4	888	−4	42	38
Maryland/Delaware/District of Columbia	196	133	−63	888	−56	160	104
Virginia	132	139	6	888	6	94	100
West Virginia	440	320	−120	888	−106	369	262
North and South Carolina	400	466	66	888	59	268	327
Georgia	468	381	−87	888	−77	344	266
Florida	451	829	378	888	335	−30	305
Ohio	689	547	−142	888	−127	617	490
Michigan	380	385	5	888	4	31	35
Illinois	408	344	−64	888	−57	342	285
Indiana	489	528	39	888	35	420	455
Wisconsin	184	210	26	888	23	44	67
Kentucky	379	340	−39	888	−35	198	163
Tennessee	299	244	−55	888	−49	321	272
Alabama	338	280	−58	888	−52	230	178
Mississippi	67	102	35	888	31	11	42
Minnesota	107	94	−13	888	−11	19	7
North and South Dakota	150	106	−44	888	−39	76	37
Iowa	115	149	34	888	30	36	66
Missouri	288	264	−24	888	−1	265	243
Kansas/Nebraska	170	253	83	888	74	26	1,00
Arkansas	83	123	39	888	35	15	50
Oklahoma	102	204	102	888	90	−21	69
Louisiana	106	77	−29	888	−26	17	−9
Texas	624	492	−132	888	−117	308	190
Total 37—East	8,310	7,678	−632	888	−561	5,006	4,446
Montana	30	173	144	888	128	−79	49
Wyoming	81	88	7	888	6	60	67
Idaho	0	0	0	888	0	0	0
Colorado	93	253	160	888	142	−98	44
New Mexico	70	62	−8	888	−7	16	9
Utah	37	168	131	888	116	−78	38
Arizona	140	349	209	888	185	−149	36
Nevada	75	104	29	888	26	27	53
Washington/Oregon	46	31	−15	888	−14	48	34
California	25	9	−24	888	−22	30	8
Total 11—West	596	1,227	631	888	561	−222	339
Total United States	8,906	8,906	−0	888	−0	4,785	4,785

APPENDIX B

TABALE A–1.—WET SCRUBBER COSTS FOR NEW UTILITY POWERPLANTS ACHIEVING 95 PERCENT REMOVAL WITH ADIPIC ACID (SENATE BILL ANALYSIS)

	Sulfur level						
	Very low	Low	Low medium	Medium	High medium	High	Very high
Capital costs (early 1986 dollars per kilowatt)	139.00	142.00	148.00	158.00	164.00	178.00	187.00
Fixed O&M Costs (early 1986 dollars per kilowatt year)	5.38	5.48	5.56	5.72	5.90	6.18	6.47
Variable O&M Cost (early 1986 millions per kilowatts hour)	.29	.38	.54	.79	1.04	1.54	2.04
Energy penalty (percent)	2.50	2.50	2.50	2.50	2.50	2.50	2.50
Capacity penalty (percent)	2.10	2.10	2.10	2.10	2.10	2.10	2.10
Reliability penalty (percent)	2.70	2.70	2.70	2.70	2.70	2.70	2.70
Annual emission rate (lbs. So_2/mmBtu)	.04	.05	.08	013	017	.25	.33

Sulfur level	Lbs. SO_2/mmBtu
Very low sulfur	Less than 0.80
Low sulfur	0.80–1.08
Low medium sulfur	1.09–1.66
Medium. sulfur	1.67–2.50
High-medium sulfur	2.51–3.33
High sulfur	3.54–5.00
Very high sulfur	More than 5.00

Note: EPA estimates except for reliability penalty which is based on earlier EPRI estimates. More recent scrubber availability data suggests that these reliable estimates may be conservatively high.

The PRESIDING OFFICER. Who yields time? The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I yield 2 minutes to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. DURENBERGER. Mr. President, last night I left the floor about 11:30 or so and got home and turned on channel 19, and at 12:30 saw my colleagues who were still here complimenting each other. In fact, the present Presiding Officer was engaged in complimenting his colleagues on the Environment and Public Works Committee, and others. I think what you have heard this morning, including the comments from our colleague from Idaho, is, as I said last night, a compliment to how the process can work when the people who are involved have a commitment to making it work.

I would like to recall especially, as I have on other occasions, the month of February 1990 because I believe that process, in which the majority leader asked us and then after a couple of weeks insisted that we participate in that process of taking the Environment and Public Works Committee bill and working with the administration, was the key to the success of an incredibly complicated, hard to understand, full of differing opinions piece of legislation.

The interesting part of that process was that while we were meeting in the majority leader's office, the Republican leader was meeting after all of our meetings with various Republicans, some of whom have been heard from today, who had strong and often conflicting business constituencies. The senior Senator from Idaho, who is retiring after this year, was a very important part of that process, the senior Senator from New Mexico, the senior Senator from Texas, a variety of people who, though not directly involved in the meetings, were a critical part of that process. I hope that people will look at that and remember that was a key to the success.

Therefore, Mr. President, it is with a great sense of pride and relief that I rise to strongly support the conference report on the Clean Air Act of 1990. At a time when the Congress and the administration are taking some well justified hits for indecision and confusion, this bill is a monument to the best in Government. This is a bill whose goal could not be more simple: to make Americans healthier. The means of accomplishing that end could not be more complicated. This is a carefully forged instrument, comprised of the best knowledge we can take from science, from economics and from law. It is a testament to the fact that we can change Government and change our society to improve people's lives.

There are many to whom the American people owe a great debt of gratitude for this achievement. The President of the United States deserves the highest commendation. Congress can craft solutions of many kinds, but only one person can put a problem on the national agenda. That is what George Bush did with his speech on June 15, 1989. He created the unbeatable momentum which reaches its conclusion today.

Our majority leader, GEORGE MITCHELL deserves tremendous credit for the passage of this legislation. He contributed not only a wealth of substantive ideas to this final product, but used the full force of his office of Senate leader to bring the bill to completion. Without his determination and skill many of the obstacles which have faced this bill would never have been overcome. I would venture to say that anyone who wants to see what kind of leader we have in this body, look at this bill.

My two colleagues from the Environment and Public Works Committee who lead us on the floor and in conference, JOHN CHAFEE and MAX BAUCUS also deserve special commendation. This is a voluminous task, and they did an outstanding job of keeping both the big picture and details in focus. I also want to thank other members of the committee, especially Senators SIMPSON and SYMMS, who were worthy adversaries on some issues, but very important contributors to bringing this process to conclusion.

Mr. President, I want to reserve a special honor in this achievement for the members of the staff who have given their lives to this effort over the last 3 years. Particularly, I want to recognize the work of Mr. Jimmie Powell, of the Senate committee staff. We are greatly blessed in this body by those who bring their talent and their conviction to bear on the Nation's business. In Jimmie's case, he brings an extraordinary intellect and a single-minded devotion to the welfare of people. I cannot fully express my admiration for his contribution and my gratitude on behalf of the people of Minnesota and America for his role in bringing this bill to completion.

Mr. President, we are taking a major step toward a healthier America today with the passage of the 1990 Clean Air Act. All Americans can breathe easier, freer and longer because of this bill.

We have established the toughest acid rain program ever proposed: a 10 million ton reduction in sulfur dioxide. This will mean cleaner lakes and bluer skies. In Minnesota, this has special significance for our lakes, which are much a part of our lives and our heritage. The Boundary Waters Canoe Area, one of the jewels of our national park system, will be protected and remain pristine because of the passage of this bill.

For the first time, we have placed tough national standards on emissions from municipal and commercial incinerators and put strict controls on any

emission of 189 toxic air pollutants, compounds that cause cancer in half a million Americans. I am proud to have drafted this section in the Senate bill and to have it in the final bill. This removes a major health threat to Americans. I am hopeful that early next year, in the RCRA reauthorization, we will enact the companion ash and recycling provisions from the Senate bill.

For the first time we have enacted a national program to stop accidential chemical releases like the one that killed 2,000 people in Bhopal, India. We have created a investigative agency to study such releases when they occur, to provide information on how we can prevent recurrences, in much the same way that the National Transportation Safety Board prevents accidents by studying them exhaustively when they do happen.

We require oil companies to remove toxic additives like benzine from gasoline, and replace it with clean fuels like ethanol. That means less smog and a new market for 300 million bushels a year for America's and Minnesota's corn. That means cleaner air for all of us, and a much needed spur to America's rural economy.

We put new controls on urban buses to end diesel soot, which plagues motorists and pedestrians alike.

Mr. President, our consumer society, and the technology that serves it, have created health risks for people. Unlike the sixties, when the threats to the environment were as obvious as a discolored river or a blackened sky, today we face insidious threats. We know now that what you can't see can kill you. This bill puts science and technology back to work for people. We can find ways to produce that do not pollute.

A healthier America should be the goal of each of us. It does not come free or cheap. But what we must remember is that we pay a tremendous price today for dirty air, a price we cannot afford.

Mr. President, I would like to describe in some detail four or five of the provisions in the Clean Air Act Amendments of 1990 on which I have been most directly involved. These are complicated programs and some few words of explanation seem appropriate. I would start with reformulated gasoline.

REFORMULATED GASOLINE

Gasoline is a complicated mixture of about 200 different compounds. The exact mixture of these compounds varies over a wide range by brand and grade of gasoline. The variation in the mixture of gasoline can have an impact on air quality. Some gasoline is cleaner from an air quality perspective than other gasoline.

Motor vehicles contribute a substantial portion of the air pollution in the United States. They emit 40 to 70 percent of the pollutants contributing to ozone nonattainment and 90 percent of the carbon monoxide. Vehicle emissions account for 55 percent of the cancers attributable to air toxics and 25 percent of the global warming gases, a carbon dioxide and methane. All of this pollution begins with the fuel and can be affected by the characteristics of the fuel.

Over the 20-year history of the Clean Air Act most of the regulatory effort has focused on the vehicle itself with requirements for new pollution control technology like the catalytic converter or the evaporative canister system. Very little attention has been paid to fuel quality during that same period. Lead has been phased down because it interferes with the operation of the catalytic converter. In other respects fuels have actually become dirtier in the last 20 years. The octane provided by the lead was replaced with octane from aromatic hydrocarbons which are toxic and have other negative air pollution effects. And the volatility of gasoline has increased dramatically causing increased evaporative emissions.

The bill reported by the committee addressed some fuel quality issues. It banned lead completely. It reduced fuel volatility. It required oxygen additives in carbon monoxide nonattainment areas. And it required detergent additives to prevent deposits in fuel and engine components.

But it is possible to accomplish much more pollution reduction by focusing on the fuel. The most aggressive approach is to require alternative fuels like methanol, ethanol, compressed natural gas and electricity in the most severe nonattainment areas. These fuels would be used in new vehicles designed for that purpose. President Bush proposed an alternative fuels program in his clean air bill. The Senate adopted an alternative fuels program which applied to new cars in nine cities and in fleet vehicles.

A less aggressive, but equally important step, is to clean up the gasoline that is used by the cars which are out there already. This strategy has come to be called reformulated gasoline. The oil companies became seriously interested in it only after the President proposed an alternative fuels program. For instance, ARCO has begun to sell a reformulated gasoline which it calls EC-1 in southern California. And consumers will see television ads for other brands claiming environmental benefits.

Senator DASCHLE offered an amendment to require reformulated gasoline when the Senate was considering the bill. It was adopted overwhelmingly. The House adopted even stronger provisions. The conferees now return to the Senate with reformulated gasoline provisions that are tough, but workable. They are phased in over a reasonable time period, they provide flexibility for compliance, but they also require steep reductions in hydrocarbon and toxic emissions.

Let me briefly summarize the elements of this program, after discussing the principal health and environmental threats that are posed by gasoline-fueled motor vehicles.

Benzene is a component of gasoline averaging about 2 percent of the volume. It was a smaller portion of gasoline before lead was removed. It is a known human carcinogen. It is the most widely dispersed air toxic causing about 15 percent of the cancers attributable to air toxics. Risks from benzene exposure reach 1 in 1,000 in urban corridors; 50 percent of the mobile source benzene emissions come from benzene in the fuel and 50 percent come from the transformation of other aromatics to benzene when they are burned.

Aromatic compounds are a substantial portion of gasoline fuel. They average 32 percent of the volume but in premium fuels may reach up to 54 percent by volume. Aromatic compounds include benzene, toluene and xylene. All three are air toxics listed in title III of the bill. They contribute to ozone formation with xylene being especially reactive. Fuels high in aromatics cause deposits in the combustion chamber of engines interfering with combustion and increasing emissions. Aromatics have a higher carbon content than the rest of gasoline, so gasoline high in aromatics contributes more to global warming. Aromatics had been only about 20 percent of the fuel in 1970 but percentages have increased substantially because the aromatics have been used to replace the octane that was lost as a result of the lead phasedown. Oxygenate fuels could be used in lieu of aromatics to provide the octane.

Adding oxygen to the fuel improves combustion. The principal benefit is to reduce carbon monoxide formation. But it also reduces the amount of unburned hydrocarbons in the exhaust. And the alcohols and their combustion byproducts are less toxic than the aromatics they would replace as octane enhancers.

Gasoline fuels may also include detergent additives which prevent deposits in the fuel system, in the carburetor or fuel injector and in the combustion chamber. Deposits increase emissions by interfering with combustion. These desposits also reduce fuel economy increasing the cost of transportation to the vehicle owner and increasing CO_2 emissions to the atmosphere.

The reformulated gasoline program included in the conference agreement begins in 1985. It will apply in the nine cities with the worst ozone nonattainment problems that have populations above 250,000. Other cities may elect to join the program at any time begin-

ning in 1995. The Administrator may waive the effective date of the program if there is not sufficient domestic capacity to produce reformulated gasoline to meet the demand in all of the cities that elect to join the program. All of the gasoline sold in the nine worst ozone nonattainment areas and in the cities that elect to participate is to be reformulated gasoline.

There are certain elements of the gasoline formula and its emissions characteristics that will be required for every gallon of reformulated gasoline that is sold. First, it must have a benzene content not exceeding 1 percent volume. Second, the gasoline is to contain no heavy metal additives like lead or manganese. These provisions are included to reduce the toxic emissions from motor fuels and automobile tailpipes.

Third the reformulated gasoline is to have not less than 2 percent oxygen by weight. This requirement can be met by blending gasoline with a variety of additives like ethanol or MTBE. Oxygen in the fuel reduces carbon monoxide emissions and tailpipe emissions of hydrocarbons. The alcohols and ethers which are used to provide oxygen are also relatively nontoxic compared to the other components like lead and aromatics which have been used to increase octane.

Fourth, reformulated gasoline is not to increase emissions of oxides of nitrogen from levels which would have occurred without its use. NO_x, as it is called, contributes to ozone pollution and to acid rain. We don't need a formula for gasoline that addresses one environmental problem while making another worse. That is the reason for the NO_x cap.

Whether a reformulated gasoline causes increased NO_x emissions is to be determined by comparing emissions from a sample of model year 1990 cars burning a baseline gasoline that is specified in the bill and the reformulated gasoline. If NO_x emissions do not occur, than the reformulated gasoline meets the test.

Both aromatics and oxygenates may increase NO_x emissions. The general theory of this reformulated gasoline program is that aromatics will be decreased and oxygenates will be added with offsetting impacts on NO_x emission. Blended properly this theory can be implemented in practice without any increase in NO_x emissions. However, if it turns out to be technically infeasible, the administrator is given authority to adjust the oxygen requirement. Looking at the question of technical feasibility, I would point out that the aromatic content of gasoline can be reduced substantially below the 25 percent level with technically feasible measures. The Administrator is to adjust aromatic levels, first, and to the extent technically feasible before any adjustment to the oxygen requirement in the formula is modified. The aromatics level specified in the bill is a cap not a floor with the level of technically feasible aromatics reductions well below the cap.

In addition to these four elements, the Administrator is also to promulgate a rule that all gasoline sold nationwide, including reformulated gasoline in the nine cities, is to contain an additive or additive package that is effective in preventing deposits in engines and fuel systems. This requirement is to be effective in 1995. Like the requirement for benzene, heavy metals, oxygenates and the cap on NO_x emissions, it is effective year around.

So, that is one element of the reformulated gasoline program—flat requirements that apply year around to every gallon of gasoline sold in the nine cities and the cities that elect to join the program.

A second element of the program imposes performance standards on emissions from vehicles using the gasoline. And there is a complicated system applying any one or a combination of three requirements. The three requirements that are to be considered include an emissions reduction for volatile organic compounds, an emissions reduction for air toxics, and a specific formula for gasoline components.

The VOC reduction requirement is 15 percent in the year 1995. The reduction is measured in the mass of emissions comparing emissions from model year 1990 vehicles burning a baseline gasoline that is specified in the legislation and the same vehicles burning any proposed reformulated gasoline that a refiner, importer or marketer wants to distribute in the nine cities or other cities participating in the program. The VOC reduction requirement is to be increased in the year 2000. The target for that year is a reduction of 25 percent. The Administrator may set a lower level of reduction but not less than 20 percent, if the Administrator determines that 25-percent reduction is infeasible. The Administrator is also to consider larger reductions in VOC emissions for the year 2000 and after. If larger reductions are feasible, taking cost into account, the Administrator is to require them.

Taking cost into account means comparing the cost per ton of the VOC reductions achieved by a reformulated gasoline requirement with the cost per ton of reduction for other measures which are adopted or planned for the control of VOC's in the nine cities. If reformulated gasoline is within the same range it should certainly be considered cost effective.

The 1995 and 2000 reduction requirements are to be put into place, unless the administrator determines that a reformulated gasoline meeting a formula specified in the bill can achieve greater reduction in the mass of emissions. This comparison needs some explaining because it is a complicated test. The so-called formula gasoline would have a benzene content of 1 percent, an aromatics content of 25 percent, no lead, a detergent additive, and an oxygen content of 2 percent. In other respects, the gasoline is to be the same as the baseline gasoline defined in the bill. If the Administrator determines that this formula gasoline achieves a reduction in VOC emissions of greater than 15 percent in 1995, the Administrator is to require that the formula gasoline be used. That is clear.

But beginning in the year 2000, the Administrator can adjust the VOC performance standard up or down for feasibility. If the formula gasoline gets more than a 20 percent reduction, a reduction of at least the level the formula gasoline can achieve should be specified. It could be a higher level, if some other formula that is feasible achieves greater reductions.

It is unlikely, in my view, that a gasoline meeting the baseline specifications modified to reflect the legislated formula will achieve dramatic VOC reductions. If I am correct the VOC performance standard will be in place beginning in 1995 and after the year 2000, the Administrator will be called upon to select that set of specifications for gasoline which are feasible and which attain the greatest VOC emission reduction, but not less than a 20 percent reduction.

There is a second test here. That is a comparison of the so-called formula gasoline with a toxics performance standard. The standard is similar to the VOC standard, a 15-percent reduction in 1995 and a greater reduction in the year 2000 with a target of 25 percent and authority to adjust up or down for feasibility. This test works independently from the VOC performance standard.

If the Administrator finds that the formula gasoline as specified in the bill gets a greater toxic reduction than 15 percent in 1995, the Administrator is to specify the formula as a component of any reformulated gasoline that is certified. After the year 2000, the Administrator is to select a formula which is feasible and which achieves the greatest reduction in toxic emissions which is achievable.

The bill includes a definition for toxic air pollutants which is the aggregate emissions from a vehicle of five specific pollutants: benzene, butadiene, polycyclic organic matter, acetaldehyde and formaldehyde. If one looks at emissions of these pollutants from cars on the road today, benzene makes up the largest portion of the mass. The so-called formula gasoline which contains a cap on benzene at 1 percent and a cap on aromatics at 25

percent should achieve substantial reductions in the aggregate emissions of the 5 pollutants, probably well beyond the 15-percent standard. If so, the Administrator would require that all reformulated gasoline in the nine worst ozone nonattainment areas with populations above 250,000 would satisfy the formula requirements. And if my reading of the evidence on VOC reductions is correct, this gasoline will also be required to meet a VOC performance standard which requires a 15-percent reduction in emissions.

After the year 2000, the situation is different because the Administrator is to choose the performance standard for toxics which reflects the maximum reduction in toxic emissions that is feasible taking cost into account. The formula gasoline may well achieve a reduction in toxics which exceeds 20 percent, and if so whatever it does achieve would be a floor for the performance standard after the year 2000. In this Senator's view controls on benzene and aromatics more stingent than those in the formula gasoline are certainly feasible, in fact, gasoline sold in the 1970's had lower aromatics and benzene levels. Therefore, one would expect that the toxic performance standard and not the formula would be the controlling requirement after the year 2000.

There is one final complication that needs to be addressed and that is the equivalency provision from the House bill which was adopted by the conference committee. This allows any refiner, blender, importer or marketer to certify a gasoline which meets the flat requirements that apply to every gallon—benzene not greater than 1 percent, oxygen not less than 2 percent, no increase in NO_x emissions and no heavy metals—and also meets the performance standards for VOC and toxic reductions.

As I noted a moment ago, one can foresee a circumstance in which the combination of requirements applicable in 1995 is the formula, rather than a toxics reduction, combined with a VOC reduction. This is likely since the formula gasoline gets little VOC improvement but achieves substantial reductions in benzene emissions. The equivalency provision would allow a refiner or marketer to sell a gasoline other than one meeting the specific formula, if that gasoline achieved greater reductions in toxic emissions than did a formula gasoline and if the alternative gasoline also met the VOC reductions requirement. Looked at from this perspective, the formula becomes a defacto performance standard which between 1995 and 2000 might well be greater than the 15 percent reduction specified in the bill.

Two final points need to be made with respect to this very complicated program. The performance standards and the formula stated explicitly in the legislation are only minimum requirements. Paragraph (1) of the reformulated gasoline provision clearly states that:

> Such regulations shall require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

This authority is independent from the formula and the performance standards. Proper implementation of this authority will require the Administrator to look at more than the formula, at the performance standards and the equivalency provision to determine whether additional measures would increase emissions reductions and are achievable.

Finally, this legislation includes credit systems to facilitate compliance in the most cost effective manner. The credit system is a very significant threat to enforcement and may well mean massive noncompliance as we have experienced with other rules applying to the oil and petroleum marketing industries in the past. I have in mind the price and allocation rules of the 1970s. The lead banking rules. And the recent report on compliance with octane labeling requirements. This program would take aggressive enforcement to work in any event, and is made doubly difficult by the credit provisions.

Beyond the fundamental problem, one important ambiquity in the legislation needs to be clarified. Credits can only be earned and used during the periods when requirements are applicable.

As an example, consider Los Angeles which is a nonattainment area for both ozone and carbon monoxide. In that city, an oxygen requirement of 2.7 percent will apply during at least 4 winter months and a level of at least 2 percent will apply during the rest of the year. The credit system cannot be operated in such a way that credits earned for exceeding the 2 percent outside the carbon monoxide season can be used to offset the 2.7 percent requirement during the carbon monoxide season.

Furthermore, offsets must always be in hand before any gallon not in compliance with the oxygen, benzene for aromatics requirements is sold. There is no time period over which the average is determined. Rather, credits must be in hand to offset any fuel sold which is not within the specifications.

MUNICIPAL WASTE COMBUSTION

Mr. President, one of the most difficult issues in this legislation has been the solid waste combustion or municipal incinerator provisions of title III. The bill as passed by the Senate contained authority for EPA to set air emissions standards from incinerators, an ash management and disposal program and a requirement that cities building incinerators achieve a 25 percent recycling rate.

This legislation was strongly opposed by the environmental community which saw it as a green light for municipal incineration. They have staged demonstrations, circulated petitions, marched the Halls of Congress and raised money door-to-door to demonstrate their opposition to these provisions.

I think our friends in the environmental community are deeply misguided on this question. And those in the Congress who followed their lead, I fear, did not give the question sufficient independent thought to come to a reasoned decision.

The environmental community opposed the incinerator legislation for three principal reasons. First, it classifies incinerator ash as a special waste; they want ash treated as a hazardous waste under subtitle C waste of RCRA.

Second, they think Federal air and ash standards will encourage more communities to turn to incineration as a way to solve their solid waste problems; they would like a moratorium on new incinerator construction.

Third, they think the recycling provisions included in the bill are too weak; they want mandatory recycling at a relatively high percentage—50 percent—of the waste stream.

That is their agenda and they are not prepared to consider any compromise to protect public health with more modest programs and provisions until this environmental utopia is in place.

For a Senator to fairly evaluate this agenda takes some understanding of the current regulatory situation and the history of the legislation.

The committee began work on municipal incinerator legislation in 1987. At that time, EPA was not prepared to regulate the air emissions of these facilities. In addition, EPA was about to classify incinerator ash as a nonhazardous subtitle D waste. The clean air bill reported in 1987 included stringent air pollution standards and as ash management regime similar to the structure of subtitle C of RCRA for hazardous waste.

The regulatory situation has changed significantly, since the committee began this effort. EPA was sued by NRDC in the 1987 to force the promulgation of standards for air emissions from municipal incinerators. Those standards were finally proposed last December and are expected to be promulgated at the end of this year. They are not as protective as the standards which the committee has sought in legislation, but it is a credi-

ble effort. The amendment offered by Senator DOLE here on the floor, which became the Senate provision, modified the committee-reported bill, so that is builds upon the EPA proposoal strengthening it in several ways.

EPA's air emissions regulations also include provisions requiring that 25 percent of the waste stream be separated and not sent to the combustor. This requirement is intended to encourage recycling of 25 percent of the waste stream. But it is not a recycling requirement. The Clean Air Act does not give EPA the authority to require recycling. The most they could do is reduce the waste stream to be burned by 25 percent.

On the ash side of the equation, NRDC and EDF also sued two incinerator oprators arguing that they were generators of hazardous waste and were in violation of RCRA subtitle C by not handling their ash as a hazardous waste. Again just after the committee reported its legislation last fall, two Federal district court judges dismissed the environmental suits finding that ash from municipal incinerators is exempt from subtitle C regulation under RCRA. Section 3001(i) of the law specifically excludes waste combustors, and according to the courts the ash they produce, from Federal hazardous waste regulation. As a result, ash is an unregulated waste under current law.

Members who were sponsoring the incinerator provisions of the Clean Air bill believe that it was better than the current regulatory situation which I have just described in the following ways:

It included a strict ash management regime that in most respects paralleled the hazardous waste management regime under RCRA. Without that bill there are no Federal regulations that apply to ash disposal and reuse.

It mandated actual recycling, not just source separation for each city with an incinerator. The EPA proposal could be satisfied by landfilling 25 percent of the waste stream.

It required air emission standards for several pollutants including mercury not covered by EPA's rules.

It applied to hospital incinerators—of which there are 4,500—and other classes of incinerators and not just municipal incinerators of which there are 200.

It will require scrubber retrofits at many existing units to meet standards. EPA's rule only requires scrubber retrofits at 12 units. Scrubbers are a crucial technology in controlling the dioxin emissions that are the principal health threat from incinerators.

Compare those immediate advantages to the environmentalist agenda: ash is a hazardous waste; recycling at rates exceeding 50 percent; and moratorium on new incinerator construction. That's not a realistic agenda. There is no chance that Congress will do any of those things in the near future. So, you have a classic case of some folks blocking the legislative process because it can only produce a good bill, not the best bill, as seen by their lights.

The Senate conferees ultimately proposed that recycling and ash management be dropped from the conference report. And they were dropped. We have a good strong program to control air emissions. But no program for ash and recycling.

And we will see how it turns out. If RCRA flounders for years—if RCRA goes without a recycling mandate—and no bill other than this incinerator bill has been introduced in Congress that actually mandates recycling) if the Ash Management Program ultimately adopted is significantly weaker, then we will have missed a great opportunity in this conference.

I am disappointed that we didn't get a whole program. I feel especially disappointed for the county and city officials who worked with us over such a long period to produce a good incinerator program. The process has dealt those folks an outcome that is unfair and unwise. And I will do what I can in the next Congress to address the wrong that has been done here.

The new source performance standards which EPA has proposed for municipal incinerators include provisions for the control of acid gas emissions. Some units are required to install scrubbers. Some units would be required to use sorbent injection or other technologies. Those proposed rules reflected the authorities which are available to the Agency under section 111. We are providing a new basis for standard-setting in this bill. This new authority may very well mean that the scrubber requirement will apply to more subcategories of incinerators than EPA has proposed. We, therefore, mandate that EPA reconsider the decision for subcategories that were not required to have scrubbers in the proposed rules and we delay the promulgation date for the small units, so that EPA might fully evaluate this question.

URBAN BUSES

This bill establishes new requirements for urban buses to control the diesel particulate pollution which is the bane of every big city in America.

The President's bill proposed that urban buses in all cities with populations above 1 million be converted to alternative fuels like methanol and natural gas. I was very much in favor of that proposal. Diesel particulate emissions account for a very substantial portion of the cancer risk associated with airborne toxics.

This proposal was strongly opposed by the transit agencies at the local level and by the companies which have been developing pollution control systems for diesel engines. They asked that rather than impose an alternative fuel requirement, the Congress instead set a very clean standard and let any technology which can achieve the standard be used. That policy was incorporated in the House bill.

That sounds like a most sensible policy. But there are problems with that approach. The fundamental problem is that EPA has no program to assure that the standards would, in fact, be met in use. There is no recall testing program for heavy duty engines. So a failure of a particular technology, like diesel particulate traps, would not be detected.

A second problem is that engines used in buses are not certified, that is tested before manufacture for compliance with the standards, on operational cycles reflecting the way in which buses are actually used.

We tried to address these issues in a compromise urban bus program included in the conference agreement. It starts with the House bill. EPA is to consider an urban bus standard that is 50 percent more stringent for particulates than the standard that would otherwise apply. This standard will go into place if it can be met by any technology and fuel system that is available for use in urban buses. If it can be met by natural gas, but can't be met by diesel, then we will have natural gas buses beginning in 1994 under this part of the compromise. If a 50-percent reduction cannot be met by any technology, then EPA can back the standard off to a 30-percent reduction.

The compromise also addresses the problems which caused the Senate to prefer an alternative fuels standards. Buses will be tested, both for certification and for recall, to assure that they are meeting the standard for operating cycles which actually reflect the driving patterns of urban buses and to assure that those standards are met in use. If the bus manufacturers select a compliance strategy that relies on diesel engines and diesel traps and that technology does not meet the standard in use over the full useful life of a bus as determined by tests reflecting the actual operating conditions of urban buses, then buses that fail the standard will be subject to recall for correction and the Administrator will be required, 3 years after the failure is determined, to impose a low polluting fuel standard which does not permit the use of diesel fuel in large cities and may impose such a standard for buses in all cities.

HAZARDOUS AIR POLLUTANTS

There are two kinds of pollutants regulated under the Clean Air Act. One group, called criteria pollutants, are emitted in millions of tons and are air pollution problems across broad regions of the country. There are six criteria pollutants including sulfur diox-

ide, carbon monoxide, lead, zone, nitrogen dioxide, and particulates. EPA sets ambient air quality standards for each of these pollutants and States must take actions to assure that the standard is not exceeded. This hearing is not about criteria pollutants.

The other kind of pollutants are called hazardous air pollutants or air toxics. They are generally cancer-causing substances, but other health and environmental problems may also be caused by toxics.

There are hundreds of air toxics of concern. Some examples are mercury, arsenic, asbestos, benzene, radionuclides, trichloroethylene.

OSHA regulates 500 toxics in the workplace. A few States with active programs have regulated a total of 708 different air toxics. Recently major manufacturing facilities were required to report their air toxics emissions. The total for the firms reporting was 2.7 billion pounds per year. That is estimated to be about one-fifth of all emissions.

Under the Clean Air Act, EPA is to regulate these toxics by setting emissions standards limiting the amount of the pollutant that can be emitted by any particular source. The standard is to be set to a level which "provides an ample margin of safety to protect public health."

The law has worked poorly. In 18 years, EPA has regulated only some sources of only seven chemicals. One reason the law has worked poorly is the standard of protection required. "An ample margin of safety" has been interpreted by many to mean zero exposure to carcinogens, because any amount of exposures may cause a cancer. EPA has not been willing to write standards that tough because they would shutdown major segments of American industry. The legislation to be proposed and described to be considered at the hearings would entirely restructure the existing law, so that toxics might be adequately regulated by the Federal Government.

On April 12, 1989, EPA issued its toxic release inventory compiled from reports required by the Emergency Planning and Community Right-to-Know Act of 1986. The EPA data indicated that toxic releases to the air from major manufacturing facilities were approximately 2.7 billion pounds in 1987. The largest amounts of emissions were in Texas—240 million pounds, Ohio—173 million pounds, Louisiana—138 million pounds, Tennessee—135 million pounds, and Virginia—132 million pounds.

Chemicals most frequently released included toluene, ammonia, acetone, methanol, carbon disulfide, trichloroethane, methyl ethyl ketone, xylene, dichlormethane and chlorine. Actual emissions are likely to be 2 to 5 times higher, as the reporting requirements only applied to a fraction of the sources which are known to emit toxic pollutants.

In a 1985 study examining the potential cancer-causing effects of exposure to air toxics, EPA estimated a national annual cancer incidence of approximately 2,000 cases as the result of exposure to some 15 to 40 toxic air pollutants. This would mean that 140,000 of the Americans now alive—2,000 annually x 70 year life span—might be expected to contract cancer from exposure to air toxics. Again, this estimate may be low as a much larger number of air pollutants have been identified as potentially toxic.

In 1987, the South Coast Air Basin—southern California pollution control agency—released a study on ambient concentrations of approximately 20 air toxics in the Los Angeles area. Based on that data and extrapolating to the whole Nation, cancer incidence attributable to toxic air pollutants was projected to be as high as 500,000 cases for those Americans now alive.

Another aspect of the air toxics problem is the very high risk of health problems experienced by individuals living near large industrial facilities or in highly developed urban corridors. EPA has examined cancer risks at more than 2,600 industrial facilities across the United States as part of its effort to promulgate air toxics regulations. At more than one-quarter of these facilities, toxic emissions produced cancer risks greater than 1 in 10,000—that is 1 additional cancer for each 10,000 persons exposed—for people living nearest these plants. If these sites were abandoned waste dumps, risks of that magnitude would qualify them for cleanup under the Federal Superfund Program.

The 1987, South Coast Air Basin study found cancer risks in the Los Angeles area for the mix of air pollutants from industrial sources, highway fuels, and small business to exceed 1 in 1,000. Based on the actual ambient concentrations recorded as part of the study, cancer deaths in the area were projected at 222 per year.

Beyond the cancer and other adverse health effects caused by exposure to air toxics, these air pollutants also cause widespread environmental degradation. It is estimated that a large percentage of the toxics in the Great Lakes—up to 80 percent of the toxics in Lake Superior—are deposited from the air rather than from surface runoff. Lakes all across the northern tier of States are now posted with warnings for pregnant women and children because of high mercury levels in fish attributable to mercury emissions from coal-fired powerplants.

In addition to these routinely occurring emissions, another aspect of the toxic problem is the sudden and potentially catastrophic chemical accident. In August 1988, EPA prepared an update of its Acute Hazardous Events Data Base—which was released on April 8, 1989—covering 11,048 events in the United States involving the accidental release of extremely hazardous substances between 1982 and 1986. These events caused 309 deaths, 11,341 injuries and the evacuation of 464,677 people from homes and jobs. Evacuation information was only reported for about one-half of the recorded events, so the actual figure may be much higher.

As part of its work on the accident database, EPA analyzed 29 events with the highest potential for damage to health and the environment. These events were compared to the release at Bhopal, India which killed 3,000 and injured over 200,000. Considering only the toxicity and volume of the chemicals released in the 29 U.S. events, 17 of these events had the potential for more damage than Bhopal and all 29 had a potential of 50 percent or more of the Bhopal effects. That few were killed or injured in these accidents—650 people were injured in one event and 5 killed in another—is due principally to the location of the facilities and climate and operating conditions at the time of the release.

Section 112 of the Clean Air Act adopted in 1970 requires EPA to list each hazardous air pollutant which is likely to cause an increase in death or serious illness. Within a year after listing EPA is to establish emissions standards which would apply to sources of the listed pollutant providing an ample margin of safety to protect public health.

In the 18 years of administering section 112, EPA has listed only eight pollutants: Mercury, beryllium, asbestos, vinyl chloride, benzene, radionuclides, inorganic arsenic, and coke oven emissions. No standard has been promulgated for coke oven emissions and for many of the other pollutants only a few of the source categories emitting the substance are actually regulated. There is only one standard for benzene, while sources in several categories contribute significant emissions. Mercury is a listed substance, but mercury emissions from powerplant boilers—exempt from standards—are contributing to high mercury levels in the flesh of fish taken in the Great Lakes region.

While EPA has listed only eight substances for regulation, a handful of States with active air toxics programs developed on their own have set standards for 708 substances. In 1983, and upon his return to EPA, William Ruckelshaus committed to make decisions within 1 year on approximately 25 toxic air pollutants that had been under review since 1977. Subsequently, EPA decided that 14 of the substances did not require regulation, that 10 may be listed at some point in the

future, and that one—coke oven emissions—was to be listed.

In 1985, EPA announced a new air toxics strategy shifting the focus from the regulation of hazardous air pollutants under section 112, to actions under other laws and by the States. The 1985 strategy elevated concern for emissions from the small, areas sources like automobiles, dry cleaners, small combustion units, and so on. One action announced in the strategy has been completed—a new source performance standard for wood stoves, but few of the other elements proposed have been implemented.

In 1987, the Court of Appeals for the District of Columbia reviewed decisions made by EPA with respect to vinyl chloride emissions. As with actions on other standards, EPA had considered cost in a decision to withdraw vinyl chloride standards that had been proposed during the Carter administration. The court found that cost cannot be considered when establishing a safe level of exposure to toxic air pollutants. It is only in determining the margin of safety that EPA is authorized to consider cost and other factors. Because cost has been considered in several of the other hazardous pollutant standards established by the Agency, 5 of the 7 standards that has been issued will be reconsidered. The first proposed revisions for benzene and radionuclides are due in August of 1989.

Recently, EPA began consideration of a new air toxics strategy that would shift the focus from individual pollutants to source categories. The Agency has screened some 900 pollutants and 360 source categories to establish priorities for regulation, identifying 27 source categories for high-priority review. But the legal status of such a policy is in doubt, since the current law requires pollutants rather than source categories to be listed and also requires all sources of every listed pollutant to be controlled. Regulation of high priority source categories would necessarily trigger actions on other sources of lower priority hampering the efficiency of a program already short on resources.

The 1985 air toxics strategy also included a new planning program for emergency response to events like the tragedy which occurred at Bhopal, India. The program included a listing of 402 extremely hazardous substances which might be involved in chemical accidents causing death or injury. The program was eventually incorporated in the Emergency Planning and Community Right-to-Know Act of 1986. With EPA guidance States have identified local planning areas and established emergency planning committees to prepare for response to chemical accidents.

The air toxics problem can be divided into three parts: First, everyday, up-the-stack and fugitive emissions from major sources like chemical plants, petroleum refineries and manufacturing facilities; second, everyday emissions from small, but numerous sources like cars and trucks, drycleaners, gasoline stations, wood stoves, and pesticide applications; and third, accidental, catastrophic releases of extremely hazardous substances which may cause immediate death or injury.

The bill would establish a list of 189 hazardous air pollutants. Any source emitting any one of these pollutants in quantities greater than 10 tons or any combination greater than 25 tons is classified as a major source and subject to regulation under the bill.

In addition to the list of pollutants, EPA is to establish a list of source categories for purposes of promulgating standards. The standards apply to sources in a category (refineries, smelters, boilers, incinerators, chemical plants, cotton gins, POTW's, coke ovens), rather than to pollutants. There may be 250 source categories.

For each category of sources, EPA will promulgate a standard which requires the installation of maximum achievable control technology [MACT] by the sources in the category. In setting MACT standards, EPA is to give priority to pollution prevention measures like process changes and materials substitution. Standards for all source categories are to be promulgated within 10 years, with standards for 40 source categories to be issued within 2 years. Existing sources must comply with MACT standards not later than 3 years of promulgation.

It may be that the MACT technology-based standards will not reduce emissions sufficiently to remove all risks to health and environment of concern. If significant risks remain, EPA is to tighten the standards 8 years after the initial MACT standard is promulgated. For carcinogens, EPA is to promulgate standards if the person most exposed to emissions from a source faces a risk exceeding 1 in 1,000,000.

Area sources are the small, but possibly numerous sources, of toxic pollutants. Although the risks from each source are small, EPA believes that in the aggregate they may cause as much as 75 percent of the cancers in some urban areas.

The area source program in the bill works off the same list of approximately 200 substances. The Administrator can also list an area source category just as he would a major source category and require installation of maximum achievable available control technology.

But for some sources this standard may be too costly, in which case the Administrator would likely not list the source category and no control would result. So the bill establishes an alternative area source control program that asks the Administrator to prepare a national urban air toxics strategy to reduce the risks from area sources. EPA is to monitor for a broad range (400) air toxics in several urban areas to better identify the area source problem. Five years after enactment of the bill, EPA is to propose a national urban air toxics strategy that will significantly reduce risks from toxics in urban areas by controlling the area source categories presenting the greatest risk and which account for 90 percent of the emissions of the 30 pollutants on the list which cause the greatest public health risk as the result of area source emissions.

EPA will report on the reductions achieved by the area source program at 8- and 12-year intervals.

The bill also contains a program to prevent chemical accidents. The purpose of this section of the bill is to prevent accidents like that which occurred at Bhopal and require preparation to mitigate the effects of those accidents that do occur.

The bill establishes as a general duty of the owner or operator of each facility handling extremely hazardous substances to operate a safe facility free from potential chemical accidents which may threaten public health and safety.

EPA is to publish a list—in addition to the list of hazardous air pollutants—of at least 100 substances including those which are most likely to cause death, injury or evacuation in the event of an accidental release. Approximately 20 substances are listed in the bill. Facilities handling extremely hazardous substances in more than threshold amounts are subject to various requirements under the bill.

The bill establishes a five-member Board to investigate chemical accidents which cause death, injury or severe property damage. The authorities and activities of the Board are similar to those exercised by the National Transportation Safety Board. The Board is to detemine the probable cause of each chemical accident under its jurisdiction (those at fixed facilities) and to make recommendations to EPA on measures that might be adopted to reduce the risk of accidents. The Board would have no regulatory authority of its own except the authority to require reports from the owners of sources which experience accidents.

EPA is authorized to promulgate accident prevention, detection and correction regulations including requirements for design, operation, maintenance and training at facilities handling extremely hazardous substances. These regulations would generally be issued in response to recommendations for safety improvements made by the Board. The regulations will also require the owners of sources which handle listed substances to conduct

hazard assessments and to prepare and implement risk management plans that will be effective in preventing accidents.

The Administrator of the Environmental Protection Agency could issue orders to mitigate the potential for accidents at particular facilities and seek enforcement of the orders in U.S. district court. The order authority would be available whenever conditions at a facility presented the threat of an accidental release that would cause an imminent endangerment to public health.

DEFINITION OF MAJOR SOURCE UNDER SECTION 112

The conferees have agreed on a comprehensive new program to control toxic air pollutants. It is important that this program get off on the right foot with a clear understanding of congressional intent on many of the important details of the title III provisions.

In this connection, the Senate managers take note of the fact that after the 1977 amendments to the act, there was much unnecessary confusion, delay, and litigation over the meaning of the terms "source" and "major source." These definitions are important because the requirements of section 112 apply to "sources" and "major sources." If the definitions we are about to enact are later misconstrued, then the scope and effect of title III's provisions will be distorted from our intent.

The potential for such distortion is apparent in a draft paper prepared by the Environmental Protection Agency entitled "Definition of Source: Range of Alternatives," which I will quote at length this morning. The paper reviews a number of potential interpretations of these definitions. Some of these interpretations match the intent of the managers, but others do not. The managers believe it is useful and necessary to review the alternatives set forth in the EPA paper and indicate clearly which interpretations of these terms are intended, and which are not intended and not permissible.

First, the EPA paper posits two alternatives for applying the 10-ton and 25-ton cutoffs in the section 112 definition of the term "major source." Section 112(a)(1) of the bill says that major source means "any stationary source or group of stationary sources within a contiguous area and under common control that emits in the aggregate, or has the potential to emit considering controls, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants."

In alternative 1(a), the EPA paper states that if "the emissions from the entire site", including "all emission sources of listed pollutants on the commonly owned plant site," are at least 10 tons per year of a listed pollutant or 25 tons per year of a combination of such pollutants, then the entire site is a major source and is subject to regulation. The test is: Do the total emissions from the entire site combined meet or exceed the applicable amount? The managers agree that this is the correct interpretation of the term "major source."

The managers reject alternative 1(b), also posited by the EPA paper. Under this interpretation, whether a plant is a major source would be determined by looking at only those emission sources within the site for which a MACT standard has been promulgated. As the EPA paper notes: "Fewer emissions will be regulated under this alternative." The paper also states that "the proposed legislative language doesn't seem to sustain this alternative." The paper is correct, and we reject this alternative in favor of alternative 1(a).

The next issue addressed by the EPA paper concerns the application of MACT standards to affected parts of an industrial plant within an entire site. The question is: When determining if a MACT standard applies to such a part—for example, a coke oven battery within a steel mill—is the agency to look to the emissions of the entire site, or to the emissions of the individual affected part?

The managers' intent is reflected in the EPA paper's alternative 2(a), which states that where the entire site is a major source, "any portion thereof to which a MACT standard applies is subject to that standard regardless of the total emissions from that portion."

The paper gives the following example. Consider a coke oven emitting 9 tons per year, located within a steel mill that, taken as a whole, is a major source; for example, it emits at least 10 tons of one pollutant or 25 tons of a combination of pollutants. In this case, the coke oven is subject to the MACT standard for coke ovens even though its emissions, considered alone, are less than 10 tons per year.

This is the correct interpretation. The managers reject the opposite interpretation, alternative 2(b), posited by the paper, which would exempt the 9-ton emitting coke oven battery located wihtin a major source from the applicable MACT standard. As the EPA paper notes: "This alternative would result in less coverage of toxic emissions." It is contrary to our intent and not a permissible interpretation.

The third question addressed by the EPA paper is whether all parts of an entire site must be subjected to MACT standards at the same time. Section 112 provides for issuing MACT standards for all categories and subcategories on a schedule of 2, 4, 7, and 10 years after enactment.

The EPA paper poses two alternatives. As stated in alternative 3(a):

> MACT standards shall be focused on a specific portion of a contiguous facility, which might range from an identifiable subcategory of the facility (e.g., a coke oven) to the entire contiguous facility (e.g., an ethylene oxide sterilizer). The entity covered by MACT would be defined at proposal of the standards. * * * This alternative may result in earlier regulation of some source categories of a complex comprised of multiple source categories, while some other source categories may not be regulated until as much as 10 years after enactment."

Alternative 3(b) states that MACT standards must be focused on entire plant sites, and must simultaneously address "all emission sources of listed pollutants located at the contiguous facility".

The intent of the managers is that alternative 3(a) is the correct interpretation. In some instances; for example, ethylene oxide sterilizers, entire major sources will have similar configurations at different sites. In those cases, it will be practical to cover the whole major source within a single MACT standard. In contrast, many plants which emit the listed hazardous air pollutants are composed of discrete pollution-emitting units or activities which, like building blocks, are assembled in differnt combinations at each major source. As in the paper's example, an automobile production complex may contain a coke oven battery, a foundry, chromium electroplating facilities, painting facilities, and so forth. These facilities may be found in different combinations within other automobile production plants, or within other types of plants.

For these types of plants it reflects our intent for EPA to set MACT standards for logical parts of major sources, provided that priority is given to the largest emitters and the most dangerous pollutants, and provided all parts of each major source are subject to a MACT standard within the 10-year schedule. By analogy, seeing an entire plant site as a jigsaw puzzle, there must be a MACT standard to cover each piece of that puzzle. EPA may not leave parts of the puzzle uncovered by a MACT standard.

The approach set forth in alternative 3(b) would defeat the purpose of setting MACT standards on a categorical basis. Since relatively few plants are sufficiently alike, defining the categories as entire major sources would result in a very large number of categories containing just one, or perhaps a few, members.

Wherever practical and consistent with health-protection priorities, however, EPA should establish all the MACT standards relevant to a given industry at one time. For instance, the managers expect EPA to establish MACT standards for most, if not all, source categories within the synthetic organic chemicals industry in 1992. Keeping standards for related source

categories on the same schedule will simplify the task of setting residual risk standards which, as discussed below, must focus on the total risk from all sources located within a major source.

The fourth set of alternatives reviewed in the paper concern source-by-source exemptions from MACT based on risk assessments, a provision contained in the House bill. The authority for such exemptions was not present in the Senate bill, and the House receded to the Senate on this point. The provision was deleted in conference. As a result, the paper's discussion of this provision is irrelevant to the final legislation.

The fifth topic addressed by the EPA paper is voluntary reduction credits. The legislation allows extensions of up to 6 years beyond the otherwise applicable MACT deadline for sources that make emission reductions of 90 or 95 percent for pollutants which are particulates. In this case, the EPA paper asks whether the owner or operator may count emission reductions only from the same part of the contiguous complex to which the MACT standard applies, or whether credit may be taken for reductions elsewhere in the same complex.

Alternative 5(a) states that creditable reductions must come from the same part of a plant site that is covered by the applicable MACT standard. In other words, to gain the extension from a MACT standard applicable to emissions from wastewater treatment facilities at chemical plants, a plant owner must make a 90-percent reduction from the wastewater treatment facility. The owner cannot claim credit for reductions made at another part of the plant. The EPA paper states:

> This view is supported by House language (section 112(g)(B)(i)) which says:
>
> "Any existing source for which the owner [demonstrates 90 percent reduction from the *source* before proposal of an *applicable standard* promulgated pursuant to subsection (3), * * *"

Similar language was adopted in the final legislation.

This interpretation is correct and is the one the managers intend EPA to follow. We reject alternative 5(b), which would allow credit to be taken for reductions made elsewhere within the major source. We agree with the EPA paper that this alternative "would also make the process much more complicated and liable to gaming."

The managers also reject alternative 5(c). The EPA paper posits a source type with several emission points—for example, stack emissions and fugitive emissions. The source category is subject to a MACT standard which applies to any source of that type and specifies emission limitations for each of the emission points within the source. Under this alternative, an owner could obtain an extension from one portion of the standard—for example, the stack emission limit—by making a 90-percent reduction of stack emissions. This action would have no impact on the obligation to meet the applicable limitations for the other emission points covered by the MACT standard; for example, fugitive emissions. The difficulty with this option, as the paper points out, is that by subdividing a source in this manner, the owner could get an extension from a part of the MACT standard's requirements without making a 90-percent reduction in overall emissions. This is not consistent with our intent, and we reject this alternative.

Finally, the managers reject alternative 5(d), which would allow an owner to gain an extension from MACT for a part of his plant by reducing the site's overall emissions of listed pollutants by 90 or 95 percent. In this case, extensions from the MACT standard applicable to a given pollutant and type of source could be gained by making reductions in a wholly different pollutant from a wholly separate portion of the plant. The managers do not intend to allow this result.

The sixth issue addressed by the EPA paper concerns the application of residual risk standards. The primary question is whether the entire major source, or only portions of it, must be considered when determining if there is "an ample margin of safety" to protect public health, or whether additional standards are needed to protect the environment.

On this point, alternative 6(a) directly contradicts the intent of the managers. Our intent is that the public will be protected with "an ample margin of safety" from the combined health risks of all of the pollutants emitted by an entire major source. Contrary to this intent, alternative 6(a) posits that EPA should examine not the residual risk from the entire site, but only the residual risk from the emissions of individual sources subject to MACT standards. We reject this approach.

The paper uses the example of an automobile production complex containing a coke oven, chrome electroplating facilities, and other sources. The coke oven and the electroplating facilities are subject to MACT standards promulgated 2 years after enactment, and the other sources are subject to MACT standards issued subsequently. The paper then states:

> Under this alternative a series of residual risk tests would be performed for the automobile complex, with the first series focused on the coke oven and, in a separate evaluation, the chrome electroplating source categories. Subsequent evaluations would be performed for source categories promulgated at 4, 7, and 10 years. By dividing the complex in this fashion the residual risk test is less stringent than under alternative 6(b) and 6(c).

This approach is contrary to our intent. As the EPA paper acknowledges, while this approach will reduce risks from parts of plants to the ample margin of safety level when they are considered in isolation, this approach will not reduce risks from the entire major source to the ample margin of safety level.

People are not exposed in isolation to pollution from parts of a major source; they are exposed to all the pollution from the entire major source. It is the managers' intent that residual risk standards shall be sufficient to protect the most exposed person with an ample margin of safety from the combined hazardous emissions of an entire major source.

This means that the residual risk standards for each source category must be set at a level sufficient to assure that the risks from the emissions of sources in that category, combined with the risks from the emissions of other sources that are located together within a major source, are below the "ample margin of safety" level.

Under alternative 6(b), EPA would consider the residual risks from all colocated sources categories subject to MACT when it sets the first residual risk standards in 2001. This would result in promulgating residual risk standards for all such categories at that time, even for those whose MACT standards were promulgated 4, 7, and 10 years after enactment.

The managers agree with the objective of this alternative: assuring that the combined risk from a major source is within the ample margin of safety level. But we are concerned that this approach may be impractical. The managers intend EPA to proceed as follows:

The statute establishes a staggered schedule for setting residual risk standards, 9 years after promulgating MACT for the initial categories, 8 years after promulgating MACT for the subsequent ones. When determining the levels that protect public health with an ample margin of safety for the first group of categories, EPA shall consider the combined risks of all sources that are colocated with such sources within the same major source. The residual risk standards for such other categories do not have to be set until the prescribed later dates, but the standards for the categories in the first group must be sufficiently stringent so that when all residual risk standards have been set, the public will be protected with an ample margin of safety from the combined emissions of all sources within a major source. In other words, the residual risk standards for each category must allow sufficient room so that the combined risks from all parts of a major

source do not exceed the ample margin of safety level.

On a related matter, the managers intend EPA to use the same entire site approach when reviewing petitions to remove a source category from the list of source categories under subsection (c) if it is demonstrated that no source in the category creates more than a 1-in-1,000,000 lifetime risk of cancer for the person most exposed. It is the intent of the managers that the showing of less than 1-in-1,000,000 risk must be made for the entire major source in which such sources are located.

The managers have one other statement to make regarding the discussion of alternative 1(a). In that discussion the paper asserts that "a facility may be subject to a MACT regulation but * * * cutoffs specified in the standard may result in no additional controls being applied." No such authority has been retained in the final statute. While various categories and subcategories of sources may be established, emissions from all facilities within a category or subcategory must be controlled by the MACT standard. The managers specifically disapprove of EPA's practice—evident in recent new source performance standards under section 111 of current law—for example, the air oxidation and distillation standards—of establishing cutoffs that result in excluding some sources within the category or subcategory from the emission limitations or control measures otherwise required.

This approach is more consistent with the statutory structure and more practical than alternative 6(c), which would set residual risk standards for major sources, that is, for whole plants.

RADIATION DOSE

The House bill contained three provisions, originally offered in the administration's proposed legislation, which would have amended current law to authorize—and in one case, mandate—the establishment of standards for radionuclides in the form of an allowable radiation dose. The Senate bill rejected the administration's proposed change and continued the requirement of current law: That radionuclide standards—like standards for any other hazardous air pollutant—be set in the form of numerical emission standards or, in the limited circumstances set forth in subsection (h), as design, equipment, work practice, or operational standards.

The conference agreement deletes the House bill's provisions and reaffirms the requirement of current law that standards for radionuclides be set in the form of either numerical emissions standards or work practice standards.

Dosage standards specify, in effect, an allowable amount of radiation in the ambient air. Ambient air quality standards have their place in the program for the control of criteria pollutants in the nonattainment areas, but ambient standards have never been authorized under the hazardous air pollutant program in section 112, or under other provisions such as section 111. Even under the nonattainment program, ambient air quality standards are not directly enforceable against any source. Rather ambient standards are used to determine the emission limits which sources must meet; those emission limits must be sufficient to attain the ambient standards. It is the emission limit which is enforceable against a source.

The logic of the law's reliance on emission limits is plain. An ambient exceedance in the community surrounding a source is difficult to detect and, often, impossible to relate back to a particular source. As a result, a system of air pollution regulation that attempted to rely solely on ambient standards would prove to be an unenforceable failure.

The conferees have rejected radiation dosage standards for the same reasons. Ambient dosages of radiation in community air are difficult to detect with any reasonable monitoring network. The chances that a plume of radionuclides emitted from the source would slip through such a network undetected are high. Modeling studies may be useful in determining what emission limits must be observed in order to provide assurances of not causing excess levels in the community air, but modeling studies cannot be used to discover or locate excess releases. In short, a dosage standard is unenforceable.

MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

Subsection (d) of section 112 requires the Administrator to establish "maximum available control technology" standards for all existing sources within each category of sources listed under subsection (c). Subsection (d)(3) provides a floor for existing source MACT. The standard may not be less stringent than the average of the emission levels achieved by the best-performing 12 percent of the existing sources within the category.

In implementing this provision, the managers intend the Administrator to take whatever steps are necessary to assure that he has collected data on all of the better-performing sources within each category. He must have a data-gathering program sufficient to assure that he does not miss any sources that have superior levels of emissions control.

The Administrator is to exclude from the calculation of the average of top 12 percent any source which met the following conditions: It must be a new source which received its operating permit, began operating, and first achieved the emission level determined to be the lowest achievable emission rate [LAER], within 18 months prior to proposal of the MACT standard, or 30 months prior to its promulgation. The time periods apply to both the new source and first achieved LAER conditions.

In setting standards for existing sources, the bill imposes a rule for determining which sources are existing and which sources are new. Those sources which first meet a lowest achievable emission rate of LAER standard within 18 months of proposal or 30 months of promulgation would be considered new sources and would not be included in calculating the floor for the existing source standard. This is a useful approach to a difficult question that was included in the House bill and was adopted by the conference.

However, there may be some problems implementing this notion in practice. LAER is a moving target. It is not a standard set by the Administrator, but is a case-by-case determination that is continuously updated as new sources begin operations or are modified. In implementing the LAER condition, the Administrator shall not exclude a source simply because it is permitted or monitored at a level previously determined to have been LAER and logged into the BACT/LAER clearinghouse. Rather, the Administrator must determine that the source in fact is emitting pollution at a rate equal to or lower than level achieved by the best-performing existing source in the category. If the Administrator makes this finding regarding a particular source, and if subsequently he finds that another source has begun operation at a lower rate within the above-mentioned time frames, then the first source loses its LAER status and must be included within the top 12 percent. This has the potential of creating a moving target during the rulemaking process, but it is the best cut that the managers could make in distinguishing new from existing sources in setting the floor for standards.

While an excluded source does not count in the calculation of the floor, the Administrator is authorized to take its performance into account when establishing the MACT standard. Subsection (d) specifically authorizes the Administrator to go beyond the floor if he determines that a more stringent standard is achievable. Indeed, the Administrator is authorized and expected to set the standard beyond the level achieved by any source in the past if he determines that such a standard will be achievable by the deadline for compliance. The fundamental test is not whether the standard is at or above the average for the best performing 12 percent of the sources in the category, but whether the standard reflects the maximum

degree in reduction of emissions that can be achieved by sources in the category.

ELECTRIC UTILITY EMISSIONS OF AIR TOXICS

One issue that drew a great deal of attention during this conference is the regulation of toxic emissions from electric utilities. Powerplants emit many of the hazardous air pollutants on the list. Some powerplants emit a single pollutant or a combination in amounts that would trigger major source status and MACT regulations.

I have always believed that powerplants should be regulated under the air toxics program just as any other source category. It seems to me inequitable to impose a regulatory regime on every industry in America and then to exempt one category, especially a category like powerplants which are a significant part of the air toxics problem.

Powerplants should have been regulated under current law. They emit mercury, radionuclides and arsenic in significant amounts. Each of those pollutants has been listed under section 112 and the law clearly requires that standards be issued for each source of a listed pollutant within a year of listing.

Mercury emissions from powerplants are a significant health and environmental problem. I spoke at length about the mercury problem when this bill was debated before the Senate. I won't repeat that discussion here, but it is clear to me, and to many of the people from my region of the country, from the Great Lakes region, that mercury pollution may be every bit as insidious a pollutant as acid rain. In that regard I would like to submit for the record a statement from the U.S. Forest Service which was released in northern Minnesota this past summer. It states the problem quite directly.

Unlike the bill reported from the Committee on Environment and Public Works, the administration bill contained an exclusion for utility emissions from the air toxics program. Standards were not mandated, but were to be imposed only after a study and to the extent that EPA thinks they are necessary. Given the 20-year history of the air toxics program, I and other Members were concerned that utility emissions would never be regulated under that formula. On the other hand the utility industry saw toxics regulation as a backdoor acid rain program. They thought every plant in America would be required to have a scrubber to remove these pollutants.

So, we negotiated a compromise with the administration when the bill was on the floor last winter. The deal we worked out precluded the use of scrubbers and required that standards be set for mercury and particulates within a definite timeframe. I thought that was a good deal when we made it. I am most concerned about the mercury emissions. Everything we heard from EPA indicated that scrubbers were not MACT for mercury and that the acid gases emitted by powerplants were not a toxic concern.

At the time, we were just learning about two new technologies which showed promise for mercury control and neither was a form of flue gas scrubbing. We were able to come to a meeting of the minds with DOE and others in the administration on that basis.

However, the utility industry continued to adamantly oppose this provision in the bill. First, they argued that mercury isn't much of an environmental problem. But as the evidence mounted over the summer and it became clear that mercury is a substantial threat to the health of our lakes, rivers and estuaries and that powerplants are among the principal culprits, they changed their tactic. Now they are arguing that mercury is a global problem so severe that just cleaning up U.S. powerplants won't make enough of a difference to be worth it. They've gone from "we're not a problem" to "you can't regulate us until you address the whole global, problem." Recasting an issue that way is not new around here. So, it is not a surprise. But it does suggest the direction in which this debate will he heading in the next few years.

Another thing happened during the conference. We learned more about the two mercury control technologies that look most promising. It turns out that both of them require that flue gas be cooled significantly for mercury capture. The cooling causes the hydrogen chloride in the flue gas to form hydrochloric acid so strong that it would damage pollution control systems which are located behind the mercury control devices in the stream. A scrubber may be needed to remove the HCl. It appeared that the Senate bill, requiring mercury control without scrubbing, would not be an acceptable formulation given this new understanding of these systems.

Under those circumstances and given that a resolution of the difficult issues in the conference was necessary to conclude work on this bill, the Senate proposed to recede to the House provision which was taken from the original administration bill. It provides for a 3-year study of utility emissions followed by regulations to the extent that the Administrator finds them necessary.

This provision must be considered in the context of two other items, as well. One is the definition of electric utility units. Units under 25 megawatts are not electric utility units under this definition. That is consistent with the decision made by the conferees to exclude these units from the Acid Rain Program. But it does leave them subject to possible regulation as sources of air toxics.

It is unlikely given what we know that units under 25 megawatts would be major sources under section 112. But they would certainly be area sources of toxic pollution. And section 112(c)(6) requires that EPA set standards for sufficient source categories to assure that 90 percent of the emissions of each of 7 pollutants are subject to MACT standards. One of those pollutants is mercury and it may be that these small utility units will be subject to air toxics standards, as a result. It should also be noted that industrial boilers which do not generate electricity would also be captured for control under this same provision.

That is perhaps not the most sensible policy outcome. But that's where we're at. It might make more sense to control emissions from the large plants that already have scrubbers or to look at fuel switching as a way to reduce mercury emissions. But those suggestions were rejected out of hand when offered.

I am hopeful those strategies will get some attention in the coming months. I really do encourage the utility industry to look at this mercury question with more thoughtfulness than has been in evidence up to now. I have the feeling that this is the early stages of another struggle like acid rain. I don't think the utility industry has been particularly well served by the acid rain debate or the program that is in this bill. I hope on mercury and the other toxics we can find a more reasonable, equitable and earlier resolution of the issues.

COKE OVENS

For coke ovens, an extension of the deadline to comply with the residual risk standard is available until 2020. The Senate managers wish to emphasize, however, that the tradeoff for the availability of this extension is a very stringent regime of interim standards for both new and existing coke oven batteries. The managers expect the strictest and most rigorous implementation of this regime by the Administrator and the States, from the establishment of these standards through their enforcement.

All coke oven batteries must comply within 3 years of enactment with a standard requiring the maximum feasible emission reductions from the use of sodium silicate "luting" compound, to fill cracks around coke oven doors, lids, offtakes, etc. EPA must establish this standard by December 31, 1992. All coke ovens must comply by December 31, 1995, with a MACT standard, which is also to be established by EPA by December 31, 1992.

The MACT standard shall be promulgated under the criteria of subsection (d)(2) and (d)(3). The legislation provides two floors for this standard.

It may not allow more emissions than the average emissions of the best-performing 12 percent of existing coke oven batteries. The standard also may not allow more than 8 percent leaking doors. The more stringent of these two floors shall take precedence. Since recent data show that many coke oven batteries are already performing with lower door leakage rates than 8 percent, it may be that the average of the top 12 percent will be less door leakage than 8 percent.

The managers emphasize, however, that the Administrator's task is not simply to set the standard at whichever of these floors takes precedence. Rather, it is the intent of the managers that the Administrator shall rigorously apply the MACT criteria in subsection (d) to determine if the standard shall be set at a level more stringent than the floor. Subsection (d) specifically authorizes the Administrator to go beyond the floor, if he determines that a more stringent standard is achievable. Indeed, the Administrator is authorized and expected to set the standard beyond the level achieved by any source in the past if he determines that such a standard will be achievable by the deadline for compliance.

The Administrator also must set a MACT standard for new, modified, and reconstructed coke oven emission sources by December 31, 1992. This standard shall apply to batteries that commence construction, modification, or reconstruction after the date on which the standard is first proposed, and it shall also apply, as described below, starting January 1, 1998, to any battery that opts for the extension of the deadline for meeting the ample margin of safety standard until 2020.

This standard also has two floors. First, the standard cannot be less stringent than the emission level that reflects the lowest achievable emission rate as defined in section 171. Second, the standard may not be less stringent than 3 percent leaking doors. As with MACT for existing sources, the more stringent of the two floors shall take precedence. Since recent data indicate that the best performing batteries are achieving well under 3 percent leaking doors, it may be expected that the best-performing oven criterion will take precedence.

Regarding the 3-percent floor, the Administrator is authorized, but not required, to allow the exclusion of doors on ovens which have just been charged. He is also authorized to set the standard in terms of mass emissions rather than percent leaking doors, if he determines this to be practicable. Essential to any determination of practicability is the conclusion that such a standard is as readily enforceable as a percent leaking doors standard. Monitoring and inspections must be no more complex, time consuming, or expensive, and the results of such monitoring and inspections must be equally unambiguous.

Also as with existing source MACT, the Administrator is authorized and expected to set the standard for new, modified, and reconstructed sources beyond the performance of existing batteries if he determines that level to be achievable.

The Administrator is specifically directed to consider basing the standard for new and reconstructed batteries on the Thompson nonrecovery oven design now in operation at Jewell Coal & Coke Co. in Vasant, VA. This design differs from conventional coke ovens in that it operates at negative pressure. As a result air is sucked into the ovens, and door leaks to the atmosphere are virtually eliminated. Also unlike conventional batteries, the Thompson design does not attempt to recover benzene and other chemicals from the gases driven off the coal. Recovery of benzene, et cetera, leads to substantial emissions to the atmosphere. Rather, in the Thompson process, these gases are incincerated, providing sufficient heat to run the batteries and, potentially, enough extra to generate up to 100 megawatts of electricity, which can be sold. The remaining stream of exhaust is channeled through centralized smokestacks, where it can be readily treated. The only other source of leakage is during charging of the ovens.

The Administrator is expected to carefully analyze the Thompson coke oven design. If he determines that it is feasible, produces adequate quality coke, and has lower emissions than conventional coke oven designs, he shall base the standard for new and reconstructed ovens on the emissions performance of this technology.

Nine years after the MACT standards are set; that is, in 2001, the Administrator shall establish a standard under subsection (f) assuring protection of public health with an ample margin of safety, and also protecting against adverse environmental effects. Unless the owner or operator opts for the extension until January 1, 2020, and meets all the relevant conditions for such an extension, the deadline for meeting the ample margin of safety standard shall be January 1, 2003.

To obtain the extension of the deadline for meeting the ample margin of safety standard until January 1, 2020, a coke oven battery must meet these additional requirements:

First, the battery must have reduced door leakage below 8 percent by the date 3 years after enactment of this act. Second, the battery must comply with all the above-described standards taking effect in 1993 and 1995. Third, beginning January 1, 1998, any existing battery opting for the extension must meet the standard for new and reconstructed batteries described above. Thus, by that date, all batteries opting for the extension—existing, new, modified, and reconstructed—must meet the new source standard.

Fourth, by January 1, 2007, the Administrator must make a new determination of the lowest emmission level achievable by a new battery, and revise the new source standard accordingly. This standard is to be rigorously established on the basis of the best performing battery at that time, just like the original new source standard. All batteries that have opted for the extension must meet this standard no later than January 1, 2010.

Any battery which has opted for the extension and does not meet the additional requirements is, of course, in violation and shall be subject to rigorous enforcement. Because such a source, in effect, in exceeding the ample margin of safety level after the 2003 deadline otherwise applicable, the managers expect strict enforcement, with no countenance of delay in complying with the applicable limitations.

The legislation establishes a default requirement for January 1, 1998, in the event EPA has failed to set the new source standard due in 1992. That requirement is 3 percent leaking doors, with no exclusions of any doors allowed. The managers wish to make clear, however, that the presence of this default requirement in no way excuses the Administrator from his mandatory duty to establish the new source standard in 1992 according to the schedule and criteria summarized above. If the proposal or promulgation of that standard is delayed, a citizen suit will lie under section 304 to enforce the deadline.

Subsection 112(n)(2) of the new legislation authorizes studies and demonstration projects on technologies to reduce or eliminate coke oven emission. The scope of the study and demonstrations shall include measures to reduce leakage from conventionally designed coke ovens like luting compounds, maintenance practices, door designs, as well as the investigation of alternative coke-making technologies like the Thompson process and alternative steel-making processes that reduce or eliminate the need for coke like direct steel-making.

It is critical that all affected interests and communities be involved in the design and execution of these studies and demonstrations, and in the evaluation of their results and the formulation of recommended actions. Consequently, the managers expects the Administrator to form a balanced advisory committee, containing representatives of industry, employees, and affected community residents, as well as State and local air pollution control authorities. Each of these groups shall be consulted upon the formation of

the advisory committee and the Administrator shall pay maximum heed to their nominations for the committee.

"RESIDUAL RISK" STANDARDS

Mr. President, one of the most difficult issues for the Senate when this bill was on the floor last winter was the question of residual risk, that is how do we assure that public health and the environment will be protected in the event that the technology standards do not provide sufficient control? This was really a debate about cancer policy and how much cancer risk is acceptable from environmental pollution.

This bill doesn't have the answer. To be sure it includes a mechanism. It can be carried out. There will be a second tier of standards, if they are necessary to protect public health. But it doesn't reflect a congressional statement of policy. Rather, the bill defers to decisions made by the courts and by the Environmental Protection Agency. We simply return to current law in the second phase and ask EPA to set standards which provide an ample margin of safety to protect public health. That is the current law standard. It is also the reason that very little has been done to regulate toxic air pollutants over the past 20 years.

My own view is that Congress, in part because of the debate we have had on these provisions of the Clean Air Act, will be moving away from the risk assessment and risk management construct that has been developed by EPA for the regulation of carcinogens over the past decade. There is no consensus on the appropriate level of cancer risk that the risk managers should use in setting standards. That was the message that I heard on the floor while we debated these provisions. There is no consensus on the fundamentals for management.

And I suspect that the consensus on the scientific part of this process—the risk assessment part—is also unraveling. That may well be the message from the Risk Commission which this bill establishes.

So, we may well revise our policy on residual risk before the second phase of this program is implemented. We may impose a safe alternatives policy or some other approach in dealing with these issues. I look forward to consideration and debate on possible new approaches. I'd be glad to declare risk assessment dead. My only goal was to curb the abuse I saw as risk assessment was used to justify emission standards for carcinogens which I thought were not sufficiently protective.

On the other hand, the provisions of this bill may not be replaced by the end of this decade. And in that event it is important to make a few points on the residual risk standard in this bill.

Subsection 112(f) requires the Administrator, after specified periods, to determine whether MACT standards have reduced emissions from major sources sufficiently to protect public health with an ample margin of safety in accordance with this section as it was in effect prior to the enactment of these amendments. The Administrator must also determine, at the same time, if MACT standards are sufficient to prevent adverse effects on the environment.

The Administrator is to replace the technology standards for a source category, only if it is necessary to protect health with a more stringent standard. This bill does not authorize the Administrator to relax the standards established under subsection (d) for a category by establishing standards under subsection (f). With respect to the pollutants for which a safe threshold can be set, the authority to set a standard less stringent than maximum achievable control technology is contained in subsection (d)(4). With respect to carcinogens and other nonthreshold pollutants, no such authority exists in subsection (d) or in any other provision of the Act. There is no safe level of exposure for these pollutants. And there is no possibility under the two-step decisionmaking procedures established by the Court in the vinyl chloride case for EPA to set a standard less stringent than is already being achieved by sources in the category under subsection (d). Any such interpretation is entirely inconsistent with the ample margin of safety test which is a mandatory second step in a standard-setting regime which most definitely includes both steps.

By referring to the ample margin of safety requirement as in effect under current law, the managers intend that the Administrator shall interpret this requirement in a manner no less protective of the most exposed individual than the policy set forth in the Administrator's benzene regulations published at 54 Federal Register 38044 (September 18, 1989). The Administrator shall have authority to issue standards which provide greater protection of such most exposed individual. The Administrator shall set an ample margin of safety standard under this subsection whenever the estimated lifetime cancer risk to the most exposed individual from any source in any category exceeds one chance in 1 million.

No postponements or exceptions are available regarding standards under subsection (f) for reasons of voluntary reductions or for any other reason not expressly authorized by the statute. Risk assessments may not be used to postpone, lessen the stringency of, or gain an exception from any standard issued under subsection (d) (or any alternative emission limit adopted pursuant to a voluntary reduction or for any other reason), except as provided by subsection (c)(9)(B)(i).

RISK COMMISSION

The final legislation includes a study of risk assessment issues by a Risk Assessment and Management Commission. The Commission must have balanced, as well as expert, membership representing all affected interests in matters of public health and environmental protection. These include academia, industry, Government, and public health and environmental organizations.

The managers expect the Commission to carefully examine the practices of risk assessment in both Government and industry. The managers are concerned that risk assessment has come to be used inappropriately to allow exposure to toxic chemicals in air and other media to continue where such exposures can and should be prevented.

Despite claims to the contrary, there is still no rigorous evidence of thresholds of effect for chemicals that cause cancer and certain other illnesses. Consequently, the only prudent public health policy is to reduce exposure to these chemicals to zero. The managers are concerned that a number of advocates are pressing for a change in this policy—shifting either to a policy that assumes thresholds or that significantly reduces estimated cancer risks—based on mere hypotheses about biological mechanisms or incomplete experimental evidence, in the absence of rigorous and complete proof. The managers expect the Commission to apply rigorous and complete standards of proof concerning such hypotheses and experiments before adopting any such different policies for their own use or before recommending any such policies to any governmental or nongovernmental entities.

Similarly, the managers expect the Commission to refrain from suggesting changes in current policies regarding the use of animal testing data to estimate human cancer risk that would have the effect or reducing risk assessments, unless there is rigorous and complete proof to support such changes.

The managers also expect the Commission to study and make recommendations on measures needed to assure that risk assessments represent the risk to persons who have the greatest sensitivity to carcinogens and other toxic chemicals and who suffer the heaviest exposure. Recent evidence strongly suggests that a portion of the population is extraordinarily more sensitive than average to carcinogens, as well as to a host of other toxic effects ranging from the acute to the chronic. Scientific evidence also demonstrates that some substances act synergistically with one another, multiplying the risks from either sub-

stance acting alone. Yet current Government risk assessment policies do not take above-average sensitivity into account.

Likewise, some portion of the population is exposed to much higher levels of toxic chemicals due to their residential location, work exposure, food and water consumption, the co-location of pollution sources, and other factors. Current Government policies are inconsistent in taking these factors into account in order to assure that risk estimates represent the danger to the most exposed persons.

It is the intent of the managers in this legislation, as in all of the landmark public health and environmental protection laws, that protecting public health means protecting the health of the people who are most sensitive to and most exposed to toxic chemicals. The Commission shall bear this fundamental policy in mind in all of its studies and recommendations.

The PRESIDING OFFICER. Who yields time?

The Senator from Rhode Island.

Mr. CHAFEE. I yield 3 minutes to the distinguished Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, I will add to the swelling chorus of praise of those who have taken this bill over the long and arduous path to this moment when we are about to enact what I think will be truly a historic piece of legislation.

It is no secret that with others on this floor I sought amendments which would have strengthened it. I see the Senator from Colorado, with whom I fought one of those good fights. I think the happy thing is that in this two-House process, the final product, while perhaps not as strong as the Senator from Colorado and I might have wished, is nonetheless infinitely the best clean air bill that this country has ever seen. I am also persuaded that in the future we will find more and more a desire and a joining in the view that we have put forth on this floor that there is a need for America to move to alternative fuels, not simply because that will most dramatically clean our air but because it will remove the present dependency upon oil imports so sharply in focus because of the Persian Gulf crisis.

But there is much that we can be pleased about, and in a parochial way, on behalf of my fellow Californians, we are grateful for the wisdom of allowing a preemption in the Federal law that will allow California to be in the vanguard of what many regard as a great experiment to bring clean air to what is the most polluted air in this country. We are also aided in that by a provision which has transferred the authority for the regulation of ambient air quality over offshore rigs to the Environmental Protection Agency. It removes the inherent conflict of interest that was that of the Department of the Interior in seeking to impose a less stringent standard which inevitably became the ambient air quality onshore because of prevailing winds. The effect of that was inevitably to preclude greater opportunity for small businesses ashore to gain permits.

Mr. President, I particularly thank my friend from Rhode Island, who has been a pioneer in this area, and to say that he has been valiant and courageous and tenacious understates this man's role in crafting this legislation. But many have enjoyed a role. There has been given and take. I think it has been the best debate, certainly one of the best that I have seen in my time in the Senate, an honest debate between people from sharply differing points of view, a compromise reached that inevitably is going to mean a cleaner and healthier America. I commend them.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, I commend the Senator from California for his efforts in connection with two particular areas, the reduction of ozone around the country, of which he was particularly concerned, especially as it dealt with southern California, and also his vigorous efforts in curbing offshore oil rig emissions off the California coast, an area that is of deep concern to him. So he stayed there tenaciously in connection with those two particular areas and did outstanding work, and I think we and all Californians owe him a deep debt of gratitude.

Last night I had the opportunity to speak on this measure and thank those who were involved, but I do particulalry want to talk, once again, about several people. First of all, the President, as we mentioned last evening, and the majority leader, who has been so active and tenacious over a long period of time, and obviously without his support and that of the President we would not be where we are; and my colleague and counterpart, Senator BAUCUS, who has really been remarkable in connection with this and a whole series of environmental measures. The key staff people we mentioned last evening, Mike Shields, but I also want to join in the tribute to Kate Kimball, who was remarkable in all her work, and Bob Hurley and Katie Kudlipp, Jimmie Powell, Steve Shimberg, Steve Roady, who have been absolutely superb.

Mr. President, you might say, well, the clean air bill looks like it is going to pass, and what do we do next?

Well, there are a whole series of environmental problems. We have not run out of challenges. We have cut disposal of waste, solid waste, and hazardous waste, particularly the toxics. We have the interstate problems with hazardous waste and solid waste. We have the wetlands. We have endangered species. We have global warming, problems, that we are yet to face.

I am very very pleased that in this legislation we start trying to tackle the global warming problem. That, of course, is no connection with the ozone-depleting chemicals which are not only a great danger to the Nation and to the world because of the depletion of the ozone layer, but also the CFC's contribute about 20 percent to the whole global warming problem.

So, Mr. President, I am delighted that we have come this far. I look forward to completion of this. But I do not think anybody should think it is all over, and there are no challenges left. There is plenty of work left to do.

CLEAN AIR ACT AMENDMENTS OF 1990 CHAFEE-BAUCUS STATEMENT OF SENATE MANAGERS

Mr. President, the conference report that is before us includes some 800 pages of legislative language and less than 40 pages—double spaced—of explanatory text. Due to time constraints, we do not have a particularly useful statement of managers.

To help rectify this problem, we have prepared a detailed explanation of five important titles. The explanation is in the form of a traditional statement of managers. It has not been reviewed or approved by all of the conferees but it is our best effort to provide the agency and the courts with the guidance that they will need in the course of implementing and interpreting this complex act.

The titles covered by the "Chafee-Baucus Statement of Senate Managers" are: title I on nonattainment; title II on mobile sources; title V on permits; title VI on stratospheric ozone; and title VII on enforcement.

Mr. President, I ask unanimous consent that this document be printed in the RECORD.

There being no objection, the material was ordered to be printed on the RECORD, as follows:

CHAFEE-BAUCUS STATEMENT OF SENATE MANAGERS, S. 1630, THE CLEAN AIR ACT AMENDMENTS OF 1990

Title I—Provisions for Attainment and Maintenance of National Ambient Air Quality Standards.
Title II—Mobile Sources.
Title V—Permits.
Title VI—Stratospheric Ozone Protection.
Title VII—Enforcement.

TITLE I—PROVISIONS FOR ATTAINMENT AND MAINTENANCE OF NATIONAL AMBIENT AIR QUALITY STANDARDS

Section 101—General Planning Requirements

Senate bill. In sections 101 and 104 the Senate bill amends the Clean Air Act with respect to processes for designating areas of the country based on air quality and with respect to requirements for preparation, contents, submittal, and review of State implementation plans.

In section 106 the Senate bill amends section 176(c) of the Clean Air Act which requires conformity of Federal activities and federally funded activities with the State implementation plan.

House amendment. In section 101 the House bill amends the Clean Air Act to establish a somewhat different structure from existing law for State and EPA action following promulgation of new or revised national ambient air quality standards, including procedures for designating areas based on air quality and for preparation, submittal and review of State implementation plans.

Section 101 also contains an amendment to section 176(c) of the Clean Air Act. The amendment clarifies and expands the requirements applicable to determinations of the conformity of Federal and federally funded activities with the applicable implementation plan.

Conference agreement. The Senate concurs in the House amendment except as follows:

(1) The House concurs in the Senate provision (section 105 in the Senate bill) to amend section 118 of the Clean Air Act to clarify that Federal facilities are subject to any State or local agency requirement to pay a fee or charge to defray the costs of the agency's air pollution regulatory program.

(2) The House concurs in the Senate provision amending section 176(c) of the Clean Air Act with changes as follows:

The conference agreement clarifies that individual transportation projects that come from a conforming transportation plan and program may be found to conform to a SIP if the design concept and scope of the project have not changed significantly since the conformity finding for the plan and program and if the definition of the project at the time of the conformity findings for the plan and program was sufficiently detailed to permit a determination of emissions for comparison to projected emissions at the time the project is being adopted or approved. In addition, projects that are not part of a conforming plan and program may be treated as conforming if the projected emissions, when considered together with emissions projected for a conforming plan and program for the area in which the project is located, do not cause the plan or program to exceed the emission reduction projections in the applicable SIP. Of course, if a project is not part of a transportation plan or program, but the plan or program is revised to take emissions from the project into account, and the plan and program as revised conform to the SIP, the project may be approved.

The conference agreement adds language to allow for conformity determinations during the transition period before a revised State implementation plan is approved.

The process for the issuance of criteria and procedures by the Administrator is modified to require concurrence by the Secretary of Transportation and to assure that a citizen suit may be brought against the Administrator and the Secretary to compel promulgation of the criteria and procedures.

Sec. 102—General Provisions for Nonattainment Areas

Senate bill. In section 106 the Senate bill amends subpart D of title I of the Clean Air Act with respect to generic provisions for nonattainment areas, including requirements for attainment dates, State implementation plan contents and review, operating permits, fees for emissions, sanctions, and maintenance plans.

Section 106(g) of the Senate bill requires EPA and the Department of Transportation to analyze State and local air quality-related transportation programs and submit a report to Congress in 1992 and every three years thereafter on the results of the analysis together with recommendations for improving the programs.

House amendment. The House amendment in section 102 amends subpart D of title I of the Clean Air Act, establishing generic authority and requirements for nonattainment areas with respect to attainment dates and classification of areas based on the severity of the pollution problem; schedules for, and contents and review of, State implementation plans; interstate transport commissions; sanctions; and Federal implementation plans.

Conference substitute. The Senate concurs in the House amendment except in the following respects:

(1) Senate section 106(g) is included but modified by changing the date for the first report to Congress from 1992 to 1993 and by requiring in reports after the first that the Secretary of Transportation describe what actions have been taken to follow up on the recommendations of the preceding report.

(2) The sanctions provisions are a combination of provisions in both the House and Senate bills. The Administrator is required to impose sanctions as in the House bill, and the sanctions available are the requirement for offsets of emissions at a 2 to 1 ratio, as in the house bill, and a limitation of the types of projects for which Federal highway funds may be spent to a specified list. The list is as contained in the Senate bill with two deletions. In addition, the Senate provision restricting the use of funds to safety projects funded by specified programs under title 23, United States Code, is deleted and language substituted restricting funding to projects "the principal purpose of which is an improvement in safety". While the principal purpose of the project must be to improve safety, the project may also have other important benefits.

The Federal implementation plan required by section 110(c) of the Clean Air Act is to provide for attainment and maintenance of national ambient air quality standards, except that were a State planning failure does not relate to a failure to demonstrate attainment with the ambient standards, the Federal plan may be limited to the correction of the relevant failure.

New section 173(e) of the Clean Air Act directs States to allow emissions from existing and modified sources that test rocket engines and motors to be offset by alternative or innovative means. The provision requires that, to be eligible for an offset, the source must obtain a written finding from the Department of Defense, the Department of Transportation, the National Aeronautics and Space Administration, or another appropriate agency, that the testing of rocket motors or engines is essential to the national security. The required finding is not limited to military or government launch programs; the appropriate Federal agency may also find that testing required for a civilian or commercial launch program is essential to the national security.

Section 103—Additional Provisions for Ozone Nonattainment Areas

Senate bill. Section 107 of the Senate bill provides for the classification of ozone nonattainment areas as moderate, serious, severe, and extreme based on the severity of ozone pollution, deadlines for attaining the primary ambient air quality standard for ozone, requirements applicable to ozone nonattainment areas based on their classification, and consequences for failure to comply with requirements or meet deadlines.

The section also contains requirements for the Administrator to issue Federal regulations and guidelines for certain products, stationary sources and the loading and unloading of petroleum from vessels, and sets a deadline for the Administrator to promulgate emissions standards for hazardous waste treatment facilities (TSDFs) under the Solid Waste Disposal Act. Section 107 also establishes a northeast ozone transport region consisting of 12 States and the District of Columbia.

House bill. Section 103 of the House amendment is similar in structure and content to the Senate bill, but contains a different breakdown for classification of areas as marginal, moderate, serious, severe, and extreme, variations on the requirements applicable to each classification, different approaches to direct Federal regulation of certain sources, including a directive that the Administrator consider TSDFs in determining for which categories to establish a control technique guideline, and a northeast transport region consisting of 11 States and the District of Columbia.

Conference agreement. The Senate recedes to the House except as follows:

(1) With respect to transportation controls required in serious areas (new section 182(b)(5) of the Clean Air Act), language from the Senate bill is adopted to describe the measures that must be included in a SIP and to require the States assure adequate access to areas in the nonattainment area when adopting transportation controls.

(2) With respect to transportation controls in severe and extreme areas (new section 182(d)(1) of the Clean Air Act), the House recedes to the Senate, except that with respect to the provisions requiring employers of more than 100 employees in a nonattainment area to institute programs to increase average vehicle occupancy on commuting trips, i.e., trips between home and the workplace (new section 182(d)(1)(B) of the Clean Air Act), the conference agreement drops the provision that specifies that employers may demonstrate compliance with the requirement by spending as much on the required program as on parking subsidies for employees. In calculating average vehicle occupancy rates, an employer is not required to include in the calculation or in a compliance plan employees who do not travel regularly to the same workplace.

(3) With respect to control of emissions of oxides of nitrogen (NO_x), the conference agreement adds authority for the Administrator to limit the application of VOC control requirements to NO_x sources if the result would be "excess reductions in emissions of NO_x". The agreement permits a person to petition the Administrator at any time afer the completion of the study of VOC and NO_x emissions required by new section 185B of the Clean Air Act, for a determination to limit the applicability of requirements for NO_x controls, either because excess reductions would result or because net air quality benefits are greater in the absence of reductions of NO_x from certain sources.

(4) With respect to regulation of emissions from consumer and commercial products by the Administrator (new section 183(e) of the Clean Air Act), the conference agreement

drops the terms "reasonable fees" and "charges" as an elaboration of the phrase "economic incentives".

(5) With respect to emissions from vessels, the conference agreement clarifies the types of vessels covered and the role and authority of the Coast Guard in assuring the safety of emissions control systems.

While the conference agreement gives priority to TSDFs for the establishment of a CTG, it does not intend to disrupt nor duplicate the EPA's ongoing efforts to set air emissions standards under section 3004(n) of the Solid Waste Disposal Act, in response to amendments to that Act passed in 1984. Nor does the conference agreement suggest that a lesser level of VOC control is appropriate in any area of the country. To the extent that criteria for CTGs under the Clean Air Act could result in a less stringent level of control than will be imposed under the Solid Waste Disposal Act, the standard for which is "necessary to protect human health and the environment," the Solid Waste Disposal Act standard should govern.

With respect to Federal regulation of consumer and commercial products, new section 183(e) of the Clean Air Act requires the Administrator to regulate categories which account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, in ozone nonattainment areas. Credit toward the 80 percent threshold should be given to emission reductions from any consumer or commercial products made after enactment of the Clean Air Act Amendments of 1990, not solely from products that would otherwise be regulated. Subsection (e)(9) requires consultation with EPA when a State plans to regulate VOC emissions from consumer or commercial products. The provision is intended to create a clearinghouse of information to encourage national uniformity. It does not preempt or otherwise limit the national uniformity. It does not preempt or otherwise limit the authority of States to propose or adopt regulations affecting such products, either before or after EPA adopts regulations.

The conference agreement emphasizes the importance of implementation of reasonably available control technology in all nonattainment areas. The reference in section 182(a)(2) to guidance issued by EPA under section 108 of the Act is intended to cover control techniques guidelines, guidance on the applicability of RACT, and guidance covering the correction of deficiencies in State rules.

Section 182(b)(1)(A) requires ozone nonattainment areas to obtain a 15 percent reduction in VOC emissions within six years of enactment. These reductions are to be calculated from emissions levels in the year of enactment, and growth must be accounted for so that the required reductions from 1990 levels are actually achieved.

Section 104—Additional Provisions for Carbon Monoxide Nonattainment Areas

Senate bill. Section 108 of the Senate bill provides for classification of carbon monoxide (CO) areas as moderate or serious, depending on the severity of CO pollution, deadlines for attaining the primary ambient air quality standard for CO, requirements applicable to nonattainment areas based on their classification, and consequences for failure to comply with requirements or meet applicable deadlines.

House amendment. The House amendment is similar to the Senate bill in structure and content but differs in several specific provisions.

Conference agreement. The Senate recedes to the House except that, by reference to the provisions in section 103 of the agreement, transportation control requirements applicable in severe ozone nonattainment areas—including the requirement applicable to employers of 100 or more employees—are also applied in serious CO nonattainment areas.

Section 105—Additional Provisions for Particular Matters (PM-10) Nonattainment Areas

Senate bill. Section 109 of the Senate bill provides for classification of PM-10 areas based on the severity of pollution, deadlines for attaining the PM-10 primary standard, requirements applicable to PM-10 nonattainment areas depending on their classification, and consequences for failure to comply with requirements or meet deadlines.

House amendment. The House amendment is similar in structure and content to the Senate bill but differs in details.

Conference agreement. The Senate recedes to the House.

Section 107 Provisions Related to Indian Tribes

Senate bill. Section 113 of the Senate bill authorizes the Administrator to treat Indian tribes as States under the Clean Air Act and requires the Administrator to issue regulations that specify which provisions of the Act may be administered by Indian tribes.

House amendment. The House amendment provides similar authority and directives to the Administrator regarding treatment of Indian tribes.

Conference agreement. The Senate recedes to the House.

Section 108—Miscellaneous Provisions

Senate bill. In section 103 the Senate bill revises sections 108 (e) and (f) of the Clean Air Act to require the Administrator and the Secretary of Transportation to update air quality/transportation planning guidance and to add to the transportation control measures to be evaluated by the Administrator after consultation, when appropriate, with the Secretary.

House amendment. The House amendment contains a similar provision to the one in the Senate bill regarding amendments to section 108 of the Clean Air Act. In addition, the House amendment contains provisions for a technology clearinghouse to be established by the Administrator, for amending section 111 of the Clean Air Act relating to new and existing stationary sources, for amending section 302 of the Clean Air Act which contains definitions, to provide a savings clause, to state that reports that are to be submitted to Congress are not subject to judicial review, and for other purposes.

Conference agreement. The Senate recedes to the House except that with respect to the requirement regarding judicial review of reports, the House recedes to the Senate and with respect to transportation planning, the House recedes to the Senate with certain modifications.

In striking the provision in the House amendment that stated that reports to Congress are not judicially reviewable, the conferees recognized that the issue of whether the contents of reports are judically reviewable has already been satisfactorily addressed by a court in *NRDC* v. *Hodel* (D.C. Cir. 1988), which found that report contents are not subject to such review. The House provision was deleted so that there would be no doubt that the failure of the Administrator to submit reports in a timely manner is subject to judicial review.

In the language on transportation planning, the notice and comment requirements in sections 108 (e) and (f) do not create a formal, Administrative Procedure Act review requirement for the Administrator. The guidance to be issued under subsection (f) is guidance and not a regulation requiring a formal rulemaking process. However, EPA must provide public notice of its intent to issue guidance and solicit ideas and comments from State and local officials and other interested parties as the guidance is being prepared.

Section 109—Interstate Pollution

Senate bill. In section 110 of the Senate bill amends section 126 and section 302(h) of the Clean Air Act to strengthen prohibitions on emissions that result in interstate pollution.

House bill. The House amendment is similar to the Senate provision.

Conference agreement. The Senate recedes to the house.

Section 110—Conforming Amendments

Senate bill. No provision.

House bill. The House amendment contained provisions amending various sections in title I and title III of the Clean Air Act to conform to provisions elsewhere in the House amendment.

Conference agreement. The Senate recedes to the House.

TITLE II—PROVISIONS RELATING TO MOBILE SOURCES

Section 201—Heavy-Duty Trucks

Senate bill. The Senate bill codifies particulate matter standards for heavy-duty trucks scheduled to take effect in 1991 and 1994 under EPA regulations. The standard for oxides of nitrogen scheduled to take effect in 1991 would be codified, and tightened in 1998. Averaging credits for emissions reductions was allowed between engine families of the same manufacturer and among manufacturers.

House amendment. The House amendment does not specify standards for heavy duty trucks, rather it authorizes the Administrator of EPA to set technology-forcing emission standards, considering cost, energy, and safety factors.

Conference agreement. The conference agreement adopts the House provisions, modified to retain the Senate oxides of nitrogen (NO_x) standard for heavy-duty engines effective in model year 1998, and to reinstate the four year lead time and three year stability provisions in current law.

The conference agreement deletes language from the Senate bill that would have authorized EPA to establish regulations permitting heavy-duty engine manufacturers to undertake averaging, banking, or trading of emission reduction credits for particulate matter, nitrogen oxides, and other pollutants. It is the intent of the managers that the emission standards specified for heavy-duty engines in the final legislation shall be met without averaging, banking, or trading.

Section 202—Control of Vehicle Refueling Emissions

Senate bill. The Senate bill requires all motor vehicles to be equipped with onboard devices capable of recapturing 95 percent of evaporative emissions during refueling. This provision takes effect in 1993 for light duty vehicles, and at the earliest feasible date, as determined by EPA, for other vehicles.

House amendment. The House amendment requires the Administrator to promulgate standards within one year of enactment. These standards must require all new light-duty vehicles manufactured in and after the third model year after the model year in which the standards are promulgated to be equipped with onboard systems for control of evaporative emissions during vehicle refueling. The standards apply to all new passenger vehicles and light duty trucks and are to provide a minimum capture efficiency of 95 percent.

Conference agreement. The Conference agreement adopts the House provision modified to begin during the fourth year after the standards are promulgated, with a three year phase-in period.

Section 203—Emission Standards for Conventional Motor Vehicles

New Section 202(g) of the Clean Air Act—Light-Duty Trucks and Passenger Cars.

Senate bill. The Senate bill requires light-duty vehicles, including trucks less than 3,750 lbs. loaded vehicle weight, to meet tighter emission standards for NO_x, non-methane hydrocarbons, total hydrocarbons and particulates beginning in model year 1993. The requirements are phased in over three years. For the purposes of certification and recall, these standards apply for five years or 50,000 miles, whichever comes first; twenty-five percent less stringent standards apply for 10 years/100,000 miles.

House amendment. The House amendment establishes new emission standards applicable to light-duty vehicles and light-duty trucks. For non-methane hydrocarbons and carbon monoxide, these standards are phased in between 1994 and 1998. The new standards for NO_x and particulate matter are phased in between 1994 and 1995.

The section includes two sets of standards. A set of more stringent standards applies during a useful life of 5 years/50,000 miles. Slightly numerically higher standards apply during the full useful life of 10 years/100,000 miles.

Conference agreement. The Conference agreement adopts the House provisions with the following modifications. The agreement establishes a new NO_x standard for 10 years/100,000 miles with a revised phase in period for both the 50,000 mile and 100,000 mile NO_x standard beginning in 1994, adopts a useful life of 10 years/100,000 miles for certification and 7 years/75,000 miles for testing for recall, and adopts the diesel NO_x standard from the Senate bill through model year 2003.

New Section 202(h) of the Clean Air Act—Light-Duty Trucks of More Than 6,000 lbs GVWR

Senate bill. The Senate bill establishes specific numerical emissions limitations on light-duty trucks between 3,750 lbs. loaded vehicle weight and 8,500 lbs. gross vehicle weight that are derived from standards applicable to those for light duty vehicles, adjusted to take into account the heavier weights and carrying capacity of the trucks.

House amendment. The House amendment contains no comparable provision.

Conference agreement. The conference agreement establishes specific numerical standards for light-duty trucks beginning in 1996 which are consistent with the newly adopted California tailpipe standards for light-duty trucks.

New Section 202(i) of the Clean Air Act—Phase II Study for Certain Light-Duty Vehicles

Senate bill. The Senate bill mandates a second phase of more stringent tailpipe standards for total hydrocarbons, NO_x and carbon monoxide for light-duty vehicles beginning in model year 2003 if more than eleven seriously polluted areas outside California continue to exceed the ozone standard during the 1999-2001 period.

House amendment. The House amendment requires a second phase of more stringent tailpipe standards for non-methane hydrocarbons, NO_x and carbon monoxide which take effect for model years after January 1, 2003 unless the Administrator determines, on the basis of a study that such standards should not take effect, or that they should be postponed, or that alternative standards should be established.

Conference agreement. The conference agreement adopts the House provision.

Section 204—Carbon Monoxide Emissions at Cold Temperatures

Senate bill. The Senate bill establishes standards for carbon monoxide emissions from light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit. An initial set of standards applies between model years 1993 through 1999. A second more stringent set of standards applies in model year 2000 and thereafter.

House amendment. The House amendment is similar to the Senate bill in the first stage except that the standard is phased in over a three year period. The House amendment gives the Administrator discretionary authority to impose a tighter standard beginning in 1998, but only if an EPA study determines that such standards are needed and feasible.

Conference agreement. The conference agreement is a compromise between the Senate bill and House amendment. The initial set of standards in the Senate bill is retained, but begins with model year 1994 (instead of 1993) with a three year phase-in period. The second round of standards in the Senate bill is also retained, but goes into effect only if six or more carbon monoxide nonattainment areas exceed the carbon monoxide standard. The determination is made in June 1997 and is effective for model year 2002. The useful life with respect to CO cold start is 5 years/50,000 miles. The Administrator can extend the useful life to 10 years/100,000 miles if it is technologically feasible and a phase-in period if provided.

In a September 17, 1990 rulemaking on carbon monoxide emissions from vehicles at cold temperatures, EPA sought comment on allowing manufacturers to average, trade or bank emissions. Such program elements are not in accordance with the law.

Unless there is assurance that each and every vehicle meets the emissions standards, it is quite possible that a given area, because of the mix of vehicles that are sold in the area, might have a fleet that fails to meet the Federal CO standard. The fact that another area, where a different mix of vehicles predominates, exceeds required emission reduction levels, will not contribute to attaining the carbon monoxide ambient standard in the first area.

Section 205—Evaporative Emissions

Senate bill. The Senate bill requires EPA to issue regulations to control evaporative emissions, including running losses, from all new gasoline vehicles within 18 months of enactment. The regulations must take effect beginning in model year 1994 and must require the greatest degree of emission reduction achievable by means expected to be available during any model year to which the regulations apply.

House amendment. The House amendment is generally similar to the Senate bill except it does not require regulations to take effect in 1994. Instead, EPA must commence rulemaking within 12 months of enactment. If EPA does not issue final regulations within 18 months, the agency must provide an explanation and set a deadline for issuing the regulations within an additional 15 months. The standard for emissions reductions is the same, except that EPA is to consider fuel volatility, cost, energy and safety.

Conference agreement. The Conference agreement adopted the House provision.

Section 206—Mobile Source Related Air Toxics

Senate bill. The Senate bill contains no comparable provision.

House amendment. The House amendment requires the Administrator to issue regulations to reduce emissions of hazardous air pollutants from motor vehicles and motor vehicle fuels within 54 months of enactment. Standards must reflect the greatest degree of emissions reduction EPA determines achievable through the application of technology that will be available, taking into account cost and other factors. The regulations at minimum must apply to benzene and formaldehyde. EPA is to study the need to regulate air toxics for motor vehicles and fuels.

Conference agreement. The Conference agreement adopts the House provision.

Section 207—Emission Control Diagnostics Systems

Senate bill. The Senate bill requires all new light-duty vehicles beginning in 1994 to have on-board diagnostic systems to identify emission-related systems deterioration or malfunction. EPA is given discretion to require onboard diagnostic devices for heavy-duty vehicles. EPA must issue regulations within 18 months of enactment and must require state inspection and maintenance programs to provide for inspection, maintenance and repair of onboard diagnostic systems.

House amendment. The House amendment is similar to the Senate bill, but applies to all vehicles. EPA must determine the effective date based on time needed for technological development and cost. EPA must commence a rulemaking within 12 months. If final regulations are not issued within 18 months, EPA must explain and set a deadline for issuance within an additional 15 months. EPA is given discretion to require state programs to inspect onboard diagnostic systems.

Conference agreement. The Conference agreement requires EPA to develop within 18 months of enactment regulations to require onboard diagnostic systems for light-duty vehicles and light-duty trucks. The regulations take effect in 1994, except that the Administrator may waive the application of the regulations for model year 1994 or 1995 or both if it would be infeasible to apply the regulations in these model years. EPA must require State inspection and maintenance programs to inspect these systems for maintenance and repair.

Section 208—Motor Vehicle Testing and Certification

Senate bill. The Senate bill requires EPA to revise certification tests to ensure that

tests reflect actual current driving conditions, including conditions relating to fuel, temperature, acceleration and altitude. Procedures must include evaporative and tailpipe emissions tests, and tests of trucks of 6,000 gross vehicle weight or more in a loaded mode. An idle test must be added to the certification procedure. If 10 percent or more of vehicles taken from the assembly line fail to meet the emissions standards, the model cannot be sold until the manufacturer corrects the problem.

House amendment. The House amendment requires that certification test procedures be revised to better reflect real-world conditions (e.g. temperature and fuels).

Conference agreement. The Conference agreement adopts the House provisions modified to include the Senate provision on Federal test procedure modifications, except that (1) the rulemaking and review need not occur every four years, and (2) there is no requirement that modifications include loaded mode testing. These revisions of the Federal test procedure are intended to increase the likelihood that vehicles in actual use will, in fact, meet the emissions standards required in the Act.

Section 209—Auto Warranties

Senate bill. The Senate bill shortens the warranty period for light-duty vehicles from 5 years/50,000 miles in currently law to 2 years/24,000 miles starting in model year 1995. However, the warranty would extend for 8 years/80,000 miles for catalytic converters, onboard diagnostic devices, electronic emissions-control units, and major components over $200 that were not in general use on vehicles made before 1990.

House amendment. The House amendment is similar to the Senate bill except that onboard diagnostic equipment is not automatically covered by the 8 year/80,000 mile warranty period.

Conference agreement. The Conference agreement adopts the House provision but includes onboard diagnostics in the components covered for 8 years/80,000 miles.

Section 210—In-Use Compliance—Recall

Senate bill. The Senate bill allows States to petition EPA for a determination of whether any class or category of vehicles is subject to recall, and gives the Agency 60 days to respond. EPA is allowed to consider information from State inspection and maintenance programs in making such a determination.

House amendment. The House amendment establishes intermediate in-use standards for motor vehicles of less than 6,000 lbs. gross vehicle weight rating (gvwr).

Conference agreement. The conference agreement adopts the House provision with the following addition: for trucks above 6,000 pounds gvwr, the agreement provides that the final in-use standards for emissions of non-methane hydrocarbons, carbon monoxide, and NO_x will apply to 50 percent of each manufacturer's sales volume in model year 1998 and 100 percent in model year 1999 and thereafter, for a period of 7 years/90,000 miles.

Section 211—Information Collection

Senate bill. The Senate bill contains no comparable provision.

House amendment. The House amendment requires motor vehicle manufacturers to conduct tests and to disclose information needed by EPA to determine whether the manufacturer is in compliance with this title. Authorized EPA personnel are allowed to enter manufacturers' facilities and inspect their records. Any information obtained under this section, except that relating to trade secrets, must be made available to the public.

Conference agreement. The conference agreement adopts the House provision.

Section 212—Nonroad Fuels

Senate bill. The Senate bill contains no comparable provision.

House amendment. The House amendment provides EPA with the authority to regulate fuels for nonroad vehicles and engines.

Conference agreement. The conference agreement adopts the House provision.

Section 213—State Fuel Regulation

Senate bill. The Senate bill contains no comparable provision.

House amendment. The House amendment clarifies that section 211(c)(4) of the Clean Air Act applies only to non-identical State regulations governing the same characteristic or component of the fuel or fuel additive already regulated by EPA. EPA is also allowed to approve non-identical State regulations that are necessary to achieve an ambient standard.

Conference agreement. The conference agreement adopts the House provision.

Section 214—Fuel Waivers

Senate bill. The Senate bill contains no comparable provision.

House amendment. The House amendment expands a requirement in current law that manufacturers obtain waivers for new fuels and fuel additives that are not substantially similar to the fuels used in vehicle certification.

Conference agreement. The conference agreement adopts the House provision.

Section 215—Misfueling

Senate bill. The Senate bill makes it unlawful for any individual to dispense or allow dispensing of leaded gasoline into vehicles designed for unleaded gasoline. The bill also makes it unlawful to dispense diesel fuel that does not meet the bill's standards into any motor vehicle, starting October 1, 1993.

House amendment. The House amendment includes the prohibition on misfueling with leaded gasoline, but does not include the high sulfur diesel prohibition.

Conference agreement. The conference agreement adopts the Senate provision.

Section 216—Fuel Volatility

Senate bill. The Senate bill requires EPA to tighten existing limits on gasoline volatility during the high ozone period the year, from May 15 to September 15, or a longer period set for a region by EPA. EPA must set standards for hotter areas that achieve reductions comparable to those in class C areas.

House amendment. The House amendment requires EPA to issue regulations banning the sale of gasoline with Reid Vapor Pressure greater than 9 lbs. psi during the high ozone season, as defined by EPA.

Conference agreement. The Conference agreement adopts the Senate provision modified to prohibit the Administrator from requiring gasoline with a lower RVP than 9.0 lbs. psi in attainment areas other than areas that have been redesignated from nonattainment to attainment.

Section 217—Diesel Fuel Sulfur Content

Senate bill. The Senate bill bans the sale of motor vehicle diesel fuel that has a sulfur content of more than 0.05 percent by weight, or that fails to meet a minimum cetane index of 40 as after October 1, 1993. The diesel fuel limits do not apply to certain refiners on the North Slope of Alaska with crude oil or feedstock capacity of 25,000 barrels per day or less whose products are used solely on the North Slope.

House amendment. The House amendment is similar to the Senate provision without the North Slope provision. An additional provision specifies the sulfur content of fuel used to certify heavy-duty diesel vehicles starting in 1991. EPA may exempt Alaska and Hawaii from diesel fuel limits.

Conference amendment. The Conference agreement adopts the House provision.

Section 218—Lead Substitute Gasoline Additives

Senate bill. The Senate bill contains no comparable provision.

House amendment. The House amendment requires EPA to develop test procedures to test lead-substitute gasoline additives. EPA may impose a user fee to recover the costs of testing any fuel additive up to a specified limit.

Conference amendment. The Conference agreement adopts the House provision.

Section 219—Reformulated Gasoline and Oxygenated Gasoline

New Subsection 211(k) of the Clean Air Act: Reformulated Gasoline

Senate bill. The Senate bill requires that reformulated gasoline be the only gasoline sold in severe and extreme ozone nonattainment areas. EPA must set standards for reformulated gasoline within one year of enactment, based on requirements in this section. Standards are to be phased in between 1992 and 1996.

At a minimum reformulated gasoline standards must provide for (1) an oxygen content of at least 2 percent In 1992, 2.5 percent in 1993 and 2.7 percent in 1994, except where higher oxygen content is mandated for carbon monoxide nonattainment areas; (2) an aromatic hydrocarbon content of no more than 30 percent in 1992, 28 percent in 1994 and 25 percent in 1996 and thereafter; (3) the lowest achievable benzene concentration, but not more than 1 percent, and (4) a volatile organic compound (VOC) reduction of at least 15 percent and no increase in NO_x. Reformulated gasoline is also subject to the regulations for gasoline volatility and for conventional gasoline.

EPA may certify a gasoline as complying with reformulated gasoline requirements if it complies with the oxygen content and VOC and NO_x emissions requirements, and achieves equivalent or greater emissions reductions than a gasoline meeting specifications for aromatic content and benzene content.

Moderate and serious ozone nonattainment areas may opt in to the reformulated gasoline program through a State implementation plan revision. EPA can delay requirements for moderate and serious areas for up to three years to allow time for fuel to be manufactured in the needed quantities.

EPA must issue regulations to ensure that conventional gasoline sold on a nationwide basis does not result in per-gallon emissions greater than from gasoline sold in 1989. The regulations, effective in 1993, must apply to VOCs, NO_x, CO and overall emissions of carcinogenic air pollutants.

House amendment. The House Amendment requires reformulated gasoline in any ozone nonattainment areas reclassified in the future as severe or extreme, as well as in the nine current severe and extreme ozone

nonattainment areas. EPA must set standards for reformulated gasoline based on requirements in this section within one year of enactment. Standards are to be phased in between 1992 and 2000.

Reformulated gasoline standards must require the greatest achievable reduction in emissions of VOCs during the high ozone period (as defined by EPA) and hazardous air pollutants, taking into consideration costs, non-air-quality health and environmental impacts, and energy requirements. Standards for reformulated gasoline must comply either with specified fuel content specification, or emissions performance requirements, whichever is more stringent.

The fuel content specifications are: (1) an oxygen content of at least 2 percent in 1992, 2.5 percent in 1993, 2.7 percent in 1994 and thereafter; (2) an aromatic hydrocarbon content of no more than 30 percent beginning in 1992, 28 percent in 1994, and 25 percent in 1996 and thereafter; and (3) a benzene content of no more than 0.08 percent.

The emissions performance requirements are: (1) a reduction of at least 15 percent in VOCs during the ozone high season, increasing to 20 percent in 1997, and 25 percent in 2000 and (2) the same reduction levels for hazardous air pollutants as for VOCs.

In addition, reformulated gasoline standards must require no lead content, additives to prevent deposits in vehicle fuel supply systems and no aggregate increase in NO_x emissions in comparison with conventional gasoline.

At a State's request, EPA must apply reformulated gasoline requirements in any ozone areas classified as marginal, moderate or serious areas. EPA must establish an effective date not later than January 1, 1994, or one year after the State application is received. If EPA determines that there is insufficient domestic capacity to produce reformulated gasoline, the Agency must extend the effective date in marginal, moderate, or serious areas for one additional year, and may renew the extension for two additional one year periods.

EPA must issue regulations to ensure that gasoline sold on a nationwide basis does not result in increased per gallon emissions from gasoline sold in 1989. The regulations are effective in 1992.

Conference agreement. The conference agreement requires reformulated gasoline in the 9 ozone nonattainment areas with population above 250,000 that had the highest ozone design values during the period of 1987 through 1989. EPA must set standards for reformulated gasoline within one year after enactment. The standard will be phased in between 1995 and 2000.

Reformulated gasoline standards must require that the fuel be heavy metal free (including lead and manganese) and contain deposit preventing additives. The oxygen content must be at least 2.0 percent. The benzene content cannot exceed one percent. Emissions of NO_x cannot exceed that of baseline gasoline (defined in this section). The total emissions of hazardous air pollutants during the entire year and the emissions of ozone forming VOCs during the high ozone season must be reduced by 15 percent by 1995. This reduction must increase to 25 percent by 2000 although EPA is authorized to lower this value (to not less than 20 percent) if it finds the requirements to be technically infeasible.

At any State's request, EPA must apply reformulated gasoline requirements in ozone areas classified as marginal, moderate, or serious. EPA must establish an effective date not later than January 1, 1995, or one year after the State application is received. If EPA determines there is insufficient domestic capacity to produce reformulated gasoline, EPA must extend the effective date in marginal, moderate or serious areas for one additional year, and may renew the extension for two additional one year periods.

Within one year after enactment, EPA must promulgate regulations to ensure that gasoline other than reformulated gasoline does not result in average per gallon emissions of VOCs, NO_x, carbon monoxide and toxic air pollutants in excess of emissions from gasoline sold in 1990.

New Subsection 211(m) of the Clean Air Act: Oxygenated Fuels

Senate bill. The Senate bill requires an oxygenated fuels program to reduce carbon monoxide emissions from motor vehicles in all 44 areas exceeding the carbon monoxide standard. The sale of gasoline with less than 3.1 percent oxygen is banned in these areas between October 1 and March 31 unless the seller holds oxygen credits. EPA may reduce the period. The requirement is effective October 1, 1991.

EPA may waive these requirements in whole or part if the state shows that oxygenated fuels would interfere with attainment of air quality standards for a pollutant other than carbon monoxide. EPA may waive the requirement in Alaska's carbon monoxide nonattainment areas if the agency finds that prevailing temperatures cause engine or fuel system malfunctions in vehicles using oxygenated fuels.

House amendment. The House amendment is similar to the Senate bill, except that the oxygen content is 2.7 percent. The standard would be 3.1 percent for serious areas that failed to attain the carbon monoxide standard by the deadline in the bill. The requirement is broader than in the Senate bill, applying to the metropolitan statistical area (MSA) or consolidated MSA in which the nonattainment area is located. The requirement applies during the part of the year that EPA determines the area is prone to high levels of carbon monoxide beginning no later than October 1, 1992.

A waiver similar to the Senate bill is mandatory when oxygenated fuels would interfere with attainment of an ambient standard other than CO. EPA also must waive the requirement where mobile sources do not contribute significantly to carbon monoxide pollution in an area, upon a showing by the state that is satisfactory to EPA.

Conference agreement. The conference agreement requires any gasoline sold in a carbon monoxide nonattainment area to contain at least 207 percent oxygen during the portion of the year in which the area is prone to high carbon monoxide levels. The area is defined for purposes of this requirement as the MSA or consolidated MSA, whichever is larger. The requirement is effective October 1, 1992.

The Administrator may waive the oxygenated fuels requirement in whole or in part if the State can demonstrate to the satisfaction of EPA that the use of oxygenated fuels would prevent or interfere with the attainment by the area of a pollutant other than carbon monoxide, if the State can demonstrate that mobile sources do not contribute significantly to carbon monoxide levels in the area, or if there is an inadequate domestic supply or distribution capacity for the product. Serious areas which fail to achieve the air quality standard by the applicable attainment date are required to switch to a fuel with 3.1 percent oxygen unless the requirement is waived by EPA.

Section 220—Lead Phasedown

Senate bill. The Senate bill bans the sale of leaded gasoline for motor vehicles designed for street or highway use effective January 1, 1992. EPA may extend the deadline annually for up to 3 years if the ban will reduce the availability of leaded gasoline for farm vehicles, and substitutes of lead additives are unavailable for use in gasoline powered farm vehicles. Manufacture of new engines requiring leaded gasoline is banned after 1992.

House amendment. The House amendment contains no comparable provision.

Conference agreement. The Conference agreement bans the sale of leaded gasoline as of December 31, 1995.

Section 221—Fuel and Fuel Additive Importers

Senate bill. The Senate bill agreement adds a new section which clarifies the term "manufacturer" to include an importer and the term "manufacture" to include importation.

House amendment. The House amendment contains no comparable provision.

Conference agreement. The Conference agreement adopts the Senate provision.

Section 222—Nonroad Engines and Vehicles

Senate bill. The Senate bill requires EPA to estimate the contribution of each category of nonroad engines and vehicles to ambient ozone and carbon monoxide levels in nonattainment areas, and to total nitrogen oxide and particulate levels. The Agency must issue standards for each category that makes a significant contribution to pollution levels that may reasonably be determined to endanger public health or welfare. Standards must meet the greatest emissions reduction achievable through the application of available technology, considering cost, safety, and energy factors. States can adopt more stringent standards.

House amendment. The House amendment requires EPA to determine within 30 months of enactment whether emissions from nonroad engines or vehicles are significant contributors to ozone or carbon monoxide levels in more than one nonattainment area. If so, the Agency must issue standards within 18 months for categories that contribute to that pollution, considering cost, safety, and energy factors. The EPA may issue additional standards for categories of nonroad engines and vehicles that significantly contribute to pollution that may reasonably be determined to endanger public health or welfare. States are preempted from adopting more stringent standards.

Conference agreement. The Conference agreement adopts the House provision with some modifications. The schedule for EPA study, determination, and promulgation of standards would be shortened from 48 months to 36 months. Railroad locomotives would not be included in the study and EPA is required to issue standards for new locomotive engines within five years of enactment, achieving the greatest possible reduction, considering cost, safety, and energy factors. States are preempted from regulating new nonroad engines which are smaller than 175 horsepower used in construction equipment or vehicles or farm equipment or vehicles, as well as new locomotives or new engines used in locomotives. With respect to other nonroad sources, California would be permitted to set standards, and other States

would be permitted to opt-in to the California standards.

Section 223—New Title II Definitions

Senate bill. The Senate bill contains no similar definitions.

House amendment. The House amendment amends section 216 of the Clean Air Act by adding new definitions for curb weight, gross vehicle weight rating, light-duty truck, loaded vehicle weight, test weight, motor vehicle or engine part manufacturer, nonroad engine, and nonroad vehicle.

Conference agreement. The conference agreement adopts the House provision.

Section 224—High Altitude Testing

Senate bill. The Senate bill requires EPA to open at least one testing center at a high altitude site, to conduct routine testing of vehicles at high altitude, and to evaluate heavy-duty engines and fuels at high altitude.

House amendment. The House bill requires EPA to open at least one testing center at a high altitude site.

Conference agreement. The conference agreement adopts the House provision.

Section 225—Compliance Program Fees

Senate bill. In section 213(b) of the Senate bill authorizes EPA to require manufacturers to pay for the cost of procuring and testing vehicles or engines which it has reason to believe may not be meeting in-use standards.

House amendment. The House amendment allows EPA to impose fees on manufacturers to recover the costs vehicle certification and testing. Fees are deposited in a special Treasury fund for use by EPA's compliance program, subject to appropriation.

Conference agreement. The conference agreement adopts the House provision.

Section 226—Prohibition on Production of Engines Requiring Leaded Gasoline

Senate bill. The Senate bill prohibits the production or sale of any vehicle engines requiring leaded gasoline after model year 1992.

House amendment. The House amendment contains no comparable provision.

Conference agreement. The conference agreement adopts the Senate provision.

Section 227—Urban Buses

Senate bill. The Senate bill requires new urban buses in metropolitan areas of one million or more to be capable of operating exclusively on low-polluting fuels, and to operate exclusively on such fuels. For larger cities, the requirement is phased in between 1991 and 1994 (10 percent in 1991, 25 percent in 1992, 60 percent in 1993, and 100 percent in 1994). For medium-sized cities (1 million to 1.5 million in population), the requirement is phased in between 1993 and 1997.

Low polluting buses must meet a particulate emissions standard of 0.1 grams per brake horsepower-hour (g/bhp-hr). Diesel buses qualify as low polluting if they meet this standard. All new urban buses must meet this standard beginning in 1992.

Beginning on January 1, 1992, in the cities subject to the bus program, urban buses must be retrofitted to meet the 0.1 g/bhp-hr standard at the time of any major engine overhaul.

House amendment. The House amendment is similar but applies to cities with a population of 750,000 or more. The requirement is phased in between 1994 and 1996 (30 percent in 1994, 60 percent in 1995, and 100 percent in 1996).

EPA must issue standards for clean-fueled buses based on the best technology that can reasonably be anticipated to be available at the time the measures are to be implemented, taking costs, safety, lead time, energy and other factors into account.

Clean-fueled buses must meet a 0.1 g/bhp-hr standard. In addition, either NOx or particulate matter cannot exceed 50 percent of emissions from a conventional vehicle of the same type and model year. EPA must relax the 50 percent requirement (to no more than 70 percent) if it determines it is not technically feasible.

Diesel-fueled urban buses must meet PM standards of 0.25 g/bhp-hr in 1991 and 1992, and 0.1 g/bhp-hr in 1993 and thereafter.

In cities subject to the bus program, urban buses that have their engines replaced or rebuilt after January 1, 1996, must be clean-fueled and operate exclusively on clean fuels when in the area.

Conference agreement. The Conference agreement sets performance criteria, beginning in 1994 requiring clean buses operating more than 70 percent of the time in large urban areas using any fuel to cut particulate emissions by 50 percent compared to conventional heavy duty vehicles. EPA is authorized to relax the control requirements to 30 percent. Beginning in 1994, EPA must conduct yearly tests to determine whether covered buses are meeting the standard in use over their full useful life. If EPA determines that 40 percent or more of the buses are not meeting the standard, the Agency must require that all new buses sold in areas of population of 750,000 or more operate excusively on low-polluting fuel. The Agency will provide a phase-in schedule.

Section 227—Enforcement

Senate bill. The Senate bill authorizes EPA to assess civil penalties (after an opportunity for hearing) up to $200,000 for violations of certain new vehicle-related provisions in the Clean Air Act. The maximum penalty for other violations by companies is raised from $10,000 to $25,000. Individuals can be fined up to $2,500. Individuals are prohibited from tampering with emissions control devices, and the manufacture or sale of devices that bypass or defeat emissions controls is made illegal.

House amendment. The House amendment is generally similar.

Conference agreement. The conference agreement adopts the House provision.

Section 228—Technical Amendments

Conference agreement. The conference agreement includes technical and conforming amendments to various parts of this title.

Section 229—Ethanol Substitute for Diesel

Senate bill. The Senate bill requires EPA to issue a report on the feasibility of using ethanol and high erucic rapeseed oil as an alternative to diesel fuel.

House amendment. The House amendment contains no similar provision.

Conference agreement. The Conference agreement adopts the Senate provision.

Section 230—Adoption by Other States of California Standards

Senate bill. The Senate bill contains no provision of this subject.

House amendment. The House amendment contains no provision of this subject.

Conference agreement. the conference agreement amends section 177 of the Clean Air Act, which allows other states to adopt emissions standards from the California motor vehicle control program. The purpose of this amendment to section 177 is to make plain that states exercising this option may not, in such adoption and enforcement, create a "third vehicle" that is not a California vehicle or a 49-state Federal vehicle, because of the burden it would place on the motor vehicle manufacturers.

Section 231—States Authority to Regulate

Senate bill. The Senate bill requires the Administrator and the Secretary of Transportation to conduct a study on the testing of aircraft engines and reguires the State of Connecticut, if it regulates emissions from aircraft engine test cells to regulate in accordance with the results of the study.

House amendment. The House amendment contains no provision of this subject.

Conference agreement. The Conference agreement requires the Administrator together with the Secretary of Transportation to issue a report to Congress on NO_x emissions from aircraft engines in enclosed test cells. Following completion of the study, any State may adopt or enforce any standard for NO_x emissions from test cells only after issuing a public notice stating whether such standards are in accordance with the findings of the study.

Section 232—Fugitive Dust

Senate bill. The Senate bill requires EPA to develop a new model within four years to predict fugitive dust emissions from surface coal mines. The Senate bill also allows governors to exempt surface coal mines and hardrock and non-coal mines, located in class II area in the States, from having to count their particulate emissions against the class II particulate increment.

House amendment. The House amendment does not contain a similar provision.

Conference agreement. The Conference agreement modifies the Senate provision to require EPA to develop the new model for predicting fugitive dust emissions from surface coal mines within three years. The agreement deletes the Governors' authority to exempt fugitive dust emissions from surface coal mines and hard rock and non-coal mines from consumption of prevention of significant deterioration increments.

Section 234—Clean Fuel Vehicles

Senate bill. The Senate bill sets up three clean-fueled vehicles programs to reduce ozone and toxic air pollution. One program requires new vehicles in the nine most polluted cities to be clean-fueled. A second program requires many of the new vehicles added to fleets to be clean-fueled. Separate requirements apply to Federal government fleets. A third program requires new urban buses in many cities to be clean-fueled (this program is included in section 227). Clean-fueled vehicles in each of the programs must meet different emissions standards.

Clean fuels consist of methanol, ethanol, mixtures of those fuels with gasoline, reformulated gasoline, natural gas, liquified petroleum gas, electricity, or any other fuel or power source, provided that such fuel or power source, when used in a motor vehicle, results in compliance with standards for clean-fueled vehicles.

Fleets

The Senate fleet vehicle program mandates a clean-fueled program for fleet vehicles in the nine severe and extreme ozone nonattainment areas. The program applies to fleets of 20 or more vehicles which are centrally fueled and maintained. Certain fleet vehicles are exempt, including law enforcement and emergency vehicles, as well as retail rental fleets.

Beginning in 1997, 30 percent of new light-duty vehicles (cars and very light trucks with loaded vehicle weight of 3,750 lbs. or less) and light duty trucks bought by commercial fleets must meet the standards for clean-fueled fleet vehicles. The vehicles must be operated exclusively on clean fuels when in the nonattainment area.

Clean-fueled fleet vehicles must yield the following in-use emissions: ozone-forming volatile organic compounds must not exceed 0.25 gpm, carcinogens must be reduced by 75 percent from the bill's baseline car, and formaldehyde emissions must not exceed 0.015 gpm. EPA must issue standards for light-duty trucks that are comparable to those for cars. Standards are to cover ozone-forming VOCs, carcinogens and formaldehyde.

Clean fueled fleet vehicles must meet standards that apply to conventional vehicles as well as standards for clean-fueled vehicles. If EPA determines it is not technically feasible for cars and very light trucks to meet both the clean-fueled fleet vehicle standards and the bill's NO_x tailpipe standards for gasoline vehicles, EPA can relax the NO_x standard as it applies to clean-fueled fleet vehicles to 1.0 gpm for 1995-1997 and 0.7 gpm for 1998-2000. EPA may grant equivalent waivers during the same two periods for light-duty trucks.

Fleet operators exceeding the requirements can sell credits to other fleet operators for use in demonstrating compliance.

A separate fleet program is established for Federal government fleets of cars and light-duty trucks in serious, severe and extreme ozone nonattainment areas. The program applies to 30 percent of new vehicles in 1995 and 1996, 60 percentin 1997 and 1998, and 90 percent thereafter. EPA is given the authority to lower these percentages.

Nine Cities Program

The Senate nine cities program requires that beginning in 1995, light duty vehicles (cars and very light trucks) sold in the nine metropolitan areas with the worst ozone pollution must be clean-fueled vehicles meeting certain emissions standards. Phase I standards begin in 1995. Phase II standards begin in 1999.

Between 1995 and 1998, clean fueled vehicle standards for cars and very light trcks must yield the following emissions in use: no more than 0.75 gpm of ozone-forming VOCs and a toxic content level that, in comparison with emissions from the bill's baseline gasoline, reduces the estimated number of human cancers by 12 percent.

In 1999 and after, clean-fueled vehicle standards become: no more than 0.66 gpm of ozone forming VOCs, a 27-percent reduction in toxic emissions, and a 0.015 gpm formaldehyde standard.

States can elect to apply the clean fuels programs for general vehicles or fleets to additional cities. Any new requirements would apply after the time needed for vehicles and fuels to be made available, as determined by EPA.

House amendment. The House amendment relies on a broader fleet program, a California pilot program, and an urban bus program to promote similar objectives. There is no requirement for all new vehicles in nine cities to be clean-fueled, and no separate program for federal fleets.

Clean fuels consist of methanol, ethanol, mixtures or those fuels with gasoline, reformulated gasoline, natural gas, liquified petroleum gas, electricity, or any other fuel or power source, when used in motor vehicles, results in compliance with standards for clean fueled vehicles.

Fleets

The House amendment requires a clean-fueled fleet program in serious, severe and extreme ozone nonattainment areas, carbon monoxide areas that have a 1988 design value of at least 0.16 parts per million and a population of 250,000 or more, and ozone areas reclassified as serious, severe or extreme. The program applies to fleets of 10 vehicles or more that are centrally fueled or capable of being centrally fueled. Exemptions are similar to the Senate bill. An additional exemption applies to non-road vehicles.

For cars and light-duty trucks, the program applies to 30 percent of covered fleet vehicles in 1995, 50 percent in 1996 and 1997, and 70 percent in 1998 and thereafter.

Fleet program requirements are established for heavy-duty vehicles (over 8,500 lbs. gross vehicle weight). The program covers 30 percent of heavy duty fleet vehicles in 1998, 50 percent in 1999, and 70 percent in 2000 and thereafter.

EPA must issue standards for clean-fueled fleet vehicles based on the best technology that can be reasonably anticipated to be available at the time the measures are to be implemented, taking costs, safety, lead time, energy and other factors into account.

Clean fueled fleet vehicle standards for cars and very light-duty trucks must limit emissions to not more than 0.66 gpm of ozone forming VOCs beginning in 1995, and 0.25 gpm beginning in 2000. For light duty trucks, the standards must require that ozone-forming VOCs do not exceed the light-duty truck equivalent of a car at 0.53 gpm beginning in 1995, and the light-duty truck equivalent of a car at 0.25 gpm beginning in 2000. For heavy-duty trucks, the standards at a minimum must require either NO_x or particulate matter not to exceed 50 percent of emissions from a conventional vehicle of the same type and model year. In addition, particulate matter cannot exceed 0.1 g/bhp-hr.

Clean-fueled fleet vehicles must meet standards that are applicable to conventional gasoline vehicles as well as standards for clean-fueled fleet vehicles. If necessary for cars and very light trucks to achieve the 0.25 gpm VOC standard, EPA shall waive the NO_x emission standard for up to three model years and establish a different NO_x standard not to exceed 0.7 gpm. No waiver is available for light-duty trucks.

Fleet operators exceeding the requirements could sell credits to other fleet operators for use in demonstrating compliance.

California Pilot Program

EPA must establish a pilot program in California to demonstrate the effectiveness of clean fueled vehicles in controlling air pollution in ozone nonattainment areas. In 1998, EPA must submit a report to Congress discussing the effectiveness of the program and the desirability of continuing or expanding it. The program applies to cars and very light trucks, and sets Phase I and II emission standards. Phase I begins in 1994; Phase II begins in 2000.

Clean-fueled vehicles must be produced, sold and distributed in California according to the following schedule: 150,000 vehicles annually in model years 1994-1996, and 300,000 vehicles in model year 1997 and each year thereafter.

EPA must issue emissions standards for California pilot program vehicles that are based on the best technology that can reasonably be anticipated to be available at the time the measures are to be implemented, taking costs, safety, energy and other relevant factors into account.

Phase I emissions standards require that beginning in 1995, the California pilot program vehicles be 50 percent cleaner than conventional vehicles of the same type and model year for emissions of ozone-forming VOCs and at least 5 toxic pollutants. In 2003, the standards require the vehicles to be 75 percent cleaner, unless EPA finds that level is not technically feasible. In that case, EPA must require lesser reductions, but not less than 50 percent.

Clean fueled vehicles must comply with the most stringent standard applicable to conventional vehicles of the same type and model year, as well as clean-fueled vehicle standards.

As under current law, other states can elect to have the California standards apply.

Conference agreement. The conference agreement establishes two programs to promote the development and use of clean-fueled vehicles, a fleets program and a California pilot program.

Clean alternative fuels specifically included methanol, ethanol, and mixtures of these two fuels with gasoline, reformulated gasoline, natural gas, liquified petroleum gas, electricity, and other fuels and power sources that result in a vehicle's compliance with the emissions standards established under these programs.

Fleets

The conference agreement requires a clean-fueled fleet program in serious, severe and extreme ozone nonattainment areas and carbon monoxide nonattainment areas with a design value at or above 16.0 parts per million and a population at or above 250,000. Coverage extends to fleets of ten or more vehicles that are capable of being centrally fueled (except for vehicles garaged at personal residences each night under normal circumstances).

In these cities a specified percentage of new fleet passenger cars and light duty trucks below 6,000 lbs. (30 percent in 1998, 50 percent in 1999, and 70 percent in 2000) must meet the California standards for low emissions vehicles starting in 1998, if such vehicles are available in California. If not, the program is delayed until model year 2001.

The tailpipe standard for these vehicles includes a limit of 0.075 gpm nonmethane organic gases (NMOG) compared to the 0.25 gpm non-methane hydrocarbon standard which applies to conventional cars.

EPA is mandated to establish an equivalent "wrap around" standard (exhaust, evaporative and refueling emissions combined) for low emission vehicles (LEVs) below 8,500 lbs. This wrap around standard is to be based on LEVs) using reformulated gasoline. It is left to the manufacturers to decide which standard to use (the LEV tailpipe standards or the wrap around standard).

New fleet heavy-duty vehicles are phased in (50 percent in 1998 and thereafter). Heavy duty fleet vehicles between 8,500 lbs. and 26,000 lbs. are required to meet a combined NO_x and hydrocarbon emission standard of 3.15 g/bhp-hr, which is a 50 percent reduction below emissions from 1994 heavy-duty diesel engines. If EPA determines this standard is not possible for a clean diesel-fueled engine, the Agency can change the requirement to a 30 percent reduction.

California Pilot Program

The conference agreement contains a California pilot program. Beginning in 1996, 150,000 clean-fueled vehicles must be produced for sale in California annually; in 1999 and later years, the number rises to 300,000. These vehicles must meet California's transition low emission vehicle standards (0.125 gpm NMOG, 0.4 gpm NO_x, 3.4 gpm carbon monoxide and 0.015 gpm formaldehyde) until the year 2000, when they must meet the LEV standards (0.075 gpm NMOG, 0.2 gpm NO_x, 3.4 gpm carbon monoxide and 0.015 gpm formaldehyde). California is required to develop an implementation plan revision within one year to assure that sufficient clean fuels are produced, distributed and made available, so that all vehicles required to be clean-fueled can operate to the maximum practicable extent on clean fuels in the covered area. If California fails to adopt a fuels program that meets these requirements, EPA must establish such a program within three years.

Other states with serious, severe or extreme ozone nonattainment areas are authorized to "voluntarily" opt in to the program in whole or in part. This voluntary opt-in cannot include any production or sales mandate for vehicles or fuels but must rely on incentives to encourage their sale or use.

Section 235—Federal Compliance

Senate bill. The Senate bill requires Federal agencies to comply with EPA-approved State implementation plans. This requirement includes compliance with motor vehicle inspection and maintenance programs, except for military tactical vehicles.

House amendment. The House amendment contains no similar provision.

Conference agreement. The Conference agreement adopts the Senate provision on compliance with motor vehicle inspection and maintenance programs.

TITLE V—PERMITS

Section 501 of the conference agreement adds a new title V to the Clean Air Act establishing a program for operating permits.

New Section 501—Definitions

Senate bill. The Senate bill defines the sources that are covered by the new permit program and that are required to obtain operating permits.

House amendment. The House amendment includes similar definitions as those found in the Senate bill, but does not include definitions of the term "major emitting facility", or of "owner or operator" for purposes of section 111.

Conference agreement. The conference agreement includes the House provisions, modified to eliminate the two separate subsections that addressed definitions under sections 111 and 112. The House provisions define the term "major source" by reference to the definition of that term in section 112, section 302, or part D of Title I of the Act.

New section 501 of the Act, as added by this agreement, defines those sources that will be subject to the requirement to obtain operating permits by, among other things, making clear that the requirement applies to all "major sources" as that term is defined in title I of the Amendments.

New Section 502—Permit Programs

New Subsection 502(a): Violations

Senate bill. The Senate bill sets out the universe of sources that would become subject to the requirements of the permit program, and allows the Administrator to designate source categories in addition to those listed, as well as to exempt sources from the requirements of the permit program under specified, limited conditions.

House amendment. The House amendment is similar to the Senate provision, but does not allow the Administrator to exempt major sources from permit requirements.

Conference agreement. The conference agreement clarifies that public notice and comment shall be required in connection with the addition of source categories to the list of those that will be required to obtain permits, and emphasizes that the permit program requirements will not affect the requirements found elsewhere in the Act that a permit be obtained prior to construction or modification of a source. In addition, the agreement adopts the House criteria for exemptions ("impractical, infeasible, or unnecessarily burdensome"), but clarifies that regulations implementing such exemptions must be consistent with the Act. Finally, the conference agreement retains the House provision prohibiting the Administrator from exempting any major source from the permitting requirements established in this title.

In general terms, this section allows the EPA to expand its list of sources that will be required to obtain a permit after public notice and comment, and also authorizes EPA to exempt sources from permit requirements under certain limited, specified, conditions. This title provides that EPA can grant such exemptions if it concludes that compliance with the permit program requirements would be "impracticable, infeasible, or unnecessarily burdensome".

However, as the language of the statute makes clear, any such exemption is required to be consistent with the Act. The Act requires EPA to protect the public health, welfare and the environment. Accordingly, this provision of the permits title prevents EPA from exempting sources or source categories from the requirements of the permit program if such exemptions would adversely affect public health, welfare, or the environment.

New section 502(a) of this title also states explicitly that the EPA cannot exempt "major sources" from the requirements of the permit program.

New Subsection 502(b): Regulations

Both the Senate bill and the House amendments require the EPA to promulgate general regulations within one year following enactment of the Clean Air Act Amendments of 1990 that establish the minimum elements of an approvable permit program to be administered by an air pollution control agency. The conference agreement retains this requirement, as well as the provisions found in both the Senate bill and the House amendment relating to permit applications and to monitoring and reporting aspects of those regulations.

As the first step in the implementation of the permit requirements, new section 502(b) of the Act requires EPA to establish basic regulations that will govern the States in developing permit programs within one year following enactment of the Amendments.

In this connection, it is important to emphasize that while States will be required to comply with the permit program regulations prepared by the EPA, the States will remain free to establish additional permit requirements that are more stringent than those prescribed by the EPA. We state this point explicitly in new section 506.

New Subsection 503(b)(3): Fees

Senate bill. The Senate bill establishes a permit fee system designed to cover the reasonable costs of the permit program, and allows those fees to be used to support the entire air program administered by the permitting agency.

House amendment. The House amendment establishes a permit fee system designed to cover all direct and indirect costs of the permit program, and limits use of the fees to support only the permit program itself.

Conference agreement. The conference agreement establishes a fee system to cover the direct and indirect costs of the permit program, and clarifies that fees can be imposed by State, local, and interstate authorities. The agreement also makes clear that fees collected under the permit program by a State, local or interstate permit authority shall be utilized solely to cover the reasonable (direct and indirect) cost required to support the permit program as enumerated in new subsection 502(b)(3)(A). Finally, the agreement provides that in the event EPA determines that fee collection is inadequate, it can collect fees itself, and that such fees shall be designed solely to cover the Administrator's costs of administering the permit program.

Under the express terms of this agreement, the costs of permit programs include costs associated with the establishment of air emission standards, with monitoring, inspections, and other actions. Accordingly, this section of the permits title authorizes permitting authorities to collect permit fees sufficient to defray a wide range of direct and indirect costs associated with with their permit programs.

New Subsection 502(b)(5): Required authority

Senate bill. The Senate bill provides that each permitting authority must have adequate authority to engage in a variety of specified actions to administer the permit program, including authority to assure that no permit be issued in the event the Administrator objects to issuance.

House amendment. With the exception of the requirement that no permit issue over an EPA objection, the House amendment contains similar authority provisions as those in the Senate bill.

Conference agreement. The conference agreement clarifies that the permitting authority must have authority to impose penalties in a maximum amount of not less than $10,000 per day of violation. This change in the House language clarifies that the authority is not required to impose a $10,000 fine for each violation. In addition, the agreement adopts the Senate provision which requires the permitting authority to have adequate power to ensure that no permit will be issued if the Administrator objects to issuance in a timely manner.

This provision is significant, and bears emphasis. New section 502(b)(5) requires that the permitting authority in each State be empowered to ensure that no permit will be issued to any source in the event the EPA Administrator objects to the issuance of that permit.

The significance of this provision is as follows. Under new section 505(b), the Administrator is required to object to permit that violate the Act. Thus, this particular provision in new section 502(b)(5) helps to assure that no State, local, or interstate permitting authority will be able to issue any permit in

a form that the EPA has found objectionable.

New Subsection 502()b)(6): Processing procedures

Senate bill. The Senate bill requires permitting authorities to establish expeditious processing procedures for permit applications.

House amendment. The House amendment requires expenditious permit processing procedures in the same fashion as the Senate bill. In addition, the House amendment requires permitting authorities to allow an opportunity for judicial review of the final permit action by the applicant or by any person who participated in the public comment process on the permit application.

Conference agreement. The conference agreement retains the requirement for expeditious permit processing, clarifies that judicial review of actions on permits shall be in State court, and allows such review by: (i) the permit applicant: (ii) any person who participated in the public comment process; and (iii) any other person who could obtain judicial review of the permit action under applicable law. These modifications in the House provision with respect to judicial review of permit actions are intended to ensure that existing provisions of law governing the availability of such review are in no way limited by this title.

New section 502(b)(6) serves several important functions. First, much concern has been expressed that this new permitting process will unduly delay the proper functioning of many sources, and we intend to mitigate any delay by directing that the process be expeditious.

In addition to this general directive for expeditious processing, we mandate in new section 503 that permitting authorities approve or reject permit applications within certain specified time periods following filing. In this fashion, we have taken explicit steps to protect against undue delays.

Several other provisions are included to ensure fair treatment in the permit process. For example, we make clear that judicial review of final actions by the permitting authority to issue or deny permits shall be available in State court to anyone who could obtain such review under any applicable law. This provision ensures that existing provisions of law governing the availability of review of final actions on permit applications are in no way limited, and that interested persons who arguably are affected by permit decisions are guaranteed their day in court.

In addition to providing for judicial review of final actions on permits, we provide for judicial review in the event the permitting authority *fails* to take final permit action. Specifically, in new section 502(b)(7), we provide that the same persons authorized in new section 502(b)(6) to seek judicial review of final actions also are authorized to seek judicial review in State court in the event the permitting authority *fails* to take final action in conformity with the deadlines for such action that are established in new section 503 (or, if the permit is one required under the acid rain title, by the time established for such action in that title). In all such cases, if the U.S. EPA is the permitting authority, judicial review will be available in federal court under sections 304 and 307 of the Act.

These provisions will benefit everyone concerned with the permitting process. Companies that want to get on with their business in conformity with an operating permit will be able to seek court assistance in the event their applications languish in a large backlog of applications at the permit office. They will be able to seek court orders compelling the permit authority to act. At the same time, persons concerned that delays in the approval of operating permits would allow increases in pollution would likewise be able to petition the courts to mandate prompt action on permit applications.

New Subsection 502(b)(9): Permit revisions

Senate bill. The Senate bill provides that permits can be revised prior to the expiration of the permit term in order to incorporate requirements of the Act that became applicable to the source where such revision is necessary to protect public health or welfare or the environment, or to correct material mistakes.

House amendment. The House amendment provides that permits for major sources with a term of three years or more would be revised prior to the expiration of the permit term to incorporate applicable standards and regulations that are promulgated after issuance of the permit, if the standards or regulations become effective before the expiration of the permit term. In addition, the House bill requires that the revisions occur no later than 18 months after promulgation of the standards or regulations.

Conference agreement. The conference agreement adopts the House amendment without change.

Like the earlier provisions discussed above, this provision is a careful effort to ensure that the permit program works effectively and efficiently. Succinctly, this provision accommodates two competing concerns. On the one hand, it is important to ensure that permit requirements remain up-to-date as the provisions of the Clean Air Act are developed and new requirements are imposed. On the other hand, it also is important to be sure that we do not reduce the permit program to a shambles by requiring sources to engage in a continuous process of revising their permits as these new requirements are imposed.

So we have crafted a provision that allows sources some certainty that their permits will not need to be revised every time EPA comes up with a new requirement or regulation.

Nothing in this title supports any inference that this provision interferes with the authority of the EPA to take appropriate actions to revise, revoke, modify or otherwise affect permits when such actions are necessary to protect public health, welfare, or the environment. To the contrary, nothing in this title prevents the EPA from acting to address situations where the public health, welfare, or the environment is at risk. In fact, new section 505(e) provides authority for the Administrator to modify, revoke, reissue or terminate permits for cause. Such "cause" clearly could include the promulgation of new requirements or regulations that the Administrator determined were essential to enforce prior to the time an existing permit expired.

New Subsection 502(b)(10): Operational flexibility

Senate bill. The Senate bill requires EPA to provide by regulation that the permitting authority allow sources the flexibility to make operational changes that shift emissions among sources within a facility without the need for a permit revision in cases where the changes are authorized by permit, the source provides 30 days written notice of the proposed change, and the changes do not increase the rate of emissions or the total emissions allowed under the permit.

House amendment. The House amendment requires permitting authorities to have provisions allowing changes within a permitted facility without the need for a permit revision if the changes do not constitute modifications under title I of the House amendment, the changes do not exceed the emissions allowable under the permit, and the facility provides advance notice of the proposed changes.

Conference agreement. The conference agreement retains the House language that allows changes without a permit revision if the changes do not constitute modifications under title I. The agreement also includes the Senate requirement that the changes must not increase the emission rate or the total emissions, and specifies that the source must provide seven days advance written notice of the proposed changes to the EPA and the permitting authority.

Under the language of title I, the question whether any particular change constitutes a "modification" will depend—not only on the nature of the change itself—but will also depend upon the air quality of the area in which the facility seeking to make the change is located. Nevertheless, we are confident that this provision allows businesses the flexibility they need to remain competitive, while at the same time it preserves the ability of the government to regulate proposed changes in an appropriate fashion.

New Subsection 502(d): Submission and approval of permit programs

Senate bill. The Senate bill provides that each State must submit a permit program to EPA for review within three years after enactment of the Clean Air Act Amendments, and that EPA must approve or disapprove a program within one year after it is submitted. In the event the State fails to submit an approvable program, the Senate bill provides that EPA will apply a sanction and that EPA has the discretion to establish and enforce a Federal permit program in lieu of the State program.

House amendment. The provisions of the House amendment with respect to State development and submission of a permit program mirror those of the Senate bill. In the event the State fails to submit an approvable program, the House bill provides for a menu of sanctions that differ from those of the Senate bill.

Conference agreement. The conference agreement provides the same schedule for development and submission, review and approval as contained in the Senate bill. With respect to sanctions, the conference agreement provides EPA the discretion to apply a sanction in the event the State does not submit an approvable program within 18 months after submission is required. In the event more than 18 months elapse after submission is required and the State program has not been submitted and approved, the conference agreement requires EPA to apply a sanction. In the event the failure to submit an approvable program relates to an air pollutant for a nonattainment area, other sanctions shall apply. The conference agreement also provides that EPA shall promulgate, administer, and enforce a Federal permit program in lieu of a State program in the event a complete program has not been approved in its entirety within two years after the date required for submission.

The permit program established in this title is key to the proper implementation of this legislation. Accordingly, we are counting on the States to move forward vigorously to develop and enforce their own programs in conformance with the provisions of this section. However, in the event the State is reluctant to develop, administer or enforce its own permit program under this title, we have included authority for EPA to impose sanctions. This authority is set out in sections 502(d) and 502(i) of the new permits title.

These sanctions can be imposed by EPA under certain defined circumstances when any State fails either to submit an approvable program, or to enforce an approved program in an adequate manner. Such sanctions can include withholding certain highway funds. If the failures on the part of the State continue, EPA is directed to prepare, administer, and enforce a Federal permit program.

New Subsection 502(f): Partial permit programs prohibition

Senate bill. The Senate bill has no provision for partial permit programs.

House amendment. The House amendment does not provide for submission and approval of partial permit programs unless those programs satisfy the requirements of the permit title, title IV on acid deposition, section 112, and title I on nonattainment. The House bill also provides that approval of a partial program will not relieve the State of its obligation to submit a complete program, or from the application of sanctions for failure to submit a program.

Conference agreement. The conference agreement adopts a modified version of the House amendment, eliminating language relating to the authority of the Governor and the Administrator with respect to partial permit programs. The authority to approve partial permit programs is severely limited by the language of the conference agreement.

New Subsection 502(g): Interim approval

Both the Senate bill and the House amendment provide EPA the authority to grant interim approval to permit programs by rule where the programs are not fully approvable. Both also provide that such interim approval will last no longer than two years.

Conference agreement. The conference agreement adopts the House provision, and adds language which clarifies that while sanctions and the duty of the EPA to promulgate, administer, and enforce a Federal program shall not be applied during the period of any interim approval, such sanctions and duty shall apply following expiration of any interim approval.

This language makes clear that no State shall be allowed to use approval of its permit program on an interim basis as an excuse for failing to move forward vigorously to prepare and submit a complete program.

New subsection 502(i): Administration and enforcement

Senate bill. The Senate bill provides EPA with discretion to apply sanctions in the event it determines that a State is not adequately administering and enforcing that State's permit program, and requires EPA to promulgate, administer and enforce a Federal permit program after a certain period if the State fails to do so.

House amendment. The House amendment also provides EPA with the discretion to apply sanctions, and requires EPA to impose sanctions in nonattainment areas, as well as to establish and enforce a Federal program, under certain conditions.

Conference agreement. The conference agreement allows EPA discretion to apply sanctions to States found to be deficient in administration and enforcement of their programs during an 18-month period following EPA notice to such States. If the Administrator determines that the State failure to administer and enforce has not been corrected after expiration of the 18-month period following notification from the EPA, the Administrator is required to apply certain sanctions. Such sanctions shall be applied only where the failure to adequately enforce and administrate the program relates to an air pollutant for which the area has been designated a nonattainment area. Finally, the conference agreement provides that EPA shall promulgate, administer, and enforce a Federal permit program two years after notifying the State of deficiencies where the State fails to correct deficiencies within 18 months after receipt of notice from the EPA.

New Section 503—Permit Applications

New Subsection 503(b): Compliance plan

Senate bill. The Senate bill requires the owner or operator of a source to submit a compliance plan, progress reports, certifications of compliance, and reports on violations to the permitting authority.

House amendment. The House amendment includes a comparable provision.

Conference agreement. The conference agreement clarifies that the compliance plan shall be submitted by the permit applicant, and requires the plan to include a schedule of compliance as well as a schedule for submitting progress reports at least every six months regarding implementation of the compliance plan. In addition, the conference agreement requires the permittee to certify at least annually that it is in compliance with the applicable terms of the permit, and to report promptly to the permitting authority any deviations from permit requirements.

New Subsection 503(c): Deadlines for permit applications

Senate bill. The Senate bill provides that sources will submit permit applications and compliance plans within 30 months after becoming subject to permit requirements, and requires permitting authorities to establish a schedule for phasing-in the processing of those applications.

House amendment. The House amendment provides that sources will submit applications and compliance plans within 12 months after becoming subject to permit requirements, and requires permitting authorities to approve or disapprove permit applications within 18 months of receipt. In addition, the House amendment requires permitting authorities to establish a phased schedule for processing permit applications, and to grant priority to applications received under sections 165 (preconstruction), 172 and 173 (nonattainment).

Conference agreement. The conference agreement retains the requirement that sources submit permit applications within 12 months of becoming subject to permit requirements, and clarifies that permitting authorities shall not only approve or disapprove, but shall also issue or deny, permits within 18 months after receiving permit applications. It is this latter deadline that is made subject to judicial review by the provisions contained in new subsection 502(b)(7). In addition, the conference agreement provides a phased schedule for acting upon applications submitted within the first year after the effective date of a permit program, and clarifies that permitting authorities shall grant priority consideration to applications for construction or modification of sources.

New Subsection 503(d): Effect of timely and complete applications

Senate bill. The Senate bill protects certain sources from the requirements of this title so long as they submit timely and complete permit applications.

House amendment. The House amendment contains the same provisions as the Senate bill, and includes applications for renewals in the scope of the protection.

Conference agreement. The conference agreement includes the reference to applications for permit renewals, and clarifies that the protection afforded under this subsection shall not apply to sources required to have permits prior to construction or modification. The conference agreement also provides that no source will be deemed in violation of the requirement to have a permit prior to the date that source is required to file its permit application under the phased schedule established by the permitting authority.

New Subsection 503(e): Availability of documents

Both the Senate bill and the House amendment require that a copy of certain permit documents be made available to the public, subject to the protections from disclosure afforded under section 114(c) of the Act.

Conference agreement. The conference agreement retains the House language that provides 114(c) protection for compliance plans, and clarifies that schedules of compliance shall be made publicly available as part of the compliance plan. It should be emphasized that the compliance plan required to be submitted under this title must include much more detailed information than the compliance plan that is required to be submitted under title IV (relating to acid deposition control).

New Section 504—Permit Requirements and Conditions

New Subsection 504(a): Permit conditions

Both the Senate bill and the House amendment provide that each permit will include emission limitations and standards, a schedule of compliance, and such other conditions as are necessary to assure prompt and continuing compliance with applicable requirements of the Act.

Conference agreement. The conference agreement clarifies that the emission standards and limitations included in permits must be enforceable, adds a requirement that the permit include the requirements of the applicable implementation plan, and a requirement that the permit include a requirement that the permittee submit the results of any required monitoring no less often than every six months.

New Subsection 504(b): Monitoring and analysis

Senate bill. The Senate bill provides that the EPA could, by rule, prescribe procedures and methods for determining compliance with the Act and for monitoring and analysis of pollutants regulated under the Act.

House amendment. The House amendment provides for EPA rulemaking in the same fashion as does the Senate bill with respect to determining compliance and for

monitoring and analysis of pollutants, and includes certain language with respect to continuous emissions monitoring.

Conference agreement. The conference agreement provides that EPA may, by rule, prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under the Act. In addition, the conference agreement provides that continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.

New Subsection 504(f): Permit "shield"

Senate bill. The Senate bill provides that compliance with the terms and conditions of a permit will be deemed compliance with all Clean Air Act requirements that are explicitly addressed in the permit.

House amendment. The House amendment provides that compliance with a permit will be deemed compliance with the requirements of the permit program, and that under certain conditions the permit could also provide that permit compliance will be deemed compliance with other applicable provisions of the Act.

Conference agreement. The conference agreement provides that compliance with a permit issued in accordance with this title shall be deemed compliance with the requirements of new section 502. In addition, it clarifies that—except as provided otherwise by the Administrator by rule—compliance with a permit may be deemed compliance with other applicable provisions of the Act that relate to the permittee if: (i) the permit includes the applicable requirements of such provisions, or (ii) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions are not applicable and the permit includes or expressly refers to the determination. In addition, the conference agreement provides that this subsection shall not alter or affect the provisions of section 303 (emergency orders). In other words, there is no "shield" with respect to orders issued under section 303.

This provision balances competing concerns in a fashion that protects both industry and the quality of our nation's air.

On the one hand, this provision provides reasonable assurance to industry that sources will be protected from allegations that they are in violation of the Clean Air Act so long as they are in compliance with an operating permit that has been properly-issued in accordance with the requirements of this title.

On the other hand, by requiring that any determination of the permitting authority with respect to provisions it deemed inapplicable to the permittee be included in the permit itself, we have made sure in this provision that the public will be kept fully informed as to the requirements of the Act with respect to which the permit will act as a "shield".

This provision is designed not only to protect facilities that are in compliance with the provisions of their permits, but also to preserve the ability of the public to know how it is that sources are to be regulated. In particular, this provision ensures that no permitting authority will be able to tuck away in a file drawer—far from the public eye—a determination that a source will be shielded from any requirement of the Clean Air Act. Under this provision, all such determinations will be made in a public fashion and will be open to public review and comment before such determinations take effect.

New Section 505—Notification to Administrator and Affected States

New Subsection 505(a): Transmission and notice

Senate bill. The Senate bill requires each permitting authority to submit certain permit documents to the EPA for review, unless the permits merely implement existing State implementation plans (SIPs) and make no material change in the SIPs. The Senate bill also requires permitting authorities to provide notice of proposed permits to any State susceptible to adverse air quality effects from emissions that would be allowed under the permits, and to allow such States to comment on those permits.

House amendment. The House amendment requires permitting authorities to provide certain permit documents to the EPA for review. The House amendment also has requirements for notice to States similar to those contained in the Senate bill.

Conference agreement. The conference agreement requires each permitting authority to transmit to the EPA a copy of certain permit documents for review in connection with each permit application. In addition, the conference agreement requires permitting authorities to notify all States whose air quality may be affected and that are contiguous to the State in which the emission originates, or that are within 50 miles of the source that is seeking the permit, of each permit application and proposed permit.

These are intended to be minimum notice requirements with respect to affected States. Accordingly, EPA is authorized to expand the 50-mile limit for notice, and to require notice to non-contiguous States, in appropriate circumstances.

New Subsection 505(b): Objection by EPA

Senate bill. Under the Senate bill, no permit can be issued if EPA objects to issuance, and the Administrator is required to object to any permit or permit modification that contains provisions not in compliance with the Act. In the event EPA fails to object to such a permit, the Senate bill allows citizens suits in Federal district court to review such failures.

House amendment. The House amendment authorizes EPA to object to proposed permits that are not in compliance with the requirements of the Act, and requires the Administrator to provide a statement of reasons for any objection.

Conference agreement. The conference agreement requires the Administrator to object to the issuance of a permit if the Administrator determines that the permit contains provisions which are not in compliance with the Act, including the requirements of an applicable implementation plan. The conference agreement allows a 45-day period for the Administrator to review permits forwarded from permitting authorities and to make an initial determination regarding, *inter alia*, compliance with the Act.

In the event the Administrator does not file an objection to a proposed permit, the conference agreement further provides that any person can petition the Administrator to lodge such an objection during the 60-day period following expiration of the 45-day period provided for initial EPA review. Any such petition shall be based only upon objections that were raised during the public comment period on the proposed permit, unless the petitioner demonstrates that it was impracticable or impossible to raise such objections during that time.

Under the conference agreement, the petition will not postpone the effectiveness of any permit that has been issued by the permitting authority after the close of the 45-day period for initial EPA review but before the filing of the petition. The agreement requires the Administrator to take final action on the petition within 60 days after it is filed, and further requires the Administrator to issue an objection during that time if the petitioner demonstrates that the permit is not in compliance with any requirements of the Act, including the requirements of the applicable implementation plan. In the event the Administrator denies the petition, that action would be subject to judicial review in the Federal courts of appeal pursuant to section 307 of the Act.

The conference agreement also provides that in the event a permitting authority has already issued a permit prior to receiving an objection from the EPA, the Administrator is required to modify, terminate, or revoke that permit upon issuing an objection in response to a petition. Permitting authorities may not issue permits after receiving an objection from the EPA unless they first revise the permit to meet the objection.

This section sets out clearly the procedures required of EPA in reviewing permits. Simply put, the Administrator is required to object to permits that violate the Clean Air Act. This duty to object to such permits is a nondiscretionary duty. Therefore, in the event a petitioner demonstrates that a permit violates the Act, the Administrator must object to that permit.

A failure to object under these circumstances would violate the nondiscretionary duty of the Administrator, and therefore would be subject to review in Federal district court in a citizen suit filed under section 304 of the Act. In such a suit, the court could compel the Administrator to object to the permit. Courts in such citizen suits are as capable as is the Administrator to review the merits of the petition and to determine if an objection should be entered to the permit. Accordingly, courts in such suits should grant no deference to the views of the Administrator and should review the merits of the petition *de novo* in order to arrive at its determination whether to order the Administrator to issue an objection to the permit.

New Subsection 505(c): Issuance or denial of permits

Under both the Senate bill and the House amendment, permitting authorities are allowed 90 days to revise permits to meet EPA objections, and if the permitting authority fails to so revise the proposed permit, EPA will issue or deny the permit. No objection by EPA will be subject to judicial review until the Administrator takes such final action. The conference agreement adopts the House version of this provision.

New Subsection 505(d): Waiver of notification requirements

The House amendment allows the Administrator to waive the requirement that permitting authorities notify EPA and affected States of proposed permits for sources other than major sources, as well as the provision allowing EPA to object to permits for sources other than sources. No such provision appears in the Senate bill.

Conference agreement. The conference agreement adopts the House provision without change.

For sources other than major sources, new section 505(d) authorizes the Administrator to waive the requirement that permitting authorities notify EPA and affected States of proposed permits, as well as the requirement that EPA object to permits that are in violation of the Clean Air Act. However, no waiver is allowed with respect to the requirement that EPA take final action issuing or denying a permit after allowing the States an opportunity to meet any objection.

New Section 506—Other Authorities

New Subsection 506(a): In general

Both the Senate bill and the House amendment provide that nothing in the permits title will prevent permitting authorities from establishing additional permitting requirements not inconsistent with the Act.

Conference agreement. The conference agreement adopts the House provision. Consistent with the general provisions of section 116 of the Clean Air Act, the conferees understand that a State may establish additional more stringent permitting requirements, but a State may not establish permit requirements that are inconsistent with the national permitting requirements of this act, including this title.

New Section 507—Small Business Stationary Source Technical and Environmental Compliance and Assistance Program

New Subsection 507(a): Plan Revisions

Both the Senate bill and the House amendment have provisions for States to establish a small business stationary source technical assistance program that would assist such sources in complying with permit program requirements.

Conference agreement.—The conference agreement requires each State to include in its implementation plan provisions for establishing a small business stationary source technical and environmental compliance assistance program. The States are to submit such proposed provisions of the EPA within two years after enactment of the Clean Air Act Amendments of 1990. Among other items, the provisions are required to include procedures for consideration of requests from a small business stationary source for modifications of any work practice or technological method of compliance, or of the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based upon the technology and financial capability of the small business stationary source.

Under the conference agreement, no such modifications may be granted unless they are in compliance with the applicable requirements of the Act, including the requirements of an applicable implementation plan. Where such applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

Paragraph (7) of new subsection 507(a) restrains the flexibility under this section to that which is consistent and in compliance with the applicable Federal regulation, including the deadlines of the Act. However, it is the intent of the conferees that the EPA, in developing regulations, give careful consideration to opportunities for flexibility, based on the technical and financial limitations of small businesses. This same principle of encouraging flexibility also applies in the case of EPA guidance documents, such as CTG's where differentiating among the size and type of facilities is particularly important.

New Subsection 507(b): EPA Program.

Both the Senate bill and the House amendment require the EPA to establish a small business stationary source technical assistance program to assist the States in developing their own provisions, and to issue technical guidance for use by the States in implementing their own programs.

Conference agreement.—The conference agreement requires EPA to establish a small business stationary source technical and environmental assistance program for several purposes, including assisting small business stationary sources in determining applicable requirements and in receiving permits under the Act in a timely manner in any State that fails to submit a program.

New Subsection 507(c): Eligibility

Senate bill.—The Senate bill defines "small business stationary source" for purposes of this section by reference to specific limits on the amounts of air pollutants either emitted by that source or which that source has the potential to emit.

House amendment. The House amendment defines "small sources" in a manner different from the Senate definition, and allows States to include major sources in the program upon the filing of a petition by such sources.

Conference agreement.—The conference agreement defines the term "small business stationary source" for purpose of this section as a non-major stationary source that satisfies certain restrictions on number of employees and amount of emissions. A State may consider the petition of a major source to be included in the small business stationary source program if that source meets certain conditions. Sources that can meet the requirements of the Act without application of this section can be excluded by the State from the small business stationary source program.

New Subsection 507(g): Continuous Emission Monitors

Both the Senate bill and the House amendment provide that requirements for continuous emission monitoring will not be imposed on a small business stationary source under certain conditions.

Conference agreement.—The conference agreement provides that, insofar as consistent with the requirements of the Act, the EPA shall consider the necessity and appropriateness of continuous emission monitoring requirements for small business stationary sources before applying such requirements to those sources.

New Subsection 507(h): Control Technique Guidelines

Neither the Senate bill nor the House amendment address control technique guidelines with respect to small business stationary sources.

Conference agreement.—The conference agreement provides that EPA shall consider, consistent with the requirements of the Act, the size, type, and technical capabilities of small business stationary sources in developing control technique guidelines applicable to such sources.

There is no requirement that States establish separate permit programs for the purpose of providing assistance to small business stationary sources.

As part of the assistance programs, we allow States to consider modifying the methods of which small business stationary sources can comply with permit requirements under this title. However, in so doing, we expressly provide that such modifications in compliance methods must not relax any deadlines or requirements of the Clean Air Act. Any such relaxation would be illegal and would be subject to federal government citizen suits.

TITLE VI—STRATOSPHERIC OZONE PROTECTION

Section 601—Part B Repeal

Senate bill—This Senate bill repeals part B of the current Clean Air Act's title I, sections 150 through 159, entitled "Ozone Protection." The issues addressed in part B of the existing law's title I are transferred by this legislation to a new title of the Clean Air Act.

House amendment—The House amendment does not contain any comparable provision. It retains and amends part B of title I of the Act.

Conference agreement—The conference agreement adopts the Senate proposal to create a new title in the Clean Air Act to address "Stratospheric Ozone Protection."

Section 602—Stratospheric Ozone Protection

Senate bill—This section of the Senate bill contains the text of a new title that is added to the Clean Air Act by this title of the Clean Air Act Amendments of 1990.

House amendment—The House amendment contains comparable provisions in section 711 in the form of amendments to part B of title I of the Clean Air Act, sections 150 through 159.

Conference agreement—The conference agreement adopts the Senate approach and, as explained below, combines the Senate and House proposals.

Definitions—New Section 601

Senate bill—The Senate bill includes definitions of: Administrator; household appliances, import; manufactured substances; medical purposes; person; to produce; Secretary; and substances covered by this title.

House amendment—The House amendment includes definitions of: household and commercial appliance; medical device; Commissioner; to produce; ozone-depleting substance; class I substance; class II substance; ozone-depletion factor; baseline year; and Montreal Protocol.

Conference agreement—The conference agreement includes definitions of: appliance (combining the Senate and House proposals); baseline year (modeled after the House proposal); class I substance and class II substance (modeled after the House proposal); Commissioner (from the House proposal); consumption (modeled after the Montreal Protocol); import (from the Senate bill); medical device (combining the Senate and House proposals); Montreal Protocol (modeled after the House proposal); ozone-depletion potential (from the House amendment); and produce, produced, and production (combining the Senate and House proposals).

Controlling and ultimately eliminating the production of ozone-depleting substances is one of the key features of this new title. Therefore, the definition of "production" is extremely important.

The Senate bill, the House amendment and the conference agreement define "production" to exclude the manufacture of a controlled substance that is recycled or reused. This provision is designed to avoid the problem of double counting, i.e. forcing a producer to use production allowances when the producer is simply reprocessing a previously produced and used substance. If the producer increases the amount of such substance, however, such increased amount will count as new production.

This provision is also designed to allow reprocessing of previously, legally produced substances after the ultimate phase-out date for production of such substances. This provision does not, however, exclude from the production controls and ultimate prohibitions a substance that is produced with the intent to *eventually* reuse or recycle it. All new production falls outside the scope of the "reuse/recycle" exclusion.

The manufacture of substances that are "used and entirely consumed" in the manufacture of other chemicals is also excluded from the definition of "production". This provision is necessary because some of the substances covered by this new title are feedstocks for other important substances. The provision is environmentally benign because it only extends to controlled substances that are used in a fashion that eliminates both the threat of release to the environment and the ozone destroying properties of these substances.

The conference agreement includes a technical correction to this provision of the original Senate and House proposals. The requirement that the controlled substance be "entirely consumed" is qualified by adding the parenthetical "except for trace quantities". This modification is designed to allow for the fact that, as a result of certain chemical and physical properties, nothing is ever "entirely consumed". To the extent an extremely small amount of the controlled substance remains "locked up" in the new compound, the controlled substance may still qualify for the feedstock/"entirely consumed" exclusion.

EPA is expected to use the normal meaning of the phrase "trace quantity" in regulations implementing this exception. Our intent is to cover only very small amounts. We did not use the phrase "de minimis" because, in other contexts under the Act, that phrase may mean as much as several tons. Interpreting this provision in that manner would create a huge, unacceptable, and illegal loophole in the law.

The conference agreement does not include a requirement to construe the term "production" "in a manner consistent with the Protocol." The Protocol's exclusion for manufactured substances that are subsequently destroyed is too broad and does not include adequate safeguards to preclude abuse. In the course of implementing this Act, however, EPA shall consider whether an exclusion will be allowed on a case-by-case basis for the manufacture of controlled substances that are (1) coincidental, unavoidable byproducts of a manufacturing process and (2) immediately contained and destroyed by the producer using maximum available control technologies.

The conference agreement's definition of the "Montreal Protocol" includes a reference to "amendments that have entered into force." This reference includes all such amendments, not just those that the United States has ratified.

Listing of Class I and Class II Substances—New Section 602

Senate bill—The Administrator is directed to publish a "priority list" of chemicals to be phase-out, including all fully halogenated chlorine or bromine containing compounds. The bill includes a minimum list of 9 compounds (5 chlorofluorocarbons (CFCs), 3 halons, and carbon tetrachloride). The Administrator is also directed to publish a list of "other regulated substances" that will be subject to controls under this Act, including all partially halogenated chlorine containing compounds. The bill includes a minimum list of 6 compounds (5 hydrochlorofluorocarbons (HCFCs) and methyl chloroform).

In addition, the Administrator is directed to publish ozone depletion potentials, global warming potentials and atmospheric lifetimes of listed substances, as well as chlorine contribution values that are based on potency, lifetime and production levels of listed substances. The bill includes a table setting forth ozone depletion potentials that will apply unless changed by the Administrator by regulation.

House amendment—The Administrator is directed to publish a list of "class I substances", including a minimum list of 10 compounds (5 CFCs, 3 halons, carbon tetrachloride and methyl chloroform). The Administrator is also directed to publish a list of "class II substances", including a minimum list of 5 HCFCs. In addition, the Administrator is directed to publish ozone depletion potentials, atmospheric lifetimes and chlorine contribution values. The amendment includes a table setting forth ozone depletion potentials that will apply unless changes by the Administrator by regulation.

Conference agreement—The agreement adopts the House amendment terminology regarding "class I and II substances" and combines the balance of the two proposals. The minimum lists of compounds are expanded to include a number of CFCs and HCFCs that were added to the Montreal Protocol after Senate and House consideration of the legislation.

Monitoring and Reporting Requirements—New Section 603

Senate bill—Each person producing or importing a substance covered by this bill is required to file annual reports with EPA setting forth the amount of the substance that was produced or imported by such person.

Under new section 508 as added by the Senate bill, EPA is required to monitor and, not less often than every three years, report to Congress on the production and use of "other regulated substances" (primarily HCFCs), including an estimate of worldwide production and use.

NOAA and NASA are required to monitor and, not less often than every three years, report to Congress on the current average tropospheric concentration of chlorine—the prime indicator of threatened ozone destruction. These reports are to include updated projections of (1) peak chlorine loading, (2) the rate at which the atmospheric abundance of chlorine is projected to decrease after the year 2000, and (3) the date by which the atmospheric abundance of chlorine is projected to return to a level of two parts per billion (the highest concentration at which repair of the Antarctic ozone hole may be possible). These projections are to be made on the basis of current international and domestic controls as well as on the basis of a hypothetical year 2000 global elimination of all halocarbon emissions (the base case).

If the Administrator determines that the production and use of "other regulated substances" is projected to contribute to an atmospheric chlorine loading in excess of the base case projections by more than five-tenths parts per billion, the Administrator must submit an emergency report to Congress.

The Administrator is also required to periodically review the progress being made in the development of alternative systems or products necessary to manufacture and operate appliances without "other regulated substances" and, if the Administrator believes that technological development problems will make it impossible to meet the year 2015 control requirements, submit a report to Congress no later than 2010 to so inform the Congress of such technological development problems.

House amendment—Each person producing a class I or class II substance is required to file annual reports with EPA setting forth the amount produced by such person.

EPA is required to monitor and, not less often than every two years, report to Congress on the production and use of class I and class II substances, including an estimate of worldwide production and use.

NOAA and NASA are required to monitor and, not less often than every two years, report to Congress on the current average tropospheric concentration of chlorine and bromine in the atmospheric and on the level of depletion of the stratospheric ozone layer.

Conference agreement—On a quarterly basis, or such other basis (not less than annually) as determined by the Administrator, each person who produced, imported or exported a class I or class II substance during the previous reporting period is required to file a report with EPA setting forth the amount that such person produced, imported or exported.

The requirement that EPA's amended regulations shall conform to the requirements of this section does not limit EPA's authority to require additional or more detailed reporting than that required by this section. The Agency is also authorized to use whatever information gathering tools available in order to collect in a timely fashion the initial baseline reports that are necessary to establish the production and consumption rules required by the Act. EPA's current regulations will, as provided in new section 193 of title I of the Act, as added by this Act, remain in effect until modified.

The conference agreement combines the Senate and House proposals for EPA, NASA and NOAA monitoring and reporting to Congress requirements, including the Senate proposals for a technology status report (to be submitted not later than 2015 as opposed to the original Senate date of 2010) and an emergency report regarding atmospheric chlorine loading that is projected to occur as a result of global production, consumption and use of class II substances.

Phase-out of Production and Consumption of Class I Substances—New Section 604

Senate bill—In the absence of regulations establishing earlier dates, each producing or importing "priority list" substances must freeze annual production and importation at 1986 levels effective July 1, 1989, and reduce annual production and importation 20 percent effective July 1, 1993, 50 percent effective July 1, 1998, and 100 percent effective July 1, 2000.

The Administrator is authorized on a conditional basis to grant limited exceptions for production of limited quantities for medical purposes, aviation safety purposes (solely with respect to halons), and, in accordance with the Montreal Protocol, export to developing countries.

Under new section 508 as added by the Senate bill, each person producing methyl chloroform is required to eliminate production on the following schedule: effective on the date of enactment, freeze production at 1989 levels; effective January 1, 1996, reduce production 50 percent; and effective Janu-

ary 1, 2000, eliminate production completely.

House amendment—In the absence of regulations establishing earlier dates, effective July 1, 1993, each person producing a class I substance (other than methyl chloroform) must reduce annual production 20 percent from 1986 levels, effective July 1, 1998, the reduction must total 50 percent, and effective July 1, 2000, the reduction must total 100 percent.

In the case of methyl chloroform, each person must reduce annual production 20 percent effective July 1, 1993, 30 percent effective July 1, 1994, 40 percent effective July 1, 1995, 50 percent effective July 1, 1996, and 100 percent effective July 1, 2005.

In addition, the Administrator is required to promulgate regulations providing for equal annual percentage reductions for class I substances in each of the following periods: July 1, 1991 to July 1, 1993; July 1, 1993 to July 1, 1995; and July 1, 1995 to July 1, 2000.

The Administrator is authorized on a conditional basis to grant limited exceptions for production of limited quantities of class I substances for medical purposes, aviation safety purposes and fire suppression (solely with respect to halons), and, in accordance with the Montreal Protocol, export to developing countries.

Conference agreement—Effective January 1 of each year starting with 1991, it shall be unlawful for any person to produce any class I substance in an annual quantity greater than the relevant percentage specified in Table 2. The percentages in Table 2 refer to a maximum allowable production as a percentage of the quantity of the substance produced by such person in the baseline year (1989 for carbon tetrachloride and methyl chloroform and 1986 for CFCs and halons). The schedule set forth in Table 2 of the conference agreement is subject to acceleration by the Administrator under new section 606 (Accelerated Schedule).

Table 2

The percentages in the following table refer to the maximum allowable production as measured against baseline production.

	Carbon tetra-chloride	Methyl chloro-form	CFC's and halons
1991	100	100	85
1992	90	100	80
1993	80	90	75
1994	70	85	65
1995	15	70	50
1996	15	50	40
1997	15	50	15
1998	15	50	15
1999	15	50	15
2000		20	
2001		20	
Total	415	685	440

The Montreal Protocol subjects "consumption" to the same controls and reduction schedule as apply to "production." The conference agreement includes this aspect of the Protocol and directs the Administrator to promulgate regulations to insure that the consumption of class I substances in the United States is controlled and eliminated on the same schedule as is provided in this title for production.

The agreement prohibits production of all class I substances (other than methyl chloroform) as of January 1, 2000, and prohibits production of methyl chloroform as of January 1, 2002. The Administrator is authorized on a conditional basis to grant limited extensions of the termination date for production of limited quantities of class I substances, to the extent such action is consistent with the Montreal Protocol, for: essential uses of methyl chloroform (between January 1, 2002 and January 1, 2005); medical devices; aviation safety purposes (solely with respect to halons); fire suppression or explosion prevention on the North Slope of Alaska (solely with respect to halons between January 1, 2000 and January 1, 2205) and, export to developing countries.

It is not expected that there will be a need to authorize production of methyl chloroform beyond December 31, 2001. Safe substitutes already exist for the vast majority of uses and should be available for all uses by the year 2000. In the unlikely event that safe substitutes have not been developed for some uses by that time, if a particular use is determined by the Administrator to be "essential", production of a limited amount of methyl chloroform may be authorized by the Administrator for such use.

This is an extremely narrow, conditional exception. "Essential uses" may include uses such as those necessary for national security purposes or certain electronics applications, such as the manufacture of precision instruments that are crucial for navigation purposes. It does not include uses of convenience or products based on "consumer preference." For example, as a general matter, use of methyl chloroform as a bonding agent may not be deemed "essential". Hypothetical concerns about matters such as "flammability" may not be used to covert a nonessential use into an "essential use" for purposes of this provision.

The burden of proving "essentiality" is on the person seeking the exception, not the Administrator. In making a determination under this provision, the Administrator shall consider what alternatives are available with respect to the particular use and whether comparable products are being made without methyl chloroform.

The granting of any extension under this title must be in accordance and consistent with the Montreal Protocol. If the Protocol does not authorize the extension being sought, the provisions of the Protocol take precedence and no such extension may be granted by the Administrator.

Any failure of the Administrator to promulgate regulations as required by this title, or any court order delaying the effective date of such regulations, shall not alter the effective dates of the statutory requirements and prohibitions that are set forth in this title.

The centerpiece of the stratospheric ozone protection program established by this title is the phaseout of production and consumption of all ozone depleting substances. The first phase of the required reductions begins in less than three months, on January 1, 1991. Notwithstanding the self-effectuating nature of the statutory requirement to reduce production in 1991, regulations are necessary to implement the "consumption" controls and would be helpful with respect to the "production" controls.

In view of the short time that remains before that date, EPA should dispense with prior notice and opportunity for comment in promulgating regulations relating to the first phase of reductions, including the rules governing reporting, issuance of allowances, exports to developing countries, and domestic and international trading. In particular, EPA should quickly obtain the data needed to verify baselines against which to measure the required reductions. It is expected that dispensing with notice and opportunity for public comment will apply solely with respect to the 1991 control period.

Phase-out of Production and Consumption of Class II Substances—New Section 605

Senate bill—This section declares it to be the national policy that the production and use of "other regulated substances" (such as HCFCs) will not (1) increase the peak chlorine loading that is projected to occur with interim CFC emission controls and a year 2000 global phase-out of all halocarbon emissions (the base case), (2) reduce significantly the rate at which the atmospheric abundance of chlorine is projected to decrease under the base case, or (3) delay the date by which the average atmospheric concentration of chlorine is projected under the base case to return to a level of two parts per billion, the highest concentration at which repair of the Antarctic ozone hole may be possible.

Subject to acceleration by the Administrator, effective January 1, 2015, production of "other regulated substances" must be frozen at year 2014 levels and the use of any such substance shall be unlawful unless such substance (1) has been used, recovered and recycled, (2) is used and entirely consumed in the production of other chemicals, or (3) is used to maintain and service household appliances or commercial refrigeration units manufactured prior to January 1, 2015. Effective January 1, 2030, it shall be unlawful to produce any quantity of such "other regulated substance."

House amendment—Subject to acceleration by the Administrator, effective January 1, 2015, production of any class II substance (other than a substance with an atmospheric lifetime equal to or shorter than HCFC-123) must be frozen at baseline levels and the use of any such substance shall be unlawful unless such substance (1) has been used, recovered and recycled, (2) is used and entirely consumed in the production of other chemicals, or (3) is used to maintain and service household appliances or commercial refrigeration units manufactured prior to January 1, 2015. Effective January 1, 2030, it shall be unlawful to produce any quantity of a class II substance (other than a substance with an atmospheric lifetime equal to or shorter than HCFC-123). For substances with atmospheric lifetimes equal to or shorter than HCFC-123, the date January 1, 2020 applies in lieu of January 1, 2015 and the date January 1, 2035 applies in lieu of January 1, 2030.

Conference agreement—The Senate statement of national policy is modified, restated as "the purpose of Congress", and included in new section 603 (Monitoring and Reporting).

Subject to acceleration by the Administrator, effective January 1, 2015, production of any class II substance must be frozen at baseline levels and the use of any such substance shall be unlawful unless such substance (1) has been used, recovered and recycled, (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals, or (3) is used as a refrigerant in appliances manufactured prior to January 1, 2020. Effective January 1, 2030, it shall be unlawful to produce any quantity of any class II substance.

As with class I substances, the Administrator is directed to promulgate regulations to control and eliminate "consumption" of class II substances and, on a conditional basis, is authorized to grant limited exceptions for purposes of use in medical devices

and for export to developing countries in accordance with the Montreal Protocol.

If the Administrator discovers that the growth in production and use of class II substances is occurring at a rate that will increase significantly peak chlorine loading, reduce significantly the rate at which the atmospheric abundance of chlorine is projected to decrease as a result of controls on class I substances, or delay the date by which the average atmospheric concentration of chlorine is projected to return to a level of two parts per billion, additional controls on class II substances must be imposed in accordance with new section 606.

Accelerated Schedule—New Section 606

Senate bill—The Administrator is directed to implement a phase-out schedule to control and reduce production and use of all regulated substances more rapidly than the schedule set forth in the bill if: (1) the latest assessments of new or existing information suggests such an accelerated schedule may be necessary to protect human health and the environment; (2) the Administrator determines, based on the availability of substitutes, that an accelerated schedule is attainable; or (3) the Montreal Protocol is modified to include an accelerated schedule that is more aggressive than the schedule set forth in the bill. Any person may petition the Administrator to issue regulations under this section and, no less often than every 18 months, in response to a petition or otherwise, the Administrator must either publish such regulations or a determination that such regulations are not necessary.

House amendment—A similar provision is included in the House amendment.

Conference agreement—A combination of the Senate and House proposals is included in the conference agreement.

Exchange Authority—New Section 607

Senate bill—The Senate bill makes it unlawful for any person to produce substances covered by the bill in annual quantities greater than specified percentages "of the combined ozone depletion weighted amount of such substances produced by such person during" the baseline year. As a result, a producer may decide to reduce CFC-11 by an amount greater than is required in a given year and, in the same year, be authorized to produce a greater amount of CFC-113 than would otherwise be allowed. With the exception of such interpollutant transfers, the bill does not authorize the exchange of production allowances.

House amendment—The House amendment does not authorize interpollutant transfers. It does, however, direct the Administrator to promulgate regulations regarding the exchange of production allowances. Such exchanges must meet certain conditions, including a requirement that any exchange result in an overall reduction in production greater than the reduction that would have occurred in the absence of the exchange.

Conference agreement—The Administrator is directed to promulgate regulations that will authorize interpollutant transfers, as in the Senate bill, and trades with other persons, as in the House amendment. Interpollutant transfers are limited to transfers among substances listed in the same group under new section 602. This precludes, for example, the ability of a producer to avoid mandated reductions in the production of methyl chloroform in exchange for making greater reductions than is otherwise required in CFC-11 production. The same limitation applies to trades with other persons.

National Recycling and Emission Reduction Program—New Section 608

Senate bill—By July 1, 1991, EPA is to promulgate regulations establishing standards and requirements regarding the use of substances covered by this bill. Such standards and requirements must (1) reduce the use and emissions of substances covered by this bill to the lowest achievable level, and (2) maximize the recapture and recycling of such substances.

As of January 1, 1992, it will be unlawful for any person maintaining, servicing, repairing or disposing of a household appliance or a commercial refrigeration or air-conditioning unit to knowingly vent, release, or dispose of any substance used as a refrigerant and covered by this bill in a fashion that permits such substance to enter the environment. Exceptions to this prohibition are included for certain de minimis releases.

Prior to January 1, 1994, EPA is to promulgate standards and requirements for the safe disposal of substances covered by this bill.

House amendment—Within 2 years after enactment, EPA is to promulgate regulations establishing standards and requirements regarding the use and disposal of class I and class II substances. The House amendment includes comparable criteria for such standards and requirements and a comparable prohibition on venting that takes effect two years after enactment.

Conference agreement—Prior to January 1, 1992, EPA must promulgate regulations establishing standards and requirements regarding the use and disposal of class I substances during the service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than July 1, 1992.

Within 4 years after enactment, the Administrator must promulgate regulations regarding the use and disposal of all class II substances as well as all class I uses and disposal practices that are not covered by the earlier regulations. Such regulations shall become effective not later than 12 months after promulgation.

The use and disposal regulations must include standards and requirements that satisfy the criteria set forth in the bill, including requirements that reduce the use and emission of class I and II substances to the lowest achievable level and requirements that class I and class II substances contained in bulk in appliances be removed from such appliances prior to disposal of the appliance or delivery of the appliance for recycling.

The reference to "in bulk" distinguishes this requirement from another requirement dealing with products in which a class I or class II substance is incorporated so as to constitute an inherent element of the product. An example of the "in bulk" reference is the class I or class II refrigerant in an appliance. An example of the "inherent element" reference is the insultation that was made with a class I or class II substance and is now incorporated in the walls of the appliance.

Effective July 1, 1992, it will be unlawful for any person maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration to knowingly vent, release, or dispose of any class I or class II substance used as a refrigerant in a manner which permits such substance to enter the environment. Exceptions to this prohibition are included for certain de minimis releases. As used in this context, de minimis refers to extremely small amounts. The fact that de minimis, in other contexts under this Act, may be as much as several tons is not relevant nor controlling in this context. Most appliances contain only a few ounces of class I or class II refrigerant. Interpreting de minimis to mean anything other than an extremely small amount would render this provision a nullity. The exception is included to account for the fact that, in the course of properly using recapture and recycling equipment, it may not be possible to prevent some small amount of leakage. The key element of this exception is limitation of its application to "de minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance."

This prohibition is self-implementing and does not depend on the existence of applicable recycling regulations. The fact that recycling regulations for class II substances may be promulgated after the effective date of the venting ban, for example, does not alter the requirements and prohibition of this provision.

Effective 5 years after enactment, the prohibition on venting or release shall also apply to all substances that are used as refrigerants as substitutes for class I or class II refrigerants. By its terms, this provision applies to substances that are not listed as class I or class II substances. This is an important provision because many of the substitutes being developed do not have ozone depleting properties but they are "greenhouse gases" and have radiative properties that are expected to exacerbate the problem of global climate change. The prohibition shall apply to all such substitute substances except where the Administrator determines that the venting, release or disposal of a particular substitute substance does not pose a threat to the environment.0

The Administrator shall consider long term threats, such as global warming, as well as acute threats. The fact that a particular substance has been identified by the Administrator as a "safe substitute" for purposes of section 612 does not affect the requirement for a separate determination under this section. The purposes of section 612 and of this section are different and substances approved under section 612 will *not* automatically qualify for exclusion from the prohibition on venting that is included in this section.

Servicing of Motor Vehicle Air Conditioners—New Section 609

Senate bill—As of January 1, 1992, any person who services motor vehicle air-conditioning systems for consideration must use extraction and reclamation equipment that is certified as meeting the standards set by the Society of Automotive Engineers.

The sale of do-it-yourself recharge canisters of motor vehicle refrigerants to persons other than professionals in compliance with the requirement to use extraction and reclamation equipment will be prohibited as of January 1, 1992.

House amendment—Effective 2 years after enactment (or, in the case of persons repairing or servicing motor vehicles at an entity which performed service on fewer than 100 vehicles in 1990, 3 years after enactment), any person who services motor vehicle air-conditioning systems for consideration (1) must properly use extraction and reclamation equipment that is certified as meeting the standards set by the Society of Automotive Engineers, and (2) must be properly trained and certified.

Effective 2 years after enactment, the sale of do-it-yourself recharge canisters of motor vehicle refrigerants (canisters containing less than 20 pounds of refrigerant) to persons other than professionals who are in compliance with the requirement to use extraction and reclamation equipment will be prohibited.

Conference agreement—Effective January 1, 1992 (or, January 1, 1993 in the case of persons who certify by January 1, 1992, that they are repairing or servicing motor vehicles at an entity which performed service on fewer than 100 motor vehicle air conditioners during 1990), any person who services motor vehicle air-conditioning systems for consideration (1) must "properly use" extraction and reclamation equipment that is certified as meeting the standards set by the Society of Automotive Engineers, and (2) must be "properly trained and certified." The phrases "properly using" and "properly trained and certified" are defined in this section of the conference agreement. This section includes a certification requirement that is applicable to each person performing service on motor vehicle air conditioners for consideration.

Effective 2 years after enactment, it shall be unlawful to sell or distribute, or offer for sale or distribution, to any person (other than professionals who are in compliance with the requirement to use extraction and reclamation equipment) any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air-conditioning system and is in a container which contains less than 20 pounds of such refrigerant.

Nonessential Products Containing Chlorofluorocarbons—New Section 610

Senate bill—Effective one year after enactment, the sale and distribution of nonessential products containing "priority list substances", such as CFC propelled plastic party streamers and noise horns, CFC cleaning fluids for noncommercial electronic and photographic equipment and other products determined by the Administrator to be nonessential, will be prohibited.

Effective January 1, 1994, the sale and distribution of aerosols (other than medical devices) and plastic foams (other than insulating foams) that use "other regulated substances" will be prohibited.

House amendment—Within 1 year after enactment, EPA must promulgate regulations identifying nonessential products that release class I substances into the environment, including the products identified in the Senate bill. Effective 2 years after enactment, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, any nonessential product identified in the regulations.

Effective January 1, 1994, the sale and distribution of aerosols (other than medical devices) and plastic foams (other than insulating foams) that use a class II substance shall be unlawful.

Conference agreement—The conference agreement includes the House amendment with two modifications to the prohibition on the use of class II substances. First, the prohibition on the use of class II substances in plastic foam products does not apply to certain foams that are used for motor vehicle safety purposes in accordance with Federal Motor Vehicle Safety Standards. Second, the Administrator is authorized to grant exceptions from the prohibition on pressurized dispensers which contain a class II substance where (1) the use of the pressurized dispenser is determined to be essential as a result of flammability or worker safety concerns, and (2) the only available alternative to use of a class II substance is use of a class I substance which legally could be substituted for the class II substance.

Including authority for the Administrator to grant such exceptions is necessary to account for the fact that the aerosol ban which has been in effect in the United States since 1978 for certain class I substances is not a complete ban. Assuming the use of class I substances in certain pressurized dispensers remains legal after 1994, it may be counter-productive to prohibit the use of class II substances (substances that are generally less potent ozone depleters) in certain "essential" applications if the only available substitutes are class I substances which could be legally used in place of the class II substance. For this reason, the Administrator is authorized to grant limited exceptions.

Labeling—New Section 611

Senate bill—By January 1, 1992, and every two years thereafter, the Administrator is directed to determine whether safe substitutes that do not rely on priority list substances exist for each class of products and, for each class of products for which such substitutes do exist, to promulgate regulations requiring the labeling of the products that contain priority list substances. The Administrator is authorized to issue labeling regulations for products containing "other regulated substances" but is not required to do so by a date certain.

House amendment—Effective 2 years after enactment, all containers and products containing class I substances, as well as products made with class I substances, must be labeled. The same requirements apply with respect to class II substances if the Administrator finds that there is an alternative to using a class II substance. Effective January 1, 2015, the labeling requirements will apply to class II containers and products without exception.

Conference agreement—Effective 30 months after enactment, containers of a class I or class II substance and products containing class I substances must be labeled. Products containing or made with (but no longer containing) a class II substance must be similarly labeled if the Administrator determines that there are substitute products or manufacturing processes. The determination involves a three part test.

Products made with but no longer containing a class I substance must be labeled unless the Administrator determines that there are no substitute products or manufacturing processes. As with the previously discussed determination, the statutory language includes a three part test.

Effective January 1, 2015, the labeling requirements will apply, without exception, to all products containing a class II substance and all products made with a process that uses a class I or class II substance.

To supplement to the Administrator's responsibility to implement this section and make the requisite determinations on the Administrator's own initiative, a petition process is included to trigger the determination process.

Safe Alternatives Policy—New Section 612

Senate bill—To the maximum extent practicable, substances covered by this title are to be replaced with alternative substances and processes that reduce overall risk to human health and the environment. The Administrator is assigned various responsibilities regarding recommendations for Federal research and promoting a transition by the Government to the use of safe substitutes, examining Federal procurement practices, and collecting health and safety studies from producers of chemical substitutes.

House amendment—A "safe alternatives policy" is included that will, within 2 years after enactment, with respect to all class I and class II substances, require the use, to the maximum extent practicable, of replacement chemicals, product substitutes, and alternate production processes that reduce overall risks to human health and the environment. The policy will also prohibit the replacement of any class I substance with any substitute which the Administrator determines may present adverse effects to human health or the environment if the Administrator has identified an alternative to such substitute that reduces the overall risk and is currently or potentially available.

Conference agreement—The Administrator is directed to promulgate regulations prohibiting the replacement of any class I or class II substance with a substitute which the Administrator determines may present adverse effects to human health or the environment if an alternative that reduces the overall risk to human health and the environment has been identified. The Administrator is required to publish lists of prohibited substitutes for specific uses and lists of the safe alternatives identified. A petition process is included to prompt the Administrator to either add or remove specific substances from the lists. The Administrator is also directed to require that any person who produces a chemical substitute for a class I substance (1) provide the Administrator with such person's health and safety studies on such substitute, including unpublished studies, and (2) notify the Administrator not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as a class I substitute.

Federal Procurement—New Section 613

Senate bill—Each Federal agency is directed to prepare "procurement strategy plans" that will eliminate Federal procurement of controlled substances and promote the procurement of alternative substances and products that do not rely on controlled substances.

House amendment—To promote Federal procurement of safe substitutes, the Administrator and the General Services Administration are directed to promulgate regulations that must, in turn, be followed by other agencies that are required to revise their procurement regulations.

Conference agreement—The conference agreement includes a modified version of the House amendment's provision on federal procurement. The modification adds a deadline for other agencies to revise their regulations and a requirement that each agency certify to the President that its regulations have been modified in accordance with this section.

Relationship to Other Laws—New Section 614

Senate bill—This title does not affect the authority of the Administrator under any other provision of the Clean Air Act or the Toxic Substances Control Act nor does it affect the authority of other agencies. Similarly, nothing in this title shall preclude or deny any State or political subdivision from adopting or enforcing any requirement respecting the control of any substances, practice, process, or activity for purposes of pro-

tecting the stratospheric ozone layer or reducing the extent of global climate change.

To prevent persons subject to United States' jurisdiction from transferring technology or investing in facilities to produce controlled substances in countries that are not parties to the Montreal Protocol, the President is directed to prohibit such technology transfers and investments.

House amendment—During the 2-year period beginning on the enactment of the Clean Air Act Amendments of 1990, no State or local government may enforce any requirement concerning the design of any new or recalled household and commercial appliance for purposes of protecting the stratospheric ozone layer.

Conference agreement—The agreement repeals the provision of current law that preempts State and local governments in certain circumstances and includes a narrow, two year exception to the principle of nonpreemption that is codified in section 116 of the Clean Air Act and adopted with respect to this title in section 618. The exception is as stated in the House amendment. Proposals to expand the provision to include, for example, requirements concerning the "servicing" of appliances (including "procedures" relating to appliances) or requirements concerning the manufacture or use of foam insulation were rejected by the conferees.

For purposes of this narrow, two year stay of certain State and local laws, the term "recall" is intended to extend to situations where the nature of the product is such that it would be impractical to return the product to the factory and, as a result, the manufacturer must instead undertake a program at the manufacturer's expense to rectify the product deficiency on-site.

A provision is added to make it clear that this title is a supplement to the Montreal Protocol, it does not supplant the Protocol and it does not abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Protocol.

Many of the provisions in this title are more stringent than the provisions of the Protocol. For example: the reduction schedule for CFC, halon, and methyl chloroform production; the elimination date for production of methyl chloroform; the controls and ultimate elimination of HCFC production; and the emission control and safe disposal requirements. In all such instances, the provisions of this title are controlling. In areas where the Protocol is more stringent, the provisions of the Protocol are controlling. If the Protocol is modified in the future to include new provisions that are more stringent then this legislation, such more stringent provisions will be controlling.

In the sections where the Administrator or another government official is authorized to grant extensions or exceptions to the requirements of this title, the legislation includes an express limitation. The Administrator or other official may exercise such authority only to the extent such action is consistent with the Montreal Protocol. The provisions of this Act may not be used to justify or authorize any action that is inconsistent with the terms of the Protocol.

To prevent persons subject to United States' jurisdiction from transferring technology or investing in facilities to produce controlled substances in countries that are not parties to the Montreal Protocol, the President is directed to prohibit the export of technologies used to produce a class I substance; to prohibit direct or indirect investments in facilities designed to produce a class I or class II substances in nations that are not parties to the Protocol; and to direct that no government agency provide subsidies or assistance for the purpose of producing a class I substance.

Authority of the Administrator—New Section 615

Senate bill—The Administrator is authorized to prescribe such regulations as may be necessary to carry out this title. The Administrator is directed to promulgate promptly regulations respecting the control of a substance, practice, process or activity if, in the Administrator's judgment, such substance, practice, process or activity may reasonably be anticipated to affect the stratosphere and such effect may reasonably be anticipated to endanger public health or welfare.

House amendment—A comparable provision that is in current law is retained and redesignated as section 159G.

Conference agreement—A comparable provision is included in the conference agreement. As under current law, the phrase "to affect the stratosphere" includes, but is not limited to, stratospheric ozone depletion. Effects such as anthropogenically induced cooling of the stratosphere are included and must be considered by the Administrator. Cooling of the stratosphere has important implications for global climate change. Human activities that are polluting the atmosphere, affecting the stratosphere, and, as a result, aggravating problems such as global climate change should be regulated by the Administrator under the authority of this section.

Transfers Among Parties to Montreal Protocol—New Section 616

Senate bill—No comparable provision is included in the Senate bill.

House amendment—No comparable provision is included.

Conference agreement—A new section based on the Montreal Protocol's provisions for "industrial rationalization" is included in the conference agreement. For purposes of this section, the phrase "production allowances" is used to indicate a portion of the United States' "calculated level of production", as that phrase is used in the Protocol. The authority provided in this section is limited and subject to a number of conditions, including the requirement for implementing regulations. Among the conditions is the requirement that any transfer under the authority of this section must result in a net reduction in production in the year in which the transfer occurs, as compared with the production that would have occurred in the United States and the other party to the transfer if the transfer did not occur.

International Cooperation—New Section 617

Senate bill—The President is directed to enter into international agreements to foster cooperative research and to develop international standards and regulations which protect the stratosphere consistent with regulations applicable within the United States. The President is required to report to Congress periodically on efforts to arrive at such agreements.

The Administrator, in consultation with the Secretary of State, is authorized to support global participation in the Montreal Protocol and to assist developing countries that are parties to and operating under Article 5 of the Protocol.

House amendment—A comparable provision that is in current law regarding international agreements is retained and redesignated as section 159F.

The Administrator, in consultation with the Secretary of State, is directed to support global participation in the Montreal Protocol by providing technical and financial assistance to developing countries that are parties to the Protocol and operating under Article 5 of the Protocol. There are authorized to be appropriated $30,000,000 to carry out this section in fiscal years 1991, 1992, and 1993.

Conference agreement—The Senate provision regarding international agreements is included in the conference agreement. As a result, United States' delegations to future meetings of the parties to the Montreal Protocol have a legal obligation to seek modifications to the Protocol that will make the requirements of the Protocol at least as stringent as the requirements applicable in the United States as a result of this legislation. For example, the United States must seek to strengthen the Protocol by accelerating the phase-out date for methyl chloroform, adding controls on the use and production of HDFCs, and adding emission controls, including recycling and safe disposal requirements.

The House provision authorizing funds for the United States' voluntary contribution to the fund established to assist developing countries that are parties to the Protocol in their efforts to comply with the Protocol is included in the conference agreement. At the June 1990 meeting of the parties to the Protocol in London, representatives of China and India indicated that their countries intend to join as parties to the Protocol. In recognition of this new development, the conference agreement including a provision to increase the authorization of appropriations by an additional $30,000,000 if and when China and India become parties to the Protocol.

Miscellaneous Provisions—New Section 618

Senate bill—New section 519 as added by the Senate bill explicitly preserves State and local government authority to adopt and enforce requirements that are more stringent than the Federal requirements. The provisions of current law providing for limited preemption of State and local authority are repealed.

House amendment—For purposes of section 116 and 118, the requirements of this title shall be treated as requirements for the control and abatement of air pollution.

Conference agreement—A modified version of the House provision is included in the conference agreement. This section makes it clear that more stringent State and local government requirements for the protection of the stratosphere against ozone depletion are *not* preempted by this Act or the Clean Air Act as amended by this Act.

This section also provides that federal facilities shall be subject to all requirements of this title and to all State, interstate, and local requirements, administrative authority, and process, and sanctions respecting the protection of the stratospheric ozone layer.

Section 603—Methane Studies

Senate bill—This portion of the bill authorizes and directs the Federal government to identify and analyze options to reduce the risks of tropospheric ozone formation and global climate change by conducting a series of studies assessing methane emissions.

House amendment—No comparable provision is included in the House amendment.

Conference agreement—A modified version of the Senate provision is included in the conference agreement.

TITLE VII—PROVISIONS RELATING TO ENFORCEMENT

Section 701—Amending Section 113 on Federal Enforcement

Amendments to Section 113(a): Federal Enforcement in General

Subsection 113(a)(1): Violations of SIPs and Permits

Senate bill. The Senate bill increases the scope of the enforcement ability of the EPA with respect to violations of State Implementation Plans ("SIPs") in several ways.

First, it amends section 113(a)(1) of the Act to provide that EPA can initiate enforcement actions for SIP violations not only against persons in violation at the time enforcement is commenced, but also against persons found to have violated the SIP in the past.

Second, it amends section 113(a)(1) to allow EPA to commence enforcement actions against such persons at any time after 30 days have expired following notice by EPA to such persons and the State in which the SIP applies. By so doing, the Senate bill removes the existing requirements in section 113(a)(1) that the violation extend beyond the 30th day following notice from the EPA before enforcement action can be taken.

Third, it creates a new enforcement mechanism for EPA in responding to SIP and permit violations by granting EPA the authority to issue an administrative penalty order against the violator.

House amendment. The House amendment increase the scope of EPA's enforcement ability with respect to SIP violations in the same three ways as the Senate bill. In addition, the House amendment extends EPA's increased enforcement powers to violations of permits as well as SIPs.

Conference agreement. The conference agreement adopts the House provisions, retaining the language granting to EPA certain enforcement authority for violations of both free-standing SIP requirements and those set forth in permits, and including the new authority for EPA to issue administrative penalty orders in response to such violations.

Each of these provisions is important in the effort to ensure compliance with the requirements of the Act. The ability to bring enforcement actions for violations of permit and SIP requirements obviously is central to assuring that those requirements will be satisfied.

It is particularly noteworthy that these provisions change current law in a fashion that will prove tougher on polluters than does the current arrangement. Specifically, these provisions remove the ability of a source that has violated the Clean Air Act to avoid an enforcement order simply by abating its violation within 30 days after receiving notice of the violation from the EPA.

Subsection 113(a)(2): State failures to enforce SIPs or permits

Senate bill. The Senate bill adds two provisions to the existing authority of EPA to respond to failure by States to enforce Clean Air Act requirements. First, it adds authority for the EPA to issue administrative penalty orders for violations. Second, it allows the Administrator to initiate enforcement actions not only for violations of SIPs, but also for violations of approved permit programs.

House amendment. The House amendment adds the same two provisions to the Administrator's section 113(a)(2) enforcement authority as are added by the Senate bill.

Conference agreement. The conference agreement adopts the House provisions, and adds a technical correction to clarify that enforcement can be brought with respect to "prohibitions", as well as "requirements".

These provisions are important because they allow EPA to back-stop the States in a meaningful fashion in the enforcement area. Moreover, the addition of administrative penalty order authority is long overdue. Such a system of administrative penalties have been in place for several years under the Clean Water Act, and it has demonstrated excellent results. Providing the Administrator the option of imposing penalties administratively—without the need to go to court—is a proven method for allowing EPA to tailor the punishment to fit the crime.

Subsection 113(a)(3): EPA enforcement of other requirements

Senate bill. The Senate bill increases the scope of EPA's enforcement authority with respect to past or present violations of requirements contained in title I, III, or IV of the Act by allowing the Administrator to initiate enforcement actions—including issuing administrative penalty orders—against persons found to be in violation of those requirements.

House amendment. The House amendment increases the scope of EPA's enforcement authority for violations of several sections and titles of the Act. Like the Senate bill, the House amendment authorizes EPA to take the following actions against persons found in violation of the enumerated provisions: (i) issue administrative penalty orders; (ii) issue administrative compliance orders; (iii) bring civil actions; and (iv) seek to initiate criminal proceedings.

Conference agreement. The conference agreement adopts a modified combination of the Senate bill and the House amendment. It modifies the Senate language to add references to section 303 (in lieu of the reference to title III), title IV (acid rain), and title VI (stratospheric ozone protection). In addition, it adopts the House language listing the various enforcement options available to EPA, including the new option of imposing administrative penalties.

Subsection 113(a)(4): Procedures for issuing and reviewing administrative orders

Senate bill. The Senate bill provides that persons receiving administrative orders under section 113 are required to comply expeditiously. In addition, the Senate bill makes clear that the issuance of such orders would not prevent the State, the EPA, or a court in a citizen suit from assessing penalties or enforcing any requirements of the Act, nor affect either the obligations of the recipient to comply with the Act or the terms of any applicable permit or implementation plan. Finally, the Senate bill authorizes the person receiving such an order to obtain an informal public hearing with the EPA prior to the effective date of the order.

House amendment. The House amendment provides that orders issued under section 113 (other than such orders relating to a violation of section 112) would not take effect until the recipient had an opportunity to confer with EPA concerning the alleged violation. No order would prevent the State or the EPA from assessing penalties, nor would it affect the enforcement authority of the United States under the Act. No order would affect the obligation of any persons to comply with the Act or with applicable permits or implementation plans. The House amendment contains no provision for a public hearing like the one contained in the Senate bill, and leaves current law regarding the availability of preenforcement review in place.

Conference agreement. The conference agreement adopts a modified version of the House provision. In particular, the agreement clarifies that issuance of an order under section 113(a) would not affect enforcement under other provisions of the Act. The agreement does not adopt the Senate provisions for a preenforcement, informal administrative hearing. The agreement leaves intact current law which has been interpreted correctly as barring preenforcement review of administrative compliance orders.

Subsection 113(a)(5): Failure to comply with new source requirements

Senate bill. The Senate bill authorizes the EPA to take the following actions upon a finding that a State is not acting in compliance with any requirement of the Act relating to the construction of new sources or the modification of existing sources: (i) issue an order prohibiting the construction, modification, or operation of any major stationary source in any area to which such provisions apply; (ii) issue an administrative penalty order; or (iii) bring a civil action.

House amendment. With the exception of the authority to issue an order prohibiting the operation of major stationary sources, the House amendment authorizes the EPA to take the same actions authorized by the Senate bill, but requires a prior finding that actions by the State were not in compliance with any requirement of Part C or Part D of title I of the Act.

Conference agreement. The conference agreement adopts the House provision, clarifying that the finding which triggers enforcement is as stated in the Senate bill rather than the House amendment.

Subsection 113(a)(6): "De minimis" and "technical" violations

The House amendment provides that section 113 would not apply to any violations that were determined by the Administrator to be "*de minimis*" or "technical". The Senate bill contains no comparable provision.

Conference agreement. The conference agreement includes no statutory provision with respect to "*de minimis*" or "technical violations. It is the intention of the conferees to confirm that the Administrator enjoys prosecutorial discretion to decide not to seek sanctions under section 113 for *de minimis* or technical violations in civil and criminal matters. We emphasize that such decisions lie entirely within the discretion of the Administrator, and that nothing in this title affects the exercise of that discretion.

Amendments to Section 113(b): Civil Judicial Enforcement

Senate bill. The Senate bill requires the Administrator, under certain conditions, to commence a civil action in federal district court for injunctive relief or for penalties whenever the owner or operator of a major source has violated or is in violation of any requirement of a SIP, or is violating any other requirement of title I, title III, or title IV, or is attempting to construct, modify, or operate a major stationary source in any area with respect to which EPA has found

that a State is not in compliance with new source requirements under the Act.

House amendment. The House amendment grants the Administrator discretion to bring civil actions of the same type authorized in the Senate bill for violations of permits as well as SIPs, and for violations of several enumerated provisions of the Act, as well as whenever an owner or operator is attempting to construct or modify a major stationary source in an area not in compliance with new source requirements.

Conference agreement. The conference agreement clarifies that the Administrator may initiate civil actions for past as well as ongoing violations of requirements and prohibitions of SIPs and permits. In addition, the agreement specifies that such actions can be brought whenever any person has violated or is in violation of title I, title IV (acid rain), title V (permits), or title VI (stratospheric ozone protection), as well as section 303 (emergency orders).

The agreement also adopts the House language making clear that such actions can also be brought whenever an owner or operator is attempting to construct or modify a major stationary source in violation of new source requirements. In so doing, the agreement follows existing law under the Act, pursuant to which EPA enjoys the authority to halt the construction or modification of new sources that are violating new source review requirements. It is our intention, however, to preserve the current interpretation of the EPA that it can prohibit the operation of a source upon discovering that such source is operating in violation of new source requirements. Indeed, it is particularly important that the EPA be allowed to take enforcement action against operating sources that have circumvented new source review requirements and are emitting pollution which could cause exceedances of ambient air standards. We note that EPA has been judicious in the use of this authority to date, and we would encourage the Agency to continue to exercise its discretion with some restraint in this area.

Amendments to Section 113(c): Criminal penalties

Senate bill. The Senate bill provides criminal fines and penalties for the following actions: (i) the knowing failure to pay any fee owed the United States under the Act; (ii) the negligent or knowing release into the air of any hazardous pollutant that exceeds a standard or limitation under the Act and endangers others; (iii) the knowing violation of enumerated titles of the Act; and (iv) the knowing submission of false material statements, or similar knowing violations of recordkeeping, reporting, and monitoring requirements, including the omission of material information.

House amendment. The House amendment provides criminal fines and penalties for the following actions: (i) the knowing failure to pay any fee owed the United States under titles I, III, IV or V; (ii) the negligent or knowing release into the ambient air of any hazardous pollutant that exceeds a standard or limitation under the Act and endangers others; (iii) the knowing violation of SIPs, as well as enumerated sections and titles of the Act; and (iv) the knowing submission of false statements, or similar violations of the recordkeeping, reporting, and monitoring requirements, including the omission of material information. In addition, the House amendment includes as an affirmative defense to prosecution under the knowing endangerment provision a showing that the conduct charged was freely consented to by the person endangered.

Conference agreement. The conference agreement adopts a modified version of the House provision, clarifying that criminal fines and penalties are applicable to violations of permits as well as SIPs, as well as to violations of title VI (stratospheric ozone protection) and other enumerated titles and sections of the Act.

This subsection adds several criminal provisions to the Clean Air Act that have not previously been included in the statute. It elevates sanctions on other criminal provisions from the level of misdemeanors to the level of felonies. It is our intention by so doing to bring the criminal provisions of the statute up to date with the criminal provisions in the Clean Water Act and the Resource Conservation and Recovery Act. Indeed, the criminal provisions that are introduced in section 113(c) are largely modeled upon those contained in the CWA and RCRA, and we expect them to operate in the same fashion as those have operated. In particular, it is our intention that—with the exception only of the crimes of knowing and negligent endangerment—crimes under these new criminal provisions shall be crimes of general intent, rather than crimes of specific intent.

The agreement includes the Senate language in lieu of the House language with respect to knowing violations of requirements regarding recordkeeping, reporting, monitoring, and omissions of material information. These are new criminal sanctions for recordkeeping, filing, and other omissions. These provisions are not meant to penalize inadvertent errors. For criminal sanctions to apply, a source owner or operator must be on notice of the recordkeeping, information or monitoring requirements in question.

The agreement modifies the House affirmative defense language in connection with the knowing endangerment provision to make clear that the courts will remain free to develop the common law with respect to that defense.

Nothing in this subsection is intended to discourage owners or operators of sources subject to this Act from conducting self-evaluations or self-audits and acting to correct any problems identified. On the contrary, the environmental benefits from such review and prompt corrective action are substantial, and section 113 should be read to encourage self-evaluations and self-audits.

Owners and operators of sources are in the best position to identify deficiencies and correct them, and should be encouraged to adopt procedures where internal compliance audits are performed and management is informed. Such internal audits will improve the owners' and operators' ability to identify and correct problems before, rather than after, government inspections and other enforcement actions are needed.

Voluntarily initiated environmental audits should be encouraged and, in the course of exercising prosecutorial discretion under the criminal provisions of subsection 113(c), the Administrator and the Attorney General of the United States should, as a general matter, refrain from using information obtained by a person in the course of a voluntarily initiated environmental audit against such person to prove the knowledge element of a violation of this Act if—(1) such person immediately transmitted or caused the transmission of such information to the Administrator or the State air pollution control authorities, as appropriate; (2) such person corrected or caused the correction of such violation as quickly as possible; and (3) in the case of a violation that presented an imminent and substantial endangerment to public health or welfare or the environment, such person immediately eliminated or caused the elimination of such endangerment to assure prompt protection of public health or welfare or the environment.

Amendments to Section 113(d): Administrative Assessment of Civil Penalties

Senate bill. The Senate bill authorizes the Administrator to issue administrative orders assessing civil penalties for violations of SIPs, or of titles I, III, or IV of the Act, or whenever any person attempts to construct, modify, or operate a major stationary source in an area that is not in compliance with the new source provisions of the Act. The total of such penalties is limited to $200,000 in any particular case. The Senate bill also authorizes the Administrator to implement a field citation program for minor violations of the Act, and caps the amount of such citations at no more than $5,000 per inspection.

House amendment. The House amendment authorizes the Administrator to issue administrative orders assessing civil penalties for the same violations as are identified in the Senate bill, with the exception that the House does not provide such authority with respect to operation of major sources in areas that are out of compliance with the new source provisions of the Act. The House amendment also authorizes a field citation program, and caps field citations at no more than $5,000 per day of violation.

Conference agreement. The conference agreement adopts the Senate language authorizing administrative orders assessing civil penalties, clarifying that the penalties can amount to as much as $25,000 per day of violation, and also that such orders can be entered for past and present violations of SIPs, as well as for violations of any requirement or prohibition of titles I, III, IV, V, or VI of the Act. As per the House amendment, the agreement authorizes such orders when persons are attempting to construct or modify sources in violation of new source requirements. In so doing, the agreement confirms existing law and leaves unchanged the current EPA interpretation pursuant to which it has taken enforcement action against operating sources that are in violation of new source requirements. The agreement adopts the House language authorizing a field citation program.

Amendments to Section 113(e): Penalty Assessment Criteria

Senate bill. The Senate bill enumerates several criteria for the courts to employ when determining the amount of penalties to assess under section 113 or in citizen suit actions. These criteria are intended to be applied in the same manner under this Act as the similar criteria that were added to the Clean Water Act in 1987. In addition, the Senate bill provides a sufficient cause defense to the imposition of penalties in actions for violations of section 114 (inspections, monitoring, and entry) and for noncompliance with administrative subpoenas under section 307(a). The Senate bill also establishes a formula for establishing the number of days for which penalties may be assessed.

House amendment. The House amendment provides the same criteria as the Senate for determining the amount of penalties, and requires not only the courts, but the Administrator, to consider such criteria. The House does not include a sufficient

cause defense, and sets out a different formulation than the Senate for calculating the number of days for which penalties may be assessed.

Conference agreement. The conference agreement adopts the House language requiring both the Administrator and the courts to employ the enumerated criteria in making penalty determinations. It adopts the Senate sufficient cause defense, as well as the Senate formulation for calculating the number of days for which penalties may be assessed.

This section requires the Administrator and the courts to consider a number of factors when arriving at an appropriate penalty, including, in particular, the economic benefit gained as a result of the violation. Violators should not be able to obtain an economic benefit vis-a-vis their competitors as a result of their noncompliance with environmental laws. The determination of economic benefit or other factors will not require an elaborate or burdensome evidentiary showing. Reasonable approximations of economic benefit will suffice. Other objective factors customarily taken into account in assessing penalties, such as the history of violations, good faith efforts to comply, and economic impact on the violator, also may be taken into account in arriving at an appropriate penalty.

Amendments to Section 113(f): Awards

Senate bill. The Senate bill authorizes the Administrator to pay an award of up to $10,000 to any person who furnishes assistance and which leads to a criminal conviction or civil judgment for any violation of the Act.

House amendment. The House amendment authorizes the Administrator to pay an award of up to the same amount established by the Senate to any person who furnishes assistance which leads to a criminal conviction, or a civil penalty under titles I, III, IV, V, and VI of the Act. Unlike the Senate bill, the House amendment makes the award subject to appropriations.

Conference agreement. The conference agreement adopts the House provision.

Amendments to Section 113(g): Public Participation in Settlements

The House amendment requires the Administrator to provide for prior notice and public comment upon proposed settlement agreements in cases other than enforcement actions under section 113, section 120, or title II, and authorizes the Administrator to withhold consent to such settlements based upon such comments. The Senate bill contains no similar provision.

Conference agreement. The conference agreement adopts the House provision, and clarifies that the requirement applies only to settlements to which the United States is a party.

Amendments to Section 113(h): Definitions of "Operator" and "Person"

The House amendment provides that for the purposes of section 113 and section 120, the term "operator" includes any person who is senior management personnel or a corporate officer. It provides further that for purposes of the criminal sanctions contained in section 113(c)(4) (recordkeeping, monitoring and reporting violations), the term "person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. In addition, it provides that for the purpose of the endangerment provisions and certain other criminal violations, the term "person" shall not include such an employee carrying out his normal duties who is acting under orders from his employer. The Senate bill contains no provisions comparable to these House provisions.

Conference agreement. The conference agreement amends this portion of the House amendment as it relates to the meaning of "person" in certain cases under section 113(c) and the ability of employees to hide behind "orders". The changes adopted by the conference agreement is designed to eliminate and has the effect of eliminating the special treatment afforded "non-management employees" in cases of knowing and willful violations. A person who knows that he is being ordered to commit an act that violates the law cannot avoid criminal liability for such act by hiding behind such "orders". The "knowing and willful" standard does not require proof by the government that the defendant knew he was violating the Clean Air Act per se. It is sufficient for the government to prove the defendant's knowledge that he was committing an unlawful act.

These provisions create a new affirmative defense to criminal actions under certain parts of section 113(c). As such, once the government has satisfied its burden to prove a "knowing" violation in the traditional sense, the burden will shift to the person seeking to claim the defense and the defendant must prove that he was acting under his employer's orders or carrying out normal activities. Only after a defendant has satisfied that burden will the government be required to prove that the defendant's actions were "willful." If the defense is successfully asserted and the government succesfully overcomes it with a showing of a "willful" violation, criminal penalties shall be applied under section 113(c). For purposes of this provision, a plant manager or environmental compliance manager who has been granted broad decisionmaking authority by the owner of the facility shall not be considered to be acting "under" orders.

Section 702—Compliance Certification

Both the Senate bill and the House amendment authorize the Administrator to require such reports, monitoring, and certifications as the Administrator deems necessary for the purposes of the Act. With respect to major sources, these shall include requirements for enhanced monitoring and for the submission of certifications on the status of compliance.

Conference agreement. The conference agreement adopts the House provision.

Section 703—Administrative Enforcement Subpoenas

Both the Senate bill and the House amendment increase the scope of EPA's power to employ administrative subpoenas by authorizing the use of such subpoenas in connection with investigations, monitoring, administrative enforcement proceedings and other actions under several enumerated sections of the Act.

Conference agreement. The conference agreement adopts the Senate provision.

Section 704—Emergency Orders

Senate bill. The Senate bill amends the emergency order provision of the Act (section 303) by eliminating the requirement that the Administrator determine whether State or local authorities have acted to abate the emergency prior to filing suit. In addition, the Senate bill authorizes the Administrator to issue administrative orders necessary to protect public health, welfare, or the environment if the filing of a civil action would not assure such protection. The Senate bill limits the duration of such administrative orders to 60 days unless extended by the filing of an action in court.

House amendment. The House amendment authorizes the Administrator to issue administrative orders if it is not practicable to assure prompt protection of public health, welfare, or the environment by filing a civil action, and provides no limit on the duration of such orders.

Conference agreement. The conference agreement adopts the Senate provisions amending subsection 303(a), and also adopts the House amendment that eliminates section 303(b) in its entirety.

Section 705—Contractor Listings

Both the Senate bill and the House amendment expand the scope of EPA's ability to prevent the award of federal contracts to persons convicted of criminal violations of the Act by allowing the Administrator to extend such prohibition to other facilities owned or operated by the convicted person.

Conference agreement. The conference agreement adopts the House provision. By so doing, the agreement leaves the Act silent with respect to the issue of inspections by contractors that are duly authorized representatives of the Administrator.

We are aware that EPA policy currently allows the use of contractors to conduct inspections. So long as those contractors are properly trained, we believe they can provide very valuable assistance to the EPA. Contractors often possess special skills and knowledge that is invaluable to the Agency in determining whether to take enforcement action. Accordingly, it is our intention that EPA continue to engage in the judicious use of contractors for inspections.

Section 706—Judicial Review Pending Reconsideration of Regulation

Both the Senate bill and the House amendment provide that the filing of a petition for reconsideration of any action by the Administrator that is a final rule or action shall not postpone the effectiveness of such rule or action, nor postpone the time for judicial review.

Conference agreement. The conference agreement adopts the House provision. Section 307(b)(1) of the Act grants jurisdiction to the federal circuit courts of appeal to review "final action" of the administrator. The term "final action", however, is defined only by a non-exclusive list of particular kinds of actions. Several courts have specifically considered whether section 307(b)(1) provides for pre-enforcement review of administrative orders. As noted in Sen. Rpt. 101-228, at 367, the Second, Third, and Eighth Circuits have already resolved this issued and, as such, except with respect to judicial review of administrative penalty assessments and orders, there is no opportunity for pre-enforcement review and no new statutory language addressing the issue is necessary.

Section 707—Citizen suits

Senate bill. The Senate bill requires that civil penalties assessed in citizen suits be deposited in a special treasury fund for use by the EPA, and allows such suits to be brought in federal district court when the Administrator has failed to perform a nondiscretionary action or duty, or has unreasonably delayed such performance or deferred such action. In addition, the Senate bill allows any interested person to petition the Administrator to issue, amend, repeal or reconsider regulations or orders issued

under the Act. Finally, the Senate bill clarifies that citizen suits could be brought for past violations of the Act.

House amendment. The House amendment establishes a special treasury fund similar to the one created in the Senate bill, and also authorizes courts in citizen suits to order that penalties be used in beneficial mitigation projects. In addition, the House amendment allows citizen suits to be brought in federal court to compel action by EPA that has been unreasonably delayed, or has been deferred. The House also clarifies that citizen suits could be brought to enforce permit conditions as well as the requirement to obtain a permit, and that such suits could be maintained for past violations upon a showing that such violations had been repeated or continuous.

Conference agreement. The conference agreement adopts the House provision, modified to require a showing only that past violations had been repeated (not continuous) as a precondition to the maintenance of a citizen suit. It is the intention of the conferees that citizens should be allowed to seek civil penalties against violators of the act whenever two or more violations have occurred in the past.

Three additional points merit emphasis with respect to citizen suits. First, by adopting the House language that confirms the availability of citizen suits when EPA defers a nondiscretionary action, the conferees in no way intend to weaken existing case law that holds—in language not limited to deferrals of nondiscretionary duties—that an EPA deferral is final action subject to challenge in the federal courts of appeal under section 307(b)(1).

Second, adoption of the House language in no way limits the universe of EPA actions subject to unreasonable delay suits.

Third, failure of the agreement to adopt the senate bill language that established a timeframe for EPA response to citizen petitions is in no way an endorsement of the numerous delays that have characterized the agency's actions on a number of key air pollution issues. Instead, it reflects the judgment of the conferees that EPA's conduct is better addressed by the more flexible case-by-case approach inherent in "unreasonable delay" suits.

Last, the six-month waiting period for unreasonable delay suits should apply only to newly-authorized suits, not to ones that were already authorized under pre-existing law.

Section 708—Enhanced Implementation and Enforcement of New Source Review Requirements

Senate bill. The Senate bill increases the authority of the EPA with respect to new source requirements by authorizing the Administrator to issue orders preventing the operation, construction, or modification of major emitting facilities in areas subject to such requirements. In addition, the Senate bill provides that the recipient of such an order could seek an informal public hearing with the EPA prior to the effective date of the order.

House amendment. The House amendment increases the EPA's new source authority in the same fashion as the Senate, and grants to the Administrator power to prevent the construction or modification of major emitting facilities. The House amendment has no provision for any hearing prior to the effective date of such orders, and leaves intact the current law regarding preenforcement review of administrative orders.

Conference agreement. The conference agreement adopts the House provision. In so doing, the agreement recognizes existing law which allows EPA to initiate enforcement actions against sources that are being constructed or modified in violation of new source requirements, and leaves intact the current interpretation of the Agency that allows action against sources that are operating in violation of new source requirements.

Mr. CHAFEE. Mr. President, we have before us legislation that is truly of historic proportion. Legislation that will make an enormous difference to the tens of millions of Americans who now breathe unhealthy air, legislation that will go a long way in protecting the environment from acid rain and other harmful pollutants.

This is a health bill and an environment bill.

This comprehensive bill has been 10 years in the making. Over the last year both the Senate and House stepped up to the plate, put regional political differences aside, and passed bills that effectively dealt with the shortcomings of the current Clean Air Act. Since July 13, House and Senate conferees struggled mightily to resolve the differences in both bills and just 3 days ago broke the 10-year deadlock. We have produced a conference agreement that is environmentally sound and economically responsible.

Much of the clean air debate has focused on the cost of the bill—and I believe this bill is within the range the President has set forth. But, what seems to get lost in the discussions—the real reason we are pushing forward with this legislation—is protection of human health and the environment.

Because you often cannot see or smell polluted air, the urgency to clean it up is less pressing; the old cliche, out of sight, out of mind, rings true. Yet, health studies estimate that polluted air is responsible for between 50,000 and 100,000 deaths in the United States of America per year. Toxic air pollutants are estimated to cause up to 2,500 cancer cases each year. It is estimated that over 4 million people annually become ill as a result of dirty air.

Air pollution also harms buildings, crops, and forests and, we have seen the harmful effects of acid rain on lakes and rivers.

The costs associated with this pollution is incredible. The American Lung Association has estimated that health costs associated with air pollution run at least $25 billion annually. EPA has estimated that ozone causes annual crop losses, including loss in the production of soybeans, tomatoes and beans of $2 billion to $3 billion annually. I could go with additional costs but I believe I've made the point.

Mr. President, given the contentious and lengthy nature of this legislation, I believe it is safe to say, after the conference agreement is adopted, that we will not be reauthorizing the Clean Air Act anytime in the near future.

So, what we have done in this bill is layout a roadmap, a roadmap that will chart the course for this Nation's clean air program well into the next decade.

Let me outline the basic elements of the conference agreement.

TITLE I: NONATTAINMENT PROVISIONS

Currently over 100 areas in the United States do not meet health standards under the Clean Air Act for ozone [smog]; more than 40 areas are failing to attain the carbon monoxide standard; and an estimated 58 areas exceed the health standard for particulate matter [PM-10]. Under the act, State and local governments have a major responsibility for implementing measures that will reduce pollution to levels that do not threaten health. The Federal Government sets certain minimum requirements and assures that States carry out their responsibilities.

Following is a summary of the provisions of title I which affects these requirements.

Depending on the severity of the pollution problem, nonattainment areas for any of the pollutants must attain the health standard for ozone within 5, 10, 15, or 17 years—20 years for Los Angeles.

Nonattainment areas must reduce pollutants by specified percentage increments from the present until the health standard is achieved. This new requirement will ensure early ozone reductions and, for the first time, steady progress toward meeting the standard. In the case of ozone, areas must reduce emissions of volatile organic compounds [VOC's], a precursor of ozone, by 3 percent per year (with waivers for certain specified conditions) until the standard is attained.

In areas exceeding the standard for ozone, service stations dispensing more than 10,000 gallons per month of gasoline are required to install equipment on pumps to reduce emissions of VOC's.

Vehicle inspection and maintenance programs must be upgraded in ozone and carbon monoxide areas that already have such programs and must be instituted in most other areas that do not already have them.

The Environmental Protection Agency is required to impose one of the following sanctions in an area that fails to prepare or implement a plan to attain a health-based air quality standard: Limited use of Federal highway funds or a requirement that new industry offset emissions at a 2-to-1 ratio.

The definition of major sources in current law is modified so that smaller sources of VOC's are required to control emissions—50 tons in moderate

and serious areas; 25 tons in severe areas; 10 tons in the extreme area of Los Angeles.

TITLE II: MOTOR VEHICLE-RELATED PROVISIONS

Cars and trucks currently account for 50 percent of the smog pollution and 90 percent of the carbon monoxide pollution in urban areas in the United States. They are also responsible for significant emissions of toxic pollutants. It is not only the vehicles but the fuel they use that causes pollution.

The agreement contains the following measures to reduce these pollutants:

REFORMULATED GASOLINE

Cleaner, reformulated gasoline would be mandated in the nine cities with the severest ozone pollution beginning in 1995. States could elect to have the requirements apply in other cities with ozone pollution problems.

In comparison with conventional gasoline, reformulated gasoline would be required to have 15 percent lower emissions of volatile organic compounds and toxic chemicals by 1995, and 20 to 25 percent lower by 2000. The agreement also contains additional standards for oxygen, benzene and aromatics.

The agreement establishes an oxygen content level of 2.7 percent in 44 cities with carbon monoxide pollution, starting in 1992. These provisions will encourage the use of oxygen-containing additives like ethanol and MTBE, a natural gas derivative.

TAILPIPE STANDARDS FOR CARS AND TRUCKS

Auto manufacturers are required to reduce tailpipe emissions of hydrocarbons and oxides of nitrogen, which form smog, by 35 percent and 60 percent, respectively, beginning with 40 percent of the vehicles sold in 1994 and increasing to 100 percent of vehicles sold in 1998. Comparable reductions are required for light trucks such as vans and pickups.

The period during which cars would be subject to recall for failure to meet emission standards would be doubled to 10 years or 100,000 miles whichever occurs first.

An additional reduction in auto emissions—a 50-percent cut below the standards required in the mid-1990's—would be required after 2003 if EPA finds that this new standard is both necessary and technologically feasible.

FLEET VEHICLES

A program for fleet vehicles, for both private and Federal fleets, is included in the agreement. Fleet vehicles covered by the program would be substantially cleaner than conventional vehicles.

The fleet program applies in serious, severe and extreme nonattainment areas to fleets of 10 or more vehicles that are capable of being centrally fueled (but not including vehicles garaged at personal residences each night under normal circumstances).

CALIFORNIA PILOT PROGRAM

The agreement contains a pilot program for California, a modification of the House bill. Beginning in 1996, 150,000 clean fuel vehicles per year must be produced for sale in California; by 1999, this number must rise to 300,000. These vehicles must meet California's TLEV (transitional low emissions vehicle) standards (0.125 NMOG, 0.4 NOx, 3.4 CO and 0.015 formaldehyde) until the year 2000 when they must meet the LEV requirements (0.075 NMOG, 0.2 NOx, 3.4 CO and 0.015 formaldehyde). California must assure that sufficient clean fuels are produced, distributed and made available for all clean fuel vehicles to operate exclusively on such fuels in the covered area. If California fails to adopt a fuels program that meets this requirement, EPA must establish such a program within 3 years.

Other States with serious, severe or extreme ozone nonattainment areas are authorized to voluntarily opt-in to the California standard. This voluntary opt-in cannot include any production or sales mandate for vehicles or fuels but must rely on incentives to encourage their sale and use.

One of the more difficult issues the conferees addressed was the question of States' authority to adopt California motor vehicle emission standards. Section 177 of the existing Clean Air Act permits States that contain nonattainment areas to adopt and enforce California standards, which are tougher than the Federal standards.

The State of New York this fall became the first State to exercise this option, and in doing so, raised questions about the extent to which the New York vehicle program may differ from California's.

Although no amendment to section 177 was included in either the House or Senate bill, the conferees found themselves embroiled in the tug between the automakers' and the States' interests. The automakers have a legitimate concern that different programs in different States could result in a requirement for a third or fourth or fifth car; that is, one that is different from either a California or a Federal vehicle. The States have an equally compelling interest in being able to assure that cars that meet the California standard when new also meet the standard under normal driving conditions in each State.

After lenghty debate and numerous exchanges of language, the conferees agreed to a brief clarification of section 177, stating simply that in adopting and enforcing California standards, no other State can have the effect of requiring carmakers to produce a vehicle different from the cars that can be sold in California.

The language is clear that other States do have enforcement authority, and part of that authority is the ability to trigger recalls of vehicles that fail to meet emission standards when the vehicles have been properly maintained. Assuring that cars are manufactured so that they meet emission standards in actual use is not an instance of requiring a third car.

TITLE III: AIR TOXICS PROVISIONS—ROUTINE EMISSIONS FROM MAJOR SOURCES

LIST OF POLLUTANTS AND SOURCES CATEGORIES

The conference agreement establishes a list of 189 chemicals taken from the administration's bill, except that ammonia and hydrogen sulfide were deleted from the list.

EPA is to establish a list of major source categories: for example, chemical plants, oil refineries, steel plants for the purpose of issuing standards. Approximately 250 source categories will be subject to regulation. Different standards may apply for different categories.

MACT STANDARD

For each category of sources, EPA will promulgate a standard which requires the installation of maximum achievable control technology [MACT] by the sources in the category. MACT is the maximum available control technology, taking cost into account.

All standards are to be promulgated within 10 years, with standards for 41 source categories required within 2 years.

Existing source must comply with MACT standards not later than 3 years after they are issued. However, a 1 year extension is possible.

Any source making a voluntary reduction of 90 percent below 1987 emissions levels receives a 6-year extension on the MACT compliance date.

RESIDUAL RISK

Under some circumstances, MACT may not provide enough public health protection. So the bill establishes a residual risk program. The program is fashioned after the House bill which sets a standard for protection which is an ample margin of safety to protect public health unless a more stringent standard is necessary to protect the environment.

EPA is required to set such residual risk standards for pollutants which may cause cancer whenever the risk is greater than 1-in-1,000,000 to the person in the general population most exposed to emissions from a source in the category.

ROUTINE EMISSIONS FROM "AREA" SOURCES

Based on the list of pollutants mentioned above, EPA can also list an area source category just as the agency would list a major source category and require MACT. EPA must list sufficient source categories to assure that 90 percent of the emissions of the 30

most serious area source pollutants are regulated.

Five years after enactment, EPA is to propose a national urban air toxics strategy to reduce cancer risks associated with urban air toxics by 75 percent. EPA is to report on reductions achieved in 8-and 10-year intervals.

ACCIDENTAL RELEASES

The agreement contains provisions that are designed to prevent chemical accidents.

These provisions include a general duty on the owner or operator of each facility handling extremely hazardous substances to operate safety; and a requirement whereby each owner of a facility handling extremely hazardous substances must complete an engineering analysis of the facility to identify possible hazards to public health. The assessments would be publicly available.

The conference agreement also establishes a Chemical Safety Board, similar to the Transportation Safety Board, to investigate chemical accidents.

MUNICIPAL INCINERATORS

The conference agreement includes provision to control the air emissions from municipal, hospital and other commercial and industrial incinerators. Recycling and ash management provisions from the Senate bill were deleted.

TITLE IV: ACID RAIN PROVISIONS

The agreement reduces sulfur dioxide [SO_2] emissions by 10 million tons per year below 1980 levels and provides a national cap on sulfur dioxide emissions. This title, based on the Senate bill, also reduces emissions of oxides of nitrogen [NO_x] by approximately 2 million tons a year.

MARKETABLE ALLOWANCES

In addition to its operating permit, each source will receive allowances equal to the pollution it is permitted to emit. An allowance is a marketable instrument that allows a source to emit 1 ton of sulfur dioxide.

If a source reduces its pollution more than required, it will have leftover allowances it can sell to another source—which would permit the second source to emit more than allowed while remaining in compliance. This ensures that total reductions will be achieved in the most cost-effective way and that reduction costs will be allocated fairly.

Under phase I of the program, which begins January 1, 1995, utility powerplants emitting at a rate above 2.5 pounds of sulfur dioxide per million Btu (lbs./mmBtu) (about 111 plants) will have to reduce their emissions to a level equal to 2.5 lbs./mmBtu multiplied by their average 1985–87 fuel consumption.

Plants that use certain control technologies to meet their phase I reduction requirements may either postpone compliance until 1997 or receive early-reduction bonus allowances for reductions they achieve between 1995 and 1997. In addition, phase I plants that use certain control technologies will also receive 2 for 1 credit for every ton of reduction they achieve below a 1.2 lbs./mmBtu level during phase I.

A special allocation of 200,000 annual allowances per year will be made in each of the 5 years of phase I to powerplants in Illinois, Indiana, and Ohio, that are required to make reductions in phase I.

Phase II of the program begins January 1, 2000. All utility powerplants emitting at a rate above 1.2 lbs./mmBtu will have to reduce emissions to a level equal to 1.2 lbs./mmBtu multiplied by their average 1985–87 fuel consumption.

Nationwide, plants that emit SO_2 at a rate below 1.2 will be able to increase their emissions between now and the year 2000 by roughly 20 percent and will then be limited to that level. This requirement is necessary to maintain the nationwide cap on SO_2 emissions.

Bonus allowances are distributed to accommodate growth by units in States with statewide average emissions below 0.8 lbs./mmBtu. Plants that have experienced increases in their utilization in the last 5 years also receive bonus allowances.

Units that use energy conservation or renewable energy will receive special incentive allowances for making early reductions in SO_2 emissions.

EPA will auction allowances to ensure their availability to utilities that may not be able to acquire them in the allowance "market."

The 1977 percentage reduction requirement for coal is repealed once the emissions cap goes into effect.

Not later than 1993, EPA is required to establish performance standards under which utilities required to reduce sulfur dioxide emissions in phase I are also required to control their NO_x emissions based on performance standards for certain boiler types. The emission standards will be based on low NO_x burner technology.

TITLE V: PERMIT PROVISIONS

The conference agreement includes provisions that require sources emitting regulated pollutants to obtain operating permits so as to ensure compliance with the Clean Air Act. The permit program is modeled after the existing Clean Water Act Permit Program.

EPA is required to issue permit program regulations within 1 year. States are required to develop programs consistent with those regulations. The programs would be in effect within 4 years, and the requirement to have a permit would be phased in over the ensuing 3 years.

The conference agreement provides EPA with the authority to review permits proposed to be issued by a State and to object to permits that violate the Clean Air act.

If EPA fails to object to a permit that violates the Act, any person can petition EPA to issue such an objection. The petition must be based upon objections that were raised during the public comment period unless the petitioner demonstrates that the issues raised in the petition could not have been raised during that period—or that it was impracticable to raise them. The petition will not delay the effectiveness of a permit that had already been issued. EPA is required to act upon the petition within 60 days and is required to object to the permit if the petitioner demonstrates that the permit is not in compliance with the Act.

Under the conference agreement, States would be granted 90 days to revise permits to meet any EPA objection. If the State fails to revise the permit, EPA will issue or deny the permit.

The agreement provides that compliance with a permit is deemed compliance with the requirements of the permit program. Permit compliance also will be deemed compliance with other applicable provisions of the Clean Air Act if the permit includes those provisions, or if the permitting authority includes in the permit a specific determination that such provisions are not applicable.

TITLE VI: STRATOSPHERIC OZONE PROTECTION

The conference agreement includes compromise provisions on—CFC, halon, carbon tetrachloride, and methyl chloroform phaseout schedules. The following are several key provisions:

Production of CVC's is phased out with a total ban by the year 2000.

HCFC production is frozen in 2015 and eliminated in 2030.

Recapture, recycling, and safe disposal regulations are phased in beginning January 1, 1992;

On July 1, 1992, a prohibition on venting during appliance service, repair, and disposal becomes effective.

SUMMARY OF TITLE VI: FEDERAL ENFORCEMENT

The conference agreement includes a number of provisions that enhance the enforcement authority of the Federal Government under the Clean Air Act. In general terms, the agreement increases the range of civil and criminal penalties for violations of the Clean Air Act.

EPA enforcement authority is strengthened regarding violations of State implementation plans and permits, including authority to bring civil actions for injunctive relief and penalties, as well as new authority to issue administrative penalty orders in response to violations. These authorities can also be used by EPA when States fail to enforce SIP's or permit requirements.

CRIMINAL PENALTIES

Criminal fines and penalties are included for a range of violations of the act, including negligent or knowing violations that result in the endangerment of others. In addition, the conference report provides criminal fines and penalties for the knowing filing of false statements and other similar recordkeeping, monitoring, and reporting violations. Consistent with other recent environmental statutes, criminal violations of the Clean Air Act are upgraded from misdemeanors to felonies.

Owners and operators of facilities are encouraged to conduct environmental audits and to correct any compliance problems discovered in such audits. Criminal penalties should not ordinarily be applied where owners and operators engage in such audits and act promptly to correct any problems that are discovered as a result of such audits.

TITLE IX: CLEAN AIR RESEARCH

The House and Senate provisions in this area were generally similar. The conference agreement adopts the House title with several changes drawn from the Senate bill.

OTHER PROVISIONS

DISADVANTAGED BUSINESS CONCERNS

The conference agreement adopts the House's title X, relating to disadvantaged business concerns, with one substantive modification. Under the bill, as modified, the Administrator shall, to the extent practicable, require that not less than 10 percent of total Federal funding for clean air research relating to the requirements of the Act will be conducted by disadvantaged business concerns.

WISE JOB DISPLACEMENT PROVISION

The conferees approved a modified version of the Wise amendment, establishing a program of training and weekly benefit payments for workers terminated or laid off as a consequence of compliance with the Clean Air Act. This program will be administered under the Job Training Partnership Act with a 5-year, $250 million authorization, earmarked for displaced workers and to be used for both training and benefit payments. Eligibility requirements for these displaced workers will be developed by the Secretary of Labor in a rulemaking process. Benefit payments are set at a level no higher than the lower living standard income level and may be received as long as displaced workers are enrolled in approved training programs.

VISIBILITY PROVISIONS

The conference agreement retains the Senate provisions concerning visibility. EPA and other Federal agencies are directed to conduct a study to identify and evaluate sources of visibility impairment. In addition, EPA is given authority to establish visibility transport regions and commissions.

Now I would like to focus for a few minutes on transportation-related provisions in title I of the conference agreement.

GENERAL TRANSPORTATION CONTROL MEASURES

Experience of the last 20 years makes clear that we cannot solve the air pollution crisis in major polluted areas like the Northeast, Chicago, or Los Angeles only by controlling industrial sources or making new cars cleaner. Vehicles on the road account for half or more of the ozone precursors that contribute to health hazards for nearly half of all Americans in more than 100 cities and 75 percent or more of the carbon monoxide that causes ambient violations in another 50 cities. In addition, we have learned that the growth in vehicle use, nearly 3 percent per year nationwide, was a major factor in preventing the attainment of the ambient standards by the 1987 deadline.

It is clear that the goals of this bill—healthy and safe air for every American—will not be achieved without implementing strategies that effectively limit the growth in vehicle use in the major urban centers where pollution levels are the worst. The transportation control and planning provisions of the bill are intended to achieve the emission reductions from mobile sources that are needed to reach the health objectives of the bill.

In 1977, Congress added a requirement to the act, section 172(b)(2), that each State plan contain all reasonably available control measures to reduce transportation emissions.

The conference agreement in new sections 182(c)(5), 182(d)(1), and 182(e) of the Clean Air Act continues the requirement that areas should adopt all reasonable available control measures unless they are demonstrably not needed to bring an area into attainment or maintain a health air quality level.

The conference report agreement adds statutory criteria defining "reasonable further progress" in terms of specified emissions reductions. The need for transportation control measures and the appropriateness of various measures should be evaluated with regard to these new interim increments of progress in the bill as well as with regard to a final attainment date.

Concerning the "adequate access" provision in section 179 and sections 182(c)(5), 182(d)(1), and 182(e), the inclusion of the term "adequate" is intended to make clear that appropriate transportation air quality control measures may be undertaken even if they have an effect on access; the term makes clear that unfettered access by a particular transportation mode such as motor vehicles is not required as long as basic and adequate access remains available. There are many ways to provide access and that even if vehicular access is affected, adequate access can be assured by availability of other transportation modes or means to affected areas.

CONFORMITY

The experience of the last 13 years has shown that it is necessary to do more than simply consider applicable control measures. They must be implemented, as well.

The 1990 Clean Air Act amendments address this issue in amendments to the conformity requirements of section 176 of the Clean Air Act. In 1977, Congress added a requirement that any activity approved by a Federal agency conform to the applicable implementation plan. Little guidance was given regarding the application of this requirement and, unfortunately, it has been largely ignored by the agencies required to implement it.

One of the potentially most important applications of this provision is with regard to the review and approval of regional transportation plans by the Secretary of Transportation. The intent of the conformity provision in the Clean Air Act in 1977 was to give clear legislative direction to incorporate air quality criteria into the review and approval of transportation plans as well as projects. But no transportation plan has ever been disapproved under this provision, even in cities where mobile sources emission growth is a major factor in preventing attainment of the NAAQS.

The amendments to section 176 will require transportation planning agencies to view their task as the development of a transportation system that meets multiple needs, including both mobility and air quality objectives. Traditionally, regional transportation plans have been developed to provide for vehicle volumes without regard to the plan's effect on air quality.

Los Angeles, the most severely polluted urban area in the United States, is demonstrating how dual purpose transportation planning can be done in an area with the worst problems. The South Coast Air Quality Management District has adopted as part of the air quality plan for the area the mobility plan developed by the Southern California Association of Governments. This plan is designed to reduce VMT growth in the South Coast Air Basin by 60 percent over the next 20 years compared to what it would be if current vehicle miles traveled [VMT] growth rates continue. This reduction in vehicle use is an essential element of achieving air quality standards in southern California.

No transportation plan or program may be accepted by the Secretary of Transportation under title 23 unless the metropolitan planning organization for the nonattainment area can demonstrate a fit between emissions expected to result from implementation of the transportation plan and

the mobile source emission allocation in the SIP for the milestone year, the attainment year, and the maintenance period.

If the attainment demonstration requires reductions in mobile source emissions below those expected to result from implementation of the existing transportation plan, then the transportation plan must be modified to achieve the emission reduction targets for mobile sources in the SIP.

Until such time as an implementation plan is approved or promulgated that establishes the ceilings on mobile source emissions in the nonattainment area, interim requirements apply under section 176(b)(3). Implementation plans adopting emission ceilings for mobile sources are not required under the bill for 3 years. During the interim, three criteria will govern the adoption of transportation plans and programs by the MPO's and the review of such plans and programs by the Secretary of Transportation.

First, the conformity review for transportation plans and programs must be based on the use of the most current estimates of emissions for mobile sources. EPA has recently issued an revision of its MOBILE model based on the emission performance of recent model year vehicles, but this model may need to be reviewed. EPA will identify the emission factors to be used in the review of plans and programs as part of the regulations required by this section.

Second, transportation plans and programs must provide for the expeditious implementation of transportation control measures. Many implementation plans adopted under the 1977 amendments to the act included transportation control measures that have yet to be implemented. All measures were required to be implemented by 1987 in order to meet the statutory attainment deadline.

Transportation plans and programs may not be approved after the date of enactment unless they provide for expeditious implementation of such measure. "Expeditious" means as soon as practicable, but in no event longer than the project or program would have taken to implement under the original SIP schedule.

Third, plans and programs adopted for areas that are nonattainment for ozone or carbon monoxide during the interim period should contribute to annual emission reductions consistent with the emission reduction schedules adopted in the bill for such areas. New section 182(b)(1) of the Clean Air Act requires a 15-percent reduction in areawide emissions during the first 6 years after enactment in each serious, severe, and extreme ozone nonattainment area.

During the interim period, transportation projects may be found in conformity only if they are included in a transportation plan and program that meets the criteria in 176(b)(3)(A) and reduce or eliminate the number of NAAQS violations in carbon monoxide nonattainment areas.

The conferees recognize that a short period of time will be required for MPO's, DOT, and EPA to obtain the data and perform the analyses needed to carry out these interim requirements. Except in the sanction situation, to allow time for these efforts to be completed, the bill allows projects to proceed to construction if they have already been approved as part of a transportation improvement program that was found to conform to requirements in effect during the 3 years prior to enactment. These projects must also meet the requirements for carbon monoxide nonattainment areas in 176(b)(3)(B)(ii).

Once an applicable implementation plan is in effect under the 1990 amendments, all the criteria for conformity review will apply to the development by MPO's, and the review by the Secretary of Transportation, of regional transportation plans developed under section 134 of title 23, United States Code, and the Urban Mass Transportation Act, transportation improvement programs under section 105, title 23, United States Code, and transportation projects requiring Federal approvals or funding.

For transportation plans and transportation improvement programs, section 176(b)(2)(A) requires a determination that emissions expected from the implementation of such plans and programs will be consistent with estimates of emissions from motor vehicles and necessary emission reductions contained in the applicable implementation plans.

To the extent that the transportation plan includes a period that extends beyond the attainment deadline for any area, section 176(b)(1)(B)(i) also requires that mobile sources not cause violations of a NAAQS during the maintenance period.

Transportation plans are normally adopted for 20-year periods, or even longer. However, this does not mean that a metropolitan area can rely on its existing plan if it fails to conform to the mobile source emission allocation in the new SIP. The procedure for obtaining Federal funding of transportation projects in an area requires that a transportation improvement program, including the annual funding element, be submitted to the Federal Highway Administration for approval each year—or in some areas, semiannually. Section 176(b)(2)(C) prohibits the approval of any project for funding unless it comes from a conforming plan and program, unless it qualifies for an exception from this general requirement under 176(b)(2)(D).

The requirement to compare the expected emission effects of implementing the regional transportation plan with the emission targets in the SIP will also be closely tied to the triennial review of the SIP to determine whether emission reduction targets have been met. Section 182(c)(5) requires that VMT, congestion levels and other parameters do not conform to the projections used in the SIP, then both the transportation control measures in the SIP and the transportation plan and program will have to be revised to make up shortfalls in the emission reduction schedule for the area.

To ensure that the transportation plan remains coordinated with the applicable implementation plan, the Administrator is directed in section 176(b)(4)(B)(ii) to require the review of transportation plans at least every 3 years. Mobile source emissions are required to be reviewed every 3 years under section 182(c)(5) to determine if the emission reductions planned for the preceding 3-year period have actually been achieved. If emission reductions as scheduled in the implementation plan are not achieved, a SIP revision is required within 18 months.

Once the implementation plan has been shown to be inadequate, it can no longer serve as an adequate basis for determining whether the transportation plan for the region is adequate to contribute to attainment of NAAQS. The 3-year review of conformity for a transportation plans and programs will guarantee that, if the implementation plan is required to be revised, the transportation plan will also be revised if necessary to carry out the mobile source emission reductions required under a revised implementation plan.

To the extent the SIP requires the implementation of transportation control measures to meet mobile source emission targets in the SIP, such measures must meet the requirements of section 110(a)(2)(E)(i), including the requirement that the State demonstrate adequate funding to carry out such measures. The failure to show how such measures will be funded, or to include commitments from the authorized funding sources, will preclude approval of the State's plan. EPA is not authorized to approve plans containing measures that are speculative because of the lack of funding commitments.

Thus, where a State relies on the construction of highway projects to avoid congestion and thereby prevent carbon monoxide hot spots, the State will have to provide assurances that such funds will be available on schedule to complete the highway projects within the time needed to prevent the congestion levels that can cause carbon monoxide levels to exceed the NAAQS.

Section 176(b)(2)(B) requires that projects identified in the SIP that qualify for Federal funding under

titles 23 or 49 be given priority, including priority funding, by the metropolitan planning organization or other recipient of Federal funds, such as a State or county transportation department or transit district when preparing transportation improvement programs.

Any project not contained in the SIP may not be funded until projects contained in the SIP are funded in accordance with the schedule for completion of such projects. In addition, the transportation improvement program shall provide for timely implementation of other transportation control measures contained in the applicable implementation plan.

Projects may be adopted or approved as part of a plan or program by a metropolitan planning organization or any recipient of funds designated under title 23 of the Urban Mass Transportation Act or be found in conformity by a metropolitan planning organization or approved, accepted or funded by the Department of Transportation only if the criteria in section 176(b)(2)(C) are met.

These criteria are intended to ensure that projects included in a regional plan at the time of conformity determination is made are characterized with sufficient specificity to allow emissions from the projects and the regional plan to be quantified. This means that the general corridor of a project should be identified, and that the characteristics of a project which affect emissions such as whether it is limited access, grade separated, the number of lanes, location of interchanges, whether lanes are to be restriced to high occupancy vehicles, and other factors affecting vehicle carrying capacity should be described.

If a project is significantly modified after its inclusion in a regional transportation plan, it cannot be found in conformity, approved or funded unless the plan is revised to take account of the revisions to the project or the project qualifies under paragraph (D).

Paragraph 176(b)(2)(D) allows a project which does not come from a conforming plan or program to be found in conformity if it is demonstrated that the projected emissions from the project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause the plans and programs for the area to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan.

A project may qualify for this exception only if the regional plans and programs are in conformity at the time the project is reviewed, the emissions from the project are adequately characterized, and the project emissions are considered together with all emissions expected in the region from the conforming plans and programs.

The cumulative impact of the project, taken together with the approved plans and programs, may not cause the emissions to exceed the emission ceilings set for the years after the project will begin service. Any project found to conform under this provision that was not included in a plan at the time of such determination would have to be incorporated into the plan at the time of the next periodic review of the plan required under 176(b)(4)(B)(ii).

To resolve the conflicting interpretation of the conformity provision in the 1977 law that has stalemated effective transportation and environmental planning coordination, the bill specifically assigns to EPA the authority to issue regulations establishing conformity criteria and procedures, with the concurrence of the Secretary of Transportation.

Such regulations will provide guidance to the States for the adoption of conformity requirements in each SIP and will govern the conformity decisions of Federal agencies and MPO's required to make conformity determinations. Federal agencies will also have to comply with applicable provisions of the SIP if stronger than the underlying basic federal regulations.

If the regulations required by this provision are not issued within the deadline established by the act, both the Administrator and the Secretary are subject to the jurisdiction of any court reviewing the failure to perform the duty to promulgate regulations. The court will determine whether the cause for agency delay is justified and fashion a remedy designed to cure the failure of agency action.

If the Administrator has proposed rules and obtained the concurrence of the Secretary, but fails to take final agency action, the court will be faced with a case of agency delay. If the Administrator, however, issues proposed regulations in a timely fashion but received no response from the Secretary within the time allowed for comments, the court should infer that the Secretary's silence constitutes concurrence because no objections have been made, and thereby require final action by the Administrator.

If the Administrator has proposed rules in a timely fashion and the Secretary submits objections to EPA and does not concur within the time allowed for comments, the court shall decide any legal issues in dispute and issue an order setting forth a schedule for final agency action.

The legislation requires that copies of SIP revisions that implement the conformity requirements of the law be submitted to the Secretary of Transportation as well as the Administrator. The Secretary has no authority to take any action with respect to the plan; rather, its submission to the Secretary is for informational purposes only.

SANCTIONS

The conference agreement also makes a major change in the sanction requirement that applies when a State fails to submit an adequate plan, fails to submit a required plan revision or fails to implement its plan. Under the 1977 law, the Administrator was required to withhold highway funding from a State if it failed to comply with the Act or implement its SIP. The bill modifies this authority by allowing funding under title 23 to be allocated to projects that reduce vehicle use.

The bill would treat Federal transportation funding as a pollution control strategy rather than simply as a penalty. If a highway sanction is applied, Federal transportation funding is still available to the State, but only for projects that either reduce vehicle use or reduce emissions from vehicles on the highway. As defined in the provision, it may not be used for projects that promote vehicle use.

The provision that precludes Secretarial approval of projects applies to approval at all stages of project development, including approval of a project EIS, a project location approval, and approval of a project's plans, specifications and estimates. The provision is intended to reach capital and design project approvals, not the ongoing planning process.

Maximum flexibility is afforded State and local officials in the use of funds authorized under title 23 of the United States Code, for the purpose listed and specified under section 179(b)(1).

Aside from the types of projects listed in the bill, there is a narrowly drawn exemption for certain highway safety projects. Such projects must have as their primary purpose a safety improvement to resolve a demonstrated safety problem based on a specific finding by the Secretary from an accident or related data. The Secretary must also find, based on data, that the improvement will lead to "a significant reduction in, or avoidance of accidents." The safety exemption is narrowly drawn so that projects that would expand capacity or improve flow would not be eligible for Federal approval, regardless of whether they have a coincident safety benefit.

The types of safety projects that would be exempt under this bill would include such projects as rail-highway grade crossing improvements, improved safety signing, safety signalization, impact attenuation, or straightening a dangerous curve.

To the extent the Administrator is exercising discretion in choosing among sanctions, EPA should choose the sanction best suited to the circumstances. The sponsors expect, for ex-

ample, that when the State fails to submit a SIP for a pollutant emitted by mobile sources and for which transportation control measures are appropriate, or fails to implement transportation control measures in a SIP, EPA will implement the transportation funding provisions as the sanction of choice. The Administrator's choice of sanction must be rationally related to implementing the purposes of the act and, of course, will be subject to judicial review.

ECONOMIC INCENTIVES

The conference report requires State implementation plans to include enforceable emission limitations and other control measures, means or techniques, including economic incentives such as fees, marketable permits, and auctions of emissions rights, as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the Class Air Act.

Economic incentives and disincentives are viable tools that will discourage automobile travel demand and will encourage greater effort by all parties to bring nonattainment areas into compliance with the act.

The economic measures authorized by the amendments to section 110 and subpart D include items such as differential emission fees, marketable permits, road use and congestion fees, and emission charges, in combination with or as a supplement to the regulatory requirements. These measures were explicity mentioned in the Senate bill, and are also authorized by the House language adopted in the conference agreement.

It is clear that these economic measures such as road use and congestion fees or differential emission fees favoring cleaner or higher occupancy vehicles are not constrained by the provisions of titles 23, United States Code, section 301, which prohibits tolls on Federal highways. The 1990 Clean Air Act amendments provide authorization for such fees and tolls, as part of SIPS. The economic measures as outlined in this legislation assure that State implementation plans have the enforcement capabilities to meet emission inventory reduction requirements.

The conference agreement specifically authorizes exceptions to sanctions on highway funding under title 23, United States Code, programs to limit or restrict vehicular use in downtown areas or other areas of emission concentration through economic measures such as road use charges, tolls, parking surcharges, or other pricing mechanisms.

Economic measures such as road use charges are not prohibited by title 23, United States Code, section 301, but are necessary incentives and control measures to facilitate attainment in nonattainment areas.

The lesson of the past is clear: If we continue to fail to achieve effective integration between air quality goals and the transportation systems, American cities fail to attain clear air. If carefully administered by EPA and DOT these amendments offer the potential for achieving the healthy air quality that has eluded American cities for 20 years.

SUMMARY

Mr. SIMPSON. Mr. President, I would like to highlight for the record the fact that the conference accepted provisions adopted by the Senate which allow small diesel refiners to earn sulfur dioxide (SO_2) allowances for manufacturing low sulfur diesel fuel. The conference believes this provision will foster additional clean air improvements while providing compliance assistance to a class of refiners disadvantaged by costly desulfurization requirements. To assume these air quality benefits are actually realized, the conference requires small refiners to desulfurize both on and off-highway diesel fuel as a condition to earn SO_2 allowances.

BACKGROUND

Both the House and Senate passed clean air legislation requiring refiners to manufacture on-highway diesel fuel with a sulfur content of no greater than 0.05 percent—by weight—beginning October 1, 1993. Through hearings conducted by the Senate Environment and Public Works Committee in 1987, Congress became aware that this new diesel fuel standard would have an extraordinary cost impact on small refiners, due to economy-of-scale factors and the limited ability of small facilities to raise capital to purchase and install desulfurization equipment.[1]

In August 1990 the Environmental Protection Agency [EPA] issued a final diesel desulfurization rule. In the rule, EPA also recognized the difficulty small refiners would have complying with low sulfur diesel standards. Because of this hardship, EPA granted small refiners an additional 2 years to comply with the 0.05 percent standard. However, given the highly restrictive nature of the extension, most small facilities will be unable to realize compliance relief through EPA's actions.[2] Therefore, even with the extension, diesel desulfurization simply remains beyond the reach of many small refiners.

Neither congressional nor administrative action on diesel desulfurization have established low sulfur requirements for off-highway diesel fuel. It was believed small facilities unable to invest in desulfurization equipment would instead shift their distillate slates to off-highway or home-heating oil markets. However, as EPA discovered in the rulemaking process, there are many areas of the country, such as the Intermountain West, where alternative distillate markets simply do not exist to any meaningful degree. Small refiners in such areas who are unable to redirect distillate sales would be forced to comply with desulfurization requirements of shutdown. In areas where alternate markets do exist, high sulfur diesel would be sold in off-highway markets at prices lower than low sulfur diesel in on-highway markets. The difference in fuel prices, estimated at between 2 and 5 cents per gallon, would provide incentive for misfueling and creates enforcement concerns. Because of these factors, the conference accepted the small refiner diesel provision because it not only resolves the problems noted above, but also achieves long-term SO_2 reductions from off-highway diesel fuel sources, an area not addressed by other clean air legislation or EPA requirements.

DISCUSSION

The removal of sulfur from diesel fuel reduces sulfur dioxide tailpipe emissions from motor vehicles. The small diesel refinery provision enables eligible facilities to earn marketable SO_2 allowances for desulfurizing diesel fuel. Similar to the market based incentives on which the acid rain trading program is based, small refiners could sell allowances they earn and use the proceeds to help offset compliance costs.

ALLOWANCE DETERMINATION

The number of allowances a small refinery could earn would be based on the amount of sulfur extracted from diesel fuel—converted to a sulfur dioxide tonnage figure. A refinery would earn one allowance for each ton of SO_2 removed through the desulfurization process. A small refinery can only earn allowances after the facility manufacturers and sells low sulfur diesel fuel.

In the United States, the average sulfur content of diesel fuel is 0.274 percent by weight (as reported by EPA).[3] This average level, minus the new diesel sulfur standard of 0.05 percent, equals 0.224 percent and this is the amount of sulfur, per pound of fuel, the refinery is credited for complying with desulfurization standards. The total amount of sulfur removed per year would be based on this sulfur weight, multiplied by the total weight of annual 0.05 percent diesel sales of the small refiner. The total tonnage of sulfur removed from diesel is then converted to a SO_2 tonnage amount. The conference envisioned the calculation to be determined as follows:[4]

ELIGIBILITY

Small refiner eligibility is based on the current clean air definition of a small refiner. Size figures have been annualized and based on actual bona fide crude oil throughput rather than theoretical rated capacity estimates. Rated capacity was used primarily during the crude oil allocation era and the conference believes usage of actual refinery utilization figures is a more

suitable and factual method of determining size, especially since this information is already reported to the Department of Energy. Moreover, this approach is consistent with small refiner eligibility criteria used by EPA in its recent diesel desulfurization rule.

Also, eligibility for allowances is specifically and solely based on bona fide crude oil throughput and is designed to encourage refineries to install desulfurization equipment. Diesel fuel on which allowances are calculated must be directly derived from crude oil processed by the small refiner. The conference did not intend for facilities to earn allowances if distillate is brought in from outside sources and blended or finished to the 0.05-percent standard. Process activities which are not contiguous to crude oil production runs at the refinery are not eligible for allowances. However, to promote process efficiencies, the conference believed two or more refineries could jointly operate a single desulfurization facility provided that diesel fuel was exclusively derived from crude oil processed at those refineries, and that all process and desulfurization facilities are solely owned and controlled by the same small refiners.

Finally, to be eligible to earn allowances, the refinery must certify that all on and off-highway diesel fuel manufactured and sold from that facility is desulfurized to a 0.05-percent standard. This will ensure that reductions in SO_2 emissions from off-highway sources will actually occur.

LIMITATIONS

The small refinery diesel provision enables a refinery to earn a maximum of 1,500 allowances per year from October 1, 1993 to December 31, 1999. By this date, it is believed the allowance program would have sufficiently assisted refiners complying with the low sulfur diesel requirements. Also, small refiners as a class, are limited to a total of 35,000 allowances per year. If the amount of SO_2 small refiners remove per year exceeds 35,000 tons, the conference believes a proration of these allowances would be appropriate.

Facility size limitations—18,250,000 bbls/year per refinery and 50,187,500 bbls/year per small refiner—shall be measured in terms of the average of the actual annual crude oil throughput during the period January 1, 1987 to December 31, 1989. This 3-year averaging method is similar to the approach used by EPA in their final diesel desulfurization rule and is set for a past period to prevent a facility from artifically lowering rates to gain small refiner eligibility.

The conference also recognized the installation of desulfurization equipment may lead to some debottlenecking at a facility which may render plant expansion cost-effective. If expansion occurred, the refinery would still be limited to the number of allowances it could earn. Moreover, all on and off-highway diesel sales from the facility would also be required to meet the 0.05-percent standard.

ADMINISTRATIVE AND FINANCIAL CONSIDERATIONS

Administratively, the Congress envisions the appropriate administrative agency will request small refiners to submit initial information registering and verifying their status as a small refiner, and certifying their intention to manufacture low-sulfur diesel fuel and claim allowances. After review, the agency could provide small refiners with a certificate, letter, or notice indicating the small refiner is registered with the agency and that the facility is eligible to earn allowances if requirements under Clean Air Act Amendments are met. Since allowances cannot be earned until after a facility has achieved compliance, the conference believes this type of document may help small refiners obtain investment capital to purchase desulfurization equipment. Also, to provide compliance assistance as rapidly as possible, we encourage the prompt and timely issuance of allowances to qualifying refiners.

FOOTNOTES

[1] On June 16, 1987, the Senate Environment and Public Works Committee heard testimony from the National Petroleum Refiners Association which reported that small refineries were most affected and at risk with low sulfur diesel standards: "Industry averages do not reflect the disproportionally high burdens that would be placed on some industry segments and individual refiners. For example, for the 25 refineries whose individual crude oil capacities are less than 30 thousand barrels daily, their cost burden to produce 0.05% sulfur diesel/distillate would be three times that of the industry average. This would seriously jeopardize their competitive viability." Separately, on two different occasions, the California Air Resources Board has set diesel desulfurization standards and both times provided small refiners with additional compliance leadtime.

[2] EPA's extension of compliance deadlines provides little assistance to small refineries since it requires the segregation of diesel fuel with a 0.05% sulfur content from "exempted" diesel fuel small refiners would be allowed to sell. EPA felt segregation was necessary since heavy duty diesel engine manufacturers stated they could not assure compliance with emission requirements if sulfur levels in diesel pools exceeded 0.05 percent. However, segregation of diesel fuel would prove too costly since diesel manufactured by small refiners is commingled with diesel from major refiners in pipelines, terminals and retail outlets. Segregation would require separate transportation, tanks and dispensing capabilities, all of which renders the alternative impractical.

[3] To ensure that a refinery does not use extra-sour crudes in order to earn more allowances, the provision only credits those sulfur reductions below the national average of 0.274 percent by weight, as reported by EPA.

[4] National average sulfur content in diesel fuel .00274 lbs.; Less: New diesel sulfur standard (.00050) lbs.

Excess sulfur removed per pound .00224 lbs.; Weight of diesel fuel per gallon (x) 7.1 lbs.

Amount of sulfur removed per gallon .01590 lbs.; Conversion to barrels (x) 42.

Amount of sulfur removed per barrel .66780 lbs.; Annual 0.05% diesel fuel sales (x).

Annual amount of sulfur removed from diesel lbs.; Conversion to tons (divide by 2000).

Tons of sulfur removed from diesel tons; Conversion to SO_2 (x) 1.998.

SO_2 removed per year tons.

ELEMENTAL PHOSPHORUS PLANTS

Mr. SIMPSON. Mr. President, special consideration is provided in this conference report, as it was in both the Senate and House clean air amendments, to continue the regulation of radionuclide emissions from elemental phosphorus plants, and a new subcategory of grate calcination elemental phosphorus plants, under the existing health-based authorities of section 112.

Radionuclide emissions from elemental phosphorus plants have been subject to the scrutiny of section 112 since first listed in 1979. Recently, EPA revised the preexisting standard, and in doing so, did protect the public health with an ample margin of safety, but did not fully consider process differences which distinguish elemental phosphorus plants utilizing grate calciners from all others. In promulgating the recent standard, the agency also did not consider the acceptability of intermediate emission levels between the level initially proposed and that ultimately finalized. The language in the conference report will allow EPA to reconsider its decision in a manner which continues to provide health-based protection for populations exposed and which recognizes the uniqueness of grate calcination elemental phosphorus plants.

Mr. CHAFEE. Again, I want to thank everyone who had a hand in this.

ON THE ESTABLISHMENT OF STATE IMPLEMENTATION PROGRAMS AND TAKING LOCAL CONDITIONS INTO ACCOUNT UNDER THE PERMITTING PROGRAM

Mr. INOUYE. Will the distinguished managers of the conference report, the Senator from Montana and the Senator from Rhode Island, confirm the operation of the permitting requirements under the conference agreement.

During the April debate on the Senate committee bill, the distinguished bill managers confirmed for this Senator that the Environmental Protection Agency must work with the States to facilitate State administration of the new permitting program. The distinguished managers also affirmed that the new operating permit system would allow flexibility for special conditions, such as the island conditions of my State, to be taken into account.

This Senator notes that the conference agreement combines the permitting provisions from the Senate bill with certain permitting provisions from the House amendments. In light of the conference modifications, is the past explanation of the permitting system still accurate with regard to the facilitation of State administration and with regard to consideration of special local conditions?

Mr. BAUCUS. EPA should in its discretion, to facilitate State administration of the permitting program and the permitting system allow flexibility for special conditions, such as conditions which may be unique to sources in the Senator's State, to be taken into account.

Mr. CHAFEE. This Senator shares that understanding.

Mr. INOUYE. I thank the distinguished managers for their clarification.

THE OXYGENATED FUELS AND REFORMULATED GASOLINE PROVISIONS OF THE CLEAN AIR ACT

Mr. DASCHLE. Mr. President, I would like to engage the distinguished chairman of the subcommittee, Mr. BAUCUS, in a colloquy concerning the reformulated gasoline and oxygenated fuels provisions of the bill for the purpose of clarification. The legislation provides the Administration with some flexibility in determining the length of the oxygenated fuels program. I am concerned about this because it could lead to different program periods being established for different CO nonattainment areas, and thereby create a patchwork of gasoline regulatory requirements that is impractical, unnecessary and confusing for consumers and gasoline marketers alike. What is the Administrator's discretion in this area, and could the Administrator require that oxygenated fuels be sold over a 6-month period?

Mr. BAUCUS. It is correct that the Administrator has some flexibility. However, the committee believes the Administrator should avoid setting widely differing program periods for each CO nonattainment area that would create a patchwork of gasoline regulatory requirements, but the committee also believes that the strongest possible program that is appropriate should be adopted.

Cold ambient temperatures and atmospheric temperature inversions are critical factors in carbon monoxide pollution formation. As a result, virtually all carbon monoxides are observed during the months between October and April when climatic changes occur. It may be that a 6-month period is the timeframe that the Administrator would select in consideration of the area's high ambient CO season for several areas. In any event, the legislation stipulates that the timeframe for the program is not to be less than 4 months.

Mr. DASCHLE. The reformulated gasoline provision contained in section 219 of the bill directs the Administrator to promulgate regulations requiring the greatest reduction in emissions of ozone forming volatile organic compounds and toxic air pollutants achievable through the reformulation of conventional gasoline. The general requirements for these regulations prohibit increases in the emission of oxides of nitrogen, establish a minimum oxygen content of 2.0 percent, and limit benzene to no more than 1.0 percent by volume.

It is my understanding that these are minimum standards. As EPA promulgates regulations, the Administrator has the flexibility to make these requirements more stringent if it is determined that tighter standards are necessary to achieve the greatest reductions in VOC's and toxics.

For example, if EPA determines that it is possible to limit benzene to less than 1.0 percent, such as 0.8 percent as in the original House bill or less, if technically and economically feasible, then EPA has the flexibility to do so. Is this the Senator's understanding as well?

Mr. BAUCUS. Yes, that is my understanding. Benzene levels should be reduced as much as is technically and economically feasible but in no case can they exceed 1 volume percent. Benzene is a known carcinogen. Yet it is widely used as an octane enhancer in today's gasolines—averaging 1.5 to 2.5 percent in most octane grades but as much as 5 percent in some premium grades. If EPA concludes that additional reductions in this dangerous compound are possible and practical, the provisions of this legislation allow the Administrator to make the appropriate adjustments.

Similarly, if the Administrator determines that requiring more than 2.0 percent oxygen will result in greater reduction of VOC's or toxics, the legislation provides the flexibility to increase the oxygen content accordingly.

Mr. DASCHLE. The bill requires the greatest reduction in emissions of ozone forming volatile organic compounds and emissions of hazardous air pollutants achievable through the use of reformulated gasoline. In order to reach those reductions, the bill requires the Administrator to determine the more stringent of either a formula stipulated in the legislation or specific performance standards for VOC's and toxics.

The formula establishes minimum standards for benzene, aromatics, heavy metals, detergents and oxygen content. It is my understanding, again, that EPA has the flexibility to issue more stringent standards for the formula fuel if technically and economically feasible.

Mr. BAUCUS. Yes, that is correct. The Administrator has the authority to make the formula more stringent.

The objective of the formula is to establish environmentally sound standards for the most critical components of gasoline. If EPA determines that a more stringent fuel formula will yield additional environmental benefits without undue economic difficulty, the Administrator could, under this provision, adjust the formula accordingly.

Mr. BAUCUS. Mr. President, earlier today we heard some of the Senators express their concern about the economic costs of this bill. Without taking great time at this moment with the Senate, I would like to make a few observations.

First, passage of this bill will obviously inure to the benefit of our country in terms of better health, better esthetic environment, better environmental benefits. It is clear passage of this bill is going to make Americans healthier, the environment cleaner, esthetically much more pleasing.

It is also clear that there are very significant economic benefits with the passage of this bill. No. 1, for every $1 billion in pollution construction and for every $1 billion that this country invests in pollution control, there are up to 20,000 additional jobs in this country. In addition there are many jobs that are going to be lost if no legislation passes, because of greater inefficiencies that are going to occur.

I must also point out that there are about 50,000 premature deaths in this country because of dirty air. In addition, 2 to 5 percent of the American public suffer premature illness or premature death because of dirty air. Those are very definite costs to this country.

Mr. President, I also would like to point out that there are major energy savings as a consequence of passage of this bill. For example, by the year 2000 this country will be saving about 1 million barrels of oil a day, with the passage of this bill. That is because of greater efficiencies in fuels, oxygenation requirements, reformulated gasoline provisions. That will save approximately 500 barrels a day. Moreover, by the year 2005, this bill will save another 500,000 barrels a day because utilities will be encouraged to switch from oil to natural gas. There are major economic savings in this bill of which I think Senators should be aware.

The EPA recently completed a draft report evaluating the energy impacts that will result from the Clean Air Act.

EPA estimates that between 800,000 and 1 million barrels of oil per day will be saved from the acid rain provisions and the mobile source provisions.

I ask unanimous consent that a copy of EPA's draft report, entitled "The New Clean Air Act and Energy: Fuel Switching Under the Clean Air Act Amendments," be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Office of Air and Radiation, Environmental Protection Agency, Sept. 12, 1990]

THE NEW CLEAN AIR ACT AND ENERGY: FUEL SWITCHING UNDER THE CLEAN AIR ACT AMENDMENTS

FUEL SWITCHING UNDER THE CLEAN AIR ACT AMENDMENTS

CLEAN FUELS FROM NATURAL GAS AND AGRICULTURE

	Barrels oil/day saved [1]
Mobile sources:	
Oxygenated fuel for CO control—switch oxygenates for crude	
Reformulated gasoline—switch oxygenates for crude	
Alternative fuels and fleets program	
Fuels subtotal	[2] 500,000
Acid rain: Switch natural gas for oil	[3] 300,000–500,000
Total	800,000–1,000,000

[1] When fully phased-in under deadlines in the bills.
[2] Estimate based on 9-city program only. With full opt-up and opt-in to alternative fuels and reformulated gasoline provisions, an extra 2 to 3 million barrels per day could be saved.
[3] Under the EPA-ICF "high" base case scenario (used in Administration-CEA cost estimate), 300,000 barrels will be saved in the year 2000 and 500,000 in the year 2005.

(Reducing pollution also cuts incomplete combustion, saves wasted hydrocarbons and will result in additional energy savings.)

ACID RAIN AND ENERGY

The Clean Air Act will require major reductions in sulfur dioxide from electric utility power plants. Utilities will achieve part of these reductions by switching from fuel oil high in sulfur content to natural gas which is low in sulfur content.

EPA estimates that 300,000 barrels of oil per day in the Year 2000 and 500,000 barrels of oil per day in the Year 2005 will be saved by electric utility power plants that stop burining fuel oil and switch to natural gas.

These estimates of reduced oil consumption are drawn directly from the EPA-ICF July 1990 Report [4] (high base case Senate projections). Similar reductions are expected under the high base case House bill analysis. This is the case used in the ongoing Administration cost analysis of the proposed legislation.

Other scenarios in the report (low base case), and other scenarios of future energy usage, also indicate less utility oil use in the future. The Clean Air Act, by requiring significant reductions in SO^2 will guarantee these oil savings.

The decrease in utility oil consumption forecasted is a result of (1) fuel switching from oil to gas at existing oil/gas steam sources that were forecasted to burn oil in the high base case scenario, and (2) decrease in the dispatch or utilization of oil units replaced with greater gas fired generation within the same state. These shifts occur in order to achieve reductions in SO^2 at a marginal cost of about $400–$600 per ton of SO^2, which is generally below the forecasted marginal cost of allowances in Phase II of the acid rain reduction program.

About 20 gigawatts of capacity (about 2 large utility power plants) is forecasted to switch from oil to gas in the high Senate base case in the year 2000. About 5 gigawatts of capacity is forecasted to switch from oil to gas along the eastern seaboard and the remaining 15 from outside the region.

As gas pipeline access is increased, the full potential for shifting to gas could be greater than what EPA has forecasted.

MOBILE SOURCES AND ENERGY [5]

Three key provisions of the House and Senate Clean Air Act amendments would result in motor vehicles switching to cleaner fuels produced from natural gas and agricultural products—reformulated gas, alternative fuels, and oxygenated fuels. Together these switches will result in a minimum oil savings of 500,000 barrels of oil per day. Additional savings would result from additional cities opting into these programs. To the extent that higher fuels costs are reflected in higher gasoline prices, the price elasticity of demand will result in additional reduced gasoline consumption.

Reformulated Gas provisions will require changes to gasoline to make it less polluting with regard to ozone and air toxics. These requirements would apply to at least the 9 worst polluted cities.

Among the changes made will be the addition of oxygenates produced from ethanol and methanol—non-crude oil fuel additives. These fuels will comprise about 15% of the gasoline volume covered by the provisions—resulting in an estimated 4 to 7 billion gallons of displaced gasoline per year or at a minimum 310,000 barrels of crude oil per day.

Oxygenated fuel provisions require the wintertime addition of oxygenates (e.g. ethanol, MTBE and ETBE) to gasoline in those cities (about 40) with carbon monoxide air quality problems. These fuels will comprise about 15% of the gasoline volume covered by the provisions saving an additional 110,000 barrels of oil per day. The added oxygen results in better fuel combustion leading to lower carbon monoxide emissions from vehicles.

Alternative fuel provisions would require the introduction of ultra-clean fuels into fleet vehicles and subsequently passenger cars in at least the 9 worst polluted cities. This is estimated to save an additional 80,000 barrels of oil per day. Over time, if more cities take advantage of the opt-in and opt-up provisions, this program could save 2 to 3 million barrels of oil per day. Natural gas, propane, ethanol, methanol and electricity are all candidates for meeting these provisions either as pure fuels or as constituents in ultraclean gasoline.

Other mobile source controls will also save fuel by reducing evaporative losses and improving combustion. These benefits have not been included in the 500,000 barrels/day estimate. It is estimated that these controls would provide 100,000 barrels per day of additional oil savings.

OTHER CLEAN AIR ACT AMENDMENT ENERGY IMPACTS

Stationary Source Nonattainment Controls

The stationary source controls required are generally designed to prevent hydrocarbons (the major constituent of oil) from being emitted into the air. To the extent that these hydrocarbons are captured and recycled, oil will be used more efficiently. For example, recycling of solvents such as perchloroethylene for dry cleaners can result in dramatic decreases in the use of oil-based chemicals.

Other control measures, such as controls on consumer solvents, will result in substitution of non-petroleum based chemicals for hydrocarbons. For example, more extensive use of water-based paints and coatings.

To the extent that some sources choose to incinerate their hydrocarbon emissions rather than recycle them, some increased energy usage will occur.

EPA's best estimate of the net effect is a small positive impact on oil consumption.

Air Toxic Stationary Source Controls

Similar to nonattainment controls, air toxics controls will result in substitution away from hydrocarbon-based chemicals, recycling of hydrocarbon-rich chemicals, and some increased energy usage due to additional incineration of air toxics. It is hard to estimate the net energy effect of air toxics controls because it is difficult to predict the production changes that will occur in industry. Because these controls will be similar to the nonattainment requirements, EPA believes that the overall energy impact will also be slightly positive.

ICF RESOURCES, INC.,
Fairfax, VA, August 22, 1990.

MEMORANDUM

To: Keith Mason, EPA.
From: Bruce Braine, ICF Resources; Ed Miller.
Subject: Primary and secondary effects of acid rain legislation on oil consumption.

In light of the recent unrest in the Middle East and resulting impacts on oil prices and the U.S. economy, you have asked us to assess the likely impact of acid rain legislation on oil consumption and energy use. For this analysis we have concentrated on direct or primary utility effects (e.g., forecasted decrease in oil consumption in the utility sector), and the indirect or secondary effects (e.g., increase in oil consumption due to increased shipments of low sulfur coal from the west to the east). We will demonstrate in the remainder of this memo that, after assessing both the primary and secondary effects, the passage of acid rain legislation will most likely result in a *decrease in oil consumption* in the U.S.

Note that, at your request, this analysis was conducted over a very short period of time, therefore the results should be considered preliminary. Where possible we have quantified the primary and secondary effects, however given the short time constraint and lack of available data, some effects are only discussed qualitatively.

Decreasing U.S. dependence on foreign oil imports for our energy needs is an important economic and national security issue. Often, especially in times of crisis, pleas for conservation and decreased energy consumption are voiced.

SUMMARY FINDINGS

Overall, we found that oil consumption would probably decrease on balance under acid rain legislation. This is because electric utility demand for petroleum as an input fuel (residual or distillate fuel oil) could decrease significantly under acid rain legislation as plants switch to natural gas to reduce SO_2 emissions. Also, the secondary effects of acid rain legislation that would tend to increase oil consumption in other sectors would be small in comparison to the forecasted oil consumption decrease in the utility sector. In particular, many of these secondary effects would lead to greater *electricity* use which would typically be fueled by coal or gas on the margin, but *not* oil (i.e., oil accounts for only about 5 percent of curent electricity generation).

For this analysis we assumed Senate bill acid rain provisions. We would expect House

[4] "Comparison of the Economic Impacts of the Acid Rain Provisions of the Senate Bill and the House Bill," tables A-9 and B-9, prepared for the U.S. EPA, prepared by ICF Resources Inc., July 1990. See Attachment A for further details.

[5] See Attachment B for aditional details.

bill provisions to have similar primary and secondary effects on oil consumption.

PRIMARY EFFECTS OF ACID RAIN LEGISLATION ON OIL CONSUMPTION

The use of oil as an input fuel in utility steam turbines accounted for 5 percent of total utility generation in 1988, or about 1.4 quadrillion Btu of oil. This is equivalent to about 0.7 million barrels per day. In the EPA base cases without acid rain legislation, utility consumption of oil is forecasted to increase to a much as 2.6 quadrillion Btu or decline to 0.8 quadrillion Btu in the future.

However, because of acid rain legislation, utilities are expected to reduce their consumption of oil significantly. Under Senate bill the consumption of residual fuel oil is forecasted to decrease by about 0.5 quadrillion Btu (about 0.3 million barrels per day) by 2000 and 1.0 quadrillion Btu (about 0.5 million barrels per day) by 2010 in the high case (see Table I on page 5). Because utility oil use is forecasted to be quite low under low base case assumptions, consumption is not forecasted to decrease in the low case.[1]

SECONDARY EFFECTS OF ACID RAIN LEGISLATION ON OIL CONSUMPTION

Secondary acid rain effects that could impact oil consumption can be separated into three areas: (a) effects in the utility supply sector (e.g., the effect of increased surface mining in the west), (b) effects due to electricity price increases, and natural gas price increases, and (c) the effect of electricity conservation. Note that secondary effects that result in *increased* consumption of electricity would result in an insignificant increase in oil consumption, because, as discussed above, oil consumption makes up only a small part of utility fuel use. It is more likely that such electricity consumption increases would result in greater coal, or natural gas consumption.

SECONDARY EFFECTS IN THE UTILITY SUPPLY SECTOR

Senate bill acid rain legislation would lead to a considerable shift in utility consumption from high sulfur coal to low sulfur coal. This would affect (a) the distance coal is transported, and (b) the geographic location of mines that would be producing.

The distance coal is transported is not expected to increase signficantly in Phase I, because a limited number of sources are "affected" and emission reduction requirements are less stringent. However, in Phase II (2005) total coal transportation distance is forecasted to increase by about 30–44 billion ton-miles. This is an increase of about 4–5 percent from base case levels. Assuming most of this increase occurs in the rail sector, which relies on diesel fuel, the increase in oil consumption would range from 24–35 trillion Btu (or about 0.01 million barrels per day).[2]

Geographical shifts in coal production, although significant, are not expected to result in increased oil consumption because (a) coal mining is electricity intensive, and (b) production shifts to Powder River Basin mines would actually result in decreased energy consumption.

Other secondary effects in the utility supply sector could affect energy use (e.g. manufacture, transportation and construction of pollution control devices such as retrofit scrubbers, and low NO_x burners), however these increases would likely be small, and probably would affect electricity demand more than oil demand.

SECONDARY EFFECTS DUE TO INCREASES IN ELECTRICITY PRICES

Because electricity price increases in response to acid rain are expected to be small (average about 2.0–2.1 percent on a peak-year revenue requirement basis), and natural gas price increases, because utility gas demands increase, are expected to be relatively small as well, it is unlikely that a significant increase in oil consumption would occur.

Industrial sources with dual firing ability could in some cases cost-effectively switch from natural gas to oil if the fuel price differential were substantial. However, as noted the price increase for natural gas is expected to be small, and little shifting would probably result. Also, some sources which currently burn oil could have an incentive under the Senate bill to "opt-in" as "affected" sources, reduce emissions below allowable levels by switching from oil to gas, and sell excess allowances.

It is unlikely that significant shifts in residential home heating from electricity, or gas to fuel oil would occur at existing dwellings, because the cost of switching relative to the potential benefits would be prohibitive. However, it is possible that, on the margin, some increased fuel oil consumption could occur at new dwellings, built to rely on fuel oil for heating, in response to both electricity price and gas price increases. Again, this shift would not be very significant relative to the overall decrease in utility oil consumption.

Increased electricity conservation in response to acid rain legislation was not explicitly modelled in our analysis of the Senate bill. Such conservation could occur primarily reducing demand for new gas fired combined cycle turbines and coal plants. As a result use of natural gas and coal could be reduced. However, as mentioned previously, because very little oil consumption is expected in the utility sector under acid rain legislation, it is unlikely that oil consumption would be affected significatly by shifts in electricity generation.

TABLE 1.—SHIFTS IN RESIDUAL AND DISTILLATE FUEL OIL CONSUMPTION IN THE SENATE BILL

	High case		Low case	
	Change from base (mmBbl/day)	Percent total fossil fuel	Change from base (mmBbl/day)	Percent total fossil fuel
1995	−0	7.4	0	2.6
2000	−.3	5.7	0	2.4
2005	−.5	2.9	0	2.1
2010	−.5	1.1	0.0	.7

Mr. BAUCUS. Mr. President, I will ask unanimous consent that cost estimates of the National Clean Air Coalition, and the National Clean Air Fund be included in the RECORD.

Mr. President, the National Clean Air Coalition and the National Clean Air Fund recently released a report evaluating the costs and economic effects of the conference agreements of the Clean Air Act amendments.

The bill's original cost estimates have been reduced as a result of the conference agreements. Using the administration's cost estimate as a baseline, the total cost of titles I, II, and III will be $7.5 billion rather than $11.9 billion in 1995, and total costs are reduced by $4.5 billion in 2005 from earlier estimates.

Mr. President, I ask unanimous consent that a copy of the draft report entitled "Clean Air Act Amendment Costs and Economic Effects: A Review of Published Studies" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CLEAN AIR ACT AMENDMENT COSTS AND ECONOMIC EFFECTS: A REVIEW OF PUBLISHED STUDIES

(Prepared for National Clean Air Coalition, National Clean Air Fund, Washington, DC)

(Prepared by E.H. Pechan & Associates, Inc., Springfield, VA)

OCTOBER 1990.

EXECUTIVE SUMMARY

This report analyzes a set of industry-sponsored studies of the cost and employment impacts of proposed amendments to the Clean Air Act (CAA). The Administration's cost estimates, as provided by the Environmental Protection Agency (EPA), are also analyzed.

While there is considerable uncertainty about the actual costs of implementing either Senate or House versions of the legislation, the industry-sponsored estimates are so high as to be implausible. The EPA cost estimates are within the range of likely implementation although they incorporate a number of assumptions which make them higher than a true "best estimates."

In many cases, discrepancies between industry-sponsored and EPA studies can be attributed to differences in assumptions. For example, both industry-sponsored and EPA studies assume that no new pollution-control technologies will be developed as a result of the legislation. This assumption results in higher cost estimates than are likely to occur in practice since environmental legislation has typically had a "technology-forcing" effect, inspiring cost-effective pollution-control innovations never anticipated or quantified prior to legislative enactment. The industry-sponsored studies further assumes that a significant share of U.S. manufacturing capacity will close as a result of the proposed amendments. Similar claims were made by industry prior to the passage of other environmental legislation, but passage caused no major impact on the U.S. economy.

The House and Senate versions of the legislation assign considerable discretion to the EPA Administrator. The industry studies essentially assume that the EPA Administrator will take the most extreme interpretations in terms of increasing costs. At the same time, these studies assume that no additional regulatory effort will occur on the part of EPA to improve air quality in the absence of new legislation. These two assumptions are inconsistent and do not reflect the last 20 years of administration of the Act.

[1] For Base Case assumptions, forecasts and further discussion see: *"1989 EPA Base Case Forecasts"*, May 1989.

[2] 450 Btu/ton-mile was assumed as a fuel conversion factor for rail transportation. Because a large part of the increase in transportation ton miles is accounted for by increased shipments of western coal to the east, it is reasonable to assume that rail transportation accounts for most of the increase in overall transportation. The likelihood of any significant changes in barge or truck transportation is small and was not considered.

EPA has not been aggressive in using its regulatory authority and has been slow to implement new regulations. The 1977 amendments and numerous court cases have forced EPA to more assertively interpret existing regulations. Many CAA amendment provisions are designed to initiate regulatory action in areas already addressed under current legislative authority. It is unlikely that either Senate or House amendments will change the overall approach to environmental regulation which has developed over the past 20 years.

EPA estimates the original Administration bill will cost $19.5 billion. Table ES-1 summarizes EPA's estimates of the Senate and House bill costs, as well as the industry-sponsored "upper bound" estimate which includes the most stringent provisions from both Senate and House bills.[1] This table shows that slightly less than half of the EPA-estimated costs will be incurred by 1995 with the remainder of costs incurred by 2005. The industry-sponsored upper bound is almost two times the EPA estimate for the total cost of both Senate and House provisions added together.

The industry-sponsored estimates suffer from a number of major flaws:

In their analysis of the air toxics provision, the industry-sponsored studies exclude pollution-control technologies currently in place and, in essence, require that they be purchased again.

The industry-sponsored studies do not adjust their estimates to account for controls already required under existing legislation and regulations.

The industry-sponsored studies assume that the EPA Administrator will make every discretionary decision in a fashion adverse to industry interests regardless of cost. Such an approach is not consistent with the 20-year history of Federal clean air legislation.

Table ES-2 compares EPA-estimated costs with total Gross National Product (GNP) and with expenditures for other items on a per-household or per-capita basis. Even in 2005, the cost of the proposed legislation will be less per household than current average expenditures for tobacco products and alcoholic beverages. Table ES-2 also shows that the overall economic impact of the proposed legislation, spread over ten years, is less than the impact of the 30-cent-per-gallon increase in gasoline prices which has occurred over the past two months.

Industry-sponsored estimates of job impacts range from 20,000 jobs "almost surely lost" to over 2,000,000 jobs "at risk." Since the industry-sponsored jobs study relied heavily upon the industry-sponsored cost estimates, the jobs study shares the same weaknesses. The jobs analysis excludes potential employment gains likely to result from new legislation. It also ignores any possibility of adaptive behavior by sources affected by the legislation, such as product and/or raw material substitution. In addition, the jobs "at risk" figures represent total employment at all facilities which might be affected. The actual employment likely to be affected, if any, will be a small percentage of this figure. The "at risk" figures do not contribute any factual information to the public policy debate on this important issue.

[1] Separate industry-sponsored estimates for the Senate and House bills were not available.

TABLE ES-1.—CLEAN AIR ACT AMENDMENTS COST SUMMARY

[Billions of dollars per year]

	Senate bill	House bill	Industry "upper bound" [1]
Year—1995 [2]			
Nonattainment	7.0	6.8	13.4
Acid Rain	0.8	0.8	5.2
Air toxics	1.1	1.1	18.2
Oxygenated fuels and reformulated gasoline	2.9	3.2	16.4
Total	11.8	11.9	53.2
Year—2005 [3]			
Nonattainment [4]	14.7	13.4	47.7
Acid Rain	3.9	4.3	8.5
Air toxics	6.7	7.5	34.7
Other	0.1	0.2	N/A
Total	25.4	25.4	90.0

[1] Clean Air Working Group study by Denny Technical Services
[2] Industry "near term"
[3] Industry "long term"
[4] Reformulated gasoline and oxygenated fuels costs (oxy fuels only for Senate compromise) are included in nonattainment costs. EPA estimates Senate and House fuels provisions costs at $1.8 billion and $2.9 billion respectively in 2005.

TABLE ES-2.—ESTIMATED CAA AMENDMENT AND OTHER EXPENDITURES

Expenditure category	Year	Monthly cost/household	Monthly cost/capita	Percent of GNP
CAA amendments	1995	$10	$4	0.19
CAA amendments	2005	20	8	.35
Tobacco products	1990	35	13	.71
Alcoholic beverages	1990	51	20	1.04
Motion pictures	1990	29	10	.60
Other amusements	1990	43	20	.89
Gasoline price increase (August–October)	1990	28	11	.58

I. INTRODUCTION

A. Background

Over the last several years, the United States Congress has considered revisions to the Clean Air Act (CAA or the Act). The Act, originally passed in 1970, was last amended in 1977. These newest revisions are designed to address deficiencies in existing CAA programs and attempt to solve air pollution problems which have arisen since the changes made to the CAA in 1977. Currently, separate versions of the legislation have been passed by the Senate and House. Both versions incorporate provisions which are somewhat different from those originally proposed by the Bush Administration. These three versions—Senate, House, and Administration—are complex and make projections into the future. Studies by EPA and by industry have analyzed the costs, benefits, and other impacts of these amendments.

It is inherently difficult to predict the future. Most attempts are, of necessity, grounded in knowledge of the past. Regulatory programs such as the proposed CAA Amendments, however, are designed to create and encourage discontinuities with the past. For example, technology-forcing provisions can channel research into areas which would not be productive in the absence of regulatory action. Environmental legislation and regulations are required to *internalize* the costs and disbenefits of environmental degradation. Two centuries of industrialization and development under conditions of limited constraints on the use of air, water, and other public goods have taken a noticeable toll on the quality of the environment in the United States. The public has shown an increasing awareness of these issues and a willingness to pay to address them. The costs of environmental pollution related to public health and welfare are difficult to identify and quantify. It is appropriate, particularly in a wealthy society, that the public be protected from the unseen and unknown hazards which can result from exposure to certain air pollutants.

B. Purpose and scope

The purpose of this report is to examine the plausibility and supportability of cost and job impacts made in the analyses of House and Senate proposed CAA Amendments. This report also examines these cost and job impacts as they relate to the overall economy and identifies key issues in CAA design and implementation that have not been discussed in EPA and industry studies.

The industry-sponsored studies generally show much higher costs and greater impacts than studies conducted by the EPA. The reasons for these differences are discussed in this report. We also point out those aspects of EPA cost estimates which may lead to over- or underestimates of costs. This study does not attempt to produce a new comprehensive estimate of costs; results of existing studies can be used to indentify a range within which the actual costs likely lie.

II. CLEAN AIR ACT AMENDMENT COSTS

A. Overview

Table 1 outlines EPA estimates of the costs of the original Administration proposal, the version passed by the Senate, and the version passed by the House. Cost estimates range from $19.5 billion to $25.4 billion per year in 2005. Phase-in provisions of the legislation would result in lowered costs in earlier years.

Industry-sponsored cost estimates (performed under sponsorship of the Clean Air Working Group and the Business Roundtable) have been substantially higher than those estimated by EPA and other researchers. Table 2, for example, compares current EPA estimates with a March 1990 Clean Air Working Group study. Even at this point, industry-sponsored figures are higher than EPA's estimates.

Table 3 documents industry cost estimates of the Administration/Senate compromise (March 1990). Here the industry-sponsored figures skyrocket and diverge dramatically from EPA figures. The latest industry-sponsored estimate (July 1990) is an "upper bound" which combines the most stringent combination of Senate and House provisions. This estimate, also shown in Table 3, is $90.9 billion per year, almost *four times* the EPA estimate for either Senate or House versions and almost two times the sum of both!

The more recent industry studies (July and March) provide little detail on how some major cost figures were obtained. It appears that industry figures significantly exaggerate costs for the following major reasons:

All assumptions made in the industry analysis concerning legislative language and Administrative discretion favor higher cost assumptions. These assumptions fly in the face of twenty years of experience in the implementation of Federal clean air legislation.

In the analysis of air toxics provisions, no credits were given for controls already in place.

Extreme assumptions regarding Maximum Achievable Control Technology (MACT) requirements were made.

Costs of compliance with existing regulations were not subtracted from the totals ascribed to the CAA Amendments.

Several key quantitative factors which will influence the actual costs incurred in implementing the CAA Amendments are discussed below. Where possible, these factors have been quantified, although the complexity of some of the legislative provisions, the requirement to make significant assumptions regarding regulatory implementation, and the paucity of reliable data make it difficult to provide estimates with a high degree of confidence.

TABLE 1.—EPA CAA AMENDMENT COST ESTIMATES FOR 2005

[Billions of dollars per year]

Category	Administration	Senate	House
Air toxics	5.9	6.7	7.5
Nonattainment	9.5	14.7	13.4
Acid deposition	4.1	3.9	4.3
Other	0.0	0.1	0.2
Totals	19.5	25.4	25.4

TABLE 2.—COMPARISON OF EPA AND INDUSTRY-SPONSORED COST ESTIMATES FOR THE ADMINISTRATION BILL

[Billions of dollars per year]

Cost element	Titles	EPA	CAWG (3/90)
Acid rain	V	4.1	5.3
Nonattainment	I, II	10.0	9.6
Air toxics	III	4.7	7.1
Totals		18.8	22.0

TABLE 3.—CAA AMENDMENT COST ESTIMATES PREPARED FOR THE CLEAN AIR WORKING GROUP

[Billions of dollars per year]

	CAWG 3/90 estimates (residual risk level)			CAWG 7/90
	10,000	100,000	1,000,000	
Air toxics	14.0	16.3	22.3	34.7
Reformulated gasoline	(1)	(1)	(1)	16.4
Nonattainment	14.6	14.6	14.6	20.7
Motor vehicles	9.3	9.3	9.3	10.6
Acid deposition	6.4	6.4	6.4	8.5
Totals	44.3	46.6	52.6	90.9

[1] Included in nonattainment.

B. No amendment baseline

Even in the absence of revised CAA legislation, substantial controls will be required to meet and attain current standards. When considering the cost and other impacts of new legislation, it is necessary to estimate baseline impacts in the absence of new legislative authority. Industry studies have all failed to make these necessary corrections, and these corrections are highly significant for some areas in the bill, such as achievement of ambient ozone standards.

The Business Roundtable study fails to differentiate between costs associated with a CAA Amendment and those required to meet and attain the current National Ambient Air Quality Standards (NAAQS). Because CAA already requires the achievement of the ambient air quality standards, costs to meet these standards are properly assigned to the current law and not to the new bills. As an example, the industry estimated $12 billion required to bring the South Coast Air Basin into attainment with the ozone NAAQS is properly associated with the South Air Quality Management District plan.

On July 31, 1990, EPA proposed a Federal plan to clean the air in the Los Angeles area. EPA's court-mandated plan is designed to build on local and state efforts to reduce air pollutant emissions. As designed, the South Coast Federal Implementation Plan (FIP) "would generally guarantee a constant rate of basinwide reductions from 1996 through 2010 by an incremental rollback of 6 percent per year." Both House and Senate bills require no more than a 3 percent per year reduction in VOC (volatile organic compound) emissions during this time period. Thus, it is very unlikely that CAA Amendments would be more costly in Los Angeles than the probable regulatory path without a new law.

In general, EPA's method of estimating current CAA costs versus CAA Amendment costs probably overstates the latter. Current policy costs include already promulgated New Source Performance Standards, lowest achievable emission rate (LAER) controls applied to new sources expected to be greater than 100-ton-per-year emitters, and non-Control Technique Guidelines (CTG) reasonably achievable control technology (RACT) controls applied to existing sources in ozone nonattainment areas.

Although difficult to perform, it is more reasonable to measure the incremental costs of the CAA Amendments against a baseline that includes measures likely to be adopted were the law not to change. For instance, measures EPA will implement under other legislation include VOC air emission controls for hazardous waste treatment storage and disposal facilities and for municipal landfills. National measures to control the emissions from these two categories account for almost $2 billion of the $10 billion EPA has estimated for VOC control in 2005. Similarly, the second stage of fuel volatility control rules is being proposed by EPA, and Reid vapor pressure (RVP) II is estimated to cost $280 million in 2005. We believe that these rules will proceed whether or not the CAA is amended. Other similar arguments could be made to reduce the cost estimates provided for new CTGs and enhanced inspection and maintenance (I/M) programs. On its own, EPA will probably not propose as many new CTGs as indicated in the House and Senate bills; they will likely promulgate only half of the new CTGs called for in the bills.

Studies have shown that the I/M programs implemented in the late 1970s and early 1980s were not as effective as originally intended. Therefore, it has been suggested that enhancements to these programs are needed. Even without CAA Amendments, some nonattainment areas will make necessary adjustments to their I/M programs. (This is not to say that technology-forcing provisions are not needed; there has always been resistance to I/M in some areas.)

C. Comments on costs as stated by the administration

The Administration's cost estimates of House and Senate CAA Amendments (shown in Table 1) cover direct costs and assume the availability of only current technology. The information released most recently by the Administration compares House and Senate bill costs with the original Administration bill. (The Administration proposal is not currently under Congressional consideration. It is noteworthy, however, because its cost estimate—$19.5 billion—is lower than the cap the President has set for CAA Amendment costs.)

Ninety percent of the cost difference between the Administration proposal and the two bills are motor vehicle hardware or fuels costs, even assuming that the Phase II passenger car standards are never implemented. Fully 60 percent of the cost difference is estimated to result from higher fuel prices associated with reformulated gasoline or oxygenated fuels. Note that on Wednesday, October 3, 1990, the price of the November contract for crude oil increased $3.37 a barrel to $37.32. This one-day increase is equivalent to at least an 8-cent-per-gallon increase at the pump. This compares with the Administration estimate "that the reformulated gasoline and oxygenated fuel provisions in the House and Senate bills would . . . raise gasoline prices by at least 6 to 8 cents per gallon."

D. Limitations of existing cost analyses

1. The Role of Technology Innovation

The assumption that pollution control technology is static is not realistic when analyzing policies which are to become effective in the future. In the absence of regulatory requirements, pollution control technologies will only be developed for economic reasons, such as the recovery of solvents or by-products with substantial economic value. In most cases, however, pollution controls will only be installed when mandated. In such an environment, improvements in pollution control technology *performance* will only occur as a byproduct of efforts to improve *cost-effectiveness.*

Private research, development, and demonstration (RD&D) investments are generally only made for products which have an identified potential market. In the absence of regulation, there is essentially no demand for technology which achieves greater levels of pollution control than are required by law.

Unlike private industry, government-sponsored RD&D of pollution controls can be conducted without market demands. In this era of Federal, State, and local budget constraints, it is difficult to justify development of technologies with no specific applications.

The technology-forcing aspects of environmental standards have been, in general, highly effective in encouraging the development of either innovative control technology or material substitution and/or process change. In some cases, including the examples discussed below, technology forcing has led to reduced production costs and/or more efficient production methods, as well as pollution control benefits.

Technology innovation in the auto industry

When reviewing cost estimates of new, unproven technologies, it is of interest to compare past estimates of automotive price increases due to pollution control with actual sticker price increases. Retrospective studies show that the ratio of estimated to actual sticker price increases (those attributable to pollution-control equipment) for 1973-1976 model year automobiles were as high as 2:1 for model years 1973-1974 and 2.3:1 for model years 1975 and 1976 (PHB, 1980). Generally, manufacturer cost estimates covered a wider range than those of EPA or other scientific organizations. This points out the fallacy of using upper-end industry estimates as the basis for decisionmaking, especially in an industry where technological advances have generally reduced costs over time and provided ancillary benefits.

In motor vehicle emission control, the prominent technolgy advance was the catalyst. Two basic catalyst types have been developed—oxidation (CO and HC control only) and three-way (CO, HC, and NO_x control). For three-way catalysts to operate effectively, fuel-air ratios must be controlled much more precisely than is needed for oxidation catalyst systems. As a result, three-way catalysts have stimulated the development of improved air-fuel management systems, such as advanced carburetors, throttle body fuel injection systems, and electronic controls.

The net result of the technology-forcing aspects of the Federal motor vehicle control programs has been both reduced emissions and improved fuel economy. These dual objectives would not have been achieved had Congress limited its regulations to proven currently-available technologies.

Figures 1 and 2 summarize the trends over the last 12 years in passenger car pollution-control technologies and fuel injection installation, respectively. Virtually all passenger cars and light trucks are now equipped with catalysts—mostly three-way systems. During the 1980s, fuel injection installations increased dramatically; they are now in over 96 percent of 1989 models (MVMA, 1990).

These technological advances have lowered per vehicle air pollutant emissions and have improved fuel economy. Figure 3 shows fleet fuel economy changes for passenger cars over the past 12 years (Heavenrich, 1989).

Charts are not printed in the RECORD.

An EPA report (Cheng, 1983) makes the following statement about the relationship between fuel economy and exhaust emissions control:

"The relationship between fuel economy and exhaust emissions does not exist in isolation, but rather is intertwined with many other vehicle characteristics. These associated characteristics include, but are not limited to: driveability, performance, cost, octane requirement, production lead time, and fuel economy/exhaust emission relationships would include quantification of the concurrent interactions with these other vehicle characteristics."

Unfortunately, no such studies are available. Suffice it to say, though, that technological advances have enabled per vehicle emissions to be lowered while simultaneously improving fuel economy. Because fuel economy has improved partially because the average vehicle weight has decreased in the last 12 years, comparisons of fleet average fuel economy between model years must correct for vehicle weight reductions. Correcting for vehicle weight reductions (i.e., had they not occurred), fuel economy has improved by more than 40 percent compared with precontrolled cars.

Achieving limitations on CFCs

Chlorofluorocarbons (CFCs) are regulated because of concern about their impact on stratospheric ozone. The potential for introducing substitutes for CFCs to reduce the risks of ozone depletion and global warming has been known for many years. For example, the DuPont Company stated in 1980 that high-priced substitutes could be created (EPA, 1989). Without regulation, however, there was no market for these alternative chemicals, and they were not produced.

In September 1987 a historic international agreement, the Montreal Protocol on Substances That Deplete the Ozone Layer, was signed to provide a framework for global reductions in CFC emissions. The ratification of the protocol has prompted several CFC-producing companies to announce a total phase-out of CFC production by the end of the century. To meet this goal while minimizing the cost and time of studies, several CFC producers have formed consortia to share costs and expedite the testing process. Also, in pilot plants around the world, chemists and engineers are aggressively working to develop critical data that will allow them to design and build world-scale commercial facilities in record time to meet the needs of society as CFCs are phased out (Manzer, 1990).

DuPont has projected that a 30 percent reduction in the market for CFCs will occur through improved conservation measures. Another 30 percent will switch to less expensive, not in-kind replacements. The remaining 40 percent of the projected market, however, will still require fluorocarbon-based products (Manzer, 1990).

Currently, the most promising alternatives to replace CFCs are hydrochlorofluorocarbons (HCFCs) and hydrofluorocarbons (HFCs). DuPont has mixed a newly developed compound called HCFC-124 along with two already available chemicals, HCFC-22 and HFC-152a. These mixtures are designed to replace the refrigerant CFC-12 while reducing the risk to the environment. The new compound has an ozone depletion potential that is only 3 percent of CFC-12. Also, these blends may not require modification of existing equipment unlike other substitutes (Science News, February 11, 1989). Another alternative, a blend of HCFC-123 and HCFC-141b called Genesolv 2010 by Asahi Glass, has been identified as the first potential substitute for the industrial degreaser, CFC-113. It has been found by the EPA to perform as well or better than CFC-113 while lessening the threat to the environment (Science News, February 3, 1990).

Organic emission controls

A number of examples can be provided of how technology forcing regulations and standards have improved the state-of-the-art of pollution control and have led to reduced control costs. Costs of incineration have been reduced in certain applications as the ability to recover heat input has improved. In some instances, 95 percent of heat input can be recovered. The result is near-zero operating costs, and operating costs are a large portion of the cost of incineration.

Similarly, through RACT and NSPS regulations, water-based inks and coatings have been developed that have higher solids and lower VOC contents than the materials they replaced. These water-based inks and coatings are much less expensive than add-on control equipment that might be installed to achieve the same control levels.

Improvements in transfer efficiencies in painting have moved from 30 percent to 60 percent in some industries. These improvements result in less material being available for evaporation. Such improvements were not possible 10 to 15 years ago before implementation of technology-forcing regulations.

What follows are case study examples of VOC control measure that have proven to be both very effective and less expensive than the continued use of VOC containing materials.

The boat building industry was faced with the need to reduce both VOC and styrene emissions. The source of the styrene was as a polymerizing agent in both the resin (the main body of the boat) and in the gelcoat (the outer skin of the boat). Working in conjunction with chemical companies, recent advancements have led to a resin which contains 50 percent less styrene than the industry standard, and a styrene-free gelcoat. In addition to reducing air emissions, the new materials are stronger, provide a better finish, and are cheaper. In fact, one company who is testing these new materials feels that their use will reduce the cost of their specialty boats by 35 percent while producing a better quality product.

A medium sized label printer for the tea industry, and others, was faced with the choice of complying with regulations by means of add-on controls or by using water based inks. After significant initial problems, the ability to produce low VOC content ink has been established, and for the printer offers the advantage of quality products with no cost increase. An additional benefit was the reduction of workplace odors. This change was so noticeable that the printer's employees have stated that they greatly prefer the water based low VOC inks and will not return to using high VOC inks, regardless of circumstances.

An audit of a major military base indicated that there had been significant reductions in the use of VOC cleaning materials from previous audits. The reduction was attributable to the substitution of water based cleaning materials for solvent based materials. The base maintenance supervisor indicated that the water based material could perform almost all of the jobs of the solvent cleaners at a lower cost with no worry about worker exposure to fumes.

Simple Green, an all-purpose automotive and household cleanser, is a non-toxic, biodegradeable product that can be used as a substitute for high VOC content degreasers. This cleanser was originally designed by Sunshine Makers, Inc., as a product to be used in the food market as a safe alternative to tri-sodium phosphate in removing tannic acid. This product is currently marketed primarily to households, constituting 80 percent of sales, as a remover of ink, oil, blood, and other stains from any washable surface. The industrial sector makes up the other 20 percent of sales, using Simple Green mainly as a degreaser.

Riker Laboratories in Northridge, California, has substituted a water-based solvent for an organic-based solvent when coating their medicine tables. The new solvent, combined with the installation of different spray equipment, has saved the company $15,000 per year in solvent costs and has prevented an estimated 24 tons of air pollution per year (Institute, 1986).

The Hamilton Beach Division of Scovill, Inc., in Clinton, North Carolina, now recycles its trichloroethane solvent and saves 50 percent on solvent costs. The company has also experimented with substituting water-based cleaners for organic-solvent-based materials, thereby reducing use of organic solvents by 30 percent (Institute, 1986).

2. Estimating Acid Rain Control Costs

All of the major acid rain control studies cited in the CAA debate have assumed that reductions will be achieved predominantly through implementation of conventional control methods, switching to cleaner fuels, and installation of flue gas control equipment. Significant use of alternative technologies could result in reductions of anticipated costs as well as ancillary environmental benefits in areas such as emissions of greenhouse gases. For example, installation of combined-cycle units using high-efficiency turbines can result in substantially im-

proved heat rates when compared with current technology steam generation units.

Pechan has recently analyzed both House and Senate acid rain provisions. These analyses have used the AIRCOST/PC model and incorporate cases with and without interphase allowance banking. For cases in which no banking is included, Phase I costs are lower and overall costs are somewhat higher. The no-banking Phase I (1995–1999) annual costs range from $0.9 to $1.1 billion, and Phase II (2000–2009) annual costs range from $3.1 to $3.4 billion. If banking is assumed to be allowed, Phase I costs range from $1.1 to $1.5 billion and Phase II from $2.8 to $2.9 billion. These costs are based on assuming only traditional control methods—switching to low-sulfur coal and use of flue gas desulfurization. The cost of nitrogen oxide controls—approximately $0.3 billion—must also be added. Thus, the latest maximum cost estimate is $3.7 billion.

In January 1990, industry-sponsored studies reported a figure of $5.3 billion; in July 1990, the figure was $8.5 billion. The reason for the increase appears to be the assumption that the House bill NO_x provisions would cost $2.5 billion. This figure is based on the supposition that the EPA Administrator would require additional technology over and above the low NO_x burners specified in the bill and that such technology would be substantially more expensive than the technology specifically identified in the bill. It is not clear that these provisions would lead to more stringent reductions than those obtainable from low NO_x burners since EPA has not taken any action to revise the current utility NO_x NSPS emission limit despite evidence that steam electric plants in other countries are achieving significantly lower emission rates.

3. Costs of VOC Emission Controls

Reformulated gasoline costs

Pechan has estimated the costs of the reformulated gasoline programs in the House and Senate bills in the year 2005 to range between $0.5 billion and $1.7 billion. House bill costs in this projection year are expected to be higher than those in the Senate bill, because the quantities of reformulated gasoline sales and the cost per gallon of producing the fuel described in the House bill are expected to be higher. For example, the incremental cost of the Senate bill mandated reformulated gasoline is estimated at 6.2 cents per gallon, while the House bill cost in 2005 is 8.6 cents per gallon.

The July 1990 analysis prepared for the CAWG estimates House bill reformulated gasoline costs to be $16.4 billion, a number 10 times higher than our best estimate. The CAWG value assumes double the per-gallon cost of reformulated gasoline. More importantly, the value is based on the assumption that all nonattainment cities decide to use reformulated gasoline. Arguments can be made about the cost of reformulated gasoline, but the latter assumption is clearly misleading. Pechan's analyses have shown that of the 81 ozone nonattainment areas modeled, less than 20 are likely to continue to be nonattainment areas by 1995 under the provisions of the proposed House and Senate bills. Further, no reformulated gasoline is needed in 1995 to meet programs requirements.

Costs of Tier II controls

The Business Roundtable and CAWG cost estimates of the CAA Amendments include the costs of the Phase II or Tier II motor vehicle emission standards. Their cost estimates also assume the highest available estimate of the per-vehicle costs for meeting those standards. It is important to examine each of these assumptions in more detail in order to produce a more likely cost of the Tier II emission standards.

On the first point, EPA analysts indicate that Tier II standards will not likely be adopted. The House bill indicates that EPA, with participation by the Office of Technology Assessment (OTA), will study whether additional reductions in emission from passenger cars and LDTs should be required. The Senate bill has a trigger that ties Ties II standard adoption to the number of ozone nonattainment areas around the year 2000.

When EPA was given similar discretion in the 1977 CAA Amendments, more stringent motor vehicle emission standards were not adopted. An appropriate example is Sec. 202 of P.L. 95-95 which charged EPA with conducting "a study of the public health implications of attaining an emission standards on oxides of nitrogen from light duty vehicles of 0.4 gram per mile, the cost and technological capability of attaining such standard, and the need for such a standard to protect public health or welfare. The Administrator shall submit a report of such study to the Congress, together with recommendations not later than July 1, 1980." The closest EPA ever came to satisfying this requirement was a January 1981 Regulatory Analysis for proposed emission regulations for light-duty trucks and heavy duty engines. No specific mention of the 0.4 g/mile standard was made in this report, however.

Even if the Tier II emission standards are implemented, there is a wide range of possible costs of these limits. The main disagreement among researchers now is if catalysts are durable enough to last 100,000 miles. Catalyst manufacturers insist that they are. If so, the cost of the Tier II standards will be approximately $125 per vehicle, which adds $1.8 billion to the motor vehicle standard cost of the House and Senate bills in 2005; considerably lower than the CAWG/BRT estimate of $10.6 billion for Tier II tailpipe standards.

The Manufacturer's of Emission Controls Association (MECA) has testified that improved catalyst durability is a major focus of auto emissions control research, and that great progress has been made. MECA has said that "We believe that (1) improvements in catalyst design, either in existence and under development, (2) utilization of multipoint fuel injection and other engine improvements, and (3) a declining presence of trace lead in unleaded gasoline make the prospects for developing durable systems excellent."

The California Air Resources Board (CARB) estimates that the cost of compliance with Tier II light-duty vehicle standards is $125 compared with a car meeting the Tier I standards (CARB, 1989). CARB estimates that in order to meet a 0.2 gram per mile NO_x emission standard, all light duty vehicles (LDVs) will need improved catalysts which use more catalytic material. A small percentge (20 percent) of LDVs will add exhaust gas recirculation (EGR). To meet a 0.125 gram per mile HC standard, CARB estimates that 75 percent of LDVs will use improved catalysts which feature an electronically heated section that effective controls cold start HC and CO emissions. The 25 percent of cars not requiring an electrically heated catalyst will use improved fuel vaporizers or an improved start catalyst.

Some cars already meet the Tier II standards today in certification, and durability test results are promising. Califonia has already noted one engine family that met the Tier II hydrocarbon standard at 40,000 miles—in use on California roads. In 1970, not a single car met or came anywhere close to the standards adopted by Congress for 1975, nor was the technology for doing so apparent. At that time, modern electronic control systems were not even envisioned by technology forecasters.

The CARB analysis notes that Tier II standards will not begin for 12 to 14 years. During this period, improvement in engines, electronics, and emission controls will occur, which will facilitate compliance with more stringent standards. As an example, improved vehicle electronics will allow more precise control of fuel injection and EGR.

Reducing emissions of toxic pollutants

The air toxics section of the latest industry-sponsored study was prepared by Denny Technical Services. It provides the result of the studies by Delta Management for the American Petroleum Institute (API), by Denny for the Chemical Manufacturers Association (CMA), and by Energy and Environmental Analysis, Inc. (EEA) for EPA. All comments are based on the information presented in the Denny report, since we did not have access to the original reports.

Both the API and CMA studies contain methodology drawbacks which appear to overstate the costs of compliance with the proposed Amendments. The more significant points are:

(1) Neither study accounts for the significant time period during which specific control requirements will be developed and resultant costs incurred. Costs associated with air toxic emission standards will be incurred over at least the next 10 years, and possibly over a much longer time period under certain provisions of the Senate Bill. Extending the period of time over which the costs are incurred will reduce the impact on industry.

Time reduces industry impacts for a number of reasons. Affected industries will have an opportunity to explore options available to them; such options typically include factor or product substitution (e.g., use of water-based solvents), other technological changes, and installation of control equipment. To the extent that installation of control equipment appears to be the most appropriate solution, vendors are likely to develop and market equipment to meet identified needs.

(2) There is no indication in the industry-sponsored studies that currently achieved control levels have been taken into account. In essence, this has the effect of assuming industry will have to reacquire all current control technology which is in place, a substantial amount.[1] This has the effect of assuming that EPA under MACT requirements would require a source with a baghouse to install an additional baghouse, or a VOC source with an incinerator to add a second incinerator. Obviously, this grossly overstates costs. In many cases, existing control equipment can be upgraded at a much more modest cost. No nationwide data base exists, however, which can support adequate analysis of this factor. Similarly, in the API study, it appears that no consideration was given to the fact that refineries in

[1] According to Bureau of Economic Analysis surveys, industry capital investments in air pollution control hardware from 1975–1985 amounted to approximately $88 billion (1990 dollars) (Commerce, 1988). Not all of this expenditure would be relevant to this type of pollution control requirement.

nonattainment areas (a majority of capacity) have already installed much of the equipment which the study assumes will be required by MACT.

(3) The equipment life in the API study is based on the assumption that the operating permit section of the new amendments will require installation of new controls every 5 years. This is inconsistent with most interpretations of this section and has the effect of significantly overstating the annual cost of the controls.

(4) Both studies appear to assume that each and every source which meets the emission criteria for toxics will be controlled to at least the MACT level. In fact, although it is unclear how many source types will be controlled, it is very likely that either EPA will determine that many source categories do not pose a risk to public health and do not have to be controlled or that sources will make a demonstration that they do not contribute a one in a million risk and will not be required to put on controls under this provision of the Act.

E. Impact of Compliance Costs on Consumers

1. General

Twenty-five billion dollars in estimated annual costs to implement either House or Senate bills (according to EPA studies) is a small portion of the current U.S. economy. This amount will constitute an even smaller share as the economy grows and in the future years in which the costs are actually incurred. Table 4 shows the costs of the CAA amendments in 1995 and 2005 in terms of average costs per household, average costs per capita, and percentage of overall GNP. To put these figures into context, the table also reports estimated current expenditures for alcoholic beverages, tobacco products, motion pictures, and other entertainment. The overall impact of gasoline price increases in the last two months is also reported.

In 2005, the proposed amendments are expected to cost the average household approximately $20 per month (1990 dollars), assuming all costs are transferred to consumers. This impact, occurring fifteen years from now, is less than the cost impact of gasoline price increases over the past two months. It is also low relative to average current estimated expenditures for other products and/or activities.

While the figures in Table 4 include the entire cost of the proposed amendments, costs of some specific aspects of the program can be estimated separately, as discussed below.

2. Automobile Control Costs

The best estimate of the hardware costs of the House and Senate provisions on new car purchasers is $4.06 per month. This figure is based on EPA's estimates of the per-vehicle costs (provided in Table 5) along with assumptions regarding costs of automobile financing.[2] Costs of more intensive inspection and maintenance would add $1.15 per year (or less than 10 cents per month) to this figure.

[2] According to the Motor Vehicle Manufactures Association (MVMA, 1990), the average monthly payment on car loans for new cars in 1989 was $291.50, with an average amount financed of $12,000.

TABLE 4.—ESTIMATED CAA AMENDMENT AND OTHER EXPENDITURES

Expenditure category	Year	Monthly cost/household	Monthly cost/capita	Percent of GNP
CAA amendments	1995	$10	$4	0.19
CAA amendments	2005	20	8	0.35
Tobacco products	1990	35	13	0.71
Alcoholic beverages	1990	51	20	1.04
Motion pictures	1990	29	10	0.60
Other amusements	1990	43	20	0.89
Gasoline price increase (August–October)	1990	28	11	0.58

TABLE 5.—*EPA Tier I Passenger Car Cost Estimates*

Control Measure	*Passenger Car Per Vehicle Costs*
RVP Phase II	[1] $1.20
Evaporative/running loss	3.80
VOC Tailpipe—extended useful life	36.00
Onboard VRS	10.00
NO_x tailpipe standards	115.00
Cold temperature CO	7.00
Total	173.00

[1] This cost applied to existing as well as new vehicles. All other costs.

In comparison, the cost of a AM/FM stereo sound system, ordered on 90 percent of U.S. built cars, ranges from $3.69 to $14.58 per vehicle per month. Costs of air conditioning, also ordered on approximately 90 percent of U.S. built cars, ranges from $17.85 to $24.17 per vehicle per month. Automatic transmission costs range from $11.30 to $19.43 per vehicle per month (Crain, 1990).

The most likely estimate assumes that Tier II standards would not be implemented and that the House provisions for cold temperature CO would be adopted. If the Senate cold temperature provisions and Tier II were required, the estimated monthly per car costs would increase from $3.04 to $12.15 per month. Since Tier II requirements would not be effective until after the year 2000, the estimates of compliance given above are highly speculative.

3. Costs of Achieving Acid Rain Controls

A similar perspective can be provided for acid rain control costs. Since current annual electricity generation in the United States is over 2,500 terawatt hours, one mill per kilowatt-hour (kWhr) translates into over $2.5 billion per year. Typical residential electricity rates were approximately 7.5 cents (75 mills) per kWhr in 1988 (EIA, 1989). Thus, the average costs of acid rain controls (on the order of 1-2 mills/kWhr) are low relative to total prices. Total estimated acid rain control costs ($3.7 billion per year maximum) is small compared with total industry revenues of $163.7 billion in 1988 (EIA, 1989).

Table 6 shows the estimated state-level impact of proposed acid rain controls on residential consumers. These figures are based on the Senate bill provisions and incorporate banking and trading effects. House bill results are similar. By 1995 (Phase I), typical residential customers in only three states (Indiana, Missouri, and Tennessee) would be facing increases of more than $1.00 per month. By 2000, the maximum monthly residential increase is estimated to be $2.80 per month in Ohio. In 1987, the typical monthly bill for Ohio residential customers was $57.90. An annual real price increase for electricity of even 0.5 percent per year between 1987 and 2000 would result in an increase to the typical Ohio residential utility customers of $4.20 per month, much higher than the impact from the proposed acid rain control program.

Average electricity prices for commercial customers are almost as high as those of residential customers (7.0 cents versus 7.5 cents/kWhr) (EIA, 1989). For industrial customers, average prices were somewhat lower at 4.7 cents in 1989 (EIA, 1989). Even for these customers, however, cost increases associated with acid rain control will be relatively modest as a percentage of current amount paid for electricity.

TABLE 6.—IMPACT OF PROPOSED ACID RAIN CONTROLS ON RESIDENTIAL ELECTRIC BILLS

[Dollars per month]

State	Average bill (1987)	Increase for phase I	Increase for phase II
Alabama	$65.40	$0.30	$0.50
Arizona	75.33		<.50
Arkansas	65.49		<.50
California	41.65		<.50
Colorado	38.86		<.50
Connecticut	59.02		<.50
Delaware	63.68		<.50
Florida	73.70	0.30	0.90
Georgia	61.92	0.40	<.50
Idaho	51.55		<.50
Illinois	64.07	0.40	0.70
Indiana	61.39	1.40	2.70
Iowa	58.49	0.20	0.60
Kansas	58.60	0.00	<.50
Kentucky	53.66	0.60	1.90
Louisiana	74.78		<.50
Maine	47.10		<.50
Maryland/D.C.	61.39	0.20	1.90
Massachusetts	47.47		0.50
Michigan	41.43	0.00	<.50
Minnesota	45.41	0.00	<.50
Mississippi	63.93	0.40	0.70
Missouri	60.80	1.50	1.50
Montana	42.78		<.50
Nebraska	49.69		<.50
Nevada	54.77		<.50
New Hampshire	54.69	0.20	1.40
New Jersey	57.32	0.00	0.50
New Mexico	45.71		<.50
New York	50.87	0.10	0.50
North Carolina	73.48		0.60
North Dakota	55.73		<.50
Ohio	57.90	1.00	2.80
Oklahoma	58.71		<.50
Oregon	49.34		<.50
Pennsylania	59.10	0.30	0.80
Rhode Island	43.90		<.50
South Carolina	75.89		0.60
South Dakota	55.62		1.30
Tennessee	64.88	0.10	2.70
Texas	66.52		<.50
Utah	48.81		<.50
Vermont	46.44		<.50
Virginia	69.88		0.50
Washington	48.26		<.50
West Virginia	48.86	0.40	1.10
Wisconsin	44.69	0.00	<.50
Wyoming	43.38		<.50

F. Uncertainty of cost estimates

Any estimates of the cost impacts of complex legislation such as the CAA Amendments are likely to be subject to considerable uncertainty. The proposed legislation attempts to achieve a balance between statutory requirements and legislative flexibility. Of course, Congress retains the authority to modify the legislation in the future if the implementation does not proceed as envisioned. The dire consequences predicted by industry studies assume that almost all discretionary decisions by executive branch policymakers are adverse to industry. Such assumptions ignore the realities of the past 20 years of "strong" Federal initiatives to address air pollution problems. In reality, the executive branch has, if anything, been protective of industry to the extent that, in many areas, states (such as California) are taking more initiatives than the Federal government.

III. CAA EFFECTS ON EMPLOYMENT

A. Overview

A variety of additional effects of CAA Amendments are likely, some of which are beneficial to the economy and some of which are adverse. Industry studies have tended to dismiss benefits associated with pollution control and have instead concentrated on potential adverse effects, primarily job losses. In this chapter, some of the major effects of air pollution control are discussed.

B. Industry studies

The major industry-sponsored study of job impacts was the Hahn and Steger report (Hahn, 1990). This study begins with the cost analysis performed for the BRT (Denny Technical Services, 1990a). The study reports a range of impacts from 20,000 jobs "almost surely to be lost" to over 2,000,000 jobs "adversely affected and potentially lost."

In an economy with well over 100,000,000 jobs, the 20,000 figure translates to less than 0.2 percent of total employment. The 2,000,000 figure appears to represent the total employment at plants which may possibly be affected by CAA Amendment provisions. This figure represents less than two percent of the total U.S. work force. In essence, the Hahn study concludes that 2,000,000 people work at plants which, in some way, may be affected by various aspects of the CAA Amendments. Given the size of the economy and the assumptions of the study, the less-than-two-percent figure is actually fairly low since many of the facilities at which the 2,000,000 are employed may take no action as a result of implementation of the amendments.

Dire predictions have been offered before on the major job impacts of earlier environment legislation. Most did not occur. In a dynamic economy, the only constant factor is change. Technological advances and changes have always resulted in temporary economic dislocations.

The methodology used in the industry-sponsored employment analysis does not take into account any of the important, dynamic factors of the U.S. economy. For example, concern over coal miners in the high-sulfur coal industry has been a key issue affecting acid rain control policy. None of the existing models or analyses, however, account for the ability of existing mines, many of which have already depreciated their entire capital investment, to reduce prices to levels only slightly above marginal production costs in order to continue to operate. Similar effects are bound to occur in other industries.

The regional employment effects reported in the industry-sponsored jobs study are more artifacts of data analysis than accurate forecasts. They completely ignore the competitive aspects of the U.S. economy discussed above.

The extreme nature of the assumptions in the industry-sponsored employment study become evident when focusing on paper industry figures. The study concludes that job losses will range from 73,000–96,000 and that fully half of industry capacity will close.

The jobs report executive summary states that results include consideration of the following:

An analysis of CAA-related cost increases relative to the ability to absorb increases.

Investigation of cost increases relative to other firms within each industrial sector.

Projection of "jobs-at-risk" relative to degree of competition.

In fact, none of these factors appears to be a consideration in the quantitative analysis results presented, despite the fact that the report authors admit their importance.

The analysis of toxic pollution control costs incorporates some estimates of per-plant control costs, but the relevance and interpretation of the results presented is unclear. For example, a VOC control cost of $29.2 million per plant is reported for "air transportation" and is characterized as "extremely high." If an "air transportation plant" is a major airport, however, a $29.2 million cost would be relatively minor.

The discussion of permitting requirements and potential impacts on small businesses states that "U.S. job creation in the last decade has overwhelmingly been accomplished by small business." Later, the report concludes that "it is very likely that fewer small businesses will be started" and "this will likely have an adverse effect on employment growth." While the report contends that permitting and monitoring expenses will significantly burden small businesses, the report does not bother to examine what percentage of small businesses and/or recently established small businesses are in the affected industries. The only information given, however, seems to conflict with the authors' conclusions. On page 3.16, the report indicates that "about 3.5 percent" of all small businesses are "potentially adversely affected" by all types of environmental regulations. The actual number affected by CAA amendment requirements would likely be only a portion of the 3.5 percent.

For the analysis of jobs lost or "at risk" relative to acid deposition control, the following additional problems were found:

Industries selected for analysis were those accounting for 0.5 percent or more of total industrial electricity demand. A more meaningful selection criteria would have used total electricity cost as a percentage of total value added. What is of interest is those industries which rely heavily on electricity in producing their products not those which, in the aggregate, simply happen to be major utility customers.

The cost impacts associated with acid deposition control used in the study appeared to be those for Phase II (beginning in 2000), but the impacts were assumed to occur only in those counties containing Phase I plants.

C. Employment benefits

Estimated decline in employment such as those presented in the Hahn/Steger study are highly speculative. It is clear, however, that a substantial environmental control industry has developed in the United States, and this growing industry is responsible for the creation of many jobs. In 1980, there were 79,000 environmental scientists employed in the labor force. That number increased to 116,000 by 1986 (Commerce, 1988). In this one category, almost 40,000 new jobs were created over a six-year period, and the creation of those jobs is directly linked to increasing interest in and expenditures for improving the environment.

REFERENCES

Cheng (1983), Cheng, J.P., L.C. Landman, and R.D. Wagner, "A Study of the Relationship Between Exhaust Emissions and Fuel Economy," EPA/AA/CTAB/TA/83-2, May.

Clean Air Working Group (1990), "Side-by-Side S.1630 Clean Air Act Amendments of 1990," July.

Committee of Interstate and Foreign Commerce (1980), "Cost-Benefit Analysis: Wonder Tool or Mirage?," Committee Print 96-IFC 62, December.

Crain Publications (1990), *Automotive News—1990 Market Data Book*, Detroit, MI.

Commerce (1988), U.S. Department of Commerce, Bureau of the Census, Statistical Abstract of the United States 1988, Washington, DC, U.S. Government Printing Office.

Commerce (1990), U.S. Department of Commerce, Bureau of Economic Analysis, "BEA Regional Projections to 2040, Vol. 1: States", Washington, DC, U.S. Government Printing Office, June.

Denny (1990a), Denny Technical Services, "Clean Air Act Legislation Cost Evaluation," report prepared for The Business Roundtable, January.

Denny (1990b), Denny Technical Services, "Clean Air Act Legislation—Administration/Senate Compromise Bill Cost Comparison," March.

Denny (1990c), Denny Technical Services, "Clean Air Act Legislation—House/Senate Side-by-Side Comparison," report prepared for Clean Air Working Group, July.

EIA (1988), U.S. Department of Energy, Energy Information Administration, "Typical Electric Bills", DOE/EIA-0040(88), December.

EIA (1989), U.S. Department of Energy, Energy Information Administration, "Electric Power Annual 1988", DOE/EIA-0348(88), December.

EPA (1989), U.S. Environmental Protection Agency, "Policy Options for Stabilizing Global Climate", Draft Report to Congress, February.

Hahn (1990), Hahn, R, and Steger, W., "An Analysis of Jobs-at-Risk and Job Losses Resulting from the Proposed Clean Air Act Amendments," CONSAD Research Corporation, February.

Heavenrich (1989), Heavenrich, R.M. and J.D. Murrell, "Light-Duty Automobile Technology and Fuel Economy Trends Through 1989," Technical Report, EPA/AA/CTAB/89-04, U.S. Environmental Protection Agency, Ann Arbor, MI, May.

Institute (1986), Huisingh, D, et al., "Proven Profits From Pollution Prevention: Case Studies in Resource Conservation and Waste Reduction", Institute for Local Self-Reliance, Washington, DC.

Manzer (1990), Manzer, L.E., *Science*, Vol 249, 31.

MVMA (1990), *MVMA Motor Vehicle Facts & Figures '90*, Motor Vehicle Manufacturers Association of the United States, Inc., Detroit, MI.

Pechan (1989), "Comparison of Acid Rain Control Bills," E.H. Pechan & Associates, Inc., report prepared for U.S. EPA, Office of Policy Analysis and OTA, November.

Pechan (1990), "Ozone Nonattainment Analysis—A Comparison of Bills," E.H. Pechan & Associates, Inc., report prepared for U.S. EPA, Office of Air and Radiation, January.

PHB (1980), Putnam, Hayes, and Bartlett, Inc., "Comparisons of Estimated and Actual Pollution Control Capital Expenditures for Selected Industries," report prepared for U.S. EPA, June.

Science (1989), *Science News*, Vol 137, No. 5.

Science (1990), *Science News*, Vol 135, No. 6.

ACRONYMS

API	American Petroleum Institute.
BRT	Business Roundtable.
CAA	Clean Air Act.
CARB	California Air Resources Board.
CAWG	Clean Air Working Group.
CFC	Cholorofluorocarbon.

ACRONYMS—Continued

CMA	Chemical Manuafacturers Association.
CTG	Control Technique Guidelines.
EEA	Energy and Environmental Analysis, Inc.
EGR	Exhaust gas recirculation.
EPA	Environmental Protectiion Agency.
FIP	Federal Implementation Plan.
GNP	Gross National Product.
HC	Hydrocarbons.
HCFC	Hydrochlorofluorocarbons.
HFC	Hudrofluorocarbons.
I/M	Inspection and maintenance.
LAER	Lowest achievable emission rate
LDV	Light duty vehicles.
MACT	Maximum achievable control technology.
MECA	Manufacturer's of Emission Controls Association.
MVMA	Motor Vehicle Manufactures Association.
NAAQS	Natonal Ambient Air Quality Standards.
NSPS	New Source Performance Standards.
OTA	Office of Technology Assessment.
RACT	Reasonably achievable control technology.
RD&D	Research, development, and demonstration.
RVP	Reid vapor pressure.
VOC	Volatile organic compounds.

Mr. BAUCUS. Mr. President, I further would like to insert in the RECORD at this point an explanation of this legislation, an explanation that is much more detailed than the statutory language.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CLEAN AIR CONFERENCE REPORT

NONATTAINMENT

Designation and Classification

One of the more unique aspects of the new legislation is the classification of nonattainment areas and specifications of control strategies based upon the severity of the air pollution problem. In order to assure timely implementation of control measures, it is important that the Environmental Protection Agency classify nonattainment areas in a timely and accurate manner. It is our intent that states work with EPA in using designations in effect at the time of enactment, and classifications as are appropriate using air quality data from 1987, 1988 and 1989.

The provision also allows for an adjustment in the classification for areas whose design value is within five percent of a higher or lower classification. We intend this adjustment to be primarily one of "upward" classification for those areas, particularly Marginal, that may have a low design value but experience a large number of exceedances. Adjustment of area classifications "downward" should be a rare occurrence reserved only for areas which demonstrate to the Administrator that the control measures called for in the initial classification are clearly not necessary for the attainment and maintenance of the standards.

Expanded Geographic Coverage

Title I expands the geographic coverage of the control program to include the Metropolitan Statistical Area (MSA) or the Consolidated Metropolitan Statistical Area (CMSA). This was done in recognition of the significant role that transported air pollution and community patterns play in the formation of ozone and other pollutants. If we are serious about ameliorating the air pollution problems plaguing our nations' cities, then we must begin regulating sources located outside of the control region whose emissions are also contributing to this problem. Both stationary sources that have escaped controls in the past and motor vehicles that have not been subjected to Inspection and Maintenance programs must be included in the program. Although the legislation allows areas to petition to exclude a portion of their CMSA, it is our intent that this test be a difficult one to pass.

Regulation of Smaller Sources

The legislation also lowers the size threshold defining which sources are subject to the control requirements. In particular, the threshold is lowered to 50 tons for Serious areas, 25 tons for Severe areas, and 10 tons for Extreme areas. This action was necessary in light of the substantial emissions that are produced from sources below 100 tons. In fact, many states have already recognized the contribution from these smaller sources and are regulating sources emitting as few as three tons per year. This provision clearly provides states and localities with the ability to continue regulating sources smaller than the federal minimum levels specified in the legislation.

Percent Reduction Requirements

This legislation recognizes past problems associated with measuring reasonable further progress toward attainment of the standards by specifying that future progress be based upon actual reductions in VOC emissions. The Act requires that a 15 percent reduction in emissions be achieved within six years of enactment. In addition, it calls for a base inventory within two years of enactment and updates every three years thereafter. Since inventories would be required at both the five-year (2+3) and six-year (15% reductions due) time frame, we encourage the Administrator to use discretion and focus primarily on the six-year inventory. The accuracy of this inventory is extremely critical. Emissions reductions from the inventory must be real, permanent and either enforceable or "demonstrably stable" (i.e., a state could show that plant shutdowns would have to undergo new source review before resuming operations).

Technology Guidance

Many of the control measures prescribed in the bill will be issued by EPA in the form of Control Technique Guidelines, or CTGs. These guidelines define the level of control—Reasonable Available Control Technology—that existing sources must adopt. We have been extremely discouraged by EPA's track record over the past 10 years in publishing these documents. None has been published since 1983, and many before that were watered down by Office of Management and Budget review. Since states and localities will be depending upon these documents in preparing their State Implementation Plans, it is essential that EPA publish these CTGs as quickly as possible. This is particularly important in areas exceeding the small particulate standard where SIPs are required to be submitted within the first year of enactment.

Control of Nitrogen Oxides

The legislation recognizes for the first time the important role that nitrogen oxides play in ozone formation and establishes a stringent set of control requirements for new and existing sources. While the bill allows areas to impose less stringent NO_x measures where they would result in excess emissions reductions, we would look askance at any "gaming" of these provisions, that is, where overly optimistic assumptions are factored into the mathematical models to avoid important NO_x controls. This is particularly important in areas where biogenic emissions of reactive organic compounds contribute significantly to the formation of ozone.

Long Range Transport

The legislation establishes regional transport commissions to assess oxidant transport from within and outside ozone transport corridors and implement appropriate measures needed to attain the ozone standard in the region. In particular, Congress established a transport commission for the northeast corridor where transport of ozone and its precursors has been clearly demonstrated.

We believe that the transport commissions can play a vital role in abating interstate air pollution control problems. Thus, we encourage other areas, such as the upper mid-western states, to pursue authority similar to that provided the northeast.

With respect to the northeast region, we encourage the members of the Commission to petition EPA to expand, where appropriate, the coverage of the program to other areas, including the remaining portions of Virginia. Emissions from Virginia flow from its urban and rural areas toward Washington, D.C. and other mid-Atlantic states. The urbanized part of the state includes substantial industrial activity as well as vehicle travel consistent with other areas in the transport corridor. In addition, rural areas in Virginia are also exceeding the air quality standards, affecting areas both within and outside the state.

The Commission members must realize that their primary responsibilities are to evaluate oxidant transport into and throughout the transport region, implement the requirements of the Clean Air Act, assess all potential emission control strategies that may be applicable throughout the transport region or in a portion of the region, and establish control recommendations for consideration by the Administrator. The Commission should also encourage member states to use consistent techniques, assess and plan for the development of State Implementation Plans and then review all SIPs for the program stipulated in the Clean Air Act and additional requirements agreed to by the Commission. To effectively carry out these responsibilities, commissions must be allocated sufficient resources to support full time executive and scientific staff.

We believe that regional commissions must be capable of obtaining expert scientific guidance, independent of U.S. EPA and member states, on the transport of photochemical oxidants into and throughout their region. This scientific guidance should include recommendations on the level of oxidant controls needed for both hydrocarbons and nitrogen oxides to attain and maintain the ozone National Ambient Air Quality Standard and on the most effective allocation of control measures within the transport region to achieve these goals. Commissions will need to play a leadership role, in conjunction with the U.S. EPA and member states, in utilization of state-of-the art photochemical transport models based upon obtaining accurate information—such as speciated emissions data and sufficient ambient monitoring data—and using reasonable growth projections. The Commission will be in the best position to consider a variety of regional control measures which are often difficult for individual states to consider because of their effect on product distribution markets. These innovative measures include, but are not limited to, regional controls on a variety of consumer products, expanded use of reformulated gasoline, alternatively fueled fleet programs, and vari-

ous other motor vehicle emission control strategies, including transportation control measures, that encourage reductions in vehicle use.

In accordance with the House language, each member state will have two voting representatives on a Commission, an air quality control official and a designee of the governor. The importance of a Commission's activities and its recommendations will be enhanced with the participation of senior advisors to Governors. The Governor's representatives will be extremely valuable to the Commission in providing direct input from the highest levels of state government, obtaining state legislative authority or the approval of regulations as necessary, and assuring effective implementation of control measures agreed to by the Commission.

Under the bill, the Administrator has the final authority to disapprove additional measures recommended by the Commission. However, EPA bears a heavy burden of demonstrating that the additional control measure(s) is not necessary to bring any area of the region into attainment by the dates provided and to recommend equal or more effective actions that could be taken by the Commission to conform the disapproved portion of the recommendations. Any recommendations by EPA under this section designed to replace the recommendations of the Commission shall not place an unfair burden on any state which is the victim of the transported air pollution. Equal or more effective actions recommended by the EPA shall mean actions which achieve equivalent progress towards attainment of the standard, given full consideration of the impact of transported air pollution.

Inspection and Maintenance

The legislation acknowledges that mobile sources represent the dominant source of smog-producing emissions and carbon monoxide; these sources must be well controlled if air quality standards are to be attained. Vehicle inspection and maintenance programs will play a significant role in ensuring that vehicles are properly designed and maintained so that they meet their emission standards during their full life. This is especially important in light of the long lead-time associated with phasing in new motor vehicle standards.

All nonattainment areas are required to adopt and implement I/M programs, except Marginal areas that were not required to do so in the past. States are required immediately upon enactment to submit schedules for implementing I/M programs. The Administrator should require these schedules to be submitted within 30 days, legislation to be adopted within one year and the program to be implemented within two years. We urge areas to act expeditiously with these programs. While enhanced I/M programs are required for areas classified as Serious and above, we strongly urge all areas implementing I/M programs to developed enhanced programs.

Various population thresholds for I/M programs are specified in the Act, based on the use of the 1980 census. We encourage the Administrator to use the 1990 census as it represents the most recent population data available.

Finally, the legislation makes reference to the measurement of NO_x emissions and the inclusion of on-road testing devices. We encourage the Administrator to accept a tampering check to satisfy the NO_x emission check, and to be discretionary with its program to use on-road testing until such time as these devices are certified by EPA.

General Savings Clause

The savings clause in the new legislation is intended to ensure that no backsliding occurs from implementation of adopted, currently feasible measures that EPA has approved as part of a SIP in the past, or currently feasible measures that EPA has added to state plans on its own initiative or pursuant to a court order or settlement, including a Federal Implementation Plan. We do not intend that this savings clause requires EPA to finalize the Federal Implementation Plan in California and preempt the states and regional air quality planning that is ongoing in the Los Angeles area and will otherwise be required under this legislation. If EPA were to promulgate complete new plans based on requirements of the old Act, the areas subject to those federal plans would be deprived of the opportunity to use the significantly revised and clearly more workable requirements of the new legislation. We agree that this would be unreasonable, particularly since the proposed FIP fails to recognize the critical role that local governments play in reducing transportation-related emissions.

The savings clause provides EPA with significant discretion with respect to FIPs in California. EPA has the obligation to adopt control measures for sources which it exclusively controls when those controls are necessary to help attain national standards or meet other requirements of the Act. But, beyond that, EPA should complete ongoing FIP processes only for the purposes of ensuring that the standards are met by the statutory deadlines.

New Source Review

The legislation requires that in Extreme areas net emission increases of VOCs from the installation or modification of stationary sources be offset by emission reductions at a ratio of at least 1.5:1, unless the Best Available Control Technology is required for all major sources in the area, in which case the ratio must be at least 1.2:1. The section also imposes an internal offset ratio of 1.3:1 for increases resulting from the modification of equipment within a facility.

During the Conference, the South Coast Air Quality Management District adopted a new source review rule (SCAQMD) that appears to meet these ratios on an area-wide basis. It is our intention that the State Implementation Plan for an Extreme area may provide alternative methods of meeting the specified offset ratios as long as, in the aggregate, the overall emission reductions are achieved. The SCAQMD rule provides such reductions by requiring net emission increases for any new or modified stationary source, not just major sources, to be offset; by requiring all new and modified sources to comply with LAER; and by giving credit for emissions reductions resulting from equipment shutdown or curtailment at a level no greater than if the equipment had complied with LAER. Although the SCAQMD rule exempts certain categories (e.g., air pollution control equipment) from the offset requirement, it does not exempt such sources from compliance with LAER.

We believe that the legislation allows the Administrator to approve such an approach provided the aggregate emission reductions achieved by such a rule equal or exceed the level of emissions reductions that would be achieved on a source-specific basis. Furthermore, in determining whether the internal offset ratio was satisified for purposes of measuring the equivalency of the rule, the state or the Administrator may give credit for any emission reductions achieved if the modified source installs BACT or LAER.

Federal Facilities

The federal facilities language of the new legislation is identical to the Senate passed bill. As was stated in the Senate report: "Military installations in California's South Air Quality Management, District have filed suit challenging the District's authority to require payment of fees, including permit fees. Similar suits have been filed in Federal District Court in New York and there have been other challenges to the authority of State or local agencies to impose fees on Federal facilities. The bill clarifies existing law to make explicit what section 118 already requires: Federal facilities are subject to the same fee requirements that are applicable to nongovernmental entities.

Section 118 of the existing Act should have been sufficient to ensure federal compliance with all state and local requirements, including fees or charges to defray the cost of air pollution programs, notwithstanding any immunity under any law or rule of law. Nevertheless, federal agencies in California and elsewhere have argued that the doctrine of sovereign immunity shields them from the obligation to pay these fees or charges, and have asserted that argument in litigation against air pollution control agencies.

The new language is intended to refute that argument and reaffirm the obligation of federal agencies to comply with all requirements, including such fees or charges.

Control Techniques Guidelines for TSDFs

The bill also requires the Environmental Protection Agency to issue control techniques guidelines (CTG) for additional categories of sources emitting volatile organic compounds. It directs the Agency to give priority to those categories it considers to make the most significant contribution to ozone levels in nonattainment areas, including hazardous waste treatment, storage and disposal facilities. This specific reference to TSDF's is intended to underscore the importance of the Agency's ongoing work to set air emission standards under section 3004(n) of the Resource Conservation and Recovery Act for these facilities. The Hazardous and Solid Waste Amendments of 1984 directed EPA to promulgate standards for the control of air emissions from TSDFs "as may be necessary to protect human health and the environment."

This directive to EPA is not intended to disrupt these ongoing efforts, be duplicative of them or to suggest that a lesser level of control is appropriate in any area of the country. To the extent that the criteria for CTG's under the Clean Air Act could result in a less stringent level of control than will be proposed under RCRA, the RCRA standards must govern, to reflect the standard of protection of human health and environment by which the adequacy of the RCRA regulations will be measured.

General Transportation Control Measures

The experience of the last 20 years makes clear that we cannot solve the air pollution crisis in major polluted areas like the Northeast, Chicago, or Los Angeles only by controlling industrial sources or making new cars cleaner. The existing vehicles on the road account for half or more of the ozone precursors that contribute to health hazards for nearly half of all Americans in more than 100 cities and 75 percent or more

of the carbon monoxide that causes ambient violations in another 50 cities. In addition, we have learned that the growth in vehicle use, nearly three percent per year nationwide, was a major factor in preventing the attainment of the ambient standards by the 1987 deadline.

It is clear that the goals of this bill—a healthy and safe air supply for every American—will not be achieved without implementing strategies that effectively limit the growth in vehicle use in the major urban centers where pollution levels are the worst. The transportation control and planning provisions of the bill are intended to achieve the emission reductions from the use of mobile sources needed to achieve the objectives of the bill.

The transportation control provisions of the bill are designed to correct 20 years of failed efforts to control transportation sources of pollution. The sponsors hope we have learned from the mistakes of the past and have designed a better approach to achieving these objectives.

Transportation control measures are not a new part of the law. Let me take this opportunity to remind my colleagues of the expectations we had for the 1970 Clean Air Act. Senator Muskie explained the 1970 bill to his colleagues as follows:

"We still have existing a mass of used automobiles to deal with. The bill before us deals with that problem by the requirement of national ambient air quality standards geared to help.

"Those standards, realistically applied, will require that urban areas do something about their transportation systems, the movement of used cars, the development of public transportation systems, and the modification and change of housing patterns, employment patterns, and transportation patterns generally. All of that is implicit in the concept of implementation plans for national ambient air quality standards and what they mean for the used cars in our country."

Today we continue to recognize the need to make the kind of changes that the Senator from Maine described in 1970, but we also have learned that such changes are long in coming and not so easily achieved as we once thought. We also have learned that these kinds of community decisions are not likely to be made based simply on what seems implicit in the development of implementation plans, More specific planning directives are needed to focus the resources and creativity of communities.

In 1977, Congress added a requirement (Section 172(b)(2)) that each state plan contain all reasonably available control measures to reduce transportation emissions. The Environment and Public Works Committee Report in 1977 (pp. 38-40) explained that EPA was required to analyze various strategies that were then required to be reviewed by the states to determine if they could be included as part of the State Implementation Plan given the local circumstances. This provision was implemented by EPA guidance in 1979 (44 Fed. Reg. 201, 375 (April 4, 1979)), but EPA was not consistent in its application of the guidance, and many areas did not give careful consideration to the various control measures that EPA identified.

The sponsors believe that EPA's initial (1979) guidance for the application of the 1977 Law's requirement to adopt "all reasonably available control measures" in each area was sound. The Ninth Circuit recently reviewed and correctly applied EPA's guidance. The bill (sections 108(f), 172(c)(1)) retains the general planning approach of the 1977 law and ratifies EPA's guidance as recently construed by the Ninth Circuit in the case inolving the Arizona State Implementation Plan. *Delaney v. EPA*, 898 F. 2d. 687 (1990).

The Senate Committee bill, S. 1630, modified the requirements for the adoption of transportation control measures in State Implementation Plans (SIPs). The Committee bill required that identified transportation control measures be incorporated into each implementation plan for severe and extreme ozone, in serious ozone non-attainment areas under certain circumstances, and in serious carbon monoxide non-attainment area unless the state could demonstrate that a measure would not contribute any additional progress toward attainment in the area.

During Senate floor debate, these provisions were modified to require that each listed measure be considered by the state, but the mandatory obligation to incorporate each measure in the absence of a negative determination was removed. The emphasis in the amendment, therefore, was on a state selecting and implementing those measures "necessary to demonstrate attainment with national ambient air quality standards," including, of course, interim reduction requirements. The sponsors' intention in accepting this amendment was to retain current law with regard to the consideration of transportation control measures.

The Committee language in S. 1630 would have eliminated the option of the states to adopt less than all reasonably available control measures even in the circumstances where the states could make the demonstrations allowed by EPA's guidance. In agreeing to the amendment, the sponsors determined that the rigid application of control measures in the Committee bill was too restrictive. The bill (sections 182(c)(5), 182(d)(1) and 182(e)), which adopts the final Senate provisions with respect to transportation control measures for ozone SIPs in addition to the general planning requirements for reasonably available control measures in section 172(c)(1). Taken together, these provisions require the EPA's traditional guidance continues to govern the review of transportation control measures in state plans.

The sponsors believe that if the EPA consistently applies this guidance in the development of SIP revisions required by the bill, significant progress toward the control of mobile source emissions will be achieved. Of course, this bill adds statutory criteria defining "reasonable further progress" in terms of specified emissions reductions. The need for transportation control measures and the appropriateness of various measures should be evaluated with regard to these new interim increments of progress in the bill.

The sponsors intend that EPA expand its list of reasonably available transportation control measures to incorporate all the measures in Section 108(f)(1). In addition, EPA should evaluate and determine whether additional tranportation control measures should be added to those identified in the bill.

The "notice" and "comment" provision of section 108(e) is in no way intended to create an APA-type review procedure for EPA; the "guidances" listed in Section 108(f)(1) remain exactly that, not rules subject to review. However, EPA will be expected, as we understand it does now, to publish its final guidances and to continue to solicit views, ideas, and comments from state and local officials and other interests as these guidances are being prepared. The bill clarifies that these practices are to continue.

Concerning the "adequate access" provision in section 179 and sections 182(c)(5), 182(d)(1) and 182(e), the inclusion of the term "adequate" is intended to make clear that appropriate transportation air quality control measures may be undertaken even if they have an access effect; the term makes clear that complete access by a particular transportation mode such as an automobile is not required as long as basic and adequate access remains available. The sponsors recognize that there are many ways to provide access and that even if vehicular access is affected, adequate access can be assured by availability of other transportation modes or means to affected areas.

Trip Reduction Ordinances

The conferees adopted the Senate provisions on employee vehicle occupancy programs for severe and extreme ozone areas and serious carbon monoxide areas with one exception: the provision in the Senate bill allowing employers to satisfy the requirements by expenditures of money equal to or greater than the cost of providing employees with parking spaces at the location of the workplace has been eliminated. This means that, if employers do not meet the requirements of this provision, they are subject to the penalties of the Act.

The bill requires that, in affected areas, major employers—those with more than 100 employees—achieve a reduction of 25 percent improvement in commuting vehicle occupany above a baseline in the affected area for ridership on all such trips.

Affected employers will have complete flexibility in the types of incentive programs, services and facilities to encourage employees to share commuting trips. Some examples which have been successful at California companies where these programs have been instituted include: ride-matching services, vehicles provided for use during the day for employees who ride-share, rides home in the event of an emergency, ride-matching services, parking assistance for carpoolers, preferential parking for carpools, passes for transit users, and local shuttle services.

Another important way to comply with the requirement will be to encourage greater use of mass transit (which counts as an increase in the occupancy of the transit vehicle), thereby decreasing the number of cars on the road. One of the incentives which employers may choose to use to encourage employees not to drive to work is to provide mass transit passes as alternatives to parking spaces.

Conformity

The experience of the last 13 years has shown that it is necessary to do more than simply consider applicable control measures. They need to be implemented, as well. This is an area in which the law has failed to achieve the expected progress. The amendments added by this bill should go a long way to overcoming these deficiencies in carrying out current law.

The most important of these changes are included in the amendments to the "conformity" requirements of Section 176. In 1977, Congress added a requirement that any activity approved by a federal agency "conform" to the applicable implementation plan. We offered little guidance regarding the application of this requirement and, un-

fortunately, it has largely been ignored by the agencies required to apply it.

One of the potentially most important applications of this provision is with regard to the review and approval of regional transportation plans by the Secretary of Transportation. Regional transportation plans are required under both the Federal-Aid Highway Act (Title 23, U.S. Code) and the Urban Mass Transportation Act (Title 49, U.S. Code). Beginning in 1970, the Highway Act required "consistency" between transportation projects developed for a region and requirements in applicable implementation plans under the Clean Air Act. This provision was implemented by guidance adopted jointly by EPA and the Federal Highway Administration (FHWA) in 1975. That guidance required that regional transportation plans and projects be measured against ambient air standards. If emissions from mobile sources in an urban area would contribute to violations of ambient standards, or delay attainment of standards, the regional plan and transportation projects were not to be approved.

The intent of the "conformity" provision added to the Clean Air Act in 1977 was to give clear legislative authority for the application of air quality criteria to the review and approval of transportation plans as well as projects in accordance with the DOT/EPA joint 1975 guidance. But no transportation plan has ever been disapproved under this provision, even in cities where mobile source emission growth is a major factor in preventing attainment of the NAAQS.

In 1980, EPA and FHWA supplemented their earlier guidance with more detailed requirements regarding the implementation of specific projects in state implementation plans. This supplemental guidance was partly in response to the requirement for priority funding for transportation projects enacted in Subsection (d) of Section 176. This provision has also been largely ignored.

The amendments to Section 176 are intended to provide more specific criteria for the review and approval of transportation plans, programs and projects authorized under Title 23. The long-range transportation planning process established by section 134, Title 23, the "3-C process," must become part of an effective framework for making basic choices about how to control mobile source emissions. The amendment to the conformity section will require transportation planning agencies to view their task as the development of a transportation system that meets multiple needs, including both mobility needs and air quality objectives. Traditionally, regional transportation plans have been developed to handle expected vehicle volumes without regard to the limit on how many vehicle emission sources can be accommodated in an urban air shed and still meet air quality standards. This legislation makes clear that it is time to develop transportation plans and programs that also serve as part of the pollution control strategy for the metropolitan area.

Los Angeles, the most severely polluted urban area in the United States, is demonstrating how this can be done in areas with the worst problems. The South Coast Air Quality Management District has adopted as part of the air quality plan for the area of "mobility plan" developed by the Southern California Association of Governments. This plan is designed to reduce VMT growth in the South Coast Air Basin by 60 percent over the next 20 years compared to what it would be if current vehicle miles traveled (VMT) growth rates continue. This reduction in vehicle use is an essential element of achieving air quality standards in southern California.

The sponsors do not intend that the federal government make the control choices for a community or strike the balance between the amount of emission reduction to be required from mobile sources compared to stationary sources. This is the choice that each community must make, unless the state or metropolitan area fails to act. But we do intend that when the state designs a plan for a non-attainment area, the amount of emission of each non-attainment pollutant allocated to mobile sources must be specified for each of the milestone periods considered in demonstrating reasonable further progress and for the attainment year. Mobile sources are to be treated like stationary sources in that emissions from mobile sources in a metropolitan area or relevant sub-region are to be expressed as total allowable emissions and not simply an unspecified remainder.

The purpose of the new "conformity" requirement is to ensure that the transportation system choices made by the community and incorporated into the regional transportation plan required by Title 23, U.S. Code, and by the Urban Mass Transportation Act, Title 49, are consistent with achieving the allowable emission targets for each pollutant assigned to mobile sources in the SIP. No transportation plan or program may be accepted by the Secretary of Transporatation under Title 23 unless the metropolitan planning organization for the non-attainment area can demonstrate a "fit" between emissions expected to result from implementation of the transportation plan and the mobile source emission allocation in the SIP for the milestone year, the attainment year, and the maintenance period.

To implement this requirement of the Act, a number of specific provisions have been added to the Act. For ozone nonattainment areas, the bill requires that the same values be used by the air quality planning agency and the transportation planning agency. For the purpose of determining emissions from mobile sources, the assumptions regarding VMT, congestion levels, and other parameters used to develop the implementation plan or the most recent update of such data must be used. Thus the initial inventory required by Section 182 must be based on measured VMT and congestion, to the extent such data are available.

If the attainment demonstration requires reductions in mobile source emissions compared to those that would be expected to result from implementation of the existing transportation plan, then the transportation plan must be modified to achieve the emission targets for mobile sources in the SIP. For ozone, this will probably require future reductions in the growth of daily VMT, unless other measures can be shown to achieve the required emission reductions.

Until such time as an implementation plan is approved or promulgated that establishes the ceilings on mobile source emissions in the non-attainment area, interim requirements apply under section 176(c)(3). The sponsors recognize that implementation plans adopting emission ceilings for mobile sources are not required under the bill for three years. During the interim, three criteria will govern the adoption of transportation plans and programs by the MPOs and the review of such plans and programs by the Secretary of Transportation.

First, the conformity review for transportation plans and programs must be based on the use of the most current estimates of emissions for mobile sources. EPA has recently issued a revision of its MOBILE model based on the emission performance of recent model year vehicles, but this model may need to be reviewed based on the tighter emission requirements added by the bill. EPA will identify the emission factors to be used in the review of plans and programs as part of the regulations required by this section.

Second, transportation plans and programs must provide for the expeditious implementation of transportation control measures. Many implementation plans adopted under the 1977 Amendments to the Act included transportation control measures that have yet to be implemented. All measures were required to be implemented by 1987 in order to meet the statutory attainment deadline. Transportation plans and programs may not be approved after the date of enactment unless they provide for expeditious implementation of such measures. "Expeditious" means as soon as practicable, but in no event longer than the project or program would have taken to implement under the original SIP schedule from commencement of the project to completion. If the control measure can be implemented more quickly than originally scheduled, the plan or program should so provide.

Third, plans and programs adopted for areas that are nonattainment for ozone or carbon monoxide during the interim period shall contribute to annual emission reductions consistent with the emission reduction schedules adopted in the bill for such areas. Section 182(b)(1) requires a percentage reduction in regional emissions during the first five years after enactment as a requirement for the implementation plan in each moderate, serious, severe, and extreme ozone non-attainment area. Until an implementation plan is adopted, however, there is no basis for determining the amount of the percentage reduction that will be allocated to mobile source emissions. Rather than wait for the final adoption of an implementation plan, the sponsors intend that the mobile source contribution to overall emissions in the non-attainment areas by reduced annually at the same percentage rate that would apply for the development of a SIP. Thus, during the period when the implementation plan is being adopted, emission reductions from mobile sources will be achieved. Without such a requirement, mobile source emissions could increase before an implementation plan takes effect thus undermining the objective of making reasonable progress toward attainment. Section 187(a)(7) requires that annual emission reductions be determined for carbon monoxide non-attainment areas. Since these reductions are based on the difference between the NAAQS and the design value for an area (with the Administrator determining the design value for an area in order to determine its non-attainment status), the annual percentage reduction required for carbon monoxide non-attainment areas should be available for the review of transportation plans and programs.

During the interim period, transportation projects may be found in conformity only if they are included in a transportation plan and program that has been reviewed and been found to conform to the criteria in 176(c)(3)(A) and reduce or eliminate the number NAAQS violations in carbon monoxide non-attainment areas. Of course, under the savings clause, such projects must also comply with any conformity require-

ments in implementation plans that were in effect prior to enactment of these amendments and existing court decisions in interpreting the SIPs. States are also free under section 116 to continue to apply any more stringent project review criteria in effect under state or local law. The criteria in section 176(c)(3) are merely the additional federal criteria that must be met to quality for federal approval or funding of transportation projects, programs, and plans prior to the date when a revised implementation plan takes effect under these amendments.

The conferees recognize that a short period of time will be required for MPOs, DOT, and EPA to obtain the data and perform the analyses needed to carry out these interim requirements. Except in the sanction situation, to allow time for these efforts to be completed, the bill allows projects to proceed to construction if they have already been approved as part of a transportation improvement program that was found to conform to requirements in effect during the three years prior to enactment. These projects must also meet the requirements for carbon monoxide non-attainment areas in 176(c)(3)(B)(ii).

Once an applicable implementation plan is in effect under these Amendments, all the criteria for conformity review will apply to the development by MPOs, and the review by the Secretary of Transportation, of regional transportation plans developed under section 134, Title 23, U.S. Code, and the Urban Mass Transportation Act, Title 49, U.S. Code, transportation improvement programs under section 105, Title 23, U.S. Code, and transportation projects requiring federal approvals or funding. The general criteria for conformity review of any activity requiring federal action, approval, or funding in section 176(c)(1) (A) and (B) apply to transportation plans, programs, and projects as well. But in addition, the criteria required by paragraph 176(c)(2) and such further criteria as are adopted by the Administrator and the State under paragraph 176(c)(4) also apply.

For transportation plans and transportation improvement programs, section 176(c)(2)(A) requires a determination that emissions expected from the implementation of such plans and programs will be consistent with estimates of emissions from motor vehicles and necessary emission reductions contained in the applicable implementation plans. Estimates for emissions shall be made based on the Administrator's guidance regarding emission factors for various types of vehicles operating under traffic conditions found in the non-attainment area. These estimates should, of course, take into account the effectiveness of any inspection/maintenance program in effect in the area, the extent to which vehicles may be using alternative fuels to reduce emissions, and other factors that may affect vehicle emissions such as transportation control measures required under the applicable implementation plan. Using these factors to estimate emissions, the plan must demonstrate that it will achieve the levels of vehicle use in the metropolitan area necessary to achieve the emission reductions for mobile sources contained in the applicable implementation plan. Section 176(c)(1)(B)(iii) requires that the comparison should be with the emission reductions required for each interim period established as a milestone for demonstrating reasonable further progress, as well as with the reductions required by the attainment deadline. To the extent that the transportation plan includes a period that extends beyond the attainment deadline for any area, section 176(c)(1)(B)(i) also requires that mobile sources not cause violations of a NAAQS during the maintenance period.

Traditionally, regional transportation plans have been limited to identifying the projects that will make up the regional transportation network, including highways, fixed guideway systems, and restricted access facilities such as busways or high occupancy vehicle lanes. Since 1978, section 134 of the Federal-Aid Highway Act has directed that "the planning process shall include an analysis of alternative transportation system management and investment strategies to make more efficient use of existing transportation facilities. The process shall consider all modes of transportation and shall be continuing, cooperative, and comprehensive . . ." This mandate requires more than simply identifying the comprehensive transportation system for a metropolitian area; it also directs that MPOs consider strategies and options that extend beyond the limited identification of transportation projects. Programs designed to reduce vehicle use or increase the passenger-carrying capacity of highways, such as pricing strategies, time-of-day access limitations, parking management programs, van and car pool programs, employer incentive programs, off-highway bicycle paths, and trip reduction programs are all within the options and alternatives available to MPOs that can "make more efficient use of existing transportation facilities," and also achieve the emission reduction requirements of an implementation plan. MPOs and the Secretary of DOT are expected to undertake a more comprehensive consideration of alternatives and perform a much more careful analysis of options that can contribute toward achieving the air quality objectives of the Clean Air Act.

To the extent the MPO adopts policies or programs other than traditional transportation projects that are designed to reduce emissions by reducing vehicle use, the MPO may rely upon such measures for determining conformity of the transportation plan if they are included in the applicable implementation plan as enforceable control measures.

Transportation plans are normally adopted for 20-year periods, or even longer. However, this does not mean that a metropolitan area can rely on its existing plan if it fails to conform to the mobile source emission allocation in the new SIP. The procedure for obtaining federal funding of transportation projects in an open area requires that a transportation improvement program, including the annual funding element, be submitted to the Federal Highway Administration for approval each year (or in some areas, semiannually). Section 176(c)(2)(C) prohibits the approval of any project for funding unless it comes from a conforming plan and program, unless it qualifies for an exception from this general requirement under 176(c)(2)(D).

Section 176(c)(2)(A) requires that the transportation improvement program as well as the regional plan be found to be in conformity with the emission reductions required by the SIP. Thus, this comparison of the plan and program with the SIP will be required during the first funding cycle after adoption of the SIP to ensure continued conformity.

The requirement to compare the expected emission effects of implementing the regional transportation plan with the emission targets in the SIP will also be closely tied to the triennial review of the SIP to determine whether emission reduction targets have been met. Section 182(c)(5) requires that measured VMT, congestion levels and other parameters be measured against the SIP. If VMT, congestion or other parameters do not conform to the projections used in the SIP, then both the transportation control measures in the SIP and the transportation plan and program will have to be revised to make up shortfalls in the emission reduction schedule for the area.

To ensure that the transportation plan remains coordinated with the applicable implementation plan, the Administrator is directed to require the review of transportation plans at least every three years. Section 176(c)(4)(B)(ii). Moble source emissions are required to be reviewed every three years under section 182(c)(5) to determine if the emission reductions planned for the preceding three year period have actually been achieved. If emission reductions as scheduled in the implementation plan are not achieved, a SIP revision is required within 18 months. Once the implementation plan has been shown to be inadequate, it can no longer serve as an adequate basis for determining whether the transportation plan for the region is adequate to contribute to attainment of NAAQS. The three year review of conformity for a transportation plans and programs will guarantee that, if the implementation plan is required to be revised, the transportation plan will also be revised if necessary to carry out the mobile source emission reductions required under a revised implementation plan.

To the extent the SIP requires the implementation of transportation control measures to meet mobile source emission targets in the SIP, such measures must meet the requirements of Section 110(a)(2)(E)(i), including the requirement that the state demonstrate adequate funding to carry out such measures. The failure to show how such measures will be funded, or to include commitments from the authorized funding sources, will preclude approval of the state's plan. EPA is not authorized to approve plans containing measures that are speculative because of the lack of funding commitments.

Thus, where a state relies on the construction of highway projects to avoid congestion and thereby prevent carbon monoxide "hot spots", the state will have to provide assurances that such funds will be available on schedule to complete the highway projects within the time needed to prevent the congestion levels that can cause carbon monoxide levels to exceed the NAAQS.

Projects identified in the SIP that qualify for federal funding under Titles 23 or 49 are to be given priority, including priority funding, by the metropolitan planning organization or other recipient of federal funds, such as a state or county transportation department or transit district when preparing transportation improvement programs (Section 176(c)(2)(B)). Any project not contained in the SIP may not be funded until projects contained in the SIP are funded in accordance with the schedule for completion of such projects. In addition, the transportation improvement program shall provide for timely implementation of other transportation control measures contained in the applicable implementation plan.

Projects may be adopted or approved as part of a plan or program by a metropolitan planning organization or any recipient of funds designated under Title 23 or the

Urban Mass Transportation Act or be found in conformity by a metropolitan planning organization or approved, accepted or funded by the Department of Transportation only if certain criteria are met. The criteria in paragraph 176(c)(2)(C) include requirements that the project comes from a conforming plan or program, that the design concept and scope of such project have not changed since the conformity finding regarding the plan and program from which the project derived, and that the design concept and scope were adequate for the purpose of determining emissions. These criteria are intended to ensure that projects included in a regional plan at the time a conformity determination is made are characterized with sufficient specificity to allow emissions from the projects and the regional plan to be quantified. This means that the general corridor of a project be identified, and that the characteristics of a project which affect emissions such as whether it is limited access, grade separated, the number of lanes, location of interchanges, whether lanes are to be restricted to high occupancy vehicles, and other factors affecting vehicle carrying capacity be described. If a project is significantly modified after its inclusion in a regional transportation plan, it shall not be found in conformity, approved or funded unless the plan is revised to take account of the revisions to the project or the project qualifies under paragraphs 176(c)(2)(D).

Paragraph 176(c)(2)(D) allows a project which does not come from a conforming plan or program to be found in conformity if it is demonstrated that the projected emissions from the project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause the plans and programs for the area to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan. A project may qualify for this exception only if the regional plans and programs are in conformity at the time the project is reviewed, the emissions from the project are adequately characterized, and the project emissions are considered together with all emissions expected in the region from the conforming plans and programs. The cumulative impact of the project, taken together with the approved plans and programs, may not cause the emissions to exceed the emission ceilings set for the years after the project will begin service. Any project found to conform under this provision that was not included in a plan at the time of such determination would have to be incorporated into the plan at the time of the next periodic review of the plan required under 176(c)(4)(A)(ii).

To resolve the conflicting interpretation of the conformity provision in the 1977 law that has stalemated effective transportation and environmental planning coordination, the bill specifically assigns to EPA the authority to issue regulations establishing conformity criteria and procedures with the concurrence of the Secretary of Transportation. Such regulations will provide guidance to the states for the adoption of conformity requirements in each SIP and will govern the conformity decisions of federal agencies and MPOs required to make conformity decisions. Federal agencies will also have to comply with applicable provisions of the SIP if stronger than the underlying basic federal regulations.

The regulations to be promulgated by the Administrator will constitute an important part of the implementation of these Amendments and must be adopted in a timely fashion to ensure that the criteria to be applied by the MPOs are clearly defined by the time the conformity determinations are required under applicable implementation plans. In the absence of such regulations, the MPOs and the DOT will still be required to make conformity determinations. To ensure the application of uniform criteria and procedures nationwide under this section, the sponsors urge the Administrator and Secretary to act expeditiously to issue timely regulations.

The sponsors intend that the Secretary's decision on whether or not to concur with the Administrator's regulations shall be based on the provisions and requirements of this Act and the corresponding intention of the sponsors.

If the regulations required by this provision are not issued within the deadline established by the Act, both the Administrator and the Secretary shall be subject to the jurisdiction of any court reviewing the failure to perform the duty to promulgate regulations. The court will determine whether the cause for agency delay is justified and fashion a remedy designed to cure the failure of agency action.

If the Administrator has proposed rules and obtained the concurrence of the Secretary, but fails to take final agency action, the court will be faced with a case of agency delay. If the Administrator, however, issues proposed regulations in a timely fashion but received no response from the Secretary within the time allowed for comments, the court should infer that the Secretary's silence constitutes concurrence because no objections have been made, and thereby require final action by the Administrator.

If the Administrator has proposed rules within a timely fashion and the Secretary submits objections to EPA and refuses to concur within the time allowed for comments, the court shall decide any legal issues in dispute and issue an order setting forth a schedule for final agency action to ensure timely implementation of the regulations.

Transportation Sanctions

The bill also makes a major change in the transportation sanction requirement that applies when a state fails to submit an adequate plan, fails to submit a required plan revision or fails to implement its plan. Under the 1977 law, the Administrator was required to withhold highway funding from a state if it failed to comply with the Act or implement its SIP. The bill modifies this authority by allowing funding under Title 23 to be allocated to projects that reduce vehicle use.

The bill would treat federal transportation funding as a pollution control strategy rather than simply as a penalty. If a state fails to timely submit a plan that meets the requirements of the Act, a required plan revision or implement its plan, as detailed in section 179 (a), the bill provides that federal transportation funding is still available to the state, but only for projects that either reduce vehicle use or reduce emissions from vehicles on the highway as defined in section 179(b)(1)(B). As defined in the provision, it may not be used for projects that promote single occupancy vehicle use. To the extent that transportation projects are contained in the SIP, the SIP establishes a priority for funding of projects when the sanction is applied. If no SIP has been approved, or projects are not prioritized in the SIP, then the Administrator and the Secretary of Transportation in cooperation with the affected state would have discretion to determine which projects would receive priority.

The provision in subsection 179 (b)(1)(A) precluding Secretarial "approval . . . of any projects" is intended to include Secretarial approvals at all stages of project development, including approval of a project E1S, a project location approval, and approval of a project's plans, specifications and estimates. The provision is intended to reach capital and design project approvals, not the ongoing planning process.

The sponsors intend that the maximum flexibility be afforded state and local officials in the use of funds authorized under Title 23 for the purposes listed and specified under 179(b)(1)(B). The Secretary of Transportation is directed to develop expedited procedures for considering revisions to transportation plans and programs for the purpose of advancing such pollution-reducing projects in non-attainment areas. In order that non-attainment areas and states move toward compliance and do not lose substantial transportation funds, the sponsors intend that the Secretary, promptly after passage of this Act, undertake a review, in full cooperation with states and areas facing compliance problems, of pollution reducing projects that could be adopted in such areas and for which Title 23 funds could be made available. It is the intent that careful planning and consideration be undertaken by the Secretary beginning shortly after enactment, with states and localities, on using transportation funds as flexibly as possible to implement pollution-reducing projects so that areas can utilize this provision to get out ahead of their problems. Unless DOT and the localities make such use of the new flexibility this provision intends, transportation funding will remain part of the problem, not part of the solution.

Aside from the types of projects listed in 179(b)(1)(B), there is a narrowly-drawn exemption for certain highway safety projects in 179(b)(1)(A). Such projects must have as their *primary* and principal purpose a safety improvement to resolve a demonstrated safety problem based on a specific finding by the Secretary from an accident or related data. The Secretary must also find, based on such data, that the safety improvement likely will lead to "a significant reduction in, or avoidance of accidents." The aim of this new provision is to close a possible loophole in earlier law where highway improvement projects, including new roads or highway renovations, which could also bring safety benefits, could be allowed to proceed. The safety exemption is strictly narrowed by this bill so that projects that would expand capacity or improve flow would be reached by the sanction provisions regardless of whether they might have a safety benefit. The types of safety projects that would be exempt under this bill would include such projects as rail-highway grade crossing improvements, improved safety signing, safety signalization, impact attentuation, or straightening a dangerous curve. While, these types of projects could have beneficial and important secondary effects, such as improved traffic flow, their primary and principal benefit, if demonstrated by the required accident data, would be safety and, therefore, would be exempt. Concerning deteriorated bridges, the Senate receded from the position in its bill allowing this second exemption.

To the extent the Administrator is exercising discretion in choosing among sanctions, EPA should choose the sanction best suited to the circumstances. The sponsors expect, for example, that when the state fails to submit a SIP for a pollutant emitted by mobile sources and for which transportation control measures are appropriate, or fails to implement transportation control measures in a SIP, EPA will implement the transportation funding provisions of Section 179(b)(1) as one of the sanctions applied. To the extent the Administrator has discretion, the Administrator's choice of sanction must be rationally related to implementing the purposes of the Act and, of course, will be subject to judicial review.

We believe that these provisions build on the experience of the past and provide clear direction to EPA, the Secretary of Transportation and the status regarding the need to integrate transportation plans into the implementation planning process. In this bill we are creating a dynamic, iterative process, with increments of progress to be checked in each milestone year. We have learned that plans cannot be perfect from the outset. Air plans are not likely to anticipate all the changes that will occur over the course of decades. Thus we set both long-term attainment deadlines, but also interim targets that require emission reductions each year.

Transportation plans will be checked against the SIP targets annually (or semi-annually in some areas) as each Transportation Improvement Plan (TIP) is submitted, and revised as necessary to ensure continuing conformity between the SIP and regional transportation programs. Conformity will be based on both emissions expected from mobile sources, and the criteria for estimating emissions, i.e., VMT, congestion levels and other parameters selected by the Administrator. These amendments should establish a direct link between the need to reduce emissions and the transportation investment decisions reflected in the transportation plan. Once made, those decisions will be plans and the approval of TIPs in accordance with a plan. They will also be enforceable by EPA with the application of sanctions, and by EPA or the public as any requirement of a plan would be enforced. The failure of the Secretary of Transportation to require full compliance with these requirements in his review and approval of plans, programs and projects will be subject to review under the Administrative Procedure Act. Actions of the MPOs also will be reviewable to the extent they fail to carry out their duties under federal law.

The lesson of the past is clear: If we continue to fail to achieve effective integration between air quality goals and the transportation systems we build, American cities will continue to fail to attain clean air. If faithfully administered by EPA, we believe these amendments offer the potential for reforming the deficiencies of the 1970 and 1977 amendments. In turn, these amendments offer the potential for achieving the healthy air quality that has eluded American cities for 20 years.

MOBILE SOURCES

Technology-Forcing Standards

The legislation establishes Tier I and Tier II standards for light-duty vehicles. These standards will ensure steady progress in the development, optimization, and application of engine improvements, refined or new technologies, and better fuels. Even the automakers have conceded that the Tier I standards, with modest technological improvements, are achievable. The Tier II standards offer a greater engineering challenge, but, based on testimony presented before Congress, and the technological advances being reported in California, we are very confident that the industry will meet these challenges as well.

Some have characterized the Tier II standards as a "paper tiger" that will never take effect. Such a view ignores the specific statutory language and the underlying purpose of the provision.

The Tier II standards are written into the Act and take effect unless EPA proposes modifications. The EPA review process is an "escape valve" to be used *only* if the standards prove unnecessary, or if they are not technologically feasible or cost effective.

While all of us hope that further control of motor vehicles beyond Tier I will prove unnecessary to meet this nation's air quality objectives, many inside and outside of Congress, including the states themselves, doubt that this will be the case. In evaluating the technological feasibility and cost effectiveness of the Tier II standards EPA will have the benefit of, and we expect the Agency will avail itself of, California's experience with its new low emission vehicle standards. In that regard, it is worth noting that California identified technologies which showed promise for meeting emission levels at, or well below, the Tier II standards. On the issue of cost effectiveness, A CARB staff analysis found that tighter NMHC and NO_x standards were projected to be far more cost effective than many stationary source controls which have been, or likely will be, implemented in the 1970's.

The new law will also phase in a CO emission standard of 10 grams per mile at 20 degrees F if six or more cities remain above healthy levels through mid 1996.

In addition to codifying standards for trucks and buses which EPA has already found to be technologically feasible, the conferees have added a heavy truck NO_x standard of 4.0 grams per brake horsepower hour, to be introduced in 1998. This provision was added because of the significant contribution that these vehicles continue to make to overall NO_x emissions and the significant role of NO_x in ozone nonattainment and acid rain formation. These standards are intended to force the development of technology to address these problems and, in considering any waiver to this limit, EPA should carefully consider whether manufacturers have made serious efforts to achieve it.

Urban Buses

The urban bus provision is designed to afford greater protection from pollution from a category of vehicles that operate almost exclusively in heavily populated areas. The provision represents a compromise between those who wished to ban diesel-powered buses outright and those who felt diesel technology should be an available option. Under this provision, diesels, in addition to all other fuel/technologies, may participate in the urban bus market provided they certify to and continue to meet in-use applicable emission standards.

The provision establishes a particulate emission standard for urban buses 50 percent more stringent than the 0.1 g/BHP-hr particulate standard applicable in 1993. If EPA determines that such level is not technologically achievable, the Administrator may relax the standard to not more than 30% reduction from the 0.1 level.

A key element of this program is the in-use testing requirements. If diesel engines cannot achieve the required control in actual operations, EPA is required to mandate alternative fuels.

While Congress has left EPA considerable discretion in fashioning this in-use evaluation program, it clearly expects that the bus engines evaluated be representative of engines in regular revenue service receiving normal levels of maintenance.

Averaging

Both the House and the Senate rejected legislative language proposed by the President to allow averaging, trading and banking in determining compliance with applicable emission standards. Members of Congress recognized that such concepts, if permitted, would significantly alter the fundamental structure of the mobile source program, undermine its effectiveness, and ultimately lead to less pollution control than would otherwise be realized. In this legislation Congress has mandated specific emission standards for light-duty vehicles, light-duty trucks, and heavy-duty vehicles—Congress expects, as has always been its intent, that *every* vehicle, and not just some of them, meets the specific statutory standards applicable to it.

In the past, EPA has argued that since the Clean Air Act of 1977 gave the agency administrative flexibility regarding the level of standards for heavy-duty engines, the agency could allow engine family averaging, trading and banking. Many, including myself, seriously question this flawed logic. But, in any event, the Clean Air Act of 1990 puts this issue to rest by removing EPA's discretion to choose the level, or levels, of controls; Congress has mandated in the Act the specific emission standards for each class or category of vehicle—and it expects every vehicle to meet the applicable statutory standards.

Bus Retrofit Requirements

Within a year, EPA is required to adopt regulations establishing requirements for retrofit controls and maintenance practices for engines rebuilt after 1994. Testimony presented before the Senate Environment and Public Works Committee indicated that there are retrofit controls for diesel-powered engines being developed or used, which offer considerable promise for cost effectively reducing harmful pollutants from existing engines.

Off-Highway Regulations

As the members know, it was with great reluctance that the Senate conferees agreed to the partial preemption of state authority to control emissions from some new nonroad engines and vehicles. We did so only after the preemption was strictly limited to that it applied only to new engines in three distinct categories, locomotives, new farm equipment with engines smaller than 176 horsepower and new construction equipment with engines smaller than 176 horsepower. The preemption is limited only to these categories of nonroad vehicles; states retain all of their existing authority to fully regulate all other types of new nonroad equipment.

States also fully retain existing authority to regulate emissions from all types of existing or in-use nonroad engines or vehicles by specifying fuel quality specifications, operational modes or characteristics or measures that limit the use of nonroad engines or equipment.

Finally, the conferees were also concerned that the EPA might not follow through on its responsibility to regulate nonroad engines or vehicles. Accordingly the compromise includes a clear mandate to the EPA to regulate these sources in both a timely and effective manner. Where these sources contribute to air quality problems—and as strict controls are introduced for other vehicle categories, it is anticipated that the contribution from off road vehicles will increase—the legislation requires EPA to act by a certain date. Furthermore, the revised language requires EPA to adopt the most effective regulations feasible, ones that should be equal in stringency to the controls established on similar engines used in motor vehicles. We expect EPA to carry out this mandate in a fashion which assures that states which are preempted will not suffer any additional omissions beyond what they would have themselves allowed. We intend to carefully monitor EPA's performance in implementing this provision.

Section 177 Protection of State Authority

I am very pleased that the Conference chose to maintain the State's existing authority under Section 177 of the Clean Air Act to adopt and enforce motor vehicle standards that are identical to those adopted by the State of California. The new language placed in Section 177 by the Conference neither adds to nor detracts from the present authority of states under Section 177 to adopt, administer and enforce motor vehicle standards that are identical to those adopted by the state of California. The new language simply codifies, in effect, Congress' understanding of the authority originally to states by Section 177 as expressed in the legislative history of Section 177 when it was adopted in 1977.

Section 177 provides that opt-in states must use the California certification test procedure to govern their own determination of eligibility to sell motor vehicles. It is our intent to assure that states adopting the California program do not restrict and indeed, it is not in their interest to restrict the sale of new vehicles that comply with certification requirements in California. The authority enacted in 1977 prevents opt-in states from imposing different emission requirements on new vehicles and engines that would place an undue burden on manufacturers by requiring them to produce materially different new vehicles for sale in such areas. To the extent that a manufacturer could demonstrate that each vehicle leaving the assembly line performs at levels to which it was certified, that manufacturer could claim "undue burden" if a state that adopted the California standard applied enforcement procedures that would require materials changes in the manufacture of such vehicles, i.e., production of a third car.

It is vital to note that this "undue burden" standard—which was established by the legislative history in 1977 and which we reaffirm in this Act—for determining what is and is not a "third vehicle" does not require physical identicality of vehicles. Enforcement actions taken against vehicles that fail to comply with their certified California emission limits in actual use do not impose an undue burden on manufacturers or require the production of a "third vehicle." The contrary is true: compliance with certified emission limits by vehicles in use is an integral part of the obligation manufacturers undertook in obtaining emissions certificates for their vehicles. In fact, recall assures that third vehicles do not result, de facto, from lack of compliance with certificated emission limits during the useful life period. Recall and associated enforcement authority simply assure that vehicles that were built under a California certification meet those standards throughout their applicable useful life.

I understand that the requirement to make small modifications in vehicles in use to assure their continuing compliance with their certified emission limits is entirely consistent with the automakers' present manufacturing practice. So-called "running changes" are made in the emissions equipment placed on vehicles in production without any changes being made in the vehicles' existing emissions certificate. The running changes are made to assure that those vehicles comply with their certificates. Thus, physical differences in emissions equipment under a single certificate are even now being made by the auto manufacturers without anyone having contended that this creates a "third vehicle."

Moreover, in interpreting the limits on an opt-in state's enforcement activity under Section 177, the U.S. Environmental Protection Agency has written that such a state's enforcement of the California standards need not meet the requirement of identicality that governs the state's adoption of the California standards. Rather, EPA found that an opt-in state's enforcement actions must not be conducted so as to create an "undue burden" on manufacturers—again, the same standard which was established by the legislative history in 1977 and which we reaffirm in this Act. Had we intended to prevent states from initiating recalls pursuant to their appropriate test findings, we would have removed their authority to enforce the California standards under Section 177.

In this regard, it is vital to note that the Conferees from the other body proposed to the Conference that opt-in states be barred from enforcing the California standards, and that instead, EPA would enforce them. I ask that the original House proposal to strike the states' enforcement authority be placed in the RECORD at this point. Comparing this proposal, which was wisely rejected by the Conference, with the language on Section 177 adopted by the Conference makes indisputable the authority of states that adopt California emissions standards to enforce those standards through recall and other methods.

Indeed, the House proposal evoked vehement objections from a number of states, from Governors of both parties. I ask that several letters from Governors and state environmental officials that were sent to Senate Conferees protesting the House's proposal also be inserted in the RECORD at this point. I want to commend these Governors, the states and especially the Conferees for maintaining this important state authority.

The sum, it is our intention to make clear that, as reinforced by manufacturers' established practice and EPA intepretation, physical identicality is not the test of whether a state enforcement action is barred for creating a third vehicle. Rather, remedial action which a manufacturer is required to take to bring its vehicle in use into compliance with certified emission limits may encompass physical changes in the certified emissions equipment so long as those changes do not impose an "undue burden" on the manufacturer and are demonstrated as necessary to assure that those vehicles meet the California standards in actual use. If those tests are met, it is clear that states that adopt the California standards can continue to have the full authority to enforce, through recall and otherwise, adherence to those standards for vehicles sold in their states throughout the useful life of the vehicles. Only in such manner can we move towards clean air.

Reformulated Gasoline

The reformulated gasoline and oxygenated fuels provisions contained in this bill will require the oil companies to modify their fuels in such a manner as to reduce their contributions to ozone and CO nonattainment problems, to reduce the personal exposure of people to toxic emissions from vehicles; in short to require fuels manufacturers to push the state of science on the composition of gasoline and its components in the same manner that vehicle manufacturers will be required to under this legislation.

First, let me say that I believe these provisions can provide one of the biggest steps available to the states and EPA in reducing nonattainment problems of ozone and CO. It is imperative that EPA issue the required regulations for this section within the one year timetable specified in the bill.

Other portions of this provision that EPA must keep in mind as they develop these regulations and implement and enforce the provision include:

The anti-dumping provisions clearly intend that pooling of fuels meet a baseline standard at a minimum within nonattainment and attainment areas. EPA should ensure that VOCs are not pooled in a manner that, for example, allows more harmful aromatics to be treated for less harmful straight-chain hydrocarbons. Further, EPA should restrict the compliance period for pooling emissions to as short a period as achievable by any refiner, blender or importer;

Waivers from the year-round cap in NO_x emissions should be implemented by EPA in very limited circumstances. The Conferees do not intend to allow increases in NO_x emissions in return to reducing VOC emissions;

Any adjustment to the 25 percent reduction requirements for toxics and hydrocarbons required by the year 2000 should be carefully restricted by EPA. Further, in assessing technical feasibility, consideration should be given to assessing other measures which might, or might not, be available to areas which will be affected by any such adjustment and how these areas will be able to make up for the shortfall that will occur. This should include considering the costs of those reductions in VOC and toxics from other measures;

Any wavier of the oxygen requirements by petition must be the exception rather than the rule. All cities above a 9.5 ppm design value must demonstrate that they are trying to comply with this provision within their capabilities. EPA should also interpret the wording on distribution to include studying the feasibility of obtaining additional foreign supplies of gasoline components as a temporary measure while additional domestic supplies are being developed; and

The language of the provision clearly allows any nonattainment area which wants to opt-in to the reformulated gasoline programs to do so. They should be afforded every opportunity, and at the earliest possible date, to opt-in to the program subject to approval by EPA. The Administrator must approve any state's request to opt in to the program wherever possible. The Administrator must not allow the "domestic capacity"

provision to impede those states seeking such authority.

Test Procedure Modifications

One of the most critical elements of the motor vehicle program must be the assurance that vehicle emission controls are designed to operate under "real world" conditions. In modifying the certification test procedures to assure that they account for real world conditions, EPA is expected to consider actual fuels, ambient conditions and driving modes that are reflective of actual circumstances, covering as wide a range of such conditions as are reasonable.

Compliance Fees

In reaching agreement on compliance fees, the Conferees intend that EPA have sufficient resources, provided by vehicle manufacturers, to conduct surveillance testing of the vast majority of all engine families and certainly any families which it has reason to suspect may be nonconforming in use. This suspicion can be based on certification data, defect or warranty data, I/M data or any other information which comes to the Agency's attention. Further, in setting fees, EPA should be sure to consider not just passenger cars, but urban buses and light and heavy trucks, which have received less recall surveillance than necessary in the past. Further, in assessing the fees, EPA should consider the extra expense associated with procuring and testing vehicles in use after high mileage has been accumulated, in recognition of the expanded useful life requirements contained in the new law.

Recent EPA surveillance efforts in the Committee's judgment have not been sufficient and the Committee therefore expects the agency to assess fees which provide for a much greater amount of testing in the future.

Tier II Standards

We believe that based upon information available today, reductions in motor vehicle tailpipe emissions beyond those required under Tier I are likely to be necessary, technically achievable, and cost-effective. Thus, the new legislation requires that a second phase of more stringent emission standards for passenger cars and light duty trucks take effect nationwide beginning in model year 2003, unless the Administrator demonstrates to Congress that these standards are not necessary for attainment, are not technically feasible and are not cost-effective.

While the Act allows the Administrator to adopt less stringent standards than prescribed in Table 3 of this section (if he makes this demonstration), it also provides the agency with discretion to adopt even tougher standards than the ones specified. The Administrator is instructed, with the participation of OTA, to submit a study to Congress by June 1, 1997 evaluating the efficacy of the standards set forth in Table 3 on the basis of need, technology, and cost effectiveness.

Need for Additional Emissions Reductions

Today, almost every major metropolitan area in the country exceeds the federal health-based standards for ozone and/or carbon monoxide. The health effects of these emissions have been widely documented, and none of the over 130 million people living in non-attainment areas appear to be totally immune.

According to the Environmental Protection Agency, healthy individuals who are exercising while ozone levels are at or slightly above the standard can experience "reduced functioning of the lungs, which can lead to chest pain, coughing, wheezing, pulmonary and nasal congestion, labored breathing, sore throat, nausea and faster respiratory rate."

The effects of carbon monoxide are equally disturbing. Carbon monoxide, when inhaled, enters the bloodstream and disrupts the delivery of oxygen to the blood's tissues. Those most affected, according the EPA, include the estimated nine million people with cardiovascular disease, particularly those with angina. In addition, low levels of carbon monoxide affects "aerobic capacity, visual perception, manual dexterity and learning ability," and can also harm fetuses.

Although we have achieved substantial reductions in motor vehicle emissions over the past 20 years, motor vehicles still remain the largest single generator of hydrocarbon, nitrogen oxide and carbon monoxide emissions in the nation. In fact, motor vehicle emissions are expected to increase later this decade as a result of increased vehicle travel and congestion, offsetting the air quality gains from cleaner, new vehicles.

At the current rate of growth in vehicle miles travelled, it is projected that the reductions from Tier I will be overwhelmed by emissions resulting from increased vehicle use by year 2003. Thus, without additional standards, it is likely that many areas will continue to exceed the air quality standards for ozone and carbon monoxide.

At least two additional reasons are likely to make a second tier of motor vehicle emission standards necessary.

The first relates to the interstate nature of the pollution problem. Many areas of the country cannot achieve compliance with the ozone NAAQS without substantial emission reductions from upwind states. In the Northeast, for example, EPA models (e.g., ROMNET) have concluded that the entire region will need to reduce emissions by up to 90 percent, a far greater task than contemplated in this Act. Reductions of that magnitude will be impossible without a second set of more stringent motor vehicle standards. Other urban and rural areas throughout the country will face equal difficulty.

Second, there are few provisions in the new legislation which require additional reductions in carbon monoxide emissions. None of these provisions apply to all CO non-attainment areas. Thus, it is essential that we implement CO standards more stringent than the current ones. This will not occur unless EPA determines that additional controls are needed in 2003.

Technological Feasibility of Tier II Standards

Today, a large number of gasoline-powered domestic and foreign passenger vehicles already certify at emissions levels below the Tier II standards. Many new technologies to gain still greater reductions have been demonstrated. For example, the use of electrically-heated catalysts on current technology gasoline vehicles has reduced HC emissions to one third of the Tier II HC standard. The reformulated gasoline required by this Act should permit additional emission reductions.

California is contemplating the use of other emission control technologies that promise yet further reductions. The California Air Resources Board recently adopted a Low Emission Vehicle (LEV) program—with emission standards that are far more stringent than the Tier II standards—which takes effect in model year 1994. For these standards to take effect the Administrator must grant California a waiver under Section 209(b) of the Act, the criteria for which are found under Section 202(a). The Administrator must conclude that the LEV standards are technologically feasible and that the cost of compliance with such standards is reasonable within the time frame required by California. Since California's LEV standards and timetable are both more stringent than the Tier II requirements, the Administrator's approval of California would represent a conclusive determination regarding the technical feasibility of the Tier II standards.

Cost Effectiveness of Tier II Standards

The Clean Air Act establishes standards necessary to protect the public health. Clean, breathable air is a fundamental right of the American people. The 1970 Act clearly states that attainment of these standards must be accomplished regardless of cost. Nothing in the 1990 revisions seeks to alter or undermine this nation's fundamental commitment to achieve healthful air. Thus, while the assessment of cost-effectiveness should guide the identification and implementation of the most efficient means of attainment, cost considerations may not be used to avoid the implementation of efficient pollution control technologies whose use is necessary to achieve attainment of the NAAQS.

The California Air Resources Board—which has more experience and expertise in planning and assessing Tier II level emission controls than even the federal EPA—has testified before this Congress that compliance with the Tier II standards will cost between $110-$120 per vehicle. As CARB's analysis is based on the use of currently available technology to meet the Tier II standards, its cost estimate clearly represents the outer bound of compliance costs and does not assume the commercialization of future advances which are likely to reduce these costs significantly.

According to CARB's estimate, the anticipated maximum cost of Tier II reduction is approximately $2000 per ton of HC. Nonattainment areas are now being forced to impose controls on stationary and area pollution sources costing $6000 to $8000 per ton and more, and are projecting that controls costing up to $15,000 per ton of HC may be necessary before the end of the decade. Particularly given the interstate nature of many ozone non-attainment problems, the Administrator should consider the adoption of Tier II standards cost-effective if, at the time of EPA's Tier II assessment, a significant number of non-attainment areas are imposing stationary or area source controls costing at least a comparable amount per ton of HC removed.

Finally, there is another dimension to cost-effectiveness beyond the efficiency of the control technologies themselves. It is imperative also to consider the cost of not achieving clean air. A 1987 University of California study, which was prominently relied upon the American Lung Association's recent survey of health cost studies of air pollution, estimated that mobile source pollution costs the nation between $4 billion and $93 billion annually. The ALA's best estimate of health costs is in the $45 billion to $50 billion annual range.

The ALA is the nation's foremost public health organization involved in environmental issues, and it has identified additional control of motor vehicle emissions as an essential component of any serious national strategy to ensure healthful air for all Americans. The ALA's documentation of

the necessity for more stringent control of motor vehicle emission emphasizes the reality addressed by the 1990 Amendments to the Clean Air Act. We cannot afford to forego any achievable and efficient means of reducing air pollution from motor vehicles. And if we are to improve the quality of the air our citizens breathe rather than simply keep pace with the burgeoning number of pollution sources, we must demand still further advances in control technology. That is the aim of this Act in general and their Tier II program in particular.

AIR TOXICS

Mr. President, Title III covers toxic air pollutants. These pollutants are one of today's most serious health and environmental problems. Billions of pounds of toxic pollutants are released into the environment every year, routinely and in accidents from many sources. Chemical plants, oil refineries, sewage treatment plants incinerators and hundreds of different sources release hazardous pollutants into the air.

It is true that many pollutants are released in trace amounts. However, even at low concentrations, toxic pollutants may have serious acute and chronic effects.

Literally hundreds of air toxics of concern are emitted each year. Some examples are mercury, arsenic, asbestos, benzene, radionuclides, trichloroethylene (a solvent) perchlorethylene (dry cleaning fluid) (ethylenene oxide (hospital sterilant), toluene (constituent of gasoline) ammonia, ethylene and propylene (building blocks in plastics) methylisocynate (the chemical released in the Bhopal accident) and dioxin (a product of combustion whenever there is chlorine in the fuel).

In April 1989, EPA issued the first Toxic Release Inventory compiled from reports by the Emergency Planning and Community Right to Know Act or 1987. Based on this inventory, EPA reported that in 1987, 2.7 billion pounds of toxic pollutants were released into the air—just from major manufacturing sources. Actual emissions from all sources are likely to be two to five times higher.

These billions of pounds of reported releases of toxic air pollutants aren't just idle statistics. Once released they can be inhaled or injected causing cancers, liver and kidney damage, bronchial irritation, nerve damage, and skin or eye irritation.

In a 1989 study, EPA estimated a national annual cancer incidence of 2,700 cases as the result of exposure to some 15 to 40 toxic air pollutants. This means that 190,000 of the Americans now alive might be expected to contract cancer from exposure to air toxics.

Cancer incidence for the general public is only one part of the problem. There is also an equity concern. Those living near large industrial facilities or in highly developed urban corridors are at very high risk. EPA estimates that cancer risks for these individuals may be greater than 1 in 10,000.

Beyond health risks, these air toxics are causing widespread environmental degradation. Up to 80 of the toxics in Lake Superior are deposited from the air rather than from surface runoff. Lakes all across the northern tier of states are now posted with warnings for pregnant women and children because of high mercury levels in fish from air borne pollutants.

Mr. President, it's true that the existing Clean Air Act—current law—includes provisions for controlling toxic air pollutants. Section 112 of the Act adopted in 1970 requires EPA to list each hazardous air pollutant which is likely to cause an increase in death or serious illness.

However, in the 18 years of administering section 21, EPA has listed only eight substances for regulation—mercury, beryllium, asbestos, vinyl chloride, benezene, radionuclides, inorganic arsenic and coke oven emissions.

It is true that EPA has screened some 900 pollutants. And it is true that in 1983 William Ruckelshaus, former EPA Administrator committed to regulate 25 toxic air pollutants that had been under review since 1977. But the bottom line is that in 18 years EPA has only regulated eight substances.

Several states have made better progress. States like California and New Jersey—with active air toxics programs—have developed on their own standards for 708 substances.

Current law has worked poorly—to some extent—because of the standard of protection required under current law. That standard requires EPA to list each hazardous air pollutant which is likely to cause death or serious illness. Within one year after listing, EPA is to establish emissions standards.

These standards would apply to sources of the listed pollutant—providing an ample margin of safety to protect public health without considering the cost. While this standard may work for threshold pollutants where there is a safe level of exposure, for carcinogens no exposure is safe.

Current law—when literally interpreted—could require standards that would be potentially very costly. As a result, EPA has been reluctant to write standards this stringent.

There is therefore, broad consensus that the program to regulate hazardous air pollutants under section 112 should be restructured. There is broad consensus that current law doesn't work.

In light of this, the bill would entirely restructure the existing law, so that EPA would have authority to regulate industrial and area source categories of air pollution rather than individual pollutants. Moreover, the bill provides new authority allowing cost to be considered in applying controls.

This new approach towards regulation of both routine releases of hazardous air pollutants relies on technology-based standards rather than risk-based standards. This approach is needed to overcome the inertia that plagued the health-based standard setting process authorized by current law.

Specifically, the bill lists 189 toxic pollutants and allows EPA to add or delete pollutants from the list.

Any major source emitting more than 10 tons per year of any one pollutant on the list or 25 tons of any combination, must reduce its emissions using maximum achievable control technology—MACT.

Mr. President, the MACT requirement is the cornerstone of this approach. It means that the source may need to install a scrubber, selective catalytic reduction, adjust the combustion temperature of its equipment, substitute materials or apply other methods to reduce air emissions. With respect materials substitution, the substitution of, or changes in, metal or mineral bearing raw materials that are used as feedstocks or material inputs for the purpose of establishing MACT at mining, extraction, beneficiation and processing facilities should not be considered. Unlike other industries, the mining, beneficiation and processing industry has limited if any flexibility in changing the composition of domestically mined natural resource-based feedstocks.

The bill requires MACT for all major sources of any of the 189 pollutants. However, let me be clear about two points with respect to MACT.

First, the bill directs the EPA to list categories and subcategories for these major sources so that MACT is appropriately applied. Moreover, to facilitate consistency in the regulatory process, Congress expects the EPA to establish source categories under this Title so as to parallel, to the extent practicable the classifications established under section 111 for new source performance standards and under part C for the prevention of significant deterioration.

This directive to the EPA may have relevance to among other industries, primary aluminum reduction plants where the use of two distinctively different technologies—the Soderberg process and the prebaked anode process are already recognized as different processes in EPA promulgated New Source Performance Standards. Therefore, in an effort to minimize confusion and avoid unnecessary cost and dislocations, the EPA should, in establishing subcategories for the aluminum industry, distinguish among plants using Soderberg process aluminum reduction technology and plants using prebake anode technology.

Second, the bill sets a realistic schedule that phases in when MACT would be required. The bill allows MACT to be phased in over 10 years.

Mr. President, once in place, MACT should reduce toxic air emissions by 90%. Unfortunately, in certain circumstances hazardous air pollutants may continue to impose significant adverse health effects even after MACT is in place.

By their very nature, technology standards do not assure that all health and environmental concerns will be addressed. In those circumstances where there is a significant risk remaining—referred to as residual risk—they must be reduced.

This bill, therefore, provides a safety net for residual risk. The bill requires that if after MACT is in place, a significant risk remains, EPA must tighten the standards 8 years after the initial promulgation of the MACT standard. This directive requires EPA to set "residual risk" standards for pollutants that may cause cancer whenever the risk is greater than one in one million to the person in the general population most exposed to emissions from a source in the category.

Another important provision in this Title are those addressing accidental releases. Mr. President, on December 3, 1984, a pesticide manufacturing plant located in Bophal, India released a cloud of a highly reactive and toxic chemical—methyl isocyanate—in one of the worst chemical accidents in history. 3,400 people died, 200,000 were injured.

In August the following year—after countless assertions that "it can't happen again" 409 residents and chemical workers in Institute, West Virginia were hospitalized after being exposed to methyl isocyanate that was accidentally released.

Chemical accidents have become commonplace in the United States. Chemical accidents have been reported in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. Seventy percent occurred at stationary sources, 30 percent were transportation related. Four high-volume industrial chemicals—chlorine, ammonia, hydrochloric acid and sulfuric acid—were the source of injury or damage in one-quarter of these accidents. And more than 400 chemicals were released during reported accidents.

The overwhelming impression one gains from a review of the accidents is that current programs have not been effective. They have not worked in preventing accidents nor in responding to accidents.

It is therefore important and appropriate that the Federal government play a lead role in accident prevention and mitigation.

The reported bill therefore, requires that EPA develop a list of extremely hazardous substances for priority attention. Sources handling such substances must prepare a hazardous assessment that outlines operating procedures, training, preventive maintenance and emergency response plans.

In addition to these requirements, the bill establishes an independent chemical safety board with three members appointed by the President. This board would investigate chemical accidents in much the same way that the National Transportation Safety Board—NTSB—investigates transportation accidents. The independence of this board is critical if it is to objectively determine the causes of accidents.

Another important provision in Title III are those controlling air emissions from solid waste incinerators. Nearly 200 incinerators are planned in communities across the nation, and other incinerators operate across the country without adequate emissions controls. These provisions will ensure that their emissions are controlled with the maximum achievable control technology.

It is important to point out that the Administrator in establishing MACT for incinerators is directed to establish different categories for units combusting municipal waste with capacity greater than 250 tons per day, units with capacity less than 250 tons per day combusting municipal waste and medical waste, and for units combusting commercial or industrial waste. In establishing emissions standards for such units, the Administrator is expected to consider cost of achieving such emission reductions, and may distinguish among classes, types and sizes of units within a category. It is also important to point out that for the purpose of these requirements, industrial units that burn 30 percent or less by weight of refuse such as waste paper, wood, yard wastes, food wastes, plastics and other are to be regulated as industrial incinerators and not municipal incinerators.

I want to also point out that sections 306 and 307 of the Senate bill included requirements that would have required recycling. The Conference Committee has withdrawn the recycling provisions from the final bill because of our belief that recycling should not be addressed piecemeal under the Clean Air Act, but should be addressed in the context of a comprehensive solid waste management framework under RCRA.

ACID RAIN

Overview of How the Acid Rain Program Works

The sulfur dioxide reduction program established under this title operates in two phases. Beginning January 1, 1995, approximately 110 high-emitting utility units will be required to make reductions in their total annual emissions to reach emissions levels no greater than the product of 2.51 lbs/mmBTU multiplied by baseline fuel consumption. Beginning January 1, 2000, all utility units emitting SO_2 at rates equal to, or greater than, 1.20 lbs/mmBTU and with nameplate generating capacity equal to, or greater than, 75 megawatts will be required to reduce their emissions to levels no greater than the product of 1.20lbs/mm BTU multiplied by baseline fuel consumption.

The bill also includes a system of marketable allowances. Through this system, the reduction programs established by the title maximize the range of choices sources have for complying with their emissions limitation requirements. On a regional basis, this may allow areas with substantial reduction obligations and total costs to lower their net costs by producing and selling "extra" reductions—that is reductions beyond those they are required to achieve. At the same time, areas facing growth in the energy demand or units with high emissions control cost on a per ton basis may find that purchasing excess emissions reductions from plants in other areas, rather than making on-site reductions, enables them to comply with their emissions limitations at a significantly lower cost.

Allowance Program for Existing and New Units

The system of marketable allowances established under this title is the compliance linchpin for sources subject to the emissions limitations imposed by this title. When the regulatory program under this Title is fully implemented, the ultimate measure of compliance for a source will be its ability to match its actual annual emissions with the number of annual allowances it holds. In fact, under this title financial and emissions limitation obligations are imposed on the owners and operators of units failing to hold enough allowances to match their units' emissions. Section 403(g) of the Act, as amended by the bill, makes it explicitly unlawful for a unit's sulfur dioxide emissions to exceed the number of allowances held for the unit, rendering the number of allowances held for the unit the legal emissions limitation requirement for the unit.

It is essential to note that this requirement to each unit for which allowances are allocated. While utilities may "pool" allowances allocated for a group of units for their own dispatching purposes, compliance is strictly based on each unit's annual emissions not exceeding the total number of annual allowances held for the unit.

The system works in the following manner. The owner or operator of each unit that must meet a sulfur dioxide tonnage-based emissions limitation under this title will receive from the Administrator annual allowances equal in number to the tons of annual emissions that each unit is permitted to emit once the title's emissions limitations are in effect.

By the beginning of Phase II, the sources subject to the requirements of this title shall be emitting no more than 8.9 million of sulfur dioxide annually (not counting bonus allowances allocated for the first 10 years of Phase II). Thus, the Administrator's authority to allocate and issue allowances is circumscribed by the annual 8.9 million ton emissions constraint (again, leaving aside the bonus allowances authorized in Phase II).

To demonstrate compliance at the end of each year, the owner or operator must submit to the Administrator continuous emissions monitoring data and allowances allocated for that year, or remaining from previous years, that equal the unit's emissions.

Let me point out that this approach reinforces the overall tonnage-performance approach of the reduction program established under this title—that is, that on an annual basis no more than 8.9 million tons of SO_2 are being emitted by utilities. In the face of projected SO_2 emissions growth, estimated to be as high as 4.5 million tons over the next 20 years, that objective would simply be unattainable unless specific tonnage limitations were imposed on each unit.

Let me further point out that the allowances issued under this title are transferable both between units and from a current year to a future year. Any unit that reduces its emissions more than is required will be required to surrender to the Administrator fewer allowances than have been allocated to it. The remaining allowances can be transferred to another unit for its use in meeting its compliance requirements. Alternatively, the remaining allowances can also be applied to meet emissions requirements in a future year.

Mr. President, the transferability of allowances both between units and from current years to future years is the key both to strong environmental policy sought in this title and to the flexibility the title creates for sources in choosing the means for complying with their missions obligations. Since units can gain cash revenues from the sale of allowances they do not use, they will have a financial incentive both to make greater-than-required reductions and/or reductions earlier than required.

Since selling unused allowances is tantamount to selling emissions reductions, the incentives created by the allowance market should stimulate innovations in the technologies and strategies used to reduce emissions. Coupled with the overall flexibility in compliance that the title affords sources, the allowance market should encourage sources to exploit energy efficiency, enhanced emissions control technology, fuel-switching and least-emissions dispatching in order to maximize emissions reductions.

At the same time, the flexibility created by the allowance-trading system alone has been estimated by the EPA to produce a nationwide cost-savings of 50% in Phase I of the program, 14% to 20% when the program is first fully implemented at the beginning of Phase II and a 20% cost-savings in 2010. On a regional basis, allowance transfers also yield significant cost-reductions.

Mr. President, I would also like to point out that in promulgating regulations under this title the Administrator must be mindful first, that allowances are intended to ensure that the aggregate emissions limitation requirements set forth in this title are met. The Administrator must ensure that ultimately there is a precise match between allowances and emissions, and that the regulations do not inadvertently give sources opportunities to produce emissions in amounts that exceed their allowances.

Second, the allowance system is intended to maximize the economic efficiency of the program both to minimize costs and to create incentives for aggressive and innovative efforts to control pollution. In formulating regulations the Administrator should be mindful that to exploit the efficiencies afforded by the allowance system, parties will transfer them between and among themselves pursuant to a wide variety of commercial arrangements such as under leases, sales agreements and exchanges between emissions and electric power or capacity. Ownership of allowances by brokers, investors and other market makers will maintain fluidity in the allowance market, link ultimate utility buyers with original sellers and facilitate rational price-finding.

Additionally, to ensure the full flexibility of the allowance system the Administrator should assure that transfers become effective as quickly as possible with minimal burdens on the parties to the transfer. Since

the essential compliance event under this title is matching each unit's actual emissions with the number of allowances it holds, no unit should be legally entitled to avoid its emissions limitation obligations under this title by claiming possession of allowances held, and applied to compliance, by another source. Thus, transfers should be virtually automatic to minimize or eliminate such claims, for once a transfer was deemed effective, by definition, only one unit could claim the transferred allowances.

Mr. President, it is important to point out that the reason for characterizing the legal or property status of allowances in this title is to make clear that regulatory actions taken subsequent to the issuance of allowances are not subject to the "takings clause" of the U.S. Constitution. Allowances are, in large part, simply iterations of each unit's permit under this title. Since the permits will be legally binding statements of each unit's emissions limitation obligations under the pollution control program established herein, this title makes clear that should Congress or the Administrator limit, revoke or otherwise modify the allowances or the underlying regulatory program established by this title or the regulations promulgated pursuant thereto, the U.S. government will not be obliged to compensate allowance-holders for loss of the allowances or any loss in their value. Allowances are but the means of implementing an emissions limitation program, which can be altered in response to changes in the environment or for other sound reasons of public policy.

At the same time, Mr. President, the allowance system is designed so that the allowances will be treated in part like economic commodities. As such they will stimulate pollution sources to engage in actions that will advance both the environmental and economic objectives of this title. Accordingly, allowance holders should expect that allowances will partake of durable economic value and that commercial and other relevant law will apply to allowances and function to protect that value.

Mr. President, I would also like to comment on the reasons for a post-2000 cap in this title. Without such a cap on emissions in the form of a new source offset requirement, emissions would quickly increase and would defeat the objectives of this title. EPA projects that between 1985 and 2010 new sources, though relatively low-emitting on a unit-specific basis, will add between 800,000 and 2.7 million tons of annual SO_2 emissions in the absence of an emissions "cap". Such emissions growth, if unchecked, would clearly undermine the purpose of the title.

Let me also point out that the aggregate emissions cap is the final ingredient in a recipe for promoting energy conservation as a principal method for reducing acid precursor pollutants. By reducing the amount of fossil-fuel consumed in the process of providing required energy services, energy conservation has the broadest range of environmental benefits simply because it leads to the reduction of all pollutants resulting from fossil fuel use. Energy efficiency is a crucial tool for controlling the emissions of carbon dioxide, the gas chiefly responsible for the intensification of the atmospheric "greenhouse effect".

Thanks to the flexibility created by the transferability of allowances, no individual unit will in practice be bound to a fixed emissions cap by either the emissions limitation requirements or by the new-unit offset requirement. As a result, neither of these requirements will impair utilities' ability to service the energy demands of a growing economy. In fact, history demonstrates that there is little correlation between emissions growth and economic growth. Between 1970 and 1987, the U.S. economy grew substantially, but SO_2 emissions decreased by 28% in that period. During that same period electricity generation increased by 76% and coal use increased by 50%.

In addition, throughout the program, the retirement of exiting units could prove to be a key source of new unit offsets. The EPA estimates that the emissions reductions achieved when a large uncontrolled boiler is retired or repowered could provide offsets for units with three or four times the capacity of the retiring unit.

Finally, the allowance system itself will facilitate new units' access to the needed offsets. Because the allowances market will create incentives for overcontrol—that is, for more emissions reductions than required—new units will be engaging a market already rich with incentives for existing sources to use energy conservation, repowering and improved control technology to achieve the emissions reductions that new units can acquire in the form of offsetting allowances.

Phase I Sulfur Dioxide Requirements

The bill lists approximately 110 units with mandatory emissions reductions in Phase I of this title, although emissions reductions from other units may be substituted in whole or in part for the reductions required of any listed unit shall also be required to make reductions. The listed units represent those units with both the highest SO_2 emissions levels and the greatest opportunities to make cost-effective reductions. The number of allowances specified for each unit is equal to the number of tons of annual emissions to which each affected unit is limited. When fully implemented, Phase I of this title will result in annual sulfur dioxide emissions reductions of 2.8 to 4.4 million tons beginning on January 1, 1995.

Mr. President, this title requires as a matter of law, an absolute emissions limitation obligation on each unit listed in the bill in Phase I. Thus, for example, even if the Administrator fails to implement the allowance or permit programs, the owners and operators of units listed in the bill bear an absolute obligation to meet the emissions reduction. Further, such an obligation is sufficient to trigger liability under this title or any other relevant provision of the Clean Air Act or any other applicable law.

Units subject to Phase I emissions reductions may achieve compliance through the transfer of allowances between and among allowance holders. In implementing these provisions the Administrator's chief responsibility must be to ensure that the emissions reduction trading that an owner or operator proposes to undertake between and among the owner's or operator's units actually results in total emissions reductions that are equal to, or greater than, the emissions reductions that would have been achieved had the listed unit itself. Accordingly, the owner or operator must submit an emissions reduction sharing or unit substitution proposal that demonstrates conclusively that the required reductions will be achieved.

Considering the potential benefits of the allowance trading system in general, this provision is intended to give the owners and operators of Phase I units opportunities and incentives for emissions reduction strategies that lower costs, maximize pollution reduction and promote energy efficiency and innovation.

To enhance cost-saving opportunities for midwestern ratepayers and to protect Appalachian coal miners, Phase I includes a bonus incentive program.

Units using qualifying technological systems of continous emissions reduction, (i.e, 90% removal) upon approval by the Administrator, will receive allowances from a bonus reserve in an amount sufficient in number to permit them to delay compliance until January 1, 1997. In addition, units receiving such allowances may also receive bonus allowances equal in number to the tonnage emissions reductions they acheive below a level equal to 1.20 lbs/mmBtu multiplied by their fuel consumption baselines. The bonus allowances allocated to these units are limited in number of 3.5 million or to a lesser number equal to the total emissions reductions projected by the Administrator to be achieved in calendar year 1995 and adjusted in 1996 if actual reductions are fewer than projected.

Allowance Allocations

Under no circumstances may the EPA allocate basic Phase II allowances so to authorize more than 8.9 million tons of emissions. Should the applicable allocation formulas otherwise result in the allocation of more than 8.9 million in basic Phase II allowance, then the EPA is required to reduce each unit's allocations on a pro rata basis in an aggregate amount equal to the excess allocations that would otherwise be made.

As discussed below, an additional, separate allocation of 530,000 is also authorized. There are also allocation authorized in Phase I and Phase II for Phase I units in certain Midwestern States. These additional Midwestern allocations reflect a complete and final resolution of a lingering methodological controversy sparked by Dr. James Mahoney. Between 0 and 200,000 tons of uncertainty in inventorying emission has been identified; thus 200,000 allowances are allocated "temporarily" in Phase I and an addition 50,000 in Phase II.

Phase II Sulfur Dioxide Requirement

The emissions limitations set forth in Phase II capture virtually every stream-electric utility unit in the 48 contiguous States and effectuate the 10 million ton reduction in annual sulfur dioxide emissions that is a chief objective of this title.

Like units subject to Phase I requirements, this title requires, as a matter of law, an absolute emissions limitation obligation on each utility unit in the 48 States. Thus, for example, even if the Administrator fails to implement the allowance or permit programs in this title the owners and operators of units subject to the emissions limitations have an absolute legal obligation to meet those limitations. Such an obligation is sufficient to trigger liability under this title or any other relevant provision of the Clean Air Act or any other applicable law. Once allowances are allocated, then, by operation of section 403(g) of the Act as amended, the number of allowances held for the unit become the unit's absolute sulfur dioxide emissions limitation.

Mr. President, this title reflects a policy of imposing actual reduction obligations on higher-emitting units, which, as a general matter, can make the most reductions most cost-effectively. At the same time, by permitting emissions increases to occur at lower-emitting units, the title adopts a form of least-emissions dispatching, encouraging

increases in power production to occur at those units with lower emissions rates. In so doing, the title in effect rewards lower-emitting plants by permitting emissions increases at such units.

Phase II begins January 1, 2000 and reductions achieved in calendar year 2000, the first year of Phase II, are banked in a fund of 5.3 million allowances to be re-distributed at a rate of 530,000 a year for 10 years. These allowances are distributed to coal-fired plants with low capacity factors, to plants under construction and to plants in States with State-wide average emissions rates below 0.8 lbs/mmBtu based on each plant's share of electrical generation.

The size of the bonus pool—5.3 million allowances—is intended to match the tonnage reduction achieved in calendar year 2000. Thus, calendar year 2000 is treated as a "banking" year. However, by operation of compliance extensions available to units that adopt repowering technologies for purposes of compliance, year 2000 reductions may be fewer than 5.3 million tons. To compensate for this, the EPA is required to calculate the number of allowances that will be allocated in year to 2000 to implement the extension (*i.e.*, those required to cover the difference for each unit between 1.2 lbs/mmBtu X baseline and uncontrolled levels) and to reduce pro rata all units' basic Phase II bonus allocations for each of the first 10 years in an amount equal to 10% of the total repowering extension allowances allocated in year 2000.

The legislation does not require such a "ratchet" to compensate for *all* allowances allocated to extension units in every extension year simply because current projections are that very few units will delay compliance under the repowering extension. Had projections been otherwise, the legislation would have treated these delayed reductions differently.

In addition to the alternative formulas for allowance allocations to coal-fired plants and the formulas for oil and gas plants, the Senate bill includes a provision for "clean States". This specifies that plants in States whose average utility emissions rate of SO_2 is at or below 0.8 lbs/mmBtu may, at the election of the Governor, receive allowances under the set of *non*-capacity-factor-based "120%" formulas enumerated below plus allowances from a 125,000-allowance bonus pool based on their share of electrical generation.

Units >75 MWe and >1.2 lbs/mmBtu ("Big Dirties"), 1.2 lbs/mm/btu X baseline, plus, (a) for units emitting between 1.2 lbs/mmBtu and 2.5 lbs/mmBtu, with low capacity factors during the baseline period, bonus allowances equal to half the difference between the unit's capacity factor during the baseline period and a 60% capacity factor or (b) the "clean State" allocation.

0.6 lbs/mmBtu < Coal-fired Units < 1.2 lbs/mmBtu, for plants in States that do not qualify as "clean States", either (a) 1985 rate X baseline X 120% or (b) 1985 rate X baseline at a 60% capacity factor; for "clean State" plants, (a) plus a share of the 125,000 bonus allowances, based on share of electrical generation. After 2010, these plants receive allowances equal to (a).

0 < Coal-fired Units < 0.6 lbs/mmBtu, for plants in States that do not qualify as "clean States" either (a) the lesser of 0.6 lbs/mmBtu or SIP rate X baseline X 120% or (b) the lesser of 0.6 lbs/mmBtu or SIP rate X baseline at a 60% capacity factor; for "clean State" plants, (a) plus a share of the 125,000 bonus allowances, based on share of electrical generation. After 2010, these plants receive allowances equal to (a).

0.6 < lbs/mmBtu < Oil/Gas-fired Units < 1.2 lbs/mmBtu, 1985 rate X baseline X 120%, plus, for "clean State" units, a share of the 125,000 bonus allowances, based on share of electrical generation.

0 < Oil/Gas-fired Units < 0.6 lbs/mmBtu, for units whose average fuel consumption in 1980–89 was less than 90% in the form of natural gas, the lesser of 0.6 lbs/mmBtu or SIP X baseline X 120%, plus, for units in "clean States", a share of the 125,000 bonus allowances, based on share of electrical generation.

Gas-Dominated Units, for units whose average fuel use in 1980–1989 was more than 90% in the form of natural gas, 1985 rate X baseline; plus 0.050 lbs/mmBtu X baseline or, for units in "clean States", until 2010, a share of the 125,000 bonus allowances, based on share of electrical generaton. After 2010, all units in this category receive allowances equal to 0.050 lbs/mmBtu x baseline.

Pre-Enactment Units (On line between 1985 and 1990/date of enactment) allowable rate X 65% capacity factor.

Grandfather/Transition Rule Units

Units on line between September 30, 1990 and December 31, 1995, allowable or 0.3 lbs/mmBtu X 65% capacity factor. In addition, approximately 11 plants receive an outright allocation specified in the bill.

For units emitting at a 1.2 lbs/mmBtu rate or greater which are smaller than 75 MWe and part of a utility system greater than 250 MWe, 1.2 lbs/mmBtu X baseline, plus, for such units whose capacity utilization was less than 60%, allowances equal to half the difference between their capacity utilization during the baseline period and 60%. For units emitting at a 1.2 lbs/mmBtu rate or greater which are smaller than 75 MWe and part of a utility system smaller than 250 MWe, allowances equal to 1985 rate X baseline.

Repowered Sources

Mr. President, with respect to repowered sources, this title provides an extension for a subset of clean coal technologies specifically designed for, and applied to, boiler replacement or "repowering". These include, atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells or a derivative of one of these techniques as determined by the Administrator, in consultation with the Secretary of Energy.

This extension is provided only for repowering technologies because they require substantial modification or replacement of the boiler and other essential components. In order to utilize these technologies, the unit must be largely rebuilt. In contrast, other clean coal technologies involve retrofits of existing units without such substantial modifications. No extension, with a commensurate temporary loss of emissions reductions, is warranted for these technologies.

During the extension period, the Administrator shall issue annually SO_2 allowances equal to the affected unit's baseline multiplied by the lesser of the unit's Federally approved State Implementation Plan limitation or its actual emission rate for 1995. Such allowances may not be transferred to any other source. The owner or operator shall notify the Administrator 60 days before removing the unit from service to install the repowering technology. On that date, the source shall be subject to emissions reductions requirements and allowances for the year in which the unit is removed from operation to install the repowering technology shall be calculated by multiplying 1.20 lbs/mmBtu by the existing utility unit's baseline divided by 2,000. Such allowances are transferable.

Allowances after repowering is complete shall be the product of 1.20 lbs./mmBtu of SO_2 multiplied by the existing utility unit's baseline divided by 2,000.

NO_x Program

New section 407 requires that beginning in 1995, Phase I plants with tangentially-fired boilers meet a 0.45 lbs/mmBtu NO_x emissions rate and that Phase I plants with dry bottom wall-fired boilers or cell burners meet a 0.5 lbs/mmBtu NO_x emissions rate, unless the EPA sets a higher rate upon a finding that any such boiler type cannot achieve the prescribed rate using low NO_x burner technology. In addition, the EPA is required, by January 1, 1997, to set emissions limits for wet bottom wall-fired boilers, cyclones and any other utility boiler type. These emissions limits must be based on available technology, costs and energy and environmental impacts for the best system of continuous emissions reduction and must be comparable in cost to the limits set for the Phase I units. At the same time, the EPA may revise the limits set for Phase I boiler types, but such revised limits shall not apply to Phase I units. By January 1, 1994, the EPA must promulgate a revised NSPS for NO_x based on improvements in technology.

If, after installing and correctly operating appropriate control equipment, a unit demonstrates that it cannot meet the relevant standard, then the relevant permitting authority may set a less stringent standard for the unit. Units may also comply by multi-unit emissions averaging if, in a petition to the permitting authority, they demonstrate that the averaged rate is less than or equal to the Btu-weighted rate of each unit in the absence of the proposed averaging.

Cumulative reductions are forecasted to be 26–29 million tons below projected or base case levels by 2010, and 2.0–2.2 million tons a year in 2000 and 2.0–2.5 million tons a year in 2010 as the revised NSPS begins to show an effect.

Election for Additional Sources

Mr. President, this title also provides that sources not otherwise subject to the acid rain requirements may voluntarily become part of the acid deposition control program and obtain allowances to trade within the program. This adds flexibility and can enlarge the universe of sources for which there are cost-effective reductions emissions of SO_2 or NO_x. This section provides a useful additional source of reductions that can be made voluntarily by sources choosing to be affected by the provisions of this title. Unaffected utility sources, industrial and process sources are all eligible to become affected sources under this section. There are a variety of circumstances that would persuade an owner or operator to "opt-in" under this section.

For example, sources in a State expecting increased demand for electricity with fairly low levels of emissions from utilities may turn to industrial sources within the States as a source of allowances to ease the restrictions of the cap. The utility and industrial source may contract for allowances and pollution control costs in order to assure the

utility future sources of allowances for growth.

Excess Emissions Fee

This title also requires that sources that emit SO_2 or NO_x in excess of the allowances such source possesses for any calendar year shall pay an excess emissions fee of $2,000 per ton. This provision eliminates any financial benefit such owners or operators might have received from non-compliance with this title. The fee is designed to annually to keep pace with inflation. The fee is designed to be high enough that most pollution control options will be cheaper than continuing to unlawfully emit the pollution. Currently, there is all too often a financial incentive to find ways to circumvent or avoid compliance with the law. This new section of the Act is an important mechanism for removing such rewards for noncompliance.

In addition, once a source has been determined to be subject to the excess emissions fee, the source must submit a plan demonstrating how such source will reduce its emissions to achieve the requirements of this title, including a plan to achieve required offsets.

Monitoring, Reporting, and Recordkeeping Requirements

This title also includes requirements for continuous emissions monitors at each affected source and clarifies the recordkeeping requirement necessary to implement the acid rain requirements.

One of the major criticisms of the Act as currently implemented is that it is so easily, "gamed" by sources that have a disincentive to comply with the Act's provisions. The allowance system of this title attempts to reverse the economic equation so sources will have an incentive to comply. The provisions in this section are crucial in determining whether a source has complied. Unlike other control requirements of the Clean Air Act, utility emissions of SO_2 and NO_x are capable of verification in a cost-effective manner through use of continuous emission monitors.

The requirements for CEMS is the linchpin in this title for without good emissions data, a problem that has hampered enforcement of the Act to date, no allowance or emissions trading scheme can affectively operate.

Repeal of Percent Reduction

In 1977, the Clean Air Act was amended to require that the new source performance standards for fossil fuel-fired stationary sources be expressed as a percentage reduction in emissions from uncontrolled levels. This amended mean that coal alone, without regard to its sulfur content, could not be used to meet the new source performance standards as had been the case before 1977.

After 1977, all new sources, under the percentage reduction requirement, had to install a system on continous emissions control. In practice, this meant that all new utility power plants burning coal had to install scrubbers even if they were burning low sulfur coal. This exacerbated a regional split over coal use and air pollution control that had existed for some time. The original intention of the provision was to prevent western low sulfur coal from shutting eastern high sulfur coal out of the fuel market.

The provisions of this title reduce the need for a percentage reduction requirement because of the total cap on U.S. utility emissions of sulfur dioxide. After the year 2000, utilities can emit only 8.9 million tons of sulfur dioxide. With an expanding economy, this will lace a premium on the cleanest possible power plants. New sources will try to reduce their emissions as much as possible or purchase allowances for the difference in emissions.

This provision is in no way intended to allow an increase in emissions for pollutants for which a standard has been set under section 109 of the Clean Air Act. Sources commencing operation after this section takes effect cannot emit more than they would have emitted without this provision.

The bill also allows the Administrator to consider the use of clean fuels to meet BACT requirements if a permit applicant proposes to meet such requirements by using clean fuel.

Permits

Permits are to require sources to meet applicable emissions limitations and the provisions of the title. Not later than 30 months after enactment owners or operators must submit permit applications that specify methods and schedules of compliance and statements of any intent to use alternative methods of compliance. This language, along with provisions that allowance transactions automatically amend permits and that notices amendments amend compliance plans, is intended to insure flexibility. To counterbalance plans, is intended to insure flexibility. To counterbalance this, the bill requires compliance plans to bind units to complying with emissions limitation requirements even in cases where alternative compliance strategies fail.

Phase I compliance plans are binding for the purposes of compliance until permits are issued. Any utility that plans to meet Phase I reduction requirements by shifting electrical generation load from a Phase I unit to a non-Phase I unit must identify those units, which would, in turn, be required to limit their emissions to 1985 levels.

Phase II permits are to be issued by State permitting authorities. In the case of units with multiple owners, no permit may be issued until the designated representative of the owners files a certification concerning the holding and distribution of allowances. Allowances will be deemed to be held or distributed (but not used) in proportion to each owner's ownership share of the unit.

Notwithstanding the broad latitude granted in the compliance planning process afforded units not adopting alternative methods of compliance, section 408(a) of the act as amended by this legislation specifically provides that the provisions of title IV shall be implemented by permits issued for each unit. The provisions to be incorporated included not only each unit's emissions limitation requirements but the requirements of sections 403, 409, 411, 412, 413, and 414 (all added to the Act by this legislation).

New section 408(a) together with new section 408(h) make it absolutely clear that the requirements of new title IV supersede any permit to the extent that the permit does not itself incorporate the provisions and requirements of the title. Subsection (a) expressly bars the issuance of any permit that does not include the applicable provisions of the title. Thus, a permit or compliance plan shall not alter requirements of the title that are essential to achieving the emissions limitation requirements imposed on each and every unit by the title itself or to ensuring the proper and accountable functioning of the allowance/compliance system established in the title.

Section 408 also makes it clear that the permit-compliance "shield" established in new title V applies to units subject to the requirements of title IV only to the extent that the unit is in "compliance . . . with a permit . . . which complies with this title. . . ." This is essential to the design of the emissions reduction program established under new title IV. In the legislation itself, Congress has prescribed precise emissions limitations for each and every utility unit that are legally effective by operation of the legislation itself. In addition, the legislation sets up a nationwide emissions allowance system for compliance—a system that could achieve significant cost-reduction in addition to substantial emissions reduction, but only if the system works to function as a fluid, robust market.

Thus, because the essential elements of the program have been established in the legislation itself and do not require significant intervening activity on the part of the EPA or state authorities, it is the emissions limitations and the allowance allocation formulas and the other requirements necessary for making the system accountable and functional that must supersede any permit provision that is contradictory or inconsistent.

Finally, new section 408 includes a provision to buttress the interests of minority-share owners of a unit for which allowances are allocated. Without imposing any affirmative responsibilities or liabilities on the EPA—ultimately the protection of minority-share owners is a matter of commercial law, not environmental regulation—the legislation requires that multiple owners of a unit must reach agreement on the party that will represent them for purposes of compliance with the title. Allowances are allocated for units, not to persons. Consequently, the EPA can play little role in pre-determining equity in the disposition of allowances allocated for a multiple owned unit. However, since the EPA cannot act with respect to the allocation of allowances in the absence of a certified designated representative of the owners, the agreement that the owners will have to reach in designating a representative will give the minority-share owners powerful leverage in ensuring that they are equitably treated by their commercial partners.

OUTER CONTINENTAL SHELF POLLUTION

This bill adds a new section to the Act identical to the House passed bill except that existing sources will have 24 months to comply after the Administrator has promulgated requirements applicable to air pollution from all outer Continental Shelf (OCS) sources, except sources offshore, Texas, Louisiana, Mississippi and Alabama.

For OCS sources within 25 miles of the seaward boundary of a state, these EPA requirements must be the same as would be applicable if the sources were located in the corresponding onshore area. The requirements take effect with respect to new sources on the date of promulgation and for existing sources twelve months later and are enforced as standards promulgated under Section 111. States may be delegated the authority to implement and enforce the requirements if they submit regulations to the Administrator which the Administrator finds are adequate. For OCS sources located offshore Texas, Louisiana, Mississippi and Alabama, the Secretary of the Interior shall complete a study of the impacts of air pollutant emissions on coastal air quality. The bill defines the terms "corresponding onshore area" and "OCS source".

Subsection (a) is intended to cover all OCS sources except those located in the Gulf of Mexico west of longitude 87 degrees

30 minutes. For sources located further than 25 miles from the seaward state boundary, it is intended that the EPA administrator analyze the extent of onshore air pollution impacts and require an appropriate level of pollution control to protect Federal and State ambient air quality standards and prevent significant deterioration of air quality.

OCS facilities located within 25 miles of the seaward state boundary, will be regulated using the same air quality protection requirements as would apply if the OCS sources were located within the corresponding onshore area. These requirements are intended to include, but not be limited to, emission control requirements for new, modified, and existing facilities; offset requirements for new and modified facilities; and permitting, monitoring, reporting, enforcement, and testing requirements for all facilities. Administrative requirements, including the assessment of fees, will be established by the air quality permitting agency. The provisions will minimize differences in air pollutant regulations which currently exist between OCS sources and sources located in the corresponding onshore area. OCS air pollution is to be regulated to protect both Federal and State ambient air quality standards, and to prevent significant deterioration of air quality. It is intended that OCS emissions be included in any State Implementation Plan (for the corresponding onshore area) required under this Act.

Marine vessels emissions, including those from crew and supply boats, construction barges, tugboats, and tankers, which are associated with an OCS activity, will be included as part of the OCS facility emissions for the purposes of regulation. Air emissions associated with stationary and in-transit activities of the vessels will be included as part of the facility's emissions for vessel activities within a radius of 25 miles of the exploration, construction, development or production location. This will ensure that the cruising emissions from marine vessels are controlled and offset as if they were part of the OCS facility's emissions. Few OCS sources and modifications to existing OCS sources shall comply with the requirements of this subsection on the date of rule promulgation. Existing OCS sources shall comply on the date 24 months after rule promulgation. New sources are defined as per Section 111(a) of the Act to include any source which commences construction after promulgation of the rule. Any exploratory well which has commenced drilling by the date of rule promulgation shall be considered an existing source.

The responsibility for OCS air regulation is transferred from the Interior Department (under OCSLA) to the Environmental Protection Agency (EPA), in order to ensure consistent implementation of air quality laws and regulations for both onshore and offshore sources. EPA should not write a unique set of requirements, but should include the same requirements for emission controls, offsets, permitting, monitoring, reporting, and testing, as would apply if the OCS source was located in the corresponding onshore area. It is also expected that EPA will delegate Clean Air authority to regulate air pollution in the corresponding onshore area, whether that agency is a state or local air regulatory agency. EPA should delegate such authority expeditiously following receipt of a written petition requesting delegation from an onshore air regulatory agency. EPA should not withhold such delegation unless EPA finds that the onshore air regulatory agency's regulations are substantially inadequate to meet the requirements of this Act.

Subsection (b) requires the Secretary of the Interior to complete a study of the impacts of current and future OCS emission sources located in the western and central Gulf of Mexico, west of longitude 87 30, on air quality within the States of Texas, Louisiana, Mississippi and Alabama. It is intended that the Secretary consult with the EPA Administrator on the scope and content of the study and on recommended actions which are found to be necessary based on the results of the study.

PERMITS AND ENFORCEMENT: ENSURING CLEAN AIR

The new legislation also establishes a comprehensive permit program that requires, for the first time, every major source to obtain an operating permit. The Conferees strongly believe this is necessary to ensure better enforcement and faster implementation of control requirements.

The bill also includes new enforcement provisions that broaden the scope of activities that can be the subject of civil or criminal sanctions and penalties.

Under these provisions, States will be required to adopt permit programs which must include, among other things, requirements for permit applications, monitoring and reporting requirements, a permit fee program, requirements for adequate personnel and funding, and authority to review, issue and enforce permits.

We recognize that the permit program is predicated on the principle that the primary responsibility for its day-to-day administration will rest squarely with state and local air pollution control agencies. While EPA has an important role of providing guidance and general oversight, the agency should not unduly interfere with states' implementation of the permit program.

The Act also gives EPA the authority to exempt certain categories or types of sources from the notification requirements of the permitting program. We believe that EPA should exercise this waiver authority judiciously, particularly with regard to types or categories of permits that merely incorporate provisions of already approved regulations within State Implementation Plans. We also encourage EPA to use discretion in electing to add categories of permits that are not required to comply with the notification requirements identified in this title.

The permit program also requires state and local permitting agencies to revise draft permits (which are subject to notification requirements) if EPA objects in writing. This section is not intended to require that state permits be revised to contain the exact language which EPA may suggest in its written objections. As long as the state modification adequately meets the substance of the EPA objections, and such revisions are necessary to meet requirements of the Act, the revised state permit is expected to be accepted by EPA and allowed to be issued.

In addition, the Conferees recognized that while the permit provisions may work well for large businesses, small businesses may need some help. That is why the bill includes a technical assistance program for small businesses. In satisfying the requirements of the small business technical assistance program, it is our intent that the required revisions to the State Implementation Plans be non-regulatory revisions. As such, the states will be able to develop more flexible and efficient programs tailored to each state's small business needs, while at the same time allowing state and local air pollution control agencies to impose requirements in the most cost-effective manner.

Finally, with respect to permit fees, it is our intention that the program provide state and local permitting authorities with an adequate source of revenue to cover both the direct and indirect costs of administering not only the specific permit program, but those related activities that support the program. We recognize that the permits issued under this title will be the primary compliance and enforcement mechanism for achieving the goals of the Act. Accordingly, the annual fee should reflect not only the direct costs of administering the program, but the broader, indirect costs associated with the proper administration of state and local programs, such as modeling, monitoring, enforcement (including inspections), etc.

Mr. BAUCUS. Mr. President, I would like to sum up by saying that this has been a team effort. It has often been said, and it bears repeating, that there are two George's that are primarily responsible for this major effort today.

First, George Bush, who submitted legislation to the Congress. George Bush turned around the previous administration's point of view—the Reagan administration was very opposed to clean air. The Bush administration very much is in favor of clean air legislation. President Bush deserves major credit.

The major credit goes to our majority leader, GEORGE MITCHELL. GEORGE MITCHELL has been working tirelessly for over a decade to try to get the passage of clean air legislation. He almost accomplished that goal 2 years ago, but was unable to do so because various Senators could not agree on a bill. But he finally, today, is seeing the passage of clean air legislation which includes not only a very, very significant acid rain title, but also other titles on global sources—chlorofluorocarbons, air toxics, much more than even he, I think, anticipated when he started this effort a few years ago.

Mr. President, in addition to the two George's, I would like to again compliment my teammate on the Environment and Public Works Committee, Senator CHAFEE. I cannot think of anyone with whom it is easier to work with than Senator CHAFEE. He worked tirelessly, and always in good cheer. It is amazing, it is remarkable. I am very honored to be joining with Senator CHAFEE in the passage of this bill.

Mr. President, I would also like to pay special attention to and point out the work of the chairman of our committee, Senator BURDICK. Senator BURDICK has marshaled this process. He has created the conditions under which this process has worked with no partisanship, rather on a collegial basis, and I would like to again thank the chairman for his insistence and for

his assistance helping make this come to pass.

I would like to finally close, Mr. President, with a quote that I gave late night as we were discussing this bill. This is a quote by a Dr. Dubos, one of the fathers of modern environmental science.

I think it is very appropriate to what we are doing here today. He pointed out that some legislation is more important than others. Sometimes men and women leave a mark that is worth remembering, sometimes not. He is basically remarking upon how we, as Senators; we, as Americans, are really stewards for this great world of ours, this great country of ours, and it is our responsibility to do the best we can to leave a better place for our children, for the next generation. This is what he said:

> Concern for the future is a mark in the glory of the human condition. Men come and go, but however limited their individual strength, small their contribution, and short their lifespan, their efforts are never in vain because like runners in a race they hand on the torch of life.

Mr. President, by voting to adopt this conference report, each of us in this Chamber can, in a small but important way, hand that torch on to the next generation.

I thank the Senators for their consideration and urge their support for this conference report.

Mr. BOREN. Section 405(d)(4) is very important to the utilities in my State. That section pertains to certain clean coal-fired units that commenced operations between 1981 and 1985. Under section 405(d)(4) these units are entitled to receive allowances based upon their allowable 1985 sulfur dioxide emission rate. That term is defined in section 402(18) to mean "a federally enforceable emissions limitation for sulphur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million BTU, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of the emissions limitation in pounds per million BTU to establish the allowable 1985 emission rate."

My understanding is that under section 405(d)(4), if my Oklahoma utilities have an otherwise qualifying unit with a sulfur dioxide rate in their Federal permit or in the applicable State implementation plan of 1.2 lbs/mm BTU, that rate without further adjustment in the calculation, is to be used in the calculation of that unit's allowances.

Mr. President, I yield the remainder of my time.

Mr. CHAFEE. Mr. President, how soon do we vote?

The PRESIDING OFFICER. The Senator from Rhode Island has the remaining 1½ minutes.

Mr. CHAFEE. Mr. President, I yield a minute to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, let me say to the Senate I have been privileged to work on every Clean Air Act prior to this one. This was the most difficult one from the inception, but I think the way it was put together, the input from various regions of the country, has produced a marvelous product.

I think history will reveal that considering the changing times in the world, this is a landmark piece of legislation. I compliment all of those who worked on it. It was a pleasure to be a small part of it.

Mr. President, today is an important day for the American public. Today, after 10 years of consideration, the Congress is finally sending a new Clean Air Act to the President for his signature.

The Clean Air Act has not been reauthorized since 1977. In early 1981, the Environment and Public Works Committee began hearings on a new Clean Air Act. Ten years later, we are finally completing the task.

The conference report before us represents a significant strengthening of current law. It aggressively tackles the problems that have emerged since 1977 when we last amended the law.

Most significantly, Mr. President, this conference report establishes a new acid rain control program which requires that 10 million tons of sulfur dioxide be removed from our skies by the year 2000. Never before have we undertaken such an aggressive cleanup program.

And the acid rain program that we authorize here is fair to all regions of the country. It is essentially what the Senate passed back in March of this year—a compromise worked out and supported by every region of the country. For my region of the country—it recognizes the fact that we already have extremely clean powerplants.

In New Mexico, all 10 of our coal-fired powerplants have scrubbers. Our statewide emissions rate is around 0.6 pounds per millon BTU's. Compare that average, Mr. President, with the acid rain requirement that all plants in the country by 2000 meet a 1.2 pound standard. New Mexico is today at half the rate where America will be in a decade. I'm proud of that.

Because New Mexican ratepayers are already paying high utility bills in order to have clean air, this Conference Report rewards them—and other clean States—with a modest number of bonus allowances, a provision that I authored here in the Senate. These allowances are available to all States with a 0.8 statewide average and will ensure that our clean plants will not at an early date face the need to purchase allowances in order to grow.

We already know that growth that will occur in New Mexico and other Western States will be superclean because under the Prevention of Significant Deterioration Program [PSD], best available control technology [BACT] must be used, and BACT will become increasingly more stringent.

That means our Western skies will remain clean. But under this acid rain title, our ratepayers will not confront even higher utility bills.

Western skies will also benefit from the major research proposal initiated under the visibility section of this conference report. Polls in New Mexico and national polls have shown that the American people place a high value on their ability to see for long distances. The research proposal contained in this conference report will provide us with valuable information on how to proceed to tackle this important matter.

Another extremely important initiative in this bill relates to how we address hazardous air pollutants. For 10 years, we have been grappling with the question of how best to regulate these pollutants. While everyone agreed that the existing program under section 112 has not worked, there was no agreement on how to change the program to make it more effective.

After protracted discussions this bill offers a compromise. The basic structure of the air toxics title is to require an initial level of tight controls on all major sources of toxic air releases. This level of controls is determined strictly on the basis of the availability of technology, not on any defined risk to the public.

It was agreed that these technology requirements were a necessary first step to assure the public that measures are being taken to address this serious public health threat.

Once the technology is in place, however, further reductions could occur, based on a determination that risks still remain; this is the so-called residual risk determination. Because the determination of risk is so difficult to evaluate, two provisions that I and others pushed in the Senate bill, have been retained in this conference report.

One provision calls for a National Academy of Sciences comprehensive review of current risk assessment methodology used by EPA and alternative approaches and the preparation of a report with recommendations on how the process can be strengthened. As a result of these recommendations, EPA would revise its Guidelines for Carcinogenic Risk Assessment as appropriate.

The second provision establishes a Risk Assessment and Management Commission to review the NAS study and other relative information to help provide Congress with guidance on how to refine the "residual risk" process.

It is my hope that these two studies will provide EPA and the Congress with the necessary information so that when residual risk determinations are made in the coming years, they will be based on the best scientific and policy information available.

Other important provisions of this conference report include: First, an aggressive program to bring the nonattainment areas of this country into compliance with health standards; and second, new automobile tailpipe standards and provisions for new, cleaner fuels.

All combined, Mr. President, this conference report represents an incredible undertaking to resolve the remaining air pollution problems that plague this Nation.

In closing, let me say that this bill is not perfect. There will be some who will say that we have not done enough. There will be others who argue that the bill is too expensive. Both sides may be right.

However, Mr. President, the American people deserve a new Clean Air Act. And this Conference Report represents a major, important undertaking. My congratulations go to all of the conferees, who have labored long and hard to produce this product—especially the conference chairman, Senator BAUCUS and ranking minority member, Senator CHAFEE. And I would be remiss if I did not recognize the staff who spent even longer hours to make this bill a reality. The American people thank the members and staff for their perseverance.

PROVISIONS ON VEHICLE EMISSIONS TESTING

Mr. WIRTH. Mr. President, I would like at this time to draw special attention to a provision in the conference report that authorizes the EPA to establish vehicle emissions testing centers at high-altitude locations.

One of our Nation's clean air objectives is to reduce the visible pollutants emitted by heavy duty diesel trucks, buses and off-road vehicles. Hand-in-hand with this is the desire to eliminate the presence of invisible, yet highly toxic, carbon monoxide, hydrocarbons and oxides of nitrogen produced by light duty trucks and passenger vehicles. These objectives are especially pertinent to Colorado where Denver suffers from one of the highest levels of carbon monoxide in the country. The presence of carbon monoxide reduces the capacity of the lungs to exchange oxygen, thus effecting both the nervous and respiratory systems. Reducing the presence of carbon monoxide, as well as the visible particulate matter in our air will only be accomplished through vigorous and advanced research efforts dedicated to developing engine and fuel technologies that will result in cleaner burning vehicles.

Colorado, because it is extraordinarily affected by polluting vehicles, has engaged in a number of aggressive clean air campaigns. Our location at high altitudes, where the level of oxygen is lower, temperatures are colder and wintertime temperature inversions frequently occur, produces, unique pollution problems that cannot be solved at sea level vehicle emissions research and testing centers. For this reason, our State department of health and State universities have spent considerable time and resources in developing technologies that will result in the elimination of polluting vehicles from our communities.

For instance, the National Center for Vehicle Emissions Control and Safety has been at the forefront of research and development dedicated to improving the quality of air in high pollution communities across the country. This Center was established by the EPA in 1976 and has conducted ongoing research in the areas of aftermarket emission components, dual-fueled vehicles, conversion kits, effects of tampering on emissions equipment, and alternative fuels. Their research efforts have ranged from conducting the EPA's national tampering survey for the last 5 years to in-House laboratory experiments for the State of Colorado on the effects of diesel emissions on opacity at high altitude.

Testing, research, evaluation, training of emissions control maintenance personnel and development of cleaner burning engines and fuels are extremely important to Colorado, to the Rocky Mountain West, and to our efforts to clean the air in our communities. I am pleased that the conference report on the clean air bill recognizes the special circumstances of high altitude pollution and takes steps to clean and protect the air of Colorado and other Western, high altitude States.

Mr. CHAFEE. Mr. President, I yield the remainder of my time.

Mr. JOHNSTON. Mr. President, I applaud the Senate in its perseverance of the Clean Air Act Amendments of 1990. The conference principles agreed to strive to be tough, yet balanced, moving a long way toward protection and enhancement of public health and welfare. Many provisions should also allow some degree of flexibility to ensure that technical feasibility, energy policy implications, and costs are considered along with environmental amenities in EPA's implementation of the bill.

However, I am most concerned about the lack of any relief mechanism in the transportation fuels provisions of the bill if science, engineering, and economic factors fail to achieve the mandates required within the prescribed phase-in periods. The Energy and Natural Resources Committee received several very disturbing Congressional Research Service reports concerning the technical and economic feasibility of the transportation fuels provisions this past summer. In its September 1990 report on alternative fuels, the Office of Technology Assessment similarly warned of the very speculative and as yet unquantified nature of potential environmental benefits that would result from a mandate to reformulate gasoline. OTA concluded: "We cannot overstress the uncertainty associated with projecting the emissions-reduction potential of reformulated gasoline." I expressed my concerns in more detail in the statement I made here on October 17, 1990, on the dire energy policy implications that could result from inflexibility respecting the reformulated gasoline provisions in this bill, and I reference those remarks here.

I understand that the final mobile sources provisions drafted by staff differ in significant ways from those agreed to by the Senate when we passed S. 1630 last April. Changes were made to reflect concerns of the environmental community, farm and labor groups, fleet operators, and auto manufacturers. However, unlike extensions of time for compliance or outright exemptions provisions available under, for example, existing 110(f), 110(i), 112(c)2, 118, or new 248(e), the transportation fuels provisions still do not reflect needed flexibility on the part of EPA if serious adverse effects on domestic energy supplies, transportation fuels availability, or national security arise during implementation.

I believe that this potential for flexibility is essential for consumers, national economic health, and industry. There should be language in the bill to provide relief, if necessary, as the implementation of the bill occurs over the next several years.

Such language should not compromise the goals of the bill. It should require a high standard of need conveyed to Congress justifying the extension, and should require that the President make concrete recommendations to alleviate any implementation problems. If proponents of various fuels provisions are correct in their predictions concerning feasibility, the language would never be invoked. However, I believe that the ability to modify the transportation fuels requirements as essential scientific and engineering data become available is crucial to avoid the potential for supply shortages, and serious economic hardship for consumers. I urge my colleagues to be prepared to grant extensions expeditiously if problems regarding transportation fuels availability, national security, or other serious

adverse effects on domestic energy supplies appear on the horizon.

Mr. BINGAMAN. Mr. President, I rise today in support of the most important piece of environmental legislation to be passed in the past decade—the reauthorization of the Clean Air Act. The conference report we consider today represents a far-reaching program to clean up air pollution.

The legislation will reduce urban smog through tougher controls on automobile pollution and the use of cleaner burning fuels and would expand the regulation of toxic emissions from factories to lessen cancer risks. It also would combat acid rain by making utilities cut sulfur emissions and would seek to safeguard the Earth's protective ozone layer by phasing out the use of ozone-depleting chlorofluorocarbons by the year 2000.

Specifically the bill would:

Phase in new tailpipe standards for cars and light trucks intended to reduce emissions of hydrocarbons and nitrogen oxides and mandate the use of cleaner burning vehicles;

Tighten controls on industrial pollution, for the first time extending them to small sources;

Expand to 189 the number of airborne toxins regulated by the Environmental Protection Agency; and

Require 107 utility plants in the Midwest and the Southeast to cut emissions of sulfur dioxide by 10 million tons in 10 years.

The benefits of this legislation—in both lower health care costs and in the lives that will be saved by taking poisons out of the air Americans breathe—will be incalculable. We are putting in place policies that will help protect our citizens' health and clean up the pollution that threatens our environment.

While some of the provisions fall short of what I or what many of my colleagues would like to have seen included, on balance the conference report we consider today does represent a major breakthrough in the decade-long deadlock in Congress over reauthorizing the 1977 Clean Air Act.

Every community in New Mexico, large and small, stands to benefit in some way from this legislation. Our urban areas will benefit from improved visibility and air quality. The bill includes a provision I authored which authorizes a clean air study of the causes of degraded visibility in southwestern New Mexico, especially on the Mexican border near Las Cruces. But smaller towns and communities also will benefit from the legislation. I am particularly pleased that one of the provisions I fought hardest for—the requirement that government and private automotive fleets shift to less polluting alternative fuels—was included in the final compromise. This provision should be especially welcome in communities such as Portales and Tucumcari which produce grains such as corn grains which are necessary to produce ethanol, one of the fuels that will be encouraged through the provision.

Additionally, improved markets for alternative fuels will create and enhance the demand for natural gas—our cleanest burning fossil fuel—which New Mexico produces in great abundance in the San Juan and Permian Basins. Natural gas also stands to benefit as dirty midwestern utilities seek clean burning alternatives to high sulfur coal such as natural gas to fuel their boilers for electricity generation.

Finally, the acid rain section of the conference report includes flexible language for western utilities which I strongly advocated. This language will allow electric utilities in the west to be able to expand their coal-fired powerplants to meet future growth needs. Utility companies will be allocated allowances that will let them expand their capacity without exceeding the emission limits set up by this bill. This flexibility recognizes the significant improvements that have been made by utilities in the west that have already invested heavily in clean technology.

I am convinced this legislation will have the potential to significantly improve air quality today and in the decade to come. I encourage my colleagues to support this conference report.

Mr. LIEBERMAN. Mr. President, I rise in support of the S. 1630, the Clean Air Act amendments.

I strongly commend the Senate conferees, the majority leader, Conference Chairman BAUCUS, Chairman BURDICK, Senators CHAFEE and DURENBERGER for their advocacy and perseverance. In the face of unrelenting opposition from many forces, they kept the faith and overcame the obstacles that have blocked progress on a Clean Air Act for over a decade. I also want to compliment the Environment and Public Works Committee's exceptionally talented and dedicated staff, whose long hours and hard work exemplify the best in public service. In particular, I would like to commend David Strauss, Mike Shields, Kate Kimball, Joe Goffman, Jennifer Hess, Cliff Rothenstein, Roy Kienitz, Bob Hurley, Kathy Cudlipp, Jimmie Powell, Steve Shimberg, and Steve Roady.

The bill that has emerged is a very good one. For the first time in a dozen years, we are about to enact a law containing significant new restrictions on the pollution that continues to degrade our air, our world and our health.

As a new Senator, I sought an assignment to the Environment and Public Works Committee in part because I knew it would be putting together a new Clean Air Act, and I wanted to play a small role in making this dream become reality.

The testimony which I heard as a member of the Environment and Public Works Committee demonstrates that we are paying a very high price for pollution. Air pollution costs Americans billions of dollars each year because of its effect on land and water, and most important, our health.

The Nation's leading health experts—from the American Lung Association and the Academy of Pediatrics to the American Public Health Association—all testified before Congress that the Nation faces nothing less than a public health crisis because of air pollution.

Today, 150 million Americans are living in areas which fail to meet Federal health standards. Research conducted at Harvard University indicates that air pollution may be a contributing factor in one out of every 20 deaths in the United States. The past president of the American Public Health Association concluded that acid rain alone causes up to 50,000 premature deaths each year.

Ozone pollution, which is the country's most persistent pollution problem, can cripple our lungs and cause emphysema and chronic bronchitis. In some parts of the country, breathing the air is as damaging as smoking cigarettes.

A very recent study on carbon monoxide published in the Annals of Internal Medicine reports that levels of carbon monoxide sometimes experienced by urban dwellers in the normal course of their outdoor exercise can lead to fatalities in patients with heart disease.

Last July, EPA released a major report which concluded that over the long term, bus and truck fumes may cause cancer. Particles in diesel fuel are absorbed deep in the human lung, and they carry on them volatile organic compounds which are the cancer-causing agents.

The evidence of devastating environmental damage from air pollution also continues to mount. Acid rain has altered thousands of lakes and streams in the United States. This means that these lakes have become too acidic for most species to survive in them.

In Connecticut and New York, one of our most valuable resources is the Long Island Sound. We are doing everything possible to combat pollution of the sound, but the experts tell us that a significant percent of the sound's polution is from acid rain deposition.

A study by the environmental defense fund concluded that acid rain is a major source of nitrogen that stimulates excessive algae growth in waters along the east coast; the resulting loss of oxygen in the water kills aquatic

life and contributes to long-term decline in fish and plants in estuaries.

To begin to address these health and environmental problems in a comprehensive manner, the bill includes bold new steps to combat such diverse problems as acid rain, urban smog, chlorofluorocarbon emissions, catastrophic chemical accidents, and toxic air pollutants.

Perhaps most important, for those of us in the Northeast, this legislation, in the acid rain and ozone titles, for the first time deals directly with the need to control pollution traveling from one state to another. This is a matter of basic fairness which can only be addressed by the Congress in the Clean Air Act because an individual state will find it difficult to take measures requiring controls on its industries and its citizens when the benefit is for a neighboring state.

Because my State of Connecticut is the victim of air pollution transported from other States and regions, these new provisions are of critical importance to us.

In the ozone title, I am especially pleased with the establishment of the Northeast Transport Commission. Under the bill, which contains provisions from both the Senate and House versions, all areas within the transport region will be required to put controls, as specified in the bill, on sources of ozone pollution. And there are very clear procedures to impose additional controls necessary to bring any area into attainment as recommended by the Commission. The Administrator has the final authority to disapprove additional measures recommended by the Commission. However, EPA bears a heavy burden of demonstrating that the additional control measure(s) is not necessary to bring any area of the region into attainment by the dates provided and to recommend equal or more effective actions that could be taken designed to replace the recommendations. Any recommendations by EPA under this section, designed to replace the recommendations of the Commission, shall not place an unfair burden on any state which is the victim of the transported air pollution. Equal or more effective actions recommended by the EPA shall mean actions which achieve equivalent progress toward attainment of the standard, giving full consideration of the impact of transported air pollution.

The creation of a regional air quality commission is an important and creative part of the bill. It recognizes that it is impossible to put a cleanup bubble over an individual State. It puts some responsibility on the States to be good neighbors.

Another provision of the bill which is an important part of our effort to control air pollution transported from other areas is the requirement that the Federal Government intervene and promulgate a plan of emission controls in an area where the State fails to act. This provision guarantees that if States sending pollution to Connecticut are not doing their jobs in controlling pollution, Connecticut will be assured that the Federal Government will step in and do the job. I was disturbed that the bill which passed the Senate did not contain this provision, and I am pleased that the final bill has restored it.

The controls on ozone and carbon monoxide pollution also include measures which recognize that, for some parts of the country, it may become necessary to implement transportation measures which would reduce reliance on the automobile to enable these areas to achieve compliance with the ozone and carbon monoxide health standards.

The lesson of the last 20 years is that if we are ever to reduce vehicle pollution, it is not enough to control the pollution which each car emits. The use of the car must be examined as well because the growth in vehicles and vehicle miles traveled threatens to overwhelm what can be achieved through even the toughest tailpipe standards. Even as our cars get cleaner, it is clear that we must deal head on with the problem underneath the problem—the increasing number of cars on the road and the increasing number of miles these care travel.

In the past, the Congress has elected ever-greater tailpipe standards. It has never really reached the issues of vehicle use. This bill tried in modest ways to change these patterns. It includes provisions which are intended to reduce future growth of vehicles miles traveled, but at the same time provide enhanced mobility to serve increasing travel demands.

The Office of Technology Assessment has concluded that transportation use measures are a technologically simple way to lower emissions which can result in very large improvements. They are also far more cost-effective than other pollution control efforts. OTA notes that the implementation of transportation control measures in Los Angeles is expected to reduce highway vehicle VOC emissions there by a total of 30 percent by 2010, compared to levels projected without the controls.

Even a modest improvement in transportation use could have a dramatic impact because, at present, more than 80 percent of our population commutes to work in automobiles. If the average commuter passenger load were increased by just one person, we would save 33 million gallons of gasoline each day with a commensurate reduction in pollution.

The bill requires that transportation infrastructure decisions must be evaluated in relation to their impact on air quality, a connection that is critically important if we are to control motor vehicle emissions in the years ahead. It has provisions to promote ridesharing, to coordinate clean air and transportation planning, to require States to consider transportation use provisions as part of their air quality plans, and a new approach to the so-called sanctions provision to allow transportation programs that promote pollution reductions. In sections 108(e) and 108(f), the bill requires EPA to publish guidances on transportation use provisions; these guidances remain exactly that and are not rules. EPA will be expected, as I understand it now does, to publish final guidances and to continue to solicit views, ideas and comments from State and local officials and other interests as these guidances are being prepared. The bill clarifies that these practices are to continue.

While the bill contains many new provisions to control urban smog, unfortunately, I am concerned that it does not go far enough in controlling emissions from the tailpipe of automobiles which is the major source of urban smog. Although the bill requires strong, steady progress in cleaning up the emissions from automobiles, it sets a slower pace than I believe is necessary to meet the health standard. After studying the extensive record on this issue before the Environment Committee, I believe that these additional controls on automobiles are technologically feasible and cost-effective and I am disappointed that the bill does not contain an unequivocal mandate for those controls today. Since the testimony before the committee, we have even additional testing data from the State of California establishing that emission levels much lower than the second round of controls mandated by the original bill reported by the Environment and Public Works Committee are clearly technologically feasible and cost-effective. The bill does include more stringent provisions which will become effective if our urban areas are not making progress toward attainment and these provisions may well be critical in the years ahead; we know that these additional provisions are both cost-effective and technologically feasible. As a member of the Environment and Public Works Committee, I will be closely evaluating whether the smog provisions are sufficient to bring about the air pollution reductions necessary to protect public health.

In the area of acid rain, the bill assures a 10 million ton reduction of sulfur dioxide per year and approximately 2 million tons per year reduction in oxides of nitrogen. It places a cap on future emissions of sulfur dioxide, which is critical to assuring that the reductions are maintained. The system of marketable permits in the

bill assures that the reductions in emissions will be achieved in the most cost-effective manner. I hope the approach taken in the legislation will serve as a model for future environmental law.

The air toxics portion of the bill contains new authority to prevent, detect, and respond to accidental releases of chemicals. It creates an independent chemical safety board, modeled after the National Transportation Safety Board to investigate catastrophic accidents and make recommendations to EPA to reduce the risk of accidents in the future. The NHTSB has made a dramatic difference in the operation and safety of transportation in America, and I believe the independent Chemical Safety Board can produce the same result.

The emission standards to be set under the air toxics section requires both protection of human health and the environment. The consideration of environmental effects is a critical new addition to the Clean Air Act provisions on air toxics.

I am pleased that the air toxics section also contains specific provisions requiring EPA to design and deploy monitoring networks to determine the effect of metals and other air toxics on coastal waters, including Long Island Sound. EPA is required to report back to Congress on the results of this monitoring and, importantly, EPA must to determine if additional controls on sources of air toxics, beyond those contained in the bill, are needed to protect coastal waters. These provisions are another important part of our efforts to clean up Long Island.

Mr. President, in the Clean Air Act of 1970, Congress resolved that all Americans would breathe healthy air within a decade. That goal was not achieved. In the years since the Clean Air Act was amended—back in 1977—the air has become dirtier and more dangerous. Our uphill climb against the ravages of pollution has turned into a downhill fall, and only now are we recognizing the real impact of our failure to act.

I hope that vigorous enforcement of all the provisions of this bill will ensure that the promise of cleaner air which we are holding out to all Americans will be a promise that can be kept. As a member of the Environment and Public Works Committee, I will keep a close watch over the implementation of this legislation, as well as the effectiveness of its provisions.

Mr. LEVIN. Mr. President, as one of the Senators involved in the drafting of section 405(g)(1) in the Senate passed version of S. 1630, I would like to take this opportunity to explain my understanding of this provision and to indicate my approval of the conferees decision to clarify my original amendment and to recognize the efforts to clean up emissions made by the utilities in Michigan.

I would like to point out that section 405(g)(1) as included in the conference report before us now deals exclusively with units put into service between January 1, 1986, and December 31, 1995. Clean units, like many in Michigan, that came into service between January 1, 1981, and December 31, 1985, are not all included in section 405(g)(1) any longer. In the conference reported bill, these units are now covered under section 405(d)(4). Section 405(g)(1), unlike section 405(d)(4) contains the parenthetical phrase "converted, if necessary to pounds per MmBtu." That phrase provides an alternative means of determining the relevant unit's allowable 1985 sulfur dioxide emission rate if the unit does not have such a rate in its Federal permit or State implementation plan. Since the units in Michigan which qualify for section 405(d)(4) generally do have an emission rate expressed in pounds per MmBtu in their Federal permit or State implementation plan, it is my understanding that the term "allowable rate" incorporates an additional concept in section 405(g)(1) not incorporated in section 405(d)(4).

It is my belief therefore that because our State implementation plan is stated in pounds per million Btu that annualization is not required.

Mr. ROCKEFELLER. Mr. President, in essential respects, this legislation is little changed from the bill that passed the Senate, and therefore, I must vote against it.

The Nation should have cleaner air, but I cannot support clean air legislation like this, that puts a disproportionate burden on my region of the country.

It saddens me to note that at this late date, after months of debate, after passage in both Houses of Congress, after lengthy negotiation, and after compromise on a final bill, there is still widespread lack of understanding about what is going on here.

The other day the Wall Street Journal said that coal-fired powerplants mostly in the Midwest are the biggest culprits when it comes to acid rain, and that Congress and the White House rejected pleas by Midwest lawmakers for subsidies.

Wrong. We did not ask for subsidies. We asked only to pay our share. And what we got was a requirement to pay not only for our share, however big that may be, but a requirement to pay more than our share.

This was not an accident. The authors of the acid rain title, including President Bush, intentionally required our region to reduce emissions by more than the percentage of total nationwide emissions that it contributes. This was said to be justified on the theory that it is more cost-effective to remove a pound of sulfur dioxide from the air from a large coal-fired utility in the Midwest than from the air in a State like Texas where the sources emitting sulfur dioxide are more dispersed.

But, and this is a big but, if the law intentionally imposes an extra reduction requirement on a region beyond its contribution, the country as a whole should be willing and, indeed, eager to pay to mitigate the impact. The country should be eager because if each State were required to pay for cleanup of its own share, it would cost the States more than paying to mitigate the impact on our region, which is doing the job for others. This legislation does not fairly mitigate the impact and, therefore, I cannot vote for it.

Everybody does know by now where this misguided approach leads. It is likely that thousands of coal miner jobs will be lost as well as thousands of other jobs of people in the communities where coal miners live. And for what? Not to pay a fair share for clean air. We would be willing to pay a fair share for clean air. No. Despite the best efforts of some and some improvement, there is still too much in this bill reflecting not national interest, but every man for himself.

The clean air amendments are a massive undertaking, and many deserve credit for the good features of the bill. My criticism of the bill does not subtract at all from the credit due to my colleagues from West Virginia, Senator BYRD and Congressman WISE, for their battle to salvage special unemployment compensation for those unemployed by the law. I was proud to join that effort and I am glad that such a provision is included in the final bill.

On the other hand, the problems created by the acid rain title do not exhaust the shortcomings of the bill. For example, I think it particularly unfortunate that the bill misses the opportunity to take a leap forward in promoting alternative motor fuels. With so recent a demonstration of the mortal threat of energy dependence to our security, I had hoped the alternative fuels provisions would not be so largely eroded. But that issue is not closed. It is not closed because our survival depends on our facing up to it.

Unfortunately, bad as is the regional imbalance in the acid rain provisions of this legislation, this is not an isolated case. For example, in recent weeks I have heard some complaining that portions of some versions of the budget legislation are unfair to the West. I hope they realize that this kind of problem is broader than any region or group.

For weeks we have been locked in a struggle over whether the budget is going to be fair to middle- and lower-income Americans. I hope that people

see that this debate is part of a broader question.

The middle class, the poor, Appalachia, the West. Who is next? We have lived too long with a politics of disunity. In the politics of disunity, no one should be surprised if their group or community is the next to be unfairly skewered. In the politics of disunity, no price seems to be too high. Not a piling up of burdens on those who have already borne the burdens. Not Government paralysis. Not even shutting down the Government and embarrassing the United States before the world.

Enough. Enough of the politics of disunity and conflict. It is time for a government of unity and cooperation.

What if, by chance, we should some day need a government that can act. A government that can act not for this region or group and against that, but for all American. Of course, that day is here and has long been here.

We need bridges and roads rebuilt in all our States. We need to get health care costs down in every region of the country. There is not a city or town where we can afford to be complacent about crime. There is not a school in this country where we are close to the best we can do in the pursuit of excellence. And there should be no place in America for the disgrace of one-fifth of our children living in poverty.

Who thinks that we will solve these problems or begin to address them through the politics of disunity? Disunity is a recipe for paralysis. And that is what we have had in Washington for the last several weeks, one might say the last several years. The politics of disunity seeks popularity at the unfair expense of particular regions, groups, and people. It is a failed politics. It is discredited in the eyes of the public. And it should be.

The American public is prepared to pay the price for cleaner air, just as it is prepared to meet the economic and other challenges emerging from a decade of neglect. But there is one condition. The burdens must be fairly shared.

We had the same problem of unfair burden sharing in the first budget deal proposed in September and it went down to a deserved defeat. I hope that is a sign of the rise of a new politics—a politics of unity and fair deals to replace the politics of disunity and raw deals.

Despite many good provisions in the clean air amendments, the burdens are not fairly shared in this legislation, and I must vote against it.

I thank the Chair and I yield the floor.

Mr. HELMS. Mr. President, everyone is in favor of clean air. I certainly am and I have stated repeatedly that I would support a reasonable clean air bill. As a matter of fact, I support the provisions in this conference report that control acid rain.

But other provisions of this clean air bill are just plain overkill. One study concluded that we could have accomplished "99.9 percent of all the benefits at one-half to one-third of the costs" of this bill.

Mr. President, this legislation will cost up to $50 billion a year. Let me put that in perspective—$50 billion is five times the amount of the entire budget for the State of North Carolina; $50 billion is more than the entire GNP of the country of Greece.

Mr. President, the economy is teetering on the brink of a recession and the Congress is about to pass a $170 billion tax increase bill. If that tax increase doesn't kill the economy, this $50 billion bureaucratic nightmare certainly will.

Mr. President, the jobs of countless citizens are at stake here. Studies show that 43,000 to 53,000 textile and furniture jobs could be lost in North Carolina alone. Nationwide one to 2 million jobs are at stake. A more moderate bill could have protected the environment without causing such a large loss of jobs.

The two main sections that will adversely affect North Carolina are the toxics and the permit sections. The toxics section will force businesses to install very expensive control technology, even though the emissions may not cause serious health problems.

Mr. President, the textile industry is fighting for its life against unfair competition from overseas. And now this bill comes along and requires them to put on pollution control equipment that will cost them millions of dollars. I've been informed that one plant will have to spend $5 million to buy the necessary equipment. And will the textile plants in Taiwan have to buy this expensive pollution control equipment—of course not.

The furniture industry employs 93,000 people in North Carolina. Many furniture companies have fallen upon hard times recently. I have been told that a single furniture company is looking at $6 to $9 million to install the equipment required by this bill.

The toxics title will also hit small companies like drycleaners, printing shops, and even beauty shops. These small companies will be forced to put on control equipment even though they are small polluters and the environmental gains are minimal.

Second, the permit section requires 143,000 small and large companies to get a permit before they can emit a listed chemical. The permit process is long, complex, and expensive. Many small businesses will have to hire experts, and spend $20,000 just to complete all the bureaucratic paper work.

On top of that, they will have to spend $50,000 to $300,000 to buy equipment to monitor emissions. Obviously, most small businesses cannot afford these huge expenditures. Thus, many small companies will just give up and shut their doors.

Many small businesses in North Carolina will be affected by the permit provisions. For example, the CONSTAD study found that this section will adversely affect 449 companies in Mecklenberg County and 332 in Guilford County.

How will this affect the average American? Well, drycleaners will have to spend up to $100,000 for new control equipment—that will double your drycleaning bill. Printing shops will have to spend $100,000 to $250,000 on equipment. Gas prices will go up. The price of cars could increase by $600 per car. And the list goes on and on.

If this doesn't throw the economy into a recession, I don't know what will. I am concerned about the cost of this bill because in the end it is the average American who will bear the brunt of this bill. It is hard working folks like textile workers who will be kicked out of their jobs as a result of this bill.

Mr. President, as I said earlier, I support controls on acid rain. I also support the use of alternative fuels to decrease the smog in our cities, as evidenced by my support for three key alternative fuels amendments on this bill.

I would have supported this bill had the acid rain provision and the alternative fuels provisions not been overwhelmed by unwise other sections like the onerous toxics and permit titles.

But Mr. President, we could have accomplished the same environmental protection for a fraction of the cost. I just could not close my eyes to the devastating consequences of some of these provisions.

Mr. NICKLES. Mr. President, I support the effort of the administration and the Congress to reduce air pollution. I want to see my children grow up breathing cleaner air, and I want the people of Oklahoma to enjoy cleaner air. I intend to vote for the Clean Air Act Amendments of 1990, because I believe the Americans living in the more polluted areas of our country deserve to have cleaner air.

I voted against the Senate bill. I said then that the bill was far too expensive for the pollution reductions achieved, and that it was excessively burdensome and inflexible, and would dampen future economic vitality. I said that the Senate bill was unrealistic and not well founded in business or scientific reality. I still believe these flaws exist with respect to the Senate bill.

The conferees have worked for months to reach an accord on this historic bill. Many of the more serious flaws of the Senate bill have been addressed and improved upon. In many

cases I hoped they would be improved more. I am very concerned that Senate conferees accepted the House version of title I dealing with nonattainment, which among other provisions, results in even minor modifications made at an existing facility potentially forcing that facility to meet the same pollution control standards applying to new sources.

The substantial costs forecast for this bill—and they range from $20 billion per year to $50 billion per year—are less than had been forecast for the Senate version, principally because the conferees agreed upon a much more workable and reasonable approach to reducing toxic air emissions. Fortunately the agreement drops the Senate's potentially disastrous "bright line" tests for shutting down plants and moderates the grossly uneconomical emission control measures. The toxics title is perhaps the best example in this bill of a very tough pollution control program that does not set unachievable goals with unmeetable deadlines at unaffordable costs.

These common sense tests of reasonable goals, deadlines and costs should be applied to all the provisions of this act. Regrettably, many provisions, particularly in the nonattainment and permits titles, fail the common sense test, and will be unnecessarily costly and debilitating to business. But perhaps the worst example of unreasonable goals and unmeetable deadlines in this bill is in the provisions establishing the reformulated gasoline program.

The reformulated gasoline program is based on a valid premise: we can achieve the greatest automobile pollution reductions for the dollar by making reasonable changes to gasoline. A cleaner gasoline can reduce pollution in older cars rather than waiting for 10 years for the turnover of automobile fleet to have a significant clean air impact, and we minimize the costs of modifying our production, transportation and marketing infrastructure. Although several highly inflexible restrictions were modified during the conference negotiations, there remain three significant problems with the reformulated gasoline provisions in the agreement.

The first of these is the requirement that each gallon of reformulated gasoline be at least two percent oxygen, such as ethanol or relatively expensive MBTE or EBTE, again made with ethanol. Other than for winter carbon monoxide pollution, oxygen in the gasoline provides little or even negative pollution reduction. I note that the budget agreement includes an extension of the highway trust fund subsidy for ethanol in gasoline. To mandate ethanol where it is not necessary, and then subsidize its manufacture, makes no environmental sense, and should be corrected.

The second problem is the lack of flexibility given to EPA to adjust the percentage goals of reducing toxics and volatile organic compounds from gasoline. No chemical engineers I am aware of have any idea how refiners can take 25% or even 20% of the five listed toxics out of gasoline by the year 2000, and still have a fuel that runs cars economically.

The third problem with the reformulated gasoline program is both immediate and extremely serious. It could result in one quarter of the American population being unable to buy gasoline on January 1, 1995. This conference agreement contains an arbitrary deadline of January 1, 1995, for supplying an EPA approved reformulated gasoline—as yet not even developed—to one-quarter of the U.S. market—about 90 million gallons of new gasoline every day. The penalty for failing to supply this certified gasoline is a prohibition on that refiner to sell any gasoline to that market. Despite warnings from the refining industry, OTA and CRS, the conferees have insisted on tight standards and tighter deadlines for reformulated gasoline. It will take tens of billions of dollars and many years to make the refinery changes needed to provide these volumes of gasoline.

And so, one-quarter of the American people could find themselves unable to buy gasoline on January 1, 1995 unless all of the following events occur. A reasonably priced gasoline must be formulated, tested, and approved as complying with the 15 percent toxics and VOC reductions. The engineering, permits, construction and distribution must be accomplished by early 1995. And this all must happen without government delays in testing and approving the gasoline, permitting the refinery changes, or the delay from a citizen suit.

I recognize that there is not a realistic opportunity to amend the conference report at this time to correct these defects. I suspect we may have to face impending disaster before we dare weaken the bill by providing a more reasonable and hopefully, flexible, deadline for the availability of reformulated gasoline. I will be working with my colleagues, especially those on the Energy and Natural Resources Committee to provide the Senate with oversight on the progress of the industry toward the goals set forth in this bill. If the facts manifest that we need to change the law we are passing today, I hope the Senate will show the courage to make the necessary changes.

Another instance where the administration and the conferees have attempted to provide equity and market flexibility is in the "acid rain" title with its emissions trading program after the year 2000. Our Nation's sulfur emissions record under the current clean air law is impressive. Despite a 140-percent increase in coal use by utilities since 1970, past clean air acts have reduced overall sulfur dioxide emissions by 22 percent at a cost in excess of $100 billion—as spent dollars—in emissions reduction capital investment. This bill will reduce annual sulfur emissions by another 10 million tons by the year 2000. This is an ambitious and costly undertaking that will accelerate the improvement in Eastern and Southern watersheds. There has been an intensely emotional campaign for this expensive new effort, and proponents should be well satisfied with the results.

I caution my colleagues to keep an open mind to the evolving experience with the acid rain provisions and the emissions trading program. We must be alert to the possibility that the screws are being tightened so hard on future sulfur emissions that severe—and unnecessary—economic dislocations could be created, especially if sufficient allowances are not available in sufficient quantities to keep their costs reasonable. The post-2000 national cap on sulfur emissions is going to pit region against region for future growth rights. Oklahoma, which was in a depression during the credit allowance base period of 1985–87, was also burning extremely clean coal and almost no oil during that period. I appreciate the willingness of the Senate managers of this bill to listen to the special situation of Oklahoma and other so-called clean States and provide extra allowances for those States. I also appreciate the managers' efforts to preserve those extra credits for Oklahoma during conference.

I will note for the record, however, that my State is still disadvantaged by the base period used in this legislation. In fact, although all coal facilities in Oklahoma are under the clean air standard of 1.2 tons per hour, the State currently is using what will be its full allowance after the year 2000 under the clean air bill. Fairness and common sense would require a more reasonable cap level to allow more flexibility to clean States such as Oklahoma. I will be working with my colleagues to ensure a more equitable treatment for Oklahoma during future revisions to the allowance trading program.

In this connection, Mr. President, I would like to formally state my understanding that the term "allowable 1985 emission rate" in section 402(r)(1), is a utility's federally enforceable allowable sulfur dioxide emissions rate under its permit. To construe the term "allowable 1985 emission rate" as a utility's actual emissions rate or as requiring the EPA to annualize a utility's emissions rate would do a severe injustice to the delicate compromises that lead to the

clean States allowances and the subsequent support the entire bill has been afforded from the clean States.

I was pleased to see that many of the permit and enforcement issues that I fought for in the Nickles/Heflin/Dole amendment, which failed by one vote, have been addressed in the conference agreement. Although the permit process will still remain unwieldy and cumbersome, many improvements have been made. Nevertheless, under the provisions of the conference agreement, it will still be excessively difficult to get an initial permit. If the State structure is not put into place in a timely fashion, then the mechanism for determining if a source has filed a "timely and complete" permit application will not exist. This failure will subject sources to possible suits for operating without a permit.

One improvement made by the conferees in the conference agreement is that it does provide a limited permit shield, which was lacking in the Senate version. However, its effectiveness will depend on how EPA develops and implements their relevant regulations. Under the conference shield, a source is protected from suits brought by citizens unless the citizen participated during the public comment period on the source's permit application. However, the source can be sued by EPA, regardless of having a valid permit, if EPA determines that the source is somehow in violation of the act.

In addition, the conference agreement does provide some operational flexibility which also had not been included in the Senate version. Under the conference agreement language, in order for a source not to have to seek a permit modification to change its processes, it must have predicted, in its permit application, that such specific changes may occur. If the source is able to predict its future process changes in its permit application, then it will not have to modify its permit in order to make the changes. However, in the real world, predicting future needs isn't always possible. Nevertheless, this provision is an improvement over the bill passed by the Senate.

The conference agreement also made some steps forward toward eliminating duplicative permit procedures throughout the bill and consolidating them within one permit title. The intent was to avoid a fractionated permit program. This was accomplished with title I, but not in title III. Title III provisions were not dropped completely, but harmonized. Title III retains what has been dubbed "the permit hammer." This requires sources to negotiate with an engineer and the State agency for an appropriate standard of technology if EPA does not issue the MACT standards on time. This best engineering judgment determination will complicate the job of State permitting authorities by demanding that valuble staff resources be expended to review highly technical and subjective engineering judgments.

As with the permit title, the enforcement title was also improved over what was passed by the Senate. The major improvement to the title was made in the area of citizen suits with a compromise between the House and Senate versions. The more intrusive citizen suit provisions of the Senate were removed and replaced with less intrusive provisions of the House except in the case of past violations where the House language was modified to make clear that citizen suits lie if there is evidence that alleged violations have been repeated.

Although technical and de minimis violations remain criminally enforceable, the conference agreement does contain a statement of managers that it is the intention of the conferees to provide the Administrator with prosecutorial discretion not to seek sanctions under this section for de minimis or technical violations. These violations include record keeping and paperwork omissions. With the amount of paperwork involved in the permit process, mistakes are inevitable. Such violations should only be subject to civil penalties, not criminal penalties. I strongly encourage the Administrator to use this grant of prosecutorial discretion not to seek sanctions for these "technical and de minimis" violations.

In addition to the above statement of managers, the conference agreement also contains a statement relating to environmental audits. This statement spells out the intentions of the managers that the strong new enforcement provisions are not intended to interfere with or in any way discourage the conduct of environmental audits. Many in Congress have expressed very serious concern that the new knowing violations in this legislation will have the effect of placing in jeopardy of criminal prosecution both management and employees who are proactively working to find and correct environmental problems. As evidenced by the managers' statement, if this were to occur, it would be a serious misinterpretation of the intent of this legislation, and would be detrimental to the environment.

As my colleagues might observe from my concerns with this bill, my decision to vote for the conference agreement has not been reached lightly. This country deserves cleaner air, and for that reason I am supporting this legislation. However, I must caution my colleagues that the cost of this measure is very high and many goals are rigid and far into the future. Many provisions of this legislation are based on the desire for a risk-free world, with only passing acknowledgement of the limitations of our science or our economy. Accordingly, we must pass this bill with the recognition that we must critically review our experience with these provisions to correct the impractical, eliminate the impossible, and expand on the beneficial.

Mr. REID. Mr. President, I rise today in anticipation of a victory; at long last the public will get what it deserves: a roadmap to clean and healthful air quality. After a decade in search of leadership to guide this nation and, in turn, the world toward environmentally responsible practices, we see a glimmer of light through the haze. I stand squarely behind this clean air bill and I am dedicated to this first step to renew our commitment to the environment. This opportunity to restore and protect the health of the public and our precious environment cannot be squandered. We must pass a strong clean air bill that makes important strides in improving our essential air resources and the quality of life.

Many sages over the years spoke of the harmony that must exist between man and the environment in which he lives. Sound environmental public policy has been sorely lacking for generations. None foresaw the abuse of the environment better than Chief Seattle of the Dwamish Tribe when the Federal Government sought to expand its control over tribal lands in 1854. His comments provide a meaningful backdrop that places this piece of environmental legislation into context. His statement was prophetic:

To the white man, one piece of land is much like the other. He is a stranger coming in in the night taking from the land what he needs. The earth is not his brother but his enemy and when he has conquered it, he moves on. He cares nothing for the land, he forgets his father's grave and his children's heritage. He treats his mother the Earth and his brother the Sky like merchandise. His hunger will eat the earth bare and leave only a desert.

If we should sell our land then you must know that the air is valuable to us, that the air passes its breath over all life that it maintains. The wind that gave my grandfather his first breath also received his last sigh. And the wind also breathes life into our children.

We are part of the earth and the earth is part of us. The fragrant flowers are our sisters, the reindeer, the horse, the great eagle our brothers. The foamy crest of waves in the river, the sap of meadow flowers, the pony's sweat and the man's sweat is all one and the same.

All things are bound together. All things connect. What happens to the Earth happens to the children of the Earth. Man has not woven the web of life. He is but one thread. Whatever he does to the web, he does to himself.

Mr. President, the protection of natural resources and the environment is the responsibility of all mankind. For all we know, and it becomes more evident to us everyday, this Earth is the

only option that we can call home; we must protect our home from assault and insult. Environmental complacency and waste proliferation, the attitudes of recent generations, must be declared aberrant behavior patterns that need to be corrected. We now have the opportunity to chart a new course with this bill. Policy inroads initiated during the 1970's have been detoured during the 1980's; the rhetoric that the 1990's will be the "Decade of the Environment" must be translated into action.

The first page of the map is now before us. This clean air bill lays out the action plan that permits our Nation to start on its journey to improve the quality of life for all Americans and, in turn, reclaim the leadership role in the world so that we may achieve the ambitious goal of sustainable development. We can strengthen our fragile thread in the web; we can improve the quality of life.

Mr. President, we began this session 9 months ago with the clean air bill. After numerous false starts over the last decade, this is the time and this is the place that we must succeed. When we initiated the debate, and again after the compromise was achieved, I indicated that there was room for improvement. There still is; there always will be. Nevertheless, with this conference ageement we will pass our country's most comprehensive environmental legislation.

We recognize that we cannot correct the excesses of recent generations and the failures of the last administration in one step. Not only is this a start, it is a great start. Proindustry and proenvironment supporters can live with this negotiated agreement; it is the public that wins with this bill. Reasonable people found common ground and on this ground a strong foundation will be built to house "our common future."

Mr. President, in 1969, I introduced in the Nevada Legislature a bill to clean up our air in the State; it was the first air pollution legislation in Nevada's history. Since then, the quality of life in Nevada became an attraction and today we boast the highest population growth rate in America. But this has come at a price; our two largest metropolitan areas, Reno and Las Vegas, are among those with unhealthful air quality.

The degradation of air quality because of traffic congestion threatens our quality of life. Our State and local leaders in Nevada are attempting to deal with the transportation problems that usually plague major metropolitan areas. Planning will solve only a portion of the automobile pollution problem. Technological advancements to reduce tailpipe emissions are mandatory to outdistance the increase in pollution caused by the sheer numbers of automobiles. The combination of alternative fuels and emission controls included in this bill will lead to the achievement of air quality standards for virtually everyone in the decade to come.

Mr. President, this bill will not hamper those State and local authorities that aggressively pursue effective transportation planning to solve the traffic portion of this problem; it will help them. With enactment of this bill, the Federal Government will provide guidance to State and local organizations on the benefits of various transportation planning tools. It ensures that local and State officials have the discretion to decide which combination of measures will work best in their communities to solve traffic-related air pollution problems.

To ensure that all areas currently not meeting air quality standards move toward compliance, tough sanctions are needed as an added inducement. Tough, but fair standards that directly relate to improvements in air quality are clearly warranted. The conference demonstrated good judgment in dropping a sanction that would have precluded new water hookups; now, the sanctions that remain in the bill will provide a directly related air quality improvement. The sanction that was deleted would have caused an unnecessary hardship for those fast-growing areas of the Nation.

Mr. President, in other legislation, we look forward to the day when pollution prevention practices limit the production of industrial waste. We need to do more work to redesign and clean up industrial processes at the front end to preclude the creation of waste. For now, we must reduce hazardous, toxic, and other emissions at the back end of the process through the use of cost-effective pollution control technologies. This bill will set standards to provide an ample margin of safety to protect public health from air toxics.

To date, EPA has regulations governing only 7 hazardous chemicals. When enacted, this bill will cover more than 25 times that amount, nearly 200 hazardous chemicals. This bill includes provisions to establish early warning systems and to develop hazards assessments for leak detection and accident mitigation. These steps are necessary to aid the operator and to improve community awareness of risks posed by chemical manufacturing facilities. Our experience with the explosion and leveling of a chemical plant in Henderson, NV, is a lasting reminder that emergency planning and the participation of local authorities are essential to protect the public and improve industrial/community relations.

Congress recognized that additional research and development was needed to improve our understanding of the hazards associated with air toxics. The Nation's preeminent facility for conducting fullscale research on dense gases, the liquified gaseous fuels spill test facility located in Frenchman Flats at the Nevada Test Site, will be utilized to advance the state of the science in this arena. The University of Nevada and other institutes of higher learning will be afforded the opportunity to participate in the cutting edge research to be conducted at the facility.

Mr. President, as with most Western States, we have made major strides since the 1977 amendments to reduce emissions at our power generation facilities. During the 1980's, we bore the increased costs for cleaning up relatively clean facilities as other facilities continued to operate with relatively high emissions. Environmentally responsible behavior should not be penalized, it should be lauded and credited when doling out the cleanup tab. Having survived difficult economic times ourselves, we understand the potential hardships that our friends in other regions will face. The acid rain provisions of this bill, a real 10 million ton per year sulfur dioxide emission reduction, will go a long way to improve the fragile ecosystems that suffer today. The balance and schedule for improvement is reasonable and is regionally equitable.

Mr. President, we have been deliberate in taking steps to ensure that increases in emissions of sulfur dioxide and oxides of nitrogen do not lead to a significant deterioration of our magnificent vistas in the West. While disappointed that elements of the House visibility provision did not prevail in conference, we remain pleased with the Senate provision that refocuses our vision to maintain a clear appreciation of the Nation's jewels: our national parks. This provision will ensure that the breathtaking views of the West will not be lost in the haze. The short shrift given to visibility improvement in our national parks and wilderness areas over the past decade will be tolerated no more. After the completion of studies to improve analytical methods to attribute visibility impairment from stationary sources and from regional haze, EPA must carry out its mandate and promulgate regulations to protect our Nation's treasures for generations to come.

With this bill, we will preserve the magnificent views that are occurring less and less frequently; we will protect good visibility days and enhance visibility on poor days. Nevada provides the clean air corridor for the Grand Canyon National Park; when the wind blows from central Nevada, the visibility in the Grand Canyon is at its best. Our Nation's newest national park, the Great Basin National Park, lies in an area of Nevada where the air is currently pristine; we must

preserve the beauty and heritage vested in the park system.

Population growth and economic development demand services that will have an impact on the environment; when we consider inevitable growth, it must be sensible and sustainable. This bill ensures that additional emissions do not lead to a significant deterioration of our beautiful landscape. Proper siting of major facilities and advanced air pollution control technology will provide the crucial balance between environmental protection and economic development. We need both of these to sustain a vibrant quality of life in Nevada and our neighboring states.

Mr. President, this bill is far-reaching. Numerous industries faced potential devastating economic consequences as a result of the strategies contemplated while crafting this bill. In the interest of protecting the health of the public, technology-based improvements affecting a wide range of industries were necessary; in some cases, opportunities were afforded to encourage environmentally responsible practices even when they were not required for compliance with health standards. A provision to provide incentive allowances to small refineries was included in the bill to help defray the capital costs for installing equipment to cleanup or desulfurize diesel fuel. Now, rather than compelling the small refineries around the West to shutdown or sellout, this relief would permit the small operators to stay competitive with the large corporations.

Similarly, a provision to provide incentive allowances for solar, wind, geothermal, biomass, and other renewable energy sources is included in the bill. At this time, with instability in the Persian Gulf, soaring energy and environmental costs using conventional fossil fuels, and our inability to resolve the nuclear waste issue, we must look to renewables as a significant player in our energy mix to sustain development for future generations. In Nevada and other Western States, we have significant potential to tap the renewable energy options. This incentive will send a clear message that the Federal Government supports these environmentally compatible approaches to satisfy energy demand and ensures that there are cost effective options to conventional and nuclear power.

Finally, Mr. President, the last provision of the clean air bill that I will address focuses on measures that deal with the emerging appreciation of the planet on which we live. The thin ozone blanket that protects us from the harmful effects of the Sun's ultraviolet radiation has been depleted as a result of man's activities. Other activities involved in the combustion of fossil fuels also contribute to a changing global climate at a pace that must trouble our conscience.

This portion of the bill focuses on the curtailment in use of a number of chlorofluorocarbons that are known to deplete high altitude ozone. The United States is party to the Montreal Protocol on Substances that Deplete the Ozone Layer; the protocol provides the framework for all nations of the world to protect the Earth's ozone shield. Just as the Second World Climate Conference begins next week in Geneva, American representatives can hold their heads high and signal their intent to play a leadership role dealing with global environment. The United States will briefly have the opportunity to credibly lead the assault on global climate change or it can continue to obfuscate the obvious and repudiate its responsibility.

Mr. President, this is a bill that will leave a legacy for our children and future generations to come; everyone involved in this process can take satisfaction in its form and its substance. This is an issue that affects the health of the public and that should transend partisan and regional differences. Congress has the opportunity to act decisively. This environmental challenge is a must win battle for the public. The process we followed to complete this legislation signals a fundamental change in crafting public policy; it is welcomed and long overdue.

Mr. FORD. Mr. President, the Clean Air Act conference report that is now before us reminds me of the marathon we have just gone through on the tax package: Everyone has his or her own idea of what the new act should look like. There have been around 535 versions, give or take a few.

But there comes a moment when we have to accept that we're not going to get everything we want, and that time is now. The document before us is not perfect, it is not everyone's dream package, but it is the best that can be done. This has been a long and tedious process, a battle hard fought on all sides over a bill that is both complex and highly technical.

The final version is a far cry from the bill that was originally reported to the Senate floor. That bill was deemed by many Senators to be unworkable—too costly and technologically unreachable, so we worked for 3 months to modify the bill, not gut it, modify it, and that version went to conference with the House.

The conference report on which we will soon be voting has, to my mind, some important compromises and provisions—protection of clean coal technology, protection of high sulfur mining jobs, deletion of utility mercury emissions from mandatory controls under toxic emissions, reasonable standards for the coke industry, achievable tailpipe standards, prevention of a potentially devastating impact on the Paducah gaseous diffusion plant. I am willing to give it a try.

I only hope that the bill will not put America in the poorhouse. Cost estimates have ranged from $20 billion to upward of $50 billion annually. People tend to exaggerate under such circumstances and I hope these most dire predictions will not be realized. We have to start now to make a serious effort to clean up the Nation's air, and let's face it, we will all have to pitch in and help pay for it. Environmental cleanup is not free.

I am for a clean environment, do not misunderstand me. But I strongly believe that this cannot be achieved over night, and that it must be done at a pace that is technologically and fiscally sound. I hope that is what this bill will do.

Again, the conference report before us is the product of many, many long and hard hours of deliberation. A most sincere effort has been made all across the Hill to arrive at a final version that is fair and workable. Critics are saying that we have received the conference report at the last moments of the session and that we have not had enough time to study its content. Well, Mr. President, this is not the first time conference reports have been delivered right at the wire and it won't be the last. Heaven knows that every movement of the conferees has been monitored by the horde of lobbyists who have followed the most minute details of this complicated piece of legislation. I think we have a good enough idea of what is in it, and Senators BAUCUS and CHAFEE have very kindly sent to each office a detailed summary of the provisions of the report. I, for one, appreciate that.

I urge that the conference report be adopted.

Mr. BOSCHWITZ. Mr. President, I strongly support this clean air bill. After 13 long years, we were finally able to get a comprehensive measure to clean up our Nation's air pollution, and I am proud to have been part of that effort. I would particularly like to thank Senators CHAFEE and DURENBERGER and their counterparts on the other side of the aisle, who have worked so long to obtain passage of such a measure.

This bill addresses problems that Congress first attempted to solve when it passed the original Clean Air Act in 1970 and again when it updated the act in 1977. Auto tailpipe emissions standards are greatly tightened and factory emissions of toxic pollutants are strictly regulated.

In addition, however, this measure attacks new problems that we've learned about since 1977. For years Congress has been trying to pass legislation to curb acid rain. Unfortunately, such legislation has been blocked for years due to regional disputes as to who should pay for powerplant cleanups. This bill caps utility emissions of

sulfur dioxide, but does so in a fair way that provides incentives for early cleanup while rewarding those utilities that have already cleaned up.

I am pleased that the small business compliance provisions that I authored in the Senate were included in the final version of the bill. Small businesses will have to reduce their emissions of pollutants more than ever under the complex requirements of this bill. The small business compliance provisions will require the EPA and State governments to provide assistance to small businesses to more easily allow them to comply with the Clean Air Act. It will not include large businesses like DuPont or Bethlehem Steel and their subsidiaries, only small businesses that simply do not have the resources to easily understand what they are required to do.

My one disappointment with the bill is that it does not more fully address the issue of global warming. This is the biggest environmental issue of our time. The bill does include provisions in the mobile sources title to increase the use of alternative fuels, and this should help reduce emissions of greenhouse gases like carbon dioxide. But we can do more, and I hope that addressing the issue of global warming—which many other industrialized nations have already begun to do—will be a major environmental priority in the 102d Congress.

Overall, however, I am pleased with this bill, and I am proud to have been part of this effort that will greatly improve the quality of our Nation's air.

Mr. BREAUX. Mr. President, I rise in support of the conference report on S. 1630, the Clean Air Act Amendments of 1990. This legislation represents an unprecedented number of man-hours of labor over the last decade, and certainly includes a great many improvements to existing law that are badly needed.

Thanks in large measure to the persistent efforts of the majority leader, the Senate was able to break the impasse that has characterized similar legislation in previous years. At the request of the majority leader, I served as one of the Senate negotiators with the White House in developing the compromise legislation that finally allowed the Senate to move forward with passage of this bill. This group of negotiators was able to craft a proposal that, while not wholly acceptable to the special interests on either side of the debate, was rightly viewed by a solid majority of the Senate and by the White House as the sort of responsible proposal needed to move the process forward. I am pleased that our efforts have led us to the opportunity we have tonight to significantly strengthen and improve current law.

S. 1630 will provide needed tools to the States to allow them to tackle the difficult task of meeting the National Ambient Air Quality Standards. It will tighten emission standards for motor vehicles, one of the most significant sources of emissions that contribute to smog. For the first time since enactment of the original Clean Air Act, real emission controls will be imposed on a broad array of industrial emissions of toxic air pollutants that may contribute to illness and premature death. These provisions are of particular importance in the heavily industrialized areas of my own State, and I am pleased to have been an original coauthor of this important portion of the bill. This legislation will also launch an aggressive effort to reduce emissions of pollutants that contribute to acid rain, and will do so in a way that does not unduly disadvantage the ratepayers of clean States, such as Louisiana, that already rely on clean fuels.

Mr. President, I know that many of my colleagues may have doubts about the wisdom of some of the provisions contained in this legislation. Like others, I do not agree with all of the elements in this bill. I have concerns about some decisions made by the conferees and the impact these decisions may have in my State and nationally. But on balance, I must commend their effort and support the result of that effort. Having served on the Environment and Public Works Committee and in the Senate negotiations with the White House on this bill, I know how contentious many of the issues contained in this legislation can be. But I believe that the conferees have produced a solid piece of work. A decade of inability to address this issue is behind us, and I congratulate the conferees for their long months of hard work and what I believe will be a successful completion of action on this measure.

SECTION 405(g)(1)

Mr. EXON. Mr. President, I am pleased to rise to discuss section 405(g)(1) and support the excellent interpretation of my colleagues and friends Senators BOREN and LEVIN regarding this section.

It should be clarified that a distinction exists in the calculation of allowable emissions rates as it applies in section 405(g)(1). In section 405(g)(1), the parenthetical phrase "converted, if necessary, to pounds per mmBtu "was specifically included as additional language to provide an alternative means to determine the unit's allowable 1985 sulfur dioxide emissions rate, if the unit does not have a rate expressed in pounds per mmBtu in its Federal permit or State implementation plan. Therefore, any reference to annualization intended to apply to units under section 405(g)(1) should not be applied to units under section 405(d)(4).

Mr. BENTSEN. Mr. President, the Congress takes a bold leap forward in cleaning up the environment today. This legislation—the first of its kind in 13 years—marks a significant departure from the "Don't worry, be happy" attitude about the environment fostered during the 1980's. It is a good, tough, sensible bill. I am pleased to support it.

I served on the Environment and Public Works Committee for many years, Mr. President. During that time, we considered clean air legislation. It was always, always difficult to get an appropriate consensus on clean air. If it made it out of the committee, it was tough to get it to the floor. There was always an extreme of one kind or another working to frustrate the committee's product. That is why the accomplishment of the committee is so remarkable. I especially congratulate Senators MITCHELL, BAUCUS, CHAFEE, and others for working so hard to bring to this body a balanced clean air bill. This bill will move this Nation forward into the next century with improved air quality, and that is a net positive no matter how you cut it.

There has been some criticism that this bill is not as tough as it could be, and there are still others who say that the bill is too tough on industry and business. These are extremes. The rhetoric they espouse is not helpful to us, except perhaps it tells us that maybe Congress has demonstrated its wisdom. I do not say that this is a perfect bill. There are some things in it that displeases each of us. It asks certain regions of the country and particular industries and businesses to bear heavier costs than others. Of course, some of these shoulder more of the responsibility for contributing to the deterioration of air quality than others.

The point, Mr. President, is that this bill exacts from us certain sacrifices. Few of us like to make them, and still fewer of us want to make them when we do not see instant results.

Getting this bill to this point has required Congress to pay the price of leadership and responsibility. We had to cast some unpopular and difficult votes. No, we did not achieve perfection, though that is a laudable goal. What we got instead was a bill that will become law. So, I say to those who criticize this bill that they are free to do so, but remember that when it comes to legislating, perfect is the enemy of the good. Had we assumed the posture of "no bill unless it is a perfect bill," we would still be searching for utopian ideals, and our country, my State, would be even further away from improving its air quality and the health of its citizens than what we are now. I say that is too high a price to pay for perfection.

Clearly, the bill's impact on industry is substantial, which means that its impact on Texas will be felt. Texas is a

large State with a substantial industrial base. It has petrochemical plants, an assortment of manufacturing facilities, utilities, petroleum refineries, oil and gas operations, and thousands of smaller businesses which have to comply with the stringent dictates of this legislation. With that enviable industrial base comes its problems, especially environmental problems.

The balance this bill strikes is not in every instance a good one for Texas industry, and I have endeavored to blunt its impact where appropriate. In those places, it is now possible to say that the burden the legislation now places on Texas industry is not so weighty that it can't survive and prosper. In working to address some of their concerns about the bill, I have heard from some Texas plants which have indicated that while they may not have crafted certain provisions in the same way, they understand that it is part of their corporate responsibility to share in the burden of improving air quality.

And it is well they see it this way. Texas leads the Nation in the level of emissions for hazardous air pollutants. That is not a distinction we are proud of, but it is one we don't have to maintain. Likewise, Texas had more ozone nonattainment areas than any other state—Houston, Dallas, Beaumont-Port Arthur, and El Paso. They will have to strengthen programs to reduce pollution under this bill. Mobile source emissions in Texas exceed stationary source emissions in some areas.

These are problems that can't be swept under the rug. They can't be ignored by changing the subject to job loss and economic impact on industry. While these are very weighty considerations—and I listen to them—they are not the only ones we should factor into the equation. There has been a lot of talk about the impact of this legislation on jobs, and that if the bill passes thousands of jobs will be lost. I have heard these predictions before. They are mainly leveled by those who have to pick up part of the cost of environmental or social legislation. What a bill will cost and who will pay for it are legitimate questions to ask. So is this one: If we fail to address our clean air problems, who will pay the health costs of inaction?

In that regard, over 120 million American citizens live in communities that do not meet current air quality standards. The American Lung Association reports that this situation carries a health price tag in excess of $100 billion annually. Even if health costs are just half that figure or even one-third of $100 billion, that price tag still exceeds the administration's price tag of the bill.

The American Lung Association reports further that the annual health costs of motor vehicle pollution in Texas alone totals at least $271 million. It is higher in some other States, lower in others. These costs are mind-numbing. So when we discuss the costs of this legislation, all costs should enter the equation.

Conversely, the job creation potential of this legislation is perhaps underestimated. Environmental legislation drives improved pollution control technology. New and expanded markets for this technology will be developed. New markets, expanded markets mean more jobs, and jobs with good income potential.

I'd like to speak to one last issue, Mr. President. Some of my colleagues from the Midwest have suggested that they can't support this bill because of the unfairness of the acid rain title. Tax incentives have been sought. Special treatment is expected. In support of this position, they have cited Texas as the No. 1 State for sulphur dioxide emissions. Facts are facts. That's true. What some of my colleagues fail to mention is that the acid rain title is aimed principally at trying to reduce sulphur dioxide emissions from utility plants. Other sections of the bill—nonattainement, air toxics, mobile sources—will help to reduce industrial emissions overall.

Compliance fuel and scrubber technology will reduce sulphur dioxide pollution from utility plants that cause acid rain. Here, Texas has a record to envy. Texas is a clean State. It consumes over 11 percent of the Nation's coal, but has only 3 percent of the emissions. Of the 33 units in operation in Texas, over 13 of them have scrubber systems installed and 16 of them use compliance fuel. By any yardstick, that's a good record, and it's getting better. Texas is a clean State.

Despite this record, Texas will still be penalized under the allowance system more than it should be. We have been able to correct the allowance formula from what it was originally, but it does not give Texas its due based on its record as a clean State. I doubt Ohio, Pennsylvania, and Illinois can make this claim about their utility plants. So when my colleagues from Midwestern States, some of which have not taken the steps to install scrubber technology in its plants, speak of fairness, they should consider responsibility as well. The "polluter pays" principle is one that makes sense.

On the whole, Mr. President, this is a good, tough ambitious piece of legislation. Its goals are impressive. If we fall short, it will not be because we lacked the vision or the will. It will be because there is just so much to do. The time will come when others who come after us will travel this road again. It should comfort us a bit that the trail we blaze today will mark a clearer path for them to follow.

Mr. LEAHY. Mr. President, as the adjournment of the 101st Congress nears, we are on the verge of passing one of the most important environmental laws of this session—a law that will shape our environment into the next century—the Clean Air Act of 1990.

We have labored long and hard, in both Houses of Congress, to seriously strengthen clean air programs while maintaining the economic fabric of the Nation.

For years Vermonters have confronted acid rain, air toxics, and forest decline.

For 8 years the American people have waited patiently as powerful forces scuttled any attempt to strengthen clean air programs.

For 8 years—on behalf of Vermonters who are upwind from many of the Nation's worst air pollution sources—I have worked to strengthen programs that purify our air—supporting Clean Air Act amendments during the 100th Congress, encouraging the administration to provide leadership, and passing legislation to aid in air pollution research and control for our Nation's forest land.

Finally, after 8 years of fighting, congressional and administrative leadership has emerged to allow strong clean air legislation to move forward.

Today, the Senate votes for the Clean Air Act—today we vote for healthier forests, cleaner water, and the future well-being of Vermonters and the Nation's citizens.

Under the Clean Air Act, sulfur dioxide and nitrogen oxide—which make up acid rain—will be reduced by 10 million tons and 2 million tons, respectively. One hundred and eighty-nine chemical air toxics will be regulated by the "maximum achievable control technology." Automobile emissions—accounting for 50 percent of smog pollution and 90 percent of the carbon monoxide pollution in urban areas—will be cut by 35 percent and 65 percent respectively.

Mr. President, today we pass a law, but tomorrow it must be implemented. The fight for clean air does not end with this vote, but begins in earnest. For my part, I will work to assure that programs under this law are adequately funded and aggressively implemented.

I urge my colleagues to join me in voting for the Clean Air Act conference report.

Mr. DOLE. Mr. President, as amazing as it may seem, we are here today to adopt the conference report on the Clean Air Act amendments. I am certain that my colleague and good friend, Senator MITCHELL was certain that this day might never come. But come it has, and over this past year we have seen an environmental debate unequaled in the history of the Congress.

Mr. President, not withstanding the incredible journey we have traveled

toward resolution of the severe problems this Nation faces with regard to taxes and deficit spending, I remain concerned that very few Senators can say today with confidence that they fully comprehend this bill and the enormous fiscal and regulatory impact it will have on the American economy.

There should be no doubt: There are winners and losers in this bill. It is no piece of cake. Rather, this bill is the toughest environmental medicine America has ever had to take.

In Kansas, we endeavored to determine just how this bill will affect farmers, industry, oil and gas production, our electric utilities, and small business. From local dry cleaners to bakeries to factories and even to newspaper printing plants, the costs of compliance with the clean air bill will be tremendous. Many who have studied and know much more than I about what this bill will do suggest that this legislation will make the United States less competitive here at home and cost American workers tens of thousands—perhaps hundreds of thousands of jobs—simply to comply. Time will tell what the impact to America will be and whether the full measure of health benefits we seek will be achieved.

Mr. President, it is appropriate that I comment on several provisions that I fought for that should benefit Kansas in a positive way, keeping in mind that environmental protection can be achieved in a more sensible and economically balanced way.

Kansas farmers should see real opportunities contained within the reformulated fuels portion of the bill. With the events in the Persian Gulf dominating the headlines, it is clear that many in America are recognizing that America needs a sensible domestic energy policy that includes renewable fuels made from grain-based alcohols. This bill puts in place a workable program to use clean-burning renewable fuels to combat urban smog in our Nation's dirtiest cities. The use of reformulated gasolines is a giant step toward a sound environmental policy that has the added policy benefits of providing domestic energy security and budget savings from farm outlay programs by increasing farm income.

Likewise, Mr. President, Kansas farmers will be pleased to learn that anhydrous ammonia used in the production of fertilizer will not fall under the air toxics provisions of the bill. This was a much needed and necessary improvement over the Senate-passed package. Farmers need to be free to produce America's abundant food supplies without the threat of unneeded and overreaching Federal regulation. Presently, fertilizer production operations are controlled under a variety of Federal laws. The conferees approached this issue with careful thought and foresight and our agricultural producers and American consumers will benefit greatly from this decision.

One disappointment within the bill is the treatment of agricultural pesticides. The Senate version approved, thoughtfully, language that would ensure pesticides used in agricultural operations would be controlled by the Federal Insecticide, Fungicide and Rodenticide Act. This act is very strict in its own right and provides for severe criminal penalties if it is violated. Unfortunately Senate compromise language was rejected, so this provision was stripped out of the final bill. It is my hope that the EPA will exercise great restraint before burdening already overregulated farm operations with new, unnecessary rules.

One of Kansas' largest industries, the oil and gas industry, should find itself less hindered by this bill with regard to needless over-regulation designed to control large source pollutants. Indeed, because of sensible improvements in the bill, small stripper oil and gas wells will be free to produce much needed domestic energy supplies without falling into the same categories of controls designed to reduce major source pollutants. These small well operations produce little if any pollution and the provisions of this bill affecting this industry are necessarily limited.

Kansas electric producers—big and small—will probably not like everything they see in this bill. However, major improvements have been made, and I am pleased to see that the conferees recognized that many utilities have a strong commitment to clean air and have made millions in capital improvements to bring their generating plants into compliance. Indeed, because of that commitment by Kansas electricity producers, Kansas is a clean State when compared to other places. Kansas utility executives have indicated to me that from what they see in the bill, Kansas electric customers should see no increase in their electric rates because of the clean air bill. Likewise, it is important to recognize that the conferees placed the cost of pollution cleanup on those that are doing the polluting. The concept of "cost-sharing" that was a part of earlier deliberations has been dropped. Kansas electric utilities and consumers will not be unfairly penalized by having to pay for cleaning up the polution others have caused.

Another area of concern to me is the treatment of solid and medical waste incinerators under the bill. I first noticed this problem after hearing of the plight faced by the Hadley Regional Medical Center in Hays, KS. The hospital had recently purchased a new medical waste incinerator that would not have been in compliance with the original Senate proposal. Although the bill has been improved, there are still critical issues that were eliminated from the conference agreement and will have to be worked out in the new source performance standards. It is my view that EPA should look to clean, environmentally sound incineration techniques, recycling and ash management as key components of national waste management policy.

I would make a final comment on the permitting and enforcement provisions of the bill. It is well known that the Senate debated several provisions that were not adopted designed to provide guidance and flexibility with regard to the permitting and enforcement titles. It is my hope, and I know others share this view, that in practice EPA will show restraint before recommending criminal prosecutions for unintentional recordkeeping crimes and will treat good-faith self audits as a positive policy tool for encouraging clean air enforcement. In addition, I believe EPA should endeavor to find ways to tailor and phase in where possible new operating permit programs so that those sources that need regulation most are regulated appropriately.

Mr. President, this is a national bill with profound implications for our Nation and the State of Kansas. Time will tell whether what this Nation is about to spend to improve air quality will be outweighed by the improvements in national health we all seek. Everyone involved in shaping this bill has acted in good faith and a firm belief that it is important we keep our commitment to the American people to develop sound environmental policies aimed at cleaning up the Nation's dirty air and protecting public health. Senators BURDICK, BAUCUS, and CHAFEE have done an enormous job trying to balance thousands of competing interests and they should be congratulated.

Mr. LEVIN. Mr. President, I intend to vote for the Clean Air Act Amendments of 1990, as reported by the conference. I am proud to have participated in the process that led to the Senate bill, and I salute the conferees and their staffs, who worked long and hard to develop a balanced compromise. This bill is an historic measure, one which should enable us to make dramatic progress in addressing the pervasive problem of air pollution.

If enacted, this bill will, for the first time, set specific benchmarks for progress toward clean air in our dirtiest cities. It will establish tough new standards limiting emissions from motor vehicles. It will require the use of clean fuels to further reduce emissions where such reductions are needed the most.

The bill will limit emissions of nearly 200 toxic air pollutants for the first time, requiring the use of maximum achievable control technologies to reduce emissions from each source

of such pollutants. If these technologies are not adequate to reduce health risks to a level that allows for an ample margin of safety, further reductions will be required. The Great Lakes receive special protection from deposition of airborne toxics through provisions requiring control and monitoring of the most dangerous and persistent pollutants.

The bill will mandate the reduction of sulfur dioxide emissions by 10 million tons a year below 1980 levels. This feat will be accomplished without making Michigan ratepayers pay twice for the sulfur dioxide reductions our utilities have already achieved. It establishes tight controls on sulfur dioxide and nitrous oxide emissions from powerplants.

Mr. President, these are dramatic changes to existing law. Some of these steps will be costly, but we cannot expect to fight air pollution without some sacrifice. For example, this bill will require the automobile industry to reduce tailpipe emissions by 30 percent in the next few years and by as much as 50 percent more early in the next century; double the useful life of emissions equipment from 50,000 miles to 100,000 miles; comply with strict inspection, maintenance, and recall requirements; develop and install on-board computers to identify malfunctions and deterioriations in emissions equipment; install on-board cannisters to recapture evaporative emissions during refueling; meet strict new standards for emissions in cold temperatures; and produce even cleaner vehicles for sale under an ambitious alternative fuels program.

I believe that the bill spreads the burden of reducing emissions across all segments of our society that contribute to air pollution so I can support it.

Mr. President, this bill is the fruit of a long and difficult legislative struggle. A new struggle now begins. We will have to monitor this legislation to ensure that it works and is implemented as intended. We made many difficult judgments in this legislation; I certainly hope that we were right and that the stringent standards we set will prove feasible to meet.

In the long run, we will also need to take another step forward with new, ultra-clean vehicle technologies—technologies that are on the horizon now, such as electric, fuel cell, hydrogen, and hydrid automobiles. And we must persuade the American public to drive these ultra-clean vehicles once they are produced.

The steps taken in this bill are necessary. We cannot achieve clean air without them. At the same time, however, I hope that my colleagues appreciate the burden that this bill imposes on the automobile industry. I again congratulate the conferees for their extraordinary efforts on this bill, and I look forward to working with them as we continue to address these issues in the future.

Mr. RIEGLE. Mr. President, over the past year, we have been engaged in a serious debate over how to improve air quality for all Americans. As a nation, we have the ability, as well as a duty, to better protect one of our most valuable resources—the air we breath. The bill that is before us today will take tough action to achieve this national goal of cleaner air.

Twenty years after the passage of comprehensive clean air legislation, air quality in many of our cities fails to met Federal health-based standards. Acid rain is damaging some of our most sensitive areas. The Great Lakes are threatened by airborne pollutants. The measure before us today takes aggresssive steps to address these and other environmental problems that could potentially compromise the health, vitality, and beauty of our Nation. I strongly support the bill because we must begin to clean up our air today.

This legislation puts the Nation on track to make significant improvements in air quality for all Americans—especially those in our most polluted cities. We have learned this year what Americans want. They want clean water, clean land, protection from toxic chemicls and most of all, they want clean air.

This clean air bill will be successful because every sector of our economy does its part. No one was left out. Most importantly, every group was involved in the development of this bill from the beginning. No one can claim that one sector was shut out of the debate and has to pay a higher price.

I support the mobile sources section of this bill because we all must make sacrifies for clean air. I would like to make my colleagues aware that my State will pay heavily for clean air. The auto industry will face unprecedented engineering challenges to achieve the goals of this act. The industry has made, and continues to make, great strides in producing cleaner cars. The next generation of ultra-clean cars will make a significant contribution to improving air quality. The auto provisions are not perfect—they will be very costly to the auto industry over the next decade. This is a particular concern now as our economy is slowing down. However, I am convinced that if we would have all pushed for a perfect bill, we would have had no bill at all.

I strongly support the Clean Air Act Amendments of 1990. This tough and comprehensive bill will accomplish our goal to clean air without crippling any one industry. Enactment of this bill will protect our citizens and strengthen America's strong commitment to environmental protection.

Mr. KERRY. Mr. President, I rise in strong support of the pending Clean Air Act conference agreement. I want to applaud the efforts of the Senate and House conference committee who have been laboring over the issues of clean air for months. I want to take a moment if I may to commend the able majority leader for his diligence in ensuring that this bill made it through Congress to final passage today. Senator MITCHELL is a true environmental leader who has championed this critical issue for as long as I have known him. During this process he showed that his power as an advocate is matched by his skill as a legislator as he moved this legislation through the Congress at a time when so many interests—regional, economic and most importantly the interests of the health of our citizens—were pulling the act in so many directions. In addition, I want to also commend the distinguished managers of this bill, Senators BAUCUS and CHAFEE, for their fine leadership on this comprehensive legislative accomplishment.

Mr. President it has been 13 years since Congress last had the courage to address the Clean Air Act. Today, after almost 2 years of hearings, thousands of hours of meetings and discussions, the Congress is ready to pass a new, strengthened Clean Air Act.

Mr. President, I am particularly pleased that with this bill we are resolving some of the key issues of acid rain pollution. This achievement comes after a decade in which we had a White House that insisted on more studies while the plain facts showed us in New England that action was desperately needed. In the last decade, while the Reagan administration delayed, people in Massachusetts and New England saw our trees dying, our rivers deteriorating, and our lakes dying off.

After a decade of effort as Lieutenant Governor and Senator I am personally pleased that the stalemate on acid rain is finally over and that Congress will enact a strong measure to curtail the dangerous emissions that cause acid rain. For three congressional sessions in a row, I introduced acid rain reduction legislation. And the conference report before us today embodies many of the ideas which were in my acid rain initiatives. The relief this legislation will offer New England has been a long time in coming. When I came to the Senate 6 years ago, my foremost environmental priority was to continue my work to reduce acid rain. Since my first day here, I have sought to reverse a decade of Federal neglect of acid rain, and to reverse the damage that was being done to the health of Massachusetts citizens, fisheries, rivers, forests, lakes, and streams, and even to our buildings and statues. As someone who has witnessed firsthand the indescribable desecration of the Black Forest region

of Germany, I have been determined to use every power I have at my disposal to prevent a similar catastrophe in Massachusetts.

We can expect real improvements from this bill. By the year 2000 it will reduce sulfur dioxide emissions by 10 million tons below the 1980 levels. Five million tons will be reduced by 1995 and the remaining 5 million by 2000. This is just under half of the pollution emitted in the Nation and that is significant.

Mr. President, while the seemingly endless debate was raging about acid rain, the people of Massachusetts frustrated by the absence of national clean air legislation, went ahead with tough new restrictions designed to reduce acid rain emissions within our State. The regulations stemmed from a 1985 law which I had the pleasure to work on as Lieutenant Governor. The bottom line is that Massachusetts has already bitten the bullet and implemented tough acid rain pollution standards.

Yet, Massachusetts working alone to halt acid rain was simply not enough. The pollution that causes acid rain is incideous in that it travels far from the States that produce it to pollute innocent distant lands. In order to stop the pollution coming into New England from the Midwest, a Federal solution had to be developed. The conference report before us today achieves that national solution.

Halting dangerous acid rain pollution through this measure is the first step toward seeing a revitilization of our severely damaged environment. The next step is for nature to use its recuperative ability. Once the poison ceases to fall from our skies, fish will spawn again, and rather than perishing, our trees will grow healthy and strong. However, the most significant effect of the acid rain reduction will be the strong health benefits that will be achieved for Massachusetts residents, as we will no longer be forced to breath unmitigated sulphates.

There were times during the negotiations when it was touch and go. At those moments I was pleased to be in a position to tell the midwestern Senators how Massachusetts residents were already paying for cleaner air through their higher utility rates and how it was patently unfair for midwestern companies to dump their pollution in our backyard and expect us to pay for it. This was neither appropriate nor fair. The conference agreement addresses this issue fairly and equitably: polluters will pay for their pollution.

This agreement provides flexibility to States and utilities to reduce acid rain pollution. It leaves it up to utilities to reduce pollution in a manner that they find most effective while, at the same time, providing States with the ability to expand and develop their industrial base while cleaning their skies.

I am very pleased that the agreement includes a proposal that rewards utilities that promote the use of energy conservation and renewable energy sources. This provision will be particularly helpful in Massachusetts where our utilities plan to invest $5 million in energy conservation over the next 5 years, and where alternative energy sources are growing significantly. Furthermore, coming from a technology driven State, whose strength is to develop state-of-the-art alternative energy sources, it is clear to me that the Massachusetts economy will not only significantly benefit from the alternative energy incentives but the legislation as whole. Massachusetts, with its research institutions and intensive high-technology industry is uniquely poised to help develop the pollution fighting technologies that are needed to clean up our environment. Indeed, this is a case when protecting the environment will create new jobs and economic opportunities.

Some have complained that this bill will cost too much. I would argue Mr. President that the price tag of inaction is even greater. Some industry estimates suggest that the bill could cost as much as $25 billion a year. Yet, according to the American Lung Association, the health cost associated with dirty air is $40 to $90 billion a year. Who pays these health costs Mr. President? American industries and businesses do in health insurance and treatment costs. The taxpayer also pays, in Medicare, Medicaid and other taxpayer supported health programs. Even accepting their own figures, it saves money to protect the environment. We can either pay a minimal investment now to prevent dirty air, or we can shell out billions of dollars later to repair the damage that unclean air causes to our citizens' health. And health care costs are not the only costs of dirty air. Agricultural damages from polluted air cost over $5 billion a year while damage to statues and buildings from acid rain are estimated to run over $2 billion in repairs. There is also damage to forest and streams, to ponds, and to our tourist industry, which could cost additional billions of dollars. Clearly, clean, and healthy air will save this Nation tens of billions of dollars, develop new technologies and industries, and prevent untold human agony.

Some have expressed concern that this bill will hurt small businesses. As I have already pointed out, this bill will actually spur the creation of new high-technology businesses. However, it is also sensitive to the needs of existing small businesses. The bill requires that each State have a small business assistance program that takes into account the economic and technical needs of small businesses. In the development of monitoring requirements, States are required to treat small businesses with special status. Finally, States must assess lower fees on small businesses in their permitting process.

The bill before us is a compromise, it could have been better and I suppose it could have been worse. Along with the strong provisions to reduce acid rain, it also limits the majority of air toxics, and significantly reduces smog pollution.

Today industries belch out billions of pounds of hazardous toxic air pollutants. In addition, automobiles, trucks and buses spew over 50 percent of America's cancer-causing air toxics. In the past, the Clean Air Act only required the EPA to control seven toxic chemicals. This legislation increases that list to 189 and requires all major sources emitting these pollutants to use maximum available control technology known as MACT to control these carcinogens within 10 years. Some estimate that this change will decrease the air toxics from major industrial sources by almost 90 percent, and that, Mr. President is a great improvement. In particular, the conference agreed to tighten controls on the steel industy's coke ovens and municipal incinerators. The legislation also requires the EPA to create a program to monitor the atmospheric deposition of toxics into the Great Lakes and into coastal waters. For the tourism and fishing industry in my State, I commend the importance of these provisions.

The bill again makes important improvements with regard to ground level ozone pollution, known more commonly to us as smog. I am particularly pleased that the conferees agreed to accept a House provision identical to an amendment that I offered on the Senate floor in April, designed to curb urban smog pollution. In 1977, Congress gave areas in the country with severe auto-related pollution 10 years, until 1987, to achieve healthful air quality. As late as 1982, the EPA testified that a majority of the areas were going to miss that deadline. In fact today, 13 years later, there are 101 areas in this country still suffering from chronic smog, 4 areas with carbon monoxide pollution and more than 50 areas suffering unhealthful levels of fine particulate pollution. Across this country over half of our citizens live in areas where health standards are not being met. Those especially vulnerable to this pollution include 31 million children, 19 million elderly, 6 million asthmatics, and 7.5 million individuals with chronic lung disease.

The bill will set up an ambitious system which places new requirements on cities to achieve ozone attainment. It asks cities to make steady progress toward lowering their smog pollution.

Specifically, ozone nonattainment areas must reduce volatile ozone compounds the main ozone pollutant.

Since the first Clean Air Act was enacted, States have been required to develop and carry out plans to eliminate smog pollution and achieve ozone attainment. The Federal Government has the power to review these plans, and, in cases when States fail to implement a plan or introduce an insufficient one, the Federal Government is supposed to step in and implement a workable Federal plan. In many cases, the mere threat of Federal Government intervention has forced States to implement tough plans. In addition, when the Federal Government or the States failed to institute an adequate plan, the enforcement provisions of the present clean air law have allowed citizens to sue in order to force Government action. Mr. President this Federal implementation provision is the meat of the current law's enforcement statutes. I am pleased that it was added back into the conference agreement.

I am also pleased that the conferees added back a provision to the smog title that requires that reasonably available control technology or RACT, be applied to as many existing sources as necessary to reach the health standards required by the law. Under current law, the EPA is given the discretion to control smaller, stationary sources emitting smog forming compounds. This discretion is critical because, according to the Congressional Office of Technology Assessment, small stationary sources emitting less than 50 tons of pollution per year, are responsible for nearly half of the Nation's smog forming emissions and are by far the fastest growing segment of the emission inventory.

With regard to tail pipe standards, the bill before us today requires tighter controls on automobiles to reduce air pollution. Automobiles account for 50 percent of America's smog forming hydrocarbons. This bill will require that by 1996 all motor vehicles reduce their hydrocarbon emissions by 39 percent and their nitrogen oxide emissions by 60 percent. That provision is a good one. With regard to the so-called second round of tailpipe emissions, the act will revisit the need for a further round of emission reduction some time in the next century. I would have personally preferred to see a more prompt second round, but, as I've said before, this bill is a compromise.

It was my hope that this bill would take steps toward preventing global climate change and saving energy by improving the corporate average fuel economy, or CAFE, standards of our Nation's automobiles. As one who has introduced and cosponsored legislation on this important issue I hoped that we would see it addressed as part of our clean air laws. I understand, however, that as part of the compromise, we had to take the CAFE language out of the bill and vote on it separately. Unfortunately, despite the support of a majority of Senators, and despite the fact that our Nation is in the midst of a serious disruption of our energy supplies, these provisions could not overcome an administration sponsored filibuster. Yet these provisions are simply too vital to our Nation's energy supply and to the fight against global warming to let die. I want to assure my colleagues that I am committed to redressing this issue in the next Congress. As with acid rain, progress may not come quickly, but it will come.

The legislation does established a worthy pilot project in California which will develop automobiles whose fuel emissions standards are twice as tough as the 1996 standards and the standard. The standards in this program would tighten even further in 2000. The purpose of this pilot project is to develop a new generation of blended gasoline which is less polluting.

The bill also includes some new and important provisions that will help prevent the further depletion of the ozone layer. Not to be confused with low level ozone, the ozone layer screens out harmful ultraviolet rays. Its depletion causes serious damage to our global environment. The bill before us today requires complete phaseout of chlorofluorocarbons known as CFC's and phases out other ozone depleting chemicals. Earlier this year I introduced legislation which phases out CFC's in automobiles, and I am pleased that the conference report adopted a similar initiative. I applaud this section of this bill.

Mr. President there is no simple way to clean up the air that we breathe. There are no simple solutions that everyone will endorse. The cost of a clean air bill is high, but the cost of no bill is even greater. I am very pleased with the conference committee report before us today. This is a day I have waited for and worked for, for over a decade. It is a very good day for the environment and a very good day for the people of Massachusetts.

CLEAN AIR BILL REPRESENTS AN ENVIRONMENTAL LANDMARK

Mr. PELL. Mr. President, the clean air bill, which I joined in cosponsoring, is an environmental landmark. We have finally reached the end of a very long road toward passage—a road that many of us have traveled for quite some time.

The senior Senator from Maine [Mr. MITCHELL] has been battling to improve the clean air bill since he came to the Senate. I too am accustomed to working over a span of years to enact legislation, but his tenacity is a model to us all.

My colleague, the junior Senator from Rhode Island [Mr. CHAFEE] has done an exemplary job of negotiating a tough compromise and sticking to it in the face of strong, and sometimes strident opposition.

When I cite their examples of environmental leadership, I do not mean any slight to other leaders—including the chairman of the Environmental Protection Subcommittee, the senior Senator from Montana [Mr. BAUCUS] who have done more than their part.

We owe a tremendous debt to the bipartisan leadership which hammered out this compromise measure. It is far from perfect, but it clearly is a big step toward our mutual goal of protecting the health of our citizens and our planet.

Although leaders on both sides had to endure broadsides from their traditional allies, I have been most impressed by the strength, vision, and tenacity of those who battled tirelessly for the strongest possible measure.

As we know, leadership carries with it the weight of special obligations and responsibilities. There were times and there were votes when the burden compromise was extraordinary frustrating to all of us.

Throughout Senate consideration of the Clean Air Act, I joined in fighting weakening amendments and in introducing strengthening ones. We lost some big ones, but we also won a few.

Frankly, I would have preferred a stronger, as well as more compassionate, Clean Air Act. This measure, however, represents a tremendous step forward. It literally means that we will be improving the quality of the air that we breath.

I believe the Clean Air Act is an important step toward our goal of protecting the health of our citizens and our planet. This measure represents a good start, but much work remains to be done. We must not forget that—after decades of environmental progress—our work has just begun.

The PRESIDING OFFICER. The question is on the adoption of the conference report on S. 1630, the Clean Air Act. The yeas and nays have been ordered.

Mr. McCLURE. Mr. President, I ask unanimous consent that I might proceed for 15 seconds.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. McCLURE. Mr. President, many of us believe that environmental protection and economic growth are compatible. But that cannot be said for this conference agreement.

This legislation strays from fundamental principle that the polluter pays—a cornerstone of environmental legislation since the 1967 Clean Air Act. By its departure from that principle, the measure will impose signifi-

cant hardship on the future economic growth of many regions of our country, particularly rural, Western States.

In June 1989, many of us applauded President Bush for his leadership in proposing a long overdue reauthorization and strengthening of the Clean Air Act. At the time it was recognized that his proposal would have a profound impact on our economy and our Nation's energy future. But the President's proposal reflected a balance between our desire for enhanced protection of public health, a cleaner environment, and sustained economic growth. It recognized that the environmental benefits from his proposal could be achieved in an efficient manner, that is, for the lowest possible cost to American jobs, consumers and businesses. In large part this was possible by providing regulated industry with sufficient flexibility to adopt cost-effective pollution control technologies.

In his January 19 letter, the President enunciated five tests of balance and reasonableness that need to be preserved if we are to achieve a balance between the environmental progress and economic growth that the American people demand. Foremost among these tests was that the principle that aggregate costs imposed on the American economy by the final measure should not exceed the considerable costs already embodied in the administration's bill.

Because of our shared concern for the provision of a balance between environmental quality and economic growth, many of my colleagues participated in a prolonged negotiation with the administration to produce the bipartisan agreement passed by the Senate. Out of those discussions came a deeper understanding of the full implications of this legislation for all Americans.

There were many provisions in the bipartisan Senate agreement that I was unable to support. Nevertheless when the clean air conference began it represented a bipartisan will of the Senate. However, there is little evidence to indicate that the position of the Senate was a factor in the conference. Rather, despite the months of extended negotiations that went into formulating the Senate's position, all too frequently the Senate conferees abandoned the Senate position in favor of a consolidation of the most stringent provisions from both measures. This was done without any apparent concern for the consequences of their proposal on our national economy.

Some of us may know what is in this bill, Mr. President. They are the nine conferees from this body who were entrusted with a duty to negotiate in our interest with the Members of the other House. There is no doubt that they labored long and hard to bring forth whatever it is that is before us, and I must give our conferees and their staffs due credit: But no operator's manual accompanies this complex engine of social change.

WHAT IS IT?

Our colleagues who were conferees assure us that the bill is as represented to us, and I know that our colleagues are saying so to the best of their understanding. But they did not actually write this bill, Mr. President. The bill was written virtually overnight by staff.

Our colleagues may have dictated what to put into it, but you and I know who wrote it. Staff wrote this bill, and the report. And all of us, including our colleagues who were conferees, we are all at the mercy of some staff who, in the past, have shown themselves to be more concerned with being environmentally proactive than with the great burden imposed by the laws they draft without our review.

Listen to us now: we are congratulating each other for a great achievement, without saying very much about what is in the bill—if we even know. We are not taking time for the dialog and debate for which this great body stands. We are not taking time for even ourselves or our staff to carefully look at and consider this compromise carefully to determine if it is even consistent with its four corners.

Oh, we all admit that there are costs in the bill, but our opinions about how much they are differ widely. No one can even step forward and say that he or she knows for sure what even the range is for those costs.

Industry is not actively opposing this bill—not because they don't like its provisions, but because to vote this bill down and come back again next year would be to invite retribution from frustrated environmentalists and those who blindly represent their interests in Congress. I say "blindly," Mr. President, because these gentlemen and ladies—well-intentioned as they are—see a good idea and they rush to embrace it, not stopping to give thoughtful consideration to the terrible economic and cultural effects that are often wrought by their actions.

NONATTAINMENT

For example, it is considered an environmental success that the conference agreement on nonattainment adopts the House title I with minor changes. However, this move will not only place unnecessarily stringent controls on industry but it will saddle smaller businesses with excessive and costly controls with marginal, if any, environmental benefits.

This measure will require new permits from between 50,000 and 150,000 businesses, in addition to State permits they already must get. The average cost of these permits is estimated to be around $100,000. The potential costs of the permit alone could be in excess of $5 billion before any controls are installed.

When you add the costs of the pollution controls themselves, this is perhaps the most costly title of the bill, since it effectively imposes far stricter provisions on the whole Nation than is required to deal with the problem of air pollution. The House provisions were designed for Los Angeles-style problems.

Compounding the problem is the requirement of offsets in excess of one-for-one. The measure may well hamper economic development in many urban centers to the extent that even environmentally beneficial modifications to existing facilities may be stymied. Further constraining those companies seeking to comply with the amendments are excessive permit requirements. In all American industry and consumers will have a tremendous burden to bear. What pool of offsets that exists will be quickly depleted and there will be no room for growth or modernization.

TRANSPORTATION CONCERNS

Our national reliance on the automobile as our principal source of transportation has significant energy and environmental implications for all Americans. Clearly our ability to find an alternative to gasoline as our transportation fuel must play an important and critical role in any national energy policy.

Too few people realize that today the United States is more than 54 percent dependent on imported oil and that we are more dependent than we were at the time of the 1973 Arab oil embargo. Of necessity, any Federal mandate for the use of alternative fuels should not, indeed must not, foster greater dependence on imports.

One of the few areas where there is improvement over the Senate-passed bill is in the area of alternative fuels. Nevertheless the conference agreement will place a very substantial economic and technological challenge for our fuels industry.

There is significant potential within the United States for the increased use of all alternative fuels, but we should be concerned that the final conference agreement contains no safety valve in the event that the industry is unable to supply the quantities of fuel required in the legislation on the schedules provided. This concern also extends to the extensive new requirements imposed on toxics in gasoline. Although is it an important goal to seek a reduction in toxics in gasoline, whether or not this can be accomplished is one of the most uncertain technological aspects of the legislation.

Clearly there is the potential for significant conflicts between the various overlapping fuels provisions in the

measure. This possible conflict exists from the oxygenated fuels requirements; the reformulated gasoline provisions; the State option to opt-into the California program; the California pilot program; and the fleet program.

The conferees designed a very ambitious program for both reformulated gasoline and oxygenated fuels. Even if EPA is prompt and expeditious in promulgating regulations, the refining industry is faced with a formidable task. Ultimately the marketplace will determine the demand for clean fuels and whether or not this program is successful.

ACID RAIN

While there is an acid rain problem in certain regions of this country, the control requirements in this title are perhaps the least supportable scientifically. Once this very costly program has been fully implemented there is no assurance that the problem will not still exist.

What has been fabricated is an allowance trading system that is likely to be completely unworkable. When the program was proposed the allowances were to be considered as property which could be sold and traded.

However, to the contrary, the conference agreement contains a provision which says that allowances are not to be considered as private property. Under the conference agreement EPA could take allowances away from utilities without paying for them, thus denying compensation to either the utility or its ratepayers. What is disturbing about this provision is that it was not in either the Senate or House passed measures.

Since 1967 new electric powerplants in many Western States have borne the cost of installation of the best available control technology. Now, in order to grow, these Western States must purchase pollution licenses to be derived from allowances created and sold by Midwestern and Eastern polluters to defray their costs of control. This is totally unfair and in my opinion an outrageous imposition of majority will on a vulnerable minority.

Among the matters addressed by this measure is the control of acid rain precursors. These provisions establish rigid emission caps on all existing electric powerplants and a requirement that, after the year 2000, all new energy facilities must secure sufficient offsets to achieve zero emissions on a net basis. These requirements will have significant effects on both economic growth and the growth of electricity supplies regionally and nationally.

The conference agreement fails to reflect the critical role that coal must serve in our country's long-term energy future. If, over the long-term all Americans are to achieve the benefit of national environmental policies in a cost effective manner, then our policies should encourage the retirement and replacement of old electric powerplants with more efficient and cleaner facilities. Instead this measure once again takes a short-term view of the problem.

After spending over $7 billion on the commercialization of clean coal technologies in recognition that environmental protection and economic growth can be compatible, the measure before us encourages the installation of scrubbers on existing facilities at the expense of energy efficiency and long-term environmental quality.

Because of our belief that it is possible to both achieve cost-effective emissions and reliable supplies of electricity 31 members of the Senate wrote the conferees in support of the administration's comprehensive proposal for a legislative resolution of the WEPCo issue. However, despite broad bipartisan support, this provision was withdrawn by the Senate conferees. The conference agreement does not deal with the issue? Why?

Mr. President, I ask unanimous consent that the letters I refer to be included in the RECORD at this point in my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, September 27, 1990.

DEAR SENATOR BAUCUS: We are writing to request your support for revisions in Title IV of the Clean Air Act Amendments of 1990 to address more comprehensively the so-called WEPco issue. Without a broader legislative resolution of this issue, we believe that the cost-effective emissions reduction program that is the centerpiece of the clean air bill will be undermined and that a reliable supply of electricity in certain regions of the country could be jeopardized.

As you may recall, during the Senate floor debate on S. 1630, you agreed that in conference you would try to find a way to accomplish the objectives of a comprehensive legislative solution to the issues raised by EPA's WEPCo policy consistent with the overall thrust of both S. 1630 and the underlying Clean Air Act. In particular, you expressed concern that any legislative solution must continue to protect local air quality to the extent achieved by the current Clean Air Act and must not undermine the SO_2 emissions reduction requirements of the bill.

On July 23, 1990, the Administration transmitted to the Senate Energy Committee a comprehensive proposal for a legislative resolution of the WEPCo issue. We believe that a simplified version of the Administration proposal could address both concerns as to the adverse effects of EPA's WEPCo policy and your valid concerns about local air quality and SO_2 emissions reductions, which we too share.

We wish to emphasize that the legislative provision we suggest will not in any way authorize SO_2 emissions in excess of the 8.9 million ton cap. Furthermore, this provision will not authorize emissions that exceed local air quality objectives established under the ambient air quality standards, prevention of significant deterioration, or visibility provisions of the current Clean Air Act.

In particular, we urge your support for revisions to S. 1630 that would accomplish the following:

1. Allow utilities to undertake projects that reduce emissions (i.e., installation of control equipment, natural gas cofiring) without first meeting new source permitting requirements;

2. Ensure that an existing unit would not trigger new source review where there is no causal link between a change at the unit and an increase in the unit's annual emissions; and

3. Allow utilities to undertake needed repairs at an existing unit without triggering an obligation to meet stringent new source performance standards.

Two additional issues raised by EPA's WEPCo policy should be addressed by the conference report. First, the provisions in the Senate bill that specifically address "temporary" and "permanent" clean coal technology demonstration projects should be preserved. Second, the provision in the Administration proposal which equates low-NO_x burners with BACT should be part of the final bill.

Draft language that would accomplish the aforementioned goals has been included for your consideration. We greatly appreciate your taking the time to find a solution to this complex problem and are willing to work with you and your staff in this effort.

Very truly yours,

James A. McClure, Richard C. Shelby, Jesse Helms, Dan Coats, J. Bennett Johnston, Jeff Bingaman, Dale Bumpers, Trent Lott, Thad Cochran, John Heinz, Wendell H. Ford, Charles S. Robb, Arlen Specter,

Howell Heflin, Rudy Boschwitz, Conrad Burns, John W. Warner, Connie Mack, David Pryor, Mitch McConnell, Kent Conrad, Sam Nunn, Lloyd Bentsen, Thomas A. Daschle, Steve Symms, Malcolm Wallop, Pete V. Domenici.

U.S. SENATE,
Washington, DC, October 12, 1990.

Hon. MAX BAUCUS,
U.S. Senate, Washington, DC.

DEAR SENATOR BAUCUS: We too share the sentiments that twenty seven of our colleagues expressed to you in their September 27, 1990, letter concerning the so-called WEPCo issue. While both the Senate and House bills include provisions addressing this issue, a more comprehensive provision must be part of the conference report on the Clean Air Act Amendments of 1990.

Without a broader resolution of this issue, we believe that the cost-effective emissions reduction program that is the centerpiece of the clean air bill will be undermined. We also are concerned that, if left unchanged, EPA's WEPCo policy could adversely affect the reliable supply of electricity in certain regions of the country.

In his letter to you of September 26, 1990, the President included resolution of the WEPCo issue among the elements of the Administration's comprehensive proposal intended to break the logjam in the conference committee. Also, the Department of Energy has identified EPA's WEPCo policy as an impediment to fuel switching that could help to reduce our nation's dependence on imported oil.

In particular, we urge your support for revisions to S. 1630 that would accomplish the following:

1. Allow utilities to undertake projects that reduce emissions (i.e., installation of control equipment, natural gas cofiring)

without first meeting new source permitting requirements;

2. Ensure that an existing unit would not trigger new source review where there is no causal link between a change at the unit and an increase in the unit's annual emissions; and

3. Allow utilities to undertake needed repairs at an existing unit without triggering an obligation to meet stringent new source performance standards.

Two additional issues raised by EPA's WEPCo policy should be addressed by the conference report. First, the provisions in the Senate bill that specifically address "temporary" and "permanent" clean coal technology demonstration projects should be preserved. Second, the provision in the Administration proposal which equates low-NO_x burners with BACT should be part of the final bill.

We understand that draft language that would accomplish the aforementioned goals was appended to our colleagues earlier letter on this issue. We greatly appreciate your taking the time to find a solution to this complex problem.

Very truly yours,

DONALD W. RIEGLE, Jr.
PHIL GRAMM.
STROM THURMOND.
DON NICKLES.

PUHCA EXEMPTION

Mr. McCLURE. Then, Mr. President, there is the issue of the exemption from Securities Exchange Commission jurisdiction granted to utility holding companies regulated under the Public Utilities Holding Company Act of 1935 as it relates to the allowance trading program. Under the 1935 act, the Commission is granted authority to review the lawfulness and appropriateness of a range of transactions entered into by regulated holding companies.

The conference agreement provides that holding company allowance transactions involving associate and unrelated companies are not subject to Commission jurisdiction. In response to my letters of October 4 and 9, 1990, concerning the interplay between the Public Utility Holding Act of 1935 and the allowance trading system found under in the Clean Air Act, the Commission has offered its views concerning exemption in a letter to me dated October 11, 1990, from Richard C. Breeden, Chairman of the Commission.

Chairman Breeden specifically states that "the Commission would not oppose enactment of the amedments if they provided that the creation, acquisition or disposition of allowances for sale or trade, including the issuance of securities or the undertaking of any other financing transactions with respect to such allowances, we were not subject to the 1935 Act."

I also observe, Mr. President, that it is the sense of the conferees that allowance transactions involving regulated holding companies with associate or unrelated companies are exempt from Commission jurisdiction under the 1935 act. And I understand that the floor managers share this view.

Mr. President, I ask unanimous consent that the correspondence I mentioned be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON ENERGY AND
NATURAL RESOURCES,
Washington, DC, October 4, 1990.

Mr. WILLIAM C. WEEDEN,

Assistant Director, Division of Investment Management, Office of Public Utility Regulation, Securities and Exchange Commission, Washington, DC.

DEAR MR. WEEDEN: I and others interested in the implementation of the Clean Air Act amendments of 1990 have recently grown concerned about the interplay between the Public Utility Holding Act of 1935 ("PUHCA") and the allowance trading system found in both the House and Senate versions of those proposed amendments, which are now being considered in conference.

In part, our concerns are prompted by a statement in the Report of the House Committee on Energy and Commerce to the effect that ". . . allowances created in [the] legislation will be utility assets and as such subject to the jurisdiction and regulation of State (and sometimes Federal) regulatory authorities." H.R. Rep. No. 490, 101st Congress., 2d Sess. 366(1990). This could mean that utilities subject to the PUHCA may have to seek Securities and Exchange Commission ("SEC") approval of various actions associated with the transfer of sulfur dioxide allowances. As I see it, there are two potential impediments to allowance transactions facing registered holding companies that are subject to PUHCA. First, is the possibility that allowance sales and purchases may be declared an interest in a business subject to SEC approval and, second, is the possibility that allowance transactions within registered holding company systems would have to be at cost rather than at market rates.

Obviously, these types of requirements could put registered holding companies at a competitive disadvantage in the hoped-for allowance market in which they will be competing against entities that are not subject to the PUHCA. In that light, and given any other opinions that the SEC may have reached concerning its jurisdiction over allowance transfers by registered companies, I want to know whether the SEC woud favor a provision that would limit the Commission's involvement in the sale and transfer of allowances. Given the likelihood that the conference committee may soon complete its work and the importance of this matter to those subject to the PUHCA, I would ask that the Commission provide a reply to these questions within four working days, if at all possible.

I thank you in advance for your cooperation and efforts in responding to this inquiry.

Sincerely,

JAMES A. MCCLURE,
Ranking Minority Member.

U.S. SENATE,
COMMITTEE ON ENERGY AND
NATURAL RESOURCES,
Washington, DC, October 8, 1990.

Mr. WILLIAM C. WEEDEN,

Assistant Director, Division of Investment Management, Office of Public Utility Regulation, Securities and Exchange Commission, Washington, DC.

DEAR MR. WEEDEN: Recently, I sent a letter to your offices inquiring as to whether the SEC would favor a provision that would limit the Commission's involvement in the sale and transfer of emission allowances under the Clean Air Act Amendments of 1990. Given the possibility that the clean air conference committee may soon complete its work and because of the importance of this matter to those utilities subject to the Public Utility Holding Company Act, I would ask that the Commission staff, rather than the Commission, provide a reply to my correspondence as quickly as possible.

Again, I thank you in advance for your cooperation and efforts in responding to this inquiry.

Sincerely,

JAMES A. MCCLURE,
Ranking Minority Member.

U.S. SECURITIES AND
EXCHANGE COMMISSION,
Washington, DC, October 11, 1990.

Hon. JAMES A. MCCLURE,

Ranking Minority Member, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR MCCLURE: This responds to your letters of October 4 and 9, 1990 concerning a proposal to limit the Commission's involvement in the sale and transfer of allowances under the proposed Clean Air Act amendments of 1990 ("Amendments"). The Amendments would require an ultimate reduction in utility emissions of sulfur dioxide to an annual aggregate of 8.9 million tons. Public utility holding companies registered under the Public Utility Holding Company Act of 1935 ("1935 Act") that reduce their emissions below the statutory standard would have allowances that could be sold or traded to otherwise noncomplying companies.

The Commission would not oppose enactment of the Amendments if they provided that the creation, acquisition or disposition of allowances for sale or trade, including the issuance of securities or the undertaking of any other financing transactions with respect to such allowances, were not subject to the 1935 Act.

Sincerely,

RICHARD C. BREEDEN,
Chaiman.

ENERGY CONCERN

Mr. McCLURE. In many respects the conference agreement before us ignores current trends in oil imports. While everyone is willing to talk about oil imports, no one is willing to do anything about it.

Among the provisions agreed to by the Senate conferees is the House Outer Continental Shelf provisions. There was not even an effort to seek a compromise. Under the House provisions, State and local governments are effectively given a veto over OCS oil and gas development. This is unprece-

dented regulatory authority over Federal territory now outside the jurisdiction of State and local governments. The precedent being set here will come back to haunt us, particularly those of us from public land States.

Another area of concern to me is alternative fuel. Once again we are about to adopt environmental policies without understanding their energy policy implications. In this instance, it is proposed that the Federal Government create a new, artificial market for alternative fuel vehicles.

What our country needs instead, is a well thought out, coherent, and comprehensive energy strategy designed to satisfy the needs of American consumers well into the 21st century. The goals of such an energy strategy must be: first, to clearly identify the objectives to be achieved; second, to specify in detail the means by which those objectives are to be realized; and, third, to garner political consensus and public acceptance.

In no arena is this need greater than the requirement for secure, long-term supplies of transportation fuels. Our continued reliance on gasoline as our principal automobile fuel creates significant economic, energy and evironmental consequences for all Americans.

Unless we develop and implement a comprehensive energy-environmental strategy, it is without question that at some point in the not too distant future, we will once again wake up and find ourselves in the midst of a national energy crisis. And once again both our energy and environmental interest will suffer from hastily created policies to satisfy political imperatives.

My only hope is that the national energy strategy that is to be transmitted to the Congress early next year will address this issue in a comprehensive manner.

ECONOMIC COSTS

As we undertake to improve the quality of our environment, we must be concerned for the consequences of our quest for our national economy. Under the President's proposal the costs associated with achieving the anticipated environmental benefits were some $19 billion annually. Thus, many of us were disturbed by the substantially higher initial cost estimate for the measure reported by the committee on Environment and Public Works which exceeded $40 billion annually.

In large part, these additional costs stem from the prescriptive nature of the various provisions, which were accompanied by marginal, incremental environmental benefits. The same prescriptive provisions serve as a restrictions on the actions not only by industry but by the American people themselves. The bipartisan agreement attempted to restore the flexibility contained in the President's proposal; however, this prescriptive flavor is again reflected throughout the conference agreement. As a consequence, this legislation essentially prescribes the very lifestyle of many Americans.

For the most part, what little flexibility that remained from the President's initial proposal when it has now vanished. Once again Members of the Congress are going to permit congressional staff to substitute their scientifc and technical judgment for that of EPA under the guise of a perceived lack of environmental progress over the last decade.

CONCLUSION

Although the measure before us represents progress, there is little reason to celebrate. After years of drought, the American people deserved more from its leadership.

Sad to say, Mr. President, it is political expediency rather than need that may provide the real and final reason this bill may pass. Who among us standing for re-election is willing to face the fury and the consequences of the powerful and well-financed environmentalist juggernaut? Who among us about to travel to his or her home State can easily withstand the anger and the threats of environmentalists who are willing and able to whip public sentiment to a frenzy through half-truths and lies?

Who among us is willing to tell constituents "I did not vote for the Clean Air Act because I don't know what is in it, and I do not want to sell you down the river to get a good rating from the environmental lobby coalitions."

I am fortunate in that regard, Mr. President, not because I am not running for re-election and so can thumb my nose at such pressure, but because I represent the very practical and intelligent people of Idaho. These are people who do not run screaming to the shelter of Government regulation at the first hysterical cries of panic from environmental doomsayers. These are people who think for themselves and do not lead upon others to warn them of environmental consequences.

The people of Idaho are people very close to the environment. They treasure it; they love it; they are acutely conscious of their stewardship and of their need to protect that environment. Often, their credentials as environmentalists are superior to those who represent themselves as environmentalists.

I can tell the people of Idaho, as I do now, that this bill is not in their best interests. I know that they will listen and consider what I say with minds unclouded by panic or fear.

I must say to my colleagues, Mr. President: Your constituents, too, can hear the truth if you state it simply and honestly. The overwhelming majority of the people you represent cannot blame you for wishing to see what you are voting on and for having the opportunity to truly debate it. Each of our constituents deserves nothing less.

Throughout the debate on the Clean Air Act amendments we have returned to the recurring question: do the environmental benefits of this legislation outweigh the economic costs? For me, the answer to this question for the Senate passed measure was no. With respect to the conference agreement, the answer is even a stronger no.

But a more critical question is, do the environmental benefits of this legislation outweigh the restrictions on individual freedom that pervade this measure. And, again, the answer is no.

The PRESIDING OFFICER. The question is on the adoption of the conference report on S. 1630, the Clean Air Act.

The yeas and nays have been ordered.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD addressed the chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I shall vote against this conference report. I have been tied up in conference on the transportation appropriation bill all morning. Therefore, I have not had an opportunity to speak against the conference report.

Mr. President, no other Nation on Earth has been endowed or blessed with the magnificent natural resources that we have in the United States. No other State in this Nation can match the natural beauty of my home State of West Virginia. Having been so blessed, we have a responsibility to be good stewards of those resources. We owe it to ourselves, our children, and our children's children to preserve and protect the quality of our environment.

Protecting our environment and improving the quality of our air are important national goals. Yet, they are not our only goals. In seeking to protect the environment, we have a responsibility to enact legislation that is balanced. We have a responsibility to enact legislation that takes into account the interests of all of the regions of our country. We have a responsibility to enact legislation that looks beyond our environmental goals alone, and that takes into account our economic and energy needs as well. We have a responsibility to enact legislation that balances these competing interests and conflicting goals and needs.

When S. 1630 was originally reported by the Senate Committee on Environment and Public Works late last year, it failed, in my opinion, to strike such a balance. When this bill was

voted on by the full Senate in April of this year, it still failed, in my view, to strike an appropriate balance. Despite numerous and significant changes made in the committee-reported bill during its consideration by the full Senate, I was unable to vote for final passage of S. 1630 on April 3. As I stated at the time, I was unable to do so because I could not vote for a bill that would cause great economic harship for scores of hard-working men and women, their families, and their communities, throughout the United States, and particularly in my home State of West Virginia. Nor could I vote for a bill that, in my view, failed to adequately take into account the long-term energy needs of our Nation.

Since April, it has been my hope that changes would be made to the bill in conference that would enable me to vote for adoption of the conference report whenever the conference was completed. And I must commend those who labored to move this bill through conference. To shepherd this bill through confernce was a monumental task, and I believe that significant improvements in the legislation were made by the conferees. I am pleased, for example, by the agreements that were reached with respect to the issues of residual risk, coke oven emissions, and voluntary reductions in the air toxics title of the bill. I am pleased that an understanding was reached and included in the statement of managers relating to environmental self-audits.

Finally, I am pleased that the confernce report includes the House-passed labor-protection amendment offered by Congressman BOB WISE of West Virginia. Although I certainly wish I could stand here today and congratulate the conference committee for including the Byrd labor-protection amendment in the conference report, I am pleased that I can at least commend the conferees for including the more narrowly drawn Wise amendment. To enact legislation of this magnitude without attempting to mitigate the harsh impact it is certain to have on a large number of working men and women across America, and particularly in West Virginia and the other coal mining regions of Appalachia and the Midwest, would be unconscionable While an unemployment check is no substitute for a paycheck, I believe that inclusion of the Wise amendment will at least soften the blow for some of those who will lose their jobs as a result of this legislation. I commend and thank the Congressman from West Virginia Mr. WISE, for his hard work in winning approval for his amendment in the House and successfully guiding it through the conference as well.

While I am pleased by a number of the provisions agreed to by the conferees, I must admit that, as the Senate takes up the conference report on S. 1630, I am struck by an odd sense of deja vu. Just as numerous and significant changes were made on the Senate floor to the clean air bill originally reported by the Senate Environment and Public Works Committee, numerous and significant changes have been made by the conferees to the bill passed by the Senate on April 3. Yet, regrettably, just as I was unable to vote in favor of the Senate bill on April 3, I find myself unable to vote in favor of this conference report today.

In opposing this conference report, I acknowledge that the Byrd-Bond incentives that were incorporated in the Senate bill earlier this year have been accepted by the conferees. And I believe that inclusive of these incentives will help reduce the number of coal miners who will lose their jobs as a result of this legislation. I believe that inclusion of these incentives will also help reduce the impact of this legislation on electric ratepayers in the Applachian and Midwest regions of our Nation.

However, despite the inclusion of these incentives, I remain convinced that the coal miners and the ratepayers of Appalachia and the Midwest will still be forced to bear a disproportionate share of the cost of this legislation. Despite the inclusion of the Byrd-Bond incentives, I believe the price these mine workers and ratepayers will have to pay remains too high.

According to the Environmental Protection Agency [EPA], between 4,600 and 6,000 high-sulfur coal mine jobs would have been lost in 1995, if the clean air bill passed by the Senate in April had become law. Thousands more jobs would have been lost by the year 2000. In all, according to the EPA's most recent analysis of the Senate-passed bill, an estimated 30 percent of all high-sulfur coal jobs would have been eliminated over the next 10 years as a direct result of the Senate-passed bill, if that bill had become law.

I have little reason to think that these job losses will be in any way significantly reduced if the conference report before us is adopted. I cannot ask thousands of coal mine workers in West Virginia—men and women who daily risk their lives to provide our Nation with much needed energy—to sacrifice their jobs so that the Nation might gain some uncertain benefit from reduced sulfur dioxide emissions.

We know, or at least we can estimate, what the cost of the acid rain provisions of this legislation will be. Again citing the EPA's analysis of the Senate-passed bill, the direct annualized costs to utilities, in constant 1988 dollars, will be between $3 and $4 billion in the year 2004. To arrive at the total cost of the acid rain provisions of this legislation, one must add the direct and indirect economic costs that will flow from mine closures, massive unemployment in certain regions and localities, and higher energy costs for both residential and industrial users of electricity throughout the country. Again, although these cost estimates may be slightly lower as a result of changes made in conference, there is little reason to expect any dramatic reduction in the total costs associated with the acid rain title of this legislation.

In other words, we know that costs of reducing sulfur dioxide emissions by 10 million tons will be high—billions of dollars a year. But do we know what the benefits will be? Can we, with confidence, say to the American people that our Nation will gain billions of dollars of health and environmental benefits each year by reducing sulfur dioxide emissions by 10 million tons? Have we somehow become so enamoured with, or attached to, the idea of a 10-million ton reduction in sulfur dioxide emissions that we have completely lost sight of the fact that the costs of achieving reductions of that magnitude are likely to far exceed the benefits? Mr. President, I hope I have made my position clear. I believe the time has come for us to enact new clean air legislation and I wish that I were able to vote for this conference report. I am deeply disappointed that I am unable to do so. But, as I have said before, I cannot vote for a measure that could destroy the livelihoods of thousands of hard working men and women, causing great pain for themselves and their families. I cannot vote for a measure that could bring economic ruin to an untold number of communities located in the high-sulfur coal regions of America, including many in the northern counties of West Virginia. With great disappointment, I will vote against the conference report on S. 1630, the Clean Air Act Amendments of 1990.

The PRESIDING OFFICER. The question is on agreeing to the conference report on S. 1630, the Clean Air Act. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 89, nays 10, as follows:

[Rollcall Vote No. 324 Leg.]

YEAS—89

Adams	Bentsen	Boren
Akaka	Biden	Boschwitz
Armstrong	Bingaman	Bradley
Baucus	Bond	Breaux

Bryan	Harkin	Moynihan
Bumpers	Heflin	Murkowski
Burdick	Heinz	Nickles
Burns	Hollings	Nunn
Chafee	Humphrey	Packwood
Coats	Inouye	Pell
Cochran	Jeffords	Pressler
Cohen	Johnston	Pryor
Conrad	Kassebaum	Reid
Cranston	Kasten	Riegle
D'Amato	Kennedy	Robb
Danforth	Kerrey	Roth
Daschle	Kerry	Rudman
DeConcini	Kohl	Sanford
Dodd	Lautenberg	Sarbanes
Dole	Leahy	Sasser
Domenici	Levin	Shelby
Durenberger	Lieberman	Simpson
Exon	Lott	Specter
Ford	Lugar	Stevens
Fowler	Mack	Thurmond
Gore	McCain	Wallop
Gorton	McConnell	Warner
Graham	Metzenbaum	Wilson
Gramm	Mikulski	Wirth
Grassley	Mitchell	

NAYS—10

Byrd	Hatch	Simon
Dixon	Helms	Symms
Garn	McClure	
Glenn	Rockefeller	

NOT VOTING—1

Hatfield

So the conference report was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT—CONFERENCE REPORT

The PRESIDING OFFICER. Pursuant to the previous order, the question occurs on the adoption of the conference report on S. 566, the Housing and Community Development Act. The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 6, as follows:

[Rollcall Vote No. 325 Leg.]

YEAS—93

Adams	Burdick	Dixon
Akaka	Burns	Dodd
Baucus	Byrd	Dole
Bentsen	Chafee	Domenici
Biden	Coats	Durenberger
Bingaman	Cochran	Exon
Bond	Cohen	Ford
Boren	Conrad	Fowler
Boschwitz	Cranston	Garn
Bradley	D'Amato	Glenn
Breaux	Danforth	Gore
Bryan	Daschle	Gorton
Bumpers	DeConcini	Graham
Gramm	Levin	Pryor
Grassley	Lieberman	Reid
Harkin	Lott	Riegle
Hatch	Lugar	Robb
Heflin	Mack	Rockefeller
Heinz	McCain	Rudman
Hollings	McClure	Sanford
Inouye	McConnell	Sarbanes
Jeffords	Metzenbaum	Sasser
Johnston	Mikulski	Shelby
Kassebaum	Mitchell	Simon
Kasten	Moynihan	Simpson
Kennedy	Murkowski	Specter
Kerrey	Nickles	Stevens
Kerry	Nunn	Thurmond
Kohl	Packwood	Warner
Lautenberg	Pell	Wilson
Leahy	Pressler	Wirth

NAYS—6

Armstrong	Humphrey	Symms
Helms	Roth	Wallop

NOT VOTING—1

Hatfield

So the conference report was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I have supported this bill, despite the fact that I believe some provisions are myopic about the impact they will have on the cold country. They do not go far enough.

The cold start testing provision was changed. The second phase of controls should not have been subject to a trigger.

The oxygenated fuels provision for Alaska was deleted. Without the amendment that will provide for a study of the effect of oxygenated fuels in cold climates, we won't be able to determine whether oxygenated fuels interfere with vehicle operation. My people feel that oxygenated fuels may cause great difficulty. In areas where the temperature falls below 10 below, those fuels may separate out and condense leaving water in the gas lines of automobiles. This problem is particularly unique to very cold climates.

I am pleased that the conferees deleted the House provision that would have eliminated clean coal technology grants for Western States. I see no reason why the Western States should have been excluded from grants to develop better clean coal technology for western coal, as the House had envisioned. The country will be relying upon that coal too soon.

Above all, my amendment that would have allowed a national security exemption for the continued use of halon as a fire suppressant at facilities on the North Slope of Alaska and at the pump stations along the pipeline was deleted.

It is known that halon has an impact on the ozone layer, but there is no alternative to halon system in terms of fire and explosion suppression that is known. No other system will do the job for facilities in the very harsh conditions on the North Slope. The facilities now are equipped to use halon. I'm disappointed that our Alaska provision for North Slope facilities and oil transportation system was dropped. There is not even a transitional provision in this bill for its requirements on the North Slope.

God forbid we have a major disaster on the North Slope or over the pipeline that involves a fire or explosion. But if we do, this Congress has, through its adoption of a provision substituted for my provision, just guaranteed the injury of a substantial number of people.

I think this bill may require revisiting again next year to fine tune a number of the provisions. Because we are so dedicated to clean air in my State, and our people do support the concepts of the clean air bill, I have voted for it. But I want to tell the committee that has worked on it, particularly in conference, that the myopia of those who come from the southern part of our country in dealing with some of our cold climate problems is appalling, absolutely appalling.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Maryland.

MORNING BUSINESS

Mr. SARBANES. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 1880, THE CABLE TELEVISION CONSUMER PROTECTION ACT OF 1990

Mr. HOLLINGS. Mr. President, S. 1880, the Cable Television Consumer Protection Act, responds to fundamental concerns of the American public about the cost, quality, and responsiveness of cable television. Television programming is unquestionably vital to all of us, and today most people receive this programming by means of cable systems. It is for these reasons that the public has become concerned about the ability of cable operators to raise prices continually and simultaneously to provide poor quality service.

About 2 years ago, the Commerce Committee began to hear from the public about these concerns. Under the leadership of Senator INOUYE, the chairman of the Communications Subcommittee, the Commerce Committee immediately began to examine what should be done. We have carefully and

deliberately built the necessary record through numerous hearings and meetings. We have painstakingly drafted legislation that represents a true consensus of the committee's members. In fact, S. 1881 was reported by the committee by a vote of 18 to 1. We strongly believe this product addresses the problems fairly and thoroughly.

We have spent months working with Members who have amendments that they believe improve upon the balance struck by the committee, and we have put together a time agreement that reflects that work. Unfortunately, our repeated efforts to bring this legislation before the full Senate for a vote have been blocked.

This is a very disappointing turn of events. S. 1880 is important legislation for consumers and for the development of a competitive cable marketplace. I am very sorry that the message the Senate has sent to our constituents is to wait until next year for relief. I assure you that cable legislation will be a top priority for the Commerce Committee in 1991 and that I am committed to passing legislation as promptly as possible.

TRIBUTE TO RODNEY McGEHEE, BOGALUSA, LA

Mr. JOHNSTON. Mr. President, each year the National Park Academy of the Arts presents awards to 100 artists whose work captures the essence of the landscape, wildlife, and history of our national park system. I am very pleased to inform my colleagues that one of this year's winners is from my home State of Louisiana. Rodney McGehee of Bogalusa, LA, was one of the artists chosen from out of 2,130 entrants to receive this prestigious award. I am especially proud that his award-winning painting entitled "Reflections of Barataria," depicts Jean Lafitte National Historical Park and Preserve, a unit of our national park system which I have been instrumental in establishing.

Rodney's work is already well known throughout Louisiana. Earlier this month he participated in the Washington Parish fair in the commercial booth exhibits. This fair is the largest free fair in the United States. His painting of "Klen's Bridge" in Tangipahoa Parish received the first-prize-award at the New Orleans Art Association Pirate's Alley show during the 1990 French Quarter festival weekend. Last year, as part of the Bogalusa diamond jubilee celebration, Rodney created a very large mural depicting the 75-year history of Bogalusa. This mural toured the State as part of the Louisiana Back Roads tour which was sponsored by the Louisiana Tourist Commission.

Mr. President, the Arts for the Parks competition is sponsored by the National Park Academy of the Arts, a nonprofit organization founded in 1986 in cooperation with the National Park Foundation. Its purpose is to recognize outstanding artists, enhance public awareness of the national parks, and contribute to programs benefiting the National Park Service.

This is the fourth year the National Parks Academy of the Arts has sponsored this competition and it is the first time Rodney has participated in it. The award-winning paintings, including Rodney's, are now on a 12-month tour of the United States.

In closing, I would like to congratulate Rodney for winning this very distinguished award. He has a special talent and I am sure we will be seeing a lot more of his work in the future.

QUESTION NO. 2

Mr. MOYNIHAN. Mr. President, yesterday I stated that I would address three questions of foreign policy that present themselves at the close of the 101st Congress. The first question concerned the nature of the New World Order which President Bush announced, but did not define, in his address to the joint session of Congress on September 11. Were we, in fact, seeking to establish an international system based on international law as we understand it, and have adopted it as our own law in the form of treaties, most notably the U.N. Charter?

Let me begin this last day of the 101st Congress by addressing the second question, which has to do with the ways in which we will seek to deal with ethnic conflict in the context of this new world order. My thesis will be that ethnic conflict will be the most dangerous source of international instability in the period of world history ahead of us; indeed, that we have already entered that period.

This is not a new thesis for this Senator. For decades now I have contended that ethnicity was a far more powerful force in world politics than the class struggle—alternately, the class war—proclaimed by Marxist theorists and rulers for much of the 20th century. I have argued, in association with Nathan Glazer, that ethnic conflict would bring about the disintegration of the Soviet Union. The idea made little impact here or abroad, and seems hardly to be recognized even as we witness the fact itself.

This is interesting and important. Man lives by metaphor. We see the world in terms of paradigms; predict the behavior of others in terms of these paradigms; and behave in like manner. Is it not the case that the present instability in the Soviet Union has come as near a total surprise to our planners, theorists, statesmen alike? This point was nicely put by Mr. Robert Semple of the New York Times in an introduction to a special section of their Sunday edition a few weeks ago in which they reprinted articles from their celebrated Op-Ed page which has just now passed its 20th anniversary. In his introduction, entitled "Op-Ed at 20," Semple noted some of the persisting subjects and themes over the past two decades, many of them insightful and forward looking. But he noted that the sudden end in the cold war had been quite unanticipated by Op-Ed Sovietologists. If we could extend the point to the "Break Up of the Soviet Empire," it would be equally valid. Apart from some murmuring about Islamic separatism, the profession of Soviet Studies—it had become just that—almost entirely missed the most important event in the history of Soviet society. That sort of thing happens. George Will has called political science the science of one-time events, and none should expect much of its predictive capacity. Still, I would contend it is possible to see a little way ahead in the fog. If you put the right squint on things! Mine came in part by chance, in part by accident. If what I am about to say is to be heard with any serious attention, it may be well to set forth these circumstances.

I know nothing of the Soviet Union. I speak none of the languages. On the other hand, in the New York City in which I grew up the largest ethnic group by Census reckoning was Russian, and so I have known many Russians not far, I might say, from home. Also, I have just touched the fading edges of the world in which the Bolsheviks came to power. I was once in Lenin's apartment in the Kremlin. I saw his desk in his office, with the telephone exchange in the glassed-in porch to stage left. Immediately behind the desk is a smallish bookshelf. The top two shelves are books in English. I noticed that I myself had met and knew ever so slightly three of the authors present. G.D.H. Cole and Bertrand Russell, plus one I can't now remember.

Early in my youth I came under the influence of Nathan Glazer, who even then marched to a different drummer. This would be the late 1950's. He had just finished "The Social Origins of American Communism," which he found to be—ethnic. He had conceived "Beyond the Melting Pot," and I turned out to be the only collaborator he could find. The book tested the viability of the Marxist prediction of an undifferentiated proletariat emerging from industrialization. No better test case could be found than New York. A vast industrial city made up primarily of workers drawn from the ends of the Earth, many not speaking the language, none with any ancestral feudal ties to the ruling classes. Indeed, the ruling classes were nouveau themselves and expected little by way of

fealty. Moreover, an extremely talented and energetic vanguard of the proletariat was trying to put class consciousness in place along with the apparatus of a mass party. Tammany, with its ethnic structure, won; they lost. Marx had got it wrong. As I would later say, what Marx wrote in the British Museum, Glazer disproved in the New York Public Library.

In 1972 Glazer and I began a 2-year seminar on ethnicity at the American Academy of Arts and Sciences in the course of which we took on the Marxist thesis directly. We noted, following Dahrendorf, that for two centuries, from Locke to Lenin, social thought had been preoccupied with property as the source of individual and group differences. Yet the near annihilation of property in places such as Israel or Yugoslavia had not made the least dent on ethnic distinctions. We observed that even so, both the Liberal and the Marxist traditions simply had no room for ethnicity, even as it became more salient. "Ethnicity: Theory and Practice" was published in 1975.

In 1979 in Newsweek, I "predicted" that the big event of the 1980's would be the break up of the Soviet Union along ethnic lines.

> The Soviet empire is coming under tremendous strain. It could blow up. The world could blow up with it.
>
> Following the turmoil of the Russian Revolution, the new regime managed to reconstruct most of the polyglot czarist empire, ranging across Eurasia from the Danube to the Pacific.
>
> Now the nationality strains begin. Whatever Marxism may have meant to intellectuals, it is ethnic identity that has stirred the masses of the twentieth century, and they are stirring near the Russian borders. . . . Since 1920 the Communists have rather encouraged ethnic culture, while ruthlessly suppressing ethnic politics. It won't work.

In 1986 I noticed that the "Fontana Dictionary of Modern Thought," first published in Britian in 1977, whilst filled with references to Marxism, had no entry whatever on ethnicity. I wrote Lord Bullock pointing this out. He replied that a new edition (Harper's here) was being prepared and asked if we could prepare an entry. Which Glazer and I did and which was published without a comma changed. It included this sentence: "Ethnic conflict within the Soviet empire is likely to prove a major element in 21st-century world politics." Note we were now hedging a bit; still, we had our directions right!

The events now rush upon us as with volcanic force. Let me include in the RECORD sample items from the daily and weekly press.

First, from the New York Times of October 15, an article headed "Ethnic Enmity Governs a New Soviet Republic."

Next, from a survey of the Soviet Union in the Economist of October 20, a section entitled, "United in Disunion: Will It Hold Together?"

From Thursday's Washington Post: "2 Republics Deny Primacy of Moscow: Russia, Ukraine Defy Kremlin's Authority."

From the same day's Washington Post, a grim assessment by Dimitri Simes, a senior associate at the Carnegie Endowment for International Peace, entitled, "Specter of Soviet Civil War."

Finally, from yesterday's New York Times, an article entitled, "In Soviet Union, Dizzying Disunion."

In the interests of full disclosure, as they say, let me also include in the RECORD at this point the full text of my 1979 article in Newsweek.

It will be quickly enough evident that I was less than perfectly prophetic. I thought that the Soviet leaders, sensing the collapse of their economy—another aspect of Sovietology which "we" completely missed—and the rise of ethnic tensions, would make some last throw of the dice, possibly in a strike toward the gulf. They did not. It may never have occurred to them; they may have dismissed the thought. Surely, there was a period of senescent leadership. Breznev, Andropov, Chernenko. And then came Gorbachev with a vastly greater capacity to understand the reality of his situation. Even so, that reality persists; the economic and the ethnic; both intertwined. We read that the Soviet military is pulling back its nuclear weaponry from areas of ethnic conflict. Let us hope. The last thing they or the world needs is for a clash of ethnic groups in the Caucuses, or Central Asia to be settled with nuclear warheads. But the conflicts themselves will not go away. They worsen.

And they widen. The same historical forces now at work within the old Czarist empire, have returned to the old Austro-Hungarian Empire. Yugoslavia, which from the founding of the Marxist State by Tito has been structured to contain ethnic conflict, can no longer do so. The old British realms are turbulent with ethnic and religious violence in the Indian subcontinent, and in the areas received as mandates from under the League of Nations after the breakup of the Ottoman Empire. Just the French portion of the mandatory system, Syria and Lebanon are grim witness to what might be ahead.

What we need to do is think. How do we propose to manage this form of conflict in the period ahead? There are examples. The Organization of African Unity, for one. Those nations presciently decided at the very outset of decolonization that they would not contest the colonial borders, drawn by rulers on maps in places such as Berlin, and scarcely accounting for the tribal and religious distribution of populations. But even so. Better than warfare. Indeed, it may just be that a measure of stability and harmony are ahead in South Africa. Mr. Frederik de Klerk has put forth a proposal for a multiethnic state that draws significantly on our own experience of Federalism. And, of course, South Africa is a nation of many nationalities. In Europe the development of the European Community promises to provide an overarching structure of governance and integration that has thus far eluded Ireland, for example.

The challenge is to think about this new world we are entering upon. We could do better than to begin by asking how it came about that this took us so unawares. But more importantly, we must now energetically search our own and other experiences to ask what modes of intervention, peacekeeping, arbitration, even litigation might commence to cope. If it is daunting challenge, it surely is a refreshing change from the age of totalitarianism.

Mr. President, I ask unanimous consent that the six items to which I have referred to be printed in the RECORD at this point and I yield the floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 15, 1990]

ETHNIC ENMITY GOVERNS A NEW SOVIET REPUBLIC

(By Celestine Bohlen)

TIRASPOL, U.S.S.R.—It has no borders, no money and no legal authority, but the Trans-Dniesterian Moldavian Soviet Socialist Republic already has a Parliament.

"This is not a fight over portfolios," Igor N. Smirnov, the temporary chairman of the temporary Supreme Soviet, declared defensively. "This is a split among the people of Moldavia."

Both solemn and absurd, the gathering in the old chambers of the Tiraspol City Council was yet another symptom of the political confusion now paralyzing government in the Soviet Union.

Power, once tightly held by Moscow, has not just been decentralized; it is being pulverized, as different groups and regions assert their sovereignty, autonomy or simply their desire to do things their way.

MONO-NATIONALISM IN MOLDAVIA

Recently, on the shores of Lake Baikal in Siberia, yet another Soviet Socialist Republic—Buryatia—sprang into being, proclaiming that its laws take precedence over those of the giant Russian republic and of the Soviet Union.

Here on the left bank of the Dniester River, the new republic was formed in reaction to what leaders of a dominant Russian-speaking community call the "mono-nationalism" of Romanian-speaking ethnic Moldavians now firmly in control of the republic of Moldavia.

"It is our answer to the refusal of the Moldavian Government to listen to the population of this region," said Vyacheslav Zaglyadsky, a member of the temporary Parliament in Tiraspol. "We are confronting the existence of a nationalist dictatorship, which has replaced the dictatorship of the center."

With the largest concentration of Russians, Ukrainians and heavy industry in Moldavia, the Trans-Dniester, population 800,000, was part of the Ukraine until 1940, when it was joined together with an annexed Bessarabia to form the newest of the Soviet Union's 15 republics. Last month, it became the second part of Moldavia to push for greater autonomy. The other is the Gagauz republic, formed earlier this summer by Turkic-speaking Orthodox Christians who are also unhappy with policies made in Kishinev, the Moldavian capital.

SCORN FOR MINI-REPUBLICS

The Moldavian nationalist movement, in power in Kishinev for more than a year, has treated the emergence of the mini-republics with scorn and outrage. Some leaders on the extreme wing of the ruling Popular Front have publicly threatened to take up arms to stop the break up of Moldavia, while others dismiss the demands of the "secessionists" as a provocation engineered by Moscow to distract them from their own drive for sovereignty.

"I refuse to take them seriously," said Moldavia's Prime Minister, Mircha Druk, "until they understand that in little Moldavia, it is stupid to try to create a new state. Moldavia is indivisible.

"Say I came to America," Mr. Druk continued, "and took a chunk of Texas and said I don't want to deal with Washington, but with Mexico because back in 1908, or 1909, the Americans seized this land." What would the American government do? Simply lock me up somewhere."

Mr. Smirnov, sitting here in the city of Tiraspol where non-Moldavians make up 80 percent of the population, looks at the conflict in a different way. The legal right of Trans-Dniester to exist is no greater and no less than the right of the Soviet republics—including Moldavia—to unilaterally declare sovereignty, he said.

"I predict there will not be 15 republics but many more," said Mr. Smirnov, a factory director who came to Moldavia from Russia several years ago. "Maybe 30 or 40."

A central issue dividing Moldavia has been the switch in official language from Russian to Romanian. But there is also a fear among non-Moldavians—who make up almost 36 percent of the republic's 4 million population—that the nationalists, by branding all criticism as anti-Moldavian and all critics as 'enemies of the people,' will prove to be as intolerant as their Communist predecessors, perhaps more so.

Several ethnic Russians said in interviews that they would leave the republic if they could find a way to get a residence permit to live elsewhere. In the last two years, more than 30,000 Moldavian Jews, almost half the republic's Jewish population, have already left or have applied to emigrate, according to Aleksandr Brodsky, chairman of the local Jewish Cultural Association.

[From the Economist, Oct. 20, 1990]

UNITED IN DISUNION

The country is disintegrating. Four republics have declared themselves independent (the three Baltic states and Armenia). More will follow (Georgia, Moldavia, possibly the Ukraine). Those that are left behind will be divided by arguments over land, industrial assets and trading obligations. With luck, what will emerge from this muddle will be a kind of common market that may embrace even Lithuania. If things go wrong, it will be anarchy.

Two forces are driving the process of disintegration. Either alone would be divisive. Combined, they reinforce each other and will make the task of recreating a new Soviet Union immensely difficult. The forces are nationalism, and the devolution of authority away from the centre to local authorities.

National diversity is the most striking feature of the huge Soviet state. You can sip Turkish coffee by the shores of the Caspian Sea and not leave the Union. You can eat sheeps' eyes on the steppes of Kazakhstan and still be in it. Or you can munch Viennese pastries in cafés looking out over cobbled streets, Catholic churches and the Baltic sea, and still be there. Such diversity expresses deep differences in religions, customs, and standards of living. It is as if one government were trying to rule Turkey, Afghanistan and Poland.

No unitary state has ever tried to cope with anything like this. America, which comes closest, at least has a common language, and few of its citizens can look at an expanse of land and think that their ancestors lived differently on it. The Soviet Union has nearly 200 language groups, and virtually every one of them has handed-down memories of some system other than the Soviet one.

The problem is that the Soviet Union is based on an idea that failed. Lenin and Stalin wanted to create "a new Soviet citizen" free of his old national loyalties. The aim was not absurd. America, without the ideology, succeeded in forging American citizens out of waves of immigrants. But while American citizens are Americans first, and Italians, Germans or Africans second, that is not so in the Soviet Union. In their passports Soviet citizens have a line marked "nationality". This does not say "Soviet" but "Russian", "Ukrainian", "Kazakh", even "Jew". As communist ideology collapses, and with it the point of being a "Soviet citizen", the old national groups are all that is left.

For the past 70 years the country was actually held together not by the process of building a new Soviet citizen but by the brute force of the Soviet army and the coercion of the KGB and the Communist party. Now Mr. Gorbachev wants to rule it by consent. Consent means elections, and the elections to the republics' parliaments held in the spring of 1990 swept nationalist parties to power. Lithuania's nationalist movement, Sajudis, won 90% of the seats to the assembly, the Sejm. A declaration of independence soon followed.

Even where nationalist parties won only a few seats, the vague sense that "nationalism is a good thing" was so strong that other republics ended up taking a similar course. In the Ukraine, Rukh—the main nationalist group—won only a quarter of the seats, mostly in the western half of the republic. Yet within four months the Ukrainian parliament, too, was declaring its "sovereignty"—that is, that its laws took precedence over the laws of the Soviet Union. In an orgy of nationalist self-confidence, nine republics have issued declarations of sovereignty and four declarations of independence. Thirteen of the 15 republics have now proclaimed that their laws, not those of the Soviet Union, govern their territories.

THE MELTING POT MELTS

This was the apogee of nationalism. Now the complications set in. A crude measure of this complexity is the proportion of each republic's population accounted for by the dominant national group. In nine republics, 30% or more of the population belongs to some group other than the dominant one. This may undermine the mandate of the new republican parliaments, for it will be difficult for a government representing the ethnic majority to carry the minorities in the republic along with its policies.

That is the case in Georgia, where the leader of the Georgian Popular Front says that "the biggest problem for us is the possibility of attacks by Abkhazians or Ossetians" (two big minorities). In Moldavia representatives of Russian speakers in the east of the republic and a tribe called the Gagauz in the north have both declared their sovereignty. (These decisions were instantly repealed by the Moldavian parliament.)

But the problems are even more complex than simple head-counts suggest. For a start, nationalism is not synonymous with secessionism; Lithuania, where 84% of the population is Lithuanian, is the most determined of all the republics to secede; Belorussia, where 79% are Belorussians, is among the least. Even if Lithuanians would accept any new Soviet alliance, Belorussians would be likely to demand a different one.

Moreover, even where one group is apparently dominant, conflicts can still be sharp. Armenia and Azerbaijan and Russia itself are to a high degree ethnically homogenous. Yet Armenia and Azerbaijan are on the brink of war. In August 1990 Azerbaijan erected a full state border with Armenia (with customs posts, passport controls and the rest) while Armenian paramilitary groups were making armed raids across it. The reason: the 12% of the Azerbaijani population that is not Azeri is mostly the Armenian population of Nagorno-Karabakh.

Ethnic Russians dominate the Russian republic, but Russia itself is not a unified nation. This is hardly surprising: it stretches from Japan to Poland and from the Arctic circle to China. Within Russia there are 16 "autonomous" republics, five autonomous regions and ten autonomous areas. All these have their own parliaments and own laws. Eight of them have said they will declare "sovereignty", placing their laws above those of Russia.

Enter the second of the two forces causing disintegration: devolution of power from top to bottom. Mr. Boris Yeltsin, the president of the Russian republic, boasts that his government will turn "the structure of power" upside down. He means that power will flow upwards. It will reside, first, in local councils. They will then delegate some decision-making powers to the next level up—say, the city. That is, if they want to. The city fathers will then delegate some powers to the next level up, the oblast. Then to the "autonomous republic" or the republic. Last, if there is anything left to the top institutions: the Congress of People's Deputies (the legislature) and the president (the executive). This upside-down structure of power is not something to boast about.

Even in an ordinary country it would strip the central authority of much of its influence, because local authorities are often reluctant to hand power over. In the Soviet Union, which has five tiers of local government, this may well produce anarchy, because at the bottom of the pyramid there can never be unanimity of opinion. One town will want a proposed road to run north-south. Next door they will want it to run east-west. The next town will not want it to be built at all.

Moreover, once the process of devoluton begins, it is hard to know where it should

end. At the level of the village? The street? Individual flats? This may seem an exaggeration. But when the Russian parliament was debating its declaration of sovereignty, one delegate stood up to say the sovereignty of Russia was all very well but what about "the sovereignty of industrial enterprises"? If this meant anything at all, it was that the delegate who made the suggestion did not know what "sovereignty" was. The conclusion is plain: when the resurgence of nationalism is added to this process of devolution, the combination of the two is in danger of making the country ungovernable.

All this has a historical precedent: in the upheavals America endured during its civil war. Though the question of slavery divided America at that time, the basic issue of the civil war was diffent. To over-simplify, it concerned states' rights. The confederate states held that state law was superior to federal laws—a principle which, in their eyes, justified secession. Lincoln held that, under the American constitution, federal law took precedence over state law, and ultimately fought a war to keep the nation together. Secession; the union; confederation; even civil war: these terms are the stuff of the current Soviet debate over how, or whether, the country can be held together. The decisions taken now by the republics and by Mr. Gorbachev will shape the Soviet Union for decades.

SOVEREIGN STATES

The most momentous decision concerns the "new union treaty". This is nothing less than an attempt to find a new set of principles for governing the Soviet Union. At the moment those principles derive from a number of treaties signed by Russia and other republics in the early 1920s, and which went to form the USSR (the Union of Soviet Socialist Republics). Next year, Mr. Gorbachev hopes, there will be a new treaty which will replace the USSR with the USSS (the Union of Sovereign Soviet States). This treaty is supposed to confirm that the republics are "sovereign". They, in return, will volunteer to give up some of their powers to the central authorities. Everyone will be happy and the union will emerge stronger because it is based on consent—or so it is hoped.

Note, however, that President Gorbachev is startng from a position of weakness, because the existing Soviet constitution has already sold the pass that Lincoln defended. Formally, the republics already have sovereignty and the right to secede (it was only in practice that this was unthinkable). That is why they have all been able to make their sovereign declarations without hindrance, and why Mr. Yeltsin can talk about turning the structure of power upside down and why President Gorbachev faces the prospect of seeing his authority evaporate.

So he must persuade the republics to allow him some residual powers. He wants competence over eight areas: foreign policy, defence, transport, telecommunications, monetary policy, energy, raw materials and tax gathering.

It is unlikely that Mr. Gorbachev will get all of these. Take defence. Obviously, a state has valid security worries. But Lithuania has suggested that it will meet these by joining the Warsaw pact (which is breaking up anyway). At least four republics have said they will leave the command structure of the Soviet army and form their own armies. These republics include the Ukraine, which has ordered Ukrainian soldiers serving in the Red Army to return home. If carried out, this would be a devastating blow to the army because Ukrainian officers represent more than a quarter of all officers above the rank of lieutentant.

Five republics have already said that they have no intention of signing the union treaty, in which case they will remain outside the Union. These are the three Baltic states, Moldavia and Georgia. In the long run, however, there is one circumstance in which even these republics might agree to hand over some powers to the centre: if they believed they would be better off together than apart. If that were true, it would be possible to discount all the declarations and ethnic upheavals as so much background noise. What might make it true?

For President Gorbachev, the answer is: because a new union treaty and a free market are merely two sides of the same coin. Only a visible improvement in living standards, he thinks, will persuade republics to remain in the Soviet Union. And only a free market can deliver higher living standards. Upon this connection, then, hangs the fate of the Soviet Union.

[From the Washington Post, Oct. 25, 1990]

2 REPUBLICS DENY PRIMACY OF MOSCOW—RUSSIA, UKRAINE DEFY KREMLIN'S AUTHORITY

(By Michael Dobbs)

Moscow.—The legislatures of Russia and the Ukraine headed toward a constitutional showdown with the Kremlin today by insisting that their approval is needed before Soviet legislation can take effect in their territory.

This put the two largest republics directly at odds with the national legislature, or Supreme Soviet, in Moscow, which passed a resolution earlier in the day asserting that its laws take precedence. The Supreme Soviet formally struck down declarations of sovereignty by most of the 15 republics, which assert the supremacy of their own legislation.

The constitutional dispute between the republics and the central government is likely to complicate implementation of a new package of economic changes adopted by the Supreme Soviet last week after long hesitation. It could also jeopardize the effectivness of decrees being planned by President Mikhail Gorbachev to stabilize the Soviet economy and slash the budget deficit.

Addressing a labor union congress today in Moscow, Gorbachev described the collapse of the federal structure of government as "the gravest danger" facing the Soviet Union. He added that there could be a return to a "strong-hand government"—a euphemism for authoritarian rule—unless the country succeeded in moving toward a market economy.

Areas of conflict between the central government and the republics include powers to tax and to control the exploitation of natural resources. Economic guidelines adopted by the Supreme Soviet last week give the central authorities almost exclusive control over export revenues, a point that is likely to be bitterly contested by most of the republics.

The resolution adopted today by the Russian legislature, or Soviet, covers all federal legislation as well as presidential "decrees and other decisions." The only exception is legislation in such areas as transport and defense, responsibility for which has been specifically delegated to the central government by Russia.

In a speech last week, Russian President Boris Yeltsin accused Gorbachev of reneging on an agreement to implement a radical plan to create the foundations of a market economy in 500 days. He said it would be necessary to find ways of protecting the population of Russia—half of the total Soviet population—"from the negative effects of decisions taken by the center."

Constitutional amendments adopted by the Ukrainian Soviet include the legalization of a multi-party system and the dropping of clauses that ensure a special role for the Communist Party. Last week, the Ukrainian authorities were obliged to agree to hold a republic-wide referendum on whether the Communist-dominated legislature still enjoys popular confidence.

In another challenge to Moscow, the Estonian Soviet said today it would ignore a presidential decree ordering the holding of military parades on Nov. 7, the anniversary of the 1917 Bolshevik revolution. The non-Communist governments in neighboring Latvia and Lithuania are also attempting to ban parades, despite the opposition of the Soviet military. The Supreme Soviet in Moscow voted Tuesday to back Revolution Day festivities in the capital after city authorities refused to fund the parade. Other local bodies in many parts of the Ukraine and the southern Transcaucasus region also are boycotting the celebrations on both political and economic grounds.

In the southwestern republic of Moldavia, meanwhile, tensions between the ethnic Romanian majority and a Turkish minority known as the Gagauz are reaching a new pitch. Moldavian President Mircea Snegur appealed to the 300,000 Gagauz to call off elections planned for this weekend on the creation of an independent assembly, saying that the move could lead to "civil war."

[From the Washington Post, Oct. 25, 1990]

SPECTER OF SOVIET CIVIL WAR

(By Dimitri Simes)

While the Bush administration is preoccupied with the unanticipated crisis in the Persian Gulf, another challenge to U.S. national security is looming on the horizon: the danger that the world will be confronted with the unprecedented specter of a nuclear superpower sliding into bloody chaos.

The disorderly disintegration of the Soviet state is not yet inevitable—few historic events are until they actually take place. But the prospect is real and frightening enough to warrant President Bush's taking the time to review his policy of conducting business as usual with a central government in Moscow that is becoming progressively divorced from the rest of the country.

Americans traditionally do not like to think about the possibility of a friendly foreign leader like Mikhail S. Gorbachev being ousted by his disgruntled people. Still there is no escape from the fact that all his contributions to international peace and freedom notwithstanding, to his own population—tired of economic deprivation lawlessness and ethnic unrest—he looks little better than the shah did to the Iranians or Anwar Sadat to the Egyptians.

Also the notion of anarchy and, perhaps, of civil war in a nation such as the Soviet Union—with its nuclear arms and power stations and its chemical weapons depots—contradicts elementary logic. Optimists both inside and outside the U.S.S.R. point out that nobody would benefit from such an advanced and well-armed state disintegrating

into civil war. But by that criteria of rationality, most major wars (certainly not World War I) would never have taken place. The numerous ethnic grievances coming on top of economic deprivation fuel powerful nationalist passions in many parts of the Soviet Union. And local leaders in these volatile parts play more and more frequently by Beirut's rules—ruthlessly promoting the parochial interests of their own constituencies without regard to the common good. Under the circumstances, it was perfectly fitting for Gorbachev to warn about the growing phenomenon of Lebanization of the Soviet Union—a phenomenon that is already beginning to affect the army and the KGB.

The absence of a feeling of common destiny in moments of trial reflects a centuries-honored tradition and actually predates the transformation of Russia into a multinational empire. As the great Russian prerevolutionary historian Vasily Klyuchevsky wrote about the "Time of Troubles" back in the 17th century: "vis-a-vis the state, the people of Moscow behaved as displeased servants or tenants rather than disobedient citizens. They . . . developed a unique form of political protest: individuals who could not coexist with the existing order would not revolt against it, but rather left it by running away from the country."

Rejecting the notion of common destiny is exactly what the republics, provinces and even the cities are trying to do today. National aspirations do not tell the whole story behind the centrifugal tendencies in the Soviet Union. They cannot explain the resolution of the Odessa City Council that expressed the preference of this major Russian/Ukrainian port city on the Black Sea for sovereign status modeled after Singapore's. And they have nothing to do with the independence movement in the Russian Far East and the desire there to secede from the rest of the Soviet Union.

However, the peoples of the Soviet Union cannot simply run away from each other. Borders between the U.S.S.R.'s republics are no less arbitrary than those of colonial Africa. Sixty million Soviet citizens live outside their own ethnic areas. Smaller republics may secede with a tolerable level of pain. But any Ukrainian or Byelorussian attempt to establish independence would, in all likelihood, trigger a great deal of violence and perhaps lead to civil war. The combination of an increase in radical nationalist sentiments in these two Slavic republics and a growing popular contempt for Gorbachev's leadership—which is not bold enough to lead the change and not brutal enough to arrest it—puts Ukrainian and Byelorussian secession on the Soviet national agenda for the first time since the Bolsheviks consolidated their power 70 years ago.

Americans should not be blinded by the fact that unrest in the Soviet Union lacks two clearly-defined sides like the North and South in the Civil War in the United States. Both the Time of Troubles and, more recently, the Russian revolution in 1917 have been increasingly mentioned by Soviet commentators of all stripes as relevant to their nation's current predicament. These followed a pattern of: (1) disintegration of the central authority, (2) dismemberment of the state into hostile components followed by (3) a prolonged process of crystalization into principal parties, one of which eventually prevailed.

Is this tragic pattern bound to be repeated? Gorbachev's performance gives few grounds for optimism. Like the ill-fated provisional government of Prime Minister Alexander F. Kerensky in 1917, the Soviet president is accruing ever-expanding formal powers, but these only serve to camouflage his declining authority. Like Kerensky, Gorbachev pursues the illusion of national consolidation in a bitterly divided nation, when the only solution is contingent on making painful choices that could possibly exacerbate the divisions.

What may save the Soviet Union is that the Soviet republics, while asserting their sovereignty, are prepared to enter mutually beneficial arrangements. That is exactly what the Russian parliament chairman, Boris N. Yeltsin, is counting on in his effort to create a new voluntary community of sovereign but interdependent states on Soviet territory.

Yeltsin's effort represents the best hope of averting explosive anarchy in the U.S.S.R., and it deserves U.S. support. Of course, as long as Gorbachev remains the leader, the United States has to deal with him and must avoid—as much as possible—undermining his position. But relations with the Soviet president should be balanced by developing contacts with the new powers in the Soviet Union—most notably the government of Russia, which is dominated by radical reformers.

This government enjoys much greater credibility at home than Gorbachev's team does. How long this credibility will last—in the context of the emerging economic disaster—is impossible to predict. But it is surely in the U.S. national interest to find a formula to offer Yeltsin's government a helping hand in order to keep the Soviet Union from falling into the abyss.

[From Newsweek, Nov. 19, 1979]

"THE EIGHTIES"—WILL RUSSIA BLOW UP?

The Soviet empire is coming under tremendous strain. It could blow up. The world could blow up with it.

Following the turmoil of the Russian Revolution, the new regime managed to reconstruct most of the polyglot czarist empire, ranging across Eurasia from the Danube to the Pacific. As the other great colonial empires—English, French, Dutch—were disintergrating under the blows of twentieth-century nationalism, the czarists empire, superficially transformed by the spirit of "proletarian internationalism," appeared stronger than ever. The Soviets proposed the goal of surpassing America, and in the reflected light of sputnik, many in the West thought it might just happen. Khrushchev said, "We will bury you."

Then the infrastructure of the Soviet state sickened. Just after World War II the Soviet economy grew at a portentous rate; it was better than 6 percent a year in the 1950s. By the 1970s it was barely half that. The volume of investment has been half. Production has continued to increase because the work force has grown. But now that period is coming to an end. In the next decade the work force will grow by only 0.4 percent per year. Productivity increases are about at zero. Oil, one of the few things the Russians can sell for hard currency, is beginning to run out.

Something more than an economic downturn was involved. The Soviet Union has become one of the few even semimodern societies in the twentieth century to see a rise in mortality rates. Demographers don't absolutely know why, but all the evidence suggests alcoholism. Fewer statistics have been published about mortality rates since 1974, but those available suggests that mortality has been increasing for the entire Soviet population; infant mortality as well has increased sharply—at more than 10 percent a year.

At the same time, population in the Slavic republics has almost ceased to grow. Vitality at the center of the empire must be low indeed. Something happened. The moment came when it became clear that the promises of the revolution, especially the economic promises, were not being kept and would not be.

Now the nationality strains begin. Whatever Marxism may have meant to intellectuals, it is ethnic identity that has stirred the masses of the twentieth century, and they are stirring near the Russian borders. John Paul II at the United Nations spoke to both these Soviet realities: that Soviet man is not free; that the Soviet peoples are enslaved.

Since 1920 the Communists have rather encouraged ethnic culture, while ruthlessly suppressing ethnic politics. It won't work. By the year 2000 one-third of the population will be Muslim. Less than half the population will be Great Russian. They will no longer be able to rule from the center.

Good news? Hardly. The problem is that the internal weaknesses of the Soviet Union have begun to appear at the moment when its external strength has never been greater. Quite soon now, the Soviets will have the capacity to destroy our land-based missiles, and thus in one nuclear strike wipe out much of the retaliatory capacity which we have counted on to "deter" them. In the meantime they grow ever more adventurous with conventional arms. Soviet generals and "advisers" take more and more active roles in Ethiopia and Afghanistan. Soviet arms and Soviet-trained Cubans are deployed all over Africa, and now, increasingly, in the Middle East.

This can't last. So long as the economy was growing, the system could put up with the "waste" of armaments. But that time is past. And oil is running out. The move is obvious: into the oil fields of the Persian Gulf in order to reverse the decline at home and preserve national unity.

Edward Luttwak has described the present Soviet situation as one of "operational optimism" and "strategic pessimism." The short run looks good, the long run bad. Therefore move. It was the calculation the Austro-Hungarian empire made in 1914.

[From the New York Times, Oct. 26, 1990]

IN SOVIET UNION, DIZZYING DISUNION

(By Francis X. Clines)

Moscow.—It was a typical day's Babel of self-determination in the Soviet Union.

The Moldavian Republic was distracted from its own anti-Moscow separatist plans to face the determined rebellion of one of its parts, the Gagauz minority, who were beginning ad hoc independence elections.

The rarely noticed Chuvash Autonomous Republic was claiming sovereignty over its own natural resources within the Russian Republic. Members of Russia's insurgent Parliament, themselves so frustrated by the centrifugal disarray of life, were musing on the question of outright secession.

The even less noticed Mari Autonomous Republic was following up its own proud declaration of sovereignty, demanding control over its rivers and mines and announcing three official languages: Lowland Mari, Highland Mari and Russian.

STOP SIGNS IN BYELORUSSIA

The Byelorussian Republic was using its highway policemen as internal customs guards, stopping motorists from Lithuania and other neighboring republics used to shopping in local stores for food and other basic needs.

The Tyumen Oblast, a large oil region in the Russian Republic, hurriedly appointed a study commission to deal with its own fractious components: the Yamal-Nenets district, which has suddenly dubbed itself a full republic, and the Khanty-Mansi district, which is seriously thinking about it.

Even the greatly revived Russian Orthodox Church, opening an assembly of its hierarchy, had high on its debating list the Ukrainian Orthodox Church's insistence on self-government.

The nation's daily agenda of group and subgroup rebellion is so crowded lately that it is hard to get a contumacious word in edgewise, according to the private complaint of one official of the Lithuanian Republic, which has been kept waiting since March for the denouement of its dramatic declaration of independence.

"We must not panic," President Mikhail S. Gorbachev was shown declaring tonight on television, speaking of the general situation in the nation as he tried to rally the demoralized trade union leadership, the Communist tentacle no longer trusted by ordinary workers, who are planning tougher unions.

THE ARMY LOOKS BACK

The Soviet Army, attending to that earlier rebellion, announced that it was going ahead with the Nov. 7 parades celebrating the Bolshevik Revolution even though insurgent city governments are opposed and students are threatening sit-ins. "I can not understand the desire of certain people to forget their past," complained Lieut. Gen. Anatoly Golovnev.

He was swimming against a tide of popular indifference and resentment, which might have eased some tonight with the Government's announcement that a big soccer playoff game would be inaugurated Nov. 7.

In Kiev, the leaders of Rukh, the Ukrainian nationalist movement, opened a meeting to decide whether these anarchic times finally require naked endorsement of the ultimate goal, the Ukraine's full departure from the Soviet Union.

Things were routinely tense in the ethnic enclave of Nagorno-Karabakh, where the one new twist was that police investigators looking into the endless Armenian-Azerbaijani fighting were kidnapped.

Hopeful new commercial banks in Russia who had just gone through the registration paperwork with the Soviet Union Government received notice from the central Russian Republic bank that this was all invalid and they should re-register with the rival Russian bank to be safe.

Fresh formulations of despair were being fashioned by those politicians not already out of the country on the many new junkets to Western research institutes, where distant experts try to stay insightful about chaos. It is unclear whether these now frequent seminar absences of so many talkative politicians is encouraging in affording time for them to actually go off and think of something new, or discouraging in suggesting that those who pay closest attention feel the itch to travel.

The current state of the union has become "inadmissible for a civilized society," according to the latest agenda preamble adopted by the politicians of the Russian Republic Parliament. A "government of national trust" can save this place, the politicians contended in the day's typical ream of warnings and hopes.

As the Gagauz minority offered the Moldavian Government a taste of its own feistiness and reached for self-determination, vigilante busloads of Moldavian patriots were reported on the road toward the Gagauz polls in southern Moldavia. They acted under a new Moldavian law to "stabilize the socio-politico atmosphere" with citizen volunteers, some of whom were shouting, "Moldavians to arms!"

The tension was a distraction from Moldavia's corollary problem with the newly declared Trans-Dniesterian Moldavian Soviet Socialist Republic, another swatch of the vast Soviet Union with long simmering grievances about identity and prerogatives.

By the end of this long but typical day of variations on the theme of self-determination, the Kazakhstan Parliament, not being left behind, joined other republics in declaring its sovereignty as taking precedence over all others from the airspace above to the flora and fauna below.

CONFERENCE REPORT ON THE NATIONAL AFFORDABLE HOUSING ACT, S. 566

Mr. DIXON. Mr. President, I rise today in support of the conference report on S. 566, the National Affordable Housing Act.

First, please permit me to commend the chairman of the Housing Subcommittee, Senator CRANSTON, and the ranking minority member, Senator D'AMATO, on their leadership during the last 3 years in developing what has now become the foundation of this important piece of legislation.

Mr. President, housing programs have steadily declined as a national priority. Federally assisted programs have been slashed by about 80 percent during the last 10 years. S. 566 will begin to reverse this housing trend.

This is a comprehensive 2-year housing authorization bill which will establish a firm national housing policy. When implemented, it will provide approximately 360,000 additional units of affordable housing for low- and moderate-income American families.

In fiscal year 1991, the conference agreement will authorize $17.9 billion in housing programs, about $3.4 billion above current spending levels. It will authorize $20.6 billion in fiscal year 1992, about $5.5 billion above current spending.

I support the new programs in the agreement. Although I am very concerned about the size of the Federal budget deficit, I am troubled with the disproportionate share of cuts in our housing programs. This country cannot continue to turn its back on the housing needs of its citizens.

Mr. President, there are many provisions in this conference agreement which I feel are very significant to our national housing goals. These include the Homeless, Elderly and Handicapped Housing Programs; the Public Housing Development Program; the administration's "hope" proposal; section 8 contracts; the Community Development Block Grant Program; a public housing mixed income demonstration program; and reauthorization of the Public Resident Management Program, which I initially sponsored.

I call to the attention of my colleagues three additional provisions in the agreement which I believe should be highlighted.

First, the bill creates a new housing initiative, the "home" program which will consolidate most existing housing programs. "Home" will provide flexibility and autonomy to State and local governments so that they may determine how best to meet their housing needs.

Mr. President, as a conferee, I supported a compromise provision in the "home" program where the matching Federal funding to State and local governments creates a disincentive to new housing construction and to substantial rehabilitation of housing. The bill requires States and locals that use Federal dollars for new construction to put up $1 in local money for every $2 of Federal funds, and $1 for every $3 for substantial housing rehabilitation, compared with $1 for every $4 for housing rehabilitation.

This is a provision which I would like to have seen deleted from the conference report. However, it is strongly advocated by the administration. The provision is one which the administration stated must be included in order to obtain its support for S. 566.

The funding disincentive can be detrimental to my own State of Illinois which has a considerable aged housing stock that would require substantial rehabilitation. Additionally, my State has areas which are experiencing an acute shortage of available and affordable decent housing and would require some new construction.

Rather than the match imposed in this conference agreement, my preference is to have an adequate but uniform local and State requirement for jurisdictions to qualify for Federal resources.

MR. President, I commend Senator CRANSTON, however, for his acceptance of other recommendations which I proposed and I believe made improvements in the "home" program.

The second provision which I wish to call to the attention of my colleagues is the Federal Housing Administration [FHA] reform. S. 566 will replenish the FHA Mutual Mortgage Insurance Fund, which provides loans to home buyers, while continuing to achieve the goal of providing home ownership opportunities to low- and moderate-income, first-time home buyers.

The conference agreement no longer permits FHA to insure vacation homes, and it makes permanent the current FHA maximum loan limit of $124,875. The up-front premium will be reduced from 3.8 percent of the amount of the original insured principal obligation of the mortgage, to 2.25 percent, and periodic payments will be based upon the amount owed after the initial payment.

The third provision which I will highlight offers a permanent solution to one of our most troubling housing problems—the need to avoid the displacement of thousands of low-income families, while honoring contractual mortgage prepayment commitments made to present landlords.

Experts estimate that more than 350,000 housing units could be lost through prepayment in the next 15 years. According to the Chicago rehab network, more than 21,000 units in 138 buildings around the State of Illinois fall under the Government-insured program which affects these units. Mortgages could be prepaid on 89 of these mortgage-subsidized buildings in Illinois.

Essentially, the conference agreement will provide fair market compensation to owners who wish to continue their project as low-income rental units. Alternatively, owners could sell the project to new owners who wish to continue the income composition of the units.

The agreement would permit owners to prepay their mortgage loan if the value of the project exceeds the ability of the buyer to purchase the project while utilizing Federal, State, or local subsidies.

Mr. President, I believe that S. 566 is a good bill. It places housing programs back on our national agenda. I urge my colleagues to support the conference report on S. 566.

Mr. DOMENICI. Mr. President, the conference report on the National Affordable Housing Act is legislation that is needed to improve existing homeless housing, public housing, and community development programs. This legislation also authorizes new national initiatives to promote the availability of affordable housing primarily for first time home buyers and low-income renters.

It was my hope that our national housing policy could be simplified. Yet, there is clearly a need for trying new approaches to make affordable housing more available.

The new National Housing Trust, for example, will help first time home buyers buy down their interest rates. The administration's HOPE [Housing Opportunities for People Everywhere] grants will help public housing residents become housing owners. As an original sponsor of S. 2304, the Low Income Preservation and Resident Home Ownership Act of 1990, I am pleased to see the home ownership of public housing [HOPE] provisions in this legislation.

The third major new initiative in this legislation is the Senate's Housing Opportunity Program [HOP]. HOP is designed to find the best ways to attract private investors to the task of renovating existing housing and building more housing for low-income residents.

While the conference report contains several avenues to helping the first time homebuyer and housing the poor, I do not have a better answer for solving these complex problems. I am looking forward to seeing these efforts initiated, so that we can learn the approaches that work best.

Therefore, I support this conference report and urge my colleagues to vote in favor of its final passage.

I commend Chairmen CRANSTON and GONZALEZ for a job well done in the face of many, many obstacles. My good friends, Senators D'AMATO, MACK, and BOND also put in many long hours to reach this agreement that has the support of the administration.

FHA

Perhaps the most important Federal program to most first time home buyers is the Federal Housing Administration [FHA] Mutual Mortgage Insurance Fund [MMIF]. The conferees negotiated an agreement that places this vital housing policy on more firm ground. Originally a part of both bills, the FHA agreement is now formally a part of the reconciliation package before the Congress.

Under the agreement, a $65,000 home, for example, would require about $3,600 in cash from the buyer, and $4,800 of the total closing costs of $8,400 could be financied by FHA. The out-of-pocket expense is about $800 more than currently required under FHA.

The additional upfront investment by the buyer, however, also serves to place FHA on a more sound financial footing. While some argue that this additional $800 precludes first time buyers from entering the private market, the conferees concluded that the future stability of FHA is vital to hundreds of thousands of Americans whose home mortgages are insured by FHA.

I am glad to see these steps toward keeping FHA sound. FHA is a familiar and tested approach to home ownership. Its stability is a vital component of our Nation's housing policy.

PRESERVATION OF EXISTING LOW-INCOME RENTAL HOUSING

There are about 200,000 units nationwide that could be removed from the low-income housing stock in the next 5 years. These units are under 40 year mortgages with HUD that allow prepayment of the outstanding balance after 20 years. As the 20-year periods expire, many owners see more lucrative alternatives than continuing to keep their properties reserved for low-income tenants.

The conferees crafted an innovative incentive package to help keep most of these units under contract for availability to low-income renters.

SECTION 202 ELDERLY AND HANDICAPPED HOUSING

This excellent program has been mired in bureaucratic overkill. The very complicated system for determining the precise amounts each project sponsor must commit to each unit on an ongoing basis has delayed projects all over the country. When the Senate passed its housing bill, I commented on the delays caused in New Mexico by this system.

I was concerned that projects in Las Cruces, Sunland Park, Roswell, and Albuquerque might be delayed to the point of cancellation. As the rental market softened in New Mexico, the fair market rents no longer justified the Federal investment in over 120 units in New Mexico.

I was very pleased that the conferees accepted the Senate alternatives to calculating the financial viability of these needed units. Under the Senate provisions accepted by the conference, local development costs will replace the often arbitrary fair market rent calculations made by HUD economists in the regional offices.

The result will be more reasonable approaches to determining the financial viability of section 202 units committed to construction. I commend the conferees for accepting the Senate proposal.

NEIGHBORHOOD HOUSING SERVICES

There are two NHS programs in New Mexico. One in Albuquerque and one in Santa Fe. With the help of private investment, these excellent programs are able to renovate and repair housing for neighborhood residents.

The Downtown Neighborhood Association in Albuquerque is one of the first 10 NHS projects in the Nation. I helped to get it established. Since its founding in the early 1970's, business and private housing have been reinvigorated. The neighborhood is now considered economically sound.

The conference report raises the authorized level for Neighborhood Housing Services from $29,000,000 to $36,505,000. It is my hope that this program can be expanded to Las Cruces and also to rural areas in New Mexico. I believe this is a reasonable increase in this program if properly leveraged to help new neighborhoods in America.

INDIAN HOUSING

The 19 Pueblos, 2 Apache Tribes and the Navajo Nation will benefit from an authorization in this legislation for 3,000 new units of Indian housing per year for 2 years. The related budget

authority is $228 million. This is the level of authorization I had supported.

RURAL HOUSING

The conference agreed on the continuation and slight increase of the Farmers Home Administration [FmHA] rural housing programs. New Mexicans regularly benefit from the section 502 rural housing loans for the very low and low income target groups, 60 percent and 80 percent of median income, respectively. Under section 502, interest rates are reduced and mortgages are extended over a 33-year to 38-year period. This is a most useful program for financing housing in rural America.

The section 515 rural rental housing loans are also continued in this report. Hundreds of New Mexicans live in these multifamily rental units. FmHA loans are used to construct, purchase, improve or repair multifamily rental housing in rural areas; $397 million is also authorized for rural rental assistance for those who cannot meet the rental requirements.

HOMELESS HOUSING

The administration's shelter plus care initiative is incorporated into this legislation. Grants will be awarded on a national competitive basis for rental assistance to homeless people who are seriously mentally ill or who have chronic alcoholism, drug addiction, or both. Assistance will be provided for up to 5 years. The fiscal year 1991 authorization level is $123 million, with $258 million available for fiscal year 1992.

When Secretary Kemp's nomination as Secretary of Housing and Urban Development was before the Senate, he and I discussed the concept of marrying housing and services for the homeless. He asked me for some background on this issue which I sent. I commend the Secretary for the shelter plus care concept, and I am glad to have had some role in bringing this to his attention. I commend the conferees for accepting this new approach to housing the homeless who are most in need of stable housing—the mentally ill and substance abusers.

The conferees also agreed to continue the basic McKinney Act housing programs for the homeless—emergency shelters, transitional housing, and the single room occupancy program. It was my hope that the conferees would take the Senate approach to offering these funds to States and large cities in a block grant allocated on a formula basis.

As I have done in the past, I will continue to help assure the homeless of an adequate appropriation to meet their housing needs.

COMMUNITY DEVELOPMENT

Another key program that is continued in this conference report is the Community Development Block Grant Program. These funds flow directly to Albuquerque, Santa Fe, and Las Cruces. Smaller New Mexico communities and Indian tribes also use this important program for housing renovation, economic development, related site improvements and relocation assistance, and acquisition of real property.

The conferees agreed to make $3.136 billion available in fiscal year 1991 and $3.272 billion in fiscal year 1992.

Mr. President, with these remarks I concur in the passage of the conference report reauthorizing housing and community development programs for the next 2 years.

Mr. LAUTENBERG. Mr. President, I rise to express my support for the National Affordable Housing Act.

Mr. President, the lack of affordable housing in this country has reached crisis proportions. It's a crisis with many dimensions.

On one level, it is a problem of the average, midde-class American. The young person who wants a home but can't afford a downpayment.

On another level, it's a problem of millions of working people. Men and women who must live in crowded, substandard conditions, paying a disproportionate share of their incomes for rent.

And then, at the most basic level of all, it's the problem of the homeless. Those hundreds of thousands—if not millions—of Americans who are completely without a place to call home.

Mr. President, the housing crisis is especially serious in my State of New Jersey. Home costs in New Jersey are among the highest in the Nation. And in many areas of the State, there is a severe shortage of affordable housing. As a result, countless thousands of my constituents are without shelter.

Mr. President, it is our job in Congress to set national priorities. And the first priority of any society should be to meet the most basic human needs of its people. By any measure, shelter is such a basic need. And yet right here, in the greatest country on the face of the Earth, American citizens live and sleep in a public park across from the White House. It's a moral outrage, Mr. President.

No, Mr. President, there is not enough money. But if we can find hundreds of billions for the thrift bail out, surely we can find the means to bail out the homeless.

Mr. President, over the past 10 years, funding for low-income housing programs has been cut by 80 percent. And this year's administration budget—Jack Kemp notwithstanding—only continued that neglect.

It is time to reverse this trend and make housing a real national priority. The National Affordable Housing Act is an important first step in the direction. I was proud to be an original cosponsor. And the distinguished Senator from California, Senator CRANSTON, along with the distinguished ranking minority member of the Housing Subcommittee, Senator D'AMATO, deserve much credit for their work on this legislation.

Mr. President, if we are serious about addressing housing needs, we will simply have to shift some real resources to do it. And that includes shifting resources to improve oversight—to make sure we do not allow the crooks to undermine housing programs.

But we need to do more than improve HUD oversight. We have also got to develop new and better approaches to housing.

I have taken the lead in pushing one particular promising approach: the development of affordable housing by nonprofit housing organizations, and I want to discuss that approach here today.

Mr. President, as the Federal Government has withdrawn support for housing over the past decade, thousands of community-based groups have emerged to fill the vacuum. From the New Community Corp. in Newark, to the Community Housing Corp. in Santa Barbara, to the Nehemiah project in Brooklyn, these grassroots organizations have built housing and rebuilt communities.

Groups like these can do even more, if we give them the chance.

That's why I introduced the Community Housing Partnership Act, S. 1081, a bill to provide matching grants and technical assistance for community-based nonprofits. I have been working with Senator CRANSTON on this, and I am pleased that the conference report before us does include a community housing partnership title based on my legislation.

Mr. President, there are many reasons to give nonprofit housing organizations an important role in national housing policy.

First, nonprofits are closely tied to their local communities. Unlike HUD's massive, distant bureaucracy, nonprofits consist largely of local people who care about their communities and who are sensitive to local needs. Their initiatives often enjoy strong neighborhood support.

That is important. After all, efforts to provide affordable housing are often complicated by community resistance to outside authorities and developers. Yet most nonprofits are "of, by, and for" the people of the community. As a result, their initiatives often avoid the costly, time-consuming problems that face other developers of affordable housing.

In part because of their close community ties, nonprofits undertake projects that often developers consider too risky, too small or too unprofitable. And nonprofits generally are in it for the long haul—they are not look-

ing forward to converting affordable housing into high-rent condominiums.

In addition, nonprofit housing is often just one component of broader neighborhood revitalization efforts. Nonprofits do not just build housing. They often hire and train local youths. Improve other commercial and recreational facilities. And offer other services. In short, they build communities. They make people's lives better.

For all these reasons, nonprofits deserve to play an important role in Federal housing policy. And I am pleased that the conferees have agreed.

Mr. President, I would like now to turn to another issue addressed in this bill: the problem of drugs in public housing.

Mr. President, the residents of public housing all too often feel like they are living in a war zone—terrorized by armies of drug dealers and afraid to leave their apartments. It is an inhuman, intolerable situation. And I think we have an obligation to do something about it.

That is why 2 years ago I developed the Public Housing Drug Elimination Act—a competitive grant program under which housing authorities and residents can get the tools they need to fight back. Grants can be used for a variety of antidrug initiatives, including the hiring of additional security personnel, physical improvements designed to enhance security, and drug education and prevention programs.

The program is just now getting off the ground, and I'm happy to report that it is off to a very good start. There has been a tremendous response from housing authorities around the country. Clearly, the need for the program is very great.

This bill would reauthorize the Public Housing Drug Elimination Act for 2 years. It also would make various changes to the program, some of which were included in free-standing legislation I introduced earlier in this Congress, S. 1832. For example, the bill expands the selection criteria to include resident involvement in the design and implementation of antidrug plans. I think that is important, and is consistent with Secretary Kemp's emphasis on involving tenants.

The program also would be expanded to allow applications from owners of federally assisted, low-income housing. Like much public housing, assisted housing projects often have serious drug problems that imperil residents' safety.

The owners of this housing have the primary responsibility for providing safe living conditions. However, many owners face an unforeseeable explosion in drug-related crime and lack the resources to respond effectively. Under these circumstances, their residents should not be left at the mercy of violent drug dealers.

The conference report therefore allows owners of assisted housing projects to apply for drug elimination grants, and to use those grants for the same types of antidrug efforts allowed for public housing applicants. It also gives HUD discretion to establish separate selection criteria for assisted housing. Given the limited funds available, it is my hope that these selection criteria will help target grants to assisted housing owners who could not otherwise meet their obligation to provide safe housing.

I would note, Mr. President, that the inclusion of assisted housing in the drug elimination program does not come at the expense of the public housing community. Under the conference report, the authorization level is increased from $150 million, the funding level included in the Senate-passed authorization bill and the fiscal year 1991 appropriations conference report, to $160 million, 6.25 percent of that, or up to $10 million, is set aside for assisted housing. Public housing, therefore, is held harmless.

Mr. President, I want to express my sincere thanks to Senator CRANSTON for his cooperation in the development of the provisions reauthorizing the Public Housing Drug Elimination Act, and the nonprofit housing provisions. He and his staff have been exceptionally helpful, and I want him to know that I appreciate it.

In closing, Mr. President, this conference report is an important first step toward a renewed Federal commitment to housing. Senators CRANSTON and D'AMATO deserve to be proud of the legislation, and I urge my colleagues to support it.

CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT—CONFERENCE REPORT

Mr. HELMS. Mr. President, while I agree with many of the objectives that Secretary Kemp and the conferees tried to accomplish with this bill, I just cannot support it because of the billions of dollars it contains in new Government spending.

This housing conference report authorizes spending $27.4 billion in fiscal year 1991, $3.4 billion of it new spending. It is also $4.9 billion more than the President says he can spend wisely.

For fiscal year 1992, this conference report authorizes $29.9 billion for housing programs, including $5.5 billion in new spending.

Mr. President, that HUD Secretary Kemp set out to develop a comprehensive national housing policy and I commend him for it. He is working to shift our national policy away from an emphasis on how many units of housing the Federal Government constructs each year to an emphasis on how many lives our national housing policy helps to improve.

To point, Mr. President, is that we all should admit that the so-called budget compromise, which is on the way over here, will raise gas taxes excise taxes, and income taxes—while purporting to reduce spending. But, as always, what the liberals in Congress mean is: raise taxes now and reduce spending later. The American people should be told the truth about this ruse—they will never see those promised reductions in spending.

Remember, there were no spending cuts—as were solemnly promised at the time—in exchange for the 1983 tax increase. The taxpayers are not going to see these new cuts that now are being promised either. So, I am going to vote against the "smoke and mirrors" on which this latest budget agreement is based.

Mr. President, perhaps the American people will one day realize that promising politicians never deliver on their promises to cut Federal spending. That is why America is in an economic crisis now. Too many politicians are thinking of the next election—not the next generation.

Mr. SARBANES. Mr. President, I suggest the absence of quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. We are in morning business, Mr. President?

The PRESIDING OFFICER. We are in morning business.

URANIUM ENRICHMENT

Mr. FORD. Mr. President, on October 22 the House conferees on the energy portion of the budget reconciliation bill refused to consider legislation proposed by the Senate dealing with the uranium enrichment. The Senate's budget reconciliation proposal on uranium enrichment would have saved taxpayers a significant amount of money in the context of the current budget process. At the same time, the Senate bill would have insulted reforms in the Department of Energy's uranium enrichment program that could save taxpayers billions of dollars in the future.

The uranium enrichment provisions of the budget reconciliation bill adopted by the Senate were based on S. 83, comprehensive legislation that I have developed over the past 4 years with the invaluable help of Senators JOHNSTON, MCCLURE, and DOMENICI. S. 83 passed the Senate twice previously in this Congress. Very similar legislation

also passed the 100th Congress twice. Throughout this period the House has failed to act on any legislation addressing this issue.

What is the issue? It is quite simple to summarize, although the details can get pretty complex. The simple summary is that the Department of Energy's uranium enrichment program is trying to operate under a statute that assumes DOE is monopoly seller. This assumption is contrary to reality. The reality is that the uranium enrichment market is a highly competitive international market. Unless Congress changes the Federal law governing the Department of Energy uranium enrichment program to reflect market realities, the laws of economics—which Congress cannot change—will force the collapse of DOE's program.

This collapse will be costly. The DOE's uranium enrichment program today generates approximately $1.5 billion in revenue annually. In the early 1980's, the program generated over $2 billion annually. Today's uranium enrichment revenues include about $500 million in annual sales to foreign utilities. These sales represent an important contribution toward reducing our trade deficit.

In the coming decade, suppliers of uranium enrichment services worldwide will be competing for uncommitted sales to United States and foreign commercial customers worth tens of billions of dollars. A viable U.S. uranium enrichment enterprise could have a significant share of these sales. However, under today's statutory framework the DOE's program will simply be unable to compete.

In the past, revenues from commercial uranium enrichment customers have supported economies of scale that benefit our national defense. The defense of the United States depends critically on nuclear submarines. The fuel for these submarines comes from DOE's uranium enrichment program. Without the revenue that is available to the DOE program from commercial customers, the taxpayer's bill for national defense would be $300 million higher each year.

In the future, the revenue stream provided by DOE's commercial customers could help greatly to support the development of new enrichment technologies. A strong U.S. presence in world market for enrichment services could be a key factor in keeping the United States in the lead in enrichment technology. Being in the lead in enrichment technology is critical to national security and the achievement of our nonproliferation objectives. We have the lead in enrichment technology today, but it is a lead that could evaporate quickly. I submit that the continuing danger of the proliferation of nuclear weapons means that we as a nation cannot opt out of this kind of research and development. We must be involved, and we will be. The only question is how much of this burden falls on taxpayers and how successful we are at it.

There is another important task for the revenues from the commercial customers of a strong U.S. uranium enrichment program. Some day—not soon, but some day—we will begin the decontamination and decommissioning of the facilities we have used to enrich uranium. The cost of decontamination and decommissioning of these facilities is unknown now, because we do not know when or under what rules these actions will take place. We do know the cost will be very substantial—in the billions of dollars. If we let the DOE uranium enrichment program collapse, as it surely will if we do not act to change the law governing the program, these costs will fall entirely on taxpayers. On the other hand, if we provide for a continuing, profitable uranium enrichment program, the resulting revenue stream can be used to ensure an equitable sharing of decontamination and decommissioning cost among the program's customers.

How foolish we will look, to have thrown away the revenue stream that a strong, commercially viable program might have generated. My legislation, S. 83, provides for the accumulation from commercial and defense revenues of a fund for eventual decontamination and decommissioning of DOE's uranium enrichment facilities. As included in the Senate reconciliation bill, our legislation was even more aggressive and explicit in its treatment of decontamination and decommissioning funding in an attempt to respond to the ostensible concerns of House Members on this matter.

The response of these House Members in the reconciliation conference was to kill the very best opportunity to get the funds needed for decontamination and commissioning—the restructuring of DOE's program. Without restructuring, there is no way that the United States can remain a vigorous participant in the world uranium enrichment market.

I suspect there were Members of Congress who, in the early part of the 1980's, saw the beginnings of the savings and loan debacle. Today the need to pay for savings and loans losses have thoroughly frustrated efforts to put our national fiscal house in order. The exposure of taxpayers from our failure to provided adequately for the decontamination and decommissioning of DOE uranium enrichment facilities is not as large as the exposure from savings and loan losses. Nevertheless, it is obvious today that we are talking about several billions of dollars of taxpayer exposure, and it is obvious today that this bill will have to be paid. It is also obvious where we must obtain the funds to pay this bill. What we are failing to do, because of the recalcitrance of a few key Members of the House, is to make the needed changes in law that could provide the funds that could, equitably and automatically in the course of commercial and intra-governmental transactions, provide revenue to support the work that must be done.

This failure is clear. I am personally enormously frustrated that we in the Senate have spent years attempting, without any success, to get the attention of the House on this issue. We will continue, but I am forced by our past experience with this issue to question whether the traditional legislative pathways in the House are capable of responding.

I do not mean to suggest that all the jurisdictional committees of the House have ignored the uranium enrichment issue. Under the leadership of Representative MARILYN LLOYD, chair of the Subcommittee on Energy, Research and Development, the House Committee on Science, Space and Technology considered and reported a thoughtful bill, H.R. 2480, based on the administration's proposal for restructuring the DOE uranium enrichment program. But that is the only movement that has taken place. None of the other House committees with jurisdiction over uranium enrichment has addressed the issues seriously.

Next year, when the 102d Congress convenes, we will renew our efforts to get the House to act responsibly on uranium enrichment. There is very little time left to prevent a complete loss of confidence in DOE's program. In 1995, the long-term contracts that have held DOE's current customers will begin to expire. We must begin the restructuring of the DOE program well before that time if any of the DOE customer base is to be retained. We simply must have enactment of restructuring legislation next year to have a chance to reach this goal.

I would like to believe that Congress will act to prevent a multibillion dollar domestic enterprise from slipping away so that foreign competitors can take over. I would like to believe that we are capable of organizing ourselves to protect our own security and to prepare adequately for our environmental responsibilities. I would like to believe we can accomplish these things, but the performance of the House on the issue of uranium enrichment leads me to conclude that the main obstacle to achieving these goals. lies in that Chamber.

Mr. President I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimus consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WATER RESOURCES DEVELOPMENT ACT—CONFERENCE REPORT

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the conference report accompanying S. 2740, which is the Water Resources Development Act of 1990.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2740) to provide for the conservation and development of water and related resources, to authorize the United States Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 27, 1990.)

Mr. MOYNIHAN. Mr. President, it sometimes seemed doubtful that we would reach this point, however, I am pleased to report that our conference committee reached an agreement on a water resources bill.

As is ofter the case, the House and Senate versions of this bill were quite different in scope. To add to this confusion the U.S. Army Corps of Engineers and the Office of Management and Budget had their own ideas on how the final package should look. In the end I must commend the members of our conference, most particularly Mr. BURDICK, Mr. ANDERSON, my fellow New Yorker, Mr. NOWAK, Mr. HAMMERSCHMIDT and Mr. STANGELAND for their dedicated work. These gentleman were willing to strike projects from the bill that they themselves had sponsored, as well as projects very much needed by other Members of the House, in order that we might have a bill. I commend them for it. On the Senate side as well, our conferees worked hard, and were very open to compromise.

Due to objections by the administration, many meritorious projects were excluded from this bill, I can only hope that the next water bill will be more able to support these projects.

The Water Resources Development Act of 1990, continues the practice of biannual authorizations for the U.S. Army Corps of Engineers. We returned to this practice with the passage of Public Law 99-662, the Water Resources Development Act of 1986.

There had been a 10-year wait for this legislation. The 1986 bill established our current requirements for water projects which center on cost sharing, user fees, and environmental protection.

The legislation represents a consensus of our Nation's needs, as evident from the bipartisan support it has received and by the 42 States which will receive projects. The bill has an estimated cost of $2.5 billion, contains 26 construction authorizations, all of which have completed the corps planning process. Projects for navigation improvements, recreation, storm damage reduction, and flood protection are included in the bill. They all have a positive benefit to cost ratio. All have complete and favorable environmental impact statements.

In addition to these project authorizations, the legislation contains approximately 100 project related provisions and a number of general provisions to provide additional management guidance to the Corps of Engineers. I believe them to be noncontroversial and important for the continued operating effectiveness of the corps.

The enactment of this water resources bill will continue the established working partnership between the Federal Government and the non-Federal interests. It is important that we continue this orderly arrangement.

Mr. President, the bill contains several important projects for the State of New York, not least of which is the establishment of a management conference for Onondaga Lake. On January, 27, 1989, I introduced S. 27, the Onondaga Lake Restoration Act of 1990, it is now included in this bill. At that time I was determined to make the restoration of Onondaga Lake a model for the rest of the Nation. Some say that such an effort is hopeless. I say, not so. The whole Nation can profit and learn from such a model. Indeed cleaning up Onondaga Lake can show that there are very few environmental problems that cannot be overcome.

Some may not be intimately familiar with the history of the lake. It was once a well known aquatic playground. Water slides shot into the lake from prestigious lakeside resorts. But for most of this century, the lake has served more as a dump than an amenity. In 1884 the Solvey Process Co. opened operations on the lakeshore for the production of soda ash. This process, however, produced substantial quantities of chemical sludge as waste, which was dumped directly into the lake until 1907. Thereafter it was deposited along the lakeshore and substantial chemical leaching from the waste beds continued to pollute the lake.

Another unfortunate byproduct of the process was mercury. The Solvey Co. and later Allied Chemical which bought out the original owners, dumped as many as 25 pounds of mercury into the lake per day.

For all practical purposes the lake has been considered dead for a many years as most of us can remember. But in 1985, Allied Chemical left Onondaga County and moved its soda production facilities to Wisconsin. And since then there have been small stirrings of hope that perhaps the lake can be reborn.

This is a worthy goal and achievable. The lake may never recover fully from its past but we can reclaim it for human use.

The Onondaga Lake management conference is the first essential step toward finding the long-term solution to the cleanup.

Mr. President, this legislation represents sound water resources policy. I urge my colleagues to support its passage today.

Mr. BURDICK. Mr. President, the Senate is considering the conference report on S. 2740, the Water Resources Development Act of 1990. This legislation is significant, marking as it does a continuing commitment to biennial authorization of the water resources program of the U.S. Army Corps of Engineers.

This body does not have to be reminded of the landmark 1986 Water Resources Development Act, which was the first major legislative initiative in this area to become law since 1970. That act contained significant reforms to our approach to water projects, particularly with regard to increased non-Federal participation in planning and construction of such projects.

The 1986 act was followed 2 years later by the 1988 act, which continued the authorization of Corps of Engineers projects in conformity with the reforms of 1986. Enactment of this 1990 act will represent yet another commitment of the Congress and the administration to the orderly continuation of a program which is vital to the Nation's infrastructure.

I urge favorable consideration of S. 2740.

Mr. LAUTENBERG. Mr. President, I rise in support of the conference agreement on the Water Resources Development Act of 1990.

At the outset, I would like to commend the distinguished chairman of the Water Resources, Transportation, and Infrastructure Subcommittee, Senator MOYNIHAN, for his leadership in ushering this legislation through the Senate and conference with the House.

This bill addresses a number of issues important to my State of New Jersey. As a conferee on this legislation, I worked to ensure that the provisions of the bill provide my State with the backing, and the flexibility, it needs to best confront its water resources needs.

This bill authorizes substantial Federal assistance to New Jersey to address a major threat to residents in the northern part of my State who reside in the Passaic River Basin. The provision I'm referring to authorizes construction of a major flood control project along the Passaic River Basin in New Jersey. The State must now decide if it wants to proceed with this project, given the option provided to it by the Congress.

The Passaic River Basin is a densely populated area, with a population of about 2 million people. It's also an area that's highly flood-prone. The Army Corps estimates that each year, floods cause almost $100 million in damages.

In 1984, the area suffered a 25-year flood. That flood killed 3 people. It forced the evacuation of 9,400 residents. It resulted in $390 million in damages.

It is estimated that a 100-year flood, like one that occurred in 1903, would cause $1.9 billion in damages.

Earlier this year, we saw the devastation of floods in Texas and Arkansas. At the same time, we had serious flooding in the Passaic River Basin in New Jersey, with only a fraction of the rain they've gotten in those areas. In an area of more than 2 million people, flooding like that experienced in the South would be disastrous. That's what we need to prevent.

The project that this bill authorizes attacks flooding in the Passaic River Basin on a number of fronts. It preserves 5,000 acres of retention of flood waters. It stabilizes river and stream banks throughout the region. A major component of the project is a tunnel underneath the Passaic River, that would take on flood waters and divert them to an area downriver.

As proposed by the Army Corps, the tunnel would have had its outfall near a town called Nutley. Residents in that area have had concerns about the impacts of the release of flood waters there. I appreciate their concerns. We shouldn't risk shifting flooding problems from one area to another.

Because of that, I offered an amendment to the water resources bill during committee consideration to extend the tunnel outlet south, to Newark Bay. The Senate approved this modification, and it has been included by the conferees, as well.

The conference agreement also allows the State of New Jersey to be credited with the acquisition of land to be used for flood water retention in meeting some of its cost sharing requirements for the project. Under the conference agreement, the Army Corps of Engineers also is responsible for maintenance associated with the operation of the tunnel component of the project, when and if it is built. Congressman BOB ROE, who so ably represents his constituents in the Passaic Basin, fought hard and effectively to see these provisions included.

Mr. President, the State of New Jersey now has the option to proceed with this project or not. The State must reach its own conclusion about how best to deal with the threat of disastrous floods in the Passaic River Basin. The bill preserves for New Jersey the option to divert those flood waters through this comprehensive flood control project.

Mr. President, flooding is a serious and continuing threat to the Passaic River Basin. We can't allow lives and property to continue to be lost. This project would provide a way to protect the 2 million residents of the Basin.

The conference agreement also includes three provisions which will continue our efforts to protect New Jersey's coastal environment.

First, the conference agreement includes a version of S. 506, which Senator MOYNIHAN joined me in introducing last year. This bill directs the Army Corps of Engineers to use its existing program to remove floating driftwood in New York Harbor to assist in the cleanup of garbage in the Harbor which is winding up on New Jersey and New York beaches.

Garbage washing up on New Jersey's shores has adversely affected our $8 billion coastal tourist industry, fish and wildlife resources, and ruined summer vacations. Estimates of loss to the New Jersey economy from pollution incidents in 1988 run as high as $1 billion. The number of people who visited the New Jersey shore dropped from 8.6 million in 1987 to 6.7 million in 1988.

The garbage that affects our beaches stems from numerous sources. According to the U.S. Environmental Protection Agency, one source is the garbage now in New York Harbor which is refloated during storms through the harbor into ocean waters and then is washed back onto the shore. If this garbage were collected before it washed out into the ocean, we would reduce the amount of garbage which affects our beaches.

The Corps of Engineers currently operates a program to remove floating driftwood in New York Harbor. Corps' boats operating in the harbor use nets to collect pieces of driftwood which adversely affects navigation in the harbor.

Rather than wait for an emergency, the corps should act now to stop the problem before it occurs. In May 1988, I wrote to the Assistant Secretary of the Army urging him to use the existing driftwood collection program in this effort. Over the last two summers, the corps has joined other Federal and State agencies in the floatables action plan and has used its boats to clean up garbage before it washes onto the shoreline. This program is widely credited with reducing the garbage floating onto our precious beaches. The conference agreement directs the Secretary of the Army to collect and remove all floating material whenever the Secretary is collecting and removing floating logs.

Second, the agreement includes language I originally included in S. 1178, the Coastal Protection Act, which would require the corps and EPA to establish a demonstration project for environmentally sound methods of disposing of dredged material from the New York-New Jersey Harbor. Some dredged material is contaminated and presents a threat to the marine environment unless it is managed properly. The demonstration project will develop improved methods for managing contaminated dredged material from New York Harbor.

Finally, the bill establishes a process for ending the ocean incineration of wood off the coast of New Jersey. Mr. President, this practice must end as soon as possible. Burnt wood from these operations has fallen overboard and created hazards for fishermen and swimmers. The burning results in air pollution and black plumes affecting visibility. Environmentally preferable alternatives are being developed. The conference agreement establishes a process for implementing these alternatives and ending once and for all the practice of ocean incineration of wood.

Mr. President, this conference agreement is comprehensive and well considered. I urge my colleagues to support it.

Mr. DOMENICI. Mr. President, I wish to express my support for a provision in S. 2740 that authorizes the Army Corps of Engineers to construct a flood control project to protect the community of Belen, NM, from the serious runoff danger that now faces that city.

When thunderstorms rip across the mesas and watershed west of town, flood waters have poured into the city of Belen on several occasions, most notably in 1969 and again in 1980. In places, I am told, the flood waters reached depths exceeding 15 feet following the 1969 storm.

Belen's problem is that it sits in a bowl. Mesas and high ground stand to the west. The Rio Grande runs east of the city. The bed of the Rio Grande, according to calculations by the corps, is actually higher than some adjacent portions of Belen.

Under this conference report, based on S. 923, which I introduced last year, the corps is authorized to construct a

project that captures that mesa runoff, then diverts the water safely around the city to the Rio Grande.

The project would widen and deepen an existing irrigation canal, known as the Highline Canal, which is owned by the Middle Rio Grande Conservancy District. With an enlarged capacity, the canal would capture all the mesa runoff, preventing it from over-topping the canal and flooding Belen.

Because of the topography that I have described, the project will have to move that runoff water about 6 miles downriver before it can be dumped into the Rio Grande. This lengthy diversion is what makes this project relatively expensive.

One of the most interesting aspects of this provision is the cost-sharing. All Federal flood control projects, as the Members of this body know, now require at least a 25-percent contribution from non-Federal interests.

But because of the unusual topography of Belen, which I have mentioned, the corps has been unable to design a project at Belen that can be justified on strict economic terms. In fact, the benefits of the project we are authorizing in this bill are estimated to be about 80 percent of the project's costs.

Yet, I certainly am convinced—and the officials of Belen are convinced—that this project is critical to the city's future.

Therefore, S. 923 and this conference report were written in accordance with section 903(c) of the 1986 Water Resources Development Act. Under that provision, projects that appear uneconomic may still be considered and approved by the Congress if non-Federal interests agree to pay all the costs of the project over and the sum equalling the benefits of the project.

This conference report, as well as S. 923, calls for the standard 25-percent non-Federal cost sharing on that portion of the project's costs that equal the benefits of the project, with non-Federal interests paying the remainder.

Belen is not a wealthy community. But I believe the willingness of the citizens of Belen to bear this added responsibility should demonstrate to the Senate the absolute validity of the project.

They recognize that dire problems confront their community that they are willing to commit to an expenditure of $7,446,000 toward the full cost of the project: $19,576,000.

Mr. President, let me restate that. The citizens of Belen are willing to contribute 38 percent of the cost of the project, instead of the standard 25 percent.

That is how important this project is to the people and the future of that wonderful community.

I hope this Senate joins me in commending Belen for this forward-looking commitment.

Once this project is authorized, I certainly will do everything that I can, as I have said before, to assist the citizens and the officials of Belen obtain financial assistance from other non-Federal sources.

Further, Mr. President, the conference report includes language for a study of possible additional work beyond that envisioned in the original Acequia renovation program of which I was the author and which the Congress included in the 1986 water resources bill.

While we are a long way from needing additional authorization, it certainly is a good idea for the Corps of Engineers to examine the needs for the future.

It should be pointed out, of course, that this study is designed to look at additional needs beyond the existing $40 million Federal program, and is in no way designed to limit the scope of the existing Federal program.

Mr. WARNER. Mr. President, I wish to commend the managers of this bill and our distinguished chairman, the Senator from North Dakota. I am privileged to serve on the Committee on Environment and Public Works with these outstanding Members of the Senate. During the course of the consideration on this bill, there came a time when there was a disagreement between two States, but I want to commend the chairman, and the ranking member for the fair and equitable manner in which they guided a settlement of this difficult issue. I wish to express my personal appreciation to both.

Mr. MOYNIHAN. Mr. President, before the Senator from Virginia leaves the floor, as I am sure he must do, may I as a party to those negotiations express my appreciation for the great and unfailing courtesy and patience which he brought to this effort. Settlement of the problem which involved a transfer of water between two basins and between two States could have started an argument that may well have lasted 60 years before its deposition was complete.

We did it in 3 days. It may well be the first such interbasin transfer east of the Mississippi. What we have shown is the capacity for reasoning and the use of comity, not always evident in the Senate. I would like to thank the Senator from Virginia, very much.

Mr. WARNER. Mr. President, I very much appreciate those remarks and the fairness and patience exhibited by our distinguished chairman of the conference as he presided over the deliberations of the Members of the House and the Senate. I would like to pay special recognition to Congressman PICKETT, who, although not a conferee, represents the jurisdiction of Virginia that was principally affected.

During the deliberations on this issue, Congressman PICKETT impressed me greatly with his detailed knowledge and firmness of stance, both of which contributed to the resolution of this problem. Congressman PICKETT, together with Congressman SISISKY, and of course my distinguished colleague, Mr. ROBB, joined me throughout these deliberations.

Finally, with the suggestion of our capable chairman from New York, we were able to coalesce around the language of section 413, which basically codified existing law, and resolved the dispute.

Mr. CHAFEE. Mr. President, coming from the East, I was not familiar with the high emotions that are generated by water. The Presiding Officer of course, as are all westerners, is familiar with water disputes, but this was I might say the first time I had dipped my toe into these matters. I found the emotions that run high.

I want to commend particularly the distinguished senior Senator from Virginia because not only did he pursue with this bulldog-type tenacity but he was willing to compromise, to reach a solution so that all of us could move ahead. This is a bill that could be brought to a screeching halt due to a very basic philosophy, I would not necessarily say philosophic dispute, but an actual dispute based upon some water matters between two States. The senior Senator from Virginia understood the problem thoroughly, was prepared to reach what seems to me to be a very agreeable compromise, and permitted us to move on with the bill.

So I salute him for one more example of his successful negotiation ability.

Mr. WARNER. Mr. President, I thank my distinguished colleague from Rhode Island.

Mr. ROBB. Mr. President, I am pleased to be in a position to support the Water Resources Development Act of 1990. I was strongly opposed to a provision in the House version of this bill which sought to delay the construction of a pipeline to divert water from Lake Gaston to Virginia Beach. I am pleased that after some tough negotiations we have reached an agreement which will allow the pipeline to go forward.

My involvement with the Lake Gaston project dates back to my days as Governor of Virginia in the early and mid-1980's. At that time, I faced the issue of addressing the severe water problems facing Virginia Beach, and after exhaustive review of the various options it was very clear that the Lake Gaston alternative was far and away the most desirable. I never dreamed that nearly a decade later we would still face delaying tactics from opponents of the project.

I am heartened that the bill's original language delaying construction of the Lake Gaston project pending outcome of a study has been deleted. The provision remaining in this bill merely codifies the Army Corps of Engineers' existing authority to modify permits when given new information.

I want to thank my colleagues in the Senate with whom I worked on this contentious issue, Senators MOYNIHAN, CHAFEE, SANFORD, HELMS, and the senior Senator from Virginia, Senator WARNER.

Mr. WARNER. The senior Senator from Delaware would like the floor for 2 minutes.

The PRESIDING OFFICER. The Senator from Delaware [Mr. ROTH] is recognized.

Mr. ROTH. Mr. President, I rise in support of the conference report on the Water Resources Development Act of 1990. In 1919, the Federal Government took over the operation and the maintenance of the Chesapeake & Delaware Canal with the responsibility to provide good and sufficient bridges over the canal. I might add, Mr. President, that this canal totally divides my State.

Since that time the Federal Government has remained true to that obligation. This bill contains the authorization for the construction of a new bridge at St. Georges, DE, and thus reaffirms the Federal Government obligation. The report and hearing records associated with the House and Senate versions of the conference report contain the historical background and the Judiciary Committee analysis of this unique situation.

Mr. President, I want to thank my colleagues from the Committee on Environment and Public Works and their staffs for their assistance while the whole Delaware delegation, Senator BIDEN and myself in the Senate, Congressman CARPER in the House, was pursuing the effort to have this bill include the proper authorization language for this new and much needed bridge.

I am pleased that we have been able to work together and allow our efforts to have been successful.

Again, I thank the members of the committee for their cooperation.

Mr. WARNER, Mr. President, I observed the distinguished Senator from Delaware as he fought long and hard for his constituents. I hope that many of us could be invited to take one of the first crossings of that bridge when it is completed. I do not know what name it will bear but in the Chamber it will always bear the name of WILLIAM ROTH of Delaware together with his distinguished colleague, the able Senator BIDEN.

Mr. ROTH. I thank the distinguished Senator. Let me say he has an oral invitation, to be followed by a written one, to attend the opening of the new bridge.

Mr. MOYNIHAN. Mr. President, I caution Senators not to make agreements too conspicuously on the Senate floor. That we will take in good spirits. I know the other Senator, Mr. BIDEN, is on the floor. He has spoken with me on this matter repeatedly now to the point where I think I can anticipate and remember what he is about to say, but he has taught his lesson well. And the legislation provides precisely the authorization that he requested and we are very happy to have included it. I see he is on the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I rise to say thank you, thank you to my friend from New York, thank you to the members of the committee. As my colleague, Senator ROTH has said, there is an incredibly important project for the State of Delaware in this bill, and maybe most important to Senator ROTH and myself and Congressman CARPER is the recognition of the agreement that was made a long long time ago. We truly appreciate it.

Lastly, let me say to my friend from Virginia, I surely hope the bridge does not bear Senator ROTH's name, or mine, or Congressman CARPER's because in our State we usually do not name things for people until they are dead. So I sincerely hope that we all get to ride over that unnamed bridge and at some later date leave it to posterity to determine what the name change should be if there is one. We are just happy we are going to be able to get over the canal as we are supposed to.

It is a canal I might add we did not ask for. It is a canal that does not benefit us a great deal. It is a canal we did not particularly want. It is a canal that literally cuts our State in half. It is an obligation that this committee has been gracious enough to acknowledge and meet. We truly appreciate it.

ST. GEORGES BRIDGE

Included in the Water Resource Development Act of 1990 is a section that authorizes construction of a bridge over the Chesapeake & Delaware Canal near St. Georges, DE, and allows the State to be reimbursed should it construct the bridge.

The provision is unusual, but no more than the circumstances surrounding the bridge and the canal. As the owner and operator of the canal, the Federal Government has the legal obligation to provide bridges over the canal, at no cost to the State, so north-south traffic in the State is not impeded.

There is an existing bridge over the canal at St. Georges, but it is insufficient to the task. On this count there is no dispute. The bridge has four lanes but cannot handle much of its traffic demand now, will be completely insufficient to handle projected traffic levels in the years ahead and cannot be widened because of its design.

The provisions in this authorization bill are important because they make clear, once again, that the Federal Government has a contractual obligation to provide sufficient bridges for the State, and that the Federal Government will bear the cost.

The Senate took the position that an authorization is unnecessary, a position I believe is correct. The reason is that the authority for the corps to construct a new bridge was assumed when the Government took over the canal in 1919. However, while I am firmly convinced that the State's position would prevail in court, fighting that battle would only harm the State's economy by delaying construction of the bridge. The provision addressing the St. Georges Bridge in the water resources development bill is entirely consistent with the position of the State of Delaware on the legal obligation issue, and in the name of expediting the process, I support its enactment.

I ask unanimous consent that letters from the leadership of the Environment and Public Works Committee and the Senate Judiciary Committee to the Senate Appropriations committee related to this issue be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington DC, May 25, 1990.

HON. MARK O. HATFIELD,
Ranking Minority Member, Subcommittee on Energy & Water Development, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MARK: As you know, Senator Biden and Senator Roth have been working with the U.S. Army Corps of Engineers for more than a year to secure a replacement bridge over the Chesapeake and Delaware Canal at St. Georges, Delaware. The issue is unique because of the manner in which the Federal Government obtained ownership of the Canal in 1919.

It is our understanding that Senator Biden and Senator Roth will seek appropriations for a replacement structure. We have studied the detailed history and documentation of this project, including the original charter of the Chesapeake and Delaware Canal Company. Upon review, we have concluded that the U.S. Army Corps of Engineers currently possesses the legal authority to construct and fund a replacement crossing for the existing St. Georges Bridge.

We therefore ask that you give every consideration to a request for appropriations to fund the needed replacement bridge.

Sincerely,

QUENTIN BURDICK,
Chairman.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 21, 1990.

Hon. J. BENNETT JOHNSTON, *Chairman,*
Hon. MARK. O. HATFIELD, *Ranking Member, Subcommittee on Energy and Water, Committee on Appropriations, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN AND SENATOR HATFIELD: We are writing to you concerning the United States' contractual obligation to construct and fund a replacement bridge over the Chesapeake and Delaware Canal at St. Georges, Delaware. The staff of the Judiciary Committee has studied this matter in accordance with the committee's authority to examine claims against the United States.

The United States' legal obligation with regard to canal crossings originated in an 1801 charter granted by Delaware to the Chesapeake and Delaware Canal Company. In 1919, the United States acquired the canal company. Along with the company's assets—land and property rights—the United States also acquired the company's contractual obligation to build and maintain "good and sufficient" crossings over the canal.

Congress, the federal courts, and the executive branch all have recognized the United States' obligation since the time the canal was acquired. On repeated occasions during the past 70 years, the United States' legal obligation to build bridges has been reviewed. In each instance, the obligation was reaffirmed. In 1939, and again in 1954, the United States fully funded bridge projects as a result of its contractual obligation. We believe that the federal government continues to be bound by this precedent.

We hope that the study by Judiciary Committee staff and the information provided above prove helpful in your consideration of funding for the St. Georges Bridge.

Sincerely,

STROM THURMOND,
Ranking Member.
JOSEPH R. BIDEN, Jr.,
Chairman.

Mr. BIDEN. Mr. President, throughout our 1½-year fight to reach this point, the administration has failed to acknowledge its responsibility to construct the bridge. A review of the historical record clearly shows that this position is contrary to the facts of the matter.

As an example, in 1808, Albert Gallatin, Secretary of the Treasury, reported to the U.S. Senate on the condition of our Nation's roads and canals. For canals, a number of specific issues were to be addressed. Among those were physical descriptions of the canal property, but also the "substance of charters and acts of legislature [sic] on the subject."

In assessing the terms of the charter establishing the Chesapeake & Delaware Canal, the report determined that the charter itself was the best source. In other words, no interpretation was needed for what the canal's charter meant, it was evident from a reading of it. And the charter is unmistakable in declaring that the canal's owner must provide bridges over the canal.

Mr. President, if nothing happened with the canal in the intervening 182 years since Mr. Gallatin's report, I would understand why the argument might be made that the terms of the charter did not apply to the Federal Government. But throughout its history, the canal has been the subject of extensive and repeated study. The Federal Government has been well aware of its responsibility to build bridges over the canal.

To cite a few cases, in 1816, a Senate committee reported to the Senate on the C&D Canal. The report advocated that the Federal Government purchase part ownership of the canal for $400,000. The Government ultimately accepted this recommendation. In 1825, the United States purchased 1,500 shares in the C&D Canal Co. at a cost of $300,000. Four years later, it purchased 750 more shares, at a cost of $150,000.

As a result of those purchases, the United States was the largest shareholder of the canal. According a report of the company, "the stock subscribed by the United States * * * was common stock, on the same terms as that subscribed by private investors." The acts of 1825 and 1829 specifically stated that the "Secretary of the Treasury shall vote for president and directors of the said company * * * and shall receive upon the said stock, the proportion of tolls which shall from time to time, be due the United States for the shares aforesaid."

In 1871, the House of Representatives requested the Secretary of War to study transportation between the Chesapeake and Delaware Bays. I would note that the physical condition of the canal was deteriorating, and Congress was interested in improving the route.

The River and Harbor Act of 1882 directed the Secretary of War to study a number of routes that would improve transportation between the two bays. Two years later, the President was authorized to appoint a board to study alternative routes and recommend the most feasible one.

In 1906, Congress authorized the appointment of a commission to appraise "the works and franchises of the Chesapeake & Delaware Canal, with reference to the desirability if purchasing said canal by the United States." So, time after time, the Federal Government has studied the canal. Those studies have repeatedly noted the canal company's ownership of the bridges over the canal.

In 1919, Congress took complete ownership of the canal. With that, the Government assumed the responsibility to provide and maintain sufficient bridges over the canal. It was not long before that responsibility was tested.

In a case decided in 1923 by the U.S. District Court for the District of Delaware, the court decided the United States is bound by obligations originating in the charter of the C&D Canal Co.

In 1926, in testimony before the House Committee on River and Harbors, the Chief of the Army Corps of Engineers, Maj. Gen. Harry Taylor, stated Delaware's case as clearly as can be done. At the hearing, the chairman of the committee asked General Taylor if the "Government must rebuild those bridges?"

General Taylor responded that the company that constructed the canal "dug the cut through fast land, and they were obligated to build the original bridge, and we took over all their obligations. So we are obligated to build a new bridge."

Another committee member asked "What would happen if the Government refused to build the bridge?"

General Taylor's response was succinct: "The Government would be sued and would be forced by the courts to build it."

In 1939 and again in 1954, Congress recognized this obligation through authorization bills for the construction of new bridges over the canal at no cost to the State of Delaware. I would further note that the funds were appropriated from the operation and maintenance account of the corps, reflecting the fact that providing bridges is an integral part of operating the canal.

Mr. President, I have run through some of the history of this canal and its bridges because I want to make clear why the provisions related to the St. Georges Bridge were included in this bill, that there is an extensive, nearly overwhelming, historical record in support of the requirements of the provisions. They reaffirm the Federal Government's obligation to provide those crossings and a continuation of the commitment made to citizens of my State nearly two centuries ago.

I would like to thank, again, Senator MOYNIHAN for his assistance on obtaining a reaffirmation by Congress of the Federal obligation. I would also like to thank Senators BURDICK and CHAFEE, the chairman and ranking member of the Senate Environment and Public Works Committee, and their cooperation and willingness to listen to State's case, that made this tremendous success, from our perspective, possible.

I yield the floor.

Mr. CHAFEE. Mr. President, today I am pleased to join with my colleagues on the Committee on Environment and Public Works in taking up the conference report on S. 2740, the Water Resources Development Act of 1990. Passage of this report represents a continuation of the commitment to approve authorizing legislation for the U.S. Army Corps of Engineers Civil Works Program every 2 years.

As you know, Mr. President, the 1970's and early 1980's saw a departure from the previous practice of approving omnibus bills and predictable appropriations to fund the construction of water projects. In 1986, however, we broke the logjam. After years of legislative-executive policy confrontations over the role of the Federal Government in water policy, the 99th Congress approved the Water Resources Development Act of 1986.

The 1986 act was truly landmark legislation in the area of water policy and formed the basis of the Water Resources Development Act of 1988 and the report we are debating today. Most importantly, the 1986 act contains a number of provisions for increased local cost-sharing for beneficiaries of Army corps projects. I support those provisions wholeheartedly. The intent of cost-sharing, I might add, is not to prevent the construction of a particular project but rather to recognize our limited Federal resources and the financial responsibility of local project sponsors.

I would like to thank our chairman, Senator BURDICK and the chairman and ranking member of the Subcommimttee on Water Resources, Transportation, and Infrastructure, Senators MOYNIHAN and SYMMS, for their work on this legislation. The subcommittee held 2 days of hearings on the bill and heard testimony from the Army Corps of Engineers, port and waterway users, flood control agencies, and local water project sponsors. The testimony was informative and underscored the need to keep the 2-year authorization schedule on track.

The report before us is a balanced product, authorizing needed water resources projects from across the country. I urge my colleagues to support the conference report.

Mr. WARNER. Mr. President, as a Senate conferee on S. 2740, the Water Resources Development Act, I wish to speak to section 413, which deals with a general study of the striped bass fish in the Roanoke River Basin. This study was directed by Congress in the Atlantic Striped Bass Conservation Act Amendments of 1988—Public Law 100-589—to conduct an investigation of the stock of the striped bass in the basin.

During consideration of the water resources bill in the House of Representatives the following amendment was added:

> No construction may be carried out with respect to the permit granted by the Corps of Engineers for Project Application 83-0747-06 until (1) submission of the report mandated by section 5 of Public Law 100-589, and (2) review of such report and determination by the Corps of Engineers of the impact of the project in light of such report.

The Senate bill did not contain any provision on this subject. Therefore, this matter was an item in disagreement that had to be resolved by the conferees, of which I was one, before a conference report could be adopted by both Houses of Congress and become law.

At my invitation, Senator ROBB and Congressmen PICKETT, SISISKY, and PAYNE were invited to address the conferees. Senator MOYNIHAN, chairman of the conference, and conferees from both the House and Senate took an active role in redrafting this provision of the bill. The language adopted by the conferees reads as follows:

> Not later than January 1, 1992, the Secretary shall review the report mandated by section 5 of Public Law 100-589 with respect to project application 83-0747-06, make a determination of the impact of the project in light of such report, and take all action he deems appropriate, including permit modification, notwithstanding any construction that may have occurred.

During deliberations on the revision of the House provision, the Assistant Secretary of the Army for Civil Works and his General Counsel stated to the conferees that, in their legal opinion, this section merely codifies the discretionary authority granted to the Army Corps of Engineers under existing Federal laws and regulations to modify the terms of a permit issued under section 404 of the Clean Water Act. Therefore, in adopting this section, Congress does not grant to the Corps of Engineers any authority additional to that in existing law in making determinations concerning Project Application 83-0747-06.

Mr. President, I wish to thank the the chairman of the conference committee, Senator MOYNIHAN, and the ranking Republican, Senator CHAFEE, for their assistance in working on this difficult issue. In addition, I thank Senator ROBB for his steadfast support and hard work during the negotiations on this matter. Finally, I would like to thank the Virginia House delegation, who worked in drafting this revised bill language.

Thank you. Mr. President.

Mr. MOYNIHAN. Mr. President, with that admonitory note from the Senator from Delaware, I urge adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. I preface my remarks with my expression of gratitude to the Senator from Rhode Island, who has been unfailing in his patience, as indeed we have all required to be at times. "* * * even the weariest river winds somewhere safe to sea." That is as much Swinburne as is retained by the Senator from New York, but it will serve for the purpose of the Water Resources Development Act of 1990.

Mr. CHAFEE. Mr. President, I want to congratulate and thank my distinguished colleague, the senior Senator from New York, for his skillful guiding through the rocks and shoals of this measure. He has been a helmsman of incomparable patience and skill. So we congratulate him, as he has brought this ship to a safe haven.

Mr. MOYNIHAN. Mr. President, only a former Secretary of the Navy could have spoken thus, and the Senator expresses his appreciation.

I see no other Senator seeking recognition. Accordingly, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it so ordered.

COMMENDING ELIZABETH DOLE

Mrs. KASSEBAUM. Mr. President, I would like to raise a matter that I believe can gain immediate, unanimous bipartisan agreement. I want to commend and express my thanks to Secretary of Labor Elizabeth Dole, for her dedicated service to our Nation.

As all of my colleagues know, Elizabeth announced this week that she is stepping down to become the new president of the American Red Cross. I believe I speak for us all in saying that the President's loss is the Red Cross' gain. She has proven to be a very capable and highly effective cabinet officer, and I believe her extraordinary leadership skills will be a major plus for the Nation's largest humanitarian relief organization.

All here, of course, know Elizabeth not only as Labor Secretary but as the wife of our distinguished Republican leader, my fellow Kansan, BOB DOLE. They are a remarkable couple and a powerful team. Personally, I've always thought if Elizabeth could keep up with BOB, and she has, then the Labor Department and the Red Cross would be light duty.

Elizabeth's career in Government goes back to President Johnson's White House, where she served as consumer adviser. She has since been a member of the Federal Trade Commission, Secretary of Transportation, and Secretary of Labor. Her record of public service is long and her record of accomplishments is even longer, marked by her strong focus on public safety whether in transportation or the workplace.

Mr. President, through the years I have had occasion to observe Eliza-

beth in action at close range. When she served at Transportation, I was a member of our Commerce Committee. While she has headed the Labor Department, I have been on our Labor Committee. I think I know a bit about her and I can say, without reservation, that she is one of the finest and ablest public servants I have known, as well as a friend of some years, whose loyalty is beyond question.

I also want to say that her commitment, energy, and dedication do not flag when the limelight goes out. For years, she has been a pillar of her church and a tireless, anonymous worker to help those in need.

Recently, the Sara Lee Corp. honored Elizabeth with its 1990 Frontrunner Award as the outstanding woman of achievement in Government. The honor and the recognition are well deserved. I congratulate Elizabeth and wish her the very best as she begins her work with the Red Cross.

I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. I had not intended to speak, Mr. President, but I want to join my colleague from Kansas in paying tribute to Elizabeth Dole for all that she has done for this Capitol and for this Nation in her many years of public service.

I wish I had taken the time to write an eloquent tribute to her. But perhaps the best thing I can do is just speak from my heart at this moment because this is someone that I so deeply respect and so deeply admire and am so grateful for her years of service to this Nation.

I first became acquainted with her as Secretary of Transportation when I was a Member of the House of Representatives. And anyone who has spent more than 2 minutes with Elizabeth Dole knows what a dignified, gracious, caring, thoughtful, thorough, brilliant person that she is. She is just wonderful to work with, knows her subject, listens to your concerns, and attempts to draw the very best policy conclusions she can on behalf of whatever agency she is heading, whatever Department she is working for, and certainly in the interest of this Nation.

I have also had the privilege of working with her as Secretary of Labor as a member of the Labor and Human Resources Committee here in the Senate.

We have shared thoughts on a number of issues, tried to work together to effect policy which we think is for the benefit of the people of this Nation.

But I also want to talk about her as an individual, because her deep faith, her commitment to her fellow man and woman, her interest in the personal lives of those who are acquainted with her, is something that really distinguishes her.

She several years ago, at my request, was the keynote speaker at the National Prayer Breakfast. I happened, as president of the House prayer breakfast group, to be chairman of that event. I do not even remember the year.

In a visit to Fort Wayne, IN, prior to that, as I was searching for an appropriate speaker, I had an opportunity to spend some time alone with Mrs. Dole. My wife and I spent nearly half an hour talking about her background and personal life and relationship with her mother and grandmother and how she was raised in North Carolina and the role that faith played in her life. From that I could not help but conclude that was a story that ought to be told to the Nation and in fact to the world. So I made an appointment with Elizabeth to request this.

She was very reluctant at first, saying that she had always viewed her faith as a personal matter and did not feel real comfortable standing up in front of a large international audience sharing such personal thoughts. However, she agreed to do that and I believe in all of the years that I have attended the National Prayer Breakfast and all the many eloquent speakers that I have heard, some from this body, I have never heard a more moving, a more eloquent, a more deeply personal address than Elizabeth Dole's address.

She based that on the Book of Esther, and titled it "For Such a Time As This." It not only moved me and the President and Vice President and Members of the Cabinet and military and Senators and Congressmen, but moved those from more than 125 countries that attended that particular prayer breakfast.

So I think Elizabeth Dole leaves us with a tremendous legacy, a legacy of hard work, a legacy of dedication to her work, to her fellow man, but most importantly an example of how to not only relate to people in this fast-paced, busy world of Washington, DC, where often personal relationships are just not regarded at all, but a way of doing your job efficiently and effectively and yet caringly.

So we will miss Elizabeth Dole. We will miss her marvelous contributions. The Red Cross is far, far richer for having someone of her stature agree to head up that organization that does so much good for so many people.

I spoke with Mrs. Dole just a day or so ago. She again indicated that here was a wonderful opportunity to help her fellow man, to reach out to people that were caring and hurting through the Red Cross and many, many thousands and thousands of volunteers across the United States and across the world she was able to extend her commitment for personal caring for others.

So I thank her for her contributions. I wish her nothing but the best. We are glad she is still in town and, of course, we are glad that she is married to our minority leader. Certainly everyone would agree, including the minority leader, that Elizabeth Dole can only enhance his already well-established reputation and, as I am sure he will admit, maybe even help smooth a little rough edges when the tensions get a little tough here late at night.

BOB DOLE is a better person, I am a better person, the Nation is a better Nation because of Elizabeth Dole. And I personally thank her for all that she has done for me personally and all she has done for this country.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I wish to join my distinguished colleagues from Indiana and Kansas in saying just a few words on behalf of that extraordinary American, Elizabeth Dole. I, too, have been privileged to know her for many years and it has been a sheer joy and pleasure. She has enriched my life greatly.

As our colleague from Indiana said, who knows her to be a strong, fair, and compassionate lady, she has an influence on our leader which in turn benefits our lifestyle here in this body. Together they are one of the most remarkable and admired couples on the American scene today. They provide great hope and inspiration for those successive generations seeking to take up positions of leadership and struggling to balance the dual roles of husband and wife and active professionals.

The American Red Cross is an institution that indeed has touched my life and the lives, I am sure, of everyone in this body from time to time.

My mother was in the Red Cross during World War I and I cherish, at home, a small picture of her proudly wearing her uniform serving the men and women coming back from the front in France.

That organization responds in the time of need to those less fortunate than ourselves, to all types of contingencies, and now they have selected one who has the strength, stamina, wisdom, and experience to deal with those situations. I dare say that she will have a very cordial, and warm, working relationship with the Congress of the United States on behalf of the American Red Cross.

I salute those who had the wisdom to reach down and select her, to give her this opportunity to continue to serve America.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise to commend Elizabeth Dole for

the great service she has rendered this country. She graduated from Duke University, one of the finest educational institutions in the land, and later graduated from Harvard Law School, one of the leading law schools in the United States.

She is well educated. She came from a lovely family in North Carolina, a family that appreciates America and the ideals for which it stands. She has given 25 years of her life to public service and in that time I do not know of anyone who has shown more competency, more integrity, more dedication, and devotion to duty than Elizabeth Dole. We are proud of her for her great service to this country. She has held numerous positions in Government.

She is an outstanding lady, and although I regret that she is leaving Government service, I am glad she is going to the American Red Cross.

The American Red Cross offers many challenges. It is a humanitarian organization and it has been very helpful in time of war as well as in time of peace. It has served our servicemen in combat during wartime and it has served the civilian population during peacetime. Recently, in the wake of Hurricane Hugo, the Red Cross came to the aid of the people of South Carolina offering support, encouragement, and assistance. I am sure that Elizabeth Dole will meet the many challenges which lie ahead with integrity and dedication. I am confident that she will serve the Red Cross as ably as she has performed her past Government service.

Elizabeth Dole is one of the most outstanding women in America. She may be the first woman President of the United States. She has all the qualities of a great leader and a great President. I wish her the very best in all of her future endeavors.

In addition, her devoted husband has rendered this country a great service. I doubt if there is a couple in America that is more respected, more devoted to this country, or more prepared to meet the many challenges which lie ahead than Bob and Elizabeth Dole.

In conclusion, God bless you, Elizabeth, and best wishes for what I know will be a productive and successful future.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SANFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GORE). Without objection, it is so ordered.

Mr. SANFORD. Mr. President, I want to add my words of appreciation and endorse the tribute paid to Elizabeth Hanford Dole by my distinguished colleague from Kansas, Senator NANCY KASSEBAUM. Elizabeth's service in Washington does begin with the administration of Lyndon B. Johnson, but prior to that, fresh from Harvard Law, having earlier graduated from Duke University, she assisted in my Democratic campaign for Governor of North Carolina.

I have viewed her achievements in Washington in service of this Nation with great admiration. And it is with a certain sadness that I observe that the ensuing years provided an overwhelming Republican influence in her life. Like other obstacles, she has overcome this one. She has been a truly remarkable public servant.

My association with Liddy Dole continued when I was president of Duke University and she served as an outstanding trustee and contributed so much to Duke's progress.

I applaud Elizabeth Dole. She moves now to head one of my favorite organizations, the American Red Cross. I am sure she will make this an even greater institution as she blends her own humanitarian instincts with the humanitarian purposes of the Red Cross.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VETERANS' COLA

Mr. SIMPSON. Mr. President, I have some brief remarks with regard to a measure which is stalled out here. I just want to be on record. I think people should be aware in this country that a cost-of-living adjustment for veterans is stalled here. I think they deserve to know the circumstances of that.

It is, I think, a grotesque situation regarding the bill containing the veterans' COLA, which all of us want and are ready to vote for. Remember a 5.4-percent cost-of-living allowance will go out to everyone who is on Social Security and Federal retirement; it will go out January 1, 1991: $21 billion. That is one of the things we sometimes fail to address in this body, as we are trying desperately to get a budget package together. We were $5 billion apart or $3 billion apart on that effort.

While these negotiators have been working like dogs, on both sides of the aisle, just with the blink of an eye a law goes into effect, and there will be a $21 billion expenditure from the Federal Treasury.

We talk about the wealthy and the rich. Please remember that about 30 percent of the cost-of-living allowance under the various Social Security, Federal retirement, and so on—all very worthy, very valid—but about 30 percent of the cost-of-living allowance to seniors will be going to people who are 12 to 20 times above the poverty level. It has never been suggested they be hurt or injured in any way. They are not.

It has been suggested, and over 75 percent of the people in this body, both Democrat and Republican, have suggested a "means testing" of the wealthy on Social Security, those who are 12 to 20 times above the poverty level, only by saying they should have that included within their income for tax purposes. That will await another day, because we all know—it was not my phrase—that Social Security is the third rail of American politics: You touch it and you die.

But this is totally different. This is a bill containing the veterans' cost-of-living allowance. I am a veteran. I am very proud to be a veteran. I am a member of the Veterans of Foreign Wars, the American Legion, and AMVETS. I am very proud of that.

But the COLA bill was loaded down with a whole boatload of other extraneous matters, many of which are unnecessary, costly, burdensome, and entirely inappropriate. I think it is certainly sad that the same legislators who loaded down that bill with so many objectionable provisions now stand in the way of consideration of a bill containing simply a stripped-down, planned, veterans' cost-of-living allowance.

The ranking minority member of the Senate Committee on Veterans Affairs, Senator MURKOWSKI, and I have been trying to achieve an agreement to get a veterans' COLA bill passed by this body and this Congress before we adjourn. There have been many hours of negotiations back and forth among both parties, and the fine House chairman SONNY MONTGOMERY, and the able ranking member BOB STUMP, and so many others. The Senator from Alaska and I have made many concessions on provisions of grave concern to us in the interest of achieving a clean bill.

I thought, Mr. President, that we could get that done and we would be able to achieve agreement, and, indeed, we were so close. Our efforts have now been stalled, not by members of the Senate Veterans' Affairs Committee, but by nonmembers who are insisting upon weighing the bill down with what we believe to be extraneous and objectionable provisions. The ranking member, Senator MURKOWSKI, and I had hoped to be able to pass a physician and dentist pay bill this session of Congress. But those ef-

forts have also been blocked by those who would insist upon these extraneous matters. The matter of a COLA for veterans deserves to be enacted by Congress before we adjourn. If the other one is going to kick in January 1, 1991, this one should be right in there, too.

So we have been working very hard to that end, and it has now been blocked. We have been working to achieve agreement on a number of contentious issues. I think my colleagues are aware of the concerns I have had. I have expressed that in Dear Colleague letters. Among the most contentious are the provisions relating to agent orange.

So that my colleagues and the American people have a clear understanding as to what is holding up this bill, let me set out on the record exactly where we are with this bill and where we have been. I notified my colleagues long ago of my opposition to the agent orange provisions contained in the bill establishing presumptive service-connected status for certain diseases, requiring unnecessary literature reviews, mandating tissue archiving, and, in deed, all the agent orange provisions of the bill. Notwithstanding my objections, I worked very hard with my colleagues on the committee to try to come up with a proposal that would accomplish the primary goal of the proponents of this measure—and that is a new review of the evidence regarding association of exposure to herbicides with development of diseases.

I have offered to back down on my objections to the provision establishing presumption of service connection, and my colleagues are well aware of my deep and sincere objections to presuming service connection. If a veteran develops a disease as a result of his service, then that disease should be service connected, but I strongly object to presuming without further evidence that conditions are service connected. So, Mr. President, my colleagues can understand that at least I feel I made a substantial concession in offering to accept that provision of the bill without objection.

I have backed down on my objection to several other provisions of the agent orange title of the bill. I agreed to mandate that the Department of Veterans Affairs complete a scientific research feasibility study. Just so my colleagues are clear on this point, it is a study of whether further studies ought to be done. It is ridiculous, I think, and unnecessary. I do not know what kind of expertise the Department of Veterans Affairs has that makes it a correct department to be making that determination, but I agreed to back off on my opposition to that provision in the interest of reaching a compromise on the bill.

I agreed to require that the VA perform outreach service assistance and other provisions, and I agreed to the provision making modifications in the Ranch Hand Study Program, again with reservations. I even agreed to mandate yet another study of the contentious issue of whether exposure to herbicides in Vietnam may be associated with disease.

Together with the Senator from Alaska, I have offered a proposal that would require the Department of Veterans Affairs to contract with the National Academy of Science to study the research that has been done regarding herbicide exposure and to report to the VA on each disease that may be regarded as having a positive association with the biological effects of exposure. Upon finding a positive association, the Secretary is to list the disease in regulations under which exposed veterans would be presumed to be service connected for those diseases.

I submit, Mr. President, that is a very responsible approach. Yet, Mr. President apparently there are some who would prefer to have no veterans' COLA in this year than to adopt such a provision. I think that is a real shame. The veterans of America should know that there is a reason for this outcome and that it assuredly is not with the ranking minority member or myself and it is certainly not even with the chairman of the committee, the Senator from California. It is coming from one who is not a member of the committee. We have made every effort—and to no avail. It is a simple process; you just strip everything off and you pass a veterans' COLA. We can deal with all the rest of that stuff later.

So we are here at this point. The veterans are denied a cost-of-living adjustment. The VA physicians and dentists are denied a much-needed pay bill. Legislating is very dry, dull work, Mr. President, if done correctly. It is the art of compromise. What it assuredly is not is rhetoric and appeals to emotion that are so often presented in lieu of doing the hard work and walking the walk.

So the issue of health effects of agent orange has always been an easy one for emotional appeals and it always will be. The problem is that we have spent millions and millions and millions of dollars and have come up with nothing. The Government even bought an entire town during a political campaign, Times Beach, MO, and found absolutely nothing. The ranch hand study was done of people who were dumping it out of the aircraft onto the ground, and they bathed in it every day, and nothing is found in that cohort of people.

So it is one that people still feel deeply about. I do not challenge that at all. Congress has tried to address the issue again and again, and I have been in the forefront of that effort working with Senator CRANSTON, from California, to pass legislation that was intended to make it easier for veterans who were exposed to agent orange to receive compensation if their diseases were shown by sound scientific and medical evidence to have been caused by that exposure.

We have established an environmental hazards advisory group at the VA to review the studies and literature and report to the Secretary about diseases that might reasonably be associated with exposure. We have mandated studies by the Centers for Disease Control, the most recent of which was released this spring, the selected cancers study. The Air Force has a 20-year longitudinal study, the ranch hand study, which I earlier referred to, of those who worked with agent orange in Vietnam, which is still ongoing. We even had a lawsuit where the lawyers settled, so they must know the same thing everybody else does. They knew it was not worth pursuing, so they took theirs out of a kitty and decided to give up.

And yet those who would blame every single disease known to man on Earth on agent orange have not been satisfied because none of the studies or research have given them the answer they want. They will continue until they get the answer they want. The unfortunate part is they will not get it because the scientific and medical research will not give it.

I ask unanimous consent to print in the RECORD a column of Richard Harwood, from the Washington Post, of September 30, 1990, which says it far better than I could. It is entitled "The Victims of Agent Orange?" and speaks of agent orange and its alleged victims.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

VICTIMS OF AGENT ORANGE?

(By Richard Harwood)

The press for many years took a skeptical view of veterans and the veterans' lobby, led by the American Legion. Their demands on the public treasury were not more outrageous than those of other special interest groups, the farm lobby and the professional educators, for example. But their hawkish tendencies in foreign affairs, their "Americanism" crusades and their obsession with Communists here and abroad gave them a bad image in intellectual circles and many newsrooms.

Over the past 15 years or so, a metamorphosis has occurred. Veterans, and most especially the Vietnam cohort, are now commonly depicted in the press as "victims" of an evil or unthinking system that inflicted upon them sufferings that may never heal. Their "victimization" is seen as a collective and indiscriminate experience, affecting equally all who wore (or who now claim to have worn) a uniform during those years: the mail clerk in Saigon and the Pentagon chauffeur as well as that small minority of men who, in all modern wars, carry the burden of battle and pay its price.

Perhaps that is why little critical or analytical attention is being paid by the press these days to the prospective giveway of untold billions of dollars in compensation to veterans for "service-connected disabilities" that may have no connection whatever with any war or term of military service. The magic words, calculated to unlock the Treasury doors, are "Agent Orange."

This is the infamous herbicide used to defoliate large areas in Vietnam. It contained minuscule amounts of dioxin, an industrial byproduct that has been described in news stories as "the deadliest chemical known to man." Its presence in a landfill on Love Canal in upstate New York inspired panic leading to the evacuation of an entire neighborhood and the permanent abandonment of scores of homes. The experience was repeated at two sites in Missouri. When Vietnam veterans or their children fell to cancer and other diseases, Agent Orange became a prime suspect.

The Baltimore Evening Sun assigned to the story its respected science writer, Jon Franklin, who had won two Pulitzer prizes for his work. As a college student he had taken part in antiwar demonstrations and in protests against Dow Chemical, a producer of both napalm and Agent Orange: "It would be, I thought, *the* story of my science-writing carrer. I gathered about me the righteous fervor that is the armor of the crusading reporter, and I went to work."

Months later, after countless interviews and thorough review of the scientific journals, he came to a dismaying conclusion: no medical evidence supported the dioxin horror stories. He came to another conclusion: "The Agent Orange story was a myth created by a group of Vietnam-era protesters, seized upon by Viet vets and disseminated by the press. That discovery and the more shaking discovery that my colleagues [in the press] didn't care much about the truth of the matter and had never bothered to look into the substance very deeply, changed my life." He took up a teaching career and is now the journalism dean at Oregon State University.

His medical conclusions about Agent Orange have been validated in many studies, most comprehensively in a $43 million research effort by the Centers for Disease Control. Nevertheless, the Department of Veterans Affairs, cheered on by the veterans' lobby, by dissident researchers and by politicians in Congress is opening the door, inch by inch, to Agent Orange claims that, theoretically, could extend to each of the 3.1 million men and women who served in Southeast Asia. Veterans Affairs Secretary Edward Derwinski recently awarded "service-connected" disability payments to a group of Vietnam veterans suffering from a rare form of cancer. The highest incidence of these tumors was among sea-going sailors who had not been exposed to the defoliant. Mr. Derwinski claimed no "scientific" basis for his action but explained it with a quip: "Remember, this is a kinder, gentler administration." President Bush approved.

A new study of several thousand workers exposed to dioxin in manufacturing plants is to be issued soon by the National Institute of Occupational Health and Safety. If it supports the CDC studies and Mr. Franklin's researches, the "media" will have an opportunity to demythologize the subject. One might even say we would have an obligation to do so. But often we are more diligent in defining the responsibilities of others than examining our own.

Mr. SIMPSON. Mr President, I would like to read a part of this column:

Perhaps that is why little critical or analytical attention is being paid by the press these days to the prospective giveaway of untold billions of dollars in compensation to veterans for "service-connected disabilities" that may have no connection whatever with any war or term of military service. The magic words, calculated to unlock the Treasury doors, are "Agent Orange."

Those are his words, not mine.

He goes on to tell of the respected science reporter, Jon Franklin of the Baltimore Evening Sun, who went to work on the story of the health effects of agent orange with "The righteous fervor that is the armor of the crusading reporter" in Franklin's own words.

Harwood says that:

Months later, after countless interviews and thorough review of the scientific journals, he (Franklin) came to another conclusion: No medical evidence supported the dioxin horror stories. He came to another conclusion: "The agent orange story was a myth created by a group of Vietnam-era protesters, seized upon by Viet vets and disseminated by the press."

Those are not my words. Those are the words from Mr. Harwood of the Washington Post, so here we have yet another effort to get the answers sought by those, as I say, who see every single Vietnam veteran as a walking time bomb.

I think Vietnam veterans should be very tired of that description. My chief of staff is a combat veteran of Vietnam, a helicopter pilot who flew people off the jungle carpet in that far distant land and saved their lives.

I have others tell me they are tired of that description. They have said, I served my country like people did in the First World War, the Second World War, in Korea, in Vietnam, all the conflicts of our time, and we do not feel that we have to be described that way and seen in every movie, every docudrama—and I hope we can have less docudramas, more documents and less drama.

I asked one of those who was involved in one of those movies, I said, "What were you doing during the Vietnam War?" And he said, "None of your business." I said I happen to know you were parading around a little Midwestern university with a Vietcong flag and you now spend the rest of your life trying to expiate your sins and your guilt on that one. Well, it did turn into a rich discussion from that point. But at some point in time we have to stick with sound medical and scientific evidence.

I refuse to accept the description that every Vietnam veteran is a walking time bomb. The ones I know are steady, thoughtful people; they are part of the Senate, they are part of the staff here; they are involved in business and industry and they do not feel sorry for themselves at all. They are carrying their share. For those who have suffered, I have spent my entire legislative time correcting that—Vet centers, places for them to go, dealing with post-traumatic stress syndrome. I have supported every single one of those things, but agent orange as a causative agent of all ills is unsupportable, ladies and gentlemen. And it has been found to be so by sound, scientific medical science.

So I have offered to give in to their fears and concerns and their baseless paranoia, which holds that there is some mysterious and all-encompassing Government conspiracy to bury the truth about agent orange, and I have said I would agree to mandate another study.

That offer has been rejected, and that is why we face the end of this Congress without a veteran's cost-of-living adjustment or a physician's pay bill. My colleagues should know that and the people of America should know that, too.

I thank the Chair.

Mr. MURKOWSKI. Mr. President, this evening, as the 101st Congress approaches its final minutes, I ask my colleagues to reflect for a moment on "the dog that didn't bark." When the record on the 101st Congress is written, there will be a missing entry.

For the first time in my career as a Member of the Senate, the Congress will not have enacted a cost-of-living adjustment [COLA] in the compensation paid to veterans with disabilities which arose while they were on active duty and the survivors' benefits paid to the survivors of service members who died while on active duty or due to an injury or illness which arose or was aggravated while the service member was on active duty.

How, Mr. President, can it be that the Congress did not protect these benefits from the effects of the past year's inflation? Are there Senators who oppose a COLA for veterans? I know the Senator from Alaska does not. The Senator from Alaska, like most Senators, is firmly committed to implement the Nation's mandate to, in the words of Abraham Lincoln, "care for those who have borne the battle."

No, Mr. President, a COLA for America's disabled veterans is not the victim of congressional opposition. Nor is it the victim of congressional indifference. Mr. President, the COLA fell prey to a failure to match grasp with reach.

A veterans' COLA bill, because it is so desirable, tends to become a vehicle for other, unrelated provisions. A train that must leave the station has an unresistable attraction for controversial provisions. So it has come to pass that this year's veterans' COLA bill attracted so many unacceptable and controversial provisions that the bill began to founder under their weight.

Mr. President, when I observed the bill bogging down I pursued two alternatives in an effort to ensure a COLA for VA disability compensation and related benefits.

First, I sought to read a compromise with the prime movers of the most controversial provisions: those relating to presumptions of service connection based on exposure to herbicides in Vietnam. I listened to what proponents of presumptions had stated they sought: an unbiased additional review of the scientific evidence by a scientific body with both unquestioned ability and independence from the Federal Government. One could argue that such a review would be redundant in the light of all of the reviews and research already funded, but, in the interest of compromise, I joined with other interested Members of Congress, of both parties and in both bodies of the Congress. We prepared a compromise proposal which would insure the desired review and evaluation of the evidence. Sadly, the compromise offer was rejected.

I then sought a clean COLA bill. If a compromise on the agent orange question could not be reached, I sought to ensure a COLA for America's disabled veterans through a COLA bill unencumbered with controversial provisions. Sadly, this effort was also doomed to failure. Proponents of the controversial provisions would not agree to a bill which did not include their provisions.

Mr. President, I want to reassure America's disabled veterans of my commitment to their benefits and to the necessity to protect those benefits from the adverse effects of inflation. The failure of the 101st Congress to enact COLA legislation will not be the last word on the question. My efforts to secure a COLA will not end with the sound of the gavel bringing the 101st Congress to an end.

BUDGET—FOREIGN AID

Mr. LEAHY. Mr. President, I do not wish to interfere with the leader's wrap-up time. I will be very brief. I appreciate the courtesy of the acting majority leader, Senator SANFORD.

Mr. President, we are going to begin debate on the budget this afternoon. I have had a number of letters about the budget. One came from home, from a friend of mine, whose judgment I respect. He said, "Pat, cut that budget. Bring that deficit down. Cut the amount of money you need to balance the budget."

About a week later, I received another letter from my friend. He had heard from a national organization to which he belonged that Congress was going to cut a program he supported. This latest impassioned letter said: "I cannot believe the Congress is foolish enough to cut this program. I cannot believe you would do this. This is the one good program that brings back 10 times more benefits than what it costs."

I took the two letters, stapled them together, put a piece of my note paper on it with a note: "Dear so and so" and put a big question mark, sincerely, PAT.

I received a call from my friend. I think he got the point.

Mr. President, everybody wants the budget balanced. I do, the distinguished Presiding Officer does, 98 other Senators do. But you do not do it by magic.

Mr. President, if someone goes into a department store, picks out 10 or 15 items, brings them to the checkout stand but refuses to pay for them, the department store is not going to let that person take the items. In the same sense, Americans cannot go to the Federal Government and say I want all these programs, but we do not want to pay for them.

We are at the checkout stand, Mr. President. We are going to have to pay for it.

Mr. President, I would like to note one other item this afternoon.

THE SITUATION IN THE PERSIAN GULF

Mr. LEAHY. Mr. President, Congress is finally nearing adjournment. The majority leader and all Members deserve some rest after the marathon hours we have put in over the past couple of weeks.

We look forward to time with our families and the chance to return to our home States and listen to our constituents. But we are well aware that this adjournment could be short-lived, and that we could be back here in a matter of days.

Since Iraq invaded Kuwait on August 2, President Bush has received the support of the international community which universally condemns this aggression. The United Nations overwhelmingly voted to impose a stringent economic embargo against Iraq. Several nations, including Arab countries, have joined United States forces to enforce the embargo and deter further Iraqi advances.

Almost 1 million troops are now staring each other down in the gulf region. Recent reports indicate that Iraq has massed 450,000 troops near the Kuwaiti-Saudi Arabia border. The Iraqis seem to be digging in for a long stay in Kuwait. Saddam Hussein has ordered his men to prepare defensive lines that stretch over hundreds of miles. These include extensive mine fields, barbed wire and tank traps lined with remote controlled napalm bombs. Iraqi engineers have also built earthen barriers to protect tank and artillery emplacements.

Mr. President, an impressive group of nations have contributed to the multinational force assembled to face the Iraqi army. Over 200,000 U.S. troops have been deployed to the gulf region. Another 200,000 troops have been assembled from Saudi Arabia, the Gulf Cooperation Council, Egypt, Syria and European countries. While the President and other world leaders should be commended for bringing this force together, serious questions remain about how and under what circumstances these troops will be used.

Against this potentially explosive backdrop, Congress is ready to adjourn for 3 months. I am deeply concerned that hostilities may break out before we are scheduled to reconvene in January. I strongly support the decision of the majority leader and the Speaker of the House to regain the authority to call Congress back for an emergency session. Unfortunately, the situation in the Middle East does not adjourn.

The President's decision to deploy United States troops in coordination with Saudi Arabia and the international community was sound. We need to continue to work in careful conjunction with these countries. I feel confident that the unified multinational alliance will ultimately succeed in reversing the Iraqi gains in Kuwait.

Getting Iraq out of Kuwait will take patience and time. Time is necessary for the sanctions to take effect. The measures we imposed in August have only begun to be felt. Our alliance must hold together as these sanctions take hold. We must be patient.

Certainly, our troops must defend themselves if attacked. But the President must seek the full support of Congress and the American people before launching an offensive to remove Iraqis from Kuwait by force.

Over the past several days, Bush administration officials have questioned whether the United States and allied force in the gulf is enough. Secretary Cheney has said, "We are not at the point yet where we want to stop adding forces." General Norman Schwarzkopf has apparently asked for at least 100,000 additional heavy armored troops—some equipped with our finest tank, the M1A1.

Our military leaders should be provided with all the resources they need. But our goals in the Gulf region must remain clear.

The addition of 100,000 United States troops to the multinational force is a unilateral decision, made without any request that I am aware of from the United Nations or Saudi Arabia.

On October 25, Department of Defense spokesman Pete Williams stated, "Our mission today is, as it's always been, to deter further aggression, to defend Saudi Arabia, and to enforce the sanctions." He also noted that the Secretary of Defense will give the President a range of other options.

President Bush should be careful about exercising these "other options"—such as an offensive attack on Iraq—without careful consultation with Congress. And here I draw distinction between true consultation and simple notification.

I urge the President to keep Congress fully briefed over the recess—and to call a special session if hostilities are imminent. President Bush has done very well guiding U.S. policy in the gulf these past months. Unilateral action may serve only to divide, not unite, our allies and the American people.

As strongly as I have supported the President in his efforts to date, if we are going to war, the Congress should be called back and the Congress should be consulted; it should be heard.

Consulting is not just informing. It is one thing to say we have done this; we have increased troops. It is to consult and ask for the advice of Congress.

I think the President has been very good with us. He has seen a number of us. I have been to several briefings on the Gulf at the White House. Republicans and Democrats in the House and Senate, have been at similar meetings. The President has listened carefully to our advice. I commend him for it.

Mr. President, that consultation must be more than just informing. It is one thing to come back and tell the Congress and the American people we have gone to war. It is quite another thing to ask whether the stakes are great enough to bring about a war in the Middle East.

We must proceed very, very carefully. We have very strong and solid support in this body and in the House of Representatives to keep the pressure on for negotiations and to keep the pressure on for international sanctions. The sanctions are working. They fail only if we lose our will, and do not want to wait for them.

We must be patient.

So I would hope the consultation will continue. I commend the President for the consultation in the past. If we are really, as many feel here in Washington, approaching the point where war may become not just a possibility but a probability, then a great deal more consultation must take place.

I thank the distinguished acting majority leader for the time.

EXPRESSION OF GRATITUDE TO DOUGLAS B. HESTER

Mr. SANFORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the resolution I now send to the desk.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 349) expressing the gratitude of the Senate for the service of Douglas B. Hester.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, Mr. Douglas B. Hester, the legislative counsel of the Senate, will retire at the end of this year, after serving the Senate for nearly 39 years, including nearly 11 years as the Senate's chief draftsman. It goes without saying, that Mr. Hester's knowledge and experience will be missed.

Mr. Hester joined the Office of the Legislative Counsel on February 19, 1952. Early in his career, Mr. Hester specialized in the Social Security Act and other health legislation, and became an expert in the Social Security program, Medicare, Medicaid, SSI, AFDC, and many related programs under that act. For many years, Mr. Hester also drafted unemployment compensation legislation. He was appointed as legislative counsel on March 1, 1980.

Careers in public service as long and distinguished as Doug Hester's are rare. I remember the help Mr. Hester gave me when I, as a recently elected Senator, had some ideas to improve the Social Security system. He worked long and hard, and produced an outstanding product. His contributions since then in crafting and perfecting the Social Security Act are well known to all Senators.

Perhaps less well known is the even more behind the scenes contribution Mr. Hester has made during the past decade, as the head of the Office of the Legislative Counsel. In effectively coordinating the efforts of a score of attorneys, Mr. Hester has excelled in meeting the needs of the Senate and its committees and members for professional drafting services, under extremely difficult conditions, and severe time constraints.

Mr. Hester's leadership has brought many changes to the Office. Since he became the legislative counsel, the size of the staff has grown from 15 to 20 attorneys, an increase of one-third. But during that same period, the output of the Office has increased by more than 75 percent. What was once a quiet office staffed by a dozen attorneys and a handful of clerks is now a bustling, often around-the-clock, operation utilizing the latest technological equipment to meet the needs of the Senate.

The legislative counsel and his staff play a very important role in the legislative process. We all rely upon the legislative counsel and the attorneys in his office to provide the legislative blueprints for the ideas we have. These attorneys are the unsung heroes of the legislative process, spending hours shaping and formulating legislation for eventual enactment into law. Despite the frequent pressure of seemingly unrealizable deadlines, these lawyers not only manage to deliver a legislative package on time, but also provide us with quality work that is worthy of becoming the law of the land.

Working behind the scenes is, by and large, a thankless job. But it should not always be so. Therefore, on an occasion such as this, I am delighted to have this opportunity to recognize and extend our gratitude to Mr. Hester and all of the attorneys of the Office of the Legislative Counsel.

As one of the architects of our Nation's laws, Mr. Hester deserves the utmost thanks for his extended commitment to public service, his leadership, and his many contributions to the body of Federal law. I know that all Senators join me in wishing him a long, health, and happy retirement.

TRIBUTE TO DOUGLAS B. HESTER

Mr. HEFLIN. Mr. President, I rise today to pay tribute to Douglas B. Hester as he prepares to retire as legislative counsel of the Senate, following almost 39 years of distinguished service to that office, to the U.S. Senate, and to the American people.

Few people have served this Government with the distinction or the dedication shown by Doug Hester. Following his honorable discharge from the U.S. Army where he gained the rank of sergeant, Doug served as a reservist for the U.S. Navy for 5 years.

Near the end of his term as a Navy reservist, Doug began what would eventually grow into a 39-year career with the Office of the Legislative Counsel of the Senate. On February 19, 1952, Doug was appointed as a beginning attorney for that office, and has occupied various positions before his appointment on March 1, 1980, as Legislative Counsel of the Senate. The past 10 years have been spent in this capacity.

I am especially proud of Mr. Hester because of his close ties to Alabama. He is a native of my home State and a graduate of the University of Alabama and Alabama Law School. He earned both his B.S. degree and his law degree during his service as a Navy reservist. He is a member of the bar in both Alabama and the District of Columbia.

His accomplishments at Alabama Law School were good indicators of the success he would achieve with the Senate. During law school, he was a member of the Farah Order of Jurisprudence and a member of PAD legal fratenity. Doug also served as a board

member, case note editor, and business editor for the Alabama Law Review.

I know that Doug has had a hand in drafting much of the legislation concerning Social Security, Medicare, Medicaid social welfare, and public health laws. His expertise in these areas as well as other fields within the office made him a perfect choice for selection as Legislative Counsel of the Senate.

Doug Hester's devotion to duty is well known and his contributions will be greatly missed following his retirement on December 31, 1990. The Senate will be hard pressed to find someone of Doug Hester's caliber and experience to hold the position as the Legislative Counsel for the Senate.

Once again I congratulate Douglas B. Hester on his distinguished service and wish him the best of luck following his retirement.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was agreed to.

The preamble was agreed to.

The resolution (S. Res. 349) and its preamble are as follows:

S. RES. 349

Whereas Douglas B. Hester was appointed to the Office of the Legislative Counsel of the Senate on February 19, 1952, and was appointed the 11th Legislative Counsel of the Senate on March 1, 1980;

Whereas Douglas B. Hester has made major contributions in the drafting of all social security, health, and related legislation enacted by the Congress since 1952; and

Whereas Douglas B. Hester is retiring after having served the United States Senate with distinction for nearly 39 years: Now, therefore, be it

Resolved, That the Senate of the United States extends its appreciation and gratitude to Douglas B. Hester, the Legislative Counsel of the Senate, for his long and faithful service to the Senate.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Douglas B. Hester.

Mr. SANFORD. I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REGULATION OF MEDICAL DEVICES—CONFERENCE REPORT

Mr. SANFORD. Mr. President, I submit a report of the committee of conference on H.R. 3095 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3095) to amend the Federal Food, Drug, and Cosmetic Act to make improvements in the regulation of medical devices, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferences.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 26, 1990.)

Mr. KENNEDY. Mr. President, I am pleased that the conferees have reached a bipartisan agreement on the Safe Medical Devices Act of 1990. By building upon, and improving, the Medical Devices Amendments of 1976, this bill represents a major contribution to public health.

There has been explosive innovation in health care technologies in recent years, and nowhere are the fruits of this extraordinary growth more striking than in the field of medical devices. However, effective regulation of medical devices requires a balance between making such new technologies readily available, while protecting the public against unsafe devices. This legislation achieves both of these essential goals.

This bill comprehensively addresses a broad range of issues. It clarifies the scope of FDA's authority to make the finding that a new device is substantially equivalent to an already marketed device—this is vital since such a finding precedes the marketing of over 95 percent of new devices.

The legislation improves the current classification and reclassification systems to permit more efficient regulation, and to allow more FDA resources to be directed to the review of devices which present the greatest benefits or risks.

The bill also provides for an orderly transition away from the current prohibition against FDA's use of data in one manufacturer's device approval to approve or reclassify another manufacturer's device. This prohibition has led to inefficient use of industry and FDA resources.

The bill establishes an early warning system that will, for the first time, receive reports from hospitals and other health care facilities about serious injuries or deaths that may have been caused by medical devices. The bill also provides for mandatory clinical monitoring, soon after market introduction, of certain devices that may pose substantial risks.

The bill contains a humanitarian device exemption which is intended to increase the availability of devices designed to treat a disease or condition affecting fewer than 4,000 individuals.

Recognizing the tremendous growth in biotechnology, the legislation streamlines regulatory review procedures for so-called combination products comprising any combination of drugs, devices or biologics.

Finally, the bill provides several provisions, such as explicit recall authority, which will allow FDA to assure that unsafe devices are quickly identified and appropriately modified or removed from the market. It also gives new authority for civil penalties as a means of enforcing the Food, Drug and Cosmetic Act.

This legislation has been facilitated by the active assistance of consumer groups, the FDA, and the medical device industry, and represents an excellent compromise between these diverse interests.

I urge my colleagues to adopt this conference report.

Mr. DODD. Mr. President, I am pleased to express my support for the conference report on the Safe Medical Devices Act of 1990.

The purpose of the Safe Medical Devices Act of 1990 is to improve the Medical Device Amendments of 1976, the basic law under which the Food and Drug Administration regulates medical devices and ensures their safety and effectiveness.

In the past few years, interest in the medical device amendments has grown because of problems associated with implementation of the law as well as concerns regarding the costs of some provisions relative to the incremental gains in safety and effectiveness.

Simply stated, the 1976 law sought to avoid overregulation, thus eliminating unnecessary resource costs to industry and the Government, foster incentives to encourage innovation in a relatively youthful industry and, most importantly, provide the public reasonable assurances of safe and effective medical devices.

While implementation of the 1976 law by FDA has led to a substantial improvement in the safety and efficiency of devices, refinement of the law is necessary to achieve the original purpose of the amendments.

For the past 2 years, I have been working to develop balanced medical device reform legislation which would improve the regulatory scheme for medical devices and would ensure continued public access to safe, effective, high quality medical devices. The bill before us is the product of lengthy discussions and negotiations with every segment of the medical device community, including the industry, consumer groups, and the FDA.

I am pleased that the conference report on the Safe Medical Devices Act successfully culminates that effort. It strikes an effective and appropriate balance, achieving the objective of ensuring that devices entering the market are safe and effective, that problems with devices are identified quickly, and that defective devices are removed from the market as soon as possible, while also ensuring the continued growth and innovation of our medical device industry so it retains its status as the world leader.

The legislation is truly comprehensive—it will modify virtually all medical device program activities at FDA and will promote improved actions by FDA.

On the premarket side of device regulation, the bill responds to current weaknesses of the law. Numerous provisions in the bill are intended to enhance device safety and effectiveness.

The premarket review process will be made more effective by clarifying the appropriate classification of devices, thus avoiding overregulation and the needless expenditure of FDA resources. The premarket review process also will be strengthened by essentially codifying FDA's interpretation of the premarket notification process, the process by which some 95 percent of devices are approved for marketing by FDA.

Other improvements in premarket regulations related to streamlining the law and making regulations more efficient. The bill streamlines the process of promulgating performance standards and expands the type of special controls that can be imposed on class II devices.

Class II is redefined so that FDA will be better able to reclassify certain devices out of class III, while ensuring safety and effectiveness. However, for those devices that are purported or represented to be for a use in supporting or sustaining human life, that is, higher risk devices, the FDA, at the time the device is classified or reclassified, must examine and identify the special controls that are necessary to provide adequate assurance of safety and efficacy, and to describe how such controls provide such assurance for those devices which may pose a heightened potential for injury or death. This will enable FDA to evaluate and ensure the safety and effectiveness of other similar devices.

The legislation also provides for an orderly transition away from the current prohibition against FDA's access to data in one manufacturer's device approval application as a way of facilitating approval or reclassification of another manufacturer's device. This provision strikes the appropriate balance between preserving incentives for innovation and research and development on the one hand, and inefficient use of industry and FDA resources on the other.

The bill thus enables FDA to avoid meaningless duplication in the premarket review process, and likewise, provides FDA with the means of moving certain types of devices out of the resource intensive premarket review arena.

The legislation includes three unique provisions which recognize the tremendous growth in biotechnology and the new challenges of global competition which will be brought about by the changes in the European Community in 1992. The bill contains a humanitarian device exemption which is intended to increase the availability of devices designed to treat a disease or condition affecting fewer than 4,000 individuals. The legislation also streamlines the regulatory review procedures for so-called combination products comprising any combination of drugs, devices or biologics. Finally, the bill provides for the establishment of an office of international relations that will facilitate the mutual recognition of device regulations and testing protocols between the United States and foreign countries.

On the postmarket side, the bill provides additional means to protect the public health. The bill establishes a reporting system which will allow FDA to receive reports from hospitals and other health care facilities about serious injuries or deaths that may have been caused by medical devices. While I feel that user reporting requirements are important and necessary, in all candor, Mr. President, I have some concerns about the scope of the reporting provisons and the potential for needless duplication. While I am pleased with the moderating changes made in the user reporting section during the conference, I do worry that, given the limited FDA resources available to process these reports, it may be difficult to properly evaluate and utilize user reports in a useful manner. My ferevent hope is that FDA will use the discretionary authority provided in this section to strike an appropriate balance between the administrative burdens imposed by this requirement and the useful information which can be generated from user reporting.

The bill also provides for mandatory clinical monitoring and postmarket surveillance, soon after market introduction, of certain devices that may pose substantial risks. The bill provides several provisions, such as explicit recall authority, which will allow FDA to ensure that unsafe devices are quickly identified and appropriately modified or removed from the market.

Finally, the legislation gives new authority for civil penalties as a means of enforcing the Food, Drug and Cosmetic Act. Frankly, I opposed including the civil penalties provision to this conference report because the legislation already provides FDA with many other effective tools to correct violations of the medical devices provisions in the Food, Drug and Cosmetic Act. However, because our House counterparts had such a strong and persistent interest in civil penalties, the reality was that a compromise on penalties was necessary if we wanted to complete action on medical device reform. I take some comfort in the fact that the Senate conferees succeeded in moderating the penalty provisions from the House bill.

Mr. President, three major themes dominate the Safe Medical Devices Act of 1990: First, enhancing the safety and effectiveness of devices by defining and streamlining the premarket review mechanisms and by creating a series of postmarket controls that alert the FDA to device problems and provide the means for responding quickly and effectively to situations that may present serious, adverse health consequences; second, preserving and focusing FDA resources on the most important public health issues associated with medical device regulation; and third, avoiding over-regulation, thus maintaining a highly competitive, innovative industry.

Mr. President, I wish to commend Senator KENNEDY and his staff for their hard work and cooperation in helping to develop this legislation. I also wish to recognize the significant contributions made by Senators DURENBERGER, COATS, and HATCH, and their fine staffs.

Mr. President, I urge adoption of the conference report on the Safe Medical Devices Act of 1990.

Mr. DURENBERGER. Mr. President, I rise to express my support for the conference report on the Safe Medical Devices Act of 1990. For the past several months, I have had the pleasure of working with my colleagues, Senators KENNEDY, HATCH, DODD, and COATS, to develop a balanced medical devices reform bill. By balanced, I mean a bill that achieves the goals of ensuring that devices entering the market are safe and effective, that problems with devices are identified quickly, and that defective devices are removed from the market as soon as possible, while also ensuring the continued growth and innovation of the medical device industry. I felt that the devices bill passed by the Senate successfully achieved such balance, and to a large extent, I believe this conference report does the same, although I have reservations about two sections.

Mr. President, I want to call attention to two provisions of the conference report which represent improvements over their original House or Senate versions. In particular, I am pleased with the conference provision on recall authority and the surveillance approval section of the postmarket surveliance provision. Also, I am grateful that the we agreed to include the Senate provision on products which are comprised of combinations of devices, drugs, or biologics. These so-called combination products are, and will continue to be, of great benefit to health care consumers, and I think it is important that we acted to streamline the regulatory barriers facing such products.

I have reservations about two sections of this conference report: user

reporting and civil penalties. While I am pleased with the moderating changes which were made in the user reporting section, I still worry about the scope of this requirement and the limited FDA resources available to process and evaluate user reports. Mr. President, I am certain that the Congress will be asked to revisit this section in the future, especially once user groups finally figure out what this section asks of them. In the meantime, I encourage the FDA to use the discretionary authority provided in this section to strike a sensible balance between the administrative burdens imposed by this requirement and the useful information which can be generated from user reporting.

Like all of the Senate conferees, I struggled with the issue of civil penalties. I opposed adding civil penalties to this conference report because the report already provides the FDA with other, very effective tools to correct violations of the medical devices provisions in the Food, Drug, and Cosmetic Act. Realistically though, because our House counterparts had such a strong and persistent interest in civil penalties, a compromise was necessary if we wanted to complete action on medical devices reform. I think we reached a fair compromise which provides protections for both the medical devices industry and device user facilities. In shaping this compromise, I have listened carefully to the medical devices industry's concern about the $1 million maximum per proceeding. I know many companies are fearful that the FDA might misuse this provision. I think this is unlikely, and frankly, if a device manufacturer commits violations which warrant a $1 million assessment, then I submit that the FDA should consider using the other, more effective enforcement tools provided by this report to ensure compliance. Mr. President, to the extent that I have any lingering discomfort with this section, it is because I am concerned that it tilts the balance I mentioned earlier toward a level of regulation that cannot be justified by the expected gains in consumer safety.

In closing, I would again like to thank my fellow Senate conferees for their work on this report. I would also like to thank Minnesota's Medical Alley, a unique trade group comprised of medical technology manufacturers and medical technology users, for the information and perspective its members have shared with me on medical devices regulation. As I monitor the implementation of this conference report, I look forward to their input and advice.

Mr. COATS. Mr. President, today we are concluding a long and challenging effort to improve the Food and Drug, and Cosmetic Act as it relates to medical devices. The Conference Report on the Safe Medical Devices Act of 1990 updates and enhances the present law in many ways. I would like to recognize and commend the efforts of all the conferees on this bill, especially my Senate colleagues Senator KENNEDY, Senator HATCH, Senator DODD, and Senator DURENBERGER who were cosponsors with me on the Senate bill.

The 19 sections of this legislation touch almost every part of the existing device law. These changes have been discussed and analyzed by Chairman KENNEDY and Senator HATCH, and there is no need for me to duplicate their good work. I would like to highlight several parts of this legislation that I believe will be especially beneficial to the millions of Americans who are treated with medical devices every day.

The pace of change in the medical device industry has left the 1976 law even further out of date than the passage of 14 years would suggest. I believe we have clarified and expedited the approval process so that the many innovative products that are being developed can reach the market as soon as a thorough review of an application permits. It is critical that safe and effective new products reach the people who need them as soon as possible. By codifying the 510(k) process that is used to approve more than 95 percent of the new devices that reach the market, FDA investigators should be able to clear worthwhile new devices more quickly.

It was our intention to improve the premarket approval [PMA] process by letting FDA investigators use the information in their files from previous approvals to approve a new application. This provision gives adequate protection to the holders of the first four approvals of a like device, who presumably invested heavily in research and development, because the files are not opened until 1 year after the fourth approval. Classification and reclassification of devices also should be easier and more accurate under the changes in this bill.

As a balance to streamlining the approval process, we provided the Secretary of HHS additional authority to monitor approved devices and react when a problem is found. The Secretary will be able to monitor certain devices that perform essential functions such as supporting or sustaining human life. If the Secretary finds that there is a reasonable probability that a device could cause serious health consequences or death the Secretary can remove or recall the device.

In those cases where there is a serious violation of the medical device law, the Secretary may impose penalties. In my view, the civil penalty section like the other parts of this bill that give the Secretary expanded regulatory authority, is intended to be remedial and not punitive. Under this legislation the Secretary has ample tools to encourage companies to comply with the law, and that is usually the most productive course of action.

Mr. President, I am particularly pleased that there is a humanitarian device exemption in this conference report. This exemption waves performance standards and premarket approval for devices made to diagnose or treat a condition that affects less than 4,000 people, providing that the benefit of using the device outweighs the risk.

Under the present law, such a device requires full clinical trials. These trials are often impossible to conduct because of the small number of patients with the condition. Under section 14 of the conference report, the Secretary has the authority to waive these trials. The patients are protected because the Secretary can not grant an exemption for a device that would expose them to unreasonable or significant risks of illness or injury. Also, these devices can only be used in medical institutions where internal expert review committees approve the treatment.

The humanitarian device exemption is a significant breakthrough for people with rare diseases. Now companies that want to design a device to help them will be able to do it without having to work through the regulatory maze of performance standards and clinical trials. Companies that have expressed an interest in making a humanitarian device are not concerned about making a profit, however, the new law gives them the opportunity to recover their costs.

The initial authority for this exemption is 5 years after regulations are published. I hope that many manufacturers will use the opportunity this exemption offers to serve patients who have been denied potentially lifesaving devices by the cost and complication of regulations.

Mr. President, I urge my colleagues to adopt this conference report so that all of us can more fully and safely benefit from the innovative products that are being designed by the American medical device industry.

Mr. HATCH. Mr. President, I am pleased to be joining Senators KENNEDY, DODD, COATS, and DURENBERGER in supporting the conference report for H.R. 3095, the Comprehensive Medical Device Improvement Act of 1990. This legislation achieves the goals of the 1976 medical device amendments to approve devices that are safe and effective and to balance the need for regulation with the benefits of innovation.

Most of the medical device industry is dominated by small manufacturers and the industry is dependent on their entrepreneurship and innovation in developing new products. In updating

the law, we were constantly aware of the need not to get too bureaucratic and actually stifle this innovation.

The requirement that FDA develop performance standards for all class II devices is made discretionary. There are currently no performance standards developed for class II devices because the legislative requirements are too burdensome. However, standards may be warranted for those class II devices when they could assist the FDA in ensuring their safety.

One way to maintain public confidence in our advancing technologies is to closely monitor failings and then to correct them. The conference report develops a sensible reporting system. Hospitals and nursing homes will report to FDA when the failure of a device results in a death. When the failure of a device results in harm to a patient, the hospital or nursing home will report to the manufacturer. This will allow for cooperation and correction of any potential defaults.

The bill also addresses another important need. It codifies the current method by which class II devices are approved as being "substantially equivalent" to a previously approved device. The mechanisms for so-called 510(k) approvals have evolved within FDA. This bill guarantees that the same process will continue and that all device manufacturers understand and can rely on the terms by which their products must be approved.

Another important provision in the bill would modify current law by allowing FDA to use premarket approval data one year after the approval of the fourth application for like devices. Such data would not be disclosed. This provision would allow FDA to waive certain PMA testing requirements that are met through existing preclinical and clinical data.

Another of the bill's provisions is the review of transitional devices, particularly contact lenses. The 1976 amendments locked these devices into class III. Because approval as a new class III device is costly, this created a monopoly for the primary manufacturers of a transitional device. This legislation would allow for the long-overdue reassignment of transitional devices to their proper regulatory class and would reclassify gas permeable contact lenses within 2 years unless the Secretary determines that they should remain in class III.

Mr. President, this conference report also includes language adopting the House civil penalities provisions with modifications. The minimum penalty for a major violation is $15,000 and a maximum penalty is $1,000,000. It is my belief that these fines will not be imposed unless there is great justification and harm to the public health.

All in all, this legislation provides FDA with the tools to ensure the safety and effectiveness of medical devices, while providing the means for newer, safer, and more effective products to reach the marketplace and the patient. It is important that we accomplish a final piece of medical device legislation for the President's signature. I urge my colleagues to join me in moving this conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report is agreed to.

Mr. SANFORD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FISHERY CONSERVATION AMENDMENTS OF 1990

Mr. SANFORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2061.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 2061) entitled "An Act to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1983, and for other purposes", with the following amendment:

In lieu of the matter inserted by said amendment, insert:

SHORT TITLE; TABLE OF CONTENTS

Section 1. (a) SHORT TITLE.—The Act may be cited as the "Fishery Conservation Amendments of 1990".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
TITLE I—AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.
Sec. 101. Findings, purposes, and policy.
Sec. 102. Definitions.
Sec. 103. Authority with respect to highly migratory species.
Sec. 104. Foreign fishing.
Sec. 105. International fishery agreements.
Sec. 106. Permits for foreign fishing.
Sec. 107. Driftnet fishing.
Sec. 108. Regional Councils.
Sec. 109. Contents of fishery management plans.
Sec. 110. Action by Secretary of fishery management plans.
Sec. 111. Implementation of fishery management plans.
Sec. 112. State jurisdiction.
Sec. 113. Prohibition of certain acts.
Sec. 114. Civil penalties and permit sanctions.
Sec. 115. Criminal offenses and penalties.
Sec. 116. Civil forfeitures.
Sec. 117. Enforcement.
Sec. 118. North Pacific fisheries research plan.
Sec. 119. Authorization of appropriations.
Sec. 120. Miscellaneous technical amendments.
TITLE II—ATLANTIC TUNAS CONVENTION ACT OF 1975
Sec. 201. Limitations on appointments of Commissioners.
Sec. 202. Termination of current terms and completion of pending appointments.
Sec. 203. Travel expenses of Commissioners.
Sec. 204. Travel expenses of advisory committee.
Sec. 205. Species working groups.
Sec. 206. Regulations to carry out Commission recommendations.
Sec. 207. Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish.
Sec. 208. Authorization of appropriations.
TITLE III—FISHERMEN'S PROTECTIVE ACT OF 1967
Sec. 301. Vessel seizure reimbursement authority.
TITLE IV—ANADROMOUS FISH CONSERVATION ACT
Sec. 401. Authorization of appropriations.
TITLE V—INTERJURISDICTIONAL FISHERIES ACT OF 1986
Sec. 501. Clarification of appointment limitation.
Sec. 502. Federal share of activities carried out with additional appropriations.
Sec. 503. Authorization of appropriations.
TITLE VI—CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT
Sec. 601. Authorization of appropriations.
TITLE VII—NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL
Sec. 701. Reauthorization and extension of termination date.
Sec. 702. Authorization of appropriations.
Sec. 703. Transfer of Saltonstall-Kennedy funds.
Sec. 704. Continuity of National Council membership.
Sec. 705. Continuity of Council functions, contracts, and personnel.
TITLE VIII—MISCELLANEOUS
Sec. 801. Certificate of legal origin for anadromous fish products.
TITLE IX—DOLPHIN PROTECTION CONSUMER INFORMATION
Sec. 901. Dolphin protection.
TITLE X—FISHERIES COMMISSION
Sec. 1001. Redesignation of fisheries commission.
TITLE XI—REPORT OF MARINE MAMMALS
Sec. 1101. Report on marine mammal populations.

TITLE I—AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

FINDINGS, PURPOSES, AND POLICY

SEC. 101. (a) FINDINGS.—Section 2(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(a)) is amended by adding at the end the following new paragraph:

"(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.".

(b) PURPOSES.—(1) section 2(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(b)(1)) is

amended by striking "except highly migratory species".

(2) Section 2(b)(5) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(b)(5)) is amended by striking "prepare, monitor, and revise" and inserting in lieu thereof "exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of".

(c) POLICY.—Section 2(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(c)) is amended—

(1) in paragraph (3) by inserting "considers the effects of fishing on immature fish and encourages development of practical measures that avoid unnecessary waste of fish;" immediately after "and enforcement;"

(2) by striking "and" at the end of paragraph (4);

(3) by striking the period at the end of paragraph (5) and inserting in lieu thereof ", and to secure agreement to regulate fishing practices by vessels or persons fishing beyond the exclusive economic zones of any nation; and"; and

DEFINITIONS

SEC. 102. (a) GENERAL.—Section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802) is amended—

(1) by redesignating paragraphs (6) through (16) as paragraphs (7) through (17), respectively, by redesignating paragraph (17) as paragraph (19), by redesignating paragraphs (18) through (23) as paragraphs (21) through (26), respectively, and by redesignating paragraphs (24) through (27) as paragraphs (28) through (31), respectively;

(2) by inserting immediately after paragraph (5) the following new paragraph:

"(6) The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.";

(3) in paragraph (8), as so redesignated, by striking ", birds, and highly migratory species" and inserting in lieu thereof "and birds";

(4) by amending paragraph (15), as so redesignated, to read as follows:

"(15) The term 'highly migratory species' means tuna species, marlin (Tetrapturus spp. and Makaira spp.), oceanic sharks, sailfishes (Istiophorus spp.), and swordfish (Xiphias gladius).";

(5) by inserting immediately after paragraph (17), as so redesignated, the following new paragraph:

"(18) The term 'migratory range' means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.";

(6) by inserting immediately after paragraph (19), as so redesignated, the following new paragraph:

"(20) The term 'observer' means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.";

(7) by inserting immediately after paragraph (26), as so redesignated, the following new paragraph:

"(27) The term 'tuna species' means the following:

"Albacore Tuna—Thunnus alalunga;

"Bigeye Tuna—Thunnus obesus;

"Bluefin Tuna—Thunnus thynnus;

"Skipjack Tuna—Katsuwonus pelamis; and

"Yellowfin Tuna—Thunnus albacares."; and

(8) by adding at the end the following new paragraph:

"(32) The term 'waters of a foreign nation' means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.".

(b) CONFORMING AMENDMENT.—Section 101(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811(b)(1) is amended by striking "any foreign nation's" and all that follows and inserting in lieu thereof "any waters of a foreign nation.".

AUTHORITY WITH RESPECT TO HIGHLY MIGRATORY SPECIES

SEC. 103. (a) GENERAL.—Section 102 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1812) is amended to read as follows:

"SEC. 102. HIGHLY MIGRATORY SPECIES.

"The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout their range, both within and beyond the exclusive economic zone.".

(b) CONFORMING AMENDMENT.—The entry for section 102 of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"Sec. 102. Highly migratory species.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1992.

FOREIGN FISHING

SEC. 104. Subsection (d) of section 201 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821) is amended to read as follows:

"(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this Act.".

INTERNATIONAL FISHERY AGREEMENTS

SEC. 105. (a) HIGHLY MIGRATORY SPECIES AGREEMENTS.—Section 202 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822) is amended by redesignating subsection (e) as subsection (f) and by inserting immediately after subsection (d) the following new subsection:

"(e) HIGHLY MIGRATORY SPECIES AGREEMENTS.—

"(1) EVALUATION.—The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—

"(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;

"(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;

"(C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

"(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

"(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

"(2) ACCESS NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

"(3) REPORTS.—The Secretary of State shall report to the Congress—

"(A) within 12 months after the date of enactment of this subsection, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified; and

"(B) within six months after such date of enactment, on the results of the access negotiations required under paragraph (2).

"(4) NEGOTIATION.—The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

"(5) SOUTH PACIFIC TUNA TREATY.—It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.".

"(b) DETERMINATIONS OF SECRETARY OF STATE.—(1) Section 205(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1825(a)) is amended—

"(A) in paragraph (1) by striking "traditional" and by inserting "including fisheries for tuna species," immediately after "authority,"; and

"(B) in paragraph (2) by striking "highly migratory" and inserting in lieu thereof "tuna".

(2) The amendments made by this subsection shall take effect on January 1, 1992.

PERMITS FOR FOREIGN FISHING

SEC. 106. (a) FEES.—Section 204(b)(10) of the Magnuson Fishery Conservation and

Management Act (16 U.S.C. 1824(b)(10)) is amended to read as follows:

"(10) FEES.—

"(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

"(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.".

(b) SANCTIONS.—Section 204(b)(12) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(12)) is repealed.

DRIFTNET FISHING

SEC. 107. (a) GENERAL.—Section 206 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1826) is amended to read as follows:

"SEC. 206. LARGE-SCALE DRIFTNET FISHING.

"(a) SHORT TITLE.—This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the 'Driftnet Act Amendments of 1990'.

"(b) FINDINGS.—The Congress finds that—

"(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is an indiscriminate and wasteful fishing method that poses a threat to living marine resources of the world's oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

"(2) the use of large-scale driftnets is expanding into new regions of the world's oceans, including the Atlantic Ocean and Caribbean Sea;

"(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

"(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

"(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

"(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

"(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation.

"(c) POLICY.—It is declared to be the policy of the Congress in this section that the United States should—

"(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;

"(2) support the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific and the Tarawa Declaration; and

"(3) secure a permanent ban on the use of large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

"(d) DEFINITION.—As used in this section, the term 'living marine resources' includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.

"(e) MONITORING AND ENFORCEMENT AGREEMENTS.—The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement the findings, policy, and provisions of this section, in particular an international ban on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

"(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

"(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

"(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed by large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

"(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel is operating in designated areas beyond the exclusive economic zone of any nation;

"(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

"(6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;

"(7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

"(8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such large-scale driftnet;

"(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

"(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

"(f) REPORT.—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—

"(1) describing the steps taken to carry out the purposes of this section, and in particular subsection (b) of this section;

"(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

"(3) identifying and evaluating the effectiveness of unilateral measures and multilateral measures, including sanctions, that are available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize any additional measures that are needed if those are considered ineffective;

"(4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against fishing vessels engaged in fishing beyond the exclusive economic zone of any nation;

"(5) containing a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

"(6) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

"(g) CERTIFICATION.—If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (f)(5), the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

"(h) EFFECT ON SOVEREIGN RIGHTS.—This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this Act or other existing law.".

(b) CONFORMING AMENDMENT.—The entry for section 206 of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"Sec. 206. Large-Scale Driftnet Fishing.".

REGIONAL COUNCILS

SEC. 108. (a) AUTHORITY OVER CERTAIN FISHERIES.—Section 302(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(a)) is amended by inserting "(except as provided in section 304(f)(3))" immediately before the period at the end of

the first sentence in each of paragraphs (1) through (5).

(b) MEMBERS' QUALIFICATIONS.—Paragraph (2) of section 302(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(b)) is amended to read as follows:

"(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

"(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall—

"(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

"(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

"(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

"(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

"(D) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.".

(c) LIMITATION ON TERMS OF VOTING MEMBERS.—Section 302(b)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(b)(3)) is amended by adding at the end the following new sentence: "No member appointed after January 1, 1986, may serve more than three consecutive terms.

(d) COMPENSATION.—Section 302(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(d)) is amended to read as follows:

"(d) COMPENSATION AND EXPENSES.—The voting members of each Council, who are not employed by the Federal Government or any State of local government, shall, until January 1, 1992, receive compensation at the daily rate for GS-18 of the General Schedule, and after December 31, 1991, at the daily rate for GS-16 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses."

(e) TRANSACTION OF BUSINESS.—(1) Section 302(e)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(e)(3)) is amended by striking "in the geographical area concerned" and inserting in lieu thereof "at appropriate times and places in any of the constituent States of the Council".

(2) Section 302(e)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(e)(4)) is amended by adding at the end the following new sentence: "The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.".

(f) DECISIONS AND RECOMMENDATIONS OF ADVISORY COMMITTEE AND PANELS.—Section 302(g) (16 U.S.C. 1852(g)) is amended by adding at the end the following:

"(3)(A) Each Council shall establish and maintain a United States fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

"(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

"(4) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.".

(g) COUNCIL FUNCTIONS.—Paragraphs (1) and (5) of section 302(h) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(h)) are each amended by inserting "(except as provided in section 304(f)(3))" immediately before "within its geographical".

(h) FISHERY HABITAT CONCERNS.—Section 302(i) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(i)) is amended to read as follows:

"(i) FISHING HABITAT CONCERNS.—Each Council—

"(A) may comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; and

"(B) shall comment on and make recommendations concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction.

"(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measures being considered by the agency for mitigating or offsetting the impact of the activity on such habitat.".

(i) CLOSED MEETINGS.—Section 302(j)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking the semicolon at the end of clause (ii) and all that follows through "time and place of the meeting." and inserting in lieu thereof a period; and

(B) by inserting "of paragraph (2)" immediately after "(D) and (F)"; and

(2) by adding at the end the following new subparagraph:

"(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subpararaph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.".

(j) CONSIDERATION OF NEW INFORMATION.—Section 302(j) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)) is amended by adding at the end the following new paragraph:

"(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.".

(k) INTERIM MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.—Notwithstanding the amendments made by subsections (a) and (g), any fishery management plan or amendment which—

(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (as amended by this Act) applies,

(2) was prepared by one or more Regional Fishery Management Councils, and

(3) was in force and effect on January 1, 1990,

shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.

CONTENTS OF FISHERY MANAGEMENT PLANS

SEC. 109. (a) REQUIRED DATA COLLECTION AND GEAR.—Section 303(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(a)) is amended—

(1) in paragraph (1)(A) by inserting "to protect, restore, and promote the long-term health and stability of the fishery including by defining overfishing and by including conservation and management measures to prevent overfishing" immediately before the semicolon at the end;

(2) in paragraph (1)(C) by inserting "regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits)," immediately after "this Act,";

(3) by amending paragraph (6) to read as follows:

"(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;";

(4) by striking the period at the end of paragraph (7) and inserting in lieu thereof a semicolon; and

(5) by adding at the end the following new paragraphs:

"(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan; and

"(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on—

"(A) participants in the fisheries affected by the plan or amendment; and

"(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants.".

(b) DISCRETIONARY PROVISIONS.—(1) Paragraph (1) of section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)) is amended to read as follows:

"(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

"(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or for anadromous species or Continental Shelf fishery resources beyond such zone;

"(B) the operator of any such vessel; or

"(C) any United States fish processor who first receives fish that are subject to the plan;".

(2) Section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)) is amended in paragraph (6) by inserting "or to prevent overfishing" after "achieve optimum yield".

(3) Section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)) is amended by redesignating paragraphs (7) and (8) as paragraphs (9) and (10), respectively, and by inserting immediately after paragraph (6) the following new paragraphs:

"(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

"(8) require that observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;".

(c) CONFIDENTIALITY OF STATISTICS.—Section 303(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(d)) is amended—

(1) in the matter preceding paragraph (1) by striking "subsection (a)(5)" and inserting in lieu thereof "subsections (a) and (b)";

(2) by striking "or" at the end of paragraph (1);

(3) by redesignating paragraph (2) as paragraph (3);

(4) by inserting immediately after paragraph (1) the following new paragraph;

"(2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or"; and

(5) by adding at the end the following new sentence: "Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary or, with the approval of the Secretary, the council, of any statistic submitted in compliance with a requirement under subsection (a) or (b).".

(d) USE OF CERTAIN DATA.—Section 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853) is further amended by adding a new subsection at the end as follows—

"(f) RESTRICTION ON USE OF CERTAIN DATA.—The Secretary shall promulgate regulations to prevent observer or sea sampler data from being used in civil or enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), or the Endangered Species Act (16 U.S.C. 1531 et seq.). Such regulations shall be limited to data collected by an observer or sea sampler invited on board a vessel of the United States by the owner or operator of such vessel."

ACTION BY SECRETARY OF FISHERY MANAGEMENT PLANS

SEC. 110. (a) FISHERIES RESEARCH.—Subsection (e) of section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended to read as follows:

"(e) FISHERIES RESEARCH.—(1) Within one year after the date of enactment of the Fishery Conservation Amendments of 1990, and at least every three years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the five years immediately following such publication. The plan shall—

"(A) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in paragraph (2);

"(B) indicate the goals and timetables for the program described in subparagraph (A); and

"(C) provide a role for affected commercial fishermen in such research, including involvement in field testing.

"(2) The areas of research referred to in paragraph (1) are as follows:

"(A) Research to support fishery conservation and management, including research on the economics of fisheries and biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

"(B) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize the harvest of nontarget species and promote efficient harvest of target species.

"(C) Information management research, including the development of a fishery information base and an information management system that will permit the full use of data in the support of effective fishery conservation and management.

"(3) In developing the plan required under paragraph (1), the Secretary shall consult with relevant Federal agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.".

(b) MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.—(1) Section 304(f) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(f)) is amended—

(A) by striking "MISCELLANEOUS DUTIES" and inserting in lieu thereof "FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL";

(B) in paragraph (1) by striking "If" and inserting in lieu thereof "Except as provided in paragraph (3), if"; and

(C) by adding at the end the following new paragraph:

"(3)(A) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

"(B) In accordance with the provisions of this Act and any other applicable law, the Secretary shall—

"(i) identify research and information priorities, including observer requirements and necessary data collection and analysis for the conservation and management of highly migratory species;

"(ii) prepare and amend fishery management plans with respect to highly migratory

species fisheries to which this paragraph applies; and

"(iii) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), international fishery management measures with respect to fishing for highly migratory species.

"(C) In preparing or amending any fishery management plan under this paragraph, the Secretary shall—

"(i) conduct public hearings, at appropriate times and in appropriate locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan;

"(ii) consult with and consider the comments and views of commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species;

"(iii) consult with and consider the comments and views of affected Councils;

"(iv) evaluate the likely effects, if any, of conservation and management measures on participants in the fisheries affected by the plan and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors; and

"(v) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan.

"(D) Conservation and management measures contained in any fishery management plan under this paragraph shall—

"(i) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

"(ii) be fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose; and

"(iii) promote international conservation.

"(E) With respect to a highly migratory species for which the United States is authorized to harvest an allocation or quota under a relevant international fishery agreement, the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota.

"(F) In implementing the provisions of this paragraph, the Secretary shall consult with—

"(i) the Secretary of State;

"(ii) commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

"(iii) appropriate Councils.".

(2) Section 305(a)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(a)(3)), as redesignated by section 111(a)(1) of this Act, is amended by inserting "or (f)(3)" immediately after "304(c)".

(c) INCIDENTAL HARVEST RESEARCH.—Section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is further amended by adding at the end the following new subsection.

"(g) INCIDENTAL HARVEST RESEARCH.—(1) Within 9 months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, after consultation with the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, establish by regulation a 3-year program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils.

"(2) The program established pursuant to paragraph (1) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

"(3) For stocks of fish identified pursuant to paragraph (2), with priority given to stocks which (based upon the best available scientific information) are considered to be overfished, the Secretary shall conduct—

"(A) a program to collect and evaluate data on the nature and extent (including the spatial and temporal distribution) of incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

"(B) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

"(C) a program of data collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

"(4) The Secretary shall, in cooperation with affected interests, commence a program to design, and evaluate the efficacy of, technological devices and other changes in fishing technology for the reduction of incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing activity. Such program shall take into account local conditions and include evaluation of any reduction in incidental mortality, as well as any reduction or increase in the retention of shrimp in the course of normal fishing activity.

"(5) The Secretary shall, upon completion of the programs required by this subsection, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

"(6)(A) Except as provided in this paragraph, the Secretary may not implement any measures under this Act to reduce incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing which would restrict the period during which shrimp are harvested or would require the use of any technological device or other change in fishing technology.

"(B) The prohibition contained in subparagraph (A) shall cease on January 1, 1993, with respect to Fisheries under the authority of the South Atlantic Fishery Management Council, and with respect to Fisheries under the authority of the Gulf of Mexico Fishery Management Council, shall cease on January 1, 1994—

"(C) This paragraph does not apply to any law or regulation in effect on the date of enactment of this paragraph, nor does it limit in any way the Secretary's authority to take action, including any limitation on entry permitted by this Act, for the conservation and management of the shrimp fishery resource.".

(d) ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN.—(1) The New England Fishery Management Council may submit to the Secretary of Commerce an amendment to the Atlantic Sea Scallop Fishery Management Plan. Any amendment submitted under this section shall—

(A) contain measures providing for the conservation and management of Atlantic sea scallops, that are not based primarily on the scallop meat count but which may include controls on scallop harvesting effort; and

(B) consider the views of fishermen and fish processors involved in the Atlantic sea scallop fishery.

(2) If no amendment is submitted under paragraph (1) before one year after the date of enactment of this Act, the Secretary of Commerce is encouraged to prepare the amendment described in paragraph (1) under section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854).

(e) SECRETARIAL ACTION TO PREVENT OVERFISHING.—Section 304(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(c)) is amended—

(1) by striking "or" at the end of paragraph (1)(A);

(2) by striking the period at the end of paragraph (1)(B) and inserting "; or"; and

(3) by adding a new paragraph (C) as follows:

"(C) a fishery management plan, as amended, does not include conservation and management measures to prevent overfishing."

IMPLEMENTATION OF FISHERY MANAGEMENT PLANS

SEC. 111. (a) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855) is amended—

(A) by redesignating subsections (c), (d), and (e) as subsections (a), (b), and (c), respectively; and

(B) by redesignating subsections (g) and (h) as subsections (d) and (e), respectively.

(2) Section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended—

(A) in subsection (b)(1) by striking "305(c)" in the first sentence and inserting in lieu thereof "305(a)";

(B) in subsection (b)(3)(D) by striking "305(c)" and inserting in lieu thereof "305(a)"; and

(C) in subsection (c)(2)(B) by striking "305(c)" and inserting in lieu thereof "305(a)".

(b) JUDICIAL REVIEW OF CERTAIN IMPLEMENTING ACTIONS.—Section 305(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(b)), as redesignated by subsection (a)(1)(A), is amended to read as follows:

"(b) JUDICIAL REVIEW.—(1) Regulations promulgated by the Secretary under this Act and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable; except that—

"(A) section 705 of such title is not applicable, and

"(B) the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2) (A), (B), (C), or (D) of such title.

"(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a

fishery management plan, including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing.

"(3)(A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1), not later than 45 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

"(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

"(4) Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way.".

(c) EMERGENCY ACTIONS.—Section 305(c)(2)(A) (16 U.S.C. 1855(c)(2)(A)), as redesignated by subsection (a)(1)(A), is amended by inserting "(other than the voting member appointed under section 302(b)(1)(B))" after "who are voting members".

STATE JURISDICTION

SEC. 112. Section 306(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856(c)) is amended—

(1) in paragraph (1)(B) by inserting "and the application specifies the species to be processed" before the period at the end; and

(2) by striking paragraph (2) and inserting in lieu thereof the following:

"(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)—

"(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after—

"(i) consulting with the appropriate Council and Marine Fisheries Commission, and

"(ii) considering any comments received from the Governor of any other State where the fishery occurs; and

"(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.".

PROHIBITION OF CERTAIN ACTS

SEC. 113. (a) PROHIBITIONS WITH RESPECT TO THEFT, ASSAULT, AND LARGE-SCALE DRIFTNET FISHING.—Section 307(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857(1)) is amended—

(1) by striking "or" at the end of subparagraph (I);

(2) by striking the period at the end of subparagraph (J) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(K) to knowingly and without authorization steal, remove, damage, or tamper with—

"(i) fishing gear owned by another person, and is located in the exclusive economic zone, or

"(ii) fish contained in such fishing gear,

or to attempt to do so;

"(L) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any observer on a vessel under this Act;

"(M) to engage in large-scale driftnet fishing; or

"(N) to strip pollock of its roe and discard the flesh of the pollock;".

(b) VIOLATION OF INTERNATIONAL FISHERY AGREEMENT.—Section 307 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

(1) in paragraph (3) by striking "; and" and inserting in lieu thereof a semicolon;

(2) in paragraph (4) by striking the period at the end and inserting in lieu thereof "; and;" and

(3) by adding at the end the following new paragraph:

"(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.".

CIVIL PENALTIES AND PERMIT SANCTIONS

SEC. 114. (a) INCREASED PENALTY; PERMIT SANCTIONS.—Section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858) is amended—

(1) in the section heading by inserting "AND PERMIT SANCTIONS" immediately after "CIVIL PENALTIES";

(2) in subsection (a) by striking "$25,000" in the second sentence and inserting in lieu thereof "$100,000"; and

(3) by adding at the end the following:

"(g) PERMIT SANCTIONS.—(1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, or (C) any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any fishery resource law statute enforced by the Secretary has not been paid and is overdue, the Secretary may—

"(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

"(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

"(iii) deny such permit; or

"(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

"(2) In imposing a sanction under this subsection, the Secretary shall take into account—

"(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

"(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

"(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.

"(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

"(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.".

(b) CONFORMING AMENDMENT.—The entry for section 308 of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"Sec. 308. Civil penalties and permit sanctions.".

CRIMINAL OFFENSES AND PENALTIES

SEC. 115. (a) OFFENSES.—Paragraph (1) of section 309(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1859(a)) is amended to read as follows:

"(1) section 307(1)(D), (E), (F), (H), (I), or (L); or".

(b) PUNISHMENT.—Section 309(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1859(b)) is amended—

(1) by striking "$50,000" and inserting in lieu thereof "$100,000";

(2) by striking "$100,000" each place it appears and inserting in lieu thereof "$200,000";

(3) by inserting "any observer described in section 307(1)(L) or" immediately after "injury to"; and

(4) by inserting "observer or" immediately before "officer in fear".

CIVIL FORFEITURES

SEC. 116. Section 310(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1860(e)) is amended—

(1) by inserting "(1)" immediately before "For purposes"; and

(2) by adding at the end the following:

"(2) For purposes of this Act, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of the United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.".

ENFORCEMENT

SEC. 117. Section 311(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(e)) is amended to read as follows:

"(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this Act or of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—

"(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any

civil or criminal proceeding alleging a violation of any provision of this Act or any other fishery resource law enforced by the Secretary with respect to that fish or other property;

"(B) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other fishery resource law enforced by the Secretary;

"(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

"(D) any valid liens or mortgages against any property that has been forfeited;

"(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)) or under other provisions of the customs laws, as made applicable by section 310(c) of this Act to seizures made by the Secretary under this Act, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

"(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law.

"(2) Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation.".

NORTH PACIFIC FISHERIES RESEARCH PLAN

SEC. 118. (a) Title III of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) is amended by adding at the end the following new section:

"SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN.

"(a) IN GENERAL.—The North Pacific Fishery Management Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which—

"(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

"(2) establishes a system of fees to pay for the costs of implementing the plan.

"(b) STANDARDS.—(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—

"(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

"(B) be fair and equitable to all vessels and processors;

"(C) be consistent with applicable provisions of law; and

"(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

"(2) Any system of fees established under this section shall—

"(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

"(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

"(D) not be used to offset amounts authorized under other provisions of law;

"(E) be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

"(H) provide that fees collected will only be used for implementing the plan established under this section; and

"(I) meet the requirements of section 9701(b) of title 31, United States Code.

"(c) ACTION BY SECRETARY.—(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

"(2) During the 60 day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

"(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comments received and publish final regulations for implementing such plan.

"(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

"(d) FISHERY OBSERVER FUND.—There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(e) SPECIAL PROVISIONS REGARDING OBSERVERS.—(1) The Secretary shall review—

"(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

"(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

"(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—

"(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

"(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.".

(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended by inserting immediately after the entry for section 312 the following new entry:

"Sec. 313. North Pacific fisheries research plan.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 119. Section 406 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1882) is amended by adding at the end the following new paragraphs:

"(16) $77,200,000 for the fiscal year ending September 30, 1990.

"(17) $94,000,000 for the fiscal year ending September 30, 1991, of which $6,500,000 shall be used for enforcement and $5,000,000 shall be used to increase research and assessment efforts.

"(18) $98,000,000 for the fiscal year ending September 30, 1992.

"(19) $102,000,000 for the fiscal year ending September 30, 1993.".

MISCELLANEOUS TECHNICAL AMENDMENTS

SEC. 120. (a) INTERNATIONAL FISHERY AGREEMENTS.—Section 202(f) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822(f)), as so redesignated by section 105 of this Act, is amended by striking "a exclusive economic zone" and inserting in lieu thereof "an exclusive economic zone".

(b) FOREIGN FISHING PERMITS.—Section 204(b)(4)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(4)(C)) is amended by striking "council" and inserting in lieu thereof "Council".

(c) COUNCIL PROCEDURAL MATTERS.—Section 302(j)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)(4)) is amended by striking "council employee" and inserting in lieu thereof "Council employee".

(d) ACTION BY SECRETARY.—Section 304(c)(2)(B) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(c)(2)(B)) is amended by striking "appropriate council" and inserting in lieu thereof "appropriate Council".

TITLE II—ATLANTIC TUNAS CONVENTION ACT OF 1975

LIMITATIONS ON APPOINTMENTS OF COMMISSIONERS

SEC. 201. (a) IN GENERAL.—Section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2) Of the Commissioners appointed under paragraph (1) who are not governmental employees—

"(A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

"(B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

"(3)(A) The term of a Commissioner shall be three years.

"(B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner.".

(b) APPLICATION TO CURRENT COMMISSIONERS.—(1) Paragraph (2) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)), as added by this section, shall not apply to reappointment of an individual as a United States Commissioner of the International Commission for the Conservation of Atlantic Tunas (hereinafter in this title referred to as a "Commissioner") if that individual is serving in that position on the date of enactment of this Act.

(2) An individual serving a term as a Commissioner on the date of enactment of this Act shall not, by reason of that term of service, be ineligible under paragraph (3)(B) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)), as added by this section, for reappointment as a Commissioner.

TERMINATION OF CURRENT TERMS AND COMPLETION OF PENDING APPOINTMENTS

SEC. 202. The term as Commissioner of each individual serving in that position on the date of enactment of this Act shall terminate March 1, 1991. Not later than that date, the President shall complete appointment (or reappointment) of individuals to serve as Commissioners on and after that date.

TRAVEL EXPENSES OF COMMISSIONERS

SEC. 203. Section 3 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a) is amended by adding at the end the following new subsection:

"(d)(1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

"(2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.".

TRAVEL EXPENSES OF ADVISORY COMMITTEE

SEC. 204. Section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) is amended by striking "On approval" and all that follows and inserting in lieu thereof the following: "The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.".

SPECIES WORKING GROUPS

SEC. 205. The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.) is amended by inserting immediately after section 4 the following new section:

"SPECIES WORKING GROUPS

"SEC. 4A. The United States Commissioners may establish species working groups for the purpose of providing advice and recommendations to the Commissioners and the advisory committee on matters relating to the conservation and management of any highly migratory species covered by the Convention. Any species working group shall consist of no more than seven members of the advisory committee and no more than four scientific or technical personnel, as considered necessary by the Commissioner.".

REGULATIONS TO CARRY OUT COMMISSION RECOMMENDATIONS

SEC. 206. (a) Section 6(c)(1) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(1)) is amended by redesignating the existing text as subparagraph (A) and by adding at the end the following new subparagraphs:

"(B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

"(C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).".

(b) Section 6(c)(3) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(3)) is amended—

(1) in subparagraph (H) by striking ";" and" and inserting in lieu thereof a semicolon; and

(2) by striking subparagraph (I) and inserting in lieu thereof the following:

"(I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

"(J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

"(K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention;

except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission.".

RECOMMENDED COMMISSION ACTIONS REGARDING LARGE-SCALE DRIFTNET FISHING AND CONSERVATION OF ATLANTIC SWORDFISH

SEC. 207. Section 6(d) of the Act (16 U.S.C. 971d(d)) is amended to read as follows:

"(d)(1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(6) of the Magnuson Fishery Conservation and Management Act) in the Convention area.

"(2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 208. Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 10. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in article X of the Convention, not more than $1,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.".

TITLE III—FISHERMEN'S PROTECTIVE ACT OF 1967

VESSEL SEIZURE REIMBURSEMENT AUTHORITY

SEC. 301. Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended by striking "October 1, 1989" and inserting in lieu thereof "October 1, 1993".

TITLE IV—ANADROMOUS FISH CONSERVATION ACT

AUTHORIZATION OF APPROPRIATIONS

SEC. 401. Section 4(a) of the Anadromous Fish Conservation Act (16 U.S.C. 757d(a)) is amended—

(1) by striking paragraphs (1), (2), (3), (4), (5), and (6);

(2) by redesignating paragraph (7) as paragraph (1); and

(3) by adding at the end the following new paragraph:

"(2) $8,000,000 for each of the fiscal years 1990, 1991, 1992, 1993, 1994, and 1995.".

TITLE V—INTERJURISDICTIONAL FISHERIES ACT OF 1986

CLARIFICATION OF APPORTIONMENT LIMITATION

SEC. 501. Section 304(c)(3)(B) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4103(c)(3)(B)) is amended by inserting "which are managed under an interstate fishery management plan" immediately after "fishery resources".

FEDERAL SHARE OF ACTIVITIES CARRIED OUT WITH ADDITIONAL APPROPRIATIONS

SEC. 502. Section 308(b) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(b)) is amended—

(1) in paragraph (1) by striking "and" at the end;

(2) in paragraph (2) by striking the period at the end and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (2) the following new paragraph:

"(3) the Federal share of the cost of any activity carried out with an amount appropriated under the authority of this subsection shall be 75 percent of the cost of that activity.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 503. Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) in subsection (a) by striking "fiscal years 1987, 1988, and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995";

(2) in subsection (b) by striking "fiscal years 1988 and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995"; and

(3) in subsection (c) by striking "fiscal years 1988 and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995".

TITLE VI—CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT

AUTHORIZATION OF APPROPRIATIONS

SEC. 601. Section 7 of the Central, Western, and South Pacific Fisheries Development Act (16 U.S.C. 758e-5) is amended by striking "and 1988" and inserting in lieu thereof "1988, 1989, 1990, 1991, 1992, 1993, 1994, and 1995".

TITLE VII—NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL

REAUTHORIZATION AND EXTENSION OF TERMINATION DATE

SEC. 701. Section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(g)) is amended by striking "October 1, 1990" and inserting in lieu thereof "December 31, 1991".

AUTHORIZATION OF APPROPRIATIONS

SEC. 702. Section 209(d) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4008(d)) is amended by striking "1990" and inserting in lieu thereof "1991".

TRANSFER OF SALTONSTALL-KENNEDY FUNDS

SEC. 703. Section 2(b)(2) of the Act of August 11, 1939 (commonly known as the Saltonstall-Kennedy Act; 15 U.S.C. 713c-3(b)(2)), is amended by striking "fiscal year 1990" and inserting in lieu thereof "each of fiscal years 1990 and 1991".

CONTINUITY OF NATIONAL COUNCIL MEMBERSHIP

SEC. 704. (a) UNINTERRUPTED SERVICE.—Individuals serving on September 30, 1990, as members of the National Fish and Seafood Promotion Council shall be deemed to continue as members in uninterrupted service since the date of their initial appointment.

(b) FILLING OF VACANCIES.—Notwithstanding section 206(e) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(e)), any vacancy on the National Fish and Seafood Promotion Act not filled as of September 30, 1990, shall be filled within 60 days after the date of enactment of this Act.

(c) TECHNICAL AMENDMENT.—Section 207(a)(5) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4006(a)(5)) is amended by inserting "initial" immediately before "appointments."

CONTINUITY OF COUNCIL FUNCTIONS, CONTRACTS, AND PERSONNEL

SEC. 705. UNINTERRUPTED FUNCTIONS, CONTRACTS, AND PERSONNEL.—All current functions, contracts in force, and existing personnel of the National Fish and Seafood Promotional Council as of September 30, 1990, are reauthorized and extended, and shall continue as if uninterrupted, notwithstanding section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(g)).

TITLE VIII—MISCELLANEOUS

CERTIFICATE OF LEGAL ORIGIN FOR ANADROMOUS FISH PRODUCTS

SEC. 801. (a) NEGOTIATIONS.—Within 60 days after the date of enactment of this Act, the Secretary of State shall commence negotiations with nations which import or export anadromous fish or anadromous fish products for the purpose of securing general agreement among such nations to implement effective measures to prohibit international trade in anadromous fish or anadromous fish products unless such fish or fish products are accompanied by a valid certificate of legal origin attesting that the fish or fish product was lawfully harvested—

(1) within the jurisdiction of a nation having naturally occurring or artificially established anadromous fish populations of the same species as the imported or exported product; or

(2) on the high seas according to an international agreement among nations with jurisdiction over more than 1 percent of the stocks of anadromous fish being so harvested.

(b) ISSUANCE OF CERTIFICATES.—For the purposes of subsection (a), a valid certificate of legal origin may be issued only by a nation which—

(1) is the nation having jurisdiction over the vessel or other means by which the fish or fish product was harvested; and

(2) maintains regular harvests of anadromous fish in a manner consistent with the criteria for lawful harvests set out in subsection (a).

(c) BILATERAL OR MULTILATERAL AGREEMENTS.—Efforts undertaken by the Secretary of State pursuant to subsection (a) may, at the discretion of the Secretary, be directed toward achieving either bilateral or multilateral agreements, including trade agreements, whichever the Secretary determines to be most likely to result in the earliest possible date or dates of agreement by those nations which individually have in excess of $1,000,000, or the equivalent, in import or export trade in anadromous fish and anadromous fish products.

(d) REGULATIONS.—The Secretary of Commerce shall, within 180 days after the date of enactment of this Act, promulgate regulations providing for—

(1) the issuance of certificates of legal origin pursuant to agreements under subsection (a) for anadromous fish and anadromous fish products legally harvested by vessels of the United States;

(2) the delegation of the authority to issue certificates of legal origin to States, territories, or possessions of the United States which the Secretary of Commerce determines to have implemented a program which is sufficient to accomplish the purposes of subsection (a); and

(3) an orderly transition to such regulations, sufficient to ensure that United States commerce in anadromous fish and anadromous fish products is not unduly disrupted.

(e) REPORT REQUIRED.—The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall, within 180 days after the date of enactment of this Act, submit to the Congress a report—

(1) making recommendations as to the need for the adoption of United States import and export restrictions on anadromous fish and anadromous fish products consistent with subsection (a); and

(2) identifying, evaluating, and making recommendations regarding any specific statutory or regulatory changes that may be necessary for the adoption of such restrictions.

(f) CERTIFICATION.—If, at any time following the promulgation of the regulations required by subsection (d), the Secretary of Commerce finds that any nation is engaging in trade in lawfully taken anadromous fish or anadromous fish products, the Secretary shall certify that fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a)(1) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)(1)).

TITLE IX—DOLPHIN PROTECTION CONSUMER INFORMATION

DOLPHIN PROTECTION

SEC. 901. (a) SHORT TITLE.—This section may be cited as the "Dolphin Protection Consumer Information Act".

(b) FINDINGS.—The Congress finds the following:

(1) dolphins and other marine mammals are frequently killed in the course of tuna fishing operations in the eastern tropical Pacific Ocean and high seas driftnet fishing in other parts of the world,

(2) it is the policy of the United States to support a worldwide ban on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins, and

(3) consumers would like to know if the tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on dolphins.

(c) DEFINITIONS.—for purposes of this Act—

(1) the terms "driftnet" and "driftnet fishing" have the meanings given those terms in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note),

(2) the term "eastern tropical Pacific Ocean" means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, 160 degrees west longitude, and the western coastlines of North, Central, and South America.

(3) The term "label" means a display of written, printed, or graphic matter on or affixed to the immediate container of any article,

(4) the term "Secretary" means the Secretary of Commerce, and

(5) the term "tuna product" means a food item which contains tuna and which has been processed for retail sale, except perishable sandwiches, salads, or other products with a shelf life of less than 3 days.

(d) LABELING STANDARD.—

(1) It is a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to

include on the label of that product the term "Dolphin Safe" or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dophins if the product contains—

(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing, or

(B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements for being considered dolphin safe under paragraph (2).

(2) For purposes of paragraph (1)(B), a product that contains tuna harvested in the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if—

(A) the vessel is of a type and size that the Secretary has determined is not capable of deploying its purse seine nets on or to encircle dolphin, or

(B)(i) the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna in the product certifying that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphin,

(ii) the product is accompanied by a written statement executed by—

(I) the Secretary or the Secretary's designee, or

(II) a representative of the Inter-American Tropical Tuna Commission,

which states that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on or to encircle dolphin, and

(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product.

(e) ENFORCEMENT.—Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) that is false is liable for a civil penalty of not to exceed $100,000 assessed in an action brought in any appropriate district court of the United States on behalf of the Secretary.

(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 6 months after the date of the enactment of this Act, including regulations establishing procedures and requirements for ensuring that tuna products are labeled in accordance with subsection (d).

(g) TREATMENT OF FISH CAUGHT WITH DRIFTNETS.—Section 101(a)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2)) is amended—

(1) in subparagraph (c) by striking "and" after the semicolon at the end;

(2) in subparagraph (D) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(E)(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after July 1, 1992, and

"(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (E), the term "driftnet" has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note).".

(h) NEGOTIATIONS.—The Secretary of State shall immediately seek, through negotiations and discussions with appropriate foreign governments, to reduce and, as soon as possible, eliminate the practice of harvesting tuna through the use of purse seine nets intentionally deployed to encircle dolphins.

(i) EFFECTIVE DATE.—Subsections (d) and (e) shall take effect 6 months after the date of the enactment of this Act.

Title X—Fisheries Commission

REDESIGNATION OF FISHERIES COMMISSION

SEC. 1001. (a) IN GENERAL.—The Congress hereby consents to and approves of the amendments described in subsection (b) to the interstate compact which constituted the Pacific Marine Fisheries Commission, approved by the Act of July 24, 1947, (61 Stat. 419; hereinafter in this section referred to as the "compact").

(b) AMENDMENT DESCRIBED.—The amendments referred to in subsection (a) are the amendments approved and ratified before the effective date of this section by the contracting States to the compact, which—

(1) amend Article III of the compact to redesignate the Pacific Marine Fisheries Commission as the "Pacific States Marine Fisheries Commission"; and

(2) make such other amendments to the compact as are necessary solely to conform the text of the compact to the amendment described in paragraph (1).

(c) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Pacific Marine Fisheries Commission constituted by the compact is deemed to be a reference to the "Pacific States Marine Fisheries Commission".

TITLE XI—REPORT ON MARINE MAMMALS

REPORT ON MARINE MAMMAL POPULATIONS

SEC. 1101.—The Secretary of Commerce, in consultation with the Secretary of the Interior, shall provide to the Committee on Merchant Marine and Fisheries in the House and the Committee on Commerce, Science, and Transportation in the Senate within 12 months of enactment of this Act a report identifying the following:

(1) population sizes and trends of harbor seals, sea otters, California sea lions, and northern sea lions off the coast of Washington. This assessment shall include the historic, present, and projected population sizes and the overall health of current populations;

(2) an assessment of the effectiveness of section 101(a)(3)(A) and 109(h) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 and 1379) with particular emphasis on the management of the lower Columbia River and Puget Sound marine mammal populations. This assessment shall describe how the agencies are interpreting and implementing these provisions, how often they have been invoked, and whether these provisions have been effective in the management of marine mammal populations and in responding to the problems to which they were intended to address; and

(3) long range management plans for the species of marine mammals listed above in paragraph (1).

AMENDMENT NO. 3197

Mr. SANFORD. I move the Senate concur in the House amendment with a further amendment which I now send to the desk on behalf of Senators KERRY and STEVENS.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. SANFORD], for Mr. KERRY (for himself and Mr. STEVENS) proposes an amendment numbered 3197.

Mr. KERRY. Mr. President, I am pleased to rise today in strong support of a bill to reauthorize the Magnuson Fishery Conservation and Management Act. This bill represents 2 years of work by many of my colleagues in both the House and Senate, and I am very pleased with the final results. The version that we are considering today is almost identical to the House version, with a few agreed upon or technical changes.

This bill bans fishing with large-scale drift nets, recognizes U.S. jurisdiction over tuna, and provides for management of highly migratory species. This bill reauthorizes the fish and seafood promotion councils and sets standards so that consumers can be sure that tuna found in cans labeled "dolphin safe" is indeed caught without harming dolphin.

On highly migratory species, I concur with the comments made by my Massachusetts colleague in the House, Mr. STUDDS. U.S. fishermen are willing to do their fair share to rebuild these stocks. But it is Congress' intention that all nations that harvest these stocks participate and that our fishermen are not unduly burdened with the full responsibility for this effort. Therefore, this bill asks the Secretary to negotiate a strong international quota and provide fishermen a reasonable opportunity to catch that quota.

I spoke at length on the merits of this legislation when it first passed the Senate. Today I would simply like to again say that I believe this bill takes us further toward our goal to restore the Nation's fisheries for the benefit of all fishermen.

Mr. BENTSEN. Mr. President, when the Senate last considered the Magnuson Act on October 11, 1990, I engaged in a very important colloquy with Chairman HOLLINGS and Senators KERRY and ROTH concerning the meaning of new subsection (E) pertaining to the new regime for "Management of Highly Migratory Species Fisheries," which amends section 304(f) of the Magnuson Act. In that colloquy, I expressly raised a question

as to the meaning of the language in subsection (E).

I indicated at the time that this language was not intended to tie the Secretary's hands by limiting appropriate action he or she might deem necessary to meet conservation goals regardless of the level of the quota or allocation established by a relevant international agreement. My colleague, Senator KERRY, a chief sponsor of the language of the floor amendment package containing this language, indicated that my understanding was correct. Senator KERRY's concurrence was further reinforced by Chairman HOLLINGS' statement that he "would not want to endorse a provision that undermined" the conservation goals of the Magnuson Act, including the Secretary's authority to take necessary action to meet them. The clarity of our mutual understanding was further enhanced by Senator KERRY's response to an inquiry similar to my own raised by my colleague, Senator ROTH, who also specifically asked whether the subsection (E) language could be used to upset the existing billfish plan. Senator KERRY's response was that subsection (E) was not intended to be used to upset that plan. With that common understanding in the Senate, which was contemporaneous with our passage of that amendment, my concerns were relieved.

However, I am informed that when the House of Representatives took up our Senate bill on October 23, 1990, one Member of that body made a floor statement to the effect that the bill did not allow the Secretary to increase or decrease a quota set by international treaty. More accurately, however, the bill provides that regulations promulgated under the Atlantic Tunas Convention Act may not have the effect of increasing or decreasing an allocation or quota of fish to the United States agreed to pursuant to the recommendation of the Commission for the Conservation of Atlantic Tunas [ICCAT]. This provision recognizes that, to the extent possible, U.S. fishermen should be allowed to harvest their fair share of a quota negotiated internationally. On the other hand, and I want to be very clear about this, the provision was not intended to override or supercede the Secretary's responsibility to conserve and manage our Nation's fishery resources. The provision does not preclude the Secretary from prescribing measures that affect a fishery for which a quota has been established, if such measures are necessary to conserve and manage fishery resources which are not subject to a quota. The Secretary could, for example, take steps such as seasonal or area closures which would affect fishing for tuna, if such steps were needed to conserve another species, such as fillfish.

The statement made in the other body is at odds with the clear understanding of the Senate authors of subsection (E) as expressed in our colloquy here on the Senate floor on October 11, 1990. Moreover, the Member's statement obviously was not made contemporaneously with any particular House amendment to our Senate bill, especially to subsection (E).

With this said, I would like to reinforce the understanding we reached on October 11, specifically that subsection (E) does nothing to restrict the Secretary's ability to take the action he or she deems is appropriate to protect the affected fishery resources. I would ask Senator HOLLINGS whether my understanding is correct and whether this understanding should govern the interpretation of this legislation.

Mr. HOLLINGS. I fully concur. As I said on October 11, I would not then nor now endorse any provision that undermined the Secretary's authority to take necessary action to protect the fishery resources placed under his or her care through the Magnuson Act.

Since the House did not alter our text of subsection (E) certainly there is no basis for interpreting the language otherwise than as we intended it when we adopted it on the Senate floor on October 11. Nothing in this language is intended to upset the current bill fish plan. Moreover, restrictions on the Secretary's authority under the Atlantic Tunas Convention Act do not restrict the authority or discretion of the Secretary to take appropriate action under the Magnuson Act or other independent statutes which obligate and empower the Secretary to protect highly migratory and other fishery resources. I hope that resolves any question concerning the meaning of subsection (E).

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion is agreed to.

Mr. SANFORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ILLINOIS WILDERNESS ACT OF 1990

Mr. SANFORD. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from the following bill, H.R. 5428, a bill to designate certain lands in Illinois as wilderness, that the Senate proceed to its immediate consideration, that it be read a third time and passed, that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the bill was passed.

CORRECTION TO THE ENROLLMENT OF THE IMMIGRATION CONFERENCE REPORT

Mr. SANFORD. I ask unanimous consent that when the Senate receives House Concurrent Resolution 394 directing the Secretary of the Senate to make corrections in the enrollment of bill S. 358, the immigration conference report from the House, it be deemed considered and agreed to, and that motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, the conference report to S. 358 contained a statement of the managers regarding State legalization impact assistance grants. This particular language tracked provisions of the conference report on the Labor/HHS appropriations bill which has already been adopted.

I therefore consider this language now to be moot and excised from the conference report on S. 358.

Is that the view of the Senator from Wyoming?

Mr. SIMPSON. Yes.

Mr. KENNEDY. Section 705 of the conference report relates to the immigration emergency fund. I would ask the Senator from Wyoming if he shares my view that it was the intention of the conferees that funds be released under this provision only in the discretion of the Attorney General, and that the criteria contained within the provision are intended only to determine when States and localities may request such funds.

Mr. SIMPSON. I agree that that is the intent of the conferees.

TRAUMA CARE SYSTEMS PLANNING AND DEVELOPMENT ACT—CONFERENCE REPORT

Mr. SANFORD. Mr. President, I submit a report of the committee of conference on H.R. 1602 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1602) to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. KENNEDY. Mr. President, the Trauma Care Systems Planning and Development Act of 1990 will allow the Nation to complete the job started by Congress 17 years ago. It will assist States to strengthen their trauma services so they may respond quickly and effectively with state of the art knowledge and systems to reduce the toll of injury in America.

Injury in America currently extracts a tremendous toll. It is the leading cause of death for individuals under the age of 44 and is the fourth leading cause of death overall. According to the most recent estimates, the annual cost to the Nation of injury is $180 billion per year, a cost which is the result of immediate and long-term medical care, lost productivity, and disability.

Improved trauma services and emergency medical systems can greatly reduce this toll. Reduced response times, quick triage and transportation to the most specifically equipped hospital can make it possible to beat the odds and mean the difference between a satisfactory outcome and a tragedy. The bill we have before us will help every State in the country to improve their systems and improve the odds.

Congress started the task of improving these systems almost two decades ago. In 1973, Congress originated a program to improve emergency care throughout the country. Many States improved their emergency services because of that program. They established 911 systems. They designated trauma centers and instituted triage and transportation systems. But that job remains incomplete.

The GAO has reported that approximately 40 percent of the country is not covered by 911 systems. Most rural areas still rely on basic life support systems in their emergency transport; while suburban areas have advanced life support systems. A recent study has revealed that 29 States have not begun the process of designating trauma centers and have no systems for triage. The Emergency Medical Systems and Trauma Care Improvement Act will enable States to remedy this situation.

This bill has taken 4 years to reach this stage of the process. There are many individuals and organizations which have been dedicated during this time to bringing this project to completion. I would like to express my appreciation to the American Trauma Society and the many other organizations which kept up the pressure and never strayed from the goal of improving trauma services nationwide. I would like to mention in particular Marcia Mabee and Dr. Howard Champion who were tireless in pursuit of this bill. I would like to thank Senator CRANSTON and Barbara Masters of his staff who originated the bill and first sought my involvement. I would like to thank Dr. Mona Sarfaty of my staff whose first involvement with health policy was an effort to improve emergency medical services in rural Long Island 17 years ago. And I would also like to thank Sue Whittaker on Senator HATCH's staff.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. SANFORD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FAIR LENDING ENFORCEMENT ACT

Mr. SANFORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 822, S. 3049, the Fair Lending Enforcement Act.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 3049) to amend the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3198

Mr. SANFORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. SANFORD], for Mr. DIXON, proposes an amendment numbered 3198.

Mr. SANFORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 8, strike "FREQUENCY" and insert "IN GENERAL".

On page 3, line 9, strike "a separate" and insert "an", and, lines 11 through 14, after the word "jurisdiction" delete the remainder of the sentence.

On page 3, line 19, after the period insert the following: "Each appropriate Federal banking agency may consider the size of the depository institution and the complexity of the consumer compliance examination issues presented in determining whether to assign to a particular examination a consumer compliance examiner who exclusively conducts consumer compliance examinations or an examiner who has only received specialized training in consumer compliance examinations. In making this determination each appropriate federal banking agency shall also consider whether substantive questions of compliance have been raised in previous examinations or in comments or complaints from the public."

On page 4, line 16, strike "paths" and insert "opportunities".

On page 5, lines 12 and 13, strike "an annual report describing" and insert "a description of" and strike ". Such report shall be transmitted to the Congress or" and insert ", which shall be".

On page 6, line 10, strike "FREQUENCY" and insert "IN GENERAL".

On page 6, lines 10 and 11, strike "a separate" and insert "an".

On page 6, lines 12 through 14, after the word "jurisdiction" strike the remainder of the sentence.

On page 6, line 20, after the period insert the following: "The Board may consider the size of the institution and the complexity of the consumer compliance examination issues presented in determining whether to assign to a particular examination a consumer compliance examiner who exclusively conducts consumer compliance examinations or an examiner who has only received specialized training in consumer compliance examinations. In making this determination the Board shall also consider whether substantive questions of compliance have been raised in previous examinations or in comments or complaints from the public."

On page 7, line 5, strike "paths" and insert "opportunities".

On page 7, line 23, strike " head of the", and on line 24, strike "an annual report describing" and insert "a description of". Or page 8, line 1, strike ". Such report shall be transmitted to the Congress or" and insert ", which shall be".

On page 8, between lines 2 and 3, insert the following:

(c) STATE CHARTERED CREDIT UNIONS.—Section 204 of the Federal Credit Union Act is amended by adding after the second sentence a new sentence to read: "The Board shall conduct consumer compliance examinations as set forth in section 130 of State chartered insured credit unions only if the appropriate State supervisory agency has not established an examination program similar to that described in section 130.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3198) was agreed to.

Mr. SANFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DIXON. Mr. President, I rise today to urge approval of the Fair Lending Enforcement Act of 1990. The Senate Banking Committee unanimously approved this measure, which I then introduced as S. 3049. On October 5, S. 3049 with a few changes was included as part of S. 3037, the Money Laundering Enforcement Act of 1990, and then passed the Senate. Although the House previously passed a companion money laundering bill, conferees have not yet been appointed. I rise, therefore, to ask the Senate to approve S. 3049 separately since time is running short in this Congress.

Rather than repeat statements I have previously made on the floor describing this bill, I will merely summarize. This bill grows out of efforts by the Subcommittee on Consumer and Regulatory Affairs to address the problem of discrimination in home mortgage lending. The bill is designed to enhance enforcement of the Equal Credit Opportunity Act and, indirectly, the Fair Housing Act, which are the two overlapping laws dealing with mortgage discrimination.

The bill has four parts. First, it opens access to appraisal reports, which can mask redlining and discrimination. Second, it requires the regulatory agencies to establish separate consumer compliance programs. Third, the bill requires appropriate cases to be referred to the Department of Justice or the Department of Housing and Urban Development by the regulators. Part four provides for a small-mortgage banker exemption from the Home Mortgage Disclosure Act, which would be more appropriate than the current $10 million asset exemption.

A managers' amendment is included with this bill. The amendment would put S. 3049 in almost exactly the same form as when it passed the Senate as part of the money laundering bill. I will here summarize the nontechnical changes to be made by this managers' amendment; all of the changes affect part three of the bill.

First, the amendment clarifies that consumer compliance examinations do not have to be conducted at a different time from safety and soundness examinations. It also drops the frequency of examinations provision for the regulatory agencies. The Office of the Comptroller of the Currency objected strenuously to this provision because of their statistical sampling technique for consumer compliance examinations. I reluctantly agreed to drop this provision because we could not reach agreement otherwise. The regulatory agencies, however, should not interpret this as any lessening of interest by Congress in regular consumer compliance examinations.

Second, the amendment would allow each of the regulatory agencies to consider the "size of the institution and the complexity of the consumer examination issues presented" in allocating personnel within their consumer compliance programs. As my colleague from Utah and I previously discussed on the floor, these statutory factors would be expected to yield different results for the National Credit Union Administration [NCUA] than for the Federal banking agencies. For example, because credit unions are not subject to the Community Reinvestment Act and they tend to be smaller than national banks and have less sophisticated portfolios, the Federal banking agencies will presumably need to devote considerably more examiners exclusively to consumer compliance issues than will the NCUA. Furthermore, differences in the structure and mission of credit unions may lead to a lesser need for consumer compliance examiners working exclusively in that area, although they do not lessen the priority that Congress intends the NCUA to place on consumer compliance.

Finally, the amendment clarifies that the bill applies to federally insured credit unions, not just federally chartered credit unions; the original language was inconsistent on this point. The amendment recognizes that the States, in coordination with the NCUA, examine State-chartered/federally insured institutions. The amendment clarifies that NCUA will not have to start examining the State-chartered institutions, unless the States fail to have consumer compliance programs.

In conclusion, let me reassure my colleagues that this bill will not cause the regulatory agencies to diminish their efforts regarding safety and soundness examinations. It will cause them to pay more attention to the troubling evidence of mortgage discrimination.

Mortgage discrimination is illegal under more than four different statutes. What we need today is better enforcement of those laws. This bill takes a very practical, reasonable approach to strengthening enforcement of our fair lending laws. I ask my colleagues to join with me in supporting the Fair Lending Enforcement Act of 1990. America's working families—of all races—have earned their fair share of the American dream. Their rights to be free from discrimination in lending must be vigorously enforced.

The PRESIDING OFFICER. Are there further amendments to the bill? If not, the bill is deemed read the third time and passed.

S. 3049

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Lending Enforcement Act of 1990".

SEC. 2. APPRAISALS.

Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended by adding at the end the following:

"(e) Each creditor shall promptly furnish an applicant, upon written request by the applicant made within a reasonable period of time of the application, a copy of the appraisal report used in connection with the applicant's application for a loan that is or would have been secured by a lien on residential real property. The creditor may require the applicant to reimburse the creditor for the cost of the appraisal.".

SEC. 3. CONSUMER COMPLIANCE PROGRAMS.

(a) FDIC.—The Federal Deposit Insurance Act is amended by adding at the end the following:

"SEC. 35. CONSUMER COMPLIANCE PROGRAM.

"(a) ESTABLISHMENT REQUIRED.—Each appropriate Federal banking agency shall establish a separate consumer compliance program. The head of the consumer compliance program shall report directly to the head of the agency.

"(b) DEFINITIONS.—For purposes of this section—

"(1) CONSUMER COMPLIANCE EXAMINATION.—The term 'consumer compliance examination' means an examination of an insured depository institution to determine the extent to which such institution is in compliance with all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws.

"(2) CONSUMER COMPLIANCE EXAMINER.—The term 'consumer compliance examiner' means an examiner who specializes in assessing compliance with all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws.

"(c) CONSUMER COMPLIANCE EXAMINATIONS.—

"(1) IN GENERAL.—Each appropriate Federal banking agency shall conduct an on-site consumer compliance examination of each insured depository institution within its jurisdiction.

"(2) CONDUCTED BY CONSUMER COMPLIANCE EXAMINERS.—Consumer compliance examinations shall be conducted by consumer compliance examiners under the supervision or oversight of the head of the consumer compliance program. Each appropriate Federal banking agency may consider the size of the depository institution and the complexity of the consumer compliance examination issues presented in determining whether to assign to a particular examination a consumer compliance examiner who exclusively conducts consumer compliance examinations or an examiner who has only received specialized training in consumer compliance examinations. In making this determination each appropriate Federal banking agency shall also consider whether substantive questions of compliance have been raised in previous examinations or in comments or complaints from the public."

"(3) EXAMINATION UPON REQUEST UNDER CERTAIN CIRCUMSTANCES.—Any bank holding company or savings and loan holding company which controls an insured depository institution which determines that a consumer examination of such depository institution may be appropriate to expedite an application or notice for a deposit facility described in section 803(3) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(3)) may request in writing the appropriate consumer compliance program to conduct an examination of the depository institution pursuant to paragraph (1).

"(d) ADDITIONAL RESPONSIBILITIES.—In addition to the responsibilities established by subsection (c), the head of each consumer compliance program shall—

"(1) develop procedures for consumer compliance examinations and other procedures necessary to implement all applicable laws relating to consumer protection, including fair lending and community reinvestment laws;

"(2) train and supervise or oversee consumer compliance examiners;

"(3) develop career opportunities for consumer compliance examiners comparable to those for safety and soundness examiners;

"(4) respond to consumer complaints and inquiries;

"(5) undertake supervisory action and initiate enforcement proceedings with respect to all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws;

"(6) make recommendations to its agency concerning policies and adopt policies with respect to all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws; and

"(7) perform any other duties and functions related to the consumer compliance program.

"(e) EFFECTIVE DATE.—The establishment of separate consumer compliance programs in each of the agencies shall be completed no later than January 1, 1993.

"(f) REPORTS.—Each consumer compliance program shall prepare a description of its activities, which shall be included in the agency's annual report to the Congress.".

(b) NCUAB.—Title I of the Federal Credit Union Act is amended by adding at the end the following:

"SEC. 130. CONSUMER COMPLIANCE PROGRAM.

"(a) ESTABLISHMENT REQUIRED.—The Board shall establish a separate consumer compliance program. The head of the consumer compliance program shall report directly to the Board.

"(b) DEFINITIONS.—For purposes of this section

"(1) CONSUMER COMPLIANCE EXAMINATION.—The term 'consumer compliance examination' means an examination of an insured credit union to determine the extent to which such credit union is in compliance with all applicable laws and regulations relating to consumer protection, including fair lending laws.

"(2) CONSUMER COMPLIANCE EXAMINER.—The term 'consumer compliance examiner' means an examiner who specializes in assessing compliance with all applicable laws and regulations relating to consumer protection, including fair lending laws.

"(c) CONSUMER COMPLIANCE EXAMINATIONS.—

"(1) IN GENERAL.—The Board shall conduct an on-site consumer compliance examination of each credit union within its jurisdiction.

"(2) CONDUCTED BY CONSUMER COMPLIANCE EXAMINERS.—Consumer compliance examinations shall be conducted by consumer compliance examiners under the supervision or oversight of the head of the consumer compliance program. The Board may consider the size of the institution and the complexity of the consumer compliance examination issues presented in determining whether to assign to a particular examination a consumer compliance examiner who exclusively conducts consumer compliance examinations or an examiner who has only received specialized training in consumer compliance examinations. In making this determination the Board shall also consider whether substantive questions of compliance have been raised in previous examinations or in comments or complaints from the public.

"(d) ADDITIONAL RESPONSIBILITIES.—In addition to the responsibilities established by subsection (c), the head of the consumer compliance program shall—

"(1) develop procedures for consumer compliance examinations and other procedures necessary to implement all applicable laws relating to consumer protection, including fair lending laws;

"(2) train and supervise or oversee consumer compliance examiners;

"(3) develop career opportunities for consumer compliance examiners comparable to those for safety and soundness examiners;

"(4) respond to consumer complaints and inquiries;

"(5) undertake supervisory action and initiate enforcement proceedings with respect to all applicable laws and regulations relating to consumer protection, including fair lending laws;

"(6) make recommendations to its agency concerning policies and adopt policies with respect to all applicable laws and regulations relating to consumer protection, including fair lending laws; and

"(7) perform any other duties and functions related to the consumer compliance program.

"(e) EFFECTIVE DATE.—The establishment of a separate consumer compliance program shall be completed no later than January 1, 1993.

"(f) REPORTS.—The consumer compliance program shall prepare a description its activities, which shall be included in the Board's annual report to the Congress.".

(c) STATE CHARTERED CREDIT UNIONS.—Section 204 of the Federal Credit Union Act is amended by adding after the second sentence a new sentence to read: "The Board shall conduct consumer compliance examinations as set forth in section 130 of State chartered insured credit unions only if the appropriate State supervisory agency has not established an examination program similar to that described in section 130.

SEC. 4. ENFORCEMENT OF EQUAL CREDIT OPPORTUNITY ACT.

(a) PATTERN OR PRACTICE.—Section 706(g) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(g)) is amended by adding at the end the following: "Each of the agencies referred to in paragraphs (1), (2), and (3) of section 704(a) shall refer the matter to the Attorney General whenever it has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 701(a) of this title. Each of such agencies is authorized to refer the matter to the Attorney General whenever it has reason to believe that 1 or more creditors has violated section 701(a) of this title.".

(b) DAMAGES.—Section 706(h) of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following:

"(k) Whenever an agency referred to in paragraph (1), (2), or (3) of section 704(a) has reason to believe that a violation of this title has occurred, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, and that the alleged violation would be a violation of the Fair Housing Act (42 U.S.C. 3601 et seq.), and the agency does not refer the matter to the attorney General pursuant to subsection (g), it shall—

"(1) notify the Secretary of Housing and Urban Development of the violation; and

"(2) notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act.".

SEC. 5. HOME MORTGAGE DISCLOSURE ACT.

(a) IN GENERAL.—Section 309 of the Home Mortgage Disclosure Act (12 U.S.C. 2808) is amended—

(1) by striking "depository" before "institution";

(2) by inserting "specified in section 303(2)(A)" after "institution"; and

(3) by adding at the end the following: "The Board, in consultation with the Secretary, may exempt institutions described in section 303(2)(B) that are comparable within their respective industries to institutions that are exempt under the preceding sentence."

(b) EFFECTIVE DATE.—This section shall become effective on January 1, 1991.

Mr. SANFORD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ARIZONA DESERT WILDERNESS ACT

Mr. SANFORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 677, H.R. 2570, a bill to provide for the designation of certain public lands as wilderness in the State of Arizona.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2570) to provide for the designation of certain public lands as wilderness in the State of Arizona.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause, and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Arizona Desert Wilderness Act of 1990".

TITLE I—DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT

SEC. 101. DESIGNATION AND MANAGEMENT.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following public lands are hereby designated as wilderness and therefore, as components of the National Wilderness Preservation System:

(1) certain lands in Mohave County, Arizona, which comprise approximately 23,600 acres, as generally depicted on a map entitled "Mount Wilson Wilderness" and dated February 1990, and which shall be known as the Mount Wilson Wilderness;

(2) certain lands in Mohave County, Arizona, which comprise approximately 31,070 acres, as generally depicted on a map entitled "Mount Tipton Wilderness" and dated February 1990, and which shall be known as the Mount Tipton Wilderness;

(3) certain lands in Mohave County, Arizona, which comprise approximately 27,530 acres, as generally depicted on a map entitled "Mount Nutt Wilderness" and dated February 1990, and which shall be known as the Mount Nutt Wilderness: Provided, That the existing water pipeline for the town of Oatman, together with the right of ingress and egress thereto, may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(4) certain lands in Mohave County, Arizona, which comprise approximately 90,600 acres, as generally depicted on a map entitled "Warm Springs Wilderness" and dated February 1990, and which shall be known as the Warm Springs Wilderness;

(5) certain lands in Mohave County, Arizona, which comprise approximately 15,900 acres, as generally depicted on a map entitled "Aubrey Peak Wilderness" and dated February 1990, and which shall be known as the Aubrey Peak Wilderness;

(6) certain lands in La Paz County, Arizona, which comprise approximately 14,630 acres, as generally depicted on a map entitled "East Cactus Plain Wilderness" and dated February 1990, and which shall be known as the East Cactus Plain Wilderness;

(7) certain lands in Mohave and La Paz Counties, Arizona, which comprise approximately 41,600 acres, as generally depicted on a map entitled "Rawhide Mountains Wilderness" and dated February 1990, and which shall be known as the Rawhide Mountains Wilderness;

(8) certain lands in Mohave, Yavapai, and La Paz Counties, Arizona, which comprise approximately 126,760 acres, as generally depicted on a map entitled "Arrastra Mountain Wilderness" and dated February 1990, and which shall be known as the Arrastra Mountain Wilderness;

(9) certain lands in La Paz County, Arizona, which comprise approximately 25,287 acres, as generally depicted on a map entitled "Harcuvar Mountains Wilderness" and dated February 1990, and which shall be known as the Harcuvar Mountains Wilderness;

(10) certain lands in La Paz and Maricopa Counties, Arizona, which comprise approximately 22,865 acres, as generally depicted on a map entitled "Harquahala Mountains Wilderness" and dated February 1990, and which shall be known as the Harquahala Mountains Wilderness;

(11) certain lands in Maricopa County, Arizona, which comprise approximately 20,600 acres, as generally depicted on a map entitled "Big Horn Mountains Wilderness" and dated February 1990, and which shall be known as the Big Horn Mountains Wilderness;

(12) certain lands in Maricopa County, Arizona, which comprise approximately 30,170 acres, as generally depicted on a map entitled "Hummingbird Springs Wilderness" and dated February 1990, and which shall be known as the Hummingbird Springs Wilderness;

(13) certain lands in La Paz, Yuma, and Maricopa Counties, Arizona, which comprise approximately 89,000 acres, as generally depicted on a map entitled "Eagletail Mountains Wilderness" and dated February 1990, and which shall be known as the Eagletail Mountains Wilderness;

(14) certain lands in Maricopa County, Arizona, which comprise approximately 15,250 acres, as generally depicted on a map entitled "Signal Mountain Wilderness" and dated February 1990, and which shall be known as the Signal Mountains Wilderness;

(15) certain lands in Maricopa County, Arizona, which comprise approximately 61,000 acres, as generally depicted on a map entitled "Woolsey Peak Wilderness" and dated February 1990, and which shall be known as the Woolsey Peak Wilderness;

(16) certain lands in Maricopa County, Arizona, which comprise approximately 14,500 acres, as generally depicted on a map entitled "Sierra Estrella Wilderness" and dated February 1990, and which shall be known as the Sierra Estrella Wilderness;

(17) certain lands in Maricopa and Pinal Counties, Arizona, which comprise approximately 34,400 acres, as generally depicted on a map entitled "Table Top Wilderness" and dated February 1990, and which shall be known as the Table Top Wilderness;

(18) certain lands in Pima County, Arizona, which comprise approximately 5,080 acres, as generally depicted on a map entitled "Coyote Mountains Wilderness" and dated February 1990, and which shall be known as the Coyote Mountains Wilderness;

(19) certain lands in Pima County, Arizona, which comprise approximately 2,065 acres, as generally depicted on a map entitled "Baboquivari Peak Wilderness" and dated February 1990, and which shall be known as the Baboquivari Peak Wilderness;

(20) certain lands in Gila County, Arizona, which comprise approximately 9,201 acres, as generally depicted on a map entitled "Needle's Eye Wilderness" and dated February 1990, and which shall be known as the Needle's Eye Wilderness: Provided, That the right-of-way reserved by right-of-way reservation A-16043 dated October 20, 1986, together with the right of ingress and egress thereto, shall not be affected by this Act, and the existing powerline utilizing such right-of-way may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(21) certain lands in Graham County, Arizona, which comprise approximately 6,590 acres, as generally depicted on a map entitled "North Santa Teresa Wilderness" and dated February 1990, and which shall be known as the North Santa Teresa Wilderness. The Secretary of the Interior, acting through the Bureau of Indian Affairs, shall administer that portion of the Black Rock Wash Road located within the boundaries of the San Carlos Apache Reservation so as to allow reasonable use of the road for private and administrative purposes and may permit limited public use of such road for the purpose of access to the public lands outside the reservation boundary;

(22) certain lands in Graham County, Arizona, which comprise approximately 10,883 acres, as generally depicted on a map entitled "Fishhooks Wilderness" and dated February 1990, and which shall be known as the Fishhooks Wilderness;

(23) certain lands in Cochise County, Arizona, which comprise approximately 11,998 acres, as generally depicted on a map entitled "Dos Cabezas Mountains Wilderness" and dated February 1990, and which shall be known as the Dos Cabezas Mountains Wilderness;

(24) certain lands in Graham and Cochise Counties, Arizona, which comprise approximately 6,600 acres, as generally depicted on a map entitled "Redfield Canyon Wilderness" and dated February 1990, and which shall be known as the Redfield Canyon Wilderness;

(25) certain lands in La Paz County, Arizona, which comprise approximately 18,805 acres, as generally depicted on a map entitled "Gibraltar Mountain Wilderness" and dated February 1990, and which shall be known as the Gibraltar Mountain Wilderness;

(26) certain lands in La Paz and Mohave Counties, Arizona, which comprise approximately 15,755 acres, as generally depicted on a map entitled "Swansea Wilderness" and dated February 1990, and which shall be known as the Swansea Wilderness;

(27) certain lands in La Paz County, Arizona, which comprise approximately 29,095 acres, as generally depicted on a map entitled "Trigo Mountain Wilderness" and dated February 1990, and which shall be known as the Trigo Mountain Wilderness;

(28) certain lands in Yuma County, Arizona, which comprise approximately 8,855 acres, as generally depicted on a map entitled "Muggins Mountain Wilderness" and dated February 1990, and which shall be known as the Muggins Mountain Wilderness;

(29) certain lands in Yavapai and Maricopa Counties, Arizona, which comprise approximately 9,200 acres, as generally depicted on a map entitled "Hells Canyon Wilderness" and dated February 1990, and which shall be known as the Hells Canyon Wilderness;

(30) certain lands in Maricopa County, Arizona, which comprise approximately 63,600 acres, as generally depicted on a map entitled "North Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the North Maricopa Mountains Wilderness;

(31) certain lands in Maricopa County, Arizona, which comprise approximately 60,800 acres, as generally depicted on a map entitled "South Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the South Maricopa Mountains Wilderness;

(32) certain lands in Mohave County, Arizona, which comprise approximately 38,400 acres, as generally depicted on a map entitled "Wabayuma Peak Wilderness" and dated February 1990, and which shall be known as the Wabayuma Peak Wilderness;

(33) certain lands in Yavapai and Mohave Counties, Arizona, which comprise approximately 27,900 acres, as generally depicted on a map entitled "Upper Burro Creek Wilderness" and dated June 1990, and which shall be known as the Upper Burro Creek Wilderness;

(34) certain lands in Yavapai County, Arizona, which comprise approximately 11,840 acres, as generally depicted on a map entitled "Hassayampa River Canyon Wilderness" and dated February 1990, and which shall be known as the Hassayampa River Canyon Wilderness;

(35) certain lands in Pinal County, Arizona, which comprise approximately 5,800 acres, as generally depicted on a map entitled "White Canyon Wilderness" and dated February 1990, and which shall be known as the White Canyon Wilderness;

(36) certain lands in Yavapai County, Arizona, which comprise approximately 8,700 acres, as generally depicted on a map entitled "Tres Alamos Wilderness" and dated February 1990, and which shall be known as the Tres Alamos Wilderness;

(37) certain lands in Cochise County, Arizona, which comprise approximately 19,650 acres, as generally depicted on a map entitled "Peloncillo Mountains Wilderness" and dated February 1990, and which shall be known as the Peloncillo Mountains Wilderness;

(38) certain lands in La Paz County, Arizona, which comprise approximately 21,680 acres, as generally depicted on a map entitled "New Water Mountains Wilderness" and dated February 1990, and which shall be known as the New Water Mountains Wilderness;

(39) certain lands in Pinal and Graham Counties, Arizona, which comprise approximately 12,711 acres, as generally depicted on a map entitled "Aravaipa Wilderness Additions" and dated February 1990, and which are hereby incorporated in and shall be deemed to be a part of the Aravaipa Canyon

Wilderness (designated in Public Law 98-406, 98 Stat. 1491).

(b) MANAGEMENT.—Subject to valid existing rights, the wilderness areas designated by this title shall be administered by the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this Act.

(c) MAP AND LEGAL DESCRIPTION.—As soon as practicable after enactment of this Act, the Secretary shall file a map and a legal description of each wilderness area designated under this title with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such legal description and map may be made. Copies of such map and legal description shall be on file and available for public inspection in the Office of the Director, Bureau of Land Management, United States Department of the Interior, and in the appropriate office of the Bureau of Land Management in Arizona.

(d) NO BUFFER ZONES.—The Congress does not intend for the designation of wilderness areas in the State of Arizona pursuant to this title to lead to the creation of protective perimeters or buffer zones around any such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(e) FISH AND WILDLIFE.—As provided in paragraph (7) of section 4(d) of the Wilderness Act, nothing in this title or in the Wilderness Act shall be construed as affecting the jurisdiction or responsibilities of the State of Arizona with respect to wildlife and fish on the public lands located in that State.

(f) LIVESTOCK.—(1) Grazing of livestock in wilderness areas designated by this title, where established prior to the date of the enactment of this Act, shall be administered in accordance with section 4(d)(4) of the Wilderness Act and the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(2) The Secretary is directed to review all policies, practices, and regulations of the Bureau of Land Management regarding livestock grazing in Bureau of Land Management administered wilderness areas in Arizona in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this title.

(g) WATER.—(1) With respect to each wilderness area designated by this title, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this title. The priority date of such reserved rights shall be the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(h) WILDLIFE MANAGEMENT.—In furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title, where consistent with relevant wilderness management plans, in accordance with appropriate policies and guidelines such as those set forth in Appendix B of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(i) MILITARY ACTIVITIES.—Nothing in this title shall preclude low level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes over wilderness areas designated by this title.

(j) MINERAL EXCHANGES.—It is the intent of Congress that private mineral rights within wilderness areas designated by this title be acquired as expeditiously as possible by the Secretary using existing authority to acquire such rights by exchange.

(k) AMENDMENT.—Section 101(a)(23) of the Arizona Wilderness Act of 1984 (98 Stat. 1487) is amended by striking "the governmental agency having jurisdictional authority may authorize limited access to the area, for private and administrative purposes, from U.S. Route 70 along Black Rock Wash to the vicinity of Black Rock;".

SEC. 102. AREAS RELEASED.

Excepting for the Baker Canyon area (AZ-040-070), and the approximately 57,800 acres of public land as generally depicted on a map entitled "Cactus Plain Wilderness Study Area" dated February, 1990, the Congress hereby finds and directs that all public lands in Arizona, administered by the Bureau of Land Management pursuant to the Federal Land Policy and Management Act of 1976 not designated as wilderness by this title, or previous Acts of Congress, have been adequately studied for wilderness designation pursuant to section 603 of such Act and are no longer subject to the requirement of section 603(c) of such Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

TITLE II—DESIGNATION OF THE GILA BOX RIPARIAN NATIONAL CONSERVATION AREA

SEC. 201. DESIGNATION AND MANAGEMENT.

(a) PURPOSES.—In order to conserve, protect, and enhance the riparian and associated areas described in subsection (b) and the aquatic, wildlife, archeological, paleontological, scientific, cultural, recreational, educational, scenic, and other resources and values of such areas, there is hereby established the Gila Box Riparian National Conservation Area (hereafter in this title referred to as the "conservation area").

(b) AREAS INCLUDED.—The conservation area shall consist of the public lands generally depicted on a map entitled "Gila Box Riparian National Conservation Area" dated February 1990, and comprising approximately 20,900 acres.

(c) MAP.—As soon as practicable after the date of enactment of this Act, a map and legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such map shall have the same force and effect as if included in this section. Copies of such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in the appropriate office of the Bureau of Land Management in Arizona.

(d) MANAGEMENT OF CONSERVATION AREA.—(1) The Secretary shall manage the conservation area in a manner that conserves, protects and enhances its resources and values, including the resources and values specified in subsection (a), pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this title.

(2) The Secretary shall allow only such uses of the conservation area as the Secretary finds will further the purposes for which the conservation area is established. Except where needed for administrative purposes or to respond to an emergency, use of motorized vehicles in the conservation area shall be permitted only on roads specifically designated for such use as part of the management plan prepared pursuant to subsection (g).

(e) WITHDRAWAL.—Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing, and all amendments thereto.

(f) WATER.—(1) Congress hereby reserves a quantity of water sufficient to fulfill the purposes, as specified in subsection (a), for which the conservation area is established. The priority date of this reserved right shall be the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take all steps necessary to protect the right reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such right in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal rights reserved by this title are specific to the conservation area located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute

an interpretation of any other Act or any designation made pursuant thereto.

(g) MANAGEMENT PLAN.—(1) No later than two years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the conservation area (hereinafter in this title referred to as the "management plan") in order to fulfill the purposes for which the conservation area is established. The management plan shall be developed with full public participation and shall include provisions designed to assure protection of the resources and values (including the resources and values specified in subsection (a)) of the conservation area.

(2) The management plan shall include a discussion of the desirability of the inclusion in the conservation area of additional lands, including the lands not in Federal ownership that are contiguous to the boundary of the conservation area (as depicted on the map referenced in subsection (b) or as hereafter adjusted pursuant to subsection (h)) and within the area extending two miles on either side of the centerline of Eagle Creek from the point where Eagle Creek crosses the southern boundary of the Apache National Forest to the confluence of Eagle Creek with the Gila River (this area is hereafter referred to in this title as the "Eagle Creek riparian area").

(3) In order to better implement the management plan, the Secretary may enter into cooperative agreements with appropriate State and local agencies pursuant to section 307(b) of the Federal Land Policy and Management Act of 1976.

(4) In order to assist in the development and implementation of the management plan, the Secretary may authorize appropriate research, including research concerning the environmental, biological, hydrological, cultural, and other characteristics, resources, and values of the conservation area, pursuant to section 307(a) of the Federal Land Policy and Management Act of 1976.

(h) ACQUISITION AND BOUNDARY ADJUSTMENTS.—(1) Subject to the limitations set forth in paragraph (3), the Secretary is authorized to acquire non-Federal lands or interests therein within the boundaries of the conservation area or within the Eagle Creek riparian area.

(2) The Secretary is authorized to adjust the boundaries of the conservation area so as to incorporate within the conservation area any lands or interests within the Eagle Creek riparian area that may be acquired after the date of enactment of this Act as well as public lands within that portion of the Eagle Creek riparian area west of the centerline of Eagle Creek that the Secretary finds appropriate in order to properly manage such acquired lands as part of the conservation area. Any lands or interests so incorporated shall be managed as part of the conservation area.

(3) No lands or interests therein owned by the State of Arizona or any political subdivision of such State shall be acquired pursuant to this subsection except through donation or exchange, and no lands or interests within the conservation area or the Eagle Creek riparian area shall be acquired from any other party or entity except by donation, exchange, or purchase with the consent of the owner of such lands or interests.

(i) NO BUFFER ZONES.—The Congress does not intend for the establishment of the conservation area to lead to the creation of protective perimeters or buffer zones around the conservation area. The fact that there may be activities or uses on lands outside the conservation area that would not be permitted in the conservation area shall not preclude such activities or uses on such lands up to the boundary of the conservation area to the extent consistent with other applicable law.

(j) ADVISORY COMMITTEE.—The Secretary shall establish an advisory committee to advise the Secretary with respect to the preparation and implementation of the management plan. Such advisory committee shall consist of seven members appointed by the Secretary. One member shall be appointed from among recommendations submitted by the Governor of Arizona, one member shall be appointed from among recommendations submitted by the Graham County Board of Supervisors and one member shall be appointed from among recommendations submitted by the Greenlee County Board of Supervisors. The remaining members shall be persons recognized as experts in wildlife conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the purposes for which the conservation area is established.

(k) REPORT.—No later than five years after the date of enactment of this Act, and at least each ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate on the implementation of this title, the condition of the resources and values of the conservation area, and the progress of the Secretary in achieving the purposes for which the conservation area is established.

(l) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement this title shall be subject to a fine in accordance with applicable provisions of the Sentencing Reform Act of 1984 (18 U.S.C. 3572) or to imprisonment for at least six months but no more than one year, or both such fine and imprisonment.

(m) AUTHORIZATION.—There are hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this title.

TITLE III—DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE UNITED STATES FISH AND WILDLIFE SERVICE

SEC. 301. DESIGNATION AND MANAGEMENT

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following lands are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

(1) certain lands in the Havasu National Wildlife Refuge, Arizona, which comprise approximately 14,606 acres, as generally depicted on a map entitled "Havasu Wilderness" and dated March 13, 1990, and which shall be known as the Havasu Wilderness;

(2) certain lands in the Imperial National Wildlife Refuge, Arizona, which comprise approximately 9,220 acres, as generally depicted on a map entitled "Imperial Refuge Wilderness" and dated March 13, 1990, and which shall be known as the Imperil Refuge Wilderness;

(3) certain lands in the Kofa National Wildlife Refuge, Arizona, which comprise approximately 511,000 acres, and certain other public lands comprising approximately 5,300 acres which are hereby added to and incorporated within such refuge (and which shall be managed accordingly), all as generally depicted on a map entitled "Kofa Wilderness" and dated March 13, 1990, and which shall be known as the Kofa Wilderness; and

(4) certain lands in the Cabeza Prieta National Wildlife Refuge, Arizona, which comprise approximately 803,418 acres, as generally depicted on a map entitled "Cabeza Prieta Wilderness" and dated March 13, 1990, and which shall be known as the Cabeza Prieta Wilderness.

(b) MANAGEMENT.—Subject to valid existing rights, the wilderness areas designated under this title shall be administered by the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this title.

(c) MAP AND LEGAL DESCRIPTION.—As soon as practicable after enactment of this title, the Secretary shall file a map and a legal description of each wilderness area designated under this section with the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the United States House of Representatives and with the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such legal description and map may be made. Such map and legal description shall be on file and available for public inspection in the Office of the Director, United States Fish and Wildlife Service, United States Department of the Interior.

(d) WATER.—(1) With respect to each wilderness area designated by this title, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this title. The priority date of such reserved rights shall be on the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take all steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate steam adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water right reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(e) NO EFFECT ON COLORADO RIVER DAMS.—Nothing in this title shall be construed to affect the operation for flood control purposes of Federally owned dams located on the Colorado River.

(f) MILITARY ACTIVITIES.—Nothing in this title including the designation as wilderness of lands within the Cabeza Prieta National Wildlife Refuge, shall be construed as—

(1) precluding or otherwise affecting continued low-level overflights by military aircraft over such refuge or the maintenance of existing associated ground instrumentation, in accordance with any applicable interagency agreements in effect on the date of enactment of this Act; or

(2) precluding the Secretary of Defense from entering into new or renewed agreements with the Secretary concerning use by military aircraft of airspace over such refuge or the maintenance of existing associated ground instrumentation, consistent with management of the refuge for the purpose for which such refuge was established and in accordance with laws applicable to the National Wildlife Refuge System.

(g) LAW ENFORCEMENT BORDER ACTIVITIES.—Nothing in this title, including the designation as wilderness of lands within the Cabeza Prista National Wildlife Refuge, shall be construed as—

(1) precluding or otherwise affecting continued border operations by the Immigration and Naturalization Service, the Drug Enforcement Administration, or the United States Customs Service within such refuge, in accordance with any applicable interagency agreements in effect on the date of enactment of this Act; or

(2) precluding the Attorney General of the United States or the Secretary of the Treasury from entering into new or renewed agreements with the Secretary concerning Immigration and Naturalization Service, Drug Enforcement Administration, or United States Customs Service border operations within such refuge, consistent with management of the refuge for the purpose for which such refuge was established, and in accordance with laws applicable to the National Wildlife Refuge System.

The PRESIDING OFFICER. Are there amendments to the bill?

AMENDMENT NO. 3199

Mr. SIMPSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. MCCLURE, proposes an amendment numbered 3199.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3199) was agreed to.

Mr. SANFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COLORADO RIVER WATER

Mr. ARMSTRONG. Among the amendments offered by the Senator from Arizona is a title III addition which states that "no rights to water of the Colorado River are reserved, either expressly, impliedly, or otherwise."

Mr. McCAIN. That is correct. The language the Senator cited refers to the proposed wilderness within the Havasu and Imperial National Wildlife Refuges. These are the only two areas to be designated wilderness by this legislation which are in close geographic proximity to the Colorado River. It is important to note that the wilderness boundary in both areas was drawn at the high water mark of the 1983 floods, so it is unlikely that any Colorado River water would flow through the wilderness areas. Consequently, we believed these areas would not qualify for wilderness water rights from the Colorado River. Nevertheless, to avoid any confusion, we unequivocally state that no such rights are reserved.

Mr. ARMSTRONG. I thank the Senator for that clarification. It is my understanding that the words "water of the Colorado River" mean all the water in the Colorado River flowing from the upper basin to the lower basin at Lee's Ferry regardless of the water's origin, including water from Colorado River tributaries in the upper basin.

Mr. McCAIN. The Senator from Colorado is correct. We thank him for helping make that clarification. It is truly an important one to make.

Mr. McCAIN. Mr. President, I am pleased to bring H.R. 5063, the Fort McDowell Indian Community Water Rights Settlement Act, before the Senate. This bill reflects more than 5 years of intense efforts by the Department of the Interior, the Yavapai Indians at Fort McDowell, the Central Arizona Water Conservation District, the Salt River Project, the Roosevelt Water Conservation District, the State of Arizona and numerous municipalities to resolve conflicting claims to water. Many individuals have devoted countless hours to the negotiations which led to this settlement. As is the case with all true compromises, no party is entirely satisfied with the final settlement agreement. Virtually every party had to accept terms which they find to be somewhat unsatisfactory. I want to commend and congratulate all of the parties to this settlement. The leadership and spirit of cooperation which led to the settlement will serve the parties, the State of Arizona and the entire Nation well in the years ahead.

I particularly want to thank Representatives UDALL and RHODES for their efforts. Without their leadership, we would not be able to consider this legislation today. I also want to express special thanks to Secretary Lujan and the employees of the Department of the Interior for their outstanding assistance.

As passed by the House, H.R. 5063 is identical to S. 2900 which I sponsored and which was favorably reported to the Senate by the Select Committee on Indian Affairs on September 25, 1990. H.R. 5063 and the settlement agreement quantify the Fort McDowell Indian community's total water rights, from all sources, at 36,350 acre-feet per year. The water is intended to be sufficient to irrigate 4,000 acres of agricultural land and to develop 18,350 acres for urban and other uses within the reservation. The Salt River Project [SRP] will contribute 6,730 acre-feet of water and the Roosevelt Water Conservation District 3,200 acre-feet. SRP will also provide storage capacity behind the Bartlett and Horseshoe Dams on the Verde River to enable the community to gain full use of its 7,060 acre-foot Kent decree water rights.

The bill confirms existing agreements between the United States and the Salt River Project and among SRP, Phelps Dodge Corp. and the defense plant corporation regarding storage of water at Horseshoe and Bartlett Dams. It requires the Secretary of the Interior to acquire 13,933 acre-feet of water either from sources in the Harquahala Valley West of Phoenix, from entities along the Verde River upstream from Fort McDowell or from any other sources available to the United States. The bill also provides the Secretary with the necessary authority to acquire and deliver such water to the Fort McDowell Indian Community via exchanges with SRP. In addition, it authorizes the community to lease its allocation of 4,300 acre-feet of central Arizona project water to the city of Phoenix.

The bill provides for the creation of a Community Development Trust Fund, into which would be deposited the Fort McDowell Indian Community's water lease revenues, $2,000,000 to be contributed by the State of Arizona, and a Federal appropriation of $23 million. The community would also receive a $13 million loan for which it has applied under the small reclamation projects act in lieu of $7 million which the United States is otherwise required to expend to construct water delivery facilities on the community's reservation as part of the Central Arizona Project.

The bill provides that the benefits to the community's members from the settlement constitute full satisfaction of all of their claims for water rights under Federal and State laws, and authorizes the United States and the community to waive and release the community's past, present, and future claims to water.

Upon the waiver of those claims, the Secretary of the Interior will have no further authority under the Colorado River Basin Project Act to withdraw any portion of the community's reservation for purposes of a dam and res-

ervoir at the confluence of the Salt and Verde Rivers.

Local contributions to the settlement include approximately 12,000 acre-feet of water annually with an estimated value of $3,000 per acre-foot, lease revenues, and a State appropriation of $2 million. The local parties estimate their additional costs as a result of water quality deterioration and loss of exchange capacity and other indirect cash costs at $8 million, bringing the total local costs of the settlement to approximately $44 million. Federal costs would be at least $36 million for the development fund appropriation and the loan which is repayable at no interest.

The total cost of the settlement to the Federal Government will not be known until the Secretary determines from which source or sources he will obtain the 13,933 acre-feet of water needed to fulfill the community's water entitlement and what share of the costs of obtaining that water will be attributable to the community's settlement. The ratio of local to Federal costs is thus likely to be approximately 50-50.

The settlement will not become effective until the Secretary publishes findings that the major actions required by the bill and the settlement agreement have been accomplished, including the Secretary's signing of the final version of the agreement.

Mr. President, I believe that this is a fair settlement and that H.R. 5063 is good legislation. I urge my colleagues to give it their support.

Mr. DECONCINI. I would like to ask the distinguished vice chairman of the Select Committee on Indian Affairs to clarify for the record the relationship between section 6(a)(3) and section 13 of H.R. 5063.

Mr. MCCAIN. I would be happy to respond to the Senator's questions.

Mr. DECONCINI. Section 6(a)(3) authorizes and directs the Secretary, in the event he cannot acquire 13,933 acre-feet of water for Fort McDowell from either the Harquahala Valley Irrigation District or from sources in the Big Chino Valley, to acquire that amount of water from all resources at the disposal of the United States.

Section 13 States that nothing in the settlement agreement or the legislation shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than Fort McDowell.

Is my understanding correct that these provisions, read together, mean that the Secretary would be precluded from using the so-called Ak Chin surplus water in the Fort McDowell settlement?

Mr. MCCAIN. The Senator is correct. The Ak Chin water is included in legislation currently being considered by the Congress for use in the settlement of the claims of the San Carlos Apache Tribe. For the Secretary to consider using it for Fort McDowell would clearly be adverse to the San Carlos settlement and contrary to section 13.

This reasoning also applies to the other sources of water proposed for use in the San Carlos settlement legislation.

Both the House Interior Committee and the Senate Select Committee on Indian Affairs amended section 6 to eliminate provisions that specifically authorized the Secretary to use Ak Chin water for Fort McDowell. Both committee's reports cited opposition by the administration and parties in Arizona to using Ak Chin water for the Fort McDowell settlement.

Mr. DECONCINI. I thank the Senator for his response.

Is my understanding also correct that section 13 is intended to mean that the Secretary, should he exercise his authority under section 6(a)(3), could not do so in such a manner as to adversely affect his ability to deliver water to the Tohono O'odham Nation under the provisions of the Southern Arizona Water Rights Settlement Act [SAWARSA] of 1982?

Mr. MCCAIN. The Senator's understanding is correct.

Mr. DECONCINI. I thank the Senator.

Mr. MCCAIN. And I extend my appreciation to the Senator for his cosponsorship of S. 2900, the Senate version of this bill and for his assistance in moving this legislation forward.

ARIZONA DESERT WILDERNESS ACT OF 1990

Mr. DOMENICI. Mr. President, I would like to ask the sponsors of the bill, the distinguished Senators from Arizona, Mr. DECONCINI and Mr. MCCAIN, if they would clarify a provision of the bill for me.

Mr. DECONCINI. I will glady yield to my friend, the Senator from New Mexico [Mr. DOMENICI] for a question.

Mr. DOMENICI. I would say to my friends that it came to my attention several months ago that the original provisions of the bill now before the Senate, H.R. 2570—the Arizona Desert Wilderness Act of 1990, could have jeopardized the opportunity for New Mexico to use water rights granted to New Mexico. These water rights were reserved for the Hooker Dam project or a suitable alternative by Public Law 90-537, the law that authorized the central Arizona project.

Specifically, my major concern was with the water reservation proposed in the bill for the Gila Box Riparian National Conservation Area and the adverse effects that such a reservation could have on New Mexico's ability to use senior water rights held on the Gila River System. That reservation as proposed was simply not acceptable to me or the people of New Mexico.

Because of this and other provisions of the bill affecting water rights in the Upper Colorado River Basin, I could not vote in favor of the Arizona Desert Wilderness Act when it was considered by the Energy and Natural Resources Committee.

Since that time, the New Mexico State Engineer and the Director of the Arizona Department of Water Resources, the officials responsible for the protection of water rights in their respective States, have jointly developed language to amend section 201 of this bill to protect New Mexico's interests.

I would ask my friends from Arizona, am I correct in understanding that section 201 of the bill as amended clarifies that no provisions in the bill—including implied water reservations, if any—will impair or conflict with New Mexico's ability to implement the authorization contained in section 304(f) of Public Law 90-537, the Colorado River Basin Project Act, which authorizes 18,000 acre-feet of central Arizona project water to be delivered annually through exchange agreements to users in New Mexico on the Gila River System?

Mr. DECONCINI. The Senator from New Mexico is correct in his understanding of section 201.

The purpose of section 201 is to clarify that the designation of the Gila Box Riparian Conservation Area will not impact the allocation of water to the State of New Mexico pursuant to the Colorado River Basin Project Act of 1968.

Mr. MCCAIN. I also agree with the Senator from New Mexico's explanation of section 201.

Section 201 will ensure that the designation of the Gila Box Riparian Conservation Area will not affect the implementation of the authorities granted to the Secretary of the Interior to contract with New Mexico for Gila River water, as established in the Colorado River Basin Project Act of 1968.

Let me add that section 201 in no way attempts to quantify the amount that New Mexico is authorized to receive nor entitle the State of New Mexico to any water rights that did not exist prior to passage of this legislation.

Mr. DOMENICI. I thank the Senators. I want to acknowledge my appreciation for the willingness of both of my colleagues from Arizona to work with me and the people of New Mexico to resolve this important issue and to protect New Mexico's water rights.

COLORADO RIVER

Mr. WILSON. With respect to its effect on water interests in the lower Colorado River Basin, with which the Senator and I are always concerned, I would like to ask the Senator a few questions. First, does the fact that the

amendment with regard to the law of the river in the upper basin, which has just been accepted, relates only to the upper Colorado River Basin imply that something in the bill does supersede existing compacts, treaties, Federal statutes or Supreme Court decrees governing interstate or intrastate water allocations in the lower basin?

Mr. McCAIN. No. That is not its intent and it should not be so construed. For the reasons detailed in the committee report on the bill, the lower basin States were satisfied that existing allocations were in no way affected, which is our intent.

Mr. WILSON. I further want to thank the Senators from Arizona for their amendment to section 301(e) to make it clear that operations of the lower basin reservoirs on the Colorado River are not affected in any way by this bill. In this regard, will the Senator please indicate whether there is any significance in the fact that it refers only to title III of the bill, while the amendment with regard to the law of the river in the upper basin refers to titles I, II, and III.

Mr. McCAIN. I would be pleased to do so. The lower basin States were only concerned with two Fish and Wildlife Service wilderness areas designated in title III—areas within the Havasu and Imperial National Wildlife Refuges. They are the only areas designated wilderness by this legislation which are in close geographic proximity to the main stream of the Colorado River. The upper basin desired broader protections, partially because of the potential impact on New Mexico's allocation of the Gila, which we have specifically safeguarded under another amendment. Although it was our strong belief that the bill as it was reported by the Energy Committee in no way affected the upper Colorado River Basin we have accepted the language to make it unequivocally clear that it does not. I would like to note also that the broad language of the upper basin amendment would not work for the lower basin due to the inclusion of tributaries since certain wilderness areas designated in this bill may affect tributaries in Arizona. I would further add that tributaries in the lower basin are not accounted for as a part of the Colorado River flow and we do not want to imply that they are by applying the upper basin amendment to the lower basin. The language on operations of reservoirs under section 301(e) should not be interpreted to imply any alteration in the application of the law of the river to lower basin States, including, but not limited to, the allocations and priorities set forth in the decree in Arizona versus California and the Colorado Basin Project Act.

Mr. WILSON. I thank the Senator for his explanation.

Mr. ARMSTRONG. Senator WALLOP and I would like to ask our colleagues from Arizona a question about the effect of the amendment to section (301)(e) of the bill as it pertains to the operation of dams on the Colorado River.

Mr. McCAIN. We would be pleased to answer any questions our friends may have.

Mr. WALLOP. Are we correct that the designation of wilderness within Arizona and the amendment to section 301(e) will in no way affect the operation of dams in the upper basin of the Colorado River or its tributaries?

Mr. McCAIN. That is correct. The amendment pertaining to the upper basin reinforces full and unequivocal protection. That is to say, the designation of wilderness within the State of Arizona does not affect the law of the river which includes the operation of existing and future dams in the upper basin. The amendment to section 301(e) does not cloud or affect those protections in any way. The amendment simply provides tailored protection to the operation of dams on the Colorado River in the lower basin.

CLARKS FORK WILD AND SCENIC RIVER

Mr. WALLOP. Mr. President, I am especially proud to see my colleagues' approval of the Clarks Fork Wild and Scenic River Act because this is the year of Wyoming's centennial celebration.

Everyone wins with this bill, Mr. President. The Federal Wild and Scenic River System gains a stunning new addition, we provide protection for one of America's most outstanding rivers and canyon and, importantly, the Clarks Fork is given Federal designation without doing great damage to the State water system.

The bill before us today is the result of much hard work and compromise and there are changes from the language we originally introduced. Probably the most significant is the deletion of a provision which drew a fair share of controversy. The 50-percent interim flow quantification, designed to insure that the courts do not make the most basic water decisions for the State of Wyoming, is no longer in the bill.

While the measure does not foreclose appeal to the State courts on the determination of quantification, it respects the State process by ensuring that the State engineer makes the determination at the outset rather than having the courts do so. Court review is available only if there is no satisfactory resolution. The bill includes a narrow preemption of State law for beneficial uses, not a total preemption of the job of the Wyoming State engineer by the black robes on the courts.

Deletion of the interim flow provision does not mean the river will be jeopardized in any way. Every knowledgeable person agrees that there will be no threat to the flows during the pending investigations to determine the appropriate amount of water necessary to protect the river's wild and scenic values. Not only would upstream development be nearly impossible, the Governor has assured us, that because of the beauty of the basin, he does not favor damming the upper reaches of the Clarks Fork drainage under any circumstances.

The new water section provides a process for the Secretary of Agriculture to follow in quantifying the water right reserved for the purpose of the Clarks Fork River designation. It does not require the State to wait for a general stream adjudication where the State engineer is just one of many parties. Under this act, the procedural requirements of Wyoming State law will be followed including water right application to the Wyoming State engineer, adjudication by the Wyoming State Board of Control and with review of these matters provided by the Wyoming administrative procedures.

These procedures are equally available and adhered to by all appropriators in the State of Wyoming. There is no reason why the Federal Government should not submit to State process to avoid a lingering unquantified right which casts a cloud on any subsequent appropriation and frustrates State administration. I would note that the State of Wyoming administers all water rights including those held by the Federal Government through preemption. This requirement is consistent with legislation for the Cache La Poudre River designation in that the Secretary is required to perfect a reserved water right through procedures of State law. In the case of Colorado, that is through the State water court; in Wyoming the applicable process is through the State engineer.

The language declares that flows for the purpose of this designation are a beneficial use of water and fixes the priority date of the water and fixes the priority date of the water right reserved as the date of this act. The intent of Congress is to declare the designated purposes a beneficial use, while directing the Secretary to proceed with investigations to evaluate the quantities needed to meet the purposes of the designation and to present and defend that information and documentation in the form required by State law to obtain a water right. Technical review, public hearing and approval required by State law will occur with judicial review, if necessary, of administrative decisions by the Wyoming courts.

It is my expectation that the Secretary will make application to the State within 3 to 5 years of the date of enactment and I will work to ensure that

the Federal Government has the resources and the resolve to do so. The State requires certainty in the quantification process in a timely manner so that an open ended reservation of water by Congress is not left unresolved.

This meets our intent to allow Wyoming State law to continue to control and administer issues of water resources within her boundaries. Congress must not override the State law decision process which provides equal protection to all interests while addressing the need to protect the values stated in this act.

In addition to the new water section, the authorization for acquiring a scenic easement on the private property located within the designated segment is boosted to the amount of $750,000. The bill provides that any purchase occur only on a willing buyer/willing seller basis and the owners of the property are willing, and working now with the Forest Service to sell an easement to protect the natural qualities of the wild river. The funding increase should insure that the Federal Government has the ability to keep its side of the bargain.

On another point, I would like to clarify that it is our intent that water from the downstream impoundment will not be allowed to intrude upon the designated segment. In fact, the segment's lower boundary was specifically shortened to prevent such a conflict.

Finally, Mr. President, I would like to thank Senator BUMPERS and his staff, Beth Norcross and Tom Williams, for their willingness to work with us to come up with a responsible and balanced measure.

And, I would like to personally thank the minority staff on the Energy Committee for their hard work, professionalism and assistance. Jim Beirne and Gary Ellsworth are two of the best hands around, Mr. President, and Jim O'Toole's help has been most valuable. I thank them and I thank the chair for allowing me to make this statement on the Clarks Fork wild and scenic bill.

SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARK

Mr. BENTSEN. Mr. President, this legislation is the culmination of a great deal of work by the many citizens of San Antonio who strongly support the San Antonio Missions National Historical Park, and I urge its passage by the Senate. The establishment of the San Antonio Missions National Historical Park was one of the more satisfying accomplishments of my Senate career, and I am pleased now to sponsor this needed boundary adjustment. I salute my distinguished colleague in the Texas delegation, the very able Congressman ALBERT BUSTAMANTE, for his leadership in introducing this bill in the House and winning its passage there.

I also want to express my appreciation to the distinguished chairman of the Subcommittee on Public Lands, National Parks, and Forests, Mr. BUMPERS, and the chairman of the Committee on Energy and Natural Resources, Mr. JOHNSTON, for their consideration and assistance. They have brought this bill to the floor promptly and without amendments. Thanks to their efforts we are in a position to pass this bill in the Senate and send it directly to the President to be signed into law.

The bill now before the Senate will authorize an expansion of the San Antonio Missions National Historical Park. This expansion will implement recommendations made by the National Park Service in a February 1990 report. This bill would add 335.5 acres to the park, expanding it to 832 acres. Much of the land to be added would be donated by the city of San Antonio, the Catholic church, and the State of Texas. The new boundaries will provide additional protection to these historic resources and improve the administration of the park and the visitor's experience.

The bill will also raise the current $500,000 authorization ceiling for park development, clearing the way for the appropriation of funds for badly needed improvements to the park, such as a visitor center, in time for the celebration of the Christopher Columbus quincentennial in 1992.

Enacting this bill into law is a most appropriate way to recognize and celebrate National Hispanic Heritage Month. The San Antonio missions are a unique and priceless reminder of our proud Spanish heritage. They date back to the first Spanish settlements in the year 1718. For the better part of three centuries these missions have been active churches. They are living monuments to the past development of the great Southwest and to the impact of the Spanish component of our heritage on our entire Nation.

The San Antonio Missions National Historical Park is strongly supported by the people of San Antonio, the city, other interested organizations and agencies such as the Catholic church and the San Antonio River Authority, and the State of Texas. The San Antonio Conservation Society played a major role in the passage of the legislation establishing the park. The many citizens of San Antonio who are actively interested in the missions have formed a friends organization known as Los Compadres de San Antonio Missions National Historical Park. Los Compadres members now number over 1,300 individuals and businesses, and they have raised over $1 million in just 6 years for restoration, rehabilitation, and development projects in the park.

This legislation will help provide the additional Federal support needed to complement those local efforts and to make the San Antonio Missions National Historical Park the showcase of our nation's Spanish heritage that it should be.

Mr. President, 12 years ago I sponsored the legislation that established the San Antonio Missions National Historical Park in order to provide needed recognition and protection to these missions and their associated facilities. As a result, the Missions San Jose, Concepcion, San Juan, and Espada and associated structures, such as the Acequias and the Espada Dam, are now part of this park.

Twelve years ago the establishment of this park was just a dream, but it was a dream on the verge of fruition. Now the park is an established, successful reality. The San Antonio Missions National Historical Park is the third most popular visitor attraction in San Antonio, and the 10th most popular destination in Texas. It attracts over 500,000 visitors per year. That is the official count, but due to the difficulty of counting the visitors estimates of actual visitation range up to 1.5 million per year. The San Antonio Missions National Historical Park is expected to attract even more visitors in 1992 as a major New World center of the celebration of the Christopher Columbus quincentennial.

However, the visitor and interpretive facilities of this park are totally inadequate, especially in light of the current and expected visitor levels. Since the establishment of the park, not a single dollar of Federal money has been spent for improvements. The annual operating budget is less than half the level projected when the park was established, even though the projected visitation levels have been reached.

This park is expected to be the major U.S. center of the celebration of the upcoming Christopher Columbus quincentennial in 1992. However, if no changes are made the visitors who come to explore the 500-year history resulting from Christopher Columbus' famous voyage of discovery will not even have a visitor center available to help tell the story, and without a visitor center it will be impossible to share with park visitors the impact which 500 years of Spanish influence has had on our continent. The need for a visitor center is further underscored by the fact that the Park Service has been forced to move out of their former quarters at Mission San Jose due to raccoons, rats, mice, and other visitors which could not be controlled due to the deteriorated condition of the building.

Last year I helped get funds appropriated for planning a badly needed visitor center at Missions San Jose. It is my hope that we will be able to complete this job by appropriating the

needed construction funds for that visitor center this year so that it can be ready in time for the celebration of the Christopher Columbus quincentennial in 1992.

The proposed visitor center would be constructed partially on lands added by this bill. Additional lands would be added around Missions San Jose and Concepcion. Additional parts of the acequias for Missions San Jose, San Juan, and Espada would be added, and the Rancho de las Cabras, where livestock was raised for the Espada Mission, would also be added.

Mr. President, this legislation will help provide the additional Federal support needed to support local and state efforts and make San Antonio Missions National Historical Park the showcase of our Nation's Hispanic heritage that it should be. I urge its adoption by the Senate.

LAKE AMISTAD NATIONAL RECREATIONAL AREA

Mr. BENTSEN. Mr. President, this legislation is long overdue, and I urge its passage by the Senate. I salute my distinguished colleague in the Texas delegation, the very able Congressman ALBERT BUSTAMANTE, for his leadership in introducing this bill in the House and winning its passage there.

I also want to express my appreciation to the distinguished chairman of the Subcommittee on Public Lands, National Parks, and Forests, Mr. BUMPERS, and the chairman of the Committee on Energy and Natural Resources, Mr. JOHNSTON, for their consideration and assistance. They have brought this bill to the floor without amendments. Thus, Senate passage of this bill today will enable it to be sent directly to the President and signed into law.

The Amistad Dam and reservoir are located on the Rio Grande River just upstream from the cities of Del Rio, TX, and Ciudad Acuna, Coahuila. The U.S. side of the lake is now the Amistad Recreation Area and is managed by the National Park Service under a memorandum of agreement with the International Boundary and Water Commission. This legislation would elevate the status of this area by making it a national recreation area. This would give the National Park Service a more permanent presence and a stronger mandate to act to preserve the area's cultural resources, which are nationally significant.

This legislation is strongly supported by the Texas Historical Commission, which has led the effort to protect the valuable cultural resources of this area. The Amistad area contains the highest concentration of prehistoric dry cave sites in Texas. These remains document 10,000 years of nearly continuous aboriginal prehistoric occupation along the Rio Grande River. The cultural remains at these sites are deeply stratified and contain textiles, bone and wood implements, decorative ornaments, food remains, and stone tools. Pictograph panels adorn many shelter walls. The human record contained in this area is unsurpassed in the State of Texas and much of North America.

However, many of these priceless sites have not been well cared for over the years. Increased visitation brought about by the completion of Amistad Dam and the filling of the lake has brought with it an increase in vandalism and other damage. Elevating the status of this important area would provide a new impetus for the conservation, preservation and interpretation of the natural and cultural resources at Amistad. This legislation would allow the lake to continue to be a wonderful spot for public outdoor recreation and enjoyment, while at the same time helping to preserve the priceless national treasures housed in and near this area.

This is a nonpartisan issue, and the legislation has been endorsed by Governor Clements, the Texas Historical Commission, the United States-Mexico International Boundary and Water Commission, and the National Park Service.

This is legislation whose time has, I think, finally come. I first introduced legislation to establish the Amistad National Recreation Area with Congressman O.C. Fisher, Congressman BUSTAMANTE's predecessor, in the early 1970's. At that time it was opposed by the agencies involved, and it did not pass. I believe that since that time there has come about an increased sensitivity to the value of these irreplaceable reminders of our human history, and that dispute has now been settled.

Mr. President, this is a good bill. It will not change the existing management program for this area, and visitors who have been using and enjoying the Amistad area will notice no change except possibly the name on the sign out front. However, this change in status will enable Amistad to compete more effectively within the National Park Service budgeting process for funding, and it will highlight the attractiveness of this splendid area for potential visitors. I urge its passage by the Senate.

LAKE MEREDITH NATIONAL RECREATION AREA

Mr. BENTSEN. Mr. President, the legislation now before the Senate will make a significant contribution to the economic growth and development of the northern Texas panhandle area associated with Lake Meredith. I salute my distinguished House colleague, Congressman BILL SARPALIUS, for his leadership in developing this legislation and passing it through the House of Representatives. Although only in his first term in Congress, Congressman SARPALIUS was quick to recognize the importance of this legislation in terms of the positive impact that it promises for the tourism industry in the Texas Panhandle and for the benefits that it could help provide to the many Texans who now regularly use and enjoy the Lake Meredith area. He has been most effective in moving this bill through the House of Representatives, and I am pleased to be able to work with him in getting it passed in the Senate and sent to the President to be signed into law.

I also want to express my appreciation to the distinguished chairman of the Subcommittee on Public Lands, National Parks, and Forests [Mr. BUMPERS] and the chairman of the Committee on Energy and Natural Resources [Mr. JOHNSTON], for their consideration and assistance in bringing this legislation to the floor in a timely fashion and without amendments. Senate passage of this bill exactly as the House has passed it will clear it to be sent to the President and signed into law.

This legislation, which I strongly support, will designate Lake Meredith as a National Recreation Area, thereby making this unique area a full-fledged unit of the National Park System.

Lake Meredith was constructed by the Bureau of Reclamation as a water supply project in the mid 1960's. Since 1965 the area around Lake Meredith has been managed by the National Park Service under a memorandum of understanding with the Bureau of Reclamation, while the dam is operated by the Canadian River Municipal Water Authority.

Designating Lake Meredith as a National Recreation Area would codify the long-standing administrative arrangements between the Bureau of Reclamation and the National Park Service. Also, directing the NPS to assume permanent responsibility for resource protection, visitor services, and development should allow Lake Meredith to compete more effectively within the NPS for development and other funding needs. Just as a farmer can be expected to spend money for improvements on the land that he owns instead of the land that he rents, I think that the NPS may give a little higher priority to Lake Meredith when it is something more than a contract management situation.

This bill will also provide additional recognition to Lake Meredith as a tourist attraction. Lake Meredith is now the second most popular facility in the NPS southwest region, attracting some 1.5 million visitors annually.

In addition, the Lake Meredith park area already contains the Alibates Flint Quarries National Monument, which is the only National Monument in the State of Texas. This unique area was a source of flint for ancient Indian tribes throughout much of the American Midwest, and it contains

over 400 archeological sites, some of which are over 12,000 years old.

Mr. President, this bill will not in any way affect the management of Lake Meredith. The average visitor will notice no difference. Existing activities, such as hunting on these public lands, will be preserved unchanged. Oil and gas production, of which there is a considerable amount in the Lake Meredith area, will continue unchanged.

No visitor fees will be charged as a result of this legislation. I might add that the NPS already has the authority to charge entrance fees at Lake Meredith. It is the same authority that they have for other units of the National Parks System. This bill will not change that authority. The NPS has chosen not to charge entrance fees at Lake Meredith simply because they felt that the nature of the park made it too difficult adminstratively to collect such fees.

This legislation would grant long-overdue recognition to this area and would codify the long-standing and amicable relationship between the NPS, the Bureau of Reclamation, and the CRMWA. Mr. President, this legislation is most timely and helpful to the Panhandle area. I urge its passage by the Senate.

AMISTAD NATIONAL RECREATION AREA

Mr. GRAMM. Mr. President, I rise today in support of H.R. 967, a bill to establish the Amistad National Recreation Area which is a title of the pending bill H.R. 2570.

This legislation would create a unique resource at the International Amistad Reservoir along the Texas-Mexico border near Del Rio, TX. This area is managed by the National Park Service in conjunction with the International Boundary and Water Commission under a memorandum of agreement. Therefore, this bill would recognize the significance of these resources and establish a permanent method of preserving them.

Along the banks of the reservoir are prehistoric cave sites which contain numerous examples of rock art and pictographs and document nearly 10,000 years of continuous prehistoric occupation. In addition, there are numerous other cultural resources in the surrounding area resulting from early efforts to settle the area and the second transcontinental railroad.

The Amistad Reservoir is visited by nearly 1 million people each year, and the area is a popular site for outdoor activities, including fishing, boating, scuba diving, and hunting.

Mr. President, this legislation would ensure that these important artifacts, which are significant to the Nation, are preserved for the education and enjoyment of future generations of scholars and tourists. I thank you for this opportunity and urge my colleagues to give their approval to this bill.

SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARKS

Mr. GRAMM. Mr. President, I rise today in support of H.R. 4811, which will expand the boundaries of the San Antonio Missions National Historical Parks, which is a title of the pending bill.

This legislation would add over 300 acres to this system of parks which comprise one of the greatest concentrations of Spanish Colonial architecture in the New World. A recent study identified additional historic resources that were not included when the parks system was originally designated. These include the Rancho de las Cabras, the working ranch which supported Mission Espada, in Floresville, TX.

The Missions National Historical Parks are the 10th most popular tourist destination in Texas. Local leaders estimate that over 1 million visitors tour the missions annually. During the economic summit of last July, First Lady Barbara Bush hosted a tour of Mission San Jose for the spouses of the G-7 leaders.

In addition, a citizens group, Los Compadres de San Antonio Missions National Historical Park, has supported the park through extensive private fundraising efforts. These efforts have resulted in physical improvements to the park, including the new visitors center at Mission Concepcion, as well as archeological research and architectural restoration.

This legislation would also permit the development of additional visitors centers and interpretive displays at the missions. It is my hope that these improvements can be completed in time for the upcoming quincentennial celebration of Christopher Columbus' discovery of the New World so that visitors will be provided with additional information regarding the role of the missions in the development of Texas and the West.

These parks play an important role in the economy of San Antonio and the surrounding area and are strongly supported by the community. Mr. President, I urge my colleagues to show their support for the missions as well and to act favorably upon this legislation.

Mr. DECONCINI. Mr. President, I rise today in strong support of H.R. 2570 the Arizona Desert Wilderness Act of 1990. This legislation represents almost 2 years of continuous work by the Arizona congressional delegation and I am proud to have played role in its drafting and ultimate enactment.

As the Senate considers this legislation, a brief history of how we arrived at this point is in order. H.R. 2570 represents the consensus Arizona congressional delegation position on wilderness in our State. It is, with several exceptions, identical to S. 2117, the second wilderness bill that my colleague Senator MCCAIN and I have introduced this Congress. The first, S. 1080, was introduced last May and it would have designated as wilderness 895,150 acres of Bureau of Land Management and Fish and Wildlife Service lands. That legislation, for the most part, adopted the BLM recommendations on suitable acreage for wilderness designation in my State. At that time, I stated that we were introducing that legislation to elicit a thorough and candid analysis of this issue by our colleagues and constituents. Also, last year in the House, the senior member of the Arizona delegation, Chairman UDALL, introduced two wilderness bills that would have placed over 2.7 million acres of Federal land in the wilderness preservation system.

Our second wilderness bill, S. 2117 and the bill before the Senate today, H.R. 2570, reconciles the differences between Chairman UDALL's original bill and S. 1080.

Mr. President, I am happy to tell you and the Members of this body that my goal of a thorough and candid analysis has indeed been accomplished. After many months of discussions among members of the Arizona delegation, hearings both in Arizona and Washington, meetings with constituents and staff, we have arrived at the bill before you today—a consensus Arizona wilderness bill. This bill reflects what, in my opinion, is widespread agreement throughout my State on what wilderness should be in Arizona. While it does not contain everything that everybody wanted, this legislation is a fair and balanced wilderness bill.

This consensus bill designates, as wilderness, approximately 1.1 million acres out of the 2.1 million acres of BLM land currently in wilderness study status in Arizona. The land that is not designated as wilderness by this act will be released to multiple-use management. A particular emphasis of this bill is the protection of Arizona's rapidly disappearing desert riparian areas. Out of the seven riparian areas considered for wilderness suitability by the BLM, six are included in the wilderness preservation system and one, the Gila Box, will be made a National Riparian Conservation Area.

The major difference between Senator MCCAIN's and my original bill and S. 2117 and H.R. 2570 is the inclusion of two large wildlife refuges: The Kofa and Cabeza Prieta National Wildlife Refuges. When we introduced our first bill last year, I had concerns that the designation of these refuges as wilderness would impact the ability of the refuge managers to manage the very significant wildlife resources within them. However, in testimony before the House Interior committee, John

Turner, the Director of the Fish and Wildlife Service, allayed these concerns. He stated:

[T]he analysis and selection of management methodologies that comprise the requisite minimum tools for use in a wilderness area have not precluded positive management actions.

And—

On the KOFA Refuge, maintenance of approximately 80 existing wildlife watering facilities and construction of 7 new sites has occurred since the original [wilderness] proposal was submitted to Congress. On the Cabeza Prieta Refuge, similar habitat management efforts have also been implemented. We have modified methods of personnel and material transport from wheeled vehicles to helicopters where appropriate, but such modifications have not caused us to deay or forgo in any manner management actions considered necessary to further our mission in the administration, protection, and enhancement of the lands and wildlife for which we are responsible.

There are a number of other issues concerning this wilderness bill that I would like to touch upon briefly. The vast majority of the wilderness areas designated by this bill are in a desert environment with very little, if any, water associated with them. The question of whether a wilderness designation implies an additional water right has always been very controversial in the West and it was difficult for the delegation to reach a consensus on this issue. However, we in the Arizona delegation consider ourselves fortunate to have two outstanding water lawyers, JON KYL and JOHN RHODES. They worked with Chairman UDALL and the Arizona Department of Water Resources to draft an amendment to the House bill that addresses the issue of the Federal reserve water rights in wilderness areas. I do not believe it is an issue as to whether or not the creation of a wilderness area creates a reserve water right. Rather, I believe it to be an issue of how and in what arena these water rights will be quantified. The language that was adopted by the House states clearly that it is Congress' intent that these reserve water rights be quantified and clarified in the courts of the State. Furthermore, the language declares that this approach only applies to this bill. It is my belief that these issues should be resolved on a State-by-State basis. The water language in this bill is an Arizona solution for an Arizona wilderness bill.

There is an additional water issue that affects only two proposed wilderness areas; the Swansea Wilderness Study Area [WSA] and the Rawhide Mountains WSA. It is my understanding according to the participants in the water rights discussion, that this issue was not part of the agreement on the water rights language, that this issue was not part of the agreement on the water rights language. These two areas are in the Bill Williams watershed. This watershed contains the only significant unappropriated water rights in the State and the Arizona Department of Water Resources has indicated that there is a pending application for the unappropriated water in this watershed. It is our intent that the priority date for the reserve water right created by this legislation is the priority date of enactment and therefore, junior to both senior vested rights and pending applications for unappropriated water filed before the date of enactment.

Another wilderness issue that the Arizona delegation addressed was the issue of management of wildlife in wilderness areas. It is my personal opinion that Congress needs to further clarify and define the appropriate role of wildlife managers and Federal agencies in the management of wildlife within the wilderness areas designated by this legislation. As I stated earlier, many of the areas designated as wilderness by this bill are in a desert environment. Development pressures have greatly reduced the natural habitat of many species of wildlife. For example, the migratory patterns of the desert bighorn sheep have been disrupted by roads and other man-made obstacles. This prevents this species, in many instances, from seeking out its natural waters. In many of the areas designated as wilderness by this legislation, there do not exist natural sources of water and as a result the wildlife managers have had to undertake measures to provide it. The Arizona delegation wanted to ensure that these practices would be able to continue in wilderness areas. The bill before us today reflect this desire. We came to the conclusion that by including the wilderness wildlife management guidelines developed by the International Association of Fish and Wildlife Agencies in the committee report with a statutory reference in the bill, this will state, clarity, that wildlife management is compatible with wilderness.

Concerning cattle grazing, the delegation agreed that the guidelines contained in the Colorado bill, Public Law 96-560, have been successful in allowing for the proper management of livestock grazing in wilderness areas. The committee report includes these guidelines and the bill we are considering today contains a statutory reference to them.

As I stated earlier, a particular emphasis of this bill is the protection of Arizona's rapidly disappearing riparian areas. With the indulgence of the committee, I would like to take a moment to highlight two of these areas and outline briefly issues that we would like to have addressed by the committee. The one area that, in my mind, typifies the cooperative spirit in which this bill was drafted in White Canyon. White Canyon is located within an hour's drive of Arizona's largest metropolitan area. It is an area of tremendous beauty containing a deep and dramatic gorge with a perennial stream flowing through it. A significant number of wildlife species make their home in White Canyon. These include the mountain lion and black bear as well as a number of special status species. A major mining company, ASARCO Minerals, expressed to the delegation very significant concerns that the creation of this wilderness area would hamper its ability to develop its significant mineral resource in the vicinity. At the suggestion of the Arizona congressional delegation, ASARCO, wilderness proponents and BLM sat down and came to an agreement that will allow this area to become a wilderness area. It was agreed that with a modest boundary adjustment and report language recognizing the possible existence of this mine and stating that the designation of this wilderness area is not intended to prevent them from developing their resources outside the boundary, they would be able to continue with plans for this mine. The committee report accompanying this bill contains this language.

An area that is also worthy of mention is Upper Burro Creek. This area was not recommended for wilderness by BLM because the State of Arizona owned three key sections bordering the 8.5 miles of Burro Creek within the WSA. Those State land sections have since been acquired by BLM making it a much more manageable wilderness area. This unit consists of a steep, scenic canyon along Burro Creek and a large mesa. Upper Burro Creek is estimated to contain more than 25 percent of the wildlife species occurring in Arizona; more than any other BLM WSA. This area also contains many National Register quality archaeological sites. Santa Fe Minerals still holds substantial subsurface mineral rights within the Upper Burro Creek wilderness area. It is important for me to note at this point that this company has been a responsible corporate entity in Arizona. This is evidenced in part by the fact that Santa Fe negotiated the exchange of approximately 140,000 acres of subsurface mineral rights which enabled eight areas to be designated as wilderness by this bill. I have significant concerns that we are forcing this company to enter into another exchange so that they will not have to deal with the difficulties inherent with developing their resources in a wilderness area. Accordingly, at both Senator MCCAIN's and my request, statutory language was included in the bill to make it clear that it is Congress' intent that it is in the public interest to acquire the private subsurface mineral estate within the wilderness area.

Mr. President, Senator McCAIN and I have a number of amendments that are, for the most part, technical in nature. Those that are not include an amendment clarifying that the flood control operations of Alamo Dam and the dams of the Colorado River are not to be affected by this legislation. Also, responding to the concerns of the senior Senator of New Mexico, we are offering an amendment that clarifies that the creation of the Gila Box Riparian National Conservation Area will not impact the allocation of water to the State of New Mexico pursuant to the Colorado River Basin Project Act of 1968.

Mr. President, in coming to agreement on this wilderness bill, Arizona has once again demonstrated why its delegation is unique among those in Congress. We don't always see eye-to-eye on every issue, but we are able to put aside partisan differences for the good of the State we serve. This consensus wilderness bill is further example of this cooperative spirit. Each and every member of the Arizona delegation has made his mark on this legislation.

I particularly want to thank my colleague, Senator McCAIN, for his tireless efforts in working with me on this bill. Without the hard work of Senator McCAIN and John Raidt of his staff, we would not be in a position to pass this legislation. It has been a pleasure to work with the both of them.

I also want to say a few words about my good friend, Mo UDALL, chairman of the House Interior Committee. Over the years, he has earned my respect and admiration for his leadership on natural resource issues. He kept the delegation moving forward toward a compromise bill. His commitment to seeking this work completed has been an inspiration to me.

I want to also express our appreciation to the Governor of Arizona, Rose Mofford and her staff, particularly Bill Plummer of the department of water resources and Duane Shroufe with the game and fish department. Their expertise and counsel has been helpful and appreciated by this Senator. Their suggestions have been constructive and have made the Arizona wilderness bill a better bill.

Mr. President, almost 60 percent of the total landmass in Arizona is owned by the Federal Government. In Arizona, we are fortunate to have outstanding land mangers who administer this land. The process by which this bill was drafted has once again reinforced this fact in my mind. The Arizona Desert Wilderness Act designates both BLM and Fish and Wildlife Service lands as wilderness. Beau McClure and Dean Bibles of the BLM and Mike Spear, Jennifer Fowler-Propst, Bob Schumaker, and Milton Haderlie of the Fish and Wildlife Service deserve special recognition for all of their assistance to the delegation as we proceeded with this legislation.

I also want to extend my gratitude to Chairman JOHNSTON and Senator McCLURE for their efforts in ensuring the timely consideration of this legislation. Also, the chairman and ranking member of the Public Lands Subcommittee, Senator BUMPERS and Senator WALLOP, have played a critical role in the passage of the Arizona Desert Wilderness Act. Their counsel, and that of their staff—David Brooks, Tom Williams, and Jim Beirne—has been constructive and in my opinion, resulted in a better bill. The Arizona delegation has worked long and hard to get to this point and without their assistance it would have all been for naught.

As codrafters of this legislation, I have a number of issues I would like to raise with my colleague Senator McCAIN, in order that our intent concerning this bill is clarified.

PRIVATE OWNERSHIP WITHIN THE WILDERNESS AREAS DESIGNATED BY H.R. 2570

Within the boundaries of the upper Burro Creek Wilderness Study Area for example, there are approximately 6,000 acres of private mineral estate beneath the federally owned surface estate. H.R. 2570 was amended to include language stating that it is Congress' intent that private mineral estates should be acquired by the Secretary of the Interior in as timely a fashion as possible.

Mr. McCAIN. The senior Senator from Arizona is correct. Because development of the private mineral estate is likely to be incompatible with the wilderness values of the area. I believe that it would be in the pubic interest for the Secretary to acquire the private mineral estate ownership by exchange not only in this wilderness area, but the others designated by this legislation. H.R. 2570 was amended which will hopefully facilitate such exchanges. This provision is contained in section 101(j) of H.R. 2570.

Mr.DeCONCINI. I thank the Senator. He and I are in agreement on this issue. It is certainly in the public interest for the Secretary to use his existing authority to acquire the private mineral estate in the wilderness areas designated by this legislation and I hope he would do so in as timely a fashion as possible.

SANTA RITA AMENDMENT

Mr. McCAIN. The intent of title V of Public Law 100-696 was: First, to satisfy the debt of the State of Arizona for State land taken by the Bureau of Reclamation for construction of the Central Arizona Project [CAP]; and second, to provide for the acquisition of all State lands described in the act through exchange or eminent domain. The eminent domain authority was included because of the uncertainty under Arizona law whether the State would have exchange authority. The Arizona Supreme Court, in a subsequent decision, held that it did not.

The legislation identifies six State areas—Black Canyon Corridor, Lake Pleasant, Catalina State Park, Arivaca Lake, Madera-Elephant Head and Buenos Aires National Wildlife Refuge—for Federal acquisition and provides for the termination of several withdrawals on four Federal parcels to allow for disposal—Santa Rita Experimental Range, Red Mountain, and Fish and Wildlife Service's lands in the Havasu and Imperial National Wildlife Refuges. Title V was a plan worked out between the Federal and State land management agencies to better serve the public and to improve the management and administration of the lands involved.

Appraisals for the CAP, Federal and State land areas reflects a Federal deficit of $26.5 million. In an effort to accomplish the intent of title V, the BLM and the State looked to section 28 of the State's Enabling Act to satisfy the CAP debt and looked at public lands outside those specifically identified in title V to compensate the State for lands to be taken by eminent domain.

Unfortunately, the Department of the Interior Field Solicitor has determined that section 501 of the act precludes the use of section 28 of the Enabling Act to satisfy the CAP debt and that lands other than those specifically described in the act cannot be used to compensate the State for lands taken by eminent domain.

This opinion is inconsistent with the intent of title V. The authors of the legislation had no intention or expectation that section 501 of the act would eliminate the option of using section 28 of the State's Enabling Act to satisfy the remainder of the CAP debt to the State. Furthermore, this opinion is inconsistent with the intent of the law as described in section 502(a), which is to acquire all State lands listed in the act. Therefore, technical amendments to title V of Public Law 100-696 clarifying our original intent are necessary. The amendments will allow the satisfaction of the CAP debt, the acquisition of all State trust lands described in title V and the transfer of lands to the State which have value for the school trust.

Mr. DeCONCINI. That is correct. These amendments clarify that title V does not preclude the State's selection rights for the CAP compensation under section 28 of the State's Enabling Act. The amendments reaffirm that section 502(b) authorizes compensation in the form of additional public lands determined by the Secretary of the Interior to be of equal value to lands taken from the State by eminent domain. Also, the amendments clarify that lands described in section 507 can

be used as compensation for State lands acquired under the act.

Mr. McCAIN. That is correct. Title V provides an additional authority, not the sole authority, for satisfying the CAP debt. It is also important to point out that this clarification of section 502(b) does not establish new exchange authority. It is strictly limited to the payment in public lands for the State lands described in title V that are taken by eminent domain.

Mr. DECONCINI. That is my understanding also. The Arizona Supreme Court has ruled that State exchanges are unconstitutional and that a constitutional amendment is required to allow future exchanges. Although a constitutional amendment will be on November's ballot, there is no assurance that the initiative will pass. If it does not pass, the possibility of being able to acquire in the foreseeable future these State lands, which have very significant natural resources values, will be lost. Therefore, it is extremely important that these technical amendments be made at this time so that the results of our efforts in 1988 can be realized.

Mr. McCAIN. I ask unanimous consent that a letter from the Arizona State Land Department requesting the clarification involved in these amendments be included in the RECORD. Also, we are expecting a letter from the Department of the Interior in the near future requesting that clarifying technical amendments be introduced so that the intent of title V can be realized.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ARIZONA STATE LAND DEPARTMENT,
Phoenix, AZ, September 24, 1990.

Hon. JOHN MCCAIN,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: I am writing to ask for your support for including a Technical Amendment to Title V of the Arizona-Idaho Conservation Act of 1988 as part of the Arizona Wilderness Bill. The amendment would enable the Arizona State Land Department and the Departments of the Interior and Agriculture to proceed with the Santa Rita Public Lands Exchange that was authorized by the Arizona-Idaho Conservation Act.

The Santa Rita Public Lands Exchange will allow the State and the Federal Government to reposition state trust and federal public lands with major environment benefits. Trust lands inside parks, wildlife refuges and archeological areas will become Federally owned, and Arizona's University system will acquire the Santa Rita Experimental Range, an important wildland research area.

The Santa Rita Project has been three years on the making and is authorized by State legislation and Title V of the Arizona-Idaho Conservation Act. Unfortunately, Title V does not do all that we set out to do. It confines the State's selection rights to the Santa Rita Experimental Range and it does not authorize the Bureau of Land Management to add additional Federal lands to compensate the State for the higher value Trust lands that are designated for Federal acquisition by Title V.

We have reviewed the technical amendment that has been prepared for inclusion in the Arizona Widerness Bill, and wholeheartly endorse its inclusion so that we can proceed with the Santa Rita Public Lands Exchange project that is so vital to both Arizona, and the Departments of the Interior and Agriculture.

Please support the amendment.

Sincerely,

M.J. HASSELL,
Commissioner.

SAFFORD DOMESTIC WATER SUPPLY

Mr. DECONCINI. In addition to designating BLM and Fish and Wildlife Service lands as wilderness, H.R. 2570 also created the Gila Box Riparian National Conservation Area. This conservation area encompasses approximately 20,900 acres of prime riparian habitat along the Gila River and Bonita Creek. It is my understanding that the city of Safford obtains approximately 80 percent of their domestic water supply from Bonita Creek. Additionally, there are also several water delivery facilities within the conservation area that the city must have access for maintenance purposes. It is our intent that Safford's water supply from Bonita Creek as well as their ability to maintain these facilities not be adversely impacted by the designation of the Gila Box Riparian National Conservation Area.

Mr. McCAIN. I am in absolute agreement with my colleague in this regard. It is my understanding from the BLM that there is a road that runs along Bonita Creek and is used by the city of Safford to maintain their water delivery facilities. The BLM feels that there is adequate administrative authority for them to continue to allow this use in the conservation area. It is my expectation that as the BLM prepares its management plan for the Gila Box Conservation Area, this historical use be recognized and allowed to continue.

WATER RIGHTS

Mr. McCAIN. Mr. President, as my colleague, Senator DECONCINI, alluded to previously, the water rights language in this bill is the product of long and arduous negotiations involving a number of parties including, among others, members of the Arizona congressional delegation and the Arizona Department of Water Resources. I think that the language included in the bill is a sound and rational approach to deal with this controversial issue. However, after the bill was marked-up, an additional issue was raised concerning the Federal reserve water right created by this legislation and its relationship to pending applications for water filed with the Arizona Department of Water Resources. Two areas designated as wilderness by this legislation are in the Bill Williams watershed which contains the only significant unappropriated water in the State of Arizona. The city of Scottsdale has an application pending for the unappropriated water rights in this watershed. It is my understanding that under Arizona water law, the Arizona Department of Water Resources is bound to approve applications for water rights if they do not, among other things, conflict with vested rights. In view of the fact that the priority date of pending applications is the date they are filed with the Arizona Department of Water Resources and the priority date of the reserve water rights created by this legislation is the date of enanctment, it is my understanding that the Federal reserve right would be considered junior to pending applications. Without commenting on the merits of this application, we believe that Arizona law allows the Arizona Department of Water resources to consider the pending application unimpeded by the existence of the Federal right.

Mr. DECONCINI. My distinguished colleague has correctly assessed the situation with respect to the Swansea and Rawhide Mountains Wilderness Areas, the two areas in the Bill Williams watershed. Our intent always has been that the priority of date of the rights is the date of enactment and therefore junior to senior vested rights and pending applications filed before the date of enactment.

BLACK ROCK WASH ROAD

Mr. DECONCINI. It is my understanding this amendment is intended to provide authority to the Secretary of the Interior and the Secretary of Agriculture for signing, fencing and maintenance of that section of Black Rock Wash Road located within the boundary of the San Carlos Apache Reservation.

Mr. McCAIN. That is correct. This is a matter of particular concern to Congressman KOLBE who has requested the addition of this amendment. The Black Rock Wash Road is the sole access route for ranchers whose homes are adjacent to the Santa Teresa Wilderness area. In addition, the BLM and Forest Service need to use the road for administrative purposes. Therefore, upkeep of the road is important and the reason we are authorizing cooperative agreements to provide for maintenance.

Mr. DECONCINI. There is some question as to whether the portion of Black Rock Wash Road located within the reservation boundary is a tribal road or a public road, how is that question affected by this amendment?

Mr. McCAIN. This amendment does not expressly or impliedly attempt to address the road ownership question. Resolving this longstanding controversy is beyond the scope of the wilderness bill and it would be inappropriate to address it in H.R. 2570.

WHITE CANYON

Mr. DECONCINI. Mr. President, in a number of areas that we have considered for wilderness designation, there have been many existing mining claims and, additionally, a lot of expressed interest in mineral potential. By working cooperatively with the mining interests, the wilderness proponents, and the Bureau of Land Management, we have arrived at agreements that have allowed us to make some significant wilderness recommendations.

One such area that has been included in this bill is the White Canyon Wilderness Area. However, an additional concern of the mining interests in this area is the long planned development of significant mineral resources not far from the wilderness boundaries.

In making this recommendation, we are fully aware that these mining activities, as the company points out, could impact the White Canyon Wilderness in terms of noise, dust, vehicle emissions, or the other unusual byproducts of mine development. Nonetheless, Senator MCCAIN and I have agreed that wilderness designation is very important in providing other protection to this unique and beautiful canyon.

Mr. MCCAIN. That is certainly correct, Mr. President. This is a very significant riparian area and one which we felt deserved to be given wilderness protection. It is within a short driving distance from Phoenix, Arizona's largest metropolitan area; and, will certainly be under increased recreational pressure in the upcoming years. I think it is significant to also point out that the proposed mining operations are downstream from the canyon and that neither water quality nor quantity in the canyon should be affected in any way.

Mr. DECONCINI. Mr. President, Asarco Mining Co., which is the company with mining interests in the area, has been very cooperative from the start in working with the Bureau of Land Management and with the Arizona congressional delegation. They are willing to forego future mining opportunities within the canyon area, but have expressed serious concerns as to how wilderness designation would effect mining operations which are planned in the immediate vicinity. Again, there is no doubt that dust, noise, and other impacts of normal mining activities could be detected within the boundaries of the White Canyon Wilderness area.

Knowing that, we have recommended this wilderness designation with the expressed understanding that it is not our intent, nor the intent of Congress, to limit or restrict normal mining activities because of those effects. In fact, language was included in the committee report addressing this concern. The committee recognized that large-scale mining operations may be developed in relatively close proximity to the boundaries of the White Canyon Wilderness and it is not our intent to establish a wilderness area to impede or unduly limit those normal activities.

Mr. MCCAIN. I would further point out, Mr. President, that the development and operation of these mining activities would be subject to all relevant Federal environmental laws and regulations and to all State and local laws, regulations, and permit requirements and I would hope that the company will do everything to mitigate impact to the greatest extent possible.

SAN CARLOS INDIAN COMMUNITY LAND CLAIMS

Mr. MCCAIN. Certain lands within the Gila Box Riparian National Conservation Area are subject to claims by the San Carlos Apache Indian Tribe. Is it correct to say that the inclusion of these lands within the NCA is not intended to decide or in any way adversely affect the claims of the San Carlos Apache Tribe?

Mr. DECONCINI. That is right. The inclusion of lands in the NCA is not intended to affect the claims of the San Carlos Apache Tribe. If through appropriate legal channels the boundary of the reservation is determined to include lands within the NCA, adjustment of the tribal boundary would in no way be affected or prejudiced by the NCA status.

Mr. MCCAIN. Would the Senator agree that the inclusion of the lands claimed by the San Carlos Apache Tribe within the NCA will provide the area with more protection for the lands pending the resolution of the tribe's claims, than it would without the special status, where the land would be subject to mineral claims and other uses, and that the more protective NCA status benefits the tribe should its claims be found to be meritorious?

Mr. DECONCINI. I believe that clearly to be the case.

The PRESIDING OFFICER. If there is no objection, the bill is deemed read the third time and passed.

EXECUTIVE SESSION

UNANIMOUS-CONSENT AGREEMENT

Mr. SANFORD. Mr. President, as in executive session, I ask unanimous consent that when the Senate proceeds to consideration of Executive Calendar No. 12, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it be considered as having been advanced through the various parliamentary stages up to and including the presentation of the resolution of ratification. *Provided further,* That the resolution be considered under a time limitation of 10 minutes, to be equally divided and controlled by the chairman and ranking member of the Committee on Foreign Relations, or their designees; that the reservations, understandings and declarations recommended in Senate Executive Committee Report 101-30 be considered as having been adopted and treated as original text for purposes of further amendment; that the following four amendments to be offered by the Senator from Rhode Island, Mr. PELL, for himself, and Mr. HELMS, be considered en bloc and be the only amendments in order: An amendment to strike the first reservation dealing with Federal-State issues; and amendment to insert an understanding on the same subject; an amendment to part C of the first understanding dealing with lawful sanctions; and an amendment to the resolution dealing with the deposition of the instrument of ratification; that the time for the amendments offered by the Senator from Rhode Island [Mr. PELL] be provided from the time on the resolution; that following the using or yielding back of time on the amendments and resolution, the Senate conduct two back-to-back votes, one on the en bloc amendments if a rollcall vote is ordered and on the resolution of ratification; that no motions to recommit be in order; that after the completion of the votes or vote, the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The clerk will report the resolution of ratification.

The assistant legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein) That the Senate advise and consent to the ratification of The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by unanimous agreement of the United Nations General Assembly on December 10, 1984, and signed by the United States on April 18, 1988, *Provided* That:

I. The Senate's advice and consent is subject to the following reservations:

(1) That the United States shall implement the Convention to the extent that the Federal Government exercises legislative and judicial jurisdiction over the matters covered therein; to the extent that constituent units exercise jurisdiction over such matters, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Convention.

(2) That the United States considers itself bound by the obligation under Article 16 to prevent "cruel, inhuman or degrading treatment or punishment," only insofar as the term "cruel, inhuman or degrading treatment or punishment" means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.

(3) That pursuant to Article 30(2) the United States declares that it does not consider itself bound by Article 30(1), but reserves the right specifically to agree to follow this or any other procedure for arbitration in a particular case.

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Convention:

(1)(a) That with reference to Article 1, the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subject to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

(b) That the United States understands that the definition of torture in Article 1 is intended to apply only to acts directed against persons in the offender's custody or physical control.

(c) That with reference to Article 1 of the Convention, the United States understands that "sanctions" includes judicially-imposed sanctions and other enforcement actions authorized by United States law or by judicial interpretation of such law provided that such sanctions or actions are not clearly prohibited under international law.

(d) That with reference to Article 1 of the Convention, the United States understands that the term "acquiescence" requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.

(e) That with reference to Article 1 of the Convention, the United States understands that noncompliance with applicable legal procedural standards does not per se constitute torture.

(2) That the United States understands the phrase, "where there are substantial grounds for believing that he would be in danger of being subjected to torture," as used in Article 3 of the Convention, to mean "if it is more likely than not that he would be tortured."

(3) That it is the understanding of the United States that Article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in territory under the jurisdiction of that State Party.

(4) That the United States understands that international law does not prohibit the death penalty, and does not consider this Convention to restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States, including any constitutional period of confinement prior to the imposition of the death penalty.

III. The Senate's advice and consent is subject to the following declarations:

(1) That the United States declares that the provisions of Articles 1 through 16 of the Convention are not self-executing.

(2) That the United States declares, pursuant to Article 21, paragraph 1, of the Convention, that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. It is the understanding of the United States that, pursuant to the above mentioned article, such communications shall be accepted and processed only if they come from a State Party which has made a similar declaration.

The PRESIDING OFFICER. Debate on the resolution will be 10 minutes equally divided between the Senator from Rhode Island and the Senator from North Carolina.

The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, this convention is the product of some 7 years of intense negotiation in which the United States played an active role. The convention was unanimously adopted by the U.N. General Assembly on December 10, 1984, the 36th anniversary of the Universal Declaration of Human Rights. It has now been ratified by or acceded to by 51 States and signed by 21 others.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment represents a major step forward in the international community's campaign to combat torture because it makes torture a criminally punishable offense and obligates each State party to prosecute alleged torturers or extradite them for prosecution elsewhere.

The Reagan administration submitted the convention to the Senate in May 1988 with 19 proposed U.S. conditions, many of which were of concern to the human rights community, the American Bar Association, and others. After consulting with these groups, the Bush administration substantially reduced and revised the proposed list of conditions. I appreciate and applaud this effort.

The Foreign Relations Committee held a hearing on the treaty on January 30 of this year. On July 19, the committee voted 10 to 0 to report favorably the convention with a resolution of ratification containing the reservations, understandings and declarations proposed by the Bush administration.

In categorizing the treaties pending before the Senate, the administration listed the Convention Against Torture as one for which there is an urgent need for Senate action. At the appropriate time, I will be offering four amendments en bloc on behalf of myself and Senator HELMS. The first three amendments would make changes in the language of the resolution of ratification dealing with the issue of Federal-State relations as it impacts on our obligations under the treaty and with the lawful sanctions issue in article 1. These have been worked out with the administration and the administration supports their adoption. The fourth amendment would add a new proviso to the resolution of ratification regarding deposition of the instrument of ratification by the President. This proviso will not be included in the instrument. The administration accepts this amendment. The administration strongly supports ratification of the convention with its proposed conditions, as modified by the committee amendments.

In 1984 Congress enacted a joint resolution, which I sponsored along with Senator Percy, reaffirming the U.S. Govenment's opposition to torture. By ratifying this convention, the United States will demonstrate that it is determined to take concrete steps to eradicate this evil and inhumane practice.

I yield the floor.

Mr. HELMS. Mr. President, I commend the distinguished Senator from Rhode Island for his cooperation and courtesy in working out the problems in developing the proviso package to the convention. He has been unfailingly cooperative and understanding in coordinating the negotiations between our respective staffs and the Department of State. I commend him for his contribution to the negotiation process.

We now have worked out an agreement that all sides support. The State Department is satisfied that the United States will adhere to its obligations under the convention. The distinguished chairman has my assurance that the sovereignty proviso will be attached only to the resolution of ratification and not to the instrument of ratification.

Finally, I am satisfied that U.S. constitutional principles will prevail under this convention, and therefore I support its adoption with the proviso package offered by the distinguished chairman of the Foreign Relations Committee, my good friend from Rhode Island, Mr. PELL.

Mr. President, I happen to be one of those Senators who believes that the Constitution of the United States is the best form of government ever devised by the mind of man. As my late great friend and Senate mentor, Sam Ervin, often said, the Constitution should be in all of our thoughts all of the time. I feel that I would be derelict in my duties as a U.S. Senator sworn to uphold the Constitution were I to disregard the potential conflict between what the Constitution actually says and those who try to say what the Constitution says.

But all of that has been worked out. I thank my friend again.

THE U.N. CONVENTION ON TORTURE

Mr. President, we are here today to consider two lofty ideals. The first has to do with the expression of the revul-

sion of civilized nations against torture. The second has to do with the protection of the noblest legal expression of the human, the U.S. Constitution. After much debate and discussion about the U.N. Convention Against Torture, I believe that we have devised a way to implement the ideals of the Torture Convention and fundamental principles of the U.S. Constitution.

In the past, multilateral conventions dealing with criminal law and procedure on the international level have raised a number of difficulties when they were sought to be applied to U.S. law. The U.S. domestic legal system is based on the U.S. Constitution. Our Constitution is unique. It does and must take precedence over any other international legal regime.

During the past decade, starting with the Genocide Convention, the Senate attached either a reservation or an understanding to eight different treaties and conventions dealing with the subject of international criminal law putting on record the primacy of the Constitution. The Senate did this because case law is not clear and convincing on the subject of constitutional sovereignty.

In the case of Ware versus Hilton, at the end of the 18th century, Justice Iredell stated that treaties were equal to the Constitution. That case has never been overruled. In the famous Curtiss-Wright decision of 1936, Justice Sutherland strongly implied that the chief executive, in matters of foreign policy, was above the Constitution. That case also has never been overruled. In the case of Reid versus Covert, nearly two generations ago, in 1952, Justice Douglass, in a two sentence expression of dicta, did assert the supremacy of the Constitution. This statement was challenged in a concurring opinion by Justice John Marshall Harlan, widely acknowledged to have been the best scholar on the Court, who flatly stated that the Constitution was not necessarily supreme over treaties. The subject matter of that case dealt with an executive agreement, not with a treaty.

Now, I happen to be one of those Senators who believes that the Constitution of the United States is the best form of government ever devised. As my great friend and Senate mentor, Sam Ervin, often said, the Constitution should be in all of our thoughts all of the time. I would be derelict in my duties as a U.S. Senator sworn to uphold the Constitution were I to disregard the potential conflict between what the Constitution actually says and those who say what the Constitution says.

Were the Senate to omit this proviso from the resolution of ratification, potential harm could be done to those constitutional safeguards guaranteed by the Bill of Rights. There could also be problems of due process, the presumption of innocence, and the right to confront one's accusers, just to name a few examples. However, I have agreed to place this proviso only on the resolution of ratification since it accomplishes international notification—the same end that would be accomplished by being included in the articles of ratification.

For the past 6 years, ever since Senate approval of the Genocide Convention, the Senate has attached to international criminal law instruments a sovereignty reservation or understanding which clearly acknowledges the supremacy of the U.S. Constitution. If, as its opponents claim, the sovereignty proviso is meaningless, then no harm is done. If, however, as I and many other Senators believe, the sovereignty clause is meaningful, then it is of the highest legal importance to have it attached to the resolution of ratification where it will put future administrations on notice as to the primacy of the Constitution in U.S. domestic law.

In addition, Mr. President, the Reagan administration had developed a reservation which exempted the United States out of the jurisdiction of the Committee on Torture, which has the responsibility of investigating alledged complaints, both by individuals and by states, of torture and other forms of cruel punishment. I believe that the Bush administration has made a serious mistake in dropping that reservation. To see why this is a mistake one only has to look at the current membership of the Committee on Torture, which includes a representative from the Soviet Union and a representative from Bulgaria.

The Soviet Union and Bulgaria have their own particular expertise in the matters of torture. This Convention's Committee on Torture is a farce, and it may be a dangerous farce. One could well say in this case that the lunatics are indeed running the asylum. I do not want those folks poking their noses into the operation of the U.S. legal system. They have plenty to do with the notorious injustice exemplified by the two countries I have just mentioned.

Therefore, Mr. President, although I am reluctantly accepting the exclusion of the Torture Committee from the proviso package I have worked out with the distinguished chairman of the Foreign Relations Committee, I am also pointing to the possibility of future difficulties caused for the United States by this Torture Committee. I believe that the Reagan administration was right in its more cautious approach.

However, since this Convention is primarily symbolic, it is not necessary to engage in a superfluous debate. Let us hope that the symbolism of the evils of torture will be enough to end that scourge of mankind.

AMENDMENT NO. 3200

(Purpose: To clarify ambiguities in the Federal/State system)

AMENDMENT NO. 3201

(Purpose: To clarify ambiguities in the Federal/State system)

AMENDMENT NO. 3202

(Purpose: To clarify relationship between domestic law and international law)

AMENDMENT NO. 3203

(Purpose: To add a new proviso regarding deposition of the instrument of ratification)

Mr. PELL. Mr. President, I send to the desk now the floor amendments and ask that they be considered en bloc.

The PRESIDING OFFICER. The clerk will report the amendments.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. PELL], for himself and Mr. HELMS, proposes amendments en bloc numbered 3200 to 3203.

Mr. PELL. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 3200

Strike the first reservation dealing with Federal/State issues in part I of the resolution of ratification.

AMENDMENT NO. 3201

Insert the following understanding on Federal/State issues in part II of the resolution of ratification: "That the United States understands that this Convention shall be implemented by the United States Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered by the Convention and otherwise by the state and local governments. Accordingly, in implementing Articles 10-14 and 16, the United States Government shall take measures appropriate to the Federal system to the end that the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfillment of the Convention.".

AMENDMENT NO. 3202

In part c of the first understanding under part II of the resolution of ratification, strike everything after the world "law" on line 5 and insert in lieu thereof the following: ". Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.".

AMENDMENT NO. 3203

At the end of the resolution of ratification, add the following:

"IV. The Senate's advice and consent is subject to the following proviso, which shall not be included in the instrument of ratification to be deposited by the President:

"The President of the United States shall not deposit the instrument of ratification until such time as he has notified all present and prospective ratifying parties to this Convention that nothing in this Convention requires or authorizes legislation, or other action, by the United States of Amer-

ica prohibited by the Constitution of the United States as interpreted by the United States.".

Mr. PELL. Mr. President, the first amendment strikes the first reservation dealing with the federal-state issue in the resolution of ratification.

The second amendment adds a new understanding on this matter to part II of the resolution. This new language is designed to clarify ambiguities in the original federal-state reservation and to hone in on those specific articles of the convention where the federal-state system could affect U.S. compliance.

The third amendment modifies the language in part C of the first understanding related to lawful sanctions.

Under article 1 of the convention, pain or suffering resulting from lawful sanctions does not constitute torture. The resolution of ratification stipulates that sanctions, to be lawful, would have to be permitted under U.S. law and not be prohibited under international law.

The amendment that I am offering would replace the reference to international law with a reference to the object and purposes of the convention itself.

This amendment is designed to overcome concerns raised by my distinguished colleague, Senator HELMS, about the relationship between domestic and international law in determining the lawfulness of sanctions. The language of these three amendments has been worked out in consultation with the administration and the administration supports these revisions.

The fourth amendment would add a new proviso to the resolution requiring the President to notify all present and prospective parties to the convention that nothing in the convention requires or authorizes any legislation or other action prohibited by the Constitution.

The amendment makes clear that this proviso is not to be included in the instrument of ratification.

This proviso does not constitute a reservation. It will not alter our obligations under the convention.

Because it is not a reservation, other countries cannot invoke it on a reciprocal basis to limit or eliminate their obligation to comply with the convention.

The only obligation in this amendment is for the President to notify other countries that the convention does not authorize or require action inconsistent with the Constitution—a view that the administration shares.

I believe that the President can and will comply with this proviso by simply notifying all countries of our position.

The purpose of this amendment is to address concerns raised by the distinguished ranking minority member of the committee, Senator HELMS, about the legal relationship between multilateral conventions and the Constitution.

The administration's view, which I share along with the American Bar Association and Amnesty International, is that this proviso is unnecessary because nothing in this convention requires or authorize legislation or other action prohibited by the Constitution. Also, it is well settled constitutional law that the Constitution is supreme law over a treaty, as held in Reid versus Covert.

Nevertheless, the administration is willing to accept this proviso because it is not a reservation, it will not be included in the instrument of ratification, and it will not in any way alter U.S. obligations under the convention.

Mr. President, the amendments that I am offering address all of the concerns raised vis-a-vis this treaty. I move adoption of the amendments en bloc.

I yield the floor and yield back such time as I may have.

SOVEREIGNTY AMENDMENT ON TORTURE CONVENTION

Mr. HELMS. Mr. President, there should be no controversy regarding the proviso which I call the sovereignty proviso. Similar language has been approved by the Senate either as a reservation or as an understanding to be attached to eight different international conventions which impact upon the subject of domestic criminal law.

Today we are considering another convention which purports to undertake obligations relating to our domestic criminal law. The Senate, if it wishes to preserve the supremacy of the Constitution, should once again attach this language.

Specifically, the amendment adds to the Senate Resolution of Ratification by requiring that the President, before he deposits the articles of ratification, to notify all pertinent parties that nothing in this convention requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.

It puts other countries on notice that should a conflict arise in this country between obligations imposed by this convention, and obligations imposed by the U.S. Constitution, that our country shall follow the Constitution.

It puts other countries on notice that our Constitution is the supreme law of the land, a law which can never be invalidated or modified in any degree by an international obligation.

The issue is as clear-cut as that.

I take it as a given principle that the underlying object of U.S. diplomacy is to protect and enhance, both in the short run and in the long run, the sovereignty and independence of the United States. This sovereignty is both inherent in, and symbolized by, the Constitution of the United States.

It follows as a necessary corollary that international law is a mere subordinate agent to the U.S. Constitution. When the President of the United States concludes a treaty with another nation or group of nations, he does so independently of any regime of international authority. A treaty is a contract between two independent parties; but unlike domestic contracts which are subordinate to the U.S. Constitution and customary law, a treaty is without sanctions other than the good faith, prestige and power of the contracting parties.

This means that the President retains full authority to interpret the treaty in any manner consistent with the U.S. Constitution, despite any interpretation placed upon it by any other party. The President, for reasons of prudence or policy, may choose to submit a dispute to arbitration; but he is neither required to do so, nor to accept the results of any arbitration. The sovereignty of the U.S. Constitution must be his ultimate guide, even if enforcing that sovereignty derogates from any system of international law. International law is merely a combination of codification and basic international customary practice leading to expectations of action by a nation state, but it can in no way be determinative of any such act.

Moreover, the U.S. Constitution is something unique among legal systems in the world. No other country allows its sovereignty to repose in its Constitution. For most nations, a constitution is merely a basic statement of positive law intended to guide subsequent delineations of specific regulations. The U.S. Constitution is not a statement of positive law. It is a charter of permitted Federal actions, providing a framework leaving intact the legal systems of the several states. Without the Constitution, the Federal Government would have no sovereignty.

Therefore, the relative positions of the United States versus other nations are not comparable.

I think we should all agree that the Constitution is the supreme law of the land, and neither a treaty nor an executive agreement can authorize action inconsistent with it. I know that there are some who argue that the supremacy of the Constitution was unambiguously established by the Supreme Court with Reid versus Covert (1957). Although the general purport of that case would tend to support the principle, the fact is that even the affirming justices wrote several opinions, disagreeing with the reasons of the others for supporting the principle. For every distinguished jurist whom you can name who believes the matter is settled, another distinguished jurist

can come forward to say that it is not settled. If the chances are only 50–50 that it is settled, the gamble is too great.

The State Department agreed only reluctantly with my proviso because they argued that my proposal becomes very damaging at the international level. Such an assertion makes sense only if you believe that the international level is superior in authority to U.S. sovereignty. Since I take an oath to uphold the U.S. Constitution, I am required to believe that the integrity of U.S. Constitution is a matter superior to any damages which might or might not result in subordinate concerns such as the international level.

The Torture Convention is by and large a rhetorical gesture, expressing the revulsion which every decent nation has against torture. Obviously, there is no way that a sovereignty clause can upset the object and purpose of a rhetorical gesture.

But if the convention is meant in itself to be anything more than a rhetorical gesture, or to lay the basis to go beyond a rhetorical gesture, then it may present a clear and present danger to U.S. sovereignty and to the people of the United States. When even nations notorious in the annals of torture such as the Soviet Union and Bulgaria, piously sign such a treaty, it cheapens the consensus.

Finally, there is the question of how the judiciary in the United States might treat the convention. If, in the future, a so-called creative judiciary here in the United States began to interpret the standards of the convention as superseding U.S. customary and constitutional law, then we will wish that the U.S. Senate had upheld its obligation to protect the U.S. Constitution by adding this proviso.

For the last 6 years, since Senate approval of the Genocide Convention, the Senate has attached to all international instruments which impinge upon domestic criminal law a sovereignty reservation or understanding which clearly acknowledges the supremacy of the U.S. Constitution. If, as its opponents claim, the sovereignty proviso is meaningless, then no harm is done by its approval. If however, conflicts arise between U.S. obligations under this convention and under the Constitution, then this proviso will be of paramount importance in protecting the Constitution. The Senate has approved this language eight times before, and it should do so again today.

Mr. PELL. Mr. President, I ask for a division vote.

The PRESIDING OFFICER. The question is on agreeing to the amendments, en bloc.

Those in favor of the amendments will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

The amendments (No. 3200 through No. 3203) were agreed to.

Mr. PELL. Mr. President, I thank the Senator from North Carolina for his support this afternoon. I thank him very much indeed. We worked very hard to craft this present agreement to enable Senate action on this convention.

I would also like to express my appreciation to the committee staff director, Beryld Christianson, the minority staff director, Dr. James Lucier, and the two professional staff members most responsible for the work on this convention, Dr. Nancy Stetson and Dr. Robert Friedlander.

Mr. MOYNIHAN. Mr. President, the Senate will shortly vote to give its advice and consent to the ratification of the U.N. Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment. This is an important day for the Senate for two reasons. First, because we will be giving our consent to the ratification of a very important international agreement. The United States has invested enormous resources in this convention. For 7 years our diplomats labored to make the convention more than just words on paper. They made its obligations concrete, meaningful, and, as never before, enforceable. I believe that this is an important step in the continuing battle to end man's inhumanity to man.

This is an important day for another reason. Some years ago the Senate made a mistake. An important international agreement, the Genocide Convention, had languished on the Senate Calendar literally for decades. In order to move forward with the convention, the Senate agreed to attach a reservation to its consent to ratification. This was the so-called sovereignty reservation. It seems innocuous. It states that the convention does not require or authorize any unconstitutional legislation.

The problem with this reservation is that it renders our obligations uncertain. It is quite different from a reservation which states that the United States will not abide by this article or that. It says to every other nation in the world that they must figure out for themselves whether we adhere to a particular provision or not. It purports to condition every provision of the treaty on the entire corpus of constitutional jurisprudence.

Not surprisingly, various nations objected. Strenuously. Our closest allies objected. By sharp contrast, however, nations which felt that the convention might be invoked against them did not object. They could see the advantage of being able to invoke their own domestic legislation to avoid their obligations and then claim that they had done no more than had the United States. In short, the sovereignty reservation distressed our allies and gave comfort to our adversaries.

Subsequently, many Senators began to realize the magnitude of this mistake. The dangers of the reservation became especially obvious when it was attached to several bilateral mutual legal assistance treaties. The United States found to its chagrin that other nations were drawn to the advantages of the reservation like moths to a flame, invoking their own domestic legislation in efforts to avoid their obligations. International agreements of this type are specifically intended to prevent other nations from invoking their domestic legislation and the Sovereignty Reservation directly undermines this objective.

Ironically, the reservation is also completely unnecessary. The Supreme Court emphatically resolved this point over three decade ago. In Reid versus Covert, decided in 1957, Justice Black wrote:

> It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by Article V. The prohibitions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the Executive or by the Executive and the Senate combined.
>
> There is nothing new or unique about what we say here. This Court has regularly and uniformly recognized the supremacy of the Constitution over a treaty.

Thus, the reservation does no more than state established constitutional law as regards our domestic legal system. It is clear that the U.S. Government cannot carry out any action which would violate the Constitution even if it is obligated by a treaty to do so. If a treaty obligation violates the Constitution, the U.S. Government will be in violation of its international obligations when it fails to comply. But it cannot—it does not have the constitutional authority—to rectify that fact.

Let me be clear. Neither the Genocide Convention nor the Torture Convention require the United States to undertake any unconstitutional acts. Were that to be the case, the Senate would not give its consent to ratification or would insist upon a specific reservation stating that the United States would not agree to be bound by that specific unconstitutional obligation.

In the case of this convention the Senate is not adopting a sovereignty reservation. The Senate is not insisting upon a reservation. This is not an understanding. It will not be attached to our instrument or ratification. The Senate is simply stating a constitution-

al truism. Namely: as a matter of domestic law, the Convention does not—as, indeed, it could not—authorize any unconstitutional legislation. The Senate is simply stating that the President will not deposit the instrument of ratification until it has informed other states of this fact of our constitutional system.

This does not, in any way, alter the legal obligations of the United States as a matter of international law. The United States will not be able to invoke this statement as a defense to its obligations under the convention and no other state will be able to invoke this statement on a reciprocal basis against the United States.

I remain concerned that this statement will create a political and diplomatic problem for the United States and provide a rhetorical device which nations using torture can employ to defend their actions. This will not, as I have stated, be a sound legal defense to their conduct. Nonetheless, it will inevitably and unfortunately be used. I continue to oppose this wholly unnecessary statement and will oppose even this type of proviso in the future. It is only because the United States has invested so much in this convention and because the failure of the United States to ratify during this Congress would be so very unfortunate and would so damage our reputation in international circles that I have reluctantly agreed to this arrangement. It has no legal effect whatsoever. It is unwise and unnecessary. But it is a step in the right direction.

Mr. President, I ask unanimous consent that a letter concerning the sovereignty reservation signed by a bipartisan group of eight Senators be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, October 5, 1990.

DEAR COLLEAGUE: The United Nations Convention Against Torture will come before the Senate shortly. It is strongly supported by the Administration, the Committee on Foreign Relations and the American Bar Association. The Convention establishes standards which can be used to bring charges against countries practicing torture like Iraq.

The Senate may be asked to create a dangerous "escape clause" for human rights abusers by adopting a totally superfluous "sovereignty reservation".

The reservation—which states that the Convention does not authorize unconstitutional laws—is superfluous because it is already established constitutional law that a treaty cannot override the Constitution (see Reid v. Covert, 354 U.S. 1, 16-17 (1957)). Moreover, the Convention simply does not require unconstitutional legislation.

The reservation is unnecessary—it also has the potential to do great harm. The "sovereignty reservation" will protect human rights abusers because it can be invoked on a reciprocal basis by every state abusing human rights pursuant to its domestic legal system. Our Constitution does not allow human rights abuses, but that is not true for every nation. In fact, it is not uncommon for other nations to permit "exceptions" to the normal protection of human rights during emergencies. If we attach the reservation to the Torture Convention states like the People's Republic of China which permit "reeducation" and forced labor can reject complaints based on the Convention by invoking our own reservation. The Administration, the ABA, Amnesty International and other human rights groups strongly oppose the reservation for that reason.

True, the Senate adopted the "sovereignty reservation" on the Genocide Convention and some legal assistance treaties. The result? Our closest allies have vigorously objected to our "sovereignty reservation", arguing that it undercuts the Convention. Experience has convinced the Departments of State and Justice that it is not in our national interests to adopt the reservation.

In the case of the legal assistance treaties, we have given other states a right to refuse to help the U.S. bring criminals to justice if they can claim that it would violate their constitutions. Some constitutions restrict extradiction. Other nations might refuse to help track illegal drug profits by invoking bank secrecy provisions. In other words, the "sovereignty reservation" deprives the United States of the very leverage over other states which these treaties were intended to create.

Who does the "sovereignty reservation" help? Not Americans. They are fully protected by the Supremacy Clause of the Constitution. It only provides comfort to states who wish to abuse human rights and protect criminals by invoking their domestic legal systems as a shield for their wrongdoing. That is precisely what these international agreements are intended to prevent.

We strongly urge you to vote to reject the "sovereignty reservation" if it comes before the Senate.

Sincerely,

Daniel Patrick Moynihan, Claiborne Pell, John Kerry, Alan Cranston, Richard Lugar, Nancy Kassebaum, Mark Hatfield, Joseph R. Biden, Jr.

Mr. LUGAR. Mr. President, the Convention Against Torture that is before the Senate is an important international treaty that merits the Senate's approval. Senator PELL and Senator HELMS have proposed a package of four amendments to the resolution of advise and consent to the Convention as a response to various concerns that have been expressed about the Convention. I would like to briefly comment on the fourth amendment in this package.

The amendment in question is being offered by the distinguished chairman and ranking member of the Foreign Relations Committee in order to help clarify the issue of the constitutionality and sovereignty as they relate to the Convention. They propose adding a new proviso to the resolution of advise and consent—not to the instrument of ratification—that would, in their view, make this clarification. They have made it clear that this proviso does not constitute a reservation to the convention.

Mr. President, I believe it would be preferable if the Senate did not adopt this proviso. Nonetheless, I can accept the proposed amendment with the knowledge that throughout the entire review process here in the Senate no one in the administration, and no one speaking in this body has ever suggested that the Convention requires or authorizes legislation or other actions prohibited by the U.S. Constitution. No one has ever suggested that the convention in any way is in violation of the protection and guarantees in our Constitution. It could be argued, therefore, that it is not necessary to include this proviso in the resolution of advise and consent since the Convention does not, in any way, authorize action inconsistent with our Constitution.

I know that it is not the intention of the sponsors of this amendment to question or weaken the protection against torture in the Convention, but I fear that we might be inadvertently doing that very thing. We must make clear that adoption of this proviso in no way provides other countries, which might be less inclined to protect citizens from torture than are we, a way to wiggle out of the prohibition against torture in the convention.

Mr. President, I understand that this proviso is not a reservation to our treaty obligations. It will not be included in the instrument of ratification. It does not permit other countries, under international treaty law, to invoke reciprocal arguments that they need to abide by the Convention's provisions against torture.

The sole requirement of this amendment would be that the President inform other states of the inclusion of this proviso and that it does not violate or is in any way inconsistent with our Constitution.

This is a good convention. It is worth supporting. I believe circumstances before us are such that we should support this amendment and the resolution of advise and consent to the Convention.

Mrs. KASSEBAUM. Mr. President, I rise today to express my strong support for ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. I am sure my colleagues would agree that the United States can no longer wait to join with other countries who have made this treaty binding.

Last July, Amnesty International released its 1990 report documenting the incidence of torture of thousands of individuals in more than 100 countries. Though we do live with the reality of state-sanctioned torture in some countries, as well as its random occurrence, amnesty's statistics were nothing less than shocking.

39-059 O—92-7 (Pt. 25)

Our ratification of the Convention Against Torture will, in itself, lead us closer to the goal it represents. The convention makes legitimate the right of nations to be concerned and to intercede regarding the behavior of another country toward its citizens. The findings of the Committee Against Torture, the overseeing body created by the convention, will aid human rights work throughout the world.

The convention reinforces the international definition of torture and forces each state party to take steps to prevent the practice in each country. Every state party to the convention must make torture a punishable offense and require that torturers be prosecuted or extradited.

Mr. President, some may ask why we should agree to accept the force of this treaty when other countries that are known to condone the practice of torture have accepted it as well. Mr. President, I believe that the fact that these countries want to be seen as opposed to torture is at least a step in the right direction.

Critics of this convention also say it may give other countries opportunity to make charges against the United States. I do not agree with this because I believe we have nothing to fear about our compliance with the terms of this treaty. Torture is simply not accepted in this country, and never will be.

Though I see it as unnecessary, I can accept the provision offered by Senator HELMS in the package of committee amendments. My colleague from North Carolina continues to insist that this convention be amended to indicate that nothing in it authorizes or requires action prohibited by the U.S. Constitution. This provision we have agreed upon is acceptable because it in no way modifies our obligations under the convention. The compromise does not undercut the purpose and nature of the treaty, nor does it make our stance ambiguous to the other states party to the convention.

I must say, however, that in general I oppose the concept of a sovereignty clause. Such a clause was added to the Genocide Convention, and in the year since its ratification, some 12 countries, all European allies, have formally registered objections to it. I agree with the Bush administration's view that the sovereignty clause is not harmless but, instead, threatens to undermine the whole purpose of the convention, which is the establishment of an effective international legal prohibition against torture.

Mr. President, I would note that the United States is the only permanent member of the U.N. Security Council which has not ratified the convention. The climate of international cooperation supporting Operation Desert Shield makes ratification at this time ideal and necessary. It is important that the United States be consistent in its condemnation of human rights violations.

The Torture Convention, as it is presented to the Senate today, is an agreement in which we should take part. At the very least, it would send a powerful signal to torturers around the world that the United States will not tolerate its practice. As we near the end of the 20th century, let us take this step to help bring the world closer to ending practices which deny individuals basic human dignity.

The PRESIDING OFFICER. Is all time yielded back on the resolution?

Mr. PELL. I yield back the remainder of my time.

Mr. HELMS. I also yield back the remainder of my time.

The PRESIDING OFFICER. The question occurs on the resolution.

Is there a division requested on the resolution of ratification?

Mr. PELL. Yes.

The PRESIDING OFFICER. A division is requested. Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification, as agreed to, is as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by unanimous agreement of the United Nations General Assembly on December 10, 1984, and signed by the United States on April 18, 1988: *Provided,* That:

I. The Senate's advice and consent is subject to the following reservations:

(1) That the United States considers itself bound by the obligation under Article 16 to prevent "cruel, inhuman or degrading treatment or punishment," only insofar as the term "cruel, inhuman or degrading treatment or punishment" means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.

(2) That pursuant to Article 30(2) the United States declares that it does not consider itself bound by Article 30(1), but reserves the right specifically to agree to follow this or any other procedure for arbitration in a particular case.

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Convention:

(1)(a) That with reference to Article 1, the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

(b) That the United States understands that the definition of torture in Article 1 is intended to apply only to acts directed against persons in the offender's custody or physical control.

(c) That with reference to Article 1 of the Convention, the United States understands that "sanctions" includes judicially imposed sanctions and other enforcement actions authorized by United States law or by judicial interpretation of such law. Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.

(d) That with reference to Article 1 of the Convention, the United States understands that the term "acquiescence" requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.

(e) That with reference to Article 1 of the Convention, the United States understands that noncompliance with applicable legal procedural standards does not per se constitute torture.

(2) That the United States understands the phrase, "where there are substantial grounds for believing that he would be in danger of being subjected to torture," as used in Article 3 of the Convention, to mean "if it is more likely than not that he would be tortured."

(3) That it is the understanding of the United States that Article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in territory under the jurisdiction of that State Party.

(4) That the United States understands that international law does not prohibit the death penalty, and does not consider this Convention to restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States, including any constitutional period of confinement prior to the imposition of the death penalty.

(5) That the United States understands that this Convention shall be implemented by the United States Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered by the Convention and otherwise by the state and local governments. Accordingly, in implementing Articles 10–14 and 16, the United States Government shall take measures appropriate to the Federal system to the end that the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfillment of the Convention.

III. The Senate's advice and consent is subject to the following declarations:

(1) That the United States declares that the provisions of Articles 1 through 16 of the Convention are not self-executing.

(2) That the United States declares, pursuant to Article 21, paragraph 1, of the Convention, that it recognizes the competence of the Committee against Torture to receive

and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. It is the understanding of the United States that, pursuant to the above mentioned article, such communications shall be accepted and processed only if they come from a State Party which has made a similar declaration.

IV. The Senate's advice and consent is subject to the following proviso, which shall not be included in the instrument of ratification to be deposited by the President:

The President of the United States shall not deposit the instrument of ratification until such time as he has notified all present and prospective ratifying parties to this Convention that nothing in this Convention requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.

Mr. PELL. Mr. President, I move to reconsider the vote.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, I am very pleased that the Senate has given its advice and consent to ratification of this very important convention. I believe that we have moved a step closer to the elimination of the inhumane practice of torture. I urge the President to ratify this convention as quickly as possible.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE BUDGET RECONCILIATION ACT

Mr. SPECTER. Mr. President, although the Omnibus Budget Reconciliation Act of 1990 has not yet been placed before the Senate, it soon will be. While there is a little break in the proceedings, I thought I would utilize this time to state my support for this Budget Reconciliation Act of 1990.

I do so, Mr. President, not because I find that this budget is desirable, but in choosing among the undesirable alternatives, I think this is the least undesirable. So often in the work of the Senate, we have to make choices that are not our preference, but we have faced a situation where we are on the verge of anarchy unless the Congress acts. It is indispensable that in the Congress we proceed to practice the art of the possible, which is to make compromises and adjustments to get our job done.

I have expressed my sense and my sentiment on a number of occasions, Mr. President, as I hear the comments coming from my State, Pennsylvania, as I have open house town meetings across the State, as I have talked to my constituents, as I have felt the pulse of the public nationally, that there is enormous concern that the Congress of the United States is not doing its job, that we disagree too often, and that there are too many who want to have their way on too many propositions.

I have said, Mr. President, that given the sense of the public that there may be 537 of us in Washington, DC, who will be seeking new employment soon, 100 in the Senate, 435 in the House and the President and the Vice President; there is a mood developing in the public to throw all the rascals out. The only thing that may stop the public from doing that is that they will have to throw some other rascals in.

I think if the public could see what we are doing here in some detail, there would be a little less resentment or perhaps a little more appreciation, because every night for the past few weeks this body has been in session. A week ago Thursday night on into Friday morning, at about 1:30, 1:45 a.m., the Senate passed a Budget Reconciliation Act. We have been in session every night, virtually every night, into the late hours, past midnight on many nights, and back here again in the morning for 8 a.m. conferences, working around the clock. I saw one of my colleagues, Senator PRYOR, about 8 o'clock last night. He worked all night and all day and was absolutely fatigued. He was on his way home because fatigue had set in, even though there is more business that we are really struggling to try to finish. Mr. President, I think the disagreements that have been articulated on this floor and in the House of Representatives really reflects the very deep disagreements in America about who should pay taxes. Nobody wants to pay taxes in this country. I recall one of the earliest comments my father made to me was quoting Will Rogers. My father loved America. He was an immigrant. His great regret was that he could not pay more taxes. He would have liked to have had a bigger income to pay more taxes. Many years he paid virtually nothing in taxes because he had such little income. He quoted Will Rogers saying America is a great country but you cannot live in it for nothing.

Notwithstanding the great sentiment to not pay taxes, Americans want services. Frequently, I will find my constituents coming to my office in Washington or Pittsburgh, or Philadelphia or open house town hall meetings saying, you ought to cut expenses, you ought to cut Federal expenditures. Then we talk about the programs of interest to them, and that ought to be exempted, and certainly there ought not to be any new taxes.

We have a budget reconciliation, Mr. President, which is the best that can be done under the circumstances. The House of Representatives, I see, passed it by a total of 228 ayes to 200 nays; 181 Democrats voted in favor, 74 against; 47 Republicans voted in favor and 126 against. Only five in the House were not voting, according to the statistics that I have here. Apparently there are two vacancies.

The one thing that really concerns me about this, or one of the many things that concerns me, is that the debt ceiling will be increased to $4.073 trillion.

We passed a constitutional amendment for a balanced budget in 1982, as I recollect it—it could have been 1983, but I think it was 1982—by a vote of 69 to 31. Later, the constitutional amendment for a balanced budget came up after there had been some change in the composition of the Senate and was defeated. It by only 66 to 34 which meant it did not have the requisite two-thirds.

We need the constitutional amendment for a balanced budget, Mr. President. We need a line-item veto. We need structural changes which will enable us to bring the deficit under control as we look toward a significant reduction of the decicit in the next 5 years.

We talk about deficit reduction. If we cutback too much on deficit, it may spur us toward recession, if we are not already in one, or worse. So that there are very difficult considerations which have to be faced.

Mr. President, on the revenue-raising measures, we have gone to a new top rate of 31 percent and, again, no one likes to pay taxes, but that is the best that can be done. There has been a limitation on itemized deductions and a limitation on the personal exemption phaseout which will raise funds. It is not painless, but it is surreptitious. People will really not be able to recognize it, but it will raise some money.

The Medicare attention has been improved so that there is not such a heavy bite on the senior citizens. The motor fuels tax, which is very regressive, has been cut back to an increase of 5 percent, instead of 9.5 percent which had been in prior packages.

So without going into all the provisions, when you take a look at the revenue increases, the enhancements, the circuitous words for taxes, there are taxes but they are being apportioned in the least painful way or, perhaps better stated, in the way which has finally brought some agreement in the House of Representatives and hopefully some agreement in the Senate.

Mr. President, on the limitations of spending, we have a discretionary

spending cap for 5 years, which is not going to be easy, but it is something which we simply have to do. We have taken Social Security, including interest, out of the Gramm-Rudman-Hollings deficit calculation for 1991. And there is a provision here, as it is articulated, for a firewall to protect Social Security surpluses. So there will not be a raid on Social Security surpluses.

All in all, Mr. President, this is not a budget reconciliation bill that this Senator would have preferred. But I think it is fair to say here, on October 27, at 2:38 in the afternoon, as we are looking toward a midnight session or an all-night session to finish our work, that it is the best that can be done.

I think it is very important that we move ahead with the business of Government, recognizing that everyone cannot have their way on everything and that this is the best compromise that can be worked out.

It is the least of all the undesirable alternatives which we face, and if the Congress continues to turn down these compromises, I think we are really on the verge of anarchy, Mr. President.

So although this has not been laid before the Senate yet I thought I would utilize this opportunity to be among the first to speak out in support of this Budget Reconciliation Act.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE JUDGESHIP BILL

Mr. SPECTER. Mr. President, there is one other subject that I think worthy of comment at this time. There are really many, but one I would like to comment on. That is the new judgeship bill that has been agreed to, as I understand it, after conferring early this afternoon with the chairman of the Judiciary Committee, Senator BIDEN and the ranking member, Senator THURMOND.

It is a very important bill because we will be creating 87 new Federal judges. I think it worthy of comment, while there is no other business to be transacted on the Senate floor, because our Federal courts have been overwhelmed with litigation, especially in the drug field. The creation of these 87 new judges will be directed, in significant measure, to the districts which have very heavy drug caseloads.

Pennsylvania will receive five Federal judgeships. I have already expressed my appreciation to my colleagues, as has my colleague in the Senate, Senator HEINZ. Four of those judgeships will go to the U.S. District Court for the Eastern District of Pennsylvania, and one to the Middle District.

I may say I regret we do not have additional judgeships in the Western District, but there had not been a request made from that district for additional judgeships, which I tried to cure because there was a need there. Absent that request, it simply was not possible to get additional judgeships for that district.

Five Federal judgeships out of 87 is an equitable, if not generous, apportionment for Pennsylvania. The four which will come to the U.S. Eastern District in Philadelphia are especially needed because Philadelphia, like much of America, has been plagued by drug cases.

We have worked out an arrangement, Mr. President, between the U.S. Attorney, Michael Baylson, a very distinguished public servant; and the district attorney, Ron Castille, another distinguished public servant. And if I may say so with a note of pride, both were assistant district attorneys of mine when I was district attorney in Philadelphia.

Those two prosecutors have worked out an arrangement to move more cases from the State courts, which are in a state of disrepair, to the Federal courts. Drug violations are prosecutable for the most part in either the Federal court or the State court.

Under an arrangement worked out by District Attorney Castille and U.S. Attorney Baylson, with some input from this Senator, there have been arrangements made to move cases from the State courts to the Federal courts. That is very desirable, Mr. President, because the Philadelphia Court of Common Pleas, the courts that function in the city and county of Philadelphia, are overburdened and are not very efficient.

I will not say too much more about that now, but it is highly desirable to move those cases to the Federal courts where we have an individual judge calendar. That means defendants and their lawyers cannot shop around to get an easy judge, and they cannot get continuances because the case comes back before the same judge. So if an effort is made for a continuance, the same old reason will not work.

The Federal courts have preventive detention where appropriate to keep dangerous criminals in jail for a brief period of time awaiting trial. Then there are tougher sentences from the Federal courts, in part through the armed career criminal bill of 1984.

So the Philadelphia Federal Court has been beleaguered with a shortage of manpower. The chief judge of the Third Circuit, Judge Higginbotham, has been supportive of the program to try more cases in the Federal courts. The chief judge, Louis Bechtle, in the Federal court has also been supportive. They are simply short of manpower.

I think this same situation is duplicated in many district courts around the country. So the addition of these 87 Federal judges will be very good news indeed for America, because we will have more judicial manpower to handle the very pressing problems of the Federal courts, including the very serious drug cases.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS BUDGET RECONCILIATION ACT—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on H.R. 5835 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991 having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 26, 1990.)

The PRESIDING OFFICER. The debate on the conference report is limited to 10 hours.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DOLE. As I understand, we have 5 hours on this side?

The PRESIDING OFFICER. That is correct.

Mr. DOLE. Mr. President, I yield back 4 hours.

The PRESIDING OFFICER. The Senator has that right. Time is reduced accordingly.

Mr. MITCHELL. Mr. President, I yield back 4 hours of our time.

The PRESIDING OFFICER. The Senator has that right. Time is reduced accordingly. There will be 2 hours equally divided.

Mr. MITCHELL. Mr. President I now yield to the distinguished chairman of the Budget Committee, the manager of the bill.

The PRESIDING OFFICER. The Senator is recognized under time controlled by the majority leader.

Mr. SASSER. Mr. President, today as we move to final passage of the budget reconciliation conference report, I can hear all across the Senate from 100 offices in the near vicinity of this Chamber a sigh of relief, and I suspect we can hear a loud sigh of relief coming from those Americans everywhere who believe that this Nation's fundamental strength is built on the stability and predictability of our governing institutions.

My own view is that we have pushed our system of Government close to the very brink of losing the confidence of our people. As painful as it may seem, I believe the experience that we have just gone through during the past few days and weeks will ultimately prove to be a national catharsis, an opportunity I think at long last to expel some of the demons and myths that have built up over the last decade.

I am convinced that once we pass this legislation, we will have passed a fundamental test of leadership and responsibility in this Chamber. We will have proven to the American people that we can, indeed, put aside our immediate political advantage in pursuit of a long-term national interest. We will have proven that on the most divisive and contentious issue of the 1980's—and that has been the budget, and spending, and revenue priorities—we can put those contentious issues aside and in fact reach a productive consensus in the interest of all of the people of this country.

Mr. President, the budget reconciliation conference report represents, I submit, a substantial improvement on the budget reconciliation we passed just last week in this body. You will recall, Mr. President, we passed that reconciliation report with a substantial bipartisan majority.

The conference report before us today concentrates the savings overwhelmingly on the spending side, not on the tax or revenue side. I might say that 10 Senate committees worked on and achieved their reconciliation savings and every conference succeeded in maintaining those savings save one. Overall, we have reconciled some almost $29 billion in savings for 1991, and $250 billion over 5 years.

As I said when we considered the original reconciliation bill, Mr. President, that is really a mammoth achievement. This is the largest deficit reduction package in the history of this Republic.

Those who might seek to trivialize it have not seen the anguish that went into implementing these policies, policies that committees know both bodies had resisted for years. A lot is said in this Chamber about historic legislation, though the phrase is thrown around much too liberally, I do believe—and I see the distinguished ranking member, Senator DOMENICI on the floor. It is a pleasure to see him. I do say to my distinguished friend from New Mexico that I think this conference report may truly represent historic legislation.

I think this may be the beginning of what I would characterize as the "great correction," the fundamental adjustment to too many years of indulgence and excess. This is the beginning for the American people, beginning once more to start living within their means and, more importantly, their Government to take the first step to living within its means. This fiscal package reaches the necessary deficit reduction goals through reasonable but prudent program cuts, and it reaches its goals also with equitable and fair revenue policies.

Mr. President, the mechanisms to enforce this deficit reduction package are going to be put into law when the President signs this package.

Taken as a whole, I think the proposal that is before this body today should be easily creditable enough to give confidence to the Federal Reserve and to the world's financial markets. In the variation on the bill that we passed last Thursday, we reduced the amount of sacrifice we are asking from Medicare beneficiaries and reduced it substantially.

We reduced substantially the impact of the gasoline tax, and we increased the overall progressivity of the tax policy changes, placing a smaller burden on middle-class Americans and increasing the burden on the wealthiest Americans.

Frankly, Mr. President, I consider those improvements. They were necessary alterations if we were to get concurrence from the House of Representatives. In these final hours of what is seemed to many of us like interminable debate, I want to spend just a very few minutes dealing with the larger question behind this package and the question of why it is so vitally necessary to this country at this particular time.

Some of us have made the case that vigorous deficit reduction is the wrong way to go at this time. That has been the argument of a number of our colleagues, and the argument of others across this country. Instead they have proposed once again a mixture of tax cuts and tax breaks. I submit that is the same formula that got us in the hole we are in now. That is exactly the path of least resistance that led us into the fiscal swamp of the 1980's. We have to change that course. I think most of us here understand that.

The oil shock, slowing growth, and I must say that this country is in a poor position today to take a rapid runup in oil prices that we were in the decade of the 1970's. And with the sudden flight of capital to which we have become addicted, we now see the Japanese keeping their money at home because they can get interest rates just as high there as they can in the United States. We see the Germans using their money to rebuild the eastern part of Germany and all of Eastern Europe. So the foreign capital is leaving us. We cannot finance our deficit with that as we could in the decade of the eighties.

We have deficits at record levels and we find that we, as the world's now only unchallenged superpower, are chained by this budget deficit. We have run up a huge tab with the rest of the world. And I think we, thereby, enslaved ourselves to the whims of the international capital markets.

That might have been acceptable as long as our interest rates remained sufficiently attractive to command a steady flow of foreign investment. But events in the Middle East over the past few months have turned our foreign capital dependency into potentially a mortal weakness, I say to my colleagues. The rising price of oil has put stress on the economy of creditor Nation. That includes Brazil. It includes other lesser developed countries and, unhappily, it also includes the United States of America.

We, as the world's largest debtor country, I submit could become a financial casualty not to war but to even the rumor of war. The intrinsic appeal of our Treasury bonds is now nonexistent. As a result, foreign investors have the power to extract from us the highest possible premium because they know that we cannot finance our massive debts without their money.

So, in short, we must act to reduce our needs for borrowing. We must act to reduce the deficit. If we do not, the rates of interest we must pay to attract the necessary capital will simply have to go up. The higher interest rates will combine with the rising cost of oil to strangle economic growth. Our steadily weaker economy will further weaken our already tenuous financial institutions which will, in turn, be unable to provide the investment capital we need to get off our needs.

The whole thing could turn into a nightmarish economic death spiral with high interest rates generating economic weakness and economic weakness forcing higher interest rates still.

That all has to be avoided. That is why I submit, Mr. President, that it would be fundamentally irresponsible to vote against this conference report here today.

As has been said before, this is not a perfect package. I am sure that if Sen-

ator DOMENICI, the distinguished ranking member, were free to write his own package, it would have been substantially different from the one we have before us today. Certainly, had I been free to write my own package, it would have been substantially different from the one we have before us today.

But we do not live in a pure world. This is a world in which we must make accommodations, and in this great democracy of ours we must make compromises.

I want to pay tribute to those individuals on both sides of the aisle who have the wisdom and the maturity to put the economic health of their country first today, and give up some of their long-held beliefs simply in the effort to get an agreement here today and to lay this controversy to rest.

We can either sit and curse the economic darkness, or we can light this single candle, Mr. President. I choose today to light this single economic candle.

We all have our regrets about the end point of this tortured process. There are plenty of provisions that I would take out of this package if I can do so. But the saddest part of the whole thing is that we should have been doing what we are doing today at least a year earlier.

We should have been making these fundamental adjustments on this great economic engine we call the American economy growing and when inflationary pressures were not restricting the flexibility of the Federal Reserve to respond to the needs of our economy. We did not do so. We did not act in a timely manner. But, Mr. President, that was unfortunate. But it would be absolutely tragic if we failed to act at all today.

So this package deserves to pass. It deserves to pass for a lot of reasons. It deserves to pass because we want to do things for this country. We want to see this economy growing, prospering and expanding.

There are some good things in this package—also some good initiatives.

A moment ago, I saw the distinguished Senator from Connecticut on the floor, Mr. DODD. As all of my colleagues know, Senator DODD has had a longstanding interest, as have many of his colleagues, on the whole question of child care, and the ability of our Nation to see that working mothers have some help in the caring of their small children.

We live in a society now in which a two-worker family is the norm rather than the exception. When I was growing up, it was very seldom that the mother of the household worked. The father worked and the mother stayed home and took care of the family and the children.

That is not the case anymore. We find that fully 80 percent of mothers now are working mothers. These mothers have young children. These young children need support and they need nurturing and they need supervision. Thanks to the unstinting efforts of our distinguished friend from Connecticut, Mr. DODD, this package will provide for that.

Mr. President, this package is better than what we have voted on before. It is infinitely better than the summit agreement that we produced a few weeks ago between the leadership and the administration.

I submit that it is better than the reconciliation package we passed just a few days ago. But whatever you may think about this package, it is certainly much better than political gridlock. It is better than sequester; it is better than stagflation, better than an outright economic depression, and all of these things could result from continued inaction.

To my colleagues on both sides, I say it is late in the day. I fear this is our last best hope. I urge quick adoption of this conference report, Mr. President.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico [Mr. DOMENICI] is recognized.

Mr. DOMENICI. Mr. President, first let me thank the chairman for his kind remarks and reciprocate by saying that Senator SASSER, a new chairman, came in at a most difficult time, and it has been a pleasure working with him. I am delighted we are here today presenting this conference report.

Mr. President, this great ordeal of putting together a $500 billion deficit reduction package is going to end, finally. I am hopeful it ends with us approving this conference report, as the House did last night. When we send it over to the President, I am hopeful he will sign it.

Having said that, there can be no doubt that if the Senator from New Mexico was drafting his own budget deficit reduction package, this would not be it. But obviously, none of us have the luxury of writing our own plan.

As a matter of fact, the American people think the President of the United States is very powerful. In our system, he does not enjoy such a luxury. So we have moved from May 6, when the President asked us to get together, on a bipartisan basis with his people, and come up with a deficit reduction plan. We have moved through these past months to this day.

We have had some extreme highs when things were going well, and we have had some extreme lows when things went very bad. I guess we are here today somewhere in the middle.

We are about to approve a package of $492 billion in deficit reduction over 5 years. As it is adopted, and if it is signed, and I think it will be, with the enforcement over the next 5 years of the caps on discretionary accounts, all of the necessary changes in the law, and all of the savings will have been achieved. So, we do not have to vote again next year on a piece of this package. It is done.

We have to maintain and enforce remaining year caps on defense, discretionary, and foreign affairs, and we have to carry out the new pay-as-you-go policies. If there are new programs, they have to be paid for, and if they are not, they will suffer the fate having a sequester against entitlements to make sure they are deficit neutral. In a nutshell, that is where we are today.

Mr. President, this Senator is not wise enough, nor do I purport to know enough to suggest that this package is the cure-all for the American economic woes of today and of the next decade and for the future. But I do submit that I am wise enough and know enough that it will be worse for America, worse for this decade, worse for our children, if we do not reduce this lingering pervasive deficit now.

I repeat, I would have much preferred moving in the direction of more structural reform in programs that spend money, but we did the best we could. There are 10 committees, Mr. President, 10 standing committees of this Congress that had input into this package. They all had to do some things. Some did it right; some did it three-quarters right; some did it in ways that we do not like; some made savings in ways that we would like to take out of this package. Certainly in the areas of OSHA, areas of pension reform, taxation, and a number of others, we would like to change their proposals. But this was the result of committees working to meet their targets.

While this package is finished, policy does not remain static in the future, and there are many opportunities to work better ways on some of these policies in years to come.

With reference to the entitlements, there are not as much savings as I would like. But the Senate should also know there are about $5.7 billion less in taxes in this package, than the bill that passed the Senate, about $5.7 billion less in taxes on the American people. I think when you add all that up, this package deserves to be supported.

I have no illusions. There will be some Americans who will say, we are finished, good, we are starting to get the deficit down. Others will say, "I do not like the way it was done. I do not like to pay any new taxes. I do not like my program changes."

We have learned in the last month that you cannot take $490 to $500 bil-

lion out of the current policies of this country without affecting someone. You cannot affect the air; you cannot affect an image; you have to affect someone, somewhere, somehow. And that has happened.

Mr. President, I suggest that the reason I am concerned, and the reason I think we ought to get this done is very simple. There are many who worry about Federal Government programs. There are many worried about how we are going to have room to adopt new ones in the future.

This Senator feels that the best social program around is a prosperous, growing American economy. I believe the best social program is a job. I believe the best social policy is jobs and opportunity. I submit that everything else about policy comes second.

An American economy that is in recession is an American economy that cannot provide for growth. Everything about recession is negative and detrimental to the American people and to our future. So it must be that growth is good, because it is the exact opposite of recession.

It seems to me that sooner or later we had to bite the bullet and reduce the deficit substantially, in a way that is a compromise with the President, between Democrats and Republicans, ways that some Republicans do not like, some Democrats do not like, and some parts that the President does not like. But, overall, if our primary goal is to reduce the deficit substantially and permanently, not because we just want to make things difficult, or because we want to change programs, or because we want to put mandatory caps and targets on the U.S. Congress for the next 5 years, none of those things are what we really want to do.

What we want to do is give some breathing room to the American economy, so dependent upon capital and borrowing. The American economy is filled up over its head with borrowed money, money from here and from abroad; we are going to take one great big slice out of the deficit here, albeit in some ways I do not like. And the package is real; the package will carry out what it states. The new reforms will see to it that we carry them out, or we will need super majorities in the Congress to vitiate them.

So, overall, Mr. President, I believe we ought to get on with it, stop the bloodletting, stop the ordeal, and get it adopted.

From this Senator's standpoint, many ask, "Have the processes been changed enough? Will these recongized changes actually yield deficit reduction, or will they be spent? Is this smoke and mirrors?"

I want to answer all these questions. Americans who will pay new taxes and have programs changed and reduced ought to know that their sacrifice will, indeed, go toward deficit reduction. There is no way in our democracy and in our Congress that you can absolutely and unequivocally commit to that. But to the best of our ability, we have seen to it that this deficit reduction is credible. It will get carried out automatically by the rules we have changed and the processes we have adopted.

I think that is probably as strong a part of this package as anything we have done. For the next 5 years, we will be able to enforce this agreement against the fiscal policy, desires, and goals that others set in the Congress in ways that I think are far better than anything we have had in modern times.

Having said that, I know there are a number of people who want to speak. I wonder if the Senator from Tennessee has anyone that wants to speak. I had the Senator from Florida on my side, but as soon as the Senator is ready to yeld to me, I will call on him.

(Mr. BRYAN assumed the chair.)

Mr. SASSER. Mr. President, I have the Senator from Texas, to whom I yield 15 minutes.

Mr. BENTSEN. I thank the distinguished manager of the bill.

Let me at this time say how much I appreciate the job that the distinguished Senator from Tennessee, the chairman of the Budget Committee, and the ranking member, the Senator from New Mexico have done on this piece of legislation.

Mr. President, I do not know anyone who is happy about having to make this tough political vote to reduce the deficit.

The hard fact is, though, that it is time to pay the bill for a decade of indulgence, a decade of kiting not checks for $200 billion a year.

People go before chambers of commerce and make their speeches about why we have to reduce the deficit, but when the painful choices are before them they choose, year after year, not to face up to the task.

Decision time is now.

In the 1980's:

We tripled our national debt.

Most American families had to work harder just to stay even, but the top 1 percent—the very richest people in America—saw their family income almost double.

Private savings rates plunged to post-war lows.

Home ownership rates declined for young families for the first time since World War II.

We accumulated a trade deficit of $845 billion, thanks in part to a growing dependence on foreign oil, and

We saw our transportation system begin to crumble. Federal spending on highways decreased by 13 percent in real terms, even though we wound up the decade with a $10 billion surplus in the highway trust fund.

Today, our economy is faltering. We've lost 600,000 industrial jobs over the last 6 months.

Prospects are that we will be losing more jobs in the months ahead.

If we fail to reduce the deficit and reduce borrowing by the U.S. Government—at a time when the demand for credit is growing around the world—if we fail in this task, then our prospects are bleak indeed.

We simply have to lower interest rates in this country in order to give our economy a chance to recover.

We can not count on Japanese and German and British investment to carry us along like they did throughout the 1980's. Japanese interest rates were well below ours through the eighties, but they have grown to roughly equal ours over the past year and investments in this country don't look nearly so good to them these days.

So far this year, in fact, foreign interests have taken more investment out of this country than they have put into it.

During the decade of the eighties, the effective tax rate of the top 1 percent of Americans fell by more than 14 percent, while the tax rates of most Americans were going up.

I am convinced that most high income Americans believe they should bear a bigger share of the burden.

Look at Sam Walton from Arkansas, one of the richest men in this country. Ross Perot from Texas not too far behind him. Both have acknowledged in recent weeks that they should be paying more taxes.

We have produced a deficit cutting package that does a good job of insuring that the burden of deficit reduction is shared with those who make the most paying the most.

It doesn't do the job in as straightforward a fashion as I would have preferred. I wanted a 33 percent top rate. But we could not get that.

But while we could not get everything in the package, it gets the mob done and in a way that is fair and equitable to all Americans.

Let us look at how we've done that.

The bill raises the top tax rate to 31 percent for the wealthiest six-tenths of 1 percent of taxpayers, those making over $200,000 a year. It also takes additional steps to make sure the wealthy shoulder the bulk of the burden. It pushes the HI wage cap to $125,000 to help keep the hospital trust fund solvent. And it phases out the personal exemption for taxpayers with incomes above $100,000 a year.

It holds the limitation on itemized deductions to 3 percent, which is a matter of concern to charities and States with high income taxes.

The bill cuts the budget summit agreement's gas tax increase from 12 cents a gallon down to a nickel. That

helps motorists everywhere, particularly those in rural States.

The tax increase on tobacco is the same as the summit agreement—a 4-cent-per-pack increase in 1991 and another 4-cent increase on 1993.

On alcohol taxes, this bill sticks closely to the summit agreement. The tax on a bottle of wine would increase by 21 cents, by 16 cents on a six pack of beer, and by about 20 cents on a bottle of hard liquor.

We expanded the earned income tax credit—the EITC—which helps working families of modest means. We provided a child health insurance tax credit and crafted a special tax credit for low income families with children under a year old. We also beefed up child care services to help people remain self sufficient and therefore stay off of the welfare rolls.

The crisis in the Persian Gulf has underscored our vulnerability as a nation to imported oil. It should be plain to everyone that we have to take steps to cut back on this dangerous dependence on foreign oil. This bill does that by providing energy incentives to promote oil and gas exploration and production here in the United States and encouraging use of ethanol—a cleaner burning alcohol fuel—to reduce our dependence on petroleum fuels. Most of these incentives would be fully available only if the price of oil drops below $28 per barrel, so they will kick in when the market alone doesn't provide sufficient incentive. At $2.5 billion, this package is about $100 million less than what the President requested.

We extended expiring provisions through the end of next year: foreign allocation of R&D; the research and experimentation tax credit; employer-provided educational assistance; group legal services; the targeted jobs tax credit; two business energy credit; the low-income housing credit; mortgage revenue bonds; small-issue manufacturing bonds; health insurance for the self-employed; and the orphan drug credit.

On the spending side, we've had protracted negotiations to finalize the provisions on Medicare and Medicaid. In the end, we achieved Medicare savings of $44 billion over 5 years. Of this total, $10 billion comes from beneficiaries by extending the 25 percent share of part B and increasing the deductible to $100. Previously, the proposal included taking the deductible of $150 and including 20 percent of lab coinsurance—$34 billion in savings comes from providers.

In addition to these savings, we also achieved some significant Medicare Program improvements, including addressing the rural-urban differential, protecting low income elderly from increases in the Medicare premiums and deductible, and extending health insurance to children whose family incomes are below the poverty level. In Medicaid, we have reached our reconciliation target and propose $2.3 billion of initiatives which are paid for.

Mr. President, everyone, of course, can find something they wanted that's not in the package. Everyone can find something in the package that they fervently believe should not be in there.

Today we can put aside partisan differences, do what is right for this country. The American people have had to endure 5 months of posturing and bickering. They have seen the Government shut down—just lock the doors—and they deserve better than that. They are tired of this chaos. They expect and they deserve a positive result, one that will help us get this Nation's books back in order. That is why we must pass this conference report.

In an ideal world, this kind of drawnout process might not have to happen. Everybody involved could have written his or her own deficit plan. We would have 535 from the Congress, and the President might submit two or three. Then there are those who are just looking for excuses for voting against this bill in order to gain political advantage.

But this is the real world, and we are having to settle up on that decade of indulgence. The bills are past due, and—as the President and the Congress have agreed—that means raising tax revenues and cutting spending.

Now it is time for all of us in the Senate to pull together one more time, pass this effective and fair bill and send it to the President for his signature.

I yield the remainder of my time to the manager of the bill.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SASSER. Mr. President, before yielding the floor I want to express my appreciation to the distinguished Senator from Texas, the chairman of the Senate Finance Committee, for the splended job he did over the days, weeks, months, and the long nights of hammering out a revenue package and an entitlement package that I think is truly historic in its scope and in the manner in which it treats the needs of the people of this country. I want to just say on behalf of all of our colleagues, that we owe, I think, a real debt of gratitude to the distinguished Senator from Texas. He has produced a product that he can be justly and rightfully proud of.

Mr. BENTSEN. Mr. President, I thank the Senator. I deeply appreciate the generous comments of the distinguished Senator.

The PRESIDING OFFICER. The Senator from New Mexico [Mr. DOMENICI].

Mr. DOMENICI. Mr. President, I join in those accolades and add to that the distinguished ranking member, Senator PACKWOOD, who worked along with the chairman. Considering they are not free to do it their way either, they had to work with the House, I think they have done a good job. I compliment the Senator from Texas and Senator PACKWOOD.

Mr. BENTSEN. I am delighted to include Senator PACKWOOD. We worked side-by-side in this and it was a truly bipartisan effort.

Mr. DOMENICI. With the permission of the chairman, I was going to yield to Senator MACK, but Senator JEFFORDS had asked if he could have a minute. I yield 1 minute to him and then 5 minutes to the Senator from Florida. I so yield.

The PRESIDING OFFICER. The Senator from Vermont [Mr. JEFFORDS] is recognized.

Mr. JEFFORDS. Mr. President, I rise in support of the conference report which is before us. I am sure we all say there is something we would like to have changed if we could have, but we could not.

Mr. President, the public is rightly angry at what has unfolded in Washington over the past few weeks. Congress has proven itself a day late and a dollar short.

We tend to focus on a tremendously short timeframe, one that right now is literally on an hour-by-hour basis.

While understandable, it's regrettable. We operate so much in the present that we give far too little attention to both the past and the future.

The eve of adjournment is hardly the time for a long-winded speech on our fiscal history or future. But a few points are worthwhile to keep it both in perspective.

Today's action will not solve our fiscal problems. Today we are just putting a down payment on the deficit.

A deficit that has been a decade in the making is not going to disappear with one deft compromise. It may well take as long to fix as it took to create.

Where did this deficit come from? Well, you have to remember that the Reagan administration, with an overwhelming mandate from the American people, and from Congress, set out to do several things.

First, it wanted to cut taxes. In 1981, it succeeded in doing so. And in bits and pieces, we have engaged in an almost annual exercise of recouping the revenues lost in that tax bill.

Second, the Reagan administration wanted to increase defense spending. Congress more than obliged, with an unprecedented peacetime military buildup that outpaced the growth of our economy or revenues.

Finally, the White House wanted to cut domestic spending and regulation. The tools would be deregulation, fed-

eralism and the hammer of a burgeoning Federal deficit.

What happened? Well, the operation was a success but the patient died. The White House was tremendously successful, but the country is now suffering. The national debt tripled despite a recordbreaking peacetime economic expansion. We went from being the world's biggest creditor to the world's largest debtor nation.

The specifics are not any prettier. The tax breaks provided in the 1981 package were largely poor policy and have in large part been reversed. While the continued policy of containment no doubt hastened the change in the Soviet Union and Eastern Europe, defense spending, even without the benefit of hindsight, was far more than was needed and far more than could be accounted for properly.

States have been given more responsibilities without the resources to pay for them. Deregulation has produced mixed results, the most notable of which is the biggest financial scandal in the history of this country.

To be fair, responsibility lies with both ends of Pennsylvania Avenue. We all like to cut taxes, we are all for a strong defense, and we all want to help people with genuine needs. We were all part of a conspiracy to keep the deficit under wraps so that—depending on our particular interest—our priorities would not suffer.

But the illogic of this conspiracy was that ultimately all these interests would suffer, if for no other reason than the fact that servicing the debt would put more and more pressure on our markets and budget.

Gramm-Rudman-Hollings brought this point home. Not dramatically at first, because we were talented enough to come up with several years of "slidge-by" budgets.

But this year even our ingenuity was taxed. We are doing what we should have done years ago and acknowledged that we have serious problems.

But even though $500 billion sounds like a lot of money, I fear it will fall short. The assumption that underlie this package read like economic science fiction—except for the fact that science fiction sometimes comes true.

But it's a start, and probably as prudent as we can make with a fragile economy.

I plan to support the budget agreement. I made my views clear when the Senate proposal was before us, so I will not reiterate them at length here. Suffice it to say that the bill before us today is more progressive than that we adopted last week. It relies less on regressive excise taxes on asks more of those able to pay.

Neither I nor any other Member of Congress is perfectly pleased by the package. But we did scale back the cuts in Medicare, we did burst the bubble, and we did reduce the gas tax.

There is still plenty of poor policy in the package. We slap an excise tax on a six-pack of beer but say that a setting of six sapphires does not qualify as a luxury. We discourage pension plan formation and set labor law penalties with no regard to their policy implications.

As an example, the labor committees have agreed to a sevenfold increase in penalties under the Occupational Safety and Health Act. I happen to believe that some increases in OSHA penalties is warranted. But clearly what drove us was the need to meet our budget targets, not the need to examine what constitutes effective enforcement policy.

I understand there may be some effort to construe our action as having some meaning for state plan States. It may be that state plan States should increase their penalties. I don't know, as the issue never came up in the conference. But the standard the Department of Labor should continue to follow be the overall effectiveness of a state plan, which is based on the sum of its individual components.

And for reasons that escape me, we have decided to put an excise tax on life insurance that may double companies' tax burden—a burden entirely divorced from profitability. Discouraging the purchase of life insurance is hardly an enlightened policy.

Home heating oil will not be taxed, but oil products will get a windfall. We are doling out $2.5 billion in tax breaks to oil producers at a time when oil has bounced up and back to $40 per barrel and there seems to be little room in the budget for conservation or alternative energy efforts.

But while all of us can judge this bill on its component provisions, we need to bear in mind the long-term policy implications as well.

As I've mentioned, the policy implications in the labor provisions are disturbing. But even more troubling is what this bill means for agriculture, particularly for the dairy industry. The dairy price support system was designed as a "balancing wheel." The deficit has dismantled the wheel and removed the support. But the farmers will be charged more and more to pay for less and less.

And while the Medicare changes have been looked at fairly narrowly, as a question of how much beneficiaries will pay, they raise much broader questions.

Year after year we have ratcheted down reimbursements. But at what price? Hospitals in my State and in rural areas across the country are having tremendous problems. The broader health care issues are deferred time and again—that is, until we need to reduce the deficit.

We can pat ourselves on the back for this package. We can breathe a sigh of relief, go home, and try to explain our mess to the voters. But the tough choices, in my mind, are not being made today. They are being left for tomorrow.

Mr. MACK. Mr. President, I rise today to protect the economic well-being of our Nation. I rise to point out the main weakness of this particular conference report.

I do not rise, though, with a sense of antagonism toward the leadership in either party because I recognize, as I hope they will recognize, from my perspective, I approach this from a proper motivation.

What has been clearly said by the speakers so far is that their overwhelming objective is to reduce the size of the Federal deficit. but I make the argument that we are best going to accomplish that by finding ways of creating economic activity in this country; by finding ways of stimulating growth; and by finding ways of encouraging people to start new businesses to employ more people.

I point out during the 1980's, average growth of new businesses—that is the startup of new businesses—averaged about 7 percent each year. We are now seeing a very disturbing set of statistics come forward.

Some say the growth in new business has absolutely come to a standstill. Others are reporting that for the first time in 10 years, we are now seeing a negative growth in new businesses around the country.

My colleagues might ask the question why is that occurring?

The growth occurred in the 1980's because of the wise decision made in 1977 to lower the capital gains tax rate from 49 percent down to 28, and eventually down to 20 percent. As a result of that we saw capital flow into the venture capital market around the country.

Believe it or not between 1969 and 1977, there was an average of $59 million a year in what is referred to as the formal venture capital market in this country; $58 million, not billion. After the cut in the capital gains tax rate in 1977, the amount of funds flowing to the venture capital market increased to $600 million; the year following that, it increased to $900 million, and today the venture capital market has increased to where it is over $4 billion a year.

Capital is available for people who want to take risks, capital is available for people who want to start new businesses, and as a result of those new businesses, jobs are created.

Anyone who takes a look at the 1980's will recognize that of the 20 million new jobs created, 80 percent of those came from small businesses. The problem with this particular conference report is that it has nothing in it to encourage the formation of capital. It has nothing in it to encourage the

formation of new businesses and the creation of new jobs.

It is little wonder that the U.S. Civil Rights Commission recently came out with a statement which reflected its members' unanimous opinion that there should be a lower capital gains rate. In fact the Commission suggested a zero capital gains rate in areas of very high unemployment in the country.

The Commission supported a freeze in spending and asked that there be no further increases in taxation.

So I suggest, Mr. President, that if we were really serious about deficit reduction in this country, we would focus in on lowering the capital gains tax rate. The result of a lower capital gains tax rate will increase the flow of funds into Federal coffers; it will increase the amount of money that is available in the venture capital market; it will help in the formation of new businesses and the creation of new jobs.

So, again, it should be no surprise to anyone that I am going to oppose this legislation and I do so, as I have said in the past, because of the tax increases, the failure to control Federal spending, and the failure, most important, to focus on the need to follow policies that create growth. I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. The Senator from Iowa is seeking recognition on the time of the Senator from New Mexico.

Mr. MACK. If the Senator will yield for a moment. Mr. President, I ask unanimous consent to have several articles that relate to my statement printed in the RECORD. One article is an editorial from the Wall Street Journal. The other is the news release from the Civil Rights Commission. A third is a statement by Secretary Kemp to the Federal City Council annual meeting.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SOAK THE POOR

Who speaks for the poor in the current budget drama? The Democrats? George Mitchell? Dan Rostenkowski? Bob Dole? Dick Darman? We suspect the short answer is that no one much thinks about the poor in Washington these days. The battle is over the middle class, because that's where the votes are and that's where the tax money is. The poor and the working poor are along for the ride. Some ride.

The Democrats in Congress, abetted by at least three or four members of the Bush administration, purport to stave off a recession by raising taxes $149 billion across five years. Yes, we know, they have attached a theory to this: Short-term interest rates will drop maybe 100 basis points and the American economy will climb to the stars. A few folks, however, hold to the view that this game plan is more likely to drive any recession deeper and that the people hit hardest aren't the soaked rich or even the middle class. It's the poor. Both the U.S. Commission on Civil Rights and Jack Kemp are now trying to raise this argument in Washington.

On Tuesday, the Civil Rights Commission voted 6–0 in support of a resolution warning that the current thrust of the budget could cause economic difficulties for minorities, women and the disabled (Commissioner Mary Frances Berry abstained from the vote). "We request on behalf of America's disadvantaged," the commission said, "no general spending increase and no general tax increase." Instead, the commission would freeze spending at the fiscal 1990 level.

It called on the President and Congress to be aware of "the importance of continued economic growth to the advancement of civil rights in this country. In bad economic times, black and Hispanic unemployment rates rise the fastest."

Of course, none of the current budget incarnations has specifically growth-oriented provisions in the budget. So the Civil Rights Commission proposed one of its own: a capital gains rate of zero for those who "live, work and invest" in the depressed inner cities. This proposal, of course, has zero chance at the moment; the Democrats' soak-the-rich philosophy is colorblind.

No one has attacked the hopelessness of the status quo more than HUD Secretary Jack Kemp, and he did so again in a speech earlier this week, calling on Congress to get growth back into its deliberations. Secretary Kemp would raise the top marginal rate on incomes to 31%, while cutting capital gains to 15%. He also usefully pointed out that the grand plan to cut $500 billion over five years "began when the economy was stronger and there was no foreign policy challenge as we face in the Middle East today. In my view, it's not logical to adopt sharp tax increases in the face of such an uncertain future." He too favors a one-year spending freeze.

As to economic opportunities for the poor, Mr. Kemp pointed out that the number of black-owned businesses grew almost 50% from 1977 to 1982, a period that began with the Steiger Amendment cutting the capital gains rate to 28% from 49%.

We can already hear the solons of Washington pooh-poohing the Kemp and Civil Rights Commission interventions. It looks to us, though, as if the Beltway is giving the poor little more than more of the same. With a recession looming, Mr. Kemp and the commission are at least trying to do better than that.

U.S. COMMISSION ON CIVIL RIGHTS RAISES CONCERNS ABOUT FEDERAL BUDGET DEFICIT-REDUCTION EFFORT

The U.S. Commission on Civil Rights urges the President and Congress, in their efforts to reduce the federal deficit, to be fully cognizant of the importance of continued economic growth to the advancement of civil rights in this country. In bad economic times, black and Hispanic unemployment rates rise the fastest. In good times, a tight labor market encourages employers to cast a wider net when hiring, thus breaking barriers that have traditionally prevented minorities, women and persons with disabilities from gaining better paying jobs. Civil rights laws can do little to expand opportunities for members of historically disadvantaged groups when opportunities for all Americans shrink. Strong economic growth is important for creating a climate for effective civil rights policies.

Strong economic growth can also be a powerful force for cutting the federal deficit. A growing economy means more and better paying jobs, which expands the tax base. Policies that encourage savings and entrepreneurial initiative create a growth dividend which will reduce the deficit.

The Commission recognizes that deficit-spending can stifle economic growth, and encourages deficit-reduction efforts. However, plans for balancing the budget that would also reduce the incentives for individuals to work, save, and invest are likely to be self-defeating. This is the great danger in trying to control the deficit through new taxes.

We therefore call on the President and Congress to adopt only those deficit-reducing proposals consistent with economic growth. Specifically, we recommend freezing real total government expenditure at the fiscal 1990 level.

The Commission recommends that the President and Congress focus on developing policies that will spur both general economic growth and, in particular, growth in the depressed urban and rural areas of our nation. For those who live, work and invest in the depressed areas of our inner cities, for example, we urge cutting the capital gains tax rate to zero, establishing enterprise zones, and other social and job-creating initiatives to help restore economic prosperity to these areas. Overwhelmingly, the residents of these areas suffer the legacy of past discrimination and the limitations of current civil rights laws and policies to promote equality of opportunities. Policies to stimulate growth in depressed areas would not only foster the economic opportunities of residents of these communities, but would benefit many other Americans by helping to realize the full potential of our nation's wealth. Economic growth is not a panacea for this nation's civil rights problems, but economic stagnation will surely exacerbate them. Progress toward eliminating these problems can be accelerated by sustained economic growth and, equally important, aggressive enforcement of all civil rights laws and effective programs to provide educational and economic opportunities to those who have been denied.

In summary, we request, on behalf of America's disadvantaged, no general spending increase and no general tax increase.

The United States Commission on Civil Rights is an independent, bipartisan, fact-finding agency concerned with discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap and national origin.

Arthur A. Fletcher is Chairman; Charles Pei Wang is Vice Chairman. William B. Allen, Carl A. Anderson, Mary Frances Berry, Esther G.A. Buckley, Blandina Cardenas Ramirez and Russell G. Redenbaugh serve as Commissioners. Wilfredo J. Gonzalez is staff director.

REMARKS BY JACK KEMP, AT THE FEDERAL CITY COUNCIL ANNUAL MEETING,

"A PROGRESSIVE-CONSERVATIVE PRESCRIPTION FOR A NEW WAR ON POVERTY"

In the 1980's, the American economy experienced an unprecedented expansion, generated over 21 million new jobs—more jobs than Europe, Canada and Japan combined—and created more than 4 million new business enterprises. While the Nation's gross national product grew by 26.3 percent between 1983 and 1989, Federal tax revenues expanded by 35.7 percent, twice as fast as

they did in the 1970s. Federal income taxes paid by the top 1 percent of taxpayers surged by over 80 percent—from $51 billion in 1981 to $92 billion in 1987.

The Reagan-Bush Administration rediscovered the classical prescription for non-inflationary economic growth; i.e. sound money, income tax rate reductions across the board, and reductions in the growth of government spending and regulation. As a result, the entire world was lifted to a higher vision of what democratic capitalism could achieve in creating wealth and opportunity for people. Indeed, by decade's end, the leader of the socialist world—the Soviet Empire—had become an economic basket-case. The intellectual and political case for socialism collapsed.

As we enter a much tougher economic climate and experience slower growth, the answer is not to choke off expansion with higher taxes, but to stimulate the economy with President Bush's cut in the capital gains tax rate. Cutting the capital gains rate will free up investment capital for entrepreneurship, small businesses, and new job creation, generate billions of dollars of revenues to State and Federal treasuries, and add value to the financial assets of our Nation.

The creation of new businesses, the unleashing of innovative ideas, invigorates economies and markets. Economic growth in the 1980s confirmed that real wealth comes not from physical resources, but human beings; not from mere things, but from the ideas, talents, and efforts of our people. That's why the President and some courageous Republican legislators like Senator Bob Kasten of Wisconsin, Senator Connie Mack of Florida, House GOP Whip Newt Gingrich, and Congressman Vin Weber of Minnesota want to add capital and labor based incentives to the tax code, such as the capital gains tax cut, Enterprise Zones, expanded IRAs, and a higher earned income tax credit for the working poor.

While the 1980's was a period of unprecedented economic expansion, parts of our Nation and some of our people have been left behind, or worse left out. Success has not been the whole story of the 1980's . . . grinding poverty and homelessness, violent crime and drug abuse, the growing number of broken families and mothers on welfare. These are the deeply disturbing, even alarming, problems that signal ongoing deterioration in many communities, especially minority communities.

In 1984, New York's Governor Mario Cuomo was cheered at the Democratic Convention with his tale of America as two cities, one rich and one poor, permanently divided into two classes. But with all due respect to his great rhetoric, the Governor got it wrong. America is not divided into two static classes with redistribution and envy the only answer. Our Nation is divided into two economies, one democratic capitalist, based on private property; the other is near socialist, government-directed, and based on public ownership of property.

Our macro and mainstream economy is market-oriented, entrepreneurial, incentivized for working families; it rewards work, investment, saving and human output.

The second economy, all too often in our inner cities, is similar in many ways to Eastern European, or Third World "socialist" economies. It is predicated on rules, regulations, and disincentives almost totally opposite to the way people are treated in our mainstream economy. It has built barriers and disincentives to productive human and social activity, almost eliminated economic incentives and rewards, and has linked effort and reward in perverse and counterproductive ways.

This second economy almost guarantees poverty and dependency: It rewards welfare and unemployment at a higher level than working and productivity; It taxes and regulates the entrepreneur who wants to succeed in the above ground capitalistic system, while rewarding the underground or gray economy of illicit capitalism; it rewards people who stay in public housing more than those who want to move up and out into private homeownership; it rewards the family that breaks up rather than the family that stays together; it encourages debt, borrowing, and spending more than saving, investing, and risk-taking. But worst of all, it weakens and in some cases destroys the link between effort and reward.

The irony is that the first war on poverty and much of our welfare system was created in order to help the poor, to alleviate suffering, and provide a basic social safety net. But despite the noble intent, it has lead to dependency, welfare bureaucracy, and near pathological social conditions for some. Our country is now reaping this whirlwind in terms of abandoned children, homeless women and children, unemployed fathers, and crack addicted babies . . . despair not hope, poverty not opportunity.

Examples abound of how disincentives have created poverty in inner cities. I recently read a Wall Street Journal article about a woman on welfare in Milwaukee, Wisconsin who tried to put away a few pennies, nickels, dimes and dollars so that one day she could do what every other mother wants to do, send her daughter to college. She managed to build a savings account of just over $3,000, but there was a catch. The social welfare agency said she was violating welfare rules. She was taken into court, prosecuted for fraud, and fined $15,000. But since she didn't have $15,000, they just took her $3,000, gave her a year's sentence in jail, suspended it . . . and traumatized her life.

Guess what? According to the same Wall Street Journal article, she now spends every cent she gets, and she must rely on government subsidies to pay for just about everything. Incidentally, the story may have a good ending for this woman. After I talked about her in a speech, a man came forward from the audience and offered to finance a trust fund for the cost of a college education for the young girl.

The startling fact in America today is that the highest marginal tax rates are not paid by the affluent, but by welfare mothers or unemployed fathers who want to take a job. In most cities, a welfare mother must earn $15,000–$18,000 in wages to equal the average welfare payment. According to a study by Christopher Jencks and Kathryn Edin in the American Prospect magazine, a working mother with two children, employed at about $5 an hour, would net minus 45 cents per hour. She would lose about $4 a day after taking into account lost government benefits, taxes, and work-related expenses such as transportation and child care.

Eugene Lange, a wealthy businessman from New York City, also believes in the power of incentives to produce postive behavior. According to the New York Times, he went into PS 121 elementary school in East Harlem and told children that if they stayed in school, got good grades, stayed drug free, and qualified, that he would personally pay for a college education. Talk about behavior modification! Whereas, 60 percent of those children were dropping out, today 90 percent are in their first 2 years of college.

Public housing is another example of government policies perpetuating a poverty trap with disincentives to work and strong families. Because public housing authorities charge rents based entirely on a tenant's income, those rents actually could jump by 600 percent or more if the tenant gets married or takes a job. In some cases, rents exceed those charged in the private sector for similar dwellings.

We're instituting a new policy at HUD that sets "ceiling" rents at no higher than the market level. If a tenant takes a job or gets married, the rent increase will be put into an escrow or savings account, which will be released to the family when they leave public housing to pay, for example, for a downpayment on their first home. We want public housing—indeed all public assistance—to become a platform for self-sufficiency, not a trap of dependency. HUD used to give awards for public housing residents who stayed in public housing the longest. We stopped that. Now, we're offering incentives to public housing tenants who move up and out into the private sector.

The heavily-regulated U.S. housing market is another example of government-created scarcity. Rent controls, exclusive zoning, and buiding codes have crippled low income rental housing markets in many cities. Ironically, rent controls mostly help the wealthy and hurt the poor. The New York Times recently editorialized that "Perversely, many poor families are the harshest losers from rent controls . . . rent control has benefited the lucky, not the needy."

The real effect of rent control is to subsidize many upper and middle-income families who pay rents much lower than they would without regulation. Because the incentive is for these families to stay in rent controlled apartments, these homes are not available for those with lower incomes. According to the Times, "some families in the highest income groups became even richer by buying apartments they rented, reselling them later at 10 and 15 times what they paid." Affordable housing is a real challenge, and we in the Administration are taking steps to solve it. State and local governments must not make our task more difficult by imposing counterproductive, market-destroying regulations.

Another glaring example of counterproductive government policies is how HUD subsidizes vacant public housing. It has been costing the taxpayer over $1,300 per unit to subsidize vacant public housing often used as crack houses for gangs and drug pushers. We've started a policy called Operation Occupancy to subsidize only those units actually occupied by low income people. But this important victory isn't won yet. Some on the joint House-Senate Conference on the Housing bill are trying to overturn our policy.

The good news is: government policies can change; more importantly, people do respond to rewards. Productive human effort can be promoted; behavior can be modified or altered; work effort can be unleashed. Entrepreneurial talent is alive in the inner city. President Bush said making this happen means "giving people—working people, poor people, all our citizens—control over their own lives. It means a commitment to civil rights and economic opportunity for every American."

The Bush Administration is pursuing and expanding a national agenda to help low

income people combat poverty and despair. In his recent speech to the joint session of Congress, President Bush mentioned part of this agenda—and these were the only domestic goals he spoke of not directly affected by the Persian Gulf Crisis.

First, President Bush wants to cut the capital gains tax not to help the rich but to help the poor get rich or richer in terms of opportunity. As Abraham Lincoln said, "When one starts poor, as most do in the race of life, free society is such that he knows he can better his condition in life. I am not ashamed to confess that twenty-five years ago I was a hired laborer, mauling rails, at work on a flatboat—just what might happen to any man's son! I want every man to have the chance—and I believe a black man is entitled to it—in which he can better his condition—when he may look forward and hope to be a hired laborer this year and next, work for himself afterward, and finally hire men to work for him. That is the true system."

In the spirit of Lincoln's vision, President Bush has asked Congress to cut the capital gains tax rate to 15 percent for the Nation, and establish Enterprise Zones, as a national policy to generate jobs, opportunities, and minority enterprise in our Nation's most distressed communities.

I believe we should set a goal of doubling or tripling the number of minority business enterprises over the next decade. Earl Graves of Black Enterprise magazine has pointed out that black-owned firms are still just 3 percent of all U.S. companies, with only 1 percent of gross receipts. This is not just a tragedy for the Afro-American community, but for all minorities. Worst of all, it hurts all of us to have so many of our people lacking access to capital, property, and resources.

Cutting the capital gains tax rate has worked before and it can work again to powerfully stimulate minority businesses and job creation. In 1978, the Steiger amendment slashed the capital gains tax from more than 50 percent to 28 percent; in 1982, the Reagan/Bush tax cuts began to take effect, including our cut in capital gains to 20 percent. What happened?

Between 1977 and 1982, the number of black-owned businesses increased by 33 percent, and new Census Bureau figures show that, between 1982 and 1987, the number of black-owned companies jumped 38 percent—growing two-and-a-half times faster than all new business formations in the same period.

While the 1986 tax reform lowered income tax rates across the board, Democratic leaders in Congress extracted a high price by demanding a 65 percent increase in the maximum tax rate on capital gains—one of the largest increases in U.S. history!

Considering inflation, the real capital gains tax rate, according to a study by economist David Goldman, easily may be 75 percent or more. This punitive tax is staggering the entrepreneurial sector. Columnist Warren Brookes estimates that investment, which was growing at more than 7 percent annually before the tax hike, has slowed by 50 percent, and new business formation is actually declining for the first time in 10 years.

No one is hurt more by this than the poor and minorities who must have access to the seed capital that a capital gains tax cut would unleash. In the Journal report, Harry Brooks, CEO of a large black-owned business in California, took note of a shortage of capital, saying: "as you start growing, you use cash at an accelerated pace. If you don't have some semblance of deep pockets, you can be profitable and still go out of business."

The resistance of capital gains tax reduction by Congressional leaders is counterproductive to our national goals of winning a war against poverty. The capital gains tax is not a tax on the rich, it's a tax on the creation of wealth. If the tax code taxes wealth at such a high rate that the wealth disappears, jobs and small business creation will be destroyed. As jobs disappear, the poor will suffer the most. To make it worthwhile for people to innovate, to risk, and to create wealth, we've got to set a lower tax rate on risk income than ordinary income.

Second on the President's agenda is resident management and urban homesteading in public housing to empower tenants to achieve control of their housing communities and their dreams of homeownership.

Under President Bush, we've recently set a goal of creating more than 1 million new homeowners by 1992 through FHA and our HOPE initiative, Homeownership and Opportunity for People Everywhere, which has passed the House and Senate and goes to conference this week and next.

Post columnist William Raspberry wrote recently ". . . when assets are present, people begin to think in terms of the asset. If a young mother owns her own home, she begins to pay attention to real estate values, property taxes, the cost of maintenance and so forth . . . it is the assets themselves that create this effect, as opposed to just educational programs or exhortations toward better values."

Raspberry is right. Not only is homeownership and tenant empowerment a practical thing to do, it's a moral imperative, in our view.

Third, in order to create greater choice and independence, housing rental vouchers should be significantly increased and expanded. Low income families should have greater opportunity to live where they want and better access to affordable housing.

Fourth, tax reform is needed now to help remove more low income families from the tax rolls and dramatically increase the net income of welfare mothers and unemployed fathers who get jobs. In 1948, a median-income family of four paid almost no income taxes, and only $30 a year in direct Social Security taxes. This year, the same family's tax burden is over $6,000. To be as sensitive to families now, the tax code would have to set the personal exemption for the costs of nurturing children at well over $6,000 today.

Fifth, it is essential to expand the earned income tax credit, create up to a $6,000 exemption for children under 16, and pass the President's Child Care tax credit to roll back the huge tax burden on low income families and unemployed parents. These can be paid for, in part, by the additional revenues gained by cutting the capital gains tax rate to 15 percent, as Bob Kasten, Connie Mack, Newt Gingrich, and Vin Weber have all said. The capital gains tax cut would expand tax revenues at all levels of government by spurring new economic growth.

Sixth, for homeless people, the Administration's new Shelter Plus Care plan will expand community-based mental health facilities, drug abuse treatment, job training, and day care. Shelter and support services are the key to helping homeless Americans re-enter the mainstream economy. If Congress passes HUD's budget request for 1991, including the Shelter Plus Care initiative, it will represent a 62 percent increase in homeless assistance over 1990 and nearly 170 percent increase from 1989.

Seventh, to enhance education and opportunity, we must expand true choice and competition through magnet schools, education vouchers, tuition tax credits, and other choice-enhancing policies. Merit—plus champions like State Representative Polly Williams in Wisconsin and Council Member Keith Butler in Detroit—has rescued this idea from the partisan attacks of the past. Empowering parents with choice over the education of their children deserves strong consideration.

Eighth, Congress should pass President Bush's HOPE legislation, including IRAs for first time homebuyers, the low income housing tax credit, and Operation Bootstrap linking housing vouchers to strategies for gaining self-sufficiency.

Today's debate over how to help low income people is a debate between those who believe that people are a drain on resources and those who see that people are our greatest resource. It is a debate pitting hope and opportunity against the politics of envy. I believe that our greatest assets are not in the wealth we see around us but the potential that is unseen—minds yet to be educated, businesses not yet opened, the technologies not yet discovered, the jobs waiting to be created. Wealth is not what we've done, but what we have yet to do . . . and we've got a lot to do.

I've travelled to hundreds of distressed communities and I know entrepreneurial capitalism and empowerment can work to create the wealth and opportunities of the future. As we approach the 21st century, let us resolve to make our legacy a successful war against poverty. Let's unleash the greatest wealth our Nation has, the pent up talents and potential of our people.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. I yield myself 5 minutes off the time of Senator DOMENICI.

The PRESIDING OFFICER. The Senator from Idaho may proceed.

Mr. SYMMS. Mr. President, the Wall Street Journal had an editorial sometime last week. It went something like this, the "Remocrats and the Depublicans are at it again." I guess I would laugh, Mr. President, if it were not so sad to see the failure of not only the Congress but of the American people to be able to send a clear enough message to Washington that they would like to have programs put into effect that would either freeze spending, freeze spending with a modified growth rate, or let a sequester and fall, and reform the entitlement spending programs so that we could approach this from the spending side instead of approaching it from the taxing side.

What has happened here, Mr. President, is that we are going to witness a tax increase of several hundred billion dollars so we can have spending go up by over $100 billion. I note that my distinguished chairman, Senator BENTSEN, mentioned about people making the hard votes and how during the eighties it was the age of excesses and we ran up all these deficits.

This budget package we are hearing so much about is going to run up another one trillion, nine hundred billion dollars in debt in 5 years. So if we extend this program out for 10 years, we will do just about as well as we did during the eighties. We can run up two more trillion dollars of debt and then we can say we lived in excesses in the nineties and some other group of people in the Senate can get up and talk about how during the nineties we overspent and now we are going to have to do better at the turn of the century.

Like I say, Mr. President, it just makes a person want to sit down and cry to see how after 2 years of work on this, after the people had an election in 1988 where they chose a course for the country with a flexible freeze, no new taxes on one argument and the other side was tax, spend, business as usual, and then after 2 years of fighting we end up with tax, spend, business as usual. It is just absolutely heartbreaking to this Senator.

In my opinion, the American people know that the problem is spending, it is not taxes.

I have to say, Mr. President, that last week in this Chamber when I had the amendment up on striking the gas tax, I found it fascinating that the same people who constantly said that we do not tax the rich enough and we have to protect the middle- or low-income people more, turned right around and defended the gas tax, which is the most regressive of all taxes.

I compliment the committee as they have reduced it by $20 billion off the backs of the working men and women in the country. The part that bothered me the most was in listening to the debate. I thought surely it was not that one sided in respect to how the response was with my colleagues. Then I went back and read the CONGRESSIONAL RECORD and found out that what really bothered me was true; that there were not really very many Senators who got up and said where would you suggest cutting $40 billion in spending, if you reduce the gas tax? What the proponents of this package said is what tax would you suggest raising to offset reducing the gasoline tax to pare the deficit? My answer, of course, is that the problem here is not to tax the deficit away, Mr. President; the problem is the Federal Government spends too much money.

I have to say that I have long been an advocate of the economic policies with respect to Government taxes and spending of Nobel laureate Milton Friedman, and he has always said it is what the Government spends that is the problem. Whether you borrow the money or directly tax people for it, borrowing is a tax on the working people. It is what we spend that is the problem, and we spend too much money. The Senate has heard this phrase plenty from this Senator this week.

I just think, Mr. President, we are skating on ice that is very thin. We have passed the Clean Air Act which will excessively regulate industry. We passed that today. And then today we also will pass another excessively regressive taxation program to provide disincentives for all kinds of different groups of people, for people who work and try to save, try to invest, try to hire people, try to insure people—whatever.

It is very discouraging to this Senator to see how well we had done, how many people had improved their living standards, and to see this Congress make such a rapid retreat from what has been an advance toward a better society for America. We are making a rapid retreat here today. I plan to and will vote against this package.

Mr. President, the Remocrats and Depublicans are at it again, so I will say it one more time. I have spoken in this esteemed Chamber on numerous occasions since a budget agreement was brought before the American people a couple of weeks ago. I have lamented on how the many budget packages, compromises and closed door agreements will send this Nation into a tailspin. Why would I say this—because in my opinion—spending is the problem, not a lack of revenue.

I believe my message of no new taxes and the need for reductions in Government spending is being heard in Idaho, and everywhere else outside the beltway. I think the only message being heard inside the beltway, however, is the need to raise taxes to pay for excessive and unneeded Government programs.

What brings me great grief is that there are alternatives to one of the largest tax increases in history. Nearly a month ago, myself and 10 of my colleagues introduced the 4-percent solution. The 4-percent solution was designed to limit increases in outlays to 4 percent per year and to provide for midyear sequesters to assure that deficit and outlay targets were achieved.

The 4-percent solution was ingenious in its simplicity. There were no tax increases included and the Government was even allowed to grow at 4 percent a year. When we introduced this solution to the budget morass, my colleagues and I were not taken seriously. How can we balance the budget without raising taxes and more importantly, how can we balance the budget with a simple 10-page bill instead of an eight inch thick reconciliation bill?

Another solution would have been to extend the continuing resolution, freeze spending of appropriated accounts at 1990 levels and go home. Again, no help from the taxicrats. A continuing resolution would have resulted in no new taxes and was too simple to comprehend.

Mr. President, an example of the attitude shared by many in this Chamber occurred during the floor debate on the budget reconciliation. In that debate, I introduced an amendment to strike the gas tax increase from the agreement. I stated that the gasoline tax is one of the most regressive taxes ever devised and that it hits hardest those least able to afford it.

I went on to say that families living on $10,000 to $20,000 a year spend twice as large a share of their income on gasoline as families living on $50,000 or more a year. Two-thirds of Americans oppose an increase in the Federal gas tax and this tax, which is compounded by the rise in gas prices caused by the gulf crisis, will only go to feed more government programs instead of an extra gallon or two of gasoline for somebody's gas tank.

When I introduced this amendment, one Senator asked me incredulously, "How do you make it up?" referring to the $45 billion of tax revenue that would be lost. I had no intention of making it up. I am not in favor of raising taxes period.

What amazes me, Mr. President, is the attitude that prevails here. I was not told that I did a great job of trying to alleviate a small part of the proposed tax burden to be levied on the American people, but rather, which taxes do I intend to raise to make up for the $45 billion of lost tax revenues.

I have letters from the Associated Builders & Contractors, American Farm Bureau Federation, and from the National Federation of Independent Business, which ask that I vote against the budget reconciliation package. To me, this is a sign. The business sector realizes how devastating this package will be on an economy which is already in dire straits.

Mr. President, I hope the people of this Nation are paying close attention to what Congress has in store for them. I hope they understand that their taxes will be increased, and their benefits will be reduced, and that every aspect of their lives will be affected by this budget agreement.

Mr. President, I further hope that they remember the achievements of Congress 2 weeks from now.

Mr. President, I ask unanimous consent that three letters from NFIB, American Farm Bureau, and the Associated Builder and Contractors be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ASSOCIATED BUILDERS
AND CONTRACTORS, INC.,
Washington, DC, October 25, 1990.

DEAR MEMBER OF CONGRESS: It appears the budget reconciliation conference committee has reached a tentative agreement which moves substantially from the original bal-

anced approach of cutting spending and raising taxes to a heavier reliance on tax increases while ignoring the root of the problem, excessive federal spending.

The Associated Builders and Contractors supports deficit reduction as a top priority. However, we cannot accept an agreement which imposes new and higher taxes at a time when the economy is slipping into a recession—already impacting the construction industry. As an alternative, we urge you to support a continuing resolution for six months which includes a $20-$40 billion limited sequester or a resolution which continues spending at FY 1990 levels, both of which will yield effective savings until a realistic five-year budget proposal can be adopted.

ABC adamantly opposes, for deficit reduction purposes, an increase in the motor fuels excise tax. Any increase must be deposited in the Highway Trust Fund to preserve the integrity of the pay-as-you-go systems which has sustained the development of our nation's transportation system. These funds are included in the totals of the Unified Federal Budget and can be counted against deficit reduction.

Again, ABC urges you to vote against the budget reconciliation package and support a meaningful pro-growth solution.

Sincerely,

CHARLES E. HAWKINS III,
CAE Vice President,
Government Affairs.

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
October 22, 1990.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: As we watch the tortured budget negotiating process, we are becomng increasingly disturbed that the final outcome will have a disproportionate and negative impact on small business and, therefore, the nation's economy. Information on the shape of the package, as attributed to the negotiators, suggests that it contains significant tax increases which will be shouldered by smaller firms, especially the self-employed, coupled with spending cuts that rely on specious assumptions.

Specifically, we are deeply concerned about proposals to raise income tax rates, double the gasoline tax, lift the cap on the HI portion of FICA, and limit deductions. In 1986, self-employed small business owners, three out of every four business taxpayers, gave up deductions such as the Investment Tax Credit and accelerated depreciation in return for the promise of lower rates. In the package now being proposed, those same business owners will bear the brunt of tax increases.

These actions could not come at a worse time. The latest Quarterly Economic Report by the NFIB Foundation suggest the nation has already slipped into recession. In September, our Index of Small Business Optimism fell sharply for the second consecutive month to the lowest level since the 1980 recession. Worse still, our data indicates that the 1990 recession will affect small businesses more than it will large corporations, at least initially. Therefore, we believe a package dominated by revenue increases, including higher rates and fees is the wrong approach to both deficit reduction and a stronger economy.

NFIB supported the summit compromise even though we would have preferred sequestration. We cannot support any further deterioration of the balance between spending cuts and tax increases and we urge you to reject any efforts to move toward greater reliance on tax increases, such as those now rumored to be part of the package.

I assure you, the more than 500,000 members of NFIB would welcome the triggering of sequestration rather than any further compromise and the resulting economic damage. You can be certain of our support for any action which will reverse this dangerous drift toward a tax solution to the budget deficit. Conversely, NFIB will oppose in Congress any agreement that moves in that direction.

Sincerely,

JOHN SLOAN, Jr.,
President and CEO.

AMERICAN FARM BUREAU FEDERATION,
Washington, DC, October 25, 1990.

Hon. STEVE SYMMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR SYMMS: Farm Bureau opposes the budget reconciliation bill. We ask you to vote against the conference report.

Taxpayers are upset with the inability of the Congress and the Administration to restrain federal spending. We are increasingly distressed by the willingness of our senators and representatives to raise taxes rather than curtail government expenditures. Higher taxes will only provide more money to be spent.

Agriculture is hit by a 25 percent reduction in farm program spending in the reconciliation bill. We take a double hit in agriculture when consideration is given to higher taxes on gasoline and on products which come from commodities like tobacco and grains. Aside from agriculture's specific concerns in the bill, tax increases, regardless of kind, are a drag on the economy and could trigger a recession. Agriculture has only recently recovered the ground it lost in the recession of the early 1980s. We are fearful of what another setback would mean for farmers, ranchers and rural America.

We ask you to reject tax increases. Vote against the conference report on reconciliation. Instead, freeze spending or approve a long-term continuing resolution at the FY 1990 level.

Sincerely,

DEAN R. KLECKNER,
President.

Mr. SYMMS. I yield back whatever time I have remaining.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Mr. President, I yield 3 minutes to the Senator from North Dakota [Mr. CONRAD].

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 3 minutes.

Mr. CONRAD. Mr. President, first, I want to thank the chairman of the Budget Committee for his extraordinary efforts throughout this year to arrive at a responsible and fair budget package. I have greatly admired his work as we have moved through this process. And so it is with a special sense of regret that I rise today to oppose the reconciliation package before us.

I think most of my colleagues know that for 3½ years I have headed a deficit reduction caucus that has met every 2 weeks to work on the very subject we are now addressing. There is nothing that I have felt more deeply about than the need for this country to get its fiscal house in order.

I have believed and stated frequently on this floor that the greatest threat to our security is our economic vulnerability. In fact, earlier this year, I presented to the Budget Committee a 5-year plan that reduced the deficit $559 billion over that 5-year period.

Mr. President, in my judgment, this plan is so unfair to the part of the country that I represent that I simply cannot support it. Farmers in this program are being cut 25 percent.

But that does not begin to tell the story, Mr. President, because the truth is that farm families in real terms will take a 40-percent reduction under this package, and that is before considering the income reduction they were to face for the next 5 years absent any cuts. The Congressional Budget Office told us farmers in this country could expect a 21-percent reduction in farm income over the next 5 years before any cuts are made. With these cuts, which are by far the largest of any function of Government, we will now see a new wave of farm foreclosures and farm failures across the heartland of America that will be unprecedented since the Great Depression.

Mr. President, that simply is unacceptable. It is especially difficult to accept when in the midst of all of this we will continue to spend nearly $100 billion a year to pay the military bills for Europe, when we have to borrow the money from them to do it; we will continue to spend nearly $50 billion a year paying the defense bills for Japan even though we have to borrow the money from them to do it.

Mr. President, it makes no sense to this Senator that we insist on paying others' bills when we cannot pay our own.

I am also disturbed that we ask taxpayers in this country for a tax increase when we are not being able to assure them that we are requiring other taxpayers to meet their obligations first.

The tax gap in this country is $100 billion, the difference between what is owed and what is being paid. We have done very little in this package to address that enormous injustice to the honest taxpayers who are paying what they legitimately owe.

So, Mr. President, it is with a real sense of regret that I rise today in opposition to this package but oppose it I must. It is simply too unfair to the area that I represent to win this Senator's vote.

No Senator wants to vote for a deficit reduction package more than I do. I have said many times on this floor that our greatest weakness as a nation

is our economic vulnerability, and I believe that.

But I must hold this budget to two tests. First, is it fair? Second, is it honest? For this Senator, the answer to those questions is "No."

This budget is not fair. This budget still asks too much from the middle class, the elderly, the farmers, and rural America. This budget still asks the American taxpayer to pay the defense bills for Europe and Japan, when we can't pay our own.

This budget is not honest. It relies on phony economic assumptions and impossibly rosy scenarios. Does anyone really believe that oil prices will average $21 a barrel this year? Does anyone really believe interest rates will stand at 5.7 percent by 1992? Does anyone really believe that our economy will grow at a rate of 3.8 percent, a rate we haven't seen since 1983?

There are so many simple, fair, effective things we could have done to make this a better budget.

We could have told our friends in Japan that we're not going to spend $50 billion a year to pay for their defense, when they can well afford to pay their own bills.

We could have told our friends in Western Europe that we're not going to spend $100 billion a year to pay for their defense bills, and borrow the money from them to do it.

We could have put a tough fair share tax compliance program in place, to collect some of the tens of billions of dollars from those who refuse to pay what they legitimately owe.

We could have. But we didn't.

I cannot vote for this budget. The middle-class wage-earners of North Dakota did not send me here to raise their taxes, then spend $100 billion a year to pay for the defense of Western Europe. The people of my State did not send me here to raise their gas taxes, and then let tax cheats get off scot free. They did not send me here to ask the elderly to pay more for medical care, and then spend $50 billion a year to provide Japan's military defense. They did not send me here to cut agriculture spending by $15 billion, and then forgive nearly $7 billion of Egypt's military debt.

The people of North Dakota are willing to do their part. Like all good citizens, they're willing to make sacrifices to get our fiscal house in order—but only if the budget is fair, and only if it will really work to solve our problems. Well, it's not fair, and it won't work.

It strikes hardest at States like my own State of North Dakota, rural States with high elderly populations, States that depend on agriculture for their economic strength, States where people have no alternative but to drive long distances and pay the higher gas tax. We'll have to pay for this package, and the price is too high.

Let's take a look at the agriculture cuts. This buget cuts agriculture by 25 percent in nominal dollars, and as much as 45 percent in real terms by 1995. That's far and away the largest spending cut, proportionally, of any major Government program. That's not fair.

And it comes at a time when farmers in my State are still recovering from 2 years of drought, at a time when wheat prices have plummeted, at a time when energy costs for farmers are going through the roof. And Congress gives them a budget that guarantees another wave of bankruptcies and foreclosures across the heartland.

It's not just farmers that will suffer from these budget cuts. The rural economy depends on the health of the family farm. Main street businesses in small towns will suffer, and many will fail. Implement dealers, send dealers, and fertilizer and farm chemical businesses will be damaged. We will lose export markets. The food and fiber industry our Nation's biggest business, will inevitably feel the effects. More jobs and economic opportunity will move to the urban centers and overseas.

Let's take a look at the gas tax. Everyone will pay, but rural America will pay more—far more. North Dakota is 10th of all States in per capita gas consumption. My people have no choice. There's very little public transportation available to cross the wide stretches of North Dakota; people must drive.

Let's take a look at the tax increases. They still fall far too heavily on the middle class. Over the past 13 years, taxes on the middle class have climbed steadily, while their real incomes have increased only modestly. Meanwhile, the ultrarich, the top 1 percent of Americans, have seen their taxes drop by 23 percent, while their real incomes have risen a staggering 91 percent. That's not fair.

And the irony is that we're asking for tax increases before we make an honest effort to collect the taxes that are already due.

We know that the Internal Revenue Service has accounts receivable of at least $60 billion. That's money that we know is out there, that people have admitted they owe, and that simply has not been paid.

The Federal tax gap—the difference between what wealthy individuals and corporations owe and what they actually pay—stands at $100 billion today. The tax gap will rise to $120 billion by 1992 if nothing is done to improve tax compliance.

Earlier this year, I proposed a plan to make a modest investment in IRS resources, to collect nearly $64 billion over 5 years. This Nation needs a Fair Share Tax Program to collect the taxes that are legitimately owed. I don't think we should ask honest taxpayers to pony up another red cent until we make the deadbeats pay what they owe.

A Fair Share Program could bring in billions of dollars in revenue without a single tax increase. And yet Congress is proposing massive tax increases with this budget, with only a token effort to collect from those who fail to pay what they legitimately owe.

The irony is that we're asking for tax increases while we continue to pay the defense bills for Europe and Japan, even though we have to borrow the money from them to do it. The Warsaw Pact has collapsed. The Berlin Wall is a memory. And yet we continue to keep hundreds of thousands of troops in Europe, and pay $100 billion a year to pay for their defense. We keep 50,000 troops in Japan, and pay $50 billion a year for their defense. It doesn't make sense to ask our own people to sacrifice while we pay the defense bills for our allies—who are more than able to pay their own way.

You may say it's easy to sit back and pick this budget apart. It's easy to blow holes in it without offering any alternatives, without making the hard choices that must be made to bring our budget under control. But this is one Senator who has tried, not once, but many times, to offer a reasonable alternative.

This spring in the Budget Committee, I offered a plan that would have cut even more from the deficit—$559 billion over 5 years. And I did it with no phony assumptions, no smoke-and-mirrors accounting gimmicks. There was plenty of deficit reduction in the budget I offered—but it was fair, and it would have worked.

Just a few days ago, when the budget resolution came to the Senate floor, I offered an alternative. My plan would have pierced the income tax bubble, and imposed a surtax on those with taxable incomes over $1 million a year. My plan would have scaled back the gas tax, eased the cuts in Medicare, and restored about half of the cuts in agriculture—while still achieving the 5-year deficit reduction goals.

I have tried at every opportunity to make changes in the budget, to improve it and make it more fair. But like most of the Members of this body, even those of us who serve on the Budget Committee, I was locked out of the budget summit process.

This is essentially a budget that was put together by a handful of negotiators from the White House and Congress, behind closed doors. They are men of honor and good will, and I appreciate their hard work. But this is no way to put together a budget. The American people are disgusted by this process, and rightly so.

It's time to put an end to the era of budget summits. It's time to stop putting together our proposals based on threats of vetoes from the President.

It's time to debate a budget on the floor of the Senate, and vote our consciences in the open and under the steady gaze of the people who sent us here, as we were meant to do. If you don't want higher taxes for the rich, come to the floor of the Senate and say so. If you want to raise the gas tax, come to the floor of the Senate and say so. And if the President wants to veto what we do, so be it. Maybe then we'd be able to put together a budget the American people could support and respect.

I want very much to vote for a budget that will reduce the deficit, and put this Nation back on track to economic strength. This package will cause a great deal of pain for the people of my State, and win precious little for the people of the Nation. I cannot vote for this budget.

I yield the floor. I thank the Chair for this time.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Mr. President, I yield 5 minutes on Senator DOMENICI's time to the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming [Mr. WALLOP] is recognized for 5 minutes, the time charged to the Senator from New Mexico.

Mr. WALLOP. I thank the floor manager.

Mr. President, if Americans can take a look for just a minute, this is the package upon which we are about to vote, right here. It weighs what 8, 9 pounds? I do not know how many pages it is. But we are supposed to take comfort, because this three-page document summarizes it for us. We are supposed to be quite confident in what we know about what we are about to vote upon.

Mr. President, this is totally irresponsible of the Congress and it is typical of the way the Congress operates. It is virtually impossible for anybody to claim any certainty, including those who worked on it all those many thousands of hours, as to what is included in here. But we are supposed to take it.

By the way, on the desk down there is one copy, one copy available for all of the Republicans, of the statement of the bill managers. But we have reduced from 10 hours down to 2 hours the time in which we are able to debate this and discuss it, to try to determine what is in it.

This is a marvelous little thing that has been produced, which I would say is one copy of spin doctrine, called the half-a-trillion-dollar deficit reduction program. If you read it, you are reading, those of you who were here before, shades of TEFRA.

Mr. President, one thing does come out of this—this is a tax program principally except that, as my friend from North Dakota noted, it cuts severely into agriculture. Those are real cuts. It cuts severely into defense, and those are real cuts. It cuts severely into veterans, and those are real cuts.

But then look at these items from the little summary.

The Committee on the Judiciary achieved its deficit reduction savings of $102 million over 5 years through an increase in user fees.

The Committee on Commerce, Science, and Transportation achieved deficit reduction savings of $1.2 billion through a combination of user fees.

The Committee on Banking adopted language that gives the Federal Deposit Insurance Corporation more flexibility to increase deposit insurance problems.

These are all new fees.

Also among the interesting items: the Committee on Labor and Human Resources achieved its deficit savings through increases in penalties.

The Committee on Environment and Public Works achieved its deficit reduction through a combination of Nuclear Regulatory Commission/Environmental Protection Agency user fees.

The Committee on Veterans' Affairs I mentioned.

The Committee on Governmental Affairs achieved its savings by requiring the Postal Service to make payments to the civil service retirement program, and by permanently increasing the maximum mortgage amount eligible for FHA insurance. So what they did was increasing their revenue by increasing the risk to America. And this, my friends, is deficit savings?

You will go through all of this, every last page of it, and you will not find any trimming of Government. One of the things you will find is that we have appropriations caps, new budget reform—wonderful, and I take my hat off. At least it is an attempt. But what does it do? It caps a rate of increases, and guarantees it at the same time, so there is no such thing as discipline applied anywhere.

I know when I was on the Energy Committee I asked why we did not take 15 percent off the identifiable overhead of the Department of Energy and of the Department of the Interior? Guess what? We cannot do that because that is the province of the Appropriations Committee.

But I thought, why would it not be a good thing for the American Government to cut down on some travel, to cut down on some conferences, to cut down on some advertising, to cut down on some of the frivolity which constitutes modern American delivery of Government which may be nice to have but not critical to us. But what do we get? We get new taxes and increases in fees and deductions from farmers and veterans and Americans' security.

I do not know how anybody else feels about that. That is all that is identifiable out of the package. Somewhere down the road we are going to have a look at a thing called a technical corrections bill, and therein will rein down the special favors on all of those people in both parties who were not at the table and who were probably not involved in this great mischievous thing.

The PRESIDING OFFICER. The Chair informs the Senator from Wyoming he has used his 5 minutes.

Mr. WALLOP. Mr. President, could I have 30 seconds?

Mr. DOMENICI. I yield 30 seconds to the Senator from Wyoming.

Mr. WALLOP. I thank the Senator from New Mexico.

Mr. President, if anybody in America thinks anybody on this floor knows what is in here, then everybody in America deserves the tax increase they are getting.

I yield the floor.

The PRESIDING OFFICER. Under the rules of the Senate, it is inappropriate for visitors in the gallery to respond affirmatively or to the contrary to remarks made on the Senate floor. That will be enforced.

Who yields time?

Mr. DOMENICI. We were expecting Senator NICKLES from Oklahoma. Does the Senator from Mississippi wish to speak?

Mr. LOTT. I do.

Mr. DOMENICI. I yield 3 minutes to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 3 minutes.

Mr. LOTT. Mr. President, I thank the distinguished Senator from New Mexico for yielding me this brief time. I had actually thought about not having any further comments at this time; I had expressed myself so strongly earlier about what I saw coming with this so-called deficit reduction package. And that is certainly an oxymoron because I do not think we are going to see any real deficit reduction from this package.

I thought about maybe just getting up and saying the dastardly deed is done, let us get it over with. But there are some basic points that I have to make this afternoon to free my own conscience as I vote against this package.

First of all, the fundamental premise of this package is wrong. It has been wrong really for weeks or months. It goes back to probably May. But somewhere earlier this year, this turned into a tax increase package. That is

what it really is. It is a tax increase package.

As a matter of fact, as we try to find out exactly what is included in terms of taxes, I think it is generally acknowledged now that it has $164.6 billion in tax increases plus an additional $18 billion in user fees, new or increased user fees, and $7 billion in premium increases, for a total of approximately $190 billion in tax increases.

The argument is going to be made, well, it hits mostly people in the higher income brackets. Let me assure one and all that it is going to hit everybody. When you look at the changes in this package, from gasoline taxes to new Coast Guard fees, it is going to hit the average working, struggling American very hard. Only in Washington would we call this a spending decrease because we are holding down the amount of increase. It makes no sense.

Let us just state it very simply. Over the 5-year period, Federal Government spending will go up significantly.

After looking at this massive package it is hard for me to tell exactly what the total tax increase will be. It is hard to tell exactly what the spending increases would be. But there are probably somewhere in the neighborhood of well in excess of $200 billion in spending increases across a myriad of areas.

Let me talk about some of the specifics in this package just a moment. I mentioned the Coast Guard user fees and you say "Well, we are talking about yachts." You are also talking about shrimp boats and fishing boats of people who work the seas for a living; now they are going to have a Coast Guard fee they have to pay—not of $25—but $35, $40. There is some escalating scale upward that is included in this package. That is a tax anyway to look at it. It does not really go into the Coast Guard. It goes into the General Treasury.

We have significant changes now in veterans affairs, including the current loan origination fee which will be increased.

There is a seven times increase in the mandatory minimum penalties for OSHA violations. Those people who have businesses, small businesses, trying to get their jobs done, are going to see OSHA increases. That again is a fee or a tax anyway you want to look at it.

There are going to be a whole number of areas like this where you are going to see the working, struggling people of this country hit by increased taxes or fees, and the spending increases will not go to those people who are out there earning the living, paying the taxes.

There is no growth incentive in this package. You almost stop hearing—except for the distinguished Senator from Florida a few minutes ago—about the fact we are not doing anything to encourage growth and development in the economy. We wound up doing nothing to significantly improve the capital gains area.

But there is some bit of good news here. At least we are coming to the end of this session. This is the bottom. I hope that next year we will begin to turn up this thing and that we will seriously address the deficit in a way that will not be only tax increases.

I yield the remainder of my time.

Mr. DOMENICI. Mr. President, I made arrangements now for 5 minutes to the Senator from Oklahoma. Senator HUMPHREY wanted time. I yield 3 minutes following that. And if they have someone on their side, they have a right to be in between.

I yield in that order.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I compliment my friends and colleagues. I decided to vote against this package. I cast no aspersions on the people who tried to put it together. I know they did their best. I am not satisfied with the results.

Mr. President, looking at the results of this package as described by some of my colleagues previously, 40 percent of this package is a tax increase. They have tax increases. You also have fees, fee increases, taxes or fees or fines or penalties. That is 40 percent of the package. And 37 percent of the package is discretionary spending cuts. But basically that is spending cuts in defense, not in nondefense.

There is no nondefense spending cuts. Nondefense discretionary spending cuts are zero. Defense makes a significant contribution. There is a very significant contribution on the tax side. Thirteen percent of the package is interest savings. That is purely an assumption. That is a wish, a hope. It is not necessarily a reality.

We put that in many of our budget packages in the past.

If you look at the total amount of money we spent on interest it has risen rather substantially.

This package also has a $950 billion debt increase, almost $1 trillion debt increase. That is an improvement over what it was originally at one time, at $1.9 trillion, enough to give us a blank check for 5 years.

As I understand, $950 billion probably will take us through May or June 1992.

We passed an amendment on the floor that would have reduced that down to basically a 1-year debt extension. We have significantly more than that now, but still $950 billion is only enough to take us through 1992. That much debt extension. That shows you even with this package the amount of debt is increasing, the amount of deficit is increasing, and increasing at a very alarming rate.

Mr. President, there are a lot of provisions in the package that have been pointed out, an enormously large package. We have not had time to review it extensively.

I have asked some questions and some of the things I found out about this package have alarmed this Senator. As the Senator from Mississippi mentioned, there are very significant increases in OSHA fines. Actually, it goes up to $1.1 billion over the next 5 years. OSHA is designed purposefully for the idea of creating a safer work environment for employees, not to go out and raise money, not to be a tax collector for the Federal Government.

I happen to be an employer. I came from the private sector. I am concerned about businesses now when they see the OSHA inspectors coming by, knowing that inspector is supposed to be raising a lot of money. So a lot of these fines are going to be very expensive.

Actually this bill allows those fines to go up by 7 times; not a 10-percent increase, not a 50-percent increase; a 700-percent increase in OSHA fines and penalties. I do not think that is a good change.

We had an amendment on the floor of the Senate which passed overwhelmingly to reduce that. But, unfortunately, when it came back from conference the higher fines and penalties were in there.

We also find out that this is a very heavy and punishing tax I am going to say on pension plan reversions, the tax that would go all the way up to 50 percent if an employer had a termination of a pension plan, had excess funds in it; now the Federal Government can take up to 50 percent of that reversion. That could have dramatic negative impacts on the private pension plan community of which there is over $1 trillion in assets.

That is terrible policy, terrible, terrible policy that we in the Senate will come to regret. We will find that the pension benefit guarantee corporation is going to have increased liabilities because employers in the future will not overfund their plans, they will underfund their plans. Some of those plans will go upside down and the liabilities will be on the taxpayers.

I have heard a lot of rhetoric: who is this going to tax; who is this going to hit? We are going to hit the upper income but with the HI increase alone. Medicaid, 1.45 percent; that tax now goes up. From $51,000 we are going to increase that up to $125,000, if a person is working to make enough to make $125,000. You are looking at a tax increase on the employee and on the employer of $1,000. That is $2,000 tax increase for that one person. That is a tax on wages.

I personally think that is a step in the wrong direction, as most of this

package, the greater emphasis is on taxes, not on spending reduction, not on really controlling the growth of Federal spending.

Many of the appropriations bills we passed this year, the spending level increases exceed 10 percent. Mr. President, I think that is where Congress should have spent most of its time, in trying to contain the growth of spending, not trying to just raise more and more taxes.

I yield the floor.

Mr. HUMPHREY addressed the Chair.

The PRESIDING OFFICER (Mr. KERREY). The Senator from New Hampshire is recognized for 3 minutes.

Mr. HUMPHREY. Mr. President, how much time remains?

The PRESIDING OFFICER. 19 minutes, 1 second.

Mr. HUMPHREY. Mr. President, I was watching on my television when our colleague from Wyoming, Senator WALLOP, made his outstanding speech just a few moments ago. I can fully understand why there was such an emotional outburst of applause from the galleries—in violation of the rules, to be sure, but one can certainly understand it—because I share the very same sentiments.

I will just bet that, among those 2 or 3 million Americans who may be tuned in just now on cable television, 90 percent were applauding Senator WALLOP's remarks, because they were right on target. We are told that we are about to tell the American people, I guess, that we have to raise taxes because spending cannot be cut further. We have cut spending as far as we can go.

Mr. President, any such suggestion is utter nonsense. Let me go to the bottom line. I will cite figures for the fiscal 1991 budget, the percentage of increase for 1991 over 1990 for the various appropriations bills.

The appropriations bill for Commerce, State, and Justice Departments increase 11 percent over last year. The Energy Department is getting a 9-percent increase. These are rounded off the nearest whole percentage. Foreign Operations, foreign aid, 6 percent. Interior, 6 percent. Labor and the Department of Health and Human Services, 14 percent increase. Appropriation for Congress, 7 percent increase. Appropriation for the Department of Agriculture, nearly an 8.6-percent increase. Appropriation for the Department of Transportation, 8 percent increase. Appropriation for the Treasury Department, 12 percent increase. Appropriation for the Departments of Veterans Affairs and Housing and Urban Development, 15 percent increase.

Where are the cuts, and who are we kidding, Mr. President I hope we are not deluding ourselves, and I am certain we are not deluding the American people.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Mr. President, I yield myself 3 minutes.

Mr. President, I have listened with interest to some of the statements from my colleagues on the other side of the aisle, and I would say that it is awfully easy to stand up and pick apart this budget reconciliation package. It is very easy to find disagreement with it. Who in the world wants to raise revenues?

I do not want to see my taxes go up, Mr. President. I stand before you as a government employee with two children in very expensive colleges. I do not want to see my taxes go up. But I do not want to continue to mortgage the future of those children either. It is high time we started living within our means in this country and in this Government

When this budget reconciliation package was on the floor, I heard no one on the other side of the aisle come forward and offer Medicare cuts. Where were they? They could have offered a measure to cut Medicare to the old folks right there. We would not have to raise revenues.

Where was the offer to cut agriculture? They could have cut the farmers. We would not have had to raise revenues. We did not hear a word about that. They could have cut the cost-of-living adjustments for the Federal employees, the retirees, the military retirees. Not a peep about that.

How about the student loan program? We did not hear a single word about cutting any of that program. How about environment and educaton? We have a President who says he wants to be the education President. He wants to be the environment President. Well, I want to see him be both of those. If he is going to be the education President and the environment President, he is going to have to have some resources to do that.

Veterans is another area we could cut. I just heard it referred to over here that payments for veterans are going up. That account is going up, yes, it is, because right now we are in the period where we have the post-World War II veterans bulge. Those men and women who defended this country in the Second World War are now approaching the age of 68, the time when their needs for medical care are the highest they will be in their entire lives.

Yes, we could cut those veterans. So why did we not hear an offer from the other side to cut these veterans programs? Not a word about that. We could have saved some of these revenue increases if those offers had been forthcoming.

So, Mr. President, for those who want to come on the floor now and make these speeches at the 11th hour and say, "We are taxing this group too much, these poor fishermen out there ought not to have to pay for these Coast Guard services that they receive. I say that their arguments simply come too late. They had their time to make those arguments and offer those amendments when they could be effective in changing the laws of this country.

I submit, Mr. President, that I have heard about all the rhetoric around here that I want to hear. It is time for those of us who want to get on with the business of making this Government run, to get on with that business. It is time, I think, to put aside some of these vacuous statements about we ought not to be doing this; we ought not to be doing that.

If people want to make cuts in this Federal budget, let them come forward and offer their cuts, and then go back home and defend them to their constituents. No, they do not want to offer the cuts.

They just want to go back home and complain and point the finger at those who accept the responsibility of raising revenues to run this Government, those who will accept the responsibility to raise the revenues so that Medicare can take care of the older citizens; those who will accept the responsibility to see that the veterans get what they deserve; those who defend the freedom of this country and fought for it; and those who accept the responsibility of providing the resources so that this President of their party can carry out his agenda of being the education President and the environment President.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. 21 minutes, 17 seconds.

Mr. MITCHELL. Will the Senator yield for a question?

Mr. SASSER. Yes.

Mr. MITCHELL. I was not present during the entire debate, but I heard someone else's discussion. I note that the Senator from Florida and the Senator from Mississippi are here. I heard phrases like "cut spending, reduce spending, deal with entitlements, we need spending reductions." I would if I missed anything. Did anyone propose cutting Medicare while I was out of the room?

Mr. SASSER. Mr. President, I say to the distinguished majority leader that I have heard no one propose cutting Medicare on this floor this morning, nor have I heard that proposal made during this entire session of the 101st Congress.

Mr. MITCHELL. Did anyone propose cutting Social Security while I was out of the Chamber?

Mr. SASSER. I say to the distinguished majority leader that no one proposed that, nor have they proposed it this session.

Mr. MITCHELL. Mr. President, I think that illustrates one of the problems here——

Mr. SIMPSON. If the majority leader will yield.

The PRESIDING OFFICER. Does the majority leader yield?

Mr. MITCHELL. Mr. President, let me just ask, does the Senator favor cutting Social Security?

Mr. SYMMS. I have favored, throughout my career, a modification of the cost-of-living adjustments. It is all on the record. I have favored raising the retirement age. I have offered the amendments here on the floor. I have offered raising the deductibility on Medicare. It is way out of balance from where it should be, and I think it has to be done in fairness with all the other programs.

But I think that is what the American people are asking us. Unfortunately, people like me are in the minority.

Mr. MITCHELL. I thank my colleague from Idaho, and I say that I have always admired his candor, and I admire it especially now. He is the first Senator that came out here on the Senate floor and said not only is he in favor of cutting spending, he is in favor of cutting Social Security, and he is in favor of cutting Medicare.

I think that his candor is—

Mr. SYMMS. That is different. I am talking about reformulating the formulas, raising the retirement age and raising the deductibility.

Mr. MITCHELL. Do I take it then that the Senator is now saying he does not favor cutting Social Security and does not favor cutting Medicare?

Mr. SYMMS. The majority leader is a master wordsmith.

Mr. MITCHELL. I thought for a moment I actually heard a Senator say that he favored cutting Social Security and favored cutting Medicare. But I gather even that has been modified or conditioned in some respects.

I think it really points up the problem, Mr. President, to which the Senator from Tennessee has alluded. We have heard a cascade of demands for cutting spending. We have heard a deluge of words for reducing entitlements. Every Member of this Senate knows that by far the largest entitlement programs, by far the largest spending programs, by far the fastest-growing spending programs are Social Security and Medicare.

And yet not one of those Senators who have spoken here today in opposition to this package and made such a demand for spending cuts has stood up and said let us cut Medicare, let us cut Social Security, because, of course, they are aware of the political consequences. I invite any Senator who has that view to stand up and say so.

To be specific, the two Senators on this Senate floor who have had the courage to spell out specific modifications in these programs that would deal with them effectively, and particularly Medicare, are Senators who worked hard on this package, and they know what is required. They know that restraint is required. They know that these programs cannot continue to grow at the current pace.

But the reality is that we have not heard from those who claim to want spending reduction, anyone who will stand up and say right now, loud, for all to hear, especially for their constituents to hear, "I favor cutting Social Security." "I favor cutting Medicare."

Mr. President, we are not going to hear that.

Mr. SYMMS. Mr. President, if the majority leader will yield one more time, I would like to say when we did the Social Security Reform Act, this Senator offered on the floor an amendment to raise the retirement age 1 month every year starting in 1984. I offered an amendment to suspend COLA's with a modified reformulation. We had votes on it. It is in the RECORD. It is simply not true. We have advocated savings.

Mr. MITCHELL. I thank my colleague.

I merely make the point, Mr. President, that is the problem we confront. It is very easy to be abstract and use euphemisms and general phrases that do not touch a chord. But the reality is, of course, that we have here a package that is balanced and that is fair and is responsible, imperfect as it is. Desirable from the standpoint of each individual Senator? No.

But nothing better illustrates the difficulty of achieving meaningful deficit reduction than the words we heard in this Chamber this afternoon, the words from those who oppose this package but will not say that they want to cut the programs that are the largest and fastest growing and which create, in part, the difficulty which we confront.

Several Senators addressed the chair.

Mr. SASSER. Mr. President, I yield 5 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I rise to indicate my support for this bill. Although I recognize there are some good parts in it, there are some parts that are not so good, and some parts that I would have liked to have changed. But, I am a realist about the legislative process. You do not always get the bill that you want. It is a question of give and take.

I believe that the Democratic leadership has done a good job. Frankly, they would have done and could have done a better job if we did not have a President who consistently stood in the way and took certain positions that were very obdurate and, I believe, against the interest of the majority of the American people. The President was determined to protect the wealthiest people in the country and by reason of his adherence to that position, certain negotiations and concessions had to occur.

But I believe overall, in spite of that, this bill represents a major move in the right direction. It is not as progressive with respect to the tax rates as I think it should be, but I think it moves in that direction. I am unhappy about the fact that jewelry and fur purchases are only taxed if they cost in excess of $10,000. That amount ought to be lower, but so be it. I think that the energy tax credits should not be in the bill. I think that the tax on airplanes and yachts is unfavorable because the exemption is too high. But you have to swallow some of these special-interest provisions because, as I previously said, overall you have to take the bill as it is, not expect only what you want it to be.

I am frankly disappointed that defense spending is not to be cut more in the next 5 years. I believe the people of this country were expecting a peace dividend after all that transpired in Europe, and I think they feel a great sense of disappointment that we are not cutting Defense more significantly.

I know that Desert Shield is a totally separate issue, but the fact is we ought to be cutting back on some of the exotic weaponry and we are not doing enough of that.

Let me also look at the positives, now that I have mentioned the negatives. It will cut the budget deficit by $490 billion over 5 years under the economic assumptions that the President and the Office of Management and Budget has used. I think some of these assumptions are off base, but based upon their assumptions, it would be a $490 billion cut in the deficit over 5 years. It will burst the bubble in large part in spite of the President's opposition to progressive taxation.

It reduces the Medicare cuts as proposed by the administration by $93 billion. In other words, those who are on Medicare will be paying $93 billion less or suffer $95 billion less in cost than they would have if the administration position had been accepted. I am pleased about the fact that the workers of this country are going to be getting better protection, are going to be safer on their jobs and less lives lost because penalties had to be raised in order to balance the budget. The fact is they should have been raised a long time ago. They had not been raised in 20 years and this is one of the good things that came out of the negative,

that by raising monetary penalties we are protecting the lives and bodies of workers on the job.

As I will explain further in my extended remarks, I must say, that I am glad personally, that after 8 years of trying, this bill does something about the fact that the employers of this country have ripped off over $22 billion from the pension funds of the workers of this country. Lots of the money was taken by the leveraged buyout artists who, immediately after they made the deal, terminated the pension fund, took out the excess funds for themselves. Under this bill, they will no longer be able to do that. They will have to share some of those funds with the Government and with their workers, depending upon the circumstances.

I believe that the Congress deserves a lot of credit for providing a reasonable way to ensure that the pensions of retired workers will be protected.

I conclude by saying that this is not a perfect bill. This is not the kind of bill that I would write. But the fact is it is a better bill than the bill that the administration wanted us to take in the first instance, and I doff my hat to the leadership on the Democratic side, who were able to bring about this result. I think it is in the country's best interests.

PENSIONS

I would like to explain the pension provisions included in the budget. For the past 8 years, I have tried to bring to the attention of the Congress and the Nation how workers and retirees are being harmed by companies raiding so—called excess assets from workers' pension plans.

At long last, the budget bill before us contains provisions to protect the millions of working men and women who are depending upon their pension plans to provide them with adequate income during their retirement years.

This issue first came to my attention in 1983 when the A&P Tea Co. was taken over by a German conglomerate. The purchaser terminated the A&P pension plan and attempted to take the money in the plan to pay for the entire cost of the takeover.

The A&P workers and retirees were outraged that their pension moneys could be taken away from them.

Those workers had given their lives to the company only to have their retirement security taken away from them.

They had sacrificed higher wages in order to set aside funds for retirement. But in one fell swoop their retirement money was gone. The Reagan administration at first ruled that this was an illegal practice.

But then in 1984, after some heavy arm-twisting from the business community, the administration changed its position and gave the green light to these sham pension plan terminations.

Soon thereafter, thousands of employers began terminating their pension plans and using the money for other corporate purposes.

Forty percent of the terminations were used to finance or prevent a merger or takeover.

Since 1983, over 2 million workers have lost over $22 billion from their pension plans.

Every study on this subject has shown that workers, retirees and taxpayers are harmed by these sham transactions.

Workers lost the security of having a defined benefit pension plan which is insured by the Federal Government. Following termination of a plan, the average worker loses half of his or her funded pension benefits.

Any replacement plan an employer establishes also is likely to provide lower future retirement benefits, and that new plan has no cushion of assets to protect against a downturn in the economy or a change in the employer's financial condition.

Retired employees are similarly hurt by a plan termination. Their pensions are sold off to an insurance company and thus become dependent on the financial status of the insurer. Retirees are unlikely ever again to receive cost-of-living adjustments in their benefits. Each year their income will be eroded by inflation as they are forced to live on a frozen pension check.

Before reversions became legal in 1984, half of all retirees received cost-of-living adjustments from the pension plan's assets. Since 1984, less than one-third of retirees have received a single increase.

Taxpayers are also harmed by these transactions. All contributions made to a pension plan and the interest earned by the plan are tax-deferred. When an employer raids a pension plan, it benefits from the tax-free value of that money. Not only are we permitting employers to rob their workers, we are allowing them to bilk the taxpayers.

Although Congress imposed a 10-percent excise tax on employer reversions in 1986 and increased it to 15 percent in 1988, taxpayers still lose out. According to the General Accounting Office, the excise tax needs to be increased to 40 percent solely to recapture the Government's tax loss.

This raiding has gone on far too long. It is time that Congress stop giving employers incentives to terminate pension plans.

It is time Congress protect the retirement security of the American worker.

The budget bill before us does that. It provides a basic level of protection to workers and retirees and lessens the loss to the Government.

The bill changes the law so that if an employer decides to terminate its pension plan, then any excess assets must be allocated so that 20 percent goes to the Government, 25 percent is set aside for workers in a new pension plan, and the remaining 55 percent is recovered by the employer.

The employer may choose to reduce the workers' portion to 20 percent, if, but only if, the workers and retirees are provided immediate increases in their benefits.

But if the employer fails to set aside any money for the workers—either in a new pension plan or in immediate increased benefits—then the employer must pay a total excise tax of 50 percent not just 20 percent.

Although I am frank to say this bill is not all that I believe workers deserve, I believe it is a fair compromise.

I believe most employers will continue their existing pension plans if they cannot steal all the money. And if companies do decide to terminate, the workers and retirees will be fairly protected.

Before I discuss the other pension provisions in the bill, I must make one last comment. During negotiations over these provisions, every party but one wanted to work out a solution. Regrettably, the U.S. Department of Labor did not want to provide protections for American workers. I find it both sad and disgraceful that the agency established to protect workers was the only party that sought to limit their protection.

The bill also contains provisions to permit temporarily the transfer of certain pension plan assets to retiree health benefits.

Under current law, the money in ongoing pension plans may only be used for pension benefits. Employers may not transfer assets.

Rising health care costs have significantly increased employers' liability to workers and to retirees for health care benefits.

In addition, financial accounting regulations are requiring these liabilities to be reported on corporate balance sheets.

As a result, some companies want to start funding their obligation.

The deficit makes any new tax deductions for health benefits unrealistic.

So a handful of companies have proposed using pension assets to fund their retiree health obligations.

Although most Members of Congress are quite wary of permitting this, we have reluctantly agreed to do so for a limited period of time.

Under the provisions included in the budget, employers may transfer pension assets provided certain conditions are met.

First, the employer may transfer assets only if agreed to under collective bargaining, or if not restricted by

other laws, such as Government contractor restrictions.

Second, the employer may transfer assets only if its pension plan is fully funded and a cushion of the money remains in the plan.

Third, all workers must become vested in their pension benefits to protect their pension rights.

And fourth, the employer may not reduce its health care expenditures for a 5-year period subsequent to any transfer.

This provision expires at the end of 5 years as employers' pension plans are unlikely to be able to absorb any further transfers.

I cannot express how uneasy I am over this provision.

I am concerned that workers' pension plans will be too severely drained, and as a result, workers and retirees will be less likely to see benefit improvements.

But I am willing to give this change a chance.

I intend to monitor closely every company seeking a transfer, and if I believe abuse is occurring, I will seek to have this provision eliminated.

Overall, the pension provisions in this bill are a triumph for the American worker. For 8 years, workers have been victims to corporate raiders who cared not at all about the workers' hard-earned retirement funds.

Starting today, the gravy train for employers is over. Congress is serving notice that pension plans are meant to be used to provide pension benefits to workers and retirees. Employee benefits represent a trust between workers and employers. Congress will not allow that trust to be broken. American workers deserve retirement security.

I will continue to fight to ensure that the rights of working men and women are fairly protected.

Before I end, I want to thank the many Members of Congress, their staffs, and outside organizations, who supported me in my long lonely fight. First, I want to thank our majority leader, Senator MITCHELL and his aide Robert Bozen, for their tireless efforts in this cause. I also want to thank Senator BENTSEN and his aide Randolf Hardock, for agreeing to reasonable protections for workers. I want to thank Senator KENNEDY and his staff, Mary Jeka and Sara Fox, for their continued support in this important effort. I want to thank Senator KASSEBAUM and her aide, Dan Bolen, for their willingness to speak out on the need to protect workers and retirees. As for my House counterparts, I am indebted to Congressmen CLAY, HAWKINS, and ROYBAL, for sharing this fight with me. And to their aides, Phyllis Borzi, Fred Feinstein, Karen Vagley, and former staffer, Roger Thomas. I want to thank the many groups that fought for meaningful legislation in this area: the AFL-CIO and all of its affiliated unions, the AARP, the pension rights center, and all of the other senior citizen organizations. We should all be grateful for the efforts of their fine Staff, Ernie Dubester, Meredith Miller, David Certner, July Schub, Marty Corey, Karen Ferguson and Karen Friedman.

And last, but surely not least, I must say a few words of thanks to my own staff. My former aide David Starr, spent a number of years working to secure protection against the scourge of reversions. My current pension counsel, Michele Varnhagen, has done a tremendous job of pushing this issue, developing creative new approaches, and tirelessly toiling on behalf of America's workers and retirees. I want to recognize her publicly and commend her efforts. Jim Brudney, Al Cacozza, Kelly Murphy, and Pat Preston of the Labor Subcommittee staff also have been important to this success.

There are still many battles ahead of us to improve the retirement and other employee benefits of American workers and their families. I will be here to fight those battles.

OSHA CIVIL PENALTY PROVISIONS IN BUDGET RECONCILIATION

Mr. PELL. I would like to clarify a few points with the chairman of the Labor Subcommittee regarding the agreement to include increases in civil penalties for violations of the Occupational Safety and Health [OSH] Act as part of the budget reconciliation package. As I understand the provision, the conferees agreed to two changes in this area: First, increase all existing maximum allowable civil penalty levels in the OSH Act by seven times; and second, institute a $5,000 mandatory minimum assessed penalty solely for willful violations of the OSH Act. Is my understanding correct?

Mr. METZENBAUM. The Senator is correct. Moreover, according to the Congressional Budget Office, these changes in OSH Act civil penalties will produce nearly $900 million in new Federal revenues over the next 5 years. All those additional revenues will be deposited in the U.S. Treasury for purposes of Federal deficit reduction.

Mr. PELL. I thank the Senator. In addition to the impact on the Federal budget deficit, how will the increase in civil penalties affect the safety and health of America's workers?

Mr. METZENBAUM. As my good friend from Rhode Island, who has been one of the true leaders in protecting the safety and health of American workers, well knows, the conferees regarded the impact on health and safety as one of the significant motivating factors for adopting these specific penalty changes. Civil penalties under the OSH Act have never been adjusted in the 20-year history of the act. But returning OSH Act civil penalties to their original 1970-level will not be enough to deter violations and ensure adequate enforcement by the Occupational Safety and Health Administration [OSHA].

In recent years, the Senate has conducted oversight hearings on OSHA civil and criminal enforcement efforts. One major conclusion from those hearings is that OSHA has not lived up to its stated purpose: To "assure so far as possible every working man and woman in the Nation safe and healthful working conditions." Therefore, the conferees adopted the changes in civil penalties both to reduce the Federal budget deficit but even more importantly, to improve worker safety and health protection.

Mr. PELL. I have one additional question. Section 18 of the OSH Act authorizes any State, subject to a plan approved by the Secretary of Labor, to assume the Federal responsibility for development and enforcement of occupational safety and health standards in that State. As I understand it, 23 States currently operate under such federally approved plans. How will the changes in OSH Act civil penalties included in the reconciliation package affect those States operating under federally approved plans?

Mr. METZENBAUM. The Senator has raised an important question. Those States operating under a federally approved plan will be required to bring their plans into compliance with these new penalties. Let me explain. The penalty changes in reconciliation are amendments to section 17 of the OSH Act. There are no changes in section 18 of the OSH Act. Therefore, it is clear that the requirement in section 18 that the State plan be at least as effective as the Federal system with regard to safety and health standards and the enforcement of such standards remains unchanged.

Thus, a State operating under a federally approved plan will have to reexamine its current plan to ensure that its enforcement mechanisms are at least as effective as the OSH Act, as amended by this reconciliation package. In addition, the Secretary of Labor, as part of her responsibility to make a continuing evaluation of State plans, may have to take additional action to ensure substantial compliance with the OSH Act.

Mr. PELL. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Mr. President, I yield 5 minutes to the distinguished Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. GORE. Mr. President, thank you very much, and I thank my distinguished colleague and friend from Tennessee, Senator SASSER, for yielding me this time.

Mr. President, it was only a few days ago that I stood here on the Senate floor with my colleague, Senator MIKULSKI, from Maryland and others arguing that we could do better for our constituents and for our country; that it just did not make sense to ask seniors, Medicare patients, and others to pay a lot more so that those who could most afford it could pay less, thanks to new unjustified tax breaks.

Today there is proof that we were right. This package is better and the American people know it. All the working families, all the seniors, all who have no more to give and who have been holding on to their pocketbooks can feel a little better about this package today.

We are not going to let the Government pick middle-income Americans' pockets with this budget. We are not asking those who can least afford it to find money they do not have to pay someone else's bills. We are asking those who can most afford it to pay more of their fair share. No more free rides. In this package, there are no free rides.

Mr. President, I want to commend our colleagues in the leadership of this body for their commitment to a difficult task and for their tireless efforts to reach an agreement. I know in particular that I am only one Tennessean among many who are proud, and rightfully so, of my colleague and friend, Senator JIM SASSER, chairman of the Senate Budget Committee. We are all in his debt and grateful for his service, skill, and leadership during a very long and difficult year.

Today's action proves that all of the work, all of the difficulty, is paying off in the sense that we finally have a better result with more fairness and more credibility than we would have had without the dedication and hard work of the senior Senator from Tennessee, Senator SASSER.

I wish to commend his Republican counterpart on the committee, Senator DOMENICI. As I have already done, I would like to single out the two leaders, Senator MITCHELL and Senator DOLE, for their outstanding leadership during this process and the two chairmen of the so-called money committees in the Senate, Senator BYRD, the chairman of the Senate Appropriations Committee, and Senator BENTSEN, the chairman of the Finance Committee, and their Republican counterparts.

Mr. President, this process has not always been pretty to watch. We have all heard from our constituents, and we have all been faced with the same questions, and encountered the same anger. Many of us have been asking ourselves those questions and controlling the same anger.

How can you ask Medicare patients to pay a lot more when you tell those who can most afford it that they can pay a lot less? It is a question that has made many of my constituents in Tennessee angry and has aroused other questions. Tennessee common sense says you just cannot do it and we are not doing it in this final result. The fact is plain old American common sense says you just cannot do it. And this budget makes room for some of that old-fashioned common sense.

Reducing the deficit is our first priority. But, as this agreement shows, we do not have to shake down seniors or middle-income families to do it.

Like many of my colleagues, I have to say there are changes, including some spending cuts, I would have liked to have seen in this budget that are not there, and there are cuts and tax increases that are included that I would rather have not seen as a part of it. In fact, there are 100 different budgets that would have been written if each one of us could have had his or her way. But overall, this is a package that is greatly improved compared to the earlier proposals. In my view it deserves strong support.

The fact is we must reach an agreement, because in the final analysis, this is not about politics or partisan gain. It is about people. It is about all the people that work hard to make ends meet, to feed their families, to educate their children, to make their dreams—and their children's dreams—real. This is about the people who are counting on us to stand up and fight for what is important to them and to their families. This is about passing a budget that will strengthen the American economy they depend on to support their families and their future.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I yield 5 minutes to Senator ROTH.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, I once heard that the definition of the Eiffel Tower is the Empire State Building after taxes. I am afraid that if the budget package Congress is about to vote on becomes law, this definition will take on a whole new meaning—not only will Congress have further stripped financial wherewithal from the American taxpayer, but it will be one more step toward taking a strong economy and turning it into a shell.

That is why I intend to vote against it.

This final package meets virtually none of the criteria America needs to meet its future in an increasingly competitive world. It meets none of the criteria our homes, farms, and businesses need to secure their futures. I know that some of my well-intentioned colleagues are trying to sell this as a bipartisan success that provides $490 billion of deficit reduction over the next 5 years. But let us look beneath the rhetoric. What we really have is a package that includes $200 billion in new revenue made up of tax increases, user fees, and increased Medicare premiums. The rest of this package is $70 billion in domestic spending reductions, $180 billion in defense savings and $64 billion in savings on interest on the national debt. This does not include the increased spending, tax breaks, and income redistribution also continued in this package—all of which detract from deficit reduction.

A closer look at this package—especially its tax component—illustrates the real burden it will have on the American public and our economy. Proponents will argue that the net tax figure is $137 billion, but in reality total tax increases will hit $164 billion. The $27 billion difference are tax breaks and income redistribution. For example, by 1994, lower income families will be receiving three times the tax credits they receive now—increasing their total credits from $1,000 to almost $3,000 over the next 5 years—while middle- and higher-income families will receive a 2- to 6-percent tax increase. Three examples of how this package increases taxation include:

The increase in the health insurance wage base, a 3-percent tax hike for families earning over $50,000. To give you an idea of who this will affect, consider that 41,000 hourly union workers at GM will pay this increase; and

Another increase includes the phaseout of personal exemptions, which I believe is patently antifamily.

And another is the phaseout of itemized deductions which attacks deductions for home mortgages, charitable contributions and State and local taxes. While now this tax increase affects only those over $100,000,

I'm afraid it's only a matter of time before Congress is back reducing the threshold to include the middle-class.

These are only three of 26 different tax increases—many of which will hit the middle-class right on the chin.

And the fact is, it is the increases in this proposal that are for certain. They represent the most tangible part of this plan. The same can't be said about the reductions.

Only $70 billion of this package are real reductions—reductions in Medicare, Federal employee retirement, veterans programs, student loans and agriculture.

In fact, new revenue increases outpace entitlement savings 3 to 1. To give the voter a perspective of Congress's true intentions concerning spending, the 13 appropriation bills Congress has voted for 1991 total $36 billion more than it spent in 1990—and this does not include all entitlements, interest on the national debt, and the

savings and loan bailout. The fact is, that under this proposal, total Government spending will increase $100 billion more in 1991 than it was in 1990.

In fact, even during this time of austerity, this legislation builds in increasing spending for discretionary programs. If there were guarantees that these increases were necessary, it would be one thing. Unfortunately, these guarantees do not exist, and in fact we are already hearing of discretionary funds to be used for renovating the home of Lawrence Welk, studying the potential for a national bicycle policy, as well as looking for a place to build a new congressional staff gym. In other words, Congress has not only passed the buck—but spent it.

Concerning the cuts in defense, the $180 billion of this package counted as defense savings may very well be real, but is not the result of these budget negotiations.

It is not the result of hard choices made by the Congress.

In fact, it represents a windfall due to the Communist melt-down. And like a windfall, this $180 billion is fortunate at best and illusory at worst. Operation Desert Shield is outside any spending restrictions—totally exempt from what little enforcement mechanisms exist in the proposal. Consequently, we do not know how long these defense savings will last, or how long we can depend on them.

The final component of this package that I would like to address is the $65 billion in reduced interest payments on the national debt. Mr. President, this figure is based on extremely optimistic interest rate assumptions and has very little to do with the hard choice Congress must make if it is going to get the deficit under control.

Some of my colleagues will try to convince the voters that this time deficit reduction is for real—that this time enforcement is for real. Well, let me be the first to say that if the Gramm-Rudman enforcement procedures can be compared to Dirty Harry, what this package proposes are the keystone cops. Even the proponents of this proposal admit that Gramm-Rudman is only advisory during the first 3 years—with no bite to limit spending. The so-called caps intended to monitor spending throughout the year are so flexible that spending will continue to increase during the next 5 years. For example, these caps—or ceilings—allow for emergency spending increases as well as inflationary adjustments.

In addition to their rubber-like flexibility, these caps will have no influence on IRS finding increases, credit re-estimates, Egyptian debt forgiveness, additional IMF contributions, emergency supplementals and Operation Desert Shield. If this logic were compared to a diet, it would not only allow for occasional cheating, but offer weekend binges in a pastry shop. No way to lose weight; no way to bring down the deficit.

Proponents argue that this conference report represents a 5-year package—that this will settle the deficit problem for the next 5 years. I can almost guarantee otherwise * * * We will be here going over the same arguments next year, the year after, and the year after that. We will be here because one of the fundamental problems of this package is that it does not address the issue of spending. This spending will drive increased taxes. And just as it has led us to this point, spending will drive the deficit further and further into the red.

Mr. President, for these reasons I cannot support this package. It is the wrong package at the wrong time. It fails the American people. It will fail their economic needs. It tries to lay the blame of the deficit and budget debacle at their feet. It tries to make them believe that the problem is not that Congress is spending too much—or that Government is wasting money—but that they are not being taxed enough. Well, I do not believe it. And neither do they. Treasury revenue has doubled in 10 years—due to the economic boom provided by the tax cuts of 1981. Even that windfall was not enough for the big-spenders, and they drove the deficit to its all-time high.

On September 27, I submitted into the RECORD a $400 billion plan which reduced agriculture, Medicare, domestic discretionary spending, defense, and general government. It did not rely on large tax increases.

As far as I am concerned, Mr. President, this is a dark day for the Republic.

After this tax agreement, Americans have as much reason and right to rebel as they had in 1774. In fact, as I look around this chamber, the only thing missing is a portrait of King George.

The PRESIDING OFFICER. Who yields time?

CORRECTION TO ENROLLMENT OF IMMIGRATION CONFERENCE REPORT

Mr. DOMENICI. I yield 5 minutes to Senator RUDMAN.

The PRESIDING OFFICER. If the Senator will withhold.

The Chair will announce that House Concurrent Resolution 394 has been received from the House.

Under the previous order the resolution is considered and agreed to.

Mr. RUDMAN. Mr. President, I rise to support this proposal. I want to make a few comments.

Very briefly, just let me commend all those on both sides of the aisle who have worked so hard in a very difficult situation. No one has really talked tonight—actually, it is daytime; I said tonight because lately we have been late into the night—this afternoon, about the fact that we not only have a divided Government in this country but we also have divided parties; maybe more so on my side than the other, but we certainly do. That has made this even more difficult.

If this were a parliamentary system, Mr. President, this Government would have fallen 3 weeks ago. I am not suggesting we change our system. But with the divided Government we have, I think it is remarkable that we have this product.

I want to rebut a couple of things that were said recently.

First, as far as Gramm-Rudman-Hollings is concerned, it is stronger, not weaker, with the adoption of this reconciliation package for the simple reason we now have so-called minisequesters. That was an idea that Senator DOMENICI and Senator GRAMM and I have talked about for a long time and it is very effective. We will see how effective it will be next year.

Second, the chairman of the Appropriations Committee, the President pro tempore, cited some figures the other day which the American people ought to know about. Let me just run through them once more because I quote them myself.

This year's Federal budget is 24 percent defense, 17 percent nondefense discretionary, 49 percent entitlements, and 14 percent interest. In other words, interest at 14 percent is only 3 percent less than what most of the American people call Government.

Second, let me point out that discretionary spending has gone from 25 percent of the Federal budget in 1981 down to 17 percent this year, hardly indicating profligate spending by anyone.

I happen to be the ranking member of the State, Justice, Commerce Subcommittee and on the floor a few moments ago someone said that our appropriation went up 14 percent. If one discounts for nonrecurring prison costs, funding for the Department of Justice was increased over 18 percent and for the Judiciary, around 15 percent. That sounds like a lot of money. It is. I will tell my colleagues where it went. It went to fight the drug problem we talk about on the floor and the American people talk about, and to investigate savings and loan fraud. It went to the FBI, Drug Enforcement Administration, Justice Department and Federal judiciary, mainly for these purposes.

We can fight a war on drugs with our mouths or we can fight it with money. We chose money. I think the American people back that all the way.

Finally, I want to say one thing to my friends on the Budget Committee, my chairman, and the ranking member. There is one thing we have not done here and we are going to have to do it. The Senator from Tennessee a few moments ago talked about seniors. I listened to him very carefully and I agree with him. You cannot put all seniors in the same category any more than you can put all of any group in the same category. We are going to have to get serious in the next 2 years about means testing entitlement programs.

Yes, Mr. President, I am talking about means testing Social Security more than we are now. We are now means testing at $35,000; we start taxing it. We are going to to have to start means testing Medicare or I will tell my colleagues with certainty we will be back in the same mess 3 years from today. The entitlement programs have grown from around 32 percent of the Federal Government to 49 percent. Left unchecked, they may grow to 70 percent by 1996.

There is nothing that makes sense about a Medicare program that treats all seniors alike. Those with upper incomes should pay for more of their own health care. Those with low amounts of income should pay very little.

I cannot understand why there is such sensitivity to that kind of an approach. I happen to believe that the American people would agree that a carefully means tested program in Social Security and Medicare and other programs will be fair and in the interest of the American people. Otherwise, Mr. President, the young people of this country, ages 21 to 55, will be paying all of the taxes and have a lower standard of living.

I serve notice on my colleagues I will have a comprehensive means testing program for entitlements to introduce to the Senate next year in the normal fashion. I will introduce it. It will go to the Finance Committee. I hope we will debate it, and I hope we will vote on it. If we can do that, we need not be back here again 2 years from now facing a budget crisis.

Mr. GORE. Will the Senator from New Hampshire yield briefly?

The PRESIDING OFFICER. The time of the Senator from New Hampshire has expired.

Who yields time?

Mr. SASSER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes and 16 seconds.

Mr. SASSER. Mr. President, I yield 5 minutes to the distinguished President pro tempore of the Senate, and would ask unanimous consent that he be allowed an additional 10 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The President pro tempore is recognized.

Mr. BYRD. Mr. President, if we go to war in the Middle East, the deficit will grow. If we have a disaster in our banking system, the deficit will grow. If our economy falters, the deficit will grow. But I believe that those who have worked for so many long months on both sides of the Hill, both sides of the aisle, and including the White House representatives, have fashioned an agreement which aims to lock in set amounts of budget savings each year for the next 5 years.

It is a tough package. It has tough enforcement provisions. Many will not like its tax increases. But I believe that the taxes have been levied fairly, and I believe it is time to face the fact that we will never get these budget deficits down without increased revenues.

I congratulate President Bush for having the courage to say that taxes are needed. Only a fool or a knave would adhere to a campaign pledge while his country foundered. President Bush is neither, and he has done the right thing.

We have heard talk about Government spending and the need to cut it. Government spending has been cut as a result of this agreement. Defense spending is Government spending. Entitlement spending is Government spending. Foreign aid spending is Government spending.

Defense has been cut by at least $184 billion over 5 years and a significant step has been taken to curb the growth in entitlements. So do not let it be said that this is an agreement that does not result in Government spending cuts.

Let it also be said—and let it be heard by those who see, through the electronic eye, that defense spending is also Government spending. Some Senators talk about Government spending as though it only is that spending which improves the infrastructure of this country—the physical infrastructure, and the human infrastructure. But the cuts have not been made with a meat ax.

Programs that educate and train our people and which can help to rebuild our crumbling infrastructure have been preserved. It is folly to cut the deficit in a way that lacerates this Nation's ability to compete and to grow within a global economy. It is wrong to sacrifice our children's future on the altar of political expediency.

This package will not be popular. It asks for sacrifice, and sacrifice has fallen into disfavor. But there are times when sacrifices must be made for the public good.

As a country, we need to think hard about the direction in which we are headed and about our obligations to our children and to our grandchildren. They seem to be the voiceless ones in this debate. We cannot leave them with this mountain of debt, nor can we leave them with a bleak future and a diminished standard of living.

The world is changing. No more does America dominate. The question has now become: Can America continue to compete? And, if we cannot compete, then we certainly will not lead. If we do not get our economic house in order, we will do neither.

Mr. President, as one of the summiteers, I cannot assure that the objective of achieving a deficit reduction of $490 billion in 5 years will be fulfilled. But the package is real and it is painful. As I have already indicated, there are uncertainties regarding the Middle East and a recession and other things which can intervene to make this effort less a success than it might otherwise have been. The debt will still be there at the end of the 5 years and it will still be rising, because, until a balanced budget is achieved, the deficits will continue.

Until we are able to control defense spending and until we are able to control entitlement spending, balancing the Federal budget will be elusive. Entitlement spending is fast growing, and it threatens to crowd out other important needs.

The computer has the easy work, Mr. President, when it comes to entitlement spending, and just as sure as the sparks fly upward, there is nowhere for entitlement and other mandatory spending to go but up. To reverse this trend will require great courage on the part of Senators and other representatives of the people. The politician will be competing against the computer, with the politician having to make the hard decisions and take the tough stands while the computer does the easy work of adding to the burgeoning costs.

The national debt has become a serious threat to the Nation's future. Some people believe that, because the deficit constitutes a smaller percentage of the gross national product today than some years ago, deficits are no longer a threat.

I call attention, for example, to the fact that in 1976, the deficit constituted 4.3 percent of the GNP. In 1989, according to the Congressional Budget Office, the deficit constituted only 2.9 percent of the GNP. I say "only" because, in comparison with what the deficit was in 1976, it is lower with respect to a total percentage of the GNP.

But the real indicator, Mr. President, to which we should pay close attention is the debt burden, the rising cost of servicing the debt—$189 billion in this fiscal year—that part of the budget which is growing faster than any other part.

The growth of entitlements adds to the debt burden, the difference being,

with respect to entitlements, that the money spent for entitlements flows back into the economy, for the most part, while the money that goes to pay the interest on the debt does not buy one textbook for our schools, does not immunize one child against measles, does not repair one inch of our deteriorating highways and bridges, and does not buy one bullet for one gun for one serviceman. Much of the interest payments goes into the pockets of foreign investors.

The basic point to be remembered here is that the legislation before us is an important step forward toward the goal of reducing the annual deficits and achieving a balanced budget. This is not a perfect bill, as no bill is perfect. The fact that this bill is very controversial means it is painful. It means that it is not made up of blue smoke and mirrors. It does make cuts in entitlements; it does cut defense; it does raise taxes; and it does attack the budget deficit.

It is easy to find fault with the bill. It is always easy to nitpick. It is easy to vote against the bill. It will be easy to write press releases stating "I voted against cutting entitlements," "I voted against raising taxes." But what those same press releases will not say is, "Rather than do something that required a little courage and a little spine to pay for the feast on which we have been gorging ourselves for 10 years, I would prefer to shift that burden to our children and grandchildren and let them pay for the feast, plus the tip."

"Besides"—in that same press release—"Besides, by then, I will have retired and left town."

Of course, the press release can also say, "I had a better plan," without revealing that it would not have gotten a shirttail full of votes.

Mr. President, we in this Chamber are charged with the duty of leadership. We asked for it. We expended a lot of effort to get it. And we are expected by the American people to demonstrate it.

Leadership is not always easy, especially when the going gets hard. It is not always popular. But in the end, it is the character and the quality of leadership that will make or break a nation.

So, I hope for the passage of this tough attempt at deficit reduction. I also hope that we here who claim to be the leader of the Nation will begin to tell our people back home the truth about the budget, the truth about what is increasing the national debt.

True leaders do not say only what the polls tell us is popular. When it comes to a matter that is so grave and so vital as the one before us, we ought to tell the people the truth and not just what the polls may say is popular.

The widely reported disgust with politicians in the electorate, I believe, is largely due to the fact that the American people are sick to death of leaders who pander to the special interests in order to ensure their next election.

So I support this imperfect package, Mr. President. It is not the ultimate answer. But with solemn dedication, let us vote for this bill and start the ultimate answer on its way. That is our mission.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from New Mexico.

Mr. EXON addressed the Chair.

Mr. DOMENICI. Mr. President, I understand the Senator from Nebraska needed 30 seconds. I yield for that and I ask unanimous consent that it come in addition to the time remaining.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nebraska.

Mr. EXON. Mr. President, the action about to be taken by the Senate in a very few moments has caused a great deal of concern, consideration and debate.

Mr. President, I rise to oppose the budget reconciliation bill before the Senate. I have spoken extensively on this subject and I will keep my remarks brief.

The economy is on the brink of recession and the American people are appropriately impatient with the quick fixes and political salves of the past. The new budget package, even with its modifications, is still full of false promises, blank checks, optimistic assumptions and tax provisions which would seriously hurt the Nation and hurt my home State of Nebraska. The reconciliation bill is nothing more than a dressed up version of the President's budget summit agreement.

The combination of large cuts in farm programs, the 5-cent increase in gas taxes, and the new tax rules for insurance companies will seriously hurt the State of Nebraska.

The farm cuts come at a terrible time for rural America and for the United States presently engaged in a most difficult trade negotiation. The deep farm cuts represent unilateral disarmament. If the United States employed the same strategy in military negotiations as it employs in farm trade negotiations, we would all be speaking Russian today. To destroy the American farm program and not even get one concession in return from our trading partners is total folly.

Mr. President, the tax provisions of this package have been well discussed. What is not well understood is the so-called budget reform package in this reconciliation bill. Like the Gramm-Rudman law, this package is wrapped around a proposal to increase the statutory debt ceiling. Added to the current $3.2 trillion debt, the new debt ceiling will equal $5 trillion. This level of fiscal irresponsibility alone justifies the defeat of this package. In the name of reform, a choke point for spending is erased. Other so-called reform measures are designed to delay any renegotiation on this package until after the 1992 Presidential elections. How convenient.

There is a better course. The reconciliation bill, the son of the summit, should be voted down and an alternative should be adopted which freezes discretionary spending accounts, both domestic and foreign aid, rolls back congressional and high ranking executive branch pay raises, reduces non-Desert Shield Defense spending to the level recommended by the Senate Budget Committee, freezes through attrition the size of the Government work force and grants retirees a full cost-of-living adjustment.

In addition, the debt ceiling should be extended for only 1 year at a time. The budget reform which should be added would require a three-fifths vote for any increase in borrowing authority which exceeds the level consistent with the promise of the budget agreement. The Senate Budget Committee has already given its approval to this very measure which I introduced known as the Debt Ceiling Reform Act.

The President should also be required to update this budget on a biannual basis to take into account the changes in the economy and the effectiveness of the previous year's promises. Such an assessment would provide a midcourse correction to prevent an untimely expiration of the debt ceiling and the false promise of another quick fix.

An additional provision should be added that would require the President and the Congress to define the deficit as the year to year increase in the national debt.

If such an honest budget provision were in force, the Congress and the President would not be telling the American people that they are presenting a plan to reduce the deficit by $490 billion over 5 years as they are attempting to do today, but they would have to tell the American people that they will be borrowing an additional $1.9 trillion over 5 years, if and only if, the rosy economics of the present package hold together. If not, borrowing would increase borrowing even more.

Mr. President, I will vote to oppose the reconciliation package and encourage my colleagues to do likewise. Once defeated, a true freeze budget could then be considered and real budget reform can be pursued.

Thank you, Mr. President.

Mr. DOMENICI. Mr. President, I note that we will be exactly equal on

both sides in terms of time if the following occurs: I ask unanimous consent that Senator STEVENS have 3 minutes; Senator SIMPSON 3 minutes; Senator DOMENICI 4 minutes; Senator DOLE 7 minutes, and that will put both sides having exactly the same amount of time on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. And in that order, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. I ask for the yeas and nays on final passage, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. HEINZ. Mr. President, this is the first major revision of the Clean Air Act in 13 years. It is overdue. Our Nation has not achieved our clean air goals. Our current regulatory system is failing to solve the problems we identified more than a decade ago. Moreover, emerging science has made us aware of new dangers: global warming, the disappearance of the protective ozone shield, and the long-term effect of toxic air emissions on public health.

The need for urgent action is evident. This legislation meets that need.

Today, for example, over 100 million Americans are exposed to urban smog because they live in areas that fail to meet ozone standards. Under current law for ozone nonattainment, communities are merely required to meet a certain goal by a certain time. There is no mechanism to ensure steady progress toward the goal. There is no strategy to separately address the pollution generating components affecting the quality of the air. There are no realistic penalties for communities that fail to meet the goal. And, consequently, far too many communities have not met the ozone standard.

This Clean Air Act of 1990 will provide the strategy and mechanisms missing from current law. Under this legislation, the Nation's air will improve steadily from year to year. Some of my constituents believe that this bill is too strong, and some believe it is too weak. It is, in truth, a product of the legislative process; but a better product, I think, for that process.

This is a tough bill. It will make significant improvements in the public health, affecting millions of people. It will also impose significant costs on businesses. This legislation represents the most stringent air pollution control law on the books in the world today.

This legislation will force automakers to reduce smog-causing pollutants, demand that coal-fired utility plants cut back on sulfur dioxide emissions that cause acid rain, phase out production of ozone-depleting CFC's, and require steel, oil, chemical, and other manufacturers to restrict nearly 200 toxic substances in the air.

In the first round of controls, toxic air emissions will be reduced by 90 percent. Sulfur dioxide emissions, the precursors of acid rain, will be reduced by 10 million tons. I believe the additional allowances provided by the conference bill will help our Midwestern States meet the ambitious goal of the bill in a more equitable and economically sensible way.

By 1995, cleaner, reformulated gasoline is mandated in the nine cities with the most severe ozone pollution, and States may elect to have the requirements apply in other cities with ozone pollution problems. In comparison with conventional gasoline, reformulated gasoline will be required to have 15 percent lower emissions of volatile organic compounds and toxic chemicals by 1995, and 20 to 25 percent lower by 2000. The requirements for reformulated gasoline will also encourage the use of oxygen-containing additives like ethanol and MTBE.

Auto manufacturers are required to reduce tailpipe emissions of hydrocarbons and nitrogen oxides, which form smog, by 35 and 60 percent respectively, beginning with 40 percent of the vehicles sold in 1994 and increasing to 100 percent of vehicles sold in 1998. And fleet vehicles provisions will result in vehicles substantially cleaner than conventional vehicles.

Mr. President, most important as a public policy principle and to me personally, we have labored long and hard to achieve these goals using least cost solutions. I believe the marketplace is far too important to be either a force or a bystander in our pollution prevention efforts. As an ally, market mechanisms can help us achieve far more in the way of pollution prevention at far less cost to the economy as a whole. I am proud that the President cited Project 88, a report commissioned by the Senator from Colorado [Mr. WIRTH] and me, as the basis for the credit-trading program included in the acid rain title which is designed to introduce market forces into the achievement of our environmental goals. And I anticipate greater use of these incentive mechanisms as we address our imposing environmental agenda for the next Congress.

Mr. President, the conferees have been successful in improving this legislation during the long conference negotiations. As a whole, I believe that this bill is a good piece of legislation. I am particularly gratified that the conference produced some assistance for our coal miners who may be hurt, and hurt badly, by the Nation's urgent need to clean its skies.

Mr. President, clean air is in our Nation's interest. Despite our differences, and despite our regional concerns, each of us is elected to advance the national interest. I believe this bill does, and I will support it.

I congratulate President Bush, without whose initiative this process would not have started, the majority leader, whose selfless work over many years has brought us to this point today, and my colleagues in the conference, whose attention to these complex and difficult issues has been meticulous and exhausting. This is sound legislation. It is important legislation. I urge my colleagues to vote for it. I urge President Bush to sign it into law.

Mr. RIEGLE. Mr. President, our present Federal budget dilemma is a result of unwise and unfair fiscal policies during the 1980's. Large tax breaks for high income people and excessive defense spending caused a large and growing structural deficit.

These dangerous fiscal conditions that now exist were largely hidden from public view because Social Security taxes were increased during the 1980's and these higher Social Security taxes paid largely by the middle class created a huge surplus that was then used to hide the growing structural deficit in the rest of the Federal budget.

This economic theory was called Reaganomics—it was also called supply-side economics or trickle down economics.

It was a strategy designed to tilt our tax laws to greatly favor the high income people and to put a large new tax burden on the middle class.

President Ronald Reagan used his great skill as a communicator to convince the people that if the tax laws were tilted in favor of the wealthy—the money would flow up the income scale, enable the wealthy to make new investments that would create jobs, and the money would then trickle back down through the economic system and eventually reach the middle class and the low-income people who would eventually come out ahead.

It was a snake-oil formula as George Bush himself realized in 1980 when he called it "voodoo economics."

At the same time an inadequate national savings rate caused an inadequate rate of capital investment, and our annual productivity improvement as a nation dwindled to less than 2 percent. This caused us to lag behind other nations like Japan, Germany, Korea, and Taiwan that were surging ahead. This in turn helped cause a huge U.S. trade deficit, which was greatly worsened by unfair trading practices by other nations that our Government failed to challenge. We are now adding international debt at the rate of $1 billion every 3 days and

we will owe the rest of the world a trillion dollars within 2 years.

This sharp decline in America's economic and financial position over the past decade was not brought forcefully to the attention of the American people. Instead the prevailing politics of the 1980's was to mask the problem, and use phoney government accounting gimmicks and clever political advertising to create a false picture of U.S. economic and fiscal strength.

Perhaps the greatest examples of misguided Madison Avenue genius during this period were the Reagan Presidential reelection TV ads of 1984, built on the "morning in America" theme, and the George Bush Presidential election ads of 1988, built upon the theme of "Don't worry, be happy."

These highly successful advertising campaigns were false and misleading and have done much to bring us to the difficult realities now confronting our Nation.

What has happened in 1990 is that the economic chickens of the 1980's have finally come home to roost and the huge structural Federal budget deficits can no longer be papered over with more accounting gimmicks, more rosy scenario economic assumptions in the Federal budget calculations, or more sheer nonsense that tax inequity favoring the wealthy would somehow end up helping the middle class and others.

The hard fact is that Reaganomics has been steadily grinding down the middle class and creating a larger and larger underclass of permanently poor, many of them homeless and sleeping in doorways or cardboard boxes.

With the present Federal budget numbers now showing a projected Federal deficit above $300 billion and rising, a radical adjustment in fiscal policy has now become imperative.

That is why "read my lips" has become "read my hips," because President Bush has had to begin dismantling, however grudgingly, the false promises of the Reaganomics voodoo economics of the 1980's before these policies bankrupt the Nation.

With our Federal Government facing massive and growing structural deficits for the reasons mentioned, and our national economy teetering on the brink of recession, the Bush administration decided it must act now or face even worse economic circumstances in 1992.

All of this has brought us to the current moment of this budget deficit reduction package now before the Senate.

While today's package is better than the ill-fated summit package of a few weeks ago it is still terribly unfair to the middle class and to our Nation's elderly because of the major cuts it makes in Medicare.

While some of the excessive tax breaks given the wealthy during the 1980's are partly recaptured in this package we are still left with a Tax Code that is unfair to the middle class and which does not facilitate the new investments America must make in its people, its technology and its productive base. This budget is not designed to lift our national productivity rate from 2 percent a year to 4 percent a year and that must be the overriding goal of Federal fiscal strategy for the foreseeable future, It is an urgent need.

Despite the collapse of communism and the fall of the Berlin Wall defense spending is still too high in this budget and our free world allies are not asked to bear their fair share of the free world defense.

This fact is illustrated most dramatically by the overwhelming number of United States troops stationed in Saudi Arabia this very day and the meager and inexcusably small presence of our allies with either their troops or adequate financial support.

Moreover, there is another harsh truth buried in this budget reconciliation bill that has not been brought to the attention of the American people.

This 5-year plan will not reduce the Federal deficit, but add to it. Next year's Federal deficit under this plan will be higher than it is this year, and the cumulative national debt will keep rising inexorably.

In addition, the economic assumptions from OMB used to make projections in the budget years 1992, 1993, 1994, and 1995 are hopelessly unrealistic as the attached table shows. While these OMB economic projections forecast $490 billion of deficit reduction below the projected baseline over the next 5 years, the more realistic CBO economic projections predict the 5-year deficit reduction below baseline at only $236 billion, or less than half of what this package advertises.

I ask unanimous consent that the table of economic assumptions be included at this point in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE V.A.—ECONOMIC ASSUMPTIONS

	(Calendar years)						
	1989	1990	1991	1992	1993	1994	1995
Nominal GNP:							
Level (in billions of dollars)	5,201	5,486	5,807	6,199	6,670	7,141	7,607
Percent change, 4th/4th	5.4	6.0	6.0	7.3	7.5	6.8	6.4
Real GNP, percent change, 4th/4th	1.6	0.7	1.3	3.8	4.1	3.7	3.5
GNP deflator, percent change, 4th/4th	3.8	5.2	4.6	3.4	3.2	3.0	2.8
Unemployment rate	5.2	5.6	6.1	6.4	5.6	5.3	5.1
Interest rates:							
91-day Treasury bills	8.1	7.7	7.2	5.7	4.9	4.4	4.2
10-year Treasury notes	8.5	8.7	8.3	7.1	6.1	5.6	5.3
Domestic oil prices (per barrel)	17.88	21.15	24.15	21.10	21.79	22.41	23.02

Mr. RIEGLE. Mr. President, those outyear economic assumptions envision dramatically lower interest rates, much higher economic growth, low inflation, and lower unemployment than can reasonably be expected. If these projections do not materialize, the Federal budget deficit could explode higher, into the $400 to $500 billion range. That is an extremely dangerous set of possibilities, and cannot be minimized given the current economic trendlines, and the accumulating structural weaknesses one sees in our banking system, in the insurance system, in real estate values, and in overleveraged corporate and personal balance sheets.

Major American cities, including New York, Philadelphia, and Detroit are in extreme fiscal difficulty, and Federal budget cuts and a weak economy threaten further grave consequences.

The bottom line of this analysis is that this budget package is years late, very small, and lacks the sharp adjustment in fairness among income levels needed to adjust for the tax injustice of the 1980's.

This package does not solve our Federal budget problem, or our structural deficit problem. It is a first small step in that direction, but it only postpones a far more demanding day of fiscal reckoning that we should be facing now.

America needs a bold new economic strategy which targets substantial new investments into human capital and physical capital that can set in motion a surge in national productivity. That's what this budget should be doing.

We must invest in America and invest in the American people, and a modest surtax on yachts costing over $100,000 found in this package is not the kind of fundamental redirection that will enable us to catch the Japanese or the Germans in the global economic competition.

These are miserably hard realities we must face, and unless every citizen begins to understand the true dimensions of this challenge to our national well-being, and think more of the common good than of one's private good in isolation from our urgent national requirements, then we face sharply growing stresses and traumas within our Nation and our communities and we face a declining future.

If America is going to revitalize itself, and engineer a national strategy that can produce a sustained economic surge, then we must look inward and build America to a new strength this budget does not even contemplate. It will mean new emphasis on education, job training and retraining, national health insurance for all people, and fostering new investments in research, development and applied high-value-added technology and production, that can greatly strengthen our private sector economy.

It will mean seeing every American citizen as important members of the team, of team America, and a contributing part of a more productive future for our country. Equality of opportunity must be linked to equality of sacrifice, built upon the belief that the good of each adds to the good of all, and the bonds between us all as fellow Americans, must be the focus and driving purpose of our national government.

This budget contains some elements of this sort, but it does not lay out a real plan for national success in today's global economy. I will continue to do all I can to move our Government in that direction.

Mr. HATCH. Mr. President, this body is considering final passage of one of the largest tax increases in history. I would like to explain to my colleagues and my constituents why I believe we should vote against this so-called deficit reduction package.

This country is in trouble, Mr. President. We know it, and our constituents know it. The budget deficit that we have struggled with for several years now is out of control. The credibility of the Federal Government is being seriously questioned, and for good reason. Despite yearly budget summits, despite the Budget Act, despite the fear of Gramm-Rudman-Hollings sequesters, despite the fact that all of us in Congress say we want a balanced budget—we have failed to gain control over the budget. In the eyes of many Americans, we are the problem and not the key to the solution.

We have before us now a package that is designed to reduce the deficit by nearly $500 billion over the next 5 years. This sounds very good. We all agree that the deficit is our biggest domestic problem and that it must be cut. We all recognize that significant steps must be taken now. But before we jump into this latest deficit reduction bandwagon, Mr. President, we ought to know what is on board.

I am unhappy with almost everything in this package, but one of the few things in this bill worth supporting is the child care block grant and its companion tax component. As my colleagues know, I have worked long and hard with Senators DODD, KENNEDY, MIKULSKI, and others to fashion a workable, effective child care bill. I am delighted that President Bush has accepted the package, and I want to recognize the effort made by his administration to help bring about this resolution.

I have said repeatedly that we do not need Federal child care—what we do need is Federal leadership in child care. The provisions of this bill will permit States to make their own decisions about child care programs and their own decisions regarding the care their children receive. And, these provisions will help improve the affordability, availability, and quality of child care, without overly burdensome governmental interference.

In addition to direct assistance in the form of grants, contracts, and certificates, it is my hope that States will use some of these funds to design their own innovative responses to child care needs. For example, programs could include liability risk retention pools, intergenerational programs, child care during nontraditional working hours, or other custom-designed programs. States will welcome this broad flexibility to address the child care needs of the families within their boundaries.

As pleased as I am with the child care provisions of this package, Mr. President, there is one thing that needs to be clearly understood. This legislation will raise taxes by $165 billion. While the authors of this bill tout it as a model of fairness, this is far from the case. It is more a collection of mismatched schemes designed to lift a great deal of money from the pockets of an unsuspecting population.

Among many other problems which I will discuss in a few moments, this bill contains a provision that imposes new rules and requirements, with respect to pension plan terminations. While this measure is considerably better than prior versions of pension asset reversion legislation, I do retain concerns that this provision will act as a further disincentive to employers to either start pension plans, or to generously fund those that already exist.

Some of my colleagues claim that America threw a huge party in the 1980's and we must now pay the price. They say the only answer is higher taxes. Mr. President, I flatly reject this position, because it is based on totally false premises. The economic growth we experienced in the 1980's came about because we pursued progrowth policies. The deficit came about because we have never controlled Federal spending.

Regardless of what most people in this town believe, we do not need to raise taxes to balance the budget. Whether you measure it in nominal dollars, in real terms, or as a percentage of gross national product, tax receipts of the Federal Government are higher now than they were in 1980. In nominal dollars, Federal tax receipts doubled between 1980 and 1990. Even without any changes in the tax laws, revenues are projected to increase by almost $400 billion over the next 5 years. This is an average of $80 billion per year, without raising taxes.

Although revenue from taxes doubled during the past 10 years, Federal spending has increased even faster. This is why a balanced budget has been so elusive. Even though the money is pouring in through the top of the bucket at record rates, it is flowing out the bottom even faster. This Nation does not need more revenue, Mr. President. We need to slow down the money flowing out of the bottom of the bucket.

Everyone who has ever struggled to balance a family budget knows that there are two ways to make ends meet. You can either bring home more money, or you can cut out some of what you spend. This same rule applies to the Federal Government. The only difference is that if Uncle Sam wants more income, he does not earn more, he simply takes it from his citizens. And then, once he has it, does he use it to make ends meet? We all know the answer to this one. A report issued by Senator ROTH shows that between 1948 and 1986, for every dollar of new revenue received, the Federal Government increased spending by $1.58. Do we really believe that every dollar of new tax revenue raised by this bill will go toward deficit reduction? In 6 of the past 8 years, the Federal budget has been set by budget summit agreements between the President and Congress. In all 6 budget summit years, new taxes were agreed to in return for an agreement on a lower deficit. Despite the agreement and the resulting higher taxes, the deficit has not been reduced. Promises of deficit reduction made in this reconciliation package will simply not be kept. I predict that within 2 years, and possibly by next year, we will be hearing the same call for new taxes to cut the deficit. New taxes lead to increased spending—not deficit reduction.

Our economy is on the verge of a serious recession. The Wall Street Journal reported on October 10, 1990, that most economists now believe that the economy is already in a recession, and many of them think it will be severe. I will ask unanimous consent that a copy of the Wall Street Journal article be placed in the RECORD following my remarks. If we place new taxes of the magnitude contained in this reconciliation bill on our economy now, we will deepen and lengthen the recession.

And, with a recession, there will be job losses. It is estimated that each 1 percent increase in unemployment raises the deficit by about $25 billion, and every 1 percent decrease in GNP raises the deficit by about $6 billion. Even a modest recession, with unemployment increasing by 2 percent, and GNP decreasing by 2 percent, would raise the deficit by $62 billion. Unemployed workers, Mr. President, do not pay much in taxes. Unprofitable corporations do not contribute to the Treasury. On the contrary, an economy in recession quickly reduces the amount of taxes paid to the Federal Government. The result of new tax increases may well be a decrease in total receipts. We cannot solve our deficit problems by placing recessionary tax increases on a stagnant economy.

Our best hope for solving the budget deficit crisis is to let our economy grow out of it. This can only happen if we follow national economic policies that promote growth. This package is as noteworthy for its lack of growth incentives as it is for its inclusion of tax increases. For example, this bill does nothing to spur investment in capital or in job creation. By passing a tax bill that will likely lead to a recession, we lose our best chance of getting the budget under control.

In speaking with my constituents about the deficit, I find that almost everyone agrees that the solution to the problem is going to involve some sacrifice and pain. This is understood; and almost universally, I find, the people are willing to pay a price to take care of the deficit. Most people are willing to see benefits cut and some are even willing to have their taxes increased. Two conditions exist on this willingness, however, Mr. President. The people will pay the price, but they want it to be fair with everyone called upon to do his or her part, and they want their sacrifice to be meaningful, and go toward true deficit reduction. This package promises neither.

Regardless of all the analyses, predictions, and promises, the simple fact is that each American will pay more in taxes if this bill passes. And, these new taxes will be permanent. As to deficit reduction, most of us admit in private that this package will not reduce the deficit. One only has to look at the significant increases in the appropriations bills we have just passed, to realize that this package will be a failure the minute it is signed.

Moreover, Mr. President, this package will tie the hands of the Congress in future years in trying to correct the problems this bill will bring upon our Nation. The so-called budget process reforms contained in the conference agreement will make it very difficult, if not impossible, to ever lower the taxes we are now raising. These tax hikes will damage the economy. The last time this country faced a recession, we were able to pull the economy out of its doldrums by passing a series of pro-growth measures, including tax decreases, that brought about the longest peacetime expansion this Nation has ever seen. As I have already discussed, we are already on the verge of a recession. These tax increases will certainly make the economic outlook much more dismal. Yet, by passing this bill and the budget process reforms, we are limiting our ability to fight this recession by passing growth and business incentive measures. It is ironic that these same budget process reforms that effectively prevent us from later lowering these tax increases also contain loopholes that will not be effective in limiting spending growth.

We are told, Mr. President, that passage of this budget agreement is the only real alternative we have. The elections are a few days away and the eyes of the Nation and the world are upon us, waiting to see what we will do. The pressure is on to pass this bill, even with its numerous flaws, because it is the best that can be done in this time frame.

We must not be deluded into falling into the trap of political expediency once again. There are other alternatives, which represent a more responsible and effective plan than raising taxes in the face of a recession and perpetuating the tax-and-spend philosophy that has created this budgetary quagmire in which we are stuck.

For example, we could pass a continuing resolution that freezes spending at 1990 levels until January 1991. This move by itself would do more to fight the long-term deficit problem than would this entire reconciliation bill. In January, the Congress could return and work out a plan that keeps spending levels under the growth rate of revenue.

Similarly, we might consider the 4-percent solution, a plan introduced by the distinguished Senator from Montana, Senator BURNS. This plan would allow spending to grow at a rate of 4 percent over the prior year, and it would not require a personal tax increase. It would not require a bigger gas tax. It would not turn our regulatory agencies into revenue agents. It would not hurt charitable organizations. It would not require an increase in FICA taxes. Instead, the 4-percent solution would eliminate the deficit by 1997. It is absolutely amazing in these times of economic woes and grave political trepidation that we have yet to consider or even debate this proposal on the floor.

The conference agreement before us is just another quick-fix solution. Few really believe that this package will last through the next Congress or allow us to avoid another round of budget hysteria in 1992. It will not be effective in cutting the deficit because it does not address the true cause of the deficit—too much Federal spending.

Until we come to terms with Federal spending, there will be no long-term solution to the budget deficit. Until we stop increasing Federal spending at a rate greater than the growth in revenues, we will never have a balanced budget. And, until we recognize that deficits can not be reduced by passing the single biggest 1-year tax increase in history, we will continue to teeter on the edge of financial disarray.

The American people have every reason to be suspicious of the ability of Congress to solve our budgetary problems. If this conference agreement is enacted, their suspicions will be justified for we will have failed once again to gain control over the budget. In fact, all we will accomplish is the one thing we collectively fear. We will increase the Federal deficit.

I hope my colleagues will join me in voting against the conference report and for a solution that directly curtails Federal spending, that institutes true budgetary process reform, and that will result in a balanced Federal budget. We can do better. We must do better.

I ask unanimous consent that the previously referred to article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Oct. 10, 1990]

GROWING GLOOM: A SEVERE RECESSION MAY BE DEVELOPING, ECONOMISTS SAY

(By Alfred L. Malabre, Jr.)

Most economists now believe that the economy has fallen into a recession, and many of them think it will be severe.

That's a sharp turn toward pessimism. A couple of months ago, most forecasters expected no recession at all. Now, the majority expect at least a mild slump. And a growing number of analysts are questioning their more optimistic colleagues' emphasis on the relatively lean inventories, the strong demand for U.S. exports and the prospects for an easier monetary policy. Reinforcing their pessimism was yesterday's 78.22-point plunge in the Dow Jones Industrial Average.

The more downbeat analysts dispute, for instance, the idea that lean inventories can guarantee against a severe recession or that the Federal Reserve can readily turn around a sliding economy. There's growing concern, moreover, that the mild-recession view underestimates the pervasive financial problems.

"We've grown accustomed to equating the advent of a recession with physical problems in the economy—production bottlenecks, labor shortages and so on," says Paul J. Markowksi, an economist at Buckingham Research Group in New York. "But financial problems can be equally important." He recalls that financial imbalances, more than physical ones, preceded the deep depression in the early 1930s.

David B. Bostian Jr., chief economist of Jesup, Josephthal & Co., agrees adding, "I'm increasingly concerned that this could turn into much more than just a mild recession."

The economy probably began retrenching in June, Mr. Bostian estimates, and "with each new statistic from Washington, and the pileup of debt in all economic sectors, I grow more and more concerned that we could be entering a long, deep slump on the order of 1973–75 or 1981–82." Both of those recessions lasted 16 months, and unemployment reached 9% of the labor force in 1975 and nearly 11% in 1982.

Those recessions were far more severe than anything foreseen in the consensus forecast now. Typical of that view is the estimate of C.J. Lawrence, Morgan Grenfell Inc. Its analysts reckon that a recession set in recently and will last about 12 months and that economic activity will decline 1.3%. Such a drop would be only half the average decline in the seven recessions during the past four decades.

"We're encouraged to look for only a rather mild recession largely because we don't detect the sort of excessive inventory building that typically deepens and prolongs a recession," says Nancy Lazar, an economist at C.J. Lawrence. If inventories get too high, manufacturers would be under pressure to cut production. She adds: "It's only in the past couple of weeks, in fact, that we changed from a forecast containing no recession at all. We still don't think a recession is a sure bet."

GAZING INTO THE PAST—A COMPARISON OF PREVIOUS RECESSIONS

	Duration in months	Depth [1] (percent)	Top jobless rate (percent)
1953–54	10	−3.0	6.1
1957–58	8	−3.5	7.5
1960–61	10	−1.0	7.1
1969–70	11	−1.1	6.1
1973–75	16	−4.3	9.0
1980	6	−2.4	7.8
1981–82	16	−3.4	10.8
Average		−2.7	7.8

[1] GNP at annual rate, adjusted for inflation.

Charles B. Reeder, an economic consultation in Wilmington, Del., also anticipates a relatively mild recession. In addition to little difficulty with inventories, he notes that "the weakened dollar will help to sustain exports" because U.S. goods would be cheaper abroad. He also reasons that, because of the Mideast crisis, "the declining trend of defense spending will be temporarily reversed"—perhaps giving the economy a boost.

The latest survey by Blue Chip Economic Indicators shows a recession already under way. Released today, the newsletter finds that its 52 participaing forecasters expect, on average, overall economic activity to decline at an annual rate of 0.6% in the current quarter and of 0.1% in the 1991 first quarter. In the previous monthly survey, the Blue Chip consensus showd no quarterly declines.

Whatever sort of slump develops, most forecasters agree that huge imponderables make pinpointing its ultimate magnitude unusually difficult.

The largest uncertainty is the Mideast crisis and its effect on oil prices. Will they remain near today's high levels? Will they soon decline? Or will they climb further, as will surely happen if the oil fields are damaged extensively?

Another major uncertainty is the budget mess in Washington. How sharply will taxes ultimately be raised and spending cut? Will the result be an interest-rate drop that will spur the economy, as some analysts maintain? Or will the upshot be a brake on economic activity, as others warn? Normal fiscal policy when recessions strike, of course, is for the government to *lower* taxes and *raise* spending.

Even without such imponderables, many forecasters contend that it's far harder to judge the ultimate severity of a new recession than whether one is coming. They note that the Commerce Department's index of leading economic indicators fell sharply in the 10 months before the onset of a very mild recession in 1980—at six months the shortest downturn in business-cycle history. But the index fell only modestly for just three months before the 1981–82 recession, which is widely regarded as the worst since the 1930s.

"There are many indicators that will help you spot the approach of a turning point in the business cycle, which in this instance is a new recession," says Geoffrey H. Moore, director of Columbia University's Center of International Business Cycle Research. "But the same indicators, unfortunately, don't usually reveal very much about the nature of a coming recession. It's only after a recession has been under way for a while that you begin to get a sense of its eventual scope."

Accordingly, Mr. Moore regards analysis of a recent action of the leading indicators to be of limited value. The index, whose 11 components range from stock prices to plant-and-equipment orders, first reached its high for the latest expansion—a reading of 146.0 on a base of 1982=100—as long ago as January 1989. In August, the latest month for which the figure is available, it stood at 144.2, down 1.2% from July. This was the sharpest monthly drop since November 1987, soon after the stock-market crash.

In fact, Mr. Moore surmises that a recession arrived in June, well before Iraq's invasion of Kuwait and the surge in oil prices. "It has been deepening ever since and already looks to be at least of moderate severity," he adds.

The growing concern of forecasters such as Mr. Moore about a severe downturn partly reflects recent data from Washington's number mills. Statistics that reflect the *current* status of the economy, rather than its likely future course, have begun to drop. Included on the lengthening list of sliding statistics are such broad measures as industrial production, employment and construction outlays.

THE DEBT PROBLEM

Concern that a severe recession is developing also reflects more than numbers from Washington. Foremost among these problems is the unprecedented amount of debt in all sectors of the economy.

"We generally don't like trying to predict the severity of a recession because it's so tricky to gauge," says James J. Brzycki, an analyst at Northwestern Mutual Life in Milwaukee. "But with the vast amount of debt outstanding, we're becoming increasingly convinced that this one could be long and deep, with lots of business failures." It's when a recession hits, he adds, that high levels of debt begin "jumping up to bite you."

At present, the private and public debt outstanding amounts to nearly 2.5 times the gross national product, the nation's output of goods and services. That multiple is higher than at any time since the mid-1930s, when GNP was falling and business failures were surging. It compares with a multiple of about 1.7 nearly a decade ago, when the last recession developed. In earlier postwar years, the figure fluctuated between 1.4 and 1.7.

Especially worrying many economists is the likelihood that, whatever the outcome of the budget battle in Washington, the federal deficit will soar in a new recession. In recent recessions, that pattern has prevailed: Incomes and tax revenues erode, while federal payments to those hurt by the slump tend to rise along with unemployment.

The effect can be dramatic: At the start of the 1981–82 recession, the deficit was running at an annual rate of about $50 billion, and when the slump ended 16 months later, the red ink was near $200 billion. A similar fourfold rise now would propel the deficit above $600 billion.

The debt burden at corporations and among consumers normally diminishes during a long economic expansion. But not in recent years. Corporate debt amounts to more than 46% of the corporate capital, up from 34% a decade ago. Consumer debt, at close to 20% of after-tax income, also is far higher than before the last recession.

INVENTORY DEBATE

Although inventories seem relatively lean—there are about 1.5 times monthly sales—analyists who foresee a severe recession tend to discount that. They note, for instance, that the inventory-to-sales ratio for manufacturing and trade was a high 1.7 and rising before the harsh recession of 1981–82, but a low 1.5 and falling before the also-severe 1973–75 slump.

Consumer spending, in the consensus view, should hold up reasonably well. Optimistic economists cite, among other things, continued growth in income and a slightly higher rate of savings. Increasingly, however, forecasters fear that the recent weakening in housing prices in many areas will prompt consumers to trim their spending. No longer, the argument runs, will homeowners be willing to spend freely and let their savings slide because the value of their homes is surging.

Mr. Marks also disputes "the widespread notion that export growth, as a result of the weakened dollar, will keep the economy going." Exports, he says, "account for only 7% or 8% of GNP, which isn't nearly enough to offset weakness in other, larger sectors of the economy." He notes that consumer spending amounts to about two-thirds of GNP.

Strong growth in major economies abroad, of course, would tend to spur U.S. exports. However, the Center for International Business Cycle Research reports that "in much of the industrial world, growth—where it is continuing—is weakening." The center, which tracks leading indicators in 11 major economies, foresees "either decline or no growth" in seven of them.

Some analysts also worry that the steep decline in Japanese stock prices in recent months will restrict the flow of Japanese investment into the U.S. As a result of the stock-market plunge in Japan, "we've been told to cut back our lending in the U.S.," says Alan P. Murray, deputy general manager of the New York headquarters of Fuji Bank Ltd.

Another worry is the considerable doubt over the Federal Reserve's ability to spur the economy. Robert H. Parks, an economic consultant in New York, believes that the Fed has been too slow to adopt an easier monetary policy and, as a result, he now fears a "major recession" instead of the mild one he previously expected.

Some analysts note that the economy, once it slips into a recession, often continues to retreat for a long while, even as interest rates fell and the money supply rises. The money supply—broadly defined to include most savings and adjusted for inflation—began to increase at the very start of the 1981–82 recession, and it continued rising through the recession. Most interest rates, moreover, fell sharply through most of the period. Yet, the slump persisted for 16 months.

Mr. McCAIN. Mr. President, I would like to voice my strong opposition to this budget reconciliation bill as I have to the budget resolution that led to it. I realize that months of work

and endless sleepless nights have gone into its drafting, but unlike those who support it, I cannot believe this is the best deal we could get. And, it is a far cry from the kind of budget package demanded by the American people. It is, in fact, as far from what this economy needs as Arizona is from being a rain forest.

In my view, the huge budget deficits that have been the norm over the past dozen years are the biggest, most pernicious domestic problem before this Nation. They are the product of overgenerous social and defense programs that were implemented in the 1960's, 1970's, and 1980's, and which have never been reformed, terminated, or otherwise brought under control.

Since World War II there has been a steady deterioration in our fiscal policy—deficits as a percentage of GNP have doubled every decade since the 1950's. Our expenditures have ballooned—and so has the tax burden on the American people.

For years we have known that enormous Federal budget deficits plunder our national savings. We have been remiss for so long in controlling deficits that our savings rate has more than halved since the 1960's to less than 4 percent. Our savings rate is 40 percent of Germany's and only 20 percent of Japan's. And despite the lipservice that Congress pays to the importance of international competitiveness and the need to foster investment, the deficits keep getting bigger, and our expenditures keep setting new records.

It is the expenditures, Mr. President, that need to be brought into line. The waste, the inefficiency, the mismanagement, the redundancy—this is what the American people demand be trimmed from this budget, and this is what this budget agreement fails miserably in doing.

Instead, this budget package relies on the largest tax hike in history; it raids the health care program for our elderly; and fails miserably in instituting structural reforms that would help put the brakes on congressional profligacy.

Mr. President, let me first elaborate on my opposition to this tax increase. The Tax Foundation has recently done an analysis of the erosion of the average American family's real income which it anticipates this year. Part of the problem is inflation, which is on the rise. The rest is taxes. According to this report, since 1980, the Federal income tax bill paid by the median family has risen 56.9 percent. As a percentage of the family's total income, the Federal income tax claimed 13.7 percent of the family's total income in 1980—fell to a low of 11.8 percent in 1987—and has rebounded to 12.4 percent.

Now, we are about to foist another huge tax burden on these families.

These increases will be in the form of gasoline taxes, aviation taxes, excise taxes, and rate increases, and yet, it doesn't impose a surcharge on the 60,000 Americans whose income is $1 million a year or more.

Mr. President, I also resent that this tax package contains breaks for oil and gas, for wineries, and for other special interest groups who have influence over the tax writers of Congress. How can it be that we give breaks to the select few while ignoring millions of Americans who have made their opposition to new taxes clear in the two recent Presidential elections?

The truth of the matter is that this agreement repeats a mistake that was made no less than four times in the last 8 years. The mistake is that this is another bipartisan agreement in which the Republicans have acquiesced on taxes and the Democrats have indicated they will do the same on spending. In each of the past four agreements—in 1982, 1984, 1987, and 1989, promises were made to rein in spending and assurances were made that the new taxes would be devoted to deficit reduction. But, in every single case, Congress went ahead and spent the new revenues and the deficit surged. Ironically, in the years that there was no agreement, the deficit decline!

There is every reason that this year will be the same. The taxes will be the law of the land, and the spending side will be undone next year. This year may, in fact, be worse, because the $490 billion in deficit reduction that is supposed to take place over the next 5 years is predicated on continued growth in the economy. Yet, this economy is flagging.

It seems to me that heaping gobs of taxes on an already ailing economy is like giving fresh flowers rife with pollen to an asthmatic—it is a recipe for disaster.

This has been borne out before. Never since the Second World War have we raised taxes to over 19.6 percent of GNP—as this package undoubtedly will—without tipping the economy into recession. This time we are starting with a slow economy—anyone can figure out what $140 billion in new taxes will do.

Mr. President, the way to cut the deficit and the way to make this economy as robust as it has been during the last 95 months is to do what the taxpayers want us to do. We need to eliminate waste, inefficiency, and mismanagement before we even consider raising taxes. This package is 0 for 3 and yet we are being asked to agree to the largest tax increase in history?

Mr. President, I also disagree with the approach taken on Medicare. I have believed all along that this is not the time nor the place to be restructuring the Medicare Program dramatically.

The last time we tried to balance the budget on the backs of seniors, a firestorm swept the country. Fortunately, this conference agreement backs away from the significant increases in Medicare premiums and deductibles that have been contemplated throughout this budget process this year. But, it does not back away from it enough.

There is no question that we need to address rising health care costs, but to ask the elderly to pay more and more without doing anything to control the rising costs means that we will be right back picking their pockets next year when health care costs rise in the double digits once again. Plain and simple, increasing premiums without health care cost reforms or providing new benefits is a thinly veiled budget tax increase.

I am also very concerned about the impact of this package on Medicare providers because the House refused to accept the Senate's proposal to eliminate the urban/rural payment differential. I have advocated eliminating this differential for some time because there is no reason to paying rural hospitals less than urban hospitals for the same services. There is no indication that it is cheaper for rural hospitals to deliver care—and in fact, in some cases it is ever more costly.

I am pleased, however to see that there are several provisions in this bill which I do favor, like mammography screening and a number of important end state renal dialysis measures which I sponsored with Senators BENTSEN and HEINZ, and which were included in the Senate-passed reconciliation bill.

I am also pleased at the inclusion of the proposal I offered with my good friend, the senior Senator from Missouri, to require hospitals to inform patients of living wills and medical directives upon their admission for care.

Let me also point out another improvement over the budget summit. I am pleased that the House has accepted the proposal that I offered with Senators HEINZ and MOYNIHAN to the Senate bill which takes Social Security off-budget and out of the Gramm-Rudman-Hollings deficit calculations.

I favor this because the current practice is, in short, dishonest. Moreover, without the change, baby boomers would have found that as they reach retirement, the trust funds would begin to be drawn down, and there would be nothing but IOU's because the deficit has been allowed to offset the largest portion of the trust funds—interest payments and the tax revenues.

Obviously we can't let this happen. Pure and simple, the continuation of the practice of having Social Security on-budget and included in the deficit calculations would legitimize the concern that many baby boomers have—

that Social Security will be unable to provide them with benefits when they retire.

Again, I am pleased that the House has agreed to the proposal to take Social Security off-budget and out of the deficit calculations.

Mr. President, the third major downfall of this package is that it lacks the budget process reforms that this institution so badly requires. We need real, structural reform in the budget process, not the complicated changes in this package which have fancy names that confuse the daylights out of everyone, including so-called budgeteers. We need budget reform that will require us to make our deadlines and that will impose discipline on Congress—the negligent keeper of the country's purse.

One of the most important budget reform measures we can adopt is the line-item veto. My friend from Indiana, Senator COATS, and I have offered our own line-item veto bill twice as amendments to spending bills, and twice we have lost on parliamentary maneuvers. Mr. President, the time has come for us to concede that Congress desire to fritter away the taxpayer's hard-earned dollars is insatiable and that the President needs the line-item veto to curb that desire.

Over 70 percent of American taxpayers, who fund preposterous projects and special interest programs each year, support giving the President the line-item veto. This package seems only to contain the complex budget measures that the failed summit agreement contained, which will worsen this already confusing process. The new budget also contains special interest projects that are so offensive, like $500,000 for a Lawrence Welk memorial; $3.2 million for a neighborhood economic improvement project in New Orleans; and $1.2 million for a metals casting center in Iowa. With this type of waste, it is no wonder that the American people are losing their confidence in Congress by the day.

Under this proposal, we will continue missing deadlines and facing 11th-hour decisions again next year and the year after that and the year after that.

Finally, this agreement just won't work. The economic assumptions it is based on underestimate outlays; the temptation by committees to play smoke and mirrors games remains; and if the new taxes slow the economy, spending will burgeon and the revenues will fall short of projections.

It is vitally important to achieve the goal this agreement aims for—but it misses badly. As GAO recently wrote in a report on the budget deficit, deficits have an "ominous implication for economic growth."

I know that the President has had a difficult time negotiating with the Democratic leadership of this body. He has made serious concessions. In fact, he has had to go too far in his concessions to make the Democrats come along. It is because of many of these huge concessions that I oppose this package.

There are options that I do support, one of which is called the 4-percent solution and has been introduced by my good friend, the distinguished junior Senator from Montana. As most of my colleagues know, this would freeze all spending increases at 4 percent per year, thus requiring Congress to make spending decisions within a certain level of outlays each year. This would force Congress to make dozens of very difficult choices—and would leave the taxpayers alone. The reason the 4-percent solution works, Mr. President, is that the outlay freeze is barely enough to cover inflation and would result in a $50 billion increase every year. Revenues, on the other hand, are already projected to increase about $75 billion a year, and according to proponents of the plan, this would be enough to balance the budget by the late 1990's.

Another option would have been a $40 billion sequester. This is not the ideal solution by any stretch of the imagination, but with the economy in as weak a state as it is, one of the major advantages of sequester is that the taxpayers don't end up with the short end of the stick. Instead of taking money out of the hands of consumers, workers, investors, savers, the elderly, and others who would see an increase in their tax burdens, a sequester would make across-the-board cuts in most programs and would result in savings of as much as $335 billion over 5 years.

In other words, Mr. President, there are alternatives to the budget we are presented with today which do not have the egregious flaws of this proposal. They would get spending under control without taxes or an assault on Medicare. And, combined with budget reform, they would be the best medicine for our economy. This budget bill before us today amounts to business as usual at a time when our constituents want change and results. There are options which are much better, even though painful, and we ought to have adopted one of them.

ADA TAX CREDIT IN THE RECONCILIATION CONFERENCE REPORT

Mr. KOHL. Mr. President, I would like to draw my colleagues' attention to a small provision in the very large reconciliation bill we just passed. This provision establishes a tax credit for small businesses that accommodate their workplaces to disabled individuals. This credit is a small bit of light in the gloom and pain of the reconciliation bill.

I started working on this sort of tax credit over 1 year ago. In November 1989, I introduced S. 1876, the Small Business Rehabilitation Relief Act. This bill called for a 80-percent tax credit for small businesses making up to $4,000 in expenditures to make their businesses accessible to disabled individuals. Around the same time, my good friend, Senator PRYOR, also introduced a tax credit measure. Since last year, we have worked together closely, consulting with the disabled community, the small business community, and other staffs trying to put together a tax credit that was effective and that could pass this year. I am very pleased that all our efforts and hard work have paid off in the provision before us today.

We are calling for sacrifice in the reconciliation bill conference report, and many of our Nation's productive, small businesses will have to respond to that call. This is not an unusual situation. The Federal Government takes heavily from our small enterprises—with mandates, rules, regulations, taxes, you name it. What is unusual is that this reconciliation bill also gives back—to small businesses pursuing the worthy goal of bringing disabled individuals into their establishments as customers and as employees.

The conference report provides a 50-percent credit of up to $10,250 for small businesses—those with gross receipts less than $1 million or no more than 30 full-time employees—making expenditures to allow access to their workplaces by disabled individuals. The business must put down the initial $250, but after that, it will receive 50 cents back on each dollar spent on qualified modifications.

The definition of qualified expenditures tracks the types of expenditures will be required by the recently passed Americans With Disabilities [ADA]. However, it is important to note that the tax credit's date of implementation does not track the dates on which the ADA will apply to small businesses. Many small businesses will not be required to comply with the ADA for several years. The tax credit in this reconciliation bill, however, will immediately offer those businesses an incentive to make access expenditures.

In this way, the ADA tax credit complements and supplements the worthy goals of the ADA. It will compensate small businesses for the access expenditures they must make under the ADA, and it will reward small businesses for making those expenditures before they are required. The ADA tax credit is fair tax policy and sound economic policy. It acknowledges and partially compensates small businesses for the costly mandates that the Federal Government imposes on them. It encourages small businesses to make the investments needed to allow them to draw on the vast resources of the disabled community. I am delighted and

proud that this provision is about to become law.

ON FINAL PASSAGE

Mr. KOHL. Mr. President, we have had a lot of time in the last month to discuss—and debate and complain about and distance ourselves from and criticize—the individual components of the budget package before us. There's a lot to hate here. I hate most isolated tax increases or spending cuts. There are few Members of Congress who relish imposing pain on their constituents.

But today, we're not being asked to vote "yes" or "no" on isolated provisions; we're being asked to vote on a complete and interrelated package. And it is on that package that I wish to speak.

The budget legislation does do the one thing that we all agree has to be done—reduces the deficit with permanent, straightforward measures. Now, I'm not enough of an optimist to believe that the package will achieve our original goals—$50 billion in savings this year and $500 billion over the next 5 years. As usual, unrealistic economic assumptions are scattered throughout this budget bill, and the enormous and unavoidable costs of the savings and loan bailout and Operation Desert Shield are not accurately registered. In addition, the last couple of weeks of negotiations have led to concessions on spending cuts here, concession on taxes there, and some erosion of the budget's original savings.

The conference report, however, will achieve real savings of at least $35 billion this year and $350 billion over the next 5 years; that's better than this Congress has ever done in the past. The package includes serious deficit reduction, and it will get serious results. That's a bottom line we should all support.

But it's the fine print above the bottom line that has caused all the fury. The details of this conference report are a compromise and have all the strengths and weaknesses of a compromise. The weaknesses are easy to identify. Too many special interests left their fingerprints on this package; too few urgent needs were met. It is shameful that we found room to give tax breaks to the oil industry, but we could not find money to ensure all American children a healthy infancy and decent schools.

The conference report's strengths are less obvious. The greatest strength is that at least 51 percent of Congress can support it—not embrace it, not recommend every word of it, but vote for it. This package is a miracle of democracy. It was put together by men and women representing different regions, different people, different world visions, and different priorities. It is a product of a democratic system: It embodies tough decisions that were made slowly and noisily and, when all's said and done, fairly.

This said, I would like to discuss for the record three serious reservations I have about this conference report.

My first resolution is procedural. The reconciliation bill properly includes enforcement provisions. It would have made no sense to spend so much time and effort enacting deficit reduction measures if we did not also intend to make those measures stick. However, the enforcement provisions in this package go further that just enforcement of the package. They change the body and soul of the congressional budget process.

Where in years past, we tried—often without result—to match our expenditures with our receipts, now we will focus on preset spending ceilings. These ceilings are written into law. They won't change with the unforseen needs of the Government or with the changing priorities of this body.

This new way of budgeting separates our spending decisions from our bottom line. No business or no family could run its operations on this basic principle. Firms, banks, multinational corporations, even other countries, must look both to how much money they have coming in and how much money they have going out. In the long run, the two sides of this equation have to match up. Only the United States—because it is large and powerful and vital to the world economy—has been able to get away with piling up debt year after year after year. And even the United States, with all its power and importance and vitality, has started to reach the limits of how much it can borrow.

Yet, the new budget process established by the reconciliation bill denies that we are coming to the dangerous end of our enormous line of credit. The new process says that it is the budget policy of the United States to ignore what we add to the debt each year as long as we hit certain preset spending targets. Budget policy will no longer be fiscal policy—it will no longer be an overall decision about how much the U.S. Government should borrow from the private sector. Budget policy will be appropriations policy: how can we keep within the spending caps we've set—no matter how unrealistic, unresponsive, or irresponsible they are.

Adopting a budget process that separates Federal spending from Federal receipts sends the same message that President Reagan did when he told the American people that they could have lower taxes, higher defense spending, and a balanced budget. And look where that policy has brought us. We face, as David Stockman faced 10 years ago, $200 billion deficits as far as the eye can see. We face a national debt that will grow to about $5.1 trillion dollars in the 5 years that this deficit reduction agreement covers. And, we face many more years of tough budget choices.

We cannot stop focusing on the bottom line—even if it will make it easier to enforce this important deficit reduction agreement. The bottom line is our primary responsibility, and I am afraid this conference report ignores that.

My second reservation about this conference report is substantive. A last minute addition to the package phases out personal exemptions for taxpayers with incomes starting at $100,000 for single tax payers and $150,000 for joint filers. Don't let anyone fool you, this is no new tax innovation. This is the bubble shoved up the income scale. The effect of this provision is that we will have five separate tax brackets: 15 percent, 28 percent, 31 percent, 35 percent, and 31 percent again. That's not much of an improvement from the earlier four tax brackets.

On its face, this provision doesn't look so bad. It taxes those who can afford it. It takes away a tax break afforded to some upper income taxpayers by the replacement of the old 33-percent bubble with a 31-percent rate. It raises revenue.

What I don't like about the new bubble is that it makes our previous, earnest, and legitimate criticism of the old bubble look ludicrous. We argued that it doesn't make economic sense or common sense to have one group of taxpayers paying a higher marginal rate on their income than the most wealthy taxpayers. And we were right. We argued that the bubble had a heart of gold—phasing out the benefit of personal exemptions and the low 15-percent rate—but that there were clearer ways to construct a progressive Tax Code. And we were right. We argued that if we wanted progressivity, we should simply create an explicit third rate—at 33 percent, 35 percent, 38 percent, or whatever we decided was necessary. And we were right.

By replacing the old bubble with the new bubble, the conference report makes it look like this Congress doesn't understand our own arguments about basic tax theory. The insertion of the new bubble at the last minute confirms what many outside this institution already believe about us: When it comes right down to it, and there are difficult decisions to be made, we choose expediency over reason.

My third reservation encompasses the substantive and the procedural. Congress, congressional committees, groups of Congressmen and administration officials, worked long and hard on this bill—too hard and too long to justify the final result.

By saying this, I don't mean to demean the final conference report. It

is real deficit reduction. It is fair. It is very important that we pass it before Congress adjourns.

I am disturbed, however, that it took so much agony and acrimony, time and energy, to write a deficit reduction plan that will slow almost imperceptibly the precipitate growth of our national debt. It was so hard to ask for the sacrifices we needed this year. Are we—Congress, the President, and the Nation—going to be able to make the further sacrifices needed to bring our crippling national debt under control?

I sincerely hope the answer is yes. I believe that the economic road ahead of this Nation is rough. But there are a lot of great ideas for Government out there, a lot of lessons that our constituents can teach us, a lot of opinions that we should listen to. And there is Congress, designed to funnel and package those diverse views into legislation that equitably meets important national needs.

Mr. President, I will vote for the conference report today, not because it's good but because it's better. It is better than the summit agreement: the Medicare cuts are mitigated, the gas tax bite is softened, the tax on home heating oil is eliminated, the unemployment benefits waiting period is eliminated. It is better than the Senate reconciliation bill: it is more progressive, it asks for a greater sacrifice from the upper income individuals who gained so much from the fiscal policy of the 1980's, it raises the top income tax rate. And finally, it is most certainly better than nothing.

Doing nothing is no longer an option. We must deal with the deficit now, or it will deal with us—and in a manner more harsh and inequitable than any deficit reduction plan that could come out of Washington. It is not easy or fun to do the responsible thing. But that is what we must do today. I urge all my colleagues to support the conference report.

Mr. LEVIN. Mr. President, I want, first, to express to the bipartisan leadership of the Senate and the House my appreciation for their extraordinary efforts to arrive at the budget agreement embodied in this reconciliation bill. It is because those efforts were so sustained and so well intentioned that I particularly regret that I cannot support the results of their work.

I agree that we need to reduce the deficit if we are to safeguard our Nation's economic prosperity now and in the future. This concern is not new to me.

In 1981, I voted against the Reagan tax bill because of its unfairness and because it was likely to lead to huge budget deficts. The budget submitted by outgoing President Reagan for fiscal year 1990 included a table which indicated that the effect of the 1981 tax bill in fiscal year 1990 would be to reduce revenues in that year alone by $357 billion. In 1981, I also voted against the Defense appropriations bill for fiscal year 1982 because I opposed the excessively high funding level of the Reagan military budget, as well as the emphasis on nuclear over conventional forces within that budget.

In 1986, I voted against the tax reform bill because I believed that it represented a missed opportunity for deficit reduction through tax reform. I also believed that it would eventually make deficit reduction in the future more difficult and less fair. It put us on a glidepath for tax increases on the middle class. At that time, I stated that we were setting the stage for a deficit reduction bill which "would impose taxes on many of the very people who are supposed to benefit from this tax reform bill and who are among the least able to shoulder additional revenue burdens and additional tax burdens." I also stated that "once the Congress has approved of the pending conference report on the tax reform bill, the revenues from a strengthened minimum tax and from loophole closing will already have been soaked up to pay for the uneven tax cuts. Then, we will have to face the prospects of increased consumption taxes, or increased income tax rates, or unacceptable spending cuts, or inadequate deficit reduction." The bill before us today is, unfortunately, the grand slam realization of this prediction.

I will vote against this legislation for three main reasons.

First, this reconciliation bill is still too heavy a hit on middle income taxpayers and does not ask enough from the highest income Americans who benefited the most from the 1980's. After taking into account the affect of taxes and inflation, the top 1 percent of the population—those making over $200,000 a year in 1980—saw its income almost double by 1990. But at the same time, middle-income Americans could barely keep their heads above water or actually sunk below. This legislation before us makes some efforts to correct this situation, but still asks middle income Americans to pick up more than their fair share of the leftovers from the party thrown for the wealthiest Americans by the Reagan-Bush administration in the 1980's.

The gasoline tax included in this bill represents the wrong tax at the wrong time. It comes on top of the Saddam Hussein gas price hike, which has already pressed the patience and stressed the pocketbook of middle and low income Americans. If the maxium income tax rate was raised to 35 percent for taxpayers making over $200,000 a year, as I proposed during the consideration of the Senate version of this bill, the gasoline tax increase could have been totally eliminated. In addition, if my amendment had been adopted, it would have been possible to avoid most of the Medicare cutbacks in this bill which will increase out-of-pocket costs to seniors for their health care benefits.

Instead, this legislation deflates one tax bubble and creates another one, and does not contain any surtax on millionaires. The net effect is that the highest income taxpayers are still not paying the highest marginal rate, and middle income taxpayers are, in effect, asked to make up the difference.

Second, this legislation bakes in spending levels and priorities for defense and domestic discretionary spending for the next 3 years. I believe it is wrong to fix for 3 years in advance in three separate categories spending at those high levels. I am concerned that for each of those categories the so-called caps will in fact also turn out to be floors. This creates the paradoxical situation in which limitations on spending will actually encourage spending fully up to the limit.

Also, this bill as a practical matter, will make it impossible to transfer spending from defense to nondefense or vice versa during the next 3 years without there being the 60 votes not only to waive a point of order, but also the 67 votes to override a potential Presidential veto. The reason for this situation is that if there is a successful attempt by waiving a point of order to exceed the limit in any category, then there is an automatic sequester in that category of spending back to the limit. The only way to avoid the automatic sequester would be to change the underlying law itself creating that sequester, which change would presumably be vetoed by the President. Therefore, 67 votes would be needed to override the veto and to shift priorities in the next 3 years.

If the events of the past year should teach us anything, it is that the rise and fall of needs and crises should make us pause before establishing a level of spending for several years in advance. With the Berlin Wall falling and the Warsaw Pact distintegrating, now is not the time to put military spending on automatic pilot. If we are to meet the challenges of trade, technology, and crime in the future, we cannot continue to reflexively pour resoures in fighting a European war that is more history than reality.

Third, the economic assumptions on which the budget plan is based are overly optimistic. I would like to believe that in 1992 the inflation rate will drop from 4.6 to 3.4 percent, that interest rates will drop from 7.2 to 5.7 percent and that GNP will grow from 1.3 to 3.8 percent. However, the history of economic projections during the 1980's—starting with David Stockman's Rosy Scenario and Murray Wei-

denbaum's visceral computer—is that they tend to be more optimistic than realistic. The new effect of overstating our likely economic health in the future is that it leads to our underestimating the deficit reduction steps that we need to set in place now. It would be terrible that if after having gone through what must appear to the American people to be the legislative equivalent of slow motion mud wrestling, we came up with a deficit reduction package which is not up to our rhetoric nor up to the task. I am concerned that the economic assumptions underlying this reconciliation bill will lead it to fall far short of the mark.

To end where I started, I believe that we need fair and comprehensive deficit reduction and would have liked to have supported a package which would have accomplished that. However, this reconciliation bill, in spite of all the extraordinary efforts expended on its behalf, is not fair enough, not flexible enough, not realistic and not comprehensive enough for me to support.

PUBLIC HEARING REQUIREMENT

Mr. DOLE. The conference report requires that States must have a policy concerning public hearings on premium increases for Medicare supplemental health policies. It is my understanding that this policy requirement reflects the belief of the conferees that each State should address the issue of when public hearings, may be appropriate, balancing all relevant factors including the solvency of the affected companies. It is also my understanding that no inference is to be drawn that any particular State's policy is inadequate

I would like to ask the distinguished chairman of the Finance Committee if my understanding of the intent of this provision is correct.

Mr. BENTSEN. The Republican leader's understanding of the intent of this provision accurately reflects the intent of the conferees.

Mr. LAUTENBERG. Mr. President, the reconciliation bill includes the Pollution Prevention Act of 1990. This provision is based on S. 585 which I introduced and which was reported by the Environment Committee a few weeks ago. The Pollution Prevention Act establishes what I believe will be the new environmental ethic in this Nation.

Mr. President, do not take my word for it that this bill is needed. EPA Administrator Bill Reilly has called the bill "a big step in the right direction * * *" The National Roundtable of State Waste Reduction Programs which represents the 38 State programs says that the bill "provides a catalyst, focus, and process for actually implementing the national policy of waste reduction." And the Chemical Manufacturers Association, which represents the chemicals industry, says that the bill "* * * is an important step in the development of an effective national pollution prevention program.

Until now, almost all of our environmental efforts have involved regulating pollutants after they are generated. The Pollution Prevention Act is designed to foster efforts to eliminate or reduce pollution before it is generated.

At a hearing last year before the Senate Subcommittee on Superfund, Ocean and Water Protection which I chair, OTA estimated that the United States generates 400 billion pounds of toxic substances each year. These emissions can adversely affect human health and the environment. And this volume of pollution grows each year as disposal capacity shrinks.

The safest way to protect the American people and our environment from these pollutants is to eliminate or reduce them before they are generated. EPA estimates that we have the ability to reduce the generation of hazardous wastes and other pollutants by up to 30 percent while the Office of Technology Assessment suggests that a 10 percent for each of the next 5 years is achievable.

And source reduction has the potential to provide significant cost savings to industry. Currently, $77 billion are estimated to be spent on pollution control in the United States each year. By reducing the amount of waste generated, we can reduce these pollution control costs.

The Office of Technology Assessment, in its 1987 report, "From Pollution to Prevention: A Progress Report on Waste Reduction," found that source reduction efforts have proceeded slowly because industry lacks information about the opportunities and benefits of source reduction. This is especially true for small and medium sized firms which may need both technical assistance and financial aid to identify opportunities for source reduction and put promising techniques into practice. Yet virtually all of our regulatory efforts have been directed toward managing wastes and controlling other pollutants after they are produced.

The Pollution Prevention Act addresses the information shortcomings identified by OTA and provides the legislative backbone for a source reduction program. EPA would provide grants to States for technical assistance programs for businesses and for source reduction training. The bill would establish a source reduction clearinghouse to disseminate information on source reduction opportunities.

And industry would be required to provide data on source reduction and recycling efforts as part of their reporting requirements under the Right-To-Know Program. Information would have the same protection from disclosure as is provided under the Right-To-Know Program.

Mr. President, there is strong support for this bill in the Senate. S. 585 has been cosponsored by 32 other Members. Similar legislation in the other body had 204 cosponsors and passed unanimously. And a version of this bill passed the Senate twice in 1988. Unfortunately, there was not enough time at the end of the last Congress to resolve the few areas of disagreement between the House and Senate versions of the bill.

The concepts embodied in the Pollution Prevention Act have received the support of a diverse group including the National Roundtable of State Waste Reduction Programs which represents 38 State waste reduction programs, the Chemical Manufacturers Association and a number of environmental groups including the Sierra Club and the National Wildlife Federation. The support this legislation has received clearly demonstrates the wide recognition of the need to significantly increase our efforts to eliminate or reduce the generation of hazardous wastes and other pollutants before they are created.

The Pollution Prevention Act will promote source reduction throughout the country. It will help business understand the value of source reduction techniques, and how to implement them. And it will foster the development of pollution prevention technology.

I ask unanimous consent that copies of letters in support of the Pollution Prevention Act be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CHEMICAL MANUFACTURERS ASSOCIATION,
Washington, DC, October 16, 1990.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: The members of the Chemical Manufacturers Association (CMA) urge you to support S. 585, the "Pollution Prevention Act of 1990". The chemical industry has long recognized the value of integrated waste management programs. This "hierarchical" approach to waste management is the cornerstone of national policy set forth in S. 585. CMA believes the bill, which creates a comprehensive national data base to identify trends in waste generation and management, is an important step in the development of an effective national pollution prevention strategy.

CMA is a nonprofit trade association whose member companies represent more than 90 percent of the productive capacity for basic industrial chemicals in the United States.

The bill, as passed by the Environment and Public Works Committee is consistent with CMA's recently implemented waste release and reduction plan, which is part of CMA's broader Responsible Care initiative. The purpose of Responsible Care is to commit the chemical industry to continuously improve its performance. S. 585 and

the industry's commitment share the common goal of reducing waste generation and improving the quality of environmental protection associated with waste disposition practices. The public made clear they want waste and release quantities cut. We are dedicated to addressing these concerns.

The Chemical Manufacturers Association urges your support of the "Pollution Prevention Act of 1990" (S. 585). CMA's member companies look forward to a continuing dialogue with you and your staff as related issues are discussed in the context of the reauthorization of the Resource Conservation and Recovery Act (RCRA).

Sincerely,

ROBERT A. ROLAND.

NATIONAL ROUNDTABLE OF STATE WASTE REDUCTION PROGRAMS,
Minneapolis, MN, July 17, 1990.

Hon. FRANK LAUTENBERG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: The National Roundtable of State Waste Reduction Programs was established in 1985 to promote the exchange of information and the development of state programs to reduce the generation of all wastes which are hazardous to human health and the environment. Participation in the Roundtable has increased to include at least forty-five states, fourteen universities, and ten non-profit organizations. In those few programs where state funding has been provided to support program activities, the level of resources provided is generally less than one-half of one percent of the funding available for pollution control and regulatory programs.

It is critical that effective coordination and leadership at the federal level be established where it does not already exist, and continued where it has already been established. Sufficient resources must also be provided to assure that waste reduction becomes a reality throughout the United States. Without these basic commitments, the national policy that "the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible" (HSWA, 1984) will not be carried out. The long-term benefits anticipated by this policy will not be accomplished unless the immediate needs for resources and leadership are addressed now.

Having taken the initial lead on waste reduction, states are now at a critical juncture regarding their waste reduction program development. States must formally certify their capacity to treat and minimize hazardous waste; states must document to the public that wastes are being minimized, in order to have a credible siting process for treatment and disposal facilities; states must respond to increasing numbers of requests for information and technical assistance on waste management and waste reduction; and a growing number of states must implement waste reduction legislation which mandates waste reduction activity by generators.

Reports to Congress by the Environmental Protection Agency and the Congressional Office of Technology Assessment, as well as by other groups, have focused attention on the importance of waste reduction. A major area of agreement in these reports is on the need for significant federal effort in the areas of information-gathering and dissemination, technical assistance, and data collection, for waste reduction activities, implemented through state waste reduction programs. The National Roundtable concurs with these conclusions. In addition, the National Roundtable strongly endorses the provisions of the Pollution Prevention Act (S. 585), which comprehensively responds to state and federal needs in this critical area. The legislation provides a catalyst, focus, and process for actually implementing the national policy of waste reduction.

We look forward to a strengthened and productive state/federal partnership in reducing and climinating hazardous wastes for our own generation and those to follow.

Sincerely,

TERRY FOECKE,
Director.

Participating states: Alabama, Arkansas, Connecticut, Illinois, Kansas, Maine, Michigan, Missouri, New York, Oklahoma, Rhode Island, Texas, Washington, Alaska, California, Florida, Indiana, Kentucky, Maryland, Minnesota, New Jersey, North Carolina, Oregon, South Carolina, Vermont, Wisconsin, Arizona, Colorado, Georgia, Iowa, Louisiana, Massachusetts, Mississippi, New Mexico, Ohio, Pennsylvania, Tennessee, and Virginia.

NATIONAL WILDLIFE FEDERATION,
OFFICE OF THE PRESIDENT,
Washington, DC, May 24, 1989.

Hon. FRANK R. LAUTENBERG,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: The National Wildlife Federation commends you for cosponsoring the Pollution Prevention bill, S. 585. We are pleased S. 585 has engendered broad Senate support with more than 25 cosponsors to date. As you know, NWF supported your Hazardous Waste Reduction bill in the 100th Congress.

This bill addresses the production of hazardous waste, a serious threat to public health and the environment. The Federation's recently released report, *Danger Downwind*, documented emissions of more than 2 billion pounds of specific toxic chemicals into the air during 1987. The Environmental Protection Agency (EPA) has calculated total toxic chemical emission of more than 20 billion pounds for industry during 1987. Also according to EPA, American industry produces almost 600 million tons of hazardous waste annually: over two tons of hazardous waste for every man, woman and child each year.

The toxic inundation overtaking America contaminates air, water and land resources. It is a problem common to all these media, and cross-media transfer leads to unanticipated problems. For example, a recent National Academy of Sciences report attributes toxic chemical contamination of the Great Lakes to air emissions, waste water point and non-point runoff from surface and groundwater sources.

Reports from the Congressional Office of Technology Assessment, EPA and public interest groups have shown that waste reduction—the actual elimination or reduction of wastes created during manufacturing processes—is the best way to keep toxics out of our environment. While the importance of strong, effective pollution control laws cannot be overestimated, emphasis on waste prevention also will promote creation of a healthier environment. The Waste Reduction bill is an important step in the right direction.

S. 585 mandates EPA's development of an essential database on source reduction and recycling through expanded industrial reporting requirements. By identifying the quantities of chemicals released to environmental media and the techniques of industrial waste reduction, the bill would provide environmental managers, the Congress and the American people with the first nationwide profiles of waste reduction activities. This information will promote efficient allocation of scarce public resources for research and regulatory action. Most importantly, the data will provide each industry with goals and suggest methods for achieving their own maximum waste reduction potentials.

Through its state grants program and computerized data clearinghouse, S. 585 also would provide technical and financial support essential for waste reduction programs in every state. Currently only a few, underfunded state programs provide technical assistance and technology transfer to businesses interested in reducing chemical wastes.

The Pollution Prevention bill increases opportunities for removing toxic waste from the nation's land, water and air. NWF supports S. 585 and looks forward to working with you to strengthen waste reduction efforts.

Sincerely,

JAY D. HAIR.

NATIONAL TOXICS CAMPAIGN FUND,
Boston, MA, September 19, 1990.

Hon. MAX BAUCUS,
U.S. Senate, Washington, DC.

DEAR SENATOR BAUCUS: The National Toxics Campaign Fund (NTCF) urges you to do all that you can give priority passage of S. 585, the Pollution Prevention Act.

NTCF is a membership coalition of citizens, community leaders, scientists, statewide consumer organizations, environmentalists, health activists and dumpsite groups formed to develop and implement solutions to what many see as a national toxic crisis. For seven years members of our staff have designed, evaluated and promoted government policies for industrial pollution prevention. NTCF takes pride in the fact that its legislative activities, its public education efforts and many of its more innovative policy proposals for industrial pollution prevention are widely recognized and that many of its ideas have been adopted, particularly within the environmental community. Based on our longstanding involvement in the area of pollution prevention we believe that S. 585, the Pollution Prevention Act, is a superior piece of legislation.

Nearly everyone agrees that that industrial pollution prevention is an economically sensible response to some of our nation's most stubborn environmental problems. The unique environmental, economic and societal benefits of industrial pollution prevention hardly need to be restated here. What few people recognize, however, is that for all of the glib talk about industrial pollution prevention over the past five years and despite the unquestioned theoretical primacy of pollution prevention, this is an environmental option that is not being given the focused attention and the substantial government support that it deserves.

EPA activities in this area remain largely unimpressive. The Agency's pollution prevention actions have proved to be scattered, poorly defined and quite limited in effect. Without a national program created by Congress we see little hope for improvement of EPA pollution prevention policies and programs. In addition, while a number of exemplary state programs now exit, state progress has been slow and uneven. Many

state programs still lack clear direction, are underfunded and have minimal institutional visibility.

Passage of S. 585 in 1990 would signal to EPA and all the states that Congress sees pollution prevention as a national priority. The bill would lay a solid foundation for industrial pollution prevention by providing:

An acceptable federal definition of source reduction that excludes hazardous waste recycling from pollution prevention,

Needed institutional support, information, analytical resources and guidance for state programs,

A range of policy instruments, including pollution prevention reporting requirements, a federal grant program, technical support for industry, and a biennial EPA report to Congress.

One important feature of S. 585 is that it is designed to provide the necessary amount of guidance and support to states without handcuffing them to an overly restrictive federal effort.

The quick passage of S. 585, independent of the RCRA reauthorization process, is crucially important if the nation is to realize the substantial benefits of industrial pollution prevention.

Sincerely,

DAVID W. ALLEN,
Director,
NTCF Pollution Prevention Project.

U.S. PUBLIC INTEREST RESEARCH GROUP, NATIONAL ASSOCIATION OF STATE PIRGS,
September 20, 1990.

HON. MAX BAUCUS,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR BAUCUS: The Pollution Prevention Act (S. 585) addresses one of the most serious threats to public health and the environment facing our nation today: toxic pollution. The undersigned organizations believe that the Pollution Prevention Act has the potential to provide publicly available information and technical assistance of the greatest value. We urge you to support passage of S. 585 with a minor change.

S. 585 will:

Develop a data set on source reduction techniques;

Establish a Source Reduction Clearinghouse which will serve as a center for source reduction technology transfer;

Develop a state grants program and provide states and businesses with the technical assistance necessary to develop source reduction programs; and

Provide for public availability of the data.

One of the greatest strengths of S. 585 is that it will involve public "oversight" in source reduction efforts. However, S. 585 does not require industries to report the destination of off-site shipments of chemicals for recycling, treatment or disposal. We urge the Senate to add the destination of off-site transfers to the reporting requirements in S. 585.

The public has a right to know about the fate of chemicals generated by industrial processes. The off-site burning or reformulation of toxic chemicals should enjoy no special exemption from reporting requirements, and thereby from public scrutiny. Information on the destination of chemical shipments is readily available to the facilities and will help regulatory agencies and communities verify whether a particular industry has engaged in a true "pollution prevention" activity.

In addition, the legislative record on this bill should clearly reflect the fact that S. 585 is an information and research bill that will not substitute for comprehensive federal toxics use reduction legislation. Although we believe that S. 585 could act as an important information gathering tool, S. 585 does not require industries to reduce the amount of toxic chemicals used or hazardous wastes generated. For this reason, the passage of S. 585 should not be construed as obviating the need to enact comprehensive federal toxics use reduction legislation in the near future.

The Pollution Prevention Act reflects a growing recognition by Congress of the need to adopt a new approach to environmental protection and policy-making. With the above-mentioned change, S. 585 will become a significant step toward true pollution prevention. We would be pleased to discuss the contents of this letter with you or your staff, at your convenience. Thank you for your consideration.

Sincerely,

Carolyn Hartmann, U.S. PIRG; A. Blakeman Early, Sierra Club; Ed Rothschild, Citizen Action; Casey Padgett, Environmental Action; William Walsh, Greenpeace; Ann Maest, Environmental Defense Fund; Kenneth A. Brown, Clean Water Action.

Mr. BRADLEY. Mr. President, I rise in opposition to a budget agreement that continues to reflect a mistaken vision of our Nation's priorities over the next 5 years. Higher taxes for middle-income taxpayers, new tax loopholes for oil and energy investors, continued spending on obsolete defense missions, and additional burdens on the aged and the sick are the wrong direction for this country to head in. I would support a budget that built on the changing nature of American leadership in the world, that improved our productivity, that sought to repair the bonds of community in our cities, that improved the education and health care for all children, that treated clean up of our environment with the urgency of a moral obligation. Such a budget that reflected our real needs could also cut the deficit. This is not that budget.

I must acknowledge that this conference agreement is a far better bill than the original budget summit agreement, or the first reconciliation package, both of which I opposed. I am very pleased that the impact of Medicare cuts on senior citizens has been reduced dramatically, and that Medicaid benefits for poor children are extended. I am glad that there is no deep cut in the tax rate on capital gains. I am glad to see that the Superfund will be extended for 4 more years. And I think it is a step in the right direction to raise the top income tax rate slightly in order to lessen the burden of the deficit reduction on those less able to pay. While these improvements are worth noting, and should be applauded, they are not enough to transform a bad budget bill into a good bill.

First, the bill continues to refuse to recognize and take advantage of the dramatic changes in our relationship with the Soviet Union. That country is now committed to withdrawing all its armed forces from Central Europe within the next few years. It is cutting support for its old clients in Cuba, Vietnam, and North Korea. Its deteriorating economy will force a deeper retreat from military purposes and prevent it from resuming imperial quests until the next century, if then. Although Soviet or Russian military power will remain a long-term concern, it will not generate threats in the 1990's comparable to those we faced in the 1980's. We can safely concentrate on the many lesser challenges America faces, such as the threat Iraq poses to the oil fields of the Persian Gulf, and we can safely discard unduly expensive weapons systems designed to counter Soviet threats. We can insure our security with a smaller defense budget.

This budget package continues to waste taxpayers' money on such military luxuries as the B-2 bomber and oversized naval forces for 5 more years. For 5 years we will continue to squander our resources on the threats of the past, instead of reassessing our national defense to anticipate the actual threats to American security interests in the future. And this bill compounds these wrong-headed priorities by making it impossible to shift defense savings to critical domestic priorities in coming years. In other words if next year we want to cut a weapons system and use the money to feed or educate our children we will need at least 60 votes to accomplish it. Why should it be easier to raise taxes, which takes 50 votes, than it is to clean up the environment or improve the health or education of our children, which takes at least 60 votes.

Second, the bill does not do enough to keep taxes low and fair for middle-income families. This package raises taxes on middle-income families, and it does so in order to give away new tax breaks for wealthy oil and energy investors. That is wrong and it is unfair.

We should reduce the deficit by closing tax loopholes, not by opening new ones. Under this plan, families earning $20,000 to $30,000 a year would pay more. Families earning $30,000 to $40,000 would pay even more. These are not well-off families. They face extraordinary burdens in our complex society. It's one thing to ask these families to make some sacrifices for the purpose of reducing the deficit. It's quite another thing, though, to ask them to make sacrifices so that we can put more money in the pockets of wealthy oil and gas investors who are already benefiting from high oil prices. This provision of the package skews our priorities for the present as well as for the future. In addition the part of the bill which includes the so-

called extenders—special interest tax breaks—perpetuate the hidden-deficit trick. If these special breaks were extended for 5 years—the length of the agreement—they would cost $20 to $25 billion. To hide the true cost, they are assumed to expire at the end of next year. Of course, at that time they will not expire and someone else's taxes will be raised to protect them. But right now no one says anything about that.

This package raises taxes on the middle class but instead of using that revenue to reduce the deficit, it squanders part of it on new revenue-losing provisions to benefit healthy industries and wealthy people. This kind of waste hurts the efficiency of the economy and the drags it creates could be a force pulling us toward a recession. Indeed I believe the 1986 tax reform law, with its low rates and improved efficiency, is the main reason we have not had a recession in the last 3 years. While not a dramatic departure, this bill does turn back toward the past.

Besides these problems, this package places an undue portion of the burden of deficit-cutting on those least able to bear it—senior citizens dependent on Medicare. Raising the deductible for Medicare is not a solution to the problem of high health care costs. It will not, as some have argued, discourage large numbers of people from using unnecessary health services. It is simply a tax on being sick. Similarly, the increased Medicare premium is simply a higher tax on the elderly. While Medicare cuts might be some part of a balanced deficit-reduction package, senior citizens dependent on this limited program should not be the first place we look for money. There is no place for this unfairness in our Nation's priorities for the next 5 years.

A serious but humane effort to cut the deficit, I believe, should look first to the particularly wasteful agricultural support programs. As with defense, we need more than the modest reforms included in this package. As long as we treat wealthy and poor farmers alike, as long as we treat career farmers and hobby farmers alike, we will squander the limited funds available. We need structural reforms, not Band-aid approaches. Our agricultural programs should reflect the stress not only on farmers but on taxpayers being asked to support big corporate farms as much as small family farms. In tough times we have to choose. In this budget we have not.

Finally, Mr. President some have said this package is an attempt to rectify the excesses of the 1980's. The original sin of these deficits was the tax bill of 1981. It also significantly reduced the progressivity of the Tax Code. I voted against it and I also voted for spending cuts in 1981. If the rest of Congress had voted this way the deficit would have been in surplus in 1985 and there would have been no suggestion of something as disastrous as Gramm-Rudman.

My deepest misgiving about this package is that we seem to have learned very little from the mistakes that led us to this deadlock of an artificial crisis and that produced a bad agreement simply because getting a budget agreement—any agreement—became our only object. This package makes totally unrealistic economic assumptions. How many people really believe interest rates will be 4 percent in 1995? Why do we continue to manipulate the budget numbers by phoney assumptions? It has been the practice for the last decade and it is one of the reasons people are losing faith in Government. If we were serious the practice would end. In this agreement, it has been perpetuated.

This package also assumes continuation of the ill-advised Gramm-Rudman guidelines for 5 more years, with additional restrictions that will make it more difficult to use the "peace dividend." The ghost of our last failed deficit reduction plan haunts this one. For 5 more years, we will be driven into bad policy decisions and gridlock by furlough notices and threatened cutoffs of vital services. As only a very few of us realized in 1985, no rigid formula or magic procedure will reduce the deficit for us. Only cautious choices that recognize our long-term national priorities can lead us to a fiscally sound future.

Despite the improvements made in the past month of constant crisis, I cannot accept that this budget package sets us on the proper path for our Nation over the next 5 years. For 5 years, taxes would be higher to pay for loopholes for the rich and for the oil industry. For 5 years, the middle class would make sacrifices while the military continued to squander resources on obsolete weapons and defense systems that don't address our security needs. For 5 years, senior citizens who need help with health care costs would be required to pay more.

If it is enacted, I suspect that it will not take 5 years for us to realize that this budget package has failed to achieve its goals. I would not be surprised if these questions come up again in the 102d Congress, and I hope at that time, we will be ready to step back and undertake a more open-minded effort to develop a budget that reflects our national priorities. I stand ready to make those tough choices.

COASTAL ZONE REAUTHORIZATION

Mr. LAUTENBERG. Mr. President, I am pleased that the reconciliation bill includes the Coastal Zone Act Reauthorization Amendments of 1990. The coastal zone provisions are based on S. 2782, the Coastal Zone Improvement Act of 1990 of which I am an original cosponsor. These provisions would reauthorize the Coastal Zone Management Act [CZMA], strengthen the act's consistency provisions by reversing the Supreme Court's decisions to restrict the ability of States to protect their coastal zones from Federal activities, and establish a coastal nonpoint source pollution control program.

Mr. President, more than 75 percent of the Nation's population is expected to live within 50 miles of the coast by the end of the century. Our coastal areas are becoming increasingly important for recreational use, fishing, and water-related businesses and industries. As a result, these areas are facing increasing, conflicting demands.

The CZMA establishes a program for Federal, State, and local governments to manage our precious coastal areas and address these conflicting demands our our coasts. State CZMA programs must: protect lives and property from hurricanes, flooding, erosion, and the effects of other natural disasters along the coast; protect fish and wildlife habitat; provide public access to shorelines and recreational opportunities; assist in restoring waterfronts; and ensure the proper siting of coastal facilities for transportation, energy and coastal defense needs. It is essential that we reauthorize this unique program.

I am particularly pleased that the bill reverses the decision in *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984) in which the Supreme Court inexplicably held that Outer Continental Self [OCS] oil and gas lease sales are not subject to the consistency provisions of the Coastal Zone Management Act. Under the consistency provisions, Federal actions must be consistent with federally approved State coastal zone management programs. OCS activities clearly can affect land or water uses and natural resources of State coastal zones. This provision will restore the proper role of States in controlling Federal activities such as OCS lease sales which affect their coastal zones.

Mr. LAUTENBERG. Mr. President, I am going to vote against the conference report on the budget reconciliation bill.

Mr. President, the need for deficit reduction is apparent to all. It is urgent. It is critical. We must do something to get control of our country's debt and our Nation's future. And we must do it soon.

I am committed to reducing our deficit and I have supported proposals to do so. Just this year, we in the Senate Budget Committee developed a budget resolution that would have reduced the deficit by about $54 billion in fiscal year 1991. That is significantly more than the $40 billion called for in the summit agreement.

Mr. President, I was opposed to the budget summit agreement worked out

between White House and congressional leaders, and I also opposed the reconciliation bill that passed the Senate last week. Both of those packages, in my view, were unfair to middle-class families, the elderly, and the future of our country.

I voted for amendments to improve the package, and to move it toward the type of legislation I could support. I supported the amendment offered by the distinquished Senator from Tennessee [Mr. GORE] which would have reduce the tax burden on the middle class, reduced the Medicare cuts included in this bill, and asked the wealthiest Americans to bear a larger share of the tax burden. I supported an amendment by the distinguished Senator from Iowa [Mr. HARKIN] which would have eliminated the increase in the Medicare deductible, and asked millionaires to pay a modest surcharge to pay for it. While the final package moves in the direction of these efforts, it falls short.

Mr. President, reducing the deficit is vital. But it is equally important that we do so fairly, in a way that promotes growth. Unfortunately, in my view, serious defects remain in this package.

Mr. President, this legislation still includes real tax increases on middle-class Americans. These increases could have been avoided or reduced if the President and the Congress had been willing to cut spending, particularly for the Pentagon, and to forego lucrative new tax breaks for the energy industry. And given the real pressures facing today's middle-class families, they should have been avoided.

Mr. President, ordinary, middle-class people in New Jersey are adjusting to a significant change in the State tax structure. Our economy is struggling. Working New Jerseyans are hard pressed to pay their mortgages. Hard pressed to save for their children's education. Hard pressed to keep their heads above water.

Senior citizens must cope with ever rising medical expenses and other costs of living. Yet this package would increase their monthly premiums and increase the amount of money they have to take out of pocket, before Medicare pays their bills.

The tax plan in this package is particular skewed against New Jersey. The limits on individual deductions will hit New Jersey harder than other States. Moreover, it is a disturbing precedent that I fear will pave the way to a front attack on the deductibility of State and local taxes.

I also remain very concerned about the unjustified and unwarranted tax breaks that are being provided in this bill to the energy industry. I supported an effort to restore the windfall profits tax on the oil industry. Unfortunately, that amendment failed. Instead we see new tax breaks. The oil industry is reaping huge profits as a result of the crisis in the gulf. The taxpayers are already paying at the pump. They should not have to pay again through the Tax Code.

It is not right, Mr. President, and I will not support it.

Before we hit middle-class taxpayers even harder and before we hit the senior citizens on limited means, we simply must eliminate much of the waste and excess in our military machine. It is wrong to ask middle-class families to pay for it through increased taxes. And to ask our senior citizens and our hospitals to pay for it through cuts in Medicare.

Pentagon spending over the past 10 years has exploded. In 1980, as the cold war raged and the Soviets occupied Afghanistan, we spent a total of $134 billion on defense. Under the budget plan before us today, not counting any spending related to our operation in the gulf, we are being asked to endorse defense spending in the range of $300 billion for the next 3 years.

Mr. President, that is too much. As Eastern Europe has been transformed, we heard a lot of talk about a peace dividend. Well, Mr. President, the word should go out—with the passage of this package, the peace dividend has been canceled.

Mr. President, 10 years ago domestic discretionary spending constituted 23 percent of the Federal budget. Today it constitutes 11.9 percent. We have seen real cuts in education, in housing, in community development. We have failed to maintain our physical infrastructure, and we continue to neglect the needs of America's infants and children.

In a nutshell, Mr. President, we have underinvested in this Nation's future, while we have continued to build more excess into our military machine.

The so-called budget process reform provisions of this package protects defense spending from any cuts that would shift funds to help Americans build strength at home, with their families, in their neighborhoods, in their towns and cities. The bill places virtually insurmountable procedural obstacles in our way. That, Mr. President, is unacceptable.

So in sum, Mr. President, this conference report is an improvement. But it still places too great a burden on the middle class and the elderly. It still provides unwise tax breaks to the energy industry. And it still fails to address the problem of runaway Pentagon spending.

I think we should have done better.

THE FINANCE COMMITTEE STAFF

Mr. BENTSEN. Mr. President, as we complete action on this reconciliation bill and move toward adjournment, no one is more relieved than I am. No one, perhaps, except the seemingly tireless members of the Finance Committee staff.

For 5 months of the budget summit, they have been at work and on call. They endured our long negotiations, then stayed behind to pour over the revenue estimates and draft the proper legislative language. They spent countless days, endless nights, and working weekends ever since last spring.

These talented men and women are the unsung heroes of the legislative process. Before they, and we, take a well-earned rest, I want to offer a few words of praise and thanks.

To Van McMurtry, the chief of staff, whose sound judgment and careful management skills. Made this long ordeal productive and successful.

To Sam Sessions, chief tax counsel, who contributed his detailed knowledge of the most arcane tax issues as well as a refreshing sense of humor.

To Marina Weiss, chief analyst for health and human services, who demonstrated, as always, her professional expertise and humane judgment, as she worked through the night to finish her part of the package.

To Bob Kyle, chief international trade counsel, Bill Halter, chief economist, and Chris Peacock and Laura Wilcox, who helped the news media understand what we were doing.

Mr. President, virtually every member of the Finance Committee staff made superhuman efforts despite little sleep and the usual end-of-session confusion. I want to thank them publicly for their skill and dedication.

Thanks to the tax staff: Denise Roy, Maurice Foley, Randy Hardock, Norm Richter, John Leggett, Don Spellman, Caroline Graves, Ann Goshorn, and Jenny Finneran.

Thanks to the health and spending staff: Joe Humphreys, Margaret Malone, Richard Lauderbaugh, Lisa Potetz, Janis Guerney, Katrina Osterhoudt, Donna Ridenour, and Jeanne Roby.

Thanks to the trade staff: Eric Biel, Marcia Miller, Deborah Lamb, Nelle Pace, Jennifer Bergstrom, and Gayle Fralin.

And thanks to the hearing clerks, support staff, and receptionists—who also had to work long hours under unusual pressure, but whose efforts were vital for the legislative process to function. I want to commend Gloria Fralin, Judy Jackson, Janet Blum, Darcell Savage, Kerri Goshorn, Mark Blair, Josh Cooper, Chris Baker, K.C. Halm, Dave Baker, Eric Mayer, Wayne Hosier, Bob Merulla, and Bruce Anderson.

Mr. President, I owe a special word of thanks to Janet Milne, my legislative assistant who is the key link between my personal staff and the Finance Committee staff. She performed her vital job with consummate skill.

And I cannot neglect the able and dedicated staff of the Joint Committee

on Taxation, starting with Ron Pearlman and Stuart Brown. They gave substance to our proposals and precision to our estimates.

I especially want to commend Bernie Schmitt, the joint committee's chief revenue estimator. He and his staff calculated the revenue effects of 290 complete deficit reduction packages during the summit and the subsequent reconciliation process.

Mr. President, these talented staff people are an asset to the entire Senate, not just the Finance Committee. They make it possible for us to accomplish what we intend as national policy, and to avoid mistakes from ignorance or inadvertence. We make the decisions, but their dedicated efforts make it easier for us to make sound judgments.

The Finance Committee staff deserves a rest. They ought to get reacquainted with their families and loved ones. They deserve weekends. Away from the telephone, and nights far away from their computers.

But as they recharge their batteries, they should be proud of what they have accomplished. They have helped us to fashion a solid, durable, effective deficit reduction package. They have been the quintessential public servants. They have made a difference for good in our lives.

Mr. SANFORD. Mr. President, my argument with the conference report on budget reconciliation is not with the overall amount of deficit reduction it should achieve over a 5-year period. There are certainly many things included in the deficit reduction portion of this legislation that I do not like and would like to see changed. Every Member of the U.S. Congress can find fault with specific aspects of this legislation. But it is serious deficit reduction, and as a total package, it is far more balanced and far more fair to working families than was the summit agreement.

Part of my argument with this budget reconciliation legislation involves the budget process changes included. These changes are significant and will have a profound negative impact on the future of this Nation.

The budget process changes weaken the Gramm-Rudman weapon of sequestration and allow us to turn a blind eye on our massive national debt. Deficits, even our phoney deficits, no longer matter. So long as we achieve a prescribed amount of deficit reduction in each of the 5 years, debt and deficits do not matter.

The budget process changes create two loopholes large enough for Fort Knox to slip through. They make it easier for the President to underestimate spending needs without retribution and to overestimate economic strength without reproach.

The first loophole allows the President to continue to assume 4-percent interest rates, economic growth three or four times stronger than will be the case in his budget proposals, and not be held accountable. It allows the Office of Management and Budget freedom to continue building into the President's budgets unrealistic forecasting that translates into tens of billions of dollars in debt increase not subject to sequestration or any requirement to take any corrective action. This is an economic adjustment loophole that will completely escape any budget enforcement ax.

The second loophole is even worse. Under this proposal, the President's budget can drastically underestimate the cost of Desert Shield, for example, and not be held accountable. This too or any emergency spending will escape the meat-ax approach of sequestration under this proposal and there is no requirement or even incentive for the President or Congress to develop a plan to pay for emergency spending. This spending will not even trigger sequestration, because this loophole is a technical correction to accommodate emergency spending.

These are gigantic budgetary loopholes that weaken, not strengthen, budget process enforcement.

Some of my distinguished colleagues might point out that normal appropriated spending is capped under this process reform. To that I would ask what good are caps if untold amounts of spending is out from under those caps? What good is sequestration if untold amounts of spending will be untouched by automatic spending cuts?

It is a spend-now-borrow-now budget. This is not the pay-as-you-go budget it is reported to be. Social Security will continue to be a pay-now-pay-again-later program. The process changes included in this reconciliation legislation require a pay-when-caught budget, not pay-as-you-go.

This is not the pay-as-you-go budget it is reported to be. Social Security will continue to be a pay-now-pay-again-later program. Other parts of the budget will be able to easily operate on a spend-now-borrow-now basis. The process changes included in this reconciliation legislation require a pay-when-convenient budget, not pay-as-you-go.

Gramm-Rudman opened the door to budgetary games and gimmicks. I do not believe it was designed to do that, but nonetheless it allowed them. This new budget process package is a gimmick in and of itself. It is a gimmick designed to let the White House and Congress off the hook. It is a gimmick that allows the White House and Congress to perpetuate the illusion that we are moving toward a balanced budget while we are actually moving further away from a balanced honest budget.

Mr. President, we are elected to deal with tough problems that need attention, not to turn our backs on them. The budget process reform included in this reconciliation measure allows us to turn our backs on our annual deficits and on the debt itself.

Mr. President, I am also concerned that this so-called budget enforcement package does not require an honest accounting of the Federal budget. It takes a giant step forward by removing Social Security surpluses from the deficit calculations, but it continues to allow the use of other Federal retirement programs to mask the red deficits, the increase in debt.

We will still be allowed deficits of convenience that can be easily manipulated. The budget resolution itself included two different sets of deficits that were not even remotely correct, but they were convenient deficits to use in the fiscal year 1991 budget resolution. Another set of deficit numbers are included in reconciliation, yet they too fall well short of the $400 billion we will likely add to our debt in that same fiscal year.

This coverup of debt has not served us well in the past and will not serve us well in the years to come. It is time to stop this deceptive behavior, but this package falls short of that.

This reform package also does nothing to guarantee that the new taxes included in reconciliation will be spent for deficit reduction. I think we should be able to guarantee that and I know the people of North Carolina believe we should be able to guarantee this.

I cannot support a proposal that perpetuates a false sense of deficit reduction for the next 5 years as we have done for the past 5 years under Gramm-Rudman, while permitting tremendous hidden deficits to pile up even more debt, already by far the largest in the history of this Nation.

Mr. COCHRAN. Mr. President, passing this bill is like taking medicine. It is not fun. It is not something one likes to do, but we have to do it, if we want the deficit reduced in an orderly way.

So, not liking it, I have decided to be on the side of those who will do what is necessary to help deal with the budget crisis. The alternative to passing this bill is chaos, and we have had enough of that this year.

COASTAL ZONE IMPROVEMENT ACT

Mr. KERRY. Mr. President, a year and a half ago I met with Governors, Congressmen, and a number of my Senate colleagues, and we signed a coastal covenant to protect our shared coastal resources. On that day in June 1989, other Members of Congress and I committed to develop a comprehensive legislative coastal protection initiative and ensure its passage this session. Today I rise in support of passage of such legislation which is perhaps the most significant coastal initiative since the writing of the Clean

Water Act and the Coastal Zone Management Act two decades ago.

Mr. President, our oceans, coastal waters, estuaries, and wetlands have come under extreme stress. The need for improved coastal protection in our coastal areas is obvious. Each year factories dump an estimated 5 trillion gallons of wastewater into our coastal waters; 2.3 trillion gallons of sewage pours into America's coastal waters; and population growth continues to add increased stress to our coastal communities. Nationally by the year 2010 the number of individuals living in coastal areas is expected to increase from 80 million today, to 127 million. This accounts for an estimated 60 percent increase in coastal population. Some suspect that in the State of Florida for example, population will grow by 200 percent by the year 2010. In Massachusetts we have also witnessed an unprecedented population explosion in our seaside communities. Roughly 5.8 million people currently live in the State yet 2 million reside in our coastal communities. That number has doubled in the past 15 years with no end in sight for this population growth. With this growth comes untold environmental degradation.

Shellfish bed closures continue to increase both in Massachusetts as well as nationally. In 1976, 76,000 acres of shellfish beds were closed in my State. To date this year that number has reached 117,102 acres closed. And last year, Mr. President, it is estimated that shellfish bed closures resulted in an economic loss of $94.5 million. I don't have to remind anyone of the economic downturn that faces the Northeast, and this kind of loss due to pollution is just not acceptable. In addition, to further emphasize my point let me say that between 65 and 75 percent of the shellfish consumed in my home State last year was harvested outside of Massachusetts because of our increased shellfish bed closures.

Our coastal regions are under siege from a number of manmade problems such as oilspills, development, urban and agricultural runoff, beach pollution and the like.

According to NOAA, our estuarine and coastal wetlands are significantly decreasing each year. Nationally we have witnessed a loss of 50 percent of America's wetlands since the Europeans landed several centuries ago.

Mr. President, a decade ago point source pollution was the primary cause of degradation to our coastal waters and estuaries. The Clean Water Act has made significant improvements in that area, and today nonpoint source pollution is the major reason for the decline in the quality of our water.

Today, I join with several of my colleagues—the chairman of the Commerce Committee, Senator HOLLINGS; Senator STEVENS; Senator PACKWOOD, and a number of other members of the Commerce Committee, in urging passage of S. 2782, the Coastal Zone Improvement Act which reauthorizes programs under the Coastal Zone Management Act. The legislation is designed to improve our water quality by addressing coastal non-point-source pollution, providing land use planning to protect our coastal areas, as well as protecting our coastal habitats, fisheries, and wetlands.

In 1972, Congress, recognizing the increasing threats to the Nation's 90,000 miles of coastline, passed the Coastal Zone Management Act which established a unique Federal/State partnership to protect our coastal resources and manage activities affecting the coastal areas. In order to improve water quality there is not a program that makes more sense than the CZMA Program. It gives States and localities a great deal of discretion on working to improve their water quality problems, while at the same time offering the stability of a Federal program.

With regard to the Coastal Zone Management Act reauthorization it has been the subject of two hearings before the Commerce Committee. During those hearings we received testimony from NOAA and the EPA, as well as environmentalists, representatives of fisheries, the oil industry, and State program directors on how to improve the Coastal Zone Management Program. The hearings focused on the Federal implementation of the Coastal Zone Management Act and a number of other reauthorization issues.

In order to come to grips with the myriad of problems facing our coastal areas, the legislative package before us today strengthens both the CZMA, and the Clean Water Act. It addresses such issues as non-point-source pollution, wetlands preservation, and Federal activities such as off shore oil and gas leasing which affect the coastal zone.

The primary tool the CZMA Program has in dealing with coastal water quality is through its ability to manage land use activities. By adding buffer strips to coastal areas, and addressing poison runoff such as pesticide runoff from lawns and storm water runoff from highways, and parking lots, the CZMA Act will strengthen our ability to better control non-point-source pollution. The passage of this legislation today will ensure a stronger link between State water quality agencies, State CZMA programs and the Federal water quality programs.

The legislation also clarifies that States have the ability to review Federal activities that affect their coastal zone. It provides States with a measure of control over Federal activities such as oil and gas leasing which affect their coastal zone.

In addition, the bill addresses problems associated with global warming which is caused by excessive releases of man-made gases into our atmosphere from the burning of fossil fuels, deforestation, and the production of chlorofluorocarbons which is estimated to cause sea levels to rise 1 meter by the year 2050. This legislation encourages States to take the necessary precautions to prepare for such rise. Models have shown that a 1½ -foot sea level rise in Massachusetts would prove devastating, wiping out 10,000 coastal acres, and causing at least $10 billion in damage. We witnessed the consequences last year of Hurricane Hugo in South Carolina, that is the same type of situation that must be prepared for if sea levels rise.

To protect wetlands, the spawning grounds to our fisheries, our legislation provides grants to States to develop wetlands protection programs.

The legislation establishes a new set of coastal enhancement grants which States can apply for to improve coastal programs in the following six areas: wetlands protection, hazard prevention, public access, marine debris, fishery management cooperation, and special area management planning and ocean planning. This will give States the opportunity to address coastal problems unique to their State.

Mr. President, the need to pass this legislation is critical. A recent study for the United Nations by the Group on the Scientific Aspects of Marine Pollution reported that coastal pollution is on the rise globally. Population growth, land use activities, and manmade problems are responsible for this trend. This study shows the clear link between coastal water quality and land use. It highlights the fact that coastal planning and development control measures are essential to our coastal protection. Mr. President, the extent of our coastal problems goes far beyond our existing laws. Old solutions will not do. New approaches like those set out in our bill, in addition to education efforts, and enlightened lifestyles will offer us the answers. Now is the time for Congress to focus its attention on an environmental threat of historically unprecedented proportions—the destruction of our coastline and the fouling of our oceans and coastal waters.

Mr. President, I urge my colleagues to join with us today in passing this coastal protection initiative that will make a serious difference in our coastal areas, the quality of the environment we live in, and the economic vitality of our coastal communities, States, and the Nation.

Mr. KERRY. Mr. President, on many occasions, I have stood before this body to speak on the need to reduce the budget deficit. I have said that the single most important thing

we could do to encourage economic growth was to cut the deficit and drive interest rates down. And, I have explained that the most painful legacy that we could leave to our grandchildren would be a colossal national debt.

My thoughts on this issue are reflected not only in my speeches, but in my votes as well. I was the first Democratic Senator from the Northeast to cosponsor the Gramm-Rudman-Hollings bill as an important step in that direction. I have voted against budget resolutions, reconciliation bills, and appropriations measures over the years when I believed that they were inconsistent with achieving real deficit reduction and did not reflect the values and priorities of the people of Massachusetts.

After not having taken action on the budget deficit in the mid-1980's when reduction measures would have been less painful than they are today, Congress and the President finally got serious about the budget this year. But, in the year that the White House and Congress finally got serious and were prepared to enact a multiyear deficit reduction package, we developed our package behind closed doors through months of negotiations.

What did these negotiations produce? The answer, Mr. President, is that as time ran out, the harried budget negotiators put forth a package that may have been a careful compromise, but did not reflect the priorities of the constituents of many Members of Congress. As a result, the initial summit agreement brought to the House floor was defeated by a majority vote of Republicans and Democrats alike.

The agreement, however, had enough merit to serve as the basis of a budget resolution that became the outline of a reconciliation bill. This resolution, therefore, would be the foundation for any future agreement, it would set the boundaries for all of our future discussions and ideas on deficit reduction.

As I indicated at that time, I would apply three criteria to forming my opinion about this resolution:

First, it must be fair to the working people of Massachusetts. It must not discriminate against our region of the country. It must not continue or increase the burden of the middle-class families of our state and unfairly benefit those with substantial wealth.

Second, it must be consistent with the expansion of the Massachusetts economy and recovery from the serious recession that we are currently in.

Third, it must have real, substantial multi-year reductions and abandon the recent practice of phony budgets with rosy economic assumptions and gimmicky short-term measures predominating.

Although it was the most heroic measure in history to take decisive action toward reducing the budget gap, this agreement did not meet my conditions. And, therefore, I voted against it.

As I said at the time, the budget resolution took the path of least resistance. It relied too heavily on increased taxes and too little on reduced spending. It takes courage and careful analysis to cut unnecessary programs and to trim wasteful spending and mismanagement. Unfortunately, this resolution lacked courage and careful analysis. The summiteers missed large potential cuts in the defense budget, in excessive subsidies to agriculture, in breaks given to businesses conducted on public lands, and in loopholes for oil and gas and other businesses. Had the summiteers taken the House proposal for the Defense budget, for example, we could have saved $62.5 billion alone.

The resolution also failed to target these unnecessary and wasteful programs and instead identified the Medicare Program and veterans benefit programs, among others, as areas to cut.

By ignoring cuts in meaningful places, we were left with $135 billion or more in new taxes that could have been, in whole or in part, avoided. And, if this were not bad enough, the majority of the taxes proposed were regressive taxes on, for example, gasoline that would have unfairly burdened the working people of Massachusetts.

The budget resolution was passed despite my opposition. The die was cast. The debate and the negotiation that followed proved to be over the remaining details: what portion of the agreed to tax increases would be gasoline taxes versus other kinds of taxes; how should the user fees be levied; and, what should the final form of the spending cuts be?

Given the parameters set out in the resolution, the intermediate result, the budget reconciliation bill, and now the final result, the conference report, were not surprising. These results turned out to be a significant improvement over the previous resolution, but not a large enough improvement to satisfy me or my constituents. The products that followed the resolution simply could not overcome the foundation upon which they were built.

While I applaud the efforts of the negotiators and appreciate the improvements that they made over the original budget, I cannot support the final outcome of their effort. I cannot support it for the same reasons that I could not support the Budget Resolution Act and the Budget Reconciliation Act.

This budget does not cut spending enough. And, what spending does get cut, too often, in my opinion, spending that should not get cut. This budget raises too high and the wrong taxes at that.

It does not reduce excessive spending in defense, on agriculture and in other areas sufficiently.

It does not close unnecessary tax loopholes adequately.

It does not include waste and mismanagement as it should.

It does not distribute the burden of taxation as fairly as it should by asking more of millionaires and those that have great wealth and less of those in the middle class who already pay a great deal when compared to their income.

It does not fairly impose the burden of reduction on all States and regions of the country or recognize the economic conditions in States like Massachusetts.

It does not adequately reflect the special needs and living requirements of the elderly and our veterans.

It does not include adequate incentives for investment in small and growing businesses.

It authorizes, without hearings, without the input of local communities, and without debate in the Senate, a major new federalization of airport noise control. This Federal intrusion into a critical area of local control, without even hearing community concern, is unwise and unwarranted. I will continue to do all I can to defend the right of local citizens to protect their right to maintain what they consider to be a reasonable degree of peace and quiet.

As a result, it does not pass the test of fairness to the people of Massachusetts, their values and priorities that I must apply in reaching my decision on the reconciliation conference report. I will, therefore, vote against it.

I want to reduce the deficit. I have been willing, as I indicated earlier, to make the tough choices, but the reconciliation bill makes the wrong choices for Massachusetts and the Nation.

I understand how hard it is to produce a budget that we all can support.

I understand that our leaders had to fashion a proposal that they believed could pass and that the President could sign.

I commend them for the difficult and thankless task to which they have devoted themselves so generously.

And, I believe that they have produced a better budget than what was produced in the budget summit. For this I am very grateful. It is better. It is more progressive. It hits the elderly and the working families less severely than the original package.

For example, I am pleased that the original Medicare costs to our elderly have been reduced somewhat.

I am pleased that improvements in progressivity are included compared to

the original budget agreement, and the reconciliation bill.

I am pleased that the gasoline tax, one of the regressive taxes included in the original package, was reduced.

I am pleased with the expansion of the earned income tax credit.

I am pleased with the child health care package.

And I am very pleased that the 2-cent tax on heating oil has been discarded.

It reauthorizes the Coastal Zone Management Act, a measure I authored which will provide essential additional protection to our environmentally threatened coastline. This legislation makes landmark changes to the way we manage our coasts to address the increasing pressures that these critical areas are under.

And there are other provisions that are improvements. I am pleased that I was able to help improve these provisions and this final product.

But, better just is not good enough. This reconciliation bill is seriously flawed.

For example, the tax increases proposed remain excessive and still too regressive. Excessive reliance on the gas tax, for instance, without significantly increasing taxes on millionaires, leaves us with a tax system that is not as fair as it could be or should be. After all, in the decade of the 1980's, the richest 1 percent of the Nation saw their average income increase 73.7 percent to $548,970 while the bottom 90 percent experienced a mere 5.9 percent increase in income to $29,334. It is time that those who reaped so much of the benefits of the 1980's give back a little more to those who gained so little.

The Medicare provisions would increase the deductible from $75 to $150 in 1991 and other costs to the elderly for this health care would also increase. The veterans cuts remain excessive and unfair.

The mandating of Medicare for State and local government employees hits Massachusetts governments especially hard, as it does their workers, it would cost our State and local governments $150 million each year and our workers a similar amount.

The Medicare provisions would add a significant burden to hospitals in my State already under serious financial stress and reduce resources to Massachusetts teaching hospitals substantially.

The tax incentives provided for oil and gas production are excessive and unnecessary, particularly in the period of high oil prices.

The failure of this budget to include a targeted incentive for investment in small, new ventures—the source of important job and income growth in the Nation—and desperately needed in Massachusetts is a major failing.

And these are only a few of the problems I could recite that make it impossible for me to support this measure.

During our debate on this bill in the Senate I also tried to make it better. I supported amendments to reduce or eliminate regressive gasoline taxes, to reduce or eliminate unfair Medicare cuts, and to pay for these cuts by increasing taxes on the wealthiest of our citizens. I voted to take Social Security off-budget to protect the integrity of the Trust Fund and reduce its use to artificially suggest that the Federal deficit is less than it really is. And I supported several other amendments intended to make this measure more fair. But despite these efforts, the Senate reconciliation bill, and now the conference report, simply do not meet the criteria that I must apply on behalf of the people of my State.

As the months of negotiations wind down and climax in the final vote on the budget reconciliation conference report, I realize that there is no longer anything I can do to change this package. As much as I would like to make the tax increases more progressive, increase the cuts to the Defense Department and agriculture subsidies, and reduce the burden being placed on the elderly and our veterans, I am a realist. I know that the die was cast with passage of the budget resolution.

Now, as we debate final passage, I can only praise the Members and their staff for having worked so hard to come up with this first multiyear deficit reduction package. And, unfortunately, I must also voice my opposition to this package because it is not fair to the working people of Massachusetts.

Mr. CHAFEE. Mr. President, this year has been one of the most tumultuous in the 14 years I have been in the U.S. Senate.

Earlier this month, I told my colleagues in the Senate that I have never felt so pessimistic about our ability to keep our Nation strong and thriving. For most of this year, partisan politics, ironclad ideologies, and cynicism seemed to be the order of the day. The temptation of grandstanding on popular issues seemed so great that it seemed some were willing to risk the future of our Nation, of our children for short-term political gain.

This is not a game we are playing. The future of our country, the future of our children, is indeed at stake. The economy is in trouble. People cannot sell their homes. American businesses are losing ground in international markets. Our children are dropping out of high school, they have few skills and face a lifetime of dead end jobs. Our infant mortality rate is higher than that of any other industrialized nation.

We cannot hope to make any significant inroads in any of the myriad of problems facing us unless we reduce the deficit.

Happily, however, it appears that we are about to take a significant step toward resolving the fiscal crisis that has stymied the Congress for close to a year. The conference report on reconciliation represents the largest deficit reduction package ever considered by the Congress. The bill will decrease the deficit by $43.1 billion next year, and $492 billion over the next 5 years. It contains changes in the budget process which hopefully will ensure that we will live within our means in the future. It contains significant spending cuts as well as substantial revenue increases. Equally important, it begins to address some of our most troubling domestic problems such as child care, health benefits for poor children, and protections for low-income elderly individuals. The package also addresses the competitiveness of our businesses in international markets through the extension of certain expiring provisions in the Tax Code.

The budget reconciliation conference report contains in some areas and does not contain in other areas, many spending cuts and tax increases that I would not have chosen. In fact, it is probably fair to say that no Member of Congress, or the President would have embraced this package as his or her own. It is truly a compromise.

The revenue raising provisions included in the package represent one of the most significant areas of compromise. However, I am pleased that, taken as a whole, the tax provisions in this package are very progressive. This is illustrated by the fact that the top 5 percent, by income, of American taxpayers will pay more than 60 percent of the revenue raised by this bill.

We have heard many complaints about the fact that we are raising the gasoline tax in this bill. The increase in this legislation will bring the total Federal gasoline tax to 14 cents per gallon which is less than 20 percent of the amount of gasoline tax imposed by many of our trading partners. Even when Federal and State gasoline taxes are combined, the level of taxation in the United States is less than 50 percent of that imposed by other countries.

This legislation will also increase the excise tax on cigarettes, a proposal that I and many other Members of this body have been advocating for a number of years. If I had had my way, I would have doubled the amount of the increase contained in this bill. Last year, I introduced legislation to increase the excise tax by 22 cents per pack.

We have placed a new floor on itemized deductions that will apply to only the top 2 or 3 percent, by income, of American taxpayers. Many of my colleagues have criticized this provision as hurting taxpayers who live in States with high income tax rates. I

disagree with this analysis. This floor applies to all itemized deductions—except medical, casualty and theft losses, and investment interest which are already subject to limits. The new floor will apply in the same manner to all upper-income Americans, regardless of where they live.

As I mentioned earlier, the package also contains provisions which will help enhance the competitiveness of American business in international markets. Two of these provisions are critical to the continuation of technological innovation in this country: the research and experimentation [R&E] tax credit and the R&E allocation rules under section 861 of the Internal Revenue Code. The current regulations under section 861 create an incentive for companies to move their R&E offshore. If R&E expenses incurred in the United States must be allocated to foreign sales, U.S. companies may move the R&E offshore to take advantage of beneficial tax treatment in other countries.

It has been alleged that reform is some type of tax break. I assure you that is not the case. Section 861 is a penalty on domestic R&D because it requires U.S. R&D performers to engage in an accounting fiction that leads to double taxation and increases their worldwide tax liability. Removal of this penalty simply allows American companies to be treated like their counterparts all over the world.

The R&D tax credit is also very important to encourage American companies to increase the level of research that they are doing on new technologies and new products. I am dismayed that we have not been able to extend this provision for more than 15 months, since America needs a consistent and permanent R&E policy. Research projects often take years to complete and require businesses to make commitments of funds years in advance, therefore they need the assurance that a permanent R&E policy would provide.

Finally, there are also provisions to assist Americans in purchasing homes. In many States, such as Rhode Island, where housing is very expensive when compared to median incomes, we must provide tax incentives for programs that assist low-income Americans in acquiring their first home. We must reverse the declining home ownership trend that exists in this country.

The Mortgage Revenue Bond [MRB] Program authorizes States to issue tax-exempt mortgage revenue bonds to provide below market-rate financing for the purchase of homes by citizens in those States. This below market-rate financing allows many Americans to purchase a home, when they would not be able to buy a house with conventional financing.

In 1986, we adopted a State volume cap which placed a limit on the total amount of private-purpose, tax-exempt bonds that could be issued by a State. The MRB program expands the type of private-purpose bonds that can be issued within a State's volume cap. I believe we should allow each State to utilize the volume cap to best meet the needs of its citizens.

The mortgage revenue bond program is a vital part of my State's housing program and its efforts to address the large affordability gap that exists in Rhode Island. The experiences of Rhode Island Housing, the manager of the MRB program in my State, illustrate the importance of this program to fulfilling the homeownership dreams of low-income Americans.

Approximately 80 percent of the families served by the MRB program in Rhode Island over the last 15 years would not have been able to qualify for a conventional mortgage. In the last year the Rhode Island MRB Program has provided mortgage financing for one-half of all of the homes purchased in Rhode Island.

The extension of this program through the end of 1991 will allow States such as Rhode Island to continue to assist young families who may not otherwise have been able to purchase a home. I am very glad that we have been able to maintain this tax exemption that is such an important part of our overall housing program.

Lastly, Mr. President, I would like to discuss the Medicare and Medicaid provisions included in the reconciliation bill before us. For the 6th year in a row, I was a member of the Health Subconference on Reconciliation. We were given the task of making substantial reductions in reimbursement for those who provide health care services to Medicare beneficiaries. This is not an easy task. Over the past 10 years, we have made significant reforms in the Medicare Program which have slowed the rate of growth in that program. In addition, we have restructured the program to ensure that the best health care policies are reflected. This is a complicated process, and we are not always able to accomplish all of our goal.

On the whole, this year, I believe we have made changes which will reduce the cost of the program, while at the same time preserving the quality of health care provided to Medicare beneficiaries. However, I am worried about the impact of some of the reductions—particularly those dealing with reimbursement to hospitals.

This agreement makes reductions of $34 billion in payments to providers, $13.7 of which will come from hospitals. While those reductions were more than any of us really wanted to make, we were able to include protections for those which are most vulnerable, hospitals which serve a disproportionate share of low-income patients, and hospitals located in rural areas.

Another important provision in this package will result in increased reimbursement under Medicare for community health centers. This provision, which I sponsored, will allow these centers to serve more of our Nation's uninsured low-income individuals.

Ten million dollars in savings under this package will come from increased cost-sharing under Medicare. We increased the Medicare part B deductible from $75 to $100, but did not increase the part B premiums, nor was the 20-percent coinsurance for clinical lab services, contained in the original budget summit agreement, imposed.

In this agreement, we were able to include important provisions which will help mitigate the impact of part B deductible increases on low-income elderly individuals. Next year, the Medicaid Program will cover the cost of Medicare part B premiums, deductible, and coinsurance for all Medicare beneficiaries whose incomes are below 100 percent of the Federal poverty level. In addition, by 1995, Medicaid will cover the part B deductible for the elderly whose incomes are above 120 percent of poverty.

Also included is legislation I sponsored with Senator BENTSEN, which will phase in Medicaid coverage for all children whose family income is below the poverty level. Twenty percent of our Nation's children are living in poverty. Through this provision we can assure that they have access to basic health care services.

I am also pleased that we were able to include some funds for services to individuals with disabilities and their families which will help them live, work and play in their own communities. This provision will help ensure that those with disabilities, and their families, will no longer be forced to choose institutional settings due to the fact that no other services are available.

The bill also contains a controversial provision to save $1.9 billion in the Medicaid Program through rebates to the States for prescription drugs. I believe that this provision represents a responsible approach while still ensuring that Medicaid beneficiaries have access to state-of-the-art prescription drugs.

So, Mr. President, although this package may not contain all of the elements of deficit reduction I believe are important, and although it does not contain all of the spending provisions I believe are necessary to assist the children of this Nation, I believe it is the best we can do this year. I will support the package, and urge my colleagues to do likewise.

Mr. SIMPSON. Mr. President, before we get down to our last business here, and vote on this budget conference report, I believe it is appropri-

ate to review a few points pertaining to this debate.

I understand that many of my colleagues are going to find it difficult—nay, for some impossible—to vote for this package. It is a tough package, and it is going to inflict some pain upon everyone. "Soaking the rich" has surely been a popular campaign slogan for the last few weeks. So we did that. That's in this package. If your income is above $200,000 your annual taxes are going to go up by over 6 percent—that's some easy math to do—that's at least $12,000 a year extra from you.

But we should also lay it on the line that "soaking the rich" wasn't a panacea; it has never been before and it won't be now. Those Americans who have joint income ranges between $30,000 and $40,000 a year will also see their taxes go up an average of 2 percent a year. That's a smaller amount—at least $600 a year. But those people will feel that, believe me. Is that taking care of the little guy?

So everyone here has to ask themselves: Am I willing to inflict this pain, even though well-distributed pain, on the citizens of this country? Consider this as you formulate your answer to that question. What is the alternative to deficit reduction? Right now it is the expiration of the continuing resolution—a Government shutdown. Let's not kid ourselves, that would be far more painful than anything ever contemplated on this floor, and there is no demagoguing our way around that one. Air traffic control needs to continue, roads need to be repaired, kids need to be vaccinated. Anyone who would put a stop to that in the name of trimming Government "pork" is truly "throwing out the baby with the bath water."

And there's another alternative—and I want people to understand this. The alternative to shutting the Government down is to let it run and to do nothing. Let's get this straight; that will not produce deficit reduction. Entitlements spending in this country has its increases already built into the law. That's why we have to make cuts. People phone us and say, "Why do we need this deficit agreement? Let's just not spend so much money." The answer is that not making cuts leaves those expenses to grow and swell. So let no one claim that voting against any and all deficit reduction packages or agreements is compatible with restraining spending. It isn't. The effect of that is only to keep that benefit machine churning away at top speed.

We have not solved the long-term problems facing our Federal budget, but we finally have made a start. Social Security spending is untouched. The 5.4-percent COLA is to be given to Social Security recipients and Federal retirees at the start of the new year, and it will cost this country, not $21 billion extra on top of this past year's spending. Anyone concerned about the integrity of the Social Security System has to be reassured by this package; we shielded all Social Security recipients, regardless of their net worth, from any pain in a package which has 491 billion dollars' worth of pain. We did that because everyone at that negotiating table bent over backward to assure that it was done.

The Medicare cuts, pure "Washingtonese" for limiting spending to a 10-percent increase rather than an 11.6-percent increase—have been limited. We heeded the firestorm that broke out when a $3.60 premium increase was suggested. Now we will spend $42 billion less than planned, not less than now, but less than planned before our deficit reduction efforts. And $32 billion of that will come from providers of health care; the remaining $10 billion—2 percent of the total package—will come from beneficiaries.

Even limiting the hit to that degree is going to affect real people. Let me tell you: This Congress, or any Congress, would not inflict that difficulty upon people of sadism or self-service. We depend on those people for their support of us, for their votes, for our jobs. So why do it? Because the alternative is to inflict ever much more pain on them in the long run. We are able to see the pain that will be produced by this package. People have a much tougher time seeing or comprehending the way the mounting deficit hurts them, but they are feeling it already, and they will feel it more sharply unless we do this act.

So that is smack where we are, faced with an up or down vote on this maligned, unpopular package. On our right are sincere conservatives, on our left are sincere liberals. One side will tell you that they can't vote for the package because it includes tax increases. The other side will tell you they can't vote for it because of entitlement cuts—Medicare, agriculture. I don't question the sincerity of any person who is of those beliefs, but I do know that what they now suggest is politically impossible at this moment in time. Neither side has near enough support to get an "ideologically pure" package through the Congress. So we have to compromise. We have to compromise, or watch the terrible deficit grow. Watch it eat people up through inflation and interest rates. Watch the markets and savings be eroded away.

There has been much criticism of the package which is before us and I am very happy to criticize it, too. But let us talk about stark reality. Suppose you could convene the most responsible statesmen legislators in the land to solve a problem of this magnitude. Who would you want at that table? The President certainly. Our fine leaders, Senator GEORGE MITCHELL, Senator BOB DOLE, greatly respected legislators. The dean of legislators, Senator ROBERT C. BYRD. And Senator JIM SASSER, who has grown into a real team player. Senator LLOYD BENTSEN would be there, our universally respected colleague. The energetic and bright Senator BOB PACKWOOD. I would certainly want Senator PETE DOMENICI there.

If you run down that list, I think you will pretty much come up with the men who actually did the tough negotiating of this package. If there is a better package possible, I would surely like to know who we could have directed to produce it? This package is here because, while it is surely not the best of all worlds, it is the best of all possible political worlds. So let's stop "talking the talk" and let's "walk the walk." "Off the gangplank together, my hearties." I thank my colleagues for listening, and I yield the floor.

Mr. DOLE. Mr. President, I would like to engage the distinguished manager of the bill in a colloquy concerning the reduction in insured loans in the REA Telephone Program contained in section 1201 of the conference report on the bill, H.R. 5835. It is my understanding from a reading of that section of the bill that, as far as the Telephone Program is concerned, the reductions contemplated under section 1201 are reductions in the overall insured loan program levels for each year and do not authorize, in any way, the administrator to make reductions in individual loan applications or to require individual loan applicants to accept the privately funded guarantees under the new loan guarantee authority of section 314(d) of the Rural Electrification Act contained in section 1201. Is my understanding correct?

Mr. DOMENICI. The Senator's understanding is correct.

Mr. DOLE. In other words, these program reductions in the Insured Telephone Program do not contemplate any change in the manner in which the current Insured Telephone Loan Program is administered. And, further, that the assumption of a reduction in an insured loan contained in paragraph (3) of subsection (e) of the new section 314 of the Rural Electrification Act applies solely to the electric program? Are these interpretations correct?

Mr. DOMENICI. The Senator's interpretations are accurate. The provision referred to does not authorize any change in the way the current Insured Telephone Loan Program is administered.

Mr. GARN. Mr. President, we are in a terrible and embarrassing national predicament today. We have a huge national debt; an increasing Federal deficit; and the obvious inability to agree on a satisfactory solution to these problems. We are in this trouble for a number of reasons. The core of

the problem may be genuine disagreement over how to solve our economic woes. Unfortunately, regardless of the philosophical differences, the result is that politics—the ugly name-calling and blame-laying—seems to be overshadowing the very somber issues before us.

I have been a good soldier—looking at the long-term objectives of reducing the deficit. I have supported the last two budgets because they promised to reduce the deficit by the targeted $500 billion. But I have supported them with strong reservations. I predicted 3 weeks ago that if Congress did not pass the first budget agreement, each subsequent agreement would be worse. President Bush was exactly right when he said that if we started picking the package apart, we would never be able to put it back together again. I believe we have reached that point now. Tonight's budget is the worst yet. I cannot, in good conscience, lend my support to it.

We have toyed with this budget for 9 months and now we have reached a point of complete mayhem. The Capitol Dome has become a clouded bell jar under which we are incapable of viewing what is in the best interests of our country. Everyone is picking at every proposal. The Democrats are accusing the Republicans of being the party of the rich. The Republicans are accusing the Democrats of being big spenders. The media is attacking the President for his lack of leadership. And in this environment, we have no direction, no consensus building, and no discussions on what truly needs to be done—which, simply put, is to reduce Government spending.

I do not like the choices placed before me today. On the one hand, I could stay in the ranks, and vote for a budget that goes against my philosophy and sound economic judgment. Or, on the other hand, I could vote what my conscience dictates and oppose raising taxes on a citizenry that needs relief. These choices are not easy. They are the kind every politician hates. However, it is the kind we are elected to make. My decision has to be—for the good of my constituents in Utah and for the good of the country—to say "no" to politics and vote against a bad bill.

The Federal Government has been on a continuous spending spree for far too long. Congress cannot resolve our deficit crisis unless hard choices are made, even if they hurt. But raising taxes is not the answer. Revenues have increased exponentially over the past decade, but Federal spending continues to out-pace the revenues. And every time taxes have been increased in the past, those taxes have gone to new spending, not to retiring our debt. We have a terrible record on being responsible with the taxpayers' money.

The other issue that continues to be raised is fairness and progressivity. "We aren't taxing the rich enough," some say. Yet statistics show that the top 25 percent of income earners pay 78 percent of all income taxes, while the lowest 50 percent of income earners pay only 5.5 percent of all income taxes. Indeed, it seems that the so-called wealthy are carrying their fair share of the tax burden.

I continue to maintain that across-the-board spending freezes or reductions—including cuts in our costly entitlement programs—is a more reasonable and fair approach to resolving the budget crisis. No one faction of our population should bear the deficit burden unfairly.

I don't believe this budget package is the solution to our Nation's economic problems. I don't like the fact that 40 percent of the deficit reduction is made up of new taxes and fees, giving Congress the opportunity to continue its irresponsible spending habits. I don't like the fact that we haven't addressed the ever-burgeoning entitlement programs with some method to control or limit their growth. I also don't like the fact that the discretionary spending cuts in the package come entirely from the defense budget, making up 37 percent of the targeted budget savings. Certainly there are other programs and accounts that can take reductions in their spending levels as well.

I have heard from many Utahns who are upset about the inability of Congress to deal effectively with the economic problems our country is facing. Many have expressed anger that Congress once again wants to raise taxes. Most have made suggestions of ways to reduce the deficit. Almost all have named a certain program that is important to them that shouldn't be cut. It has been a rare and lonely voice, however, who has said "I am willing to tighten my belt." Well, the time is here; we all must tighten our belts.

The last 3 weeks of this partisan bickering has angered the Nation, and rightfully so. I am angry, too. As Stephen Rosenfeld aptly stated in last week's Washington Post, our current budget crisis "is a crisis of governance and political values at the core expressed in a chronic inability to set priorities and make hard choices and an adolescent reluctance to accept the consequences of our acts." My dear colleagues, we are now facing the consequences of our inability to act. I simply cannot vote for a bill which will not attack the root cause of this problem: excessive Federal spending.

Mr. GRASSLEY. Mr. President, I must first preface my remarks by reminding my colleagues that the record of my service in the U.S. Senate bears out that time and time again I have put partisan politics aside to do what I sincerely believed has been good for the country, and good for my constituents.

I have put aside partisanship on matters of defense waste, farm problems, and budget matters. Moreover, as a recent example, I was the lone Republican to vote for the Democrats' budget plan adopted by the Senate Budget Committee this spring.

I am compelled to preface my remarks with this reminder because what I am about to say is harsh.

It may sound partisan. But it is true.

Here we are, drawing to the end of the 101st Congress, war-weary over a long drawn out battle over this budget package, a package which is supposed to be about deficit reduction, but unfortunately has more to do with more taxes and more spending. The biggest tax increase in the history of our Nation.

Mr. President, I cannot remember a time when I have been more disappointed with the behavior of Congress. The 101st Congress, in my view, has been one where the majority party has been more interested in playing politics, than with meeting the serious challenges of governing.

The process leading to this budget process underscores my point.

The President submitted to Congress a budget last February. He could have simply walked away and let this Democrat controlled Congress develop its own plan, and let them alone make the tough decisions—let them alone take the political heat for unpopular decisions.

Politically, that would have been the smart thing for Republicans and for the President.

But we have a crisis at hand. We extended an olive branch and offered a budget summit to work this out together.

What did the President get for bending over backward, by submitting to Democrat demands that he alone first suggest taxes may be needed. Partisans set out about the country ridiculing the President for breaking his so-called read my lips, no new taxes campaign promise.

But the President and Republican leaders moved forward, trying to work out an agreement. The Democrats, unfortunately, seemed more intent on playing politics.

A leak from the summit, Republicans want to increase taxes for the poor, and decrease taxes for the rich.

Scolded by Democrat congressional leaders, yes, but during the next few days, Democrat Party Chairman Ron Brown ran around the country repeating and repeating the same attack.

Mr. President, this Democrat-controlled Congress does have its privileged class, its untouchables. It is not farmers, it is not Medicare recipients, it is not the poor who must pay higher gas taxes.

I offered an amendment to make the wealthy shipowners and seafarers, some who make a mere $146,000 for 6 months work, pay their fair share in budget cuts through the Coast Guard user fee.

It was knocked out. Maritime unions are too important to the 101st Congress. Cargo preference, a backdoor, hidden, lucrative subsidy—subsidizing U.S. maritime to the tune of $415,000 per job per year—is off limits. This Democrat-controlled Congress which is responsible for a budget—not the President—gouged the farmers, gouged the poor consumers, and gouged the elderly, but not U.S. shipowners and seafarers who collect unpatriotic profit over 1,100 percent the going rate to ship Desert Shield cargoes.

Next Congress, Mr. President, next Congress. There will be fairness, there will be reform.

Mr. President, the Democrat controlled 101st Congress reminds me a lot of Nero, as Rome burned, he simply fiddled around.

Well, this country is in a crisis, a crisis created by Congress, too much spending, and it adds up to uncontrolled deficits that pile higher and higher our Nation's debt.

At a time when Americans are crying out for heroes, all this Democrat-controlled Congress has given them is a sad bunch of Nero's.

The time for playing politics with the lives of Americans, thank God, has come to an end. The time for fiddling is over.

But believe me, Mr. President, America burns, burns with anger.

And the Nero's will pay on November 6 if there is justice in this world.

Mr. D'AMATO. Mr. President, I rise in opposition to H.R. 5835, the Omnibus Budget Reconciliation Act of 1990. I am voting against this budget because it's time to stop business as usual. This is not an austerity budget. It does not cut spending. It does not even freeze spending. It continues to increase spending and raises taxes to pay for it. The claims that it will reduce the deficit by $500 billion over 5 years are completely unbelievable and unreliable.

This is not a deficit reduction package. This is a spending increase bill and a tax bill—a tax bill that will fall right in the laps of the working middle-class Americans. Make no mistake about it, this bill increases taxes by $20.6 billion next year and $146.6 billion over the next 5 years. Over the same 5 years spending will increase by a minimum of $245 billion.

We need to freeze spending if even just for 1 year. We need to hold the line. The fiscal year 1991 budget summit cap for domestic discretionary spending increased by $20 billion over fiscal year 1990. That's a 12-percent increase in domestic discretionary spending alone. That is plain wrong.

The increased taxes are not going to deficit reduction, they are going to finance an addiction—out of control spending. Congress is an addict, a spending addict. You don't give a drug addict more drugs, do you? Well, you don't give Congress more tax revenue either. They can only do one thing with it—spend it.

In addition, this bill increases the debt limit for a 5-year period by $1 trillion, 900 billion equaling a total debt limit of $5 trillion, 200 billion. This is inconceivable.

I support efforts to bring about economic stability and encourage growth in our Nation by reducing our Federal deficit but I will not accept an increase in taxes as a substitute for spending cuts. And, I certainly don't believe that raising revenue through a reduction in the value of deductions such as State and local deductibility will meet that goal. This deal is merely a foot in the door to future tax increases on the hard working middle class of this country.

Before we ask for any more money from the American public, Congress should learn the lesson every American knows—in tough times, you tighten your belt. Because this bill ignores this lesson, I will vote against it.

FHA INSURANCE PROGRAM

Mr. D'AMATO. Mr. President, I rise today to discuss a section of the Budget Reconciliation Act with which the Senate Banking Committee was charged.

I'd particularly like to provide some insight into one of the areas the committee addressed: the FHA Insurance Program.

As far back as 1986 the Senate was getting an education on FHA. The insurance authority for FHA ran out five times in 6 months during that year. Each time the program expired there was a lag of a couple of days before FHA was reauthorized. It was also a time of extreme volatility in the fluctuation of interest rates for home mortgages. Phones in many of our offices on Capitol Hill rang off the hook from worried constituents who were afraid their FHA loan wouldn't close and they'd lose that starter home they'd wanted for so long.

In the 1987 Housing Act, the year I became ranking Republican on the Senate Housing Subcommittee, we finally made the FHA mortgage insurance authority a part of permanent law.

During 1988, we didn't do much on FHA. That year Congress was besieged by the S&L debacle and the expensive bailout legislation that was intended to solve the problem.

On September 19 of last year, we increased the FHA mortgage insurance limit for high-cost areas to $124,875 for a 1-year period.

In the reconciliation package and in the 1990 Housing bill, we made that $124,875 a part of permanent law.

And in 1989, something else became apparent; the FHA Mutual Mortgage Insurance fund might be in serious trouble. When a GAO/HUD report was released in the spring of 1990, it confirmed that the FHA fund was in disastrous financial shape, and drastic reforms were necessary if the fund was going to be able to continue to serve American home buyers.

I, for one, want to be completely sure that the FHA financial situation does not lead to another Federal bailout. The Government should not be put at risk again as it was with the S&L fiasco. Taxpayers should not be asked to bear the burden of cleaning up after someone else has been putting Federal insurance at risk.

People have argued that this close scrutiny of the FHA fund is an inside the beltway issue and people in other areas of the United States don't care.

Well, that's just not the case. The front page of last Sunday's Chicago Tribune real estate section addressed the problems FHA has been experiencing. FHA has helped millions of Americans get into a home, and we need to ensure that the fund will remain sound so that we have FHA in the future to help more Americans fulfill the American dream.

Over the last 6 months, a considerable group of people has been trying to devise ways to reform the FHA, by putting the fund back on track toward acturial soundness, and reducing FHA's drain on the Federal budget. The Senate response to FHA reform is included in the budget reconciliation package.

This FHA reform provison provides $2.5 billion in budget savings.

This FHA package requires a prospective buyer to include more of his/her own money upfront. This provision is very important to me. Everyone of us is more careful with something that we've worked hard for, and that we've put our own money into.

In current law, a buyer can finance up to 103 percent of the appraised value of his home. This is just plain ridiculous, and it is this very factor that has contributed to losses in the FHA Program.

In making reforms to the FHA Program, I want to make sure that if and when times get tough, people would have enough of a stake in their homes, that they would make a commitment to continue making the payment on their home.

While I, personally, would like an even tougher FHA reform package, I am satisfied with the reforms we've made to FHA, and I am happy that those reforms are able to add considerable savings to the budget. This pack-

age is clearly a step in the right direction.

Thank you, Mr. President.

Mr. GORE. Mr. President, I feel very honored to have been on the Senate floor the evening of October 18 to listen as the President pro tempore sought to educate all of the Senators on the true magnitude of the problems facing this country. Not just problems facing this body, or our children, but our children's children. As the President pro tempore so eloquently detailed, this country is experiencing an investment deficit of both physical and human capital.

We have spent numerous hours engaged in lengthy debate over how the U.S. Government, created by the will of the people, should spend the money of the people, in order to reduce the Federal deficit which was created by the U.S. Government. As the President pro tempore pointed out to my colleagues and I, the issue at hand is greater than the Federal deficit. It is about the people of this Nation whom we have neglected.

Interestingly, I recently read an article by David Alan Aschauer published in the Journal of Monetary Economics, March 1989, which outlined the very relationship between infrastructure investment and productivity which the President pro tempore spoke of on the Senate floor. Mr. Aschauer's article is based on an extensive study which considers Government spending variables and aggregate productivity in the private economy of the United States. Not surprisingly, the conclusions drawn by Mr. Aschauer echo the point made by Senator BYRD—nondefense public investment is one of the most influential factors in determining a Nation's rate of productivity growth.

Mr. President, alleviating the pain incurred by the huge Federal deficit will not cure the disease. Unless we address all of the symptoms—the dilapidated bridges, overcrowded airports, polluted waters and low math scores—the pain will only become worse.

I thank Senator BYRD for his sobering statement reminding us all of the real situation and referring us back to "the point of our departure from fiscal sanity." It is an honor to not only have personally heard the words of the distinguished Senator from West Virginia, but to serve with him. His dedication and service to the Senate and to our great Nation is truly an inspiration to us all. He symbolizes the ideals and vision toward which we must all strive in order to create a future for this Nation that is as great as the foundations upon which it was built.

Mr. PELL. Mr. President, I am opposed to the budget plan before the Senate and will vote against it. Why. Because the people of my State, as the people of the United States oppose any increase in taxes at this time.

Earlier in this unprecedented budget formulation process, I voted against the budget resolution, and the Budget Reconciliation Act before it was sent to conference with the House of Representatives. Although the conference has improved the proposals in a number of ways, the objections I raised when I voted against it earlier remain.

It relies to much on increased taxes and fees, many of which bear most heavily on the average taxpayer.

It fails to do enough to control spending in defense.

It poses, I believe, a very real danger to our economy at a time when we are sliding toward a recession.

During consideration of the original bill in the Senate I voted to eliminate the increase in gasoline excise taxes at this time. I voted to reduce or eliminate the increased costs that would be imposed on the elderly in the Medicare Program. And I voted to shift the burden of taxes so that the well-off would carry their fair share.

The final bill before us now does impose higher gasoline taxes, it does impose some increased costs on the elderly through the Medicare Programs, and it does impose a significant tax increase on the average taxpayer, even though a larger tax increase has now been imposed on wealthier taxpayers.

In my view it is wrong to increase gasoline taxes at a time when gasoline prices have risen about 40 cents a gallon in the course of the past 10 weeks. To impose a tax increase at this time on top of that price increase imposes a serious burden on working Americans who must drive to their jobs.

We should remember that the objectives of this budget plan—to reduce the deficit in 1991 by $40 billion and over 5 years by a total of $500 billion, were established in negotiations with the White House months ago. Since that time the evidence has grown steadily that our national economy is slowing and is in danger of sliding into an actual recession.

It is just plain bad economics to impose a heavy tax increase at a time when the economy is slowing down. Indeed, most economists agree that at a time like this, when in Rhode Island recession is a reality and there are fears of depression, it would be best to reduce taxes. With the size of our Federal deficit, we probably cannot reduce taxes, but we should certainly think twice about imposing heavy new tax burdens.

I would note also that the legislation imposes a luxury tax on both jewelry and on yachts. This luxury tax is intended as a counterpart to the higher excise taxes imposed on products such as cigarettes, beer and wine purchased by the average taxpayer. In reality, the luxury tax will raise little revenue. Any wealthy person can avoid the tax by simply buying something different, and the net result will be a serious blow to the jewelry and boat-building industries and their workers which are very important to the economy of Rhode Island.

For all of these reasons I am opposed to the budget plan presented to us in the Senate.

HIGHWAY TRUST FUND

Mr. BREAUX. Mr. President, section 11211(i) of this bill directs the Treasury to transfer from the highway trust fund amounts that are deposited into such fund attributable to gasoline taxes now being paid by users of small engine power equipment—at a rate of 11.5 cents—to the sport fish restoration account of the aquatic resources trust fund.

A GAO report issued in January 1988, titled "Resources Protection: Using Gasoline Taxes to Fund the Nongame Act" contains estimates of the annual nonbusiness motor fuel consumption by outdoor power equipment. The report contains two estimates, its own and one made by the Outdoor Power Equipment Institute [OPEI].

Is it your view that when the Secretary of the Treasury estimates the amount of annual nonbusiness motor fuel consumption by outdoor power equipment he will rely on available consumption data such as the OPEI estimate and the GAO estimate until such time as he can make a thorough and independent review?

Mr. BENTSEN. Yes, that is my view.

Mr. BREAUX. I thank the Senator.

MINIMUM PREMIUM PLANS

Mr. HEINZ. Mr. President, I would like to call to the attention of the Senator from Texas, the chairman of the Senate Finance Committee, an issue that we discussed last year in connection with the 1989 reconciliation conference report. It concerns the deductibility of certain reserves established in connection with group accident and health subject to minimum premium plan riders.

Under such riders, the employer is responsible to the insurer for finding claims up to a certain trigger-point amount on a cumulative monthly basis. These minimum premium riders do not change the risk assumed by the insurance company, and the insurer remains liable for all unpaid claims as of the date of termination of the rider. The insurance company reflects on its annual statement a liability for the future unpaid claims upon termination of the minimum premium rider in an amount essentially equal to the termination premiums.

The Internal Revenue Service has taken the position that an insurer in these circumstances is not entitled to a current deduction for additions to its

reserve. At the same time, the IRS denied a current unpaid loss deduction on the ground that the insurer's liability does not arise until some future date, and at the same time denied a current unearned premium deduction on the ground that risks insured against have occurred during the policy year.

Last year a clarification was included as an amendment to our markup of the reconciliation bill, but as you recall, all of the so-called miscellaneous amendments were dropped on the Senate floor. However, given the short time remaining in this Congress, it does not appear that we will have an opportunity to address this issue in the Senate until next year.

Mr. Chairman, if the IRS does not decide that the insurer is allowed a current deduction under these circumstances, then I hope that we will act on the matter early next year and clarify that a current deduction is allowed in this case.

Mr. BENTSEN. I am familiar with the situation that the Senator describes. As the Senator states, clarification was included in our committee bill last year. Unfortunately, because of the parliamentary situation in which we have found ourselves this year and last, we have not had an opportunity to enact the amendment. I, too, certainly hope that the Internal Revenue Service will allow current deduction under this circumstance, making it unnecessary for us to enact a legislative clarification. If they do not, we will certainly look carefully at this issue again in the future.

Mr. MACK. Mr. President, does section 9304(2)(C) entitled specific exemptions exempt agreements between airport operators and citizens groups that are in effect before October 1, 1990.

Mr. FORD. Yes, that is one of the intents of this sections.

Mr. DOMENICI. Mr. President, whatever else we do in this reconciliation bill, we can be very pleased that this bill takes some important new strides to help low-income families; in particular, helping them with the high cost of raising their children.

This bill provides for more than $18 billion to be spent over the next 5 years specifically on programs to help low- to moderate-income families find and afford both child care and health care insurance.

This reconciliation bill combines funding reserved for the child care package passed in the Senate last year, and additional tax credit assistance for low-income families to which we agreed in the recent budget summit agreement.

The most significant provisions included provide for a generous expansion of the earned income tax credit [EITC] program. The EITC currently supplements, by about 14 percent, the earnings of low-income wage earners who have children.

The EITC is a refundable tax credit—enabling workers who have little or no tax liability to get a direct cash rebate to make sure they can take full advantage of the credit. I should also note workers can get this cash in advance, at the beginning of the year.

The EITC is a great way to help low-income families with the costs of raising their children. It sends assistance directly to those in need; to those who work hard and yet struggle to make a living and provide for their children.

At the same time the EITC keeps options open for parents, enabling them to address the particular needs their families and their children face.

First, this bill expands upon the basic EITC program by raising the income supplement, and providing an extra supplement for families with more than one dependent child. When fully phased-in, after 5 years, the maximum benefit for a one-child family could be over $1,560, and nearly $1,700 for larger families—that's about a $560 and $700 increase over current law, respectively.

This assistance is concentrated toward low-income families—particularly families with incomes up to $13,000 to $14,000. However, lower levels of assistance could reach families with earnings up to about $17,000–$18,000.

Second, the same families would get a similar, though smaller, credit for health insurance expenses of their children. Families could credit up to about $426 in health insurance expenses.

Third, families eligible for the EITC would also be eligible for another, smaller, supplement if any of their qualifying children are under age 1. This would provide up to an additional $355.

In addition to these tax provisions, this reconciliation package also provides for grants to States to improve child care.

This package authorizes a new block grant to States enabling them to address comprehensive child care needs within their States. While helping States to address quality and availability problems, it also allows States to help low-income parents pay for services.

I have been opposed to using State grants to pay for child care services that parents themselves should be allowed to pay for with tax credits. It is very important to me that parents be given maximum choice in deciding how their children are cared for—and the assistance we give should not penalize parents who wish to stay at home and care for their own children.

However, the grant in this bill represents a very reasonable compromise. It includes a provision I had added to the original Senate child care bill requiring that parents assisted through this grant must be offered a certificate, or voucher, option. This provision will assure that they will have maximum choice within the grant program.

The principal child care problem in America, and in New Mexico, is affordability. Many young families have very limited resources to care for their children, and they want to have a wide range of quality care options available to them.

The first bill I introduced in the 101st Congress proposed refundable tax credits that would give direct cash to parents for each of their young children.

Later, and together with many of my colleagues, I supported establishment of a limited grant program to help States with quality and availability problems.

I am pleased to see that what the Senate is doing in this reconciliation bill is to adopt the general design for Federal child care assistance that will do great service to the young families of this Nation, and of my State.

This is tremendously important to my State of New Mexico. In a State in which 1 in 5 children lives in poverty, this bill will give direct, flexible assistance to nearly 60 percent of New Mexican working families. This is in addition to the many other New Mexicans who are getting assistance already through the AFDC Program.

The EITC expansion in this bill will be of particular help to the many Hispanic families in New Mexico. Hispanic working families are twice as likely to be poor as non-Hispanic working families. In addition, those Hispanics who are poor are more likely to work, and will tend to have more children, than other groups of poor families. Thus, Hispanic working families with children qualify for the EITC in far larger percentages than anyone else.

As stated by a representative of the center on budget and policy priorities: "Adjusting the EITC to reflect family size would benefit Hispanics more than any other group in the Nation."

This proposal represents one of the most important assistance packages for the working poor families of America that we have done in years.

So while there may be much that Members do not like in this budget package, we can be very pleased that we are doing some great things here to help alleviate and prevent poverty; that we are doing much to help improve the long-term prospects of our children; and that we are doing much to strengthen the American family.

Mr. DOMENICI. Mr. President, one section of the reconciliation bill includes a $2.5 billion energy security package to encourage domestic production of oil and gas.

This is an important part of our deficit reduction effort because the price of oil has a direct impact on the economy. It affects potential growth, and inflation. It is a significant factor in both our federal and trade deficit. Oil is responsible for 28 percent of our trade deficit.

Mr. Alan Greenspan, the Federal Reserve Board's Chairman, told Congress on September 19, that a sustained oil price of $30 per barrel would knock one percentage point off America's GNP growth in 1991. He also testified that a $30 oil price would add 1½ percentage points to inflation in 1991.

One percent less growth in 1991 would increase the Federal deficit by $6 billion in the first year and continue to have a ripple effect for several years, adding as much as $79 billion over a 5-year period to our national debt.

If we experience $40 a barrel oil, it would increase inflation by 3 to 4 percent and cost us 2 percent in real growth.

This would constrain the Federal Reserve's freedom to ease interest rates as fears of inflation grow.

While this energy incentives package isn't a perfect offset for higher oil prices, and while it may not be significant enough in and of itself to influence world prices, it is a step in the right direction. The goal of this energy package of incentives is to revive American domestic production.

It has provisions to maintain stripper oil production, to enhance production from wells already drilled and includes some alternative minimum tax relief. It includes incentives for oil and for natural gas.

The package of incentives has the flexibility to be judiciously frugal under high price scenarios and prudently effective in low price scenarios.

I want to commend the chairman of the committee for his hard work on this package of incentives. The work on the energy security package is the result of several year's of effort. Great care was taken to make these incentives as targeted and efficient as possible.

The specific energy provisions include extending section 29, the nonconventional fuels credit, for 2 years. This production credit is available for coal seam—coal bed methane—geopressured brine, Devonian shale, biomass and certain other nonconventional fuels. Thirty states have nonconventional fuel production potential.

Coal bed methane and tights sands are important resources in New Mexico. In my State of New Mexico, the coalbed methane, alone, could double New Mexico's natural gas reserves.

It is a tremendous resource. The Gas Research Institute estimates that there is more than 50 trillion cubic feet in the San Juan Basin and a potential 18 trillion cubic feet in the Raton Basin of New Mexico and Colorado. Beyond the borders of New Mexico there are 400 trillion cubic feet of coalbed methane in the United States. Since natural gas is a clean, environmentally sound fuel, it is very significant that our energy security package includes an extension of this credit.

The nonconventional fuel credit also helps producers drilling for hard-toget natural gas found in geological formations known as "tight sands."

In New Mexico we have an abundance of tight sands gas. Because of this tremendous resource I introduced the first bill last Congress to restore the tight sands credit when a Supreme Court decision rendered the credit inoperable. Earlier in this Congress, S. 425 and S. 2288 were introduced to restore the tight sands credit and to extend the credit.

DOE has estimated that a 2-year extension of the section 29, nonconventional fuels credit will add to our supply of natural gas by an estimated 98,000 barrel per day equivalent.

In general, a production credit is more efficient than a drilling credit because only actual production is given the tax benefit. The section 29 credit is a production credit that has a good track record of success. The section 29 credit has effectively stimulated production since its enactment in 1980. Nonconventional fuel production has increased from 40 bcf in 1979 to 1,400 bcf in 1989.

I am very pleased that the package also includes a 15 percent investment tax credit for enhanced oil recovery.

The United States has produced more oil than any other nation in history, but unless new technologies are rapidly installed, the United States will leave behind twice as much in known reservoirs as it has ever produced from them. We are leaving behind 70 percent of the oil when we drain proven fields using primary oil recovery techniques.

Of this massive 340-billion barrel resource, as much as 76 billion barrels could be made economically producible using techologies that we have developed, or that could be developed, within the next decade.

Economic recovery of this oil presupposes use of existing wells, but the accelerating rate of well plugging could eliminate access to as much as twothirds of the remaining oil by 1995.

EOR clearly has a significant but time-sensitive potential. To maximize it, it is essential to maintain the stripper well production. This package addresses both types of production.

Last year I introduced S. 828, the Enhanced Oil Recovery Tax Act. It was cosponsored by Senators BOREN, DOLE, NICKLES, WALLOP, JOHNSTON, BINGAMAN, GARN, MCCLURE, GRAMM, BUMPERS, COCHRAN, BURDICK, LOTT, HATCH, STEVENS, and CONRAD. This bill was the basis for the EOR provisions contained in this package.

I believe the Finance Committee should be commended for making the hard decisions necessary to go foward with this package.

Under the provisions included in the reconciliation bill, the 15-percent EOR credit would apply to tangible property which is an integral part of the project; intangible drilling and development costs and the cost of tertiary injectants.

The 15-percent investment tax credit is price sensitive and phases out when the price of oil is in the $28 to $34 range. During periods of high prices the incentive is not available. However, the incentive serves as a safety net if prices fall. Since EOR projects are long-term investments, this safety net is very important to encourage producers to financially commit to EOR projects. This is especially important in uncertain times with volatile oil prices such as we find ourselves now.

The EOR incentives promise to contribute significantly to energy security. During the life of the EOR projects made possible by the EOR credit, we can expect 6.9 billion barrels to domestic production that would not have been produced otherwise.

The cost to the Federal Treasury will be small—somewhere between 35 cents to $1 per barrel, depending on oil prices.

At the same time, because oil is such a significant part of our trade deficit, it has been estimated that for every $1 in tax incentives, the EOR oil produced will reduce our trade deficit by about $50.

This bill includes important incentives for strippers. It repeals the transfer rule for properties transferred after October 12, 1990. The transfer rule is a disincentive for independents to take over properties owned by integrated producers. It is a disincentive that denies an independent producer percentage depletion on properties that have changed ownership if the chain of title runs from an integrated producer to an independent producer. Since independents often have lower operating costs, it makes economic sense for an independent to develop or maintain a property. However, the current law the Tax Code was penalizing this economic fact of life. I am very pleased this bill repeals this disincentive.

The bill also increases the net income limitation from 50 to 100 percent. Increasing the income limitation to 100 percent would double the amount of percentage depletion that an independent could take on a property.

At the same time that we are maintaining the production we have, and

are taking steps to encourage additional production from wells already drilled using enhanced oil recovery techniques, we also need to explore for new reserves.

The bill also provides some breathing space for producers who are in the alternative minimum tax situation.

Mr. President, I ask unanimous consent that a resolution passed by the New Mexico State Legislature supporting section 20; a telegram from Conley P. Smith supporting the package; a letter from Permanian Basin Petroleum Association, and a letter from the Independent Petroleum Association of New Mexico be printed in the RECORD.

And I also ask that several tables listing States where this production comes from be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATES AFFECTED BY OIL PRODUCTION INCENTIVES

ENHANCED OIL RECOVERY

Alabama, Alaska, Arkansas, California, Colorado, Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, West Virginia, and Wyoming.

STRIPPER WELLS

Alabama, Arizona, Arkansas, California, Colorado, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming.

STATES AFFECTED BY NATURAL GAS PRODUCTION INCENTIVES

TIGHT SANDS FORMATION

Alabama, Alaska, Arkansas, Colorado, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming.

COAL SEAM METHANE GAS

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Mississippi, Montana, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, Washington, and Wyoming.

DEVONIAN SHALE

Illinois, Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, and West Virginia.

HOUSE JOINT MEMORIAL 12

Whereas, the Gas Research Institute estimates there are 400 trillion cubic feet of coal-bed methane gas in the United States, including more than 50 trillion cubic feet in the San Juan Basin and a potential 18 trillion cubic feet in the Raton Basin of New Mexico and Colorado; and

Whereas, the number of gas wells drilled in northwestern New Mexico almost doubled last year, primarily as a result of federal tax incentives for coal-seam gas; and

Whereas, continued development of this resource could double New Mexico's total gas reserves, produce jobs and increase state royalty and tax revenues; and

Whereas, the federal tax credit for coal-seam gas under Section 29 of the Internal Revenue Code, unless extended by Congress, will not apply to gas from wells drilled after this year; and

Whereas, this tax credit is intended to encourage domestic producers to develop supplemental gas supplies in order to meet national energy needs; and

Whereas, this resource will help reduce this nation's dangerous reliance on imported oil and at the same time increase domestic supplies of clean-burning natural gas; and

Whereas, New Mexico clearly stands to benefit from extension of the credit; and

Whereas, Congressional action is urgently needed so that producers will be able to continue development of coal-seam wells in the San Juan Basin and be able to open the Raton Basin for inaugural gas production;

Now, therefore, be it resolved by the legislature of the State of New Mexico that it respectfully requests the United States Congress to act quickly to extend the Internal Revenue Code nonconventional fuels tax credit; and

Be it further resolved that copies of this memorial be transmitted to the Honorable Pete Domenici and the Honorable Jeff Bingaman, United States Senators; and the Honorable Steve Schiff, the Honorable Joe Skeen and the Honorable Bill Richardson, United States Representatives.

WASHINGTON, DC,
October 22, 1990.

Senator PETE DOMENICI,
Senate Office Building,
Washington, DC.

DEAR SENATOR: Meeting today in Dallas, TX, the Tax Commitee of the Independent Petroleum Association of America has reviewed the package of energy tax incentives adopted last week by the U.S. Senate.

The single most important provision in that package, one which affects virtually every member of the IPAA, is the reduction of the existing tax penalties on drilling investments under the alternative minimum tax.

Of all the provisions in the Senate package, the reduction of AMT preferences is IPAA top priority and will result in the greatest economic incentive for new domestic drilling.

As negotiations on the 1991 budget continue, we urge you to retain the Senate provisions reducing amount of penalties on new drilling investments in the final budget package.

CONLEY R. SMITH,
Chairman, IPAA Tax Committee.

PERMIAN BASIN
PETROLEUM ASSOCIATION,
Midland, TX, July 12, 1989.

Hon. PETE V. DOMENICI,
U.S. Senate, Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR DOMENICI: We appreciate your co-sponsorship to the Enhanced Oil Recovery Act (S. 828). Just recently, the Texas Legislature passed H.B. 428 which reduces certain crude oil production taxes by fifty percent over a ten year production period for qualifying enhanced recovery projects (attached). While we do not believe this will be a large boost to Enhanced Recovery investments (EOR) or will it have a major impact on Independents, it is another upward step toward reducing our alarming dependence for foreign crude oil by maintaining production for "in place" oil.

Along with our support of S. 828, we highly endorse those marginal production initiatives as a companion proposal as recommended by the Independent Petroleum Association of America; they are:

Eliminate percentage depletion as a perference item for marginal production.

Raise the property net income limitation from 50% to 100%.

Repeal the 65% taxpayer income limitation with respect to percentage depletion on marginal production.

Repeal the transfer rule.

Remove marginal production from the 1,000 b/d limitation.

We congratulate you in your efforts to enhance an ailing industry. We also encourage you to use your influence for getting the Department of Energy to take action on the various industry incentives they are preaching to the nation as hopeful cures to the domestic petroleum industries ill health. While our association members are extremely tolerant and patient, its time to stop talking and start doing!

Sincerely,

HARRY A. SPANNAUS,
Executive Vice President.

INDEPENDENT PETROLEUM
ASSOCIATION OF NEW MEXICO,
Santa Fe, NM, August 1, 1989.

Hon. PETE V. DOMENICI,
Washington, DC.

DEAR SENATOR DOMENICI: Members of the Independent Petroleum Association of New Mexico have reviewed Senate Bill 828, Enhanced Oil Recovery Tax Act, and strongly endorse it. We believe that the bill is sufficient in its present form and does not require amendments.

New Mexico currently has 14.7 thousand stripper wells out of 17.2 thousand oil wells. Of that number 5.2 thousand are classified as inactive. This is greatly attributable to economic circumstances.

Today's circumstance is gravely unfortunate because it invites premature abandonment of marginal wells and does not invite innovation for secondary and tertiary recovery methods.

Enhanced recovery is out of the question for small operators at today's oil prices. We believe that an incentive for enhanced oil recovery as spelled out in SB 828 will improve the lead time for secondary and tertiary recovery methods when prices improve. Congress has recognized the importance of providing incentives in order to recover reserves from difficult formations. Section 107 pricing under the Natural Gas Policy Act of 1978 is an excellent case in point. It should be noted that under SB 828 the potential for recovering crude oil from "tight formations" can greatly improve the nation's reserves as was the case with natural gas.

In New Mexico 85% of our oil wells are stipper wells and 3.9 thousand are injection wells. Our State is gravely concerned about premature abandonment of oil wells due to low prices. The oil and gas industry is the second largest revenue source and is still the single largest industrial contributor of revenue to State and local governments. In 1988 total oil and gas revenues and permanent fund earnings from funds established by oil and gas dollars totaled $736.4 million. This is approximately one-half of the State's budget.

Because of the State's heavy dependence on oil and gas production for revenue, our Legislature has shown and continues to be

interested in enhanced recovery incentives. Senate Bill 828 may well serve as a model to producing states like New Mexico that are interested in providing incentives for enhanced ercovery at the state level. The overall impact of SB 826 will be the positive signal it sends to the domestic oil industry. Since 1973 every president and every Session of Congress has paid lip service to "energy self sufficiency". They have both expressed grave concern about strategic preparedness being jeopardized by importing such a large percentage of foreign oil from unreliable sources. SB 826 is more than just words, it demonstrates a real commitment toward improving the nation's energy producing capability.

We thank you for the opportunity to comment on SB 828 and we wish you success in its passage.

Sincerely,

TOMMY ROBERTS.

REVENUE SHORTFALL

Mr. DOMENICI. Mr. President, section 13111 of this bill adds a new title VI to the Congressional Budget Act. Section 604 of this new title provides a new fast-track reconciliation procedure in the House of Representatives to allow for the consideration of reconciliation bills to meet revenue shortfalls. The conference report does not apply this procedure to the Senate.

I wonder if the distinguished chairman of the Budget Committee could respond to a question on the application of section 310 of the Budget Act to a bill passed by the House under this procedure?

If the House passed a measure under this procedure that was deemed to be a reconciliation bill, would all the provisions of the Budget Act regarding reconciliation legislation, including subsection 310(g) of the Budget Act and the Byrd rule, apply in the Senate?

Mr. SASSER. I would be happy to respond to the distinguished ranking member of the Budget Committee.

Let me start by saying that the conferees on the budget process for the Senate, as the Senator of New Mexico well knows, did not view this special procedure to be of much merit. After all, procedures already exist under section 304 of the Congressional Budget Act whereby Congress may revise budget resolutions and create new reconciliation instructions calling for new deficit reduction. That is one of many reasons why we did not seek to have a similar provision applied to the Senate. But the conferees on the part of the House insisted on having this rule in the House, so that is why the provision is there.

So what would happen if the House of Representatives passed a concurrent resolution under this section? At the outset we have to acknowledge that it is unclear whether the Presiding Officer would treat it like a budget resolution in the Senate. As it deals with matter that would normally be addressed in budget resolutions, I would expect that the Presiding Officer would refer it to the Budget Committee.

If the Budget Committee reported out the concurrent resolution under this section, it is unclear whether the Presiding Officer would view it as being constrained by the 50-hour or 15-hour time limits for budget resolutions.

If both Houses passed the resolution, however, and a bill in the nature of a reconciliation bill resulted, the next question would be whether the Senate would give it all the protections that normally go to a reconciliation bill.

As I saw it, the conferees on the budget process intended that all the points of order and restrictions that ordinarily apply to reconciliation bills would apply in this case as well. In particular, the points of order against putting Social Security changes and other extraneous matter in reconciliation should apply in this case. That is, the conferees on the part of the Senate fully expected that the provisions of section 310(g) of the Congressional Budget Act and of the Byrd rule should apply to this reconciliation bill, as well.

So, in sum, we are not sure that the product of this new procedure should be put on a fast track if it comes over here to the Senate. But if it is put on such a fast track, then it was the intent of the conferees that it would not provide a fast track for extraneous matter.

Mr. DASCHLE. Mr. President, today we finally reach the point that will hopefully mark the end of a long, tortuous road to enactment of a meaningful deficit reduction package.

The trip has been extremely frustrating, for the administration officials and congressional leaders who have been closest to the budget negotiations; for the Members of Congress who want real deficit reduction and a balanced package of spending cuts and revenue increases; and for the American people who ask only that the Government get its fiscal house in order and enact a meaningful and fair budget package. It has been marked by strong philosophical differences about how the burden of deficit reduction should be apportioned among the American public. An imperfect process has yielded an imperfect yet essential budget agreement.

From day one my personal bottom line on this deficit reduction fight has remained the same. The Government of the United States must be forced to cut at least $500 billion from its budget over the next 5 years. And the cuts made to achieve this goal are absolutely unacceptable unless they include significant contributions from the very richest Americans whose bank accounts have been so fattened by the policies of the last 10 years.

There have been hundreds of claims and counterclaims about who is doing what to whom in this budget battle. But there is one very simple fact. If the deficit reduction plan presented to the Congress by President Bush had included even the most modest request for sacrifices by the rich—anything at all—there would have been a budget plan adopted months ago, and the budget crisis we hopefully and very belatedly end today would never have happened.

Let me spell the situation out. Ten years ago millionaires were taxed at a 70-percent rate. Today they are taxed at a 28-percent rate. President Bush shut down our Government for 3 days because he flatly refused to raise the top rate back to 33 percent. Now, after months of battling, he finally consents to a 31-percent rate, but will not accept a surtax on millionaires.

And what is the price the President asked us to pay for his all-out, scorched-earth protection of the right of the rich to pay a 28-percent tax?

He asks for a $60 billion cut in Medicare. He asks for a 12-cent per gallon increase in the gas tax. He asks for huge cuts in farm income and a grab bag of taxes on the products ordinary Americans buy every day—all so the wealthy would have to give nothing. In fact, in his original proposal, he actually sought a new multibilliondollar capital gains tax loophole, 83 percent of which would have gone to people earning over $100,000 per year.

I will never support that sort of policy. It is fundamentally and disastrously unfair. It contradicts everything I believe in and everything I have worked for during my tenure in the Congress.

I know the Nation cannot afford much more of the gridlock that has been produced by this battle over fairness between the President and Congress. No matter how strongly I personally may feel, the final choice had to be between compromise and a complete collapse of our Government.

That is why, to keep the deficit-cutting process going, I reluctantly cast votes against amendments I have fought for in the past. For example, when the budget bill faced certain defeat in the Senate if amendments I strongly favored, that would have cut the gas tax increase and restored Medicare cuts, had been adopted, I voted against those amendments so that the legislation could proceed to a joint House/Senate conference committee which every Senator knew would, and which in fact did, make the final deficit reduction package stronger and fairer.

To conclude this lengthy and contentious budget process, I will today cast my vote, with some disappointment, for a bill that is much better than the President's initial plan, much

better than the Senate bill of last week, but not nearly as good as what this Congress could and would have produced had the President of the United States not opposed fairness every step of the way.

The bottom line, though, remains for me where it has always been.

Asking the wealthy to give back just a little of what they have been handed by the administrations of Ronald Reagan and George Bush is fair.

Asking ordinary families, who have been handed nothing over the past 10 years except bills, to bear a 12-cent per gallon increase in the gasoline tax and take a $60 billion Medicare cut is not fair.

My votes for South Dakota have been designed to chop just as many pennies as I possibly can off that gas tax, to restore just as much of those Medicare and farm income cuts as is humanly possible and to pay for these things by cutting unnecessary spending like foreign military aid and asking the wealthy to bear their fair share of the deficit reduction burden.

In the budget bill before us today we have moved the gas tax increase down from the President's 12 cents per gallon to 5 cents per gallon phased-in over 5 years. We have slimmed Medicare reductions from the President's $60 billion to $44 billion, most of which will be borne by physicians and hospitals rather than individual seniors. And we have moved the tax rate for the very rich from his 28 percent to a slightly fairer 31 percent and reduced tax deductions for individuals with adjusted gross incomes higher than $100,000 a year.

It is much better than what we had and better than an impasse that would shut down Government services for the American people. However, if the voters of this Nation speak as loudly as I believe they will on election day and send a message to the President about how they feel about fairness, then this Congress will be able to do better and be fairer next year. That, I can assure you, is something this Senator looks forward to very much indeed.

THE VETERANS PORTION OF THE PROPOSED CONFERENCE AGREEMENT ON THE BUDGET RECONCILIATION BILL

Mr. MURKOWSKI. Mr. President, as ranking Republican on the Veterans' Affairs Committee I rise to speak about the veterans portion of the conference agreement on the reconciliation bill.

SENATE ACTION

On October 12 the Senate Veterans' Affairs Committee met to approve legislation to meet our obligations under the budget agreement. Under this agreement, our committee was required to recommend legislation which would save some $620 million in the first year and $3.4 billion over 5 years.

In order to ensure that our committee would not achieve more savings than required under the budget agreement, it was proposed that the committee limit the time period which certain provisions would remain in effect. That is, there were sunset dates for many of the provisions.

For example, it was proposed that VA's authority to bill health insurance companies for the cost of treating a nonservice-connected disability of a service connected veteran would expire on September 30, 1991.

After lengthy debate, the committee voted 6 to 5 in favor of my amendment to remove from the bill clauses which would have set expiration—or sunset—dates for 7 of the provisions in the reconciliation package. Our committee voted to make the legislative changes permanent. As a result of this action, our committee exceeded our mandated savings level by $2.7 billion over 5 years.

Let me explain why I opposed the idea of sunsetting.

Sunsets would enable the Veterans Committee to reauthorize the programs or authorities when they expire. Why would we do that? Well, it would permit us to use the so-called savings scored for the extension for

First, future reconciliation requirements; or

Second, to combine with legislation establishing new programs and entitlements in such a way as to make the legislation budget neutral.

Does this not defeat the purpose of deficit reduction legislation?

I know that sunsets are not technically a violation of the budget agreement. However, it simply seems inconsistent with the agreement and the desire of this body to reduce the Federal deficit.

HOUSE ACTION

The House, however, approved reconciliation language which included sunsetting 7 new authorities or programs.

The final reconciliation bill includes the House provision—with one modification to extend by 1 year the third party reimbursement authority—relating to sunsetting.

I sincerely regret that the House refused to accept the Senate position which was no sunsets!

CONCLUSION

My conclusion is that we are required to produce legislation to reduce the burden of debt and deficit borne by the American people. Instead, what we are doing is playing games to ensure that starting in fiscal 1992 we have what amounts to a slush fund which would allow creation of new and expensive entitlements.

We demean ourselves and the budget process when we establish a mechanism to create future savings by continuing business as usual and extending a sunset date.

Last year we took a major step toward budgetary integrity when we terminated the game of temporarily extending the home loan origination fee and temorarily extending provisions concerning vendee loans sales with and without recourse to the Government.

I have to see us establish the basis for returning to similar practices.

I strongly believe that we should be honest with ourselves, honest with the veterans of our Nation, and honest with the taxpayers.

It seems to me that there is nothing wrong with achieving more savings than is required. This effort would help to further reduce our deficit. A sound economy which results from getting our fiscal house in order certainly helps our Nation's veterans.

Veterans do not need to be told about the need for all of us to sacrifice in times of crisis—veterans have always been there when this country has asked them to contribute.

My friends, the fiscal crisis is now.

Thank you, Mr. President.

Mr. HEFLIN. Mr. President, the budget reductions that are before us will have a devastating effect on U.S. agriculture. While Congress is debating massive cuts in farm programs, our U.S. trade negotiations are proposing across-the-board reductions in world agricultural supports. In other words, Congress and the administration are unilaterally disarming domestic farm programs without concomitant reductions from our foreign competitors. This stragegy will ultimately raise food costs and increase our dependence on foreign food and fiber.

There are three principal ways this bill results in savings. First of all, our program crop farmers will be required to adopt the triple-base concept. This concept results in a savings because it will, in affect, reduce by 15 percent the number of acres which is eligible for target prices. This reduction will increase price instability and reduce farm income.

The second way this bill saves money is by recalculating the average market price for program crops. Presently, the market price is calculated on a 5-month moving average. This bill will calculate the market price on a 12-month moving average. The net result is a smaller deficiency payment for the family farmer.

Lastly, this bill taxes farmers who grow commodities like peanuts, tobacco, and sugar. Because these crops result in no cost to the U.S. taxpayer, the conference committee decided that these commodities should actually be required to contribute money to the U.S. Treasury. This concept is referred to as a marketing access fee. The result, however, is nothing more than

a tax to grow peanuts, tobacco, and sugarcane. Once again the administration has been successful in its attempts to drive the family farmer from the farm through the misuse of U.S. tax policy. Under this proposal my peanut farmers are having to pay for the more expensive farm programs such as wheat and corn. The administration knows, as David Stockman so eloquently stated, the way to dismantle farm programs is to pit one commodity against another. In conclusion this idea of a marketing fee is inherently unfair to the no cost programs.

Mr. President, this bill amounts to 25 percent reduction in farm support. Our farm families are taking a disproportionate cut in income relative to society as a whole. As a Senator from a rural State, this bill as it relates to farming is a disaster.

Mr. KASTEN. Mr. President, this tax-and-spend budget is bad news for the American economy. And it will be a disaster for Wisconsin families.

I intend to vote no on this package.

This budget will raise total taxes and fees by at least $170 billion over 5 years. This is the largest tax increase in U.S. history.

It will raise income tax rates, gasoline taxes, beer taxes, payroll taxes, and business taxes.

It will raise taxes on low- and middle-income families.

It will reduce incentives for charitable giving.

It will increase the complexity of the Tax Code, creating new jobs for tax accountants, financial planners, and tax lawyers.

It will hurt families with children by phasing out the personal and dependency exemptions for certain taxpayers. The more children in the family, the higher the marginal tax rate.

It will punish self-employed individuals by increasing their payroll taxes by as much as 150 percent.

It will weaken the competitiveness of U.S. businesses in world markets.

It will kill the economic expansion of the 1980's, which created 21 million new jobs and raised family incomes.

It will give the tax loophole lobby a new lease on life.

But it will not reduce the Federal budget deficit.

I believe this budget is based on dishonest economic assumptions. Who really believes that oil prices will fall more than 40 percent next year? That GNP growth will triple by 1993? That interest rates will be down in the 5-percent range by 1992?

The assumptions are false. And we all know it. But—it seems—Congress does not care.

And on the basis of these assumptions, we have reared up an equally fraudulent economic skyscraper—a huge white elephant that will raise taxes on America without producing the promised deficit savings of $40 billion next year and $500 billion over the next 5 years.

We ought to take these estimated spending cuts and tax increases, and frame them on the wall. And I would invite my colleagues to join me here 1 year from today, and look at that frame again.

The tax increases will be there. The spending cuts will not.

And we'll be talking about even more tax increases to dig us out of the deeper hole that we are digging right now.

History shows that every $1 in higher taxes leads to $1.52 in higher spending.

Mr. President, I challenge my colleauges to tell me where—besides defense spending—any cuts at all are included in the current package. Under the budget resolution nondefense spending is slated to increase by almost $70 billion.

That's the kind of deficit reduction we are offering the American people.

And we continue to add to the budget over the whole 5 years of the budget package—a total of $245 billion in overall spending increases over 5 years.

In this regard, I ask unanimous consent that an article that appeared in the October 23 issue of the Wall Street Journal be printed at this point in the RECORD:

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Oct. 23, 1990]

THE DEFICIT SHELL

Let's say you represent the American public, and you walk up to a folding table with three shells on it. A member of the Washington establishment—maybe Lloyd Bentsen or Dick Darman—is running the three-shell table. He tells you that the inside of one shell is labeled "Spending," another is labeled "Tax Payments," the third is "The Deficit." You stand there agog while he whips the shells of federal finance around the table.

CONGRESSIONAL BUDGET "CONTROL"

[In billions]

	Fiscal 1990	Proposed fiscal 1991	Percent change 1990–91
National defense	$299.9	$297	−0.9
Science, space, technology	14.2	15.2	7.0
Energy	3.3	4.0	21.2
Natural resources/environment	17.8	18.9	6.2
Agriculture	12.5	14.1	12.8
Commerce/housing credit	75.7	87.0	15.0
Transportation	29.5	30.7	4.1
Community/regional development	8.3	8.6	3.6
Education	38.3	41.8	9.1
Health	58.2	65.5	12.5
Medicare	96.9	104.9	8.3
Income security	148.5	160.5	8.1
Social Security	248.7	266.3	7.1
Veterans benefits/services	29.4	31.7	7.8
Administration of Justice	10.5	12.3	17.1
General government	10.6	11.7	10.4

Source: Compiled by Heritage Foundation from figures in Congressional Budget Resolution.

Well, we've all played this game many times before so we know who wins. The only shell Washington ever turns over for the American public to see is the one labeled "The Deficit." Somehow, Spending and Tax Payments fade away into those quick hands. Has anyone ever wondered why the game's set up this way?

After all, the deficit number is merely the inert difference between two more interesting any active quantities—taxes and spending.

Taxes are interesting, because the President and Senate Democrats say Washington needs so much more of them. The country hasn't sent them enough, or as it is sometimes said, "The American people aren't willing to pay for the level of public services they demand." Let's look at the tax receipts the "unwilling" public has sent Congress and the President recently, in current dollars: 1986: $769 billion, 1987: $854 billion, 1988: $909 billion, 1989: $991 billion, 1990 (est.): $1.1 trillion.

We don't recall anyone in Washington—say, the media folks who keep holding up the deficit shell on those Sunday-morning talk shows—ever explaining why it is that Mr. Bush and Congress, after receiving $4.6 trillion from their constituents since 1986, now need more by way of gasoline taxes, beer taxes and higher income taxes.

Now, if someone will just grab hold of Senator Byrd's hands for a moment at the appropriations table, we'll turn over the spending shell to see what's inside. The table depicted here shows last year's actual spending and the proposed 1991 spending authorized in the Grand Compromise budget resolution that was finally voted by Congress two weeks ago. Spending is going up. Only defense is going down.

The appropriations committees are now producing their own spending bills, which may diverge some from these numbers. But press reports the past few days indicate that the appropriators are pushing the spending levels higher, paying for the increases with new taxes and fees.

But the budget negotiators say spending is being "cut." Ah yes, the Spending Reduction shell.

Under the budget-reform law passed in 1974, Congress doesn't touch a new fiscal year's budget until nearly all spending levels in it are automatically raised by some percentage tied to inflation and other factors. The public naturally thinks Congress is working on the levels in last year's budget, since that's the way people think about cutbacks in the real world. But Congress's budget law has already jacked up spending to a higher level. So any "cut" really comes out of this automatically jacked-up level. The result is that spending usually ends up higher than it was the year before.

This is why tax payments, even when they hit $900 billion, have never been able to catch up with the spending stream. And why all the shells are labeled Deficit. If Americans were ever given a comprehensible look at the spending and tax accounts, they would call for a policeman.

The tax-and-spend Congress has redefined the meaning of the word "cut." In Wisconsin, a spending cut means spending less. Here on the Senate floor, if spending does not increase quite as fast as the politicians had planned, they call that a spending cut.

Mr. President, when we find ourselves back here next year, in an even worse economic crisis than we are in

today, I would hope that the tax-and-spend crowd would then, finally, start listening to the American people. Because the people have known all along that tax increases hurt the economy and only add to Congress' budget deficit.

We simply don't need new taxes. From 1986 to 1990, tax receipts have risen from $769 billion to $1.1 trillion. Tax receipts are already projected to rise by $397.8 billion between 1990 and 1995. This flood of new revenue that the American people will send to Washington—an average of $80 billion each year—is more than enough to fund the Nation's true priorities and trim the budget deficit.

Instead of raising taxes, we ought to freeze Federal spending—and spend no more this fiscal year than we spent in the previous fiscal year.

Let me repeat: We don't need to cut spending; we just need to spend no more next year than this year. Freezing total outlays at 1990 levels would cut the deficit by $70 to $90 billion next year. Even if we allow spending to grow by 4 percent, the deficit would decline by $30 billion next year. Under a $40 billion across-the-board sequester, total Federal spending would still rise by $75 billion next year.

All of these alternatives would have resulted in real deficit reduction without raising taxes.

In addition, we should give the President a line-item veto and enact a balanced budget amendment to the Constitution.

Perhaps most important of all, we need to get America moving again by enacting growth incentives like a revenue-winning cut in the capital gains tax to stimulate investment—and a reduction in the payroll tax to leave working families with more of their own hard-earned wages.

Mr. President, this tax increase plan will siphon $170 billion from the private economy to refund Washington's bureaucracy. It would bring back the stagflation and declining living standards of the 1970's. It will mean less for the family budget and more for the Federal budget.

President Bush has bargained in good faith. He wanted spending restraint, real budget process reforms and growth incentives. Unfortunately, President Bush found it virtually impossible to pass a no-new-taxes budget when the Democrats control both Houses of Congress.

The Democrats desperately want to raise taxes so that they can spend more money. They say they want to target the wealthy. The only problem is—there aren't enough of them.

The Democrats had no choice but to raise taxes on lower- and middle-income families because that's where the real money is. That's why their original tax plan suspended inflation indexing of the income tax brackets which would have cost middle-class families as much as $313 a year.

I vote for America's economic future. And that means I vote against this bill.

Mr. BOREN. Mr. President, I rise to ask the chairman of the Finance Committee a question regarding the provision in the budget reconciliation bill which extends the tax credit for producing fuel from a nonconventional source.

As the chairman knows, the credit is available for the production and sale of fuels from a number of sources which are named in the Internal Revenue Code, including oil produced from shale and tar sands. The Code, however, does not define the term "tar sands."

Shortly after the credit first was enacted, the Department of Energy held a conference to develop a generally applicable definition of tar sands. The definition which resulted from that conference was a substance based definition of tar sands, which definition has been accepted by and adopted into the United States Code and regulations used by all relevant agencies of our Government except the Internal Revenue Service. In my view, this substance based definition is consistent with the original intent of the nonconventional fuels credit.

Prior to 1989, taxpayers relied on the definition of tar sands developed by the DOE. In 1989 the Service issued a technical advice memorandum suggesting a definition of tar sands originating from a Federal Energy Administration ruling which was promulgated in 1976 (ruling 1976-4). As opposed to the substance based definition, the Service advocates a process based definition. Under that definition, it appears that no existing U.S. commercial production would qualify for the credit.

It had been my hope that we could have clarified this issue during this session of Congress, however the crisis involving the budget and the requirement to pass a budget agreement in such a short period of time have interfered with the committee's review of this issue.

Mr. Chairman, is it correct that no inference should be drawn regarding the proper definition of the term "tar sands" in extending the section 29 credit this year without statutorily defining the term?

Mr. BENTSEN. The gentleman from Oklahoma is correct. The committee did not have an opportunity to consider this issue one way or another. Therefore, it is appropriate that no inference as to the correct definition of "tar sands" should be drawn from the committee's failure to take action on this question.

Mr. FORD. Mr. President, I urge my colleagues to pass this reconciliation measure which includes a very important aviation package. After more than a week of difficult negotiations, the conference has produced legislation which will establish a national noise policy and provide for the phaseout by the end of this century of the noisy stage 2 aircraft. The bill also prohibits the addition of stage 2 aircraft to existing fleets.

The conference on the aviation issues has not been an easy one. My colleague in the House, JIM OBERSTAR, and I have worked more than a week crafting a compromise. Senate and House staff have met around the clock to complete the title in time. The issues we were dealing with are critical to our airlines and our airports, as well as to our citizens. I often say there are no victories in Washington, just degrees of defeat. But I don't feel defeated by the compromises in this bill. This measure will give the air carriers the assurance they need to go forward with the modernization of their fleets, to borrow money to buy the stage 3 aircraft which, ultimately, will improve the quality of life for those citizens living near airports.

After this noise policy is in place, the Secretary may grant authority to airports to impose passenger facility charges [PFC's] for specific airport projects. Before submitting an application to the Department of Transportation, airports must confer with their users and agree on the project to be funded by the additional fees. I hope that the PFC will increase airport capacity and promote growth in a system which is straining to accommodate the needs of the flying public. Provisions of the legislation require a turn back of 50 percent of entitlements by an airport which chooses to charge a PFC. This turn back money will be used to fund small hubs, small airports and general aviation airports.

The bill also authorizes contract authority from the Airport and Airway Trust Fund for the Essential Air Service Program. This will assure continued air service to small communities around the country. The aviation title continues important programs of the Federal Aviation Administration: research, capital development and airport grants, as well as the operation of the air traffic control and aircraft inspection systems.

I urge the Senate to pass this reconciliation package and I appreciate the support of my colleagues in including this aviation package.

Mr. BRADLEY. Mr. President, I thank the Senator from Kentucky, and appreciate his clarifications. I would like to ask further clarification on how the national noise policy will be implemented.

The inclusion of the national noise policy as part of budget reconciliation prevented the committee from holding public hearings and establishing con-

gressional priorities for the policy. The bill provides for the policy to be written by the Secretary of Transportation with opportunities for involvement by citizens through public hearings and a comment period.

Through the course of the hearing process a national noise policy will be developed which will reflect a broad spectrum of interests. The people who are directly affected by aircraft noise have a special understanding of its consequences and therefore must play a part in crafting a national noise policy. It is vital that the local authorities and citizen's groups have a role in developing this policy.

I hope that the committee will exercise rigorous oversight of the development of the national noise policy to make sure that adequate public participation is granted by the Secretary.

Mr. FORD. The Senator can be assured that the committee will monitor the development of the national noise policy. One of the things we will look for is adequate citizen input. The law requires the Secretary to conduct hearings and provide for a public comment period. Congress will also have the authority to make recommendations.

I want to assure my colleagues from New Jersey that the local authorities and citizen groups will play a significant part in this process. The National noise policy should be developed with full opportunity for Federal, local, and civic input.

Mr. LAUTENBERG. Mr. President, I would like to ask the Senator from Kentucky, the chairman of the Aviation Subcommittee, for some clarification on the aviation noise provision included in this proposal.

As my colleague knows, Senator BRADLEY and I have been working hard to address this problem. It has been a difficult task, but we are making progress. An important part of this progress has been getting the Port Authority of New York and New Jersey, which operates the major airports in our region, to start working with us.

We oppose any policy that would preempt the accomplishments we've made, or efforts we are making. That is why we opposed the original aviation noise policy proposal.

The Senator from Kentucky acknowledged the concerns we and others raised, and has worked to modify the proposal. It is that modification that is now in this reconciliation package.

With regard to the modified proposal, I ask the Senator from Kentucky if he would confirm these points to be true:

First, this agreement would not affect noise control programs now in effect, such as those that have been adopted by the Port Authority of New York and New Jersey.

Second, that, under this proposal, an airport operator would be allowed to impose restrictions on stage 2 operations, without the approval of the FAA, and without risking the loss of AIP money. This is particularly important, as reducing the number of stage 2 planes serving Newark International is a critical part of our efforts to reduce noise in New Jersey.

Third, that the FAA or airport operator would not be prevented from working out operational changes, such as random vectoring, variation in runway use, or altitude requirements, that are designed to reduce noise impacts.

And, an airport operator could impose restrictions on the use of stage 3 planes, by barring certain types, for example, or limiting them to certain hours of operation, subject to review and approval by the FAA.

Mr. FORD. The Senator is correct on each of those points. He has made the case for his constituents, and I believe that we have taken the steps in this legislation to protect the efforts that he has been making to reduce aviation noise in New Jersey.

I also would note that this package contains, at the request of the two distinguished Senators from New Jersey, a requirement for the FAA to conduct an environmental impact statement on the expanded east coast plan. In response to concerns that have been voiced by his constituents, the bill also would not give legislative backing to the 65 Ldn standard as a measure of noise impact.

Mr. LAUTENBERG. I appreciate the clarification made by the distinguished senior Senator from Kentucky, and thank him for his efforts to modify this provision.

"NO" ON RECONCILIATION, "YES" ON GETTING THE JOB DONE

Mr. HOLLINGS. Mr. President, I will vote against this reconciliation bill. Quite frankly, I have been chomping at the bit to find a budget package that I can vote for, a budget package that addresses the magnitude of the problem and that offers some promise of actually balancing the budget over a 5-year period. This bill fails on all counts.

Indeed, this bill is next of kin to the original, discredited summit package, and it displays most of the same warts and deformities of the earlier version. It disproportionately slashes Medicare benefits. It leaves defense spending virtually untouched and sacrosanct, while hog-tying domestic discretionary spending in a 3-year straitjacket, meaning that we can forget about any new initiatives to improve education, to rebuild infrastructure, to boost competitiveness. This package is all pain and no gain. It raises the debt limit by $1.9 billion, which gives us a good idea of the magnitude of additional deficit spending which is expected over the next 5 years. And it will still leave us with a whopping deficit in 1995. So what is the purpose of this exercise?

Mr. President, to demonstrate the futility and abject inadequacy of this bill so far as deficit reduction is concerned, consider the following. When we originally passed Gramm-Rudman-Hollings in 1985, that law anticipated a fiscal year 1991 deficit of zero. When Gramm-Rudman-Hollings was revised in 1987, that revised law anticipated a fiscal year 1991 deficit of $64 billion. In this latest incarnation of Gramm-Rudman-Hollings, the 1991 deficit is anticipated to approach no less than $330 billion. So by what bizarre standard can we claim that this reconciliation bill is a serious assault on the deficit? We are going backward, not forward.

Senators are well aware of my efforts in recent weeks to advance my own budget freeze plan designed to accomplish the objective of saving $50 billion in 1991—$10 billion more than this bill provides for—and $500 billion over 5 years. More importantly, for years now I have urged freeze plans and a value-added tax which would go well beyond that limited objective by actually balancing the budget over the same timeframe. So I have sought to be constructive, but I refuse to capitulate on my fundamental insistence that we produce a deficit-reduction package that is real, and that will get the job done. At this point, I believe I can best serve the Senate by sticking to my guns. The inadequacy of this package will be abundantly manifest within a matter of months. Deficit forecasts will skyrocket. Our foreign creditors, looking inward in the case of the Japanese and looking eastward in the case of the Europeans, will refuse to continue financing our run-away deficits. At that point, Congress and the President will at long last be ready for a budget freeze and a value-added tax which, together, will move this country toward a balanced budget in short order. I am prepared to lead that effort, to pay whatever political cost is involved in selling and administering that bitter medicine. But I cannot support the present, entirely inadequate measure.

Let us look at several of the major elements of this reconciliation bill. Most of its basic elements should be familiar to us, inasmuch as this is essentially a reincarnation of the original budget summit package.

This reconciliation bill claims that its $500 billion in deficit reduction between 1991 and 1995 will balance the budget. But, in truth, it asks us to solve the problem by ignoring half of it. The General Accounting Office concluded only last month that it will take closer to $1 trillion in deficit reduction between 1991 and 1995 to bal-

ance the budget. On top of that, like the summit package before it, this bill is puffed up with impossibly inflated economic assumptions, for instance, projecting 1992 economic growth at 3.8 percent and interest rates declining to 4 percent. At very best, the agreement's $500 billion objective is like throwing a 50-foot lifeline to a drowning man 100 feet off shore.

One more great shame of this reconciliation bill is that it essentially guts the original focus of Gramm-Rudman-Hollings. Heretofore, Gramm-Rudman-Hollings has been premised on specific targets aimed at achieving a balanced budget. That is now gone. In its place, this bill talks only about targets for proposed savings. In other words, in 1991 we only have to reach the proposed savings of $40 billion, and no one is supposed to notice or care that the deficit skyrockets to $253 billion. By 1995, the last year of this plan, even the wildly optimistic OMB projection foresees a $63 billion deficit—even after raiding the trust funds, factoring in rosy economic assumptions, and excluding the S&L bailout costs. A more accurate deficit projection for 1995 would be closer to $200 billion. In other words, the deficit can continue to grow unchecked in each and every year of this agreement, but as long as we reach our target for proposed savings, then we get to claim that we did our job. Perhaps nothing more clearly illustrates the inadequacy and sham of this approach. The summiteers are clever. They reform the budget process by eliminating it and go to a savings process. The problem is solved by restating it.

Mr. President, aside from the deceit, both the summit package and this Senate variant are downright dangerous in terms of policy. Both packages officially kill any idea of a peace dividend. Gone are predictions of defense budgets being pushed down toward $250 billion over the next several years. Instead, the plan expressly locks in Pentagon budgets at no lower than $292 billion annually for the next 3 years. What's more, the cost of Desert Shield—whether it ends up at $5 billion or $50 billion—does not count against the $292-plus billion spending limit. Instead of a peace dividend, we are awarding the Pentagon a war dividend by exempting it from significant cuts and giving it carte blanche in the Persian Gulf.

Mr. President, this reconciliation bill is especially shameful in that it fails to address our changing national priorities. During the last year, our Nation has moved from the cold war to the trade war. We have a crying need for new investments in education and infrastructure in order to get our country moving and competitive. This bill offers a martial plan for the military, not the domestic Marshall plan we desperately require.

I can tell you that the extremely low spending ceilings for domestic discretionary spending are not adequate to fund even current program obligations. Beyond that, the bill assumes zero new initiatives by the self-styled education president, environment President, child care President, and his like-minded colleagues in Congress.

Mr. President, this reconciliation bill presents us with a formula for a gridlocked Congress and a do-nothing Government for the next 5 years. It also grants three-way veto authority to a willfull minority in Congress. Take your pick from the Sununu veto, the Dole veto, and the Darman veto. The Sununu White House can exercise the traditional constitutional veto requiring 67 votes for override. The distinguished Republican leader, Senator DOLE, has his own veto power under the provision requiring a 60-vote point of order for any bill exceeding the spending caps. And Dick Darman has yet a third veto option by virtue of OMB's authority under the terms of this package to rule unilaterally on whether a given bill violates the spending caps.

Both President Bush and President Reagan have acknowledged that the discipline of deficit targets has been the single most useful tool in controlling spending. By gutting the targets and the points of order used to enforce them, this legislation completely undermines our efforts to pay the bill.

Meanwhile, the Senate Budget Committee will be reduced to automatic pilot. It will be stripped of any meaningful role in establishing budget priorities, and will quickly fall into irrelevance.

As I said, Mr. President, this is a sure-fire formula for a deadlocked Congress and a do-nothing Government. That may be just fine in the eyes of a President without an agenda. But America deserves an agenda, and a leadership willing to pay for it.

Mr. LAUTENBERG. Mr. President, the budget package before us today contains a very important provision that I requested to extend the Superfund tax for 4 years.

Based on legislation, S. 3182, I introduced earlier this month, the Superfund extension is vital for preventing disruptions in the national cleanup effort during the upcoming reauthorization process. The legislation was cosponsored by Senators BURDICK, CHAFEE, and DURENBERGER.

A special word of thanks to the distinguished chairman of the Senate Finance Committee. Without his positive response to my request and support for it in the conference committee, we wouldn't have gotten this extension.

I thank him and commend him for his leadership, and I also thank his fine staff, particularly Mr. Don Spellman, for their hard work on this issue.

Mr. President, I will ask unanimous consent that a copy of recent correspondence between myself and Senator BENTSEN and Congressman ROSTENKOWSKI be included following my remarks, along with a copy of S. 3182.

Mr. President, one very important lesson of the past Superfund reauthorization effort was the devastating effects a funding slowdown can have.

I was deeply involved in the last reauthorization. It was a controversial and lengthy process, during which funds ran out for the program. While I was able to help EPA maintain a skeletal program during this time through emergency short-term funding measures, the program lost valuable personnel, cleanups were delayed, and contracts were threatened. The very survival of the national cleanup effort was in question.

Throughout this year, Administrator Reilly and others at EPA have indicated that without an immediate extension of the Superfund tax, we would have been facing a repeat of the 1986 situation. With the current funding authority expiring on December 31, 1991, the Agency indicated that without an immediate extension, it would have been forced to start slowing down the program later in this fiscal year.

But the action we are taking today will prevent this slowdown. It will allow vital cleanup work to go forward at the many hazardous waste sites that scar the Nation. It will allow EPA to continue the effort to improve the program.

I can't overemphasize this last point, for I believe that continued improvements are essential. Extending funding for Superfund is not an endorsement of business as usual. It's simply a commitment to a rational process that will allow us to work to fix the program without at least time letting it shut down.

That's why I've worked so hard to extend the program. And that's why I've worked even harder to reform the program.

Since the 1986 reauthorization, I've held numerous oversight hearings aimed at improving the program's implementation. In report, "Cleaning Up the Nation's Cleanup Program." The 200-page report provided 44 recommendations on ways to improve Superfund's implementation, including ways to speed up cleanups, improve enforcement, and to retain and train staff.

During Administrator Reilly's confirmation hearing I raised a number of concerns about how the program was operating. In response to my concerns the Administrator committed to a 90-day review of the Superfund Program. He issued his findings in the so-called Superfund Management Review in 1989, a report which included a number of recommendations from my report on Superfund.

While I have not agreed with EPA in many of its Superfund policies, without question the program is in far better shape than it was in its first five years. The rates of almost all phases of the cleanup process are up, and the program is generally more productive than it was in those disappointing first years.

Clearly more improvements need to be made in implementing Superfund. But while those improvements are being made, we should not let the program grind to a halt.

I intend to continue my efforts to push EPA to improve its implementation of the current law. At the same time I hope to begin in the next Congress the process of considering ways to improve the Superfund law itself.

But since the goal of oversight and reauthorization is to improve Superfund, I just don't think it makes sense to allow the program's funds to run out during such efforts.

Mr. President, with today's Superfund extension, we make it clear that the war on toxic waste sites, and those who create them, will not be deterred. We tell the citizens of this country that we will not let them down in the effort to protect them from the ravages of contaminated groundwater, soil and air. We take a vital step toward a better Superfund Program and a cleaner environment.

Although I cannot support this budget package, I want to make clear my appreciation to the chairman of the Finance Committee for including my Superfund extension proposal in the conference agreement, and my strong support, as the proposal's author, for the Superfund extension provision, despite my opposition to the budget package as a whole.

I ask unanimous consent that the material I referred to earlier be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC, October 22, 1990.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR LLOYD: I am writing to you to express my continuing support for adopting a five-year extension of the Superfund funding provisions as part of reconciliation.

As I indicated during Senate Finance Committee consideration of the budget reconciliation package, I believe such an extension could help us avoid a repetition of the funding disruptions that occurred during the last reauthorization of Superfund. Although I realize the Finance Committee was unable to incorporate my Superfund extension bill, S. 3182, into the Senate package, I urge you to continue to press for the extension during the ongoing negotiations with the House on the budget reconciliation package.

I was deeply involved in the last Superfund reauthorization process. I remember vividly the damage caused to the program by the disruption in funding that occurred. Indeed, I was the author of several short term interim funding measures to keep things going. While we did keep a skeletal program going, we lost valuable personnel, cleanups were delayed, contracts were threatened, and it was unclear that the program would survive.

I intend to continue my efforts to push the Environmental Protection Agency (EPA) to improve its implementation of the current law, while at the same time beginning in the next Congress to consider ways to improve the law. But since the goal of both oversight and reauthorization is to improve the operation of the Superfund program, it simply does not make sense to allow the program's funds to run out during such efforts.

Providing for the extension at this time would avoid the possible slow-down in the program that could begin as early as this fiscal year. According to EPA staff, such a slow-down might be made necessary as the Agency considers the uncertainty of funding in years following FY 91.

We should act now to avoid such disruptions, and take this opportunity to extend the program's financing mechanism for another five-year cycle. I have consulted with Senator Burdick, the Chairman of the Environment and Public Works Committee, and he joins me in the hope that the conference with the House will provide another opportunity to pursue this important goal. We look forward to working with you to assure the effective operation of the Superfund program.

Sincerely,

FRANK R. LAUTENBERG,
Chairman, Subcommittee on Superfund, Ocean and Water Protection.

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC, October 22, 1990.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR DAN: I am writing to you to express my continuing support for adopting a five-year extension of the Superfund funding provisions as part of reconciliation.

As I indicated during Senate Finance Committee consideration of the budget reconciliation package, I believe such an extension could help us avoid a repetition of the funding disruptions that occurred during the last reauthorization of Superfund. Although I realize the Finance Committee was unable to incorporate my Superfund extension bill, S. 3182, into the Senate package, I urge you to support the extension during the ongoing negotiations with the Senate on the budget reconciliation package.

I was deeply involved in the last Superfund reauthorization process. I remember vividly the damage caused to the program by the disruption in funding that occurred. Indeed, I was the author of several short term interim funding measures to keep things going. While we did keep a skeletal program going, we lost valuable personnel, cleanups were delayed, contracts were threatened, and it was unclear that the program would survive.

I intend to continue my efforts to push the Environmental Protection Agency (EPA) to improve its implementation of the current law, while at the same time beginning in the next Congress to consider ways to improve the law. But since the goal of both oversight and reauthorization is to improve the operation of the Superfund program, it simply does not make sense to allow the program's funds to run out during such efforts.

Providing for the extension at this time would avoid the possible slow-down in the program that could begin as early as this fiscal year. According to EPA staff, such a slow-down might be made necessary as the Agency considers the uncertainty of funding in years following FY 91.

We should act now to avoid such disruptions, and take this opportunity to extend the program's financing mechanism for another five-year cycle. I have consulted with Senator Burdick, the Chairman of the Environment and Public Works Committee, and he joins me in the hope that the conference on reconciliation will provide another opportunity to pursue this important goal. We look forward to working with you to assure the effective operation of the Superfund program.

Sincerely,

FRANK R. LAUTENBERG,
Chairman, Subcommittee on Superfund, Ocean and Water Protection.

S. 3182

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ENVIRONMENTAL LAW EXTENSION.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended as follows:

(1) subsection (a) is amended by inserting immediately after "Reauthorization Act of 1986," the following: "and $8,500,000,000 for the period commencing October 17, 1991, and ending September 30, 1996,";

(2) subsection (c)(11) is amended by inserting immediately after "1986," the following: "and during the 5-fiscal-year period commencing October 1, 1991,";

(3) subsection (c)(12) is amended by deleting "and 1991" and inserting in lieu thereof "1991, 1992, 1993, 1994, 1995, and 1996";

(4) subsection (m) is amended by deleting "1990 and 1991" and inserting in lieu thereof "1990, 1991, 1992, 1993, 1994, 1995, and 1996";

(5) subsection (n)(1) is amended by deleting "and 1991" and inserting in lieu thereof "1991, 1992, 1993, 1994, 1995, and 1996";

(6) subsection (n)(2)(E) is amended to read as follows:

"(E) For each of the fiscal years 1991, 1992, 1993, 1994, 1995, and 1996, $35,000,000.";

(7) subsection (n)(3) is amended by deleting "and 1991" and inserting in lieu thereof "1991, 1992, 1993, 1994, 1995, and 1996"; and

(8) subsection (p)(1) is amended by inserting immediately after "(E) For fiscal years 1992, $212,500,000.", the following:

"(F) For fiscal year 1992, $212,500,000.
"(G) For fiscal year 1993, $212,500,000.
"(H) For fiscal year 1994, $212,500,000.
"(I) For fiscal year 1995, $212,500,000.
"(J) For fiscal year 1996, $212,500,000.".

SEC. 2. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Section 4611(e) of the Internal Revenue Code of 1986 (relating to application of hazardous substance superfund financing rate) is amended—

(1) by striking "1992" each place it appears in paragraphs (1) and (3)(B) and inserting "1997",

(2) by striking "1989" in paragraph (2) and inserting "1994",

(3) by striking "1990" each place it appears in paragraph (2) and inserting "1995",

(4) by striking "1991" each place it appears in paragraphs (2) and (3)(A) and inserting "1996", and

(5) by inserting "after December 31, 1991, and" before "before January" in paragraph (3)(B).

(b) CONFORMING AMENDMENTS.—

(1) Section 59A(e)(1) of the Internal Revenue Code of 1986 (relating to application of environmental tax) is amended by striking "1992" and inserting "1997".

(2) Section 4661(b) of such Code (relating to amount of tax on certain chemicals) is amended by striking "1992" and inserting "1997".

(3) Section 9507(d)(3)(B) of such Code (relating to authority to borrow) is amended by striking "1991" and inserting "1996".

(4) Section 517(b) of the Superfund Revenue Act of 1986 (relating to authorization of appropriations) is amended—

(A) by striking "and" at the end of paragraph (4), and

(B) by inserting after paragraph (5) the following new paragraphs:

"(6) 1992, $250,000,000,

"(7) 1993, $250,000,000,

"(8) 1994, $250,000,000,

"(9) 1995, $250,000,000, and

"(10) 1996, $250,000,000,".

Mr. GARN. Mr. President, in 1986, I rose before this body to plead for action to provide funds for the Federal Savings and Loan Insurance Corporation. I urged Congress to provide funds so that the FSLIC could close down insolvent thrift institutions before the S&L problem mushroomed into a massive catastrophe for the American taxpayer. On October 18, 1986, I said:

There is no question in anyone's mind—including all the financial regulators—that FSLIC recap is necessary. The real question is whether it's necessary this month, next month, or in 6 months, and the answer is that we should not tempt the hand of fate by doing nothing now. The consequences of that kind of inaction are bleak: potentially devastating losses to the FSLIC fund, and even the possibility of direct Federal appropriations.

Unfortunately, parochial interests prevailed, and Congress did not act. The result of that inaction is today costing the American taxpayer up to $500 billion.

Mr. President, so far this year the Congress has once again refused to act on vital legislative provisions necessary to save taxpayers potentially billions of dollars and maintain the health and stability of our deposit insurance systems. This is inexcusable.

I am referring explicitly to the failure of the U.S. Congress to pass legislation to alleviate the cloud of environmental liability hanging over the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, and federally insured depository institutions.

Mr. President, in March of this year I introduced a bill that would provide some limited protection to the FDIC, RTC, insured depository institutions, and other mortgage lenders against potentially unlimited environmental liability for problems they did not cause.

In June, a revised version of this legislation was introduced, and hearings were held in the Banking Committee. In these and other hearings held by the committee, one point has been repeated over and over again by Chairman Seidman and other representatives of the FDIC and RTC: This bill is vital to the health of our deposit insurance system, and necessary to contain the costs of the savings and loan resolution process.

The RTC wrote to the committee that, quote:

If the RTC is not successful in avoiding (environmental) liabilities * * * the very resources dedicated by Congress to the rescue of savings and loans could be imperiled.

The FDIC, testified before the Banking Committee that:

The environmental laws, as presently interpreted * * * pose significant risks to the FDIC's goal of protecting depositors. * * * Current environmental laws may directly affect the soundness of the Federal Deposit Insurance funds and the stability of the deposit insurance system generally.

Bill Seidman, Chairman of the FDIC and RTC, warned of the urgent need for this legislation over and over again. On July 31, he stated before the committee that relief from environmental liability is, quote:

Really vital to our going ahead with selling property in the RTC and we certainly need that if we are going to contain costs * * *.

Later in this same hearing Chairman Seidman repeated his concern over this issue by stating:

The environmental (legislation), I would emphasize, is very important to us continuing to be able to sell real estate—particularly large pieces of real estate—from the RTC and that's vital to holding the costs down.

In August, Chairman Seidman, appearing before the committee for a hearing on bank and thrift fraud, again stated the need to pass this legislation this year. In his own words:

The (environmental bill) has some vital provisions for our proceeding on a cost-effective basis. The environmental provisions are very important, and there are a number of other provisions in there. Every one of them will save money to the taxpayer and are important to our getting the job done. I hope the Congress will pass it before it leaves.

In September, Mr. Seidman testified before the Banking Committee on issues relating to the RTC. At this hearing he again reiterated his concern that we act on this issue this year. He stated, and I quote:

This is vital legislation for the proper operation of the RTC. It is basically not an environmental issue. It is an issue of whether either lenders or borrowers are going to have to pay for liability which they had nothing to do with creating and did not know about. Frankly, it is going to be very costly for the RTC and FDIC if we do not address this problem. We strongly urge passage of (this) legislation before the end of the year.

Let there be no mistake. The potential clean-up costs facing the RTC and FDIC are quite significant. We are talking about billions of dollars of known liability right now, but this is just the tip of the iceberg, neither the FDIC nor the RTC knows for sure the full extent of its potential exposure. However, preliminary surveys by the FDIC indicate that they are holding at least 270 properties with environmental contamination. Estimated clean up costs to the FDIC for these properties alone are in the $1 billion range.

The RTC has already identified approximately 300 properties in its inventory with estimated environmental liability of $1.5 billion.

The RTC and the FDIC will be taking over the assets of hundreds of additional banks and thrifts in the coming years, and each closure brings with it the peril of finding additional contamination, with unknown billions of clean up liability. Moreover, even if no problem is known to exist with a particular property, the specter of environmental liability inhibits its sale, thereby driving up the costs to taxpayers.

Mr. President, over reaching by the courts in interpreting environmental laws also threatens the Federal deposit insurance funds by imposing liability on private lenders who are not responsible for the contamination.

When Congress enacted the Superfund Act in 1980 we specifically carved out an exception for secured creditors. In 1986 Congress attempted to provide additional protection through the so-called innocent landowner provision.

Despite the clear congressional intent to protect innocent lenders from liability, these provisions have been construed by the courts and the EPA in such a manner that little to no protection is afforded at all.

For example, the U.S. Court of Appeals for the 11th Circuit, the case of United States versus Fleet Factors, stated that a secured lender could be liable for environmental pollution caused by the borrower, even if the lender does not foreclose, or take any other action with respect to the mortgaged property, but simply based on the theory that the lender could have affected hazardous waste disposal decisions if it so chose.

This and other court decisions and EPA interpretations have a significant detrimental impact—not only on lending institutions—but also on our Federal Deposit Insurance system and on our economy, particularly small businesses.

The FDIC's concern arises from the fact that an insured institution's, capital may be depleted by environmental claims, or because institutions are

afraid to foreclose on potentially damaged property, and thus may be forced to write off the entire value of the loan, rather than risk potential environmental liability.

This is not mere speculation on the part of the FDIC. During our hearings we learned, for example, that one bank in Montana, is now facing potential insolvency due to a single loan made in 1980, prior to the enactment of the original superfund legislation.

The loan was for $200,000, and was made to a telephone pole treatment company. The company defaulted on the loan in 1984, and the bank temporarily held the property for several months, in February 1990, the bank was notified of its potential liability by the EPA because of its temporary ownership of the land in 1984. The cleanup costs are projected to approach $10 million. The total capital of the bank is only $2.5 million, so this one environmental claim, if successful, could result in the insolvency of the bank.

This is but one example of the problem lenders are facing. There are many, many more. The potential for environmental liability is having a significant effect on the ability of certain sectors of our economy to obtain bank credit.

Congressman LAFALCE, chairman of the House Small Business Committee, testified before the Senate Banking Committee that the current situation creates credit problems for the small business community that are national, in scope and growing. According to Chairman LAFALCE, lenders across the country have stopped making secured loans to businesses that use hazardous materials or are located in areas of possible contaimination. The result is that thousands of well-run, creditworthy small businesses cannot obtain the financing they need to survive.

Businesses that are affected include: gas stations, auto repair shops, dry cleaners, tool and die shops, wood preserving facilities, scrap yards, railroad facilities, utilities, bottling and canning facilities, metal fabricating facilities, chemical manufacturers and distributors, and fertilizer or pesticide producers and distributors.

Mr. President, I am not saying that environmental problems are not serious, or that contaminated sites should not be made safe and clean. This Nation should and must take care of our pollution problem.

Congress addressed this concern when it created the Superfund in 1980. This is the fund, and the EPA is the agency, that should be responding to toxic pollution. The FDIC, the RTC, and federally insured depository institutions and other mortgage lenders should not be allowed to become the "deep pocket" for environmental costs in cases where they are not responsible for the problems.

If additional funds for environmental protection are needed, Congress should appropriate those funds for that purpose, rather than raid funds designated for S&L cleanup and expose our entire financial system to risk and possible failure in order to have a source of funds for pollution cleanups.

Mr. President, the Congress is on notice. We have been informed of the facts. The failure to pass legislation dealing with liability for environmental problems will increase the cost to the U.S. taxpayer for resolving the S&L crisis. It will threaten the stability of our deposit insurance system. It will cut off credit to whole sectors of our economy.

Yet, despite the crucial importance of this legislation, despite the clear record that has been compiled, despite the discussions and negotiations, this body has not even allowed me the opportunity to have a vote on this legislation.

The issue will not go away. It will be back next Congress. It will have to be addressed. But the delay in acting will cost the American taxpayer billions of dollars. And I consider that to be just plain wrong.

Mr. COHEN. Mr. President, when the budget resolution was being debated earlier this month, I indicated that I supported the overall goals that were set by the resolution; namely, to seek a deficit reduction of $40 billion over the next fiscal year, and deficit reduction of $500 billion over the next 5 years.

In supporting that resolution, I also indicated that I would reserve judgment on the final reconciliation package to determine whether the means by which the deficit reduction targets were met were fair and equitable. I, like many of my colleagues, voted against the Senate reconciliation bill last week because I believed that the package placed a disproportionate burden on the poor, the elderly, and the middle-class. During the course of the debate on the Senate bill, I supported several amendments that would have made the bill more acceptable, but ultimately, I voted against the bill because I firmly believed that the bill was not fair, and that the deficit reduction burden should be spread more evenly over all income levels.

I had hoped that the conference committee on the reconciliation bill would produce a reconciliation package that I could support. Unfortunately, however, the two areas of the Senate bill which I opposed most strongly are contained in the conference report on reconciliation.

First, this conference report still imposes major cuts in the Medicare Program. While the conference report requires somewhat less out-of-pocket expenses for the elderly than previous proposals would, the conference report would still exact a real hardship on those with fixed incomes. The elderly would also be hurt by the proposed cuts for hospitals and physicians. Past experience has shown that, when Medicare payments are drastically reduced, services for the elderly suffer.

The proposed Medicare cuts could also have a severe impact on Maine hospitals. Eighty percent of Maine's hospitals lost money in 1989, and 10 Maine hospitals are spending money set aside for investment to help make ends meet—situations that are closely linked to past Medicare shortfalls. Further shortfalls would be particularly troubling in light of their likely impact on private health insurance premiums. In the past, hospitals have made up for their losses in Medicare by shifting costs to private insurers. Hence, the result is simply higher premiums for everyone.

Second, the conference report contains an increase in the Federal gas tax at the very same time that the price of gas continues to be high at the pump. While we have seen some fluctuation in the price of gas over the last few days, this is still the wrong time to be imposing an increase in the gas tax.

Perhaps if the price of gas were down to the level that it was in August, an increase in the gas tax might make some sense. But even then, this increase would mark the first time that we are using the gas tax for deficit reduction, rather than using it for the highway trust fund, to build roads and improve the infrastructure. Once more, the 5-cent increase in the gas tax, while better than the doubling of the gas tax that was contained in the Senate's reconciliation bill, still cuts into the States' ability to use the gas tax for revenues, and disproportionately hurts States like Maine, in which people have to travel long distances, especially in rural areas.

While I realize that it would be impossible to craft a budget package that would be acceptable to every Member of the Congress, every Member must apply a basic test of fairness to a package, based on the needs of the constituents he or she represents, as well as on his or her own judgment. While I believe that this agreement is an improvement over what was proposed before, it still does not go far enough to hit the mark of fairness and equity.

I am pleased that the package contains a higher top marginal tax rate for persons at upper-income levels, and that other provisions, such as an increase in the alternative minimum tax, have been included to spread the burden of deficit reduction. Still, I believe that the package should include other provisions affecting very high-income levels, such as a surtax on millionaires, rather than continuing to

make middle-income persons shoulder a significant portion of the tax increases under this bill. In my judgment, those who have the greatest ability to pay also have the greatest obligation to pay. Placing more of the burden on the very rich would be far preferable to an increase in the gas tax, and far better than cuts in Medicare.

On the spending side, I fully support the cuts that are called for in defense spending. They are an important recognition of the changes that have taken place in Eastern Europe. I also believe that the caps on discretionary spending contained in the conference report are a step in the right direction. But on the whole, I cannot support the conference report because of its cuts in Medicare, increases in the gas tax, and effects on middle-income taxpayers and families.

Mr. DODD. Mr. President, every so often, we, in Washington, have a chance to do something right for the children and families of this Nation; something which fulfills both national goals and individual needs; something which is both a prudent expense today and a sound investment for tomorrow. Every so often we turn political rhetoric into bipartisan action. Today, the U.S. Senate has one of those rare opportunities—to pass meaningful child care legislation included in the reconciliation conference report now before us which will really make a difference in the lives of millions of low-income families. This could be the first comprehensive Federal child care law in our Nation's history.

As the sponsor of S. 5, the child care legislation which passed the Senate almost 16 months ago, I am very pleased that we were able to reach a bipartisan agreement with the White House on a new Child Care Grant Program. The Child Care and Development Block Grant Act of 1990 has been included in the reconciliation legislation together with a package of expanded tax benefits for low-income families with children developed by Chairman LLOYD BENTSEN and other members of the Senate Finance Committee and the House Ways and Means Committee.

Mr. President, by definition legislation is a process of give and take—of confrontation and conciliation. Our child care agreement with the administration is the product of a tough negotiating process. But what made this agreement possible is our mutual commitment to provide parents with the greatest range of choices possible for the care of their children.

We and the White House began the 101st Congress very far apart. Two years ago, President Bush wanted no grant program at all; the sponsors of S. 5 wanted a large grant program with rigorous health and safety requirements. The agreement embodied in this reconciliation measure is a perfect balance—a grant program which will deliver critical funds to the States to enable them to improve the quality, availability and affordability of child care and to maximize parental choice.

Under this legislation, each State will reserve 25 percent of its total allotment for activities to improve the quality of child care and for early childhood development and latchkey services. The funds reserved for quality will provide the States with a strong incentive to improve child care standards and the training and salaries of child-care providers on a State-by-State basis. The funds reserved for grants and contracts for early childhood development and latchkey programs will be targeted to local communities with high concentrations of poor children.

The remainder of block grant funds will be used by the States for a range of activities to improve the affordability, availability and quality of child care services. We hope and expect that the preponderance of these funds will be used specifically to help low-income parents pay for child care services. States may also use the funds to establish State liability risk pools, to provide grants or loans to child-care providers to increase the supply of care, or for public-private partnership programs which involve businesses in meeting their employees' child care needs. Employer-supported child care programs are critical in meeting the needs of today's working families and I hope the States will use funds provided under this legislation to encourage business involvement. Next year, I hope to build on the strides we have made in this area by introducing legislation in the next Congress which provides more specific incentives for employers to establish innovative child care arrangements.

Under the Child Care and Development Block Grant Act of 1990, States will establish minimum health and safety requirements for all child-care providers receiving funds under the Act. These requirements will include the prevention and control of infectious diseases, building and physical premises safety, and training for child-care providers. Within this general mandate, the States will have broad discretion to decide how best to apply these requirements to different care settings.

Mr. President, let's be honest. Until now, the politics of child care have generated far more heat than light. But today, we have the chance to shed our political baggage and do something truly meaningful for the families of this Nation. We have bipartisan agreement on a comprehensive child care package. We have legislation which embodies goals we all share—funds targeted to low-income families; parental choice and involvement in the care of their children; and State and local control over standards and licensing decisions.

On an issue like this, no agreement is perfect. There will be those on the left or right who feel we or the White House went too far. But what that tells me is that we have a fair and balanced agreement that will have the broad support of American families as well as State and local governments. If the 101st Congress is remembered for nothing else, I hope and expect it will be known as the time Democrats and Republicans came together in the name of children and working families in this Nation.

I ask unanimous consent that a summary of the child care amendment be included in the RECORD. I further ask consent that statements by Senators KENNEDY and MIKULSKI and a colloquy between myself and Senator DOLE be included in the RECORD at this point and that statements by any other Senators on the child care amendment be included together in the RECORD at an appropriate point.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT

IN GENERAL

States will receive funds through a formula that takes into account the number of children below age five and the number of children receiving assistance through the School Lunch Program in the state.

ELIGIBLE CHILDREN

Children of working parents are eligible if they are below age 13 and their family income is below 75 percent of the state median income.

75 PERCENT OF FUNDS

75 percent of funds may be used for child care services or for activities to increase the availability and quality of child care. All child care services provided with this share of funds will be available through grant, contract, or certificate so that parents have the maximum range of choices of child care providers, including care by relatives and care in neighborhood homes, churches, and schools. Parents receiving certificates may select any licensed, regulated, or registered provider that is in compliance with applicable state and local law.

25 PERCENT OF FUNDS

25 percent of funds are reserved for quality improvement activities and early childhood education and latchkey programs.

Of the reserve, not less than 75 percent will be used for early childhood education and latchkey programs. Services funded with this share of funds will be provided through grant or contract. Priority for services under this reserve goes to areas eligible for concentration grants under the Chapter 1 program.

Of the reserve, not less than 20 percent will be used for quality improvement activities, including grants or loans to help providers meet state or local standards; activities to improve the enforcement of state standards and licensing and regulatory requirements; providing training and techni-

cal assistance; and improving salaries for child care providers.

STANDARDS

The state must establish health and safety requirements for all providers receiving assistance under this Act and ensure that such providers demonstrate compliance with such requirements. The state health and safety requirements will include requirements concerning the prevention and control of infectious diseases (including immunization), building and physical premises safety, and a health and safety training requirement appropriate to the provider setting.

Eligible providers must be in compliance with all applicable state and local licensing and regulatory requirements. A state may impose more stringent standards and licensing or regulatory requirements on child care providers who serve children for which assistance is provided under this Act than on providers who do not receive public funds.

If a state reduces the level of standards applicable to child care services provided in the state, the state shall inform the Secretary of the rationale for the reduction in the state's annual report.

States to conduct a one-time review of state licensing and regulatory requirements and policies unless the state has done so in the three years prior to the date of enactment.

PARENTAL RIGHTS

Parents will have unlimited access to their children in care funded under this Act. States will have in place a parental complaint procedure, maintain records of substantiated parental complaints, and provide general consumer information. Parents of children served under the 75 percent portion of funds will have the right to receive a certificate rather than a grant or contract and the right to select the child care provider.

STATE PLAN

States will submit plans that include: designation of lead agency; local consultation re: use of funds; coordination with existing programs; general description of planned use of funds; description of planned use of quality reserve; supplement not supplant language; priority for very low income children and special needs; sliding fee scale; provider payment/reimbursement.

REPORTING REQUIREMENTS

States will report to the Secretary annually on use of funds; data on caregivers, children in care, and public-private partnership activities in the state; results of the licensing review; a justification of state actions to reduce the levels of state standards (if applicable); state actions to improve the availability and quality of care; and a description of standards in the state.

The Secretary will report to Congress annually on use of funds in the states; summary and analysis of state reports regarding data on caregivers and children in care, results of the state licensing reviews, state activities to protect the health and safety of children and to increase the availability of care, and state standards; and recommendations to Congress on further steps necessary to ensure the health and safety of children.

AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated $750 million in fiscal year 1991, $825 million in fiscal year 1992, $925 million in fiscal year 1993, and such sums as may be necessary in fiscal year 1994 and fiscal year 1995.

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I would like to ask the distinguished chairman of the Budget Committee, Mr. SASSER, to respond to a question I have concerning the effect of the credit reform provisions of the reconciliation bill on credit programs administered by the Department of Veterans Affairs.

My principal concern relates to whether this proposal could require that, in order for VA to guarantee a loan, an annual appropriations act must contain a specific appropriation for, or a specific dollar limit on, the issuance of VA guaranties. If that were the case and if, by virtue of a change in economic conditions or any other reason, the dollar level in the VA appropriations act were not sufficient during a particular year, the VA loan-guaranty program could be forced to shut down when the dollar level is reached before the end of the fiscal year. That would mean that veterans then would be unable to use the loan guaranty entitlements they have earned.

Thus, Mr. President, my question is whether the credit reform provisions would have the effect of providing a limit on the number of loans that VA could guaranty, based on a dollar figure appropriated or otherwise established in appropriations acts for VA's loan programs.

Mr. SASSER. Mr. President, I am pleased to assure the very able chairman of the Veterans' Affairs Committee that there would be no change in the programs administered by VA. These programs are in the nature of an entitlement and have permanent authorization, under title 38, United States Code.

The amendments to the Congressional Budget and Impoundment Control Act of 1974 contained in this bill would allow a Federal agency to make direct or guaranteed loans either if an appropriation has been made to the agency for the cost to the Government or if a limitation is enacted in an annual appropriations act on the use of funds otherwise available to the agency for this cost. However, specific exemption is included for those programs considered mandatory in the budget process. VA's loan-guaranty programs are covered by the exception for mandatory programs. VA's annual appropriations act historically includes language that authorizes obligations "in such amounts as may be necessary to carry out the purposes of the 'Loan guaranty revolving fund'" and provides permanent authority for making government contributions to the Guaranty and Indemnity Fund in "such sums as may be necessary."

These quoted provisions underscore the mandatory nature of the VA loan guaranty program and would satisfy the requirements of proposed new section 504(c) of the Budget Act. Moreover, VA's guaranteed-loan programs are protected in the credit-reform provisions from any limitations other than those contained in the statutes authorizing the program by the language of proposed new section 507(a), which states, "Nothing in this title shall be construed to establish a credit limitation on any federal direct-loan or loan-guaranty program."

Mr. CRANSTON. I thank the distinguished chairman of the Budget Committee, who always has been a great friend of our Nation's veterans and an effective advocate on their behalf. I especially appreciate the close cooperation between the staffs of our two committees during the difficult reconciliation process and I thank Senator SASSER for this cooperation and for his assistance.

Mr. ROCKEFELLER. Mr. President, today the Congress fulfills its responsibility to act on behalf of the Nation and most of all, the Nation's future. This is work none of us relish or celebrate. The policies of the past have caught up with the present, and one of the grave consequences is the current Federal deficit. This deficit, which threatens to surpass $300 billion, imperils America's economic future. It threatens to throw our people out of work, to raise interest rates to intolerable proportions, and to prevent us from making critical investments in education, health care, infrastructure, and other vital needs. I am painfully aware that the State I represent, West Virginia, is especially vulnerable to these effects of ignoring the deficit.

Every Member of this body was elected to share in the task of governing. We have asked for the privilege of leading the country, and that is what we must do, every day and every year we hold public office.

Mr. President, the easy vote today is to vote against this deficit reduction package. However, today is not the day to take the easy route. If we are honest to the people we represent and pledge to serve, we must acknowledge that there is no easy or quick path that will eliminate the federal deficit and reorder our fiscal priorities to secure a strong, vital future.

Some have called this past year of debate on the budget—for fiscal year 1991 and as a blueprint for the next 5 years—anything from chaotic to a disaster. I believe, however, that it also has been a very real and meaningful debate about principles, about public policy, and about priorities. Since I was elected to the Senate, there has not been such an explicit discussion of the burdens that exist on different income groups in our country. There has not been such an explicit commitment to make fundamental changes in Government programs in order to spend less and spend more wisely. My

hope is that this debate will continue, and that it will help all lawmakers become more committed to our principles and to the essential test of fairness when we develop budgets and new policy.

This reconciliation package is the result, inevitably, of negotiation and accommodation among both Houses of Congress, among both parties, and between Congress and the President. And I believe it bears the marked imprint of the views of Americans. When the so-called budget summit unveiled its agreement a month ago, and the people saw the burdens it would inflict on the poor, the middle class, and the elderly, they rebelled and told our leaders to go back to the drawing board.

Now, we have before us a major package to achieve the goal of reducing the deficit by almost $500 billion over the next 5 years. It raises substantial new revenue, it cuts Government spending, and it directs resources to meet certain urgent priorities such as child care for working families, health care for poor children, and long-term care for the neediest elderly. Most importantly, it distributes the burden of deficit reduction in a progressive and fair manner. It asks the wealthy to pay a much greater share than those who are not so privileged.

I don't entirely embrace this legislation, nor do I agree or support every section or provision. But we cannot govern or lead by insisting on our first choice or our personal ideal. During the negotiations on the budget, I did insist that we meet the test of fairness and that we reject tricks and gimmicks to accomplish the job of deficit reduction. I believe this package basically lives up to these tests, and I will support and vote for it.

Mr. President, I also am immensely proud of the fact that this legislation contains certain provisions that I worked long and hard to achieve. I was privileged to be one of the conferees for the Finance Committee, and was assigned to negotiate the final agreement pertaining to Medicare, Medicaid, and related issues. In the past week, with the help of tireless and talented staff, we met day and night to finalize the approach to achieving both savings in the health care programs and to determine what affirmative changes we could make to meet the health care needs of people who deserve that help the most. Again, there were disappointments and decisions that I don't support, but in the end, I believe we did the best we could to meet our instructions and to produce positive steps for the future.

In this package, we took a significant step forward toward addressing the pressing long-term care needs of America's elderly. My legislation, the Medicaid Home and Community Care Options Act, was adopted, with $580 million earmarked to provide services to frail elderly in my State and across America. I am also pleased to point out that this legislation contains the funding and authority for a major expansion in Medicaid's coverage of children. This was one of my most fervent goals for this Congress, and I am genuinely excited about this progress. I hope that this will be only the beginning of a national commitment to ensure that every child in America has access to affordable, decent health care.

Mr. President, we set priorities in this legislation. While we asked most Americans to shoulder some part of the burden of deficit reduction, we recognized the fact that some literally can't bear any more burden. We stood up to certain interests, such as prescription drug companies and insurance companies, and mandate important changes to protect the elderly, the poor, and others from abuses that can't be tolerated.

I am very grateful for the privilege of representing the State of West Virginia in the U.S. Senate. I believe West Virginians recognize that solutions to America's greatest problems can't happen overnight. They understand that their congressional delegation can't turn our State's hard times into good ones instantly or effortlessly. But the people of West Virginia do rightfully expect their Senators and elected officials to face up to the job, and to not duck the tough choices. In considering this overall budget package and in participating actively in one portion of it, I tried to live up to these expectations. And in doing so, I fought hard for the basic fairness that my State and the rest of America fully deserves.

Mr. SASSER. Mr. President, this reconciliation bill, the largest deficit reduction package in our history, is the product of many capable and dedicated minds. It represents 10 months worth of work under often trying, if not adverse, circumstances.

And I want to congratulate and thank those who have toiled many long hours in the service of reducing our Nation's deficit.

First I want to acknowledge the tremendous guidance and leadership of the majority leader, Senator MITCHELL. In moments of confusion and seeming gridlock, and believe me there have been many of them throughout the year, he has brought sound judgment and piercing clarity. He kept us focused on the goal, encouraged us when we lacked resolve, shepherded us around one land-mine after another, and steadied us as we moved inch by inch over 10 months to the threshold we are now at.

I would also like to thank the minority leader, Senator DOLE, for his understanding, hard work, and commitment to reality in this process.

Indeed, there are many Members of this body who have been active participants in this complex process, and each deserves great congratulations for their efforts. With the completion of this bill, I have now served 2 years as chairman of the Budget Committee, and I want to thank my counterpart on the committee, Senator DOMENICI, for his hard work, patience and counsel over these 2 years.

I also want to thank Senator FOWLER for his leadership in this process. The odyssey that began at Andrews Airforce Base is now nearing completion due largely to his capable hand.

The work of a reconciliation package is the work of committees, and without the work of the committee chairmen we would surely not be here today. I particularly want to thank Senator BYRD for his wisdom and guidance, without which we could never have arrived at this point.

Now I realize the great weight of responsibility for this bill has fallen on the shoulders of the Finance Committee. Without the diligence of Senator BENTSEN, and the help of Senator PACKWOOD, this agreement would not have been possible, we simply would not have taken this first lunging step out of the deficit swamp.

I also want to thank the very able chairman of the Agriculture Committee, Senator LEAHY and the ranking Republican, Senator LUGAR, for making difficult and painful choices on behalf of this package. The chairman of Governmental Affairs, Senator GLENN, deserves special mention as well.

Of course, without a first-rate staff, work on a bill of this kind—a bill this intricate, far reaching and complex—without an absolute top-notch staff, the work just could not get done. I want to thank and congratulate John Hilley, the Budget Committee staff director on the majority side, and Bill Hoagland, the minority staff director. They are public servants without parallel, and I want to say thank you to all who work for them and for the committee, especially deputy staff director, John Callahan, legal counsel Bill Dauster, Alan Cohen, Sue Nelson, Larry Stein, Agnes Bundy and the rest of the Budget Committee staff.

My gratitude also goes out to the majority leaders' tireless and dedicated floor staff. They spent many late nights in this Chamber with us. I understand they even worked all night on a number of occasions in order to comply with our needs, and I thank them for their extraordinary efforts. I would like to recognize several floor staffers in particular—Marty Paone, Charles Kinney, Lula Davis, Nancy Iacomini, and Pierre Golpira. Thank you all. In addition, I must thank Jeanine Drysdale-Lowe, Deputy Sergeant at

Arms and the Service Department for their timely assistance with our Budget documents. Bob Keith and Sandy Davis of the Congressional Research Service and Bill Jensen and Bob Weinhagen of the Senate and House Legislative Counsel's office all deserve well-earned thanks.

Last, I would say to my colleagues in this Chamber, there is a big difference between compromising and being compromised. Each of us had to compromise in some way to get this agreement. But not one of us is compromised by it. It is an agreement we can all be proud of. It is the right thing to do, and I thank my colleagues.

Mr. DODD. Mr. President, I rise to express my support for the budget reconciliation bill for fiscal year 1991.

The budget reconciliation bill is imperfect—but a major improvement on the budget summit agreement of October 7. The solid deficit reduction it provides, the clarification of Government priorities, and the fairness of burden sharing more than outweigh its flaws.

The reconciliation bill preserves the overall summit agreement on deficit reduction. It is the largest deficit reduction package ever considered by the Congress, including deficit reduction of some $40 billion in fiscal year 1991 and $490 billion over fiscal years 1991 and 1995.

As we all know, for the past month, we have faced a crisis—a crisis in Government, a crisis in the economy, and a crisis in confidence in the institution of Government itself.

Mr. President, I note that yesterday, the Treasury Department reported that the Federal budget deficit for the fiscal year that ended September 30, 1990, was $220.4 billion, the second highest ever. Last year's deficit reduction legislation projected that the shortfall would be $99.7 billion. Less than $2 billion of the change was due to additional domestic spending. The rest was due to a weak economy and increased spending on the savings and loan cleanup.

We are now paying the price for the excesses of the 1980's—the so-called supply side economics championed under the Reagan administration. The crisis we face today stems from two fundamental policy decisions made in the early 1980's at the insistence of the Reagan administration: huge increases in Defense spending and massive tax cuts for the wealthy. The gigantic deficit created by these two decisions is the major reason, although not the only reason, we have been in fiscal crisis for months.

Mr. President, we no longer can nonchalantly pile up huge deficits as we did in the 1980's. These deficits made us into a debtor nation, dependent on paying foreign investors high interest rates to keep Government running. The total national debt from the beginning of our Nation to 1980 was $1 trillion. From 1980 to 1987, it tripled to $3 trillion. Interest on the Nation's debt is now $180 billion—that's $500 million a day. Every day, our Nation must borrow $500 million. We borrow most of it from foreign governments.

Cutting the deficit is the only way to reduce the high cost of borrowing—to consumers and Government—without spurring inflation. It is the only way we can afford to meet new national needs without mortgaging our children's futures.

By passing the budget reconciliation bill now before us, we can once and for all begin erasing the Federal deficit that has plagued this country for the past 10 years and begin putting our Nation back on track.

Mr. President, the budget plan isn't perfect but it is a real beginning toward serious deficit reduction. Moreover, it also reflects some of the priorities for this Nation as a budget plan should.

We not only need to have the deficit reduced—we also must invest in the next generation.

In that regard, I would like to highlight a few of the improvements that have occurred since the budget summit agreement. I am particularly delighted that the bill incorporates a two-part approach to Federal assistance to meet the child care needs of millions of families across the Nation—a grant program to States fashioned by the Labor Committee and an expansion of tax credits developed by the Finance Committee.

As my colleagues know, a great deal of my time and energy, and a great deal of deliberation have gone into developing child care legislation. During the 1988 Presidential campaign, George Bush announced his support for child care. Everyone agreed that we needed child care legislation—but we lacked consensus on what that legislation should look like. On June 23, 1989—15 months ago—the Senate passed S. 5, the ABC bill, after 8 days of heated debate. Subsequently, the House passed its version of child care legislation, and since that time the Senate, the House, and the administration have debated the best way to meet the child care needs of the Nation.

Just recently, with the encouragement of the distinguished majority leader, for the first time, we reached agreement on a new and expanded Federal role in child care. The bipartisan agreement, embodied in this budget package, is a fair and balanced approach that will make quality child care more available and affordable.

I am also pleased that the budget plan includes a substantial improvement in Medicaid coverage, especially for poor children. The Medicaid Program also would be expanded to pay Medicare premiums for more elderly poor and provide home care for them.

Mr. President, I am also pleased about the greater fairness in burden sharing in this bill as compared to earlier budget plans and the budget summit. I had serious reservations about the tax provisions in earlier budget plans because of their regressivity.

By raising the top income tax rate for the approximately 600,000 highest income Americans from 28 to 31 percent, by expanding the earned income tax credit for the poor and by reducing the tax breaks for the rich, this bill significantly increases the progressivity of the package.

Finally, with respect to taxes, I am pleased that the package drops the provision of the summit agreement that called for a 2-cent-per-gallon tax on home heating oil, a tax that would have had an adverse impact on the citizens of the Northeast.

Mr. President, I do have some concerns about the package. One of these concerns relates to the Medicare Program. While I am pleased that the beneficiary reductions are considerably smaller than those in the summit agreement, I am concerned that the package retains the Medicare deductible increase and monthly premium increase.

On balance, Mr. President, the budget plan before us continues to have some flaws but is dramatically improved over the original budget summit. It is a budget plan that I can and will support.

We finally are in the homestretch of this grueling, months-long budget marathon. The finish line is in sight. Let's pass this budget reconciliation bill so that we can stop taxing everyone's patience along with everything else.

Mr. GARN. Mr. President, it would be a costly mistake for this Congress to adjourn without providing the Resolution Trust Corporation with the additional resources it needs to continue the job of closing insolvent thrift institutions and to continue the job of meeting the Government's commitment to insured depositors in those institutions.

Our Government has pledged its full faith and credit as backing for insured deposits. To renege on that commitment would be unthinkable. To renege would—among other things—almost assuredly cause a full-scale financial panic as the word of the U.S. Government could no longer be trusted anywhere.

Nor can we reduce the cost to taxpayers by not providing additional funds to the RTC before we adjourn. To the contrary, delay would substantially increase the burden taxpayers ultimately would be required to bear.

Delay in providing the needed resources would only force the RTC to delay closing insolvent institutions that we all know must eventually be closed. Allowing those institutions to continue operating would only allow them to run up even larger losses that taxpayers would be stuck with.

Make no mistake about it: the RTC cannot continue its current rate of case resolution while waiting for the Congress to return next year to provide the additional needed resources. At its current level of activity, by the end of this year the RTC will have less than $2 billion left out of the $50 billion in loss funds provided last year.

In fact the RTC already has been forced to slow down its pace of case resolutions, given the uncertainty over whether Congress will act before adjournment to replenish the pool of funds to cover losses. Unless Congress acts, case resolution will virtually cease by December 31.

The cost of delay was quantified by RTC Chairman Bill Seidman in a letter dated October 25, 1990. According to Mr. Seidman:

> The estimated cost of delaying the resolution process is $250 to $300 million for a one-quarter delay and $850 to $950 million for a two-quarter delay. These estimated do not include other factors that could substantially add to the cost of delay. These factors include asset deterioration, deterioration of franchise value, and the effect that competition with insolvent institutions has on the cost of funds for marginally solvent institutions, possibly causing additional failures.

It is not as if Congress has not had ample warning that additional funds would be needed. As far back as May 23 of this year, Treasury Secretary Nicholas Brady in testimony before the Senate Banking Committee told us that additional funding would be necessary to enable the RTC to meet the Government's end of the agreement represented by Federal deposit insurance.

Just yesterday, Secretary Brady again wrote to the Congress saying: "I repeat the administration's urgent request that Congress provide adequate funds to the RTC."

Treasury has estimated that the RTC would need $50 billion in aggregate loss funds to continue operations at their current pace throughout fiscal year 1991, including about $10 billion in loss funds authorized and appropriated in 1989 but not yet spent. That level of spending is reflected in the fiscal year 1991 baseline of the congressional budget resolution which foresees $40 billion in additional loss spending for the RTC.

Treasury sent Congress three alternative suggestions for how the additional loss funds might be raised. In choosing among the Treasury alternatives, or some variation thereof, Congress must make three key decisions: First, whether to provide the RTC with sufficient funds to carry it completely through fiscal year 1991 or only part way; second, whether to continue to maintain the haircut on working capital borrowings established in 1989 that limits working capital borrowings to 85 percent of the estimated market value of the assets of seized institutions; and third, whether to authorize the RTC to tap $18.8 billion in questionable borrowing authority from the 1989 legislation.

Earlier this month, the Senate Banking Committee adopted a $57 billion package that would: First, provide the quantity of loss funds currently estimated to be needed for the RTC to operate through fiscal year 1991; second, keep the 15-percent haircut on working capital borrowings; and third, not authorize the RTC to tap the questionable borrowing authority.

The House Banking Committee subsequently adopted a package that would: First, only appropriate $10 billion in additional loss funds for the RTC; second, keep the 15-percent haircut; but third, provide for the RTC to tap the questionable borrowing authority.

Apparently the political reality is that legislation containing the full amount of money for the RTC that passed the Senate Banking Committee cannot pass the House of Representatives. Therefore, the package before the Senate today takes the House Banking Committee's approach but adds an additional $5 billion in appropriated loss funds for a net addition of $15 billion.

Mr. President, I think it would be preferably to provide the RTC with sufficient funds to operate through fiscal year 1991. Providing less may keep the RTC on a shorter leash, but it also complicated planning within the RTC and will lead to less efficient operation of the agency.

Nevertheless, if political reality in the House precludes us from taking the optimal course of action, I will support the compromise before the Senate today as a way of assuring that the operations of the RTC will not be forced to shut down by the end of this calendar year. I repeat: To allow that to happen would be a costly mistake for this Congress.

Mr. WARNER. Mr. President, my vote for the 1991 budget is the toughest vote in my 12 years in the Senate. But, in my view, Congress has to step up and make the very tough decision to pass this budget.

Although this budget raises taxes too much and does not cut spending nearly enough, there is no choice for Virginia.

The only alternative at this late hour is sequestration, which would be disastrous.

It would slash at least $100 billion across-the-board in Federal spending this year alone. In my judgment, Virginia would be among the top five States hardest hit in terms of the adverse impact upon our economy.

Virginia for decades has enjoyed the benefits of one of the largest Federal inputs to our economy. A sequester order would be devastating to the Commonwealth since we are home for so many Federal and military employees and house a very large number of Federal departments and agencies.

The Pentagon alone would absorb over $40 billion of a sequestration order which I view as totally unfair to the men and women serving in the cause of freedom overseas, particularly in the Persian Gulf.

PROVIDER SPECIFIC TAXES AND VOLUNTARY CONTRIBUTIONS

Mr. GRAHAM. it is my understanding that the Medicaid portion of the budget reconciliation bill contains a provision regarding provider specific taxes and voluntary contributions. This language is from S. 1878, a bill I introduced and which the Senator from Arkansas cosponsored, to statutorily protect States rights to use taxes and voluntary contributions.

The provision in the budget reconciliation bill would allow States which use taxes on providers as a part of the State Medicaid match to continue this practice. This would permit these taxes to be used as Federal matching provided that a hospital is not directly reimbursed for the tax.

Mr. PRYOR. That is correct.

Mr. GRAHAM. This measure would allow States, such as Florida, which assess hospitals 1.5 percent of net revenues for a portion of the State Medicaid match, to continue to do so. Florida does not directly reimburse hospitals for provider based taxes, clearly complying with this provision. Most importantly, this would enable the State of Florida to continue providing health care services to indigent patients.

I would like to thank Senators PRYOR and BENTSEN for their assistance with and understanding of this matter. I am very pleased that Congress decided to statutorily protect provider based taxes.

ABANDONED MINE LAND FUND REAUTHORIZATION

Mr. McCLURE. Mr. President, in order to meet reconciliation instructions, the Committee on Energy and Natural Resources and the House Interior and Insular Affairs Committee agreed to language which would reauthorize the abandoned mine land [AML] fund through 1995. In doing so, the committees adopted a modified version of H.R. 2095, a House-passed reauthorization bill. No companion bill exists in the Senate and the Committee on Energy and Natural Resources held no hearings on the AML reauthorization issue during the 101st Congress. Consequently, Members of the Senate have not had an adequate op-

portunity to develop a complete legislative record with respect to AML reauthorization legislation. In the interest of providing guidance to the Office of Surface Mining Reclamation and Enforcement [OSMRE] in implementing the reauthorization language approved by the conference committee, I would like to offer the following comments.

Current law—Public Law 95-87—establishes an abandoned mine land fund in the Treasury. Money from that fund is available only through annual appropriation by Congress to the Secretary of the Interior. Those basic provisions remain unchanged in H.R. 2095 as modified by the conference committee. However, section 402(g), which specifies the allocation process for the distribution of funds, comprises approximately half a page in current law and is designed to provide the Secretary of the Interior with the necessary discretion to carry out the purposes of the abandoned mine land fund. H.R. 2095 takes a few lines of that section and expands them to over two pages with lengthy but unclear specifics of how the Secretary of the Interior is to allocate the fund. This detail seems to presume that all AML fees collected are available to the Secretary when, in fact, annual appropriations have never equaled annual income. In most years the annual appropriation has been less than annual income while in a few years the appropriation has exceeded income. Consequently, it is unclear as to whether the percentage allocations in the expanded version of 402(g) are to be applied to income, the annual appropriation, or the total balance of the fund at the beginning of the fiscal year. In my view, sufficient flexibility must be provided in applying these percentages to assure that there will be adequate funds available to carry our a reasonable emergency program and otherwise effectively administer the AML fund.

H.R. 2095, as modifed by the conference committee, makes the entire AML fund interest bearing. However, the House report to accompany H.R. 2095 indicates that all interest from the AML fund accrues only to the Secretary's share. This direction presupposes that there is no unappropriated State and tribal share balance remaining in the AML fund to accrue interest. However, the House report does not identify any new responsibility on the Secretary to fully distribute State and tribal share funds each year. Under H.R. 2095 itself, interest income is to be credited to the fund. In my opinion this means the entire fund, and I would except OSMRE to interpret this language similarly.

H.R. 2095 requires the Secretary to maintain an inventory of eligible lands and waters pursuant to section 404 and to provide financial and technical assistance to the States and tribes for updating the inventory. Financial support for this undertaking can be found under section 402(g)(5) as well as 402(g)(3).

Section 411 of H.R 2095 specifies that a State certify the completion of all coal-related problems prior to undertaking a noncoal reclamation program. Despite certification, nothing in this legislation prohibits a State from addressing any new coal-related problem if and when it arises.

Section 409 of the Surface Mining Control and Reclamation Act—Public Law 95-87—currently provides that voids, abandoned tunnels, shafts and entryways constitute a hazard to the public health and safety. These findings are equivalent to a priority 1 designation under section 403(a)(1) of H.R. 2095.

H.R. 2095 provides that a State may undertake a non-coal reclamation program following completion of all known coal-related problems. Nothing in this legislation directs a State to undertake reclamation of a site which is eligible for listing under the Comprehensive Environmental Response Liability and Compensation Act of 1980 [CERCLA].

Finally, H.R. 2095 provides that the Secretary of the Interior concur with a State's finding that all coal-related priorities have been achieved. Nothing in this bill changes the certification process utilized under current law.

ON CHILD CARE

Mr. KENNEDY. Mr. President, this is a landmark day for the Nation's children and their working parents. After much negotiation, we have reached agreement to help move the Nation forward in meeting its growing child care needs.

This plan is long overdue. Every day more than 2 million children are left alone and unsupervised—and more than 3 million risk injury or even death in unlicensed day care homes. For too many years we have seen children subjected to unlicensed, unsafe and unstable conditions because their working parents, struggling to make ends meet, could not afford adequate child care. In a society as compassionate as ours, it is a tragedy that we have permitted this situation to exist.

The legislation before us today is a major step forward in solving the Nation's child care crisis. Under its provisions, child care will be more accessible and affordable, and minimum standards will be established by States to assure that it is available under conditions that are healthy and safe.

This $2.5 billion multiyear plan will assist children under the age of 13 whose family income is below 75 percent of the State median income. Seventy-five percent of the funds may be directed at increasing the availability, affordability, and quality of child care. The remaining 25 percent of the funds are reserved for important quality improvement activities and early childhood education and before- and after-school care services.

While provision of services is the primary purpose of the legislation, we believe that activities to improve the quality and availability of child care are critical aspects of this comprehensive legislation. We expect that States will use at least 10 percent of funds for quality activities such as providing training to child care staff, upgrading standards, and establishing resource and referral networks. States should ensure that every child has access to an affordable slot in a safe, licensed, high-quality family day care home or child care center.

To ensure an adequate supply of child care, States may choose to make grants and loans to providers to help them meet State standards, establish a revolving loan fund for family providers to make capital improvements, provide funds to local educational agencies to establish full-day, full-year child care and early childhood education programs, and create a State liability risk retention pool for child care providers who are having trouble finding affordable liability insurance.

We also encourage States to increase availability of child care by investing in public-private partnership activities to involve local businesses in offering child care benefits to employees through worksite programs or by contracting for slots with a nonprofit provider.

As Congress and the administration grapple with the budget, it is fitting that the Nation's children receive the priority they deserve. Our smallest voices often have the biggest needs. This play says that we have heard those voices and that help is on the way—for children and their parents.

I commend Senator MITCHELL for his leadership in bringing this legislation this far. Senator HATCH has worked long and hard to make the proposal bipartisan, and I am grateful to Senator DOLE and to the President for their cooperation and willingness to reach a consensus on the legislation. Most of all, Senator DODD should be commended for the tremendous leadership he has shown on child care over the past 4 years, and on all issues affecting the Nation's children throughout his career.

This plan recognizes that in spite of the controversies that arise in dealing with such issues, Congress and the administration can work together to address concerns that deeply affect our future. But, this is not a victory for Congress or the President, for Republicans or Democrats. It is a victory for America's children, and for working families across the Nation.

I urge my colleagues to support this proposal.

CHILD CARE

Ms. MIKULSKI. Mr. President, I am delighted that this body has demonstrated a commitment to America's children by including child care legislation in this year's reconciliation package.

Finally, we have acknowledged that millions of American children are in day care out of necessity—that single parents and two-career families have no choice but to place children in day care while they work full time trying to make ends meet.

Finally, we stopped talking about the Pentagon's playthings and high-tech bombers, long enough to deal with our children's playgrounds and preschool classrooms.

In my home State of Maryland more than half of all mothers with preschool age children work outside the home. Three quarters of a million kids under 12 compete for only 90,000 regulated day care slots. But until now, the Federal Government ignored those parents and their children.

Like most of us, I was afraid that child care was dead for this Congress. But, through hard work and determination we have taken the first toddler steps toward a 21st century child care system.

This is also an important step forward for America's employers. As we work to fight off a recession, we need all our resources—often the best person for the job is a parent. We need them working hard, and we need them thinking about their job; not whether their children are safe.

This agreement is not perfect. There is not enough money for the working people who have been most squeezed by rising costs and flat wages. It is not the package we had such high hopes for a few months ago.

But we are giving America's moms and dads an opportunity to get their children into affordable, accessible, competent and safe child care programs.

For millions of working Americans, child care is a crisis they must deal with every single day. I am proud that we are working to help end that crisis. I am proud of our support for working parents and—most important—the children of America.

CHILD CARE PROVISIONS OF BUDGET RECONCILIATION

Mr. PELL. Mr. President, the budget reconciliation package contains provisions on child care which go a long way toward addressing the child care needs of America's families. As an original cosponsor of the Act for Better Child Care Services, in both this Congress and the 100th Congress, and as a conferee on the child care legislation that was approved by the Senate and the House, I am pleased that a compromise has been reached that encompasses the essence of our original legislation.

Our goal in crafting any child care legislation has been to increase the availability, quality, and affordability of child care services. The compromise reached goes a long way toward achieving those objectives. It addresses the need to increase the supply of available child care services and to ensure the quality of that care. The package does not go as far as I would like in the area of quality: in my view, tough, minimum standards for safe, quality care should be mandatory. But the compromise does take steps toward ensuring that all children in day care, in every State, are safe.

The compromise also allows for significant parental choice in child care services. The parental choice provisions contained in the grants section, together with the tax credit provisions, help ensure that families can make the child care choices which best address their particular needs. Providers include community-based care, home care, and relative care. While I would have preferred that the package include a greater role for school-based care, the compromise does acknowledge the important role of schools in providing both before and after-school care.

Mr. President, in my home State of Rhode Island, there are an estimated 13,000 children under 5 who live in poverty. Subsidized child care, for children of any age, is available to only about 1,900 children. Any assistance that these children and their families can get is desperately needed; any assistance that we can provide to them—and to other children and families in need—is long overdue. As proposed, this compromise legislation will bring about $2 million to Rhode Island in fiscal year 1991. For that kind of assistance, we in Rhode Island can surely accept slightly less than we had hoped for.

Mr. President, the compromise contained in the reconciliation bill will not solve the child care needs of Rhode Island or the Nation. But it will mark a strong beginning to the Federal Government's commitment to assisting families, businesses, and local governments address the changing needs of today's working parents, their children, and future generations.

Because of my disapproval of the budget provisions of this legislation, I voted against it. However, I did want to indicate my strong support for the child care provisions and my hope that those provisions will become law.

FISCAL YEAR 1991 RECONCILIATION BILL

Mr. LEAHY. Mr. President, one of the most depressing aspects of this debate is how inevitable it was that we are here today. I did not know anything special when I voted against the Reagan Deficit Creation Act of 1981—simply how to add and subtract. Mostly subtract.

Of the 11 Senators in this body who resisted fierce pressure from the Reagan administration and the American people to approve this plan, 4 have retired. Seven of us remain.

There are even fewer members of the Reagan administration left from those days. Richard Darman, head of the Office of Management and Budget, was around back then, serving as a White House aide.

David Stockman, his predecessor at OMB, reports in his book that on the eve of congressional passage of the tax package in 1981, Richard Darman said to him: "I don't know which is worse, winning now and fixing up the budget mess later, or losing now and facing a political mess immediately."

He won back then. But we are not trying to fix up a budget mess today. We are dealing with an economic disaster.

Ronald Reagan was quite a storyteller. Back when he was running for President in 1980 he used a vivid example about our national debt, then roughly $1 trillion. The best way to illustrate $1 trillion, he used to say, was to imagine a stack of $1,000 bills 67 miles high. Even though most of us had never seen a $1,000 bill, we got the point.

President Reagan promised to do something about the national debt, and he did: He tripled it.

Our national debt now hovers around $3 trillion.

This year we will pay $260 billion in interest alone on our Federal debt. Enough to pay for all domestic discretionary spending programs—the phrase used to describe money for education, roads, bridges, law enforcement, cleaning up lakes, the air and so many other important programs.

By honest accounting methods, our Federal deficit should be well over $300 billion this year alone. Ironically, this year we will have $325 billion less in revenues because we passed the Reagan tax package 10 years ago.

This disaster didn't sneak up on us. The Reagan plan was put in place—the huge tax cuts, the huge Pentagon increases—and the magic of the marketplace was left to work its will.

And the deficits came.

By 1983, our country was staring a $200 billion deficit straight in the eye. We needed a bold plan. All we got was happy talk about growing our way out of our economic woes.

That year I was among 1 of 17 original supporters of the bold budget freeze plan put forth by Senator HOLLINGS of South Carolina. I voted for similar freezes over the next 2 years.

These budget freezes would have caused pain—but it would have been shared pain. The Hollings freeze amendments, while gaining support over the years, also fell victim to the 1984 Presidential election cycle, where

serious, painful deficit reduction efforts had to be put off until after the voters went to the polls.

President Reagan campaigned for reelection in 1984 telling us it was morning in America. This despite $200 billion annual deficits "as far as the eye can see," according to his erstwhile budget director, Mr. Stockman. Former Vice President Mondale was vilified during that campaign for having the courage to suggest that some revenues would have to be raised to close our budget gap.

But huge deficits were not the only economic legacy of the Reagan administration. Gaps between rich Americans and poor and moderate income Americans got worse and worse.

By 1988, the richest 5 percent of American families received 17.2 percent of the total national family income—the highest level since 1952. The poorest 20 percent of American families received only 4.6 percent of national family income—the lowest figure in 36 years.

Homelessness in America grew in the 1980's. And so did the scourge of hunger.

Some Senators tried to do something about this income disparity during the debate over tax simplification in 1986. Senator MITCHELL offered an amendment during the tax reform debate to establish three tax rates of 14 percent, 27 percent, and 35 percent. I saw this amendment as tax relief to middle-income Americans—and a preemptive strike against a tax package that could have asked more of wealthy Americans than it did.

Unfortunately, the Mitchell amendment was defeated 71 to 29.

The 1988 Presidential campaign of then Vice President Bush further put off the day of reckoning with our Federal deficits. His "Read My Lips" slogan made an arresting sound-bite, but it did nothing to help him govern once he was elected. And it once again put off the day to face up to our spiraling debt until earlier this year.

Mr. President, what we have before us today is the product of one of the most frustrating and unseemly exercises in budget brinkmanship in the 16 years I have been here. But the product is something I will grudgingly support.

The budget reconciliation bill before us is better than the original leadership deficit package that the House overwhelmingly rejected 2 weeks ago. The tax on home heating oil is gone. The huge Medicare premium increases have disappeared. And the revenues are more evenly distributed than the regressive tax package contained in the President's original deficit reduction plan.

This package is not without flaws—not by a long shot. The defense figures are too high. The economic assumptions are too rosy. And some of the budget process reforms place too great a harness on important domestic programs.

I would like to take a few minutes to talk about major components of the package before us.

MEDICARE

For the elderly, the final budget reconciliation bill is a major improvement over the original summit plan and the Senate-passed bill. During debate on the budget, I expressed my concern that the increased out-of-pocket Medicare costs in the Senate bill would price Vermont's large low-income elderly and disabled population out of the health care system. For the majority of older Vermonters, a $75 increase in their yearly deductible and a 20 percent charge on the cost of laboratory tests would have been too great a burden. That is why I voted for amendments offered to the Senate bill that would have reduced the burden on seniors.

The bill before us now rejects the summit agreement's harsh and unfair charges to beneficiaries. It does ask seniors to share in the budget reduction effort, but in a much fairer way. There is a $25 increase in the yearly deductible, but there is no requirement that seniors pay any part of their laboratory costs. And for elderly and disabled persons living at or near the poverty line there are some protections against the new Medicare charges.

The negotiators of this bill deserve praise for some policy changes that will protect seniors and save States and the Federal Government money.

A new Medicaid provision requires drug manufacturers to offer prescription drugs to State Medicaid programs at the lowest price they charge any other bulk purchase in the State. This change reclaims valuable Medicaid dollars from drug manufacturers and helps bring the skyrocketing cost of prescription drugs under control.

Earlier in the year I cosponsored legislation offered by Senator DASCHLE to reform an industry that for too long has exploited the fears of senior citizens by selling duplicative and expensive Medicare supplemental insurance, or Medigap policies. I am pleased that these stricter controls on Medigap policies are included in the reconciliation package.

DEFENSE

This is among the most disappointing parts of this package. This reconciliation legislation inflicts pain in almost every sector of our society—except the Pentagon. Sweeping changes have taken place over the last year. The Berlin Wall is down, Germany is reunified and the Warsaw Pact is a defunct military force.

Looking at the defense numbers in the reconciliation bill—one might think Congress had its head in the sand for the past year. Serious budget our didn't reach the doors of the Pentagon.

The budget conferees agreed on defense spending levels that are significantly higher than the reductions called for in the budget resolution proposed by the Senate Budget Committee earlier this year. Defense outlays in fiscal year are $70 billion higher than the historical peacetime average.

On Friday, the Senate gave final approval to the conference reports on the Defense authorization and appropriation bills. I was deeply concerned that Congress failed to kill a single major weapon system. Several programs are bled but none are stopped outright.

Mr. President, the only saving grace about defense spending in this agreement is that the defense figures are only caps and not floors. I supported amendments to the defense spending bills that would cut billions of dollars in programs. I feel strongly that Congress must make deeper cuts in defense during the next session.

AGRICULTURE

As chairman of the Agriculture Committee, my task to meet the deficit reduction targets was among the most difficult I have faced since coming to the Senate. I knew severe cuts in agriculture programs will inflict real pain throughout rural America.

Between 1985 and 1990, $80 billion was spent on agriculture. Under the farm program passed by the Senate, we were able to hold the projected costs to $54 billion over the next 5 years. To make matters worse, our budget reconciliation instructions required by the Agriculture Committee to cut an additional $13.4 billion. This bill along with the 1990 farm bill will limit spending on farm programs to about $40 billion for the next 5 years.

Make no mistake: These are real cuts. Agriculture, during the next 5 years, will spend half of what it spent in the past 5. I know of no other program in the entire Government facing cuts of this size.

These cuts are not numbers on a piece of paper. They will be painful to our farmers, they will hurt. But we made every effort to share the pain fairly. Each commodity will take its fair share of the pain.

I would like to note, Mr. President, that I did vote for the amendment offered by the Senate from North Dakota, [Mr. CONRAD], that would have increased the tax rates of the wealthiest taxpayers while decreasing the levels of cuts that our farmers are being asked to absorb. I was disappointed that this amendment was defeated.

TAXES

The bill we have before us today has come a long way in restoring progressivity in our Tax Code. No longer will

the poor of this country be asked to pay the highest percentage to reduce our deficit—nor will the burden be placed squarely on the middle class.

This package cuts the gas tax back to 5 cents a gallon. The tax on home heating oil is gone. Both of these original provisions would have been particularly tough on rural Vermonters.

The original summit agreement would have increased taxes by 7.6 percent for those families earning less than $10,000. Under the conference plan the tax burden on these families would be cut between 2 and 3 percent. And according to the Joint Committee on Taxation, households with incomes under $50,000 a year would face an average tax increase of 2 percent or less. Eighty-nine percent of the Vermont tax returns filed in 1988 would fall under this category.

I voted for amendments during the Senate debate to incorporate many of the progressive tax provisions from the Democratic House proposal into the final budget agreement. I am pleased to see that the conferees adopted many of them.

By raising the income tax rate to 31 percent, phasing out personal exemptions, limiting deductions for taxpayers earning over $100,000 and increasing the alternative minimum tax, this bill ensures that those with the ability to pay contribute to the deficit reduction package. The tax share of the wealthiest families would be raised by 6.3 percent.

The conference report has produced a package that begins to reverse the tax trend that started in 1981 with the Reagan tax cuts.

Mr. President, in May 1981, I made a speech on the Senate floor against the original Reagan budget plan.

I ask unanimous consent that a copy of my speech be included at the conclusion of my remarks.

That day, I sensed we would have to pay the price for the economic plunge our country embarked on.

Today is the day we start to pay the bills. The process has been ugly. But this surely a step toward fiscal responsibility.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. LEAHY. Mr. President, I will oppose the budget plan before us today because in my judgment, it is not equitable, it is not balanced in its priorities, and it is not economically sound.

A consensus has formed in favor of reduced Government spending, reduced Government regulation, and lower taxes to promote thrift and business investment. It is a consensus shared by the American public, by Congress, and by President Reagan.

This consensus was shaped by a common desire for an improved economy, for lower inflation, new job opportunities and greater economic security. It is held together by a belief that spending cuts and selective tax cuts will improve the economy. It is held together because the American public trusts Congress and trusts the President to make necessary cuts in a just and sensible way.

Mr. President, I must oppose this budget because it breaks this public trust and the consensus that I joined. It violates the rules of equity and fairness. It lacks in vision and planning for the future. It is short on compassion. And worse, it promises, in my judgment, higher inflation, fewer jobs, and less economic security for many Americans.

Earlier this year, I supported the budget reconciliation resolution to cut the budget by some $36 billion this year alone. I favor substantial cuts in Federal spending because I believe a balanced budget is one of the many steps that must be taken to reduce inflation and interest rates.

Unfortunately, the budget before us today proposes huge budget deficits for the next several years—deficits which the Congressional Budget Office estimates may exceed $200 billion by 1984.

What do the money experts think?

Expectations of higher inflation have again pushed the prime lending rate near 20 percent—this despite predictions by the Reagan administration that those rates would soon fall below 10 percent.

In the last 10 days of trading on the New York Stock Exchange, the Dow Jones average of 30 industrials has plummeted 60.61 points.

Mr. President, these developments are not votes of confidence for the Reagan economic plan. A close look at the budget plan before us reveals some troubling facts.

There is strong reason to believe that huge budget deficits will persist throughout the remainder of the President's term in office.

This budget assumes real economic growth of between 4 and 5 percent each year beginning this fall. It assumes inflation of 8.3 percent and falling, and interest rates of 12 percent and falling, also beginning this fall. And it assumes that unemployment will decline to 7.2 percent next year and will continue to fall over the next several years. These optimistic forecasts are greatly at odds with most private economic forecasters. If the economy does not perform the hoped for miracles, the budget deficit could swell by tens of billions of dollars.

Over the next 3 years, this budget proposes $170 billion in increased defense spending—more than the entire fiscal year 1981 defense budget—$176 billion in domestic spending cuts, and tax cuts of $293 billion. Unless the untested "supply-side economics" theory works miracles, budget deficits of nearly $300 billion or $100 billion each year may be the result.

Even if the optimistic economic forecasts and theories bear themselves out fully, there is still reason to believe that this budget will not be balanced in 1984.

On top of the rosy forecasts, this budget relies on savings of $81 billion from "additional cuts not yet proposed, assumed passage of legislation to increase Presidential impoundment powers, assumed 1 percent cuts in waste, fraud, and abuse" and other sleights of hand to bring it into balance.

Mr. President, this budget is just plain fiscally irresponsible. It places commitments to a careless and wasteful defense buildup and tax handouts to the wealthy above the fight against inflation.

The huge budget deficits likely to result are not the only inflationary feature of this plan.

Few economists will argue that the $54 billion Reagan-Roth-Kemp tax cut proposed for next year, written entirely in red ink, will not be inflationary, Coming at a time of already high inflation, it is virtually certain to fan, not dampen, inflation.

This budget overlooks the major role that skyrocketing energy costs and oil import bills continue to play in our present inflation. To cut energy conservation and alternative energy development budgets by roughly two-thirds is pure folly.

Not only do I oppose the economic policies rejected by this resolution, Mr. President, but I believe many of the specific spending cuts it assumes are inequitable and shortsighted.

The combined effect of cuts in housing, highway and EPA sewage construction moneys, regional and community development moneys, and large cuts in Farmers Home, SBA, and HUD lending programs may prove devastating to Vermont's economy and the economies of other rural States and chronic money shortages.

It is false economy to slash assistance for preventive health care and education assistance. Greater costs to society will surely follow.

All of our major nutrition programs—school lunch, food stamps, and the special program for pregnant women, infants, and children (WIC)—will be dramatically reduced if Congress enacts this budget. While I support efforts to cut federal spending, even in the nutrition area, these cuts are pennywise and pound-foolish.

Mr. President, the budget cuts for child nutrition may achieve immediate savings, but the long-term costs for health care and education will far outweigh the short-term benefits. According to Vermont school officials, these nutrition cuts may force many elementary and secondary schools to close down their school lunch program, a program which has been in existence since 1946. If the cuts are not modified, most school lunch programs in rural areas will close in 1992.

A balanced mix of all the domestic energy sources is needed to end the U.S. dependence on foreign oil. The mix must include fossil fuels, solar, hydro, and other renewable energy resources as well as a strong conservation effort. The energy spending proposals reflected in this budget are not balanced. Cuts of roughly two-thirds have been proposed for conservation programs, for solar and renewable energy source programs, and for fossil fuel programs in fiscal year 1982. At the same time, large subsidies for synthetic fuels and a 33-percent increase in funding for nuclear power programs were left in place.

These cuts ignore the realities of today's energy markets, the success of renewable energy programs and the success of conservation efforts in Vermont and elsewhere. Funds for conservation and renewable energy source programs should be restored.

Major reductions are proposed in Federal support for mass transportation in rural and urban areas. These cuts threaten the future of the entire Amtrak passenger rail system, including Vermont's "Montrealer". While it may be possible for Vermont's four rural bus lines in the areas surrounding Rutland, Bethel, Newport, and Bennington to absorb some budget cuts, the Reagan administration proposal which is tied to the cuts could force all four bus lines to end or seriously reduce their services.

Reduced funding for mass transit and arbitrary and urban-biased restrictions on the use of mass transit funds contradict our Nation's need to reduce the consumption of

foreign oil through more efficient transportation services.

There are also areas where I believe further cuts could and should be made, and where proposed spending increases go too far.

We can and should save millions of additional tax dollars by eliminating water projects that are not economically justified. To stop construction of the Tennessee-Tombigbee and Dickey-Lincoln projects would save well over $2.5 billion. Halting these two projects this year would save $200 million, an amount roughly equal to the entire Federal payment to the State of Vermont.

Another area in which to achieve budget savings is the myriad "advisory commissions." They are easy to set up, but are providing considerably more difficult to end. For example, the Franklin Delano Roosevelt Memorial Commission was established in 1955 to create a suitable memorial for FDR. It was set up despite the existing memorial in downtown Washington, and against the wishes of the Roosevelt family. While the commission's $500,000 annual budget may appear small, the total spent to fund over 800 such "advisory commissions" is substantial. The Leahy report in 1976 on this abuse of taxpayers' dollars has resulted in many of them being discontinued, but the job is far from complete.

Finally, we must recognize that America's security is based on a balance which must be struck among effort to address all of our national needs—defense, economics, energy, health, and so on. Indiscriminate defense spending destroys this balance and is precisely the same thing as indiscriminate Government spending in any other area—waste. America cannot afford waste in any program.

To give the Pentagon, or any Federal department, $255 billion without sufficient guidance and accountability is both shortsighted and irresponsible. We must question the need for the full $170,000,000,000 defense spending increase which has been proposed over the next 3 years. We must question where and how each dollar will be spent. Before we commit billions to any new weapon program, we must make certain that there are ample funds for fuel, training, operations, maintenance, and personnel in the Department of Defense.

Mr. President, I commend President Reagan for acting swiftly and effectively in presenting his economic plan, I share his commitment to control further the growth of Government spending, to provide selective tax cuts for business and individuals, and to continue to simplify and reduce the cost of Government regulation.

In the spirit and interest of the board public support which I believe exists for each of these goals, I believe we should reject the budget plan before us today. We should reject it in favor of a plan which promises an end to huge Federal budget deficits. This plan does not.

We should reject it in favor of a budget package which assumes a modest, carefully targeted tax cut which Government can afford. This budget will place us billions and billions more into debt.

Finally, we should reject this plan in the interest of a budget which requires equal sacrifice and offers equal reward to the different regions of the country and to people of differing economic means.

NEW JERSEY MEDICAID RESPITE CARE DEMONSTRATION PROJECT EXTENSION AND MEDICAID CHILDREN'S HEALTH EXPANSIONS

Mr. BRADLEY. Mr. President, I am pleased that the reconciliation bill now before us extends the New Jersey Medicaid respite care demonstration project for another 2 years. This means that $4 million in Federal funds will flow to New Jersey to continue this valuable program for the next 2 years.

The Senate Aging Committee recently held two hearings on the Medicaid respite care demonstration project at my request. I know firsthand about the value of this program for many New Jersey families.

Mr. President, the demonstration project was originally intended for a full 4 years beginning in 1986. Delays in implementation have meant that it will only have provided services for 2 years before the expiration of the funding. A full-scale evaluation of the project is in progress through the State University of New Jersey at Rutgers. The program deserves a full 4 years of operation before meaningful conclusions can be drawn. It is my hope that the program will serve as a blueprint for a national network of caregiver support under the Medicare Program. This bill, therefore, provides an extension for the respite care demonstration project for an additional 2 years.

Mr. President, the stories that I heard from both caregivers and providers of respite services moved me deeply. I am more convinced than ever of the need for supporting the enormous network of loving family caregivers who provide the overwhelming majority of care for disabled Americans in the home and the community. The New Jersey respite care project serves nearly 2,000 families a year. These are families who opt to keep their disabled members at home despite extensive sacrifices. One woman with three children spoke of her resolve to keep her mother with Alzheimer's disease at home with the family. Respite care allows her family to spend two Saturdays a month together in activities that are focused on their children. Attending her sons' baseball game or a family outing are activities that the Wagenblasts cannot take for granted. Respite care brings a semblance of normalcy to their lives and allows them to continue to love and care for their elder member in the way that feels right to them.

Mr. President, I am also pleased that the reconciliation bill contains some of the provisions of the Medicaid Infant Mortality and Children's Health Act of 1990. The reconciliation bill amends the Medicaid Program to require States to provide health care coverage for children up to age 18 from families living at or below 100 percent of the poverty level.

Mr. President, for the past few years we have taken several steps to address a problem that can only be characterized as a national disgrace. This proposal takes us one step further in attacking our failure to protect the lives of children in America.

As we watch the amazing changes that are overtaking the world today, I am more and more convinced that the test of our leadership in the world will be the example we set in providing for the human needs of our own people. Our record on how we treat our children in America is less than exemplary. It is unacceptable that in America today, infant mortality is higher than in all other industrialized nations. More children die in America before the age of five than in East Germany and Singapore. It is also intolerable that our country, which pioneered the development of vaccines, should have a childhood immunization rate among non-white Americans which ranks behind 48 other countries including Albania and Botswana. A country that can put men on the Moon and can dream of sending men to Mars can surely find ways to add ounces to the birthweight of newborns and to provide basic healthcare to its children.

Mr. President, last year Congress provided medical care to poor children under the age of 6 up to 133 percent of the Federal poverty level. This year, with this bill, we will be phasing in, over the next decade, coverage for children from age 7 to 18 up to 100 percent of the Federal poverty level. This will mean that hundreds of thousands of poor children without health coverage—about 40,000 in New Jersey—will gain coverage by Medicaid.

Our children are our future, Mr. President. Our greatness as a nation is fully diminished by our reluctance to provide basic health care to our children. I am pleased that we are taking steps to redress this glaring omission.

CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT OF 1990

Mr. DOLE. Is it the Senator's understanding that for sectarian child care providers which do not fall within the scope of section 658N. (a)(4), section 658N. (a)(1)(B) is intended to control with respect to the ability of a sectarian organization to require that employees adhere to the religious tenets and teachings of that organization?

Mr. DODD. That is correct.

Mr. DOLE. Is it the Senator's understanding of congressional intent under section 658N. (a)(2)(B) and section 658N. (a)(3)(B) that the term "organization" should be interpreted to mean, not only an organization in the same geographic location as the provider, but also any parent organization which owns or operates that provider?

Mr. DODD. The Senator is correct.

Mr. DOLE. Is it the Senator's understanding of congressional intent that inherent in the definition under section 658P. (2), is the intention that the State shall not restrict parental choice by limiting the range of providers from which parents may seek child care using certificates as payment, except as specifically provided for in this act?

Mr. DODD. That is the intent.

VETERANS PROGRAMS

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I rise to comment on title VIII of the conference report on H.R. 5835, the fiscal year 1991 budget reconciliation measure.

Title VIII contains provisions to comply with instructions contained in section 4(c)(10) of House Concurrent Resolution 310, the concurrent resolution on the budget for fiscal year 1991, requiring the Committee on Veterans' Affairs to report changes in laws within the committee's jurisdiction sufficient to reduce outlays for veterans' programs by $620 million in fiscal year 1991 and a total of $3.35 billion during fiscal years 1991-95.

Pursuant to section 4(a) of the budget resolution and action of the committee at an October 12, 1990, meeting, the Committee on Veterans' Affairs later the same day submitted to the Budget Committee legislation recommending the required reductions. Estimated savings from that legislation would have exceeded the 5-year total required savings of $3.35 billion by over $2.7 billion, producing total savings of $6.059 billion in outlays during fiscal years 1991-95.

Mr. President, title VII of the bill contains provisions that would make changes in laws relating to VA compensation and pensions, health care, educational and vocational assistance, home loan guaranties, and burial benefits, and miscellaneous provisions. The Senate and House provisions and conference agreement are spelled out in the joint explanatory statement accompanying the conference report. In brief, these provisions would:

COMPENSATION AND PENSION

First, in section 8001, suspend payment of service-connected disability compensation to an incompetent veteran without dependents whose estate exceeds a value of $25,000 and resume compensation payments when the value of the estate reaches $10,000. Veterans would receive a lump-sum payment of withheld compensation 90 days after being found competent. Section 8001 would expire on September 30, 1992.

Second, in section 8002, eliminate the presumption of permanent and total disability for veterans over age 65 for purposes of pension eligibility and provide a presumption of permanent and total disability for veterans of any age who become unemployable as a result of disability reasonably certain to continue throughout the life of the disabled person. VA regulations currently provide that nonworking veterans aged 55 to 59 are considered permanently and totally disabled if they have disabilities rated 60 percent or more or are 60-64 years old and rated at least 50-percent disabled. The committee, and the conferees on this provision, expect that VA would extend this system of presumptions for veterans age 65 and older, and the CBO savings estimate is based on this expectation.

Third, in section 8003, limit monthly pension payments to $90 for Medicaid-eligible recipients of VA pension who are in nursing homes, other than State veterans homes, that participate in the Medicaid Program. Section 8003 would expire on September 30, 1992.

Fourth, in section 8004, eliminate dependency and indemnity compensation and pension benefits for surviving spouses who have remarried and again become single and for married children who again become single.

Fifth, in section 8005, require that the fiscal year 1991 cost-of-living adjustment for disability compensation and DIC be rounded down to the next lowest dollar, that the COLA not take effect until January 1, 1991, and provide for the delayed December 1990 increase to be repaid with the regular monthly payment for January 1992.

HEALTH-CARE BENEFITS

Sixth, in section 8011, authorize VA to bill third-party insurers for the cost of health care provided in connection with nonservice-connected conditions of veterans who have service-connected disabilities; establish the Medical Care Cost Recovery Fund [MCCRF] to receive collections from billing third-party insurers for certain health-care services and from copayment by veterans for VA-furnished care and medications and to pay the administrative costs of these collection activities, including the costs of 300 full-time equivalent employees [FTE] in addition to those currently engaged in billing and collection efforts; and provide that collections in excess of the administrative costs would be paid from the MCCRF into the Treasury. The authority provided by section 8011 to collect from third-party insurers would expire at the end of fiscal year 1993.

Seventh, in section 8012, require payment of $2 for each 30-day supply of medication dispensed by VA for the care of nonservice-connected conditions of veterans who do not have service-connected disabilities rated 50 percent or more disabling. The medication copayment requirement would expire on September 30, 1991.

Eighth, in section 8013, modify health-care categories and payment requirements by: First, eliminating the distinction between the current B and C categories; and second, requiring all veterans other than category A veterans to make payments of $10 a day for inpatient care—in addition to a payment equal to the Medicare annual deductible for the first 90 days of care in a year, plus half that amount for each subsequent 90 days of care in the year; $5 a day for nursing home care—in addition to a payment for each 90 days of care equal to the Medicare deductible; and $16 per visit for outpatient care—with no cap. The amendments made by section 8013 would expire on September 30, 1991.

EDUCATIONAL AND VOCATIONAL ASSISTANCE

Ninth, in section 8021, eliminate vocational rehabilitation benefits for veterans with disabilities rated 10 percent or less.

HOME LOAN GUARANTEES

Tenth, in section 8031, allow lenders to file guaranty claims for manufactured-home loans in default upon the lender's receipt of the VA appraisal of the resale price of the manufactured home.

Eleventh, in section 8032, increase by 0.625 percent the fees for VA-guaranteed home loans closed before September 30, 1991.

BURIAL BENEFITS AND GRAVEMARKERS

Twelfth, in section 8041, limit the VA plot allowance—$150 paid on behalf of deceased veterans who are not buried in a National Cemetery—to those who are eligible for a burial allowance—generally veterans who were receiving VA pension or disability compensation at the time of their death. The plot allowance would continue to be paid for veterans buried in State veterans cemeteries.

Thirteenth, in section 8042, eliminate the headstone allowance, which is a payment in lieu of a VA-furnished headstone or gravemarker. The payment is based on VA's average wholesale cost for headstones and markers—currently $87—and is paid on behalf of deceased veterans who are not buried in a National Cemetery.

MISCELLANEOUS

Fourteenth, in section 8051, allow use of certain Internal Revenue Service and Social Security Administration data to verify veterans' income for purposes of eligibility for certain VA benefits. Section 8051 would expire on September 30, 1992.

Fifteenth, in section 8052, eliminate compensation for the secondary effects of willful misconduct or the abuse of alcohol or drugs.

Sixteenth, in section 11053, require disclosure of Social Security numbers for applicants for certain VA benefits and require VA to conduct regular matches of Social Security and State data on deaths with certain VA beneficiary data in order to identify erroneous payments being made to or for vet-

erans and other beneficiaries who have died.

DISCUSSION

Mr. President, I am especially pleased that, with one exception, the conference report contains the expiration dates that I had included in the legislation I proposed to the committee for the Senate reconciliation bill, S. 3209. I advocated these so called sunset dates in the committee markup on October 12, 1990, as means of ensuring that the reductions in veterans' programs were not required to exceed unfairly what was required in reconciliation and that the committees could monitor closely some of the provisions presenting the greatest potential for adverse effects on veterans. Without the expiration dates, Congress would have been unable to terminate these cuts without including offsetting savings in veterans' programs. The conference report restores all of the sunset dates I had initially proposed for provisions that will affect veterans directly.

Mr. President, the one provision that will expire later than I had advocated is the provision granting VA expanded authority to collect from third-party insurers for all nonservice-connected health care provided to veterans. It is reasonable to expect that this provision will be extended beyond the September 30, 1993, expiration date. If, for example, a future budget resolution instructs our committee to produce further reconciliation savings or revenues, I would support extension of this provision to comply with such instructions.

There are very few provisions in this package that I would recommend in the absence of reconciliation requirements and the great need to reduce the Federal deficit this year and in coming years. In making these required cuts, however, I, along with others on the Committees on Veterans' Affairs in both bodies, have kept in mind the special debt our Nation owes to veterans and we have done my best to minimize the adverse impact of this measure on veterans and their families.

THE 1991 IRS REVENUE INITIATIVES

Mr. GLENN. Mr. President, the Treasury appropriation bill considered in the Senate just a short time ago funds a series of new revenue initiatives directed toward improving both tax collection and enforcement activities of the Internal Revenue Service [IRS]. In August 1990, the Governmental Affairs Committee heard testimony from IRS Commissioner Goldberg, General Accounting Office representatives, and others concerning the severe problems in tax administration now facing the IRS. Uncollected taxes have grown dramatically in the past decade—expected to be near $100 billion by fiscal year 1992. The increasing age of the accounts, the staff shortages which prevent IRS from collecting many smaller accounts, and the increasing amounts written off due to the expiration of the statute of limitations all demonstrate just how serious a problem confronts IRS.

At the outset I want to make clear that the testimony before the Governmental Affairs Committee has convinced me that we need to act right now to greatly strengthen IRS tax collection activities. A fair and efficient tax administration system is a national asset that we cannot allow to fall into disarray. As a result of my concern about strengthening IRS tax collection activities, I offered an amendment to the fiscal year 1991 Treasury, Postal Appropriations Act to increase the IRS law enforcement account to provide $55 million in additional funding for 1,050 revenue officers. While my amendment was rejected largely on a procedural basis—the reluctance to waive the Budget Act to extend budget authority and outlay limitations—I believe that the attention focused on this issue played an important role in the IRS appropriation increase contained in the present bill. I am gratified that today's bill sets aside these budget limitations that worked against my initial amendment and provides IRS more resources to collect desperately needed additional tax revenues.

The $191 million made available to IRS by this bill will fund over 3,000 additional enforcement and collection personnel. IRS estimates that these additional personnel will generate added revenues of over $500 million in 1991 and about $5.7 billion over 5 years. Of course there will always be disagreements about revenues expected to be generated by additional staffing resources. I understand the Congressional Budget Office has estimated that the 5-year return will be closer to $4 billion than $5 billion. In my view, even if one significantly discounts current IRS revenue estimates, there is no doubt that these employees will pay for themselves in the first year they're employed, and every year thereafter.

The revenue initiatives in this bill are a crucial step in preserving the integrity of this Nation's tax administration system. In recent years uncollected taxes have risen to unacceptable levels while the "tax gap" has skyrocketed in the face of insufficient enforcement efforts. The personnel increases funded in this bill begin the process of restoring collection and enforcement programs to more creditable levels. Over 2,000 staff will be added in the tax collection and the examination programs as well as another 1,000 staff to several monitoring activities. I have no doubt that even more staff will be needed in future years and I am confident that we in the Congress will continue to provide IRS the staff resources necessary to administer a strong and efficient tax system.

In addition to augmenting IRS staff, other steps need to be taken to strengthen IRS tax collection program. In testimony before the Governmental Affairs Committee, Commissioner Goldberg outlined a series of management steps IRS is taking to more effectively collect unpaid taxes. IRS is also embarked on a long-term computer modernization program. This program is absolutely essential to provide the capacity to process the anticipated levels of tax data in future years. Perhaps even more importantly, the promise of this modernization program is its potential to provide data in ways and at the times needed that will greatly increase the productivity of IRS staff. I firmly believe the successful introduction of a modern capable computer system will go a long way toward cutting back the errors and inefficiencies that plague today's system.

Mr. President, our Nation's tax collection system needs help. The Treasury appropriation bill makes a real beginning in making progress in this area.

AMENDMENT TO EXTEND STATUTE OF LIMITATIONS FOR COLLECTION OF BACK TAXES

Mr. GLENN. Mr. President, the reconciliation bill we are considering today extends the statute of limitations for collecting delinquent taxes owed the IRS from 6 years to 10 years. I believe this is an important step in enhancing the IRS enforcement effort, and raising important revenues which everyone agrees are due and owing the Government.

In August 1990, the Governmental Affairs Committee heard testimony from IRS Commissioner Goldberg, representatives from the General Accounting Office and others concerning the severe problems in tax administration now facing IRS. The inventory of delinquent tax cases has grown dramatically in the past decade—expected to be near $100 billion by fiscal year 1992. Moreover, the IRS reports that the amount of delinquent taxes that is no longer available for collection because the 6-year statute of limitations has expired has risen from about $600 million in 1983 to about $2.1 billion in 1989. Senator LIEBERMAN introduced a bill (S. 3165) to extend the statute of limitations for collecting assessed taxes from 6 to 10 years; I was an original cosponsor of that bill. Senator LIEBERMAN and I then successfully offered this legislation to the budget reconciliation bill on the Senate floor.

Extending the statute of limitations will raise additional revenues. In this time of persistent and enormous deficits, we should not fail to exert every effort to collect taxes that are legally owed. I am aware that estimates differ on the extent of additional revenues

that would result—ranging from $250 to $600 million over 5 years. The important point is that no matter what estimate ultimately proves to be most accurate, additional revenue will be collected in any case.

I am convinced that extending the statute of limitations from 6 to 10 years to allow for more time to collect delinquent taxes is fair and a revenue-raiser to boot—that combination makes this amendment a winner all around—for the IRS, the U.S. Treasury, and the law-abiding taxpayers of this Nation. Therefore, I am pleased that the final budget reconciliation measure included Senator LIEBERMAN's and my amendment in this issue.

CONFERENCE BUDGET RECONCILIATION BILL

Mr. DODD. Mr. President, I rise to express my support for the budget reconciliation bill for fiscal year 1991.

The budget reconciliation bill is imperfect—but a major improvement on the budget summit agreement of October 7. The solid deficit reduction it provides, the clarification of Government priorities, and the fairness of burden sharing more than outweigh its flaws.

The reconciliation bill preserves the overall summit agreement on deficit reduction. It is the largest deficit reduction package ever considered by the Congress, including deficit reduction of some $40 billion in fiscal year 1991 and $490 billion over fiscal years 1991 through 1995.

As we all know, for the past month, we have faced a crisis—a crisis in Government, a crisis in the economy, and a crisis in confidence in the institution of government itself.

Mr. President, I note that yesterday, the Treasury Department reported that the Federal budget deficit for the fiscal year that ended September 30, 1990, was $220.4 billion, the second highest ever. Last year's deficit reduction legislation projected that the shortfall would be $99.7 billion. Less than $2 billion of the change was due to additional domestic spending. The rest was due to a weak economy and increased spending on the savings and loan cleanup.

We are now paying the price for the excesses of the 1980's—the so-called supply-side economics championed under the Reagan administration. The crisis we face today stems from two fundamental policy decisions made in the early 1980's at the insistence of the Reagan administration: Huge increases in defense spending and massive tax cuts for the wealthy. The gigantic deficit created by these two decisions is the major reason, although not the only reason, we have been in fiscal crisis for months.

Mr. President, we no longer can nonchalantly pile up huge deficits as we did in the 1980's. These deficits made us into a debtor nation, dependent on paying foreign investors high interest rates to keep Government running. The total national debt from the beginning of our Nation to 1980 was $1 trillion. From 1980 to 1987, it tripled to $3 trillion. Interest on the Nation's debt is now $180 billion—that's $500 million a day. Every day, our Nation must borrow $500 million. We borrow most of it from foreign governments.

Cutting the deficit is the only way to reduce the high cost of borrowing—to consumers and government—without spurring inflation. It is the only way we can afford to meet new national needs without mortgaging our children's futures.

By passing the budget reconciliation bill now before us, we can once and for all begin erasing the Federal deficit that has plagued this country for the past 10 years and begin putting our Nation back on track.

Mr. President, the budget plan isn't perfect but it is a real beginning toward serious deficit reduction. Moreover, it also reflects some of the priorities for this Nation as a budget plan should.

We not only need to have the deficit reduced—we also must invest in the next generation.

In that regard, I would like to highlight a few of the improvements that have occurred since the budget summit agreement. I am particularly delighted that the bill incorporates a two-part approach to Federal assistance to meet the child care needs of millions of families across the Nation—a grant program to States fashioned by the Labor Committee and an expansion of tax credits developed by the Finance Committee.

As my colleagues know, a great deal of my time and energy, and a great deal of deliberation have gone into developing child care legislation. During the 1988 Presidential campaign, George Bush announced his support for child care. Everyone agreed that we needed child care legislation, but we lacked consensus on what that legislation should look like. On June 23, 1989, 15 months ago, the Senate passed S. 5, the ABC bill, after 8 days of heated debate. Subsequently, the House passed its version of child care legislation, and since that time the Senate, the House, and the administration have debated the best way to meet the child care needs of the Nation.

Just recently, with the encouragement of the distinguished majority leader, for the first time, we reached agreement on a new and expanded Federal role in child care. The bipartisan agreement, embodied in this budget package, is a fair and balanced approach that will make quality child care more available and affordable.

I am also pleased that the budget plan includes a substantial improvement in Medicaid coverage, especially for poor children. The Medicaid Program also would be expanded to pay Medicare premiums for more elderly poor and provide home care for them.

Mr. President, I am also pleased about the greater fairness in burden sharing in this bill as compared to earlier budget plans and the budget summit. I had serious reservations about the tax provisions in earlier budget plans because of their regressivity.

By raising the top income tax rate for the approximately 600,000 highest-income Americans from 28 percent to 31 percent, by expanding the earned income tax credit for the poor and by reducing the tax breaks for the rich, this bill significantly increases the progressivity of the package.

Finally, with respect to taxes, I am pleased that the package drops the provision of the summit agreement that called for a 2 cents per gallon tax on home heating oil, a tax that would have had an adverse impact on the citizens of the northeast.

Mr. President, I do have some concerns about the package. One of these concerns relates to the Medicare Program. While I am pleased that the beneficiary reductions are considerably smaller than those in the summit agreement, I am concerned that the package retains the Medicare deductible increase and monthly premium increase.

On balance, Mr. President, the budget plan before us continues to have some flaws but is dramatically improved over the original budget summit. It is a budget plan that I can and will support.

We finally are in the homestretch of this grueling, months-long budget marathon. The finish line is in sight. Let's pass this budget reconciliation bill so that we can stop taxing everyone's patience along with everything else.

Mr. DURENBERGER. Mr. President, nearly 10 years ago, Ronald Reagan stood on the west front of this Capitol and challenged us to reduce Government spending, to reduce taxes, and to reduce the Federal deficit. In laying out that challenge, he asked: "If not us, who? If not now, when?"

Mr. President, each Member of this body must ask himself the same question today as we cast our votes on this final compromise reconciliation package. And I stress the word compromise because that is what this package is. It is not the perfect reconciliation bill. If it were solely up to this Senator, many of the provisions of this bill would be crafted differently or dropped completely. I am sure that every Senator can find fault with many aspects of this package; indeed the timing of this bill, coming as it does when the economy sits on the cusp of recession, is a serious concern for this Senator.

But, Mr. President, this is the best possible compromise that the congressional leadership and the President have agreed to. We, as 100 elected officials, have a responsibility to act in the best interests of the Nation. And that means we should support the President and the congressional leadership, and vote for this package. For if it is not this budget reconciliation package, then what is the other alternative? If we do not have the courage to vote for this package, then we have failed in our responsibility to the American people.

Mr. President, it has been more than 5 months since the President and the bipartisan congressional leadership entered into the budget summit negotiations. For months we have gone back and forth over how much to cut spending, how much to raise taxes and who should bear the largest tax increase.

Unfortunately, as this process has been prolonged, as positions have hardened, nearly all sense of bipartisanship has been lost. Instead, we have fallen into the worst form of partisan bickering with the Republicans being blamed for protecting the rich while the Democrats paint themselves as the defenders of the working family.

Mr. President, when we descend into this type of partisanship, when both parties seek to use the budget crisis to gain a political advantage, there are no winners; but there are losers. The American people are the losers and the institution of representative government is the loser.

Four times in the last month, the Federal Government has been on the brink of a virtual shutdown because Congress and the President could not reach agreement on a budget. On three separate occasions, the Treasury has had to postpone its weekly financing auction. The specter of an across-the-board $105 billion sequester has hung over our heads for months, even though all of us have known that the President would never let a full sequester go into effect.

Is it any wonder that polls continue to show that Congress is held in such low esteem by the American public? After the performance the public has witnessed this year, I am sure we are going to see more efforts to limit the terms of elected officials. If anything, the anti-incumbent mood of the public is likely to grow more intense when the budget dust finally settles and the public gets the time to reflect on the spending addiction that consumes both parties in this Congress.

Mr. President, this Senator wants to vote for a budget package that credibly leads this country to a balanced Federal budget. And I believe the President of the United States honestly wants to end the hemorrhaging of the Federal budget. That's why he was willing to abandon his campaign pledge and open the door to raising taxes.

But I fear that the revenues raised in this package will be consumed by more spending and by more questionable projects. When we face another budget crisis next year, we will all wonder how so many billions in new tax dollars were frittered away.

Mr. President, we don't have to wait until next year to figure out where the money is going. Just take a look at some of the appropriations bills that have been moving through Congress. At a time of budget crisis, the Appropriations Committees raised Human Services by 14 percent—an increase of nearly $23 billion. Mr. President, that's more than one-half of the tax increase that is included in the reconciliation bill.

And, Mr. President, at a time when we are asking the American people to make some real sacrifices, legislators on both sides of the aisle have slipped in what can only be described as "pork" for their districts and their states. The Housing appropriations bills earmarks money for 61 projects including $2 million for renovation of the New Freedom Theater in Philadelphia, $769,000 for lighting on a bridge in Bay City, MI, and nearly $1 million for a performing art and cultural center in North Miami, FL. In addition, we found a half a million dollars to renovate the birthplace of band leader Lawrence Welk, and hundreds of millions of dollars for Federal buildings and highway projects throughout the country.

Mr. President, it is the urge to spend, not the reluctance to tax that has gotten us into this budget mess. Unless we can gain control over the appropriations process, we are forever doomed to budget crisis after budget crisis until the point is reached where the American people will rightfully decide to vote us all out of office.

Mr. President, I am sure this is not the last speech we are going to hear about disciplining spending, and so I want to take a few moments to discuss the reconciliation bill that we have in front of us. Much has been made about the fairness issue, about who should pay the lion's share of the tax increase in this package. A number of provisions trouble me in this bill, and I briefly want to discuss them.

This bill uncaps the Medicare hospital insurance [HI] payroll tax cap that currently limits wages subject to the HI tax to the level set for Social Security. I think that removing the $51,300 limit is a fundamental tax policy and health policy mistake.

In the first place, increasing wages subject to the HI tax will not help reduce the Federal deficit. It only serves to mask the size of the deficit, it does not reduce the deficit.

The hospital insurance trust fund has a current surplus of approximately $15.9 billion. The hospital insurance trust fund has a current surplus of approximately $15.9 billion. The hospital insurance trust fund does not contribute to the deficit. Quite the contrary, along with the Social Security and the highway and airport trust funds, the hospital insurance trust fund is helping to mask the true size of the deficit. Raising the HI wage cap merely perpetuates what some might call a fraud on the American people as to the precise contours and size of the Federal budget deficit.

Moreover, uncapping the HI payroll tax eliminates the nexus between the insurance premium value associated with the tax and the ultimate benefit that will be derived from the tax. The HI tax is really a prepayment premium on future health insurance. There is a nexus between the amount that an employee pays into the system and the ultimate value of the benefit that he or she will derive from that benefit. But lifting the cap to $125,000 eliminates completely the insurance premium concept associated with the tax.

Mr. President, I would also note that the HI Trust Fund is financed by a tax—1.45 percent—on employees and 1.45 percent employers. The tax is levied only on wages. The tax is not levied on unearned income. It is not levied on dividends, it is not levied on interest, it is not levied on capital gains. The HI tax is not levied on fringe benefits like tax free health insurance provided by big companies or pension contributions from the big corporations of America. No, the HI tax is strictly a tax on wage income. And because most small businesses are unable to offer generous tax-free fringe benefit packages, it will affect them far more than the large corporations that employ hundreds of people in their benefits departments.

Mr. President, because the HI tax is strictly a tax on wages, it means that nearly all of the current beneficiaries of the program, the nonworking elderly, are not asked to pay a single cent more to maintain the integrity of the HI trust fund. Only working people. Not those retired people who receive handsome dividend checks in the mail every month, but working people. In our current fixation to raise taxes on the rich, we have crafted a bill that focuses primarily on upper income wages—earned income—while refusing to ask upper income retirees to pay a fairer share of the costs of an entitlement program whose costs continue to defy gravity.

Mr. President, in 1989, 136 million working Americans contributed $68.4 billion in payroll taxes to the HI trust fund. This financed $60.8 billion in hospital services for 33 million eligible benficiaries. Why should we ask working people to pay even more into the HI trust fund when the beneficiaries

refuse to ante up their share of the overall Medicare Program?

When the budget summit concluded, the leadership proposed a package which, for the first time in more than a decade, asked Medicare beneficiaries to share a slightly larger portion of the part B voluntary Medicare Program. The leadership did not seek extraordinarily burdensome changes in financing the program; it sought only modest changes. It sought to increase from 25 to 30 percent the beneficiary share of financing the part B program. It sought to increase from $75 to $150 the part B deductible.

Unfortunately, even these modest cost-sharing proposals have been discarded in this package. Quite simply, Congress finds it far easier to raise taxes on working people than to have the courage to ask retired beneficiaries to contribute modestly to the health insurance program that provides them such basic protections.

Mr. President, much has been said about how this bill begins to restore fairness to the income tax because it imposes higher taxes on the wealthy. I do not object to the idea of asking the wealthy to pay a larger share of the cost of government; indeed I never accepted the idea that the tax system would be more equitable if it contained only two tax brackets.

However, I am troubled by the fact that we are beginning to move in the direction of raising marginal tax rates. It should be perfectly clear to anyone who went through the experience of the 1986 tax reform that high marginal rates do not guarantee that the upper income citizens will pay more taxes. Quite the contrary, the higher the rates, the greater the likelihood that wealthy citizens will find tax shelters that reduce their taxes.

In 1977, when the top tax rate on unearned income was 70 percent, and when the top tax rate on earned income was 50 percent, individuals in the top 5 percent of income paid 36.9 percent of all taxes. Individuals in the top 1 percent of income paid 19.5 percent of taxes. According to the Congressional Budget Office, in 1988, when the top rate was reduced to 28 percent, individuals in the top 5 percent paid 40.9 percent of all income taxes. And individuals in the top 1 percent of income paid 23.8 percent.

Mr. President, it is not higher tax rates that guarantee more revenues for the government. What the 1986 tax law changes show is that if you broaden the base of income subject to tax, and keep rates low, more tax revenue will flow into the Treasury.

Unfortunately, this legislation does not expand on the base broadening efforts that we engaged in throughout the 1980's. In fact, this bill does almost nothing to reduce the amount of tax "spending" that occurs every year as a result of the more than 100 special tax loss provisions that still clutter the Tax Code.

According to the Joint Committee on Taxation, these tax expenditures in 1991 will total nearly $320 billion and are projected to rise to over $400 billion in 1995. While that is far more than the $183 billion in tax expenditures we incurred in 1980, the base broadening that we achieved in 1986 significantly reversed the tax expenditure trend. A joint tax estimate prepared in 1985 had projected that we would be spending more than $600 billion through the Tax Code by 1991.

So, Mr. President, I would suggest that rather than raising rates, rather than creating special rules for upper income categories, we ought to be looking at better ways to broaden the base of taxable income. Next year should provide us with a better opportunity to consider these issues.

Mr. President, while there is much in this bill I do not like, there are, in fact, many positive features of this bill that deserve mention and if I needed to justify this vote, I can strongly advocate support. The child care provisions that we have labored over for more than a year move this country in the direction of what I would call, child care by choice. We have expanded the earned income tax credit for low income working families and made the dependent care tax credit refundable. These two provisons will provide substantial financial relief to the millions of two-income families that are struggling to raise families on modest incomes.

In addition, this legislation includes a provision authored by the distinguished chairman of the Finance Committee, Senator BENTSEN, that provides a modest tax credit to offset a small part of the cost of health insurance for children. This is a very modest step, and I hope that this tax credit will expand the availability and affordability of health insurance. But all of us know that if we are ever going to see the day when there is universal access to health insurance in America, it will require far more financial resources than we have so far been willing to spend.

This legislation also extends important provisions in the tax code that encourage the construction and rehabilitation of low-income housing, and make it easier for young families to purchase their first home. And it extends the 25-percent deduction for health insurance for the self-employed. Mr. President, while I am pleased that the conferees included the 25 percent health insurance deduction, I am committed to raising the deduction to 100 percent. There just is no reason to perpetuate the health insurance inequity that exists between self-employed small-businessmen and women, and people who work for large corporations.

Mr. President, I want to especially thank Senator BENTSEN for including a 4 year extension of the Superfund Hazardous Waste Cleanup Program in the bill. Since June, I have been working with members of the Environment and Public Works Committee to get this program extended before next year's deadline. If the Superfund Program were not extended, EPA would not be able to enter into any long-term cleanup contracts. The agency's budgeting and planning for future activities would be severely hampered. Cleanups would be delayed; contracts would be threatened, and work in the pipeline would be stopped. The conferees did the right thing in extending this program.

Mr. President, earlier today, we enacted an historic clean air bill. One part of that bill requires oil companies to reformulate gasoline products as part of an effort to reduce pollution from automobiles. And I believe that will mean we are going to be using more ethanol blends in our cars. This reconciliation bill extends the current ethanol tax exemption and it also provides a new tax credit that will encourage more farmers to build ethanol plants. Those are important steps to improving America's energy security and the quality of our environment.

Mr. President, I have spent most of my Senate career dedicated to improving the delivery of health care in this country. This reconciliation bill makes many health care changes that I am proud to have worked on along with several of my colleagues. I want to list just a few of these important changes.

For the first time, we have imposed tough rules on insurers who sell Medigap policies. Because of this new law there should be an end to the horror stories I have heard about elderly people who were pressurized into buying seven or eight duplicative Medigap policies. These rules simplify the number of benefit packages that can be marketed by insurers and protect beneficiaries by limiting medical underwriting and preexisting condition rules.

In addition, Medigap policies must contain guaranteed renewability clauses and must be priced in such a way that a far higher amount of benefits are returned to beneficiaries than is currently the case.

This reconciliation package requires the Secretary of Health and Human Services to submit to Congress by January 1992, a proposal for reforming payments to health maintenance organizations under Medicare. This report should go a long way toward addressing the serious rate setting problems under risk-based, capitation contracts that have discouraged HMO's from participating in Medicare and denied beneficiaries access to important managed care benefits. Other enrollment

and coverage changes should further improve participation in the future.

Mr. President, when Congress repealed the catastrophic health law last year, it also terminated the mammography screening benefit that I had authored in the Finance Committee. I am especially pleased that this reconciliation bill restores this important medical tool for the early detection of breast cancer to the benefits offered through Medicare.

This package also provides greater equity to rural hospitals throughout this country. Over the next 5 years, the current reimbursement differential that exists between hospitals in rural and urban communities will finally be eliminated. This will help assure the financial viability of rural hospitals, allowing them to continue providing needed care in areas that are all too often medically underserved. This bill also provides some payment equity for primary care physicians. Because of this legislation, the current floor on prevailing charge levels for primary care services will rise from 50 to 60 percent.

Mr. President, this bill also makes some important improvements in the Medicaid Program. The Federal and State governments will share in the costs of paying to extend Medicaid coverage to children living in families with incomes equal to or below the poverty level. Payments to hospitals that care for infants and children under age 6 who are very ill and have long lengths of stay will also be improved. In addition, the bill assures that the Medicaid Program will receive discounts on prescription drug products in the same way that other large purchasers receive discounts.

This legislation also tries to improve financial protection for low-income Medicare beneficiaries. The current law effective dates for rules permitting Medicaid to pick-up the tab for low-income Medicare beneficiaries' out-of-pocket expenses have been accelerated. Effective almost immediately, beneficiaries whose income is at or below 100 percent of the Federal poverty level can take advantage of this protection.

Finally, Mr. President, I want to note that a highly successful and nationally recognized managed care service demonstration project for Medicaid families conducted by the State of Minnesota will be permitted to continue operating for 5 more years.

Mr. President it is not just the work of the Finance Committee that should be mentioned here. The Labor Committee made some very important changes to the student loan program which should help to maintain the solvency of the program. Schools with default rates in excess of 35 percent have been eliminated from the program. I would have preferred that the threshold would be lower than 35 percent, but this is a step toward ensuring the solvency of the program.

Mr. President, there is much more that can be said about this bill. But I will stop here. I would prefer that next year we approach the job of policymaking in a different fashion. We should not be making fundamental programmatic changes only when we write budget reconciliation bills. This process does not give all Members of the Congress sufficient time to reflect and provide important input into policy changes. I would hope that next year the committees of Congress, especially the Finance Committee, will begin to consider major structural program changes outside the contours of reconciliation.

In particular, I want to see us restructure the Medicare Program to provide for elderly and disabled Americans what they really need and can afford.

I hope in the next Congress to lead an effort to reform health insurance to make it affordable to all. I believe we can and should begin to make a national commitment to long-term care; and finally to work with the 50 Governors and legislature to restructure Medicare to benefit all low-income Americans.

Mr. President, I know this is a difficult bill for all Senators to vote for. But we were not elected solely to make easy choices. The right choice is to vote for this bill.

Mr. PRYOR. Mr. President, today we passed an unprecedented 5-year budget reconciliation bill that will reduce the deficit by almost $500 billion. We have labored for months to develop a package that could be supported by the majority of the Congress and be signed into law by the President.

Although we all have reservations about this legislation, we would have had reservations about any package that achieved this much in savings. It is hard for me to conceive of any other proposal that could have received the necessary support to become law.

We could not have reached this point without the leadership and unmatched dedication of our Senate leadership. In particular, countless hours and sleepless nights were dedicated to this monumental effort by the majority leader, Senator MITCHELL, the minority leader, Senator DOLE, the chairman of the Appropriations Committee and our President pro tempore—Senator BYRD, the chairman and ranking member of the Budget Committee—Senators SASSER and DOMENICI, and the chairman and ranking member of the Finance Committee—Senators BENTSEN and PACKWOOD.

Regardless of how anyone feels about the final package, all of these Members and their staffs have earned the admiration and respect of our Nation. I not only admire and respect these individuals, I also was happy to join them in making modest contributions to this deficit reduction effort and was honored to stand with them in support of this year's budget reconciliation legislation.

I would like to take this opportunity to note the contributions of my own staff to this year's reconciliation bill. I have the privilege of serving as chairman of the Special Committee on Aging, and as chairman of the Governmental Affairs Subcommittee on Federal Services. The staffs of these committees, as well as my personal office, have worked on, and successfully incorporated, a number of significant provisions that were included in the deficit reduction measure.

From my Governmental Affairs Subcommittee staff, my thanks to Ed Gleiman, Denise Boerum, Bobby Franklin, Rick Goodman, Kirk Robertson, and Kim Weaver on a myriad of issues related to Post Office and other Federal services issues.

From my Aging Committee staff, I would especially like to note the work of Jonathan Adelstein, Holly Bode, John Coster, Bonnie Hogue, Chris Jennings, and Portia Mittelman on income security, Medicaid, Medicare, and prescription drug issues. I also would like to thank David Schulke for his investigative efforts that served as the foundation of the prescription drug legislation included in this package.

And last, but certainly not least, I would like to thank the staff of my personal office. In particular, Don Harrell, Vince Ancell, Desten Broach, Miles Goggans, John Monahan, and Ed Quick have also made numerous legislative contributions in the areas of small business, budget, agriculture, nutrition, and trade. Special thanks go to Jeff Trinca for his mastery of the intricacies and mysteries of the Tax Code.

While I mentioned staff who have worked directly on the reconciliation measure, all my staff have made equally important contributions to the operations of my office. I am fortunate to have such dedicated aides who are committed to serving the people of Arkansas and this Nation. They have made it much easier for me to be responsive to the needs of my constituents during these final weeks of the 101st Congress. My sincere thanks to each and every one of them.

Mr. BOND. Mr. President, after many long months it appears that we will finally have a child-care bill. I was extremely pleased to see that the reconciliation conferees agreed to retain language from both the House and Senate-passed bills authorizing before and after school child care programs in public schools.

School-based care is an idea whose time has come. Last year during debate over the act for better child care, I spent a great deal of time trying to convince my colleagues of the importance of including school-based care in the bill. You will remember that the original ABC bill did not contain a specific authorization for school-based care. I worked hard to see this included and was pleased that my amendments authorizing before and after school programs were accepted by the bill's sponsors and the full Senate.

I'd like to take a moment to review both the need for and the cost-effectiveness of before and after school child care programs. While my colleagues have heard me say this several times before, I believe it bears repeating again.

While estimates vary from 10 percent to over 30 percent, we know that a significant number of all children aged 5 to 14 are unsupervised either before or after school. Raising a generation of children who care for themselves will certainly have its consequences.

Studies have shown that unsupervised children are far more likely to get into trouble than their counterparts. Last fall a California study showed that latch-key children are twice as likely to use alcohol and other drugs as their peers who are supervised. In a recent national survey, public school teachers rated the widespread practice of leaving children on their own after school as the biggest cause of youngsters' difficulties in the classroom. In addition, Scholastic magazine invited students aged 5 to 14 to write in about something they feared. More children wrote essays about their fears of being home alone than any other topic. Mr. President, I would submit that we cannot afford to ignore the needs of this huge group of children any longer.

There is a cost-effective way to meet the needs of these children. The solution is beginning to be implemented on the local level, by educators and parents concerned about the time when the child is not in the care of either party. About 15 percent of the Nation's local districts now offer their own child care service, or allow community groups to use their buildings. Surely schools can be utilized more fully than they are currently, only 7 to 8 hours a days, and cost-effectively, in meeting the needs of children whose parents work. And I believe a little Federal money invested in programs of this type could go a long way toward alleviating the shortage of school-age care, at little or no long-term cost to the Federal Government.

Mr. President, I am pleased to say that Missouri has taken a lead role in this area, through the Progressive 21st Century Schools Program that is now underway in Independence, and through a number of programs scattered throughout the State that have come into being with the aid of very small start-up grants through the department of elementary and secondary education, 32 of Missouri's 546 districts now offer some sort of extended-day program for school-age children. Another 151 districts have requested information or technical assistance for school-age child care. To be eligible for funds, a school district must be anticipating establishing, expanding, or improving an extended-day program.

In 3 years, just $200,000 was spent to establish programs in 65 schools, with a capacity of 3,000 students. The total investment works out to about $68 per child. And, because schools have the necessary infrastructure, and do not have to pay for lights, heating, liability insurance, et cetera, the school can operate in the black at very little cost to parents.

In Independence, MO's "top of the line" 21st Century School Program, the expenditure of any parent—with one school-age child—is $25 per week. Independence is not a wealthy area, and poorer families are assisted through a sliding fee scale. Even the poorest districts can develop programs like this and with some ongoing assistance, as envisioned in the final bill, can operate in a cost-effective manner.

Mr. President, there has been a great deal of talk, during debate over the child-care bills and during the conference, about the need for and value of before and after school care. Some even argued that there was really very little interest in latch-key care. I would submit that while there are relatively few groups lobbying in behalf of school-age children compared with those advocating for the needs of preschoolers, outside of Washington, DC this issue could not be more relevant, or important. I believe it would have been a grave mistake to leave school-age care out of the final child-care package and commend those conferees in both the House and Senate who insisted on its inclusion.

Mr. KERREY. Mr. President, I rise in support of the deficit reduction package.

I know the summiteers are tired; we are all tired. I miss my children. After looking at the outline of the budget deal, I have concluded it satisfies my most minimal requirements to vote yes. It has crawled weakly across a weather-beaten, sagging finish line and has collapsed.

The best that can be said is that the package limped home. Witnesses have not seen the majesty of a grand performance. We do not walk away inspired by an extraordinary human accomplishment; inspired to believe in our own innate abilities.

It is a rather like the work of a sausage factory before the days of meat inspectors. We who have made the sausage have produced something which is edible, but only by those whose hunger for deficit reduction enables us to overcome our knowledge of what it is we are about to eat.

The memory of the smell of deals, conferences and private arrangements is fresh in all our minds. We know our work has not been carefully inspected by the people themselves. We know they will discover the droppings of lobbyists in their food. We know this work has been adulterated. It is fit for human consumption, but not by much.

It is fit for consumption because we have made painful progress with this package. We have reduced the increase in the deficit. We will borrow $40 billion less in this fiscal year than would have been required without this agreement. We will borrow $500 billion less over the next 5 years if the assumption for interest rates and economic growth come to pass. We have made real spending reductions in defense, agriculture, Medicare, and interest.

However, I believe strongly that we have missed an opportunity to make more substantial reductions. I wish the President had waited a little longer before agreeing to raise taxes. Instead, with a few notable exceptions, our spending went on as usual. Like all of us the President was afraid of losing votes; regrettably our collective lack of courage will cost us a lot more than elections.

We did have a very important achievement. We have shifted the argument from the question of the need for a tax increase to the more important question of who should pay them. It does matter how the burden of our taxes is distributed and there is little doubt left about the need to relieve the burden on the 92 percent of American taxpayers whose incomes are less than $50,000. Working Americans have taken too big a hit in the 1980's with higher payroll taxes and this reconciliation agreement takes that fact into account.

However, unless American productivity improves this entire tax fairness argument will be for naught. This package does little to address the need for our economy to regain a strength which enables it to grow without the debt driven features of the 1980's. We still have not addressed the pressing need to produce our way to higher standards of living.

This, of course, would require us to tackle issues more difficult and controversial than whose programs to cut or whose taxes to raise. This would require us to reform our health care system so that its rising costs do not simultaneously drag down our competitive condition or our humanitarian ideals. It would require us to follow through on the Family Support Act of

1988 to assist Americans as they struggle to improve their technical job skills. It would require us to boldly restructure American public education and above all to answer the needs of our children whose voices are simply not loud enough to influence our spending decisions.

It would require us to lay out a 20 year infrastructure strategy for our roads, bridges, water, and sewer systems. It would force us to put money behind our wordy recognition that each of these are productive investments which yield great economic benefits.

It would require us to admit that in the information age it is appalling for the United States of America to have lost the opportunities presented to us by the technologies available now and in the near future. With the end of the cold war we should be applying communication technology in American homes and businesses in the same exciting manner we have been doing for military uses.

This, of course, is only a partial list. Housing—where the intersection of productivity and humanitarian need is best illustrated—must be included. NASA is crying out for structural reform. Small science, that fountain of American youth and innovation, is running dry.

This is not the only misgiving I have with this package. The national debt will increase from $3.4 trillion to $5 trillion. The borrowing for the next fiscal year alone will exceed $300 billion. I hope we do not sit quietly if the President tells us next January—as he has the past 2 years—that our deficit is under control. I hope we have not gone through the agony of the past 5 months only to deceive ourselves again.

I know the leadership of this Senate has worked tirelessly to produce this package. We all know why it was difficult: It is a lot more fun to spend more money and reduce taxes rather than the other way around. The time has come for us to pay the bills; we should regard this action as a first installment.

The United States is still a great and mighty country. The ingredients of our greatness are equal parts of faith, hope, love, courage, and an unabashedly bold belief that we can accomplish the impossible. At the heart of my disappointment with this deficit reduction effort is my desire as one American to participate in something larger, grander, and more imaginative.

I'm tired, Mr. President, but it is not just a little fatigue. I am tired of participating in mediocre efforts. I'm tired of producing barely edible food when I know we can produce the best.

Mr. BIDEN. Mr. President, it was a tough call but in the final analysis I could not give my approval to this conference report. Although it is better than previous deficit reduction plans, and contains some worthwhile legislative proposals that I favor, I believe that it is still unfair in the way it distributes the burden of $137 billion in new taxes. Quite frankly, the very wealthy should have been asked to pay a lot more.

I opposed the summit agreement because it would have protected the wealthiest in our society, again at the expense of the low- and middle-income taxpayers. In debate on the Senate reconciliation bill, I voted four times to make the wealthy pick up a bigger share of the deficit reduction burden. Unfortunately, these efforts all failed.

The conference report at least moved in the right direction. The Medicare cuts are smaller, the gas tax increase is lower, and the wealthiest taxpayers will at least be asked to pay the same marginal tax rate as those who earn less.

Other worthy and important proposals include: New child care assistance, health care for poor children, and tax incentives for first-time home mortgages.

But the tax provisions are still insufficiently fair to earn my support for the entire package. I hope and expect that these provisions will be revisited in the 102d Congress.

Mr. STEVENS. Mr. President, just a few moments ago in our leader's office, I asked the question of Mr. Darman what would happen if this bill did not pass. He told me that the President would have to start immediately imposing automatic cuts based upon a $105 billion sequester of our appropriations bills as soon as they are signed. That would mean there would be more than $50 billion cut from Defense immediately, and more than $50 billion assessed to nondefense programs in the other appropriations bills.

What that means is, with more than 200,000 troops overseas right now, although those troops would not be affected, the support for those troops would be severely weakened. This defense budget cannot take across-the-board cuts of more than 40 percent in many of our defense accounts with the Middle East crisis going on.

Second, the balance of the sequester would come from the nondefense discretionary funds. It would mean that the war on drugs would suffer a serious setback; immigration and customs would be reduced—customs by about one-half. We would have across-the-board cuts on environmental protection. Fisheries programs, so vital to my State, would be seriously cut back. Park Service facilities would have to close once again. A budget sequester would bring massive furloughs to our Goverment employees.

The people who would bear the greatest pain would be those who really depend upon Federal services. Many of those in the business world depend on Federal services for Customs services. Mr. President, a sequester would be worse than anyone can contemplate in terms of the continuity of our system of government and our free enterprise system.

From this Senator's point of view, I wish we had had a chance to vote on the budget summit agreement. I think it was more fair. I think our leaders had worked hard for a long period of time and it deserved our approval. I commend them now for having gone back to the table and worked again and brought us a second package.

I find the same people who did not accept the first one are now trying to turn over the second one. It is my hope that will not happen. Our leaders deserve our support. They have worked hard. I believe the country would be better off if this bill is passed, notwithstanding the fact, as I said, it is worse than the first one and it is really not all that acceptable to anybody. But in my judgment, we have to pass this bill right now to avoid that sequester.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, this is the toughest vote we will cast, and I have been watching those who have been participating and give them nothing but my admiration.

Only in Washington, DC, can you find a place where when you are talking about Medicare cuts, what you are talking about is that they were going up 11½ percent if we did not do anything, and we decided we would only let them go up 10 percent. And so by cutting back an 11½ percent increase to a 10 percent increase, we have cut.

Boy, I tell you, that is tough to get across. I think the national media really fails the test. If the function of a free press is anything, it is education, not just firing up the troops with little bits of babble about that thing, and taking pictures of people who are not even on Medicare, and not even getting across to them that 25 percent of the premium is paid by those people, and Joe Six-Pack is paying the other 75 percent, the little guy they always talk about.

So that is part of it. Nobody is touching Social Security. What a cruel hoax, what a terrible thing, to confuse America's senior citizens by telling them that is in here with Social Security. Nothing is in here with Social Security. And they are going to get a cost-of-living allowance on January 1 of 5.4 percent, and it will cost the Government $21 billion, while they are there trying to figure out what to do between $3 billion and $5 billion. That is where we are.

But if you had to do it all over as real statesmen, what would you do? It

is easy to criticize. But if you had to convene the most responsible people in this legislature, who would you get? You would get Senator GEORGE MITCHELL; you would get Senator BOB DOLE, our respected leaders; you would get the dean of legislators, ROBERT BYRD; you get JIM SASSER, who has turned into a real player; you would get BOB PACKWOOD, a bright and energetic person; you would get LLOYD BENTSEN; you would get the indomitable PETE DOMENICI.

That is who you would get, and that is who we did have. If you run through that list, these are the people who did all the tough negotiating. If there is a better package possible, I would love to see it. I surely would love to see it. Who would produce it? Who else could produce it? This package is here because it is not the best of all worlds, but it is the best of all possible political worlds at this point.

So let us stop talking the talk, and finally walk the walk and do what we know we have to do in a responsible way and let the people of America finally see their Government function instead of the left telling us one thing and the right telling us another, and then those of us who are in the middle having to plow the good ground.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senator from New Mexico [Mr. DOMENICI], for up to 4 minutes.

Mr. DOMENICI. Mr. President, this ordeal is just about over, and I am very hopeful that the divisiveness that has come with it is about over. We are going to vote, and hopefully it is going to pass. I hope that those who oppose this package—and they do so because they hold strong views—will leave and go home, go through these elections, and return next year, once again committed to do what is right for this country.

Mr. President, there has been a lot said about specifics. I am not going to talk about specifics. If this budget package is adopted, the deficit of the United States will be reduced substantially. That is not hot air; $490 billion will be taken off the deficit in the next 5 years.

There are those who say, "How?" I will tell you how. The discretionary accounts of this Government but for this package would have grown about 3½ percent a year, real growth. They now will grow at 2 percent. Now, in a budget this big, that is a pretty good reduction. Normally it goes up all the time. Now it is coming down from 3.5 percent a year. It will be growing at 2 percent a year.

Is it balanced? We have heard all kinds of remarks about cutting the wrong things or leaving the wrong things out. Let me just summarize. The discretionary accounts of our Government will be reduced by $184 billion over the next 5 years. That is, 37 percent of this package comes out of discretionary spending, and they are capped and they will be enforced.

You heard the appropriations chairman, who made this deal, agree that the caps would be enforced, and we who enforce it say they will be.

The entitlements, there has been much discussion about did we do enough? Did we do too little? Twenty percent of this package comes from those accounts—$99 billion.

Once you make the cuts, you are finished; the cuts are done. Revenues will constitute 29.8 percent of this package—$147 billion.

Frankly for some that may not balance but if you look at the Government of the United States and where we are today, you can balance 37 percent out of discretionary, 20 out of mandatory and entitlements, and 30 percent out on the revenue side, you have a pretty good balanced package.

We should do it. We should pass it. If the deficits are harmful, we should vote for this package. On the other hand, if deficits are good and growing deficits are healthy for our children, and our future, we should vote against this package. It appears to me very simple. If you want a chance to grow and prosper, if you want a chance for more jobs and more opportunities, get the deficit down.

There may be other things you have to do. But start with the first thing first.

I regret that everyone is not in accord on this package. I repeat, I hope the divisiveness leaves the scene, not the fact that we should disagree. That has to always be there. But we need not have any acrimony. We have done the best we can. The President has. The package is a good one. We ought to vote it in.

The PRESIDING OFFICER. The distinguished Republican leader is recognized for 7 minutes.

Mr. DOLE. Mr. President, I understand at that time all time will have expired.

The PRESIDING OFFICER. The Senator is correct.

INTRODUCTION

Mr. DOLE. Mr. President, the budget process has been a long and difficult road this year. It began on January 29, when the President submitted his budget, but soon bogged down in partisan bickering and phony number games. By May, it was clear to everyone that Congress was going nowhere fast and the cold air of a recession was breathing down our backs. Congress needed leadership and it was up to President Bush to provide it.

On May 6, the President summoned the leaders of Congress to the White House and asked that they join him in a bipartisan summit to solve the budget mess once and for all. Well, it took us another 5 long months, but Congress and the President were finally able to agree on a 5-year package of deficit cuts totaling almost $500 billion.

TOO MUCH OF THE SAVINGS IS FROM TAXES

Mr. President, this package is not the deficit reduction package any individual negotiator, including President Bush, would have written. In my opinion, too much of the package, almost one-third, comes from taxes. There is too little real spending reform.

Nevertheless, the strong commitment of the negotiators to the spirit of tax reform: Low tax rates and the curtailment of deductions and other loopholes for the wealthy, ultimately transformed the House tax increase bill into a bill which actually cuts income tax rates for 4½ million Americans while raising rates for only the wealthiest 600,000.

By flattening the so-called bubble, we have lowered the marginal tax rate paid by families earning between $75,000 and $200,000 in income, while raising the top rate paid by wealthier taxpayers from 28 to 31 percent.

In addition, the bill places a floor under the itemized deductions of the top 3 to 4 percent of American taxpayers in lieu of further increasing tax rates which would have made those deductions that much more valuable.

Finally, so-called sin taxes, excise taxes on alcohol and cigarettes are increased, and gasoline taxes are raised to promote conservation and energy security. We also included offsetting incentives to small oil and gas producers and those committed to innovative technologies.

Thus, those tax increases in the bill which are not borne by the wealthiest taxpayers have been directed at socially beneficial goals.

ANTI-FAMILY BIAS

Mr. President, I understand that some have called the reconciliation conference agreement anti-family because the conferees have decided to continue the phase out of the personal exemptions for upper income taxpayers which was begun in 1986.

The premise of tax reform was that a fairer and economically more efficient tax system could be achieved by dramatically lowering tax rates while repealing deductions and other tax benefits for upper income taxpayers. We have heard a lot about the so-called bubble—which phased out the benefit of the 15 percent rate bracket and personal exemptions for families with 1990 incomes in excess of $78,450.

The new rate structure adopted in conference repeals the bubble. All that the conferees have done is to restore the personal exemption phase out, but for families with incomes in excess of $150,000—the top 1 percent of all taxpayers. This benefit is not entirely lost until family income reaches $275,000.

The personal exemptions were designed to adjust the tax rate structure to take into account the needs of larger families whose ability to pay taxes is less than that of a couple without children earning the same amount.

This adjustment, a deduction of approximately $2,000 per person, is intended to offset the additional costs incurred to support an additional child or dependent. However, the conferees have decided, as the Congress decided in 1986, that families earning in excess of $275,000 do not need an additional $2,000 deduction to afford to raise their children accordingly, the reconciliation conference report reduces this deduction by 2 percent, or approximately $40, for each $2,500 of income over $150,000. This is not antifamily, it is pro tax reform. And I urge my colleagues to believe the facts, not the rhetoric.

MEDICARE

Many of the elderly have panicked after hearing reports that we are slashing Medicare. This is completely untrue. There will be no reduction in care. We are simply asking that those who participate in the program pay an increased share of the costs. Under this budget agreement, two relatively minor changes would take place in 1991: First, the part B deductible would increase from $75 to $100 a year—a $25 increase, and second, the part B premium would continue to represent 25 percent of program costs. Seniors will continue to receive a taxpayer subsidy of 75 percent on their part B premium. Not a bad deal in my book.

Of course, there are many seniors who will not be able to afford this modest increase. They should not worry, however, because Medicaid will continue to pick up the cost of both their deductible and their premium. In fact, there is expanded Medicaid coverage for the low-income elderly contained in this deal.

On the provider side, while the cuts are deep, there are also some real improvements. We are finally going to see a phase out of the urban rural differential so that rural hospitals will be more adequately reimbursed.

CHILD CARE

One of the truly bright spots in the bill are the child care provisions. After months of debate, we have finally reached consensus on both the grant and tax credit portions of a child care bill.

The end result of our efforts, is to put money and decisions regarding child care in the hands of parents. The changes in the earned income tax credit, and the supplemental infant credit are targeted to those with low incomes and young children. The grant position gives the funds with very few strings attached so the moneys can be used for a variety of programs and providers. Most importantly any child care services must be provided through a delivery mechanism that includes an unrestricted certificate option.

Mr. President, the compromise is a good one.

AGRICULTURE

This package also contains painful cuts for our Nation's farmers. They, more than anyone else, have contributed their fair share to the package. During the next 5 years farm program spending will be reduced by 25 percent, or approximately $14 billion.

For many years, I have stressed that farmers have more to lose from rising interest rates and runaway inflation than any other industry. Many politicians in Washington pawn themselves off as the farmers friend by clamoring for increased spending. But to see how friendly these short-sighted policies are, all you have to do is to remember the early 1980's when irresponsible fiscal policy left America's farmland dotted with foreclosure signs. Farmers deserve a farm program which is not based on short-term political gain, but preserves their longer term interests through economic stability. We in Congress must wake up and realize that it is not worth selling out the future of the family farm, just for the easy vote.

CONCLUSION

The politicians who are griping the loudest about this budget plan, were the quietest ones in the room when it was time to put budget reduction options on the table. If they had their way would they have frozen cost-of-living adjustments for security and military retirees? We did not. Would they have taxed Social Security benefits? We did not. Would they have dropped the earned income tax credit for the working poor? We actually increased it by $13 billion.

This Nation, and its people, are at a critical moment in our history. Without action, the deficit will soar to almost $300 billion—the highest level ever. Interest payments on our $3 trillion debt now equal $175 billion a year; that is almost double the amount of the first budget I voted for when I came to Congress in 1961.

Does anyone really think that this Nation should just ignore a $300 billion deficit? Do we just stand around and watch interest rates rise toward double digits as America's national debt spirals out of control? This is the choice that Congress now faces; vote for this deficit reconciliation conference agreement, which truly pleases no one, or vote for nothing, which will be a disaster for everyone.

We are either Americans who share equally in the future, or we are nothing more than an amalgam of interest groups fighting among ourselves for short-term gain. The price of our short-sightedness will be paid for, not by us, but by our children and grandchildren. If we do not make the tough votes in the next 2 weeks, the young people of America can expect to face a short-changed future of stunted economic growth and limited opportunity. That is not an option I care to take.

Mr. President, we are about to bring to an end a very long and tortured process many of us have been through starting in May and then again in June. Since August 27 we have had sort of the emergency concept of trying to put a budget together. Finally, we have it done.

It is not the package we had on October 4, which was shut down in the other body to a large part because some of the President's own party were not prepared to make hard choices. Now we have a package that is not quite as good. We have had to make concessions to those who delivered the votes.

I would say to those who are opposed to any package, if you are going to oppose any package, you are not going to have much input. If one side has 60 votes, we have 20 votes. The way it works generally is the side with 60 votes will have more to say about the final package.

So I come here today saying we do not have the package we had at the end of the summer. We still have a good package. We do not have the savings we had in the first package, which was thrown out with the water on October 4 in the other body. But all in all, we have a package that I think most people would say Congress would never do that in 100 years. We have not done it in 200 years.

This is a biggest single deficit reduction package in history. It is not perfect. Those who want to vote no, can find 20, 30, 40 reasons. Unfortunately, we are backed up against an election. That costs some votes. Then we have party elections November 13. That may cost more votes.

But, I want to pay tribute first of all to President Bush, because without his walking the plank, so to speak, we would not be here today. Without his pledge to help us and support us we would not be here today.

The bipartisanship we have had—and we have had it from day one in the U.S. Senate—we may not produce 50 percent of the votes today, I regret to say that to the majority leader. There is still a chance, but I doubt it. We will be awful close.

But I want to point out to some who have been talking about this bill has too much taxes, nobody likes taxes. The last time I checked at home, I said, "Do you like your taxes raised?" Not a single person raised his hand.

But I am reminded of the Time magazine poll, where 84 percent support the gulf crisis, and say we are willing to make the sacrifice to help in the

gulf crisis. The next question was, "Would you support a gas tax?" Seventy-three percent said no. That is America.

We want leadership, we want everything, we do not want to pay for it. So you have to pay a penalty for leadership.

I believe the American people have been waiting for this for a long time. They have almost given up on the U.S. Congress. Today we have a chance to redeem ourselves.

In a bipartisan way we can tell the American people, yes, it took a long time; $490 billion is a lot of money. But I say to those who look at the tax side only, keep in mind there are lot of people who want to cut defense $240 billion. We did not do that.

A lot of people would not do anything on the spending side. We did quite a bit in agriculture, in the health care field, but mostly providers, hospitals and physicians, very little on beneficiaries, even though my friend from Wyoming said we pay 75 percent of the premiums for some millionaires in Medicare. We should not do that.

But, those who are making notes and keeping books, keep in mind 33 percent of the taxes expire in 5 years. About 35 percent of the taxes in this package expire in 5 years; 20 to 25 percent of the balance on excise taxes, taxes that people support on tobacco, on hard liquor, wine. On gas it is down to a nickel.

I want to commend the distinguished Senator from Idaho, whose amendment I think brought that down, saved about $20 billion to people in Idaho and all across America. He is to be commended for it. In fact, I want to compliment him more, if he will vote for the bill. [Laughter.]

But he did a good job. Between 3 and 4 million families are going to get a tax cut in this bill. Those who are in the upper tax brackets who are going to pay a lot more taxes.

I think everybody agreed if you asked the American people do you think rich people ought to pay more taxes, 99 percent would say yes; the other 1 percent would be in doubt. That is not a very rough road to hoe either.

But in this bill, through the so-called Pease plan, and the so-called PEP plan, the personal exemption phaseout, which I thank Senator PACKWOOD and the members of his staff for, and it is good policy, we have it now. It has been the law. Only we raised it.

We start to phaseout higher income. I have had people come and say, you are going to phaseout personal exemption. Yes, we have been doing it since 1986, when you get above $50,000 Now we are going to raise it over $100,000 before we start the phaseout.

I would say to my friends on this side, we also took care of the so-called Rosty package which ripped off the working men and women in America by indexing for 1 year. I am looking at the father of indexing, Senator ARMSTRONG of Colorado. That was over the objection, as you know, of the Reagan administration. They would have taken $36 billion out of the pockets of the working people. Only 1 percent of that $36 billion would have come from people making more than $200,000, and we stopped it dead in the U.S. Senate. We do not want it. We want indexing. We do not want to pick the pockets of the poor. That is the Rostenkowski package. Let him do that.

So all in all, this is not a bad little package. I do want to thank my friend from Oregon, Senator PACKWOOD, my friend from New Mexico, Senator DOMENICI, certainly my colleagues in the Democratic side—I would ask I might use 3 minutes out of my leader time.

The PRESIDING OFFICER. The Senator has that right. The Senator is recognized for an additional 3 minutes.

Mr. DOLE. The distinguished majority leader, the chairman of the Finance Committee, the chairman of the Budget Committee, and others on the other side. I also want to thank the Secretary of the Treasury.

When the President's Chief of Staff, John Sununu, the Office of Management and Budget Director, Dick Darman, and Secretary Brady—referred to by some as "The three wise men," they are wise men and they took a lot of heat in this process because they were there to present the point of view of the President of the United States, and did a good job.

Sometimes we did not like everything they suggested. But in the final analysis, they were there to help mold the package.

I can tell you they were still here at 3 o'clock this morning, in my office; on the phone with the President at 2 a.m. this morning to make certain that he was being kept informed, that he fully understood—the four of us and others—that this was sort of how it was going to end up.

So I hope my colleagues on this side would, even though they may have made up their minds, to take one more look, one more look. I really believe the American people are willing to take a little hit. Members of Congress are going to take a hit too in this package, as the majority leader can tell you, a pretty good hit.

But I believe that American people understand that the economy demands that we do something, even though it is easier to do nothing. This is just the start. Do not get any ideas that we have solved the deficit crisis with a $488 billion or $489 billion deficit reduction package. We have just started.

I believe we are setting a precedent that might be followed, maybe not, with the summit. Maybe when we see the American people respond, as we finally accomplish this mission, I think those who stood up and made the tough votes are going to be able to go home and say, I did it. I did not want to, but I did it. I was concerned about your children, and I was concerned about your grandchildren. I want to leave some kind of a legacy of leadership other than, well, I passed it on to somebody else, or we delayed it. But let the next Senate decide it, or wait 10 years and let other Senators decide it. We have waited too long.

I recall working closely with the Presiding Officer when he was Governor of the State of Virginia, because we agreed that we had to deal with the deficit. It had not gotten any smaller. It has gotten bigger. We could not find a bipartisan majority. We have it now.

I would say to all of my colleagues on both sides that we have had some differences. We have had some pretty tough moments in our caucus on the Republican side, and I assume they have had a difference or two on the other side. I believe that when we finally vote on this package, we can move on to something else where the great majority on each side can agree with one another.

So, Mr. President, I conclude by thanking the President of the United States and the Members of this body who are going to vote for the package, and even those who are going to oppose it, because this is a step in the right direction. We ought to make certain that we take it.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I ask unanimous consent that I be permitted to use my leader time at this time.

The PRESIDING OFFICER. Without objection, it is so ordered. The majority leader is recognized.

Mr. MITCHELL. Mr. President, Members of the Senate, we confront a question which transcends the details of the budget bill before us. There are questions that go to the heart of our system of Government. Can the American Government govern? Can Congress act?

In a representative democracy, can elected officials ask any sacrifice of the President to secure the future? This has been a difficult and demanding experience for all concerned, every Member of this body, every Member of the House, the President and his representatives and associates, and for the American people.

What we have gone through has been described in negative and critical terms across this country for several weeks. Much of the criticism has been justified. Some of it, perhaps not.

But the reality is that whatever the events of the past months, we now come to a critical point, and we face a painful choice. As the distinguished Republican leader noted so accurately, nobody likes to pay taxes. As a result, in a legislative body, in a representative democracy, nobody likes to vote to raise taxes. It is equally true that nobody likes to see cuts in popular spending programs. And as a result, in a representative legislative body, nobody likes to vote to cut popular spending programs, But we all know that the reality we confront is that a budget deficit can be closed by one of or both of two ways. We must either raise revenues, reduce spending, or do both.

This measure does both. Necessarily, in a body of 100 different individuals, representing divergent economic, political, social, cultural interests, the result is not what any one of us would prefer. When you combine that with the 435 Members of the House, and the President's role, there is much to criticize.

But I believe that, on balance, in the mysterious and sometimes unfathomable ways in which democracies function, we produced a reasonably fair and responsible result that deserves the support of every Senator. I know it will not receive the support of every Senator, but I hope it does receive the support of a sufficient majority to make a clear statement to the people not only in this country, but abroad, that the American Government can govern, that Congress can act, and that at least on occasion, we are capable of summoning the courage and will to ask for some part of sacrifice to secure the Nation's future.

Each of us knows that the deficit cannot be permitted to grow as it has over the past decade. Each of us know that the increasing debt and the interest rates that hobble and will ultimately cripple our economy. Each of us know that the only way that interest rates are going to come down over a sustained period of time is if the Federal budget deficit is controlled at least to some extent.

This is a step, an important step, a major step, in that direction. It is essential that this legislation be enacted, much as each of us dislike some or many of its specific provisions.

We do not have the luxury of saying that we will only vote for legislation with respect to which we are in 100-percent agreement. Our Nation does not have that luxury and, most important, those Americans who will live in the next century, our children and their children, do not permit us that luxury. This is the best product that a democratic process, untidy and imprecise as it often is, is capable of producing in this Congress, in this year. Therefore, we must act, and we must act now. We must act in a way that secures the future for our economy and our children.

A "no" vote is an indulgence. It is a continuation of what we have seen for a decade, in which we have permitted, all of us, elected officials, House and Senate, Democrat and Republican, executive and legislative, and the American people, permitted this rising debt to form like a great boulder that is going to roll down the hill and crush the American economy, if we do not stop it now. So I urge my colleagues to join with us in making this the most significant deficit reduction package ever presented in this Congress as reality.

I want to thank all concerned with making this possible, most of whom are present here: The distinguished Republican leader; the ranking member of the Budget Committee, the Senator from New Mexico; the ranking member from the Finance Committee, the Senator from Oregon; as well as the chairman of those committees, Senator SASSER, Senator BENTSEN, and, of course, our distinguished colleague, the chairman of the Senate Appropriations Committee, Senator BYRD.

When you get a group of good people with good judgment and a commitment to the public good who are unanimous in supporting a package, that is entitled to some weight in determining how you will vote. In this case, the combined leadership does support this package. I hope very much that a large majority of other Senators will as well.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All leader time having been yielded back and all the time on the reconciliation package having expired, the question is on agreeing to the conference report of H.R. 5835, the Budget Reconciliation Act for fiscal year 1991.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

I further announce that if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 45, as follows:

[Rollcall Vote No. 326 Leg.]

YEAS—54

Adams	Bumpers	Dole
Akaka	Burdick	Domenici
Bentsen	Byrd	Durenberger
Bingaman	Chafee	Ford
Bond	Cochran	Fowler
Boren	Cranston	Glenn
Boschwitz	Danforth	Gore
Breaux	Daschle	Graham
Bryan	Dodd	Heinz
Inouye	Mikulski	Rudman
Jeffords	Mitchell	Sarbanes
Kassebaum	Moynihan	Sasser
Kennedy	Nunn	Simpson
Kerrey	Packwood	Specter
Kohl	Pryor	Stevens
Leahy	Reid	Thurmond
Lugar	Robb	Warner
Metzenbaum	Rockefeller	Wirth

NAYS—45

Armstrong	Grassley	McCain
Baucus	Harkin	McClure
Biden	Hatch	McConnell
Bradley	Heflin	Murkowski
Burns	Helms	Nickles
Coats	Hollings	Pell
Cohen	Humphrey	Pressler
Conrad	Johnston	Riegle
D'Amato	Kasten	Roth
DeConcini	Kerry	Sanford
Dixon	Lautenberg	Shelby
Exon	Levin	Simon
Garn	Lieberman	Symms
Gorton	Lott	Wallop
Gramm	Mack	Wilson

NOT VOTING—1

Hatfield

So the conference report was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Applause in the visitor's galleries.)

The PRESIDING OFFICER. The Senate will be in order. The gallery is reminded that no expressions of support or disapproval are authorized.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Louisiana has the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana has the floor. The Senator from Michigan will be recognized next.

The Senator from Louisiana [Mr. JOHNSTON] is recognized.

DARYL OWEN

Mr. JOHNSTON. Mr. President, as we near the end of our business in the 101st Congress I wish to take a moment to say a special word of thanks and farewell to the staff director of my committee, Daryl Owen, who will be leaving his post at the end of this year.

I do so with a considerable sadness leavened by excitement for Daryl as he leaves Government service—only temporarily, we all hope—to lend his remarkable talents to the private sector.

Daryl began his remarkable service on my staff as a summer intern 12 years ago. Since that time he has served as my legislative assistant, as my administrative assistant, and, for the past 4 years, as staff director of the Committee on Energy and Natural Resources.

One of the great blessings of service in the Senate is the opportunity to work with some of this country's very best young men and women who spend part of their careers as staff members. They bring or develop great gifts, and the country is much the better for their commitment and the extraordinarily long days that they give to the job.

As they move on we find replacements and usually fill the void. I say usually, because it is hard for me to imagine filling the void left by Daryl Owen's departure. I cannot imagine any member of this body having a more indispensable aide than Daryl.

He has either stood at my side or in my stead performing an extraordinary range and number of duties over the years. It is well known in this body that the staff of the Energy Committee is a superbly professional and committed group of men and women. As much as I would like to take full credit, the fact is that much of the credit should go to Daryl not only for having helped to assemble that staff, but also because he has infused them with a great spirit and a sense of purpose. You have only to ask any member of the committee or their own staff and I dare say you will get the same view.

We will all miss him, his legislative skills, his great common sense, his fairness, and his unfailing wit and good humor. I will miss him for all of those reasons and more. I know that all of the many members of this body who have come to admire Daryl join me in wishing him the very best and in the hope and expectation that the country will someday have the good fortune of seeing Daryl once again in public service.

The PRESIDING OFFICER. Who seeks recognition?

The Chair recognizes the Senator from Rhode Island [Mr. CHAFEE].

DEPARTING SENATORS

Mr. CHAFEE. Mr. President, this is obviously going to be the last day of the session, and three of the Members on this side will be leaving. Indeed, a fourth one, we hope, will not return.

First, I want to say about the three who are leaving, we are going to miss them: Senator JIM MCCLURE, Senator BILL ARMSTRONG, and Senator GORDON HUMPHREY. They have all served here at least 12 years, and JIM MCCLURE for longer than that. Senators MCCLURE and ARMSTRONG served in the House, as well. They have served with extreme diligence and faithfulness, ability, and accomplishment, in this body. So we will miss each and every one of them.

The fourth Senator whom we hope will not return is the distinguished Senator from California, who is running for another office. I hope he succeeds, and therefore that is the basis for my wish that he will not be with us next year.

If he is with us, we are delighted to have him. But we are even more delighted to see him go on to other different heights. Not necessarily higher; different heights.

So, to all of them who there is a good chance may not be back here next year, we bid them farewell and Godspeed, and wish them happiness for all their undertakings in the future.

The PRESIDING OFFICER (Mr. ROCKEFELLER). Who seeks recognition?

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination: Calendar No. 1073, Dennis W. Shedd to be U.S. District Judge for the District of South Carolina.

I further ask unanimous consent that the nominee be confirmed; that any statements appear in the RECORD as if read; that the motion to reconsider be laid upon the table; that the President be immediately notified of the Senate's action; and the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination, considered and confirmed is as follows:

THE JUDICIARY

Dennis W. Shedd, of South Carolina, to be U.S. District Judge for the District of South Carolina.

STATEMENT ON THE NOMINATION OF DENNIS W. SHEDD

Mr. THURMOND. Mr. President, I rise today to voice my strong support for Mr. Dennis W. Shedd, President Bush's nominee to be a U.S. district judge for the District of South Carolina. Mr. Shedd is no stranger to my colleagues on the Judiciary Committee and many Members of the Senate as he served on my staff from 1978 until 1988. During that time, he served as chief counsel and staff director while I was the chairman of the Judiciary Committee. He also served as the minority chief counsel and staff director after I became the ranking member.

Mr. Shedd is a native of Orangeburg, SC, a graduate of Wofford College, the University of South Carolina School of Law, and Georgetown University. During his undergraduate studies he was a member of Phi Beta Kappa and a National Merit Scholar, as well as several other honorary organizations. In law school, Mr. Shedd was a member of the South Carolina Law Review, the Order of the Wig and Robe, president of Phi Delta Phi, and a dean's scholar. He continued his legal education at Georgetown University where he earned an LL.M degree in 1980.

After law school, Mr. Shedd joined my staff where he served as my administrative assistant. He later served as counsel to me as President pro tempore. As I previously stated, Mr. Shedd served on the Judiciary Committee as a top staffer. He served on my staff for almost 10 years before leaving Washington and returning to South Carolina to enter into the private practices of law.

Since 1988, Mr. Shedd has been of counsel with the law firm of Bethea, Jordan & Griffin. He is presently a sole practitioner in Columbia, SC, where he also serves as an adjunct professor of law with the University of South Carolina.

Mr. President, I have had the opportunity of personally knowing Mr. Shedd since 1978. Simply said, he is an outstanding young man. He possesses the integrity, ability, and temperament to be an excellent Federal district judge. It was with considerable pride that I recommended Mr. Shedd to President Bush for this very important position, and it is with an equal amount of pride that I urge my colleagues in the Senate to support his confirmation today.

Mr. SARBANES. Will the Senator yield for a moment?

Mr. BIDEN. Yes.

PENDING TREATIES

Mr. SARBANES. Mr. President, I just wanted to bring to the attention of the Senate, since the distinguished Senator went to the executive calendar, that we have pending on that calendar two treaties reported out of the Foreign Relations Committee; an investment treaty with Panama and a treaty with Poland concerning business and economic relations in Poland between the United States and Poland.

I understand they are being held by some Members of this body. I simply want to underscore the importance of those treaties and particularly, with respect to the treaty with Poland, to point out here we have a country that

has returned to democracy, is trying to develop a free enterprise market economy. This treaty was negotiated with them in an effort to encourage business and economic relations between the United States and Poland. I just very much hope that before we adjourn—this is not directed to the Senator who is at the moment managing the floor because I know he is very strongly in support of these treaties, and it is, in fact, in part for that reason that I bring the point up at this time—but I hope that we can move those treaties through. I thank the Chair.

Mr. BIDEN. Mr. President, I share the point of view of the Senator from Maryland with regard to both treaties. I will continue to do my best to see who is holding them up and if they can be freed. It is a serious mistake for us to adjourn without agreeing to those treaties.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

JUDICIAL IMPROVEMENT ACT

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 768, S. 2648, a bill to provide for civil justice expense and delay reduction plans, authorize additional judicial positions for the courts of appeals and district courts of the United States, and for other purposes.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2648) to amend title 28, United States Code, to provide for civil justice expense and delay reduction plans, authorize additional judicial positions for the courts of appeals and district courts of the United States, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which has been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause, and inserting in lieu thereof the following:

That this Act may be cited as the "Judicial Improvements Act of 1990".

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

The Congress finds that:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.
"471. Requirement for a district court civil justice expense and delay reduction plan.
"472. Development and implementation of a civil justice expense and delay reduction plan.
"473. Content of civil justice expense and delay reduction plans.
"474. Review of district court action.
"475. Periodic district court assessment.
"476. Enhancement of judicial accountability through information dissemination.
"477. Model civil justice expense and delay reduction plan.
"478. Advisory groups.
"479. Information on litigation management and cost and delay reduction.
"480. Training programs.
"481. Automated case information.
"482. Definitions.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources; and

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(a) A civil justice expense and delay reduction plan developed and implemented

under this chapter shall include provisions applying the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months of the filing of the complaint, unless a judicial officer certifies that the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting deadlines for the filing of motions and target dates for the deciding of motions;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) establishes deadlines for filing motions and target dates for deciding motions;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider adopting the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial accountability through information dissemination

"(a) To enhance the accountability of each judicial officer in a district court, the Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years of filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice and expense delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) In no event shall any member of the advisory group serve longer than four years.

"(d) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(e) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 479. Information on litigation management and cost and delay reduction

"(a) Within four years after the date of the enactment of this chapter, the Judicial Con-

ference of the United States Courts shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title and the litigation management and cost and delay reduction demonstration programs that the Judicial Conference shall conduct under this title.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Within three years after the date of the enactment of this title, each United States district court shall implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than six months and no later than twelve months after the date of the enactment of this title, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 105(a).

(3) Within eighteen months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such districts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof:

"23. Civil justice expense and delay reduction plans ..... 471".

SEC. 104. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the four-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than March 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1990 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1990 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1990 to carry out the provisions of section 104.

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

(2) 4 additional circuit judges for the fourth circuit court of appeals;

(3) 1 additional circuit judge for the fifth circuit court of appeals;

(4) 1 additional circuit judge for the sixth circuit court of appeals;

(5) 1 additional circuit judge for the eighth circuit court of appeals; and

(6) 2 additional circuit judges for the tenth circuit court of appeals.

(b) TABLES.—In order that the table contained in section 44(a) of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

"Circuits	Number of Judges
District of Columbia	12
First	6
Second	13
Third	14
Fourth	15
Fifth	17
Sixth	16
Seventh	11
Eighth	11

"Circuits	Number of Judges
Ninth	28
Tenth	12
Eleventh	12
Federal	12.".

SEC. 203. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the western district of Arkansas;

(2) 2 additional district judges for the northern district of California;

(3) 5 additional district judges for the central district of California;

(4) 1 additional district judge for the southern district of California;

(5) 2 additional district judges for the district of Connecticut;

(6) 2 additional district judges for the middle district of Florida;

(7) 1 additional district judge for the northern district of Florida;

(8) 1 additional district judge for the southern district of Florida;

(9) 1 additional district judge for the middle district of Georgia;

(10) 1 additional district judge for the northern district of Illinois;

(11) 1 additional district judge for the southern district of Iowa;

(12) 1 additional district judge for the western district of Louisiana;

(13) 1 additional district judge for the district of Maine;

(14) 1 additional district judge for the district of Massachusetts;

(15) 1 additional district judge for the southern district of Mississippi;

(16) 1 additional district judge for the eastern district of Missouri;

(17) 1 additional district judge for the district of New Hampshire;

(18) 3 additional district judges for the district of New Jersey;

(19) 1 additional district judge for the district of New Mexico;

(20) 1 additional district judge for the southern district of New York;

(21) 1 additional district judge for the eastern district of New York;

(22) 1 additional district judge for the middle district of North Carolina;

(23) 1 additional district judge for the northern district of Oklahoma;

(24) 1 additional district judge for the western district of Oklahoma;

(25) 1 additional district judge for the district of Oregon;

(26) 3 additional district judges for the eastern district of Pennsylvania;

(27) 1 additional district judge for the middle district of Pennsylvania;

(28) 1 additional district judge for the district of South Carolina;

(29) 1 additional district judge for the eastern district of Tennessee;

(30) 1 additional district judge for the western district of Tennessee;

(31) 1 additional district judge for the northern district of Texas;

(32) 3 additional district judges for the southern district of Texas;

(33) 1 additional district judge for the western district of Texas;

(34) 1 additional district judge for the district of Utah;

(35) 1 additional district judge for the eastern district of Washington;

(36) 1 additional district judge for the northern district of West Virginia;

(37) 1 additional district judge for the southern district of West Virginia; and

(38) 1 additional district judge for the district of Wyoming.

(b) EXISTING JUDGESHIPS.—(1) The existing district judgeships for the western district of Arkansas, the northern district of Illinois, the northern district of Indiana, the district of Massachusetts, the western district of New York, the eastern district of North Carolina, the northern district of Ohio, and the western district of Washington authorized by section 202(b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353, 98 Stat. 347-348) shall, as of the effective date of this title, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(2)(A) The existing two district judgeships for the eastern and western districts of Arkansas (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be district judgeships for the eastern district of Arkansas only, and the incumbents of such judgeships shall hold the offices under section 133 of title 28, United States Code, as amended by this title.

(B) The existing district judgeship for the northern and southern districts of Iowa (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be a district judgeship for the northern district of Iowa only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(C) The existing district judgeship for the northern, eastern, and western districts of Oklahoma (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) and the occupant of which has his official duty station at Oklahoma City on the date of enactment of this title, shall be a district judgeship for the western district of Oklahoma only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the northern district of Alabama;

(2) 1 additional district judge for the eastern district of California;

(3) 1 additional district judge for the district of Hawaii;

(4) 1 additional district judge for the central district of Illinois;

(5) 1 additional district judge for the southern district of Illinois;

(6) 1 additional district judge for the district of Kansas;

(7) 1 additional district judge for the western district of Michigan;

(8) 1 additional district judge for the eastern district of Missouri;

(9) 1 additional district judge for the district of Nebraska;

(10) 1 additional district judge for the northern district of New York;

(11) 1 additional district judge for the northern district of Ohio;

(12) 1 additional district judge for the eastern district of Pennsylvania;

(13) 1 additional district judge for the eastern district of Texas; and

(14) 1 additional district judge for the eastern district of Virginia.

The first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring five years or more after the effective date of this title, shall not be filled.

(d) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsections (a) and (b) of this section, such table is amended to read as follows:

"DISTRICTS	JUDGES
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	8
Arkansas:	
Eastern	5
Western	3
California:	
Northern	14
Eastern	6
Central	27
Southern	8
Colorado	7
Connecticut	8
Delaware	4
District of Columbia	15
Florida:	
Northern	4
Middle	11
Southern	16
Georgia:	
Northern	11
Middle	4
Southern	3
Hawaii	3
Idaho	2
Illinois:	
Northern	22
Central	3
Southern	3
Indiana:	
Northern	5
Southern	5
Iowa:	
Northern	2
Southern	3
Kansas	5
Kentucky:	
Eastern	4
Western	4
Eastern and Western	1
Louisiana:	
Eastern	13
Middle	2
Western	7
Maine	3
Maryland	10
Massachusetts	13
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	
Northern	3
Southern	6
Missouri:	
Eastern	6
Western	5
Eastern and Western	2
Montana	3
Nebraska	3
Nevada	4
New Hampshire	3
New Jersey	17
New Mexico	5
New York:	
Northern	4
Southern	28

Eastern	13
Western	4
North Carolina:	
Eastern	4
Middle	4
Western	3
North Dakota	2
Ohio:	
Northern	11
Southern	7
Oklahoma:	
Northern	3
Eastern	1
Western	6
Northern, Eastern, and Western	1
Oregon	6
Pennsylvania:	
Eastern	22
Middle	6
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	9
South Dakota	3
Tennessee:	
Eastern	5
Middle	3
Western	5
Texas:	
Northern	11
Southern	16
Eastern	6
Western	8
Utah	5
Vermont	2
Virginia:	
Eastern	9
Western	4
Washington:	
Eastern	4
Western	7
West Virginia:	
Northern	3
Southern	5
Wisconsin:	
Eastern	4
Western	2
Wyoming	3.".

SEC. 204. VIRGIN ISLANDS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, one additional judge for the District Court of the Virgin Islands, who shall hold office for a term of 10 years and until a successor is chosen and qualified, unless sooner removed by the President for cause.

(b) AMENDMENT TO ORGANIC ACT.—In order to reflect the change in the total number of permanent judgeships authorized as a result of subsection (a) of this section, section 24(a) of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1614(a)) is amended by striking "two" and inserting "three".

SEC. 205. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this title.

SEC. 206. EFFECTIVE DATE.

This title shall take effect on the date of enactment of this title.

AMENDMENT NO. 3204

(Purpose: To amend title 28, United States Code, to provide for civil justice expense and delay reduction plans, authorize additional judicial positions for the courts of appeals and district courts of the United States, provide for the implementation of certain recommendations of the Federal Courts Study Committee, modify judicial discipline and removal procedures, and for other purposes)

Mr. BIDEN. Mr. President, on behalf of myself and Senator THURMOND, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN], for himself and Mr. THURMOND, proposes an amendment numbered 3204.

Mr. BIDEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. KENNEDY. Mr. President, artists in America, as in every other country and civilization, have been the recorders and preservers of the national spirit. The creative arts are an expression of the character of the country; they mirror its accomplishments, warn of its failings, and anticipate its future. As Katherine Anne Porter wrote in 1940:

The arts live continuously. They outlive governments and creeds and societies, even the very civilizations that produce them. . . . They are what we find again when the ruins are cleared away.

The bill which the Senate has approved today, the Visual Artists Rights Act, will establish new protections for art and artists in America. Under its provisions artists will have the right to claim authorship of a work when it is displayed, and to disclaim the work if it is mutilated or altered. In addition, the bill prohibits the intentional mutilation or grossly negligent destruction of a work of visual art.

Painters and sculptors deserve this action. We are not talking about unearned benefits, but long overdue rights. Visual artists create unique works. If those works are mutilated or destroyed, they are irreplaceable.

A companion bill has been approved by voice vote in the House. I commend Congressman KASTENMEIER and Congressman MARKEY for their diligence and skill in bringing this legislation to enactment. The bill has evolved as a consensus approach to the legitimate needs of painters and sculptors. Earlier concerns expressed by art dealers, conservators, and museum professionals have been addressed so that there remains no opposition to the legislation.

It is the product of extensive hearings by the Subcommitte on Patents, Copyright and Trademarks. I am indebted to Senator DECONCINI for his help in providing a forum for the bill. Expert witnesses were consulted in all aspects of the art community. It is clear that current law does not adequately protect either artists or their works.

Although many other countries around the world already guarantee these basic rights to artists, the United States has been slow to embrace them. It is time for Congress to act and to acknowledge America's responsibility to its creative artists.

Our artists are the chroniclers and guardians of an important part of our national heritage. They express the character of our country, and they contribute immensely to our national spirit. They deserve these modest safeguards for their creativity.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Delaware.

The amendment (No. 3204) was agreed to.

Mr. BIDEN. Mr. President, I am pleased that the Senate is about to pass comprehensive legislation aimed at improving our Federal courts. It is my hope that this legislation will make the courts a little more affordable, a little more efficient, and a little more accessible.

This legislation has three parts. First, it contains a revised version of the civil justice reform bill that Senator Thurmond and I introduced earlier this year. Second, it creates 85 new Federal district court and circuit court judgeships. Third, it contains a number of other reform proposals to improve the functioning of our judicial system.

I will not delve into all the details of this legislation today. The Judiciary Committee's report is extensive and addresses, in particular, the aspects of the civil justice and judgeships legislation. As to title III, Senator GRASSLEY has submitted for the record a detailed section-by-section analysis.

I will limit my comments today to the compromise with the House that this legislation reflects. I am enthusiastic about the compromise we have reached, although, as with all compromises, some parts of the bill are not exactly to my liking. Over-all, though, I believe that the legislation is an excellent compromise that warrants immediate passage and enactment.

Turning to title I, the Civil Justice Reform Act, the compromise reflects two fundamental objectives that I sought to accomplish when this legislation was introduced in January: requiring every U.S. district court to convene a local advisory group, and requiring every district court to imple-

ment a civil justice expense and delay reduction plan.

I am also pleased that the compromise includes a provision that I have long believed is necessary: providing to the public statistics and information on cases and motions that have been pending for an inordinate amount of time without decision. Section 476 ensures that, for the first time, the public will be allowed to learn which cases have been pending for a lengthy period of time and the identity of judges and magistrates before whom those cases have been pending.

One issue on which there has been much debate relates to the contents of the district court plans and, more specifically, the degree to which the legislation should mandate the contents. While I believe that the Senate bill is preferable to the House bill on this point, we have reached an appropriate compromise. The legislation now mandates that the district courts consider the six principles of litigation management and cost and delay reduction that we have specified, but leaves them the discretion to determine whether or not to adopt the principles.

In addition, and importantly, a pilot program is established that requires 10 district courts to include the 6 principles in their plans. The legislation specifically requires that at least five of the districts encompass metropolitan areas. It is my hope and expectation that the judicial conference will select these districts carefully and thoughtfully, and in full compliance with this requirement that at least five metropolitan areas will be included. I certainly hope and expect that some of the Nation's larger cities—New York, Atlanta, Chicago, Philadelphia, Los Angeles, for example—are included in the pilot program so as not to frustrate the will of Congress in this respect.

At the end of the pilot period, an independent organization with expertise in Federal court management will evaluate the effectiveness of the 6 principles and the degree to which costs and delays were reduced, compare those results to the impact on costs and delays in 10 other districts, and prepare a report. The judicial conference shall then submit its own report to Congress. If it recommends that additional districts be required to include the six principles in their plans, it must initiate proceedings under the Rules Enabling Act to implement that recommendation. If the Judicial Conference does not recommend expansion of the pilot program, it—and this is significant—must identify alternative, more effective cost and delay reduction programs that should be implemented and take steps to implement such programs. Of course, Congress can revisit this subject as well, should we be dissatisfied with the manner in which the Judicial Conference proceeds.

Within a set number of years, then, this legislation insures that one of two things will occur. Either the six principles of litigation management and cost and delay reduction that Congress has specified in this legislation will be part of district court plans nationwide, or some other program, that has been shown to be demonstrably better, will be in place. One way or the other, the situation is bound to improve.

The bottom line is that we have, through this legislation, set in motion a sequence of action-enforcing events. Over the long run, these events will ensure that all courts, lawyers and litigants confront the dual problems of cost and delay and develop adequate means of reducing cost and delay.

There is one other provision in the civil justice bill offered today on which I would like to comment. We have amended the provision—section 473(a)(2)(B)—requiring that trial dates be set such that the trial is scheduled to occur within 18 months by including an ends of justice exception.

Frankly, I believe that the provision in the bill reported by the Judiciary Committee provided adequate flexibility to respond to those cases in which such a time frame was not feasible. Nevertheless, I believe the compromise language is acceptable. I would caution, however, that I hope that this exception is not abused—I hope that the exception does not swallow the rule. It is our intention that the ends of justice provision be limited to those few cases in which setting a trial within 18 months would indeed be incompatible with serving the ends of justice.

In title II, the compromise bill creates 85 new judgeships. We have added certain judgeships in the House bill primarily to provide additional resources to those districts hit hardest by drug cases.

This bill, unlike other judgeship proposals, ensures that the district courts with the heaviest drug caseloads will receive additional judgeships. By doing so, this bill is a critical anti-drug, anti-crime initiative. Quite simply, we need this bill to ensure that the courts can try more major drug dealers, bring to justice the S&L crooks, and cope with the explosion of violent crime in our country.

Mr. President, I would like to thank several of my colleagues, without whom passage of this bill would not have been possible. On the Judiciary Committee, Senator THURMOND's invaluable assistance and input on this legislation since its inception was critical. Senators HEFLIN and GRASSLEY, the chairman and ranking member of the Courts Subcommittee, also contributed greatly. Our colleagues in the House—Chairman BROOKS, Congressman FISH, Congressman KASTENMEIER and Congressman MOORHEAD—demonstrated once again that they are committed to improving the Federal court system and the delivery of justice in this country.

The staffs, too, played an integral part in the development of this legislation. Terry Wooten, Mary Avera, and Kevin McMahon of Senator THURMOND's staff deserve special thanks and appreciation, as do Sam Gerdano of Senator GRASSLEY's staff, Winston Lett and Scott Williams of Senator HEFLIN's staff, and Jon Leibowitz of Senator KOHL's staff. On my own staff, I would like to pay special tribute to Ron Klain, Diana Huffman, Jeff Peck, Scott Schell, and Lisa Meyer, whose unyielding commitment to this legislation is obvious. My former chief counsel, Mark Gitenstein, also played a critical role, starting with the Brookings conferences at which the legislation had its genesis.

Finally, I want to pay tribute to the members of the Brookings conferences, whose thoughtfulness, expertise and cooperation have made civil justice reform a reality. They all deserve a special note of thanks from anyone devoted to ensuring the just, speedy and inexpensive resolution of disputes in our Federal courts: Debra Ballen; Robert Banks; Robert G. Begam; Gideon Cashman; Alfred W. Cortese; Susan Geztendanner; Mark Gitenstein; Barry Goldstein; Jamie Gorelick; Marcia D. Greenberger; Patrick Head; Deborah Hensler; W. Michael House; Shirley Hufstedler; Kenneth Kay; Gene Kimmelman; Norman Krivosha; Leo Levin; Carl D. Liggio; Robert E. Litan; Frank McFadden; Francis McGovern; Stephen D. Middlebrook; Edward Muller; Robert M. Osgood; Alan Parker; Richard Paul; Judyth Pendell; John A. Pendergrass; George Priest; Charles B. Renfrew; Tony Roisman; John F. Schmutz; Christopher Schroeder; Bill Wagner; and Diana Wood.

Mr. President, what we have here is the product of a great deal of time, effort, and travail. It is a bill to reform the civil justice system which is very controversial and, after a great deal of time, hearings, compromise and consultation with both the House and the Senate, it has finally been agreed upon.

But even more important, Mr. President, there is the anomaly of a Democratic chairman of the Judiciary Committee rising to propose that the President of the United States, a Republican, appoint 85 new judges.

If past is prolog, they will all be Republican judges. Notwithstanding that, Mr. President, we on the Democratic side feel it very important that the number of judges in this country be expanded to meet the increased workload, a great deal of which is a consequence of the increased drug

problem in the United States of America.

So, Mr. President, the judicial conference has suggested over 70-some judges. We have moved that to 85 to accommodate additional needs around the country. This has been worked out with the House of Representatives, with the chairman of the Judiciary Committee on that side and others.

So, Mr. President, I now yield to my colleague from South Carolina, if he wises to speak to this issue.

Mr. THURMOND. Mr. President, I am in accord with the request made by the distinguished chairman of the committee. The Judicial Conference has recommended these judges are badly needed, and I am in favor of the bill providing for them.

Today we are considering S. 2648, a bill to provide for civil justice expense and delay reduction plans and to authorize the creation of additional Federal judgeships. Originally introduced by Senator BIDEN and myself as S. 2027, the Civil Justice Reform Act, we are today offering a substitute version of the bill which incorporates the suggestions made by many to modify and improve the initial proposal.

The goal of this legislation is very laudable. This bill is intended to increase the administrative efficiency of the civil litigation process in the Federal courts and reduce litigation costs. Over the past several years, the workload of the Federal court system has increased dramatically. Currently, there is a feeling among many members of the bench and bar that civil litigation in the Federal court system is much too costly and takes far too long to resolve disputes.

The recognition of delay and cost concerns has been affirmed by the House of Representatives. On September 12, 1990, the House passed two separate bills addressing civil justice reform and the creation of additional Federal judgeships.

Based upon these concerns, the legislation we are considering today embodies principles from which each individual Federal district will develop their own plan for creating greater efficiencies in the civil litigation process.

Generally, under the modified provisions of title I contained in this substitute, a civil justice delay and expense reduction plan should be implemented for each district of the United States. The purpose of the plan is to simplify adjudication on the merits, monitor discovery, and improve the overall management of the litigation process. Implementation of the plan should result in a just, speedy, and inexpensive resolution of disputes.

While title I addresses judicial reform, title II provides the necessary judicial manpower to carry out these reforms. It is appropriate to consider the procedural changes in title I which will reduce the costs and delays confronted by those who seek to resolve their disputes through the civil litigation system within the Federal courts. However, any attempt to reform the civil justice system is futile without providing adequate manpower.

Title II of S. 2648 creates 85 additional Federal judgeships. Recently enacted drug and crime legislation increased the caseload of many judges across the country. As a result of the needs of the judiciary from the perspective of increased drug- and crime-related prosecution and its impact on the Federal docket, I believe more judgeships are vitally important. The Judicial Conference made recommendations to reflect its assessment of where judicial manpower should be placed. We have made every effort to accommodate these recommendations and embody them in this substitute proposal. The result is a provision to create additional Federal judgeships which will address the current demands on the judiciary and the needs of the citizens of this Nation.

In closing, S. 2648 will create the necessary judgeships and increase the administrative efficiency of the civil litigation process. For the above reasons, I support S. 2648 and urge its passage by this body.

Mr. KOHL. Mr. President, I am pleased to support S. 2648, the Judicial Improvements Act of 1990. As amended, this bill will make a number of significant improvements in our civil justice system, add scores of crucially needed Federal judges, and enhance our protections for intellectual property. I want to extend my congratulations to Chairman BIDEN for the fine job he did in finding the common interests among groups and Members who are often at cross-purposes.

I would like to speak briefly about my section, title IV, which will help develop and implement needed modifications to the judicial discipline and impeachment process. Much of the credit for this title should go to BOB KASTENMEIER, the dean of the Wisconsin delegation and chairman of the Courts Subcommittee, who introduced identical legislation in the House.

The first section of title IV would improve the method of filing and investigating complaints against Federal judges. I think a recent example demonstrates some of the problems with the existing system. After Federal Judge Harry Claiborne was convicted of tax fraud, he continued to collect his judicial salary even in prison. The House could not initiate impeachment proceedings because the chief circuit judge had not made a proper recommendation. The chief judge could not act until he had received a formal complaint. As a result, the Senate did not vote to remove Judge Claiborne until 2 years after his criminal trial. Similarly, it took more than 3½ years after Judge Walter Nixon's criminal conviction for us to complete his impeachment trial.

My provision will prevent such situations from occurring in the future. Under this proposal, when a judge has been convicted of a felony and has exhausted all direct appeals, the Judicial Conference may immediately transmit a recommendation of impeachment to the House. This would dispense with the requirement of an additional lengthy investigation by the circuit's special committee of judges. And in cases where there has been no conviction, the chief circuit judge may initiate a complaint of his own volition, so that there will be no unreasonable delay in commencing an investigation.

Neither of these proposed changes endangers the independence of the judiciary. On the contrary, by allowing more efficient action in the clearest cases of judicial abuse, this provision should enhance people's faith in our judges and in our legal system.

The second section of title IV would create a blue-ribbon commission to study and report on possible changes in the impeachment structure. Last year, I served on the panel considering the removal from office of Judge Walter Nixon. That experience brought home to me the importance of the Senate's constitutional role in a thorough and fair impeachment process. But I also learned first hand of some of the problems with the system.

Judicial impeachment has recently become so cumbersome and unwieldy that it adequately serves neither the Senate nor the accused. Two hundred years ago it was possible for every Senator to hear all the arguments and determine the credibility of the witnesses in every impeachment case. Today, there are 100 Senators and a full schedule of pending legislative actions. For the full Senate to listen to dozens of witnesses would require us to suspend pressing legislative business for weeks, or even months. Therefore, we are forced to handle impeachments just as we do all other issues—through committees. But by treating impeachment like other issues, we are asking the entire Senate to decide guilt or innocence based on the recommendations of a 12-member panel and a few days of summarized arguments. I know many Senators—particularly those who have served on impeachment committees—find this option practicable but not entirely satisfactory.

At the same time, some have argued that the existing process is unfair to the accused judge. In their view, the defendant should be able to make his case to each individual who will decide his fate—ultimately, that is 100 Senators. Instead, according to this viewpoint, we have delegated the task to ever smaller bodies—a judicial committee for the complaint, a House sub-

committee for the impeachment articles, and a Senate panel for the verdict. While I believe that the current approach is constitutional, we must consider some changes.

The Commission created by this measure would examine the current impeachment process and suggest modifications. Commission members will be appointed by the President, the Chief Justice, and leaders of the House and Senate. On the basis of hearings and other expert assistance, the Commission will release a nonbinding report within 1 year of its first meeting. The Commission's proposals could include legislation, administrative, or constitutional reforms and should provide momentum for streamlining the process of removing article III judges.

Over the years, many of my colleagues have proposed changes in how judges are removed from office. In the 96th Congress, for example, Senator DECONCINI proposed a special court to evaluate complaints and recommend possible disciplinary actions. In the 99th Congress, Senator THURMOND introduced a constitutional amendment that would automatically remove a judge from office upon conviction for a felony. And in the current Congress, Senator HEFLIN introduced a constitutional amendment that would authorize Congress to address judicial discipline through legislation. Ultimately, we did not move on any of the proposals, though each has merit. But with the support of a bipartisan blue-ribbon commission, Congress might finally take the necessary steps to reform the impeachment process and preserve the integrity of our life-tenured judiciary.

Mr. President, S. 2648 includes many worthwhile components to make our legal system function more efficiently and more fairly. The new judgeships should reduce the backlog of cases in the Federal courts and the civil justice reform provisions will help ensure that the quality of justice is not strained by the quantity of demands. I am pleased to have contributed to this legislation, and I look forward to it soon becoming law.

Mr. HATCH. Mr. President, I am pleased to join with my colleagues in the passage of S. 2648, dealing with civil justice reform. This bill creates 85 new Federal judgeships. This will go a long way to expediting both criminal and civil cases in the Federal system. I commend Chairman BIDEN and Senator THURMOND for their work on this matter. Chairman BIDEN has recognized the dire need for new judgeships and has acted with statesmanship and skill in seeking this necessary increase.

This bill also contains the Computer Software Rental Amendments Act, which I introduced as S. 198. We have spent over 3 years attempting to move this important legislation.

The computer software industry, is a dynamic and blossoming source of growth for our Nation's economy. Yet today it is threatened by an emerging software rental industry which would make it possible for software users to make illegal copies; creating the potential for lost sales and the subsequent collapse of the software industry. This practice, if it is allowed to continue, will be devastating, and one of the brightest stars of the modern U.S. economy will be extinguished in its infancy.

The overwhelming rationale for renting a computer program is to make an unauthorized copy. Computer software cannot be enjoyed for an evening's entertainment and then returned. To have meaning to a user, the software packages require mastery of complex user manuals, often running hundreds of pages in length. Even after a user has mastered the use of a program, it has little value until he or she adds his or her own data base to the program. The functions of learning how to use a program and utilizing it in connection with one's own data base cannot be accomplished in the few hours or days available under a rental arrangement without copying the program and displacing a legitimate sale of the program.

The provision which we are voting on today provides software protection by prohibiting the rental of computer software unless authorized by the copyright owner. This portion of this legislative package has been the subject of extensive hearings and lengthy negotiations. I believe that it is a worthwhile change in the law.

ADDITIONAL FEDERAL JUDGESHIPS

Mr. DOMENICI. Mr. President, I am pleased that the bill now before the Senate will authorize the appointment of an additional Federal judge in New Mexico and two new judges on the Tenth Circuit Court of Appeals.

New Mexico, like other States along the southwest border, has seen a dramatic increase in drug-related crime in recent years. As a result, the number of felony filings per Federal judge in New Mexico increased 57 percent between 1984 and 1989, and is now twice the national average. Twenty-four percent of all criminal felony cases filed in 1989 were drug offenses.

The number of pending cases in the district increased 32 percent between 1984 and 1989 to 2,159. Our judges are doing their best to clear off this backlog, as evidenced by the fact that New Mexico—with an average of 70 trials per judge—is now ranked second in the country in the number of trials per judge.

This bill adopts the recommendation of the Judicial Conference that an additional Federal judgeship be created in New Mexico and that two judges be added to the Tenth Circuit Court of Appeals, which is the Federal appeals court that handles cases from New Mexico.

These judges are much needed to help clear the backlog of cases in New Mexico caused by the drug epidemic. I am pleased that the Senate is acting to create these positions, and I urge all Senators to support this bill.

Mr. GRAHAM. Mr. President, over the last few years Congress has stepped up its war on crime by providing additional resources to Federal, State, and local law enforcement, and passing tough new prosecutoral and sentencing measures.

However, we have overlooked the needs of a key player in the war on crime—the Federal judiciary.

While Congress has authorized increases in the number of FBI agents, DEA agents, border patrol officers, and Federal prosecutors, little corollary action has been taken to enable the judiciary to handle the rising caseload.

For example, Mr. President, the middle district of Florida has experienced a 30-percent increase in civil cases and a 55-percent increase in criminal cases over the last 8 years.

In the last year alone, the criminal caseload increased by 15 percent.

However, there have been no new judgeships authorized in the middle district since 1982.

In fact, Congress has not provided for any additional Federal judgeships in the Nation since 1984.

The northern district of Florida has one of the busiest trial dockets in the Nation.

Judges in this district completed 71 trials per judge over a 12-month period when the national average for that same time was 35 trials.

With the addition of five new DEA and customs offices in the northern district, and with added personnel in the U.S. Attorney's Office, there will continue to be an increase in the criminal litigation caseload.

Florida is additionally burdened by the slow speed at which judicial vacancies are filled.

Two seats on the bench are currently vacant, and other vacancies are expected with retirements and elevations.

The result of increasing caseloads without increasing capacity to handle these cases is that justice is delayed. Justice delayed, Mr. President, is justice denied.

Every effort we make to improve apprehension and prosecution of criminals will be negated if the judiciary is ill equipped to process those cases.

I am proud to be a cosponsor of this bill and I strongly encourage my colleagues to move quickly in passing this much-needed legislation.

Mr. GRASSLEY. Mr. President, I am pleased to support the Judicial Improvements Act of 1990—a most im-

portant and badly needed court reform package. I commend the chairman of the committee and Senator THURMOND, and their staff for their hard work to this point.

I particularly thank Chairman BIDEN for being responsive to the legitimate concerns of Federal district judges around the country with respect to the title on civil case management. Mr. President, I know that Federal judges in Iowa were especially concerned about the initial version of title I. These judges, like many others, do a fine job keeping their dockets current, and thus resisted the idea that Washington would seek to micromanage case management. The judges have a point, Mr. President. After all, a Congress that cannot perform its own constitutional obligations with respect to the Federal budget ought not to presume to tell another branch how to do its business. I am grateful that our chairman has worked out an accommodation that preserves a critical level of judicial automony.

With respect to the addition of new judges in title II, this is a long overdue action to enhance the ability of the third branch to simply keep up with current backbreaking caseloads. We have not had a judgeship authorization since 1984. Again, I thank the chairman and ranking member for their efforts on this provision.

Mr. President, I am pleased that we are also adding a title III to this important court reform package. This title consists of a number of noncontroversial and somewhat technical recommendations of the Federal Courts Study Committee.

As you know, Mr. President, this past April, a blue-ribbon panel of judges, lawyers and members of Congress—authorized by Public Law 100-702, and appointed by the Chief Justice—proposed more than 100 changes in the administration and operation of the Federal court system. The study was historic: The work of the Federal Courts Study Committee represented the most comprehensive examination of the Federal courts since the passage of the Judiciary Act of 1789.

During the course of its work, the study committee solicited and received comments from hundreds of individuals and organizations. Public hearings were held early in the process to identify the areas of study. After a number of tentative recommendations were developed, the study committee held a second round of public hearings around the country.

Along with my colleague Senator HEFLIN, the chairman of the Subcommittee on Courts, I was privileged to serve on the study committee. Our final report represented the culmination of 15 months of work, under the direction and able leadership of Judge Joseph F. Weis, Jr. of the Third Circuit Court of Appeals. Others on the study committee included J. Vincent Aprile, II, the general counsel of the Department of Public Advocacy in the State of Kentucky, the Honorable Jose A. Cabranes, a district court judge from Connecticut, the Honorable Keith M. Callow, the Chief Justice of the Supreme Court of the State of Washington, the Hon. Levin H. Campbell, a judge on the U.S. Court of Appeals for the Second Circuit, the Hon. Edward S.G. Dennis, Jr., the then-assistant attorney general for the Criminal Division of the U.S. Department of Justice, Morris Harrell, a prominent lawyer in private practice in Dallas, TX, the Hon. ROBERT KASTENMEIER, chairman of the House Judiciary Subcommittee on Courts, Intellectual Property and the Administration of Justice, the Hon. Judith Keep, a District Court judge from California, Rex E. Lee, the president of Bringham Young University and former solicitor general, the Hon. Carlos Moorhead, ranking member of the House Judiciary Subcommittee on Courts, Diana Gribbon Motz, a prominent lawyer from Baltimore, MD, and the Hon. Richard A. Posner, a judge on the U.S. Court of Appeals for the Seventh Circuit.

A principal focus of the study committee was on institutional and procedural change, rather than substantive law reform. Some of the recommendations—such as the abolition of diversity jurisdiction and the repeal of mandatory minimum criminal sentences—do represent major changes in the law, and will require more study by Congress. The changes proposed by this amendment today, however, represent only those consensus items that enjoyed unanimous support among study committee members. Taken individually, these changes are quite modest. Collectively, I believe these changes will substantially improve the administration of justice in the Federal system.

I thank the chairman of the Judiciary Committee, Senator BIDEN, for being willing to consider this package of amendments as a compliment to titles I and II of S. 2648. Each of these titles, in their separate ways, will help the judiciary better serve the public: by reducing costs and delays in litigation, by increasing resources so that courts can better cope with burdensome caseloads, and by improving the efficiency and fairness of Federal court procedures.

I would also like to thank the many staff people who worked for months on this amendment, particularly Samuel Gerdano, my chief counsel, Winston Lett and Scott Williams with Senator HEFLIN, Jeff Peck and Scott Schell with Senator BIDEN, and Tony Coe with the Office of Senate Legislative Counsel. I am also grateful for the technical advice provided by the Administrative Office of the U.S. Courts.

I ask unanimous consent that a more detailed section-by-section analysis of title III be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

TITLE III—IMPLEMENTATION OF THE FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

SECTION-BY-SECTION ANALYSIS

Section 301 states the short title of this title.

Section 302 requests that the Federal Judicial Center study and report back to Congress by 1992 on the number and frequency of unresolved intercircuit conflicts.

As the Federal Courts Study Committee pointed out in its report,

"As recently as 1960, the Supreme Court reviewed approximately 3 percent of all federal appeals. That proportion has dropped precipitously to less than 1 percent, and will continue to drop as the total number of appeals rises. The Supreme Court handles roughly 150 or fewer cases annually (and that number may be dropping); approximately 75 percent come from the federal courts of appeals. This figures has remained constant for some time, with little prospect for expansion. We are not persuaded that the Court could increase its output, given the difficulty of the cases that the Court hears.

"Although the Court sits at the apex of the state and federal systems, theoretically to harmonize the federal law coming from both, the Court has long since given up granting certiorari in every case involving an intercircuit conflict. Thus, a federal statute may mean one thing in one area of the country and something quite different elsewhere—and this difference may never be settled. Some conflicts, of course, may have the redeeming feature, especially in the constitutional area, of helping to develop legal doctrine and insight. Other conflicts need rapid resolution. Conflicts over some procedural rules and law affecting actors in only one circuit at a time may have a negligible effect. A federal judicial system, however, must be able within a reasonable time to provide a nationally binding construction of these acts of Congress needing a single, unified construction in order to serve their purpose.

"It appears from academic analyses that the Supreme Court in 1988 refused review to roughly sixty to eighty "direct" intercircuit conflicts presented to it by petitions for certiorari. This number does not include cases involving less direct conflicts (e.g., fundamentally inconsistent approaches to the same issue). Not all these sixty to eighty conflicts, however, are necessarily "intolerable," to use a commonly applied adjective."

The Federal Courts Study Committee recommended that these conflicts be analyzed to determine, as objectively as we can, those that are intolerable and yet, for whatever reason, are unlikely to be resolved by the Supreme Court.

Commentators have suggested various criteria for identifying "intolerable" conflicts. For example, does the conflict:

Impose economic costs or other harm to multi-circuit actors, such as firms engaged in maritime and interstate commerce?

Encourage forum shopping among circuits, especially since venue is frequently available to litigants in different fora?

Create unfairness to litigants in different circuits—for example, by allowing federal

benefits in one circuit that are denied elsewhere?

Encourage "non-acquiescence" by federal administrative agencies, by forcing them to choose between the uniform administration of statutory schemes and obedience to the different holdings of courts in different regions?

Section 302 is not intended to prescribe a rigid research scheme for the FJC to follow. Indeed, the details of the study are intended to be left to the sound discretion of the Board of the FJC. Nor does Section 302 anticipate any particular result from the FJC's analysis.

Section 302, in subsection (c), also seeks the FJC's analysis and report to Congress within two years on a range of structural alternatives for the Federal Courts of Appeals. The Federal Courts Study Committee studied various structural alternatives, without endorsing any particular approach. As with subsection (a), this provision is not intended to suggest that the FJC will need to undertake massive, original research. Rather, it contemplates that, for example, the existing literature on structural alternatives will be canvassed and analyzed for the benefit of Congress.

Section 303 would amend Title 28 to provide, in effect, that the appointment of an active Federal judge to the position of Director of the Federal Judicial Center, Director of the Administrative Office of the United States Courts, or Administrative Assistant to the Chief Justice will create a vacancy in the courts on which the judge was sitting and, if the judge subsequently returns to the court as an active judge, the next judicial vacancy on the court will not be filled.

The purpose of this section is to encourage active judges to seek to serve in these important Judicial Branch administrative positions without penalizing the court from which they come or prejudicing their opportunity to return to active service as a judge.

Section 304 amends 28 U.S.C. 152(a) to permit a bankruptcy judge whose 14-year term of appointment has expired to continue to serve until a successor has been appointed. The provision includes a 180-day limitation on such extended service and is subject to the approval of the judicial council of the circuit.

Allowing a bankruptcy judge to serve up to 180 days after the judge's term of appointment has expired will provide invaluable assistance when the appointment of a successor is delayed. At present, the only assistance available during such a "gap" period is from visiting judges or retired bankruptcy judges recalled to active service. Because bankruptcy filings have increased rapidly across most of the country in recent years, visiting judges and recall judges are not available for all of the districts which need assistance.

Section 305 would permit, but not require, the judicial councils of two or more circuits to establish a joint bankruptcy panel if authorized by the Judicial Conference of the United States. This would allow small circuits (such as the First Circuit) to form multi-circuit bankruptcy appellate panels. (BAP).

The Federal Courts Study Committee recommended that Congress require each circuit to establish BAPs, with an "opt-out" provision, as well as authorize small circuits to create multi-circuit BAPs. The Study Committee was impressed with the experience of the Ninth Circuit BAP, which disposed of 902 appeals in 1987 and 664 in 1988, reducing the workload of both district and appellate courts. The Ninth Circuit BAP received favorable reviews from both bench and bar. It is expected that BAPs foster expertise and increase the morale of bankruptcy judges, in part by offering them an opportunity for appellate work. Section 305 is intended to be a modest first step, short of mandating BAPs, so as to encourage further experimentation with BAPs.

Section 306 provides a new retirement system for judges of the U.S. Claims Court, generally modeled after the system in place for judges of the U.S. Tax Court. This section solves a serious problem in the Claims Court: the apparent lack of independence of the judges.

This seriously undermines the ability of the court to be seen as an impartial decider between the government and the taxpayer, the contractor, the Indian tribe, government employees or patent holders. The independence problem is created by the fact that the judges livelihood is dependent upon reappointment by the defendant's representative. Under the current retirement system, most claims court judges are not eligible for any retirement at the time their term ends. Unlike bankruptcy judges and magistrates whose appointment is made by the judiciary, Article I judges are appointed by the President through the Department of Justice. Also, unlike the bankruptcy judges and magistrates whose independence is not threatened by the judicial appointment process, Article I judges might well be reluctant to rule against an executive branch that holds their future livelihood in its hands.

Currently, all United States Claims Court judges have a fifteen-year term, with no possibility of recall or pension until they are eligible for retirement, generally at age sixty-five. Some may not even be eligible for any significant pension at age sixty-five because of a lack of prior government service. There are only two realistic options available to a judge who will not be sixty-five when that judge's term ends (a majority of judges now serving on the court).

The judge must either seek reappointment from the President through the Justice Department or seek employment as a litigating attorney. The Justice Department is the defendant's representative in all suits pending before Claims Court judges. The most likely source of litigation employment is with firms that appear before the court on behalf of plaintiffs. A judge's seeking employment through either is unseemly and may at least appear to threaten the Claims Court judges' independence.

Since 1969, the judges of the United States Tax Court have been provided with both judicial independence and adquate job security through their reappointment and retirement provisions, 26 U.S.C. 7443(e), 7447(b)-(f). Prior to the expiration of a Tax Court judge's fifteen-year term, that judge will advise the President of a desire to be reappointed. A judge not reappointed becomes a senior judge of the Tax Court and immediately receives retirement pay. The Congress, in creating the most recent Article I court, the United States Court of Veterans Appeals, instituted almost identical reappointment and retirement provisions for that court as exist for the United States Tax Court. See 38 U.S.C. 4095-97.

The purpose of Section 306 then, is to generally conform the reappointment and retirement provisions of the Claims Court to that now in place at the Tax Court.

Under this section, the President can ensure continued judicial service by reappointment. If this does not occur, however, the judge who is willing to serve (and who seeks reappointment but is denied) receives his or her full salary. In return, the Claims Courts benefits from the continued service of the judge as a senior judge for life, or as long as that judge retains his or her full salary. Section 306 also eliminates the threat to the system's independence created by having judges who can be terminated by one party to its cases. Finally, the section sharply restricts what the judges can do outside of being senior judges. In the Tax Court, this system has led to a general trend of reappointment and has provided an active corps of senior judges to expedite the handling of cases.

Generally here is how the section would operate: if a Claims Court judge seeks reappointment by the President but is not reappointed, the judge then becomes a Senior Judge of the Claims Court. Senior Judges are subject to compulsory recall by the Chief Judge for up to 90 calendar days per year and voluntary recall for unlimited time. If a Senior Judge does not perform mandatory recall service, the full annuity for that year is forfeited. Senior Judges are sharply restricted in the work they may underake while not on recall service.

They may not assist in making any civil claim against the United States. Violation of this restriction will result in a permanent forfeiture of their annuities and possible criminal penalties under 28 U.S.C. 454. A person serving as a Senior Judge under the age of 65 does not have an option provided to those judges over 65 of freezing the annuity then paid and avoiding further mandatory recall and outside employment restrictions.

Section 306 creates a new 28 U.S.C. 178. Subsection (a), pertaining to normal retirement based on age and years of service, tracks the portion of 26 U.S.C. 7447 applicable to Tax Court Judges permitting retirement under the "Rule of 80" after age 65 and upon 15 years of service.

Subsection (b) pertains to retirement upon failure of reappointment and tracks the provisions of 26 U.S.C. 7447 applicable to Tax Court judges. It provides that a judge must serve at least one full term and seek reappointment by timely notice to the President in order to be eligible for an annuity upon failure of reappointment.

Subsection (c), pertaining to retirement or removal from office by reason of physical or mental disability, tracks a similar provision in 26 U.S.C. 7447 for Tax Court judges. The amount of the annuity will be based on whether the judge served 10 years or less, but in no case less than 5 years.

Subsection (d) provides that judges who retire on the basis of age and years of service and upon failure of reappointment would, without age limitation, be subject to compulsory recall for up to 90 days per year. This requirement matches the current Tax Court provisions.

Subsection (e) provides that a retired judge shall be designated "senior judge" and shall not be counted as a judge of the court for purposes of the number of authorized regulator active judgeships. This tracks a similar provision in 28 U.S.C. 7447 applicable to the Tax Court.

Subsection (f) provides that an eligible judge must elect into the new retirement system by notifying the Administrative Office of the United States Courts and that election of an annuity under the new system precludes any other federal annuity.

Subsection (g) pertains to calculation of service on which an annuity would be based. It provides that only prior service as a judge of the Claims Court or as a commissioner of the Court of Claims may be included in the calculation. This corresponds precisely to the creditable service provisions applicable to Tax Court judges.

Subsection (h) provides that the time and manner for making annuity payments will be the same as for a judge in active service. These provisions track a similar provision in 28 U.S.C. 7447 pertaining to the Tax Court.

Subsection (i) provides for payments from a judge's annuity to a former spouse or family member pursuant to court decree upon notice to the Director of the Administrative Office of the U.S. Courts.

Subsection (j) pertains to permanent and temporary forfeiture of annuities in certain circumstances. Tracking a related provision in 28 U.S.C. 7447 applicable to retired Tax Court judges, it provides that there shall be permanent forfeiture if a retired judge, in the practice of law, represents a client in making any civil claim against the United States provided that upon advance election and notice such retired judge could avoid total forfeiture and instead freeze his annuity at its level immediately prior to representing a claimant against the United States. This subsection also provides for a one-year forfeiture if a retired judge fails to render required judicial services when called upon by the chief judge. This subsection also provides for a temporary forfeiture in the case of a retired judge who accepts compensation for other federal government service.

Subsection (k) is a housekeeping provision detailing the manner and effect of revoking an election to receive an annuity under the new system.

Subsection (l) contains a housekeeping provision pertaining to funding and management of the retirement fund ("Claims Court Judges Retirement Fund") from which annuities under the new system would be paid.

Subsection (b) of Section 306 pertains to judicial survivors' annuities. It makes the Judicial Survivors Annuity Plan set forth in 28 U.S.C. 376 applicable to Claims Court judges and is thus analogous to 26 U.S.C. 7448 for Tax Court judges.

Subsection (c) of Section 306 pertains to the Civil Service Retirement System and would apply to judges who, for whatever reason, prefer to remain under Civil Service rather than elect the new retirement system. It would specifically provide for enhanced civil service (vesting at 2½ percent per year) in exchange for a higher contribution rate. Some Claims Court judges with long federal service may prefer to retire at an earlier age under the Civil Service system without a restriction on the practice of law and could take advantage of these provisions which also apply to bankruptcy judges and magistrates. *See* 5 U.S.C. 8339(n). A judge who chose to retire under the Civil Service System rather than under the proposed new retirement system would receive a smaller annuity with a resulting savings to the Treasury.

Subsection (d) of Section 306 pertaining to participation in the Thrift Savings Plan is verbatim with language included in the recently enacted bankruptcy judge retirement legislation and participation in the plan has specifically been provided for the Article III judiciary. *See* 5 U.S.C. 8440a.

The Thrift Savings Plan is currently available to Claims Court judges and is participated in by most of them. Without subsection (d), a Claims Court judge who elected the new retirement system would no longer be eligible to participate in the Thrift Savings Plan. As a result, Claims Court judges would be losing an opportunity currently available to them. Participation in the Thrift Savings Plan pursuant to the subsection (d) provisions would involve no matching contribution by the Government.

Subsection (e) of Section 306 would make a number of technical and conforming amendments consistent with the purposes of section 306.

Subsection (f) of Section 306 provides that these new retirement provisions apply to all active and senior judges in active service as of the date of enactment of the Judicial Improvements Act of 1990.

Mr. President, I should note here that the Federal Courts Study Committee also recommended that a similar reappointment and retirement provision be included for judges of the U.S. Court of Military Appeals. Judges of this Article I court appear to face similar threats to their judicial independence. The U.S., through the Department of Defense and its military departments, is the prosecuting authority in all cases before the Court of Military Appeals. Judges of the Court must seek reappointment from the President through the Defense Department.

Because of an objection from the Armed Services Committee, however, no provision for these judges is included in this amendment.

Section 307 modifies 28 U.S.C. 601 which now states that the Supreme Court shall appoint the Director and Deputy Director of the Administrative Office, to instead provide that the Chief Justice shall make the appointment after consulting with the Judicial Conference of the United States.

The Chief Justice is the only member of the Supreme Court with official administrative duties regarding the courts of appeals and district courts and, of course the Chief Justice is the titular head of the Judicial Branch and Chairman of the Judicial Conference of the United States.

In these capacities, he works on a daily basis with the Director of the Administrative Office and has an obvious substantial interest in naming a qualified person to fill this major judicial branch position.

By giving the appointment authority specifically to the Chief Justice, the law will be modified to reflect actual practice and responsibility. By including a requirement that the election be made after consulting with the Judicial Conference, the law will also reflect in large part present practice and recognize the great interest that the Conference has in who becomes the District and Deputy Director of the Administrative Office.

Section 308(a) amends 28 U.S.C. 636(c)(2) to permit judges and magistrates to advise civil litigants of the option to consent to trial by a magistrate.

Under present provisions, judicial officers may not attempt to persuade or induce any party to consent to reference of a civil matter to a magistrate. Many judges refrain entirely from even mentioning to parties the option of consent to civil trial by a magistrate. Litigants in many jurisdictions often receive little more than a standardized written notification of this option with the pleadings in a civil case.

As a result, most parties in civil cases do not consent to magistrate jurisdiction. The present procedures have effectively frustrated the intent of the 1979 amendments to the Federal Magistrates Act which authorized magistrates to try civil consent cases.

The right of a litigant to have his civil case heard by an Article III judge remains paramount. Under the present Act, judicial officers are restricted from informing parties of their opportunity to have a civil matter referred to a magistrate because of concerns that judges would coerce parties to accept a reference to a magistrate. Those concerns have not been borne out in the decade since the 1979 revisions. The amendment made by Section 308 safeguards the right of a civil litigant to trial by an Article III judge by requiring judges and magistrates to advise parties of their freedom to withhold consent to magistrate jurisdiction without fear of adverse consequences. The amendment thus provides a proper balance between increased judicial flexibility and continued protection of litigants from possible undue coercion.

The need for the court system to have greater flexibility in utilizing judicial resources was recognized by the Federal Courts Study Committee. This need is particularly acute in handling the expanding civil caseload of federal courts. Liberalizing the civil case consent procedures furthers the goal of efficient and maximum utilization of judicial resources. Both the Judicial Conference and the Federal Courts Study Committee have endorsed this amendment.

Section 308(b) amends 28 U.S.C. 631(f) by extending the period that a magistrate may continue to serve until a sucessor is appointed from 60 days to 180 days, so as to ensure that no judicial district suffers from a gap in magistrate service. This section follows the rationale articulated in Section 304 with respect to bankruptcy judges.

Section 309 would amend 11 U.S.C. 305(c) and 38 U.S.C. 1334(c)(2) and 1452(b) to clarify that, with respect to certain determinations in bankruptcy cases, they forbid only appeals from the district courts to the courts of appeals, not from bankruptcy courts to the district courts.

The statutes provide that bankruptcy judges' orders deciding certain motions (motions to abstain in favor of, or remand to, state courts) are unreviewable "by appeal or otherwise." Because bankruptcy judges may enter trial orders only if there is appellate review in an Article III court, one result of this limitation is that bankruptcy judges cannot make final judgments in such cases even when they clearly involve "core" proceedings.

Section 309 would authorize bankruptcy judges to enter binding orders in connection with abstention determinations under Title 11 or Title 28 and remand determinations under Title 28, subject to review in the district court. The statutory language under each of these sections now provides that the decision of the bankruptcy court (to abstain or remand) "is not reviewable by appeal or otherwise." The proposed amendment would modify these three sections to provide that the decision of the bankruptcy court is not reviewable "by the court of appeals . . . or by the Supreme Court of the United States . . ." Such determinations would therefore by reviewable by the district court.

Speeding the disposition of these types of motions will better serve the purpose of the limitation on appeals from the district courts to the courts of appeals.

Section 310 implements a recommendation of the Federal Courts Study Committee by authorizing federal courts to assert pend-

ent jurisdiction over parties without an independent federal jurisdictional base. The language originated in the House of Representatives after the benefit of substantial helpful comment from the academic community. We here adopt the analysis of the House.

The doctrines of pendent and ancillary jurisdiction, in this section jointly labeled supplemental jurisdiction, refer to the authority of the federal courts to adjudicate, without an independent basis of subject matter jurisdiction, claims that are so related to other claims within the district court's original jurisdiction that they form part of the same cases or controversy under Article III of the United States Constitution. Supplemental jurisdiction has enabled federal courts and litigants to take advantage of the federal procedural rules on claim and party joinder to deal economically—in single rather than multiple litigations—with related matters, usually those arising from the same transaction, occurrence, or series of transactions or occurrences.

Moreover, the district courts' exercise of supplemental jurisdiction, by making federal court a practical arena for the resolution of an entire controversy, has effectuated Congress's intent in the jurisdictional statutes to provide plaintiffs with a federal forum for litigating claims within original federal jurisdiction.

Recently, however, in *Finley* v. *United States*, 109 S. Ct. 2003 (1989), the Supreme Court cast substantial doubt on the authority of the federal courts to hear some claims within supplemental jurisdiction. In *Finley* the Court held that a district court, in a Federal Tort Claims Act suit against the United States, may not exercise supplemental jurisdiction over a related claim by the plaintiff against an additional nondiverse defendant. The Court's rationale—that "with respect to the addition of parties, as opposed to the addition of only claims, we will not assume that the full constitutional power has been congressionally authorized, and will not read jurisdictional statutes broadly," 109 S. Ct. at 2007—threatens to eliminate other previously accepted forms of supplemental jurisdiction. Already, for example, some lower courts have interpreted *Finley* to prohibit the exercise of supplemental jurisdiction in formerly unquestioned circumstances.

Legislation, therefore, is needed to provide the federal courts with statutory authority to hear supplemental claims. Indeed, the Supreme Court has virtually invited Congress to codify supplemental jurisdiction by commenting in *Finley*, "What ever we say regarding the scope of jurisdiction . . . can of course be changed by Congress. What is of paramount importance is that Congress would be able to legislate against a background of clear interpretive rules, so that it may know the effect of the language it adopts." *Finley*, 109 S. Ct. at 2007. This section would authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understanding of the authorization for and limits on other forms of supplemental jurisdiction. In federal question cases, it broadly authorizes the district courts to exercise supplemental jurisdiction over additional claims, including claims involving the joinder of additional parties. In diversity cases, the distict courts may exercise supplemental jurisdiction, except when doing so would be inconsistent with the jurisdictional requirements of the diversity statute. In both cases, the district courts as under current law, would have discretion to decline supplemental jurisdiction in appropriate circumstances.

Section 310 adds a new 28 U.S.C. 1368. Subsection (a) of the new section generally authorizes the district court to exercise jurisdiction over a supplemental claim whenever it forms part of the same constitutional cases or controversy as the claim or claims that provide the basis of the district court's original jurisdiction. In so doing, subsection (a) codifies the scope of supplemental jurisdiction first articulated by the Supreme Court in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). In providing for supplemental jurisdiction over claims involving the addition of parties, subsection (a) explicitly fills the statutory gap noted in *Finley v. United States*.

Subsection (b) prohibits a district court in a case over which it has jurisdiction founded solely on the general diversity provision, 28 U.S.C. 1332, from exercising supplemental jurisdiction in specified circumstances. In diversity-only actions the district courts may not hear plaintiffs' supplemental claims when exercising supplemental jurisdiction would encourage plaintiffs to evade the jurisdictional requirement of 28 U.S.C 1332 by the simple expedient of naming initially only those defendants whose joinder satisfies section 1332's requirements and later adding claims not within original federal jurisdiction against other defendants who have intervened or been joined on a supplemental basis.

In accord with case law, the subsection also prohibits the joinder or intervention of persons as plaintiffs if adding them is inconsistent with section 1332's requirements. The section is not intended to affect the jurisdictional requirements of 28 U.S.C. 1332 in diversity-only class actions, as those requirements were interpreted prior to *Finley*.

Subsection (b) makes one small change in pre-*Finley* practice. Anomalously, under current practice, the same party might intervene as of right under Federal Rule of Civil Procedure 24(a) and take advantage of supplemental jurisdiction, but not come within supplemental jurisdiction if parties already in the action sought to effect the joinder under Rule 19. Subsection (b) would eliminate this anomaly, excluding Rule 24(a) plaintiff-intervenors to the same extent as those sought to be joined as plaintiffs under Rule 19. If this exclusion threatened unavoidable prejudice to the interests of the prospective intervenor if the action proceeded in its absence, the district court should be more inclined not merely to deny the intervention but to dismiss the whole action for refiling in state court under the criteria of Rule 19(b).

Subsection (c) codifies the factors that the Supreme Court has recognized as providing legitimate bases upon which a district court may decline jurisdiction over a supplemental claim, even though it is empowered to hear the claim.

Subsection (c) (1)-(3) codifies the factors recognized as relevant under current law. Subsection (c)(4) acknowledges that occasionally there may exist other compelling reasons for a district court to decline supplemental jurisdiction, which the subsection does not foreclose a court from considering in exceptional circumstances. As under current law, subsection (c) requires the district court, in exercising its discretion, to undertake a case-specific analysis.

If, pursuant to subsection (c), a district court dismisses a party's supplemental claim, a party may choose to refile that claim in state court. In that circumstance, the Federal district court, in deciding the party's claims over which the court has retained jurisdiction, should accord no claim preclusive effect to a state court judgment on the supplemental claim. It is also possible that, if a supplemental claim is dismissed pursuant to this subsection, a party may move to dismiss without prejudice his or her other claims for the purpose of refiling the entire action in state court. Standards developed under Rule 41(a) of the Federal Rules of Civil Procedure govern whether the motion should be granted.

Subsection (d) provides a period of tolling of statutes of limitations for any supplemental claim that is dismissed under this section and for any other claims in the same action voluntarily dismissed at the same time or after the supplemental claim is dismissed. The purpose is to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court. It also eliminates a possible disincentive from such a gap in tolling when a plaintiff might wish to seek voluntary dismissal of other claims in order to pursue an entire matter in state court when a federal court dismisses a supplemental claim.

Subsection (e) defines "State" in accordance with other sections of this title.

Section 311 is intended to establish venue for both diversity and federal question cases in identical terms.

The general venue statute (28 U.S.C. 1391) includes "the judicial district . . . in which the claim arose" as one of the districts where civil actions may be brought. The implication that there can be only one such district encourages litigation over which of the possible several districts involved in a multi-forum transaction is the one "in which the claim arose."

This section clarifies that phrase by substituting the words: "any judicial district in which a *substantial part* of the events or omissions giving rise to the claim occurred, or a *substantial part* of property that is the subject of the action is situated." Congress used the same phrasing in a 1976 amendment designating venue in actions against foreign states.

This section also eliminates the century-old anomaly, now codified in the venue statute, providing for venue in diversity but not federal question cases "in the judicial district where all plaintiffs . . . reside." There is no good historical or functional reason for this distinction, which perversely favors home-state plaintiffs in diversity cases. The American Law Institute's 1969 Study of the Division of Jurisdiction Between State and Federal Courts proposed eliminating plaintiffs residence as a basis for venue and providing for venue in a judicial district in which "any defendant resides, if all defendants reside in the same State." This moderate broadening of venue means that if a litigation has a significant relation to a plaintiff's home state, it may be brought there; if it has no such relation, the plaintiff's residence alone should not suffice for venue.

Subparagraph (3) makes a similar change (regarding "substantial part") in venue rules for civil cases where the government is a defendant.

Section 312, regarding removal of separate and independent claims (28 U.S.C. 1441(c)), would eliminate most of the problems that have been encountered in attempting to administer the "separate and independent claim or cause of action" test. Most of the cases have involved the requirement of ab-

solute diversity to establish diversity removal jurisdiction. The plaintiff, for example, might sue a diverse defendant for breach of contract and join a claim against a nondiverse defendant for inducing the breach. Courts have found the test very difficult to administer and have reached confusing and conflicting results. At the same time, the need to provide removal to the defendants who are diverse is not great.

The amendment would, however, retain the opportunity for removal in the one situation in which it seems clearly desirable. The joinder rules of many states permit a plaintiff to join completely unrelated claims in a single action. The plaintiff could easily bring a single action on a federal claim and a completely unrelated state claim. The reasons for permitting removal of federal question cases applies with full force. In addition, the amended provision could actually simplify determinations of removability. In many cases the federal and state claims will be related in such a way as to establish pendant jurisdiction over the state claim. Removal of such cases is possible under 28 U.S.C. 1441(a).

The further amendment to 28 U.S.C. 1441(c) that would permit remand of all matters in which state law predominates also should simplify administration of the separate and independent claim removal. Of course, a district court must remand state claims that are so unrelated to the federal claim that they do not form part of the same Article III case or controversy.

Section 313 provides a fall-back statute of limitations (codified at new section 28 U.S.C. 1658) for federal civil actions by providing that, except as otherwise provided by law, a civil action arising under an Act of Congress may not be commenced later than four years after the cause of action accrues.

Statutes of limitations provide a specific time period after the contested event within which a case must be commenced. At present, the federal courts "borrow" the most analogous state law limitations period for federal claims lacking limitations periods. Borrowing, while defensible as a decisional approach in the absence of legislation, appeals to lack persuasive support as a matter of policy.

It also creates several practical problems: It obligates judges and lawyers to determine the most analogous state law claim; it imposes uncertainty on litigants; reliance on varying state laws results in undesirable variance among the federal courts and disrupts the development of federal doctrine on the suspension of limitation periods.

Section 314 would provide for a modest increase in juror and witness fees, to account in part for an increase in the cost of living since the last adjustment and in recognition of the important contribution these citizens make to our Federal justice system. These fees were last set by congress in 1978. Witness and juror fees would increase from $30 per day to $40 per day.

Section 315 delegates to the Supreme Court the authority, pursuant to and limited by the Rules Enabling Act, to define what constitutes a "final decision" for purposes of 28 U.S.C. 1291. As the Federal Courts Study Committee noted;

"The state of the law on when a district court ruling is appealable because it is 'final,' or is an appealable interlocutory action, strikes many observers as unsatisfactory in several respects. The area has produced much purely procedural litigation. Courts of appeals often dismiss appeals as premature. Litigants sometimes face the possibility of waiving their right to appeal when they fail to seek timely review because it is unclear when a decision is 'final' and the time for appeal begins to run.

"Decisional doctrines—such as 'practical finality' and especially the 'collateral order' rule—blur the edges of the finality principle, require repeated attention from the Supreme Court, and may in some circumstances restrict too sharply the opportunity for interlocutory review."

The Supreme Court's rulemaking authority is, of course, constrained by the requirement that any rule "not abridge, enlarge or modify any substantive right."

Section 316 extends the life of the Parole Commission for five years beyond the 1992 date for abolition set out in the Sentencing Reform Act of 1984. This extension would permit the Commission an adequate time to consider cases where the offense occurred prior to November 1, 1987 (so-called "old law" cases).

Section 317 extends, for 10 years, the bankruptcy administrator program currently operating in the judicial districts of Alabama and North Carolina. These programs, established by the "Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1966" (P.L. 99-554), as an exception to the nationwide expansion of the U.S. Trustee program, would otherwise expire on October 1, 1992. Any of the six affected districts may elect to become part of the U.S. Trustee program before the year 2002.

This section also amends the 1986 law to give bankruptcy administrators in the six districts standing to raise issues and appear and be heard in the same manner as U.S. Trustees. The section further provides that the power given to bankruptcy courts to act *sua sponte* to take any action or make "any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process" is given to the six affected districts on the date of enactment of this Act. The section thus makes uniform the authority of courts under 11 U.S.C. 105.

Section 318 requires the Judicial Conference to conduct a comprehensive review of the Federal defender program with a report back to Congress, with recommended changes, by March 31, 1992. As the Federal Courts Study Committee reported:

"Some years have passed since the last comprehensive review of the Criminal Justice Act program. Since that time, the federal defender program has grown substantially in size and complexity. For example, panel attorney appointements have risen from 16,000 in 1966 to 65,000 in 1988. There have been many other changes: the maturation of the defender movement, the dramatic increase in criminal prosecutions, the evolving sophistication and complexity of criminal law, the constitutionally mandated necessity of competent defense counsel, the small percentage of the legal profession that practices criminal law, the legal and ethical requirement of an independent criminal defense bar, the heavy workload of the federal judiciary, the independence of the federal prosecutor, and the revival of the federal death penalty."

Consistent with the importance of this program, Section 318 contemplates that the Judicial Conference will appoint a special committee to conduct a detailed study of the federal defender program.

The review should assess the current effectiveness of the CIA program (consistent with the areas suggested for study in subsection (b)) and recommend appropriate legislative, procedural, and operational changes, including those dealing with compensation. In addition to present and former federal defenders, the study committee should include a cross-section of those knowledgeable with CIA matters.

Section 319 amends the Ethics in Government Act of 1978, as amended, to provide that compensation for teaching received by a federal senior judge shall not be subject to an outside income limitation.

In contrast to the federal judicial retirement system, which allows judges who satisfy age and service requirements to retire at full salary, senior judge status enables eligible federal judges to continue to serve, but with a reduced workload. Pursuant to the Ethics Reform Act, federal judges who take senior status rather than choosing to retire are currently required to carry a minimum caseload corresponding to 25% of the caseload of a full-time active federal judge.

The Federal Courts Study Committee report recognizes the significant contribution of senior judges to effective court operations and additional judicial capacity. The Report recommended that "Congress *not* enact disincentives to senior judge service." Section 319 is consistent with this recommendation, by removing a disincentive to senior judge service.

Section 501 of the Ethics in Government Act currently imposes a federal employee a 15% ceiling on outside earned income. 5 U.S.C. app. 210 (1988). Section 319 excepts from that 15% ceiling teaching income earned by eligible federal judges who choose to take senior status pursuant to section 294(b) of title 28, United States Code. This exception applies only to teaching income earned by federal judges on senior judge status. It does not apply to active status federal judges or other federal employees or officers.

Section 320 requires that circuit judicial conferences be held once every two years (instead of every year as in current law) with an option to be held in the off year, as a way to reduce the judiciary's costs. This provision, supported by the Judicial Conference, was included in S. 1482 (100th Congress) as introduced and H.R. 4807, as passed by the House.

Though the provision did not prevail, the idea of providing this degree of flexibility into expensive circuit conference meetings is cost-conscious and sound.

Section 321 changes the title of "United States Magistrates" to "United States Magistrate Judge." The effect of this provision is that any magistrate appointed pursuant to section 631 of 28 shall henceforth be referred to as a United States Magistrate Judge. The change in designation is intended to apply equally to full and part-time magistrates.

"Judge" is a name commonly assigned to non-article III adjudicators in the federal court system. Examples include Claims Court Judges, Tax Court Judges and Bankruptcy Judges. Accordingly, appending "judge" to the magistrates' title renders it consistent with adjudicators of comparable status. Moreover, United States magistrates are commonly addressed as "judge" in their courtrooms, so that the change of designation provided for in this section largely conforms to current practice. The provision is one of nomenclature only and is designed to reflect more accurately the responsibilities, duties and stature of the office. It does not affect the substantive authority or jurisdiction of full-time or part-time magistrates.

Section 322 amends the Judicial Survivors' Annuities System (JSAS), 28 U.S.C. 376, which provides for annuities for the survivors of Federal judges and judicial officials who elect to participate in JSAS. Current law limits entitlement to the survivors of those who had completed at least 18 months of service. Section 322 eliminates the 18-month service requirement for survivor annuity eligibility in cases where a judge or judicial officer (as defined in 28 U.S.C. 376(a)(1)(A), (B), and (F)) is assassinated. Amounts necessary to equal a full 18 months of contributions are to be deducted from the annuity where an assassinated judge or judicial officers served for less than 18 months.

Section 322 further amends 28 U.S.C. 376 to permit a survivor of a judge or judicial officer who is assassinated to receive an annuity notwithstanding the survivor's concurrent eligibility for Federal workers' compensation benefits under 5 U.S.C. chapter 81. Under existing law, survivors must elect between workers' compensation benefits and a JSAS annuity.

The determination as to whether the killing of a judge or judicial officer who is an assassination is to be made by the Director of the Administrative Office, subject to review by the Judicial Conference of the United States.

The amendments made by section 322 apply retroactively to May 18, 1979, and thus would permit the receipt of JSAS annuities by survivors of the three judges who have been assassinated since that date—Judge John Wood (W.D. Tex.) in 1979, Judge Richard Daronco (S.D. N.Y.) in 1988, and Judge Robert Vance (11th Cir.) in 1989.

Section 323 amends section 332 of Title 28 with respect to the composition of judicial councils, in a manner designed to better equalize the representation between circuit and district judges on the policy making body of the circuit. Circuit judges will still have one additional vote on the council, because of the presence of the circuit chief judge. In other respects, however, the number of district judges will equal that of circuit judges.

Section 324 contains several miscellaneous provisions. Subsection (a)(1) creates two new places for holding court in Nevada, at Ely and Lovelock. These cities, which recently have become locations for major state prisons, need to be designated as places of holding court so that space can be rented on an occasional basis for civil jury trials relating to prisoner civil rights cases.

The new maximum security prison located in Ely, Nevada, which is 284 miles from Las Vegas and 317 miles from Reno, houses all maximum security prisoners including death row inmates previously housed in Carson City (a designated court location). The new medium security prison under construction in Lovelock, Nevada, which is 439 miles from Las Vegas and 92 miles from Reno, is scheduled to open in September 1992.

The Nevada Department of Prisons has constructed a small hearing room and judge's chambers in the Ely prison and the same will be included in the Lovelock facility. Therefore, most hearings will be held inside the prisons. However, in order to accommodate the additional space requirements of jury trials, it will become necessary from time to time to rent space to supplement the existing facilities. Designation of the locations as places of holding court is required in order to allow the rental of space for such purposes.

Subsection (a)(2) amends Section 112(a) of Title 28, to add Watertown, New York as a place of holding court within the Northern District of New York. The Northern District of New York is a large district consisting of approximately 28,000 square miles. Litigants in the Watertown area presently have to travel approximately 70 miles to Syracuse, the nearest place of holding court.

There are federal facilities and Indian reservations in the Watertown area and litigation in the area has been increasing rapidly. The addition of Watertown as a place of holding court will reduce travel times and thus litigation expenses. The district court and the Judicial Council of the Second Circuit support the addition of Watertown and the Judicial Conference at its March 1988 session voted to support the designation of Watertown as a place of holding court.

Subsection (a)(3) amends Section 118(a) of Title 28 to add Lancaster, Pennsylvania as a place of holding court within the Eastern District of Pennsylvania. Litigants from Lancaster currently have to travel over 70 miles to Philadelphia. While Reading, over 30 miles from Lancaster, is also a place of holding court, no active district judge regularly sits in Reading. The addition of Lancaster as a place of holding court will reduce travel time and thus litigation expenses and will result in greater convenience for litigants from the Lancaster area. In addition, Lancaster County is one of the two fastest growing counties in Pennsylvania, and it has experienced the largest proportionate increase in federal court case filings of any of the ten counties within the Eastern District between 1987 and 1989.

Subsection (b) amends Section 122 of Title 28 to transfer Jackson County, South Dakota, to the Western Division of the district and to eliminate the designation of Washabaugh and Washington counties as part of the Western Divison. This technical change is made necessary to reflect the fact that the latter two counties were eliminated through merger.

The transfer of Jackson County to the Western Division was requested by the United States Attorney for the District of South Dakota. As a result of the merger of Washabaugh County into Jackson County, cases from the Pine Ridge Reservation which were formerly all in the Western Division (in Washabaugh and Shannon counties) were split between the Central and Western Divisions. The United States Attorney believes that this result is cumbersome and inconvenient for all concerned and that it is appropriate to handle all Pine Ridge Reservation cases in the Western Division. The transfer of Jackson County to the Western Division will accomplish this result and eliminate legal challenges which have arisen from the splitting of the reservation.

Section 325 makes a number of minor, technical amendments to existing law and tables of sections, consistent with this Act and other recent enactments.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 907, H.R. 5316, and that all after the enacting clause be stricken and that the text of S. 2648, as amended, be inserted in lieu thereof, and that the bill be deemed read for a third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, will the Senator from Delaware be good enough to explain, is this the package of antitrust amendments that we are talking about?

Mr. BIDEN. No; it is not. That is next.

Mr. METZENBAUM. I see. I thank the Senator.

Mr. BIDEN. Mr. President, I ask unanimous consent that Calendar Nos. 768, 906, and 908 be indefinitely postponed.

Mr. METZENBAUM. Parliamentary inquiry. I do not believe we ever reached the point of passing the Senate bill.

Mr. BIDEN. We are not passing the Senate bill. We are indefinitely postponing it. The House bill contained all of the provisions that are in question.

Mr. METZENBAUM. I appreciate the clarification. I thank the Senator.

Mr. BIDEN. Now, I have trouble seeing the Chair because there is a 7-foot Senator standing between us.

Mr. SIMPSON. Six-seven.

Mr. BIDEN. Six-seven. I beg your pardon.

Part of the problem, Mr. President, I am informed by some of my colleagues that my jacket is so loud it is causing the lights to cause the TV cameras not to function well. These are the notes I keep being handed here, and the reflection is making it difficult for me to see the Chair.

Mr. President, I ask unanimous consent, to finish my request, that Calendar Nos. 768, 906, and 908 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERLOCKING DIRECTORATES ACT

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 555, H.R. 29, an act to amend the Clayton Antitrust Act concerning interlocking directorates.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

39-059 O—92-10 (Pt. 25)

A bill (H.R. 29) to amend the Clayton Act regarding interlocking directorates and officers.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill? There being no objections, the Senate proceeded to consider the bill.

AMENDMENT NO. 3205

Mr. BIDEN. Mr. President, on behalf of Senators METZENBAUM and THURMOND, I send a substitute to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] for Mr. METZENBAUM (for himself and Mr. THURMOND) proposes an amendment numbered 3205.

Mr. BIDEN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

That this Act may be cited as the "Antitrust Amendments Act of 1990".

SEC. 2. Section 8 of the Clayton Act (15 U.S.C. 19) is amended to read as follows:

SEC. 8. (a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

"(A) engaged in whole or in part in commerce; and

"(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than $10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

"(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

"(A) the competitive sales of either corporation are less than $1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

"(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

"(C) the competitive sales of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, 'competitive sales' means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, 'total sales' means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

"(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

"(4) For purposes of this section, the term 'officer' means an officer elected or chosen by the Board of Directors.

"(5) For each fiscal year commencing after September 30, 1990, the $10,000,000 and $1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decreased) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than October 30 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

"(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at tne time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.".

SEC. 3. Section 10 of the Clayton Act (15 U.S.C. 20) is hereby repealed.

SEC. 4. AMENDMENTS.

(a) RESTRAINT OF TRADE AMONG THE STATES.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended—

(1) by striking "one million dollars" and inserting "$10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

(b) MONOPOLY.—Section 2 of the Sherman Act (15 U.S.C. 2) is amended—

(1) by striking "one million dollars" and inserting "$10,000,000, and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

(c) OTHER RESTRAINTS OF TRADE.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended—

(1) by striking "one million dollars" and inserting "$10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

TREBLE DAMAGES FOR THE UNITED STATES

SEC. 5. Section 4A of the Clayton Act (15 U.S.C. 15a), is amended by striking out "actual" and inserting in lieu thereof "threefold the".

Mr. THURMOND. Mr. President, I am pleased to join with Senator METZENBAUM in bringing these three antitrust measures to the floor. All three of them enjoy strong bipartisan support in this Congress, and in Congresses past.

The first measure amends section 8 of the Clayton Act concerning interlocking directors. It is legislation that has long been needed to modernize section 8 and to bring it into conformity with present times. It increases the jurisdictional amount from $1 million to $10 million, and provides for certain de minimis exceptions. In addition, it repeals section 10 of the Clayton Act covering common carriers, so that they will now be subject to the same section 8 requirements as all other industries.

This legislation also amends the Sherman Act to provide for an increase in criminal fines. Present law provides for individual fines of $100,000, and corporate fines of $1,000,000. Pursuant to this legislation, these amounts would increase to $350,000 and $10,000,000, respectively. Mr. President, I heartily endorse these changes, as does the Justice Department and the administration. Antitrust violations will only be effectively deterred if the system of penalties is meaningful. These changes accomplish that goal.

Finally, Mr. President, this legislation amends section 4A of the Clayton Act to provide treble damages for the Government when it brings an antitrust action. Current law allows the United States to recover only single damages when it brings an antitrust action in its own right. This legislation would correct that situation and put the Government on an equal footing with private parties. Although I have some concerns about whether treble damages are appropriate in all situations, I know that the Justice Department, and in particular the Antitrust Division, strongly support this amendment, and it is for that reason that I will not oppose it.

Mr. President, I urge all my colleagues to support this legislation.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3205) was agreed to.

Mr. BIDEN. I move to reconsider the vote.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments to the text of the bill?

Mr. BIDEN. I beg your pardon, Mr. President.

The PRESIDING OFFICER. Are there further amendments to the text of the bill?

Mr. BIDEN. No; there are no further amendments to the text of the bill.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read: "An Act entitled the 'Antitrust Amendments Act of 1990'."

MEASURES INDEFINITELY POSTPONED

Mr. BIDEN. Mr. President, I ask unanimous consent that Calendar Nos. 490, 533, 544, and 545 be indefinitely postponed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Without objection, Calendar No. 768 is also indefinitely postponed.

COORDINATED CLEARANCE AND SETTLEMENT ACT

Mr. BIDEN. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 607, H.R. 3656, a bill to impose the clearance and settlements of transactions of securities and related instruments.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3656) to amend the Securities Exchange Act of 1934 to improve the clearance and settlement of transactions in securities and related instruments, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3206

(Purpose: To clarify the application of the functional relationship test to gas utility holding companies registered under the Public Utility Holding Company Act of 1935)

Mr. THURMOND. Mr. President, I send an amendment to the desk on behalf of Senator D'AMATO.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. THURMOND], for Mr. D'AMATO (for himself and Mr. BREAUX, Mr. BURDICK, Mr. ROTH, and Mr. HEINZ), proposes an amendment numbered 3206.

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Gas Related Activities Act of 1990".

SEC. 2. RULE OF CONSTRUCTION.

(a) TREATMENT OF CERTAIN ACQUISITIONS INVOLVING GAS COMPANIES OR GAS TRANSPORTATION OR STORAGE.—The acquisition of a registered company of any interest in any natural gas company or of any interest in any company organized to participate in activities involving the transportation or storage of natural gas, shall be deemed, for the purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies.

(b) TREATMENT OF ACQUISITIONS RELATED TO SUPPLY OF NATURAL GAS; COMMISSION DETERMINATION OF CUSTOMER INTEREST.—The acquisition by a registered company organized to participate in activities (other than those of a natural gas company or involving the transmission or storage of natural gas) related to the supply of natural gas, including exploration, development, production, marketing, manufacture, or other similar activities related to the supply of natural or manufactured gas, shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies, if—

(1) the Commission determines, after notice and opportunity for hearing in which the company proposing the acqusition shall have the burden of proving, that such acquisition is in the interest of consumers of each gas utility company of such registered company or consumers of any other subsidiary of such registered company; and

(2) the Commission determines that such acquisition will not be detrimental to the interest of consumers of any such gas utility company or other subsidiary or to the proper functioning of the registered holding company system.

(c) CASE-BY-CASE DECISIONS REQUIRED.—Each such determination under this section shall be made on a case-by-case basis, and not be based on any preset criteria.

(d) SAVINGS PROVISION.—Nothing herein shall be construed to affect the applicability of any other provision of the Act to the acquisition or retention of any such interest by any such company.

(e) DEFINITIONS.—For purposes of this section—

(1) the term "registered company" means a company registered under the Act solely by reason of direct or indirect ownership of voting securities of one or more gas utility companies, or any subsidiary company of such registered company;

(2) the term "natural gas company" has the meaning given such term under the Natural Gas Act (15 U.S.C. 717(a) et seq.); and

(3) the term "the Act" means the Public Utility Holding Company Act of 1935.

Amend the title so as to read:

An Act to clarify the application of the functional relationship test to gas utility holding companies registered under the Public Utility Holding Company Act of 1935.

Mr. D'AMATO. Mr. President, I rise to explain legislation that I introduced on June 20, 1990 called the Gas Related Activities Act. Today the Senate is passing my legislation as an amendment to H.R. 3656.

The Gas Related Activities Act addresses a critical issue regarding the Public Utility Holding Company Act of 1935 [PUHCA] which affects the three gas systems registered under PUHCA. In order to be effective participants in the gas industry's newly emerged competitive environment while retaining the benefits and protections afforded consumers under the Act, these three gas systems must have the same degree of flexibility as exempt or non-PUHCA regulated gas companies in the acquisition of interests in certain ventures related to gas supply. Without this flexibility, the registered gas systems and their customers are, and will continue to be, placed at a disadvantage in the marketplace.

Investment in these activities has recently been constrained by the Securities and Exchange Commission [SEC] staff's interpretation of the "functional relationship" language under section 11(b) of PUHCA. Specifically, the SEC must be "primarily devoted to the benefit" of the affiliated distribution companies in the system. In the context of the gas industry, this standard has required that transportation, marketing, storage and other nonutility activities must primarily benefit the affiliated utilities—the local distribution companies [LDC's]. To assure compliance, a preset criterion has been developed by the SEC staff; 50 percent of the revenues of the nonutility venture must come from the affiliated LDC's. The resultant limitations on transactions with nonaffiliates are clearly inconsistent with the flexibility needed if these companies are to serve as effective competitors under State and Federal Energy Regulatory Commission [FERC] policies which require or encourage dealings with nonaffiliates. The limitations on competitive flexibility can also be detrimental to consumers.

At this point, I would like to summarize what my legislation does.

The acquisition or retention of gas-related businesses by the three registered gas systems is currently reviewed under section 11(b)(1) of PUHCA, which in relevant part provides that:

Each registered holding company * * * shall take such action as the Commission shall find necessary to limit the operation of the holding company system to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility system * * *.

The Gas Related Activities Act would declare in subsection 2(a), that, for purposes of section 11(b), the acquisition by a registered gas holding company of any interest in a business involved in the transportation or storage of natural gas is deemed to be reasonably incidental or economically necessary or appropriate to the operation of the gas utility system. For other gas supply-related activities, including exploration, production, development or marketing, subsection 2(b) of the Gas Related Activities Act would require the SEC to determine whether the acquisition of businesses participating in these activities by a registered gas company is in the interest of customers of each gas utility company or customers of any subsidiary of such registered company. If the Commission makes this determination, then the acquisition of these activities would be deemed for the purpose of section 11(b)(1) to be reasonably incidental, or economically necessary or appropriate, unless the Commission finds that the acquisition would be detrimental to the interest of consumers or the proper functioning of the registered holding company system.

The detrimental to the interest of consumers standard is derived from section 10 of the act.

The requirement that the proposed acquisition of an interest in one of these activities be in the interest of customers replaces the current interpretation of 11(b)(1) that the proposed activity must primarily benefit the affiliated LDC's. It is not intended that purely speculative benefits should meet this test, but that the company be able to show a reasonable expectation that an acquisition would be in the interest of the customers of the holding company. There are numerous activities which are in the interest of customers that could not meet the standard formerly imposed. The imposition by the SEC staff of preset standards requiring that a certain level of revenues be obtained from affiliates could foreclose numerous activities that otherwise could be beneficial to the customers of one of the registered gas utility systems.

Examples include a marketing company's ability to locate new markets for higher priced supplies, allowing release of those supplies from contracts with system companies, thereby lowering the cost for system customers. Similarly, the marketing company can locate lower cost supplies to the benefit of system customers. The functional relationship test as interpreted by SEC staff could have had the perverse effect of encouraging marketing companies to sell high-priced gas to affiliated LDC's. Clearly, this result is not intended under PUHCA.

Unduly favoring the system's affiliated customers is recognized to be inconsistent with the FERC's open access and nondiscrimination policies. The requirement in the legislation of a showing of a benefit to customers of the system is not intended to conflict with those policies nor with regulations respecting marketing companies affiliated with natural gas pipelines. This section shall not be construed to require a marketing company to show preference for an affiliate nor for an existing system customer.

In the area of exploration and development, the acquisition of supplies that are not currently required for use by system companies may provide greater ease of access in the event of future shortages. Technical advances and expertise may also be developed through these activities that may benefit customers. Finally, there may exist assets that are either temporarily surplus to the needs of the system or that have been developed in the normal course of system operations. Use of these assets to maximize their value is recognized as a benefit to customers so long as the proposed activity does not create a detriment to system customers.

Subsection 2(b) also requires the SEC to provide notice and opportunity for a hearing before making a determination regarding whether a proposed acquisition in the interest of customers. Where appropriate, in the Commission's judgment, the SEC may continue to delegate authority. The company proposing the acquisition will have the burden of proving that the acquisition satisfies the statutory test set forth in subsection (b). The imposition of this burden is intended to clarify that existing law requires; namely, that the company requesting the action must demonstrate that the statutory requirements are met. No modification of existing law regarding evidentiary standards or burden of proof is intended.

Subsection 2 also provides that the SEC shall not allow a proposed acquisition to proceed—even if the standards of subsection 2(b) are met—if the acquisition will be detrimental to the interests of consumers of any gas utility company owned by the registered gas company of any subsidiary of such company, or the proper functioning of the holding company system. This reiteration of the consumer interest standard contained in section 10(b)(3) of the act is to clarify that the Gas Related Activities Act does not bless all gas supply related activities, regardless of the impact on consumers, but rather it is intended that no acquisition should be permitted if a detriment to consumers would result.

The Gas Related Activities Act is very narrow in scope. First, it is limited to the acquisition of gas supply related businesses. Investments in businesses, which are not related to gas, such as real estate, drug stores, or other similar activities, would remain subject to the functional relationship test requiring that the applicant prove that the proposed activity is reasonably incidental or economically necessary or appropriate to the utility business. All other provisions of PUHCA would continue to apply as well.

Second, the Gas Related Activities Act is limited to the application of the functional relationship test. All other PUHCA standards would continue to apply to investments in gas activities by the registered gas systems. The continued applicability of the other standards, as well as section 2 of the bill, responds to certain concerns raised by consumer groups. The National Association of State Utility Consumer Advocates [NASUCA] and the Ohio Office of Consumer's Counsel [OOCC] adopted resolutions recognizing the benefits of the Gas Related Activities Act with respect to transportation and storage. They also expressed concern that the Gas Related Activities Act might permit unlimited expansion of nonregulated gas supply activities regardless of whether those activities might be detrimental to LDC's. As a result, increased risks might be imposed on those LDC's. Concerns were expressed that gas empires could be created similar to the empires that the PUHCA has effectively dismantled.

The Gas Related Activities Act is not intended to be an avenue for empire-building. The remaining SEC authority, together with the oversight authority of FERC and State public utility commissions, are sufficient to prevent unlimited expansion of activities which may be detrimental to consumers.

The SEC is charged with oversight responsibility over the three registered gas systems and has authority under sections 7 and 10 of the PUHCA to consider whether their nonregulated activities might be detrimental to the interests of consumers and to take corrective action.

Section 7(d) provides that—

> The Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that:
>
> (1) The security is not reasonably adapted to the security structure of the declarant and other companies in the same holding company system;
>
> (2) The security is not reasonably adapted to the earning power of the declarant;
>
> (3) Financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest;
>
> * * * * * * *; or
>
> (6) The terms and conditions of the issue or sale of the security are *detrimental to the public interest or the interest of investors or consumers.* (Emphasis added.)

As previously stated, section 10(b)(3) of the PUHCA requires that the Commission approve the acquisition of a security, a utility asset or an interest in a business unless the Commission finds that:

> (3) Such acquisition will unduly complicate the capital structure of the holding company system of the applicant *or will be detrimental to the public interest or the interest of investors or consumers of the proper functioning of such holding company system.* (Emphasis added.)

Moreover, the last sentence of section 11(b)(1) has been interpreted to be a public interest standard for functionally related businesses. That test also continues to apply.

The SEC should continue to provide oversight under these provisions to assure that the registered gas systems' nonregulated, nonutility gas supply related activities do not create inappropriate risks to their affiliated utility systems through inordinate or imprudent expansion.

When one of the registered gas holding companies or one of its subsidiaries wishes to issue a security for the purpose of financing nonutility activities, section 7 applies. A notice of proposed transaction must be published in the Federal Register and State PUC's and

representatives of consumer interests and other interested parties then have the opportunity to submit comments or request a hearing. If the proposed financing is for the purpose of an overexpansion in an nonregulated area, which may be viewed as excessively risky, intervenors have the right to request that the SEC deny the application or to seek appropriate protection for consumer interests.

Under section 7 excessive leveraging of the nonutility venture would not be permitted since the effect would be to adversely affect the consolidated debt-equity standard of the system as a whole. The SEC staff insists that registered utility systems maintain appropriate capital structures.

When the holding company parent wishes to acquire the security of a system subsidiary, or if the subsidiary wishes to expand through the acquisition of securities or another interest in a business, section 10 applies. Notice of the proposed transaction would be published, the opportunity to comment and request a hearing would exist and, again, if the proposed acquisition would be detrimental to the consumer or public interest, the application may be denied or the order conditioned to prevent a detrimental result.

The SEC's authority under section 10 is very broad and also enables the SEC to consider matters of public interest such as the anticompetitive effects of a transaction.

The regulatory library includes a host of decisions establishing that when an agency is called upon to determine whether a proposal or condition satisfies the "public interest", or another similar broad standard, the agency has the authority and typically the responsibility to consider a challenge based on the asserted anticompetitive purpose or consequences of the proposal. *City of Lafayette* v. *Securities and Exchange Commission*, 454 F.2d 941, 948 (D.C. Cir. 1971)).

The Gas Related Activities Act is intended to conform the application of the functional relationship test to the competitive changes in the gas industry, while preserving the essential consumer protections the act provides.

I believe that, at this time, a description of the appropriate definitions used in this debate would be useful.

The term "natural gas company," is defined in section 2(6) of the Natural Gas Act (15 U.S.C. section 717a) as:

"Natural gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

For purposes of the Gas Related Activities Act, the following definitions apply:

"Marketing" refers to the activities connected to the sale or company-owned production as well as the purchase of natural gas or manufactured gas for resale to others or the purchase or sale of natural gas or manufactured gas as an agent for others or brokering of gas.

"Exploration" refers to the process of searching for natural gas through such operations as seismic and geologic research and testing, as well as exploratory drilling for natural gas.

"Development" refers to the acquisition of acreage, land, leases or mineral rights containing expected or proven natural gas reserves, initial drilling for reserves, and any related activities necessary to remove natural gas.

"Production" refers to the drilling for natural gas, operation or natural gas wells, and removal of natural gas from reservoirs. A producer of natural gas may not necessarily own the natural gas reserves, but may be engaged in the sale of natural gas either as reserves in the ground or after removal from the natural gas well. A producer may operate and sell oil and other petroleum products, as well as natural gas, depending upon the presence of oil and natural gas in the geologic formation underlying a particular well. In the presence of other substances in the natural gas produced from the well, a producer may also operate natural gas processing and treatment facilities to remove such substances from the natural gas stream.

"Manufacture" refers to the creation of synthetic natural gas, as opposed to naturally occurring gas through industrial processes to create gas from nongaseous substances, such as coal gasification or conversion of biological wastes to methane.

"Storage" refers to the injection of natural gas into partially depleted natural gas fields or other suitable natural gas storage facilities, holding the natural gas for a time in such storage field, subsequently withdrawing the natural gas, and any related activities and operation.

"Transportation" means the carriage of natural gas or manufactured gas through gathering facilities, intrastate pipelines facilities, offshore pipeline facilities, or interstate pipeline facilities, as well as the carriage of liquified and compressed natural gas by truck, ship or train.

Mr. President, this legislation is important to consumers in that it allows the three registered gas holding companies to develop new gas markets thereby increasing competition and resulting in lower prices. Without the passage of the Gas Related Activities Act, it is unlikely that these three companies would be able to play a role in bringing gas supplies to the Midwest and Northeast.

I am pleased that the Senate is about to pass the Gas Related Activities Act.

The PRESIDING OFFICER. Is there debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3206) was agreed to.

Mr. THURMOND. I move to reconsider the vote.

Mr. BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the questioin is, Shall the bill pass?

So the bill (H.R. 3656), as amended, was passed.

Mr. BIDEN. I move to reconsider the vote.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. I thank the Chair.

I yield the floor.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

ORDER OF PROCEDURE

Mr. WALLOP. I ask unanimous consent that I might proceed as if in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE RETIREMENT OF SENATORS ARMSTRONG, HUMPHREY, AND McCLURE

Mr. WALLOP. Mr. President, the 102d Congress will be without three of our colleagues who have chosen to retire this year. These retiring Senators have over half a century of combined Federal legislative experience, over 40 years in the Senate. Each of us who returns next year will note the absence of these three colleagues. GORDON HUMPHREY, BILL ARMSTRONG, and JIM MCCLURE have brought to the Senate experience in business, in law, in State legislatures and local politics; from public relations to prosecution to piloting aircraft.

But their contributions go far beyond legislative victories or defeats. Mark Twain said, "Few things are harder to put up with than the annoyance of a good example." Using Twain's language, each of these fine men has been a real annoyance—and an example which this Senator regrets too few have followed.

Although completing only his second term, GORDON HUMPHREY is described in the Almanac of American Politics as "the kind of conservative who likes to take on lost causes and complain about being sold out—but in this conservative era he has also

gotten some results * * * He has made a difference."

And make a difference he has. He has indeed tilted at a number of windmills, he has fought for causes others might choose to describe as lost. He has been a ceaseless and courageous soldier in the fight for the right to life, helping found the congressional coalition on adoption to focus on alternatives to abortion. Though not an attorney, he has been a strong voice on the Judiciary Committee, fighting for a sound confirmation process during the shameful attack on Robert Bork, and fighting to restore credibility to the role of the ABA in our nomination process.

Beyond all other issues, though, GORDON HUMPHREY's name is virtually synonymous with the Mujahideen's fight to free their country from its Soviet oppressors. He was tireless, tenacious, relentless, in his determination to keep attention focused on the continued presence of Soviet troops in Afghanistan. And no one can doubt that GORDON HUMPHREY affected the outcome, that he made a difference. And what more can a man ask be said about him—than that he made a difference?

BILL ARMSTRONG also came to the Senate in 1978, bringing with him years of legislative experience from his home State of Colorado and from the House of Representatives. He is a businessman—a background that evidences itself in his incisive understanding of budgets and economics. And his experience in radio and television communications is equally evident—in his quiet confidence and composure, his distinctive eloquence. I do not know of a Senator here who finds anybody more lucid, and eloquent on the issues than BILL ARMSTRONG.

BILL ARMSTRONG's impressive knowledge of his issues and unparalleled command of speech and language combine with his moral strength, principles, and integrity to make him a powerful force in the Senate.

Whether he is arguing for fiscal restraint, antitax Republicanism, the sanctity of human life, the need for a moral standard in our Nation—whatever his cause, he is a persuasive and courageous advocate and this Senator is gratified to share his beliefs and proud to call him friend.

And what does one say about JIM MCCLURE, the most senior of the retiring Senators? The finest thing we can say is that JIM MCCLURE is a wise and courageous friend and colleague.

He has been in the Congress since 1966, for those of you who would limit terms, and I am not certain that the country is going to be better off with his absence from the 102d Congress.

And it is difficult to contemplate this body without him next year. His resume is impressive: former chairman and now ranking member of the Energy Committee, ranking member of the Interior Appropriations Subcommittee, former chairman of the Republican conference. There is no major piece of energy, public lands, or natural resources legislation passed in recent years on which he has not left an imprint.

In addition to his well-known role in resource and energy issues, he has also taken the lead in exposing and demanding an accounting for Soviet violations of arms control treaties. He has been a vigorous advocate of the Reagan doctrine, and a long-time and often lonely voice calling for reform of the entitlement processes which must be addressed if we are ever to truly get our budget under control.

A man of depth and breadth and quiet commitment to principle, he extends that commitment to the institution and history of the Senate. He has fought to defend our rules, to protect the rights of the minority, to preserve the integrity and fairness of the Senate itself. This may, indeed, be the area in which he will be most missed in the years to come; the Senate as an institution will be the worse for his absence.

Whatever the outcome of the elections in 2 weeks, the retirements of BILL ARMSTRONG, GORDON HUMPHREY, and JIM MCCLURE ensure that the U.S. Senate will be a very different place next year. Winston Churchill said, "Short words are best and the old words when short are best of all."

I will close this farewell to my retiring colleagues taking Churchill's advice, using old and short words: Honor, integrity, courage, wisdom, decency, morality, principle, dignity. These are the words that describe BILL ARMSTRONG, GORDON HUMPHREY, and JIM MCCLURE. The Senate, and this Senator, will miss them.

May God wish them all speed.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I would like to compliment our distinguished colleague from Wyoming. He is well recognized as being articulate, but at this moment he has risen to one of his finest moments in the Senate.

I wish to associate myself in every way with those remarks, the remarks which are factually correct, remarks which are spoken from the heart.

I share those feelings for I came to this Senate 12 years ago with two of those distinguished colleagues, Senator ARMSTRONG, Senator HUMPHREY, and when I arrived I met the Senator from Idaho, JAMES MCCLURE, whom I had not known before hand. But it turned out through the years we found that our careers were very parallel, having served briefly at the end of World War II in the Navy, and having worked in the national forest in Idaho prior to World War II both as firefighters, trailblazers, and what not, 16-, 17-year-old young persons.

I shall miss them all, but, indeed, JIM MCCLURE I have considered throughout my brief career as a mentor, sort of an older brother. I will feel his departure very deeply, as I will the other two.

I thank the Senator from Wyoming for his remarks and allowing me to associate myself with those remarks.

Mr. WALLOP. I thank the Senator. I yield.

RETIREMENT OF SENATOR JAMES MCCLURE

Mr. MITCHELL. Mr. President, the retirement of Senator JIM MCCLURE after a congressional career that spans 6 years of service in the House of Representatives and 18 years in the U.S. Senate means the loss of an effective voice for the people of Idaho.

Senator MCCLURE's Senate service has been distinguished not only by his commitment to the people and State of Idaho, but also by his commitment to learning and knowing in great depth the issues to which he chose to dedicate his time.

The Senate has had no more ardent or consistent advocate or a national energy policy than JIM MCCLURE.

Throughout times of energy crisis and stability, through shortage and plenty, he never abandoned the central core of his goal: That our Nation is shortchanging itself so long as we permit ourselves to depend on unreliable foreign sources for much of our energy.

Events in the Persian Gulf today vindicate that long view.

The Senate will miss his knowledge and his experience as we seek to deal with these issues in the years ahead.

Senator MCCLURE has been a colleague to Senators of both political parties. He has never allowed partisan differences to extinguish the common purpose of the Senate institution, to serve the Nation and to uphold our Constitution. He has defended his positions with vigor and intelligence and he has been graceful in both victory and defeat.

We all wish JIM MCCLURE a satisfying career in the private sector.

RETIREMENT OF SENATOR ARMSTRONG

Mr. MITCHELL. The retirement of our colleague, Senator BILL ARMSTRONG of Colorado, deprives the Senate of an articulate and forceful presence.

Senator ARMSTRONG has represented the people of Colorado for two terms in the U.S. Senate with forcefulness and intelligence. I have had the privilege of serving with Senator ARMSTRONG on the Senate Finance Committee, and while we have often disagreed on policy, he has never failed

to present a well-prepared and thoughtful defense of his perspective.

His consistent championing of the principle of tax indexing has borne fruit, for it has become a part of the Tax Code today. His decade-long concern about the domestic savings rate is more and more widely acknowledged today. Senator ARMSTRONG has never lacked the courage to back his convictions with his vote, even when such an action could have been politically damaging.

Senate debate is enlivened and democracy is enriched by the vigorous presentation of diverse views. Senator ARMSTRONG has presented his views with consistency and intelligence. He has challenged all of us to reexamine our perspective and in so doing, he has broadened and strengthened the caliber of our legislative work.

Colorado has been well served by Senator ARMSTRONG, and all of his colleagues will miss him when the next Congress convenes. We wish him every success in his future career.

RETIREMENT OF SENATOR GORDON HUMPHREY

Mr. MITCHELL. The retirement of Senator HUMPHREY means a loss to the U.S. Senate but a possible gain for the Senate of New Hampshire. In choosing to continue public service at the State level, Senator HUMPHREY reminds all of us that in today's world, much of the important work of government is taking place in those governments closest to the people.

I have served on the Environment and Public Works Committee with Senator HUMPHREY. He has supported our efforts to curb the emissions that lead to acid rain, from which his State of New Hampshire has suffered as severely as Maine.

Senator HUMPHREY's long and consistent championship of the Afghan freedom fighters helped preserve the successful American effort that helped lead to the Soviet withdrawal from that beleaguered nation. His commitment to freedom for the Afghan people mirrors his commitment to the principle of liberty for all peoples.

If Senator HUMPHREY is successful in his State election race, the Senator of New Hampshire will gain a principle new voice.

I yield the floor.

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

RETIREMENT OF SENATOR MC CLURE

Mr. GARN. Mr. President, some 17½ years ago, I was mayor of Salt Lake City, and I had come back to Washington to confer with Senator Bill Brock, who was then chairman of the Republican Senatorial Campaign Committee about possibly running for the Senate. Purely by accident, I was seated on the same airplane with Senator JIM MCCLURE. I had not had the pleasure of meeting him before that time, but I knew of him, being from a sister State to the north. So I sat with him and discussed at great length the possibility of me running for the Senate.

I have said the Senator MCCLURE recently that I sometimes wonder whether I did the right thing or not, whether I appreciated his advice, looking back over all those years. But I certainly do not regret it from the standpoint of having had the opportunity to serve with Senator MCCLURE.

We do have very similar States, in many respects. We are public land States; we are States that are much dependent upon our dealings with the Federal Government. Our water resources are scarce. We both have a great deal of natural resource development within our States, as well as timber. So we have such common interests to represent that it has been a great pleasure for me to have the benefit from his advice and experience.

I said to Senator MCCLURE just last evening that I not only resented him leaving because of the loss of the daily contact with a very dear personal friend, but he would increase my workload dramatically, because for all of these years, he has been such an expert on all of these public lands, and on energy issues, that it has allowed me to concentrate on some other things and simply seek his guidance, knowing that with his advice and help on the issues that affect our States, I simply could rely on that, and not have to do the time for all of the research myself. So it is literally true that being on the same committee that he is on, without him, my workload will be increased, although I would expect to be calling him often, as I learn more from him about these issues.

However, I suppose I am glad about some of the rules about lobbying, but I would expect that advice free from the Senator from Idaho. It is a great loss to the Senate of the United States and to the people of Idaho. It is a loss to me personally of a friend and a Senator who has been of such great assistance to me over such a long period of time, and who had something to do with me coming here to begin with.

I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

RETIREMENT OF SENATOR WILLIAM ARMSTRONG

Mr. COATS. Mr. President, the end of this Congress will see an end to the Senate service of an extraordinary individual, WILLIAM ARMSTRONG. He leaves a legacy of legislative accomplishment and strong, personal friendships that a freshman like myself can set as a goal, but never hope to fully grasp. He has been a Senator of integrity, and an individual of character. And this body will feel his absence in a thousand ways.

John Stuart Mill said, "One person with a belief is a social power equal to ninety-nine who have only interests." The career of WILLIAM ARMSTRONG has been dramatic proof of the power of belief. The belief that the unborn deserve our care and protection. The belief that the strength of the family is the highest goal of government. The belief that American weakness invites conflict and that strength preserves the peace. The belief that government has a moral duty to live within its means.

But when you spend some time with BILL ARMSTRONG, it is clear that one belief surpasses all the rest and shapes his whole life and character—a belief in the teaching and work of Jesus Christ. BILL ARMSTRONG, above all else, is a man of faith. And he has been the best example I know of how public service can be transformed and elevated into service to God.

I know that BILL ARMSTRONG will find ways to give this kind of service for the rest of his life. It is part of who he is. But his absence from the Senate will leave our deliberations improverished. He spoke out of conscience. He acted in humility and conviction. He made friends who will miss him. And he gave service that exemplified what it means to be a U.S. Senator and a Christian gentleman.

But perhaps the best I can say is that he fulfilled a standard as old as the Scriptures. "What does God require of you? To do justice, to love mercy, and to walk humbly with your God."

I yield the floor.

The PRESIDING OFFICER. The majority leader.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I am advised that the Excellence in Education Act has been cleared for action on both sides of the aisle, and I will momentarily ask to proceed to that as soon as I get a final clearance.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to Calendar item No. 1025, H.R. 5932, the excellence in Education bill.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Maine?

Mr. HELMS. Mr. President, reserving the right to object, we are talking about $800 million of the taxpayers' money.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate receives from the House the conference reports accompanying H.R. 5399, legislative appropriations; H.R. 5769, Interior appropriations; and H.R. 5114, foreign operations appropriations, that the conference reports be deemed adopted, and the motion to reconsider be deemed made and tabled.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, reserving the right to object, and I shall not object; the senior Senator from Wyoming and I have a serious reservation about a provision in the Interior appropriations conference report.

We will not be asked it be voted on, but we would like to have a statement in opposition and an explanation inserted in the RECORD at the appropriate place.

I have no objection.

Mr. MITCHELL. I thank my colleague, and I thank my distinguished friend from New Mexico for his courtesy.

The PRESIDING OFFICER. As the Chair indicated, the unanimous-consent request is granted.

A TRIBUTE TO SENATOR JAMES McCLURE

Mr. DOMENICI. Mr. President, I want to speak just a few moments about Senator MCCLURE's departure.

Mr. President, 18 years ago I was fortunate to be elected by the people of the State of New Mexico to come to the U.S. Senate. The Senator from New Mexico had no experience as a legislator. I had been a mayor of a city, and city councilman, and I did not have the good fortune of being either in the State legislature, or being a Governor, or serving in the U.S. House of Representatives.

In a very real sense, my first acquaintance with the distinguished Senator from Idaho, Senator MCCLURE, was when I found out that even though we arrived at the same time, he was going to be my senior. This was because he had served in the U.S. House of Representatives, and we had rules then that said that. I guess for a few fleeting weeks I wondered whether that was fair.

Let me tell you, even though we have changed those rules, I think it was eminently fair. If placing one Senator over and ahead of another in this institution as we did in those days when the Senators from New Mexico and Idaho arrived on the scene, was based on knowing how to legislate and knowing what the principles, ideas, and ideals that we stood for were, if those were the criteria, than he deserved being ahead of me.

I had the privilege one time of sponsoring and endorsing him in one of our Republican caucus events. I can remember vividly what I said. It is good that I have a chance to say it now publicly, and say it on the RECORD because my theme was, about 8 years ago when I did that, that I was very privileged to introduce and recommend to my fellow colleagues "a Senator's Senator," and I stand tonight saying that he has served this body well because he is truly a real Senator. He understands that our principal job is to help make policy through legislation. He has some real firm principles, but he also is careful and he understands what he wants to do and how to do it.

I want to say to the U.S. Senate tonight as he leaves, he is indeed a Senator's Senator. He is in every respect, what a Senator ought to be from the standpoint of his personal qualities, from the standpoint of what he stands for, his demeanor, his lifestyle, his love and admiration and respect for his family, and his great dedication to his people.

But he is also a Senator from the standpoint of this country, because he understands from whence we came, and where we are going. He has done everything within his power to be a constructive person in the fields that he is expert in, and there are many.

It has been my privilege to serve with him on a number of committees, when we first joined the Budget Committee and on the Energy and Natural Resources Committee and, in the last few years, on the Appropriations Committee. He makes this Senate a better place. His departure makes it less good than when he was here. The Senator from New Mexico is sorry to see him leave. The Senate will miss him.

But obviously he has made his choice and I wish him the very, very best. I wish him good health. And for him and his family I wish nothing but the very best.

I thank the Senate for giving me time and I yield the floor.

Mr. McCLURE. Mr. President, I am not going to give any kind of a valedictory speech about the years I have spent in the Senate. I do want to respond just to the remarks that have been made here today by several of my friends, and friends on both sides of the aisle, whom I sincerely cherish.

I leave the Senate with no regrets, with a lot of nostalgia, richly rewarded by the friendships that I have made and the opportunity to serve the people of Idaho, and of this Nation over the last 18 years in this body, and 6 years in the other. I am looking forward to the challenges of the future and I am hoping that I will have opportunities to say hello to my friends here and, perhaps, even if one or two of them were to call and ask me to talk to them about one of the pending problems, I would welcome the opportunity to a dialog with them on these problems.

As you know, the rules of the Senate will not apply to me next year but do prohibit any direct lobbying for a year, and I shall respect that rule meticulously. But if any of you really want to talk to me and ask me to talk to you, I think I can respond to that request.

There are, certainly, for any of us who serve in public office, high points and low points. I say without any qualification at all, aside from the sacrifices my family has had to make in order to allow me to serve here—and those sacrifices have been many—I have no regret with the time I have spent here.

Certainly I regret that some of the things that I cherish and believe in, and some of the battles that I have been involved in I have lost, when I would rather have won. But in a pluralistic body, as we are a pluralistic society, there are 100 men and women that serve in this body, but in the main my contacts with them have been almost universally friendly above board, and constructive. There may be some of my friends in this body who do not believe that is true always, but I think it has been true.

It is a great privilege to serve in an institution of this character. And while some of us may regret—indeed, I regret from time to time—that it does not work more perfectly than it does, and recognizing that indeed it can be made to work better than it does now, it is reflective of both the best and worst of our society; much more the best than the worse.

And so as I close out a quarter of a century in the Congress of the United States, I am so proud of my associations here, proud of the work that we have attempted to do together, and most proud of the friendships that I have made that have elicited the generous comments here today. I thank each of you sincerely for the opportunity to have served here, and most of all, I thank the people of Idaho for having made it possible.

TRIBUTE TO SENATOR JAMES McCLURE

Mr. KENNEDY. Mr. President, I join in this tribute to our Republican colleague, and I want to mention a service that the distinguished Senator

from Idaho has provided to this country that has not been addressed in the other tributes to his work in the U.S. Senate. I refer to his service as a Senate ex officio member of the board of trustees of the John F. Kennedy Center for the Performing Arts.

Senator MCCLURE has served with great diligence and distinction as the vice chairman of the Kennedy Center, and he has taken an interest in all the operations of the center. He shared the vision of President Kennedy that it would become a national center for the performing arts. I know that all those who serve on the board have deeply valued his hard work and his outstanding service as I do.

I have not had the opportunity to serve with Senator MCCLURE on the committees on which he sits, but I have very much appreciated working closely with him on the board of the Kennedy Center. I have enormous respect for JIM MCCLURE. He will be missed at the Kennedy Center, as he will be missed in the Senate, and I wish him well in the years ahead.

Mr. MCCLURE. Would the Senator yield?

Mr. KENNEDY. I am glad to yield.

Mr. MCCLURE. I thank the Senator for his comments. Certainly you have put your finger on one of the most emotional parts of my departing. Of all the things that I do around here, I think that one is activity I enjoy the most, because it meant a great deal to me and to my wife.

RETIREMENT OF SENATORS WILLIAM ARMSTRONG, JAMES MCCLURE, AND GORDON HUMPHREY

Mr. RUDMAN. Mr. President, I want to speak briefly about our three colleagues on this side of the aisle that will be here as Members of the Senate for the last time this evening, and I certainly hope that they are visitors as former members of the Senate in the years to come.

SENATOR WILLIAM ARMSTRONG

BILL ARMSTRONG is someone that I have come to have deep affection for and enormous respect. We agree on a great deal, but we also disagree on a great deal. One of the great intellectual experiences I have enjoyed in the Senate over the last 10 years is to have an opportunity privately, one-on-one, to exchange reading materials with BILL ARMSTRONG, to debate things with him that we were concerned about, and to talk about a myriad of issues. He is a thoughtful, extraordinarily intellectual, engaging man, deeply rooted to his faith, which is obvious in everything that he does. I will miss him.

SENATOR JAMES MC CLURE

JIM MCCLURE. I got to know when I got here in 1981 as a fairly senior Member of the Senate, one who had positions of great responsibility on the various committees on which we serve, and we served on several together. He has been a true education for me in things I knew nothing about.

I am a New Englander, and knew very little about water rights and mineral rights and Federal ownership of lands in those Western States, the problems of timber operators and the proper use of our vast tracts of Federal land. He truly has been, to use a pun, a gold mine of information.

JIM MCCLURE probably knows more about those subjects than anyone in this body, and we are going to miss him. In addition to that, he brings a very special balance to this place. He is one who truly you can disagree with without ever having him become disagreeable. We have had some fascinating discussions on a wide variety of issues. I will miss JIM MCCLURE.

SENATOR GORDON HUMPHREY

My senior colleague, GORDON HUMPHREY, is not on the floor. But I want to say just a word about my senior colleague. I have never in my life met a person who was so devoted to certain principles that he held dear.

GORDON HUMPHREY is not well known to many of us on this floor. Some have described him as a loner. And I do not think GORDON HUMPHREY himself would refute that statement. He is very devoted to some subjects he cares about and spends enormous amounts of time examining those subjects.

I had occasion about 3 months ago to speak at a dinner for GORDON HUMPHREY in New Hampshire. In order to do that I had my staff look through the CONGRESSIONAL RECORD and go through many of his statements over the last 12 years. It was remarkable the consistency of those statements about things he cared about.

The majority leader mentioned one, and that, of course, was his almost single-minded dedication to the plight of the Afghan freedom fighters and the Afghan people. I do not think it is an overstatement to say he made the difference in bringing the attention of the administration and his colleagues to that situation which cried out for remedy and still does.

The other issue, of course, my senior colleague and I disagreed on. He is strongly pro life and I am pro-choice. And we have discussed that issue many times in travels we have had back and forth to New Hampshire.

I have never met anyone who believed that so fundamentally, so sincerely. I believe if GORDON HUMPHREY were facing reelection this year and chose to run and he was told overwhelmingly that he would lose his Senate seat unless he would change his position, GORDON HUMPHREY would never change that position, because it is part of him.

As the majority leader mentioned, he will be running for our State senate, and I expect he will win that seat. And I agree with the majority leader, he will bring a great deal to that body.

So, to the Senator from Colorado, BILL ARMSTRONG, and the Senator from Idaho, JIM MCCLURE, to GORDON HUMPHREY from New Hampshire, I will miss all three of them.

The PRESIDING OFFICER. The Senator from California.

TRIBUTE TO DEPARTING SENATORS

Mr. WILSON. Mr. President, with his customary eloquence the junior Senator from New Hampshire has, I think, put on the record things that we admire in our three departing colleagues. Rather than repeat them I will say he has spoken eloquently for many of us.

I will take only a few moments more of the Senate's time to make some rather personal observations. One of the great benefits, and there are many, of service in this body is making friendships of a rather special kind. The people on this floor are very different but each of them has come to this body because of merit. They are not here by accident. They are here because they have earned the privilege of serving their State. However we may disagree, agreeably, I think in fairness each of us would have to concede that.

As it happens, the three who are departing, though they are quite different men, are each possessed of deep conviction and they have in their different ways made a very great impact upon this body and its deliberations. We are all aware of that.

TRIBUTE TO GORDON HUMPHREY

GORDON HUMPHREY is a man who has been depicted by this colleague from New Hampshire as possessing great conviction, and that is true. What is perhaps lesser known is that on an occasion, when he might very properly have asserted seniority, at my request he yielded a seat on the committee that he felt he could live without in order to allow me to gain admission.

I think that was an act of very great generosity and it is not the kind of thing that should be forgotten. It is the kind of thing that should be noted and appreciated for what it is, an act of great personal generosity.

TRIBUTE TO WILLIAM ARMSTRONG

BILL ARMSTRONG has been one of the most eloquent spokesman for the causes in which he so passionately believed. Some of the best debate I have heard on this floor has issued from his mouth. He is a man who cares very deeply about those causes that have been fortunate to have him as an advocate. But he is also somebody who

cares about people. Never, ever, have I seen him be mean spirited.

In his zeal as an advocate he has been respectful of those who oppose him. If he has not always respected the merits of their agruments, he has never demeaned the person making those arguments. To the contrary he has been, I think generous in terms of his own personal conduct, even in heated debate.

He has also demonstrated enormous courage. He has been an advocate whether his cause was popular or distinctly unpopular. And he has demonstrated the kind of intellectual integrity and the kind of character that is all too rare in any walk of life, and perhaps even in one where we hold people to high standard, as we do on this floor. He has, I think, enriched those who have known him and he has provided a real role model for people who come to this body with rather strong egos to begin with.

TRIBUTE TO JAMES MC CLURE

My friend JIM MCCLURE's quarter-of-a-century of service in this body has provided him with the expertise that he has gained by the application of a keen intellect to those areas that have been attributed to him as areas of expertise. But far beyond his expertise, he is the kind of person to whom a freshman in this body can go seeking wise counsel, even when that wise counsel happens to run counter to the self-interest of JIM MCCLURE.

On more than one occasion I have asked him for advice, not just information but advice. And on every occasion I have had from him both information and advice, and in every instance the advice was what he as a counselor seeking my best interests would tell me in unvarnished terms, even when it went against his own interests.

He is the kind of person who would never fail to give warning to an opponent of what it was that he intended to do. His is a special kind of integrity and, again, I think he has offered a model for people who come with strong egos and a strong belief in their own integrity. He has gone the extra mile. And, though passionately devoted, he is also someone who has understood that a decent respect for the convictions of others sometimes is what breeds compromise: Reasonable, rational compromise of the kind that does not compromise anyone's integrity.

He has been an extraordinary role model in terms of his integrity, his character, and certainly the expertise which we will sorely miss. I hope we will not miss it altogether.

In fact I hope all three of these men will not be strangers to this body and that we will continue to benefit in a different fashion from what they have allowed us to enjoy in such generous measure. Each of them I think should be recognized for a generosity of spirit that should provide a model for all of us.

I yield the floor.

The PRESIDING OFFICER (Mr. WIRTH). The Senator from Wyoming.

TRIBUTE TO DEPARTING SENATORS

Mr. SIMPSON. Mr. President, even though I think this may not be a particular special order occasion, I would like to briefly comment on our three colleagues, if I may.

Senators BILL ARMSTRONG and GORDON HUMPHREY and I came to the Senate at the same time. We were in the class of 1978. It was a group of 11 Republicans and 9 Democrats. We used to meet together once a month, which was very troubling to Senator BYRD and Senator BAKER, as to what we might be plotting in there. Because all 20 of us would gather there and we would talk about our lives here. Senator KASSEBAUM was in that class, Senator COCHRAN, Senator PRYOR, Senator COHEN, BILL BRADLEY, DAVID DURENBERGER, RUDY BOSCHWITZ—it was a very interesting group of people—DAVE BOREN.

We would meet once a month, and as I say it was a cause of consternation because we obviously had a lot of fun in there, and we did not do any plotting but we would talk about how to answer the mail and how to handle constituents and things that are very much real in this place—and we forget those things. In any event, I learned to know them both.

TRIBUTE TO GORDON HUMPHREY

GORDON HUMPHREY and I campaigned together a little here in the city, doing what we do, raising money—the things you do. I got to know him. He, as his friend from New Hampshire said, may be considered by some as a loner. I do not see him that way totally, at all. When he gets that infectious grin when he has something he is going for, you want to know he is probably going to win. I made the greatest mistake of my life once when he said, "I wonder if I can have a hearing on this thing?" And I said, "No, it seems like a waste of time to me."

GORDON wrestled me around like old bones for 6 months. I said, "You win." I never have seen such tenacity, such spirited energy and such dedication to his cause and especially those, as the Senator from New Hampshire has given us. It would be easy to say these things about him, but I should say something about his wife Patty. She is a very lovely, warm, and delightful lady. We shall miss both of them. I wish we could have seen more of them.

BILL ARMSTRONG, here again with his wife Ellen, with JIM MCCLURE and his wife Louise. It is very obvious that their success is very much occasioned by their spouses. I know that I say that in my own life. I say lightly that we all overmarried. That may be the best way to leave it. But these are special ladies: Patty Humphrey, Ellen Armstrong, Louise McClure, and Ann Simpson, if I may say.

I do not know what BILL ARMSTRONG is going to do. He has been very quizzical. He has cocked his head at me several times and we know how he does that—cocked his head and looked through his glasses and said, "I'll be telling you what I'll be doing." I have seen him share so much of himself with us through prayer breakfast. The National Prayer Breakfast will remember his remarkable speech that morning. I do not know what he will do, but I know he will have an influence on others because his faith is not something that is just talked about. It is like the old phrase, "I would rather see a sermon than hear one any day," and he is that. I do not know what he will be doing, but I will be putting it on him to find out. I am going to find out.

Finally, with my friend JIM MCCLURE, out in the high country. We call that the land of high altitude and low multitude, out where the canary sings base and the calf nods. Here is JIM MCCLURE going back to the beauty of Idaho, a very special place for him, as it is for all westerners. This is a very special, hallowed ground to a westener. It usually has some mountains, some trees, and it is a place where you go when all this clatter is getting pretty heavy. We all have a place for that and that is what JIM is going to retire to.

To JIM MCCLURE, I want to thank him particularly for what he has done for me. He is the most extraordinary resource I have never seen in the Senate. What makes him more effective than even just being an—and I say this; I wish I could pick another word because I cannot, because it is so descriptive—he is a vacuum cleaner. I have seen him come on this floor and say "What is up?" You say it is this. JIM all of a sudden is saying, "Oh, let me tell you about that. We do not want that." Or "We want to do this." He is an extraordinary gatherer of facts. There are a lot of us who are gatherers of facts. Not me. But what makes him effective is that people trust him. When he says he is going to do something, you can count on him.

I have followed him through hot issues, issues like gun control. Our part of the world sometimes is not understood to these people here. In our part of the world, it is very clearly understood. So he has guided me, he has helped me. I have deeply appreciated his kindness.

He and Louise are very special people. I was very honored to be part of his final dinner that we had downtown and participate in that. It was

there I used good humor and things I wanted to say in a jocular way.

Today, let me just say, thank you for JIM MCCLURE. I do not know what he will do or where he will go, but he will leave a presence here and he leaves a great legacy.

To JIM MCCLURE, BILL ARMSTRONG, and GORDON HUMPHREY, Godspeed, and bless you, bless you all.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

A TRIBUTE TO RETIRING SENATORS

Mr. STEVENS. Mr. President, I am sometimes at a loss for words when I follow the Senator from Wyoming, but I share the same feelings that he has expressed.

I recall JIM MCCLURE when he was in the House and when he came to the Senate, we knew that we had an expert in many areas of Federal law that affects the West. I think JIM has made his greatest mark in an area that is dear to the hearts of many people in the East, West, North, and South and that is in the area of protecting our rights to keep and bear arms. JIM MCCLURE really does leave a lasting mark on the legislation in this country concerning the use and the right to use firearms.

I have said to Senator MCCLURE I think he should move over and decide to be the spark plug to restore the vitality of the National Rifle Association. I would hope he might consider that.

But together with Louise McClure, JIM MCCLURE has been part of the family team of the Senate. We have traveled together a great deal—going to NATO meetings and to other meetings throughout the world—trying to represent our Government in areas that concern primarily defense matters. That is another area where we will move into next year without the expertise of JIM MCCLURE, and that is in the area of defense matters.

As the head of the group that we know as the steering committee, for many years JIM MCCLURE had a great deal to do with the changes in the modernization of our defense program. I believe that he and the people he had working for him prepared some of the finest studies of the deficiencies in the military program of the United States that I have ever used.

In the field of Western law—whether it is mining law or water law or the land law of the Federal Government as affects our 17 Western States—again, there is no one in the Senate who knows that law as well.

I heard the Senator from Idaho make his comment about being available if we call him. I am certain that he knows this Senator at least will be calling him because he is a veritable storehouse of information. You do not have to have a computer if you can talk to JIM MCCLURE concerning Federal law.

It is with a great deal of sadness that I see him decide to retire. I think it takes sometimes more courage to make the decision to leave this body that we all love so well than it does to run again. It is a tough decision he has made, and I respect his decision.

BILL and Ellen Armstrong have been friends in a different way. I have admired Senator ARMSTRONG and his tenacity for the principles that he believes in, and he has been very forceful on this floor, not in the same way as my friend from Idaho who is retiring, but in a way of offering a combination of spiritual and really principle-based philosophy that we have all admired.

We have at times disagreed. I can think of one basic issue that we disagree on, but the beautiful thing about the Senator from Colorado is I can never remember him being disagreeable. Some people can remember me being disagreeable, I can assure the Senator from Colorado, but he has been very forceful as a leader in the Senate prayer group from time to time and certainly in the annual Presidential Prayer Breakfast, he has been one of the foremost spark plugs of that effort.

So we are said to see Senator ARMSTRONG and his wife Ellen leave our ranks. I can say that we wish him well. And I am sorry that he has decided to prematurely terminate his career in the Senate.

Senator GORDON HUMPHREY and his wife Patty are something different again. I try to analyze why people make the decision not to run again when they are such forceful Senators and have such great ability. I do believe that GORDON HUMPHREY has brought a different perspective to the Senate, one that has been most important in the period we have gone through. Yet he had a change in his life that I understand, and that is he has acquired two new children recently. I can admire his decision on the basis that he will return to New Hampshire with his wife Patty and devote much more of his time to being with those children. That motivation above all the others I can understand.

But I do thank him also for his contributions in the field of defense and for his interest in children throughout the world. We know of his great interest in the educational facilities abroad, for children of Americans abroad. That has been a significant contribution he has made in a very silent way. I am not sure many people in the Senate or Congress even know the amount of time he has put in on that issue.

Mr. President, I am sad to see my three friends leave. I look forward to seeing them revisit this Chamber from time to time. As a westerner, I hope they also think first of returning home though.

I thank the Chair.

TRIBUTE TO SENATORS McCLURE AND ARMSTRONG

Mr. CONRAD. Mr. President, I have already made statements on Senator MCCLURE and Senator ARMSTRONG, but I rise to take note of their leaving this Chamber.

Senator MCCLURE, whom I serve with on the Energy Committee, is the acknowledged energy expert, not only on the Energy Committee but in this Chamber. Nobody has done his homework more thoroughly than JIM MCCLURE, and no one in my judgment is more respected on either side of the aisle on complex issues that fall within the jurisdiction of that committee.

I have found JIM MCCLURE to be a wise and principled man, a defender of the West and, most of all, a good friend. We have traveled together. We have worked together. JIM has come to my State on two occasions to address our semiannual synops conference and done an outstanding job. I can sincerely say that JIM MCCLURE is going to be missed in this Chamber and he is going to be missed on the Energy Committee.

One of the remarkable things about this institution is that people of different parties and on some issues conflicting ideas can work together closely over an extended period of time and develop great respect for each other even though their views may vary. I just want to say, Mr. President, to our colleagues and to JIM, you will be missed.

And to BILL ARMSTRONG as well, I have not had the privilege of serving on a committee with BILL ARMSTRONG, but I have had the benefit of listening to him here on the floor and also of working with him on some issues that were important to the West.

In my judgment, there are very few in this Chamber or outside this Chamber who have the gift of intellect that BILL ARMSTRONG has. He has been a very forceful advocate for his point of view. Sometimes we have been in agreement. Sometimes we have found ourselves on opposite sides of an issue. But I have always respected the intelligence that BILL ARMSTRONG has brought to an issue and, beyond that, the very deep conviction he has brought to issues.

I can remember very well several years ago being in the Chair in the midst of a debate on an issue, and I started out being in one place after listening at some length to Senator ARMSTRONG, I changed my view, and I voted with him. In looking back, I have always been pleased that I

changed my view because I was convinced that he was right.

Mr. President, it is with real regret that I am saying goodbye to BILL ARMSTRONG and real regret that I am saying goodbye to JIM MCCLURE, but I suspect that they will be back and we will have a chance to work with them another day.

I yield the floor.

IN TRIBUTE TO SENATOR DAVID PRYOR

Mr. ROCKEFELLER. Mr. President, I want to take several minutes of the Senate's time to say something about one of our distinguished colleagues. I know we use hyperbole often here on the Senate floor, but it is no exaggeration to say that Senator PRYOR stands out as one of the real giants of this body.

When the Senate approved the budeget reconciliation bill late this afternoon, we also adopted landmark legislation that is the direct result of Senator PRYOR's vision, leadership, and total commitment. Senator PRYOR, the junior Senator from Arkansas, made one of his goals awhile back to address an obvious burden on the Medicaid Program—the program that provides vital health care services to poor families, childen, and elderly in his State, my State, and the entire Nation. He recognized that the Medicaid Program was being forced to pay for prescription drugs at premium prices, instead of at the discount that were clearly being offered to customers like hospitals and the Veterans' Administration.

One might call this story "David and Goliath," except that Goliath consisted of large prescription drug companies and countless skeptics who didn't believe Senator PRYOR that this kind of change and reform was possible. Well, anyone who knows Senator PRYOR also knows that he has the tenacity, the determination, and the convictions to wage the necessary battles and slay the dragons to reach a worthy goal like the one he set.

Thank to Senator PRYOR, today we adopted a set of major legislative reforms that will lower the prices of prescription drugs sold to the Medicaid Program. As a result, taxpayers will be relieved of almost $2 billion. The limited dollars in State coffers will go farther, and enable the Medicaid Program to be more effective in providing health care to the poor across this land.

I know that I speak for America's senior citizens, for the people of Arkansas, and for countless others in commending Senator PRYOR for this achievement and for his many other contributions in the 101st Congress. I am deeply grateful to him for his immeasurable wisdom. And this particular victory—the enactment of legislation to reduce prescription drug prices under Medicaid—is one more shining example of the ability of Senator PRYOR to achieve the change and a better world that the senior citizens, the families, and all of the people of Arkansas and America deserve.

SENATOR ARMSTRONG'S LOVE OF THE SENATE

Mr. ARMSTRONG. It will not be long until we hear the three words we have been hoping to hear for some time, Mr. President, adjournment sine die. In fact, I think every Senator believes that we are overdue. Most of us have had plans that would have taken us home or on other kinds of missions long before now. So we are eager to adjourn.

Yet for some of us, at least for those of us who will not be returning to this Chamber as Senator, this is a bittersweet moment. Somehow, it is a moment that we are reluctant to let go off of.

As I have listened in the last hour or so to a number of my colleagues who have risen to say goodbye and to compliment me in ways far beyond what I deserve, I cannot help but think what a wonderful experience it has been to be here in the U.S. Senate.

This will be undoubtedly the last, or certainly one of the very last times, that I shall have the privilege of addressing the Senate, serve as a Member of the Senate, and come on this floor as a Senator. There are a couple of things before the evening is over that I just want to say, just for the RECORD.

I want to say I love the Senate. I, of course, love this wonderful country. This is such an important institution in light of the country. It is in sort of a civic sense in which I care about this institution, this body.

But that is not what I mean. I mean I love this place. I am well aware there are times when the U.S. Senate seems like an anachronism; I am well aware of the fact that there are many times when our traditions of debate and our parliamentary forms seem hopelessly outdated.

It is obvious to me, as it is to every Senator and everybody else who pays attention, that this place is terribly inefficient. Indeed, there are times when it makes me wonder if man is capable of self-government. But I do love this place. I love its traditions; I love its intricacies.

Most of all, I love the people, the men and women of the U.S. Senate, who are in fact the family of the Senate. That is not a word that I have used often here, although I have always thought of the Senate, not just the Members, but the Members and the others who are part of this family, as being just that, a family, a group of people who are bound together by shared experiences and ideals, and great love of our country, and aspirations for the future.

I love the Senate. It is the greatest legislative body in the world, without any doubt, and much more than that. For a legislator, which I have been proud to be for a long time, it is the pinnacle of achievement to be a Member of this body. It is a very great honor, a unique honor.

As I prepare to leave this place, I am reminded of what our Lord said, that: "Unto whom much is given, of him much shall be required; and to whom men have committed much, of him they shall ask the more."

Mr. President, it crossed my mind tonight to give a sort of farewell address. I am not really going to do that. First, because I am not prepared to say farewell. Some of my colleagues have in effect said goodbye, but I hope they will not be too surprised that I intend to hold onto the friendships and the associations, and the shared experiences that have been so meaningful to me, as they have been to my wife, Ellen, and to our whole family.

It is not goodbye, but it is an intersection. It is time to say a couple of things that will not be appropriate any other time.

I thought about trying to set out in one place at one time on my last day in the Senate, sort of for the RECORD, all the principles that I believe in, all the issues I care about, sort of a final summation to emphasize and amplify the issues I care about. But I am not going to do that, either. The fact of the matter is I have had the privilege of addressing the Senate on hundreds of occasions.

What I had to say about clean air, wilderness, balancing the budget, tax cuts, sanctity of life, or any other issues, I have already said. If anybody—I suppose that would only be my children or grandchildren—ever wanted to go back in the RECORD and see what I had in mind turned out in the light of history. There is already plenty of material in the RECORD.

But there is this that I want to say before I depart. I would not want to let the moment pass without taking time to express my appreciation to the people who have made it possible for me to be here, and the wonderful people that I have met here on Capitol Hill.

Mr. President, it would be my desire that whatever I say tonight would be the finest speech I ever made. It will not be, if for no other reason than I have learned a long time ago that when I feel really strongly about something, it is hard to give a good talk. I guess lawyers discovered that when they are really involved emotionally in the case, they cannot give the kind of presentation they would like to.

So what I am going to say tonight is very simple, but it is really from the heart. First of all, I want to say a word in appreciation of the people of Colorado. They are decent, generous, tolerant, hard-nosed, warm-hearted, patriotic people who have given me a great honor. I shall always be in their debt. I thank these good citizens. They are good neighbors; they are good friends. Ellen and I are looking forward to going home and being with them, and living there the rest of our lives.

Mr. President, I am very grateful to the people I have campaigned with, a few of whom are here in Washington; most of whom are not. But you know when you run for election, as all Senators know, there is a special relationship that develops between the candidate and those who are deeply involved in the campaign. We go door to door passing out brochures, come down to the headquarters, make telephone calls, ride around with the candidate out on the trail, develop speeches, write speeches, do research. I always have had the sense, during the years I have run for office, that it was an extraordinary privilege to be part of that kind of team.

I thank them for their help in making it possible to win, but more than that, just for their friendship, for their encouragement. In our campaigns, we had the goal of winning, but a lot more than that. We always had the goal also of eating more pizza and having more fun than any campaign on the road. We did.

It was a great experience, and though I will not be the candidate any longer, frankly I am looking for campaigns to hitch onto, because I have not had enough of that kind of experience.

During the course of campaigning and of course, being here, I spent a lot of time with reporters, editors, and news directors. Some of my colleagues know that I come from that background myself. My first jobs in my lifelong career have been in the news business, in the media business.

When I came to Washington, one of the things I noticed was the extraordinary professionalism and intellect of the people who are the men and women of the press, including the electronic press in this town. I salute them. I thank them.

Then I want to say, and I know I run the risk when I try to go through a list of the people that I am grateful to that I will leave somebody off, and yet I cannot resist the temptation to just mention some.

I want to say to my friends who are industry representatives, who are lobbyists, who are consultants, who go by different names in this town, how much I am indebted to them, how much I have learned from them, how important a part of the process I personally believe they are.

I am only speaking for myself, but if any lobbyist might hear my talk tonight or read about it in the future, I think there are probably 99 other Senators who, in reflective moments, would agree with me that the contribution of the people who represent special interests in this town—the right-to-life interests, the oil interests, the raise-the-taxes interest, the lower the taxes interest, and all of the other interests that make up this great country of ours—perform an invaluable service.

Mr. President, in the last few minutes, some of my colleagues have arisen to say nice things about me, more than I deserve. I would be remiss, in fact I would regret it forever, if I did not take a moment to pay tribute to my colleagues.

When you serve in a body like this over a long period of time, you get to know people pretty well. As I prepare to leave the Senate, my heart is full of gratitude to my colleagues, not only for the times that we have debated on this floor, but the times we have prayed together, studied the Bible together, gone to dinner together, gone on trips together, all the things that we have done.

I have drawn great inspiration from the men and women who are Senators. I continue to draw inspiration from them.

Of all the men and women in this Chamber, I like them all. I respect them. I admire many of them beyond my ability to put into words. I said earlier that I love the Senate. I love my colleagues, too. In a very real sense, I feel that we are a part of a family, that we share things in common that are more important, in some ways, than blood. I am not going to mention any individual Senators, except two, because if I were to do that, this would be a much longer speech than I want it to be, though I could tell anecdotes and stories and express appreciation to practically every Member of the Senate.

I would not want to let the moment pass without paying tribute to two of my colleagues who are departing. Both have already been mentioned. I agree with everything that has been said about them. They richly deserve to be praised and complimented. GORDON and Patty Humphrey are among Ellen's and my dearest and closest friends. We have been to their home and they to our's. We feel close to their children, and they are close to our's. We inquire about each other's children. If I had a brother, I would hope it to be somebody like GORDON HUMPHREY. We have spend a lot of time together and have many interests in common.

The reason I admire GORDON so much is because, first, last, and always, he is a man of principle. In an era when a lot of people in public life sometimes are not sure what their convictions are, GORDON HUMPHREY is always sure. I would give a lot of insights, but I want to mention just one which, as far as I know, has never been discussed publicly, concerning a meeting which occurred in his hideaway office about 6 years ago, a little more than 6 years ago, when he was running for reelection. He confided to four or five of us who were his close friends that if he should be reelected, he would make it his main purpose, his main goal during his second term in office to protect the lives of unborn children. I know every Senator does not share his conviction about this or his point of view or has not reached the same conclusion about legislation on this matter. I share it completely. His views and mine on this are identical. What I think is interesting is that when he was reelected, in a quiet, patient, tenacious, vigorous, creative, relentless way, every day, every week, 7 days a week, 365 days a year, he has stood up for the rights of those yet to be born, for the sanctity of life.

He stood up for a lot of other things, too. Afghanistan was mentioned. He has been a champion for freedom for Afghanistan, and he has been involved in many issues. But unlike so many people who cannot focus their attention, my colleague, GORDON HUMPHREY, figured out what was the most important thing to him, as it is to many of us, and devoted the full measure of his intellect and devotion to that cause, and I compliment him for it. He is a great guy, a great person. GORDON and Patty and Ellen and I will be friends forever.

JIM and Louise McClure have been friends of ours for a long time. JIM was a mentor of mine. History has forgotten this, but long before Ronald Reagan announced he wanted to cut the Nation's taxes, long before "supply side" was a word in the popular American vocabulary, there was a tiny group of Senators and Congressmen talking about cutting taxes. I remember, because I was one and so was JIM MCCLURE. And everybody was laughing; they thought that was the funniest thing to say that tax rates ought to be reduced.

I remember one occasion when we had a news conference, and there were only three of us. I was a Congressman at the time, JIM MCCLURE was a Senator, and there was one other whose name came to be attached to the legislation, Jim Kemp. But from that time, I guess maybe about 15 or 16 years ago, I followed JIM's career in this body very closely. I followed his lead on many occasions and have benefited from his wisdom. It so happens, also, that our paths crossed because I am in business up in Idaho. Some of my friends in this body know I own a couple of television stations up there.

So I am tuned into what goes on in JIM's home State. I will tell you this: There is no more beloved figure, more respected couple than JIM and Louise McClure, in the State of Idaho. I feel the same way.

Mr. President, I would be remiss if I did not mention the staff of this body, the people who serve us at the desk, on the floor, and in the Cloakroom. They are great. Their energy and dedication and what they put into their jobs and the way they serve us is beyond my ability to adequately express appreciation for. Not only those who are involved with legislation or who are parliamentarians or on the floor, at the front desk, or so on, but I think of the men and women who serve us in the dining room, who come in at 7 o'clock in the morning, and when we are here at 2 or 3 o'clock in the morning, they are still there. In all the times that I have had breakfast, lunch, dinner, snacks, whatever, in the Senate dining room, I have never encountered those people when they were not cheerful and eager to serve and smiling and friendly and helpful. I have seen them lots of times when they were so tired they could hardly stand up. They were always there to be helpful. Mr. President, I think we are indebted to them, as we are to the others, such as the police officers, people who serve us, and the pages in this Chamber.

It touched my heart when some of the pages presented me with a little card on which they had written me some messages. I told some of them, and I say to all of them, I am grateful not only for the card but for the friendship and for your service and for everthing. Thank you for doing that.

Mr. President, finally, I would be neglectful, I would be untrue to myself, if I did not say a word of appreciation to my family. My dad told me years and years ago that the two best jobs you can have in politics are being a State senator and being a U.S. Senator. He was right. I have had the privilege of having both of those jobs. My dad—on some other occasion I may say more about my dad, who passed away a few years ago.

My mother is a great encouragement to me in my work here. In fact, I believe that Dorothy Armstrong, my mother is the most faithful watcher of the Senate on C-SPAN. On a daily basis, I get her comments about the floor proceedings and about the Members. She is an almanac of politics. When a Senator rises to speak she has the book open, reading the biographical sketch of the Senator and knows what his or her lifetime record is, what committees the Senator serves on. She is a keen observer and has been a great encouragement to me.

Most of all, I want to thank my dear wife Ellen. We have been campaigning together and serving in legislative bodies all of our life, literally since before we were married. We have had a great time. When we came here, our son, Will, was in kindergarten. He is now a college graduate and a banker. He just received a big promotion. He was just a little boy when we came here. Our daughter, Anne, was in the fourth grade. As some of my colleagues know, she graduated from the University of Denver and has a wonderful husband and has given us two grandsons who, according to impartial authorities, are the two finest and handsomest, strongest, and bravest young men of their age today, one of whom I had the pleasure of introducing on the very first day of his life in this Chamber, because when I heard he had been born I came running over to the floor and announced that James J. Corbett III had come into this world, and Mr. BYRD who was on the floor arose and—he was then the majority leader—made a very gracious statement, which I will always think about, about names people are known by, and also complimenting me in a way I did not deserve. But it pleased me that when he turns 18, I will be able to give him a framed copy of this birth announcement in the Journal of the U.S. Senate.

Unfortunately, his brother Daniel did not happen to be born on a day when I could announce it here.

But it has been a wonderful time, a great, great experience. My family and I are thankful to my colleagues, to the men and women of the Senate and most of all the people at home.

I close just by saying thank you, God bless you, and the very last words which I would like to say to my colleagues are these from the last verse of the last book of holy scripture: The grace of the Lord Jesus be with all. Amen.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, I earlier had made a statement regarding Senator ARMSTRONG and I know that I represent the views of all Senators in expressing our gratitude to him for his service and our best wishes for his success in the future.

A BILL TO CONTROL CRIME

Mr. MITCHELL. Mr. President, on behalf of Senators BIDEN and THURMOND, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3266, a bill to control crime, just introduced by Senators BIDEN and THURMOND.

Mr. STEVENS. Mr. President, there is no objection.

The PRESIDING OFFICER. The clerk will report the bill.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 3266) to control crime.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. KOHL. Mr. President, I rise in support of this consensus anticrime legislation. As agreed to by the conferees, this bill will make a number of significant improvements in our criminal justice system and our fight against the drug scourge. I would like to speak briefly about two sections that I authored: Gun-free school zones and the treatment programs for juvenile offenders who suffer from child abuse.

First, I am pleased that the conference unanimously accepted S. 2070, my Gun-Free School Zones Act of 1990. It responds to a growing problem in America today: The proliferation of firearms in our schools. Indeed, over the past few years we have witnessed a shocking number of attacks against our children as they sat in the classroom and played in the schoolyard.

The National School Safety Center estimates that more than 100,000 students carry guns to school every day, and that more than a quarter of a million students brought a handgun to school at least once in 1987. In New York City alone, school authorities confiscated almost 2,000 weapons from students in 1988. And according to a recent Washington Post article, these incidents are so commonplace that some parents are now dressing their children in bullet-proof vests before sending them off to school. It's a sad and frightening commentary that violence in our schools and on our streets has reached such a level that there's a market for these products.

My home State, Wisconsin, is not immune from this wave of gun violence. Last year, the Milwaukee school system expelled more than a dozen students for weapons violations. And the number of Milwaukee County juveniles charged with handgun possession has doubled over the past 2 years. According to Gerald Mourning, the director of school safety for Milwaukee, "[K]ids who did their fighting with their fists, and perhaps knives, are now settling their arguments with guns."

To ensure that our school grounds do not become battlegrounds, I introduced the Gun-Free School Zones Act with EDWARD FEIGHAN of the House Judiciary Committee.

The provision is simple, effective, and straightforward. As amended, the measure would create a Federal criminal offense to knowingly bring a gun within 1,000 feet of a public, private, or parochial school. It would also make it a crime to fire a gun in these zones. Each violation would carry a maximum prison sentence of 5 years and a fine of up to $5,000, though the convictions would be treated as misde-

meanors for purposes of other laws. The proposal also contains carefully crafted exceptions for school-approved programs, law enforcement officers, and unloaded guns in locked containers or on car racks. Finally, it would exempt private property that is not part of school grounds and encourage the posting of warning signs.

Mr. President, the widespread support for this proposal underscores its commonsense approach. Already, the National Education Association, the American Association of School Administrators, the National School Boards Association, and the American Academy of Pediatrics have endorsed the legislation. When Congress mandated drug-free school zones in 1984, we declared that our Nation's classrooms deserve special protection. In the same way, this section will help keep the areas around our schools from becoming sanctuaries for armed criminals and drug gangs. Gun-free school zones are not a panacea, to be sure, but they are an important step toward fighting gun violence and keeping our teachers and children safe.

Second, I am delighted that this conference agreement contains my provision to fund treatment programs for juvenile offenders who suffered child abuse or neglect. The relationship between child maltreatment and subsequent delinquent behavior has been well established. A review of juvenile court records in New York State showed that delinquents with a history of child abuse were twice as likely to commit physical assault, 24 times as likely to commit arson, and 58 times as likely to commit rape than their peers. As many as three-quarters of the 700,000 young people who pass through the juvenile justice system each year were abused as children.

My provision is an attempt to break this cycle. It would support projects to provide treatment for such young offenders and their families, strengthen family relationships and reduce the likelihood of further offenses. It further provides for transitional services, including alternative placements and independent living programs, for successful participants in these child abuse treatment projects—$15 million is authorized to fund such projects, to be administered by the Office of Juvenile Justice and Delinquency Prevention and the Department of Health and Human Services.

Mr. President, I wish to thank the distinguished chair of the House Subcommittee on Human Resources, Mr. KILDEE, for his able assistance in strengthening this provision during conference. I commend my distinguished colleague from Pennsylvania, Mr. SPECTER, who first explored the clear relationship between child abuse, juvenile delinquency, and adult criminality when he chaired the Juvenile Justice Subcommittee in 1983. And last but never least, I thank the distinguished chair and ranking minority member of the committee, Senators BIDEN and THURMOND, for their leadership on these provisions and many others.

I look foward to these provisions soon becoming law.

Mr. DOMENICI. Mr. President, I want to thank the managers of the crime bill for including in the final version of this bill an amendment that I authored that will regulate private jails that are utilized by the U.S. Marshals Service.

Clearly, our Nation has a responsibility to provide sufficient jail space for those who break our laws. However, before any new jails are constructed they should meet two requirements.

First, all new jails need to go through a rigorous analysis to determine the need for the jail. Second, jails, whether they are publicly or privately constructed, need to meet certain standards to protect the public.

I became concerned about this issue after a company proposed to build a private jail in my State. After reviewing the matter, it seemed to me that the proposed private jail has not met these two requirements.

It appears that this jail is being built for speculative purposes without a clear determination of the need for the jail. The builders of this jail intend to contract with the U.S. Marshals Service to house Federal detainees. However, I received conflicting information from the Marshals Service on whether they would have an interest in using the jail. Before any jail is constructed for Federal prisoners in New Mexico or any other State, the Federal Government should determine whether such a facility is needed.

There are no applicable Federal standards that would govern this proposed private jail.

Under 18 U.S.C. 4013(a)(3)—which was enacted as a section of 7608(d)(1) of Public Law 100-690, the Anti-Drug Abuse Act of 1988—the Marshals Service is authorized to house Federal detainees in private jails. The Marshals Service currently is seeking space in private jails in Boston and Kansas City. In these two cases, the standards will be set by a contract between the Marshals Service and the private jail before the jail is constructed.

The proposed jail in New Mexico is different. In that case, the jail will apparently be built first and then the builder will seek to enter into a contract with the Marshals Service. The public needs to be assured, prior to the construction of a jail, that adequate safeguards will be put in place to protect the public.

Mr. President, the provision that I authored would amend section 4013 to correct these problems.

The provision would require the Marshals Service to determine whether there is a need for additional jail space in a particular area and will permit the Marshals Service to contract for jail space only in areas where there is a need. This will curb the building of jails for speculative purposes.

In order to determine whether there is a need for additional jail space in an area, the Marshals Service would determine the availability and suitability of existing detention facilities in the area. In evaluating the suitability of existing facilities, the Marshals Service would be expected to take into account the cost, quality, safety, and security of the existing facilities.

The provision also would permit the Marshals Service to enter into contracts only with private jails that meet strict standards designed to protect public safety. Under the provision, private jails with which the Marshals Service contracts must:

First, meet the standards of the American Correctional Association;

Second, have approved fire, security, escape, and riot plans;

Third, comply with all applicable State and local laws and regulations; and

Fourth, comply with any other regulations that the Marshals Service deems appropriate.

There is some concern that the various standards that private detention facilities would be required to meet may impose conflicting obligations on these facilities. In order to prevent such conflicts from arising, the Marshals Service should assure that its regulations for private detention facilities are consistent and nonconflicting.

This provision is practically identical to S. 2519, which I introduced with Senator BINGAMAN on April 25. Representative STEVE SCHIFF, who represents the district in which the private jail would be constructed, introduced companion legislation in the House of Representatives. The provision was adopted as an amendment to S. 1970, the Senate crime bill, when it was approved last summer.

I thank the distinguished chairman of the Judiciary Committee, Senator BIDEN, and the ranking Republican member, Senator THURMOND, for including my amendment in the final version of the bill. I also want to thank their staffs, particularly Manus Cooney, staff attorney for the minority, for their assistance.

Mr. ROTH. Mr. President, I am very pleased that the Simon-Roth-Dixon amendment that passed the Senate on July 11, 1990, has been incuded in the crime bill in essentially the same form. While the 101st Congress has enacted hundreds of pages of savings and loan or banking legislation, all too little of our effort has been dedicated to bring-

ing the S&L looters to justice. This amendment is a welcome change.

The purpose of the amendment is to help the Attorney General make wrongdoers pay the taxpayers for wrongs done. The amendment achieves this result in two ways: First, it provides incentives for the production of critical evidence, the human clues or the smoking gun to help solve S&L and bank fraud cases; second, it provides the Attorney General with additional resources by granting him authority to employ outside counsel as part of the Justice Department's efforts to make wrongdoers pay their debt to the taxpayer.

Unfortunately, too many of our efforts to fight crime or combat S&L fraud are very costly to taxpayers. Very often such efforts produce no net gain financially. But this is not true of my amendment. Under its provisions, outside counsel may be paid only—I repeat, only—if they recover assets of funds for the United States. Moreover, the wrongdoer is subject to pay reasonable attorney's fees and other costs of litigation so that, as a general matter, the Government will not suffer a reduction in its recovery.

The Government presently is inundated with thousands of possible lawsuits against wrongdoers. In one sense, they are too few. Not all wrongdoers are known to us. That is why my amendment provides rewards for informants. In another sense, the lawsuits are too many. They overwhelm the resources of the Attorney General, even as the resources are augmented. The Department needs more lawyers to handle its caseload. Articles have appeared in newspapers that the Government is ignoring S&L fraud cases where the potential recovery is under a million dollars because of its limited resources. While understandable, it is an absolute waste of taxpayers rightful recovery.

Providing resources—more lawyers—for the Attorney General at virtually no cost is the solution that my amendment achieves. It should allow the Attorney General the advantage of pursuing very winnable cases. That is a goal we all wish to achieve. The American taxpayer deserves no less.

As I said before, in a very important sense, while there are many cases of S&L fraud being formulated, they are too few. In the hope of creating additional winnable cases against wrongdoers, the amendment provides handsome rewards—a percentage of the recovery—for those who come forward and provide the Attorney General with new evidence that makes the case against those who have milked the taxpayer. Cases of S&L fraud are complex, involving endless paper trails. Human clues that alert investigators as to what actually happened can save years of time otherwise expended solving the fraud.

Therefore, my amendment would provide the Attorney General with useful tools in the effort to bring wrongdoers to justice.

I wish to thank my colleagues from the State of Illinois, particularly Senator SIMON, who were so helpful in making this amendment a part of this package. Their time and energy contributed mightily to our joint effort. It would not have happened without them. I very much appreciate their contribution.

PRISONER WORK REQUIREMENTS IN OMNIBUS ANTICRIME BILL

Mr. LOTT. Mr. President, I rise to commend the conferees for including in the conference report to accompany the omnibus anticrime bill, the Lott amendment, which for the first time, requires inmates incarcerated in Federal correctional institutions, by law, to work.

It is only right that convicted criminals serving time earn their keep. Society has lost patience with a correctional system that makes no demands of the criminals it incarcerates. We are talking about people who have victimized law-abiding citizens, who now are victimized again by having to pay for the upkeep and housing of the law breakers.

Mandating work forces a prisoner to pay his debt to society by a means other than just locking him away. The security of society is paramount, but it also is important of the convict's time served to have a purpose.

The Lott amendment provides exceptions to mandatory work in those cases where security, discipline, or near total health disability require.

The Director of the Bureau of Prisons should have, and now will have, behind him the weight of Federal law to put prisoners to work in Federal projects and more. I look forward to working with my good friends on the Judiciary Committees in the 102d Congress to expand the parameters of that work. There's still more to do.

I also further commend the conferees for incorporating that provision of my amendment which expands the current private sector Prison Industry Enhancement Certification Program, known as PIE, to allow every State in the Union the opportunity to participate.

PIE encourages the private sector to develop programs utilizing the prison work force. Protections are in place to ensure that small businesses and labor concerns are not disadvantaged. It has proven to be a very successful partnership between private enterprise and the correctional community.

Current law permits the certification of only 20 private sector/prison work programs, and there is a waiting list of 8 applicants, including the Tennessee Department of Corrections, who desire entry into the program. My amendment raises the cap from 20 to 50 programs.

While I was researching my prisoner work requirement amendment, I had the opportunity to see interviews with a number of inmates involved in PIE programs who spoke eloquently about how it had changed their lives. I was struck by their message. They spoke of a sense of self worth, dignity, integrity, and pride that resulted from their participation in the PIE program.

They talked about how the discipline of the work ethic and the value of acquiring solid working skills had given their lives a future they never thought they'd see.

Mr. President, the prisoners in correctional institutions should be required to serve the society whose laws they have violated.

But the greatest benefit will be the trained and motivated ex-convict who will be more likely to seek employment and less likely to repeat his or her crimes.

If we can instill higher self esteem and stronger work ethics in prisoners, they will be more likely to obtain and hold jobs once they leave the prison confines.

Again, I thank the conferees and urge the support of this provision.

Mr. WIRTH. Mr. President, before the Senate today is new legislation that incorporates many provisions of the omnibus crime bill. An important title of this legislation includes provisions to address fraud and other criminal activity in the S&L and financial services industry. The legislation represents a compromise on many provisions worked out in recent weeks by members of the House and Senate Banking and Judiciary Committees. It incorporates several provisions approved by the Senate in the Wirth-Heinz amendment to the crime legislation and by the House in H.R. 5401.

The S&L debacle is the largest financial crisis in our Nation's history. While it will be years before we know the final tally, the cost of resolving the industry's problems, according to some estimates, may reach $500 billion or more. No matter what the final figure, it represents a vast sum that we will be unable to devote to other critical needs such as education, our crumbling infrastructure, biomedical research and environmental protection.

Although there are a number of factors that contributed to the S&L crisis, there is no question that fraud and other crimes played a significant role and that we can do more to pursue those who looted the Nation's thrifts:

Officials at the Resolution Trust Corporation [RTC] indicate that an estimated 60 percent of the institu-

tions it has seized "have been victimized by serious criminal activity."

The Federal Bureau of Investigation has received more than 20,000 referrals involving fraud and other criminal activity in the financial services industry that the Bureau has been unable to examine. At least 1,000 of these cases involve losses of more the $100,000.

As of February 1990, the Bureau also had more than 7,000 pending bank and S&L fraud and embezzlement cases, some 3,000 of which were major. And more than 900 of the pending cases and 234 of the unaddressed referrals involve losses greater than $1 million.

The personnel added to the S&L crime effort early this year did not meet the staffing needs identified in a FBI survey. In this survey, FBI and U.S. attorneys' offices requested 224 more FBI agents, 113 more assistant U.S. attorney positions, and 142 more support staff positions than the agencies received.

In recent months the need to pursue fraud and other crimes that contributed to the S&L crisis has drawn a great deal of attention in Congress and by the administration and the public. A number of Senators offered legislation to address S&L crime, making various suggestions to help investigators and prosecutors in their efforts to bring those who looted our S&L's to justice. In July, the Senate overwhelmingly passed the Wirth-Heinz amendment to the omnibus crime bill as a comprehensive bipartisan package that incorporated many of these proposals.

The legislation we consider today reflects the contributions of Members of both Chambers on both sides of the aisle. It is a sound proposal that we all can and should support. I am particularly pleased by the authorization of new resources to investigate and prosecute financial services crimes and the creation of a Financial Services Fraud Unit within the Department of Justice and an investigation unit within the RTC. The proposal also calls for the creation of a Commission to determine the causes of the S&L crisis and recommend steps to prevent a recurrence. Comprised of leading experts in the financial services and investment industries, the Commission would help us better understand the crisis and ensure that it never happens again.

INCREASED RESOURCES FOR INVESTIGATION AND PROSECUTION

The legislation authorizes a significant increase in resources devoted to the investigation and prosecution of the criminals who were active in the industry. The legislation authorizes $162.5 million for each of the next 3 years. The increased authorization would bring additional FBI agents, Assistant U.S. attorneys, IRS agents, support personnel and financial experts on board to aid in S&L crime enforcement. Importantly, additional funds would also be provided to the judicial branch to help the courts handle the increased caseload.

I began the effort to increase resources for this purpose early this year. I am pleased that this authorization is a part of the legislation and that, with Senator HOLLINGS' leadership, we have already appropriated increased funds for fiscal year 1991. This is perhaps the most effective thing we can do at this time to increase efforts to attack S&L crime. If we give the FBI and the U.S. attorneys more resources, the Department of Justice will be able to make more progress against the backlog of cases.

DEPARTMENT OF JUSTICE FRAUD UNIT

The fraud unit at the Department of Justice would coordinate and focus efforts to investigate and prosecute fraud and other criminal activities in the financial services industry and determine how to deploy resources most effectively. The Attorney General is also authorized to establish Financial Services Crime Strike Forces to pursue criminal activity within the industry. These steps would raise the visibility of this effort, sending a clear message to the American public and those involved in the financial services industry that we will not tolerate the criminal activity that contributed to the S&L industry's losses.

RTC INVESTIGATIONS UNIT

The legislation would require the RTC to continue its efforts to investigate thrift failures and coordinate its activities with other financial regulatory and law enforcement agencies. The RTC Investigations Unit is required to report to Congress twice a year on its activities. These provisions will ensure that the RTC continues to examine institutions that come under the Corporation's control and assist regulators and law enforcement agencies with matters related to those institutions.

OTHER PROVISIONS

There are a number of other provisions in the package that also deserve our attention and support. For example, the legislation includes tough new sentencing requirements that would raise the maximum penalty for bank fraud and embezzlement to 30 years—an increase of 10 years, and impose mandatory minimum sentences in major bank fraud and embezzlement cases. Other important provisions would change Federal asset seizure, forfeiture and bankruptcy laws to increase recoveries from those who looted the S&Ls and the deposit insurance fund.

I would like to thank the many Senators who have made important contributions to this legislation, including Senators BIDEN, DOLE, RIEGLE, GRAHAM, HEINZ, and DIXON. After we act today, I hope the House will approve this measure as well so we can send it on to the President.

We now have the opportunity to enact a comprehensive proposal to tackle S&L crime. It is long past the time for speeches and photo opportunities, Mr. President. We need to act. The legislation sends a message to the FBI agents, U.S. attorneys, and support personnel working on the frontlines against financial institution crime that help is on the way. I encourage my colleagues to support the legislation.

Mr. HEINZ. Mr. President, as a leading sponsor of the Senate's comprehensive bipartisn amendment to the omnibus crime bill—title IV of S. 1970—I support this legislation which contains the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990.

This act combines measures from the Banking Law Enforcement Act (H.R. 5401) adopted by the House with the S&L crime provisions previously adopted by the Senate. This legislation is designed to punish those who treated federally insured savings and loans like a personal piggy bank. The act provides the Justice Department and bank regulatory agencies with the tools and the resources needed to investigate and prosecute savings and loan fraud.

The savings and loan crisis is far and away the largest bank heist in American history. The American Treasury has been looted to the tune of $500 billion. The American taxpayers have had their wallets picked clean. In my view, it is imperative that Congress take bold action to combat S&L crime.

Mr. President, although this legislation contains many important measures to combat savings and loan fraud, it still fails to a correct a mistake that Congress made more than a year ago when we enacted the savings and loan legislation, called FIRREA. In my view, FIRREA had only done half the job. The S&L bill had protected the American depositor but not the American taxpayer. My conclusion was based, in part, on the House conferees insistence to strip from the Senate bill a series of measures that I sponsored that were designed to maximize the recovery of funds from those responsible for massive losses at federally insured savings and loans.

The provisions that I sponsored more than a year ago, and and have since been adopted by the Senate three times:

Gave the Resolution Trust Corporation's claims a priority, on behalf of the American taxpayer, to recover funds from those responsible for losses at insolvent savings and loans.

Took the shield of bankruptcy protection away from officers, directors, and others who breached their fiduci-

ary duties to federally insured institutions; and

Directed the courts to speed up cases brought by the Government to recover funds on behalf of the American taxpayer.

Although I am pleased that the bankruptcy and fast track litigation provisions are now part of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, the House conferees have once again stiffed the American taxpayer by insisting that taxpayers stand in the same line with S&L owners to recover funds from those who looted S&L's.

Mr. President, when the Resolution Trust Corporation reports that more than 60 percent of insolvent savings and loans were victimized by serious criminal activity and the Attorney General concludes that there was an epidemic of fraud in the savings and loan industry it is time that Congress declare savings and loan crooks public enemy No. 1. However, with the cost of the savings and loan bailout in the hundreds of billions of dollars, it is also time that Congress make the recovery of funds for the American taxpayer job No. 1. Last year Congress bailed out the savings and loans to protect depositors. Today, while we have gotten tough on S&L criminals, we have yet to complete the job of rescuing the American taxpayer as well.

Mr. RIEGLE. Mr. President, I rise in support of S. 3266. This bill deals with criminal, civil and administrative actions combating fraud and insider abuse at financial institutions.

This approach to the problem represents a broad bipartisan consensus. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 was the first step in addressing this problem. It increased enforcement powers of the Federal banking agencies, authorized more resources for prosecution of bank crimes, and extended the statute of limitations for bank crimes to give an understaffed Department of Justice sufficient time to investigate and prosecute cases.

The savings and loan amendment to the omnibus crime bill, sponsored by Senator WIRTH and passed by the Senate on July 11 of this year with only one dissenting vote, was a recognition that more needed to be done to increase the Government's response to this problem. The Wirth bill incorporated the amendment by Senators GRAHAM and DIXON requiring the Department of Justice to coordinate its attack against crime by creating a financial institutions fraud unit. The Wirth bill also provided for significantly increased resources, authorizing $162 million for the Department of Justice to hire the additional FBI agents, accountants, and lawyers that it so desperately needs. This bill retains all of these important provisions.

This bill also contains an important provision regarding the disclosure of regulatory actions and proceedings. Generally, it reverses the traditional notion that regulatory proceedings and enforcement orders and settlements should not be disclosed to the public. This provision has the strong support of Chairman Richard Breeden of the Securities and Exchange Commission, who said in response to my question about this provision that "public disclosure is the greatest disinfectant."

This version of the bill has been slightly amended to clarify the scope of the publication requirement. Informal supervisory understandings, that by their own terms are not enforceable by the Federal banking agencies, are sometimes used in the early stages of correcting problems at financial institutions. The regulators believe that informal enforcement actions are a valuable tool in the early detection and prevention of unsafe and unsound banking practices, and that such informal action, whether or not committed to writing, may contribute to a bank's incentive to work with the Federal banking regulators. The publication requirement of subsection (1) is not meant to apply to such informal actions, but rather addresses situations where enforcement of an agreement is contemplated or provided for through either proceedings in Federal court or formal administrative action. However, in order for the Congress to adequately carry out its oversight responsibilities, it is necessary for the Congress to continue to have access to information concerning the regulatory and enforcement activities of the agencies. Thus, pursuant to subsection (9) which essentially provides there is no change in current law on congressional access to agency documents, any letter, directive, agreement, memorandum of understanding, business plan, and supporting documents such as applications or examination reports would be available to the Congress or a committee of Congress during its oversight or investigation of a matter under its jurisdiction.

There is also an important provision that clarifies what type of relief is available under temporary cease and desist orders. The Office of Thrift Supervision has requested this technical change because of some differing applications of the current statutes by some district courts. These changes are consistent with the congressional intent at the time FIRREA was enacted and are to clarify any ambiguity.

This bill creates new powers for the regulators, in addition to the substantial powers given to the regulators in FIRREA. As chairman of the Banking Committee, I want to assure the other Senators that we intend to conduct careful oversight of the Federal banking agencies exercise of their powers. In particular, I think it is necessary to review their effectiveness in preventing insolvencies, or mitigating the amount of loss when insolvencies occur. We will also be looking not only at the number of enforcement actions taken during the year by the appropriate Federal banking agencies, but the timeliness and effectiveness of those actions.

Mr. DODD. Mr. President, I am pleased that this crime package includes legislation that Senator DODD and I sponsored setting up an independent, bipartisan commission to investigate the collapse of the savings and loan industry and make policy recommendations to the Congress.

The current atmosphere of finger-pointing and partisan demagoguery surrounding the S&L crisis obscures the important policy lessons that should be learned from this debacle. We need an objective, forward thinking policy analysis of the role played by regulatory policies, supervisory practices, State and Federal legislation, and macroeconomic changes in causing the problems that led to the unprecedented losses to the deposit insurance fund.

This Commission is charged with making a calm and careful assessment of what went wrong and what we ought to avoid in the future so that we do not repeat this sad story. Irnoring this problem was a mistake. Ignoring its lessons would be a bigger mistake. This independent Commission will review all of the facts and report to the American people on the basic question—how did this happen?

The eight-member Commission would be appointed by the President and the congressional leadership and its membership would be evenly divided between Republicans and Democrats. It is important to note that no current Members of Congress, administration officials, or State officials would be eligible to serve. The Commission's report would be due 9 months after the election of the Commission's Chairman.

The administration had some concerns about the original draft of this legislation because they feared that a commission and subpoena power could impede and disrupt ongoing civil and criminal prosecutions. After discussions with the Department of Justice and the Treasury Department, we were able to work a subpoena provision acceptable to the administration.

We need the benefit of an objective assessment of the policy decisions that led to the S&L crisis so that we can avoid similar mistakes in the future. The Congress will be considering legislation next year to reform deposit insurance and modernize our financial system and the report of this Commission should help in this effort.

We must prosecute the crooks who looted S&L's and left the taxpayers with the bill, but that is not enough. If we focus solely on prosecutions and colorful malfeasance, we will blind ourselves to the full picture of just how this fiasco took place. Let's learn some useful policy lessons from the wreckage of the S&L industry. I encourage my colleagues to support this legislation.

Mr. D'AMATO. Mr. President, I rise today to support the legislation offered by my colleague, Mr. BIDEN. This legislation provides the financial institution regulatory agencies with additional ammunition for their battle to prosecute the individuals whose fraudulent activities have been the primary cause of the S&L crisis.

The S&L fraud bill will allow the financial institution regulators greater latitude in freezing the assets of potential defendants so that these individuals cannot dissipate their assets to avoid making restitution when the time comes for them to pay for their victims' losses. The regulators will, therefore, be able to obtain money judgments that count and that will contribute to making victims of the S&L fraudsters whole.

This legislation also provides for tougher jail terms for those individuals convicted of major bank crime cases. We also send a serious message to financial criminals by allowing for life sentences for financial crime kingpins. This legislation tells financial criminals in a loud voice that the American citizens will not tolerate their activities and that the Government means business in prosecuting S&L criminals to the fullest extent possible. By providing for tougher jail penalties, the Government makes clear that whether someone steals with a gun or a pen, it is equally a criminal action that will be punished by time spent in jail.

I urge the rest of my colleagues who are conferees on this legislation to approve this bill as expeditiously as possible so that we may help the regulators in their efforts to recover the hundreds of claims involving billions of dollars against those responsible for losses at insolvent institutions and clean away the rubble to begin rebuilding the banking community.

Mr. GRAHAM. Mr. President, let me express my support for the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 before us today. The Senate began work on this bill in early July and passed it later that month.

In particular I have been involved with the creation of the financial institutions fraud unit, within the Department of Justice. The bill establishes a new Office of Special Counsel and a series of task forces within the fraud unit which will bring greater institutional capacity to deal with those individuals who have broken the law, who have engaged in fraudulent activities, and who are now benefiting by the proceeds of those criminal and fraudulent activities.

We had some experience in the past with how to deal with unusual investigations and prosecutions. One of those which I believe was very successful was the establishment of a series of task forces under a designated individual within the Department of Justice to deal with organized crime.

The essential genius of that task force structure was that persons who had that single responsibility were responsible and accountable. Also, you had the ability of individuals to gain wisdom and understanding and insight as to how to prosecute these especially difficult cases.

Finally, you were not asking a U.S. attorney who already had an overburdened workload of the types of activities that are their day-to-day responsibility to now suddenly take on a new, highly sophisticated area of investigation and prosectution. I believe that model which served this Nation effectively in dealing with organized crime is the model that can serve us well again in dealing with the issues of financial institution criminal and fraudulent activity.

It is that essential idea which is now incorporated in this bill and I hope will soon be in use to give to our Justice Department greater capacity to deal with illegal activity and to give the American people greater confidence that there is somebody who is concerned, accountable, and capable of taking serious actions against those individuals who have caused the greatest single financial crisis debacle in the history of this Nation.

I commend all those who have worked over the past months in bringing this important concept to fruition. I urge its adoption by our colleagues.

Mr. BIDEN. Mr. President, I rise today to urge Senate passage of the compromise crime bill that is before us; to explain why certain critical items are missing from this bill; and to argue why, nonetheless, this crime bill should be passed.

As we all know, last July the Senate passed what was probably the toughest crime bill in history. It included a massive expansion of the death penalty; new penalties for S&L fraud; limits on death penalty appeals; a ban on killer assault weapons; and much, much more.

Unfortunately, the House did not pass its version of such legislation until just 3 weeks ago. In the ensuing 20 days, we have held a dizzying array of Member and staff meeting to attempt to resolve the major differences between the two bills.

Without recounting for my colleagues all of the bidding, I can summarize the outcome of the meetings this way: By 6 p.m. last night, it was clear that no possible agreement could be reached covering the five major issues in dispute—death penalty, habeas corpus, assault weapons, exclusionary rule, and Racial Justice Act.

Consequently, last night, the conferees faced a stark choice:

Pass no crime bill, given our inability to resolve the major issues, or take the many provisions, that dozens of Senators and Congressmen had labored long to write and advance, and put them together in a scaled-back crime bill to include those items on which we could all agree.

I want to emphasize how profoundly disappointed I am with the bill we bring to the floor today. My colleagues know how long and hard I fought—along with Senator THURMOND—for a truly comprehensive crime bill.

Over a year ago, I obtained an agreement to bring to the floor a bill addressing death penalty, habeas corpus, exclusionary, and assault weapon controls.

In November of last year, I introduced a bill, S. 1970, containing proposals in each of these areas.

And once we reached the floor, I fought back a filibuster, overcame two negative cloture votes, and won passage of a truly comprehensive crime bill.

To see all of this work go down the drain now is painful, to say the least.

I also want my colleagues to know how hard I fought for these provisions in conference. I voted for more conference offers containing the death penalty than did any other conferee. I voted for the death penalty with racial justice, and without it.

I voted for various habeas proposals; both House habeas reform plans and Senate plans.

And on guns, I offered a motion in conference—rejected by the House—to add the DeConcini assault weapon limit to the crime bill.

In sum, I supported each of the Senate-passed provisions on death penalty, habeas corpus, and assault weapons as vigorously as possible.

I am frustrated and disappointed that we could not get a bill dealing with these major issues. I pledge to my colleagues today that, next session, we will start even earlier in the Senate, press the House even harder, and—Senator THURMOND and I, working together—will do even better to win passage of a truly comprehensive crime bill.

We all know what is not in this bill. We can all be disappointed with what it does not contain. This legislation is not a comprehensive crime bill—but let me tell my colleagues why I think it is a crime bill that merits their support nonetheless.

And the best way to do that is to explain to them some of the provisions that are in this bill.

First, it contains the S&L fraud enforcement package put together by Senators RIEGLE, DOLE, WIRTH, HEINZ, GRAHAM, DIXON, SIMON, ROTH, THURMOND, and I—the toughest-ever white collar crime provisions. Among other things, this S&L provision authorizes up to life in prison for the worst S&L crooks, and allows the Government to take away all of their ill-gotten gains.

Whether you rob a bank with a pencil or a pistol, you will do time under this bill.

Second, the bill contains the Biden-Reid Victims of Child Abuse Act, a sweeping title aimed at make our criminal justice system more effective in cracking down on child abusers, and more gentle in dealing with the child abuse victims.

Third, the bill contains the Child Protection Act, authored by Senator THURMOND. Senator THRUMOND's bill imposes tough new penalties on child pornographers and provides the first-ever Federal punishment for possession of kiddie porn.

Fourth, the bill contains provisions authored by Senators KERRY, BAUCUS, PRYOR, and I to double aid to local law enforcement and to launch a new rural law enforcement initiative.

Fifth, the bill contains legislation that the Attorney General has called one of his "top two legislative priorities for this year"—Senator THURMOND's debt collection bill. This legislation will save the taxpayers millions by making it easier for U.S. attorneys to crack down on deadbeats who owe the taxpayers money.

Sixth, the bill contains provisions authored by Senator THURMOND and I to impose the toughest-ever Federal restrictions on steroids—a drug that is regularly abused by as many male high school seniors as is crack.

Seventh, the bill contains my proposal to authorize a doubling in the number of FBI agents devoted to drug-fighting, and a sharp increase in the number of DEA agents for that purpose.

The list of important provisions left in this bill goes on and on. "Ice" provisions based on those authored by Senators AKAKA and GORTON. Very tough crime-fighting provisions written by Senator SIMON to punish dangerous felons and get them off the streets.

I am also pleased that the conference crime package includes a provision from the Senate bill calling for a Federal grant program for State boot camp prisons. Senator LEVIN took the initiative on this issue with two hearings on boot camps this year in his Subcommittee on Oversight of Government Management. These hearings led to Senator LEVIN to team up with Senator COATS, who had introduced a bill on this topic, and together they came up with an amendment that helps States implement this tough, innovative corrections concept. I also commend Senator LEVIN for his leadership on several other issues in the crime bill, including closing a loophole in the bankruptcy laws that let some criminals avoid their restitution obligations, and toughening the penalties for drug dealers operating near playgrounds.

This is just a sampling of what is contained in this bill. It is a good bill—not all that it could be—not all that it should be. But under the extreme circumstances we find ourselves in, I believe that this is the best crime bill the Senate can pass today.

Mr. President, in closing, I want to say this: This bill is just a down payment on what Congress owes to the American people in the war on crime and drugs. They deserve better; they deserve more. Next year, I intend to work with Senator THURMOND to deliver on the unfulfilled promise that this bill represents.

This year, we pass this bipartisan legislation, as a start. Next year, we will hopefully pass bipartisan legislation like S. 1970, covering the death penalty, habeas corpus reform, assault weapon control, and much more. Working together, I know we can get the job done.

Mr. GARN. I note that the crime bill requires the Federal banking agencies to retain certain documents for 6 years. These documents include material supporting supervisory actions. As a member of the conference committee, could the Senator for Missouri elaborate on this requirement?

Mr. BOND. We do not intend to impose an undue burden on the Federal banking agencies. The requirement is intended to cover only those materials that are directly and materially related to the agencies; formal administrative enforcement actions. In addition, it is directed only at official documents.

BANK AND THRIFT FRAUD PROSECUTION ACT OF 1990

Mr. BIDEN. Mr. President, today the Senate will pass the toughest while-collar crime bill in U.S. history. This legislation was drafted in response to the biggest financial scandal in the Nation's history—the S&L crisis.

It is hard to grasp just how much this scandal will cost taxpayers.

But think of it this way: Cleaning up the mess created by S&L crooks over the next 10 years will cost us the same amount that bank robberies will cost us over the next 4,000 years.

Much of the S&L crisis can be directly attributed to fraud and insider abuse. William Seidman, head of the Federal Deposit Insurance Corporation, estimates that between 30 and 60 percent of S&L failures can be linked to fraud and criminal wrongdoing.

Unfortunately, the few S&L violators that the Justice Department has nabbed are spending little time behind bars. According to a recent study, in 1989 the average S&L offender received a sentence of just 1.9 years in prison, in comparison, the average bank robber was sentenced to a prison term of 9.4 years.

The white-collar criminals who are responsible for this massive ripoff must be brought to justice. Whether they use a pencil or a pistol to rob a bank, these criminals should spend time behind bars.

And that's exactly what this bill does.

This bill is based on the comprehensive S&L fraud enforcement package, S. 2786, that I introduced back in June of this year.

That package—and the bill that the Senate will pass today—focuses on three fundamental areas: First, greatly expanding the Government's attack on S&L criminals; second, imposing stiff, mandatory penalties on those who are convicted of bank and thrift fraud; and, third, authorizing U.S. agents to seize and recover every possible dollar of stolen and embezzled funds.

BANK AND THRIFT FRAUD PENALTIES

This bill imposes the toughest penalties ever against white-collar criminals, including up to life imprisonment without parole for so-called S&L kingpins. The bill also contains an across-the-board increase in punishments, including mandatory minimum sentences, for other bank and thrift crimes.

The bill also creates new Federal penalties for concealing assets from Federal bank regulators and obstructing bank investigators.

RECOVERING STOLEN AND EMBEZZLED FUNDS

The bill stops S&L criminals from profiting through their crimes, by expanding the ability of law enforcement officers to seize and forfeit embezzled and stolen funds. And the bill protects taxpayers by prohibiting S&L insiders convicted of fraud from hiding behind the Federal Bankruptcy Code to avoid repaying their victims and the U.S. Government.

STRENGTHENING THE ATTACK AGAINST FINANCIAL CRIMES

The bill adds hundreds of new FBI and Secret Service agents, Federal prosecutors and IRS criminal investigators to our fight against S&L crime. In total, the bill boosts spending on S&L enforcement efforts to $200 million—twice the level proposed by the administration. These additional resources will be focused and coordinated through a new financial institutions fraud unit in the Department of Justice, headed by a top-level special prosecutor.

The bill also contains other important provisions to prevent and punish bank and thrift fraud that will:

Prohibit S&L executives in troubled thrifts from receiving excessive golden parachute payments;

Ban S&L wrongdoers from participating in the operation of banks and thrifts;

Open the bank oversight process to public scrutiny by requiring Federal regulators to disclose civil enforcement actions; and

Expedite civil S&L fraud suits brought by bank regulators against officers and directors of failed thrifts.

I would also like to call special attention to title VI of the S&L fraud bill, which would establish a national commission to investigate the causes of the S&L crisis to ensure that the S&L debacle will never happen again. I am pleased that the Senate agreed to include subpoena authority for the Commission—authority the Commission will need to ensure an independent and thorough inquiry into the S&L crisis.

Mr. President, as I said before, this is the toughest while-collar crime bill in history. It is the product of hundreds of hours of meetings and negotiations with Federal prosecutors, investigative agencies, and bank regulators over the last several months.

The final bill, however, contains several provisions that were amended due to objections by the House. I strongly supported the Senate language on these measures, but when confronted with the possibility of the House killing the bill, I sought a bipartisan compromise that could be supported by Democrats and Republicans and the administration.

First, the bill does not contain an amendment drafted by the Office of Thrift Supervision that would have codified the rules that govern courts in reviewing challenges to the decision by bank regulators to take over a troubled thrift or bank.

The Office of Thrift Supervision withdrew that provision, due to concerns that it merely restated the rule followed by a majority of courts. I think clarifying the law would have been helpful, but I agreed to drop that provision at the request of the Senate Banking Committee and the Office of Thrift Supervision.

Second, the Bankruptcy provisions were amended to address strong objections by some Members of the House of Representatives. I accepted changes drafted by the House only because they maintained the core Senate-passed bankruptcy language that prevents all S&L wrongdoers—from discharging their debts by filing for bankruptcy. The final language specifically preempts State homestead laws, which would otherwise allow S&L crooks to retain lavish homes through the excessive protections in some State bankruptcy laws.

Mr. President, this bill takes a major step in bringing S&L criminals to justice. Under the bill, major S&L offenders will spend time behind bars. Their assets will be seized. And every possible dollar will be recovered for depositors and taxpayers.

The S&L debacle can't be undone. But we can punish the white-collar ripoff artists who have perpetrated this fraud, thereby deterring such crimes in the future.

I ask unanimous consent that two letters from the Office of Thrift Supervision be included in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD as follows:

OFFICE OF THRIFT SUPERVISION,
DEPARTMENT OF THE TREASURY,
Washington, DC, October 24, 1990.

Hon. JOSEPH R. BIDEN,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BIDEN: I want to express my deep appreciation for the vigorous support that you and the Committee staff have given to the provisions in the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 that are of particular interest to the Office of Thrift Supervision.

I am writing to request your continued support for the asset freeze provision (section 201(b) of H.R. 5401 as amended by S. 3194) of this legislation in its present form. As you know, we feel strongly the need for explicit legislative authority for court-ordered asset freezes. Since I arrived at the Agency, we have discovered that in many cases those who have abused thrift institutions continue to hold assets that, the evidence suggests, rightfully belong to those institutions. We have sought to remedy this situation, and to ensure that the institution will have the maximum amount of assets—thereby minimizing the risk of the federal taxpayers. Accordingly, in four cases instituted since my arrival, we have issued administrative orders effectively freezing the assets of wrongdoers pending the final outcome of our Agency enforcement proceedings. The most recent of these cases is the David Paul case, which we announced this past Monday.

It is also necessary to enforce our Agency asset freeze orders in court. We have had a measure of success, but it is important that we not be required to provide an amount of evidence that is likely to be available only at the conclusion of an agency proceeding. Such requirements could effectively vitiate the effect of any agency asset freeze order.

For these reasons, we asked for, and the substitute that you have prepared wisely includes, a provision that would empower the courts to issue an asset freeze order once we have made a prima facie case of wrongdoing. The prima facie standard is the appropriate one because it represents the amount of evidence that would be necessary to take a case to a jury. This standards will ensure that the courts have an adequate basis on which to determine whether an asset freeze is appropriate and at the same time make it possible for our Agency to freeze assets, and this prevent their disruption, without waiting for the conclusion of an administrative proceeding.

I therefore request your continued support for section 201(b) in its present form. I would add that my office has had the pleasure of a productive experience because of the close cooperation with Committee staff, and we look forward to the continuation of that relationship.

Sincerely,

TIMOTHY RYAN.

OFFICE OF THRIFT SUPERVISION,
DEPARTMENT OF THE TREASURY,
Washington, DC, October 26, 1990.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On September 14, 1990, I wrote to you recommending final language for three provisions of the Omnibus Crime Bill, S. 1970, which are of substantial importance to the Office of Thrift Supervision. Your staff responded immediately to our suggestions and through their diligence and cooperation with the Senate Judiciary Committee staff, the provisions were included in the Senate Judiciary Committee mark of S. 3194, the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990.

One of the provisions which received your strong banking is section 1002, a technical amendment to the Home Owners' Loan Act and the Bank Conservation Act. We suggested this amendment in order to codify two principles of existing administrative law. The first is that judicial review of decisions to place savings associations in conservatorships or receiverships is to be based on the administrative record. The second is that the scope of review is whether the decision was arbitrary and capricious.

These principles have been affirmed by the two federal courts of appeals that have considered the standard and scope of review in cases involving the appointment of a conservator or receiver. *See Woods* v. *FHLBB*, 826 F.2d 1400 (5th Cir. 1987); *Guaranty Savings & Loan Ass'n* v. *FHLBB*, 794 F.2d 1339, 1342 (8th Cir. 1986). They are the same principles that govern judicial review of other forms of informal agency adjudication and that the Supreme Court recently discussed in *PBGC* v. *LTV Corp.*, 58 U.S.L.W. 4831 (June 18, 1990).

As this provision is declaratory of existing case law in the United States Supreme Court and Federal Courts of Appeals, we do not believe that it is an essential part of S. 3194. Accordingly, we ask that you withdraw section 1002 from the bill.

Sincerely,

TIMOTHY RYAN.

Mr. THURMOND. Mr. President, I rise today as the original cosponsor of this bill which is the result of the conference consideration on the crime bill. However, I am deeply disappointed that this Congress will be denied the opportunity to pass a Federal death penalty and habeas corpus reform.

The crime bills passed by the Senate and the House both contained a much needed Federal death penalty and credible habeas corpus reform. Yet, we could not get a majority of the House conferees to support the will of their body by adopting either of these provisions in conference. The Congress is now left with a crime bill without a

heart. Many of the remaining provisions of the crime bill have been incorporated into this bill which we are introducing today and will be helpful in our fight against crime. I support these measures but believe it is a disappointing effort by this Congress. We have been thwarted in our attempt to enact a truly effective anticrime bill which includes a Federal death penalty and habeas corpus reform.

Mr. President, the American people should be outraged because they deserve better from their representatives. It is my opinion that a few in the Congress who oppose the death penalty have refused to accede to the majority and allow the Congress to enact a death penalty measure.

It is my understanding that the President is dissatisfied with this bill in its current form because it lacks a Federal death penalty. I can understand his frustration. The Senate passed a dealth penalty and habeas corpus reform. The House passed a death penalty and habeas corpus reform. Yet, despite this action by a majority of the Congress, the House conferees who oppose death penalty and habeas reform would not allow these measures to go back to their body for final vote.

The President understands, as a majority of the Congress understands, the American people support a comprehensive Federal death penalty. It is most unfortunate that a few Members of Congress can deny the American people a final vote on this important issue.

However, I have joined the distinguished chairman of the Judiciary Committee in introducing this bill today because it contains needed provisions in our fight against crime. While we now have only a minicrime bill without the death penalty and habeas corpus reform, it should be passed by the Congress. We must continue our efforts, despite the views of those to the contrary, to appropriately confront the criminals in our society and assist the brave men and women of law enforcement as they risk their lives every day for our protection.

I would like to briefly discuss some of the provisions which are in this bill. This crime measure provides funding for additional Federal law enforcement officers and prosecutors. In addition, it provides desperately needed financial assistance to State and local law enforcement and enhances the Federal Government's drug enforcement efforts in rural America. Further, it contains provisions which greatly expand victims' rights in our Nation's court rooms. This measure further responds to victims rights by making civil judgments for personal injury caused by drunk driving nondischargeable in bankruptcy. The bill also creates a long awaited uniform system to assist the Federal Government in collecting over $30 billion in debt currently owed to the Treasury. Finally, this bill contains a comprehensive measure designed to enhance our Nation's ability to investigate and prosecute those criminally responsible for the savings and loan crisis.

Mr. President, this bill should be swiftly adopted by the Congress. This legislation will benefit law enforcement and continue our fight against the criminal element throughout the Nation. However, I want to make clear that I believe it is a disgrace that we will not have the opportunity this year to pass a tougher crime package which includes a Federal death penalty.

In closing, I wish to express my appreciation to Chairman BIDEN for his effort in getting a good crime bill through the Senate and feel certain that next year he will continue working with me to get a major crime bill which contains the death penalty and habeas corpus reform enacted into law.

Mr. GRASSLEY. Mr. President, as a long-time original cosponsor of the Federal Debt Collection Procedures Act, I support its inclusion as a part of the crime bill. We must have a uniform Federal debt collection procedure when it comes to Federal loans and obligations incurred by private parties. This title—while not as good as it could be, and should be—is an improvement over current law. Thus, I support it passage.

It is conservatively estimated that as much as $40 billion in Federal loans and debts of various types are delinquent, but collectable. Figures as high as $99 billion have been cited. When the Federal Government first lent this money to students, small business people, farmers, homeowners, veterans, and others—it did so under uniform criteria and uniform standards; the Government could not discriminate based on the residence of the loan recipient. Therefore, Mr. President, it is perfectly fair and sensible to collect the obligation under a similar uniform standard, and without discrimination based on the happenstance of the debtor's residence.

Unfortunately Mr. President, when the Justice Department has to resort to litigation to collect the debts owed to the Treasury—debts owed to the people of your State and mine—it must run a gauntlet of 50 conflicting State laws. Many of these State laws, under the guise of protecting homestead and other rights, are quite generous, effectively shielding scofflaws and even crooks from the reach of Federal law.

The patchwork quilt of different laws encourages the transfer of assets to jurisdictions that are more debtor-friendly. Indeed, the debtors' search of these States has become a kind of growth industry in private debt collection circles. When a Federal debtor so moves, or when his assets are located in different States, the U.S. Attorney's office has basically three options: either become an expert in the complex debt collection law of the new State, or transfer part of all of the case to another office out of State, or, upon weighing the costs and delay of the litigation, reluctantly give up entirely.

Mr. President, it is downright galling that despite more than 3 years of Senate action on this bill, this country is still plagued with doctors, lawyers, and other professionals who have the ability to repay their student loans and other debts, but prefer not to. Now the House has finally agreed to act, we may begin to see some long-awaited reforms.

This title will give the Federal Government certain prejudgment remedies—such as the ability to discover a debtor's financial condition—that will aid the collection of debts when those who owe the Federal Government money attempt to fraudulently conceal their assets. The title also gives the United States the tools of the Uniform Fraudulent Transfer Act throughout the country, thus giving U.S. taxpayers a way to recover moneys that until now have been spirited away by wealthy debtors. It is time that those who have in the past flaunted their ability to shelter assets from the Government be within the reach of that statute.

Along that line Mr. President, I would like to elaborate on section 3004 of the title, which provides for nationwide service and enforcement. Debtors, like all of us, move from place to place, though some clearly move just to avoid paying their debts. Because of the difficulties experienced in registering and enforcing judgments under 50 State laws, this section provides a mechanism for both nationwide service of papers and nationwide enforcement of court orders. If a debtor objects to enforcement in a district court other than the district of his or her home, that objection should be treated as either a motion for change of venue or transfer of the case. Further, under this section, it will no longer be necessary to register a judgment pertaining to a debt covered under this act in another district prior to its enforcement unless the debtor objects. If the debtor objects, the judgment can still be registered and then enforced. The provision thus ensures that the Government can collect debts without being unduly impeded by State law, while afforded adequate protection to debtors.

With respect to prejudgment remedies mentioned earlier, the title at section 3015 includes an important section on the discovery of financial condition. Under current case law, many courts deny prejudgment discovery of

financial condition as not being relevant to the issues of liability and damages. Rather, discovery of the debtor's financial condition becomes an issue only after judgment. However, in debt collection cases, the loan amount due is often not in dispute. Thus, permitting reasonable discovery of financial condition prior to judgment allows the United States to determine at an early phase of the case whether the debtor will be able to make even installment payments; if not, the matter may not be worth the investment of prosecutorial resources. Accordingly, prejudgment discovery can assist both the debtor and the United States. This title recognizes the value of such a practice, and permits discovery in cases where there is a reasonable likelihood that a debt to the United States exceeds $50,000. Current postjudgment financial condition discovery is unaffected; discovery can continue to be had irrespective of the amount owed to the United States.

Mr. President, we have passed versions of this bill on five different occasions. Candidly, this title that has emerged from discussion between the Justice Department and the House Judiciary Committee staff does not have all of the improvements in Federal debt collection procedures that we originally passed, or that we need.

Typical of the shortcoming is found in the absence of any provision on bankruptcy nondischargeability of certain debts in the nature of restitution. The House language before us—unlike the Senate counterpart—fails to even codify the Supreme Court's decision in *Kelly* v. *Robinson*, 470 U.S. 36 (1986), so as to make unambiguous that chapter 7 of the Bankruptcy Code prohibits discharge of criminal restitution.

The title also leaves a giant remaining loophole for dishonest debtors in chapter 13, by failing to reverse *Pennsylvania* v. *Davenport*, ____ U.S. ____, 110 S. Ct. 2126 (1990) thus permitting convicted felons to discharge their obligations to victims and/or the State, merely by filing a bankruptcy. As Justices Blackmun and O'Connor wrote in their dissenting opinion, this result invites the Code to be "used as a shield to protect a criminal from punishment for a crime." Not surprisingly Mr. President, the filing of chapter 13 bankruptcy by an assortment of welfare cheats, crooks, and even violent criminals has become a kind of "growth industry" in the wake of Davenport.

Senate language on both of these points, as well as on preventing the discharge on civil restitution owed to the Government in consumer protection and environmental cleanup cases, is strongly supported by the National Association of Attorneys General. Law enforcement officials understand how the closing of such loopholes is important to protecting crime and fraud victims in the States, while at the same time preserving a judge's discretion to continue to order restitution as an alternative sentence to incarceration in criminal cases. As the dissenters in Davenport reasoned:

> The judgment of sentencing courts and legislators that rehabilitation is the most effective form of punishment will be tempered by the knowledge that convicted criminals easily may avoid a sentence requiring restitution merely by obtaining a chapter 13 discharge. Sentencing courts will be faced with a dilemma. The sentencing judge must either risk that a Federal bankruptcy judge will undermine a restitution order, thus absolving the convicted criminal from punishment, or impose a harsher and less appropriate term of imprisonment, a sentence that the Federal bankruptcy court will be unable to undermine. Congress surely would not have enacted legislation with such an extraordinary result without at least some discussion of its consequences.

I agree that this is an anomalous result; a consequence that has already lead judges to incarcerate those for whom a restitution order would suffice. I am very disappointed in this outcome and will seek to address it yet again next session.

But the hour is late in the 101st Congress. And while I will continue to work to see that additional reforms are made in the future, the country needs these procedures now. We must take whatever steps we can now to enhance our debt collection efforts. If the current budget stalemate teaches us anything, it is that this country needs to effectively manage its revenues, including collecting on loans it made long ago at below market rates.

I urge my colleagues to support this title, and yield the floor.

Mr. GRASSLEY. Mr. President, despite my high personal regard for my Senate colleagues on both sides of the aisle who worked on this conference report, I rise in strong opposition to the crime bill conference report.

My strong feelings against this product is in no way a commentary against the many hours of hard work and effort expended. Indeed, I regret that I was not permitted to join the conference.

But Mr. President, this is lowest common denominator legislating—legislating just for its own sake.

This report is not a crime bill, as it purports to be. It is, indeed, an imitation crime bill, that covers for being a crime bill by its outward appearance—its title. Beyond its title, it is a mere echo of a crime bill.

The report does, indeed, skillfully exploit a situation—the end-of-the-session need for a campaign position. It satisfies our biennial need to have something labeled a crime bill. But I remind my colleagues that it is not a crime if we don't pass a crime bill. But it may be a crime to pass an ineffectual one—one that will not ensure the safety of law-abiding Americans.

This report lacks the ability to protect the first civil right of every American: to be free—in person, in home, and in the neighborhood—from the threat of violent crime.

Its silence on key provisions speaks volumes about our commitment to protect our people.

There is no reform of Federal habeas corpus procedures. This means that lengthy, spurious, and repetitious claims by State death-row inmates will continue to thwart the imposition of valid State death penalties.

There is no good faith exception to the Judge-made exclusionary rule. An objection good faith exception to the exclusionary rule would allow reliable physical evidence—including, but not limited to, such evidence as narcotics seized from a drug trafficker—to be admitted into evidence in a criminal trail.

As is well-known by now, the exclusionary rule is not a guarantee grounded in the Constitution.

It is a judge-made rule—adopted by the Supreme Court for use in the Federal courts in 1914 (see *Weeks* v. *United States*, 232 U.S. 383) and for the States by the Supreme Court in 1961 (see *Mapp* v. *Ohio*, 367 U.S. 643)—to deter abusive law enforcement practices that might occur under the "color" of the protections afforded by the fourth amenmdent.

The fourth amendment, of course, guarantees that the people shall be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

Consequently, the enforcement of the exclusionary rule excludes evidence from being considered at a criminal trail, where it has been determined that such evidence has been obtain illegally.

The overtechnical reliance upon the exclusionary rule has resulted in criminals—who have, in fact, been caught in the act of committing a crime—being set free; not because they are innocent, but becuase the evidence necessary to establish guilt is determined by the Court to have been seized "unreasonably", or just because of the constable's honest mistake.

I have already stated that it is the foremost responsibility of law enforcmeent officers to protect the citizenry. Sometimes in the performance of those duties, an officer makes a mistake.

There should be room to distinguish between a wholly unreasonable search of one's person or home, and the simple and honest mistake—made in good faith—of a law enforcement officer conducting a search under sometimes life-threatening circumstances.

That is just common sense.

Unfortunately, strict enforcement of the exclusionary rule results in all

criminals and all crimes being treated alike.

In 1974, Justice Rehnquist said, "Just as the law does not require that a defendant receive a perfect trial, only a fair one, it cannot realistically require that policemen investigating serious crimes make no errors whatsoever."

Ten years later, the Supreme Court, in *U.S.* v. *Leon* (1984), adopted a good faith exception to the exclusionary rule, in instances where a search was conducted pursuant to a warrant, issued by a magistrate, that was later invalidated.

The Supreme Court recognized that it is absurd to attempt to deter the conduct of a police officer, who in good faith, conducts a search pursuant to a warrant that the officer considers to be valid—or who has no reason to believe is invalid.

Can we really expect—as some courts seem to demand—that an officer should cross-examine the issuing judicial officer as to possible deficiencies in the warrant?

And what about instances when an officer is acting under probable cause and reasonable good faith—without the benefit of a search warrant?

Should evidence that tends to prove the guilt or non-guilt of an individual be excluded because of an artificial reliance upon a rule which erects an artificial veil between the facts and common sense?

I think not.

I think the American people have waited long enough for us to restore logic to their criminal justice system.

If an objective good faith exception to the exclusionary rule were adopted, a guilty defendant would not get a free ticket out of jail—for certainly no thoughtful reading of the fourth amendment, nor the judge-made exclusionary rule, ever intended such a result.

Mr. President, none of us want the police breaking in our doors or indiscriminately making searches and seizures.

Certainly none of the supporters of the objective good faith exclusionary rule exception advocate such police-State tactics.

Strict adherence to the exclusionary rule makes sense only in those instance where law enforcement personnel intended to break the law.

I believe that is the original purpose of the exclusionary rule: to deter unlawful police conduct.

There is no effective, fair, or workable, Federal death penalty provision. In fact, there isn't a death penalty provision at all in this report.

This means that a constitutionally valid criminal penalty for a certain group of well-defined heinous and abominable crimes will not be available for Federal judges or juries to consider.

The American people are not out to fill some psychological blood lust. However, they do know that when it comes to heinous, outrageous, and abominable criminal acts—the death penalty is necessary, appropriate—and in these certain circumstances, the only just punishment.

To attach a lesser sanction against such criminal acts would, in my view, undermine our system of justice and its ability to deter crimes.

Worse, the lack of the capital sentencing option is an abdication of one of our most fundamental duties: the protection of the people.

To advocate the use of society's ultimate criminal sanction is not something I take lightly.

But the Constitution permits us the option to end a convicted criminal's life if certain prescribed procedures are followed—including appropriate and constitutional due process procedural safeguards—to insure that mitigating and aggravating factors are taken into account during the sentencing portion of a criminal proceeding.

And, as a matter of criminal law policy—in addition to much thought and study on my part—I believe that capital punishment should be a sentencing option available for those who are convicted of crimes deemed to be affronts to civilized society.

The lack of a capital punishment provision in this report also means that the opponents of the death penalty have won—at least for this session of the Congress.

I do want to indicate that there is one provision in this report which I wholeheartedly support, which I have worked for, and which I cosponsored with my colleague from Oklahoma, Senator NICKLES—protection and safeguards for the victims of violent crime.

However, as much as I would like to see this title enacted into law, even it is not enough to allow me to support this bill.

For far too long, the American people have demanded that the Congress take action against violent crime. For far too long, the Congress has procrastinated.

This report should attempt to reflect how our society is to maintain both its freedom and its civility.

We cherish our freedoms, both as individuals, and as a nation.

Among its many guarantees, the Constitution guarantees that Americans will enjoy the freedoms of domestic tranquility and the protection afforded the general welfare.

It is idealistic to believe that domestic tranquility includes a reasonable expectation that people will respect each others privacy—or that people will be civil to one another—or that people will just plain leave each other alone.

However, I believe the threshold of the guarantee of domestic tranquility does at least include the right to be free from being a victim of violent criminal activity.

As elected officials, we take an oath to uphold the Constitution, the supreme law of the land. Consequently, the welfare of the people must always be our supreme law.

The report should contain a direct, forceful, and responsible package that would contribute toward enhancing the public's security against crime and improving the effectiveness of the Federal criminal justice system.

It does not.

This report should help us to fulfill our constitutional obligation to protect the citizens of this great Nation—to guard their freedoms and to ensure domestic tranquility—by protecting them from those who have no regard for the law at all.

It does not.

As importantly, I believe that this is the least we can do for those who are on the front lines of the fight against crime and who lay their lives on the line every day against the thugs who trample upon the peace and tranquility of a law-abiding society.

As I have stated previously, the American people have a right to be secure in their dwellings, free from drug traffickers, and similar predators.

The American people also have the right to prosecute those who would flagrantly disregard the laws of the United States and hide behind an overly legalistic reading of the fourth amendment.

In conclusion Mr. President, this conference report does not offer us a real opportunity to enact a truly tough and effective anticrime package. If anything, it is an anti-anticrime package.

This report is a hollow bill—it is a crime bill in name only. I urge the President to veto this bill.

Finally, I'd like to say that the inability to resolve the differences between the Senate and House crime bills is a great disappointment to me.

I also know that it is a very great disappointment to the ranking member of the Senate Judiciary Committee, our distinguished colleague from South Carolina, Senator THURMOND.

I want to thank him for his valiant efforts—along with the other conferees representing the minority side of the Senate Judiciary Committee, Senators HATCH and SIMPSON.

Senator THURMOND has worked long and hard to enact meaningful anticrime legislation during his distinguished career in the Senate.

He has been no less tenacious in his efforts to have a crime bill considered this year. In fact, several times during this Congress, he single-handedly saved the Senate crime bill from being withdrawn and declared dead.

I just want him to know that as long as I remain a Member of this body, I will continue to work with him to see to it that real anticrime legislation is enacted and signed into law.

Mr. DODD. Mr. President, the Comprehensive Crime Control Act is a long and complicated bill. Therefore, I just wanted to point out that buried among its many titles is a provision that will establish a National Commission on Financial Institution Reform, Recovery, and Enforcement. This is a provision that I believe is extremely important and deserves some explanation.

The Commission is based upon legislation introduced by Senator KIT BOND and myself in the Senate, S. 2903, and Congressman SCHUMER in the House. It is an effort to give the American public a full, accurate, and unbiased account of the policy decisions that produced the largest financial scandal in the history of this country.

The newspapers have been filled with stories about the incompetency and outright fraud that will cost American taxpayers hundreds of billions of dollars. These stories make good headlines and address important matters, but they do not begin to tell the whole story. That is the purpose of our commission—to help the public understand how we got into this mess.

The legislation also has a forward-looking component which requires the Commission to recommend changes in the regulation and supervision of depository institutions to prevent a recurrence of the problems that caused the S&L mess and to recommend any other administrative or legislative actions necessary to protect the safety and soundness of depository institutions and the Federal insurance funds. These recommendations will help the Congress and the administration as we try to craft legislation to modernize our financial services. They will enable us to strengthen our banks, securities firms, insurers, and other financial services providers, while assuring that we will never again see such a massive raid on the U.S. Treasury.

Mr. President, I anticipate that the President and the Congress will appoint people with outstanding credentials as soon as possible and I look forward to reading the results of their findings next year.

Mr. WILSON. Mr. President, in the past, the Senate has voted on legislation to interdict drugs both beyond the borders and within the communities of the United States. Much of these early efforts have been characterized as striking a blow against the supply of illicit drugs.

Clearly, drug interdiction is just one side of the antidrug equation. An equally essential ingredient in our formula to rid this Nation of the scourge of drugs is effective drug education.

One of the most celebrated education programs is one that I am extremely proud to say was developed by the Los Angeles Police Department and the Los Angeles Unified School District. It is the DARE Program—DARE being the Drug Abuse Resistance Education Program.

The DARE Program is one that does not simply tell children to say "no" to drugs. It gives them the means to do it.

Mr. President, today's youth face more challenges and obstacles on the road to adulthood than ever before. For many of these children, especially in our inner-cities, the greatest obstacle they face is in the form of a rather glamorous figure—a 17- or 18-year-old pusher—who comes onto their school grounds or finds them in a park or playground, offering free drugs in order to recruit them into their retail sales apparatus.

DARE is a comprehensive antidrug program that is designed to help fourth-, fifth-, and sixth-graders who face the threat of drugs in virtually every aspect of their lives. DARE shows youth that positive alternatives to drug use do exist. Children are instructed in interpersonal and communication skills and in activities that will build their self-esteem and enable them to resist the very considerable peer pressure for drug use and gang membership.

One of the unique features of the DARE Program is that the instructors are uniformed police officers. These DARE officers, selected on the basis of experience and their dedication to children, are best able to respond to the myriad questions and concerns posed by students.

Mr. President, last fall I visited Plasencia Elementary School in east Los Angeles, a neighborhood that is beset acutely with the drug trade. I witnessed a young policewoman, Mercedes Hernandex, conduct a sixth-grade class as part of the Los Angeles DARE Program.

I must say that I came away from this session with renewed confidence that the youngsters that were participating in the drug abuse resistance education program would in fact know how and why to say no; that they would have learned techniques that will stand them in very good stead. These young men and women will graduate from the DARE Program stronger, stronger in all ways, because they have learned to value themselves and know why it is that they should not engage in dangerous drug experimentation.

Presently, more than 50,000 classrooms in 49 States are teaching DARE Programs to over 3 million schoolchildren. Yet, there are many vulnerable schoolchildren who still do not receive the benefits of DARE instruction.

Mr. President, last year I introduced S. 1835, legislation to provide Federal funds for DARE, and the Senate showed its support for this important program when it adopted language included in S. 1835 as amendments to last year's omnibus drug legislation and to S. 695, the Excellence in Education Act.

Today, the Senate has taken final action on the conference report to S. 3266, and I am pleased that the conference committee included DARE legislation, which will provide $10 million for the DARE Program. This legislation will be extremely helpful to those who wish to establish DARE Programs but have not been able to find the funding to do it; to have that additional assistance so that they, too, may instruct their children in self-esteem and resistance techniques in order to prepare them for that inevitable day when drugs place them at the crossroads of their young lives.

Mr. President, I would like to acknowledge and extend my personal thanks to Representative BILL SCHUETTE of Michigan. As the sponsor of companion legislation to S. 1835, Representative SCHUETTE has been an inspirational advocate for the DARE Program in the House of Representatives. I am sure that Representative SCHUETTE will be as pleased as me that DARE legislation will become law.

Mr. President, the war on drugs is a battle fought on many fronts, the most tragic of them being in our schools. The DARE Program has helped turn this tragedy into victory. With this legislation, more DARE Programs will join the effort to turn these battlegrounds back into playgrounds, and instruct America's youth to be victors rather than victims of the drug war.

Mr. SIMPSON. Mr. President, I have to confess to some mixed emotions about this legislation. What my colleagues have in front of them this evening represents a great deal of work by many people, fine staffers, and extremely dedicated colleagues—work which, in some cases, has been unstinting for months and even years.

These people can be proud of their product, it is impressive.

But I am also deeply saddened, Mr. President, because I do not believe the legislation before us is a comprehensive crime bill. It is a crime that after all the work we have done in this body to craft a solid, tough, bill, our efforts have been cast aside in the rush to complete some crime bill that will pass.

Well, Mr. President, I don't believe this bill is tough enough on crime—at least not to the degree the Senate intended when we passed S. 1970 last summer. But there are some good provisions in here that we can be proud of.

At this point, Mr. President, I first want to be sure that we all recognize the extreme hard work that went into the bill by our leaders on the Judiciary Committee. Our chairman, Senator JOE BIDEN, has been a true leader in this effort. He and his capable staff have worked doggedly throughout the entire process. The chairman's dedication toward the goal of getting a comprehensive crime bill out of Congress this session has been truly impressive. This meant making some very difficult decisions. In order to get a tough bill, he made a particularly difficult decision and voted with the minority in conference in a last effort to get the death penalty included in this bill. It was the chairman and our distinguished ranking member, the indomitable and ever-gracious Senator STROM THURMOND, who provided his full leadership in putting this legislation together. They and their staffs worked through the night last night and have successfully crafted a pretty good bill.

Our ranking member, the senior Republican in this body, deserves special recognition. Senator STROM THURMOND has been—and still is—a true leader in the finest sense of that word. We heard earlier this year how the Senator from South Carolina has taken part in the confirmation of over 25 Supreme Court Justices. The Senator has been particularly dedicated to the goal of providing the Nation with much needed criminal law reform. The Senator has been the guiding force behind the fight to get meaningful habeas corpus reform passed in the Senate. That was STROM THURMOND who sponsored that bill. He was the sponsor of the legislation to enact a constitutional Federal capital punishment statute. He also successfully led the fight to defeat the misguided and misleading Racial Justice Act, the amendment that would have meant the end to capital punishment at both the State and Federal level.

So, Senator THURMOND has been right in the middle of this from the very beginning. I especially commend him and his unstintingly loyal staff for their hard work and dedication to the best interests of our country. We can all be proud of the fact that we have the privilege of serving in the U.S. Senate with a Senator of his caliber.

So, Mr. President, I support this legislation for all those reasons and because it is an improvement in our criminal laws. This bill makes it a crime to possess quantities of child pornography. This bill has a victims' rights provision, a concept which I have always supported. This has a provision getting after the savings and loan crooks; it gives the Government the ability to go after the assets stolen from S&L's and protect those assets before they can be hidden or otherwise lost.

This bill has some really tough desperately needed child abuse reform provisions. These provisions put in place protections for the most defenseless Americans—our children. I commend my colleagues and their fine staffs for their hard work in getting these things included in this legislation.

But I also have to express regret, Mr. President. I regret that the conference committee was not able to convene earlier in the year so we could get to work on the real crime control provisions—the provisions which are conspicuously absent here: A death penalty, habeas corpus reform, the exclusionary rule—just to name a few. It is truly unfortunate that the conference committee did not have ample time to really dig into those issues and resolve some really difficult questions.

But all in all Mr. President, we did what we could in the time we had. It certainly is not as comprehensive as I would like, but it is a positive step in the right direction and I urge my colleagues to support it.

The PRESIDING OFFICER. If there are no amendments, the bill will be considered read for the third time and passed.

So the bill (S. 3266) was passed.

[The bill S. 3266, as passed by the Senate, will appear in a subsequent issue of the RECORD.]

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ENVIRONMENTAL RESEARCH GEOGRAPHIC LOCATION INFORMATION ACT—S. 3069

UNANIMOUS-CONSENT AGREEMENT

Mr. JEFFORDS. Mr. President, yesterday we passed a noncontroversial bill, S. 3069. Unfortunately an amendment was deleted. Therefore I ask unanimous consent in the engrossment of the bill, S. 3069, the Secretary of the Senate be directed to strike out section 5 and, to redesignate sections 6 and 7 as sections 5 and 6 respectively.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to conform internal cross references in the introduced bill, S. 3266.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination:

Calendar 1074. James L. Webb to be a U.S. Marshall.

I further ask unanimous consent that the nominee be confirmed, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER (Mr. BRYAN). Without objection, it is so ordered.

The nomination was considered and confirmed as follows:

DEPARTMENT OF JUSTICE

James L. Webb, of Oklahoma, to be U.S. Marshal for the Eastern District of Oklahoma.

TEMPORARY EXTENSION OF CERTAIN LAWS RELATING TO HOUSING AND COMMUNITY DEVELOPMENT

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5933, a bill that will extend the existing restrictions on prepayment.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5933) to provide for the temporary extension of the certain laws relating to housing and community development.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

PREPAYMENT OF MORTAGES IN THE OLDER SUBSIDIZED INVENTORY

Mr. CRANSTON. Mr. President, there remains some unfinished business now that we have passed the Cranston-Gonzalez National Affordable Housing Act.

As we have discussed, the bill contains a permanent solution to the prepayment problem. This permanent solution will replace the temporary measure that has been in effect since 1987 and which is set to expire next Wednesday, October 31.

Unfortunately, it is highly improbable that the President will sign the National Affordable Housing Act by next Wednesday. Because of the gap in coverage that would arise because of the delay in signing, many owners of federally assisted housing would suddenly be free to prepay their federally assisted mortgages and evict their low income tenants. Needless suffering will be inflicted on thousands of low and moderate income people across the nation, many of whom are elderly.

To allow owners a window to prepay at this late date in the process would

serve no discernible purpose. The conferees worked long hours to fashion a preservation solution that balances the interests of all the affected parties. The administration participated in the negotiation process and the solution, for the most part, was improved by their participation.

I request that the Senate now proceed to the consideration of H.R. 5933, a bill that will extend the existing restrictions on prepayment. Senator D'AMATO and I will propose an amendment to change the expiration date from February 1, 1991, to November 30, 1990. The amendment has been cleared on both sides of the aisle and with the House.

Under this extender, current law would expire upon the enactment of the National Affordable Housing Act if that comes first. This language has been worked out in cooperation with the administration.

The bill also, at the administration's behest, extends the expiration date for FHA mortgage limits and the Interagency Council on the Homeless.

I believe this extender bill has been cleared on the minority side. I urge my colleagues to support this prudent, responsible measure.

I urge my colleagues to support this prudent responsible measure.

AMENDMENT NO. 3207

Mr. CRANSTON. Mr. President, I send an amendment to the desk on behalf of myself and Senator D'AMATO and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mr. CRANSTON], for himself and Mr. D'AMATO, proposes an amendment numbered 3207.

Amend the bill by striking "February 1, 1991" wherever it appears and inserting in lieu thereof "November 30, 1990".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3207) was agreed to.

Mr. CRANSTON. Can we proceed now to action on the bill?

The PRESIDING OFFICER. The vote occurs on the bill.

The bill was considered read the third time and passed.

So the bill (H.R. 5433), as amended, was passed.

Mr. CRANSTON, Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BYRD. Mr. President, will the distinguished Senator yield to me for not more than 3 minutes?

Mr. GLENN. I yield.

ALEXANDER E. BARKAN

Mr. BYRD. Mr. President, on October 18 of this year Mr. Alexander E. Barkan, who was formerly the director of the AFL-CIO Committee on Political Education, died of cancer at Sibley Memorial Hospital.

Al Barkan was a man of many talents. A public speaker of great effectiveness, an organizer of unusual ability, and a man blessed with a huge capacity for hard work, Al devoted most of his life to the cause of the labor movement.

Al Barkan was born in Bayonne, NJ. He was a 1933 graduate of the University of Chicago, with degrees in economics and political science. After college, Al taught English for awhile in Bayonne and then began to work as a volunteer for the Textile Workers Organizing Committee. That was the beginning of his rise in the labor union movement. After his service in World War II aboard the U.S.S. *Alabama*, he became executive director of the New Jersey CIO Council, and was then appointed political director of the Textile Workers Union he had helped organize.

In 1955, Barkan was appointed assistant director of the newly merged AFL-CIO's political arm and was then appointed director by AFL-CIO President George Meany in 1963. Ever the innovator, an election in New Jersey in 1964, led Barkan to notice that an unusually thorough union member list had been compiled. By the end of the decade Barkan's computerized voter lists had revolutionized political volunteer work.

Barkan's career guiding lights were his beliefs that domination of the political process by elites of any persuasion was detrimental and that economic injustice was a possible consequence whenever elected officials strayed from contact with everyday folk. Everyday people who worked hard and made this country great were Al Barkan's constituents. Those are the people who will deeply feel the loss of Al Barkan. On October 18, after a long struggle with lung cancer Al Barkan passed away. He was 81. My sympathies go out to Al's wife, his two daughters, and his four grandchildren.

In 1861, President Abraham Lincoln during an address in Cincinnati, OH, expressed his view of man's duty to man, "I hold that while man exists it is his duty to improve not only his own condition, but assist in ameliorating mankind * * * I am for those means which will give the greatest good to the greatest number."

Al Barkan spent most of his life trying to do the greatest good to the greatest number. He was a delightful man. His many friends will miss him.

Mr. President, I ask unanimous consent that the obituary from the Washington Post be printed in the RECORD.

There being no objection, the obituary was ordered to be printed in the RECORD, as follows:

ALEXANDER E. BARKAN DIES; HEADED AFL-CIO COMMITTEE

(By Bart Barnes)

Alexander E. Barkan, 81, who as the director of the AFL-CIO's Committee on Political Education (COPE), was one of organized labor's top political operatives during the 1960s and 1970s, died of cancer Oct. 18 at Sibley Memorial Hospital.

Mr. Barkan, a gifted orator and energetic labor evangelist, was one of the last of the Old Guard lieutenants of the late AFL-CIO President George Meany. Mr. Barkan was known in the labor community for an unusual level of directness and candor in dealing with people. He was also the crafty gray eminence of labor politics, who was most at home behind the scenes where strings could be pulled and agreements reached out of the public spotlight.

As director of COPE, he had a major say in the distribution of millions of dollars in campaign contributions and the allocation of countless volunteer hours to political candidates. The result was that he was a vital influence in bringing about the election of members of the House and Senate who were friendly to labor.

But he was less successful at the level of presidential politics, and he saw the once-formidable power of organized labor within the Democratic Party deteriorate badly during the 1970s, when much of the party machinery was seized by people whom he had attacked as "disciples of the three A's—acid, amnesty and abortion." In Mr. Barkan's view, the party had been taken over by the "kooks and the crazies."

"To know Al was to be lifted by his great vitality and the single-mindedness with which he pursued trade unionism in general and election victories in particular," AFL-CIO President Lane Kirkland said yesterday in a statement released by the union.

A resident of Bethesda, Mr. Barkan was born in Bayonne, N.J. He graduated from the University of Chicago, then returned to Bayonne where he taught high school English at night while helping with union organizing during the day. He wrote a weekly column for a union newspaper, "Through Workers' Eyes," in which he denounced capitalist oppression of the working class.

In 1937 he left teaching to work as a full-time volunteer with the Textile Workers Organizing Committee. He served in the Navy during World War II as a radioman in the North Atlantic and later in the South Pacific.

After the war Mr. Barkan returned to New Jersey, where he became a paid staff member of the Textile Workers Union, then executive director of the New Jersey CIO Council and later political director of the Textile Workers Union.

He came to Washington in 1955 as assistant director of the newly merged AFL-CIO's political arm, COPE. Meany named him COPE's director in 1966.

In that role Mr. Barkan presided over an operation that included extensive computer data on voter registration and statistics, voluminous files on political candidates and their opponents and data on which campaigns and elections were likely to be of particular importance to organized labor.

He directed an ambitious AFL-CIO campaign against the election of Richard Nixon in 1968 and failed, but he was later success-

ful in lobbying on Capitol Hill against Nixon's nominations of Clement Haynsworth and G. Harrold Carswell to the U.S. Supreme Court.

When Nixon's list of "political opponents or enemies" surfaced during the Watergate hearings of 1973, Mr. Barkan's name was included, and he took pride in that distinction.

Mr. Barkan was convinced that involvement of labor's liberal wing in such divisive social issues as abortion and the Equal Rights Amendment diluted its political effectiveness, and he argued that labor's mainstream constituency would be alienated by alliances with special interest groups.

He left the 1972 Democratic convention that nominated Sen. George McGovern (S.D.) as its presidential candidate. He said he was convinced that the party had been taken over by "fags, feminists and far-outs." Meany and the AFL-CIO executive council remained officially neutral in the general election.

In December 1972, Mr. Barkan played an influential role in the election of Robert S. Strauss as chairman of the Democratic National Committee, but he feuded bitterly with Strauss two years later when the Democrats institutionalized reforms for selecting national convention delegates.

Mr. Barkan retired in 1981.

Survivors include his wife, Helen Barkan of Bethesda; two daughters, Carol Alt of Potomac and Lois Wolkowitz of Chatham, N.J.; and four grandchildren.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Ohio [Mr. GLENN] for his courtesy.

Mr. GLENN. I thank my distinguished colleague from West Virginia and share his views with regard to Mr. Barkan. I knew him and those remarks are very well taken. I associate myself with those remarks of the distinguished Senator from West Virginia.

Mr. BYRD. I thank the Senator.

PAPERWORK REDUCTION ACT

Mr. GLENN. Mr. President, I ask unanimous consent to call up Calendar Order No. 901 for consideration of the Senate.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. Mr. President, I have to object for another Member on this side of the aisle.

The PRESIDING OFFICER. Objection is heard.

The Senator from Ohio.

Mr. GLENN. Mr. President, I would like to take a few minutes of the Senate's time to call the attention of my colleagues to a serious disservice which I believe may take place if the Senate is unable to act on this legislation to reauthorize the Paperwork Reduction Act.

That act is not too well known. It was first put in place since 1980. This legislation is titled The Federal Information Resources Management Act. This legislation would reauthorize the popular if yet to be fully realized Paperwork Reduction Act, which created the Office of Information and Regulatory Affairs, better known as OIRA, at the Office of Management and Budget.

The legislation not only would have furthered the purpose of the original Paperwork Reduction Act, in cutting Government redtape, but it also would set a new electronic information policy for the Federal Government, as well as strengthen and modernize the existing Government information infrastructure and statistical data base.

It may not be very well known, but OIRA is a highly important Government agency because of this: It is where all the rules and regulations written by the Departments and agencies pursuant to the laws we pass, it's where they go for review prior to being implemented. While it may be one of the least known, I would submit that that agency has to perform one of the most important functions of government.

S. 1742, which is Calendar Order No. 901, was introduced about a year and three-quarters ago, almost 2 years, and it has been the subject of extensive hearings and exhaustive work by the Committee on Governmental Affairs and its Subcommittee on Government Information. On June 7, 1990 the legislation was ordered reported from the Governmental Affairs Committee by a unanimous vote of 14 yeas to 0 nays. This was after a controversial amendment to strike the regulatory review disclosure provisions proposed for OIRA was narrowly defeated on a tie vote.

The committee then negotiated an agreement with the administration to remove the controversial provisions in the bill and to issue an Executive order on the subject of those provisions. As a result the administration has delivered a very strong statement from the White House in support of this legislation.

That is one of the reasons I am surprised to see it objected to on the other side.

But, according to the October 24, 1990, statement of administration policy, and I quote from their letter:

> The Administration strongly supports passage of S. 1742 (with Committee amendment substitute) reauthorizing the Office of Information and Regulatory Affairs (OIRA) for four full years from enactment. While S. 1742, as reported by the Committee on Governmental Affairs, contained a number of items on which Senior Advisors recommended veto, a compromise has been reached which accommodates Administration and small business concerns.

Mr. President, I ask unanimous consent that a copy of the entire statement of the administration be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GLENN. The agreement between the Senate and the administration has been agreed to by the House managers and it is our understanding the bill would have been acted upon immediately by the full House of Representatives had we been able to carry through on the unanimous-consent agreement that we had last evening.

Mr. President, I just have to question this. The question I have is, since the administration supports this bill, and since the Senate Governmental Affairs Committee supports this bill, reported it favorably, and since the House is prepared to adopt our bill and send the bill directly to the President, why have we been unable to call it up for action in the Senate and make reauthorization of the Paperwork Reduction Act a law?

The measure is being held now by an "anonymous" hold—I find that deplorable—an anonymous hold on the Republican side, despite the strong support of the administration. I was told earlier this evening that the first person to put on that anonymous hold had even flown out of town, was gone, was not even going to be here, but had an agreement from others that they would oppose it. In other words, it would be a rolling hold. And I cannot fight that. As one hold would come off, there was agreement another one would be put on, so that no one really had to identify himself. The objecting Senator would remain anonymous. So much for sunshine in the Senate of the United States.

Mr. President, my colleagues know I am not usually given to caustic, partisan remarks on the Senate floor, but I must point out that this is solely a Republican anonymous hold. We have it completely cleared on the Democratic side. Originally some of the strongest opposition to this legislation was on the Democratic side. But that was all cleared up with the changes we made in the agreements we worked out with the administration.

I do find it deplorable that, after having this cleared last evening, suddenly, anonymously, a Senator, or a combination of Senators on the Republican side, remaining anonymous, can stand this evening and prevent a bill, take their stand against paperwork reduction. Anonymous Senate Republicans can come out against the nomination of Mr. Blumstein to head up OIRA, which the President and OMB have lobbied, and lobbied, and lobbied for. Anonymous Senate Republicans are against the strong desire of the President and OMB for this legislation. Anonymous Senate Republicans are against regulatory reform that is covered by this. Anonymous Senate Republicans are against cutting Government red tape, against setting new electronics information policy, and apparently against strengthing and modernizing our Government information infrastructure, and statistical data base.

Mr. President, not long ago, just a few weeks ago, one of the major papers in this country wrote a lead editorial about this. They made an unusually personal and vitriolic castigation of me by claiming that I was trying to gut OIRA.

Nothing could be further from the truth. Mr. President, they said that I had eliminated the objective of a 5 percent reduction a year in paperwork.

Mr. President, I submit that was eliminated not because of any quarrel with the objective but because no one can measure it is 5 percent, 10 percent, 50 percent. Recently, we reached an agreement with the administration on this bill allowing, under certain circumstances, the setting of goals for paperwork reduction.

Mr. President, I was further criticized, because in this legislation we worked out with the White House and with our colleagues over in the House of Representatives, we would require OIRA to explain in writing the reason for modifying a rule or regulation sent to it. Now the purpose of that was not to have any leverage over the agency. It was making sure that everyone would know what was going on, that it was fair for all.

It was not just for the benefit of big business, not just for the benefit of anyone. It was not just Government for those who could afford a Washington lobbyist to follow the rulemaking and regulation process of Government for them. This made it fair for every single person dealing with rules and regulations of the Federal Government, which really is every single American citizen.

As the paper said, OIRA is the cop, and I agreed with that. They have enormous power. And what this does is see that they exercise that power wisely, and in the open, and for the benefit of all Americans. This legislation would make it fair and workable.

I think too much time and energy and effort on both sides on the aisle have gone into this bill to allow it to be blocked at this time. I certainly would like to see that blind hold on the other side of the aisle taken off. I have no illusion that that is going to occur this evening. But the delicate agreement reached between the Senate managers and the Administration is especially important because I made it clear unless OIRA is reauthorized, I cannot, in good conscience, go ahead with the nomination of Mr. James Blumstein to be the OIRA Administrator when there is no statutory authorization for the position to begin with.

I was accused of delaying Mr. Blumstein's confirmation hearing, and that was flat not true. I took the position that without an authorized position there was no position for him to be confirmed for.

So when we finally got agreement back a week or so ago on this bill and knew we had it signed off—thought we had it signed off, on both sides of the aisle—I immediately scheduled Mr. Blumstein's hearing in the Governmental Affairs Committee. He flew in, we had his confirmation hearing, and had this bill been approved tonight, I was fully prepared to push for his confirmation on the Senate floor because we had completed the hearing.

But I refuse to do that and that is not any obstinacy on my part. It is just that Mr. Blumstein would be confirmed for a position that does not officially exist.

This is not the back room blackmail that was alleged in the editorial because we only recently have had an OIRA OK; we immediately held the Blumstein hearing; had agrement by unanimous consent; Mr. Frank Hodsoll over at OMB worked very hard on this for the last day or so and we had complete agreement. Now we seem to be thwarted in getting this legislation to the floor.

At this late date in our session, there is very little else I can do, except deplore the situation. If the legislation is not enacted obviously we cannot go ahead with Mr. Blumstein's nomination. That is not back room blackmail, it is just there is not a position for which we would confirm him, legislatively approved by the Senate and by the Congress of the United States.

So, Mr. President, I think that puts a little different view on this thing. I am sorry about this rolling, anonymous hold on the other side. I deplore that way of operating. In the Senate we usually can do better than that in accommodating each other and working out the details of our disagreements.

But an anonymous rolling hold I cannot fight this evening on this Senate floor. So, Mr. President, I am sorry the unanimous consent I asked for was not accommodated on the other side, and I yield the floor.

EXHIBIT 1

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, October 24, 1990.

STATEMENT OF ADMINISTRATION POLICY

S. 1742. Federal Information Resources Management Act—Bingaman and Lieberman)

The Administration strongly supports passage of S. 1742 (with Committee amendment substitute) reauthorizing the Office of Information and Regulatory Affairs (OIRA) for four full years from enactment. While S. 1742, as reported by the Committee on Governmental Affairs, contained a number of items on which Senior Advisors recommended veto, a compromise has been reached which accommodates Administration and small business concerns. The amended S. 1742 would no longer significantly intrude on Presidential oversight of regulatory review and paperwork reduction.

The House passed last night a bill which the Administration and small business strongly oppose, but indicated they would accept the amended Senate bill. To not pass the Committee substitute will significantly impair OIRA's ability to operate next year and threaten OIRA appropriations.

Equally important, there is agreement by the Senate Committee on Governmental Affairs to hold hearings early next year on legislation which would remedy the problems created by the Supreme Court's decision in *Dole* vs. *Steelworkers.*

Mr. ROTH. Mr. President, the bill we are trying to bring up at this time has been problematic for quite some time. The Office of Information and Regulatory Affairs [OIRA] authorization is a piece of legislation that the Governmental Affairs Committee has worked on now for 2 years. This office has been a lightening rod for controversy since its creation as part of the Paperwork Reduction Act of 1980. Every time the Congress has tried to reauthorize this office, there have arisen problems stemming from the fundamental governmental functions embodied here. With its most recent authorization having expired in 1989, I would hope that the Senate could move forward with this measure.

There has been over the last 2 years, every effort made to reach a compromise over the functions and limitations of authority of OIRA. With the closing of this session of Congress, we have no authorization for this most important office, and as a result, the Senate has not been able to act to confirm the nomination of an Administrator for the office.

OIRA is the President's eyes and ears for the review of information collections, recordkeeping requirements and regulations issued by the regulatory agencies of the Federal Government. It is here where the President regulates the regulators and has the opportunity to curb the Government's appetite for information from the public. Without this office, Congress has no specific point to hold accountable for these reviews. This office creates a fulcrum for a conflict that is fundamental to the Government of the United States. It is also a point on which to debate the powers of the President and the control of these powers wielded by the Congress. With our inability to reach agreement on even bringing this bill to the floor for debate, we are sacrificing this office, and a level of Congress' oversight into the execution of the laws we pass. We are also hurting the American people as they carry the burden of government paperwork and recordkeeping requirements.

I urge the Senate to take action on this compromise proposal which has taken so long to be reached. This issue encompasses a debate that is as old as the Federal Government itself. Government needs information, but it has an obligation to gather and manage it wisely. Government information is a

benefit of our society, but it is also a burden that hinders our growth. The balance that OIRA strikes is between what is needed and what is too much. Congress should not be so quick to throw this away.

SENATOR BRYAN PRESIDES FOR 100 HOURS

Mr. MITCHELL. Mr. President, on October 12, 1990, at 7:20 p.m. the junior Senator from Nevada [Mr. BRYAN] now presiding over the Senate, completed 100 hours of presiding over the Senate during the 2d session of the 101st Congress. He is the first Senator to reach this milestone during this session.

The duty of Presiding Officer falls mainly on the shoulders of the junior Democratic members of this body. It is an extremely important job and one in which Members become familiar with the rules and precedents of the Senate. Presiding for 100 hours involves a significant commitment of time and energy. Evidence of his enthusiasm for this task was revealed during our recent weekend session. On Sunday, September 30, the junior Senator from Nevada [Mr. BRYAN] volunteered to preside for the first 3 hours the Senate was in session and the following Saturday, October 6, he presided for the first 2 hours of session.

I personally—and I know I speak for all Senators—appreciate the many hours the junior Senator from Nevada has devoted to this task. However, I hope this Congress adjourns before it becomes possible for him to preside for another 100 hours.

EDUCATIONAL EQUITY AND EXCELLENCE ACT

Mr. MITCHELL. Mr. President, I now ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5932, the Educational Equity and Excellence Act.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. Reserving the right to object, there is another Senator on his way over here who wanted to object to this. If the leader does not want to wait, then I will object in his place.

I will object.

The PRESIDING OFFICER. Objection is heard.

Mr. MITCHELL. I regret the objection of the Senator from Iowa. I think it is important the Senate and the American people understand what has happened here.

Earlier this year, in February, the Senate passed by vote of 92 to 8 the Educational Equity and Excellence Act. That was President Bush's bill. That is the bill that President Bush asked be introduced and we passed it 92 to 8.

Later that same month, the Senate passed by a vote of 99 to nothing the literacy bill to reduce illiteracy in the United States.

Later still in the year, the Senate Labor and Education Committee reported out by a vote of 15 to 1, the National Teachers Act.

Those three bills were combined into a single legislation package and were approved yesterday by the House of Representatives without a single dissenting vote, not one vote against it.

The White House and House and Senate negotiators have worked over the past 3 weeks on this package of legislation which I have now sought to bring to the Senate floor for consideration.

The distinguished Senator from Iowa objects to it. Over and over in the past several weeks, President Bush has gone around the country and criticized the Democratic Congress for not acting on his education bill. Yet the Democratic Congress has passed his education bill and is now trying to pass it tonight and is prevented from doing so by the objections of a Republican Senator. The President has said he wants this bill.

We are prepared to enact this bill. The House passed this bill without a single dissenting vote. So there can be no question about it. It will be false and inaccurate for the President to state that the Democratic Congress prevented the passage of his education bill. The Democratic Congress passed it unanimously in the House and is now prepared to pass it this evening in the Senate but is prevented from doing so by objection by a Republican Senator. I want the record to be very clear on that.

These are important legislative matters to improve the quality of education in our society. They are bills which the President himself has sought, which the President has spent time traveling around this country saying he needs and suggesting erroneously that Democrats are preventing them from being passed.

Now the record is clear for all to see, including the President and the American people.

I conclude, the House passed this bill last night without a single dissenting vote. I would like for the Senate to consider them this evening, vote on them, and we are prevented from doing so by the objection of the Republican Senator.

I find that very deeply regrettable, mostly for the adults and children of America who will not receive the better education they would have received should this legislation become law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I would like to strongly endorse what the majority leader has said.

As chairman of the Education Subcommittee, we worked on these bills tirelessly, and with great effort. The President's bill, which he wants passed, but is being blocked by the Republicans, passed the Senate 92 to 8. The literacy bill pased 99 to zero, and the teacher bill passed our full committee 15 to 1.

When we see legislation hamstrung this way, legislation I would point out that the President wants, the country wants and which has passed both the Senate and the House by an overwhelming majority, you wonder what is wrong with our system that one or two Senators can hold up the progress this way. This is one of the reasons I think why the Nation as a whole looks at us with some derision because we are just prevented in this manner from getting passed what the majority of Senators wish. I regret this very much indeed.

I am deeply disappointed that the Senate has failed to act on this important legislation.

This omnibus education bill contained the President's education initiative, the National Literacy Act, and many features of the National Teacher Act. Unfortunately, a small group of conservative Republican Senators has joined together to block this legislation, which is important education legislation that enjoys the support of the President.

As I mentioned, this bill contains many proposals put forth by President Bush in his education initiative. These include: Schools of distinction, alternative routes for teacher certification and licensing, assistance for historically black colleges and universities and scholarships to encourage young men and women to enter the teaching profession in math and science.

The Senate originally acted upon the President's proposal last year. It passed by a vote of 92 to 8. I am proud to have been one of the first Democrats to support the President's initiative. I still support it, and still believe it should be enacted. I only wish that every Senator from the President's own party concurred.

This bill also includes major features of the National Literacy Act introduced by my colleague from Illinois, Mr. SIMON. That legislation was approved by the Senate without a single vote in opposition.

From the establishment of an Interagency Literacy Institute, to needed increases in adult education, to State Resource Centers on Literacy, and to a strengthened Even Start Program, these changes will do much to intensify our attack on the terrible problem of illiteracy in our Nation.

I am proud to have been an original cosponsor of the literacy legislation. I am also proud that we have a First Lady who has made literacy one of her major concerns. I support her in her efforts, and I support this legislation. I only wish that every Senator from the President's own party concurred.

Of equal importance, the bill in question also contains some very important provisions designed to attract more talented individuals into teaching and to provide better programs of inservice education to those already in the classroom. Many of these were included in S. 1676, the National Teacher Act, which was approved by a vote of 15 to 1 by the Committee on Labor and Human Resources in June of this year.

This is important legislation. It has strong bipartisan support and most certainly deserves to be enacted.

Mr. President, I have said frequently that if we are to remain competitive in the international arena in the years ahead, we must have a world-class work force. A world-class work force depends upon a world-class education. And a world-class education cannot exist unless the quality of what occurs in the classroom is topnotch. That, quite simply, is the major object of the legislation we have been working on, for quality education depends upon a literate America, a strong teaching force, and excellence in our schools.

I regret very much that a small group of conservative Republicans have succeeded in blocking this bill, for in doing so they have said no not only to their President but also to the American people for whom this legislation was prepared.

It is without question that important needs will go unmet because this bill will not become law. It is also without question that we need stronger programs to build a stronger American education. Yet, because of a few conservative Republican Senators' intransigence, we have stumbled on our way to forging an education of excellence for this Nation and its people. We in this Chamber may not suffer as a result, but the American people will.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. Mr. President, I want to express, first of all, my appreciation to the majority leader; and also, quite frankly, to the minority leader, Senator DOLE; to the chairman of the Education Committee, Senator PELL; and to the ranking minority member, Senator KASSEBAUM. Because all of the leadership and the chairman of the Education Committee and the ranking minority have worked very long and assiduously in attempting to fashion a compromise that would include the President's package, a program in terms of teacher training and education and a literacy proposal that was recommended by Senator SIMON, who has provided such leadership in the whole area in terms of education. And I wish to thank all of those individuals—Senator PELL, Senator KASSEBAUM, our colleague Senator HATCH, who has been the ranking minority member—we have our divisions out here on the Senate floor over these past few days on issues of civil rights, but we have worked closely together on the issues of education.

Tonight, we are here virtually united on that committee. Senator JEFFORDS is on the floor now to speak, and others, in recommending that the Senate consider this proposal. We may be in the last few hours of this session, Mr. President, but there are few items we will have tried to consider that will be more important than this proposal.

I take some pride that our committee passed out the President's education program virtually unchanged as one of the first items that was passed out of the Human Resources Committee.

It was objected to by members of the President's party before we were able to even consider it here. It eventually passed. But, quite frankly, we have included the literacy proposal of the Senator from Illinois and the additional proposal that was reported out of our committee by 15 to 1 to try and upgrade the training for teachers.

I want to commend even the President, Mr. President, and the White House. They had worked closely with us to try and fashion this compromise. But the fact that there is objection to this proposal and that the Senator from North Carolina [Mr. HELMS] at the time when the leader was putting this proposal forward, rather than permit us to get to consideration, requested the absence of a quorum which would delay the possibilities for us to get consideration.

We have now been here for over 2½ hours and, quite frankly, it is very clear now from where the objection comes.

Mr. President, the losers tonight are going to be the children of America, the families of America, and the parents of America. I think this is a sad day for all the families of this country. But I appreciate the good work of our ranking minority member, Senator HATCH, Senator KASSEBAUM, and the other members of our Human Resources Committee who have been so constructive and positive in shaping this particular proposal.

Several Senators addressed the Chair.

Mr. HATCH. Mr. President, I wish that we could have passed the President's bill. Both sides of the aisle have worked hard to create a package which was acceptable to the House, the Senate and the White House.

Unfortunately we have not been successful in that endeavor. I am a supporter of the President and his concerns about education. The role of the President is to set the agenda in education, and use his office to direct the attention of our citizens to the needs of our country.

Each citizen is now aware of the importance of a quality education for all students in this country, regardless of economic circumstances.

As we review test scores, we see that education needs improvement throughout the entire system. Clearly, we need to improve test scores for those at the lower end of the scale on achievement, and just as clearly, we need to improve the education we provide for students at the higher end of the scale.

Part of this improvement must be done by encouraging better qualified individuals to enter the teaching field. We also need to find ways to reward schools and teachers who succeed in raising achievement, reducing the drop-out rate and providing school campuses that are drug free. We also need to increase teacher training programs to ensure that teachers in our classrooms are constantly updated both in academic subject matter and the most recent research on successful teaching strategies. We must coordinate and upgrade our efforts in eliminating illiteracy.

This bill would have addressed these issues. I hope that each of us will remember the needs of education and move forward in the next Congress to fashion a bill early on to address these needs.

Again I wish to express my regret that this bill did not pass. I especially want to thank my colleagues Senator KASSEBAUM, Senator PELL, and Senator KENNEDY for their efforts on behalf of this bill.

Mr. SARBANES. Mr. President, am I correct that the legislation that we are seeking to bring up, which I guess was earlier delayed by the Senator from North Carolina from consideration, passed the House unanimously yesterday evening?

Mr. KENNEDY. The Senator is quite correct. It had the support of Republicans as well as Democrats.

Mr. SARBANES. And that it contains two separate pieces of legislation and other matters have been included in this bill, and those two pieces of legislation passed the Senate previously by a vote of 98 to 1 in one instance and was it 99 to nothing——

Mr. KENNEDY. It was 92 to 8 in one instance, and 99 to zero in the other.

Mr. SARBANES. And it has the support of the President of the United States, as well?

Mr. KENNEDY. The Senator is correct.

Mr. SARBANES. Mr. President, I think it is an outrage that we are not able to get this legislaton up and pass

it on behalf of the schoolchildren of America and on behalf of the future of our Nation, the future of our Nation which is bound up in the lives and the talents and the abilities of our young people.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I want to just associate myself with the remarks of the majority leader and the distinguished senior Senator from Massachusetts, who is the chairman of the Labor and Human Resources Committee, as well as the distinguished chairman of the Subcommittee on Education, Senator PELL. I anticipate the remarks of the Senator from Vermont and the Senator from Kansas on this matter.

Mr. President, this is just outrageous. The only single piece of legislation in this Congress to really deal with fundamental educational issues overwhelmingly adopted by the House, overwhelmingly suported in this body in the waning hours of this session, is going to die because a couple of people on the side do not like a couple of provisions. The President wants this; the Democrats and Republicans need this.

The Senator from Illinois months and months ago crafted the illiteracy provisions of this bill, had extensive hearings on that matter dealing with a tragic problem in this country. And now in the remaining couple of hours, a couple of people object to a piece of legislation that might make the difference to millions of Americans. I think that is a sad, sad commentary; a sad commentary, indeed.

With all that has been done, the hours of work, the months of hearings, we come down to a moment because a couple of people want to thwart the will of the President of the United States and the overwhelming majority of the Senate and the House to deal with education in this country. I regret deeply that we cannot build the kind of support that will allow this measure to go forward.

Mr. President, Senator HATCH, Senator KASSEBAUM, and Senator DOLE, should not be included in that number, and the overwhelming majority of the minority should not. But when a couple of Senators can stand up and refuse to identify what really is the objection and thwart the will of an entire body, then the American public ought to know it. So when we fail in this Congress to deal with excellence in education, let the record show that the Senator from North Carolina, who stood up and objected basically to this going forward, and the Senator from Iowa, this year are thwarting an educational effort, endorsed by the President and the Congress in the few hours remaining left.

We have been 5 months on summit negotiations on a budget, and we cannot get a bill passed to deal with the excellence in education. That is a tragic moment in American history and it ought not to be forgotten this evening.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I certainly appreciate the remarks of my colleagues who are concerned, as I am, about the fact that this bill may not be passed tonight. I know my colleague from Kansas agrees with me, and I think it is important that it be known that a vast majority of Republicans also agree this bill should pass tonight.

On the other hand, there is a provision or two in there that does give deep concern to a couple of our colleagues on this side. I am hopeful that that can be reconciled. But it certainly does not diminish in any way the fact that there is a dedication of the vast majority of the Members of this body who want to see this bill passed, and I am hopeful it will be.

I will be happy to yield to the Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I appreciate the Senator from Vermont yielding some time so I, too, may say I share the disappointment that we cannot bring to fruition this important bill on education strongly supported by the President.

I would like to particularly thank the staffs of Senators on both sides of the aisle who have worked for weeks and weeks to try and work out differences in this legislation. I believe it is important legislation. It is important for our educational system, for children and teachers and families. It is a great sorrow to me that we have not been able to work out the differences, clearly just a few minor ones, that seem to me that could have made the difference.

There were some, including me, who did not like some of the provisions. But major compromises had been made in trying to address everyone's concerns. We have to recognize compromise is important to achieve the overall good.

I would just add, Mr. President, that it is a major disappointment to me, and I am sure it is to President Bush as well. I am grateful for the support of those who worked very hard to try and achieve passage this evening.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. JEFFORDS, Mr. President, I believe I have the floor. I will be happy to yield to other Members but I have been waiting.

Mr. WILSON. Mr. President, in the past, the Senate has voted on legislation to interdict drugs both beyond the borders and within the communities of the United States. Much of these early efforts have been characterized as striking a blow against the supply of illicit drugs.

Clearly, drug interdiction is just one side of the antidrug equation. An equally essential ingredient in our formula to rid this Nation of the scourge of drugs is effective drug education.

One of the most celebrated education programs is one that I am extremely proud to say was developed by the Los Angeles Police Department and the Los Angeles Unified School District. It is the DARE program-DARE being the Drug Abuse Resistance Education Program.

The DARE Program is one that does not simply tell children to say no to drugs. It gives them the means to do it.

Mr. President, today's youth face more challenges and obstacles on the road to adulthood than ever before. For many of these children, especially in our inner cities, the greatest obstacle they face is in the form of a rather glamorous figure—a 17- or 18-year-old pusher—who comes onto their school grounds or finds them in a park or playground offering free drugs in order to recruit them into their retail sales apparatus.

DARE is a comprehensive antidrug program that is designed to help fourth, fifth, and sixth graders who face the threat of drugs in virtually every aspect of their lives. DARE shows youth that positive alternatives to drug use do exist. Children are instructed in interpersonal and communication skills and in activities that will build their self-esteem and enable them to resist the very considerable peer pressure for drug use and gang membership.

One of the unique features of the DARE program is that the instructors are uniformed police officers. These DARE officers, selected on the basis of experience and their dedication to children, are best able to respond to the myriad of questions and concerns posed by students.

Mr. President, last fall I visited Plasencia Elementary School in East Los Angeles, a neighborhood that is beset acutely with the drug trade. I witnessed a young policewoman, Mercedes Hernandez, conduct a sixth-grade class as part of the Los Angeles DARE Program.

I must say that I came away from this session with renewed confidence that the youngsters that were participating in the drug abuse resistance education program would, in fact, know how and why to say no; that they would have learned techniques that will stand them in very good

stead. These young men and women will graduate from the DARE Program stronger, stronger in all ways, because they have learned to value themselves and know why it is that they should not engage in dangerous experimentation.

Presently, more than 50,000 classrooms in 49 States are teaching DARE Programs to over 3 million schoolchildren. Yet, there are many vulnerable schoolchildren who still do not receive the benefits of DARE instruction.

Mr. President, last year I introduced S. 1835, legislation to provide Federal funds for DARE, and the Senate adopted language included in S. 1835 as an amendment to the Excellence in Education Act when it was considered earlier this year.

Today, the Senate will be taking final action on H.R. 5932, and I am pleased that the conference committee has recommended to include DARE legislation, which will provide $10 million for the DARE Program. This legislation will be extremely helpful to those who wish to establish DARE Programs but have not been able to find the funding to do it; to have that additional assistance so that they, too, may instruct their children in self-esteem and resistance techniques in order to prepare them for that inevitable day when drugs places them at the crossroads of their young lives.

Mr. President, I would like to acknowledge and extend my personal thanks to Representative BILL SCHUETTE of Michigan. As the sponsor of companion legislation to S. 1835, Representative SCHUETTE has been an inspirational advocate for the DARE Program in the House of Representatives. I am sure that Representative SCHUETTE will be as pleased as me that DARE legislation will become law.

Mr. President, the war on drugs is a battle fought on many fronts, the most tragic of them being in our schools. The DARE Program has helped turn this tragedy into victory. With this legislation, more DARE Programs will join the effort to turn these battlegrounds back into playgrounds, and instruct America's youth to be victors rather than victims of the drug war.

Mr. GRASSLEY. Mr. President, the situation here has been misrepresented a bit. While this bill began as the President's education bill, it barely resembles that bill, as introduced by Senator KASSEBAUM many months ago.

This bill spends $800 million. To authorize this, only moments after adopting a wrenching tax increase, would be unconscionable. I am told that $800 million would be raised by one cent of the gas tax. Well, Mr. President, that's one cent we don't have to spend.

Also, the part of this bill that is championed by the majority party is the National Board on Professional Teaching Standards. This board, an offshoot of the Carnegie Foundation, would nationalize teacher certification.

The answer to our country's educational problems is not to federalize teaching. States, like my home State of Iowa, which practice local control of education, achieve real excellence in education.

I just want to set the record straight. There are many Members on this side of the aisle, as well as the man in the White House, who oppose this national teacher certification board.

And the Senator will not be bullied into sacrificing the legacy of excellence, made possible by the commitment of parents, teachers, and the community of local school districts.

Mr. BUMPERS. Mr. President, I respect the Senator from Vermont and I certainly do not want to interrupt. I thought he yielded the floor when he yielded to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Arkansas is correct in his interpretation of the rules. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, I would hope that the Chair would recognize me as soon as the Senator from Vermont finishes, but I am happy to yield the floor in his favor at this time.

The PRESIDING OFFICER. The Senator from Vermont has reclaimed the floor and is now recognized.

Mr. JEFFORDS. I apologize for that. I will be happy to yield to the Senator from Arkansas, without yielding the floor, for the purposes of a statement.

Mr. BUMPERS. Mr. President, I had a double reason for wanting to consider the education bill. Let me just describe the first one, and I will come back in a moment and I hope to engage the Senator from Massachusetts in a colloquy. It dealt with something totally unrelated to education.

It just so happens that I feel strongly about a conforming amendment that was put on the minimum wage law that had a totally unintended result. There was an exemption on the minimum wage bill that provided that any business with a dollar volume of less than $500,000 would be exempt from the minimum wage. But, at the same time, the law provides that employees who are engaged in interstate commerce in any workweek, even if employed in an exempt business, are covered by the act. In fact, an employee may be covered in one week, but not covered in another, depending upon his duties.

It is a disastrous consequence. Secretary Dole is as upset about it as anybody. The Senator from Vermont, I know, shares my concern about this. Now, I had hoped we would be able to deal with what is an absolute accounting nightmare for small business in this country by amending the education bill. Obviously, we are not going to be able to because the Senator from North Carolina is objecting to bringing up this bill.

Now, I will come back to that in just a moment.

The blocking of this education bill this evening is an outrageous abuse of the power that every Senator has to put holds on bills. We all know that under the rules of the Senate, which provide for unlimited debate, any Senator can block any piece of legislation. This power to hold bills is being abused this evening, when everyone is hoping to be home by 12 and in our home States by tomorrow.

This is not an inconsequential bill. I know because I am very interested in a key portion of it. The Labor/HHS Subcommittee on Appropriations provided several million dollars for a portion of the bill that the Senator from Rhode Island and I had negotiated on all year. This provision establishes teacher academics for the continuing education of teachers who are already working in American classrooms. We worked hard and long all year on this provision because we thought that George Bush wanted us to do it. We knew we wanted to do it, but we were also doing what we thought was George Bush's wish.

Mr. President, the millions that are in the appropriations bill can only be spent "subject to authorization." So what I did, with the concurrence of the distinguished Senator TOM HARKIN from Iowa, and his tremendous help as chairman of that subcommittee, is for naught. Now those millions in the appropriations bill are not going to be authorized. It never occurred to me when we were in the Subcommittee on appropriations that this bill was not going to pass—a very, very important bill. It is just incredible.

You ask yourself, "Why are the people of this country cynical, disenchanted, and hostile to the United States Congress?" Why would they not be, when they see this kind of abuse of power, the ability to stop a piece of legislation that virtually every body in America believes would make a tremendous contribution to one of the most pressing problems we face—the decline in American education.

We are still dead last in almost every area of education against developed nations. Some of us have committed ourselves to reversing that. Some of us voted for the reconciliation bill this afternoon because we believe, with responsible leadership in the Congress, we can make the decade of the nineties a time of regeneration of America.

I did not want to vote for the budget reconciliation bill. You make me king for 3 years. I will solve all these problems. A few bureaucrats might lose

their jobs and a few wealthy people might pay more taxes than they want, but the problem is solvable. Do you know why the American people believe our budget problems are not solvable? It is because we do not have Harry Truman to level with the American people.

People argue how the Warsaw Pact came apart. What has happened in the Soviet Union? Some say, well, the Ronald Reagan defense buildup caused it. I do not buy that for an instant. Communism, according to the Aspin Institute, has been on the decline since 1957. Other people say it was Gorbachev, this remarkable man of the times. That is partly true.

I have thought a lot about this. If I were going to give credit to anybody, it would be Harry Truman. After the war, George Marshall came to Harry Truman and said, "Mr. President, all of Western Europe is going to go Communist if we do not rebuild those nations."

Truman said, "You are asking me to go to the American people for $18 billion?" That would be comparable to about $200 billion to $300 billion today. "Go to the Congress and the American people and say 'I want $18 billion to restore the countries that we have just deliberately destroyed'."

George Marshall said, "You have a choice. You can do that or watch them go Communist."

Think about a President faced with that dilemma. Harry Truman did not hesitate one moment. He said, "We are going to do it." So there were all those democracies—Italy, France, Germany, Britain—juxtaposed against those Eastern European countries in the Soviet bloc.

If you have been to Dresden or Leipzig, East Germany, or even East Berlin, and you see what those people were looking at every day—vibrant economies, freedom, housing, clothing, everything—that is the reason Eastern Europe got loose, plus the fact that Gorbachev turned them loose.

But do you know what my main point is? Harry Truman was my kind of politician because he always put his trust in the American people to hear the truth.

Mr. President, go back and look at the votes. In 1986, when we passed the Higher Education Act, by a vote of 96 to 1. Check the record—96 to 1. In 1988, the Elementary and Secondary Education Act passed 95 to 1. Go look at that. Look at the vote. Tonight we have an objection to this education bill.

For a bill that has a lot of money in it for innovative education, President Bush ought to be on the phone right now making sure this bill is considered this evening. There is nothing more important we are going to do here, since that Budget Reconciliation Act this afternoon, than consideration of this bill.

Mr. President, while the Senator from Massachusetts is on the floor, I want to change the subject slightly so I can get all of my business transacted while I am here.

The Senator from Vermont and I have spent a lot of time this year on two things, the Shenandoah Civil War campaigns and a Civil War Battlefield Commission. We have proposed a bill that will establish this commission, just a simple thing, and that commission would consist of scholars and developers. They would report back to us which Civil War battlefields are the most historically significant, which Civil War battlefields are threatened by development, which Civil War battlefields have areas that we ought to consider buying. Nothing but a study.

But the House took that bill and sent it back to us, and they added a provision. The provision was that we would not just study Civil War battlefields; we would study the boundary lines of all national parks and decide which of our national parks are threatened, and what we ought to do about it.

Mr. President, there are Senators on the other side, and I am not being all that critical of them; they have their own reasons, those who objected to that part of the bill.

So Senator JEFFORDS and I have put holds on just everything we can find to put holds on because I feel very strongly that most of the Civil War battlefields in this country are so seriously threatened we must deal with it, but I cannot get it done because there is a hold on the House bill. I want to send it back to the House, but the chairman of the subcommittee over there will not accept it unless his national park study is on it.

I have been waiting for 2 months to offer an amendment to correct the problem on this minimum wage small business exemption. I am committed to so many people to do that.

Now, in order to do it, I am going to have to kill a bill called the American Samoa bill. I do not want to kill somebody else's bill. That is a good bill. But they say if I put my small business exemption on the American Samoa bill, the House will simply kill the whole deal. I do not want to do that. A lot of people around here have no problem killing bills once and for all, but that is a good bill and it deserves to live.

So I want to get into a colloquy with the Senator from Massachusetts to get his assurance that we not only get a fast hearing but a fast vote on the minimum wage amendment after the first of the year. I have not removed my hold on that American Samoa bill, and I am not going to until I get this colloquy with the Senator from Massachusetts.

And on this battlefield bill, everybody is coming up to me, the Senator from Florida came up to me a while ago. We have a hold on the Hernando DeSoto bill. He came up and in his usual good humor, he said, "I have been off the floor for about an hour; how has old Hernando DeSoto been doing since I left?" I said, "He is still dead." I do not want to cause the Senator from Florida any problem with the Hernando DeSoto bill, but I want that Civil War Battlefield Commission established. I think it is important. Not a big thing to some people, but it is to the Senator from Vermont and me. We want it done.

So, Mr. President, maybe the minimum wage thing and the civil war battlefield are both going to have to wait until after the first of the year.

I can tell you to stop this education bill is a tragedy of mammoth proportions.

I yield the floor.

The PRESIDING OFFICER. Under the previous order the Senator from Vermont [Mr. JEFFORDS] is recognized.

Mr. JEFFORDS. I agree wholeheartedly on these issues, and I certainly share the Senator's frustrations.

REPRESENTATIVE GUS F. HAWKINS

Mr. JEFFORDS. Mr. President, I also want to recognize a man that I served with for some 14 years in the other House, GUS HAWKINS, who today marks the end of one phase of his distinguished public career.

Representative GUS HAWKINS is retiring from the House of Representatives after serving the 29th District of California since 1962, some 28 years in the House.

When I came to Congress, several years after GUS, I joined him on the Education and Labor Committee, something of a hardship assignment for most Republicans, and the same is true with this body. But my tenure on the committee was great, in very large part due to the friendship and leadership of GUS HAWKINS.

Few districts could have been further apart, literally or figuratively, than his and mine. And yet I quickly came to like and respect him.

He was straightforward in his politics. He wanted the lot of the least fortunate in our society to be improved. He wanted our children educated, fed, and sheltered. He wanted the barriers removed in our society so that women and minorities would have an equal opportunity in our schools, workplaces, and other institutions.

He is intelligent, compassionate, and honest. But perhaps everyone who knows GUS would agree that what stands out is his decency. He, unlike so many in Washington, has kept hold of

his humility and his humor. Lord knows, we tested his patience on the Education and Labor Committee. But through it all, he remained a true gentleman.

The usual tribute for a retiring Member of Congress is to name something after him, a bridge, or a post office, or some suitable edifice. We tried that on the human services bill recently, and only accomplished it by ignoring his repeated objections.

But GUS HAWKINS is not really honored by a bill or building. He is honored by millions of minor accomplishments in every town and every city in this country—children who are better fed, adults who are helped to become literate, and seniors who can work and retire with a greater measure of dignity and security.

I am not sure what led to his decision to retire. It may have been those razor-thin election margins of his of 80 or 90 percent, or it may have been to spend more time with his wonderful wife Elsie. Whatever the reason, I wish them the best in the future. They were great servants.

Mr. HATCH. Will the Senator yield for a short statement?

Mr. JEFFORDS. Without losing my right to the floor.

The PRESIDING OFFICER. Without objection. As the Members in this Chamber know, it is not in accordance with our rules to allow one Senator to yield the floor to the other without the approval of the body.

Mr. JEFFORDS. I ask unanimous consent. I know he would like to speak probably about GUS, but I will move on.

Mr. HATCH. I wanted to make one comment about the education bill. Could I ask unanimous consent that the Senator yield to me for 30 seconds to make a statement?

The PRESIDING OFFICER. Is there objection?

Mr. HUMPHREY. Mr. President, reserving the right to object, I point out that a number of Senators have been standing here patiently waiting to speak. I do not know why the Senator feels such an urgency to jump in ahead of us. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Vermont has the floor.

AMERICA'S CHOICE

Mr. JEFFORDS. Mr. President, if America is to ensure a prosperous future for all its citizens, we will need to make profound changes in the way we educate and train our workers and the way we organize work. This is the major conclusion of a recently released report entitled "America's Choice: high wages or low skills." The study is the product of nearly a year of research by the Commission on the Skills of the American Workforce, a group of business, labor, education, and Government leaders. The Commission was cochaired by Ira Magaziner, an international business strategy consultant, and two former labor secretaries, Bill Brock and Ray Marshall.

"America's Choice" documents some disturbing discoveries about the low skills that many of our workers possess, that our employers seek, and that our schools teach. For example:

More than 70 percent of the jobs in the United States will not require a college education by the year 2000;

We have no system capable of setting high academic standards for all non-college-bound youth and we do little to recover the young people who drop out of school, many of whom go on to become our frontline workers;

For non-college-bound students, there is little or no relationship between how well one performs in school and the type of job one will get after school;

Ninety-five percent of our companies organize work in ways that do not require high skills—and most do not expect their skill requirements to increase significantly in the future;

Only 8 percent of our frontline workers receive any formal training once on the job.

The education and skill levels of American workers roughly match the limited demands of their jobs.

The commission report argues that the United States is at a crossroads. We can choose either to maintain an economy that relies upon low wages rather than high skills, or we can create high performance work organizations and the high skill levels needed to sustain them. Given the findings of this study, building a new linkage between school and work is an economic necessity.

"America's Choice" is based on intensive research, including interviews with thousands of workers, managers, educators, and public officials in the United States, Japan, Germany Sweden, Denmark, Ireland, and Singapore.

Ira Magaziner, Bill Brock, Ray Marshall, and the other distinguished members of the commission have proposed five recommendations that provide a framework for developing a high quality Amerian education and training system, closely linked to skilled, productive work.

First, create a new national educational performance standard, measured against the highest in the world, to be met by all American students by age 16;

Second, create new neighborhood alternative learning environments to recover virtually all of our dropouts and take responsibility for helping all young people—in or out of school—reach this standard;

Third, establish comprehensive job-specific training and certification programs to professionalize noncollege occupatons;

Fourth, provide all employers with incentives to invest in further training and education of their frontline workers, and with assistance to recognize work to make use of new skills;

Fifth, develop local employment and training boards designed to organize and manage the pieces of the new high performance education and training system.

Boldly executed, these proposals have the potential not simply to put us on equal footing with our competitors, but to allow us to build the world's premier work force. In so doing, we will create a formidable competitive advantage and raise the standard of living for all our citizens.

Washington, DC, suffers from no shortage of reports. But this one, I think, stands out. It has already caught the imagination of people across the country. In fact, yesterday afternoon I unfortunately missed the dedication of the Robert T. Stafford Technical Center in my and his hometown of Rutland, VT.

The people of Rutland are doing more than simply giving an appropriate tribute to Bob Stafford for his leadership on educational issues. As Bob would be the first to point out, the more important change is that the people of Rutland are putting together a dynamic partnership of community, education, and business interests to set high standards for vocational education in our area—and to achieve them. This report is the basis of much of their work.

I recommend this important report to my colleagues and hope the Committee on Labor and Human Resources will hold hearings on the recommendations in the near future.

Mr. President, I ask unanimous consent to place in the RECORD the executive summary of "America's Choice" and an essay written by Bill Brock and Ray Marshall that appeared in the Washington Post.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[National Center on Education and the Economy]

AMERICA'S CHOICE: HIGH SKILLS OR LOW WAGES

EXECUTIVE SUMMARY

The problem

Since 1969, real average weekly earnings in the United States have fallen by more than 12 percent. This burden has been shared unequally. The incomes of our top 30 percent of earners increased while those of the other 70 percent spiraled downward.

In many families, it now takes two people working to make ends meet, where one was sufficient in the past.

The United States is in the midst of the second longest economic expansion in its

history. But that expansion is built largely on the fact that 50 percent of our population is employed compared with 40 percent in 1973. Forty million new jobs were created as the "baby boom" generation reached working age, and more women entered the workforce. More of us have been working so we produced more.

However, workforce growth will slow dramatically in the 1990's. We can no longer grow substantially just by adding new workers.

The key to maintaining, to say nothing of improving, our standard of living is productivity growth—more products and services from every member of the workforce.

But, during the past two decades, our productivity growth has slowed to a crawl. It now takes nearly three years to achieve the same productivity improvement we used to achieve in one year.

If productivity continues to falter, we can expect one of two futures. Either the top 30 percent of our population will grow wealthier while the bottom 70 percent becomes progressively poorer or we all slide into relative poverty together.

The task

To ensure a more prosperous future, we must improve productivity and our competitive position. We cannot simply do this by using better machinery, because low wage countries can now use the same machines and can still sell their products more cheaply than we can.

The key to productivity improvement for a high wage nation lies in the third industrial revolution now taking place in the world. The steam engine and electric motor drove the first two industrial revolutions, causing profound changes in work organization. This boosted productivity, quality and living standards dramatically. The creation of the modern factory in the 1800's and mass production in the 1900's followed these technology breakthroughs.

The advent of the computer, high speed communication and universal education are heralding a third industrial revolution, a revolution the key feature of which is high performance work organization.

The organization of work in America

The organization of America's workplaces today is largely modeled after the system of mass manufacture pioneered during the early 1900's. The premise is simple: Break complex jobs into a myraid of simple rote tasks, which the worker then repeats with machine-like efficiency.

The system is managed by a small group of educated planners and supervisors who do the thinking for the organization. They plan strategy, implement changes, motivate the workers and solve problems. Extensive administrative procedures allow managers to keep control of a large number of workers. This form of work organization is often referred to as the 'Taylor' model.

Most employees under this model need not be educated. It is far more important that they be reliable, steady and willing to follow directions.

But in the world's best companies, new high performance work organizations are replacing this 'Taylor' method. These companies are using a new approach to unleash major advances in productivity, quality, variety and speed of new product introductions.

Mass production methods will continue to produce high volume, inexpensive goods and services for a long time to come. But what the world is prepared to pay high prices and high wages for now is quality, variety and responsiveness to changing consumer tastes, the very qualities that the new methods of organizing work make possible.

'Tayloristic' methods are not well suited to these goals. Firms struggling to apply the traditional methods of work organization to more complex technologies, more frequent product introductions, increased quality requirements and proliferating product variety often create cumbersome and inefficient bureaucracies.

The new high performance forms of work organization operate very differently. Rather than increasing bureaucracy, they reduce it by giving front-line workers more responsibility. Workers are asked to use judgment and make decisions. Management layers disappear as front-line workers assume responsibility for many of the tasks—from quality control to production scheduling—that others used to do.

Work organizations like these require large investments in training. Workers' pay levels often rise to reflect their greater qualifications and responsibilities. But the productivity and quality gains more than offset the costs to the company of higher wages and skills development.

Despite these advantages, 95 percent of American companies still cling to old forms of work organization.

Is there a skills shortage in the United States?

Because most American employers organize work in a way that does not require high skills, they report no shortage of people who have such skills and foresee no such shortage. With some exceptions, the education and skill levels of American workers roughly match the demands of their jobs.

Our research did reveal a wide range of concerns covered under the blanket term of 'skills.' While businesses everywhere complained about the quality of their applicants, few talked about the kinds of skills acquired in school. The primary concern of more than 80 percent of employers was finding workers with a good work ethic and appropriate social behavior: 'reliable,' 'a good attitude,' 'a pleasant appearance,' 'a good personality.'

Most employers we interviewed do not expect their skill requirements to change. Despite the widespread presumption that advancing technology and the evolving service economy will create jobs demanding higher skills, only five percent of employers were concerned about a skills shortage. These were mainly large manufacturers, financial service organizations and communications companies.

The reason we have no skills shortage today is that we are using a turn-of-the-century work organization. If we want to compete more effectively in the global economy, we will have to move to a high productivity work organization.

How we prepare our front-line workers for work

More than 70 percent of the jobs in America will not require a college education by the year 2000. These jobs are the backbone of our economy, and the productivity of workers in these jobs will make or break our economic future.

No nation has produced a highly qualified technical workforce without first providing its workers with a strong general education. But our children rank at the bottom on most international tests—behind children in Europe and East Asia, even behind children in some newly industrialized countries.

More than any other country in the world, the United States believes that natural ability, rather than effort, explains achievement. The tragedy is that we communicate to millions of students every year, especially to low-income and minority students, that we do not believe that they have what it takes to learn. They then live up to our expectations, despite the evidence that they can meet very high performance standards under the right conditions.

Unlike virtually all of our leading competitors, we have no national system capable of setting high academic standards for the non-college bound or of assessing their achievement against those standards.

America may have the worst school-to-work transition system of any advanced industrial country. Students who know few adults to help them get their first job are left to sink or swim.

Only eight percent of our front-line workers receive any formal training once on the job, and this is usually limited to orientation for new hires or short courses on team building or safety.

The American post-secondary education and training system was never designed to meet the needs of our front-line workers. The system is a combination of education programs for full-time college students and short term training for the severely disadvantaged, and can be difficult to access. Because employers have not set training standards, few students can be sure that there is a market for the courses they pursue. Education is rarely connected to training and both are rarely connected to an effective job service function.

Another way

While the foreign nations we studied differ in economy and culture, they share an approach to the education and training of their workers and to high productivity work organization.

They insist that virtually all of their students reach a high educational standard. We do not.

They provide 'professionalized' education to non-college bound students to prepare them for their trades and to ease their school-to-work transition. We do not.

They operate comprehensive labor market systems which combine training, labor market information, job search and income maintenance for the unemployed. We do not.

They support company based training through general revenue or payroll tax based financing schemes. We do not.

They have national consensus on the importance of moving to high productivity forms of work organization and building high wage economies. We do not.

Our approaches have served us well in the past. They will not serve us well in the future.

The choice

Americans are unwittingly making a choice. It is a choice that most of us would probably not make were we aware of its consequences. Yet every day, that choice is becoming more difficult to reverse. It is a choice which undermines the American dream of economic opportunity for all. It is a choice that will lead to an America where 30 percent of our people may do well—at least for awhile—but the other 70 percent will see their dreams slip away.

The choice that America faces is a choice between high skills and low wages. Gradually, silently, we are choosing low wages.

We still have time to make the other choice—one that will lead us to a more prosperous future. To make this choice, we must fundamentally change our approach to work and education.

1. Problem: Two factors stand in the way of producing a highly educated workforce: We lack a clear standard of achievement and few students are motivated to work hard in school. One reason that students going right to work after school have little motivation to study hard is that they see little or no relationship between how well they do in school and what kind of job they can get after school. Other advanced industrial nations have stringent performance standards that virtually all students must meet at about age 16 and that directly affect their employment prospects.

Recommendation: a new educational performance standard should be set for all students, to be met by age 16. This standard should be established nationally and benchmarked to the highest in the world.

We propose that all American students meet a national standard of educational excellence by age 16, or soon thereafter. Students passing a series of performance based assessments that incorporate the standard would be awarded a Certificate of Initial Mastery.

Possession of the Certificate of Initial Mastery would qualify the student to choose among going to work, entering college preparatory program or studying for a Technical and Professional Certificate, described below.

Creation of the Certificate of Initial Mastery standard would require a new approach to student performance assessment. We recommend the creation of new performance based examinations for which students can explicitly prepare. The assessment system would provide multiple opportunities for success rather than a single high stakes moment of possible failure. Most important, the examination, though set at a very high standard, is not intended as a sorting mechanism on the pattern of virtually all the major tests now in use. Our goal is to set a tough standard that almost everyone will reach, although not all at the same time.

Once created, this system would establish objective standards for students and educators, motivate students and give employers an objective means to evaluate the accomplishments of students.

2. Problem: More than 20 percent of our students drop out of high school—almost 50 percent in many of our inner cities. These dropouts go on to make up more than a third of our front-line workforce. Turning our backs on those dropouts, as we do now, is tantamount to turning our backs on our future workforce.

Recommendations: The states should take responsibility for assuring that virtually all students achieve the Certificate of Initial Mastery. Through the new local Employment and Training Boards, states, with federal assistance, should create and fund alternative learning environments for those who cannot attain the Certificate of Initial Mastery in regular schools.

All students should be guaranteed the educational attention necessary to attain the Certificate of Initial Mastery by age 16, or as soon as possible thereafter. Youth Centers should be established to enroll school dropouts and help them reach that standard. Federal, state and local funds should be raised or reallocated to finance these drop-out recovery programs. Once the Youth Centers are created, children should not be permitted to work before the age of 18 unless they have attained the Certificate of Initial Mastery or are enrolled in a program to attain it.

3. Problem: Other industrial nations have multi-year career-oriented educational programs that prepare students to operate at a professional level in the workplace. Graduates of these programs have the skills to hit the ground running when they get their first full-time job at age 19 or 20. America prepares only a tiny fraction of its non-college bound students for work. As a result, most flounder in the labor market, moving from low paying job to low paying job until their mid-twenties, never being seriously trained.

Recommendations: A comprehensive system of Technical and Professional Certificates and associate's degrees should be created for the majority of our students and adult workers who do not pursue a baccalaureate degree.

Technical and Professional Certificates would be offered across the entire range of service and manufacturing occupations. A student could earn the entry-level occupation specific certificate after completing a two- to four-year program of combined work and study, depending upon the field. A sequence of advanced certificates, attesting to mastery of more complex skills, would be available and could be obtained throughout one's career.

The Secretary of Labor should convene national committees of business, labor, education and public representatives to define certification standards for two- to four-year programs of professional preparation in a broad range of occupations. These programs should combine general education with specific occupational skills and should include a significant work component.

Students could pursue these programs at a wide variety of institutions accredited to offer them, including high schools, community colleges and proprietary schools. The system should be designed to make it possible for students to move easily between the Certificate programs and college.

A means should be established to ensure that all students can receive financing to pursue these programs.

4. Problem: The vast majority of American employers are not moving to high performance work organizations, nor are they investing to train their non-managerial employees for these new work organizations. The movement to high performance work organizations is more widespread in other nations, and training of front-line workers, funded in part by national assessments on employers or general public revenues, is commonplace.

Recommendations: All employers should be given incentives and assistance to invest in the further education and training of their workers and to pursue high productivity forms of work organization.

We propose a system whereby all employers will invest a least one percent of their payroll for the education and training of their workers. Those who do not wish to participate would contribute the one percent to a general training fund, to be used by states to upgrade worker skills. We further recommend that public technical assistance be provided to companies, particularly small businesses, to assist them in moving to higher performance work organizations.

5. Problem: The United States is not well organized to provide the highly skilled workers needed to support the emerging high performance work organizations. Public policy on worker training has been largely passive, except for the needs of a small portion of the severely disadvantaged population. The training system is fragmented with respect to policies, administration and service delivery.

Recommendation: A system of Employment and Training Boards should be established by Federal and state governments, together with local leadership, to organize and oversee the new school-to-work transition programs and training systems we propose.

We envision a new, more comprehensive system where skills development and upgrading for the majority of our workers becomes a central aim of public policy.

The key to accomplishing these goals is finding a way to take responsibility for building a comprehensive system that meets their needs. The local Employment and Training Boards for each major labor market would:

Take responsibility for the school-to-work and Youth Center-to-work transition for young people.

Manage and oversee the Youth Centers.

Manage and oversee a 'second chance' system for adults seeking the Certificate of Initial Mastery.

Manage and oversee the system for awarding Technical and Professional Certificates at the local level.

Manage a labor market information system.

Manage and oversee the job service.

Coordinate existing programs.

The states would need to create a parallel structure to support the local Boards, coordinate statewide functions and establish state standards for their operation.

In conclusion

America is headed toward an economic cliff. We will no longer be able to put a higher proportion of our people to work to generate economic growth. If basic changes are not made, real wages will continue to fall, especially for the majority who do not graduate from four-year colleges. The gap between economic 'haves' and 'have nots' will widen still further and social tensions will deepen.

Our recommendations provide an alternative for America. We do not pretend that this vision will be easily accepted or quickly implemented. But we also cannot pretend that the status quo is an option. It is no longer possible to be a high wage, low skill nation. We have choices to make:

Do we continue to define educational success as 'time in the seat,' or choose a new system that focuses on the demonstrated achievement of high standards?

Do we continue to provide little incentive for non-college bound students to study hard and take tough subjects, or choose a system that will reward real effort with better pay and better jobs?

Do we continue to turn our backs on America's school dropouts, or choose to take responsibility for educating them?

Do we continue to provide unskilled workers for unskilled jobs, or train skilled workers and give companies incentives to deploy them in high performance work organizations?

Do we continue in most companies to limit training to a select handful of managers and professionals, or choose to provide training to front-line workers as well?

Do we cling to a public employment and training system fragmented by institutional barriers, muddled by overlapping bureaucra-

cies and operating at the margins of the labor market, or do we choose a unified system that addresses itself to a majority of workers?

Do we continue to remain indifferent to the low wage path being chosen by many companies, or do we provide incentives for high productivity choices?

Taken together, the Commission's recommendations provide the framework for developing a high quality American education and training system, closely linked to high performance work organizations. The system we propose provides a uniquely American solution. Boldly executed, it has the potential not simply to put us on an equal footing with our competitors, but to allow us to leap ahead, to build the world's premier workforce. In so doing, we will create a formidable competitive advantage.

The status quo is not an option. The choice we have is to become a nation of high skills or one of low wages.

The choice is ours. It should be clear. It must be made.

[From the Washington Post, Sept. 3, 1990]

BUILDING A BETTER WORK FORCE

(By William E. Brock and Ray Marshall)

Labor Day, a recognition of the accomplishments of our nation's work force, also signals the return to school for millions of students. Unfortunately, these two events have little in common other than their placement on the calendar. The world of work and what one learns in school are more disconnected than ever in the United States.

This September, we have little to celebrate in this country. We continue to lose ground in many international markets, our real earnings and productivity growth have declined, our students rank at the bottom on international achievement tests and we all but ignore the one million high school dropouts we "lose" every year.

Why?

Part of the problem is the American workplace, which is still based on a system of mass manufacture pioneered during the early 1900s. Under this system, complex jobs are broken into simple rote tasks that workers can repeat with machine-like efficiency; for many workers, an eighth-grade education is about all they need to do their jobs. For employers, financial success depends on keeping labor costs down; therefore, workers with high-level skills do not necessarily receive higher wages. Further, only 8 percent of America's front-line workers receive any formal on-the-job training.

The other part of the problem is our education system. It serves the needs of only 30 percent of our young people—those who proceed to college. The other 70 percent receive the worst job preparation in the developed world, even though it is they who will make or break our economic future.

To ensure a more prosperous future for all Americans, we need to make some fundamental changes in the workplace and in the schools. By the year 2000, more than 70 percent of American jobs will not require a college education—building a relationship between school and work is nothing short of an economic necessity.

As two former labor secretaries, we recently co-chaired the National Center on Education and the Economy's Commission on the Skills of the American Workforce a group of leaders from business, labor, education and government gathered to study the future skills needs of our nation's non-college work force.

After months of research in businesses and in schools in the United States and in six foreign countries, the commission offered some ideas for change.

First, to meet global competition, the commission believes the United States must create an education performance standard—bench-marked to the highest in the world—to be met by all American students at age 16, the age at which young people can legally leave school in most states. Students who meet the standard would qualify to enroll in a college-preparatory program, to begin studying for a skilled non-college occupation or even to enter the work force. However, those who did not meet the standard would be required to continue their education toward the performance standard as a condition for being allowed to work part-time before age 18.

Certain young people, for a variety of personal or societal reasons, do not do well in the present public school environment. Therefore, the commission also proposed alternative learning programs to recover nearly all of our dropouts and help them meet this new educational standard. The programs would provide counseling and job-experience services, would combine work with studies and would interact closely with the business community.

At present, there is no consensus about how to prepare students for the world of work if they are not college bound. To accomplish this goal, the commission recommended a comprehensive system of technical training and certification for non-college professions. We used the word "professions" deliberately, because these certificate programs would set higher standards and reward higher skills in a range of occupations. This would be an opportunity for business and labor to work together to create anew the skilled crafts on which America was built.

These recommendations, together with those which would provide incentives for greater investment in the training of front-line workers by all employers, have the potential to once again build the world's premier work force.

This September, as our workers celebrate Labor Day and our students return to the classroom, we ought to be conscious of the choices we are making. Only when we begin to insist on a high-skills, high-wage economy in our schools and in our companies—will our workers and students have cause for celebration.

(The writers served, respectively, as secretary of labor from 1985 to 1987 and as secretary of labor from 1977 to 1981.)

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator still has the floor.

Mr. JEFFORDS. Mr. President, my colleagues are all too aware, this Congress has set a new record for being in session close to an election. No Congress since World War II has remained in Washington less than 17 days prior to an election. As we hit the 10-day mark, I can fully appreciate the desperate desire to get home.

However, in our rush to get back to our constituents, we must not neglect our international responsibilities. The United States currently has 210,000 troops in Saudi Arabia, poised to repel any attack by Saddam Hussein. While the question of whether hostilities are imminent is a matter of some discussion, it is clear that our troops are in a sensitive and volatile situation, one that requires constant vigilance.

I believe that Congress must be kept closely informed on the administration's thinking on the Persian Gulf while Congress is out of session. I strongly approve of language in the resolution adjourning the 101st Congress that will set up regular discussions with the White House. The adjournment resolution will clarify congressional expectations of advice and consent provisions. It names a leadership group, comprised of the majority and minority leaders of both Houses and the Republican and Democratic leaders of the House and Senate Foreign Affairs, Armed Services, and Intelligence Committees. This group expects to meet regularly with the President and Cabinet to share its opinions on events as they develop, and would be available for immediate consultation in the event of an emergency.

Regular consultations will make it easier for the congressional leadership to know if and when Congress should be recalled in the event of hostilities. The adjournment resolution also includes an unusual provision granting the Senate majority leader and the Speaker of the House, in consultation with the Republican leaders, the authority to call Congress back into session if necessary. Under current law, only the President has the authority to call back Congress.

The situation in the gulf has once again prompted review of the War Powers Act and discussion of the appropriate congressional role in time of war. Article I, section 8 of the Constitution states that only Congress can declare war and that it alone has the power to make all laws necessary for carrying into execution all powers of the Government of the United States. And the Constitution just as clearly in article II, section 2 gives to the President the power of Commander in Chief of the Armed Forces. The overlap between these competing powers has never been clear. And the extent to which one branch can operate without the consent and cooperation of the other is still an open question.

In 1973, Congress enacted the War Powers Resolution, Public Law 93-148, over the objections of President Nixon. This law requires that the President consult with Congress during a crisis and requires written notification of Congress before mobilizing U.S. troops if possible. At a minimun, Congress must be notified within 48 hours of the introduction of U.S. forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." The President must report on the circumstances necessitating the introduction and the ex-

pected scope and duration of U.S. involvement. Congress then has 60 days to declare war or enact legislation specifically authorizing the involvement. In the absense of either action, the President is obligated to terminate the involvement at the end of the 60-day period.

The War Powers Act also stated that, prior to the expiration of the 60 days, Congress could order the removal of troops by passing a concurent resolution in both the House and Senate. However, in 1983, a Supreme Court decision called this provision into question. In an unrelated case, it ruled that Congress could not override a Presidential decision with just a resolution passed by both Houses of Congress. For the War Powers Act, this meant that any such resolution would have to be approved by the President before it could be enacted. If the President objected, both Houses would have to override the veto by a two-thirds majority, thus requiring a much higher degree of congressional unanimity than intended by the 1973 War Powers Act. There has been discussion from time to time about revising this provision in order to approximate its original intent. While I would support a realistic solution to restore the intended congressional power, there is currently no consensus on how to accomplish this.

There has been some discussion in the Senate about whether hostilities in the Persian Gulf are imminent as defined by the War Powers Act sufficient to trigger a Presidential report and the 60-day clock. I would like to think that Operation Desert Shield will prevent the onset of hostilities. However, I find it hard to believe that in early August the President could confidently state that hostilities were not imminent. Concern about the likelihood of war was heightened recently by the announcement that the Secretary of Defense may deploy up to 100,000 additional troops to Saudi Arabia in order to be prepared for any eventuality. I trust that if it appears that hostilities are about to occur, the President will notify Congress and thereby start the 60-day clock. Certainly, in the event of actual hostilities, the President must comply with the requirements of the law. If this should occur while Congress is out of session, Congress may be recalled at any time.

I strongly hope, however, that the administration will not act unilaterally, but will continue to work in concert with the United Nations and our allies who have also put their troops on the line to defend Saudi Arabia. I hope the President will realize that the best hope for a lasting solution to this crisis lies not with military aggression, but rather with focusing the power of diplomatic, economic, and ideological pressures from the entire international community.

Mr. President, I would like to step back for a moment and take a broad look at the situation in the Mideast. This is the second time in the last 3 years that the United States has been involved in military operations in the Persian Gulf that threaten to drag us into a war. Our substantial dependence upon Mideast oil prevents us from ignoring events in the area and will continue to require U.S. intervention if oil exports are threatened. Until we are able to provide for our own energy needs, we will be held hostage by the Persian Gulf.

There are several powder kegs throughout the Mideast that could jeopardize stability. Autocratic leaders with strong personal ambitions could present a threat at any time. And the region's few democracies are still in their infancy, struggling to deal with the stresses of self-government. Strong undercurrents of radical Islamic movements throughout the region could disrupt or even overthrow many governments. The assassination of the Speaker of the Egyptian Parliament 2 weeks ago by radical Islamic elements opposed to President Mubarak's cooperation with the United States brings home this vulnerability. Income disparities of great proportion between rich nations—such as Kuwait—and poor nations fuel Mideast discontent. Rich royalty and elite live lavish lifestyles in clear view of much of the Arab world's poorest people, always a potential source of societal unrest.

And we must not underestimate general Arab feelings of anger at the Western world, especially the United States, for what they see as second-class treatment for decades. America's strong support for Israel is construed by many Arab nations as a block to good Arab-American relations.

The Palestinian situation contains elements of many of these problems and for many Arabs, has come to symbolize American insensitivity to Arab concerns. As recent events on Temple Mount illustrate, emotions are running very high on all sides and minor misperceptions can precipitate a major clash. Even more troubling is the way the shock waves of incidents in Israel and the occupied territories carry throughout the Mideast. I doubt that there can be any sustainable reduction of tensions in the region without a solution to the Palestinian problem. I agree with the President that there cannot be any direct linkage, or any appearance of linkage between our dispute with Saddam Hussein and the Palestinian issue. However, I strongly urge U.S. policymakers to redouble their ongoing efforts to search for possible grounds for negotiation. The United States is in a unique position to facilitate real progress, especially if the international attention generated by recent events could be put to productive use. Attempting to ignore this tinderbox will only increase its volatility come the next crisis.

There is yet another element of the Mideast situation that is pushing us to act quickly and decisively—the increasing militarization of the region. Fueled by both the East and the West, and battle-hardened by decades of regional warfare, the Mideastern nations are increasingly militarized even in the fact of slipping domestic and economic progress. Iraq has proven that it has and will use chemical weapons. Experts believe that Hussein will soon have nuclear capability. Israel is thought to have both chemical and nuclear weapons. Both Egypt and Saudi Arabia will probably end up with larger military stockpiles after Operation Desert Shield. It is likely that many nations in the region will feel compelled to spend more of their GNP on military preparedness and less on social services in order to keep pace with their neighbors.

And what does this mean for us? The Mideast will continue to become more volatile and more explosive. And the United States, through our alliance with Israel, our international responsibilities, and our dependence on oil will continue to be involved. This is a critical time to capitalize upon international solidarity, United Nations involvement, and a broad-based effort to discourage blatant military aggression. It is critical that Saddam relinquish his hold on Kuwait and that this be brought about without military confrontation if at all possible. And if we do not wish to be involved in similar situations every few years, we should not let international attention turn away from the Mideast until it focuses on finding an acceptable solution to the Palestinian question.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair has an announcement to make. The Senator from Vermont still retains the floor.

Several Senators addressed the Chair.

Mr. JEFFORDS. Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair has not recognized anyone at this time. The Chair has an order to read.

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1990—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the conference report on H.R. 5399, which has now been received from the House, is con-

sidered adopted, and the motion to reconsider laid on the table.

Mr. HUMPHREY. Mr. President, I would be willing to yield for 30 seconds to the Senator from Utah at this point, but no longer.

Mr. HATCH. I want to say that I am deeply grateful.

Mr. HUMPHREY. Mr. President, I do this on the basis that I am immediately recognized following the Senator.

The PRESIDING OFFICER. The Chair will consider that a unanimous-consent request.

Is there objection? Without objection, it is so ordered. The Senator from Utah is yielded time, after which the Senator from New Hampshire reclaims the floor.

THE EDUCATION BILL

Mr. HATCH. Mr. President, I have one statement to make. With respect to the education bill we have been trying to get through, I feel very aggrieved that it is not able to go through tonight. But, I want to set the record straight that Senator HELMS has not had a hold on this bill for a long time. I just want people to know that. There are holds, and they are on this side, but there are darn few of them. I do feel very badly that we cannot get this through.

I want to clear it up for my friend Senator HELMS. He has agreed to let this bill go forward. I wish it would go forward. It would be a wonderful thing for the President and his program. I thank my dear colleague for giving me these 30 seconds.

The PRESIDING OFFICER. The Senator from New Hampshire reclaims the floor.

Mr. HUMPHREY. Mr. President, I believe the Senator from Wyoming would like a moment to address the same subject. I yield to him on the same basis.

The PRESIDING OFFICER. The Chair understands that to be a unanimous-consent request. The time is yielded to the Senator from Wyoming. Afterward, the Senator from New Hampshire reclaims the floor. Is there objection?

Mr. SIMON. Reserving the right to object, for the same reasons that my colleague from New Hampshire did earlier, I have been waiting for some time—I cannot say honestly, patiently—to speak. But if the Senator from New Hampshire wishes to yield to the Senator from Wyoming, can we put a time limit on it?

Mr. WALLOP. Thirty seconds.

Mr. SIMON. I have no objection.

The PRESIDING OFFICER. Without objection, the request of the Senator from New Hampshire is agreed to. The Senator from Wyoming is recognized.

Mr. WALLOP. Mr. President, I want, also, to set the record straight. The Senator from Iowa made his objection on my behalf to the Excellence in Education Act. I want to make it clear that I am among those who do have a hold on it. I do not wish to remove that hold this evening. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

SENATOR HUMPHREY LEAVES THE SENATE

Mr. HUMPHREY. Mr. President, in that these are the waning hours of the 101st Congress, this will be the last opportunity the Senator from New Hampshire has to address this august body before he goes back to the real world outside of the Beltway to mingle with real people who work for a living and are out there struggling and paying the taxes, including the ones which the Congress has seen fit to levy in the past few days.

Before I go, I want to take just a few moments to express my thanks to a number of people and friends who are especially deserving of those thanks. I want to begin by thanking my wife. Mr. President, all of us know the difficulties under which the Senate families and the Members struggle, the extra burdens they carry by virtue of the long and unpredictable hours of this body. I think all of us have a special appreciation for the extra burden of Senate spouses. The uncertainty of our schedule makes their lives very, very difficult, indeed, very trying.

The role of mother in our society, it seems to me, is ever more difficult, an ever more difficult challenge. And for my wife, Patty, it is especially so, because she does not live here in Washington. Rather, we have chosen for our family to remain in New Hampshire, so I commute down here every week and commute home every weekend. This is Saturday night, and I will not be home until almost midday on Sunday, having been away nearly 7 days—6½ days. So my wife's burden in raising our children is ever greater than the burdens on many of the other Senate wives and the burdens on many other mothers around this country. I express my gratitude, sincerely, to my wife for her patience, her understanding, her endurance, and her special devotion to our children.

I want, also, Mr. President, to express my appreciation to the people of New Hampshire, who have twice given me the honor of representing our State in the U.S. Senate. It has been a pleasure, it truly has. The people of New Hampshire are, by and large, a rather conservative lot. They do not demand much of Washington. They do not demand much of the Federal Government, except to be left alone with the smallest possible tax burden. So it has been rather easy, I think, for this Senator, in comparison to Senators from other States, to serve in this body. I thank the people of New Hampshire for their patience, for their friendship, and for the many kindnesses which they have extended me over the years.

I want to thank my colleagues, some of whom have very graciously risen to say some rather nice things about me and others of us who are leaving this body. I thank them for their friendship. This has been a very, very rich experience—sometimes exhilarating, sometimes satisfying, sometimes enervating, sometimes frustrating, but always interesting and challenging. It is a very rich experience made all the richer by these very real and sincere friendships which extend across the aisle and across philosophical lines of every kind.

That is the remarkable thing about this body. I could stand here for a long time reciting a list of criticisms of Congress, but I will not. I will save that for another occasion. But the most remarkable thing about this body, it seems to me, on the other side of the ledger, is the very real and sincere friendship that grows up between Members.

I suppose at one time or another I have butted heads bloodily with just about everybody in this body, including just a moment ago, my friend the Senator from Utah. I could not resist tweaking him one last time. Yet, notwithstanding these battles and bellows and butting and bloodletting, in a moment or two, or at worst in a day or two, the resentment and hostility passes, and we are once again friends. Even after 12 years, I find that remarkable, Mr. President.

So I thank my colleagues for their friendship, their support in many cases over these years. It has been a rich experience. I shall miss this place in many ways. In many ways I shall not. But, on balance, I will miss it. I am confident that we will encounter one another again in the years to come, and in between those contacts, I wish each of them the very best.

I say, finally, Mr. President, that this body, the Congress of the United States, is a body in ill health. One need only look at our work product to reach that conclusion. Over the 12 years I have been here, I have so often heard, with regard to our fiscal situation, at the time we are passing the budget resolution, so many assurances that at last we are on the right track.

Remember all of the catch words: Downpayment on the deficit; pay as you go; we are on a "glide slope" to a balanced budget. I do not know if that was self-delusion when the words were uttered. We have heard them in other forms, and we have heard them this

year. The point is, those glowing prophesies have never come true. We have done a very poor job, indeed, with regard to our care for this Nation's economy and for the Federal budget.

My most essential conclusion, after 12 years in this regard, is that one cannot maintain a realistic, a real-world perspective in this body, in the Congress of the United States for more than 10, 12, 14 years. You cannot be in this atmosphere with billions of dollars, indeed hundreds of billions of dollars sloshing all over the place, and still maintain perspective.

It is my conclusion that the Congress suffers most of all from too much experience and too little idealism. Members inevitably, by some inexorable, irresistible process, lose their perspective and their idealism over time. And that is why, increasingly, I have been convinced that the only cure for this institution, the only Congress-proof cure, is to amend the Constitution of the United States to limit Members to a total of 12 years, or some such fixed figure, so that Members know on their very first day that no matter how they may pack bills with pork, no matter how they may pander to special interest groups, no matter how cleverly they may marshal the perequisites of office, that they cannot make a career of serving in Congress. I believe wholeheartedly that were we to do that, and when we do that, we will see an enormous change of attitudes and, therefore, an enormous change in the performance of Congress. Term limits is an idea whose time is coming, it is an idea whose time is rushing in these last few years.

I believe that such as amendment to the Constitution cannot come too soon. That is my final conclusion, Mr. President.

I do have remarks to deliver on another subject, Mr. President, but I do not want to keep the Senator from Illinois waiting any longer. So I ask unanimous consent that I might yield the floor to the Senator and upon completion of his remarks that I might be the next recognized.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from Illinois is recognized.

Mr. SIMON. Thank you, Mr. President. I thank my colleague for yielding. If I may comment briefly on the last point he made, I think the way to avoid this almost automatic reelection, particularly that takes place in the House, is to change the way we finance campaigns, to move away from those very special interests that the Senator from New Hampshire is talking about. But my remarks right now are about the education bill that is stymied, perhaps permanently, for this session.

I see my colleague from Iowa, Senator GRASSLEY, on the floor. I do not see my colleague, Senator MALCOLM WALLOP, on the floor. I understand they are the two who have holds on this bill. Let me, if I may, appeal to my colleague from Iowa, and if my colleague from Wyoming is listening to these words through his television set in his office or if his staff is, let me just say that there is one-third of this bill that deals with this problem of literacy. Here is not only something the President wants, but someone who is infinitely more popular than the President wants, and that is Barbara Bush, the wife of the President.

Let me add that we are not dealing with something that is just an abstraction, 23 million functionally illiterate Americans. Let me mention two things: One of the women who testified before our committee did not tell one story, because she did not want to tell it publicly, but she told us privately what had happened. She had a bottle labeled "poison." Unfortunately, she could not read the word "poison," and she accidentally gave some of it to her daughter. Her daughter, fortunately, survived after very serious problems.

That is just one person's tragedy that could have been avoided, if someone had the ability to read. Let me give you another example.

The person in charge of the division of the National Institutes of Health that deals with the whole question of drug and alcohol abuse testified about 5 months ago to the Committee on Labor and Human Resources, and gave us a breakdown of a study on who was using drugs, hard drugs, by ethnic group, age group, and everything else. Do you know the group that is using drugs the most? The unemployed. And I said to him, I asked him, "So if we move on the problems of unemployment, we are moving on the problems of drugs?" He said, "No question about it."

If you want to move on the problems of unemployment, my friends, there is nothing more effective than moving on the problems of illiteracy; 90 percent of the people out of work 5 weeks or more are functionally illiterate. The majority of people in our prisons in this country are functionally illiterate.

One-third of this bill which is being held up tonight would, for the first time in this Nation's history, call for a real goal at relatively few dollars, an aim within the next 10 years of eliminating illiteracy in our country. Believe me, it is in every community in this country. It is in that new State Senate district that my colleague from New Hampshire has. It is in the communities in which we live. People hide it. We ought to be moving on this. I hate to see just on the basis of whim at the last minute and I do not mean this disrespectfully to my colleague from Iowa and to my colleague from Wyoming, but I do not think the people holding this bill up understand this measure, or they, instead of holding it up, would be enthusiastically supporting it.

I hope there can be reconsideration of this hold yet in these final few hours of this session.

Mr. President, I will yield the time, and again I thank my colleague from New Hampshire for the typically courteous thing that he is doing here.

Let me add one thing. I have heard these words of praise for the Senator from New Hampshire, which I am sure he takes with a grain of salt here on this kind of an occasion. But I remember one other thing that has not been mentioned. When the constitutional amendment came up to ban burning of the flag, very popular, very easy to go along with, the Senator from New Hamsphire was one of those who stood up and said, "Four people last year were arrested in this whole Nation of 250 million for burning the flag. Do we want to amend the Bill of Rights for the first time in 200 years because of that?" The Senator from New Hampshire is a man of courage, and I appreciated that, and I still do appreciate it.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. HUMPHREY. Mr. President, over the years, I have had the particular honor of working with some of my colleagues toward safeguarding the human rights of unborn children, particularly that most important right of all, as I see it, the right to life itself. In the end, in my view, that is the most important work anyone of us could have undertaken.

We fought many a battle these dozen years, and we have won most of them. We have blocked Federal funding of abortion time and time gain, and the Supreme Court has upheld that effort. We have helped persuade the Reagan and Bush administrations to implement policies and regulations to protect the unborn, and we have turned back every attempt to overturn those regulations by statute. We have ensured that legislation proposing new Federal programs could not promote abortion in any way. We have blocked nominations to keep posts which affect the right-to-life policies, and we have secured the appointment of nominees who have faithfully implemented the pro-life policies of President Reagan and President Bush.

Just this year, we have turned back efforts to rescind Reagan-era pro-life policies at the Department of Defense and Department of Health and Human Services. We have turned back efforts to overturn the so-called Mexico City policy, under which no funds may be used to support family planning programs which support

abortion as a method of family planing. And we prevented an attempt to fund the U.N. population fund which manages a ghastly program of coercive abortions and sterilizations in the People's Republic of China.

But saying all that, I have to acknowledge, Mr. President, we have not won the big one yet. I say that with regret. We have not yet amended the Constitution to make it clear that unborn human beings, are persons within the meaning of the 14th amendment. We have yet to extinguish this unnatural notion that some human beings are nonpersons. I regret that we have not yet secured that victory, Mr. President. Yet, I am confident that victory is coming.

We sorrow at the injustice, the violation of human rights and the tragedy of billions of helpless, innocent human being who are being slaughtered in the meantime.

What a massive price we are paying for the convenient notion that some human beings are nonpersons, who are instead disposable property. What a terrible stain on our history.

Mr. President, I contend the Supreme Court erred badly and tragically in Roe versus Wade, the 1973 decision which legalized abortion. I contend the Court erred when it found unborn babies are not persons and are therefore not protected by the Constitution—not in the first month, not in the last month, not ever.

Personhood is the crux. The Court said

> If this suggestion of personhood is established, the case for a right to abortion * * * collapses, for the fetus' right to life is then guaranteed by the amendment.

The amendment, or course, is the 14th which states: " * * * nor shall any State deprive any person of life, liberty or property without due process of law." By finding that unborn children are not persons, the Court created a whole class of human beings who are disposable property. So far, 23 million human beings have been disposed of, more often than not their remains dumped in the trash along with all the other refuse of moderm convenience.

To highlight the absurdity of the Court's finding, I point out that the Court has ruled that corporations are persons under the Constitution. Thus, we have the incredible, ironic, and tragic situation, where corporations, which clearly are not human beings in the biological sense, are found to be persons. But the offspring of human beings, which by any standard of science and biology are clearly human beings, are found to be nonpersons.

It is true, of course, that the rights extended corporations under the 14th amendment differ in some respects from those applied to humans and do not include the right to life. But the point is, corporations as persons are extended some rights under the 14th amendment. In cruel contrast, an unborn child, even the day before that child is born, is accorded no such constitutional rights. The point is, the Court has liberally interpreted the word "person" when dealing with corporations, but when dealing with unborn children has interpreted the work with the most crabbed and unnatural narrowness.

The 14th amendment, according to its authors, was intended to be inclusive. Congressman John Bingham said its scope was to include "any human being." Are not our unborn children human beings? Senator Jacob Howard said it would be applied to the "humblest, the poorest, the most despised of the human race." Are not our unborn children members of the human race? We cannot turn humanity on or off to suit convenience. Attempts to do so are utterly lacking in intellectual honesty, just as the Court's opinion in Roe was an example of studied ignorance.

The debate is really about natural law. The Declaration of Independence provides us with insight into the views of the authors of the Constitution. Surely, the Declaration is the most eloquent statement of natural law ever made:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life * * *. That to secure these rights governments are instituted among men.

The authors of the Declaration and of the Constitution and its Bill of Rights were in many cases the same. Clearly, they believed that certain rights come from our Creator, not from government, and that the duty of government is to secure such rights. Natural law underlies the 5th and 14th amendments. But, some do not want those amendments applied to all human beings. Some suggest that would violate the first amendment by enshrining the religious beliefs of certain citizens. I disagree. The children of human beings are human beings. That is a fact of science, not religion; a fact of biology, not religion.

Roe versus Wade is an unscholarly decision and will be overturned. The tragedy is that, while some defend the unnatural notion that some human beings are nonpersons, millions of our weakest and most helpless brothers and sisters perish.

I thank those of my colleagues who have fought for the human rights of unborn human beings. I encourage them onward, though I will not be here with them next year. I encourage them onward. Victory will surely be won. It will come, because the history of this Republic is the victory of justice and human rights. Sometimes such victories have been delayed. But in the end they come. And in the end, the long-delayed victory for unborn children will come.

TRIBUTE TO RETIRING SENATORS

SENATOR WILLIAM ARMSTRONG

Mr. WIRTH. Mr. President, I wish to make a comment or two related to the departure of the senior Senator from Colorado, BILL ARMSTRONG. Senator ARMSTRONG and I have known each other for now well over 20 years. We served together in the House of Representatives for, I believe, 4 years—he arrived 2 years before me—and we have served in this body together for 4 years.

BILL ARMSTRONG and I, it is no surprise, have not agreed on anything. In fact, we probably have pretty divergent voting records. But there have been disscussions here on the floor this afternoon and this evening about the ability of this institution to function; not because people disagree but because people are able to understand differences, respect differences, and to go at the battle in the middle of the night or during the day—whenever it may be—on a legislative issue, and then have lunch together amicably the next day, back to the concerns of various legislative endeavors as friends and respecting each others' views.

BILL ARMSTRONG has brought to the U.S. Senate in the 12 years he has been here a very clear commitment and an extraordinarily well articulated view of the world and the goals that he has wished to pursue here. I do not think any individual has expressed his own views more articulately than has BILL ARMSTRONG, nor has anybody pursued them more passionately than he has.

I have enormous respect for that passion, Mr. President. It is precisely that sence of indignation that sometimes BILL ARMSTRONG shows on various issues. It is that kind of indignation that really drives this institution, and should.

Any time we as individuals become resigned to what is going on, and any time our lives become those of a kind of resignation, we should not be here anymore.

BILL ARMSTRONG's strong sense of indignation has been very important to him and to the issues he supported and I respect that, Mr. President, I respect BILL ARMSTRONG.

My wife, Wren and I will miss BILL and Ellen in Washington. We look forward to seeing them more in Colorado. BILL will continue what has heretofore been a very successful business career. I know he will be carrying that on out there as well as pursuing a number of the other goals in which he believes so strongly.

I wish Senator ARMSTRONG well. We look forward to working with him in Colorado on a series of issues, other than the legislative issues on the floor.

TRIBUTE TO JAMES MC CLURE

Finally, Mr. President, I have talked at length with Senator MCCLURE over the last few years and last couple of weeks. Senator MCCLURE is one of those remarkable individuals who really is what the Senate is about, as has been pointed out over and over again; a font of wisdom. He is one of those people who brings not only that extraordinary expertise to the issues of the Senate, to the issues of the West, to the issues of environment, land use and energy, but comes at it with a great sense of humor and a great sense of understanding the views of other individuals and attempting to accommodate them when he can. I can think of nobody in the Senate who does that better.

I want to tell JIM MCCLURE I hope that George Bush has the good sense to include that expertise of the now senior Senator from Idaho in the team of people running the administration. Nobody would serve the country better on the administrative side.

I yield the floor.

Mr. RIEGLE. Will the Senator yield at that point? I just wanted to add a comment, if I may, if the Senator will yield to me?

Mr. WIRTH. I will be happy to yield.

TRIBUTE TO DEPARTING SENATORS

Mr. RIEGLE. I want to add my voice to the Senator's. I had the pleasure serving in the House of Representatives as a Republican with both JIM MCCLURE and with your colleague from Colorado, BILL ARMSTRONG. I might say JIM MCCLURE and I came to the Congress together in the same year, 1966. So we came in in that same class in Congress, in the same party. And another colleague on the other side, BILL ROTH, was a member of that group as well.

I want to say both to BILL ARMSTRONG—I have not had a chance to I say it in person—and to JIM MCCLURE and GORDON HUMPHREY as well, I wish them all the best in the future. They have all been exceedingly dedicated Members of the Senate. They contributed a great deal and they will be missed by all of us and will be missed by me. I thank my colleague.

INTERNATIONAL AFFAIRS AUTHORIZATION ACT

Mr. WIRTH. Mr. President, just a final note at the end of the evening, if I might? There are going to be a number of initiatives brought up in the Senate, conference reports coming over and so on. I do hope that in the process of going through these waning days of the session that we are able to address and pass the so-called SEED bill, the Support for East European Democracy.

That extremely important piece of legislation has passed. We all looked at it very carefully. It has passed this body. I hope we can get that legislation which will bring to emerging democracies in Central and Eastern Europe, the Bank for Reconstruction and Development, various agricultural assistance programs, access to expanded trade programs, a whole variety of educational, cultural, and scientific exchanges and, very importantly, Mr. President, a whole package of very, very important environmental initiatives and cooperative endeavors.

If there is any place in the world where it is absolutely clear that man is able to destroy the environment, and do it very rapidly, all we have to do is look at what has happened in Poland, East Europe, and elsewhere in Central and Eastern Europe and in the Soviet Union. In a very short period of time, 25 years, a very beautiful and a very mystic section of the world has been rapidly destroyed.

Every Member of the U.S. Senate ought to have the opportunity to go there, to look at that damage, to look at the ravaging that has gone on, to understand how sensitive this environment is in which we live, how sensitive the globe is, and what responsibilities we have to nurture it and not destroy it.

The SEED bill, Mr. President, is one step in which we can work with the Europeans in attempting to repair some of the damage that has been done there.

I hope, Mr. President, my colleagues here will not only bring up the bill but I hope there will not be objection on the other side and we will be able to pass that very important piece of legislation.

I yield the floor.

The PRESIDING OFFICER (Mr. GLENN). The Senator from Virginia.

Mr. LEAHY. Mr. President, will the Senator from Virginia yield for a unanimous consent request?

Mr. WARNER. Go right ahead.

PERMISSION TO ACT IN THE CAPACITY OF THE PRESIDENT PRO TEMPORE—H.R. 5114

Mr. LEAHY. I thank the Senator from Virginia for his usual courtesy.

I ask unanimous consent I be permitted to sign H.R. 5114, the foreign operations appropriations bill, in the capacity as acting President pro tempore, subsequent to its expected passage this evening. This is something I have cleared with the distinguished President pro tempore of the Senate, Senator BYRD.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERNATIONAL AFFAIRS AUTHORIZATION ACT

Mr. BIDEN. Mr. President, I move the Senate proceed to the consideration of S. 2944, and I send a committee amendment to the desk and I move the Senate adopt S. 1944 as amended by the committee amendment.

The PRESIDING OFFICER. The question is on the motion to proceed. Without objection, the motion is agreed to.

Mr. BIDEN. Mr. President, I am delighted there has been no objection to moving to this legislation. This is legislation that the chairman of the committee, Senator PELL, of the Foreign Relations Committee worked on.

The PRESIDING OFFICER. Will the Senator withhold temporarily?

Mr. BIDEN. I certainly will.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The bill (S. 2944) to authorize assistance for fiscal year 1991 activities within a comprehensive Support for East European Democracy [SEED] Program to promote political and economic transistion in countries of Europe emerging from the tyranny and legacy of Communist rule, to authorize appropriations for worldwide Peace Corps activities in fiscal years 1991 and 1992, to amend the Foreign Assistance Act of 1961 to establish a Development Fund for Africa, to authorize further United States contributions to the International Development Association, and for other purposes.

The PRESIDING OFFICER. Will the Senator from Delaware restate his substantive motion?

Mr. BIDEN. I urge the adoption of the legislation. I withhold that for a moment.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ACTION ON S. 2944 VITIATED

Mr. PELL. In accordance with the customs of the Senate, and comity, I ask unanimous consent that the previous action of calling up this bill be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERNATIONAL AFFAIRS AUTHORIZATION ACT

Mr. PELL. Mr. President, I ask unanimous consent that the Senate proceed to S. 2944, the bill known as SEED II.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. Mr. President, I object on behalf of several Senators on this side.

The PRESIDING OFFICER. The Senator from Iowa objects on behalf of several Senators.

Mr. PELL. Mr. President, would it then be in order for us to discuss this bill for a moment of two?

The PRESIDING OFFICER. The Senator may proceed.

The Senator from Delaware.

Mr BIDEN. Mr. President, because of the objection of a very small number of Senators, Congress has just signed a $450 million blank check over to the administration. I might note before we go any further that to show good faith on this side, it was the understanding of the Senator from Rhode Island and the Senator from Delaware that we could proceed. There was no objection, and we had the ability to pass this bill right on the spot. But because of the fact, it was pointed out to us by our staff on this side, that the Republicans had not been warned of this, as we had thought, we vitiated our own advantage that we had here.

It kind of bothers me, Mr. President, for without any authorization bill that would lay out the priorities, the goals, and the specific programs for the effort to assist peoples in Eastern Europe and their transition to a free market democracy, Congress has just appropriated $450 million for the administration to use as it sees fit.

Quite frankly, Mr. President, this is absurd. It is an abdication of our responsibility. The losers tonight are the people of Eastern Europe, and more important the people of the United States, who have an opportunity to play a significant role in providing for markets for our products, providing for the prospect of security and, I might add, continuity of Eastern Europe, so we do not find ourselves again in a circumstance where we have to have large numbers of American troops in Europe to face the threat of the consequence of a disagreement in Eastern Europe.

Instead of passing the SEED II bill and establishing the framework for administrative action and a process to permit congressional oversight of this program, it seems that Congress will adjourn without any authorization bill for the assistance of Eastern Europe. The President will be free to act in any way he sees fit.

The irony here is the President of the United States and his administration, at least the State Department, sat down with me for hours and hours and worked out an agreement, worked out the SEED II bill, things that they had agreed to, that they worked for.

But because of the ranking member, Senator JESSE HELMS, on the Foreign Relations Committee, in my view, as I understand it, we are in a position now, and with others, I suspect, that we are not going to have this authorization, notwithstanding the fact that a vast majority of the Members of the U.S. Senate would support it; notwithstanding the fact that the administration has signed off on 99.4 percent of everything that is in here; and notwithstanding the fact that it is preposterous for us to pass an appropriations bill with $450 million—and half billion dollars—in it for Eastern Europe, and say to the President, "Good luck, Mr. President; do it any way you want; have it any way you see fit."

I think this is just crazy. I think it is crazy that we continually have a few Members of the Senate thwart not only the will of the Senate but, in this case, thwart even the consent of the administration, for a bill that is vitally important.

Mr. President, we have worked long and hard to iron out the differences with the administration and with Senators from the Republican side, as well. I wonder if any Senator can step forward and detail any reasonable objection to this bill. I ask that now.

Anyone back in their offices listening, any staff of any Senator who has an interest in this, I would like them to alert their Senators and ask them to come to the floor and give this Senator one good reason, engage in a debate with me as to why what we are proposing here, why what we have worked out with the administration, why what we passed out of the committee, notwithstanding the fact that Senator HELMS had the Republicans boycott the effort, why is this not good policy?

It is one thing to come and argue against a piece of legislation on policy grounds. That is why we are here. That is why we are here, to iron out differences. It is another thing to block a major piece of legislation giving half a billion dollars in authority to the President of the United States to spend as he will, because you were not counted in, or because you do not like the fact the Democrats worked on it, or because you do not like the administration, or because you think Communists are hiding under the rocks in Prague.

Can any Senator—I say again; I say to those in the Republican Cloakroom listening; I say to all those who are back in their offices listening can any Republican come to the floor and debate this subject with me or with the chairman of the Foreign relations Committee as to why this bill, which we have worked on for months and months and months, and ironed out with the administration, why they are holding it up?

Mr. President, if no Senator can do that, I do not see why we should not pass this legislation.

Mr. President, I would like to discuss the process by which this bill was created and the support it has received. I will be very brief.

We in the Foreign Relations Committee have conducted countless hours of negotiations with the administration. I personally sat down with Secretary Eagleburger in my office and went over every line, dot, and title in the bill. I personally had breakfast with the Secretary of State and said, "Tell me why you do not like this provision." He said, "Talk with Eagleburger." and we talked with him and we worked it out.

Mr. President, the administration and the Members and their staffs from both sides of the aisle have worked on this. As far as I can tell, there is no reasonable objection left from the administration. Their position is one of "nonopposition." At least they have the good grace to understand that the Congress, on occasion, should appropriate but also authorize how appropriated money should be spent.

Mr. President, I would like to make as part of the RECORD a series of letters that make clear that this bill enjoys widespread support. I ask unanimous consent at this point that they be made part of the RECORD.

Mr. BIDEN. Mr. President, the following organizations have endorsed the bill: The National Organization of Manufacturers, the National Foreign Trade Council, the relevant chapters of the U.S. Chamber of Commerce, the International Executive Service Corporation, the Association of American Collegiate Business Schools, the Polish-American Congress, the Baltic-American Organization, the National Polish-Jewish-American Council, the Armenian General Benevolent Union, the World Wildlife Fund, the Natural Resources Defense Council.

Mr. President, at this point I can only say that it would be a travesty if the opposition of a very small number of Senators, I believe led in large part by the Senator from North Carolina [Mr. HELMS] were to prevent this bill from being acted upon.

Mr. President, we must act. We must provide a mandate for the administration's action in Eastern Europe and a framework for congressional oversight of this new endeavor.

Mr. President, I reluctantly yield the floor, reluctantly in the sense that I am so angry that we are unwilling to face this or that those who oppose this are unwilling to come forward and say why. That is what I mean by reluctant. I am not at all reluctant to yield to my colleague from Rhode Island, the chairman of the Foreign Relations Committee.

I yield the floor.

The PRESIDING OFFICER (Mr. BRADLEY). The Senator from Rhode Island.

Mr. PELL. Mr. President, SEED II is really one of the most important pieces of foreign policy legislation that I have seen in the last 3 decades here in the Congress and the Senate.

My colleagues will recall that last fall, having received a rather modest Administration request for aid to Poland and Hungary, the Foreign Relations Committee began from scratch and drafted comprehensive SEED legislation to set the stage for a new American initiative in Eastern Europe. The SEED Program is directed toward an unprecedented goal: that of helping new or evolving governments in Eastern Europe build successful free-market democracies on the rubble of failed communism.

I was all the more pleased—when additional revolutions swept Eastern Europe—that the committee had demonstrated the foresight to have legislation in place that could be built upon to provide for the wide-ranging program needed for an energetic American response to this new reality.

Together with a committee amendment, the SEED II legislation takes into account every reasonable criticism of the bill we have been able to identify—criticisms and recommendations from various agencies of the executive branch and criticisms and recommendations from various Senators on both sides of the aisle. I would point out that the committee amendment includes several changes recommended by Senator HUMPHREY and a lengthy amendment sponsored by Senator MACK. I have also been informed that, with the committee amendment, the bill now enjoys support on both sides of the aisle.

Three points about the SEED II legislation bear emphasis:

First, this bill is totally congruent with administration policy as regards the kind of aid it envisages. It permits technical economic assistance and democracy-building assistance in all European countries that have been Communist. But aside from authority to act in multilateral efforts to provide stabilization back-up loans for countries such as Poland, all of the focus is on advisory how-to-do-it aid—not on financial loans to governments. Indeed, such financial assistance is explicitly prohibited in the case of the Soviet Union.

Second, while providing a sound framework for action, the bill contains no provisions that require the President to take any particular action he does not regard as advancing the cause of building free-market democracies in Eastern Europe.

My third point, Mr. President, relates to the situation in which Congress will find itself if SEED is not enacted. The foreign operations appropriations bill just passed contains fiscal year 91 funds for the overall SEED Program, including the first U.S. contribution to the European Bank for Reconstruction and Development. But as matters now stand, this money will be available to the administration with no overall framework of authorization and oversight—no standards, goals, or reporting requirements against which the administration's performance can be evaluated.

I think this is one more example of the confusion that exists today where the Appropriations Committee per force, by this action, has to give the guidance that should be given by the authorizing committee on the legislation. I think it is extremely important that the SEED II legislation be enacted in accompaniment with the funds just approved.

Otherwise, we have given the President a blank check for about $450 million, no guidance, slush fund. As long as it is spent in Eastern Europe, he can do whatever he wants. That may be satisfactory to certain officials at the State Department and AID, but I do not think it should be satisfactory to us in Congress.

I would have urged that Congress accomplish what Congress has not yet accomplished, but should accomplish before adjournment, the enactment of a full authorizing statute for the SEED Program.

I hope that other Senators will support this endeavor and that we could pass it. I would add here that the villains of peace are not the individual Senators who may block it but the system that we have that renders it so inefficient, that permits one or two Senators to block legislation that has unanimous, or virtually unanimous support. I think it is this inability to act that has the country somewhat angry at us at this time.

I yield the floor.

Mr. LIEBERMAN. Mr. President, I want to commend the distinguished members of the Foreign Relations Committee for their hard work on SEED II. I want to thank you for making me a part of that process. I believe this to be a farsighted bill both in terms and content and direction.

This legislation makes cost effective use of of existing Government programs. It covers new ground for the post cold war era by emphasizing economic policy and business opportunities, making a major shift away from the cold war focus on military might. I am not suggesting that we are at the point where we can lay down our arms entirely and just work on opening markets for our exporters. The turmoil in the Middle East proves that point. Nonetheless, economic relations must be central to our future relationship with the nations of Eastern Europe.

SEED II charts a course for this nation as we begin to make our way into the post-cold war era. With it, we have a unique opportunity to help shape the world for decades to come. Certainly, because of financial constraints, we must use our resources creatively to smooth the transition of Eastern Europe from state-controlled communism to Western-style market economies. SEED II does this. But in addition to helping these nations, American businesses stand to gain a great deal by investing in Eastern Europe. SEED II helps facilitate such investment. Just as important, the American can reap a legitimate peace dividend if Eastern Europe becomes politically and economically stable.

While there is too much in SEED II for me to talk about every provision, I would like to point out a few items that I feel are of particular importance. The SEED Foundation, which would aid small businessmen in Eastern Europe, is an innovative program that would lay the foundation for the development of a small business sector in Eastern Europe.

The average size of the payroll of an Eastern European company is about 4,000. There is an entrepreneurial sector in most Eastern European nations, but it is part of the underground economy. There must be an above ground, active small business sector if Eastern European nations are going to make a smooth transition to a market based economy. Approximately 80 percent of all new jobs in this country are created by firms with 25 or less employees. As unemployment becomes a casualty of economic adjustment in Eastern Europe, small businesses will have to pick up the slack. The SEED Foundation will help to create those jobs and make the transition to a free market system much easier.

I also want to make special mention of the provision in the bill that would create business centers. Time after time I hear from businessmen about infrastructure problems in Eastern Europe—the lack of an efficient communications network and a necessary business support system. The business centers would help provide these services. There is no profit in asking American firms to go to Eastern Europe, and invest and help rebuild those nations, if we are going to force them to compete with their hands tied behind their back. The business centers give American firms a level playing field so that they can meet their European competitors head on.

The bill also contains authorizing language for the new European Bank for Reconstruction and Development [EBRD]. The EBRD's focus is on developing the private sector in Eastern Europe. Traditionally, regional development banks emphasize more typical projects designed to meet a nation's specific development needs. The EBRD differs in that it attempts to wean a country from official economic

support by promoting the free market system.

Finally, SEED II requires a report from the State Department on the activities of the OECD Center for Democracies in Transition. This center, which is designed to help East European nations rebuild their economies, is the result of an amendment that I had in SEED I last year. The Center can and will play an important role in offering expert advice and assistance to the nations of Eastern Europe. It is important that we keep abreast of the Center's activities and evaluations so that we can better tailor future aid programs to the region.

I believe that the United States is at the Rubicon. We have an opportunity to act decisively and take a leadership role in shaping not only our destiny but that of the free world as well. Voltaire said that the sound of history is satin slippers coming down the steps and hobnail boots coming up. Will we be content to put on our slippers and let history pass us by in Eastern Europe and the Soviet Union? I urge my colleagues to pass this bill, so that we will be active participants in history and not merely passive observers.

Mr. GORE. Mr. President, S. 2944, Support for East European Democracy, or SEED II, is a measure that deserves broad bipartisan support. It seeks to give structure and legislative standing to a broad range of activities all aimed at one purpose: to promote the transition of the countries of Eastern Europe from the economic structures of communism to the economic structures of the free market. This is as close as we are going to get to a Marshall plan for Eastern Europe. It is modest of course in comparison to the size of the Marshall plan, but S. 2944, carries with it the same sense of American participation together with the peoples of Poland, Hungary, and Czechoslovakia, in the reconstruction of their societies as they emerge from tyranny.

These nations deserve our attention and engagement. They have won a long struggle for freedom. In that struggle, they have on occasion paid dearly in blood. Americans once were forced to look on in anger and frustration as Soviet tanks put down freedom in the streets of Warsaw, of Budapest, and of Prague. Those sacrifices and countless others preserved the seeds of freedom in each of these countries. What has burst forth now is nothing more nor less than the response of nations to our own ideals of liberty. These are the days when all we have done to resist the drive to power of communism is vindicated.

Therefore, Mr. President, these are the days in which the United States must exert itself to make victory final and complete. The only way to do that is to place our skills and resources to the maximum extent possible, at the service of our policy, which is to see political freedom in Eastern Europe secured through the stabilization of their societies. And that in turn requires that the economies of Eastern Europe successfully make the transition from communism to capitalism.

The aim of S. 2944 is precisely that. It's essense is to authorize programs of technical assistance for environmentally sound development of private sector economic institutions. I would defer to Senator PELL or Senator BIDEN to present a definitive summary of the range and creativity of the activities authorized in this legislation. But let me give you one specific example that draws on my own experience.

Mr. President, while Eastern Europe countries finally breathe the metaphorical air of political freedom, they are literally suffocating in the actual air that surrounds them. Steeped in a hazardous chemicals, entire villages have been condemned, and soil and water are biologically dead. The people of Eastern Europe, who have fought so valiantly for political freedom, still face environmental repression.

Recently, I had the honor of hosting a delegation of 14 leaders from the fledgling democracies of Central and Eastern Europe. Representing industry, Government, and academia, they were in the United States to participate in a program initiated by the University of Tennessee. The purpose of the program was to offer Eastern Europeans an opportunity to learn how our political process resolves environmental issues. Mr. President, their story was grim. As part of the heritage of Stalin's "transformation of nature" campaign, health problems in Eastern Europe are epidemic and the environment is devastated. They told me, for example, that 1 in 17 people die because of their severe air pollution problems. And water quality is also poor. Much of the water is too toxic for human comsumption, and in Poland, river water is so polluted and corrosive that it is even unfit for industrial use.

As my visitors from Eastern Europe made clear to me, progress must be made on the dire health and environmental problems they face if their governments are to survive. But in order to make that progress, the nations of Eastern Europe desperately need trained people of their own. In response to that, S. 2944 now contains at my suggestion, authority to establish international environmental fellowships. Through this exchange program, scientists and government leaders from Eastern Europe will have the opportunity to work with our experts in government, in industry, and in universities to learn about environmentally sound technologies.

Moreover, borrowing from the fine example of the program orchestrated by the University of Tennessee, it is my hope that our visitors will have the opportunity to observe how health and environmental policies are crafted in our country as they struggle to build their own Government systems. Similarly, Mr. President, the exchange program will afford our scientists the opportunity to gain first hand knowledge of—and help to meet—the many technological needs of our Eastern European friends.

I think this is a vital investment. Yet, Mr. President, this is but a small demonstration of the scale of the need and of the scope of this bill's effort to respond within the limits what is affordable for our country. But all that is in jeopardy of being lost. Our colleagues, Senators PELL and BIDEN, have worked long and hard to perfect S. 2944 as a free-standing bill. They have worked assiduously to deal with the concerns of all interested members, whether majority or minority. They have worked just as hard to take into account any concerns expressed by the administration. Finally, they have worked hard with the House and have accommodated much of that body's approach by incorporating it. S. 2944 also enjoys strong support from the public, witness the many expressions of approval it has received from every conceivable group that believes the hour has struck for freedom in Eastern Europe.

One would imagine therefore that S. 2944 would long since have gotten to the floor of the Senate and been passed, but that has not been the case. At least one of us objects to consideration of this bill and has blocked it. But some of us—I trust most of us—believe that this legislation should not be lost. Therefore Senator WIRTH and I have taken the only step available to us to prevent that. We know that time is short and that the Senate needs to complete its business. But this measure is the Nation's business. There needs to be an opportunity for the Senate to work its will.

SUPPORT FOR EAST EUROPEAN DEMOCRACIES SEED II

Mr. BRADLEY. Mr. President, I am deeply disappointed that the Senate has decided not to consider the Support for Eastern European Democracies Program. SEED is much more than a foreign aid bill, Mr. President, it represents America's commitment to democracy, free markets, and open societies. Our actions on SEED will indicate the direction of American foreign policy in the decades to come, and I am still hopeful that we can return to consideration of SEED before we adjourn.

For 45 years we have fostered American values and institutions throughout the world and especially in Europe. The United States took the lead in economic reconstruction and demo-

cratic growth through the Marshall plan, through the 1953 London accords reducing Germany's postwar debt, through NATO, through the CSCE and by applying pressure on the Soviet Union and the repressive regimes of the Soviet bloc. It was our unflinching support, in spite of the cost, of those values that precipitated the collapse of communism. No one can deny that those resources were well-spent.

SEED is a significant affirmation of our commitment to those core values but an infinitely smaller financial outlay. The countries that are making the transition to free markets and democracy are turning to us for help making the transition permanent and effective, for help teaching what it takes to be a businessman or an entrepreneur, for help entering the international marketplace and the community of free nations, for help assuring the region's stability.

We can help achieve those goals with programs that provide technical assistance and strengthen the private sector. These are not Government programs; for the most part they facilitate contacts between private citizens with experience in finance, business, education and other fields and the potential businesspeople who sorely need private sector skills.

SEED is also the basis for our participation in the European Bank for Reconstruction and Development. The EBRD is a concrete, multilateral effort to give financial support to the transition that is taking place.

The benefits of SEED for East Central Europe are undeniable and commonly acknowledged, but let me emphasize how important this is for the United States as well. American businesses must export to survive and cannot afford to ignore an expanding market like Eastern Europe. SEED helps big and small American companies establish the links necessary to take advantage of the opportunities. The National Association of Manufacturers, the U.S. Chamber of Commerce, and many other business groups have recognized these benefits and endorsed SEED II.

SEED II has another, broader, impact. After World War II, we were the only country powerful enough to devote resources to reconstruction and make decisions that affected the shape of post war Europe. We sat at the head of the table where decisions were made and from that position made the commitment to helping Western Europe rebuild, we made the commitment to helping Western Europe defend itself from Communist threat. We have an obligation to help Eastern Europe take the final steps in freeing itself from oppression and preventing instability and isolation in Europe.

We still sit at that table, but now as "primus inter pares," first among equals. Without SEED and EBRD, however, our role in the world order will be minimized. If we abdicate our responsibilities to Eastern Europe, we accept that America's role in the world of the future will be limited and based on a narrow, materialist view of America's interests. Allowing this to happen would be a rejection of America's remarkable history of promoting the values of democracy, free markets, and open societies.

I believe that we should be expanding our world role in this time of great change and earlier this year I proposed a much more extensive program to assist the transition to democracy. If we had devoted only 1 percent of our defense budget to Eastern Europe, we could have made real difference in the world. The proposals in SEED II are the least that we can do to keep Eastern Europe economically and politically stable, to support the efforts of American businesses there and to help define the future of American foreign policy.

Mr. President, a vote against SEED II is a vote for the retreat of American business from international markets in the face of competition from well-financed German and Japanese programs, for the abdication of the history of American policy concerns, for economic and political instability.

A vote for SEED II is a vote for the expansion of American business opportunities in Eastern Europe, a vote for the growth of democracy and the free market, a vote for an internationally active and respected United States of America.

Mr. President, I hope that my colleagues on the other side of the aisle will allow this bill, which represents the future of America's commitment to free societies and free markets, to be considered yet tonight on the floor of the Senate.

EAST EUROPEAN DEMOCRACY ACT OF 1990

Mr. SYMMS. Mr President, there is a Republican objection to this motion because there are a number of Republicans who have concerns with the bill.

S. 2944 was reported from the Senate Foreign Relations Committee over the objections of every Republican member of that committee. As reported, the bill was strongly opposed by the administration. I ask unanimous consent that the text of a letter from the Director of the Office of Management and Budget be printed in the RECORD. I further ask that the text of a letter dated September 28, 1990, signed by every Republican member of the committee detailing concerns with S. 2944 be printed in the RECORD.

Mr. President, I also ask unanimous consent that a recent communication from the State Department outlining, in seven type-written pages, their objections to SEED II be printed in the RECORD.

Mr. President, I also ask that a background piece on this legislation prepared by the Heritage Foundation also be printed in the RECORD.

Further, Mr. President, I ask unanimous consent that a hold letter on S. 2944 signed by every Republican member of the Foreign Relations Committee be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, August 3, 1990.

Hon. JOHN WARNER,
Ranking Member, Senate Armed Services Committee, U.S. Senate, Washington, DC.

DEAR MR. WARNER: I understand that Senator Pell plans to offer an amendment that attaches S. 2944, the Support for East European Democracy Act of 1990 (SEED II), to the Defense authorization bill.

The Administration strongly opposes the enactment of the provisions of S. 2944 that authorize assistance to Eastern Europe. The bill authorizes appropriations at a level nearly double the President's request. The bill contains numerous provisions that infringe upon the President's authority to conduct foreign policy and make appointments in the Executive Branch. We also note the absence of needed new authorities to provide assistance to Eastern Europe.

The bill authorizes a large number of new programs, which we understand to comprise a menu from which the President may choose at his discretion. In general, it seems unwise to establish so many new Federal programs at a time when other efforts have already begun under current legislation. Furthermore, the Administration objects to those provisions that direct in a mandatory fashion how the President or individual agencies are to implement these programs.

With best regards,

RICHARD G. DARMAN,
Director.

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, September 28, 1990.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR CLAIBORNE: We appreciate your letter of August 8, requesting our counsel on how to proceed with the proposed SEED II legislation. As you stated, it *is* in the interest of the United States to help the former captive nations of Eastern Europe consolidate democracy and move expeditiously to free market economies.

We recognize and commend your efforts, and Senator Biden's efforts to reduce the number of explicit mandates included in the SEED II legislation. However, many implicit mandates and quasi-earmarks remain in the legislation reported by the Committee. As you may be aware, notwithstanding newspaper reports to the contrary, the Bush Administration still has considerable reservations about many aspects of this legislation. Those problems go considerably beyond a substantial divergence on funding levels.

Many thoughtful observers both inside and outside of government have been urging that we substantially minimize unnecessary

and redundant restrictions in our current foreign assistance laws so that the President may have greater freedom to respond to fast-changing world events. Several of the provisions still in the SEED II bill, however, move in the opposite direction.

In trying to be open to the suggestions of interested members and outside individuals and organizations, the Majority has produced a massive bill, which defines specific programs—and actual service providers, in some cases—to a degree that will make the overall program difficult to administer. Some of the provisions are creative and worthy of consideration. But the degree of micromanagement will, we fear, adversely affect the national interest by restricting the Administration's ability to respond to unanticipated opportunities and problems that undoubtedly will emerge in Eastern Europe over the next several years.

To produce the kind of legislation capable of receiving strong bi-partisan support, we believe it will be, in general, necessary to:

1. Trim back the cost of the Committee bill to the funding level more closely resembling the request of the President. The tight fiscal bind in which our Federal government finds itself makes it especially imperative that the Committee approach this matter in a fiscally responsible fashion.

2. Eliminate those provisions of the Committee reported legislation which clearly fall within the jurisdictions of other Committees.

3. Remove from the Committee-reported bill those titles unrelated to Eastern Europe aid, specifically, Titled II, III and IV.

4. Eliminate those provisions which permit, require, authorize, or urge bilateral or multilateral assistance to the Soviet Union, above and beyond those authorities for technical assistance specifically requested by President Bush.

5. Delete the many advisory boards, committees, task forces, and agencies created by the draft legislation. With the budgetary constraints faced by our government, we should not be creating new governments bureaucracies not requested by the President.

6. Remove authorities for the use of official debt repayments to fund a SEED Foundation, and restrict the Foundation from making payments to government entities.

7. Strike provisions authorizing US-financed and operated "Business Centers" which would compete with private U.S. (and Eastern European) firms prepared to establish such centers on a for-profit basis.

8. Assure that any new shipping provisions are consistent with U.S. national security requirements as determined by the President.

9. Eliminate blanket waivers of "all other provisions of law". If you feel that certain waivers may be necessary for authorized programs to operate as intended, we would welcome your providing us with a list of those *specific* provisions of law which wouldneed to be waived.

Mr. Chairman, with so little time left in the legislative schedule, the best hope of assuring that this Committee is not left out of the process of producing legislation to aid Eastern Europe lies in our producing a lean bill capable of quick floor consideration and which takes into account fiscal realities and allows the Administration maximum flexibility to deal with emerging priorities.

The current approach of attempting to enact hundreds of pages of detailed "menu" items will put undue pressure on the Administration to treat such items as quasi-earmarks, and greatly complicates efforts to enact Committee-produced legislation in this area. Perhaps a better way for the Committee to provide the Adminstration with direction on these items would be through report language, colloquy on the floor, or other non-statutory means.

Again, we sincerely appreciate your interest in trying to bring about a greater degree of bipartisan cooperation in this important matter. We look forward to working with you and our other colleagues on developing effective SEED II legislation capable of receiving strong bi-partisan support.

Thank you for your consideration.

Sincerely,

Jesse Helms, Mitch McConnell, Rudy Boschwitz, Connie Mack, Dick Lugar, Nancy Landon Kassebaum, Larry Pressler, Frank H. Murkowski, Gordon Humphrey.

DEPARTMENT OF STATE,
Washington, DC.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: In response to your request for the Administration's views on Title I of S-2944, the International Affairs Authorization Act of 1990, I enclose a statement which contains our coordinated views. These comments are based on the version of the bill marked upon in Committee on July 19. We have noted changes in section numbers, but have not addressed any more substantive changes that may have been made in the Committee print.

I am also enclosing information copies of the Administration's replies to the questions concerning the Act that were submitted on July 24 by Senator Jesse Helms and other members of the Committee.

I regret that it took so long to obtain a fully coordinated position on these issues.

Sincerely,

JANET G. MULLINS,
Assistant Secretary.
Legislative Affairs.

Enclosures: As Stated.

INTERNATIONAL AFFAIRS AUTHORIZATION ACT OF 1990

The Administration strongly opposes enactment of Title I of S. 2944. The bill authorizes appropriations at a level nearly double the President's request. The bill contains numerous provisions that infringe upon the President's authority to conduct foreign policy and make appointments in the Executive Branch. We also note the absence of needed new authorities to provide assistance to Eastern Europe. The bill contains a large number of provisions that the Administration will seek to delete or amend.

The bill authorizes a large number of new programs, which we understand to comprise a menu from which the President may choose at his discretion. In general, it seems unwise to establish so many new Federal programs at a time when other efforts have already begun, including assistance announced by the Administration, general economic and technical assistance initiated by a group of 24 governmental donors, and private initiatives undertaken by American corporations, foundations and universities. Furthermore, the Administration objects to those provisions that direct in a mandatory fashion how the President or individual agencies are to implement Federal programs.

With respect to the Soviet Union, the President has stated that the United States is prepared to provide limited technical economic cooperation to the Soviet Union to support political and economic reform. The U.S. government is using existing agency resources for these purposes where permissible. The Administration therefore does not oppose language which would give the President the discretionary authority to provide technical assistance to the Soviet Union in support of economic and political reform. But, at the same time, the Administration has not made any decision to use such authority, should it become law. In any case, the Administration would oppose language which would provide direct aid in the form of loans or grants to the Soviet Union.

AUTHORIZATION OF APPROPRIATIONS

The Administration objects to the authorization level of $585 million in appropriations for FY 1991 (including $465 for bilateral assistance to Eastern Europe, $70 million for paid-in capital to the European Bank for Reconstruction and Development, and $50 million for increased U.S. personnel and the Soviet-Eastern European Research and Training Act Program.) This amount is far in excess of the President's budget request of $300 million.

The Administration has not requested and opposes the authorization in Section 1201(a)(3) of $50 million for U.S. Missions/Personnel in Eastern Europe and the Soviet-Eastern European Research and Training Act Program. The Administration intends to augment U.S. representation in Eastern Europe through the re-allocation of existing resources.

The Administration recommends that Section 1201(a)(2) be amended by deleting the phrase "of which $70,000,000 is authorized to be appropriated in fiscal year 1991 for the initial United States contribution of paid-in capital", since there is no need to distinguish paid-in and callable capital in authorization legislation.

POLICY CONCERNS

The Administration opposes Section 101 (Policy and Authority on Structural Adjustment) as written and requests the following changes:

Subsection (b)(1) should be deleted. We disagree with the statement that debt is the primary reason for the financial weakness of several East European countries. Inappropriate economic policies—that are now changing—led to the weak economic and financial state of East European countries. As drafted, this section overstates the debt problems of the region and inappropriately calls for an urgent and unprecedented multilateral response. We also are concerned that this subsection will serve to raise unrealistic expectations of debt relief, thereby weakening the resolve of some of these countries to continue programs of economic reform.

Subsection (c)(2) should be amended to recognize that official debt reduction and/or rescheduling may not be appropriate for all eligible countries. For this reason, we recommend that the introductory language be amended by inserting the phrase", as appropriate," after the words "creditor governments to * * *."

The reference in subsection (c)(2)(B) to a specific level of debt reduction is inappropriate. We recommend that the phrase "reductions of 50 percent or more" be deleted and the word "reduction" be substituted.

Subsection (e) should be deleted. We should not deviate from the current practice concerning the earmarking of debt repayments or specific programs. Such earmarks

could have a particularly adverse effect on programs such as CCC and EXIMBANK.

Section 103(c) (Agricultural Assistance). This subsection, although continued from the Support for East European Democracy Act of 1989, should be modified so that it is clear that interest earned on local currencies exchanged for newly privatized debt accrues to the benefit of the purchaser of the debt. This would be consistent with section 584 of the Foreign Assistance Appropriations Act for FY 1990.

Section 204(c) refers to competitive procedures for procurement. We do not object to the intent of the provision but prefer the use of language "to the maximum practicable extent" vice "whenever possible" as conforming to language elsewhere in A.I.D. procurement regulations and policy. We suggest that this change be made in subsection (c) and other places in the bill where this formulation appears.

The Administration also opposes the creation of a Free Enterprise Corps proposed in Section 205. The Administration believes that the "Free Enterprise Corps" would in effect duplicate the combined functions of A.I.D. technical assistance and training, Peace Corps program, and voluntary assistance coordinated by the President's Citizens Democracy Corps.

The Administration opposes and recommends the deletion of Section 109 (Small Business Administration Programs, now Section 216). The Administration generally opposes the earmarking of specific assistance activities to individual U.S. Government agenices and specifically opposes an independent role for the SBA in international assistance efforts.

The Administration opposes and recommends the deletion of section 212 (Worker Retraining Assistance, now Section 210). This section needlessly duplicates authority already given to the Secretary of Labor under section 203 for technical assistance in support of labor market transition. In carrying out labor market transition initiatives for Poland and Hungary under SEED I, the Secretary of Labor has coordinated closely and worked extensively with the AFL-CIO and American business in the design and execution of technical assistance programs. This straightforward and flexible tripartite approach has assured sound overall management of labor technical assistance programs while allowing the respective strengths of U.S. business, government, and labor to be effectively applied in support of jointly developed program goals and objectives. This proven management system should be continued under SEED II.

The Administration requests that Section 301 be amended to remove Czechoslovakia and the German Democratic Republic from the list of countries now denied eligibility for the Generalized System of Preferences under Section 502 of the Trade Act of 1974 (U.S.C. 2462(b)).

As written, Section 302 of the bill, pertaining to authority for the Overseas Private Investment Corporation, only allows OPIC to operate in Poland and Hungary, does not provide an exemption from existing statutory provisions that set per capita eligibility limits for OPIC, and does not provide eligibility for OPIC's equity program. The Administration therefore proposes the following amendments to this section:

Amend Section 302(a) to read "Eligibility of East European countries for OPIC programs. Section 239(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2199(f)) is amended by inserting, after "Hungary," "East European countries determined to be eligible for OPIC programs pursuant to section 3 of the Support for East European Democracy Act of 1990"

Add an additional subsection (c) to read "Section 231(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2191(2)) is amended by inserting after the words "other than," "eligible East European countries determined to be eligible for OPIC programs pursuant to Section 3 of the Support for East European Democracy Act of 1990, Yugoslavia, and * * *"

Add an additional subsection (d) to read "Section 234(g)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2194(g)(2)) is amended by inserting in the title "YUGOSLAVIA, EASTERN EUROPE" before "SUB-SAHARAN AFRICA" and inserting "East European countries determined to be eligible for OPIC programs pursuant to Section 3 of the Support for East European Democracy Act of 1990, Yugoslavia, "before the words "countries in sub-Saharan Africa."

The Administration opposes Section 309 (Mutual Reduction of Export Controls), because national security export control matters are, and should continue to be, coordinated solely through COCOM. The preamble of Section 309(b) therefore should be amended to delete the phrase "and with the Soviet Union." Subsection 309(b)(2) should be deleted in order to remove any suggestion that COCOM would work with any other bilateral or multilateral entity.

The Administration recommends deletion of Section 405 (Andrei Sakharov Educational Exchange, now Section 408), since this program for the U.S.S.R. does not belong in the SEED Act.

The Administration recommends deletion of Section 406 (Soviet Debt Repayment and Educational and Other Exchange) as unnecessary. The State Department authorization bill modifies the Mutual Education and Cultural Exchange Act of 1961 to allow lend-lease monies to be used for U.S./U.S.S.R. exchanges.

With respect to Section 505 (Strengthening Institutions of Free Broadcasting), the Administration has established the Fund for Independent Broadcasting and a Free Press (International Media Fund). We therefore recommend that section 505 be deleted as unnecessary or, in order to make it compatible with the guidelines of this Fund, that Section 505(b) be expanded to include training of media professionals and provision of equipment and subsidies for independent media in Eastern Europe.

The Administration opposes and recommends the deletion of Section 603, which urges the President to create a Joint Commission with the Soviet Union on economic conversion. We believe that the activities outlined in this section can be best performed through existing bilateral mechanisms, specifically the U.S.-Soviet Joint Commercial Commission, chaired on the U.S. side by the Secretary of Commerce. This Commission is in place and is functional, as well as having longstanding ties with Soviet policymakers. The proposed new commission would duplicate the functions of the Joint Commercial Commission and create unnecessary confusion.

As noted below, the Administration recommends that Section 701, which establishes a Director for the American Business Initiative in Eastern Europe, be modified to remove mandatory language which infringes upon the President's constitutional authority to conduct foreign policy and make appointments in the Executive Branch. In addition, this section should be modified to indicate that the President or his designee may appoint the director and to remove the requirement that he hold the rank of Ambassador.

Section 703 (American Business Centers) should be amended to indicate that the Centers would be established under the direction of the President or his designee.

The Administration opposes and recommends the deletion of section 801(d)(2), which mandates assistance for restoration of the Danube River, and section 801(1)(3), which authorizes contributions to an endowment fund for the Regional Environmental Center in Hungary. Decisions on specific types of assistance or specific projects should be left to the Administration's Coordinator for East European assistance.

The Administration opposes and recommends the deletion of section 802 as duplicative of programs authorized in other sections of SEED II and excessively costly relative to environmental improvements which can be gained through technical assistance and training programs. In addition, subsection 802(b)(1) overly constrains program activity in a manner inconsistent with the SEED Act of 1989 by failing to authorize repowering activities and provision of equipment and technologies that control pollution emissions while extending plant life.

The Administration opposes the creation of the international nuclear safety board proposed in Section 807, which would deflect resources from timely efforts already underway in both bilateral and multilateral channels. It also is questionable whether the United States should assume the regulatory authority implicit in this section as well as the potential liability for conditions clearly outside its jurisdiction. The Administration has suggested alternative language which meets these concerns while preserving the objectives of the Section.

The Administration would like to clarify Section 1202(b)(1), whose intent appears to be to provide certain administrative authorities under the Foreign Assistance Act of 1961. The legislation, as drafted, appears to be too broad. The Administration therefore recommends that this subsection be amended to insert after "Foreign Assistance Act of 1961" the phrase "only for the purpose of making applicable the administrative authorities for the use of economic assistance funds which are contained in that Act."

CONSTITUTIONAL ISSUES

Several provisions of the bill, by purporting to require the President or other executive officials to engage in bilateral or multilateral negotiations or contacts on statutorily specified matters, infringe upon the President's constitutional authority to conduct foreign affairs and international negotiations. We therefore recommend that the word "should" be substituted for "shall" in each of these provisions (Sections 401(a), 602(b)(3), 701, 702(a), 801(d), and 801(e)(1) and 801(e)(2)).

Section 403(c) states that a "description of activities and negotiations shall be included" in the SEED Program Annual Report. In order to avoid constitutional concerns, the Administration construes these provisions as not requiring the reporting of sensitive diplomatic contacts with foreign nations or other constitutionally privileged information.

As raised above, Section 214(h)(1) (pertaining to eligibility requirements for the board of directors of a potential SEED Foundation) raises constitutional concerns

under the Appointments Clause, U.S. Const., art. II, sec. 2, cl. 2. We believe that a statutory specification of qualifications for principal officers of the United States violates the Appointments Clause. Because the members of this board of directors would exercise significant authority in administering a federal aid program and would be appointed "by the President, by and with the advice and consent of the Senate" as provided in Section 214(h)(1), they would be principal officers rather than "inferior officers" within the meaning of the Appointments Clause. Accordingly, the requirements of the Constitution with respect to the members of the board of directors are clear: "The President has the sole responsibility for nominating these officials, and the Senate has the sole responsibility of consenting to the President's choice." *Public Citizen* v. *United States Dep't of Justice*, 109 S. Ct. 2558, 2583 (1989) (Kennedy, J. concurring in the judgment).

Section 601, establishing the Parliamentary Partnership Program, grants a Congressional Joint Task Force the power to require assistance from various Executive Branch agencies, in violation of the principles of *INS* v. *Chadha*, 462 U.S. 919 (1983). The Administration therefore recommends that Section 601(e)(9) be amended by changing "shall" to "should."

[Issue Bulletin, the Heritage Foundation, Sept. 27, 1990]

THE SENATE SHOULD TAKE A LONG LOOK AT SEED II

INTRODUCTION

Congress will decide this fall what kind of assistance the United States should give the emerging democracies in Eastern Europe. Lawmakers have proposed follow-up legislation to last year's Support for East European Democracy [SEED] Act, which provided loans, enterprise funds, technical assistance, and emergency food aid to Hungary and Poland. The new bill, called SEED II (S. 2944), which passed the Senate Foreign Relations Committee on July 19, extends assistance to the rest of Eastern Europe. The bill is well intentioned; it seeks to ensure the success of democracy and free enterprise in Eastern Europe. Yet a number of its provisions likely will do little to advance the free market in Eastern Europe, and could actually slow economic reforms.

At best, foreign aid to Eastern Europe can help advance market-oriented economic reforms already under way. But in its current form, SEED II contains a number of problems that seriously would hinder its effectiveness. These problems include:

Problem No. 1: U.S. aid could go to the central government of the Soviet Union. While SEED II excludes the Soviet Union from certain kinds of aid, it gives the President discretion to grant other forms of assistance. Aid to the Soviet central government would be especially inappropriate as long as Moscow continues excessive military spending and assistance to such U.S. foes as Cuba. The bill fails to recognize explicitly the member republics of the Soviet Union as potential recipients of aid. Under the current Soviet economic reform plan, economic decision making will devolve to the republics. Therefore any assistance should go to this level of government, not Moscow.

Problem No. 2: The bill would force on the Eastern European countries more funds than they can absorb. The $535 million in aid for Eastern Europe and the $50 million in support for U.S. missions and personnel is nearly twice the $300 million requested by the Bush Administration. Because Eastern Europe still lacks the basic building blocks of a market economy, assistance funds likely will be wasted or even go to prop up the current failed system.

Problem No. 3: SEED II authorizes American involvement in the European Bank for Reconstruction and Development, an organization that is likely to impose on Eastern Europe policies that retard development. This bank will be controlled by West Europeans who in the past have used foreign aid to support non-market policies or their own overseas business interests.

Problem No. 4: The bill mandates the creation of numerous unnecessary U.S. government programs, commissions, task forces, and a new congressional committee to assist governments in Eastern Europe.

The economic success of Eastern Europe depends on such reforms as establishing and protecting private property rights, dismantling wage and price controls, maintaining low tax rates, and liberalizing trade. However, if SEED II is to provide even marginal benefits, certain provisions should be changed.

Specifically the bill should:

Extend the definition of Eastern Europe to include eligible Soviet republics;

Rule out explicitly any form of aid or assistance to the Soviet central government.

Cut the appropriations level of the bill to the $300 million requested by the Bush Administration.

Remove language authorizing American participation in the European Bank for Reconstruction and Development (EBRD).

Eliminate provisions creating unnecessary commissions, programs, and committees.

Authorize the Bush Administration to negotiate free trade areas with any country that succeeds in transforming itself into a free market system.

THE PURPOSE OF SEED II

The Purpose of the SEED II bill—to promote democracy and economic prosperity in Eastern Europe—is a highly desirable objective, and in keeping with America's interest in a stable, non-communist Europe. Yet foreign aid at best can play only a supporting role in promoting these goals and at worst could actually block their achievement. In the past, U.S. foreign aid, for example, has covered the costs of economic failure in less developed countries. This has removed incentives for wide-ranging economic reform. Further, there is virtually no relationship between the amount of foreign aid received and a country's economic success.[1] Countries that have followed free market policies have had the best record of economic growth. They have provided the best opportunity for the citizens to raise their living standards through their own productive efforts.

In addition, while handing out foreign aid, wealthier countries, including the U.S., follow protectionist trade policies. The damage done to less developed countries by trade barriers more than offsets all the foreign aid given by all countries of the developed world combined. Offering less developed countries the opportunity to sell their products is a far more effective way to promote economic growth than through cash handouts.

Economic Freedom Index. SEED II in certain ways is an advance over past foreign aid bills. It states explicitly that a principal objective of aid is "to promote the development of a free market economic system . . . ." It goes on to list, in an index of economic freedom, the elements that would characterize a market system. These include establishing private property rights, dismantling wage and price controls, simplifying business regulations, removing trade and investment barriers, establishing the right to private banking and stock exchanges, and a tax policy that provides incentives for economic activity and investment. In all of these cases reforms must come from the countries themselves. At best, foreign aid might defray certain costs, for example, of translating the commercial code of a developed country into the local language or to hire experts to help privatize state enterprises or to establish employee stock ownership programs.

Much of SEED II funding goes to technical assistance and cultural, scientific, and educational exchanges which are designed to promote the values and institutions of free market democracy. In some cases these forms of aid might be helpful. For example, East European countries desperately need manpower training in business, accounting, and economics. A provision of the bill provides grants for schools or universities in Eastern Europe. Such schools might contract out to American educational institutions to provide instruction in these areas. The bill also seeks to cement democracy in Eastern Europe through democratic institution building programs, such as civic education exchanges, strengthening institutions of free broadcasting, and institutionalizing civilian control of security forces.

WHY THE SEED II BILL FALLS SHORT

To be sure, the bill's emphasis on market-oriented reforms and private sector development is a welcome change from past foreign aid bills that consisted largely of government-to-government grants and loans. Yet, in its present form, SEED II will not effectively promote the kind of economic development its authors would like. However well-intentioned the SEED II bill may be, it still contains numerous flaws. These include:

Problem No. 1: The bill contains vague language which fails to explicitly extend the definition of Eastern Europe to include the member republics of the Soviet Union and fails to exclude fully the Soviet central government from receiving aid. Section 3 of the SEED II bill states that "a European country shall be regarded as an eligible East European country if the President determines that the use of such authority would assist the emergence of transition of that country from communist rule through the development or strengthening of democratic institutions and the practices of a free-market economy." While Title XII in the bill prohibits loans and grants to the U.S.S.R., Moscow still would be eligible for all other forms of aid, such as technical, health, housing and humanitarian assistance, if the President so decides.

There are a number of problems with direct aid to the central government of the U.S.S.R. First, leading proponents of the free market and democracy within the Soviet Union have asked America not to give any form of aid to Moscow. Latvian Prime Minister Ivars Godmanis told The Heritage Foundation on July 25, 1990, that any aid to Moscow would simply go down "a bottomless pit." Criticizing Western assistance to Soviet Leader Mikhail Gorbachev, Leningrad Mayor Alexander Sobchak told

---

[1] Edward L. Hudgins, "The Woods Report: Foreign Aid and Economic Growth," Heritage Foundation *Backgrounder* No. 708, May 18, 1990.

the New York Times on July 30 that Soviet bureaucrats "are masters at wasting billions on grandiose plans to build communism." Boris Yeltsin, President of the Russian Republic, has said repeatedly that any foreign assistance should be given directly to the member republics, not to Moscow.

Overextended Kremlin. Second, America has no interest in perpetuating either the inequities and inefficiencies of the Soviet economic system, or the imperial nature of the Soviet state. When the U.S.S.R. or its predecessor, the Russian Empire, have been strong, they have attempted to dominate and absorb their neighbors. The reduced Soviet threat to the West is due largely to Moscow's economic inability to sustain its overextended military empire. The Kremlin, for example, still gives billions of dollars to Cuba and other client states. Any assistance to shore up that economy, particularly as Soviet miliary production continues to grow, runs the risk of reviving that threat.

Many of the republics of the U.S.S.R. are striving to gain complete independence from the Soviet Empire. America should support these forces of freedom and democracy, not the central government. Soviet reforms should be assisted only to the extent that they contribute to the peaceful decolonization of the Soviet empire.

Lastly, any form of aid to the central government in Moscow makes little sense in view of Gorbachev's decision to create a free market in the Soviet Union. The current "500 day plan," originally proposed by Russian Republic President Yeltsin, endorsed by Gorbachev, and overwhelmingly approved by Russia's Parliament on September 11, 1990, gives economic power to the republics. Control of the economy will be in the hands of the individual republics, not in those of the central government. As a result, 23 Soviet central ministries controlling such policies as government regulation of industry, and prices would be abolished. Gorbachev could be reduced to little more than a figurehead. According to Yeltsin, "the role of the U.S.S.R. President will be comparable to that of the Queen of Great Britain."

If any technical assistance to create a free market economy is given to the Soviet Union, it shoud go to the republics, not to Gorbachev.

Problem No. 2: Seed II authorizes more spending than East Europeans can absorb. The SEED II bill provides $535 million in aid to Eastern Europe, plus $50 million for increased funding for U.S. embassies, consulates, and trade centers and diplomatic personnel. This is well above the $300 million requested by the Bush Administration. Yet East European countries cannot absorb such massive amounts of aid at this time.

The SEED II bill provides $225 million in loans, grants, and stabilization assistance. Much of this could go to direct investments. Yet funds or other forms of assistance to encourage private investment make little difference in an economy that has not yet shed its socialist institutions. In Hungary, for example, the East European country that has gone the farthest in enacting free market reforms, the economy is unable to absorb over $600 million in private investment funds—offered by such private consortia as the Austro-Hungary Fund, First Hungary Fund, and the Hungarian Investment Co. Businessmen and investors, both domestic and foreign, find the lack of clear property rights, the slow pace of privatization, and the small capital markets and dearth of private banking, among other things, make economic activity difficult. Other countries less economically advanced than Hungary will be even less able to use foreign aid productively. An example of just such a failure of foreign aid is seen in the Philippines. Western countries have authorized $4 billion in assistance and promised another $6 billion. Most of this money is unspent because of the lack of fundamental economic reform.

More imporant than foreign capital to Eastern Europe is to introduce reforms that make the economic climate favorable to private enterprise. Such reforms would include easy repatriation of profits, creating a convertible currency, lowering taxes, securing private property rights, and reducing inflation. If these things are done, private foreign investment will come and local entrepreneurs will begin generating capital.

Problem No. 3: The bill authorizes American participation in the anti-free market European Bank for Reconstruction and Development (EBRD). The SEED II bill would authorize $1.67 billion to the newly formed EBRD. The first year contribution to the bank would be $70 million. Conceived by the French soon after the political revolutions in Eastern Europe, the EBRD will be controlled primarily by West European governments. The members of the European Community together have 51 percent of the votes in the Bank; the U.S., 20 percent. It will have at its disposal $25 billion in capital for aid to Eastern Europe.

If the past record of West European foreign aid policies is any indication, the U.S. can expect the EBRD to hinder rather than promote the development of free market policies in Eastern Europe. Western Europe, for example, has been the major donor of aid to Africa over the last two decades, yet this region has stagnated economically.[2] Numerous African countries such as Tanzania, Uganda and Zaire have become dependent of foreign aid, which has allowed them to practice disastrous statist economic policies. The West Europeans, moreover, are likely to use part of the aid to promote their own business and investment interests in Eastern Europe, providing unfair, government-subsidized competition for American enterprises.

The President of the new Bank, Jacques Attali of France, is a socialist who has opposed free market reforms. He has moved to centralize the lending authority of the EBRD. Among his budget proposals is one that projects the average payroll cost for each of the 450 employees of the bank to be over $100,000. The mixed socialist-capitalist countries of Western Europe will not make for good bank partners in promoting free markets. The U.S. would have very little control over how American taxpayer dollars are spent in a bank controlled by the West Europeans. If any American aid is given to Eastern Europe, it should go directly from the donor government to the private sector.

Problem No. 4: SEED II creates numberous, unnecessary U.S. government programs, commissions, task forces, and a new congressional committee to assist governments in Eastern Europe. The bill creates a host of new U.S. federal government programs. Examples: the SEED Business Education Coordinating Board, the Commission on East European Small Business Development, International Executive Training Corps, Practical Business Training Program, Worker Training Assistance, and the Books-for-Eastern Europe.

Programs such as these, while of merit, should be and already are being undertaken by the private sector. The Institute for Humane Studies (IHS) at George Mason University, for example, a non-profit, free market educational organization, is translating economics textbooks and free market literature into East European languages and distributing them to students in Eastern Europe. IHS is also helping set up free market think tanks throughout Eastern Europe and providing scholarships for East European students to attend American Universities. Americans have assisted in establishing a new International Management Institute in Hungary. The Washington-D.C. based Free Congress Foundation, is training East Europeans in the rudiments of democratic governing. The American Bar Association is training Soviet lawyers in the U.S. The American Bankers Association is exploring ways to help East Europeans establish banking institutions, procedures and training.

Universities all over the U.S., such as Rutgers University and Duke University, are setting up programs to assist the East Europeans in their transition to democracy and the free market. There is no need to waste taxpayer's money by creating new government programs that duplicate private sector efforts.

Crowding Out Private Sector. Mandated by the bill is the establishment of an East European Business Information Center run by a Director of American Business who would hold the rank of ambassador. The U.S. government would also create and run American business centers in Eastern Europe that would be funded by fees charged to users of the center. While these services for American business are highly desirable, they need not be provided by the United States government. If there is a need for American Business centers in Eastern Europe and a clearinghouse for information on business opportunities in Eastern Europe, then surely enterprising American, or even East European businessmen, will provide such services. The U.S. Chamber of Commerce has already opened up offices in Hungary and Poland. Further, without the weight of government red tape and bureaucracy, the private sector undoubtedly will do a far better job than the government of providing these services. By getting involved in operating business centers, the government crowds out the private sector in what could prove to be a lucrative field for entrepreneurs.

SEED II also establishes a new congressional committee, termed the Joint Task Force on East European Parliamentary Development. It is charged with providing material and advisory support for newly elected parliaments in Eastern Europe and investigating creating a 35-nation interparliamentary organization. The creation of an entirely new congressional committee with a $12 million budget to provide support for parliaments in Eastern Europe is unnecessary. By giving jurisdiction in promoting parliamentary democracy in Eastern Europe to an existing committee or subcommittee, Congress could avoid some of the red tape and duplication of effort that often follows from the creation of a new committee.

SEED II would add unnecessarily to other parts of the U.S. government as well. Warns Melanie S. Tammen, Director of the Global

[2] For a more in depth analysis of the problems of the European Bank for Reconstruction and Development see Edward Hudgins, "The Eastern Europe Development Bank: Turning the East Bloc into Latin American," Heritage Foundation *Backgrounder Update*, No. 132, April 4, 1990.

Economic Liberty Project at the Cato Institute, "a senior Agency for International Development (AID) official estimates that AID alone would have to expand its staff by several hundred to carry out the programs mandated in the Senate Foreign Relations Committee's SEED II bill." [3]

RECOMMENDATIONS

While the SEED II bill is not without merit, its current flaws offset what little effectiveness it might have in promoting economic freedom and democracy in Eastern Europe. To remedy these flaws, U.S. policy makers need to take a long look at SEED II. Among the amendments they should consider are:

(1) Extending the definition of Eastern Europe to include explicitly eligible republics and rule out explicitly any form of aid or assistance to the Soviet central government. According to the "500 day plan" already adopted by the Supreme Soviet and the Russian Parliament, it will be governments of the individual republics, not Moscow, that will determine the future economic fate of the Soviet Union. Therefore, it will be the reformers in the republics who will require technical training and assistance. The Kremlin's bureaucrats should start looking for new jobs, not for aid from the U.S.

(2) Cutting the appropriations level of the bill to the $300 million requested by the Bush Administration. The U.S. is in the midst of a severe budget crisis. The federal government can not afford to waste any money on foreign aid that will not be used productively by the countries that receive it. If the $535 million requested in SEED II passes the Appropriations committee, this is precisely what will happen. Until major structural changes take place, the East European countries will not be able productively to absorb massive amounts of foreign aid.

(3) Removing language which authorizes American participation in the European Bank for Reconstruction and Development (EBRD). Despite the Bush Administration's May 29, 1990, pledge for U.S. participation in the EBRD, authorizing such funds would be a mistake. Modeled after the World Bank, and controlled by the social democracies in Western Europe, the bank likely will impose on Eastern Europe the same faulty policies that the World Bank has inflicted on Latin America or that the Western Europeans have supported in Africa. Further, the U.S. Congress would have little control over how American taxpayers' money is spent in such a bank.

(4) Eliminating provisions which mandate the creation of unnecessary U.S. government commissions, programs, and congressional committees. Many of the numerous programs and commissions are unnecessary because they duplicate efforts of the private sector or other federal agencies.

(5) Authorizing the Bush Administration to negotiate free trade areas with any East European country that succeeds in transforming itself into a free market system. Trade barriers in developed countries rob poor countries of opportunities to profit by the production and sale of goods. Such barriers also call into question the sincerity of America's call for free market reforms in Eastern Europe. A free trade area requires both parties to remove all tariff and most non-tariff barriers. While in the short run, the East European nations are unlikely to produce many goods that will sell in the American market, the opportunity to do so would stimulate investment and production for the future. America also would benefit from free trade agreements with East European countries: U.S. firms would have unrestricted access to East European markets, and American consumers would pay lower prices for imported goods.

CONCLUSION

While not unsalvageable, the Senate version of the SEED II legislation has numerous flaws which should be removed. U.S. and international foreign aid in the past has done little to help less developed countries and in many cases has done much to hinder reforms. The SEED II bill is an improvement over past foreign aid proposals. It ties assistance explicitly to the promotion of a free market and lists, in an index of economic freedom, the specific goals to be achieved.

Making Effective Aid Policy. The challenge for American policy makers is to avoid the foreign aid failures of the past and to avoid equating the amount of money given to a country with actually assisting the country in its struggle to reform. Lawmakers must take care to see that the intent of SEED II, the promotion of free markets and democracy, is translated into effective policy. Rushing to spend money is not the way. The careful use of aid will better insure that Eastern Europe will join the ranks of the developed world and need no aid in the near future.

WILLIAM D. EGGERS,
Research Associate.

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, July 19, 1990.

Hon. ROBERT DOLE,
Republican Leader, U.S. Senate, Washington, DC.

DEAR BOB: Earlier today, at a business session at which no Republican Senators were present, the Senate Foreign Relations Committee ordered reported original legislation to provide assistance to East Europe and the Soviet Union.

The legislation considered and reported out was the latest of at least a dozen versions of this bill provided to committee members. In the past week, we have received at least four versions, the last of which consists of 114 pages single-spaced, which some of us were not provided until this morning.

The various versions of this legislation have presented a wide variation in funding levels, programs, and countries eligible to receive funds. The Committee has never been provided with documentation of the changes in each version, requiring each of us to perform a laborious line-by-line search to determine the changes—a task none of us could perform on a document provided us less than 24 hours prior to mark-up.

We want to work to produce legislation which will bring credit to our Committee. However, the procedure afforded us by the majority preclude us from fulfilling our obligation to the Senate to report legislation which has been provided proper review and consideration.

As such, we respectfully request that you object to any motion to proceed to the original legislation reported by the Senate Foreign Relations Committee earlier today to provide assistance to East Europe and the Soviet Union.

Sincerely,

Dick Lugar, Mitch McConnell, Jesse Helms, Nancy Landon Kassebaum, Rudy Boschwitz, Gordon Humphrey, Connie Mack, Larry Pressler, Frank H. Murkowski.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, no doubt this is fruitless but I am going to attempt it just one more time. I ask unanimous consent to move to S. 2944.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. Mr. President, reserving the right to object, and I will object, but before I do that, I want to make perfectly clear because I have objected four different times this evening to various measures coming up, in this specific instance I do not have a hold on this, but I am objecting for several Senators who do have holds.

Further reserving the right to object, I have listened to the speeches just given on this bill and maybe the people giving the speeches have the perfect right to be as incensed as they are that their legislation cannot come up the same way the previous speeches on the education legislation. But let me suggest to everybody who is incensed that these things cannot come up now. It is only by the grace of God or else incompetence of Congress that we are here just 10 days before elections, as long as a Congress has been in session since World War II in an election year. Consequently, whatever people are irate about not being able to bring up tonight, under normal circumstances of doing business, if Congress had been on its toes getting its job done in a timely fashion, we would not even be here tonight under any circumstances.

Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Delaware.

Mr. BIDEN. I appreciate the comment by the Senator from Iowa. I point out that this legislation was signed off on by almost everyone except one person I know, possibly more—not many.

And we were never given an opportunity to debate it and discuss it because that particular Senator would not let the ball be put into play. With that, I understand the Senator's position of having to object for other people. Nonetheless, it is frustrating.

I yield the floor.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, it is now 10 minutes of 10 and a lot of people are just starting to make speeches. I wonder if we can find out the schedule

[3] Melanie S. Tammen, "Aiding Eastern Europe: The Leveraged Harm of Leveraged Aid," Cato Policy Analysis, No. 139, September 10, 1990, p. 7.

for the balance of the day. The majority leader is not on the floor but it is our hope that we can advise our colleagues there will be no more votes.

There are still a couple of matters that could be contentious, but I would hope that 10 minutes of 10 on a Saturday night we will not have any efforts to bring up bills by asking unanimous consent, because they will be objected to unless they are cleared on this side. There have been two efforts on the last bill. If we cannot have some understanding, we will have to put in a quorum call and let it run.

So I hope that if anybody wants to bring up anything by asking unanimous consent, it is customary that we be notified. If we can clear it, we will. In fact, I support a couple of the efforts being made. But every Member has a right to object. It is my hope and, I think, the hope of the majority leader that we can conclude our business in the next 45 minutes and maybe adjourn sine die.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the quorum call be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I would like to ask the minority leader a question, if I might, Mr. President.

One of the items on the executive calendar is the treaty between the United States and Poland concerning business and economic relations. That may seem like not a large item in the total picture, but I think for the people in Poland it is an important item and for the Polish Government.

I know that the distinguished minority leader was in Poland, I think this year, I do not recall exactly when. I know the minority leader and his very able wife, the Secretary of Labor, were there.

I just wondered. I know he indicated the problem about moving things and so forth. This is an item that was reported out of the Foreign Relations Committee. It is an important contribution toward the economic effort that the Polish Government is undertaking. That is an effort, of course, which we all strongly support.

I wondered whether we might be able to clear that item.

Mr. DOLE. Mr. President, I certainly have no objection. I know that there is a hold on it. We will try to do our best. We think it is important. It should be cleared. My view is the people with last-minute holds, if they have a problem, they ought to do what we are doing—discussing their objections.

I am not one to put holds on legislation. I know sometimes it probably should be held. I do not quarrel with those who do it from time to time, but there are a few important matters.

I am just checking the calendar where there are holds. I hope that Members on each side might take another look and where they can, to cooperate with us and see if we cannot pass this particular treaty.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, it is my understanding—may we have order in the Senate, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

THE SAVINGS AND LOAN BAILOUT

Mr. METZENBAUM. Mr. President, it is my understanding that shortly the majority leader, in behalf of the Banking Committee, will come to the floor with a proposal to appropriate $15 billion, as I understand it of the cost of the savings and loan bailout. I think the House bill provided for $10 billion.

Last night or the night before, we appropriated $22 billion for the cost of the 1988 deals and buying back some of those deals.

Mr. President, I rise to indicate my concern on this matter, that in none of these instances has the Secretary of the Treasury come to the Congress of the United States to discuss the need for these funds, to discuss how the problem arose, and to talk about why people of this country are being called upon literally to throw billions upon billions upon billions of dollars to bail out the savings and loan fiasco.

It came about because under the Reagan administration, during a time in which Nick Brady, the present Secretary of the Treasury, was the Secretary of the Treasury. They literally said to the savings and loan industry, do anything you want. We do not want much regulation. We will let you do what you want. We are going to deregulate the industry, and deregulate it they did.

All over the country the savings and loan executives used the money and did all sorts of things like buying art, buying china, buying yachts, buying everything else under the Sun and nothing was done by the regulators who had the responsibility to do something about it.

But we are called upon to spend billions of dollars. We cut back a few hundred million dollars that we need for some worthy program for children, for the aged, for the homeless, for education. We fight for a few dollars. But we throw billions of dollars to bail out the savings and loan fiasco. The Secretary of the Treasury is not willing to come up to the Congress and discuss the matter.

Let us face it. Part of the problem falls squarely on the shoulders of the Secretary of the Treasury, because it was the Secretary of the Treasury who, in 1988, was called by this Senator and by the chairman of the Banking Committee, and asked to put a halt to the 1988 savings and loan deals.

We reached him somewhere down in the Caribbean and we spoke with him there. We said, Mr. Brady, put a halt to those deals. There is no reason to permit them to continue on. You are throwing away billions of dollars. No, he said, he is not willing to do that.

So by lack of regulation during the Reagan-Bush years, and then by permitting the 1988 deals to go forward, the American people are being called upon to extend something like $500 billion, $600 billion to bail out the savings and loan industry.

We think of these dollars as being something totally different than the few hundred million dollars that we need for some worthy program in this country.

Tonight, without any debate, and with no disrespect to those who are offering the amendments, but with no debates, we are going to appropriate $15 billion. The administration is asking for $57 billion. The House, as I understand it, cut that back to $10 billion. But we are going to appropriate $15 billion added to the $22 billion that we appropriated just a day or two ago.

What a shameful reality this is; that all of these billions of dollars are being thrown at an industry. Why? Because the Reagan administration and the Bush administration said we do not need to regulate. Let business do what it wants to do. Business knows what it wants to do. Business knows how to do it. Business can regulate itself. And the American people are called upon to pay the price.

Mr. President, there is not anything we can do about it at this late date. The obligations are there. The Government is on the hook. But this Senator feels that somehow the American people have been had.

I know that it need not have been. I know that those who were in control were not really in control. Instead, they let down the bars and they let the high spenders run off with hundreds of millions and billions of dollars and the American people are going to wind up holding the bag.

Tonight it will be $15 billion. A couple of nights ago it was $22 billion. As we are told, these $15 billion maybe will carry the Government through to

do the bailouts up until maybe February 15.

I say it is a shame. I think it is one of those situations that we in Government have a right to be embarrassed about. But we in the Congress perhaps share some of the blame. But I believe that the real responsibility belongs to the Reagan and Bush administrations. I yield the floor.

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, I agree with the distinguished Senator from Ohio, on everything he said about this being a disaster, a disgrace, a horrible thing, and an incredible waste of the taxpayers' money. That is all correct. The Senator is entitled to his opinions, but not entitled to his own facts.

I can remember standing on this floor October 18, 1986 at 1 o'clock in the morning, begging this Senate to pass a $15 billion FSLIC recap and saying if we do not pass that, the losses will grow larger. This was one of the series of speeches begging, pleading, shouting, yelling, screaming, quoting GAO statistics about the disaster. I said the problem would become worse if we did not do something, and we would need taxpayer bailout, and we would merge FLSIC and the FDIC. October 18, 1986.

The Senate, fortunately, passed that bill on the last night of the session and every dime of that $15 billion would have been paid for by the S&L industry. Not one dollar of taxpayers' money.

The House of Representatives refused that evening to pass that. Senator RIEGLE, the chairman of the Banking Committee sat back here with me in the middle of the anteroom back here at 1 o'clock that morning. I had come back from kidney surgery, donating a kidney to my daughter, so I did not feel very good. We were arguing among the Senate Banking Committee members about whether we would do something about this, and Senator RIEGLE said to them, "We are killing JAKE. Let it go."

I guess I looked a little tired. So with that comment everybody said, let it go, and we passed it.

There are a lot of reasons for this catastrophe, and that was not the cause of it that night when the House would not accept it. Not only would they not accept that, the emergency provisions of Garn-St Germain expired September 30, 1986. The House refused to accept that extension, so we left session in 1986 not only passing new authority and giving new money to put these brain-dead institutions out of existence; we did not even extend the existing authority.

I will give you an example. People can say now $15 billion was not sufficient; it was not, but I will guarantee you that $15 billion could have cut this program by more than three-quarters. That is easy to say.

I can remember one institution in the fall of 1986 that could have been closed for some $80 million. In the spring of 1989, it was closed at a cost of over $800 million. So because FSLIC was not given the tools by the Congress of the United States to deal with this problem, they had no choice. Let them stay open. It is known as "forbearance." I hate that word. I listended to that with the House of Representatives over and over again. Forbearance. We forbear because Congress did not act. Congress was not the cause of the problem, but they failed to stop it.

A am afraid what I am hearing tonight is the same thing over again, 4 years in October. The Senator from Ohio is correct in describing the problem. But every dime that is being appropriated, what is it for? To take care of depositors. No stockholders are being bailed out. No officers, no directors, no S&L's. It is depositors—people at $2,000 and $5,000 and $10,000, up to $100,000, and some over the bigger institutions.

But nevertheless I get a little bit tired of the implication that somehow we are bailing out the dishonesty and the fraud and abuse. I made a speech about that in 1986, too. I hear a lot of them now.

There is a record of some Senators talking about the fraud and the stupidity at that time. It is in the CONGRESSIONAL RECORD.

What are we faced with now? We want to leave session again and say we should only give them $10 billion.

The Senate Banking Committee acted very responsibly under the leadership of Chairman RIEGLE. We discussed this issue over and over again. And we had Secretary Brady up here many times, over and over again. We had Mr. Seidman over and over again. And who was pressing them for a figure? The chairman, the Senator from Florida [Mr. GRAHAM], the Senator from Colorado [Mr. WIRTH], and so we decided when they gave us a figure, that we could give them the money to operate, to cut the costs down so they did not have to delay these closings by funding them for the fiscal year, just as we are funding all of the other agencies tonight to take care of their budgetary problems.

But the House of Representatives only passed $10 billion and then I read these glorious articles about how the Senate Banking Committee spent 8 minutes debating this issue before we passed $57 billion. That is a bunch of hogwash. That is like saying you watch the last half-yard march for the touchdown but forget the 99-yard drive.

Yes, we did that in markup, no doubt about it. We spent 8 minutes on it, but we got figures from the administration and got explanations about what they needed for it over and over again in previous hearings. I suggest if somebody might have looked at that summer-long record, they might have looked at what the Senator from Florida said in that committee and the Senator from Michigan and the Senator from Colorado and the Senator from Utah.

To those who are not on that committee I suggest they either start coming to the committee and listen or read the RECORD about what the committee has tried to do. As a result of all the administration's testimony and insisting with their letters and having them come up and testify, yes, we appropriated or authorized $57 billion so the RTC could do the very work that the Senator from Ohio wants them to do, to revisit the 1988 deals, to see if we can save $2 billion to $4 billion of the taxpayers' money and not lose any more. And yet what have we done? We are going to give them $10 billion. I was asked by the press earlier today, is not $10 billion enough to last until February or March? Of course, it can. It could last a whole year. All you have to do is leave the institutions open and let them grow like we did in 1986.

I have already put a statement in the RECORD earlier on this and did not intend to speak. But I will not be a part of once again repeating what we did 4 years ago and not giving the regulatory agencies the authority and the money to do exactly what we say we want them to do, close these brain-dead institutions down, stop the bleeding. If we do not give them the money to do that—at least the $15 billion we are talking about, so when we are late back here in late January, we can reassess the situation—we are just as responsible as the Congress was in 1986.

I am not married to the $57 billion, but good heavens, Mr. Seidman says it is going to cost him maybe a couple hundred million dollars a month if we do not give him the money to close them down. We cannot have it both ways. We cannot give speeches about how bad this problem is—and this is the original, here is the original speech giver about this problem—and in 1986 and 1987 nobody listened. This House did not listen. The other House did listen. The press did not listen. And now a lot of my speeches are being reprinted and regiven. That is fine. I am glad somebody finally discovered there is a huge problem out there.

But do not posture against the larger amount of money at least while we are going to be out of session, if we were going to be here, $10 billion would be enough. Let us keep their feet and the nose to the grindstone. Let us watch them carefully. Let us check on how they spend it. Let us call

them up here every other week for oversight hearings. That is all well and good. But this Senator is not going to go out of session with only $10 billion and then find out that some institutiions we kept open and raised the cost of that RTC bailout just as we did in 1986.

I know the Senator from Ohio wants to solve this problem just as much as I do. But let us not be so tight with them and then when we come back give speeches about how they did not do their job while we were gone.

I am certainly not out here saying we should do what the Senate Banking Committee did. I think that is the responsible thing to do, passed unanimously by the whole committee. But $10 billion is enough if we do not want them to do their job as rapidly as we tell them to, but it is not sufficient. Even $11½ billion is not. That is the minimum they asked for. We can haul them up here again and I invite the Senator from Ohio to come to the hearings of the Senate Banking Committee as he has always been welcome. I am sure the chairman will extend the same invitation up here. Mr. Brady has testified several times. So has Mr. Seidman. I do not know how many times. I get a little tired of seeing both of them, frankly.

That is all I am pleading for. Let us give them enough to do the job they need to do.

Mr. President, I ask unanimous consent to print in the RECORD letters, with their accompanying documents, with regard to this matter.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

RESOLUTION TRUST CORPORATION,
Washington, DC, October 25, 1990.

Hon. JAKE GARN,
Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR GARN: The Resolution Trust Corporation is in urgent need of additional funding. Without additional funds, the resolution process will grind to a virtual halt. Additional funding will reduce the costs to the taxpayers of resolving insolvent savings and loans and keep the process running smoothly.

The estimated cost of delaying the resolution process is $250 to $300 million for a one quarter delay and $850 to $950 million for a two quarter delay. These estimates do not include other factors that could substantially add to the cost of delay. These factors include asset deterioration, deterioration of franchise value, and the effect that competition with insolvent institutions has on the cost of funds for marginally solvent institutions, possibly causing additional failures.

We believe that $10 billion alone, to last until Congress returns in 1991, will force the RTC to slow down resolutions and thus will increase costs to the taxpayers.

We urge you to provide RTC funding before the adjournment of the 101st Congress so that we can continue to operate.

With best wishes.

Sincerely,

L. WILLIAM SEIDMAN,
Chairman.

THE SECRETARY OF THE TREASURY,
Washington, October 10, 1990.

Hon. CHALMERS P. WYLIE, Jr.,
Ranking Republican Member, Committee on Banking, Finance and Urban Affairs, House of Representatives, Washington, DC.

DEAR CHALMERS: The Resolution Trust Corporation (RTC) has submitted a proposed operating plan projecting that RTC case resolutions will virtually cease within the next two months unless additional funds are provided and RTC borrowing authority is clarified. Accordingly, we repeat our request that Congress address both of these constraints before it adjourns in order to avoid an interruption of RTC operations. This request is fully consistent with the Budget Resolution, which assumes sufficient funding for RTC resolutions and which recognizes that RTC spending is a mandatory federal obligation. The request is also consistent with earlier requests made since last May in testimony before Committees of both Houses. As the end of the session draws near, the public interest requires that we proceed in a bipartisan manner to assure that the RTC can continue with its important work.

ADDITIONAL FUNDING

The RTC projects that it will use nearly all—about $49 billion—of the $50 billion in loss funds provided by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) by the end of this calendar year (this assumes resolution of the borrowing cap issue, discussed below). As we have indicated in recent testimony and correspondence, there are several acceptable approaches to providing additional funds.

While one appropriate method would be a permanent, indefinite appropriation—which recognizes the mandatory character of RTC spending—we understand that Congress may be more inclined to provide interim funding for some or all of fiscal year 1991. As we have stated previously, we would support such an interim approach. Forty billion dollars in appropriations beyond currently authorized spending should be sufficient to fund the losses in RTC case resolutions through the end of fiscal year 1991, and is consistent with RTC Chairman Seidman's recent testimony.

THE BORROWING CAP

The RTC's second constraint is the limitation on RTC borrowing for working capital (the "borrowing cap"). The current RTC interpretation of the cap requires the RTC to set aside a reserve equal to 15 percent of outstanding borrowings, even though the borrowings must be fully backed with RTC assets marked to fair market value. This reserve cannot be spent to resolve losses in failed thrifts. Consequently, the RTC would be forced to cease operations in the next two months, in the absence of Congressional action, even though it will still have over $10 billion of the $50 billion in loss funds provided in FIRREA.

This problem must be addressed, or the borrowing cap will continue to prematurely halt RTC operations before additional loss funds authorized by Congress are spent. There are two potential solutions.

First, Congress could provide additional funds to be used as the 15 percent reserve. These extra funds could not be spent, and would therefore constitute a kind of "sterile reserve". As a result, for the full fiscal year 1991, this option would require an additional $17 billion appropriation for the sterile reserve above and beyond the $40 billion appropriation necessary to pay for RTC losses.

Second, Congress could eliminate the 15 percent reserve, while still including strict safeguards to ensure that all RTC borrowing is backed by RTC assets. We believe this is the better way to proceed, because the effect on RTC spending would be exactly the same as the first option, but would not require a substantial additional appropriation that will not be spent.

Finally, as you know, the General Accounting Office has issued a report concluding that the literal language of the borrowing cap allows the RTC to spend the reserve to resolve losses in failed thrifts, notwithstanding the current RTC interpretation. This literal interpretation would also require no additional appropriations beyond those required to pay for actual losses.

CONCLUSION

In sum, to prevent a termination of RTC case resolutions, Congress must provide additional RTC funds and address the borrowing cap issue before it adjourns.

Sincerely,

NICHOLAS F. BRADY.

THE SECRETARY OF THE TREASURY,
Washington, October 18, 1990.

Hon. HENRY B. GONZALEZ,
Chairman, Committee on Banking, Finance and Urban Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I thought it might be useful to review our position with regard to RTC funding. As you know, there has been frequent and fulsome testimony on the subject, as follows:

Secretary Brady, Secretary Kemp, and Chairman Greenspan—Senate Banking, May 23;—House Banking, June 14.

Chairman Seidman—Senate Appropriations, May 23; House Banking, July 30; House Banking, September 14; House Ways & Means, September 19; Senate Banking, September 20.

Under Secretary Glauber—House Banking, July 30; House Ways & Means, July 31.

Our request for RTC funding has been the subject of six letters during the last two months from me to various Congressional Committee chairmen, including four to your Committee. As you know, there have been numerous conferences between our staffs, as well, and we stand ready to provide further information your members might request.

As I mentioned to you on the telephone Tuesday evening, our projections have not changed during the period covered by these testimonies, letters, and staff consultations.

As you know, the Senate Banking Committee has agreed to report a bill providing $40 billion to the RTC based on the information your Committee has already been provided.

I again respectfully urge the Committee to act to provide funds to the RTC before Congress adjourns.

Sincerely,

NICK BRADY.

THE SECRETARY OF THE TREASURY,
Washington, October 19, 1990.

Hon. Bruce F. Vento,
House of Representatives,
Washington, DC.

DEAR MR. VENTO: Your letter of October 18 indicates that there is confusion on the matter of providing additional funds for the Resolution Trust Corporation (RTC). In this regard, the following may be useful.

Since May of this year, the Administration, the Oversight Board and the RTC itself have informed Congress on many occasions that additional funding for the RTC must be provided before adjournment in order to avoid a costly slowdown in RTC operations. The need for funding has been the subject of nine separate hearings and six letters from me to various Committee Chairmen. (I have enclosed a copy of Under Secretary Glauber's testimony of July 30, which sets forth clearly the need for new funding before Congress adjourns.) In addition, there have been innumerable contacts at the staff level.

Adjournment is now imminent. If Congress fails to provide funding before adjourning for the year, the process of resolving failed savings and loan institutions would virtually cease, greatly increasing the ultimate cost to the taxpayer. The RTC estimates the cost of delay to be roughly in the range of $250 million to $300 million for every quarter that the RTC is forced to halt operations.

Congressional inaction on RTC funding has already begun to affect the resolution process. The RTC had originally identified over 90 new cases for resolution during the current quarter, including 17 "major resolutions." I am enclosing a copy of a letter from the RTC which indicates that these major transactions are unlikely to be completed by the end of the year because of the delay in funding availability.

Contrary to your letter, the Administration has been specific in its funding requests. In fact, the Senate Banking Committee last week approved loss funds of $40 billion for the next fiscal year, based on these requests.

As indicated in my letter of October 10 to Chairman Gonzalez, the need for funds has not changed. There is no new information to report.

We are respectful of Congress' general oversight duties, and I would point out that, since the enactment of FIRREA in August 1989, representatives of the RTC, the Oversight Board, and the Treasury Department have testified over 40 times on matters involving the RTC. Within this spirit of cooperation, it is not clear that another hearing, hastily pulled together in the last week of the session, would change the situation before us.

With regard to the specific questions you have asked, I have enclosed responses. I would note that many of the specific questions you raised have been answered in earlier testimony.

We recognize that RTC funding is difficult for Congress to face, particularly at this time. The Administration has consistently met its responsibilities to place the funding issue squarely before Congress in a timely manner, and to offer specific solutions. I urge Congress to act before it adjourns to provide funds to the RTC and spare the taxpayer an even greater cost burden to clean up the S&L problem.

Sincerely,

NICHOLAS F. BRADY.

Enclosures.

1. The type and amount of seller financing contemplated and how much will it add to the cost of the bailout.

The Oversight Board strongly prefers that RTC assets be sold for cash. Under the Strategic Plan, however, the RTC is authorized to provide seller financing when necessary to facilitate real estate transactions in distressed areas when other sources of financing are not available.

As a general rule, any RTC seller financing must maximize the net present value return to the RTC taking into consideration the purchaser price of the property, the value of the financing, the costs of holding the asset, and the enhanced liquidity resulting from the conversion of a real property asset into a performing financial asset. Given these criteria, seller financing can be viewed as a means to enhance value, and thus help reduce the cost of the resolution process.

The Oversight Board has placed restrictions on both the amount of seller financing available and on the terms of such financing. Current policy places a limit of $1 billion on seller financing for real estate, and $2 billion for bulk sales of certain liquid assets such as raw land and nonperforming commercial loans. The RTC made a presentation to the Oversight Board on October 11 regarding proposed changes to the existing seller financing policies. The Oversight Board is currently reviewing these proposals, and will take some action in the near future.

2. The amount of assets expected to be sold under a Puts agreement where the buyer has the right to return losing assets to the RTC.

The Oversight Board's policies explicitly allow the RTC to use put agreements as a means of expediting the case resolution process. Put agreements are used to provide acquirers with an adequate period of time to ascertain the facts relevant to the acquired institution's portfolio. The actual terms of these agreements limit the reasons for which an acquirer may return assets to the RTC.

Through September 21, 1990, the RTC had transferred approximately $22.5 billion of assets to acquirers subject to put options. Options were exercised on $6.5 billion of these assets and options expired unused on $3.8 billion of assets. This left just over $12 billion of assets still subject to put options. All of the put options on these remaining assets are due to expire no later than March 1991.

The Oversight Board does not currently have an estimate for the RTC's future use of put agreements. However, it is a certainty that without put agreements, acquirers would take fewer assets and the RTC's portfolio of receivership assets waiting for sale would increase.

3. The fair market value of assets estimated to be placed under receivership by quarter for the fiscal year 1991.

As of the end of fiscal year 1990, the estimated fair market value of RTC claims on receiverships totaled approximately $40 billion. Based on the operating plan submitted by the RTC to the Oversight Board covering the six months ending March 31, 1991, that amount is expected to increase to approximately $80 billion. The RTC has also stated publicly (including in testimony before Congress) that working capital obligations (a reasonable proxy for the fair market value of assets) may increase by as much as $60 billion by the end of fiscal year 1991. Thus, the fair market value of RTC claims on receiverships could increase to about $100 billion by the end of fiscal year 1991.

4. The details of open thrift assistance which RTC has indicated it plans to use even after this approach was so thoroughly discredited under Danny Wall's supervision.

To date, no RTC funds have been requested by the FDIC for an open thrift assistance program. Open thrift assistance is one option for assisting failing institutions that is available to the FDIC, under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). However, this type of assistance must be funded through the Savings Association Insurance Fund (SAIF). Until the SAIF has funds, the FDIC must ask the Oversight Board to fund such a program with RTC funds. The FDIC has indicated that it has no specific plans to do so at this time.

5. The current status of implementation of affordable housing provisions.

The Affordable Housing Disposition Program is well underway. The RTC sold 680 single-family affordable properties in September, a substantial increase over the 271 sold in August, and the 257 sold prior to August.

As of September 30, 1990, the RTC has listed 87 percent of the 5,867 eligible properties that it holds in receivership with clearinghouses. Nearly 25 percent (1,208) of the 4,893 single family properties listed with clearinghouses have been sold. Substantial interest has been expressed in eligible multifamily properties in the RTC's portfolio.

The average sales prices of a single family property is $49,000, about 95 percent of appraised value. The typical purchaser was a family with an annual income of $28,000, 86 percent of area median income. Sixty percent of purchasers used mortgage revenue bond programs in conjunction with FHA financing, 18 percent used FHA financing at market rates, 5 percent obtained conventional financing, and 17 used other financial sources.

The RTC anticipates that approximately 40 percent of its single family properties in conservatorships and receiverships will be difficult to sell because they are condominiums that do not meet FHA or FNMA/FHLMC underwriting criteria, need repairs, or are located in rural areas where financing is unavailable. The RTC recently presented the Oversight Board with two proposals for seller financing for affordable housing to promote the sales of these properties to low-income purchasers. These proposals are under consideration by the Board and are expected to be approved shortly.

6. When all aspects of the bailout asset disposition are expected to start moving at an adequate pace.

The RTC's Asset Sale Guidelines indicate that securities, mortgages and residential housing property are categories of assets that are expected to be sold within one to three years of the time they are acquired. However, uncompleted construction and raw real estate owned could take up to seven years to sell. As of July 31, 1990, all real estate, other than affordable housing, held in receivership totaled $5.6 billion, and sales through July totaled $688 million, exceeding the sales target for this type of real estate.

We believe that the pace of asset disposition will continue to accelerate if interest rates and real estate markets do not deteriorate significantly.

The Oversight Board considers the oversight of the sale of the RTC's acquired

assets one of its major concerns. The RTC had $42 billion in receivership assets to dispose of as of August 31, 1990, and this amount is growing as more institutions are resolved.

The main agenda item for the Oversight Board's October 11, 1990 Board meeting was the presentation by the Resoltution Trust Corporation (RTC) relating to asset disposition and seller financing. The Board's subsequent discussion of this issue, which was led by the Board's asset disposition committee, stressed the necessity of developing ways to accelerate the sale of both RTC's conservatorship and receivership assets.

7. The present status of the Accelerated Resolution Process which is inconsistent with the strategic plan approved by the Oversight Board.

The Oversight Board has approved on a pilot basis the Accelerated Resolution Process. There are nine Accelerated Resolution Program cases with $9 billion in asets in process and expected to be completed by December 31, 1990. These cases should use about $1.8 billion of RTC's loss funds. The RTC hopes to use this program to resolve 20 additional institutions with $24 billion in assets by March 31, 1990, at a cost of about $3.8 billion.

The Oversight Board will not authorize additional institutions to be resolved under this pilot program unless it has been proven to reduce the RTC's losses.

8. Whether the staffing level of the Inspector General's office is adequate to perform the essential watchdog role.

Current staffing levels at the RTC's Office of Inspector General ("OIG") have been sufficient to perform all critical tasks inherent in the start up phase of its operations. As more staff are added, the range of activities carried out by the RTC's Inspector General's Office ("OIG") will broaden. The OIG has successfully targeted key areas for review. Detailed studies of processes and controls within each of these areas are currently underway. As a result, substantial progress is being made toward identifying any potential vulnerabilities which may exist. In addition, the OIG has commenced specific audits. Staffing levels have not posed any significant constraints in connection with these activities, which are a prerequisite to carrying out the OIG's essential watchdog role.

The Oversight Board will continue to carefully monitor staffing levels and activities at the OIG. The Oversight Board's President, and Director of Oversight and Evaluation, conduct separate meetings each week with senior OIG and RTC officials to review and receive updates on staffing, investigate and audit activities. In addition, the Oversight Board has defined contingency plans for alleviating any unforeseen constraints in OIG activities which might result from staffing shortages.

9. The future plans of the Board and RTC to dispose of assets by open bidding auctions particularly in light of the recent setbacks.

All assets owned by the RTC are available for sale and all realistic offers (offers generally within the approved range of 90 to 95 percent of market value) are considered. While the Board has not issued any policies relating to auctions (as it views the determination as to whether or not to hold them as operational), the Board is aware that auctions, which are open to the public, can provide RTC with a cost-efficient, open, and competitive means of disposing of properties. Recently, RTC Chairman William Seidman indicated that auctions might be used in order to dispose more quickly of real estate properties with market values of under $100,000 and delinquent loans with book values of less than $50,000.

10. The ability of the RTC to respond to the growing number of public complaints regarding unresponsiveness to legitimate purchase offers.

All realistic offers to purchase RTC assets (offers generally within the approved range of 90 to 95 percent of market value) are considered by the RTC. However, due to the large number of transactions with which the RTC is involved, it is inevitable that there will be a certain number of complaints registered concerning the asset disposition process. We understand that the RTC has procedures which provide that all complaints are referred for a full investigation to a regional office, sales center, or the national office, depending on the nature of the issues raised. If there are any allegations of fraud or self dealing, RTC will refer the matter to its Inspector General.

11. The number of thrifts currently in OTS that are eligible to be transferred to RTC which have not yet been transferred.

Thrifts that the OTS has classified as "Group IV" thrifts are considered likely to be transferred to the RTC. As of October 12 there were approximately 200 Group IV thrifts with total assets of about $160 billion that had not yet been transferred to the RTC.

12. The total number of thrifts expected to fail and total costs estimate.

As stated in Secretary Brady's testimony before the House Banking Committee on June 14, 1990, the Administration's current estimate for the RTC's present value cost of resolving the institutions that will become its responsibility is $89 billion to $132 billion. These numbers depend upon the number of thrifts and the RTC's loss experience. They are based on the estimate that the RTC will have to resolve between about 700 and just over 1000 thrifts. The lower number reflects the number of thrifts the RTC has resolved and those in conservatorship, plus those thrifts assigned by the OTS to Group IV. For the higher number of thrifts, those thrifts assigned by the OTS to Group III were added; the OTS considers these thrifts troubled due to poor earnings and low capital, but is uncertain as to whether they will require RTC's attention. If the number of thrifts in Groups III and IV changes substantially, then these estimates will change as well.

RESOLUTION TRUST CORPORATION,
Washington, DC, October 18, 1990.

Mr. PETER MONROE,
President, Oversight Board, Washington, DC.

DEAR MR. MONROE: This is in response to your inquiry of October 18, 1990 regarding how many dollars of assets RTC would push through resolution process this quarter, if we had money this week and to confirm our prior statement, that little if any additional assets would likely be processed.

As reflected, an Exhibit A, resolutions which are scheduled and budgeted for 1990 closing will result in projected assets of $9.9 billion passing to bidders and $16.0 billion retained by RTC. It is noted that a significant portion of assets passed will be subject to a put.

If additional money were budgeted by 10-19-90 for the 17 major resolutions which are in the initial marketing stages (i.e. bidders packages have been prepared and expression of interest solicited from the RTC bidders list), it is unlikely that RTC would be able to advertise, schedule due diligence, accept bids and consummate transaction prior to year-end for any of those institutions. Exhibit B is a time line which would likely be necessary to achieve a marketing effort which conforms to policy and which would give a reasonable probability of success.

Sincerely,

DAVID C. COOKE,
Executive Director.

EXHIBIT A

Description	Number	Projected		Resolution dated	Comments
		Billions			
		Assets passed	Assets retained		
Fourth quarter accelerated resolutions	9	5.7	2.9	Prior to Dec. 20, 1990	RTC Proceeding under assumptions that cash is budgeted for fourth quarter resolutions.
Third quarter carryover	1	0.2	7.5	....do	RTC Proceeding under assumptions that cash is budgeted for fourth quarter resolutions.
Fourth quarter field resolutions	65	4.0	5.6	Through year-end 1990	RTC Proceeding under assumptions that cash is budgeted for fourth quarter resolutions.
Subtotal	75	9.9	16.0		
Fourth quarter major resolutions	17	14.4	11.6	Early 1991	
Total	92	24.3	27.6		

EXHIBIT B—TIMELINE

Date	Action	Comments
October 19	Money budgeted	
October 25	Wall Street Journal ad	

EXHIBIT B—TIMELINE—Continued

Date	Action	Comments
November 8	Bidders conference	Two weeks between advertisement and bidders conference is about the minimum time frame necessary to receive responses to the advertisement, prequalifying respondants and invite them to a bidders conference.
October 29	Due diligence period	The RTC marketing list has been solicited. All but two institutions have interest expressed by 9 or more parties. Twenty four respondents have indicated an interest in one institution. Additional interest may be received as a result of the advertisement.
December 7 to January 11	Due diligence period ends	Typically each bidder is given one week initially for on site due diligence and limited additional time if requested. Usually at least a weeks time is allowed for summary of the due diligence findings and preparation of a bid.
December 11 to January 22	Bid submission	Bids are typically submitted on Tuesday for consideration by the RTC board on the following Tuesday with closing on the 2nd Friday following the bid submission date. A December 11 bid submission date would result in a closing December 21, the week-end prior to Christmas.

SECRETARY OF THE TREASURY,
Washington, October 19, 1990.

Hon. HENRY B. GONZALEZ,
Chairman, Committee on Banking, Finance and Urban Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you very much for today's letter concerning funding for the Resolution Trust Corporation (RTC). I appreciate your judgment that, in the interest of expediting final passage, it may be wise to provide short-term funding to the RTC that would allow the continuation of operations through February of next year. This is completely consistent with our October 10 letter, in which we suggested that additional funding be provided for "some or all of fiscal year 1991," and our July 31 letter stating that Congress should "consider appropriating an amount sufficient to keep resolutions going into the beginning of calendar year 1991."

Let me also assure you that I, together with other members of the administration, will continue to work actively with you and members of your Committee to secure passage of this critical legislation. We, too, believe in the substantial benefits that can result from close cooperation between the Administration and Congress—and the American taxpayer demands no less.

Sincerely,

NICK BRADY.

SECRETARY OF THE TREASURY,
Washington, October 26, 1990.

Hon. ROBERT DOLE.
Republican Leader, U.S. Senate, Washington, DC.

DEAR LEADER: As the Resolution Trust Corporation (RTC) and the Administration have made clear, unless Congress provides adequate funding to the RTC before adjournment, the RTC will be forced to further curtail its efforts to close bankrupt savings and loans. Already, the delay in authorizing additional funds and addressing the borrowing cap issue has slowed case activity. According to RTC Chairman Seidman, failure of Congress to act before adjourning would needlessly cost the American taxpayer at least $250-$300 million, and possibly more.

The Senate Banking Committee voted to provide the RTC an additional $40 billion in loss funds, enough to last through FY 1991. The House Banking Committee voted for $10 billion, enough to last through February of next year. Either approach is generally acceptable to the Administration, particularly if the alternative is no funding at all. However, Chairman Seidman has said that even $10 billion will likely force the RTC to slow down its case resolution activity and increase taxpayer costs. In addition, the ceiling on RTC borrowing for working capital must be addressed.

Accordingly, I repeat the Administration's urgent request that Congress provide adequate funds to the RTC.

Sincerely,

NICHOLAS F. BRADY.

Mr. METZENBAUM. Mr. President, will the Senator from Utah yield for a question?

Mr. GARN. I yield the floor, period.

Mr. METZENBAUM. I think the Senator understands the Senator from Ohio is not standing here proposing—I think it is $15 billion actually included in the proposal. I am not standing here saying it ought to be turned down because I am a realist enough to recognize that you cannot afford to turn it down because all chaos would break out and probably would be far more costly later on.

I address myself actually to what transpired in yesteryear and the failure, frankly, of the Secretary of the Treasury to come up and share with the Banking Committee of the House and the Senate his approach to this whole problem.

Does the Senator from Utah not agree that in a matter which the Secretary of the Treasury was involved, he could have put a stop to the 1988 deals? He does have responsibility for the fiscal policies as far as the Treasury is concerned of this Government. Would it not be appropriate for the Secretary of the Treasury to appear before the Banking Committee of the House and the Senate in order to explain not what Mr. Seidman is doing but what the Secretary of the Treasury is doing and how he sees this picture unfolding in future months and years and what it will cost the American taxpayer?

Mr. GARN. I have no disagreement with that. I cannot speak for the House of Representatives. All I can do is again repeat how many times he has come and responded to our questions just in the last 3 months.

Mr. METZENBAUM. Mr. Brady?

Mr. GARN. Mr. Brady.

Mr. KERREY. Will the Senator from Ohio yield?

Mr. GARN. And representatives of the Treasury as well as Mr. Seidman who is rather involved in the RTC, both of them have been before us and have answered those questions.

But my major remarks are, tonight, that we at least give them enough to get them through. I do not want to take further time of the Senate because I did not intend to speak, but as far as the 1988 deals, it is fair to say—and here I am not judging the deals—obviously some of them are too expensive, I do not disagree with the Senator from Ohio on that.

But getting back to what I was talking about, in 1986 if we had provided sufficient money totally paid for by assessment of S&L industry, the 1988 deals would not have been necessary. They were only done because you had a choice of either doing those kind of deals that way—I want to be clearly understood I am not commenting about each individual situation but the generic situation. You either left them open or closed them with the tools you had available, and if you had left them open, you would have greatly increased the cost just like we did from 1986 to 1988 by not providing those tools.

So my major comment tonight is let us not go out of session again without providing them the tools so we come back again and say, good Lord, what have you done while we have been gone? At least if we give them enough money to get them through the recess, and they do not do what we said, we have a right to complain. But not if we leave without giving the RTC proper tools. Then it seems to me, it is our fault, and we have exacerbated the problem.

Mr. METZENBAUM. I thank the Senator.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, if the Senator from Nebraska would like to pose a question I will yield to him for purposes of asking a question.

Mr. KERREY. I appreciate that. I appreciate the Senator from Georgia permitting that.

I just would like to direct a question to the Senator from Ohio. I am the Senator who requested a rollcall vote on this $10 billion appropriation. And it seems to me there is an issue here other than are we willing to put the $10 billion out there.

The question is, are we willing to go on the line? Are we willing to vote for it. It is a rather large amount of money. The Secretary of the Treasury was too busy to come before the House of Representatives. He was up on the Hill frequently lobbying on his own budget promise but unable to come

before the House Banking Committee. He was too busy. He sent Mr. Glauber to the Senate Banking Committee.

I hear the Senator from Utah saying it is going to be our fault. The fact of the matter all we have in the administration justifying $57 billion in the Treasury next year is a single letter.

I ask the distinguished Senator from Ohio if he thinks that is adequate to do much more than sort of cover their rear end in an event like this where we are unwilling to stand up here and vote and put ourselves on the record, are we in favor of spending $10 billion over the next 90 days?

Mr. METZENBAUM. The answer is I think we ought to put ourselves on record either for it or against it. I think I advise my friend from Nebraska, as I understand the proposal that would be coming before us, it is not $10 billion, my understanding is that it will be $15 billion, and I may stand corrected. But I see the chairman of the Banking Committee.

Mr. RIEGLE. It is still being discussed and it may be $10 billion.

Mr. METZENBAUM. The chairman of the Banking Committee indicates it may be $10 billion; it may be $15 billion, but certainly it is a matter that every Member of the Senate ought to have the opportunity to vote yea or nay on and certainly nobody can dispute the fact that the Secretary of the Treasury should have come before the Senate Banking Committee to make his case for this amount of money or such other sums of money as he was requesting us to appropriate. His failure to do so, in my opinion, is somewhat irresponsible.

Mr. KERREY. I quite agree. I think we have a situation here where the people do not want us to spend the money.

What is operating here, we do not want to vote on this evening though we know it ought to occur. We know the money was intended to be spent for all the reasons the Senator from Utah expressed earlier.

But my observation is the manner in which the administration operated this past year lost the confidence of the voters and citizens themselves. If that is not the case, then we ought to just easily put it to a rollcall vote and test it. Let us see how many people are willing to vote a $10 billion proposal the next 90 days to tide the RTC over given the way they handled it so far.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I believe the Senator from Nevada would like to have me yield to him for the purpose of a request.

Mr. REID. Mr. President, the Senator from Georgia is correct for a short time. If the Senator would not mind, we are ready to do unanimous-consent matters so we can get those over to the House. With the permission of the Senator from Georgia, I will interrupt him at the appropriate time.

Mr. NUNN. I will be glad to yield for that purpose when the Senator gives me the signal.

AMENDMENT TO RESTORE COMPETITION AND MERIT REVIEW TO UNIVERSITY RESEARCH PROJECTS

Mr. NUNN. Mr. President, yesterday when we had the Defense appropriations bill before the Senate, I spoke of my general support for that conference report that was adopted by the Senate. I noted my concern, however, about three specific problems. Because the appropriations conference report was not amendable, it was not possible to address these concerns. Our only choice would have been to vote "no" and try to kill the conference report.

In the overall scope of things I did not believe that should be done. I did note in my floor statement that I intended to review a possible legislative remedy on another vehicle.

I planned to offer when the military construction bill comes an amendment to correct one of the most glaring problems in the Defense appropriations bill; and that is the earmarking of defense research funds for specific colleges and universities, accompanied by an awareness of existing laws that require these projects to undergo merit review and competition. I do not oppose the projects, per se, but what I oppose is the appropriations conference came back and waived the law that gave other colleges a right to compete and designated certain colleges in the law for these funds.

The Defense appropriations conference report contained numerous earmarkings of defense research money for special projects at specific universities and colleges. We have faced this situation in several different ways.

Some universities lead charmed lives because they have champions on the Defense Appropriations Subcommittee. I understand how that works. Where other line items in the defense budget are closely scrutinized, these favored universities are given blank checks at very late periods during the session when there is not time for review, when there is not time for debate, and when there is not time for scrutiny. Indeed, the conference report did not even discuss the purpose of these projects. Instead, a few annointed universities are singled out for favors in a bill that is not amendable.

Two years ago we tried to work out a solution to this problem. We developed a statutory provision that would require merit review for these projects. This legislative solution was reviewed by both the House and the Senate. It was subjected to considerable debate. It was amended after our colleagues pointed out ways to improve it. And it was signed into law by the President. It is the law of the land.

This is why many Members of the Senate have told me they are disturbed to find a large number of earmarked projects for selected institutions, and a blanket waiver in the defense appropriations conference report from the statutory provisions that require merit review and competition. I thought we had licked this earmarking problem after several years of floor debate and votes on this, but with the passage of the DOD appropriations bill we are now taking a giant step backward.

Evidently these projects are of such questionable value to the Department of Defense that the bill has to exempt these projects from any form of competition or merit review in order to assure their funding.

Let me read the provision that is included in the conference report that applies to these projects:

"SEC. 401. Funds appropriated in this title that are directed to be made available for a grant to, or contract with, a college or university for the performance of research and development or for construction of a research or other facility shall be made available for that purpose without regard to, and (to the extent necessary) in contravention of section 2361 of title 10, United States Code, [—this is the law requiring merit reviews and competition] which is hereby modified and superceded to the extent necessary to make each such grant or award, each such contract, and any such grant or contract shall be made without regard to any of the conditions specified in subsection (b) of that section or section 2304 of title 10, United States Code." [This is the Competition in Contracting Act.]

The effect of this general provision is to wipe out competition and merit review, to wipe it off the books, and to exempt any of these earmarks from the process Congress established a couple of years ago to ensure that the awards are made on the basis of merit and that competent institutions are allowed to compete for legitimate defense purposes.

That well-crafted process that had been put on the books and was reviewed and adopted by the Congress and signed into law by the President is now being stricken with a stroke of a pen by conferees who were on the defense conference report. And some of the conferees—certainly not all of them—were advocates for the very universities and institutions that have been protected from scrutiny and been protected from competition and been protected from any kind of merit review, with no criteria whatsoever for being able to do this work.

Mr. President, this is extraordinary procedure and it is my view it is not in the best interest of the taxpayers or

the Department of Defense for the U.S. Senate.

If these programs have merit, they will succeed in a fair and competent review. If these universities and institutions have merit in being singled out, doubtless they would have the upper hand if there is true and open competition.

Mr. President, there are numerous earmarkings that were included in the defense appropriations conference report. Some of these earmarkings continue to fund programs that were started in previous years and would probably be very competitive in any review process. But at least seven of these earmarkings are first-time grants to colleges and universities for activities no one in the Department of Defense has requested and are completely and totally unauthorized.

Mr. President, yesterday I listened carefully to the explanation offered by the managers from the Senate as to why these projects were included and why the competition requirements were waived. They had three basic arguments:

First, the grant-giving bureaucracy is biased toward the large established institutions. Worthy schools that are not favored by the elites are simply not considered as worthy recipients of grants.

Second, there is over $1.6 billion of funding allocated to federally funded research and development centers [FFRDC's] without competitive review, so why single out the little universities for which they have earmarked only $140 million?

Third, the give and take of conference requires compromise and this was just one area where the Senate had to compromise in order to get a bill.

Let me deal with each of these three arguments in turn.

BUREAUCRACY BIASED TOWARD ESTABLISHED SCHOOLS

The first argument the managers gave was the bias among the scientific/engineering elites in the country to favor only the large, well-connected universities. Peer review, they argue, is not a fair competition when those who evaluate proposals and make grants are biased toward the Harvards and the MIT's and the Stanfords, and ignore the proposals of less well-known institutions.

Mr. President, I agree with this argument. I agree that there is a bias in favor of big well-known universities that have a reputation for excellence. They also tend to have large well-paid grant-writing staffs and spend money grooming the scientific and technical elites that evaluate proposals and make grants. The smaller schools are handicapped in this situation.

And that is precisely why, Mr. President, Congress has promoted the University Research Initiative, and why we added what I call the "second tier provision." This is why I offered a provision so that the University Research Initiative would expand geographically the number of universities and colleges that participate in it through the Research Initiation Program. Mr. President, I ask unanimous consent to have listed at this point in the RECORD a list of the academic institutions that have been added in recent years through the Research Initiation Program.

Mr. President, the Research Initiation Program has added 38 new institutions to the University Research Initiative. Ten additional States are now participating in URI.

Mr. President, I agree with the arguments made by the managers that there is a bias against regional schools, and that is why I have promoted the broadening of the grant process to regional schools through the Research Initiation Program. That way schools are brought into the research process on programs that DOD really needs and which are well suited to the skills and talents of the professors and graduate students of the institutions.

This is the right way to deal with the legitimate concern of academic bias. Earmarking funds for a few lucky colleges and universities—often for brick and mortar to build buildings—is not the answer. We could double the scope of the Research Initiation Program, bring on another 40 colleges and universities, with the money earmarked for just one institution by the appropriations bill. If the Defense Appropriations Subcommittee wishes to break down the bias against worthy regional schools, promote expanded funding for the Research Initiation Program, not through earmarking grants for specific colleges and universities.

FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS

The second argument offered by the managers is that the Department of Defense spends over $1.6 billion to a number of federally funded research and development centers [FFRDC's] with no competition. Why single out the small academic institutions that are getting only $140 million without competition?

Mr. President, with no disrespect for the distinguished managers of the defense appropriations conference, this argument mixes apples and bananas.

The business of the FFRDC's is exclusively to conduct research for the Federal Government. They are quasi-governmental organizations. They are designed to provide long-term technical expertise to the Department of Defense and other Federal agencies. They are able to draw and retain some of the finest intellects in America and to devote that expertise exclusively to defense research projects. This is about the only way we can get and retain first-rate scientists and engineers without being constrained by the personnel restrictions, redtape and funding limitations of employment with the Federal Government.

University-based research is quite different. The primary business in the universities is the education of their students, not full-time research for the Department of Defense. While some of the finest intellects in the world are teaching in our universities, they are not exclusively available to the Department of Defense for critical DOD projects.

The FFRDC's have laboratories, equipment, and personnel talents that exist nowhere else in the world. There is no way even the best university or college could provide this ongoing talent and expertise and make it available 5 days a week, 52 weeks a year to the Department of Defense.

So it is a mistake to imply there is any logical relationship between FFRDC's and earmarked university projects. Perhaps the expenditures of the FFRDC's are too high and should be cut, as Senator INOUYE argued yesterday. But this does not justify exempting college set asides from competitive procedures, which is the law of the land.

Providing funds for quasi-governmental institutions that work full-time for the Department of Defense is in no way related to a series of earmarked university grants for projects the Department of Defense doesn't want and didn't request.

THE INEVITABLE GIVE AND TAKE OF CONFERENCE

Mr. President, the third argument offered by the managers was that the earmarked projects are the inevitable product of the natural give and take of conference. You can't come out of conference without giving a little something in return.

Mr. President, I understand conferences. I know what the process is like. It is tough. It does involve give and take. I know how tough Members of the House can be as negotiators.

But I do not accept the proposition that members of the House Appropriations Committee, who are the most serious and responsible advocates for a strong defense and a good defense bill will not support their own bill if they cannot get a few projects salted away and exempted from competition. I have never seen that in my years in the Senate.

Mr. President, I do not belittle the task that the managers had. They had a very difficult assignment and for the most part produced an excellent bill. But the waiver of the statutory requirement for merit review and the waiver of the Competition in Contracting Act is unacceptable.

Mr. President, the amendment I had planned to introduce tonight has the effect of repealing the waiver that was included in the defense appropriations

conference report that was passed yesterday.

My amendment would restore the law requiring merit review and competition. It puts this issue back into the status quo situation. It does not cut the money for the projects. The money would stay in the bill.

It does not even eliminate the specific names of the universities. But it would ensure that all of these universities, as well as all others across the country, will be able to compete for these funds.

My amendment, simply put, restores the process the Senate and House adopted through the normal legislative process, and is the law today, which is to have merit review in competition for these projects.

Mr. President, I had intended to push this amendment to a vote tonight. I have had a long conversation with the Senator from West Virginia, the Senator from Hawaii, and the Senator from Alaska. I will not do that this evening.

Because in this situation we have a very complicated procedure, in all likelihood this could end up being a procedural vote that would be required to overrule the Chair prior to going to the merits on this matter.

I had the option of amending another conference report, but I had given assurances that I would not, because that conference report is tied up with other matters.

I talked to the Senator from West Virginia about that. That would have possibly not had any kind of procedural problems.

Mr. President, I am confident that if this amendment was pushed to the floor tonight for a vote, it would pass the U.S. Senate because the Senate has spoken on this subject over, and over, and over again. The House may not agree, but it is my view that the House of Representatives, if they had a full and open debate, which I hope they will next year, would itself agree.

I cannot believe that the House of Representatives Members are going to let a few Members designate universities to the exclusion of all other universities, and let them do that year, after year, after year, without regard to merit, without regard to any kind of competitive procedure.

Mr. President, I intend to not introduce the amendment tonight. But I want to announce to everyone concerned, and I hope this message will get over to the Department of Defense, one of the first priorities of the Armed Services Committee next year, will be to conduct a series of hearings on the university research, and on the specific earmarked projects in the appropriations bill.

I intend to hear directly from the Secretary of Defense to determine his views on each and every one of the earmarked projects in the conference report, not just on university research, but on other earmarks as well, particularly those that at least, on the face of them, have no ostensible connection to defense whatsoever.

I am anxious to learn the Secretary of Defense's view on the military requirement for spending $5 million to build a new parliament building for the Solomon Islands. I want to find out what the Secretary of Defense thinks about that one, and whether he believes that is in any way involved in our national security.

I am anxious to learn about the Secretary of Defense's view about the military requirement for using $15 million of Department of Defense funds to build a children's museum in New Jersey. That may be a very worthwhile project. But I would like to find out what the connection is to the Nation's security.

I am also anxious to learn about the military contributions that require $4 million for a Japanese-American museum in Oregon.

I am anxious to learn why the Navy's existing laboratories and design bureaus are so limited that we must add $24 million for a nonprofit consortium formed by Lehigh University to study shipbuilding design and manufacturing methods. I would like to know about Lehigh's qualifications, what kind of experts they have for that kind of shipbuilding design and manufacturing.

I would like to understand why the Navy cannot perform that in the numerous existing capabilities both in-house and in the overall Navy complex.

I am anxious to learn why space limitations in the numerous medical installations in the Department of Defense require us to spend $10 million to build a building at the College of Pharmacy at Drake University.

I am anxious to learn what the Department of Defense is doing wrong with hundreds of millions of dollars they spend on manufacturing technology that causes us to have to earmark $5 million for a Center for Tool and Die Manufacture.

I also may ask, depending on the Secretary of Defense's answers to these questions, the Comptroller General to examine these earmarkings in order to answer a few questions for the committee.

What exactly will the funds be used for? Do these earmarked grants provide critical research skills that do not currently exist in the Department of Defense or not otherwise available to the Department of Defense?

Are the institutions that are the recipients of these grants the only ones in the United States capable of conducting this research or are there other universities that may be in other people's congressional districts and other States that might be qualified, perhaps even more qualified to perform this research?

I am in no way saying we do not need to involve our universities in research. I think this is one of the most valuable parts of our defense budget. But if this kind of action continues this is going to be the most part of the defense budget, and we will end up having a big cut in the R&D funds that are so important for the national security in the future.

After we have had these hearings, and after we receive input from the Secretary of Defense and the Comptroller General, I will ask the committee to mark up a legislative measure to insure that we are obtaining the maximum research value for our defense dollars in a competitive fashion.

I hope to work with the Senator from Hawaii, and the Senator from Alaska, and the Senator from West Virginia in fashioning that kind of legislation.

I hope that the people on the Appropriations Committee will carefully consider this research initiative we have set up to set it up about 2 years ago. It has had about $15 million or $20 million appropriated. I believe we authorized more than that. But it is to go into a pool of money that is available for those that are not part of the establishment research so that can be new research facilities and expanded capabilities around the country.

But it is done on a competitive basis. It is done on the merits. It is done on the capabilities. It is done based on defense needs and based on the performance capabilities of the universities in question.

Mr. President, I look forward to working on this matter next year under their normal contracting procedures, the Department of Defense would not begin to obligate these earmarked funds until next spring at the earliest. Our committee will complete our review by then.

So I hope the Secretary of Defense will take notice that our committee intends to have the department focus on this subject and make public recommendations to the Armed Services Committee before he proceeds to obligate the funds for these projects.

Mr. President, I send to the desk an attachment to my statement that lists the colleges and universities that are participating in the research initiative program. These are a lot of universities that are not part of the so-called old boys network that are part of an expanding grouping of universities that are competing and doing so successfully for the research initiative program.

Mr. President, I send that to the desk, and ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TABLE IVB. BROADENING OF NATIONAL RESEARCH CAPABILITY: ACADEMIC INSTITUTIONS AND STATES ADDED TO URI BY RESEARCH INITIATION PROGRAM

Alabama A&M.
University of Arkansas.
University of California-Riverside.
Catholic University (DC).
Florida State University.
Florida Institute of Technology.
University of Central Florida.
Florida Atlantic University.
Atlanta University (GA).
Iowa State University.
Illinois Institute of Technology.
Louisiana State University.
University of Maryland-Baltimore.
University of Maine.
Michigan State University.
Wayne State University (MI).
University of Missouri-Rolla.
University of Missouri-Columbia.
University of Mississippi.
University of Nebraska.
Rutgers University (NJ).
Stevens Institute of Technology (NJ).
University of Minnesota.
City College of New York.
Clarkson University (NY).
State University of New York-Buffalo.
Wright State University (OH).
Kent State University (OH).
Miami University of Ohio.
Drexel Institute (PA).
Lehigh University (PA).
University of South Carolina.
Texas Christian University.
Rice University (TX).
University of Virginia.
George Mason University (VA).
Marquette University (WI).
West Virginia University.

STATES ADDED TO URI FUNDING BY RIP

1989: Arkansas, District of Columbia, Georgia, Iowa, Missouri, Mississippi, Nebraska, West Virginia.
1990: Maine, Louisiana.

Mr. INOUYE. Mr. President, will the Senator yield?

Mr. NUNN. I am glad to yield to my friend from Hawaii.

Mr. INOUYE. Mr. President, I wish to commend the Senator from Georgia for his most statesmanlike position and for the steps that he has just taken. I look forward to working with the Senator from Georgia in the coming year to draft legislation that will serve this purpose. I thank him very much.

Mr. NUNN. I thank the Senator from Hawaii.

NIOBRARA WILD AND SCENIC RIVERS ACT

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 280, the Niobrara River Scenic River Designation Act of 1990.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 280) entitled "An Act to amend the Wild and Scenic Rivers Act by designating a segment of the Niobrara River in Nebraska as a component of the National Wild and Scenic Rivers System," do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Niobrara Scenic River Designation Act of 1990".

SEC. 2. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)), as amended, is further amended by adding at the end thereof the following:

"( ) NIOBRARA, NEBRASKA.—(A) The segment from Borman Bridge southeast of Valentine approximately 76 miles downstream to the bridge crossing the Niobrara on State Highway 137 (as generally depicted on the map entitled 'Boundary Map, Proposed Niobrara Scenic River Valley Corridor', 1985), to be classified as a scenic river and administered by the Secretary of the Interior. That portion of the segment designated by this subparagraph located within the Fort Niobrara National Wildlife Refuge shall continue to be managed by the Secretary through the Director of the United States Fish and Wildlife Service.

"(B) The 25-mile segment from the western boundary of Knox County to the confluence of the Niobrara River with the Missouri River, including Verdigre Creek from the north municipal boundary of Verdigre, Nebraska, to its confluence with the Niobrara River, to be administered by the Secretary of the Interior as a recreational river. After consultation with State and local governments and the interested public, the Secretary shall take such action as is required under subsection (b) of this section.

"( ) MISSOURI RIVER, NEBRASKA AND SOUTH DAKOTA.—The 39-mile segment from the headwaters of Lewis and Clark Lake to the Ft. Randall Dam, to be administered by the Secretary of the Interior as a recreational river.".

SEC. 3. NIOBRARA SCENIC RIVER ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is hereby established the Niobrara Scenic River Advisory Commission (hereinafter in this Act referred to as the "Commission"). The Commission shall advise the Secretary of the Interior (hereinafter referred to as the "Secretary") on matters pertaining to the management and operation of that portion of the 76-mile segment of the Niobrara River designated by section 2 of this Act which lies outside the boundary of the Fort Niobrara National Wildlife Refuge.

(b) MEMBERSHIP.—The Commission shall consist of 11 members appointed by the Secretary—

(1) 3 of whom shall be owners of farm or ranch property within the upper portion of the designated river corridor between the Borman Bridge and the Meadville Bridge;

(2) 3 of whom shall be owners of farm or ranch property within the lower portion of the designated river corridor between the Meadville Bridge and the bridge on Highway 137;

(3) 1 of whom shall be a canoe outfitter who operates within the river corridors;

(4) 1 of whom shall be chosen from a list submitted by the Governor of Nebraska;

(5) 2 of whom shall be representatives of the affected county governments or natural resources districts; and

(6) 1 of whom shall be a representative of a conservation organization who shall have knowledge and experience in river conservation.

(c) TERMS.—Members shall be appointed to the Commission for a term of 3 years. A member may serve after the expiration of his term until his successor has taken office.

(d) CHAIRPERSON; VACANCIES.—The Secretary shall designate 1 of the members of the Commission, who is a permanent resident of Brown, Cherry, Keya Paha, or Rock Counties, to serve as Chairperson. Vacancies on the Commission shall be filled in the same manner in which the original appointment was made. Members of the Commission shall serve without compensation, but the Secretary is authorized to pay expenses reasonably incurred by the Commission in carrying out its responsibilities under this Act on vouchers signed by the Chairperson.

(e) TERMINATION.—The Commission shall cease to exist 10 years from the date of enactment of this Act.

SEC. 4. MISSOURI RIVER PROVISIONS.

(a) ADMINISTRATION.—The administration of the Missouri River segment designated by the amendment made by section 2 of this Act shall be in coordination with, and pursuant to the advice of, a recreational river advisory group to be established by the Secretary. Such group may include in its membership representatives of the affected States and political subdivisions thereof, affected Federal agencies, organized private groups, and such individuals as the Secretary deems desirable.

(b) BRIDGES.—The designation of the Missouri River segment by the amendment made by section 2 of this Act shall not place any additional requirements on the placement of bridges other than those contained in section 303 of title 49, United States Code.

(c) RIPRAPPING.—Riprapping using rocks from the region in as inconspicuous and harmonious a manner as practicable related to natural channels along shorelines of the Missouri River segment designated by the amendment made by section 2 of this Act to preserve and protect agricultural, residential, and commercial land uses shall not be considered inconsistent with the values for which such segment is designated.

SEC. 5. NATIONAL RECREATION AREA STUDY.

(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the National Park Service, shall undertake and complete a study, within 18 months after the date of enactment of this Act, regarding the feasibility and suitability of the designation of lands in Knox County and Boyd County, Nebraska, generally adjacent to the recreational river segments designated by the amendments made by section 2 of this Act and adjacent to the Lewis and Clark Reservoir, as a national recreation area. The Secretary may provide grants and technical assistance to the State of Nebraska, the Santee Sioux Indian Tribal Council, and the political subdivisions having jurisdiction over lands in these 2 counties to assist the Secretary in carrying out such study. The study under this section shall be prepared in consultation with the Santee Sioux Tribe, affected political subdivisions, and relevant State agencies. The study shall include as a minimum each of the following:

(1) A comprehensive evaluation of the public recreational opportunities and the flood plain management options which are available with respect to the river and creek corridors involved.

(2) An evaluation of the natural, historical, paleontological, and recreational resources and values of such corridors.

(3) Recommendations for possible land acquisition within the corridor which are deemed necessary for the purpose of resource protection, scenic protection and integrity, recreational activities, or management and administration of the corridor areas.

(4) Alternative cooperative management proposals for the administration and development of the corridor areas.

(5) An analysis of the number of visitors and types of public use within the corridor areas that can be accommodated in accordance with the full protection of its resources.

(6) An analysis of the facilities deemed necessary to accommodate and provide access for such recreational uses by visitors, including the location and estimated costs of such facilities.

(b) SUBMISSION OF REPORT.—The results of such study shall be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 6. STUDY OF FEASIBILITY AND SUITABILITY OF ESTABLISHING NIOBRARA-BUFFALO PRAIRIE NATIONAL PARK.

(a) IN GENERAL.—The Secretary of the Interior shall conduct a study of the feasibility and suitability of establishing a national park in the State of Nebraska to be known as the Niobrara-Buffalo Prairie National Park within 18 months after the date of enactment of this Act.

(b) AREA TO BE STUDIED.—The areas studied under this section shall include the area generally depicted on the map entitled "Boundary Map, Proposed Niobrara-Buffalo Prairie National Park", numbered NBP-80,000, and dated March 1990, and such other lands in the immediate area that are relevant to such study. The study area shall not include any lands within the boundaries of the Fort Niobrara National Wildlife Refuge.

(c) RESOURCES.—In conducting the study under this section, the Secretary shall conduct an assessment of the natural, cultural, historic, scenic, and recreational resources of such areas studied to determine whether they are of such significance as to merit inclusion in the national park system.

(d) STUDY REGARDING MANAGEMENT.—In conducting the study under this section, the Secretary shall study the feasibility of managing the area by various methods, in consultation with appropriate Federal agencies, the nature Conservancy, and the Nebraska Game and Parks Commission.

(e) SUBMISSION OF REPORT.—The results of the study shall be submitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

AMENDMENT NO. 3208

Mr. REID. Mr. President, I move that the Senate concur in the House amendment with an amendment that I send to the desk on behalf of Mr. EXON.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. EXON, proposed an amendment numbered 3208.

Mr. DASCHLE. Mr. President, since S. 280 includes a portion of the Missouri River in South Dakota as a component of the Wild and Scenic Rivers System, I wish to engage in a colloquy for the purpose of clarification.

The Missouri River segment is designated as a recreational river under the Wild and Scenic Rivers Act. The recreational designation is the most flexible of the three river designations possible under the act, and for the most part, does not affect existing land uses along the river. Most activities currently enjoyed by the public along the river, such as hunting, fishing, bird watching, and swimming, would not be affected. In addition, S. 280 would allow the use of erosion control techniques for streambank stabilization, subject to certain conditions.

I ask the Chairman if he agrees with my understanding of the Wild and Scenic Rivers Act.

Mr. BUMPERS. Mr. President, I concur with the Senator from South Dakota.

Mr. DASCHLE. Mr. President, under the Wild and Scenic Rivers Act, the Federal Government has land acquisition authority, but condemnation authority is very limited and the condemnation of private land in fee is very rare. To my knowledge, since 1978, no one has been involuntarily moved off his or her land due to provisions in the Wild and Scenic Rivers Act.

I ask the Chairman if he agrees with my understanding.

Mr. BUMPERS. Mr. President, I concur with the Senator from South Dakota.

Mr. DASCHLE. Mr. President, there are perceptions that the Wild and Scenic Rivers Act appears to zone private land for the purposes of river protection. It is my understanding that this is not true. The Wild and Scenic Rivers Act does not give the Federal Government the authority to zone private land nor does it allow the Federal Government to force local or State governments to zone. The act does encourage local land management programs to be developed that will protect and conserve the values that for which the river was designated.

I ask the Chairman if he agrees with my understanding.

Mr. BUMPERS. Mr. President, I concur with the Senator from South Dakota.

Mr. DASCHLE. Mr. President, under the Wild and Scenic Rivers Act, the licensing of new hydropower projects, such as dams, water conduits, reservoirs, powerhouses, transmission lines, and other projects by the Federal Energy Regulatory Commission within the designated segments is prohibited. However, existing projects, small diversions or conduits, including those that provide water for personal use by landowners along the river, that are wholly private, local, or State projects are permitted if they do not adversely affect the river segment.

I ask the Chairman if he agrees with my understanding.

Mr. BUMPERS. Mr. President, I concur with the Senator from South Dakota.

NIOBRARA SCENIC RIVER DESIGNATION

Mr. EXON. Mr. President, I rise to urge passage of the Niobrara River legislation that is before us. The amendments I am offering represent a compromise between several different versions of Niobrara scenic river legislation.

Scenic river designation will preserve the scenic character and pastoral landscape of the Niobrara for future generations. It is a biological masterpiece very much deserving of this kind of protection and recognition.

The history of the Niobrara River during the past several decades has been a difficult one. The push for scenic river designation began over 10 years ago when a group of landowners began circulating petitions to have a portion of it added to the Wild and Scenic River System. In 1985, I introduced the first Niobrara Scenic River bill. A few months later a group came to me asking that I hold off while they worked for local protections. I held off for over 2 years, but nothing happened.

In recent months there has been another push for local protections and this bill will serve as a necessary and helpful backstop. This compromise marks a landmark opportunity for a new era of cooperation.

We've worked to meld together several different Niobrara bills in this legislation. Throughout this debate I have worked hard to protect landowner rights along the Niobrara. Some in the area were concerned that scenic river designation would end up giving the Federal Government free rein to grab up land and make any changes it sees fit. That is not the case.

This legislation establishes a limited partnership, if you will, between landowners and the Federal Government. This legislation strictly limits the Federal Government's authority to condemn land as long as local protection efforts are successful. It is not my intention, nor the intention of any sponsors of the various Niobrara bills, for there to be widespread use of condemnation. Condemnation is very rare under the Wild and Scenic Rivers Act. If the local protections and management are successful, there will never have to be any condemnation.

Mr. President, this bill will be very good for Nebraska. With scenic river designation we will preserve for decades to come the beauty of this incred-

ible place. Scenic river designation can also be leveraged into some important economic development. The recreation industry along the Niobrara has been growing in recent years and this legislation will fuel those efforts.

The world is changing at an amazing pace. It is hard to imagine what it will be like in 50 or 100 years. We send our children and grandchildren into a great unknown. By laying groundwork like this, though, we can be assured there will be a safe haven in an uncertain world.

I urge my colleagues to adopt these amendments and pass the bill.

Mr. REID. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 1, line 4, of the House amendment, delete section 2 in its entirety, insert the following new sections, and renumber the subsequent sections accordingly:

"SEC. 2. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end thereof the following:

"( ) NIOBRARA, NEBRASKA.—(A) The 40-mile segment from Borman Bridge southeast of Valentine downstream to its confluence with Chimney Creek and the 30-mile segment from the river's confluence with Rock Creek downstream to the State Highway 137 bridge, both segments to be classified as scenic and administered by the Secretary of the Interior. That portion of the 40-mile segment designated by this subparagraph located within the Fort Niobrara National Wildlife Refuge shall continue to be managed by the Secretary through the Director of the United States Fish and Wildlife Service.

"(B) The 25-mile segment from the western boundary of Knox County to its confluence with the Missouri River, including that segment of the Verdigre Creek from the North municipal boundary of Verdigre, Nebraska, to its confluence with the Niobrara, to be administered by the Secretary of the Interior as a recreational river.

After the consultation with State and local governments and the interested public, the Secretary shall take such action as is required under subsection (b) of this section.

"( ) MISSOURI RIVER, NEBRASKA AND SOUTH DAKOTA.—The 39-mile segment from the headwaters of Lewis and Clark Lake to the Fort Randall Dam, to be administered by the Secretary of the Interior as a recreational river."

SEC. 3. STUDY OF 6-MILE SEGMENT.

(a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding the following at the end:

"( ) NIOBRARA, NEBRASKA.—The 6-mile segment of the river from its confluence with Chimney Creek to its confluence with Rock Creek."

(b) WATER RESOURCES PROJECT.—If funds are not authorized and appropriated, within 5 years after the date of the enactment of this Act, for the construction of a water resources project on the 6-mile segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek, at the expiration of such 5-year period, the 6-mile segment shall be designated as a component of the national wild and scenic rivers system, by operation of law, to be administered by the Secretary of the Interior in accordance with sections 4 and 5 of this Act and the applicable provisions of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287). The Secretary of the Interior shall publish notification to the effect in the Federal Register.

SEC. 4. LIMITATIONS ON CERTAIN ACQUISITION.

(a) LIMITATIONS.—In the case of the 40-mile and 30-mile segments of the Niobrara River described in the amendment to the Wild and Scenic Rivers Act made by section 2 of this Act, the Secretary of the Interior shall not, without the consent of the owner, acquire for purposes of such segment land or interests in land in more than 5 percent of the area within the boundaries of such segments, and the Secretary shall not acquire, without the consent of the owner, fee ownership of more than 2 percent of such area. The limitations on land acquisition contained in this subsection shall be in addition to, and not in lieu of, the limitations on acquisition contained in section 6 of the Wild and Scenic Rivers Act.

(b) FINDINGS; EXCEPTION.—The 5 percent limitation and the 2 percent limitation contained in subsection (a) of this section shall not apply if the Secretary of the Interior finds, after notice and opportunity for public comment, that State or local governments are not, through statute, regulation, ordinance, or otherwise, adequately protecting the values of which the segment concerned is designated as a component of the national wild and scenic rivers system.

On page 2, line 23, after "pertaining to" insert "the development of a management plan, and".

Beginning on page 2, line 24, strike "that portion of the 76-mile segment of the Niobrara River designated by section 2 of this Act which lies outside the boundary of the Fort Niobrara National Wildlife Refuge." and insert in lieu thereof "the 40-mile and 30-mile segments of the Niobrara River designated by section 2 of this Act which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.".

On page 4, line 16, strike "coordination with and pursuant to the advice of" and insert in lieu thereof "consultation with". On line 18, strike "such group may" and insert in lieu thereof "such group shall".

On page 5, beginning on line 3, strike subsection (c) in its entirety and insert in lieu thereof the following:

(c) EROSION CONTROL.—Within the Missouri River segment designated by the amendment made by section 2 of this Act, the Secretary shall permit the use of erosion control techniques, including the use of rocks from the area for streambank stabilization purposes, subject to such conditions as the Secretary may prescribe, in consultation with the advisory group described in subsection (a) of this section, to protect the resources values for which such river segment was designated."

On page 7, line 11, strike "conduct" and insert in lieu thereof "undertake and complete".

On page 7, on lines 19 and 20, strike "March 1990, and such other lands in the immediate area that are relevant to such study." and insert in lieu thereof "March 1990.".

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ROBERT McCLORY POST OFFICE BUILDING

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 924, H.R. 5007, regarding the post office designation in Illinois.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5007) to designate the facility of the United States Postal Service located at 100 South John F. Kennedy Drive, Carpentersville, Illinois, as the "Robert McClory Post Office Building".

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. If there are no amendments, the bill is considered read a third time and passed.

So the bill (H.R. 5007) was passed.

Mr. REID. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SMALL BUSINESS ACT AND SMALL BUSINESS INVESTMENT ACT AMENDMENTS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 885, H.R. 4793, an act to amend the Small Business Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4793) to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

Mr. BUMPERS. Mr. President, this is the second authorization bill to be considered since I became chairman of the Committee on Small Business in 1987. In the 100th Congress, the committee reported an original bill, S. 2619, which provided a 2-year authorization for SBA's programs. The House, however, reported a 3-year authorization bill, H.R. 4174. The conference report to H.R. 4174 provided specific

program level authorizations for fiscal years 1989 and 1990, and a general, "such sums as necessary" authorization for the third year, 1991. The bill we are now considering will provide program levels and authorized appropriations for fiscal years 1991 through 1994. In addition, the bill makes a number of salutary changes in existing law.

Mr. President, the Senate Committee on Small Business has already held three budget hearings this year. These hearings have addressed the administration's fiscal year 1991 budget requests for the SBA's finance and investment programs, its management assistance programs, and its disaster assistance programs. In addition, the committee has held four in a series of hearings reviewing the recent problems in the SBA's Small Business Investment Company [SBIC] Program. Moreover, our committee staff has maintained close contact with the House staff throughout the drafting of this authorization bill so as to minimize any differences of opinion.

I am sorry to report that once again this year, the administration's budget proposal was riddled with OMB gimmicks and so-called fixes which would render the lending programs unfair or unworkable. Parroting proposals by the Reagan administration, President Bush proposed an increase in the guaranty fee which small business borrowers pay on the Guaranteed Loan Program from 2 to 5 points. If this proposal were adopted, a small entrepreneur borrowing $500,000 through a bank with a partial SBA guaranty would be required to ponyup $25,000 on the front end as a guaranty fee, as well as paying an interest rate of 2¼ percent above prime. Frankly, no one with any business sense would borrow money on such terms, and this proposal was roundly criticized by Republicans and Democrats on the Small Business Committee.

Even more drastic fee increases were proposed for the SBIC Program and the Special SBIC Program, better known as the MESBIC Program, and the Development Company Loan Program. It is fair to say that all of these proposals have received little or no support on either side of our committee.

On the other hand, this administration has a more positive view of the Small Business Administration and its various programs than did President Reagan. For the first time in 4 years, the administration did not propose a fire sale of SBA loans, and that is certainly a blow for liberty. The administration even proposes some increases for programs, including a $250 million increase in the SBA Surety Bond Guaranty Program. This program enables qualified small business and disadvantaged small business construction contractors and subcontractors to more readily obtain the surety bonds that are required to even compete for Government contracts and an increasing number of private sector contracts. With this increase, SBA will be able to issue bond guarantees totaling $1.5 billion.

Due to low default rates, plus the fees paid by the participating small business concerns and bonding companies and improved SBA management of the program, the Surety Bond Guaranty Program is very cost effective. The $1.5 billion in surety bond guarantee authority actually costs about $10 million in annual appropriations. The additional $250 million in guaranty authority proposed in the fiscal year 1991 budget request is aimed at the implementation of the Preferred Surety Bond Guaranty Program, a pilot program added to our last authorization bill by the senior member of the Small Business Committee, my friend from Georgia [Mr. NUNN]. This pilot program is aimed at getting the large, so-called standard surety firms back into the SBA Surety Bonding Program.

The bill also makes a number of changes in existing law to improve the delivery of important SBA programs authorized by the Small Business Act and the Small Business Investment Act of 1958. It also seeks to improve the overall management of the agency. Let me cite a few examples.

First, the bill makes the Deputy Administrator subject to Senate confirmation. This change in law is overdue and was actually requested by our former colleague Jim Abdnor, who was Administrator under President Reagan. The Small Business Committee will therefore have three nominations to consider early next year since both the Chief Counsel for Advocacy post and the inspector general office are vacant, as well as the Deputy Administrator. I urge the President to submit nominees promptly to fill these important posts.

The bill makes a number of important improvements to SBA's Small Business Development Center [SBDC] Program. Under this program, SBA helps to fund a national network providing a broad array of business management training services to small business concerns. These Small Business Development Centers are located in 49 States, the District of Columbia, Puerto Rico, and the Virgin Islands. Most of these SBDC's are now located in institutions of higher education. The bill will provide that in the future States may not take control of SBDC's away from educational institutions.

Mr. President, there was a time that I questioned the value of the services provided through the SBDC Program given the substantial investments from the Federal Treasury as well as the support from State and local government sources, which incidentally makes up more than 50 percent of the overall funding. In fact, I requested the GAO to do a review of the program. GAO submitted its report in November of 1989. That report gave the SBDC Program very high marks, based on an extensive study and review of those businesses which had used SBDC services.

The Federal share of the support for the Small Business Development Center Program is allocated on a population-based formula. The population shifts that will be reflected in the results of the 1990 census will have an adverse effect on the SBDC's in many of the smaller States. This bill includes a revised formula which would avoid such artificial cuts, cuts that are unrelated to the quality of the services being provided to the small business concerns served by these centers. Mr. President, I would like to recognize the contributions of Senator HARKIN regarding this important provision.

This bill also extends the duration of a series of test programs included in Public Law 100-656, the Business Opportunity Development Reform Act of 1989, which was sponsored by the Small Business Committee. The legislation made a whole range of muchneeded changes to the SBA's Minority Small Business and Capital Ownership Development Program, better known as the section 8(a) program. One important provision, which was sponsored by Senator BOREN, provides, on a test basis, authority for joint ventures between Native American Tribally Owned Enterprises participating in the 8(a) Program and large business concerns. Unfortunately, implementation of this statutory authority has been frustrated in the regulations implementing the act that were issued by SBA in August of last year. This has resulted in the loss of almost 2 years of the test authority.

This legislation includes provisions which address remaining impediments that apparently cannot be eliminated through regulatory action, and provide for a full test of the pilot authority by extending the expiration date of the test authority and increasing the number of times that it may be exercised. These provisions are the result of the work of Senator BAUCUS and Senator BOREN, two active members of the committee who are dedicated to maximizing the impact of SBA's various programs to expand economic opportunities for native Americans.

Mr. President, I am going to offer an amendment on behalf of myself and Senator BOSCHWITZ, which will eliminate certain provisions of the House bill which have been objected to on budgetary grounds. Title II, the loan prepayment section of the bill, will be stricken, even though I would much prefer that we enact it. The fact is that President Bush has promised a

veto of the entire bill if that section is included.

Second, we will propose several changes in title III, the rural development title. As proposed by the House, the bill will now provide for creation of a new Office of Rural Development in SBA and for a number of national conferences on rural problems to be conducted by the Office of Advocacy. Finally, we will mandate a major study by the Office of Technology Assessment of the impact of deregulation of the finance, communications, and transportation industries on rural communities.

Mr. President, the direct cost of our Nation's small business programs remains modest, and I believe the ultimate cost of these programs is actually nil, when one considers the positive impact which these small companies have on the Nation's economy, and the tax revenues, State and Federal, which are generated.

Further, SBA programs to increase the small business participation in the Federal Government's annual $200 billion in various procurement programs have been repeatedly shown to benefit the procuring agencies in terms of direct costs savings, and improved quality, from the increased competition provided by the tens of thousands of these small firms.

Discounting the unfortunate and devastating natural disasters of last year—which, incidentally, forced Congress to add funds to the SBA disaster loan fund for the first time since the eruption of Mount St. Helens in 1980, SBA is able to provide about $5 billion in loan and bond guaranty programs, including a very few direct loans, for about $500 million in annual appropriations. This sum includes the salaries and expenses of some 4,000 SBA employees in SBA offices across the Nation.

Mr. President, this is a fairly routine bill, but it is important to thousands of present and aspiring business owners. Our market economy today is not only the engine of our own prosperity but also the envy of the world. In the new democracies around the world, there is a fervent desire to learn how to emulate our economic success just as there is enthusiasm for our political liberties.

But the market does not perform perfectly. The availability of capital for small companies remains the No. 1 chronic problem for those hoping to start or expand a small enterprise. The financial programs authorized in this legislation do about as much as we can do under current fiscal year constraints to help smooth out some of these imperfections.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

Section 1. *Short Title.*

This section establishes the bill's citation as the "Small Business Administration Reauthorization and Amendments Act of 1990".

Section 2. *Table of Contents.*

This section lists the bill's provisions in a table of contents.

TITLE I—AUTHORIZATION OF SMALL BUSINESS ADMINISTRATION PROGRAMS

Section 101. *Authorizations.*

This section provides specific authorization levels for various Small Business Administration (SBA) programs for fiscal years 1991, 1992, 1993, and 1994. A general authorization for appropriations for fiscal year 1991 was enacted as part of Public Law 100-590, the "Small Business Administration Reauthorization and Amendments Act of 1988".

For each fiscal year, authorization levels are specified for the SBA's various direct and guaranteed loan programs. Specific levels are enumerated for SBA's guaranteed loan programs, including the general business loan program Section 7(a) and the loans for pollution control facilities. Similarly, specific levels are enumerated for several of SBA's direct loan programs, including the Economic Opportunity Loan Program and those targeted for participants in the Minority Small Business and Capital Ownership Development Program, the handicapped, and disabled and Vietnam-era veterans. The provisions also specify the guaranteed financing available to development companies participating in the Section 504 Development Company Program, and for direct and guaranteed loans made by Small Business Investment Companies.

Finally, the provisions for each fiscal year specify the total amount of surety bond guarantees that may be made by the Administration under its Surety Bond Guarantee Program. Included within this overall guarantee level are sums added for the pilot Preferred Surety Bond Guarantee Program, established by Title II of Public Law 100-590.

A general authorization for salaries and expenses is also included for each of the four fiscal years, FY 1991 through FY 1994. This provision also includes a general authorization for the administrative expenses and loan capital funding for SBA Disaster Loan Program.

Section 102. *Disaster Salaries and Expenses.*

This section adds a new paragraph to Subsection (a) of Section 20 of the Small Business Act authorizing transfers of such sums as may be necessary from the disaster loan revolving fund for the administration of the SBA Disaster Loan Program. This provision of the bill establishes in one provision of the Small Business Act language that is currently repeated in each of the other subsections of Section 20 relating to the authorization levels for each of the fiscal years covered.

TITLE II—AMENDMENTS TO THE SMALL BUSINESS ACT AND RELATED ACTS

Part A—Small Business Act

Section 201. *Small Business Development Centers.*

Subsection (a) of this section establishes a new funding formula for the Small Business Development Center (SBDC) Program for awards made after October 1, 1991. The maximum allowable award to an SBDC is based on its pro rata share of a specified maximum program level as a ratio of the population of the State served to the total population of the United States. The formula also prescribes the minimum award to any State. This minimum award level is currently $200,000, and remains unchanged. The purpose of the new Program funding formula is to "hold harmless" those States currently participating in the SBDC Program from program cuts that would be applied under the current formula given the anticipated results of the 1990 Census. Under the proposed new funding formula the program level for computational purposes is increased from $65 million to $70 million. By contrast, the actual appropriation to the SBDC for Fiscal Year 1990 is slightly over $50 million.

Subsection (a)(2) specifies that the modification to the program funding formula made in paragraph (1) is effective with respect to SBDC Program awards made on or after October 1, 1991. Awards made prior to October 1, 1991 will be made on the basis of a $65 million program level funding formula and the population estimates used for calendar year 1990 awards.

Under Subsection (b), future SBDC Program awards will be made only to Programs based at institutions of higher education, beginning on October 1, 1990. SBA is accorded the discretionary authority to continue to make awards to non-educational recipients who were Program participants prior to that date. Currently, 51 of the 56 SBDC Program awards made in 1989 are made to institutions of higher education.

Subsection (c) makes a correction to the Program's existing statutory provisions relating to available funding instruments. The SBDC Program is a federal grant-type or assistance program in accordance with the "Federal Grant and Cooperative Agreement Act of 1978" (31 U.S.C. 6301). The federal assistance award instruments are grants and cooperative agreements. Currently, the SBDC Program provides assistance to recipients through the award of cooperative agreements. Section 21(a) of the Act currently provides that the SBA is authorized to make "grants (including contracts and cooperative agreements)". Under the Federal Grant and Cooperative Agreement Act, a "contract" is a procurement instrument and not a form of assistance instrument, i.e. a grant or a cooperative agreement. This provision will correct this confusion in award instruments.

Substantial intergovernmental experience over two decades with a broad array of Federal grant-type (assistance) programs strongly suggests that potentially severe program delivery and administrative problems are likely when attempts are made to inappropriately apply the requirements of the federal procurement process to a grant-type (assistance) program. Recently, this was the situation with the SBDC Program regulations proposed by SBA. As proposed, these SBDC program regulations reflected inappropriate requirements derived from the federal procurement process.

Subsection (d) strikes a series of provisions relating to the duplicative role played by SBDCs in assisting small business concerns relating to exporting.

Subsection (f) eliminates the specific sunset provision contained in the legislation that initially established the SBDC Program on a pilot basis in 1980. The SBDC Program is no longer generally considered to be a pilot program. As with other SBA programs, however, the SBDC Program re-

mains subject to annual appropriations and periodic authorization measures as well as continuous oversight by the authorizing committees.

Section 202. *Export Revolving Line of Credit.*

This section amends Section 7(a) of the Small Business Act to expand the provision's reach regarding fostering exports by small business concerns.

Section 203. Two-Year Rule of Eligibility in the Minority Small Business and Capital Ownership Development Program.

This section would prohibit SBA from imposing by regulation a rigid and unwaiveable requirement that an applicant for the Minority Small Business and Capital Ownership Development (MSB/COD) Program must be in business for a particular period of time in order to be eligible for admission. Under Section 8(a)(7)(A) of the Small Business Act, an applicant to the MSB/COD Program must be found to have "reasonable prospects for success in competing in the private sector", generally referred to in implementing regulations as the "potential for success". This provision was not amended by Public Law 100-656, the "Business Opportunity Development Reform Act of 1988".

SBA's final regulations implementing Public Law 100-656, however, include a provision requiring that an MSB/COD Program applicant must have a revenue-producing small business concern that has been in existence for at least two years in order to be eligible for admission to the Program. The proposed regulations had included a similar two-year rule, but provided for its waiver if the applicant met other criteria that alternatively demonstrated "potential for success". The proposed rule was derived from a provision contained in SBA's Standard Operating Procedures (SOP), which had been used for a number of years. No public comments suggested limiting the rule in the manner reflected in the final regulations. Several commentators suggested additional criteria under which an applicant could display "potential for success" without complying with the "two-year rule."

Subsequent comments suggest such a rigid eligibility rule conflicts with the fundamental business development purposes of the MSB/COD Program. It might also be viewed as unnecessarily stifling the "potential for success" of minority entrepreneurs, who have demonstrated substantial business management skills while employed by others.

The provision is intended to result in a modification of SBA's current regulation on this point. It specifies criteria under which an applicant, whose business concern has not been in existence for the specified period, might be alternatively determined to have demonstrated the required "potential for success". Finally, it vests the authority to make such determinations with the SBA Administrator, or a designee.

Section 204. *Size Determinations relating to Tribally Owned Business Concerns.*

Socially and economically disadvantaged Indian tribes are a matter of special concern to Congress and are authorized to own and control more than one small business concern participating in the MSB/COD Program in certain circumstances. This concurrent tribal ownership of several MSB/COD Program Participants has sometimes created other eligibility problems in light of SBA's generally applicable rules regarding "affiliation". This provision of the bill resolves those ambiguities in keeping with the Congressional objectives regarding the underlying provision and the practical realities of business management responsibilities exercised by some Tribal Governments.

The Administrator is authorized to suspend the application of the provision upon making a finding a specific determination that one or more tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category. It is expected that this exception to the statutory rule will be applied only in the clearest case of unfair competitive advantage.

Section 205. *Joint Ventures with Tribally Owned Participants in the 8(a) Program.*

Section 602(b) of Public Law 100-656 established a program permitting joint ventures between tribally owned participants in the MSB/COD Program and other non-small business concerns, under limited circumstances. This program authority was granted on a pilot basis, expiring on September 39, 1991.

SBA's implementing regulations, issued on August 21, 1989, proved to be an impediment to the use of the statutory authority granted. Proposed modifications to these regulations were published for comment on May 4, 1990. In light of the delay in implementing this joint venture authority, Section 205 extends the test through September 30, 1994.

In addition, one of the statutory limitations on the use of the joint venture authority relates to the number of contracts which may be undertaken. Currently the joint venture may undertake only two contracts awarded pursuant to the authority of Section 8(a). The amendment proposes increasing the number of eligible contracts to five to obtain adequate experience regarding the utility of the joint venture authority.

Section 206. *Surety Bond Waiver Authority.*

Section 301 of Public Law 100-656 authorized a three-year test of a new form of developmental assistance to participants in the MSB/COD Program by granting exemptions from the performance and payment bonding requirements of the Miller Act (40 U.S.C. 270a), under limited circumstances. The provision provides for alternative payment protections to subcontractors and suppliers to the 8(a) prime contractor, especially through the use of direct disbursements to subcontractors and suppliers by the procuring agency or an FDIC-insured financial institution. This surety bond waiver authority expires on September 30, 1992.

Section 833 of Public Law 101-189, the "National Defense Authorization Act for Fiscal Years 1990 and 1991", requires the Department of Defense to make every reasonable effort to award not less than 30 construction contracts in each of the fiscal years 1990 and 1991 to firms participating in the MSB/COD Program which have been accorded waiver of surety bonding requirements. SBA reports that only two surety bond waivers have been granted during the six-month period from October 1, 1989 through March 31, 1990. This limited performance is a result of: (a) inadequate outreach to the MSB/COD community and the procuring agencies regarding the program's existence; (b) the general reluctance of most contracting officers to waive surety bonding; and (c) SBA's implementing procedures which may excessively restrict the use of the authority by MSB/COD Program Participants. In addition, new DOD construction projects have been subject to a "freeze" during most of FY 1990.

This section extends the surety bond waiver authority for two additional years, until September 30, 1994, to provide additional time for an adequate test.

Section 207. *Establishing Award Eligibility for Contract Opportunities Competed under Section 8(a).*

This section establishes the eligibility of a firm to participate in a contract competition pursuant to Section 8(a) of the Small Business Act. Under this provision eligibility is established at the time of the closing date for receipt of a bid or proposal, not at the time of award. A similar rule applies regarding the determination of eligibility to compete in a so-called "small business set-aside" pursuant to Section 15 of the Small Business Act. The offer must be in response to an agency solicitation issued for the conduct of a competition under Section 8(a)(1)(D) of the Small Business Act. Further, the offer must be a complete offer, including a price proposal if required by the solicitation.

This provision addresses an anomaly remaining in the Program from the time contract awards were made solely on a noncompetitive basis. In a totally noncompetitive program, eligibility was properly determined exclusively at the time of award. With the requirement for competition being added to the Program by Public Law 100-656, a modification should be be included to take into consideration the significant time that can be required by a buying agency to evaluate proposals received in response to an RFP (request for proposals). During such period for the evaluation of proposals, but prior to the selection of the winning contractor, a Program Participant, fully eligible for award at the time of submission of its offer, may graduate from the Program due to the expiration of its Program participation term. Such a rule unfairly disqualifies such a firm from award, since any delay was beyond its control in the handling of the buying activity. Further, such a rule will certainly tend to discourage a Program Participant from pursuing competitive contract opportunities under the Program during the later stages of its Program Participation Term, a clearly unacceptable situation frustrating Congressional intent to successfully induce competition into the award of contracts under the Program.

Section 208. *Bundling of contracts.*

This section amends section 15(a) of the Small Businss Act to give a so-called traditional procurement center representative (PCR) the responsibility to review a proposed procurement to determine if it is an aggregation of contracting opportunities that were previously offered separately and performed by small business concerns. Under such circumstances, the PCR should make recommendations to the buying activity to subdivide the contracting opportunity into smaller elements more conducive to small business participation, whenever practicable.

This provision was incorporated from the House version of the bill and is described more fully in House Report 101-667.

Section 209. *Designated procurement center representatives.*

This provision requires the Administration to assign so-called traditional procurement center representatives to three major buying activities.

This provision was incorporated from the House version of the bill and is described more fully in House Report 101-667.

Section 210. *Nonmanufacturer rule.*

This provision provides further clarification to the provision of Small Business Act relating to when a small business concern may offer the product of other than a small

business concern and still be eligible for award when the contract is being awarded pursuant to Section 8(a) or Section (15) of the Small Business Act, or other statutory authority encouraging the participation of small disadvantaged business concerns in the Federal procurement market. In making determinations regarding whether the product of a small business manufacturer or processor is available, the provision contemplates an evaluative process that takes cognizance of business reality. The product of the small business manufacturer or processor must be available to meet the specifications, terms, and conditions of the buying activity's solicitation, including timely delivery of the quantities required at a fair market price.

Section 211. *Commission on Minority Business Development.*

Subsection (a) authorizes the Under Secretary of Defense for Acquisition, a statutorily designated member of the Commission, to be represented by a designee.

Section 212. *Sunset on Authority to Provide Technical and Managerial Assistance Through Private Sector Sources.*

This section extends the sunset on the statutory authority for SBA to provide technical and managerial assistance through private sector sources through March 31, 1991.

Part B—Small Business Investment Act

Section 214. *Development Company Financings.*

This section statutorily establishes the eligibility criteria for job creation or job preservation in the SBA Section 502 Development Company Program. The loan eligibility is established at $40,000 for each job created and $25,000 for each job preserved.

Section 215. *Small Business Investment Companies.*

This section makes clear that the existing limitation on debenture guarantees of $35 million for an individual small business investment company applies to a group of licensees which are owned or controlled by the same individual or substantially the same group of individuals. The provision becomes effective July 1, 1991.

Section 216. *Pilot Preferred Surety Bond Guarantee Program.*

This section extends the expiration date of the Pilot Preferred Surety Bond Guarantee Program for two years, until September 30, 1994, because of delays in initiating implementation of the program. With the regulatory and other implementational elements of the program completed after many months of effort by the Administration to address the concerns of the Surety Association of America, there is a strong expectation that the so-called standard surety companies will again actually participate in the SBA Surety Bond Guarantee Program in a substantial manner to help meet the bonding needs of small business concerns, and especially disadvantaged small business conerns, during the extended term of the Preferred Surety Bond Guarantee Program.

Part C—Small Business Administration Management

Section 221. *SBA Deputy Administrator.*

This section provides for the Senate confirmation of the Deputy Administrator of the Small Business Administration.

Under Section 4 of the Small Business Act the Deputy Administrator exercises all the authorities of the Administrator in the absence or incapacity of the Administrator. The Deputy Administrator automatically becomes the Acting Administrator, in the event that the Administrator's position becomes vacant.

Under Section 5315 of Title 5, United States Code, the SBA's Deputy Administrator is accorded a Level IV position in the Executive Schedule. Also accorded Level IV status are: the Under Secretaries of each of the Military Departments (Army, Navy, and Air Force); the General Counsels of each of the Cabinet Departments; the Inspectors General of each of the Cabinet Departments; and the Members of the Federal Trade Commission and Securities and Exchange Commission. All of these positions are subject to Senate conformation. Thus, four SBA positions in the Administration will be subject to advice and consent of the Senate.

Part D—Demonstration Programs and Studies

Section 231. *Small Business Technology Transfer Demonstration Program.*

This section establishes a Small Business Technology Transfer Demonstration Program. The purpose of the program is to demonstrate the feasiblity of providing small business concerns with training and technical assistance with regard to technology transfer and the application of the technology obtained. The provision authorizes $5 million in each of the fiscal years 1991, 1992, and 1993.

Section 232. *Pilot Technology Access Program.*

This section authorizes the Administration to subsidize access by small businesses through Small Business Development Centers (SBDCs) to on-line databases to facilitate technology transfer. SBDCs may apply for a grant to be used to defray the cost of access to the databases, train small businesses on the databases, the demonstrate to small businesses the benefits of accessing the databases.

This provision was incorporated from the House version of the bill during floor consideration by the Whole House.

Section 233. *Feasibility study of business cooperation network.*

This section directs the Administrator to conduct a study of the feasibility of establishing a business cooperation system similar to the Business Cooperation Network developed by the European Economic Community.

This provision was incorporated from the House version of the bill and is described more fully in House Report 101-667.

Section 245. *Study on impact of electronic data interchange technology.*

This section directs the Administrator to conduct a study of the impact of electronic data interchange technology on small business concerns.

This provision was incorporated from the House version of the bill and is described more fully in House Report 101-667.

Part E—Repealers and Technical Amendments

Section 241. *Department of Defense Procurement Reporting.*

This provision modifies existing law regarding reporting by the Department of Defense on the participation of small business concerns and disadvantaged small business concerns as contractors and subcontractors on contracts awarded by the Department of Defense. Currently submitted quarterly, the amendment changes the reporting requirement to an annual report, thus reducing unnecessary reporting burdens on the Department of Defense.

The amendment does not contemplate any change in the current format of the report submitted.

Section 242. *Expired Provisions.*

This section eliminates several expired provisions of the Small Business Act.

Section 243. *Reporting of Subcontracting Activity.*

Title VII of Public Law 100-656 established the "Small Business Competitiveness Demonstration Program". One element of that program required the Office of Federal Procurement Policy (OFPP) to devise and implement a test to collect a broader array of data relating to subcontracts awarded to small business concerns and disadvantaged small business concerns, especially regarding participation by lower-tier subcontractors and suppliers. Despite protracted good faith efforts, OFPP has been unable to devise a plan that reliably collects the data requested without placing unreasonable burdens on the firms called upon to report and on the Federal Procurement Data System (FPDS). Presently, the FPDS is approaching "breakdown" in collecting and processing prime contracts data, due principally to the substantially increased prime contract reporting flowing from the requirements of the Small Business Competitiveness Demonstration Program.

Section 244. *Notices of Proposed Procurement Opportunities.*

This section corrects an erroneous cross reference.

Section 245. *Time Limit on Secondary Market Sales.*

This section eliminates an unnecessary limitation contained in Section 7(a) of the Small Business Act.

TITLE III—ASSISTANCE FOR RURAL SMALL BUSINESS CONCERNS

Section 301. *Short Title.*

This section establishes the short title of Title III of the bill as the "Rural Small Business Enhancement Act of 1990".

Section 302. *Establishment of Office of Rural Affairs.*

This section establishes an Office of Rural Affairs in SBA's Division of Special Programs. The Office is mandated to provide a focus for the significant and specific economic problems of small business in rural America. The Office is to serve as an advocate for rural problems within the Agency in seeking to ensure an equitable distribution of agency programs and services, as well as a think-tank for rural studies. Moreover, the Office should serve businesses directly by providing information of SBA and other federal programs which may be helpful to rural communities..

No specific definition of "rural" is provided in this bill, though various definitions have been established in law for other federal programs. The Administration has discretion to determine the appropriate standards for rural communities where no specific statutory definition applies. In most states, communities of less than 50,000 may be considered as rural to the extent that they share many of the same economic and infrastructure problems.

Section 303. *SBDC Rural Activities.*

This section gives guidance and direction to Small Business Development Centers in assisting rural small businesses. Particular emphasis is to be placed on export-related activities and promoting tourism in rural communities.

Section 304. *Catalog of Programs to Assist Rural Small Business Concerns.*

This section provides for a specific catalog of state and federal programs to be prepared by the Office of Advocacy to assist rural communities. This is to be an outreach

effort by the Office with copies of the catalogue provided on request and without request to the various organizations specified in the statute. The catalog is to be updated in 1993 and again in 1995. Thereafter, the Committees will evaluate the usefulness of this project and determine whether it should be extended.

Section 305. *Area Statistics in Presidential Report.*

This section requires that the President's annual report on the state of small business include a section presenting certain statistics on small business in rural as well as urban and suburban areas.

Section 306. *Rural Small Business Conferences.*

This section provides for regional conferences on problems facing rural communities to be conducted by the Office of Advocacy. A minimum of five such conferences shall be held at various locations in the country. The Office should select sites for these conferences with a view to convenience of travel for residents of rural areas. Special consideration should be given to areas most economically distressed. At least one conference should be held in the Lower Mississippi Delta region, and at least one should be held in the upper midwest. At the conclusion of these conferences, the Chief Counsel for Advocacy is to prepare and transmit to the Congress a report summarizing the findings and recommendations of these conferences.

Section 307. *Pilot Rural Development Loan Program.*

This section creates a new rural small business lending program in which lenders are permitted to retain one-half of the statutory guaranty fee on Section 7(a) guaranteed loans of less than $75,000, provided that the business is located in a rural area. This section expands on the concept of an existing SBA small loan program which presently allows lenders to retain one-half of the two point guaranty fee on loans under $50,000. Under the new provision, this principle will apply to loans up to $75,000 only for rural areas. This test program will expire at the end of fiscal 1994.

Section 308. *Rural Small Business Incubators.*

This section encourages Certified Development Companies licensed under Title V of the Small Business Investment Act of 1958 to submit proposals, either individually or through their national trade association, under which they might operate or facilitate the operation of small business incubators in rural areas.

Section 309. *Effects of Deregulation on Rural America.*

This section requires a major study by the Congressional Office of Technology Assessment (OTA) of the effects of deregulation on rural America. The study is to include the impact of deregulation of financial institutions, including banks and savings and loan associations, as well as airline deregulation and the deregulation of trucking and other transportation industries.

OTA is further directed to assess the costs and availability of specified communications services in rural communities as compared with urban areas.

Section 310. *Tourism Demonstration Program.*

In fiscal 1992, this section authorizes a $1 million pilot grant program whereby SBA may make grants to promote tourism in economically distressed rural areas, such as the lower Mississippi River Delta region. The program shall operate only if subsequently funded by the Appropriations Committees. Further, grantees shall be required to provide a matching amount of not less than 25 percent of the amount of Federal funding. Grants should be made in not more than five states and shall be directed at increasing income and employment through small businesses in depressed rural areas.

Section 311. *Rural Training Program.*

This section directs the Chief Counsel for Advocacy of the Small Business Administration to conduct training sessions of the types of Federal assistance available for the development of small business concerns engaged in tourism. The training activities are to be conducted in conjunction with the new Office of Rural Affairs, created by Section 302 of the bill, and appropriate personnel from SBA district offices.

Statement of Congressional Policy on Loans for Tourism-Related Small Business Concerns

It is the sense of the Congress that the Administration should ensure that rural small business engaged in tourism and tourism-related and tourism-dependent industries be given due consideration in the allocation of credit for the startup and expansion of small concerns. Tourism is an important component of the U.S. service sector and contributes substantially to the U.S. economy. Tourism is one of the three largest employers in more than thirty states of this nation, creating about 6 million jobs. Travel services produces more jobs than any other industry except health services. As the tourism and travel industry expands, it will continue to provide employment to many Americans. Tourism is also an important source of foreign exchange earnings, income, and employment for nearly all countries. It also promotes economic development. In a very real sense, tourism encompasses all spending for goods and services by travelers. Domestic and foreign visitors are a source of income to local community businesses—many of them small businesses. In fact, most businesses that are engaged in the travel and tourism industry in the United States are considered small business. It is estimated that there are 1.4 million travel-related businesses nationwide and that 98 percent of these are classified as small businesses. Therefore, the expenditures of domestic and foreign visitors generate sales for local shop and store owners and service providers and create employment opportunities for local residents.

TITLE IV—MISCELLANEOUS AMENDMENTS

Section 401. *Contract Goals for Minorities in Printing Related Services.*

This section extends for two years the duration of a pilot program relating to the participation of the Government Printing Office (GPO) in the Department of Defense's Section 1207 Program, which seeks to expand the participation of disadvantaged small business concerns and minority institutions of higher education in DOD contracting opportunities. Under Section 843 of Public Law 100-456, the "National Defense Authorization Act, Fiscal Year 1989", contract opportunities for printing services to be let by GPO to meet DOD requirements shall be considered as contract opportunities subject to DOD's Section 1207 Program. This authority currently expires on September 30, 1990. This provision was included in the bill at the request of Senator Nunn, as Chairman of the Committee on Armed Services, to increase the likelihood that this successful program providing additional business opportunities to disadvantaged small business concerns may be extended before its expiration.

Section 402. *Suspension of Liquidated Damages Under Comprehensive Small Business Subcontracting Plans.*

This section suspended subsection (d) of Section 834 of Public Law 101-189, the "National Defense Authorization Act for Fiscal Years 1990 and 1991". Section 834 provides a test program under which the Secretary of Defense may negotiate small business and disadvantaged small business subcontract participation goals with large DOD prime contractors on a company-wide or division wide basis rather than a contract-by-contract basis currently required by Section 8(d) of the Small Business Act. The test program was authorized with the expectation that such company-wide plans would be more advantageous to the government, small and disadvantaged small business concerns, and major DOD contractors. Specifically, the test program is intended to expand subcontracting opportunities for small and disadvantaged small business concerns. The test program terminates on September 30, 1993.

Subsection (d) of Section 834 expressly provides that a contractor negotiating a company-wide plan shall be subject to assessment of liquidated damages pursuant to section 8(d)(4)(F) of the Small Business Act for failure to make a good faith effort to attain the goals contained in the subcontracting plan. Due to grave practical uncertainties on the part of the major Defense prime contractors as to how the liquidated damages provision would operate on other than a contract-by-contract basis, no major DOD prime contractor has indicated a willingness to participate in the test program, participation in which is purely voluntary.

This provision is designed to eliminate this perceived impediment to participation by major DOD contractors. It is expected that its enactment will facilitate participation in the test program.

Section 403. *Definition of Architectual and Engineering Services.*

This section seeks to make explicit Congressional intent regarding the appropriate regulatory implementation of Section 742 of Public Law 100-656, the "Business Opportunity Development Reform Act of 1988" by statutorily stating the intent of Congress. Section 742 amended the definition of "architectural and engineering services" which originally was enacted in Section 901(3) of Public Law 92-582 (40 U.S.C. 541(3)). The 1988 enactment of the revised definition of architectural and engineering services was necessitated by persistent problems stemming from contracting officers' confusion over the types of architectural, engineering and related professional services to which the contractor selection procedures of Public Law 92-582 (40 U.S.C. 542-544) are to apply. The interim rule revising Subpart 36.6 (Architect-Engineer Services) of the Federal Acquisition Regulation (FAR) attempted to empower contracting officers with discretion, not granted by statute, to determine the types of services included within the new definition and the types of procurement procedures to be used. Subsequently, proposed changes to FAR Subpart 36.6 suggested deleting references to mapping services, despite the explicit inclusion of both surveying and mapping among the professional services listed in paragraph (C) of the new statutory definition of "architectural and engineering services."

To ensure that the final FAR coverage address all types of professional services spe-

cifically included by statute in 40 U.S.C. 901(3) and does not grant to the contracting officer discretion to avoid the statutorily required source selection procedures for "architectural and engineering services", this section has been included to provide clear direction regarding the FAR coverage implementing Section 742. It is expected that final modifications to Subpart 36.6 will specify that architectural-engineering services include surveying and mapping services. Further, the revised FAR coverage should be precise with respect to the requirement that the contract selection procedures of Public Law 93-582 (40 U.S.C. 541-544) be used when the agency requirement is for one of the enumerated professional services, either exclusively or predominantly (*e.g.*, a simple majority of the hours requested are for such services, or such services are the essential and single largest component of the contract but do not necessarily represent the majority of the hours).

AMENDMENT NO. 3209

(Purpose: To authorize appropriations for the programs administered by the Small Business Administration for fiscal years 1992, 1993, and 1994, to amend the Small Business Act, the Small Business Investment Act of 1958, and for other purposes)

Mr. REID. Mr. President, on behalf of Senator BUMPERS, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. BUMPERS (for himself and Mr. BOSCHWITZ), proposes an amendment numbered 3209.

Mr. REID. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. LEVIN. Mr. President, I am pleased that my amendment to this legislation has been accepted by the Senate Small Business Committee and appears acceptable to the House committee as well. The text is basically the same as the bill I introduced, S. 2897, which establishes a regional demonstration program to promote technology transfer and the modernization of small business manufacturing. I view this legislation as the first step in developing an improved Federal effort to assist small businesses trying to upgrade their capability to use new and high technology manufacturing.

Education and training are integral to helping small businesses acquire and use technology, but they are expensive in both time and money. That is why this demonstration program is necessary and will be effective, because it will efficiently bring together resources from all levels to begin the complicated process of ensuring that all levels to begin the complicated process of ensuring that the United States has a quality work force that is educated, trained and flexible in adapting to technological change. As chairman of the Small Business Subcommittee on Innovation, Technology and Productivity, I have heard many witnesses testify that this nation's small businesses are suffering because they are unable to invest in or obtain the technically capable employees they need.

The Community College Association for Technology Transfer [CCATT] is a consortium of 16 midwestern community and technical colleges that exists primarily to assist small and medium sized businesses in adopting new technologies. Grand Rapids Junior College and Jackson Community College in Michigan are members of CCATT and would be part of the demonstration program.

The amendment requires the Small Business Administration to establish a 3-year demonstration program using CCATT to provide small businesses in the region around each college with education, training, and technical assistance with respect to technology transfer and manufacturing applications. SBA would be authhorized to spend $5 million on the program for each of the fiscal years 1991, 1992, and 1993, to be distributed among the members on a merit basis. At the end of the 3 years, SBA and Congress will assess the program's success and consider extending it. It may be that this program could lead to a whole network of technology extension service centers across the country, if it is a success.

Mr. President, we need small businesses. We need to help them modernize. They are the backbone of this economy. We must continue to seek ways to have Government, industry and academia work together to give our small businesses the chance to compete in a modernized, global market. This amendment is one way to start that process.

Mr. BOSCHWITZ. Mr. President, today the Senate will take up H.R. 4793, the Small Business Reauthorization and Amendments Act of 1990. H.R. 4793 reauthorizes the many programs of the U.S. Small Business Administration [SBA] for fiscal years 1991 through 1994. I urge my colleagues to support this legislation.

The Small Business Administration is the primary Federal agency providing assistance to the Nation's 18 million small businesses. The SBA guarantees commercial loans made by banks and other financial institutions to qualify small businesses unable to obtain credit elsewhere. It also makes direct business loans to certain designated groups, such as businesses located in areas of high unemployment or owned by Vietnam era or disabled veterans, handicapped individuals and organizations employing the handicapped, and minority firms which are eligible for 8(a) contract assistance. SBA also provides direct loans to victims of disasters who need to replace or repair damaged businesses or homes.

In addition, SBA licenses and regulates small business investment companies [SBA], guarantees surety bonds for small contractors, and provides management and technical assistance to firms receiving SBA financial assistance. The SBA provides procurement assistance to small businesses in selling to the Federal Government, and it promotes the development of minority small business.

I am very pleased to see that today's bill contains a funding level of $3.5 billion for the 7(a) guaranteed loan program. With this program, private lenders may loan up to $750,000 to a small business unable to obtain credit elsewhere. The SBA guarantees 90 percent of the loan up to $155,000, and between 70 and 85 percent on a higher loan balance. Interest is at market rates and the loan term is a maximum of 25 years.

This program has improved in the past few years. Part of the reason for this improvement lies with more equitable sharing of risk in the program by lenders. Lenders are paying increased fees for the privilege of attaching the SBA guarantee to their loans. This results in better quality loans and fewer losses to the Government.

One program which has been the subject of four hearings in the Small Business Committee is the SBIC Program. SBIC's are privately owned venture capital firms that are licensed by the SBA. SBIC loans are for 20 years and at interest rates tied to the Treasury rate. The amount loaned by an SBIC to any one business may not exceed 20 percent of the private capital investment by the owners of the SBIC; that is, $1 million private investment— $200,000 maximum loan to any one small business.

In our hearing we learned of the large number of SBIC's that are in liquidation and a worst-case scenario of losses up to $500 million in Federal funds. Some of the problems with the SBIC Program are simply associated with the nature of the program; it is a venture capital program. Other problems are related to overvaluing assets by SBIC's and poor auditing practices by outside auditors. The SBA has made some changes to tighten up its oversight and proposed legislation is being considered.

I believe this program has been very beneficial to many startup small businesses, but I have been concerned about the possible losses of Federal dollars. I am pleased with the administrative changes that have been made, but will continue to monitor the loss rates of this program.

At the end of my statement I will have included a table comparing the fiscal year 1990 authorized funding levels for the SBA loan programs with the proposed funding levels for fiscal years 1991 through 1994. I ask unanimous consent that the table appear in the RECORD at the end of my remarks. Generally, the program authorization levels for each year reflect the following percentage increase or decrease over the prior year: fiscal year 1991, − 3 percent; fiscal year 1992, + 9 percent; fiscal year 1993, + 5 percent; and fiscal year 1994, + 5 percent.

H.R. 4793 also authorizes a pilot program in five States to obtain access by small business to on-line databases to facilitate technology transfer. Under the program, grants must be used to defray the cost of access to the databases, train small business on the databases, and establish a public point of access to the databases. This proposal comes from legislation I introduced (S. 2526) following a hearing in the Small Business Committee which showed the necessity of getting technology from Federal laboratories and to small businesses in the private sector.

In our hearings we learned there are several hundred Federal laboratories in this country which spend more than $60 billion per year on research. Unfortunately, only a very small percentage of Federal research is being commercialized. What is transferred tends to be intellectual property rather than specific know-how or technical information, which can be equally valuable. And the vast majority of businesses do not understand the Federal technology transfer system as it currently exists.

Many small businesses told us that Federal labs do not understand the priorities and pressures of the business world. This contention, along with the frustrations that come with dealing with the Federal bureaucracy cause small businesses to lose interest in working with Federal labs. I believe this proposal, which comes from my bill, will assist in bringing Federal lab technology and small business together.

Today's legislation has several amendments to the Business Opportunity Development Reform Act of 1988 (Public Law 100-656). One amendment eliminates the 2-year rule requirement the SBA has placed in its regulations to Public Law 100-656. This is an especially troublesome provision that has the effect of keeping otherwise qualified applicants out of the program.

When writing the 8(a) reform bill, Congress did not intend for SBA to require a small business concern to be operating for 2 years before it could be eligible for 8(a) Government contracts. This provision suggests criteria under which an applicant, who has been in business for less than 2 years, might be alternatively determined to have demonstrated the required potential for success.

A pilot program under Public Law 100-656 permitted Indian tribes to joint venture with large firms for two 8(a) contracts. Today's legislation will extend that pilot program until September 30, 1994, and increase the number of joint venture contracts to five.

It is imperative we show our support for our country's small businesses by reauthorizing the SBA's programs so it can continue to provide them with assistance. I support H.R. 4793 and encourage the full Senate to pass it today.

Mr. President, I ask unanimous consent that the table to which I have referred be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

SBA LOAN PROGRAM LEVELS

[In millions of dollars]

	Fiscal year—				
	1990 authorized	1991 proposed	1992 proposed	1993 proposed	1994 proposed
General 7(a) guaranteed	3,543	3,500	3,850	4,043	4,245
Handicapped direct	18	19	20	21	22
Economic opportunity direct	25	24	25	26	27
Pollution control guaranteed	62	50	53	55	58
Veterans direct	22	19	20	21	22
8(a) direct		10	10	11	12
Development Co. guaranteed	478	520	546	573	602
Investment Co.:					
Direct	41	19	20	21	22
Guaranteed	242	200	210	221	232
Total loans	4,472	4,361	4,754	4,992	5,242

The PRESIDING OFFICER. The question is on agreeing to the substitute amendment.

So the substitute amendment (No. 3209) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Without objection, the bill, as amended, is considered read a third time and passed.

So the bill (H.R. 4793), as amended, was passed.

Mr. REID. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INTERNATIONAL PARENTAL CHILD ABDUCTION

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 492, S. 185.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 185) to amend title 18 of the United States Code to punish as a Federal criminal offense the crimes of international parental child abduction.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

S. 185

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. OFFENSE.

(a) Chapter 55 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1204. International Parental Child Abduction

"(a) For purposes of this section—

"(1) the term 'child' means a person under the age of 18 at the time the offense occurred;

"(2) the term 'detains' means taking or retaining physical custody of a child, whether or not the child resists or objects; and

"(3) the term 'lawful custodian' means—

"(A) a person or persons granted legal custody of a child or entitled to physical possessions of a child pursuant to a court order; or

"(B) the mother of the child when the parents have not been married, the father's paternity has not been established by a court of law, and no other person has been granted custody of the child by a court of law.

"(4) the term 'person' means a parent, putative parent, or family member related to the child victim by blood or marriage.

"(b) [Whoever—] *Any person who—*

"(1) intentionally removes a child from, or conceals or detains a child outside the jurisdiction of the United States without the consent of the person who has been granted sole or joint custody, care, or possession of the child;

"(2) intentionally removes a child from the jurisdiction of the United States in violation of a valid court order which prohibits the removal of the child from a local jurisdiction, State or the United States;

"(3) intentionally removes a child from, or conceals or detains a child outside the jurisdiction of the United States without the consent of the mother or lawful custodian of the child if the person is a putative father who has not established paternity of the child;

"(4) being a parent of a child born out of wedlock if the paternity of the father has been established by a court of law but there has been no order of custody, removes a child from, or conceals or detains a child outside the jurisdiction of the United States without the consent of the child's other parent;

"(5) intentionally removes a child from, or conceals or detains a child outside the jurisdiction of the United States after filing a petition or being served with process in an action affecting marriage or paternity but prior to the issuance of a temporary or final order determining custody;

"(6) being a parent of the child, and if the parents of such child are or have been married and there has been no court order of custody, conceals the child for 30 days outside the jurisdiction of the United States, and fails to make reasonable attempts within the 30-day period to notify the other parent to the whereabouts of the child or to arrange reasonable visitation or contact with the child;

"(7) being a parent of the child, and where the parents of the child are or have been married and there has been no court order of custody, conceals or detains a child outside of the jurisdiction of the United States when the child was taken with physical force or the threat of physical force;

"(8) at the expiration of visitation rights outside of the jurisdiction of the United States, intentionally fails or refuses to return or impedes the return of the child to the jurisdiction of the United States;

"(9) conceals, detains, or removes the child outside the jurisdiction of the United States for payment or promise of payment at the instruction of a person who has not been granted custody of the child by a court of law; *or*

"(10) being a parent of the child, instructs another person to conceal, detain or remove a child when that act when committed by the parent would be a violation of this [Act; or] *Act,*

[(11) aids or abets any person violating paragraphs (1) through (10),]

shall be guilty of child abduction and shall be fined in accordance with this title or imprisoned not more than 3 years, or both.

"(c) Whoever aids or abets any person violating paragraphs (1) through (10) of subsection (b) shall be guilty of child abduction and shall be fined in accordance with this title or imprisoned not more than 3 years, or both.

[(c)] *"(d)* It shall be an affirmative defense under this section that—

"(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was in effect at the time of the offense;

"(2) no court within the United States could exercise jurisdiction to determine custody of the child pursuant to the provisions of the Uniform Child Custody Jurisdiction Act;

"(3) the defendant has physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made a reasonable attempt to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible; or

"(4) the defendant was fleeing an incidence or pattern of domestic violence.

[(d)] *"(e)* If, upon sentencing, the court finds evidence of any of the following aggravating factors:

"(1) that the defendant abused or neglected the child during the concealment, detention, or removal of the child or placed or caused the child to be placed in the care of another person who abused or neglected the child;

"(2) that the defendant inflicted or threatened to inflict physical harm on a parent or lawful custodian of the child or on the child with intent to cause such parent or lawful custodian to discontinue criminal prosecution of the defendant under this section;

"(3) that the defendant demanded payment in exchange for return of the child or demanded that the defendant be relieved of the financial or legal obligation to support the child in exchange for return of the child;

"(4) that the defendant has previously been convicted of a State or Federal child abduction offense; or

"(5) that the defendant committed the abduction while armed with a deadly weapon or the taking of the child resulted in serious bodily injury to another,

the sentence imposed by the court in accordance with this title shall be more severe than in the absence of such factors.

[(e)] *"(f)* There is criminal jurisdiction over conduct prohibited by this Act if the court has jurisdiction to determine custody of the child subject to the prohibited conduct pursuant to the provisions of the Uniform Child Custody Jurisdiction [Act.".] *Act.*

"(g) No prosecution under this section may be brought against an individual for the removal of a child to a country which is a party to, and is implementing, the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1990.".

(b) The table of sections for chapter 55 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1204. International parental child abduction".

SEC. 2. EFFECT OF PRIOR REMOVAL.

If a child was removed from the jurisdiction of the United States prior to the date of enactment of this Act, charges under section 1204 of title 18, United States Code, as added by this Act, may be approved only in cases involving the concealing or detaining of the child in violation of a court order that existed at the time of the child's removal from the jurisdiction of the United States.

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 90 days from the date of enactment of this Act.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

Mr. REID. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3210

(Purpose: To make certain technical and conforming amendments)

Mr. REID. Mr. President, on behalf of Senator DIXON, I send an amendment to the desk making technical and conforming changes.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. DIXON, proposes an amendment numbered 3210.

Mr. REID. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 14, strike "possessions" and insert "possession".

On page 4, line 4, strike "30" and insert "7".

On page 4, line 5, strike "30" and insert "7".

On page 5, line 6, after "imprisoned" insert "not less than 1 year and".

On page 5, line 11, after "imprisoned" insert "not less than 1 year and".

On page 7, line 12, after "removal" insert "or wrongful retention".

On page 7, line 13, strike ", and is implementing,".

On page 7, line 15, strike "1990" and insert "1980".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3210) was agreed to.

Mr. DIXON. Mr. President, today we have jumped over a significant hurdle in the Senate's effort to enact legislation outlawing the act of international parental child abduction. Enactment of S. 185, the International Parental Child Abduction Act of 1990, puts this body solidly behind this Senator's efforts to protect our children, prevent parental child abductions, and put the full force of Federal law behind the parent victims.

In 1986, I made a commitment to do all I could to deal with this issue. For the thousands of parent victims, this legislation is for them; for their struggle to regain possession of their abducted children.

S. 185 was introduced on the first day of the 101st Congress. Now, on the final day of this session, the Senate has acted, and acted affirmatively. Should the House not act on this prior to sine die, I will be back in January, pressing for early consideration of this legislation. During the course of its lifetime, international parental child abduction legislation has been adopted by the Senate twice, and has been the focus of hearings in the House of Representatives.

International parental child abduction is a horrible act, and it should be a Federal crime. We must protect our children, and make it clear to any parent contemplating an abduction, that there is no safe haven; American law will follow them wherever they go. S. 185 puts teeth in our efforts to stem the abductions of American children by parents.

For our children's sake, we must enact this legislation.

I thank my colleagues.

The PRESIDING OFFICER. Without objection, the bill as amended is considered read a third time and passed.

So the bill (S. 185), as amended, was passed, as follows:

S. 185

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. OFFENSE.

(a) Chapter 55 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1204. International Parental Child Abduction

"(a) For purposes of this section—

"(1) the term 'child' means a person under the age of 18 at the time the offense occurred;

"(2) the term 'detains' means taking or retaining physical custody of a child, whether or not the child resists or objects; and

"(3) the term 'lawful custodian' means—

"(A) a person or persons granted legal custody of a child or entitled to physical possession of a child pursuant to a court order; or

"(B) the mother of the child when the parents have not been married, the father's paternity has not been established by a court of law, and no other person has been granted custody of the child by a court of law.

"(4) the term 'person' means a parent, putative parent, or family member related to the child victim by blood or marriage.

"(b) Any person who—

"(1) intentionally removes a child from, or conceals or detains a child outside the jurisdiction of the United States without the consent of the person who has been granted sole or joint custody, care, or possession of the child;

"(2) intentionally removes a child from the jurisdiction of the United States in violation of a valid court order which prohibits the removal of the child from a local jurisdiction, State or the United States;

"(3) intentionally removes a child from, or conceals or detains a child outside the jurisdiction of the United States without the consent of the mother or lawful custodian of the child if the person is a putative father who has not established paternity of the child;

"(4) being a parent of a child born out of wedlock if the paternity of the father has been established by a court of law but there has been no order of custody, removes a child from, or conceals or detains a child outside the jurisdiction of the United States without the consent of the child's other parent;

"(5) intentionally removes a child from, or conceals or detains a child outside the jurisdiction of the United States after filing a petition or being served with process in an action affecting marriage or paternity but prior to the issuance of a temporary or final order determining custody;

"(6) being a parent of the child, and if the parents of such child are or have been married and there has been no court order of custody, conceals the child for 7 days outside the jurisdiction of the United States, and fails to make reasonable attempts within the 7 day period to notify the other parent to the whereabouts of the child or to arrange reasonable visitation or contact with the child;

"(7) being a parent of the child, and where the parents of the child are or have been married and there has been no court order of custody, conceals or detains a child outside of the jurisdiction of the United States when the child was taken with physical force or the threat of physical force;

"(8) at the expiration of visitation rights outside of the jurisdiction of the United States, intentionally fails or refuses to return or impedes the return of the child to the jurisdiction of the United States;

"(9) conceals, detains, or removes the child outside the jurisdiction of the United States for payment or promise of payment at the instruction of a person who has not been granted custody of the child by a court of law; or

"(10) being a parent of the child, instructs another person to conceal, detain or remove a child when that act when committed by the parent would be a violation of this Act,

shall be guilty of child abduction and shall be fined in accordance with this title or imprisoned not less than one year and not more than 3 years, or both.

"(c) Whoever, aids or abets any person violating paragraphs (1) through (10) of subsection (b) shall be guilty of child abduction and shall be fined in accordance with this title or imprisoned not less than 1 year and not more than 3 years, or both.

"(d) It shall be an affirmative defense under this section that—

"(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was in effect at the time of the offense;

"(2) no court within the United States could exercise jurisdiction to determine custody of the child pursuant to the provisions of the Uniform Child Custody Jurisdiction Act;

"(3) the defendant has physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made a reasonable attempt to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible; or

"(4) the defendant was fleeing an incidence or pattern of domestic violence.

"(e) If, upon sentencing, the court finds evidence of any of the following aggravating factors:

"(1) that the defendant abused or neglected the child during the concealment, detention, or removal of the child or placed or caused the child to be placed in the care of another person who abused or neglected the child;

"(2) that the defendant inflicted or threatened to inflict physical harm on a parent or lawful custodian of the child or on the child with intent to cause such parent or lawful custodian to discontinue criminal prosecution of the defendant under this section;

"(3) that the defendant demanded payment in exchange for return of the child or demanded that the defendant be relieved of the financial or legal obligation to support the child in exchange for return of the child;

"(4) that the defendant has previously been convicted of a State or Federal child abduction offense; or

"(5) that the defendant committed the abduction while armed with a deadly weapon or the taking of the child resulted in serious bodily injury to another,

the sentence imposed by the court in accordance with this title shall be more severe than in the absence of such factors.

"(f) There is criminal jurisdiction over conduct prohibited by this Act if the court has jurisdiction to determine custody of the child subject to the prohibited conduct pursuant to the provisions of the Uniform Child Custody Jurisdiction" Act.

"(g) No prosecution under this section may be brought against an individual for the removal or wrongful retention of a child to a country which is a party to, the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.".

(b) The table of sections for chapter 55 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1204. International parental child abduction".

SEC. 2. EFFECT OF PRIOR REMOVAL.

If a child was removed from the jurisdiction of the United States prior to the date of enactment of this Act, charges under section 1204 of title 18, United States Code, as added by this Act, may be approved only in cases involving the concealing or detaining of the child in violation of a court order that existed at the time of the child's removal from the jurisdiction of the United States.

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 90 days from the date of enactment of this Act.

DRUNK DRIVING VICTIMS PROTECTION ACT

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1931, the Drunk Driving Victims Protection Act.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1931) entitled "An act to prevent the discharge in a chapter 13 bankruptcy proceeding of certain debts arising out of the debtor's operation of a motor vehicle while legally intoxicated," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Victims Protection Act of 1990".

SEC. 2. NONDISCHARGEABILITY OF CERTAIN DEBTS ARISING FROM UNLAWFUL DRIVING WHILE INTOXICATED OR IMPAIRED.

(a) AMENDMENT TO CHAPTER 5.—Section 523(a)(9) of title 11, United States Code, is amended to read as follows:

"(9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance; or".

(b) AMENDMENT TO CHAPTER 13.—Section 1328(a)(2) of title 11, United States Code, is amended by inserting "or 523(a)(9)" after "523(a)(5)".

SEC. 3. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR RESTITUTION IMPOSED FOR COMMITTING CRIMES.

Section 1328(a) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "or" at the end,

(2) in paragraph (2) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(3) for restitution included in a sentence on the debtor's conviction of a crime.".

SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

Amend the title so as to read: "An Act to amend title 11 of the United States Code with respect to the nondischargeability of debts arising from unlawful driving while intoxicated or impaired and arising from restitution imposed for committing crimes.".

Mr. BIDEN. Mr. President, I join the distinguished ranking member of the Judiciary Committee, Senator THURMOND, and my distinguished colleague from Missouri, Senator DANFORTH, in urging the Senate to pass the Drunk Driving Victims' Protection Act.

Just last month, the Senate passed a similar version of this bill. In order for this important legislation to become law, we are now required to pass it again so that technical changes made by the other body can be included. Our counterparts in the House fully support the goals of the Senate legislation—goals that I would like to briefly restate.

Drunk driving is a major public health problem, killing and injuring tens of thousands of Americans—particularly young people—every year. A drunk driving victim suffers enough when he or she is injured in an accident or losses a family member or friend. That victim should not be victimized a second time by the Federal bankruptcy code.

Under current law, drunk drivers can escape payment of civil judgments to their victims by filing for bankruptcy under Chapter 13 of the Federal bankruptcy code. Congress recognized the folly of this loophole in 1984, when it passed legislation preventing drunk drivers from using chapter 7 of the bankruptcy code to escape their obligations to victims. The Danforth-Biden-Thurmond bill simply closes a similar loophole under chapter 13.

In addition to closing this loophole to protect the rights of drunk driving victims, the legislation reported by the Judiciary Committee and passed by the Senate accomplished two other objectives. It extended current law so that the law covers drivers impaired by drugs, as well as those impaired by alcohol. It also addressed a problem of judicial procedure referred to as the race to the courthouse.

All three of these original Senate objectives will be accomplished by the legislation now before us. Although the technical bankruptcy mechanism for addressing the race to the courthouse problem has been changed, the intended effect of the original legislation remains unchanged.

Mr. President, I want to thank Senator DANFORTH for his hard work on this legislation. I also would like to recognize the tireless efforts of Mothers Against Drunk Driving [MADD], one of our most valuable advocates for improved public safety. MADD first proposed this legislation and has, in general, been very effective in pushing legislation to crack down on drunk and drugged drivers.

Mr. THURMOND. Mr. President, I am pleased that the Senate is considering today S. 1931, the Drunk Driving Victims' Protection Act. I introduced this bill along with Senator DANFORTH and Senator BIDEN to prevent a debtor from filing a chapter 13 bankruptcy proceeding in order to discharge his or her debts arising out of the debtors operation of a motor vehicle while intoxicated from using alcohol or drugs.

The Senate passed this bill on September 18, 1990. After discussions with the House, we are considering today the compromise language.

S. 1931 builds upon legislation enacted in 1984 that was intended to prevent drunk drivers who killed or injured innocent people from escaping debts owed to the victims simply by declaring bankruptcy. However, the 1984 legislation only applied to chapter 7 bankruptcy filings. Therefore, a drunk or drugged driver today may still file bankruptcy under chapter 13 and escape full payment to his or her victim.

S. 1931 will resolve this intolerable situation by amending the Bankruptcy Code in order to close this loophole and protect the right of victims to receive compensation for their injuries. Furthermore, this bill will extend coverage of this bill to persons who are intoxicated by the use of drugs as well as alcohol.

By forcing drunk or drugged drivers to pay their debts, S. 1931 will finally fill the gaps that previously have left victims uncompensated or undercompensated for their injuries. We will be sending a clear message to those drivers intoxicated by using alcohol or drugs that they will now be held financially accountable for their acts.

In closing, it is important to note that the Mothers Against Drunk Driving wholeheartedly endorses this legislation. I am pleased that the Senate has chosen to consider S. 1931 today and I urge my colleagues to support it.

Mr. REID. Mr. President I move that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTING THE ENROLLMENT OF THE BILL H.R. 4653 AND CORRECTING THE ENROLLMENT OF THE BILL S. 459

Mr. REID. Mr. President I ask unanimous consent that the Senate proceed to the immediate consideration en bloc of House Concurrent Resolution 392, making technical corrections in the enrollment of H.R. 4653, the Export Administration Act, and House Concurrent Resolution 393 to correct a technical error in the enrollment of the bill S. 459, the space patent bill; that the two concurrent resolutions be agreed to and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the concurrent resolution (H. Con. Res. 392 and H. Con. Res. 393) was agreed to.

EXTENDING THE PROVISIONS OF SENATE RESOLUTION 106 OF THE 101ST CONGRESS, THE CENTRAL AMERICAN NEGOTIATIONS OBSERVER GROUP RESOLUTION

Mr. REID. Mr. President, I send a resolution to the desk on behalf of Senators MITCHELL and DOLE and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 351) extending the provisions of Senate Resolution 106 of the 101st Congress (agreed to April 13, 1989).

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 351), was agreed to, as follows:

S. RES. 351

Resolved, That section 9 of Senate Resolution 106 of the One Hundred First Congress (agreed to April 13, 1989) is amended by striking "One Hundred First Congress" and inserting in lieu thereof "One Hundred Second Congress".

Mr. REID. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXTENDING THE AUTHORIZATION OF THE COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES SENATE

Mr. REID. Mr. President, on behalf of the majority leader and Senator DOLE, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 352) to extend the authorization of the Commission on the Bicentennial of the United States Senate through the 102nd Congress.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

EXTENSION OF THE SENATE BICENTENNIAL COMMISSION

Mr. MITCHELL. Mr. President, on behalf of the Republican leader and myself, I send to the desk a resolution to extend the life of the Senate Bicentennial Commission through the end of the 102d Congress.

The Senate established this Commission in 1986, based on the recommendation of a special advisory committee made up of former Senators and distinguished scholars. Since 1986, the Commission, consisting of nine Senators, has coordinated a successful and highly acclaimed program of ceremonial events, research conferences, reference publications, and exhibitions. The Commission has no separate staff. It draws on the staff resources of the Senate Historical Office; the Office of Senate Curator, and the Office of the Secretary of the Senate.

I believe that the Commission, under the able leadership of our distinguished President pro tempore, should have the opportunity to guide to fruition its long-term projects designed to bring greater public understanding of this 2-century-old institution.

Among the initiatives that will require Commission coordination, during the 102d Congress, with individuals and organizations outside the Senate are commemoration of the bicentennial of the Bill of Rights, programs to improve preservation of and access to Senate records at the National Archives, summer institutes on Congress for secondary school teachers, a series of book-length biographies of notable former members, a project to produce an instructional film on the operations of the Senate, and activities associated with the two-hundredth anniversary of the Senate's move to Washington.

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to as follows:

S. RES. 352

Resolved, That section 10 of Senate Resolution 144, agreed to June 13, 1989 (101st Congress, 1st Session), is amended by striking "one hundred and first Congress" and inserting "one hundred and second Congress".

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZING ACQUISITION OF PROPERTY FOR THE LIBRARY OF CONGRESS

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 5708, regarding purchase of property from the Library of Congress just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5708) to authorize acquisition of certain real property for the Library of Congress.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 5708) was ordered to a third reading, was read the third time, and passed.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDIANA DUNES NATIONAL LAKESHORE ACCESS AND ENHANCEMENT ACT

The Senate proceeded to consider the bill (H.R. 3209) to modify the boundaries of the Indiana Dunes National Lakeshore, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indiana Dunes National Lakeshore Access and Enhancement Act of 1990".

SEC. 2. DEFINITION OF NATIONAL LAKESHORE ENABLING ACT.

For the purposes of this Act, the term "the Act" means the Act entitled "An Act to provide for the establishment of the Indiana Dunes National Lakeshore, and for other purposes", approved November 5, 1966, Public Law 89-761, as amended, (16 U.S.C. 460u et seq.).

SEC. 3. BOUNDARIES.

(a) IN GENERAL.—Section 1 of the Act (16 U.S.C. 460u) is amended by striking "October 1986, and numbered 626-80,033-B" and inserting in lieu thereof "October 1990 and numbered 626-80,038-C".

(b) CRESCENT DUNE.—Section 12 of the Act (16 U.S.C. 460u-12) is hereby repealed and the following new section is added in its place:

"SEC. 12. The Secretary shall acquire the area on the map referred to as area III-B only if such area can be acquired for not more than $5,000,000.".

SEC. 4. IMPROVED PROPERTY; RETENTION OF RIGHTS.

(a) ADDITIONAL AREAS.—The table in section 4 of the Act (16 U.S.C. 460u-3) is amended to read as follows:

"Property within boundaries of map	*Construction began before*
Dated October 1990, No. 626-80,038-C.	*October 1, 1990.*
Dated October 1986, No. 626-80,033-B.	*February 1, 1986.*
Dated December 1980, No. 626-91014.	*January 1, 1981.*
Dated September 1976, No. 626-91007.	*February 1, 1973.*
Dated September 1966, No. LNPNE-1008-ID.	*January 4, 1965".*

(b) RETENTION OF RIGHTS.—Section 5(a) of the Act (16 U.S.C. 460u-5(a)) is amended—

(1) in paragraph (2)(B), by striking "subparagraph (A)" and inserting in lieu thereof "subparagraph (A)(ii)"; and

(2) by adding at the end thereof the following new paragraph:

"(3)(A) In the case of improved property included within the boundaries of the lakeshore after October 1, 1990, that was not included within the boundaries before that date, an individual who is an owner of record of such property as of that date may retain a right of use and occupancy of such improved property for noncommercial residential purposes for a term ending at either at the following:

"(i) A fixed term not to extend beyond September 30, 2010, or such less fixed term as the owner may elect at the time of acquisition.

"(ii) A term ending at the death of the owner or the owner's spouse, whichever occurs last. The owner or owners shall elect the term to be reserved.

"(B) Subparagraph (A)(ii) shall apply only to improved property owned by an individual who—

"(i) was an owner of record of the property as of October 1, 1990;

"(ii) had attained the age of majority as of that date; and

"(iii) made a bona fide written offer not later than October 1, 1997, to sell the property to the Secretary.".

SEC. 5. UNIT I-M.

The Act, as amended by section 4, is amended by adding at the end thereof the following new section:

"SEC. 25. (a) UNIT I-M.—Before acquiring lands or interests in land in Unit I-M (as designated on the map referred to in section 1 of this Act), the Secretary shall consult with the Commissioner of the Indiana Department of Transportation to determine what lands or interests in lands are required by the State of Indiana for improvements to State Road 49 and the reconstruction and relocation of the interchange with State

Road 49 and U.S. 20 so that the acquisition by the Secretary of lands or interests in land in Unit I-M shall not interfere with planned improvements to the interchange and State Road 49 in the area.".

"(b) The Secretary may acquire lands or interests in lands within Unit I-M only with the consent of the owner, so long as the existing residential land use remains substantially unchanged."

SEC. 6. GREENBELT.

Section 18 of the Act (16 U.S.C. 460u-18) is amended—

(1) by inserting "(a) after "SEC.18."; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) If Northern Indiana Public Service Company (hereinafter in this section referred to as 'NIPSCO') is agreeable, the Secretary shall enter into a memorandum of agreement with NIPSCO that shall provide for the following with respect to Unit II-A (as designated on the map referred to in section 1 of this Act and hereinafter in this section referred to as the 'Greenbelt'):

"(A) NIPSCO shall provide the National Park Service with access for resource management and interpretation through the Greenbelt and across the dike for purposes of a public hiking trail.

"(B) The National Park Service shall have rights of access for resource management and interpretation of the Greenbelt area.

"(C) NIPSCO shall preserve the Greenbelt in its natural state. If NIPSCO utilizes the Greenbelt temporarily for a project involving pollution mitigation or construction on its adjacent facilities, NIPSCO shall restore the project area to its natural state.

"(D) If NIPSCO proposes a different use for the Greenbelt, NIPSCO shall notify the National Park Service, the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives and make no change in the use of the property until 3 years after the date such notice is given.

"(2) If a memorandum of agreement is entered into pursuant to paragraph (1), so long as such memorandum is in effect and the terms of such memorandum are being complied with, the Secretary may not acquire lands or interests in land in the Greenbelt belonging to NIPSCO.".

SEC. 7. VISITOR CENTER.

In order to commemorate the vision, dedication, and work of Dorothy Buell in saving the Indiana Dunes, the National Park Service visitor center at the Indiana Dunes National Lakeshore is designated as the "Dorothy Buell Memorial Visitor Center".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

Section 9 of the Act (16 U.S.C. 460u-9) is amended by adding at the end thereof the following new paragraph:

"In addition to any other sums authorized for the acquisition of lands and interests in lands, there are further authorized to be appropriated an additional $7,000,000 to be used for such purposes.".

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 3209), as amended, was passed.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. BURNS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DE SOTO EXPEDITION TRAIL COMMISSION ACT

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 555.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 555) entitled "An Act to establish in the Department of the Interior the De Soto Expedition Trail Commission, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "De Soto Expedition Trail Commission Act of 1990".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the 450th anniversary of the De Soto expedition and the 500th anniversary of Columbus' landing provide appropriate times for the commemoration of this aspect of American history;

(2) the expedition of Hernando de Soto was the first major European exploration of the interior of the southeastern United States;

(3) the chronicles of the expedition provide a rare description of the native societies encountered by the expedition;

(4) knowledge gained as a result of the expedition contributed significantly to the subsequent exploration and colonization of the region;

(5) discovery of the first winter encampment in Tallahassee, Florida, is the most recent archeological evidence of the De Soto expedition in the United States;

(6) official commemoration of the De Soto expedition will encourage further archeological and historical research, and increase public awareness of the early historic period of the southeastern United States, including the Native American societies the expedition encountered.

(b) PURPOSE.—The purpose of this Act is to establish a Commission to encourage and direct research, and to coordinate the distribution of interpretive materials to the public, regarding the De Soto expedition, the native societies the expedition encountered, and the effects of that contact.

SEC. 3. ESTABLISHMENT.

(a) IN GENERAL.—To carry out the purposes of this Act, there is hereby established in the Department of the Interior the De Soto Expedition Trail Commission (hereinafter in this Act referred to as the "Commission"). The Commission shall exercise its responsibilities and authorities as provided in this Act with respect to that region of the southeastern United States comprising the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Texas (hereinafter in this Act referred to as the "involved States"). The Commission shall consist of 19 members, appointed by the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") as follows:

(1) 10 members knowledgeable in the history of Spanish-Native American contact, including the history of the De Soto expedition, appointed from recommendations submitted by the Governors of the involved States, of which one shall represent each State;

(2) 4 members with expertise in the history of the De Soto expedition;

(3) 2 members with knowledge of the Native American societies encountered by the De Soto expedition;

(4) 2 members, one of which shall hold the position of Superintendent, De Soto National Memorial, the other of which shall have knowledge of the history of Spanish colonization of the southeastern United States; and

(5) 1 member appointed from recommendations submitted by the Smithsonian Institution.

(b) APPOINTMENT.—All members of the Commission shall be appointed for terms of 4 years.

(c) CHAIRPERSON.—The Commission shall elect a chairperson from among its members. The term of the chairperson shall be 2 years.

(d) TERMS.—Any member of the Commission appointed for a definite term may serve after the expiration of such term until a successor is appointed. Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy shall serve for the remainder of the term for which such member's predecessor was appointed.

(3) QUORUM.—A simple majority of Commission members shall constitute a quorum.

(f) MEETINGS.—The Commission shall meet at least biannually or at the call of the chairperson or a majority of its members.

(g) COMPENSATION.—Members of the Commission shall serve without compensation as such. While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

SEC. 4. FUNCTIONS OF THE COMMISSION.

(a) IN GENERAL.—The Commission shall—

(1) assist in the coordination of activities of Federal, State, and local governments and private businesses and organizations in order to further the commemoration of the De Soto expedition;

(2) expeditiously provide the involved States the research performed under section 7 and assist those States in utilizing such research for the public's education;

(3) coordinate the preparation and distribution of interpretive materials relating to the De Soto expedition, including maps and brochures, for the public;

(4) provide advice and assistance to the Secretary with respect to the preparation of

contracts and cooperative agreements under section 7; and

(5) consider and provide advice on appropriate means to link together authenticated De Soto expedition and other Spanish Colonial sites.

(b) ANNUAL REPORTS.—The Commission shall submit an annual report to the Secretary, and to the Committee on Interior and Insular Affairs of the United States House of Representatives and to Committee on Energy and Natural Resources of the United States Senate, describing the activities of the Commission and the status of public interpretive activities and research undertaken pursuant to this Act.

(c) EXPIRATION.—The Commission established pursuant to this Act shall cease to exist 4 years after the date of enactment of this Act.

SEC. 5. STAFF OF THE COMMISSION.

(a) STAFF.—The Commission shall have the power to appoint and fix the compensation of such staff as may be necessary to carry out its duties.

(2) Staff appointed by the Commission—

(A) shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(B) shall, subject to the availability of appropriations, be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

(c) STAFF OF OTHER AGENCIES.—(1) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out the Commission's duties.

(2) The Commission may accept the services of personnel detailed from one or more of the involved States (and any political subdivision thereof) and may reimburse the State(s) or political subdivision(s) for those services.

SEC. 6. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission may for the purpose of carrying out the provisions of this Act hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem advisable.

(b) BYLAWS.—The Commission may make such bylaws, rules and regulations, consistent with this Act, as it considers necessary to carry out the purposes of this Act.

(c) DELEGATION.—When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(d) TECHNICAL ADVISORY GROUPS.—The Commission may establish and appoint such technical advisory groups as may be necessary to provide technical advice.

(e) DONATIONS.—Notwithstanding any other provision of law, the Commission may seek and accept donations of funds or services from individuals, foundations, corporations, and other private entities, and from public entities, for the purpose of carrying out its duties.

(f) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. 7. RESEARCH.

The Secretary, in consultation with the Commission, is authorized to enter into contracts or cooperative agreements with qualified researchers for archeological and historical research and field investigations regarding the De Soto expedition. The research and investigation may include research and investigation regarding the location of the expedition route, recovery and preservation of archeological or historical materials, identification of encampment sites, and advancement of knowledge regarding Hernando de Soto, his expedition through the southeastern United States, the native societies inhabiting the region during the period of the expedition and the cross-cultural impact of the expedition on the European and Native Americans societies. Such research shall fully utilize archival resources and be published as promptly as possible.

SEC. 8. EXPEDITION SITE IN TALLAHASSEE.

The Secretary is authorized to enter into a cooperative agreement with the State of Florida to provide technical assistance for the preservation and interpretation of the De Soto expedition site in Tallahassee, Florida.

SEC. 9. TECHNICAL ASSISTANCE.

The Secretary may, in consultation with the Commission, provide technical assistance to States for the development of interpretive materials to enhance public appreciation of the archeological, historical, and cultural values associated with the De Soto expedition, the Native American societies it encountered, and the impacts of the European-Native American contact.

SEC. 10 AUTHORIZATION OF APPROPRIATIONS.

(a) COMMISSION.—For the purposes of carrying out the functions of the Commission, there are authorized to be appropriated such sums as may be necessary not to exceed $250,000.

(b) RESEARCH.—For the purposes of section 7, there are authorized to be appropriated such sums as may be necessary not to exceed $750,000.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

Mr. GRAHAM. Mr. President, I am pleased that the Senate has taken final action today on a bill which will help uncover many of the remaining mysteries about the expedition of Hernando De Soto.

S. 555, the De Soto Trail Expedition Commission Act of 1990, will establish within the National Park Service a commission of historians, archaeologists and other experts to study the journeys of Hernando De Soto and other Spanish colonialists. Specifically, I hope the commission will discover further clues which will help us define the route De Soto traveled through 10 southern and southeastern States.

When I introduced this legislation last year, I intended to have the commission work with these States to mark a commemorative highway route approximately De Soto's travels. I am disappointed that this part of the original bill will not be enacted this year and am hopeful that we can move forward next year in pursuit of this worthy goal.

The trail-marking title of S. 555 responded to a National Park Service study of the De Soto expedition. The Park Service report concludes that a highway route, complemented by ongoing research at established archaeological sites along that route, is the favored approach of a majority of scholars in this area. Marking the route will promote public awareness and spark interest among highway travelers in the significant story of De Soto's expedition.

We may never know with certainty exactly where De Soto's boots touched the soil of our Southern and Southeastern States 4½ centuries ago. But most experts on the issue agree that the 7-State highway route adopted by the De Soto Trail Commission—a group of experts from each of the 10 involved States—accurately reflects the first 2,000 miles of the De Soto expedition. I hope the research conducted by the commission established by this act will shed new and convincing light on the rest of this historic journey.

The actions of the De Soto explorers, as well as those of many other early European travelers to North America, altered forever the land and the events of the New World. The fragile evidence of that extraordinary history, of our own extraordinary history, deserves to be commemorated and understood.

I am pleased that we have passed this important bill. I thank my colleagues for their support.

Mr. REID. Mr. President, I move the Senate concur in the House amendment.

The motion was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RED ROCK CANYON NATIONAL CONSERVATION AREA

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 4559.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (H.R. 4559) to establish the Red Rock Canyon National Conservation Area.

(The amendment of the House is printed in the RECORD of October 26, 1990.)

Mr. REID. Mr. President, I move the Senate concur in the House amendment.

The motion was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ADDITION OF LANDS TO THE FORT RALEIGH NATIONAL HISTORIC SITE

Mr. REID. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 5497, A bill to authorize the Secretary of the Interior to add lands to the Fort Raleigh National Historic site, and that the Senate proceed to its immediate consideration; that it be read a third time and passed and the motion to reconsider be laid on the table. I further ask unanimous consent that any statements thereon appear at the appropriate place in the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5497) was passed.

AUTHORIZING CERTAIN USES OF LANDS WITHIN THE COLONIAL NATIONAL HISTORICAL PARK IN VIRGINIA

Mr. REID. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 4107, A bill to authorize the Secretary of the Interior to permit the certain uses of lands within the Colonial National Historic park in Virginia, and that the Senate proceed to its immediate consideration; that it be read a third time and passed and the motion to reconsider be laid on the table. I further ask unanimous consent that any statements thereon appear at the appropriate place in the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4107) was passed.

FLORIDA KEYS MARINE SANCTUARY

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5909, regarding the Florida Keys Marine Sanctuary, just received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5909) to establish the Florida Keys National Marine Sanctuary, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. HOLLINGS. Mr. President, today I rise in support of H.R. 5909 which designates the Florida Keys Marine Sanctuary. Earlier this year, the Commerce Committee considered similar legislation, S. 2247, introduced by Senator GRAHAM. The committee reported S. 2788 which included the designation of the Florida Keys Marine Sanctuary. H.R. 5909 builds upon the provisions of S. 2247 to provide the designation of the Florida Keys as a marine sanctuary, and contains language which has been worked out between the House and the Senate.

This legislation represents the culmination of a year's efforts to establish a marine sanctuary in order to protect the valuable marine resources in the Florida Keys. Title III of the Marine Protection, Research, and Sanctuaries Act [MPRSA] authorizes the Secretary to designate appropriate areas of ocean, coastal, and Great Lakes waters as national marine sanctuaries. To date, eight national marine sanctuaries have been designated. A review of the potential designation of the Florida Keys as a sanctuary site was initiated in response to the 1988 amendments to title III of the MPRSA. The initial results of NOAA's site studies have supported designation of this sanctuary. In March, Senator GRAHAM of Florida, introduced S. 2247, a bill to establish the Florida Keys Marine Sanctuary. The legislation was introduced in response to three successive freighter groundings in 1989 which destroyed over 5,000 square meters of reef in the Keys. Since 1980, there have been 196 reported groundings of small and mid-size vessels which significantly damaged the Florida reef. The designation of the Florida Keys as a marine sanctuary will enable NOAA to take necessary measures to prevent this destruction of the coral reefs.

I also wish to comment on the water quality protection program that this legislation provides for the sanctuary. H.R. 5909 will ensure that all appropriate Federal agencies and the State of Florida shall work together to develop and implement a water quality protection program that meets the purpose for which the Florida Keys Marine Sanctuary is designated. However, I want to point out that under the Marine Protection, Research, and Sanctuaries Act of 1972, the Secretary of Commerce is ultimately responsible for regulating all activities within the sanctuary.

Mr. President, I wish to commend my colleague, Senator GRAHAM of Florida, for his efforts to preserve one of the Nation's most precious resources, the Florida Keys reefs. As a result of his foresight and commitment, we have an opportunity to support legislation that will establish the Florida Keys Marine Sanctuary so that this last living reef system on the North American Continent will be preserved for all to enjoy.

Mr. GRAHAM. Mr. President, I am pleased that the Senate is considering today a legislative proposal to establish a Florida Keys National Marine Sanctuary. I would like to take this opportunity to provide my colleagues with a little background on the bill.

Last year, Congressman DANTE FASCELL of Florida introduced legislation in the House to establish a keys-wide marine sanctuary in response to three highly publicized vessel groundings. The groundings caused irreparable damage to thousands of square meters of coral reef.

However, Congressman FASCELL and I both recognized that these grounds are only a small part of the problem. Daily, this coral reef is exposed to various forms of abuse and misuse, often unintentional.

Tourists on the water often anchor on the reef or bump up against the reef, unaware that both actions cause serious damage. Even a small scrape from a diver rubbing or standing on the reef can cause irreversible damage.

Studies indicate that the water quality of this marine ecosystem is also rapidly deteriorating, thus causing further harm to the coral reef.

In seeking an appropriate avenue for protecting the Keys marine resources from vessel groundings and other harmful activities, the National Marine Sanctuary Program managed by the Department of Commerce emerged as the entity best equipped to balance environmental, commercial, and recreational interests in the Keys.

I have been impressed with the work they have done in operating the already designated sanctuary areas in Looe Key and Key Largo.

Both the House Merchant Marine Committee and the Senate Commerce Committee held public hearings on this proposal. Congressman FASCELL and I corresponded and talked with numerous groups and individuals having an interest in the Keys area.

The result of these hearings and discussions was a call for a keys-wide education, research, and enforcement plan to see that the entire coral reef tract is protected without jeopardizing legitimate commercial and recreational activities.

Mr. President, before we move to final passage on this measure, I would like to address a provision in H.R. 5909 which was not in the original bill on this subject considered by the Senate Commerce Committee.

H.R. 5909 establishes an Advisory Council to advise the Secretary of

Commerce in the development of the comprehensive management plan. This council would continue to operate in an advisory capacity during promulgation and administration of regulations required by this act.

I would like to ask the distinguished chairman of the Commerce Committee what role he sees for this Advisory Council.

Mr. HOLLINGS. Ultimately, responsibility for management decisions that will fulfill the statutory aims and authorities of the sanctuary must rest with the Department of Commerce through NOAA, together with the other Federal, State, and local agencies with jurisdiction in the area. This provision will allow NOAA and sanctuary managers the benefit of the considered views of an interested and balanced advisory body, as well as the general public and other concerned groups.

Mr. GRAHAM. I agree that the Council is designed to be advisory in nature and should be, as you suggested, balanced in its membership and dedicated to the purposes of this legislation.

I also understand that the Federal Advisory Committee Act, which ensures that uniform standards and procedures apply to the formation and operations of advisory committees, will be applicable to the council established in H.R. 5909.

Mr. HOLLINGS. That is correct.

Mr. GRAHAM. I thank the distinguished chairman for this clarification and for his diligence in securing favorable action on this legislation.

Mr. CHAFEE. I am pleased at the cooperation between the Committee on Commerce, Science, and Transportation, and the Committee on Environment and Public Works. One issue of particular importance in this legislation provides for the development of a water quality plan for the waters of the Florida Keys Marine Sanctuary, a sanctuary which is to be established by this legislation. This new initiative is to be developed by the EPA and the Governor, with funding for the program provided to the EPA. We have agreed that this water quality planning provision is appropriately the jurisdiction of the Environment and Public Works Committee.

Mr. HOLLINGS. The water quality planning provision of the Florida Keys Program will be an important addition to the protection provided to this vital area as a result of its designation as a marine sanctuary. While the other provisions of the Florida Keys Marine Sanctuary Program are the jurisdiction of the Commerce Committee, the authority for development of a water quality plan is the sole jurisdiction of the Environment and Public Works Committee.

I am pleased that our committees have cooperated in the development of this important provision. The provision which we have agreed to will be an important step toward coordination of the activities of NOAA and the Environmental Protection Agency.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 5909) was ordered to a third reading, was read the third time, and passed.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MARITIME WILDLIFE REFUGE

Mr. BURNS. Mr. President, I ask unanimous consent the Energy Committee be discharged from further consideration of H.R. 5264, the Maritime Wildlife Refuge, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5264) to authorize modification of the boundaries of the Alaska Maritime National Wildlife Refuge.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 5264) was ordered to a third reading, was read the third time, and passed.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LAND EXCHANGE IN GEORGIA

Mr. REID. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 2419, authorizing a land exchange in Georgia, and that the Senate then proceed to its immediate consideration; that the bill be read a third time and passed and that the motin to reconsider be laid upon the table.

The PRESIDNG OFFICER. Without objection, it is so ordered.

So the bill (H.R. 2419) was passed.

YEAR 2000 HEALTH OBJECTIVES PLANNING ACT

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2056.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2056) entitled "An Act to amend Title XIX of the Public Health Service Act to provide grants to States to establish and implement State health objectives plans, and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Year 2000 Health Objectives Planning Act".

SEC. 2. GRANTS FOR STATE PLANS REGARDING HEALTH OBJECTIVES FOR YEAR 2000.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall make grants to the States for the purpose of assisting each State receiving such a grant with the development of a State plan for improving the health status of the population of the State.

(b) STATEWIDE ASSESSMENT REGARDING YEAR 2000 HEALTH OBJECTIVES.—

(1) IN GENERAL.—The Secretary may not make a grant under subsection (a) unless the State involved agrees, subject to paragraph (2), that in carrying out the purpose described in such subsection the State will conduct a statewide assessment to determine the extent to which the health status of the population of the State does not meet the objectives established by the Secretary for the health status of the population of the United States for the year 2000.

(2) DESIGNATION OF REQUIRED DETERMINATIONS REGARDING OBJECTIVES.—

(A) The Secretary may not make a grant under subsection (a) unless the State involved agrees that the statewide assessment under paragraph (1) will be conducted with respect to each of the year 2000 objectives designated under subparagraph (B).

(B) For purposes of subparagraph (A), the Secretary, acting through the Director of the Centers for Disease Control and in consultation with the States, shall designate the year 2000 objectives with respect to which the statewide assessments under paragraph (1) are required to be conducted.

(C) Subject to compliance with subparagraph (A), a statewide assessment under pargraph (1) may be conducted by a State with respect to year 2000 objectives that are not designated under subparagraph (B).

(c) PLAN FOR MEETING OBJECTIVES.—The Secretary may not make a grant under subsection (a) unless the State involved agrees that—

(1) in the case of each year 2000 objective that the statewide assessment under subsection (b)(1) indicates is not met, the State plan developed under subsection (a) will specify the activities that should be carried out in order to meet or exceed the objective;

(2) with respect to such activities, the plan will make recommendations for the State and for political subdivisions of the State, including recommendations for establishing or modifying public health and health financing programs, for funding levels of such programs, for maintaining sufficient numbers of appropriate personnel, for collecting appropriate data, and for coordinating the public health activities of the State and such subdivisions; and

(3) not later than April 1, 1992, the State will submit to the Secretary a copy of the

completed plan, including a copy of the statewide assessment under subsection (b)(1).

SEC. 3. CERTAIN REQUIREMENTS REGARDING RECEIPT OF GRANT.

(a) SUBMISSION OF STATEMENT REGARDING INTENDED SCOPE OF STATE ASSESSMENT.—The Secretary may not make a grant under section 2(a) unless the State submits to the Secretary a statement describing the intended scope of the statewide assessment under section 2(b)(1) that will be conducted with the grant, including a specification of the year 2000 objectives with respect to which the assessment will be conducted.

(b) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant under section 2(a) unless—

(1) an application for the grant is submitted to the Secretary;

(2) the application contains the statement required in subsection (a); and

(3) the application otherwise is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this Act.

SEC. 4. GENERAL PROVISIONS.

(a) AMOUNT OF GRANT.—In the case of any State whose application under section 3(b) is approved, the amount of the grant under section 2(a) to the State shall, subject to the extent of amounts made available in appropriations Acts, be the greater of—

(1) $100,000; and

(2) the amount determined by the Secretary, after consideration of the statement submitted by the State pursuant to section 3(a), to be appropriate with respect to carrying out the purpose described in section 2(a).

(b) CERTAIN ASSISTANCE FROM SECRETARY.

(1) TECHNICAL ASSISTANCE.—The Secretary may, directly or through grants or contracts, provide technical assistance to States regarding the planning, development, and operation of programs to carry out the purpose described in section 2(a).

(2) PROVISION OF SUPPLIES AND SERVICES IN LIEU OF GRANT PAYMENTS.—

(A) Upon the request of a State receiving payments from a grant under section 2(a), the Secretary may, subject to subparagraph (B), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such section and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(B) With respect to a request described in subparagraph (A), the Secretary shall reduce the amount of payments under section 2(a) to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(c) REPORT TO CONGRESS.—Not later than September 30, 1992, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing the statewide assessments and state plans received by the Secretary under section 2(c)(3).

SEC. 5. UNIFORM USE OF HEALTH-STATUS INDICATORS AND OF METHODS OF COLLECTING AND REPORTING DATA.

The Secretary, acting through the Director of the Centers for Disease Control and in consultation with the States, shall—

(1) develop a set of health-status indicators appropriate for Federal, State, and local health agencies to measure health status;

(2) develop model methods of collecting and reporting data on whether the year 2000 objectives are being met;

(3) encourage the uniform use by States and other entities of such methods and such indicators in order to ensure the utility and comparability of such data; and

(4) develop national data sources to measure progress toward meeting the year 2000 objectives.

SEC. 6. DEFINITIONS.

For purposes of this Act:

(1) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(2) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(3) YEAR 2000 OBJECTIVES.—The term "year 2000 objectives" means the objectives described in section 2(b)(1).

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there is authorized to be appropriated $10,000,000 for fiscal year 1991.

Amend the title so as to read: "An Act to establish a program of grants for the development of State plans for meeting the objectives established by the Secretary of Health and Human Services for the health status of the population of the United States for the year 2000.".

Mr. REID. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

GEOTHERMAL POWER PRODUCTION INCENTIVES ACT OF 1990

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4808, the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 now at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4808) to encourage solar, wind, waste, and geothermal power production by removing the size limitations contained in the Public Utility Regulatory Policies Act of 1978.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. JOHNSTON. Mr. President, I am pleased that the Senate is today acting on H.R. 4808, the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990. This bill is important to the energy security of the Nation, and I strongly support its passage.

Sone observations are in order concerning interpretation of the provisions of H.R. 4808 dealing with qualifying small power production facilities under PURPA and the Federal Power Act—hereinafter referred to as the "PURPA provisions"—and the provisions dealing with uranium enrichment licensing.

First, nothing in the PURPA provisions may be interpreted as overriding or abrogating any existing contract between a QF and the utility who purchases power from it.

Second, nothing shall limit FERC's authority to amend its existing regulations, in accordance with normal procedures, so as to reflect the statutory changes made by the PURPA provisions. For example, the existing regulations include a definition of "waste"—a term which is used in existing statutory law as well as the PURPA provisions of H.R. 4808. By utilizing the term "waste" in the PURPA provisions, Congress is not thereby codifying or locking in the current definitions of waste or related provisions contained in the existing regulations. Nor is it precluding FERC from reexamining its regulatory treatment of this and other issues which may arise as a result of the PURPA provisions.

Third, the diligence requirement of the PURPA provisions—"reasonable diligence is exercised toward the completion of such facility taking into account all factors relevant to construction of the facility"—is intended to ensure that the title's sunset provision works in practice. It does so by preventing the filing of "dummy" applications or notices with FERC. Thus, the phrase "reasonable diligence" is to be interpreted broadly and is not intended to thwart significant efforts at project development. For example, any substantial expenditure of moneys or any irrevocable commitment for substantial expenditure of moneys, be it for the acquisition of required permits or other authorizations necessary to construct a facility or for the purchase of necessary equipment or engineering or construction costs, would satisfy the requirement.

As a specific example, in the case of a geothermal facility substantial capital expenditures must be made at the time a commitment is made to drill a geothermal well. Therefore, both the commencement of construction requirement and the due diligence requirement imposed by the PURPA provisions would be satisfied when the spudding of the well occurs.

The uranium enrichment licensing provisions of H.R. 4808 would change the licensing regime applicable to uranium enrichment facilities. Under current law, enrichment facilities are licensed by the NRC under the same provisions of the Atomic Energy Act, and basically the same NCR regulations, as power reactors. Yet it is clear,

as NRC Chairman Carr stated to me in a November 13, 1989, letter, that nuclear reactors are "entirely different from uranium enrichment facilities in concept, complexity, and degree of risk." The provisions of H.R. 4808 recognize that from the standpoint of public health and safety uranium enrichment facilities are comparable to facilities that fabricate nuclear fuel and convert natural U308 to UF6. Such facilities receive what are called "materials licenses" and are licensed under sections 53 and 63 of the Atomic Energy Act.

The main effect of the enrichment licensing provisions of H.R. 4808 is to provide single-stage licensing under sections 53 and 63 of the Atomic Energy Act for the construction and operation of uranium enrichment facilities. These sections deal with the licensing of possession and use of special nuclear material in any chemical or physical form and natural uranium and its compounds. Under the new licensing provisions a mandatory adjudicatory hearing on the record would have to be completed, and a decision issued, before the commencement of construction on an enrichment facility. No further Commission licensing action would be required to authorize operation. However, prior to the commencement of operation, the Commission would be required to verify through inspection that the facility has license for construction and operation. The results of the inspection would not give rise to a second opportunity for hearing, but would be published in the Federal Register in order to give them widespread dissemination.

The bill authorizes the NRC to prescribe such regulations or orders as may be necessary or desirable to promote the common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235. Such a provision is necessary because under materials licensing it is the possession and use of source or special nuclear materials that triggers jurisdiction, rather than the existence of facilities in which those materials are used or created. It is important, from the standpoint of the common defense and security, to monitor all facilities that are capable of enriching uranium as well as those that actually possess source material or produce special nuclear material. The intent, therefore, is to grant the Commission authority to prescribe reasonable requirements regarding such issues.

The bill provides that the issuance of a license under sections 53 and 63 for the construction and operation of a uranium enrichment facility shall be considered a major Federal action significanty affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 [NEPA], and that a NEPA environmental impact statement [EIS] must be completed prior to completion of the hearing just discussed, so that it may be considered in that hearing. Thus, the license may not issue, and construction may not commence, until there has been both a full EIS and a mandatory, on-the-record hearing.

It was the position of the House of Representatives that Price Anderson coverage was unnecessary and inappropriate for newly constructed uranium enrichment facilities. While it appears that the NRC would not have used its discretionary authority to extend Price Anderson benefits and burdens to such facilities, the bill precludes Price Anderson coverage in order to accommodate the House position. Nevertheless, the bill provides that the NRC is to require, as a condition of the issuance of a license for a uranium enrichment facility, that the licensee have and maintain liability insurance of such type and in such amounts as the Commission judges appropriate to cover liability claims arising out of any occurrence within the United States, causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source or special nuclear material.

It should be noted that the scope of this insurance requirement closely tracks the definition of "nuclear incident" in the present law to the extent relevant here, with the addition of the phrase "chemical compounds containing" special nuclear material. It is intended that licensees will be able to satisfy this requirement through the purchase of nuclear energy liability insurance with appropriate dollar limits, provided that the Commission assures itself that such a policy covers the chemical toxicity as well as the radiological toxicity of UF6 and the elements or other compounds which result from an accident involving compounds such as UF6.

Similary, the Commission must require adequate assurance that funds will be available for decommissioning, including decontamination. Various illustrative funding mechanisms are specified; these are the same as those that may be used by other materials licensees under present NRC regulations.

It is intended under the new licensing provisions that the decision rendered on the question of whether or not to issue a license for the construction and operation of a uranium enrichment facility be subject to judicial review under section 189.b. of the Atomic Energy Act in an appropriate U.S. court of appeals. The bill is intentionally silent on judicial review of NRC inspection results. Such review, under the bill as under present law for materials licensing under sections 53 and 63, would be governed by established law and court decisions applicable to similar agency functions. The Administrative Procedure Act [APA], the provisions of which are made applicable by section 181 of the Atomic Energy Act, would prescribe the basis for and scope of judicial review. Specifically, such review would be governed by the courts' application of 5 U.S.C. section 701(a)(2), which provides that "to the extent that * * * agency action [is] committed to agency discretion by law" such action is not subject to judicial review under the APA. Courts do not review such actions except in extraordinary circumstances, for example, where the agency has abdicated its responsibilities. Thus, the bill would preserve the status quo regarding judicial review of inspection results.

Several of the provisions discussed above require the NRC to take implementing action through rulemaking or by order. In addition, the NRC may want to take these or other regulatory actions for purposes of ensuring administrative efficiency and expeditious processing of applications to construct and operate uranium enrichment facilities. NRC has represented in communications to and testimony before the Congress that, if legislation of this type is enacted, enrichment facility licensing can be conducted without the need for extensive changes to parts 2, 40, and 70 of the Commission's regulations. Accordingly, the implementation of this legislation should not require lengthy rulemaking proceedings, but rather can be accomplished by technical adjustments to existing regulations or by Commission orders. The enactment of this legislation is intended to simplify and expedite the licensing process for uranium enrichment facilities; in particular, its implementation should not be the occasion for delays in the licensing process for near-term applications such as that for the Claiborne Enrichment Center proposed for my home State of Louisiana. The NRC should complete any rulemaking or order activity that it deems necessary on a priority basis, so that any necessary rules are in place within 6 months following enactment of this legislation, and any necessary orders are issued within 3 months after receipt of an application. I intend to follow NRC's progress with implementation.

Mr. DOMENICI. Mr. President, the bill now pending before the Senate proposes to remove the size limitations for solar, wind, waste and geothermal

powerplants contained in the Public Utility Regulatory Policies Act of 1978.

This bill is virtually identical to S. 2415, which I introduced. S. 2415 passed the Senate unanimously on September 26, 1990, and for the purposes of the legislative history of H.R. 4808, the legislative history of S. 2415 is hereby incorporated by reference.

Mr. President, before I explain why it is in the public interest to eliminate PURPA's size restrictions on solar, wind, waste and geothermal powerplants, I will briefly summarize the underlying law the bill proposes to change.

PURPA was enacted in 1978 as one of the five parts of President Carter's National Energy Plan to address our energy crisis. One key goal of PURPA was to expand our supply of electricity, which it did by encouraging the construction of nonconventional electric power generating facilities by companies other than traditional electric utilities.

In the vernacular of PURPA, these nonconventional electric powerplants are known as "qualified facilities" or "QF's". A QF can be a solar, geothermal, wind, waste or other renewable energy-based electrical generating facility. A QF can also be a fossil fuel-fired cogeneration facility, which is a type of powerplant that sequentially produces electricity and useful thermal output.

PURPA encourages the construction of QF powerplants by giving them enhanced regulatory treatment: QF's are exempted from the Public Utility Holding Company Act, the Federal Power Act and from State regulation as a local electric utility; and QF's are given the right to connect into the local utility's power grid and the right to sell their power to the utility at avoided cost.

Without this treatment, these powerplants would be caught in a regulatory tangle and would be significantly discouraged. Moreover, even if built, without PURPA traditional electric utilities could refuse to purchase the electricity produced by such a powerplant. In other words, without PURPA, nonconventional powerplants would probably not exist.

One provision of PURPA—which is the focus of the pending bill—places a size limitation on renewable-based QF powerplants. Under this provision, solar, wind and other renewable QF's cannot be built larger than 30 megawatts without losing their PURPA benefits, namely exemption from utility-type regulation; and these facilities, as well as geothermal and biomass QF's, cannot be built larger than 80 megawatts.

Curiously, however, PURPA has no similar size limitations on fossil fuel-fired cogeneration facilities, which presently account for three-fourths of QF capacity. Cogeneration powerplants can be built to any size without the loss of their PURPA benefits. And while cogeneration facilities are typically built in the 100- to 500-megawatt size range, earlier this year the largest cogeneration facility ever—a 1,240-megawatt powerplant—went into operation in Michigan, and another gas-fired 614-megawatt powerplant is now under development in New Jersey. These are the range size of major base-load nuclear or coal-fired powerplants.

Now compare PURPA's 30-megawatt limitation for solar and wind facilities, and its 80-megawatt limitation for geothermal and biomass facilities, to the size of the Michigan and New Jersey cogeneration facilities—some 8 to 40 times larger—and you will see one key reason for this bill. Renewable facilities need to be allowed economies of scale so as to be able to compete fully in the marketplace.

One question relevant to this debate is why did Congress originally impose a size limitation on solar, wind, waste and geothermal facilities, but not on fossil fuel-fired cogeneration facilities?

I was on the Energy and Natural Resources Committee back then and, quite frankly, I can't recall the reason; nor can anyone else. My guess is that when we were writing PURPA someone felt that it was a good idea, and so it was done. But who and why—your guess is as good as mine.

But laying that historical question aside, whatever public policy reasons Congress had back then, there is no valid reason today for these size limitations. On that there can be no disagreement.

Mr. President, if we remove PURPA's size limitations for solar, wind, waste and geothermal facilities we can enhance our supply of electrical power generated by domestic renewable fuels that produce significantly less environmental pollution than conventional fossil fuel-fired powerplants, and that is clearly in the public interest.

Since 1978 nearly 5,000 megawatts of new solar, wind and geothermal power have already obtained QF status. That is the equivalent of at least five traditional baseload nuclear or fossil fuel-fired powerplants. Now, while that may already seem like a lot, much more can be done—and will be done if we adopt this bill.

Over the past decade, there has been a technological revolution which not only makes larger sized solar, wind and geothermal projects possible, it also makes them far more efficient, which lowers their cost of power production.

Solar technology, for example, has evolved rapidly since the first utility-scale electric generating facility was placed in service back in 1984. Nearly 380 megawatts of solar thermal capacity have since been put into operation, and these plants have won high praise for both their design reliability and environmental benefits from the utility which purchases the power.

Geothermal technology has similarly demonstrated both cost-effectiveness and reliability. Over 2,000 megawatts of geothermal generating capacity are currently in service in the United States.

And wind energy is likewise taking off. There are now about 14,000 wind turbines in operation, which now satisfy about 1 percent of California's electricity demand, and more will be put on line if this bill is enacted.

More can be done, but only if these renewable powerplants are allowed to remain price competitive through economies of scale, which the pending bill would make possible.

There already have been dramatic improvements in efficiency which have significantly lowered the cost of production. For example, solar facilities built in 1984 generate electricity at a lifecycle cost of 24 cents per kilowatt hour. In contrast, the most recently built solar powerplant, an 80-megawatt facility placed in service within the last month, has a lifecycle cost of only 8 cents per kilowatt hour. And larger, more efficient, solar facilities could be put on line at a production cost of 6 cents per kilowatt hour—if we allow solar energy plants to take further advantage of economies of scale.

But this cannot occur unless PURPA's size limitations are removed, and that brings me back to the pending bill, which I will now discuss.

Mr. President, the bill pending before the Senate is really very simple: it removes PURPA's size limitations for solar, wind, waste and geothermal facilities. Nothing more.

Another way of looking at this bill is that it gives solar, wind, waste and geothermal QF's the same PURPA treatment as PURPA now give to fossil fuel-fired cogenerators. On its face that is only equitable.

As modest as this change may seem, without it, solar, wind and geothermal powerplants will not have a place in the future wholesale power supply market where competition is increasingly intense. They need to be able to reduce the cost of production, for which economies of scale are critical; and that cannot occur unless this bill is adopted.

Now some will assert that lifting these limitations will harm ratepayers because there is a requirement in PURPA that electric utilities purchase QF power at what is known as "full avoided cost." But it should be noted that neither PURPA, nor the Federal regulations implementing PURPA, require State public utility commissions to force their electric utilities to pay

more for QF power than it is worth to utility ratepayers. PURPA's implementation, including the setting of the avoided cost purchase rate for QF power, is left to State commissions which are given broad discretion.

In the first few years following PURPA's enactment, there is no question that a number of State commissions overshot the mark. But over the past decade, state commissions have become far more expert in projecting and planning to meet future power needs, and that translates into more realistic numbers for avoided cost. As a consequence, State commissions have modified their implementing regulations to keep their rates in line, including the use of competitive bidding.

Thus, while the avoided cost rate may have once been a controversial matter, it no longer is. Nothing here, nor anything in PURPA, requires or even endorses a State public utility commission's requiring electric utilities in its State to purchase power from QF's at rates that exceed the utility's full avoided cost. So, I find it hard to accept the argument made by some that if we remove the PURPA size limitations on solar, wind, waste and geothermal facilities, as this bill proposes to do, ratepayers will be harmed.

Mr. President, let me take a moment to put this legislation into a broader context. There is little question that our Nation has an increasingly serious energy problem. Each day our foreign energy dependence increases, and no end is in sight. Back in 1973, the year of the Arab oil embargo, we were about 36 percent foreign oil dependent; last year we were 46 percent foreign dependent; and so far this year we have inched up to 50 percent dependency. By almost every estimate, in just a few more years we will be two-thirds foreign dependent. And hardly a week goes by without reading one report or another that says that we are stretching our existing power production resources to their limit, and that we are increasingly needing to build new powerplants.

That trend not only has significant implications for the future price and reliability of our energy supplies, it also has broader economic, military and geopolitical implications. Let us not forget that not too long ago the United States had naval war ships in the Persian Gulf escorting Kuwait oil tankers against the threat of attack—protection which was provided at a time when only a tiny fraction of the United States' oil came directly from that region. Now, with the ongoing invasion of Kuwait by Iraq, we have the very real prospect of an international oil supply interruption of the size that sent prices soaring back in 1973 and 1979 and caused us to sit in long gasoline lines waiting to fill up our cars.

Mr. President, in terms of our national energy policy, it is important that we take reasonable steps to encourage a wide variety of options to help meet this Nation's future energy needs. We will never find a single or simple answer, but incremental steps to promote domestic energy production are very important and must be taken.

This legislation will take one such step, and it will help! For example, over its life each 80 megawatts of solar, wind or geothermal generating capacity backs out the equivalent of 14 million barrels of foreign oil.

Mr. President, this is not the first time the Congress has addressed the PURPA size issue. Since its enactment in 1978, twice it has been necessary to raise PURPA's size restrictions to reflect the increased capabilities of maturing technologies. PURPA was amended in 1980 to increase from 30 to 80 megawatts the size limitation for geothermal facilities. Three years ago there was legislation enacted to temporarily lift the size limitation on solar facilities to 80 megawatts. And our experiences with these changes have been only positive; new, more efficient facilities has been put on line at lower prices to consumers.

It is also worth noting that this bill will complement the ongoing congressional efforts in the global warming bill and the Clean Air Act amendments to reduce emissions and clean up the environment. Solar facilities have minor emissions only when they burn natural gas as a back-up source of energy; wind-driven generators have absolutely no emissions of any sort; and geothermal facilities have no combustion-related emissions.

In summary, it is clear that PURPA's size limitations on solar, wind, waste and geothermal power plants are no longer necessary, appropriate or in the public interest. It is also clear that these limitations unduly burden technological development. It is evident that their removal will bring forth lower cost and environmentally benign electrical generating capacity. And it is without question that encouraging this kind of new generation capacity will help our national energy security.

Simply put, enactment of this bill is good public policy.

As a Senator from the sunny Southwest, I particularly look forward to the day when my region will more fully utilize its abundant solar resources to generate electricity.

Let me now make a couple of comments about the appropriate interpretation of the bill.

First, nothing in this bill may be interpreted as overriding, abrogating or limiting any existing contract between a QF and the utility who purchases power from it. This includes contracts with existing projects which make the appropriate filings at FERC—as is provided for by the bill—to operate over 80 megawatts where their contracts allow them to do so.

This matter is fully reviewed in the House Report accompanying H.R. 4808 which states, in part, that:

> It is not the Committee's intent for these amendments to alter any terms in existing contracts relating to the sale of capacity [or] energy under such contracts, whether such contracts relate to new or existing facilities. In particular, with regard to energy sold under existing contracts, the Committee does not intend for these amendments to have the effect of forcing utilities to accept sales from qualifying facilities which are not permitted under such agreements. Nothing in this legislation should be construed to require the purchase of additional capacity or energy under existing contracts, at the prices specified in such contracts, except as otherwise provided in such contracts. (H. Rep. No. 101-885: p. 3)

Second, nothing shall limit FERC's authority to amend its existing regulations, in accordance with normal procedures, so as to reflect the statutory changes made by this bill.

Third, the bill's diligence phrase, "reasonable diligence is exercised toward the completion of such facility taking into account all factors relevant to construction of the facility," is intended to ensure that the sunset provision works in practice. It does so by preventing the filing of applications or certifications with FERC (new Federal Power Act section (3)(17)(E)(i)) to give a project permanent eligibility for the benefits under the bill without meeting the bill's construction and due diligence requirements. The phrase "reasonable diligence" is to be interpreted broadly. For example, any substantial expenditure of monies or any irrevocable commitment for substantial expenditure of monies, be it for the acquisition of required permits or other authorizations necessary to construct a facility or for the purchase of necessary equipment or engineering or construction costs, would also satisify the requirement. As another example, in the case of a geothermal facility, the due diligence requirements will have been met if substantial commitments relating to the drilling of a geothermal well have been made prior to December 31, 1999.

Mr. President, in conclusion it is for these reasons that I introduced S. 2415, that I support this bill, and that I now urge the Senate to adopt the amendments to PURPA this bill proposes to make.

Mr. McCLURE. Mr. President, I want to bring to the attention of the Senate some aspects of the PURPA-related provisions of H.R. 4808 so that the Senate will fully understand their implications before voting.

When using the term "waste" in H.R. 4808 we recognize that the Commission has already created through its rulemaking process and case law

specific definitions of biomass, waste, and municipal solid waste for their treatment under PURPA. In enacting this law, we recognize the existence of those rules, regulations and case law. For example, I note that the Commission's regulations and case law specifically categorize municipal solid waste as biomass.

While nothing in this act limits FERC's authority to amend its existing rules and regulations in accordance with normal procedures, nothing in this act requires them to do so.

With that understanding, I am willing to support this bill.

AMENDMENT NO. 3211

(Purpose: to provide for realignment of the California-Pacific Northwest Intertie line)

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senator JOHNSTON and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], (for Mr. JOHNSTON) proposes an amendment numbered 3211.

Strike the last section of the bill and insert the following in lieu thereof:

"SEC. 6. RIGHT-OF-WAY USE.

"(a) The proposed alignment of the Harold T. (Bizz) Johnson California-Pacific Northwest Intertie line authorized by Public Laws 98-360 and 99-88 within Contra Costa County, California, is hereby rejected.

"(b) The Secretary of Energy, acting through the Western Area Power Administration, in consultation with all Intertie project participants, shall, prior to January 30, 1991, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a proposed realignment of the Intertie within Contra Costa County, California.

"(c) To the maximum extent practicable, the proposed realignment shall be consistent with the needs of affected landowners, East Bay Regional Park District, the environment, and system security and reliability.

"(d) No action shall be taken to implement the proposed realignment prior to March 1, 1991.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3211) was agreed to.

Mr. REID. I move to reconsider the vote by which the amendment was agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 4808), as amended, was passed.

Mr. REID. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ELIMINATION OF "SUBSTANTIAL DOCUMENTARY EVIDENCE REQUIREMENT FOR MINIMUM WAGE DETERMINATION IN AMERICAN SAMOA

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2930.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2930) entitled "An Act to eliminate 'substantial documentary evidence' requirement for minimum wage determination for American Samoa," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. AMERICAN SAMOA.

Section 8(b) (29 U.S.C. 208(b)) is amended by striking out "unless there is" and all that follows in that section and inserting in lieu thereof "unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.".

SEC. 2. REGULATIONS CONCERNING CERTAIN EMPLOYEES.

Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to quality as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage rate under section 6 of such Act (29 U.S.C. 206).

Amend the title so as to read: "An Act to eliminate 'substantial documentary evidence' requirement for minimum wage determination for American Samoa, and for other purposes.".

S. 2056, YEAR 2000 HEALTH OBJECTIVES ACT

Mr. HARKIN. Mr. President, I rise today to urge that the Senate concur in the House amendments to S. 2056, the Health Objectives 2000 Act. The Senate unanimously approved S. 2056 on October 19, 1990. The House passed the bill with amendments earlier today.

Passage of this legislation will mark a milestone on our journey toward a healthier America. It sends a clear signal that we are committed to improving the health of our people, and the health of our health care system.

Americans are far healthier now than 100 years ago, thanks to a virtual revolution in public health and medicine during this century. We have seen life expectancy increase by some 29 years. We have made monumental gains in understanding the leading causes of death and disability and the means by which they might be prevented.

As a nation, we no longer measure our health solely by mortality rates and average longevity, but also by the quality of our life and the impact of illness on our economic productivity. Our next opportunity to make substantial gains in public health lies in health promotion, and the prevention of premature disability and death. Many are calling this the "second revolution" of public health of America.

It is time for action. Many major health problems remain unresolved. We are not the helpless victims of death and disease. We have it in our power to reduce significantly, deaths and disabilities due to feared killers such as heart disease, stroke, emphysema, cancer, accidential injury, and other similar assaults on our health.

This September, Dr. Louis Sullivan, Secretary of the Department of Health and Human Services, took an important step toward action in this area, by announcing health promotion and disease prevention objectives for the Nation to reach by the year 2000. In its report, Healthy People 2000: National Health Promotion and Disease Prevention Objectives, the Public Health Service outlines a national strategy for improving the health of Americans over the coming decade. Healthy People 2000 sets forth specific national goals for improvements on many fronts—from the reduction in rates of heart disease and accidental injury to increased health lifespans for older Americans, and increased immunization rates for children.

In announcing the Year 2000 Health Objectives, Dr. Sullivan said, "We would be terribly remiss if we did not seize the opportunity presented by health promotion, and disease prevention to dramatically cut health care costs, to prevent the premature onset of disease and disability, and to help all Americans achieve healthier, more productive lives." In his forward to Healthy People 2000, Assistant Secretary for Health, Dr. James Mason, said, "This set of objectives for the year 2000, makes an important and compelling point to us and to all health policy makers: we can no

longer afford not to invest in prevention. From the perspective of avoiding human suffering as well as saving wasteful costs for treating diseases and injuries that could have been prevented, the 1990's should be the decade of prevention in the United States."

Mr. President, the legislation we are approving tonight will also help to reduce our Nation's skyrocketing health care costs by adding some good old-fashioned common sense back into our health care system. Since the 1970's, the cost of health care has mushroomed. The Government now spends 25 times as much on health care as we spent 25 years ago. Total health care spending in the United States has reached over $600 billion a year, with all but 3 percent going to treat rather than prevent disease and disability.

Our strained national pocketbook can no longer continue to support illness at the expense of wellness. Americans spend nearly three times the amount that citizens of the United Kingdom spend on health care. Health care in America, as percent of gross domestic product, is greater than Sweden, France, Canada, The Netherlands, Germany, Norway, Japan, and the United Kingdom. Yet Americans aren't necessarily any healthier. Death due to heart disease is 40 percent higher in the United States than it is in France and Switzerland—and costs Americans more than $70 billion a year.

The societal costs imposed by preventable disease are more than $680 billion annually. If more efforts to promote health and prevent disease and disability can result in even a 1 percent reduction, that means we can save more than $6.8 billion each year. The Health Objectives 2000 Act represents at least that level of national commitment.

America has a proud history in public health, which forms the basis for our renewed effort today. Our national public health system has, for many years, worked to prevent disease, and promote healthful environments, behavior and lifestyles. During our lifetime we have seen a substantial reduction in the death rate from infectious disease thanks to water purification, mass immunizations, and other public health measures. As a result, people live longer, and are more likely to succumb to chronic disease or become disabled. And much of that disease and disability is preventable.

Nationally, more than 1 million people die each year—nearly 52 percent of all deaths—as a result of stroke, coronary heart disease, diabetes, chronic obstructive pulmonary disease, lung cancer, breast cancer, cervical cancer, colorectal cancer or cirrhosis.

We know what to do to prevent these killers. Smoking is responsible for about 30 percent of the nearly 500,000 deaths from cancer each year. Diet has been linked to cancer, heart disease, and stroke. We can prevent deaths due to cirrhosis by reducing the consumption of alcohol.

Far too many of our citizens, especially young people, die or experience disabilities as a result of vehicular accidents and work related injuries. Accidents are the leading cause of death during the first 4 decades of life. Injuries are the most common cause of death for children ages 1 to 14. We have it within our power to prevent this tragic loss of life.

Americans are living longer. We need to help them live healthier. My own State of Iowa has the highest percentage of the population over the age of 85. In so far as health care is concerned for our elderly citizens, there is a small number of people who require a great deal of expensive care and a much larger number of people who use few, if any health care services. By preventing disease among the elderly, postponing dependence, and promoting vitality, we can improve the quality of life of our senior citizens, many of whom reside in rural America, while reducing the cost of health care.

My own State of Iowa exceeds the national average of deaths due to work-related injuries and deaths due to smoking. In fact, injuries, followed by cancer and heart disease, are the leading cause of years of potential life lost in my State. Because we are a rural State, with a strong agricultural economy, farm-related injuries are a special concern of mine—and contribute substantially to the high rate of work-related injury in Iowa. We can improve the health of our rural citizens through better health promotion and injury prevention programs.

Our Iowa State health department is hard at work on many of these important issues. They are doing a great job with programs such as hypertension screening, through which they have identified 2,113 new cases, many among the elderly. S. 2056 will help them do an even better job. Mary Ellis, at the time the Director of our Department of Public Health, commenting on the Health Objectives 2000 Act, wrote to me, "It is very important for Iowa citizens and for health care in the United States".

Mr. President, American health care—its quality, its availability, and its cost—are top concerns for us all. Too often, though, we react to bad news rather than plan for a healthier future. We tinker with parts of the system in trouble, and don't do enough toward accomplishing our own national health goals.

The Health Objectives 2000 Act offers an opportunity for us to improve the quality of our information and develop better methodology for attacking the problems that assail our health. We know a lot about the outcomes that result in death, but not as much about the outcomes that result in disability. We need to know more about how environmental noise affects hearing loss, for example. We know how many children die from drowning, but we don't know how many children there are who are substantially disabled as a result of near drowning.

S. 2056, the Year 2000 Health Objectives Planning Act, as renamed by the House amendments, takes this critical effort an important step further by providing the States and localities needed support to begin their work towards meeting these objectives by the turn of the century. Specifically, the bill as amended, would provide technical assistance and grants to the States, through the Centers for Disease Control, to assist them in developing data systems, collecting data, and conducting an assessment of the health status of their citizens. The data collected is to be used by the States to assist in setting statewide planning priorities to meet the Year 2000 Health Objectives. States should work to ensure that a minimum set of data are available to satisfactorily measure key indicators of the health status of their citizens.

States are to include in their plans recommendations for establishing or modifying public health and health financing programs, for needed funding levels for the programs, for maintaining sufficient numbers of public health personnel, for collecting appropriate data, and for the appropriate coordination of public health activities of State and local governments.

In recognition of the integral role played by local health departments, the States should actively work with them in conducting health status assessments, and in the development of statewide plans. States should also work with community-based health and mental health organizations, including minority community-based organizations, and representatives of institutions within the State that train public health professionals in developing statewide plans. Cooperation and coordination between the levels of government, and these and other entities involved in public health, should be maximized. Such cooperation and coordination is critical to the successful implementation of the year 2000 objectives.

S. 2056 also requires the Centers for Disease Control [CDC], in consultation with the States, to develop a set of health status indicators to measure health status, as well as model methods of collecting and reporting data on whether the year 2000 health objectives are being met. They are also charged with encouraging uniform use by the States and localities of these in-

dicators and collection and reporting methods, in order to ensure the utility and comparability of the information collected. Finally, CDC and the States are to develop national data sources to measure progress toward meeting the year 2000 health objectives.

The act authorizes $10,000,000 for fiscal year 1991 to provide technical assistance and grants to the States. The amount of the grants awarded States are to be determined by the CDC after review of State applications. However no grant to a State is to be less than $100,000.

Mr. President, I am proud to say that over a third of the Senate joined as cosponsors of S. 2056. Each of them have been critical to the bill's success thus far. I want to extend special thanks to Senator KENNEDY, the distinghuised chairman of the Labor and Human Resources Committee, for his work in making today's passage of S. 2056. It also means a great deal to me to have been joined by Senator HATCH, the ranking member of the Committee on Labor and Human Resources, with whom I have worked closely on a number of important issues. I also want to thank and commend our ranking member, Senator PELL, who has been a steadfast supporter of legislation promoting the health of Americans. His work was critical to the development and successful movement of this important legislation. Finally, I want to thank and commend the distinguished chairman of the House Subcommittee on Health and the Environment, the Hon. HENRY WAXMAN and its ranking minority member, the Hon. EDWARD MADIGAN, for their excellent work and cooperation in bringing this legislation forward from the House. Their work was invaluable.

I want to also express my appreciation to the Asociation of State and Territorial Health Officials, the American Public Health Association, and other 50 leading national organizations, who took a leadership role in developing this bill, and the support necessary to win its passage.

Mr. President. I again thank my colleagues for their support of this important health legislation. It will now be sent on to the President for what I hope, will be swift final approval.

Mr. REID. Mr. President, I move that the Senate concur with the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote by which the motion was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL TRANSPORTATION SAFETY BOARD ACT AMENDMENTS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 804, S. 3012, the National Transportation Safety Board authorization.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3012) to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1991, 1992, and 1993, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3212

(Purpose: To ensure that the results of certain toxicological tests of Department of Transportation employees are provided to the National Transportation Safety Board, and for other purposes)

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senator HOLLINGS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. HOLLINGS, proposes an amendment numbered 3212.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end, add the following new sections:

TOXICOLOGICAL TESTING OF TRANSPORTATION DEPARTMENT EMPLOYEES

SEC. 5. (a) When the Department of Transportation, including any of its agencies, conducts postaccident or postincident toxicological testing of an employee of the Department, specimen collection shall be accomplished as soon as practicable after the accident or incident, and the Department shall endeavor when feasible to complete such collection within four hours after the accident or incident.

(b) The head of each agency within the Department of Transportation shall send to the Office of the Secretary of Transportation a report on the circumstances concerning the amount of time required to complete specimen collection related to a toxicological test which is conducted on an employee within that agency who is reasonably associated with the circumstances of an accident or incident within the investigative jurisdiction of the National Transportation Safety Board.

(c) Any failure to comply with the requirements of this section may not be asserted, by the subject of such testing, as a claim, cause of action, or defense in any administrative or judicial proceeding.

BOARD ACCESS TO TOXICOLOGICAL TESTING RECORDS

SEC. 6. Section 304(b) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)) is amended by redesignating paragraph (11) as paragraph (12) and by inserting immediately after paragraph (10) the following new paragraph:

"(11)(A) Notwithstanding section 503(e) of the Act entitled 'An Act making supplemental appropriations for the fiscal year ending September 30, 1987, and for other purposes', approved July 11, 1987 (5 U.S.C. 7301 note), the Board is authorized to obtain from the Secretary of Transportation, by written request, and shall be furnished—

"(i) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, which is conducted on an employee of the Department of Transportation, including any of its agencies, pursuant to postaccident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when the employee is reasonably associated with the circumstances of an accident or incident within the investigative jurisdiction of the Board; and

"(ii) any laboratory record providing documentation that such test is confirmed positive.

"(B) Except as provided in subpargraph (C), the Board shall maintain in confidence and exempt from public disclosure in accordance with section 552(b)(3) of title 5, United States Code—

"(i) any laboratory record, made available under subparagraph (A), of a confirmed and verified toxicological test which reveals medical use of a drug permitted under applicable regulations; and

"(ii) any medical information provided by the tested employee in connection with such test or in connection with a review of such test.

"(C) The Board may use such a laboratory record for development of any evidentiary record in an investigation by the Board of an accident or incident if—

"(i) the fitness of the employee who is the subject of the toxicological testing is at issue in the investigation; and

"(ii) the use of that record is necessary in the development of such evidentiary record.".

Mr. HOLLINGS. Mr. President, S. 3012, as amended, authorizes the expenditure of funds for the National Transportation Safety Board [NTSB] for fiscal years 1991 through 1993. This funding will ensure that the important work of the NTSB continues. It also will allow for an increase in the current staffing levels of the NTSB.

The NTSB was created by the Department of Transportation Act of 1966, and made an independent agency by the Independent Safety Board Act of 1974. The NTSB is primarily responsible for investigating and determining the cause of aviation, highway, rail, pipeline, and marine accidents. The NTSB, as a result of its investigations, then issues recommendations to appropriate agencies to enhance safety. For example, in fiscal year 1989, the NTSB investigated 2,580 accidents, resulting in 491 recommendations. In fiscal year 1990, the NTSB

sent out "go-teams" to investigate 51 major accidents.

Mr. President, S. 3012 authorizes $32.0 million, $38.6 million and $38.8 million for fiscal year 1991 through 1993. These amounts will enable the NTSB to increase its staffing, upgrade its outdated computer systems, and relocate three offices. It is a modest amount to enhance the safety of the Nation's transportation system.

The bill also provides a fair means for the release of cockpit voice recorder information, thereby protecting the privacy of the crewmembers while enabling the NTSB to carry out its investigations fully.

There are two other provisions worth mentioning. Section 3(a) adds the word "vessel" to the list of equipment that the NTSB has authority to examine and test during an authorized investigation. This amendment is technical in nature and only clarifies existing authority. It does not expand the authority of the NTSB, for example, to investigate an accident or incident of a vessel in international waters involving a foreign carrier. Section 3(b) specifies that, in conducting accident investigatory testing, the NTSB retains discretion as to how such tests shall be conducted.

In addition, I am offering an amendment which provides that if the Department of Transportation [DOT], after an accident or an incident, requires an employee to submit to a toxicological test and the test result is confirmed positive under DOT procedures, NTSB can have access to that information in conducting an authorized accident investigation. This section does not require that DOT conduct drug or alcohol tests, but provides that, if DOT does in fact require a toxicological test, the NTSB can obtain the information, if verified positive. The privacy of the individual is maintained by otherwise keeping the results confidential unless the information is needed for development of an evidentiary record.

One key element of this amendment requires that the collection of the specimen for the test be completed as soon as possible after an accident or incident. The NTSB has recommended that the collection be completed within 4 hours after the triggering event so that the investigation can obtain the best possible information. DOT, however, has indicated that it cannot currently meet this timeframe, as the decision to test often takes a number of hours, as does the actual collection. DOT has agreed to strive to meet the 4-hour limit, and the amendment specifically urges DOT to endeavor to meet this standard.

These two sections have been carefully worked out by DOT and NTSB. It is important to note that these provisions are needed so that NTSB's accident investigatory responsibilities will not be hindered, although in reality very few tests will be affected. DOT estimates that last year only five or six postaccident tests would have come under the NTSB's authority, and none of those test results were positive. I believe that this is a fair amendment that balances the various interests, and I urge my colleagues to support it.

My colleague Senator FORD is offering an amendment on odometers, which I am cosponsoring along with my colleague Senator EXON. This amendment is much needed. The current National Highway Traffic Safety Administration rule on automobile title transfers needlessly disrupts the interstate sale of cars and needs to be fixed. As of now, a car dealer who uses a power of attorney for purposes of odometer disclosure is required to return the original power of attorney to the State of issuance and retitle the car in that State even if the car is sold to an out-of-State resident. There is no reason to title a car in one State when the car will have to be retitled immediately in the State where the ultimate purchaser resides. There are more efficient ways to effectuate the transfer and continue to protect the public from odometer fraud. This amendment will allow a vehicle titled in a State in which a power of attorney was issued to be retitled in the State of the ultimate purchaser.

In closing, all of us who travel value the work of the NTSB. Each accident it investigates helps in preventing similar occurrences. Its expertise is needed, and this bill is important to that end. I urge my colleagues to support passage of S. 3012, as amended.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3212) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3213

(Purpose: To make an amendment regarding low-level radioactive waste transportation)

Mr. BURNS. Mr. President, I sent an amendment to the desk on behalf of and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BURNS], for Mr. PRESSLER, proposes an amendment numbered 3213.

Mr. BURNS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end, add the following new section:

REPORT ON LOW-LEVEL RADIOACTIVE WASTE TRANSPORTATION

SEC. 9. Within 12 months after the date of enactment of this Act, the Secretary of Transportation shall conduct and complete a thorough study of and prepare a report to Congress on the transportation of low-level radioactive waste, specifically including—

(1) an evaluation of the feasibility of requiring States that transport waste to a regional disposal facility established and operated under an interstate compact pursuant to section 4 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d) to use, to the maximum extent practicable, routes which are within the geographic borders of the States that are parties to the compact;

(2) factual information on the volume of low-level radioactive waste being shipped currently and estimates of such shipments for the calendar years 1991 through 1995;

(3) a list of the routes proposed to be used for shipment of such waste to the disposal facilities operated under such an interstate compact;

(4) a review of the process for determining and approving such routes;

(5) a review of the processes for resolving any disputes that may arise, between States and between Commissions created by such interstate compacts, regarding such routes; and

(6) identification of the public safety risks associated with possible accidents in transporting such waste and of the response plans to be employed in the event of a transportation accident.

Mr. PRESSLER. Mr. President, the amendment I am offering to S. 3012 authorizes a Department of Transportation study of the transportation of low-level radioactive waste. It is my understanding this amendment has been cleared on both sides.

In 1980 and again in 1985, Congress passed major legislation laying out a plan for States to dispose of their low-level radioactive waste. These bills encouraged the formation of multistate compacts for the purpose of disposing of low-level radioactive waste generated within each compact's borders. To date, nine compacts have been formed and ratified by Congress and eight States remain unaffiliated. These compacts are approved by Congress and, therefore can exclude waste from other States not part of the compact without violating the interstate commerce clause of the Constitution.

In my view, compact member States should take full responsibility for the transportation of their own waste and use routes within their compact's geographic borders. It is not right for a State to route its waste through another State simply to avoid a potential accident on its own roads. Many States have been involved in such disputes.

Therefore, I have introduced legislation in the Senate to require, to the maximum extent practicable, that in transporting low-level radioactive waste to a compact's disposal site, the routes used must be within the compact's geographic borders. Because of

concerns expressed that more needs to be known about the transportation of low-level radioactive waste before we enact such legislation, my amendment directs the Secretary of Transportation to conduct a thorough study of the issue and report to Congress within 1 year of the date of enactment of this act. This is an extremely important step, Mr. President. This study will include an examination of what routes are proposed to be used by the compacts, how much waste is estimated to be shipped in coming years, the methods of resolving disputes arising over routes used, and the public safety hazards associated with transportation accidents involving low-level radioactive waste.

I thank the Senator from Missouri, the ranking member of the Commerce Committee, and the Senator from South Carolina, the chairman of the Commerce Committee, for their assistance in this important matter.

Mr. McCAIN. Mr. President, I welcome today's action on S. 3012, legislation to reauthorize funding for the National Transportation Safety Board [NTSB].

The success of our Nation's commercial aviation industry depends in large part on public confidence in the safety of our aviation system.

In fact, NTSB plays a vital role in building and maintaining public confidence in all modes of transportation.

We in Congress count on the NTSB's highly regarded investigative work to tell us why accidents have occurred, and how they might be prevented in the future.

I am pleased that S. 3012 recognizes that NTSB can only fulfill its critically important mandate if it has the necessary resources to do so.

S. 3012 would reauthorize NTSB funding for fiscal years 1991 through 1993 at levels of $32, $38.6, and $38.8 million, respectively. NTSB was funded at levels of $25.4, $27, and $28.6 million for fiscal years 1988, 1989, and 1990.

In fiscal year 1991, this 11 percent increase would allow for the cost of inflation and an OMB approved increase of 22 full-time equivalent [FTE] staff positions.

The similar jump in NTSB funding authority for fiscal year 1992 provides for a further increase of 33 FTE's, $1.4 million needed to upgrade laboratory and computer equipment, $1.1 million sought for staff related expenses, and $800,000 in costs related to relocation of several NTSB field offices.

The bill also includes a provision, requested by the Airline Pilots Association and agreed to by NTSB, limiting public release of cockpit voice recordings to accident-related information only, so the privacy of pilots can be protected.

Finally, we are adding an amendment today, agreed to by both DOT and NTSB, which would ensure that postaccident drug testing of DOT employees is done quickly, and that NTSB has access to relevant positive results resulting from such testing.

Mr. President, I urge my colleagues to join me today in supporting S. 3012.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3213) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3214

(Purpose: To make an amendment regarding intercity rail passenger service)

Mr. BURNS. Mr. President, I send an amendment to the desk on behalf of Senator JEFFORDS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BURNS] for Mr. JEFFORDS proposes an amendment numbered 3214:

At the end, add the following new section:

INTERCITY RAIL PASSENGER SERVICE

SEC. 8. (a) Section 402(d)(1) of Rail Passenger Service Act (45 U.S.C. 562(d)(1)) is amended by adding at the end the following new sentence: "The Corporation may subsequently convey title or other interest in such property to a third party, if such reconveyance is found by the Commission to further the purposes of this Act.".

(b) The amendment made by subsection (a) shall apply to any proceeding instituted before, on, or after the date of enactment of this Act (including any such proceeding pending before any Federal court on such date of enactment).

Mr. JEFFORDS. Mr. President, this provision is intended to clarify the authority used by the National Railroad Passenger Corporation [Amtrak] in 1988, under section 40(d) of the Rail Passenger Service Act, to acquire a portion of the Montrealer route in the States of Vermont and New Hampshire. A recent court decision has jeopardized the continued operation of Amtrak's only passenger train to Vermont by restricting its eminent domain authority. The new provision makes clear that the court misconstrued that authority when it questioned Amtrak's subsequent conveyance of the rail line it acquired.

In 1987, Amtrak had been forced to suspend Montrealer service because the tracks between Brattleboro and Windsor, VT, had fallen into such disrepair that traveling at a safe speed meant traveling at 5 miles per hour. The Interstate Commerce Commission approved the acquisition, and also approved Amtrak's transfer of the line to another railroad for rehabilitation and long-term maintenance for Amtrak's long-term use.

In 1987, in response to the suspension of Amtrak's Montrealer service, Congress appropriated $5 million for the needed repairs. Under this agreement, and with the use of Federal funds, Amtrak was able to restore the Montrealer to twice-daily service in July 1989.

Mr. President, the continuation of this service is imporant to Vermont and New England. This service is part of the Northeast corridor system in which Congress has a vested interest. The court decision, however, ruled that Amtrak's subsequent transfer of the line to another railroad for rehabilitation and maintenance exceeded the court view of Amtrak's powers.

This amendment clarifies that, with this and any future case, Amtrak can convey interests in condemned property to a third party when such conveyance furthers Amtrak's statutory purpose under the Rail Passenger Service Act, as it did in the Montrealer situation. This leaves the structuring of the nationwide rail passenger system to Amtrak's considered discretion, as the Rail Passenger Service Act intends.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3214) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3215

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senator FORD.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] for Mr. FORD (for himself, Mr. EXON, and Mr. HOLLINGS), proposes an amendment numbered 3215:

At the appropriate place, insert the following new section:

ODOMETER MILEAGE DISCLOSURE

SEC. . (a) Section 408(d)(2)(C) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(d)(2)(C) is amended by striking the third sentence and inserting in lieu thereof the following: "The rule, consistent with the purposes of this Act and the need to facilitate enforcement thereof, shall prescribe that the form be issued by the State to the transferee in accordance with paragraph (2)(A)(i), shall prescribe that the person granted such power of attorney shall retain a copy of such power of attorney and shall submit the original back to the State with a copy of the title showing the restatement of the mileage, and may prescribe that the State retain the power of attorney and the copy of the title for an appropriate period or that the State adopt alternative measures consistent with the pur-

poses of this title, taking into consideration costs to the State. The rule shall not require that a vehicle be titled in the State in which the power of attorney was issued.".

(b) The amendment made by subsection (a) shall be effective on the date of enactment of this Act and the Secretary of Transportation shall implement the amended section by promulgating a revision of existing regulations within 6 months after such effective date. Such rule shall consider the need to facilitate normal commercial transactions in the sale or exchange of motor vehicles.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3215) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3216

The PRESIDING OFFICER. Are there further amendments?

Mr. REID. Yes, there is. I send an amendment to the desk on behalf of Senator SIMON.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. SIMON, proposes an amendment numbered 3216:

At the end, add the following new section:

COMMUTER RAIL SERVICE

SEC. . Notwithstanding any other provision of law, the National Railroad Passenger Corporation shall not discontinue commuter rail service between Valparaiso, Indiana, and Chicago, Illinois, before May 6, 1991.

Mr. SIMON. I am joining my friend and colleague, Senator COATS, to offer an amendment which will provide for the smooth transition of the funding of the Calumet Line used by 132,000 Indiana commuters annually traveling to Chicago every day. This amendment will extend Amtrak's subsidy for service between Valparaiso, IN, and Chicago, IL, for a limited period of 6 months.

The 6 months will allow the Indiana Legislature to act on the proposal from local authorities of both parties in the four-county area served by this line. That proposal provides for a 1-cent sales tax to be used for transportation and related infrastructure. Continuation of this service is beneficial both the northwest Indiana and the city of Chicago.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3216) was agreed to.

The PRESIDING OFFICER. Are there further amendments?

Mr. REID. There are no further amendments?

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3012

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Independent Safety Board Act Amendments of 1990".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Section 309(a) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1907(a)) is amended by adding at the end the following: "There are authorized to be appropriated for the purposes of this Act not to exceed $32,000,000 for the fiscal year ending September 30, 1991; $38,600,000 for the fiscal year ending September 30, 1992; and $38,800,000 for the fiscal year ending September 30, 1993, such sums to remain available until expended.".

EXAMINATION AND TESTING

SEC. 3. (a) Section 304(b)(2) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)(2)) is amended by inserting "vessel," immediately before "vehicle" each place it appears.

(b) Section 304(b)(2) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)(2)) is amended by adding at the end the following new sentences: "The Board shall have sole authority to determine the manner in which testing will be carried out under this paragraph and under section 701(c) of the Federal Aviation Act of 1958, including determining the persons who will conduct the test, the type of test which will be conducted, and the persons who will witness the test. Such determinations are committed to the discretion of the Board and shall be made on the basis of the needs of the investigation being conducted by the Board and, where applicable, the provisions of this paragraph.".

COCKPIT VOICE RECORDER RECORDINGS AND TRANSCRIPTIONS

SEC. 4. Section 306 of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1905) is amended by striking subsection (c) and inserting in lieu thereof the following:

"(c) PUBLIC DISCLOSURE OF COCKPIT VOICE RECORDER RECORDINGS AND TRANSCRIPTIONS.—(1) Notwithstanding any other provision of law, the Board shall withhold from public disclosure cockpit voice recorder recordings and transcriptions, in whole or in part, of oral communications by and between flight crew members and ground stations, that are associated with accidents or incidents investigated by the Board.

"(2) Portions of a transcription of oral communications described in paragraph (1) which the Board determines relevant and pertinent to the accident or incident under investigation shall be made available to the public by the Board—

"(A) if the Board conducts a public hearing with respect to such accident or incident, at the time of such hearing; and

"(B) if the Board does not conduct such a public hearing, at the time when a majority of other factual reports regarding the accident or incident is placed in the public docket.

"(3) Nothing in this section shall restrict the Board at any time from referring to cockpit voice recorder information in making safety recommendations.

"(d) USE OF COCKPIT VOICE RECORDER RECORDINGS AND TRANSCRIPTIONS IN JUDICIAL PROCEEDINGS.—(1) Except as provided in this subsection, in a judicial proceeding, there shall not be discovery by a party—

"(A) of portions of cockpit voice recorder transcriptions other than such portions made available to the public by the Board under subsection (c)(2); and

"(B) of cockpit voice recorder recordings.

"(2) Subject to paragraph (4), a court may permit discovery of cockpit voice recorder transcriptions by a party if the court, after an in camera review of such transcriptions, finds that—

"(A) the portions of the transcriptions made available to the public under subsection (c) do not provide the party with sufficient information for the party to receive a fair trial; and

"(B) discovery of additional portions of transcriptions is necessary to provide the party with sufficient information for the party to receive a fair trial.

No cockpit voice recorder transcriptions prepared by or under the direction of the Board, other than portions made available by the Board under subsection (c), shall be required to be produced for an in camera review, or shall be subject to discovery, unless the cockpit voice recorder recordings are not available.

"(3) Subject to paragraph (4), a court may permit discovery of cockpit voice recorder recordings by a party if the court, after an in camera review of such recordings, finds that—

"(A) the portions of transcriptions made available to the public under subsection (c) and to the party through discovery under paragraph (2) do not provide the party with sufficient information for the party to receive a fair trial; and

"(B) discovery of cockpit voice recorder recordings is necessary to provide the party with sufficient information for the party to receive a fair trial.

"(4) If, under paragraph (2) or (3), there is discovery in a judicial proceeding of a cockpit voice recorder recording or any portion of a cockpit voice recorder transcription not made available to the public under subsection (c)(2), the court shall issue a protective order to limit the use of such recording or portion to the judicial proceeding and to prohibit dissemination of such recording or portion to any person who does not need access to such recording or portion for such proceeding.

"(5) A court may permit admission of a cockpit voice recorder recording or any portion of a cockpit voice recorder transcription not made available to the public under subsection (c)(2) into evidence in a judicial proceeding, only if the court places such recording or portion under seal to preclude the use of such recording or portion for purposes other than for such proceeding.".

TOXICOLOGICAL TESTING OF TRANSPORTATION DEPARTMENT EMPLOYEES

SEC. 5. (a) When the Department of Transportation including any of its agencies, conducts postaccident or postincident toxicological testing of an employee of the Department, specimen collection shall be accomplished as soon as practicable after the accident or incident, and the Department shall endeavor when feasible to complete such collection within four hours after the accident or incident.

(b) The head of each agency within the Department of Transportation shall send to the Office of the Secretary of Transportation a report on the circumstances concerning the amount of time required to complete specimen collection related to a toxicological test which is conducted on an employee within that agency who is reasonably associated with the circumstances of an accident or incident within the investigative jurisdiction of the National Transportation Safety Board.

(c) Any failure to comply with the requirements of this section may not be asserted, by the subject of such testing, as a claim, cause of action, or defense in any administrative or judicial proceeding.

BOARD ACCESS TO TOXICOLOGICAL TESTING RECORDS

SEC. 6. Section 304(b) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)) is amended by redesignating paragraph (11) as paragraph (12) and by inserting immediately after paragraph (10) the following new paragraph:

"(11)(A) Notwithstanding section 503(e) of the Act entitled 'An Act making supplemental appropriations for the fiscal year ending September 30, 1987, and for other purposes', approved July 11, 1987 (5 U.S.C. 7301 note), the Board is authorized to obtain from the Secretary of Transportation, by written request, and shall be furnished—

"(i) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, which is conducted on an employee of the Department of Transportation, including any of its agencies, pursuant to postaccident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when that employee is reasonably associated with the circumstances of an accident or incident within the investigative jurisdiction of the Board; and

"(ii) any laboratory record providing documentation that such test is confirmed positive.

"(B) Except as provided in subparagraph (C), the Board shall maintain in confidence and exempt from public disclosure in accordance with section 552(b)(3) of title 5, United States Code—

"(i) any laboratory record, made available under subparagraph (A), of a confirmed and verified toxicological test which reveals medical use of a drug permitted under applicable regulations; and

"(ii) any medical information provided by the tested employee in connection with such test or in connection with a review of such test.

"(C) The Board may use such a laboratory record for development of any evidentiary record in an investigation by the Board of an accident or incident if—

"(i) the fitness of the employee who is the subject of the toxicological testing is at issue in the investigation; and

"(ii) the use of that record is necessary in the development of such evidentiary record.".

ODOMETER MILEAGE DISCLOSURE

SEC. 7. (a) Section 408(d)(2)(C) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(d)(2)(C) is amended by striking the third sentence and inserting in lieu thereof the following: "The rule, consistent with the purposes of this Act and the need to facilitate enforcement thereof, shall prescribe that the form be issued by the State to the transferee in accordance with paragraph (2)(A)(i), shall prescribe that the person granted such power of attorney shall retain a copy of such power of attorney and shall submit the original back to the State with a copy of the title showing the reinstatement of the mileage, and may prescribe that the State retain the power of attorney and the copy of the title for an appropriate period or that the State adopt alternative measures consistent with the purposes of this title, taking into consideration costs to the State. The rule shall not require that a vehicle be titled in the State in which the power of attorney was issued.".

(b) The amendment made by subsection (a) shall be effective on the date of enactment of this Act and the Secretary of Transportation shall implement the amended section by promulgating a revision of existing regulations within 6 months after such effective date. Such rule shall consider the need to facilitate normal commercial transactions in the sale or exchange of motor vehicles.

REPORT ON LOW-LEVEL RADIOACTIVE WASTE TRANSPORTATION

SEC. 8. Within 12 months after the date of enactment of this Act, the Secretary of Transportation shall conduct and complete a thorough study of and prepare a report to Congress on the transportation of low-level radioactive waste, specifically including—

(1) an evaluation of the feasibility of requiring States that transport waste to a regional disposal facility established and operated under an interstate compact pursuant to section 4 of the Low-Level Radioactive Waste Policy At (42 U.S.C. 2021d) to use, to the maximum extent practicable, routes which are within the geographic borders of the States that are parties to the compact;

(2) factual information on the volume of low-level radioactive waste being shipped currently and estimates of such shipments for the calender years 1991 through 1995;

(3) a list of the routes proposed to be used for shipment of such waste to the disposal facilities operated under such an interstate compact;

(4) a review of the process for determining and approving such routes;

(5) a review of the processes for resolving any disputes that may arise, between States and between Commissions created by such interstate compacts, regarding such routes; and

(6) identification of the public safety risks associated with possible accidents in transporting such waste and of the response plans to be employed in the event of a transportation accident.

INTERCITY RAIL PASSENGER SERVICE

SEC. 9. (a) Section 402(d)(1) of Rail Passenger Service Act (45 U.S.C. 562(d)(1)) is amended by adding at the end the following new sentence: "The Corporation may subsequently convey title or other interest in such property to a third party, if such reconveyance is found by the Commission to further the purposes of this Act.".

(b) The amendment made by subsection (a) shall apply to any proceeding instituted before, on, or after the date of enactment of this Act (including any such proceeding pending before any Federal court on such date of enactment).

COMMUTER RAIL SERVICE

SEC. 10. Notwithstanding any other provision of law, the National Railroad Passenger Corporation shall not discontinue commuter rail service between Valparaiso, Indiana and Chicago, Illinois, before May 6, 1991.

Mr. REID. I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL INSTITUTES OF HEALTH AMENDMENTS

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2857.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2857) entitled "An Act to amend the Public Health Service Act to reauthorize certain Institutes of the National Institutes of Health, and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Institutes of Health Amendments of 1990".

SEC. 2. ESTABLISHMENT OF NATIONAL FOUNDATION FOR BIOMEDICAL RESEARCH.

Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended by adding at the end thereof the following new part:

"PART H—NATIONAL FOUNDATION FOR BIOMEDICAL RESEARCH

"SEC. 499A. ESTABLISHMENT AND DUTIES OF FOUNDATION.

"(a) IN GENERAL.—The Secretary shall establish a nonprofit corporation to be known as the National Foundation for Biomedical Research (hereafter in this section referred to as the 'Foundation'). The Foundation shall not, except for the purposes of the Ethics in Government Act and the Technology Transfer Act, be an agency or instrumentality of the United States Government.

"(b) DUTIES.—

"(1) ESTABLISHMENT OF FUND FOR ENDOWING RESEARCH POSITIONS AT NATIONAL INSTITUTES OF HEALTH.—

"(A) The Foundation shall establish a fund whose primary purpose shall be to provide endowments for positions at the National Institutes of Health to conduct biomedical research. Such positions may be held by scientists without regard to whether the scientists are employees of the Federal Government.

"(B) In addition to the purpose described in subparagraph (A), the fund established under such subparagraph may be expended to recruit scientists to hold the positions endowed by the fund.

"(C) The purposes for which an endowment under subparagraph (A) may be expended include support for the staffing, equipment, and quarters for the biomedical research conducted by scientists holding endowed positions under such subparagraph.

"(2) APPLICABILITY OF CERTAIN STANDARDS REGARDING NON-FEDERAL RESEARCHERS.—In the case of scientists holding endowed positions under paragraph (1)(A) who are not employees of the Federal Government, the Foundation shall negotiate a memorandum of understanding with the Director of the National Institutes of Health, subject to the approval of the Secretary, that specifies that any such scientist shall observe the ethical and procedural standards regulating research and research finding (including publications and patents) that are followed by

scientists conducting research as employees of such Institutes, including standards under this Act, the Ethics in Government Act, and the Technology Transfer Act.

"(3) ADDITIONAL DUTIES.—The Foundation shall provide for biennial audits of the financial condition of the Foundation.

"(c) BOARD OF DIRECTORS.—

"(1) COMPOSITION.—

"(A) The Foundation shall have a Board of Directors (hereinafter referred to in this section as the 'Board'), which shall be composed of ex officio and appointed members in accordance with this subsection. All members of the Foundation shall be voting members.

"(B) The ex officio members of the Council shall be—

"(i) the Chairman and ranking minority member of the Subcommittee on Health and the Environment (Committee on Energy and Commerce) or their designees, in the case of the House of Representatives;

"(ii) the Chairman and ranking minority member of the Committee on Labor and Human Resources or their designees, in the case of the Senate; and

"(iii) the Director of the National Institutes of Health.

"(C) The ex officio members of the Board under subparagraph (B) shall appoint to the Council 9 individuals from among a list of candidates to be provided by the National Academy of Science. Of such appointed members—

"(i) 4 shall be representative of the general biomedical field;

"(ii) 2 shall be representatives of the general biobehavorial field; and

"(iii) 3 shall be representatives of the general public.

"(2) CHAIR.—The ex officio members of the Board under paragraph (1)(B) shall designate an appointed member of the Board to serve as the Chair of the Board.

"(3) TERMS AND VACANCIES.—

"(A) The term of office of each member of the Board appointed under paragraph (2)(C) shall be 5 years, except that the terms of office for the initial appointed members of the Board shall expire as determined by the ex officio members and the Chair.

"(B) Any vacancy in the membership of the Board shall be filled in the manner in which the original position was made and shall not affect the power of the remaining members to execute the duties of the Board.

"(C) If a member of the Board does not serve the full term applciable under subparagraph (A), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

"(D) A member of the Board may continue to serve after the expiration of the term of the member until a successor is appointed.

"(4) COMPENSATION.—Members of the Board may not receive compensation for service on the Board. Such members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Board, as set forth in the bylaws issued by the Board.

"(d) INCORPORATION.—The initial members of the Board shall serve as incorporators and shall take whatever actions necessary to incorporate the Foundation.

"(e) NONPROFIT STATUS.—The Foundation shall be considered to be a corporation under section 501(c) of the Internal Revenue Code of 1986, and shall be subject to the provisions of such section.

"(f) EXECUTIVE DIRECTOR.—

"(1) IN GENERAL.—The Foundation shall have an Executive Director who shall be appointed by the Board and shall serve at the pleasure of the Board. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Board shall prescribe.

"(2) COMPENSATION.—The rate of compensation of the Executive Director shall be fixed by the Board.

"(g) POWERS.—In carrying out subsection (b), the Foundation may—

"(1) operate under the direction of its Board;

"(2) adopt, alter, and use a corporate seal, which shall be judicially noticed;

"(3) provide for 1 or more officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

"(4) hire, promote, compensate, and discharge officers and employees of the Foundation;

"(5) prescribe by its Board its bylaws, that shall be consistent with law, and that shall provide for the manner in which—

"(A) its officers, employees, and agents are selected;

"(B) its property is acquired, held, and transferred;

"(C) its general operations are to be conducted; and

"(D) the privileges granted by law are exercised and enjoyed;

"(6) with the consent of any executive department or independent agency, use the information, services, staff, and facilities of such in carrying out this section;

"(7) sue and be sued in its corporate name, and complain and defend in courts of competent jurisdiction;

"(8) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this subtitle;

"(9) establish a mechanism for the selection of candidates, subject to the approval of the Director of the National Institutes of Health or the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, for the endowed scientific positions within the organizational structure of the intramural research programs of the National Institutes of Health and the Alcohol, Drug Abuse, and Mental Health Administration and candidates for participation in the National Institutes of Health Scholars program;

"(10) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

"(11) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

"(12) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

"(13) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation;

"(14) appoint other groups of advisors as may be determined necessary from time to time to carry out the functions of the Foundation; and

"(15) exercise other powers as set forth in this section, and such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this subtitle.

"(h) ADMINISTRATIVE CONTROL.—No participant in the program established under this part shall exercise any administrative control over any Federal employee.

"(i) FUNDING.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—Subject to paragraph (2), for the purpose of carrying out this part, there are authorized to be appropriated such sums may be necessary for each of the fiscal years 1991 through 1995.

"(2) LIMITATIONS.—

"(A) Amounts appropriated under paragraph (1) or made available under subparagraph (C) may not be provided to the fund established under subsection (b)(1)(A).

"(B) For the first fiscal year for which amounts are appropriated under paragraph (1), $200,000 is authorized to be appropriated.

"(C) With respect to the first fiscal year for which amounts are appropriated under paragraph (1), the Secretary may, from amounts appropriated for such fiscal year for the programs of the Department of Health and Human Services, make available not more than $200,000 for carrying out this part, subject to subparagraph (A).".

SEC. 3. ESTABLISHMENT OF NATIONAL CENTER FOR MEDICAL REHABILITATION RESEARCH.

(a) IN GENERAL.—Subpart 7 of part C of title IV of the Public Health Service Act (42 U.S.C. 285g et seq.) is amended by inserting after section 451 the following new section:

"NATIONAL CENTER FOR MEDICAL REHABILITATION RESEARCH

"SEC. 452. (a) There shall be in the Institute an agency to be known as the National Center for Medical Rehabilitation Research (hereafter in this section referred to as the 'Center'). The Director of the Institute shall appoint a qualified individual to serve as Director of the Center. The Director of the Center shall report directly to the Director of the Institute.

"(b) The general purpose of the Center is the conduct and support of research and research training (including research on the development of orthotic and prosthetic devices), the dissemination of health information, and other programs with respect to the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system (hereafter in this section referred to as 'medical rehabilitation').

"(c)(1) In carrying out the purpose described in subsection (b), the Director of the Center may—

"(A) provide for clinical trials regarding medical rehabilitation;

"(B) provide for research regarding model systems of medical rehabilitation;

"(C) coordinate the activities of the Center with similar activities of other agencies of the Federal Government, including the other agencies of the National Institutes of Health, and with similar activities of other public entities and of private entities;

"(D) support multidisciplinary medical rehabilitation research conducted or supported by more than one such agency;

"(E) in consultation with the advisory council for the Institute and with the approval of the Director of NIH—

"(i) establish technical and scientific peer review groups in addition to those appointed under section 402(b)(6); and

"(ii) appoint the members of peer review groups established under subparagraph (A); and

"(F) support medical rehabilitation research and training centers.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under subparagraph (E).

"(2) In carrying out this section, the Director of the Center may make grants and enter into cooperative agreements and contracts.

"(d)(1) In consultation with the Director of the Center, the coordinating committee established under subsection (e), and the advisory board established under subsection (f), the Director of the Institute shall develop a comprehensive plan for the conduct and support of medical rehabilitation research (hereafter in this section referred to as the 'Research Plan').

"(2) The Research Plan shall—

"(A) identify current medical rehabilitation research activities conducted or supported by the Federal Government, opportunities and needs for additional research, and priorities for such research; and

"(B) make recommendations for the coordination of such research conducted or supported by the National Institutes of Health and other agencies of the Federal Government.

"(3)(A) Not later than 18 months after the date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, the Director of the Institute shall transmit the Research Plan to the Director of NIH, who shall submit the Plan to the President and the Congress.

"(B) Subparagraph (A) shall be carried out independently of the process of reporting that is required in sections 403 and 407.

"(4) The Director of the Institute shall periodically revise and update the Research Plan as appropriate, after consultation with the Director of the Center, the coordinating committee established under subsection (e), and the advisory board established under subsection (f). A description of any revisions in the Research Plan shall be contained in each report prepared under section 407 by the Director of the Institute.

"(e)(1) The Director of NIH shall establish a committee to be known as the Medical Rehabilitation Coordinating Committee (hereafter in this section referred to as the 'Coordinating Committee').

"(2) The Coordinating Committee shall make recommendations to the Director of the Institute and the Director of the Center with respect to the content of the Research Plan and with respect to the activities of the Center that are carried out in conjunction with other agencies of the National Institutes of Health and with other agencies of the Federal Government.

"(3) The Coordinating Committee shall be composed of the Director of the Center, the Director of the Institute, and the Directors of the National Institute on Aging, the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Heart, Lung, and Blood Institute, the National Institute of Neurological Disorders and Stroke, and such other national research institutes and such representatives of other agencies of the Federal Government as the Director of NIH determines to be appropriate.

"(4) The Coordinating Committee shall be chaired by the Director of the Center.

"(f)(1) Not later than 90 days after the date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, the Director of NIH shall establish a National Advisory Board on Medical Rehabilitation Research (hereafter in this section referred to as the 'Advisory Board').

"(2) The Advisory Board shall review and assess Federal research priorities, activities, and findings regarding medical rehabilitation research, and shall advise the Director of the Center and the Director of the Institute on the provisions of the Research Plan.

"(3)(A) The Director of NIH shall appoint to the Advisory Board 18 qualified representatives of the public who are not officers or employees of the Federal Government. Of such members, 12 shall be representatives of health and scientific disciplines with respect to medical rehabilitation and 6 shall be individuals representing the interests of individuals undergoing, or in need of, medical rehabilitation.

"(B) The following officials shall serve as ex officio members of the Advisory Board:

"(i) The Director of the Center.

"(ii) The Director of the Institute.

"(iii) The Director of the National Institute on Aging.

"(iv) The Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

"(v) The Director of the National Institute on Deafness and Other Communication Disorders.

"(vi) The Director of the National Heart, Lung, and Blood Institute.

"(vii) The Director of the National Institute of Neurological Disorders and Stroke.

"(viii) The Director of the National Institute on Disability and Rehabilitation Research.

"(ix) The Commissioner for Rehabilitation Services Administration.

"(x) The Assistant Secretary of Defense (Health Affairs).

"(xi) The Chief Medical Director of the Department of Veterans Affairs.

"(4) The members of the Advisory Board shall, from among the members appointed under paragraph (3)(A), designate an individual to serve as the chair of the Advisory Board.".

(b) REQUIREMENT OF CERTAIN AGREEMENTS FOR PREVENTING DUPLICATIVE PROGRAMS OF MEDICAL REHABILITATION RESEARCH.

(1) IN GENERAL.—The Secretary of Health and Human Services and the heads of other Federal agencies shall—

(A) jointly review the programs being carried out (or proposed to be carried out) by each such official with respect to medical rehabilitation research; and

(B) as appropriate, enter into agreements for preventing duplication among such programs.

(2) TIME FOR COMPLETION.—The agreements required in paragraph (1)(B) shall be made not later than one year after the date of the enactment of this Act.

(3) DEFINITION OF MEDICAL REHABILITATION.—For purposes of this subsection, the term "medical rehabilitation" means the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system.

Amend the title so as to read: "An Act to amend the Public Health Service Act with respect to certain programs for the National Institutes of Health.".

Mr. KENNEDY. Mr. President, I rise to ask for consideration of the National Institutes of Health Amendments of 1990. This bill contains two measures which will help to advance the frontiers of biomedical research and contribute to progress in the important area of disabilities research by establishing two new programs at the National Institutes of Health. The first of these is the National Foundation for Biomedical Research. The second is the National Center for Medical Rehabilitation Research.

The National Foundation for Biomedical Research will draw private funds into the Institutes to support endowed chairs for senior biomedical investigators and make possible a program for visiting scientists in midcareer. The Foundation will enhance the intellectual environment of the National Institutes and add to the strength of our Nation's premier research facility by improving its ability to recruit outstanding and productive scientists. The presence of these scientists will help attract other investigators to the NIH community at a time when recruitment has become one of the most important needs of the Institutes.

The second program is a new National Center for Medical Rehabilitation Research, which will be established within the National Institute for Child Health and Human Development as a focal point for research on rehabilitation problems. The Center will provide a home for rehabilitation research which is increasing rapidly and currently lacks a clear organizational focus. Research in the area of rehabilitation has progressed impressively in recent years. Advances in the area of orthotic and prosthetic devices as well as many other important areas are occurring rapidly and will be given impetus by the establishment of this Center. Such a Center will contribute to national leadership which will help chart the future for such research.

The rehabilitation medicine community has grown significantly over the past decade and is now clearly in a position to take advantage of breakthroughs in materials and devices to aid the disabled to function at the highest possible level in society. Many exciting discoveries, such as nerve regeneration, hold out hope for people whose physical abilities are limited as a result of accident or disease.

These programs will add to the strength of the National Institutes of Health, and to the health of the American public. I am proud to bring this legislation before the Senate and I urge its passage.

I commend the individuals and organizations which have worked to see this legislation passed. I would like to thank Senator GRAHAM and his office for their interest and suggestions. I would also like to thank the distinguished ranking minority member of my committee, Senator HATCH and his staff member, George Lewis. The American Academy of Physical Medicine and Rehabilitation, the American Congress of Rehabilitation, and the National Multiple Sclerosis Society deserve our gratitude for their excellent cooperation and assistance. There are

also several individuals who deserve credit for this legislation. My friend Dr. Henry Betts, director of the Rehabilitation Institute of Chicago, has worked for much of his life improving the lives of people with disabilities. His dedication and his insights have helped to educate the Senate about the important role of disabilities research. Dr. Mona Sarfaty of my staff has worked hard on this legislation through two Congresses and has been indispensable in its enactment. I would also like to thank Wright Williamson, who has worked as a staff member in my office for 2 years on loan from the National Institute of Mental Health. Finally, I commend Peter Thomas and George Breece of the American State of the Art Prosthetic Association for their efforts in support of this legislation.

Ms. MIKULSKI. Mr. President, I rise today to engage in a colloquy with the distinguished chairman of the Committee on Labor and Human Resources. I understand that we are considering today a bill which contains two provisions which were originally part of the National Institutes of Health reauthorization legislation.

Mr. KENNEDY. The Senator from Maryland is correct.

Ms. MIKULSKI. As the chairman knows, I have fought, along with my colleague, Senator ADAMS, and several other members of the committee, to ensure that women's health concerns will be adequately addressed at the NIH. We worked, along with the chairman, to include provisions in the reauthorization bill to ensure that women are appropriately and adequately represented in both clinical research trials and leadership positions at the NIH. I am very disappointed that the legislation we are passing today includes none of those provisions.

Mr. ADAMS. I want to thank the distinguished chairman for his work on the reauthorization for the National Institutes of Health and to join with my colleague, Senator MIKULSKI, in expressing my concern that Congress will not be able to pass the NIH bill this year. This bill contains a very exciting, important and necessary women's health initiative that will establish an office of women's health and codify existing NIH policy to include women and minorities in clinical research trials. The NIH bill incorporates the Clinical Fairness Trials Act which I introduced this year and believe is essential if the health care needs of women are to be met in the future. The bill also includes an amendment I offered, and that the chairman supported, to direct the National Institute on Aging to conduct research on menopause, an area of women's health long ignored. It is critical that we go forward with these initiatives without delay.

Ms. MIKULSKI. I would like the distinguished chairman's commitment that the speedy passage of the National Institutes of Health reauthorization be of the highest priority when the 102d Congress convenes, and that he will work with other concerned members of the committee to ensure that women's health concerns are clearly and adequately addressed in that reauthorization.

Mr. KENNEDY. The Senator has my commitment; I share her concerns about the inclusion of women's health issues in the NIH reauthorization.

Mr. REID. I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLARKS FORK WILD AND SCENIC RIVER DESIGNATION ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1009, S. 2343.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2343) to amend the Wild and Scenic Rivers Act by designating a segment of the Clarks Fork River in the State of Wyoming as a component of the National Wild and Scenic Rivers System.

The being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause, and inserting in lieu thereof the following:

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Clarks Fork Wild and Scenic River Designation Act of 1990".

SEC. 2. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)), as amended, is further amended by adding at the end the following:

"( ) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out this paragraph, there is authorized to be appropriated $500,000 for development and $750,000 for the acquisition of land and interests therein.

"(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any other Federal action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designation as a component of the Wild and Scenic Rivers System.

"(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of Wyoming: Provided, That, notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

"(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such measures as may be necessary in the control of fire, insects, and diseases to fully protect the value for which the segment is designated as a wild river.".

AMENDMENT NO. 3217

The PRESIDING OFFICER. Are there amendments to the substitute?

Mr. BURNS. Mr. President, I send an amendments to the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Montana, [Mr. BURNS], for Mr. WALLOP, proposes an amendment numbered 3217:

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—LOWER MERCED WILD AND SCENIC RIVER

SECTION 101. DESIGNATION OF THE LOWER MERCED RIVER FOR INCLUSION IN THE WILD AND SCENIC RIVERS SYSTEM.

Section 3(a)(62) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(62)) is hereby amended—

(1) by striking "The main stem" and inserting in lieu thereof, "(A) The main stem";

(2) by striking "paragraph" wherever it appears and inserting in lieu thereof, "subparagraph"; and

(3) by adding the following new subparagraphs at the end thereof:

"(B)(i) The main stem from a point 300 feet upstream of the confluence with Bear Creek downstream to the point of maximum flood control storage of Lake McClure (evaluation 867 feet mean sea level) consisting of approximately 8 miles, as generally depicted

on the map entitled "Merced Wild and Scenic River', dated April 1990. The Secretary of the Interior shall administer the segment as recreational, from a point 300 feet upstream of the confluence with Bear Creek downstream to a point 300 feet west of the boundary of the Mountain King Mine, and as wild, from a point 300 feet west of the boundary of the Mountain King Mine to the point of maximum flood control storage of Lake McClure. The requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the Sierra Management Framework Plan for the Sierra Planning Area of the Folsom Resource Area, Bakersfield District, Bureau of Land Management. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subparagraph.

"(ii) To the extent permitted by, and in a manner consistent with section 7 of this Act (16 U.S.C. 1278), and in accordance with other applicable law, the Secretary of the Interior shall permit the construction and operation of such pumping facilities and associated pipelines as identified in the Bureau of Land Management right-of-way application CACA 26084, filed by the Mariposa County Water Agency on November 7, 1989, and known as the 'Saxon Creek Project', to assure an adequate supply of water from the Merced River to Mariposa County.

"(C) With respect to the segments on the main stem of the Merced River and the South Fork Merced River designated as recreational or scenic pursuant to this paragraph or by the appropriate agency pursuant to subsection (b), the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.".

SEC. 102. STUDY OF THE NORTH FORK OF THE MERCED RIVER.

Section 5(a) of the Wild and Scenic Rivers Act, as amended, (16 U.S.C. 1276(a)), is further amended by adding the following new paragraph at the end thereof:

"( ) NORTH FORK MERCED, CALIFORNIA.—The segment from its headwaters to its confluence with the Merced River, by the Secretary of Agriculture and the Secretary of the Interior.".

"TITLE II—MERCED COUNTY, CALIFORNIA

SEC. 201. AUTHORIZATION OF ADDITIONAL USE.

(a) Subject to the requirements of this title, the county of Merced, California (hereinafter in this title referred to as the 'county') is authorized to permit use of the land described in section 203 (hereinafter in this title referred to as the 'land') for the purposes of an elementary school, notwithstanding the restrictions on use of such land otherwise applicable under the terms of conveyance of such land to the county by the United States.

(b) Except as specified in this title, this title shall not increase or diminish the authority or responsibility of the county with respect to the land.

SEC. 202. USE OF LAND FOR ELEMENTARY SCHOOL.

(a) The authority of the county under this title shall be limited to the authorization of use of the land for an elementary school serving children without regard to their race, creed, color, national origin, physical or mental disability, or sex, operated by a nonsectarian organization on a nonprofit basis and in compliance with all applicable requirements of the laws of the United States and the State of California.

(b) If the county permits use of the land as an elementary school, the county shall include information concerning such use in the biennial reports to the Secretary of the Interior required under the terms of conveyance of the land to the county by the United States.

(c) Any violation of the provisions of this title shall be deemed to be breach of the conditions and covenants under which the land was conveyed to the county by the United States, and shall have the same effect, as provided in the deed, whereby the United States conveyed the lands to the county.

SEC. 203. LAND DESCRIPTION.

The land referred to in section 201 is the south 15 acres of the 40 acres located in the northwest quarter of the southwest quarter of section 20, Township 7 South, Range 13 East, M.D.B&M of Merced County, California, declared to be surplus property by the United States in action 9-D-Calif-1028 and conveyed to the county by deed recorded in volume 1941 at page 441 of the official records of Merced County, California.".

TITLE III—CLARKS FORK WILD AND SCENIC RIVER

SECTION 301. SHORT TITLE.

This title may be cited as the "Clarks Fork Wild and Scenic River Designation Act of 1990".

SEC. 302. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)), as amended, is further amended by adding at the end the following:

"( ) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out this paragraph, there is authorized to be appropriated $500,000 for development and $750,000 for the acquisition of land and interests therein.

"(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any other Federal action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designation as a component of the Wild and Scenic Rivers System.

"(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of Wyoming: *Provided*, That, notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

"(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such measures as may be necessary in the control of fire, insects, and diseases to fully protect the values for which the segment is designated as a wild river.".

Mr. WILSON. I join my distinguished colleagues in expressing that the intent of this amendment, which I am coauthoring, in no way interferes with the existing or future licensing of Merced Irrigation District's Lake McClure as currently licensed. Our National Forests and Bureau of Land Management lands are managed on a multiple-use basis. Lake McClure is a multipurpose water project whose purposes include hydroelectric power generation, irrigation, and flood control. Wild and Scenic designation of rivers and wilderness designations are valuable and important management adjuncts. The intent of this amendment is not to interfere with the existing use, or with emergency flooding which may necessarily surcharge the existing reservoir on a temporary basis.

Mr. SIMPSON. Mr. President, I am pleased to rise in support of the Clarks Fork River Wild and Scenic designation. We have worked very hard toward this legislation for so many years. In 1982, the Reagan administration first recommended a portion of this river for inclusion into the Nation's Wild and Scenic Rivers System. The Wyoming delegation, Dick Cheney before us, former Governor Ed Herschler, and Wyoming Governor Mike Sullivan have all worked closely with the people of Wyoming to develop and perfect this bill. We have deliberated at great length over the appropriate language to meet all of our needs, and this bill today is a fine compromise piece of legislation and one that I am very proud to support.

I have personally hiked, fished, and backpacked in that area all of my life. That is home ground to me. There are places there that are absolutely stunning. Hiking in that area is overpowering. I do not want to see that diminished. The area needs and deserves to be protected and I am ready to do just that.

Water, in the west, is our lifeblood. There is no other subject that gets our attention like the issue of water does—how much we have, where it goes, what happens when it leaves our State, and who it belong to. These issues strike at the very heart of our

survival. And, because of that level of importance; emotions and opinions are strong. There is always a great deal of controversy over any proposal or idea that affects our water. This legislation has surely been no exception. But because of the importance of water in the west, State officials are, appropriately, very much involved and a vital part of the decisionmaking process. A wild and scenic designation is no exception. Our State officials deserve to be the ones to establish the instream flow for the Clarks Fork River—or any river in Wyoming which may ultimately be considered for a wild and scenic designation—in order to protect the scenic, recreational, and historic values of the segment of river.

I feel very, very strongly about the need to preserve that fragile and beautiful network of cliffs, canyons, and old Indian trails in the Clarks Fork Canyon. None of us want to see that area overwhelmed with development. It is also important to preserve the right of our State officials to protect our State water rights. I surely don't claim to know the water situations existing in certain communities in Arkansas; I don't know the ins-and-outs of local constituencies in Colorado or New Jersey, and I don't want to be in a position to have to make those decisions which would so affect my fellow members of the Senate and those Members of the House of Representatives. Likewise, I respectfully and honestly request and expect that very same courtesy.

The Wyoming delegation, joined by our Governor, have listened to the people. Today, we represent the vast majority of people in our State in supporting this designation. We haven't pleased them all. There are some local and national special interest groups who are still opposed. They want an instream flow established solely by the Federal Government and that is that. No compromise. We were not able to accommodate that. Insisting on a Federal water right established by Federal officials shows no concern for State rights, State control, or State participation in this water decision. This bill does show a concern for State rights with regards to our water, but it also preserves and protects this beautiful stretch of river and country.

I am very pleased, and thank my friend MALCOLM WALLOP and other fellow Senators for passing this bill in the Senate during Wyoming's centennial year. Special thanks too to our fine Congressman CRAIG THOMAS who has done such a tremendous job for our State of Wyoming. He worked doggedly for this bill in the House—and with great success. We have celebrated this anniversary across the State in a variety of creative, deserving, and inspirational ways. This designation for a wild and scenic river in our State's centennial year will make this anniversary all the more special.

I thank my colleagues.

Mr. WALLOP. Mr. President, I thought it important to take a moment to explain to my fellow Senators why the passage of the park boundary legislation is necessary. The original legislation proposed to allow the Park Service to sally forth wherever they wanted and suggest new boundaries for park units with absolutely no criteria other than it seemed a good idea to have more, more, and more.

For the first time, Mr. President, we have legislation which now directs the Secretary of the Interior to establish some criteria by which the expansion of park boundaries will be considered; and that criteria has to be reviewed by Federal, State, and local agencies, as well as national, regional and local organizations, and will also include public hearings. It also will be submitted to Congress.

Mr. President, in addition to the establishment of criteria, an inventory will be prepared of all inholdings currently authorized to be acquired by the Federal Government within the boundaries of National Park System units. For the first time, we will have an accurate assessment of the exact amount these acquisitions will cost the taxpayer and some idea of how long it will take to complete the acquisitions we have already authorized. Assuming the present backlog is $1.6 billion, a number which is probably low even if there were no inflation, we would be well into the next century before we complete what we have already authorized. And added to this, the Park Service will prioritize their acquisition program on a 3-year basis which should produce some relief for individuals who have been waiting around for 10 to 20 years for the Government to take some monetary action on former authorized acquisitions. This will at least let them know where they stand. The report submitted by the Secretary will also include an analysis and evaluation of the current and future needs of each unit of the National Park System for their current and future operations. That will finally provide Congress with some idea of how we are diminishing the ability of the Park Service to protect and interpret resources each time we add additional units.

Mr. President, with this information which will have had an extraordinary amount of public input and review by numerous national, State, and local organizations, the Congress will be better informed to make decisions on the expansion of park boundaries and the cost to the American public. The Congress has never had the benefit of this information in one report before. I fully believe that when we receive the first report, we will be staggered by the enormity of the price tag. It is my hope at that time that we will look at the expansion of park boundaries very carefully to determine whether or not they are worth the exorbitant cost.

It is important to note that this legislation does not authorize or require any park expansion studies; it simply provides the Congress with the criteria which the Park Service will use in the future to review any proposed expansions and an assessment of both the current authorized but unacquired backlog of land acquisition, and the operational and management needs of the Park Service.

Thank you, Mr. President.

Mr. CRANSTON. Mr. President, H.R. 4687 adds to the national wild and scenic rivers system 8 miles of the lower Merced River "from a point 300 feet upstream of the confluence with Bear Creek downstream to the point of maximum flood control storage of Lake McClure (elevation 867 feet mean sea level)."

The Merced Irrigation District has expressed concern about the affect of this designation on its New Exchequer Dam Project which forms Lake McClure Reservoir. As the sponsor of the companion Senate bill, it is not my intention that this legislation in any way affect the continued operation and maintenance of the New Exchequer Project, including flood control operations. Neither is it my intention to affect the Federal Energy Regulatory Commission's authority to relicense the project as presently configured when the current license expires.

I would like to ask the chairman of the Subcommittee on Public Lands, National Parks and Forests if he shares my understanding about the affect of H.R. 4687 on this project.

Mr. BUMPERS. I agree with the Senator from California.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3217) was agreed to.

JOHNSTON AMENDMENT TO H.R. 4687 REGARDING MERCED COUNTY, CA

Mr. WILSON. Mr. President, this important legislation, H.R. 4687, the Lower Merced Wild and Scenic River bill, contains an important committee amendment I have sponsored, along with my colleague from California, Senator CRANSTON, to eliminate a bureaucratic barrier facing the McSwain Elementary School District in Merced County, CA.

This amendment would authorize Merced County to provide a portion of land it received from the National Park Service to the school district for the purposes of building an elementary school. Merced County is heavily impacted by the influx of school-age

Hmong refugees and other immigrants.

Without this language, the terms of the original conveyance would prevent Merced County from building the school on the land or would force the return of the land of the Federal Government. Without this language, Merced County faces the choice of losing the entire parcel of land or losing a new school building the McSwain Elementary School District so desperately needs.

On behalf of Merced County and the McSwain Elementary School District, I want to thank my colleagues Senators JOHNSTON and WALLOP, and their staff on the public lands subcommittee, for their gracious support of this effort and their willingness to move the amendment and the underlying bill quickly.

With any luck, we will have modular classroom units on the proposed site open for business in time for the upcoming January school term. This will go a long way toward easing the school district's burden in meeting its education obligations.

Mr. President, I urge my colleagues to support this legislation.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. REID. I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER TO FILL VACANCIES

Mr. REID. Mr. President, on behalf of the majority leader, I ask unanimous consent that the President pro tempore of the Senate, in consultation with the majority leader—in the case of a vacancy of a Democratic member of the Senate Select Committee on Ethics—or the Republican leader—in the case of a vacancy of a Republican member of the Senate Select Committee on Ethics—be authorized to appoint a member or members to the Select Committee on Ethics to fill any vacancies which may occur during the period of adjournment sine die of the 101st Congress due to death, illness, resignation, or other contingency.

I further ask unanimous consent that the Select Committee on Ethics be authorized to file, and the Secretary of the Senate be authorized to receive reports from the Select Committee on Ethics during the period of adjournment sine die of the 101st Congress, if the Senate Select Committee on Ethics determines that filing such a report or reports is necessary.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar 944. Bert W. Corneby, to be Superintendent of the Mint of the United States at West Point, NY;

Calendar 970. W. Glenn Campbell, to be a member of the National Science Board;

Calendar 1062. Keith D. Bjerke, to be a member of the Board of Directors of the Commodity Credit Corporation;

Calendar 1063. Billy Ross Brown, to be a member of the Farm Credit Administration Board;

Calendar 1064. Mary Sterling, to be Inspector General, Department of Transportation;

Calendar 1065. Thomas F. Karanz, to be an Associate Director of the Federal Emergency Management Agency;

Calendar 1066. Antonio C. Amador, to be a member of the Merit Systems Protection Board;

Calendar 1067. Todd W. Dillard, to be U.S. Marshal for the Superior Court of the District of Columbia;

Calendar 1069. Sylvia A. Earle, to be Chief Scientist of the National Oceanic and Atmospheric Administration;

Calendar 1070. Paul K. Dayton, to be a member of the Marine Mammal Commission;

Calendar 1071. Marion Clifton Blakey, to be an Assistant Secretary of Transportation;

Calendar 1072. Mary Shannon Brunette, to be an Assistant Secretary of Housing and Urban Development; and

All nominations placed on the Secretary's desk in the Coast Guard.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF THE TREASURY

Bert W. Corneby, of New York, to be Superintendent of the Mint of the United States at West Point, NY.

NATIONAL SCIENCE FOUNDATION

W. Glenn Campbell, of California, to be a member of the National Science Board, National Science Foundation for the remainder of the term expiring May 10, 1994.

DEPARTMENT OF AGRICULTURE

Keith D. Bjerke, of North Dakota, to be a member of the Board of Directors of the Commodity Credit Corporation.

FARM CREDIT ADMINISTRATION

Billy Ross Brown, of Mississippi, to be a member of the Farm Credit Administration Board, Farm Credit Administration, for the term expiring October 13, 1994.

DEPARTMENT OF TRANSPORTATION

Mary Sterling, of Virginia, to be Inspector General, Department of Transportation.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Thomas F. Kranz, of California, to be an Associate Director of the Federal Emergency Management Agency.

MERIT SYSTEMS PROTECTION BOARD

Antonio C. Amador, of California, to be a Member of the Merit Systems Protection Board for the term of 7 years expiring March 1, 1997.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Todd W. Dillard, of Maryland, to be U.S. Marshal for the Superior Court of the District of Columbia for the term of 4 years vice a new position created by P.L. 100-690, dated November 18, 1988.

DEPARTMENT OF COMMERCE

Sylvia Alice Earle, of California, to be Chief Scientist of the National Oceanic and Atmospheric Administration.

MARINE MAMMAL COMMISSION

Paul K. Dayton, of California, to be a member of the Marine Mammal Commission for the term expiring May 13, 1992.

DEPARTMENT OF TRANSPORTATION

Marion Clifton Blakey, of Mississippi, to be an Assistant Secretary of Transportation.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mary Shannon Brunette, of Virginia, to be an Assistant Secretary of Housing and Urban Development.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE COAST GUARD

Coast Guard nominations beginning Rodney E. Smith, and ending Jeffrey L. Klingensmith, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 3, 1990.

Coast Guard nominations beginning Peter A. Tebeau, and ending Cassius L. Lisk, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 3, 1990.

NOMINATION OF TOM KRANZ

Mr. WILSON. Mr. President, I am delighted to endorse and support the nomination of my good friend and fellow Californian, Thomas F. Kranz, for the position of Associate Director of the Federal Emergency Management Agency. I do so without reservation and with enormous trust and confidence that he will ably and well serve our Nation in this post.

I have had the privilege of knowing Tom for many years. He and I have enjoyed a valued friendship over time and I have come to know him as a man of the highest integrity and character who is superbly qualified to lead FEMA as Associate Director.

This outstanding American is committed to public service. He has been a valued member of the current administration for several years, demonstrating his excellent legal abilities as Principal Deputy General Counsel of the Army, and has been responsible for formulating sound policies to ready our land forces for increased defense requirements. Tom has devised and put in motion programs for industrial mobilization and demobilization, civil and military construction, procurement of weapons systems and other equipment and supplies, civilian, military and industrial security, and financial management, all within the context of international, Federal, and State civil and criminal law. By all measures, Tom's work on behalf of our Nation's defense posture has been outstanding and has well prepared him for the challenges he will undertake at FEMA.

In addition to his legal excellence, Tom's history of public service includes his position as a deputy public defender for Los Angeles County, and special counsel to the Los Angeles County District Attorney's office for which he reopened the investigation into the assassination of Senator Robert F. Kennedy. A former lieutenant in the U.S. Navy, as well as a judge pro tem of the Los Angeles Municipal Court, Tom also served as chairman of the community advisory board of KCET, the largest public television station in Los Angeles.

Tom has been a valued leader and supporter of the Republican Party, contributing to the growth and success of the party and its principles. He has contributed his time and talent to many charitable organizations, consistently demonstrating, by word, deed, and commitment, and exemplary civic consciousness.

Tom is a man whose keen grasp of policies and issues at the local, State, and Federal levels will make him an invaluable asset to the Federal Emergency Management Agency. Our country is fortunate to have the commitment of this dedicated public servant. I have no doubt that Tom Kranz will well and faithfully serve the interests of FEMA and our Nation. I urge his speedy and unanimous Senate confirmation.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to consider the following nominations reported today by the Committee on Labor and Human Resources:

David A. Kessler, to be Commissioner of Food and Drugs, Department of Health and Human Services;

Howard E. Simmons, to be a member of the National Science Board, National Science Foundation;

Philip A. Griffiths, to be a member of the National Science Board, National Science Foundation;

Jaime Oazaca, to be a member of the National Science Board, National Science Foundation;

Jon N. Moline, to be a member of the National Council on the Humanities;

Mary Louise Smith, to be a member of the Board of Directors of the U.S. Institute of Peace for the term expiring January 19, 1991;

Mary Louise Smith, to be a member of the Board of Directors of the U.S. Institute of Peace;

Arlene Holen, to be a member of the Federal Mine Safety and Health Review Commission; and

Elsie V. Vartanian, to be Director of the Women's Bureau, Department of Labor.

I further ask unanimous consent that the nominees be confirmed en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF DAVID A KESSLER

Mr. KENNEDY. Mr. President, I urge the Senate to support the nomination of Dr. David A. Kessler as Commissioner of the Food and Drug Administration.

The Food and Drug Administration has a long and proud history as an agency dedicated to the protection of consumers from unsafe and ineffective products, while making available safe products of genuine therapeutic value. The ability of the agency to continue to accomplish this mandated mission is vital to the Nation's public health.

FDA's responsibilities are enormous and its resources are limited. Those limited resources have been further strained by the AIDS epidemic and the recent serious generic drug problems.

The agency needs strong leadership to carry out its mission. There are serious management problems and morale is low.

In response to the growing public criticism of the agency, the Secretary of Health and Human Services appointed a special Advisory Committee earlier this year, chaired by former Assistant Secretary Edwards to do an in-depth study of the situation and to make recommendations for reform.

In its recent interim report, the advisory committee stated that "FDA is an agency under stress—beset by often conflicting demands, short of resources, and in need of enhanced leadership, strengthened management systems and improved decision making capabilities." The report went on to say "In short there is ample evidence to suggest that the credibility and professional stature of the FDA have become severely compromised."

It is clear that there is a compelling and urgent need to provide new leadership for the FDA as soon as possible. The agency has been without a Commission for almost a year.

According to the available information, the nominee is highly qualified to serve as FDA Commissioner and to provide the leadership that is needed.

He is both a physician and an attorney, has taught Food and Drug Law and written extensively on the subject. He has also served in the past as a consultant to the Labor Committee and more recently as a member of the special FDA Advisory Committee appointed by Secretary Sullivan.

The Labor and Human Resources Committee would normally have held a confirmation hearing to consider the nomination. However, because of the time constraints and the impending recess such a hearing could not be held until the next session. Because of these circumstances and the pressing need for new leadership at the FDA, the committee has expedited consideration of this nominee and recommends his confirmation at this time.

The Labor and Hunan Resources Committee will hold oversight hearings in the next session on the FDA and will explore the problems facing the agency and the remedial actions being taken to solve such problems.

I ask my colleagues to confirm the nomination of Dr. David A. Kessler.

Mr. GORE. Mr. President, today, we take a truly historic step. For the first time an FDA Commissioner will be confirmed by the Senate. Confirmation is a fundamental part of the checks and balances between the executive and legislative branches of Government. It is a critical opportunity for public oversight and accountability. It is what we fought so hard for when we enacted the Food and Drug Administration Act 2 years ago.

For more than a century, the Food and Drug Administration and its predecessor, the Bureau of Chemistry, have stood for solid protection of our food supply and medicines. All of us here can understand the importance of an independent and dependable FDA.

From the Pure Food and Drugs Act of 1906 to the Infant Formula Act of 1980, Congress has always turned to the FDA to ensure and enhance the public health. Its jurisdiction includes vital areas of public health, ranging from approval of drugs and food additives to inspection of medical devices and consumer complaints. Through the years, the agency has developed a worldwide reputation for professionalism and expertise.

We in Congress have tried hard to protect and promote that reputation for excellence. The head of every other major Federal health and safety agency is currently subject to Presi-

dential appointment and Senate confirmation. Today, finally, the FDA joins that list.

Unfortunately, the moment is somewhat diminished by the urgency with which we must bring this nomination before the Senate. It is the first time an FDA Commissioner has come before us for confirmation, but there was no time for proper hearings, for thorough oversight, for many of the things we fought so hard to provide the Nation when we changed the law.

Let there be no doubt where responsibility for this situation lies: It is squarely with the administration, which has left this important agency without a Commissioner since November last year, which has known for months who the nominee would be, but waited until the last possible moment to nominate him, which knew that this would be the first time a prospective Commissioner would come before the Senate, but didn't seem to care.

That has left the Senate with two choices: We can wait—hold off on this nomination until the Senate returns next year, or we can confirm the nominee—but without the exhaustive oversight that there should be.

For us it was a difficult choice, but the correct decision clearly was to move forward. Had we waited, FDA would have been forced to go several more months without a Commissioner, without the leadership and direction it is so desperately needs. In the final analysis that would have been the greater tragedy.

In the last few days, I have had an opportunity to meet at length with Dr. Kessler. I'm also familiar with his work from when I was in the other body and Senator HATCH and I worked together on food safety legislation. Dr. Kessler and I discussed a wide range of issues and challenges confronting FDA. He exhibited an excellent understanding of the seriousness of the problems FDA faces, and demonstrated a sincere commitment to solving them. There is much more I look forward to discussing with Dr. Kessler once he is Commissioner, but based on the discussions we have had so far, I am confident his appointment can represent an important break from FDA's recent, troubled past.

An area of particular concern to me, that I plan to explore more fully with Dr. Kessler next year, is how advances in biotechnology will test FDA. I am a strong supporter of biotechnology, but a frequent critic of the job the administration has done putting in place a proper regulatory framework.

FDA was an early leader during the debate on fermentation, the use of genetically engineered organisms within sealed systems. It did an excellent job, and I don't think it is a coincidence that products from that type of genetic engineering have moved faster, more successfully than in any other area. Enormously beneficial products such as TPA, EPO, and human growth hormone are a result.

I have been unhappy, however, with the role some officials at FDA have played more recently—for example the lack of attention to the safety and nutritional value of genetically engineered foods; and FDA interference with EPA and USDA on issues such as environmental release of genetically altered organisms.

The next few years will be possibly the most critical FDA has faced. Bold, responsible leadership will be essential both at FDA and here in the Congress. I have known for some time that with leaders such as Senators KENNEDY, HATCH, and METZENBAUM on this side, and Congressman WAXMAN in the other body, there is no lack of will here in the Congress. Today, as Dr. Kessler becomes the first FDA Commissioner to be confirmed by the Senate, I hope we finally have comparable leadership at FDA, something that has been sorely lacking for too long.

As the Senator from Massachusetts knows, I am very proud to have been able to join him and the Senator from Utah [Mr. HATCH] in enacting the legislation to require confirmation of the FDA Commissioner. I deeply respect their expertise in matters involving the Food and Drug Administration, I have learned a great deal from them and I was indeed honored to be able to work with them to enact the Food and Drug Administration Act of 1988, to strengthen one of the most important health and science agencies in Government.

I was interested, in hearing his statement, to learn that the Labor Committee does indeed intend to conduct oversight hearings with the new FDA Commissioner early next year.

Mr. KENNEDY. If the Senator will yield, that is correct. By acting today to put a Commissioner, we are taking an important step to restore public confidence in FDA. The next step will be to hold extensive oversight hearings when we return, not only to explore Dr. Kessler's goals and plans to reconstruct FDA, but to assure the American people that the FDA is an agency they can count on and be proud of.

I would hope the Senator from Tennessee and the members of his science subcommittee could join us at those hearings. He is among the most knowledgeable Senators in this area and if we are to succeed in our goals for achieving an effective FDA, we will need his expertise.

Mr. HATCH. I would like to add my support for extensive oversight hearings when we return. They are an essential part of rebuilding public confidence in FDA. Dr. Kessler will be able to provide us with information on his plans to lead the FDA.

I want to commend Senator GORE for the effort he has put forward on this matter, and I join Senator KENNEDY in inviting his subcommittee to join us at those hearings.

Mr. GORE. Mr. President, I want to express my profound thanks and appreciation to both Senators for their kind words and their most generous offer. I am deeply grateful for the working relationship we have had.

It is important that those following this debate know that it is only out of our utmost concern for restoring FDA that we have expedited the confirmation process, and not because hearings are unnecessary. They are crucial, and I'm pleased to hear that those hearing will be held and I accept their offer.

Mr. HATCH. Mr. President, I am very pleased to support the nomination of Dr. David Kessler for Commissioner of the Food and Drug Administration. This is a critical time to have competent and strong leadership at the Food and Drug Administration. I have know Dr. Kessler for many years, and his reputation, experience, and dedication to public service make him the right choice for FDA.

The FDA is a preeminent force in consumer protection for advancing the technological development of new foods, drugs, devices, and cosmetics. Today, the FDA is responsible for regulating more than $700 billion worth of goods sold annually to Americans—constituting about 25 percent of the total expenditures for personal consumption in the United States each year.

The FDA has tried to keep pace with the continuous development of new products, but it needs additional resources and solid leadership to meet its basic mission and to respond to the new challenges that confront it. Many American are relying on the FDA for confidence in the food supply as well as access to important, often lifesaving, drugs and devices. For examples, the agency has established innovative measures to help expedite the development, testing, review, and approval of promising drugs, vaccines, and diagnostics for AIDS. More needs to be done to get these and other important products approved and in the marketplace.

Mr. President, the next Commissioner of the FDA has a significant job ahead of him as he provides FDA leadership. The Food and Drug Administration has faced many crises during the past decade. They include the tampering with over-the-counter products, tainting of the food supply, and fraudulent generic drug applications. I believe the FDA responded swiftly to remedy the problems. However, through this adversity, the FDA needs a new burst of energy, leadership, and

revitalization. Dr. Kessler will bring to the agency these qualities.

Dr. Kessler has served in a number of leadership positions. With both a medical and a law degree, he has an expert's understanding of food and drug law, the processes that govern the FDA and the issues that surround it today. He also spent time working as a consultant to the Labor and Human Resources Committee. In that capacity, he gained an appreciation of the legislative process as well. And, as medical director of the Jack D. Weiler Hospital of the Albert Einstein College of Medicine at New York's Montifiore Medical Center, he has demonstrated administrative ability.

Dr. Kessler will be the first Commissioner of FDA who is confirmed by Congress. His nomination was submitted by President Bush on October 18. The Senate Committee on Labor and Human Resources reviewed his nomination, and many Members personally met with Dr. Kessler to raise issues. In addition, both Senator KENNEDY and I asked Dr. Kessler to respond to questions about various FDA matters. I will ask unanimous consent that my questions and Dr. Kessler's answers be included in the RECORD. Mr. President, I believe that following the consent of the entire Senate, Dr. Kessler will have completed the entire confirmation process.

Mr. President, I strongly endorse President Bush's choice of Dr. David Kessler to head the FDA. Dr. Kessler supports President Bush's policies and with Secretary Sullivan and Dr. Mason will carry out the administration's policies.

I also want to thank Senator KENNEDY for expediting the approval of this nomination. He shares my sentiment that we need Dr. Kessler at FDA as soon as possible. This is one nomination that should not be held until next February or March. I urge all of my colleagues to support this nomination.

I ask unanimous consent that my questions and Dr. Kessler's answers be printed in the RECORD.

There being no objection, the questions and answers were ordered to be printed in the RECORD, as follows:

DR. DAVID A. KESSLER'S RESPONSES TO SENATOR HATCH

Question No. 1. There are proposals to make the FDA an independent agency. Do you believe this would enhance the mission of the Food and Drug Administration.

Answer. I do not believe that making FDA an independent agency within the executive branch would necessarily enhance the agency's ability to carry out its mission. I do believe, however, that there may be ways to make the agency work more effectively within the Department of Health and Human Services.

Question No. 2. Concerns have been raised about the backlog of applications for drug approvals at the Food and Drug Administration. What efforts will you undertake to correct this?

Answer. The most important role I can play in expediting the agency's work is to manage and oversee its numerous processes effectively. Towards those goals, I believe a number of management improvements can be made, including working to:

Assure that greater accountability, as well as authority, are delegated to those who make product review decisions;

Assure that more consistent approaches to product review exist among the various review divisions;

Continue the implementation of the management and review changes in the generic drugs program, and adhering to a process by which applications are reviewed fairly and in the order that they are received ("first in, first reviewed"); and

Examine alternative and more efficient ways to carry out drug reviews.

Question No. 3. What do you define as the primary mission of the Food and Drug Administration?

Answer. To protect and enhance the public health.

Question No. 4. What enforcement tools are needed at the FDA? For example, do you believe that FDA needs direct subpoena authority?

Answer. I am deeply committed to assuring that FDA's field managers and investigators have what they need to do their jobs effectively. A credible and effective enforcement program will signal to industry that the agency takes its law enforcement mandate extremely seriously. Although I am not yet familiar with all of the possible ways to bolster FDA's enforcement capabilities, I believe that at least three effective tools may be needed—direct subpoena authority; authority to inspect the records of manufacturers (which now exists only for prescription drugs and certain medical devices); and extending the presumption of interstate commerce to all FDA-regulated products. If it becomes clear that new legislation is needed to strengthen FDA's enforcement capacity, I would not hesitate to work with the Administration and Congress to obtain the additional authorities.

Question No. 5. Do you believe that the regulation of food should be consolidated within the Department of Agriculture?

Answer. No. The Food and Drug Administration has an excellent track record in protecting the food supply and a particularly distinguished history in detecting hazards, including microbiological and chemical contamination. I believe it would be unwise to make changes that might threaten a system that has worked so well for most of this century.

Question No. 6. As you know, the majority of products regulated by FDA—in terms of consumer dollars spent—are foods. Do you believe that FDA's food protection program is adequate, or should it be strengthened?

Answer. Although I believe that FDA's food protection program does protect the public, there are areas that should be strengthened. In particular, I would look more closely at the inspection of all foods, especially imported foods and the review process for the many innovative food products expected to enter the marketplace in the coming years. More generally, attention needs to be paid to the capabilities of the field force assigned to food protection.

Question No. 7. FDA has made a number of changes in the way it oversees the approval of new drugs. Do you believe those reforms are working, and what further steps would you take to expedite the drug review process?

Answer. The reforms in the drug approval process that have been instituted over the past few years, particularly the steps taken to expedite drug review for life-threatening illnesses, have been quite valuable. More needs to be done, however, and I believe it is important to continue experimenting with innovative approaches. New models are also needed for bringing outside scientific expertise to the FDA throughout the drug review process. Expanding the advisory committees could be a valuable way to accomplish this.

Question No. 8. FDA has also worked to permit greater access to experimental drugs for the desperately ill and to get those drugs on the market as rapidly as possible. Do you agree with the need to do so, and would you continue those efforts?

Answer. I wholeheartedly believe we must push ahead in making drugs for life-threatening diseases available more quickly. Public health officials have a special obligation to provide desperately ill patients the products they need, so long as there is reasonable basis to believe they may be effective.

Question No. 9. Biotechnology is an area of immense concern, in that it is a rapidly growing and promising technology in which we are competing with other countries for a leadership position. What does FDA have to do to keep up with this new technology?

Answer. The FDA is beginning to see increasing numbers of marketing applications that reflect the tremendous research and development efforts underway at biotechnology firms. FDA needs a framework in which to ensure that the rules for reviewing those applications are consistent across the agency. I believe that better guidelines are also needed to determine which component of the agency should review a new product. And there is a need to recruit and train staff skilled in biotechnology and to determine how resources can best be used to expedite the review of biotechnology applications.

Question No. 10. FDA scientists have instituted a number of programs to try to ensure that residues from drugs used in food-producing animals do not pose a threat to the public health. Do you believe those efforts are sufficient? If not, what further steps would you take?

Answer. The American public quite rightly expects that milk and other foods derived from animals will be free of hazardous drug residues. The presence of hazardous levels of such residues indicate a misuse of drugs on the farm or feedlot and serves as an important reminder that FDA must continue its vigorous enforcement activities. I believe it is also necessary for the agency to supplement enforcement with a program to educate farmers and other producers about the hazards of drug residues.

Question No. 11. FDA has received substantial publicity to the effect that it is underfunded and thus not up to the task of protecting one-quarter of the gross national product. Can you specifically describe for us your views on particular FDA needs, i.e., facilities, equipment, and personnel?

Answer. The resource limitations of the FDA curtails its ability to perform mandated tasks. Although some improvements can be made with new management techniques and a more creative deployment of resources, my experience as a manager suggests the need to be realistic about what can actually be accomplished within the constraints of the agency's current resources.

I have toured several FDA buildings and I firmly believe that these facilities have to be upgraded. While it is remarkable just

how much agency personnel can accomplish within this environment, it simply is not possible to do everything the agency is being asked to do. Although I have not yet reached firm conclusions about the exact level of necessary resources and how best to deploy them, I firmly believe that an infusion of new resources, along with improved management techniques for using them most effectively, is absolutely essential.

Question No. 12. Do you believe that FDA would benefit from a single campus that would consolidate its current 23 lcoations in Washington into one location?

Answer. Yes. I believe that the long-term success of the agency depends on consolidating its workforce. As Commissioner, I would make this one of FDA's highest priorities. Although the initial costs are large, in the long run the construction of a consolidated office complex would be a more efficient use of taxpayer funds than the current system under which numerous and widely scattered buildings are leased and maintained.

Question No. 13. "Revitalization" is a word often used as one of FDA's needs. Do you agree that the agency should be revitalized and, if so, how would you see that being done?

Answer. Revitalization is critical if we are to restore the agency's credibility and stature and strengthen the morale of agency employees. To accomplish the goal of revitalizing the FDA, I would, if confirmed as Commissioner, focus special attention on enhancing the authority and accountability of leadership at all levels; on improving decisionmaking by ensuring that actions taken by the agency have a sound scientific basis; and by using the appropriate management tools to guide the agency's activities and allow it to function more effectively.

I believe that these efforts, combined with the efforts by Senators Hatch and Kennedy will accomplish the revitalization so needed by FDA.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to consider all military nominations reported today by the Committee on Armed Services in the Army, Navy, Air Force, and Marine Corps.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid on the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

MINIMUM WAGE REQUIREMENTS IN SAMOA

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House on S. 2930, a bill concerning minimum wage determination for American Samoa.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I would advise the Chair, the Senator from Georgia has the floor under the previous order that has been entered. When he yielded to the Senator from Nevada, the agreement was that he did not lose the floor.

The PRESIDING OFFICER. Does the Senator withdraw his request that the message be laid before the Senate?

Mr. REID. The Senator would not. If the Senator from Georgia will continue to yield, I have one more matter to complete.

Mr. NUNN. Mr. President, I had yielded to the Senator from Nevada for the purpose of handling matters that need to get over to the House of Representatives with unanimous consent that I be recognized after that, and I would like to complete my speech on the amendment after the Senator from Nevada completes his.

The PRESIDING OFFICER. Under the unanimous-consent agreement, that is the order. The Senator from Nevada.

Mr. REID. I repeat my request that the Chair lay before the Senate a message from the House on S. 2930.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2930) entitled "An act to eliminate 'substantial documentary evidence' requirement for minimum wage determination for American Samoa," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. AMERICAN SAMOA.

Section 8(b) (29 U.S.C. 208(b)) is amended by striking out "unless there is" and all that follows in that section and inserting in lieu thereof "unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.".

SEC. 2. REGULATIONS CONCERNING CERTAIN EMPLOYEES.

Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to quality as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage rate under section 6 of such Act (29 U.S.C. 206).

Amend the title so as to read: "An Act to eliminate 'substantial documentary evidence' requirement for minimum wage determination for American Samoa, and for other purposes.".

Mr. REID. I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONFERENCE REPORTS ON H.R. 5769 AND H.R. 5114 AGREED TO

The PRESIDING OFFICER. Under the previous order, the conference reports on H.R. 5679 and H.R. 5114 which have now been received from the House are considered, adopted, and the motion to reconsider laid upon the table.

Mr. LEAHY. Mr. President, several months ago when the Foreign Operations Subcommittee was holding hearings on the fiscal year 1991 foreign aid budget, I spoke on the Senate floor about the directions I believe our foreign aid programs should take in the post-cold-war years. In my statement, which I entitled "New Directions in U.S. Foreign Aid Policy," I described what I believe should be the five guiding principles and goals of U.S. foreign aid, and the actions I hoped to take this year to further them.

Let me review for just a moment what I believe those principles and goals to be.

First, that our foreign aid must more closely reflect the values and ideals of the American people. I mentioned how too often our aid has been used to prop up governments which are the antithesis of democratic, because they are anti-Communist. That justification is not longer valid, if it ever was. Governments that receive our aid should be popularly supported at home.

Second, we must begin to shift foreign aid funds away from military aid and toward economic development and humanitarian assistance. Of all the public complaints about our foreign aid programs this stands out—too much of our aid goes for weapons of war, and too little to pay for basic human needs like medical care, education, food, and jobs.

The third principle is that we must concentrate on responding to global threats to humanity—such as the potentially catastrophic problems of global warming and uncontrolled population growth.

Fourth, is that foreign aid must do much more to strengthen American competitiveness abroad. While our competitors, the Japanese and Western Europeans, are rapidly expanding their investments in the untapped

markets of Eastern Europe and other developing countries, we are being left behind.

Fifth, the President and Congress must rebuild mutual trust and cooperation in our foreign aid programs. There are too many tragic examples of how our aid was wasted because that trust and cooperation were lacking.

Mr. President, today, just hours before the 101st Congress adjourns, the House and Senate passed the fiscal year 1991 foreign aid bill. Last week, when time was running out, it was not certain we would get a bill at all. Several efforts to prevent votes on key issues almost doomed it. There was talk of a continuing resolution. But finally we prevailed, and I am proud of the result.

What I am most proud of, Mr. President, is how close we were able to come to fulfilling my own goals, which I described half a year ago.

Back then I said I wanted to see a cut in our foreign military aid budget, and more money for economic development and humanitarian efforts. We have done that. The bill cuts military aid by $250 million below last year, and increases development assistance by $350 million.

I said I wanted to increase aid for sub-Saharan Africa, the poorest region in the world, by at least $100 million. This bill raises it by $240 million—a 50-percent increase over last year.

I said I wanted more money to improve the lives of children, and we have increased UNICEF's budget by $10 million. We increase the Agency for International Development's child survival fund by $25 million.

I proposed additional funds to support the global warming initiative Senator KASTEN and I started last year. We doubled it.

I mentioned the need to put more money into programs to prevent the spread of AIDS abroad, primarily in Africa. We increased our support for AIDS prevention by $10 million, about a 25 percent increase.

I stressed the urgent need to dramatically increase our support for international family planning. In the past 2 years since I became chairman we have increased that budget by a third, to $250 million this year.

Eastern Europe was an area I suggested should get more aid, both to support the new democracy movement there and to strengthen the ability of American businesses to reap the rewards of those new markets. Last year, we provided some $200 million in direct aid to the emerging democracies in Eastern Europe. In this bill, we raise that to $369 million.

Along those same lines, I proposed an increase for the Export-Import Bank by at least $100 million. We increase it by $135 million.

One item I am particularly pleased about is the provision which withholds 50 percent of the military aid to El Salvador. This has been a goal of mine for several years, and this is the first time in that decade-long civil war that the Congress has tied our military aid to progress in peace negotiations and on human rights. The 74-25 vote in support of my provision was a powerful signal that U.S. policy must change from support for winning the war to one of fostering a peace settlement. It also makes clear to the two contending sides that the U.S. Congress has come to the end of the road regarding this tragic war.

Mr. President, we did not fulfill every goal but we did take some important steps in those new directions about which I spoke last June. Next year, we will take further steps as we continue to make U.S. foreign aid a more effective tool of American foreign policy and more reflective of American values and ideals.

FOREIGN OPERATIONS APPROPRIATION

Mr. President, we have finally come to the end of a long, grueling process of producing the foreign aid appropriation for fiscal 1991. Adoption of this conference report marks the culmination of a herculean effort this year to shape a foreign aid bill that can respond to the foreign policy needs of this country.

I want to express my strong appreciation to my distinguished ranking member of the Foreign Operations Subcommittee and my very good friend, the senior Senator from Wisconsin. Senator KASTEN and I have worked hard to produce a bipartisan foreign aid bill. I congratulate him for this conference report, and I thank him warmly for his friendship and his cooperation.

No appropriation bill can reach this point without the tireless work of the staff. This year was extraordinarily difficult for the foreign aid bill, and no staff in the Senate worked harder, under more strain and pressure, and under such adverse conditions as the staff of the Senate Foreign Operations Subcommittee. They have gone through endless hours of work, countless cups of coffee and slices of cold pizza, days on end away from their families, and demands from all sides for budgetary and procedural miracles. Not once did they falter or fail in their responsibilities.

First, my deep appreciation and thanks go to tne subcommittee staff director, Eric Newsom. I personally, and every Member of this Senate who supports a balanced foreign aid program, owe him a great deal. Eric is a close friend as well as one of the most effective, professional, and dedicated staffers in Congress. At every stage of the ordeal of producing the foreign aid bill this year, Eric was at my side with advice, ideas, strategies for keeping us moving forward. Eric plays a major role in helping to shape the agenda of the subcommittee and in planning how to build a bipartisan coalition that can get the foreign aid bill, never politically popular, through the committee, the floor and conference. I may get some headlines on the bill, but they would be impossible without Eric who has provided so much substance.

Let me next thank my friend, Tim Rieser, of the subcommittee staff. He worked without stint to ensure the historic Senate vote to withhold military aid to El Salvador in an effort to lead the warring parties to peace. Tim never seems to tire, never seems unwilling to listen to one more member of the public who wants to explain their views, never seems disillusioned by the difficulties of trying to accomplish things with a declining foreign aid budget. Tim is the conscience of our subcommittee. He reminds us that after all is said and done, we are here to try to help people and not just to pursue abstract foreign policy interests.

Then there is Fred Kenney, the rock of the subcommittee staff. We simply could not function without Fred's expertise about procedure and process. I admire and respect his dedication, good humor, devotion to getting the job done regardless of personal inconvenience, and extraordinary capabilities. As the subcommittee staff director said to me as we neared the end and had only a few hours to get the bill organized, printed, and into the hands of Members. "Right now the most important person on your staff is Fred Kenney. Only he can make it possible to get this bill done on time." This Rock of Vermont has become a Rock of the Senate.

On the Republican side, James Bond, Senator KASTEN's chief staffer is legendary on Capitol Hill for his strength, knowledge of the issues, and commitment to getting a good bill through. While he works hard for his side, Jim is a good friend and true to his word. My staff and I appreciate his cooperation throughout this very prolonged and difficult process.

I also thank Juanita Rilling, who works with Senator KASTEN and Jim Bond on the minority side, for all her hard work in getting this bill through.

Before closing, I want to mention some of the many others who contributed so much to this bill. In the other body, Terry Peel, Bill Schuerch, Mark Murray, and Lori Maes of the staff of the House Foreign Operations Subcommittee worked constructively and cooperatively through our conference. From the executive branch, Todd Buchholz, Bob Bauerlein, Chuck English, and Carl Raether of State; B.J. Certain of DSAA; Ray Randlett, Bob Lester, and Marianne O'Sullivan of AID; and Caroline Haynes of the Treasury are just a few of the many

able and dedicated public servants who worked with us throughout this long and difficult year. I thank them all.

ISRAEL DRAWDOWN AMENDMENT

Mr. INOUYE. Mr. President, I wish to engage my colleague, the senior Senator from Wisconsin in a brief colloquy.

It is my understanding and belief that the section of this bill which is commonly known as the Israeli drawdown amendment is directly related to U.S. national security.

Notwithstanding that fact, when we were considering this legislation in the Senate, some alleged that we were transferring defense money to foreign aid and that somehow this violated the budget process or the budget summit. May I ask the senior Senator from Wisconsin [Mr. KASTEN], who coauthored this amendment, what are your views on this issue?

Mr. KASTEN. Mr. President, I am in complete agreement with the senior Senator from Hawaii. In fact, I checked with the Budget Committee on this question and was assured that not only would no Budget Act points of order lie against the amendment, but also that the provision could not be considered in any way a violation of the budget summit agreement. And, of course, I agree with the distinguished chairman of the Defense Appropriations Subcommittee that this program is related to the national security of the United States.

Mr. INOUYE. Mr. President, the interpretation which Senator KASTEN received from the Budget Committee is clear and, I might add, is also my understanding.

Let me ask the distinguished Senator from Wisconsin another question.

Since we agree that this special drawdown authority is a national defense issue implemented by the Department of Defense, could the Senator explain why the language of the amendment refers, in several instances, to the Foreign Assistance Act?

Mr. KASTEN. This was done simply for legislative drafting convenience. The types of authority needed for this new program exists in foreign assistance legislation and, rather than writing long and detailed legislative provisions, we simply utilize certain provisions of existing law. In other words, for technical convenience. Obviously, in giving this authority to the President, he can involve whichever departments he wishes. But, let us be clear, the Department of Defense will implement the program.

Mr. INOUYE. I thank the Senator for his explanation.

Mr. DECONCINI. Mr. President, I am pleased to support passage of the conference report accompanying H.R. 5114, the fiscal year 1991 foreign operations appropriations bill. I especially want to congratulate the chairman of the subcommittee, Senator LEAHY, and the ranking member, Senator KASTEN, for their stewardship of this oftentimes controversial legislation. They worked many late nights and weekends getting the Senate version of the bill passed by the full Senate. They then spent nearly 24 hours in a marathon conference with the House to get this bill to the floor today.

There is much in this bill which I support. The bill provides adequate funding, in these difficult budgetary times, form many international child health programs such as the child survival fund, vitamin A deficiency funding, the UNICEF. It maintains sufficient support for the work of the Peace Corps which is expanding its programs into Eastern Europe. It demonstrates United States support for the Middle East process by providing economic and military support for the two countries which have adhered to the Camp David peace accords—Egypt and Israel.

Additionally, economic development in Third World countries is enhanced by a number of provisions in the bill which I strongly endorsed. One is an earmark of $75 million in development assistance funds in the bill provided for development assistance to continue the Microenterprise Loans for the Poor Program. This is a provision which I first attached to the bill in 1988. The language in this bill provides a subearmark of $20 million to be used exclusively for loans under $200 to microentrepreneurs to start businesses and to help them begin to help themselves. These people, the poorest of the world's poor, have frequently been ignored by larger foreign aid programs. But they are exactly the people for whom I believe our foreign aid programs ought to be targeted. These are the people whom the American people—who are generally not supportive of foreign aid—want our programs to help.

Another provision in the bill would encourage the expansion of existing debt for development programs. One program, which has been working with some success, was initiated by Rev. Leon Sullivan's International Foundation for Education and Self-Help [IFESH] in three African countries. Debt owed by these countries to international banks is bought on the open market and converted to local currencies, frequently at margins greater than 2:1. These currencies, matched with private funds, are then used to initiate development programs. This bill encourages the Agency for International Development to provide up to $5 million for this program. Also, $20 million has been earmarked in the bill to begin a similar, pilot program in Mexico. Any steps which we can take through a combination of private and public funds to reduce Mexico's debt can only benefit our own country and reduce the pressures which we feel on our border from our neighbor to the south.

I am concerned, however, that one provision which I succeeded in having attached to the Senate bill was dropped by the conferees out of ill-considered fears that it would antagonize Iraqi dictator, Saddam Hussein. My amendment would have prevented any funds in this bill from being used by the President to initiate or maintain any dialog with the Palestine Liberation Organization [PLO] or any of its constituent groups. Instead, existing conditional language, known as the Levine amendment, was retained in the bill.

The PLO, through members such as Abul Abbas and George Habash, have threatened our troops in the Persian Gulf and elsewhere with acts of terrorism. Also, the PLO was one of only three members of the Arab League to refuse to join its fellow Arab States in condemning Iraq's invasion of Kuwait and in calling for a joint Arab force to protect Saudi Arabia. Iraq, Libya, and Yemen were the other states which voted against the resolution.

This new reality in the Middle East provides a strong reason for the Bush administration to make greater demands on the PLO if it wants to reinitiate its dialog with the United States. President Bush wisely suspended the dialog after the May 30, 1990 attempted attack on the Israeli beaches which Yasser Arafat refused to condemn. The attack was masterminded by Abul Abbas, head of the Palestine Liberation Front [PLF] and a member of the PLO's executive committee.

The PLO, which professes a desire to be accepted by the international community, has refused to join the rest of the international community in condemning Iraq's naked aggression against Kuwait in violation of international law. In doing so, the PLO has turned its back on one of its strongest financial backers—Kuwait. If Kuwait cannot trust the PLO, how can the American people trust it?

In the strongest terms possible, I urge the State Department and the members of the Bush administration who carry out the President's foreign policy, to ensure that the PLO takes certain specific steps before we consider resuming any dialog with this terrorist group. The PLO must expel Abul Abbas and other terrorists from its executive committee, amend its covenant to remove the endorsement of terrorism as a tool of foreign policy, condemn Iraq's aggression against Kuwait and its Arab brethren, and end its cooperation with Iraq before we take any steps to resume contacts with this gang of thugs. Until the final hours, this State Department appeased Saddam Hussein. I hope that it will not make the same mistake again with the PLO and Yasser Arafat.

On balance, this is a good bill and one that I am pleased to support. I congratulate my good friends from Vermont and Wisconsin, Senators LEAHY and KASTEN, for the product they have produced, and I urge my colleagues to adopt the conference report.

SUBCOMMITTEE ON THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES, H.R. 5769

Mr. BYRD. Mr. President, today I bring before the Senate the conference report on H.R. 5769, the fiscal year 1991 Department of the Interior and related agencies appropriation bill.

This bill was first passed by the House less than 2 weeks ago. Since that time the Senate has considered this very detailed appropriation legislation in my Interior Subcommittee, in the full Appropriations Committee, here on the Senate floor only 3 days ago, in conference with the House bill managers, and we are now prepared to present the bill to the Senate for final approval of the conference report.

While this is one of the last bills to be placed before the Senate in the 101st Congress, I am very pleased by the diligence of the members of the Senate Appropriations Committee in preparing this legislation so expeditiously. I also want to thank all Senators for the accommodations which they made during the rapid consideration of the many difficult issues incorporated in this bill. These issues included funding and content restrictions for art works sponsored by the National Endowment for the Arts, timber road construction levels, Federal rangeland grazing fees, net receipts sharing for Federal onshore mineral royalties, Outer Continental Shelf oil and gas leasing, the 1872 mining law patent moratorium proposal, and the spotted owl in the Pacific Northwest, to name a few. Undoubtedly, with these divisive issues, this Interior bill could not have survived, Mr. President, without the cooperation of all Senators. I thank my colleagues for their assistance in these very tiring times.

This fiscal year 1991 Interior bill is a good bill, Mr. President. It is just below the assigned 302(b) allocations for budget authority and outlays. The bill is also $239 million below the CBO baseline. So, we are saving money compared to the inflation rate for these programs.

Mr. President, I will highlight a few of the controversial conference decisions.

With respect to the National Endowment for the Arts, the conference agreement includes the legislative proposal that originated in the House and which is known as the Williams-Coleman compromise. That compromise establishes judicially recognized local community standards for what are acceptable works of art. I personally do not favor this compromise position. As my vote indicated the other day, I prefer a stricter interpretation for artwork to merit public support. However, sometimes as individuals we have to accept a differing decision by the majority of Members, and that is what I have done in this area.

The timber volume is 9.546 billion board feet with timber road construction funding at a level of $20 million below the Senate mark. The timber road funding in this conference agreement is closer to the House position than that of the Senate. More precisely, the agreement provides forest road construction funding of $108 million, which is approximately $10 million above the House level but $20 million below the Senate.

The conference agreement provides full legislative protection for Outer Continental Shelf oil and gas leasing for all areas included in the President's June 26, 1990, announcement as well as protection for the Florida Panhandle and Bristol Bay.

For the first time, the Interior appropriation bill requires the deduction of some royalty management program costs from gross onshore mineral receipts prior to the sharing of these collections with the States. This is the so-called net receipts issue.

Mr. President, I could go on at some length. This is a very complex bill, which as I noted during my statement last Monday, covers the Federal land management funding for one-third of the United States land mass. Considering that this is the very end of the 101st Congress and that the hour is late on a Saturday night, I will not tell the Senate what has been included for each of the 356 units of the National Park System, the 474 national wildlife refuges, 121 National Forests, and the hundreds of Indian reservations. Suffice it to say that under very compressed time constraints Senator MCCLURE, the other conferees, and I are reporting to the Senate a bill which resolves 225 amendments involving more than 1,200 separate and specific agreements. As the chairman of the conference committee, I could not have completed this task without the faultless dedication of Senator MCCLURE, the ranking member of the subcommittee, and the other members of the subcommittee.

Mr. President, at this time I would like to yield to Senator MCCLURE for any remarks which he may wish to make and I urge all Members to support the conference report.

Mr. JOHNSTON. Mr. President, earlier today the conferees completed work on the fiscal year 1991 Interior appropriations bill. The last item to be resolved by the conferees was the question of whether to accept the broad House language which places a leasing moratoria on virtually all of the Outer Continental Shelf [OCS] with the exception of the central and western gulf of Mexico.

The conferees had originally agreed to take this item back in disagreement; however, when it became apparent that this would be the only item in disagreement on one of the last conference reports to be considered by the 101st Congress, my fellow conferees receded to the House on this matter. I think this decision is outrageous—both in terms of our national energy policy or lack thereof and in terms of national security. As chairman of the Energy and Natural Resources Committee, I could not in good faith accept this decision and I therefore voted against this section of the conference report.

My reasons for this decision are many. First, the annual appropriations laws for the Department of the Interior and related agencies have consistently contained some form of OCS leasing moratoria since fiscal year 1982. It is clear to me that these annual moratoria are not intended to be merely short-term measures enacted to assure that environmental concerns are fully addressed. By their repeated appearance on every annual appropriations bill, it is evident that they are intended to shut down the OCS to even the most responsive development. In short, this is legislation on an appropriations bill.

This conclusion is even more apparent this year given the President's decision in June to exclude from consideration for leasing until after the year 2000. Sale 132 off Washington and Oregon. Sale 96 in the Georges Bank. Sale 116–2 off southwest Florida and 99 percent of the tracts off the California coast. The remaining 1 percent of the California tracts cannot be considered for leasing activity before 1996. Following the Iraqi invasion of Kuwait, I wrote to the President to request that he reconsider this decision. He responded that he would not. These assurances were not sufficient to curb the congressional appetite to legislate moratoria on all of these areas and more.

Second, at a time when we have 200,000 American soldiers stationed in Saudi Arabia and 100,000 more preparing to join them it makes absolutely no sense to continue these year to year statutory moratoria which are based purely on politics and not on reasoned judgment or scientific fact. At a time when our soldiers are over in the gulf defending America's right to access Arabian crude we are literally saying to the world that we are willing to trade blood for oil. By so doing we are playing right into the hands of Saddam Hussein.

This is especially so when one looks at the current state of domestic oil and gas production activity. Domestic production is at a 28-year low, while oil imports so far this year have ac-

counted for almost 50 percent of United States consumption, the highest level since 1979—and a level higher than just prior to the Arab oil embargo of 1973-74. Furthermore, 26 percent of our Nation's total imports, or 12 percent of our total consumption, comes from Persian Gulf exports. We are literally captive to the Arabs for the fuel which made this country what it is and keeps this country running.

Mr. President, how did we get into this situation? The answer is pure politics. Politics which may very well come back to haunt those who think they are making wise environmental policy.

During the past couple of years, those who oppose OCS development use the unfortunate *Exxon Valdez* accident as their latest excuses for why there should be no development on the OCS. I would argue to my colleagues that their conclusion is misguided and fails to recognize the distinction between tanker spills and OCS exploration and development. If anything, the *Exxon Valdez* accident is exactly the reason why we should develop the OCS. I base this conclusion on a 1985 National Academy of Sciences report which found that only 1.5 percent of the oil that reaches the sea comes from OCS development. Conversely, 45 percent of oil in the seas comes from transportation sources, that is the tankering of foreign oil.

Estimates indicate that approximately one-fourth of all oil and gas reserves in the United States are in the OCS. If these reserves are not developed, this product will simply be replaced with imported oil. Oil which will have to be tankered into the United States, thus posing an even larger threat to the environment than OCS development.

For example, it has been estimated that the yearly increase in imports for the period 1987 to 1988 by itself added the equivalent of more than 150 tankers the size of the *Exxon Valdez* to the flow of incoming tanker traffic. Therefore, if individuals are truly concerned about the *Exxon Valdez* accident they better become concerned about the rising level of oil imports to this country.

In contrast to tanker activity, recent OCS development has a virtually unblemished environmental record. The facts speak for themselves. Since our offshore program began in 1954, there have been more than 28,000 exploratory wells drilled on the OCS, producing more than 8 billion barrels of oil and 85 tcf of natural gas. Yet since 1971, there has not been a single oilspill from a blowout associated with exploratory drilling and stringent regulations and modern technology make it almost impossible for one to occur in the future.

At the same time, fishing, recreation, and tourism have proposed in areas where OCS activity has been allowed to go forward. For example, the fish catch in the Gulf of Mexico has grown annually, often making it the No. 1 commercial fish producing region in the United States. Its only rival is Alaska, another area of the country where oil and gas activity has been allowed to go forward. One can also look to many areas of the California coast for examples on how commercial and sportsfishing have developed along with offshore oil and gas production. In many instances the oil platforms create artificial reefs which attract a great deal of marine life. In fact, I have been advised that the State of California has found that mussels harvested from the legs of these platforms contain fewer contaminants than mussels grown in more traditional shellfish farms located closer to shore.

Mr. President, the advent of new technology has also minimized the impact of OCS activity on onshore air quality. For example, reports indicate that California OCS operations in the Santa Barbara Channel account for less than 5 percent of the onshore emissions inventory. The emissions from Platform Edith off Long Beach city are so low that if it were located within the city limits it would satisfy the South Coast Air Quality Management District's strict new source review rule and therefore would not require additional controls or offsets.

This data indicates to me that when operated in a responsive manner, OCS development is an eminently safe and environmentally sound policy. It is certainly a more responsible policy than the energy policy currently being pursued by this country. That policy can be summed up in one word, namely "import." Such a policy threatens our national security and puts our soldiers' lives at risk. For these reasons, I cannot endorse or accept the OCS language which has been included in the fiscal year 1992 Interior conference report.

Mr. SANFORD. Mr. President, I rise in very strong support of the conference report on H.R. 5769, the fiscal year 1991 Interior appropriations legislation.

I would like to commend the distinguished senior Senator from West Virginia, Chairman BYRD, and the distinguished senior Senator from Idaho, Senator MCCLURE, for producing a truly outstanding bill. Mr. President, this is really a critically important piece of legislation with respect to our natural resources. The bill provides direction and sets priorities for our Forest Service, our Park Service, and the Fish and Wildlife Service. It is important to energy policy, to the application of scientific research to natural resources, and to the stewardship of public lands.

Mr. President, I would like to note in particular, if I may, that this bill is really yet another tribute to the leadership and the philosophy of Chairman ROBERT BYRD. Chairman BYRD has long been a forceful and persuasive advocate for a compassionate Government, a Government that works for the governed, a Government that makes a difference in the lives of its people. Our distinguished President pro tempore has worked ceaselessly to see that we are making wise and proper investments in our Nation's future, and that we look to the future by providing good stewardship for the resources we have.

I just want to say, Mr. President, that this bill is very much in tune with that philosophy and that leadership, and I want to thank my good friend from West Virginia for all he has done.

I would also like to note, Mr. President, that the distinguished ranking member from Idaho, Senator MCCLURE, has again done fine work on this legislation. He has contributed much to our resource policies for many years, and I certainly want to commend and thank the Senator from Idaho for a job well done. I am sorry he will be leaving the Senate.

Mr. President, I will not take much time on this matter. I would simply state that the legislation contains many important provisions, including increased attention to energy conservation, which has long been a concern of mine; stewardship and proper management for our National Forests; investment in our Park Service; and investment in a number of research programs that will help us better understand and better make decisions with respect to natural resources and the environment in the long run. There are many provisions in this bill that are very important to North Carolinians.

If I might, I would like at this time to engage in a brief colloquy with the distinguished floor managers. First, Mr. President, I note that the legislation includes funding for activities of the Minerals Management Service, including environmental studies. As the distinguished managers know, this is an important matter for North Carolina. I would simply like to inquire if the funding provided for the MMS could be used for the activities of the Environmental Sciences Review Panel for North Carolina, established by Public Law 101-380?

Mr. BYRD. Mr. President, in response to the request of the Senator from North Carolina, the answer would be "yes." As discussed in a previous colloquy with the Senator from North Carolina during the initial consideration of H.R. 5769, the managers do intend that the MMS focus on OCS areas which meet specified criteria in

terms of environmental studies. To the intent that MMS believes North Carolina areas meet those criteria, it would be quite appropriate for the Environmental Sciences Review Panel to be funded.

Mr. SANFORD. I thank my good friend for his response. Second, Mr. President, I understand that the conference report provides funding for planning and design of a visitors center for the Alligator River National Wildlife Refuge in North Carolina, known as the home of the red wolf. I greatly appreciate the assistance of my colleague in providing for initial work on this facility.

I understand that, due to the fiscal constraints we are facing, it has not been possible to provide funds for land acquisition necessary for the new facility. I would simply like to inquire of the distinguished floor managers, if there should turn out to be unobligated funds within the Land and Water Conservation Fund allocation for the Fish and Wildlife Service accounts which might be utilized for the purposes of land acquisition for the facility during the next year, would the distinguished managers look favorably on a request by the service to use such funds for this purpose?

Mr. BYRD. Mr. President, I would respond by noting that the Senate had approved funding for such land acquisition in the version of H.R. 5769 approved by this body. Unfortunately, it was not possible to maintain such funding within the constraints of the conference. Should such a request be made by the service, I would certainly be willing to give it every possible consideration.

Mr. SANFORD. Mr. President, I greatly appreciate the response of the distinguished Senator.

H.R. 5769

Mr. ADAMS. Mr. President, I would like to inquire of the distinguished manager of the bill, the chairman of the Appropriations Committee and President pro tempore of the Senate, regarding a specific reference in the conference report to an eviction action being pursued by the Bureau of Indian Affairs against several families of Yakima Indians living on Federal fishing sites located at Cooks Landing and Underwood along the Columbia River in the State of Washington. This is a matter of deep personal interest to me, and to the chairman of the Senate Select Committee on Indian Affairs, Senator INOUYE. Has the committee of conference on H.R. 5769, the fiscal year 1991 Interior appropriations bill, provided guidance to the Secretary of the Interior regarding this matter?

Mr. BYRD. The Senator is correct. I am well aware of the concerns expressed by the Senator from Washington and the Senator from Hawaii regarding this matter. The conferees have directed the Secretary of the Interior to reevaluate the need for this eviction action, in light of Public Law 100-581, which authorizes the government to acquire additional sites along the Columbia River in Washington and Oregon for use by treaty fishermen.

Mr. INOUYE. Mr. Chairman, I want to express my appreciation for the conferees attention to this issue. As chairman of the Senate Select Committee on Indian Affairs, I have taken an active interest in this case, and was involved with the passage of Public Law 100-581. I share Senator ADAMS belief that this eviction is an unnecessary and unwarranted exercise of Federal authority. Have the conferees also directed the Secretary of the Interior to discuss the matter with the Yakima Indian Nation?

Mr. BYRD. The Senator is correct. The Secretary of the Interior is directed to both discuss this matter with the Yakima Tribe, and to file a report with the Senate and House Appropriations Committee within 120 days. Following receipt of that report, I would be happy to discuss this matter at greater length with the Senator from Washington and with the chairman of the Select Committee on Indian Affairs.

Mr. President, one of the projects that was originally included in the Senate version of the fiscal year 1991 Interior appropriations bill was $12 million for the Liberty Science Center in New Jersey. I included this project in the Senate version of the bill at the request of Senator LAUTENBERG, who has fought tirelessly for Federal funding for this science center in his State.

The science center will be an asset not only to the Senator's region, but to the Nation as a whole. To remain competitive in the world economy, and to remain strong on the world stage, we need to remain a leader in science and technology. Our jobs depend on it. Our national security depends on it. But, we won't be a leader in science unless we provoke the interest of our youth in science. That's why the Liberty Science Center is such an important project. It will provoke the interest in science of future generations.

The House decided to include a similar provision to provide $15 million for the Liberty Science Center in its version of the fiscal year 1991 Department of Defense appropriations bill. That bill then proceeded to conference before we were ready to go to conference on the Interior bill. Consequently, Senator LAUTENBERG, as a member of the Defense Appropriations Subcommittee and a conferee on the defense bill, vigorously defended funding for the Liberty Science Center during the conference on the bill. Due to his hard work and perseverance, the funding was retained during the conference on the DOD appropriations bill and is included in the conference report on the DOD appropriations bill the Senate approved on Friday.

Funding for the project was not included by the conferees on the Interior appropriations bill because the Defense appropriations bill conference occurred before the Interior appropriations bill conference.

Mr. President, I commend Senator LAUTENBERG for his efforts on the Liberty Science Center. The Senator worked tirelessly in support of this project, which is so important to the State of New Jersey and to the future of science education in this country. Without his hard work, this project would not have been included in the Senate version of the Interior appropriations bill, and it certainly would not have been preserved in the Department of Defense appropriations bill. He has fought hard to ensure that funding will be available for this project and for his State. The people of New Jersey and all those who will benefit from the Liberty Science Center are fortunate to have him fighting on their side.

As chairman of the Senate Appropriations Committee, I expect the Department of Defense to make the $15 million in funding for this worthy project available without delay. I expect Secretary Cheney and the Defense Department to work with all involved with Liberty Science Center to ensure that the Department plays a constructive role in helping this important project move forward.

URGING AN END TO UNITED STATES MILITARY AID FOR ANGOLA

Mr. KENNEDY. Mr. President, over the past year, we have all witnessed the extraordinary developments marking the end of the cold war. Yet in one tragic part of the world, the cold war rages on—the brutal civil war in Angola.

Our Angolan policy is an anomaly of the past, and it is time for a new, more effective approach to promote peace and a lasting and just political solution.

There is blame on all sides of the conflict in Angola—not only on the UNITA forces, and the Government forces, but also on the United States and the Soviet Union for fueling the conflict with military assistance. We need a new policy that puts pressure on all sides to work toward a just solution—but one which also provides incentives to each side.

Last week, the House approved an amendment to the intelligence authorization bill which calls for an end to aid to UNITA once there has been progress toward a cease-fire and negotiated settlement. Senator KASSEBAUM and I have developed a similar approach and I am pleased that Senators SIMON, BRADLEY, CRANSTON, BOB KERREY, JEFFORDS, and ADAMS have joined us in that effort.

We do not plan to offer this amendment because it is our understanding that the Intelligence Committee has agreed to the general conditions of this proposal. This action represents an important step forward in ending the war in Angola and I urge the Senate to lend the agreement its full support to the bill's provisions.

It is my hope that the full details of this agreement will become public. Unless the conditions of continued aid are made public, both sides cannot be held fully accountable.

Many of us feel that the United States never should have provided aid to UNITA. Our aid has only prolonged the conflict, delayed a political solution, hardened the positions and inflicted untold hardship and tragedy on the Angolan people. Yet, I recognize that there are many in this body who feel that aid to UNITA was justified. It is my hope that this amendment will enable us to work together to close this chapter of the cold war.

For the first time in many years, there are signs of hope that a negotiated settlement may be possible in Angola. The Government has agreed to revise its constitution to allow multiparty elections with international supervision—a key demand of UNITA leader Jonas Savimbi.

Savimbi, for his part, has indicated a willingness to accept the outcome of an internationally supervised election. Both sides have expressed a willingness to work toward a cease-fire. Savimbi has suggested that a cease-fire could be in place by December and the Government is expected to amend the constitution by that time.

A political settlement is within reach in Angola, and the United States has a responsibility to lend its full assistance to that effort. For too long, we have supported only the military option, at the cost of thousands of Angolan lives. Now, the United States has the opportunity to support a diplomatic process, and we must not let it pass by.

Several weeks ago, I had the opportunity to raise the issue of Angola with Deputy Secretary of State Lawrence Eagleburger. He agreed that the solution to the crisis will only come at the negotiating table, not on the battlefield. He said that "in order for negotiations to succeed, the parties * * * on both sides have to have a conviction that no other solution is available." He also made the point that "until both sides are convinced that—a negotiated settlement—is the reasonable alternative, there will be no negotiations that are very meaningful."

It is clear that military aid is jeopardizing the possibility of a settlement. We must remove the military option, and highlight the need for both parties to negotiate their differences.

The cost of continued warfare is staggering. The United Nations estimates that over 500,000 Angolans have died as a direct or indirect result of the 15-year civil war, including 330,000 children. An estimated 1.5 million Angolans have been displaced by the war and 500,000 have become refugees.

Forty thousand Angolans have lost limbs from hidden landmines. An estimated 400 Angolan children under the age of 5 die each day as a result of the destruction of health services or war—induced starvation and disease. And in one of the most ominous threats to the people of Angola, an estimated 1.9 million Angolans face the threat of starvation.

Two weeks ago, when this bill was first before the Senate, we adopted an amendment to the foreign operations appropriations bill urging the United States and the international community to respond generously to this crisis, and to work for a lasting cease-fire and an end to the civil war. While the United Nations has prepared a plan to distribute 102,000 tons of food over the next 6 months, the relief efforts are threatened by the ongoing civil war. And the task of delivering the aid is complicated by the fact that two-thirds of the intended recipients live in areas of conflict.

The Government of Angola has agreed to permit cross-border delivery of relief assistance to UNITA-controlled areas in the southeastern portion of the country; UNITA has agreed to respect relief convoys and to support cross-border channels proposed by the United Nations. Now it is up to the United States and the Soviet Union to use their aid and influence to bring about a cease-fire and a negotiated end to the conflict.

The Soviet Union has indicated a willingness to work toward this goal, and has offered to cut off its assistance to the Government—estimated between $500-$800 million this year—if the United States ends its support for UNITA. Such a mutual cutoff would clearly encourage a negotiated solution, but so far the administration has rejected that offer.

We should take advantage of the Soviet offer. If Soviet aid is not substantially reduced or eliminated then United States aid to UNITA could resume. By ending military aid to UNITA, the United States will be standing firmly behind a peaceful, negotiated solution to the conflict. The current level of covert assistance is estimated to be about $50 million in total; half of that amount would continue to flow to UNITA in the form of humanitarian aid. The rest would be shifted into much needed famine relief.

For 15 years, the civil war in Angola, fueled by Soviet and American assistance, has brought violence and destruction to the people and the economy of Angola. The rationale for our aid has already changed too many times—from waging the cold war, to encouraging Namibian independence, to bringing about the removal of Cuban troops, and now to putting pressure on the dos Santos regime.

But the cold war is over. Namibia has achieved its full independence. Two-thirds of Cuba's troops have left Angola, and the rest are scheduled to be gone within a year. The threat of Soviet expansion in the region is no longer credible. The Soviet Government has indicated a willingness and a desire to end its assistance to the Government of Angola. There is no rational justification for continuing U.S. military aid to UNITA, and I urge the Senate to end it.

ANGOLA AND RESTRICTIONS OF UNITED STATES AID TO UNITA

Mr. SIMON. Mr. President, as an opponent of United States aid to UNITA, I am pleased that the Congress is taking steps to restrict that aid. It is clear that the war in Angola will not be solved militarily; the answer lies in discussion and negotiation. Our policy of providing lethal aid to UNITA does not promote that important goal.

The intelligence authorization conference report provisions conditioning fiscal year 1991 aid to UNITA is a step in the right direction. That legislation outlines conditions under which all aid to UNITA would be suspended; in addition, half of the lethal aid will be placed in a restricted account, subject to release only with approval from the Senate and House Intelligence Committees. Following my statement is the text of those provisions.

The Angolan civil war has raged on for 15 years. It has taken a tremendous human toll, including over 300,000 dead, 20,000 children orphaned, and an estimated 50,000 amputee victims of landmines, the largest amputee population of any nation on Earth. Over 1 million Angolans are either displaced or have fled the country. And famine threatens almost 2 million people, more than half of whom are at risk of starvation and will not be reached.

The United States and the Soviet Union should provide leadership in actively encouraging a cease-fire and a political settlement. The Angolan conflict began in the context of the cold war; it should end with a negotiated solution.

Continuing military assistance on both sides encourages the Angolan Government and UNITA to return to war if seemingly insurmountable difficulties emerge in the discussions. The United States and the Soviet Union have leverage to remove the military option for both sides. We should encourage both parties to stay at the negotiating table. The United States and the Soviet Union have now been invited by both parties to be observers at the talks. That is a good step. Both su-

perpowers need to work together to help both parties reach a viable political settlement.

The ongoing discussions between the Angolan Government and UNITA hold the most promise if we stop fueling the war through military aid to UNITA. The intelligence authorization for fiscal year 1991 is an important step in the right direction.

[Excerpt from the conference report accompanying S. 2834, the Intelligence Authorization Act for fiscal year 1991]

ANGOLA

The House amendment provided that any lethal assistance to UNITA which may have been authorized could be provided until the President certified that the Government of Angola expresses its willingness to accept a ceasefire and a political settlement to the conflict in Angola, proposes a reasonable timetable for free and fair multiparty national elections in which UNITA was free to participate, and was not receiving military assistance from the Soviet Union. If the President so certified, or a joint resolution having the same effect were enacted, no funds which might have been authorized could be used to provide lethal assistance to UNITA, and the delivery of any lethal assistance which might have been acquired previously would be suspended.

The House amendment further provided that the prohibitions against furnishing lethal aid to UNITA could be removed at any time if the President certified that the Government of Angola had launched, or was about to launch, a military offensive which would threaten the survival of UNITA. The prohibitions could also be lifted within their three month term if the President certified that the Government of Angola was no longer willing to accept a ceasefire and political settlement, and a reasonable timetable for national elections. Finally, the prohibitions could be removed after the expiration of their three month term if the President certified that:

(1) The Government of Angola was not willing to participate in good faith negotiations for the kind of political settlement that the original certification had envisioned;

(2) The Soviet Union was continuing to make available to Angola significant amounts of military equipment or the Government of Angola was continuing to receive such equipment from other outside sources, or the agreed upon schedule for the withdrawal of Cuban troops was not being met; and

(3) UNITA was willing to negotiate in good faith for a political settlement, and that UNITA was not receiving significant amounts of military equipment.

The Senate bill did not contain a comparable provision, but restricted the use of funds being authorized pending a clarification of the political framework for which such assistance would be provided.

The conferees concluded that, because the provision in the Conference Report on this issue is so inextricably connected with classified information, it is not prudent or possible to retain in public law the modified version of section 701 of the House amendment. Therefore, the full text of the provision is contained in the Classified Annex to this Joint Explanatory Statement. The Classified Annex may be read by Members of Congress in the offices of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

The conferees further agree that half of any lethal assistance to UNITA which may be authorized shall be placed in a restricted account and its release subject to the approval of the intelligence committees.

The conferees further agree that any lethal assistance to UNITA shall be suspended if the President certifies: that the Government of Angola has expressed a willingness to accept a reasonable ceasefire and political settlement and proposes a reasonable and specific timetable for internationally supervised free and fair multiparty elections in which UNITA would be free to participate; that the Soviet Union has indicated it has ceased providing lethal assistance and has withdrawn those advisors, trainers, and technical assistants involved in assisting the Angolan government in the planning or execution of military actions in Angola, and that intelligence has indicated that such cessation and withdrawal has occurred; that intelligence has indicated that other outside sources are not supplying such materiel or advice to the Government of Angola; and that the Government of Angola has not begun a significant offensive against UNITA. If any of the conditions which produced the original certification cease to be true, or there is credible evidence that a significant offensive against UNITA is imminent, the President may issue a second certification, in which cease any lethal assistance which may have been authorized by the Act and which may have been suspended, could be resumed.

If the President has not certified by March 31, 1991 that the conditions required for suspension of lethal aid to UNITA have been met, he shall submit to the intelligence committees a report setting forth the reason or reasons why he has been unable to make such certification and shall specify the additional measures that would be required for him to make such certification.

Mr. BYRD. Mr. President, I join the distinguished Senator from Georgia in his expression of concern.

I was not here to hear his entire speech, but I know the contents, because we have discussed this subject matter earlier this evening and on several previous occasions. I want to express my gratitude for his cooperation this evening in not offering an amendment to the military construction amendments that are in disagreement.

I hope that this matter can be discussed further in the upcoming year, and I certainly want to cooperate with him, as I have tried to do in the past in this regard. I will also be working with the distinguished Senator from Hawaii [Mr. INOUYE], and I believe that the Appropriations Committee and the Armed Services Committee in the Senate have worked in a more cooperative fashion in these 2 years that I have been the chairman of the Appropriations Committee than in a long time previous thereto.

Mr. NUNN. Will the Senator yield?

Mr. BYRD. I yield to the Senator.

Mr. NUNN. Mr. President, I agree with the Senator. It has been a tremendous pleasure for me to work with the Senator from West Virginia and the Senator from Hawaii. We have had our staff working together, and we have had the closest coordination. This was a conference report that came back. I understand our conference work, and I want to express my deep gratitude for the splendid leadership of the Senator from West Virginia. We have indeed cooperated, and we will continue to do so in every way.

Mr. BYRD. Mr. President, that feeling is mutual. I, too, want to compliment our staffs. The staff of the Appropriations and Armed Services Committees have certainly worked together. I have been very careful to see that the Appropriations Committee staffs have stayed in touch with the Armed Services Committee staff on these matters. I shall look forward to continuing our mutual cooperation, because I think only in that way can the country best benefit.

DEPARTMENT OF TRANSPORTATION AND REPORTED AGENCIE'S APPROPRIATION'S, 1991—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. The clerk will report the amendment in disagreement No. 4.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 7 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert "$1,200,000".

AMENDMENT NO. 3218 TO THE AMENDMENT OF THE HOUSE TO THE AMENDMENT OF THE SENATE NO. 4

Mr. BYRD. Mr. President, I move that the Senate concur in the amendment of the House to amendment No. 4, with an amendment which I send to the desk and that the Senate concur in the amendment of the House, Senate amendment No. 7.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3218.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. 329. (a) Notwithstanding any other provision of law, for the period January 1, 1992, through December 31, 1992, the Secretary of Transportation shall reduce the aggregate amount which a State may obligate for Federal-aid highways and highway safety construction programs by 25 percent if such State has a public authority which provides mass transportation for an urbanized area of such State with a population of 3,000,000 or more as determined under the

1980 decennial census of the United States, and if by October 1, 1991—

(1) laws of such State do not authorize a general tax-based source of revenues to take effect on or before January 1, 1992, dedicated to paying the non-Federal share of projects for mass transportation eligible for assistance under the Urban Mass Transportation Act of 1964; or

(2) the laws of such State do not authorize the establishment of regional or local tax-based sources of revenues dedicated to pay such non-Federal share or for paying operating expenses of mass transit service so as to satisfy financial capacity standards as may be required by the Secretary of Transportation.

(b) For purposes of this section, the terms "mass transportation," "State," and "urbanized areas" have the meaning such terms have under section 12 of the Urban Mass Transportation Act of 1964.

(c) Any withholding defined under this section shall be waived if the Governor of the State—

(i) submits to the Secretary by October 1, 1991, a written certification stating that he is opposed to the enactment in his State of a law described in subsections (a) (1) and (2) and that funding as described in subsections (a) (1) and (2) would not improve public transportation safety.

(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution by a simple majority expressing its opposition to a law described in subsections (a) (1) and (2).

(d) This section shall remain in effect until December 31, 1992.

Mr. SASSER. Mr. President, the Senate Budget Committee has examined H.R. 5229, the conference report on the transportation and related agencies appropriations bill and has found that the bill is under its 302(b) budget authority allocation by less than $50 million and under its 302(b) outlay allocation by less than $50 million.

I compliment the distinguished manager of the bill, Senator LAUTENBERG, and the distinguished ranking minority member of the Appropriations Subcommittee, Senator D'AMATO, on all of their hard work. They had many important programs and many requests to accommodate with limited funds, and they have done that in a fair and balanced manner.

Mr. President, I have a table from the Budget Committee showing the official scoring of the transportation and related agencies appropriations conference report and I ask unanimous consent that it be inserted in the RECORD at the appropriate point.

SENATE BUDGET COMMITTEE SCORING OF H.R. 5229—TRANSPORTATION SUBCOMMITTEE—SPENDING TOTALS (CONFERENCE)

[Fiscal year 1991, in billions]

302(b) bill summary	Budget authority	Outlays
H.R. 5229, conference, (new budget authority and outlays)	$13.0	$11.2
Enacted to date	0	18.4

SENATE BUDGET COMMITTEE SCORING OF H.R. 5229—TRANSPORTATION SUBCOMMITTEE—SPENDING TOTALS (CONFERENCE)—Continued

[Fiscal year 1991, in billions]

302(b) bill summary	Budget authority	Outlays
Adjustment to conform mandatory programs to resolution assumptions	−(*)	−(*)
Scorekeeping adjustments	0	0
Bill total	13.0	29.7
Senate 302(b) allocation	13.0	29.7
Total difference	−(*)	−(*)
Domestic discretionary spending	12.5	29.2
Domestic discretionary allocation	12.5	29.2
Domestic discretionary difference	−(*)	−(*)
Mandatory spending	.5	.5
Mandatory allocation	.5	.5
Mandatory difference	0	0
Bill total above (+) or below (−):		
President's request	1.1	1.2
Senate-passed bill	−.2	.2
House-passed bill	−.1	−(*)
House 302(b) allocation	−(*)	−(*)
Baseline	−.8	.2

HIGH-SPEED RAIL LOCOMOTIVES

Mr. KERRY. Mr. President, I rise to engage the distinguished chairman of the subcommittee, the Senator from New Jersey [Mr. LAUTENBERG], in a brief colloquy regarding the provision of funds for the Northeast corridor Improvement Program. The conferees have recommended $14 million for dual-propulsion locomotives under this program, and my inquiry to the Senator is whether it is his understanding that the intent of the conferees was that these funds would be available for the development and procurement of prototype dual-propulsion locomotives capable of operating at speeds of up to 125 mph between New York and Boston?

Mr. LAUTENBERG. That was the conferees' intention.

Mr. KERRY. Is it also the Senator's understanding that the funds provided could be used to procure the prototype power cars necessary to operate two train sets for high speed Northeast corridor service?

Mr. LAUTENBERG. That is my understanding as well.

Mr. KERRY. Mr. President, I appreciate the remarks of the Senator from New Jersey, and want to express to him and to the Senator from New York [Mr. D'AMATO], my appreciation for their support of this important initiative to provide high quality, high speed rail service on the Northeast corridor between New York and Boston.

Mr. LAUTENBERG. Mr. President, I rise today to bring the attention of this body to a disaster which occurred not more than 12 hours ago, on the coast of North Carolina. I want to begin by saying that amazingly there was not a loss of life, although many lives were endangered, when the H.C. Bonner Bridge, spanning Oregon Inlet between Bodie and Pea Islands, was partially destroyed after being struck by a dredging vessel. The vessel struck the bridge during a storm which brought winds up to 60 to 90 knots. Winds of 50 to 60 knots continue and the storm is expected to last throughout the day. Ten men were aboard the dredge at the time of the accident; four men jumped overboard and have been safely recovered. The U.S. Coast Guard is trying to rescue the six remaining men off the dredge which is now firmly grounded on a bar against a bridge piling.

In reacting to this crisis I am thankful that human lives were spared. The Governor of North Carolina has declared a state of emergency, and the North Carolina Department of Transportation is surveying the site today, trying to establish the extent of the damage. Preliminary reports maintain that 180 feet of the bridge span has been destroyed and another 120 feet severely damaged. The North Carolina Division of Emergency Management is on the scene to evaluate damage and attempt to begin the process of restoring ferry services to the effected islands of Bodie, Pea, Hatteras, and Ocracoke. The Bonner Bridge, along with providing the only viable access route to Hatteras and Pea Islands, also carried electrical and telephone service to the islands. Restoring these services to the towns south of the bridge is a priority action.

I understand that for fiscal year 1991 there is $100 million in the Federal-Aid Highways Program for emergency relief. As I understand it, State highway officials may wish to apply for Federal emergency relief funding, which would be 100-percent direct funding, with no local matching requirement. I understand that any grants received for emergency relief would not count against the State's obligation ceiling. The North Carolina Transportation Officials are on the scene assessing the extent of the damage. The Governor of North Carolina has directed the State transportation officials to make immediate application for Federal assistance.

At this time I would like to ask the managers of the bill a few questions regarding the situation at Bonner Bridge and provisions within the bill which might apply.

First, is there funding within the Department of Transportation for emergencies such as this?

Mr. LAUTENBERG. Yes, there is $100 million in new emergency relief money available for fiscal year 1991.

Mr. SANFORD. The Bonner Bridge is part of the Federal-aid highway secondary road system. Within the Federal-aid highway program there is money available for emergency relief. Would the managers of the bill agree that the situation that I have described is the type for which the fund was designed?

Mr. LAUTENBERG. Yes.

Mr. SANFORD. The Bonner Bridge is very vital to the economic activity of Hatteras, Pea, Bodie, and Ocracoke Islands. The Islands rely very heavily on the tourism and recreational industries. In recent years the tourism and recreational activities in the area generated over $623,000,000. It has been estimated that any disruption of the service provided by the Bonner Bridge extending into the tourist season would mean a loss of over $80,000,000.

The Governor of the State of North Carolina has declared a state of emergency and has directed the North Carolina Department of Transportation to make immediate application for Federal financial assistance. It is my hope that the North Carolina request for emergency relief will be handled as expeditiously as possible. The communities that are effected by this disaster are in great need of our assistance.

I want to commend the officials of the North Carolina Department of Transportation and the North Carolina Department of Emergency Management for their prompt and effective response to this crisis. And I also want to commend the brave rescue actions being carried out by the Coast Guard on behalf of the 10 men who were on board the corps' dredge *Northerly Island.*

Mr. MURKOWSKI. Mr. President, I am pleased to learn that the conferees of the House and the Senate have agreed to my amendment to the Department of Transportation Appropriation Act for fiscal year 1991. My amendment requires the USTR to determine which foreign countries bar U.S. participation in public works construction, and bars those countries which do from participating in U.S. public works construction projects funded by these appropriations. I also understand that Congressman JACK BROOKS offered his support of this amendment during the conference. I thank my colleagues for their support.

A technical correction to my amendment, which would adjust the date of enforcement by the USTR, was inadvertently not substituted in the conference report. This correction would have changed the date of enforcement to May 1, 1991, and stricken the language which requires action by USTR 30 days from enactment. This date change was made on the energy and water appropriations, where I offered such an amendment.

Mr. President, I ask my distinguished colleague from New Jersey, is my understanding correct?

Mr. LAUTENBERG. Yes, the Senator from Alaska is correct. It is not the intention of the Committee to have the USTR proceed with its obligations under the Murkowski amendment before May 1, 1991.

Mr. MURKOWSKI. I would also like to ask my colleague from New York, who joined me as a cosponsor to this legislation, if he has the same understanding of the situation.

Mr. D'AMATO. That is correct. Due to an oversight, the conference report did not consider the technical correction Senator MURKOWSKI had requested. I agree with my colleagues that no action is expected of the USTR under this amendment until May 1, 1991, as I understand is the requirement in the Energy and Water Appropriation Act.

Mr. MURKOWSKI. I thank my colleagues for this clarification on my amendment and reaffirm my intention of not expecting action by the USTR until May 1, 1991.

COAST GUARD HELICOPTER ENGINE PROBLEM

Mr. KASTEN. Mr. President, the conference report addressed the issue of HH-65 Coast Guard Helicopter engine improvements. This issue runs to the safety and readiness of the Coast Guard helicopter fleet in its essential search and rescue and drug interdiction missions.

The Coast Guard fleet of 96 HH-65 Dolphin helicopters has been plagued by engine problems with the existing LTS-101 engines. The Secretary of Transportation has initiated a "three-pronged approach" to fix the problem. The first prong is to continue to attempt to fix the LTS-101 engine and address the spare parts problem. The second prong is to search for a long-term solution by conducting a proof of concept on the experimental T-800 designed for the Army light helicopter. The third prong is to undertake a proof of concept with the Arriel 1C2 engine to give the Coast Guard an immediate alternative in the event there is an emergency need to reengine.

In July Secretary Skinner notified the House and Senate Appropriations Committees of his intent to undertake the proof of concept on the Arriel. The House Transportation Appropriations Committee directed the Coast Guard to proceed with the proof of concept. The Senate report was silent on this issue, but unfortunately, the funds the Secretary intended to use were reallocated in the Senate appropriation to be spent in fiscal year 1991 for another purpose.

The conference report we are considering today makes the funding available to the Coast Guard for the proof of concept. However, it directs the Department of Defense to review the studies that have already been undertaken by the Coast Guard. Secretary Skinner and two Commandants of the Coast Guard have studies and reviewed this problem and the solutions in great detail. I have full confidence that the Commandant and Secretary of Transportation know best what is needed to perform the Coast Guard's statutory mission.

Fortunately, this language does not restrict the options of the Commandant. Under the report language, he must proceed with a commercial proof of concept if that course is recommended by the Director of the DOD Operational Test and Evaluation office. Other than that directive, which is consistent with the Commandant's intent, his other range of options is still available.

Lives, safety and the essential Coast Guard mission are at stake. I trust the Commandant will continue to proceed as rapidly and decisively as possible to provide the Coast Guard with an immediate engine alternative for the Dolphin helicopter fleet.

Mr. President, at this point I wish to insert a chronology of events concerning the CG Dolphin helicopter engine problems.

DOD QUESTION

Questions have been raised as whether the Coast Guard should have only DOD supported procurements. Now the Coast Guard is looking at possible reengine candidates for troubled LTS-101 engines in its HH-65A Dolphin helicopters. The Coast Guard is looking at two candidates: the Allison-Garrett T-800, which is being developed for the Army's light helicopter program and the Turbomeca Arriel which is in the commercial version of the Coast Guard's Dolphin helicopter.

Although former Commandant Yost may have preferred DOD support, he has serious doubts about moving to an untested, untried engine like the T-800. In a hearing before the House Merchant Marine and Fisheries Committee on March 9, 1989, Admiral Yost exchanged the following with Chairman Tauzin.

TAUZIN: "The T-800 engine is an experimental engine, is it not?

YOST: "It is an experimental engine, as the Lycoming was, and that was our mistake. We should never, never have gotten an experimental engine.

TAUZIN: "Well, are you going to make the same mistake again is the concern here?

YOST: "Now we find . . . (T-800) is another experimental engine, and that does not give me a great deal of satisfaction to go from one paper engine to another paper engine . . ."

In light of the fact that light helicopter program—for which the T-800 was designed—continues to be cut back, and is in danger of being canceled, there is a strong possibility that the T-800 will never be a DOD supported engine. The Coast Guard will never again be the sole user of an untested engine as they were with the LTS-101.

If the Coast Guard does indeed reegine the Dolphin helicopter, it will be a small procurement, at best, for its fleet of 96 helicopters. DOD itself often contracts out to private firms logistical support on small procurements.

On the other hand, the Turbomeca Arriel, while not a DOD supported engine, has logged over 1 million hours in that Dolphin Airframe and has been providing logistical support for it for over 15 years. I would say that they have extensive experience in providing support for their engine.

So, when the question arises as to whether the Coast Guard should only procure DOD supported engines, the answer is "No". The Coast Guard if an important agency with a vital mission. It should have the

flexibility to procure the best equipment for its particular needs.

CHRONOLOGY OF EVENTS LEADING TO DOT'S "THREE-PRONGED APPROACH"

(1) 1984-1989: The CG operates 96 helicopters for their Search and Rescue (SAR) and Drug Interdiction efforts. The airframes of the helicopter are Dolphin HH-65 airframes produced by Aerospatiale Helicopter Corp (AHC). The engine used to power the Dolphin is the LTS-101 produced by Textron-Lycoming. Deliveries began in 1984 and were completed in 1989. Since delivery, the Coast Guard has experienced severe problems with the LTS-101. There have been catastrophic failures of essential parts, spare parts have been in short supply, frequent overhauls are required and aircraft availability has been unacceptable. More than $74 million extra dollars have been spent to keep the engine flying. In the aviation community the LTS-101 has a poor reputation as an unreliable and unsafe engine. Most commercial fleet users have simply given up on the LTS-101.

(2) May, 1988: In May of 1988, Robert C. Ballew, an employee of Aerospatiale Helicopter Inc., filed suit against Textron-Lycoming under the "whistleblower" law. The Justice Department initiated a criminal investigation under the False Claims Act. Recently, the Justice Department reached an out of court settlement with Lycoming which included a payment to the Coast Guard of $17.9 million.

(3) January, 1989: Following a tragic aviation accident off the Oregon coast in January, 1989, Congressman Denny Smith initiated a review of the USCG's search and rescue operations. Smith identified "long term and fundamental difficulties . . . (with the) LTS-101 engine." Congressman Smith stated, "It is now time to turn our attention to the fastest possible means of providing your pilots with a reliable and safe engine." He asked that the Coast Guard look at the Army's T-800 engine and the Turbomeca Arriel as possible replacement engines. During this same period, the Coast Guard began to actively seek alternatives to the LTS-101.

(4) Summer, 1989: In FY '90, the House Transportation Appropriations Subcommittee chaired by William Lehman, recognized the continuing difficulties with the LTS-101 engine. In consultation with the Secretary of Transportation, the Committee directed the CG to evaluate the cost and potential of reengining the Coast Guard helicopter fleet with the Army T-800 or a commercially-available engine. The House/Senate Conference accepted this directive. Under this guidance, the Coast Guard commenced a "three-pronged approach" of taking corrective action on the LTS-101 while conducting proofs of concept on the T-800 and a commercial alternative.

(5) Fall, 1989: The Coast Guard reprogrammed $10.5 million, along with an additional $7 million, added by the Army to conduct Phase I of a proof of concept on the T-800. The first phase of the T-800 proof of concept has commenced under an Army contract.

(6) Fall, 1989: An engine assessment by the DOT Transportation Systems Center looked at commercial engines from six manufacturers and concluded that Arriel was the most promising in terms of, "a suitable, relatively low-cost, easy retrofit re-engine candidate." Subsequently, Coast Guard commissioned AHC to conduct an analysis to determine the best commercial alternative in the context of an "urgent reengining program".

(7) Spring, 1990: Part A of the AHC report undertook a detailed analysis of the Allison C30S2 engine and the Arriel 1C2 engine, and determined that a full blown "proof of concept" would not be necessary for the Arriel since the engine has largely been proven in the Dolphin installation. The report recommends a "Prototype Demonstrator" which is faster and more economical than a "proof of concept". The Allison would require a full multi-year proof of concept which could be expected to cost in excess of $10 million (as opposed to $2 million for the Arriel demonstration).

The report concluded that the Arriel 1C2 was the best commercial candidate available to replace the LTS-101. The CG agreed with the findings of the report that the Arriel was the *best* candidate.

(8) March 1990: Two Miami civic leaders were killed in a helicopter crash resulting from an LTS-101 failure. The National Transportation Safety Board (NTSB) investigator publicly called the LTS-101 "a piece of junk". The accident resulted in widespread press attention to the Coast Guard problem with the LTS-101.

Prior to this accident, House Transportation Appropriations Subcommittee Chairman William Lehman had been pressing Secretary Skinner and the Coast Guard to resolve the engine problem. (See Point 4.) Following this tragedy, Chairman Lehman wrote Secretary Skinner "I am not convinced that these aircraft are flightworthy . . . I . . . am deeply concerned, especially for the safety of the young aviators who put their life on the line every day in performing search and rescue missions."

(9) April, 1990: Following the AHC report on commercially-available engines, former USCG Commandant Paul Yost sent a letter to the Secretary reaffirming the Coast Guard's three-pronged approach. In his letter he recommended:

1. CG attempt to ". . . fix the LTS-101 engine and spare parts problems."

2. ". . . T-800 proof of concept project is in progress. . ."

3. An Arriel 1C2 proof of concept "to give the Coast Guard information on a possible commercial engine alternative to the LTS-101."

(10) July 12, 1990: The House passed the FY '91 Transportation Appropriations Bill that reaffirms the DOT/Coast Guard position and directs the Coast Guard to proceed with the demonstration on the Arriel 1C2 engine. The Report also expresses concern over the risks of the T-800 to the Coast Guard.

(11) July 25, 1990: The Secretary notified the House and Senate Appropriations Committees of his intent to undertake a $2 million proof of concept on the commercially-produced Turbomeca Arriel 1C2. The Secretary noted that the HH-65A ". . . continues to experience low availability and high operating costs despite the efforts of the Coast Guard and Lycoming. . .".

(12) July 26, 1990: The Senate Appropriations Committee reported the Transportation Appropriations for FY 1991 to the floor. Unlike the House, the Report is silent on the issue of the commercial demonstration. However, the bill reallocated FY 1990 Acquisition, Construction and Improvements funds which the CG intended to use for the Arriel demonstration. Simply put, the Senate directs these funds to another CG program in FY 1991.

(13) August 14, 1990: NTSB made a formal recommendation to the Federal Aviation Administration (FAA) that all commercial LTS-101's in service be retrofitted with a new turbine wheel and should study whether vibration characteristics for this engine, when fitted to Aerospatiale helicopters, or alone, contribute to premature fatigue failures. FAA has until mid-November to respond.

(14) September 12, 1990: the Coast Guard formally filed its intent in the *Commerce Business Daily* to contract for a demonstration and integration of the Turbomeca Arriel Engine into a Coast Guard furnished Aerospatiale HH-65A helicopter.

(15) October 16, 1990: The House Senate Conference on the FY 1991 Transportation Appropriations Bill made available $2 Million (which has been previously appropriated) to conduct a Proof of Concept on a commercial engine. The conferees directed the Director of Operational Test and Evaluation, Department of Defense, to review the commercial alternatives and report to the Commandant within 90 days. The Commandant is directed to Conduct the Proof of concept on the commercial engine should the Director recommend that course of action.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. BYRD. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I want to thank Senator SPECTER and Senator HEINZ for their cooperation in resolving this matter. We have spent several hours in discussing it, and they were rather interesting and animated discussions. In those discussions were Congressman BILL GRAY, from Pennsylvania; Congressman COUGHLIN, of Pennsylvania; and Congressman BILL LEHMAN.

I yield to the distinguished majority leader, without losing my right to the floor.

CONTINUING APPROPRIATIONS UNTIL NOVEMBER 5, 1990

Mr. MITCHELL. Mr. President, I have cleared with the Republican leader proceeding to the consideration of the joint resolution.

I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 687, a joint resolution making continuing appropriations until November 5, just received from the House.

The PRESIDING OFFICER. Without objection. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 687) making further continuing appropriations for the fiscal year 1991, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. Is there further debate?

Mr. COCHRAN. Mr. President, I say on behalf of the Republican leader that the resolution has been cleared on this side, and we urge its passage.

The PRESIDING OFFICER. Without objection, the joint resolution is deemed read a third time and passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. COCHRAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZING THE HAND ENROLLMENT OF THE FARM BILL—S. 2830

Mr. MITCHELL. On behalf of Senators LEAHY and LUGAR, I send a joint resolution, authorizing the hand enrollment of the farm bill, S. 2830, to the desk, and I ask that it be deemed read three times, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the joint resolution (S.J. Res. 388) was passed.

Mr. MITCHELL. Mr. President, I thank my colleague, the distinguished chairman of the Appropriations Committee, and the Senator from Pennsylvania, and the acting Republican leader.

Mr. BYRD. Mr. President, I will shortly yield the floor. Let me again compliment Senator SPECTER and Senator HEINZ. They are very tenacious protagonists of a cause in which they join. But after several hours, we were able to work out this very thorny issue. And my thanks not only go to them, but also to BILL GRAY, BILL LEHMAN, and LARRY COUGHLIN. I am gratified that the matter has now been taken care of. Both of those Senators will want to address their remarks to it.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President at the outset, I thank the distinguished Senator from West Virginia, the President pro tempore, chairman of the Appropriations Committee who, as usual, has been astute and erudite in helping to reconcile a very contentious matter. It may be a matter of some distinction, Mr. President, that this is the last contentious issue of what may perhaps have been the most contentious Congress in history. As we near the end of the 101st Congress at 11:37 p.m., it would appear to this Senator that this Congress has lasted the longest, and possibly came closest to the election of any Congress in history. Earlier today we passed the Budget Reconciliation Act, so that I think it is accurate to say this is the last contentious issue of the most contentious Congress in history.

This issue arose, Mr. President, in the course of a considerable period of time and came to a head last night because the conference report on the Department of Transportation appropriations bill contained a provision which my distinguished colleague from Pennsylvania, Senator HEINZ, and I feel very patently egregiously unfair. The provision provided for a loss of 25 percent of Pennsylvania's highway funds unless there was a dedicated source of revenue for urban mass transit.

On the substance of trying to provide funding for SEPTA, the Southeastern Pennsylvania Transit Authority, both Senators HEINZ and I were in complete agreement that that was a substantively desirable issue. However, we felt it totally inappropriate to have the Federal Government compel the government of Pennsylvania to put that into effect on condition of losing $144 million or 25 percent of the Federal highway funds.

As I said yesterday, I thought that was blackmail and a blackjack, a gun at the head of my State and that it was unconscionable, unreasonable, and unconstitutional to have that provision in effect.

We raised the issue in that determined way and were prepared to fight it out to the bitter end. I would point out that it was bitter until we found a resolution which gives the State of Pennsylvania the authority to nullify this provision and to make it inoperative as to Pennsylvania, in effect, a veto power.

And I think it worthwhile to read the operative provision which is section 329(c) which provides "Any withholding defined under this section shall be waived if the Governor of the State submits to the Secretary," that is, the Secretary of Transportation, "by October 1, 1991, a written certification stating that he is opposed to the enactment in his State of a law described," and then it refers to the sections, "and that funding," as described in those sections, "would not improve public transportation safety. In addition, the Senator shall submit to the Secretary a written certification that the legislature, including both Houses, where applicable, has adopted a resolution by a simple majority expressing its opposition to a law described in the preceding sections."

So that provides, more simply stated, Mr. President, that the provisions calling for the forfeiture of highway funds in the absence of a dedicated source shall be waived, that is, rendered inoperative or vetoed if there is action by the State of Pennsylvania, by the Governor making the certification that he does not want the provision and is joined by a majority of both Houses.

So the essential consideration which we have faced where Pennsylvania would be compelled to either have a dedicated source of revenue or lose $144 million in highway funds is invalidated, rendered inoperative, waived, vetoed, by the power of the State government acting through the general assembly and the Governor.

Mr. President, I think it is unfortunate that we have had this long controversy and the preferable course would have been that this provision had never been inserted in the law at all.

For all practical effect, it is removed or removable, void or voidable, in legal parlance, by action by the State of Pennsylvania.

So the State government, acting through its General Assembly, the House and Senate of Pennsylvania, and the Governor, can nullify this provision, and I think that retains the appropriate States' rights and the appropriate division of responsibility between the Federal Government and the State government. So what is provided in subsection (a) of this provision is nullified in subsection (b) by action of the State assembly and the Governor.

I think it unfortunate, too, that this provision was inserted into the conference report when, as I described yesterday—and I shall not dwell on this subject because we have reached a substantive agreement—that this Senator was excluded from a House-Senate conference. I had intended to offer a sense-of-the-Senate resolution on the subject. However, I think the record is now plain and the distinguished majority leader told me that he had a case where Senator BURNS from Montana appeared before the Interior conference and was admitted to speak, which I think is the practice. I trust that after our experience here we will not have a repetition where a Member of this body is excluded from a conference of a matter of importance to his or her State.

So all factors considered, Mr. President, I think this is a satisfactory resolution. I think it irrelevant to declare victory for Pennsylvanians since Pennsylvania retains the power to nullify this provision. I think suffice it to say that there has been an extended discussion involving parties on all sides in the office of the distinguished Senator from West Virginia [Mr. BYRD]. I think the matter is now resolved to the satisfaction of this Senator, to the satisfaction of the Commonwealth of Pennsylvania.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. HEINZ. Mr. President, as my colleague from Pennsylvania, Senator SPECTER, has just indicated, for the last day or so we have been at an impasse on the Transportation appropriations conference report and we have been at that impasse because of a very strong disagreement that we had had with the House of Representatives over an amendment that was inserted that would have had the effect of sanctioning our State, and only our State, through the withholding of highway funds absent State action to enact a set of taxed revenues for mass transit in our State.

That amendment had three principal characteristics. Had it been agreed to it would have started withholding highway funds on October 1990, this year, that is to say as of 28 days ago. It would have been retroactive.

Second, there would have had to have been affirmative action for all intents and purposes by our State by April or at the least maybe mid-May of the coming year, not even one-third of the way through our legislative session, in order for the State if it so chose to comply with this coercive mandate in order for the Secretary of Transportation to make a finding on or before July 1, 1991, that he should or should not start withholding further highway funds.

And most important of all, there was absolutely no way out for our State. Our State was not only singled out, but unless the State did what the legislation specifically told it to do, notwithstanding how much money it might appropriate for mass transit, notwithstanding both good deeds as well as good intentions, our State would have begun to lose and could have lost as much as $143 million of highway funds.

It was for that reason that Senator SPECTER and I came to the floor here yesterday and, using an unusual procedure, namely, amending a technical amendment in disagreement—I do not know on how many other occasions that has been used—we offered an amendment which we debated at some length and were prepared to offer others after that amendment was tabled on a partisan basis because we felt we had no alternative.

We were prepared to take whatever action was needed in order to prevent that legislation from passing, even if it meant killing a bill, the Transportation appropriation conference report, which we all otherwise support. We all know how important that legislation is to our States, to infrastructures, to highways, to bridges. We all recognize that the consequences of having to go to a continuing resolution would have been severe. So, notwithstanding that, I was prepared, and I think Senator SPECTER was prepared, to take the most extreme measures to defeat that amendment, notwithstanding how unfortunate that might be for the Transportation appropriations conference report.

I can report that for most of this late afternoon and evening Senator SPECTER and I, at the invitation of the distinguished President pro tempore and the chairman of the Appropriations Committee, Senator BYRD, have been meeting to work this out. We have been meeting on and off with Congressman GRAY, Congressman BILL LEHMAN, Congressman COUGHLIN, Senator LAUTENBERG, and others to see if we could find a solution that would solve the problem that created a problem for us and would still allow this conference report to go forward.

I want to say for the record, Mr. President, I am deeply indebted to the patience and good counsel which was offered quite freely, I might add to all sides in this matter, by the distinguished chairman of the Appropriations Committee, Senator BYRD, who invested an enormous amount of time that was in very short supply on his part because he has to make sure that all the other appropriations bills get through this body and there are still some that have been this evening requiring a good deal of his attention.

And I have to say that if it had not been for his intervention, his determination to help all sides find a solution, his goodwill in this matter, Mr. President, I can tell you that there would not be a solution but for his almost divine, but he is not there yet, I hope, intervention.

Mr. BYRD. Mr. President, if the distinguished Senator will yield, I thank him for his kind words. I also thank Senator SPECTER again as I have already expressed appreciation. But the Senator was very gracious and overly charitable in his kind comments.

Mr. HEINZ. Mr. President, I almost agree with what the Senator from West Virginia said but I do not take a word of it back.

Mr. President, the Senator from Pennsylvania, my colleague, Senator SPECTER, has explained this amendment in detail. I will not go into it except to say that the effect of this change is to totally defang the Gray amendment. This is achieved in two ways. First, by giving our legislature and the Governor of Pennsylvania the authority—and I might add a year's opportunity to do so—to decide to opt out of this provision.

That opportunity to opt out was not present in the original amendment and it means that it will not be possible for the otherwise onerous provisions of this amendment to enter into force unless our legislature and our Governor want them to. They have the authority under this amendment to nullify the language that would otherwise cause highway funds to be withheld should the other provisions of the amendment not be met.

Second, by ensuring that not one penny of any of Pennsylvania's highway funds can be withheld before January 1, 1992—1 year, 2 months, and 3 days from today—we have, if we need it, ample legislative opportunity should there be any desire or necessity to do so, to address this issue again on this floor, on the floor of the other body, or jointly.

As someone who does support our Commonwealth acting to dedicate sufficient funding for mass transit, it is my hope that this neutralization of the Gray amendment will now provide the Governor and the legislature the opportunity to address mass transit free of Federal coercion.

In sum, Mr. President, I think we have found a workable solution, one that, with one exception I will mention in a moment, preserves the principle of States having control over there own destinies free of the unjustifiable coercion of the Federal Government.

Nevertheless, Mr. President, I have to tell you the very fact there is any State-specific language, no matter how ineffective it may now be, is still offensive as a matter of principle.

This legislation should never have been adopted by the House. The Senate was quite right to strike it. It should never have been put back in in conference between the House and Senate. In my judgment, no vestige of it, how neutered or neutralized that vestige may be, really deserves a place in the laws of the United States.

But, Mr. President, sometimes we have to accept the less than perfect effect in order to get a solution. And I would not be here this evening to say that I had agreed to let this Transportation appropriations conference report go ahead. But I do want to be on the record as saying that, because the very principle that State-specific language, which was unjustified in any event, was in here, I be recorded against the adoption of the amendment offered by the Senator from West Virginia. While it does not do anything, I do not think it has a place; indeed, because it does not do anything, it should not be dignified with being enacted into law.

So I cast my vote against that amendment. It has been adopted by the Senate. It will solve a problem. But it has opened, however briefly, a chapter in the history of the Senate that I hope we never have to revisit or relive again, because, as our Founding Fathers wrote in the Federalist Papers as they debated the Constitutional Convention, this way of getting into State-specific legislation where no national interstate is involved or can be found is the way to tear the Senate apart, it is the way to tear the House

apart, it is the way to set two bodies apart. It is institutional madness.

And maybe while we get by it this year with a small effort at sanity, we will remember how close we came to having a catastrophe that could easily have been avoided in the first instance.

Mr. LAUTENBERG. Mr. President, very briefly, we are at the end of a very arduous task, after a very difficult confrontation over a contentious issue. A lot of people worked very hard, for a long time, getting this Transportation appropriations bill into the shape so that it is ready to go back to the House where we understand it will be accepted and sent on to the White House.

Mr. President, I simply want to add my comments to those already made to express my appreciation and admiration for the role of the chairman of the Appropriations Committee, the President pro tempore, Senator BYRD. It was his deft hand that finally brought the parties together to an agreement that was a very difficult one to develop.

The positions were dug in fairly deeply, but we were able, through Senator BYRD's management, to get this issue resolved. And I want to say to my colleagues from Pennsylvania that I appreciate their interest in resolving this matter and to once again extend my appreciation to the staff for the hard work they did, even down to this last minute. That includes Pat McCann, Peter Rogoff, and Jim English, the chief of staff of the Appropriations Committee, who did yeoman's work in getting this passed. We have finally completed our work on an important measure that will support a balanced national transportation system and meet needs in our various States and in the country as a whole.

Mr. President, in response to a remark that was made on the floor about the way the subcommittee handled its functions, I state for the record what is the general understanding about subcommittees' functions.

This comes from the CRS report on the Congress, and it says:

> Resolving legislative differences in Congress, conference committees, and amendments between the Houses no other rules govern conference proceedings nor do conference often vote to establish their own rules. Instead, they generally manage without them. This absence of rules reflects the basic nature of the conferences committee as a negotiating forum in which negotiators should be free to decide for themselves how to proceed most effectively.

It was the decision of the chairman of the transportation conference that no one other than conferees should play a formal role. Nonconferees were welcome to express their views privately to conferees—and they did—but they were not permitted to make formal statements, or to propose amendments to the conference. And it was that structure under which we operated.

That was the general character of the way the transportation conference conducted itself, Mr. President, and I want that to be reflected in the RECORD.

I yield the floor and thank my colleagues.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The Senate is in morning business.

Mr. BUMPERS. Mr. President, on behalf of Senators HARKIN, PRYOR, BOSCHWITZ, EXON, STEVENS, BAUCUS, HEFLIN, COATS, SHELBY, WALLOP, BRYAN, ARMSTRONG, KOHL, DOLE, DIXON, and DECONCINI, I send a bill to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Objection. Objection.

The PRESIDING OFFICER. Objection is heard.

The Senator from California.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 898, a bill to require the minting of coins to commemorate the quincentenary of the discovery of America by Christopher Columbus. This has been cleared on both sides.

Is there objection?

Mr. STEVENS. Objection.

Mr. SPECTER. Objection.

The PRESIDING OFFICER. The Chair is requesting—the Chair hears no objection.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I will take only 2 more minutes to conclude.

The PRESIDING OFFICER. The Senator from Pennsylvania will suspend. The Senator from California asked unanimous consent for a resolution to be considered. The Chair did not hear an objection.

The Senator from California.

Mr. CRANSTON. There was no objection, as it turns out.

Mr. STEVENS. Mr. President, there was an objection, but I withdraw it because I thought I was addressing another item that had previously been objected to by Senator METZENBAUM.

The PRESIDING OFFICER. The Senate is not in order. It is very difficult to hear.

Mr. STEVENS. Mr. President, that is the problem.

CHRISTOPHER COLUMBUS COIN AND FELLOWSHIP ACT

The PRESIDING OFFICER. Hearing no objection, the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2754) to require the Secretary of the Treasury to mint coins in commemoration of the quincentenary of the discovery of America by Christopher Columbus and to establish the Christopher Columbus Fellowship Foundation.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3219

(Purpose: To require the redesign of the reverse side of a circulating coin to commemorate the bicentennial of the ratification of the Bill of Rights and to provide for the redesign of all circulating coins other than the dollar)

Mr. CRANSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mr. CRANSTON] (for himself and Mr. WALLOP), proposes an amendment numbered 3219.

Mr. CRANSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following:

SEC. 6. REVERSE OF 1 COIN TO COMMEMORATE THE BICENTENNIAL OF THE BILL OF RIGHTS RATIFICATION.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(3) REVERSE OF COIN TO COMMEMORATE THE BICENTENNIAL OF THE BILL OF RIGHTS RATIFICATION.—

"(A) SELECTION.—The Secretary of the Treasury shall select the half dollar, quarter dollar, dime coin, 5-cent coin, or 1-cent coin for the design change required under subparagraph (B).

"(B) DESIGN.—The reverse side of the coin selected pursuant to subparagraph (A) shall have a design commemorating the 200th anniversary of the Bill of Rights ratification.

"(C) 2-YEAR PERIOD FOR ISSUANCE.—The Secretary of the Treasury—

"(i) shall begin minting and issuing coins bearing the design referred to in subparagraph (B) before the end of June 1991; and

"(ii) may not issue any coin bearing such design after the end of the 2-year period beginning on the date the 1st coin bearing such design is issued.

"(D) SUBSEQUENT DESIGN.—After the end of the 2-year period described in subparagraph (C)(ii), the Secretary of the Treasury shall select, in accordance with paragraph (4), a new design for the reverse side of the coin selected pursuant to subparagraph (A).".

SEC. 7. REDESIGN OF OBVERSE AND REVERSE SIDE OF COINS.

(a) IN GENERAL.—Subsection (d) of section 5112 of title 31, United States Code, is amended by adding after paragraph (3) (as added by section 2 of this Act) the following new paragraphs:

"(4) REDESIGN OF REVERSE SIDES OF COINS REQUIRED.—

"(A) IN GENERAL.—Notwithstanding the penultimate sentence of paragraph (2) and subject to paragraph (3), the Secretary of

the Treasury shall select new designs for the reverse sides of the half dollar, quarter dollar, dime coin, 5-cent coin, and 1-cent coin after the date of the enactment of this paragraph.

"(B) THEMATIC REPRESENTATIONS TO BE CONSIDERED.—In selecting any new design pursuant to subparagraph (A), the Secretary of the Treasury shall consider, among other possible designs, thematic representations of the following constitutional concepts:

"(i) Freedom of speech and assembly.

"(ii) Freedom of the press.

"(iii) The right to due process of law.

"(iv) The right to a trial by jury.

"(v) The right to equal protection under the law.

"(vi) The right to vote.

"(vii) Other themes from the Bill of Rights.

"(viii) The constitutional principle of separation of powers, including the independence of the judiciary.

"(5) REDESIGN OF OBVERSE SIDES OF COINS IN CONNECTION WITH REDESIGN OF REVERSE SIDES.—

"(A) IN GENERAL.—In connection with the selection of any new design for the reverse side of any coin pursuant to paragraph (4), the Secretary of the Treasury shall consider the need to select a new design for the obverse side of such coin.

"(B) LIKENESSES.—Any new design selected for the obverse side of any coin (after consideration by the Secretary pursuant to subparagraph (A)) shall contain any likeness which is displayed on such coin before such design change.

"(6) REQUEST FOR LEGISLATION TO IMPLEMENT DESIGN CHANGES.—Notwithstanding paragraph (2), the Secretary of the Treasury may not prepare any model, hub, or die for any coin for which a new design has been selected by the Secretary pursuant to paragraph (4) or (5) unless—

"(A) the Secretary submits a report to the Congress on the proposed design change; and

"(B) the minting and issuing of coins with such design is approved by a law enacted after such report is submitted.

"(7) CONSULTATION WITH COMMISSION OF FINE ARTS.—The selection of any new design for any side of any coin by the Secretary of the Treasury under this subsection shall be made after consultation with the Commission of Fine Arts."

(b) TECHNICAL AMENDMENTS RELATING TO INSCRIPTION REQUIREMENTS.—Section 5112(d)(1) of title 31, United States Code, is amended—

(1) in the 1st sentence, by inserting "shall" before "have"; and

(2) in the 2d and 3d sentences, by striking "has" and inserting "shall have".

SEC. 8. REDUCTION OF THE NATIONAL DEBT.

Subsection (b) of section 5111 of title 31, United States Code, is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, amounts in the coinage profit fund which are attributable to net profits received from the sale of uncirculated and proof sets of coins shall be deposited by the Secretary in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.".

Mr. CRANSTON. Mr. President, the amendment simply calls for the redesign of one coin, not a number of coins. There is no objection to it. It has been cleared on all sides.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 3219) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. CRANSTON. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I yield. I understand there are two matters to return to the House. I just wanted to finish up about a minute and a half on the transportation conference report.

Mr. STEVENS. We have two other items, Mr. President. If the Senator would defer for just one moment? I ask unanimous consent we not interrupt his right to the floor if we can finish these two items.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL MARITIME COMMISSION AUTHORIZATION ACT

Mr. BREAUX. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4009.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 4009) entitled "An act to authorize appropriations for fiscal year 1991 for the Federal Maritime Commission, and for other purposes," with the following amendment:

In lieu of the matter inserted by said amendment, insert:

TITLE I—FEDERAL MARITIME COMMISSION AUTHORIZATION FOR FISCAL YEAR 1991

That in fiscal year 1991, $15,894,000 is authorized to be appropriated for the use of the Federal Maritime Commission; except that for fiscal year 1991, and for each fiscal year thereafter, not to exceed $2,000 may be expended for official reception and representation expenses.

SEC. 102. Subsection (h) of section 18 of the Shipping Act of 1984 is amended by inserting "Advisory" immediately before "Commission shall", and by striking "its establishment" and inserting in lieu thereof "all of its members have been duly appointed".

SEC. 103. Section 19 of the Merchant Marine Act, 1920 (46 App. U.S.C. 876) is amended—

(1) in subdivision (b) of paragraph (1) by inserting "including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation systems," immediately after "generally, "; and

(2) by adding at the end the following new paragraphs:

"(5) The Commission may initiate a rule or regulation under paragraph (1)(b) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under paragraph (1)(b) of this section.

"(6) In furtherance of the purposes of paragraph (1)(b) of this section—

"(a) the Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

"(b) the Commission may require a report or answers to questions to be made under oath;

"(c) the Commission may prescribe the form and the time for response to a report and answers to questions; and

"(d) a person who fails to file a report, answer, documentary material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than $5,000 for each day that the information is not provided.

"(7) In proceedings under paragraph (1)(b) of this section—

"(a) the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

"(b) the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence;

"(c) subject to funds being provided by appropriations Acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States;

"(d) for failure to supply information ordered to be produced or compelled by subpoena in proceedings under paragraph (1)(b)(7) of this section, the Commission may—

"(i) after notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member, or

"(ii) assess a civil penalty of not more than $5,000 for each day that the information is not provided; and

"(e) when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce the order by an appropriate in-

junction or other process, mandatory or otherwise.

"(8) Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.

"(9) If the Commission finds that conditions that are unfavorable to shipping under paragraph (1)(b) of this section exist, the Commission may—

"(a) limit sailings to and from United States ports or the amount or type of cargo carried;

"(b) suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences in United States trades of which it is a member for any period the Commission specifies:

"(c) suspend, in whole or in part, an ocean common carrier's right to operate under an agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

"(d) impose a fee, not to exceed $1,000,000 per voyage; or

"(e) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

"(10) Upon request by the Commission—

"(a) the collector of customs at the port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(h) of this section, and shall collect any fees imposed by the Commission under paragraph (9)(d) of this section; and

"(b) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

"(11) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under paragraph (7)(d) or (9)(b) of this section, or after its right to use another tariff has been suspended under those paragraphs, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff.

"(12) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this section.".

TITLE II—DOCUMENTATION OF VESSELS

"SEC. 201. Notwithstanding sections 12106, 12107, and 12108 of title 46, United States code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation with appropriate endorsement for employment in the coastwise, or Great Lakes trades, or the fisheries of the United States for the following vessels:

1. AMERICAN EAGLE (U.S. official number 512873)
2. ANGELOS (hull identification number HAZ1432C0173 and State of Hawaii registration number HA1432C)
3. ARCTIC SOUNDER (U.S. official number 569927)
4. BIG DEAL (North Carolina registration number 8817BD)
5. BOUNTY (U.S. official number 960956)
6. CAMELOT (U.S. official number 923202)
7. CHEROKEE V (U.S. official number 570746)
8. CONQUEROR (U.S. official number 552790)
9. ERNESTINA (U.S. official number 136423)
10. ESPERANCE (U.S. official number 691732)
11. FLORA VEE (U.S. official number 526631)
12. GHOSTRIDER (U.S. official number 906121)
13. HE'ENALU (State of Hawaii registration number HA843CP)
14. HELL'S-A-POPPIN (U.S. official number 963543)
15. HIPPOCAMPUS (U.S. official number 560934)
16. IMPULSE (U.S. official number 693209)
17. JOB SITE (U.S. official number 595013)
18. KAINALU (State of Hawaii registration number HA779CP)
19. LADY ROSE ANNE (U.S. official number 603040)
20. MARINER III (U.S. official number 225459)
21. OCEAN PROWLER (U.S. official number 632751)
22. OH BABY AT LAST (U.S. official number 938936)
23. OPEN RETURN (U.S. official number 658669)
24. PACIFIC PEARL (hull identification number MRY10161M76H414)
25. PAULA SUE (State of Maryland registration number MD7449K)
26. PLAYPEN (U.S. official number 617198)
27. PUMPKIN (U.S. official number 627259)
28. RANGGA (U.S. official number 675379)
29. ROSE (U.S. official number 928811)
30. ROUGH POINT (U.S. official number 917958)
31. SALISA M (U.S. official number 265653)
32. SEA DEVIL (U.S. official number 569316)
33. SEAGULL (U.S. official number 958929)
34. SEA NUGGET (State of Alaska registration number AK2233E)
35. SEA WIND (U.S. official number 610694)
36. SINBAD (ex-SANGRIA) (State of Alaska registration number AK3650 and hull identification number 15846)
37. SOLITAIRE (U.S. official number 521894)
38. SWEE'PEA (State of Alaska registration number AK8550L and hull identification number PBL3291K990)
39. SYRINGA (hull identification number 363412; U.S. Customs number 84-129170-6)
40. WEATHERBIRD (U.S. official number 527918)
41. WEATHERBIRD II (ex-AUNT BEE) (U.S. official number 652213)
42. Eight inflatable vessels identified as follows:

Serial number 3968B, model number J990
Serial number 4581B, model number J990
Serial number A501A, model number D989
Serial number A502A, model number D989
Serial number 6291C, model number G091
Serial number 6300C, model number G091
Serial number 7302C, model number G091
Serial number 7305C, model number G091

SEC. 202. Notwithstanding the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), a vessel of less than five hundred gross tons that was sold to and operated by a nonprofit corporations organized under United States law, the majority of whose directors are United States citizens, for use by that corporation exclusively as an oceanographic research vessel, has not been "sold foreign" unless the vessel has been placed under the registry of a nation other than the United States during the period of ownership by that corporation.

SEC. 203. (a) The S/V ZODIAC (United States official number 223755) shall be deemed to be less than one hundred gross tons, and, in applying the regulations relating to the inspection of passenger vessels, the Secretary of the department in which the Coast Guard is operating shall inspect that vessel under regulations applying to vessels of that weight.

(b) Notwithstanding any other provision of law, the Secretary of the department in which the Coast Guard is operating shall inspect the ZODIAC (United States official number 223755) under subchapter T of title 46, Code of Federal Regulations. Any certification issued by the Secretary under subchapter T for the ZODIAC shall permit that vessel to carry not more than forty-nine passengers on lakes, bays, and sounds service.

TITLE III—COAST GUARD OMNIBUS ACT OF 1990

SECTION 301. SHORT TITLE.

This Act may be cited as the "Coast Guard Omnibus Act of 1990".

SEC. 302. AMENDMENT TO THE VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE ACT OF 1971.

Section 4(a)(1) of the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (33 U.S.C. 1203) is amended to read as follows:

"(1) every power-driven vessel of twenty meters or over in length while navigating;".

SEC. 303. DESIGNATION OF THE SIDNEY LANIER BRIDGE AS AN OBSTRUCTION TO NAVIGATION.

Notwithstanding another law, the Sidney Lanier Bridge at mile 6.3 on the Brunswick River in Georgia is deemed an unreasonable obstruction to navigation.

SEC. 304. EXEMPTION OF CERTAIN VESSELS USED AS MEMORIALS TO MERCHANT MARINERS FROM PASSENGER SHIP INSPECTION REQUIREMENTS.

(a) Section 3302 of title 46, United States Code, is amended by adding the following new subsection:

"(l)(1) The Secretary may issue a permit exempting the following vessels from the requirements of this part for passenger vessels so long as the vessels are owned by nonprofit organizations and operated as nonprofit memorials to merchant mariners:

"(A) The steamship John W. Brown (United States official numbered 242209), owned by Project Liberty Ship Baltimore, Incorporated, located in Baltimore, Maryland.

"(B) The steamship Lane Victory (United States official numbered 248094), owned by the United States Merchant Marine Veterans of World War II, located in San Pedro, California.

"(C) The steamship Jeremiah O'Brien (United States official numbered 243622),

owned by the United States Maritime Administration.

"(2) The Secretary may issue a permit for a specific voyage or for not more than one year. The Secretary may impose specific requirements about the number of passengers to be carried, manning, the areas or specific routes over which the vessel may operate, or other similar matters.

"(3) A designated Coast Guard official who has reason to believe that a vessel operating under this subsection is in a condition or is operated in a manner that creates an immediate threat to life or the environment or is operated in a manner that is inconsistent with this section, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.".

SEC. 305. BIENNIAL DESIGNATION OF MEMBERS OF THE COAST GUARD ACADEMY CONGRESSIONAL BOARD OF VISITORS.

Section 194 of title 14, United States Code, is amended to read as follows:

"(a) In addition to the Advisory Committee, a Board of Visitors to the Academy is established to visit the Academy annually and to make recommendations on the operation of the Academy.

"(b) The Board shall be composed of—

"(1) two Senators designated by the Chairman of the Committee on Commerce, Science, and Transportation of the Senate;

"(2) three Members of the House of Representatives designated by the Chairman of the Committee on Merchant Marine and Fisheries of the House of Representatives;

"(3) one Senator designated by the President of the Senate;

"(4) two members of the House of Representatives designated by the Speaker of the House of Representatives; and

"(5) the Chairman of the Committee on Commerce, Science, and Transportation of the Senate and the Chairman of the Committee on Merchant Marine and Fisheries of the House of Representatives, as ex officio members.

"(c) When a member is unable to attend the annual meeting another member may be designated as provided under subsection (b).

"(d) When an ex officio member is unable to attend the annual meeting that member may designate another member.

"(e) Members of the Board shall be designated in the First Session and serve for the duration of the Congress.

"(f) The Board shall visit the Academy annually on the date chosen by the Secretary. Each member of the Board shall be reimbursed, to the extent permitted by law, by the Coast Guard for actual expenses incurred while engaged in duties as a member of the Board.".

SEC. 306. SIMPLIFIED MEASUREMENT OF CERTAIN BARGES.

Section 14301(b) of title 46, United States Code, is amended by adding the following:

"(6) a barge (except a barge engaged on a foreign voyage) unless the owner requests.".

SEC. 307. COAST GUARD BONDING REQUIREMENT.

(a) Chapter 17 of title 14, United States Code, is amended by adding the following new section:

§ 667. Vessel construction bonding requirements

"The Secretary or the Commandant may require bid, payment, performance, payment and performance, or completion bonds from contractors for construction, alteration, repair, or maintenance of Coast Guard vessels if—

"(1) the bond is required by law; or

"(2) the Secretary determines after investigation that imposing these bonding requirements would not prevent a responsible bidder or offeror from competing for award of the contract.".

(b) The analysis for chapter 17 of title 14, United States Code, is amended by inserting after the item relating to section 666 the following:

"667. Vessel construction bonding requirements.".

SEC. 308. SELF-PROPELLED HOPPER DREGE EXEMPTION FROM FEDERAL PILOT REQUIREMENT.

Section 8502 of title 46, United States Code, is amended by adding at the end the following new subsection:

"(i) A seagoing, self-propelled hopper dredge is exempt from subsection (a) of this section.".

SEC. 309. HEMPSTEAD, NEW YORK TRANSFER.

Notwithstanding another law, the Secretary of Transportation shall transfer by quitclaim, without consideration, to the Town of Hempstead, Nassau County, New York, all rights, title, and interest of the United States in Coast Guard property and improvements located at Reynolds Channel, Atlantic Beach, New York. The Secretary shall require the property to be surveyed before it is transferred and the transferee shall pay for that survey and all conveyance costs.

SEC. 310. SOUTH HAVEN, MICHIGAN TRANSFER.

(a) Notwithstanding another law, the Secretary of Transportation shall transfer without consideration to the City of South Haven, Michigan all rights, title, and interest of the United States in Coast Guard property described in subsection (b). The transferee shall pay for all conveyance costs.

(b) The property is part of block 52 in the original Village (Now City) of South Haven, Van Buren County, Michigan, described as, beginning at a point found by commencing at the North quarter post of section 10. Town 1 South, range 17 West, Van Buren County, Michigan; thence with bearings referenced to the Corps of Engineers Harbor Line Survey of 1941. South 89 degrees 34' 36" West along the North line of the section, 2386.95 feet; thence South 00 degrees 25' 24" East at right angles to said section line. 450.64 feet to the place of beginning of this description, said place of beginning being 825.50 feet South 81 degrees 52' 10" West of the East terminus of the Black River Channel entrance; thence South 10 degrees 38' 30" East, 147.00 feet; thence South 81 degrees 52' 10" west, 131.47 feet; thence North 07 degrees 43' 50" Wet 146.85 feet; thence North 81 degrees 52' 10" East, 124.00 feet to the place of beginning of this description, as per a survey made July 11, 1925, by T.A. Smith, Van Buren County Surveyor, subject to existing easements and restrictions of record.

SEC. 311. MUSKEGON, MICHIGAN TRANSFER.

(a) Notwithstanding another law, the Secretary of Transportation shall transfer without consideration to the Secretary of Commerce all rights, title, and interest of the United States in Coast Guard property and improvements described as follows: Part of Block 739 of Revised Plat of City of Muskegon of part of section 28, Town 10 North, Range 17 West, City of Muskegon, Muskegon County, Michigan described as beginning at a point distant South 48 degrees 15 minutes 56 seconds East 414.13 feet from Corps of Engineers Disc Guard 2 and distant North 35 degrees 59 minutes 49 seconds West 225.70 feet from Corps of Engineers Monument MUS 34 and distant South 85 degrees 51 minutes 27 seconds West 727.32 feet from the Northwest corner of Block 757 of the Revised Plat of City of Muskegon and proceeding thence North 28 degrees 38 minutes 52 seconds West 230.13 feet; thence South 61 degrees 14 minutes 26 seconds West 14.96 feet; thence North 28 degrees 24 minutes West 128.23 feet; thence South 61 degrees 14 minutes 26 seconds 00 seconds West 150 feet, more or less, to the shore of Lake Michigan; thence Southeasterly 358 feet, more or less, along the shore of Lake Michigan to the intersection with the line bearing South 61 degrees 14 minutes 26 seconds West from the point of beginning; thence North 61 degrees 14 minutes 26 seconds East 163 feet, more or less, to the point of beginning.

(b) The Secretary of Commerce shall make the property transferred under this section available to the National Oceanic and Atmospheric Administration.

SEC. 312. STRATEGIC PLAN FOR INFORMATION RESOURCES MANAGEMENT.

(a) None of the funds authorized to be appropriated for use by the Coast Guard in Fiscal Year 1992 may be expended to acquire additional information resources, including information equipment, until the Commandant of the Coast Guard develops and implements a strategic information resources plan to identify long-term information priorities and link the coast Guard's missions, priorities, and organizational strategies to Coast Guard information resources.

(b) The Commandant shall submit to the Committee on Commerce, Science, and Transportation in the Senate and to the Committee on Merchant Marine and Fisheries in the House of Representatives quarterly reports during Fiscal Year 1991 concerning the progress toward completion of the strategic information resources plan, and specifically listing any expenditures or obligations made to acquire information resources.

(c) Section 663 of title 14, United States Code, is amended in the first sentence, by striking "and Shore Facilities Plan." and inserting "Shore Facilities Plan, and Information Resources Management Plan.".

SEC. 313. BOATING SAFETY PROGRAM.

Chapter 131 of title 46, United States Code, is amended—

(a) in section 13101(b)(2) by striking "and with the guidelines developed under that Act; and" and inserting "the Federal Aid in Sport Fish Restoration Act of 1950 (16 U.S.C. 777-777k), and with the guidelines developed under those Acts; and";

(b) in section 13102—

(1) in subsection (a)(3) by inserting "State" after the word "general";

(2) in subsection (c)(4) by inserting "or drugs" after the word "alcohol"; and

(3) in subsection (d) by striking "the proportionate share" and inserting "a proportionate share";

(c) in sections 13103(a)(3) and 13105(a) by striking "or obligated" each time it appears; and

(d) in section 13108(a)(1) to read as follows: "During the second quarter of a fiscal year and on the basis of computations made under section 13105 of this title and submitted by the States for the preceding fiscal year, the Secretary shall determine the percentage of the amounts available to which each eligible State is entitled for the next fiscal year.".

SEC. 314. DARE COUNTY, NORTH CAROLINA TRANSFER.

Notwithstanding another law, the Secretary of Transportation shall transfer without consideration by quitclaim deed to Dare County, North Carolina all rights, title, and interest of the United States in Coast Guard

property and improvements located on the northern end of Pea Island east side of State road 1257, 0.3 miles north of North Carolina Highway 12 in Rodanthe, Dare County, North Carolina. The Secretary shall require the property to be surveyed before it is transferred.

SEC. 315. BAYOU LAFOURCHE, LOUISIANA.

Bayou Lafourche, in the State of Louisiana, between the Percy Brown Road (Hwy 648), city of Thibodaux, parish of Lafourche, and the Southern Pacific Railroad bridge crossing the bayou, city of Thibodaux, parish of Lafourche, is declared to be a navigable waterway of the United States under chapter 11 of title 33, United States Code.

SEC. 316. COLD WATER SURVIVAL TRAINING CENTER.

In addition to any sums authorized to be appropriated for the Coast Guard for fiscal year 1992, $6,000,000 is authorized to be appropriated for fiscal year 1992 and transferred to the University of Alaska to establish a Cold Water Survival Training Center in Kenai, Alaska.

SEC. 317. FISHING VESSELS IN CALIFORNIA.

(a) DEFINITION.—For purposes of the application of sections 8103(a), 12102, 12110, and 12111 of title 46, United States Code, to a fishing vessel operating in waters subject to the jurisdiction of the United States off the coast of the State of California, the term "citizen of the United States" includes an alien lawfully admitted to the United States for permanent residence.

(b) TERMINATION.—This section shall terminate on October 1, 2000.

TITLE IV—FALSE DISTRESS REPORTS

SECTION 401. PENALTIES AND LIABILITY FOR MAKING A FALSE DISTRESS REPORT.

Section 88 of title 14, United States Code, is amended by adding at the end the following new subsection:

"(c) An individual who knowingly and willfully communicates a false distress message to the Coast Guard or causes the Coast Guard to attempt to save lives and property when no help is needed is—

"(1) guilty of a class D felony;

"(2) subject to a civil penalty of not more than $5,000; and

"(3) liable for all costs the Coast Guard incurs as a result of the individual's action.".

SEC. 402. AUTHORIZATION FOR ACQUIRING DIRECTION FINDING EQUIPMENT.

There is authorized to be appropriated to the Secretary of the department in which the Coast Guard is operating not more than $2,000,000 for fiscal year 1991 and not more than $2,000,000 for fiscal year 1992 for acquiring direction finding and transmitter identification equipment to improve land-based and mobile Coast Guard search and rescue capabilities.

TITLE V—ADDITIONAL COAST GUARD AUTHORIZATION FOR FISCAL YEAR 1991

That section 102 of Public Law 101-225, the Coast Guard Authorization Act of 1989, is amended—

(1) in subsection (1), by striking $2,381,500,000" and inserting "$2,391,500,00"; and

(2) by adding a new subsection to read as follows:

"(6) ENVIRONMENTAL COMPLIANCE AND RESTORATION.—For environmental compliance and restoration at Coast Guard facilities, $30,000,000.".

TITLE VI—ALEUTIAN TRADE ACT OF 1990

SECTION 601. SHORT TITLE.

This Act may be cited as the "Aleutian Trade Act of 1990".

SEC. 602. ALASKA CARGO PROVISIONS.

(a) DEFINITION.—Section 2102 of title 46, United States Code, is amended by—

(1) designating the existing text as subsection (a); and

(2) adding the following new subsection at the end:

"(b) In chapters 33, 45, 51, 81, and 87 of this title, 'Aleutian trade' means the transportation of cargo (including fishery related products) for hire on board a fish tender vessel to or from a place in Alaska west of 153 degrees West longitude and east of 172 degrees East longitude, if that place receives weekly common carrier service by water, to or from a place in the United States (except a place in Alaska).".

(b) INSPECTION PROVISIONS.—Section 3302(c) of title 46, United States Code, is amended by adding at the end the following:

"(3) A fishing, fish processing, or fish tender vessel of not more than 500 gross tons is exempt from section 3301 (1), (6), and (7) of this title if—

"(A) when transporting cargo to or from a place in Alaska—

"(i) that place does not receive weekly common carrier service by water from a place in the United States; or

"(ii) the cargo is of a type not accepted by that common carrier service; or

"(B) in the case of a fish tender vessel, the vessel is not engaged in the Aleutian trade.

"(4) A fish tender vessel is exempt from section 3301 (1), (6), and (7) of this title when engaged in the Aleutian trade if the vessel—

"(A) is not more than 500 gross tons;

"(B) has an incline test performed by a marine surveyor; and

"(C) has written stability instructions posted on board the vessel.".

(c) SAFETY STANDARDS.—

(1) Section 4502(b) and (c) of title 46, United States Code, is amended to read as follows:

"(b)(1) In addition to the requirements of subsection (a) of this section, the Secretary shall prescribe regulations requiring the installation, maintenance, and use of the equipment in paragraph (2) of this subsection for documented vessels to which this chapter applies that—

"(A) operate beyond the Boundary Line;

"(B) operate with more than 16 individuals on board; or

"(C) in the case of a fish tender vessel, engage in the Aleutian trade.

"(2) The equipment to be required is as follows:

"(A) alerting and locating equipment, including emergency position indicating radio beacons;

"(B) lifeboats or liferafts sufficient to accommodate all individuals on board;

"(C) at least one readily accessible immersion suit for each individual on board that vessel when operating on the waters described in section 3102 of this title;

"(D) radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities;

"(E) navigation equipment, including compasses, radar reflectors, nautical charts, and anchors;

"(F) first aid equipment, including medicine chests; and

"(G) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment.

"(c)(1) In addition to the requirements described in subsections (a) and (b) of this section, the Secretary may prescribe regulations establishing the standards in paragraph (2) of this subsection for vessels to which this chapter applies that—

"(A)(i) were built after December 31, 1988, or undergo a major conversion completed after that date; and

"(ii) operate with more than 16 individuals on board; or

"(B) in the case of a fish tender vessel, engage in the Aleutian trade.

"(2) The standards shall be minimum safety standards, including standards relating to—

"(A) navigation equipment, including radars and fathometers;

"(B) life saving equipment, immersion suits, signaling devices, bilge pumps, bilge alarms, life rails, and grab rails;

"(C) fire protection and firefighting equipment, including fire alarms and portable and semiportable fire extinguishing equipment;

"(D) use and installation of insulation material;

"(E) storage methods for flammable or combustible material; and

"(F) fuel, ventilation, and electrical systems.".

(2) Section 4502(f) of title 46, United States Code, is amended to read as follows:

"(f) To ensure compliance with the requirements of this chapter, at least once every 2 years the Secretary shall examine—

"(1) a fish processing vessel; and

"(2) a fish tender vessel engaged in the Aleutian trade.".

(d) LOAD LINES.—Section 5102(b)(5)(B) of title 46, United States Code, is amended to read as follows:

"(B)(i) is not on a foreign voyage; or

"(ii) engaged in the Aleutian trade (except a vessel in that trade assigned a load line at any time before June 1, 1992).".

(e) MANNING.—

(1) Section 8104 of title 46, United States Code, is amended by adding at the end the following:

"(n)(1) Except as provided in paragraph (2) of this subsection, on a fish tender vessel of not more than 500 gross tons engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 3 watches.

"(2) On a fish tender vessel of not more than 500 gross engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 2 watches, if the vessel—

"(A) before September 8, 1990, operated in that trade; or

"(B)(i) before September 8, 1990, was purchased to be used in that trade; and

"(ii) before June 1, 1992, entered into service in that trade.".

(2) Section 8702 of title 46, United States Code, is amended as follows:

(A) in subsection (a)(3) by striking "vessel" and substituting "vessel (except a fish tender vessel engaged in the Aleutian trade)";

(B) in subsection (b)(2) by—

(i) striking "50 percent on a vessel permitted under section 8104 of this title to maintain a 2-watch system."; and

(ii) substituting the following:

"50 percent—

"(i) on a vessel permitted under section 8104 of this title to maintain a 2-watch system; or

"(ii) on a fish tender vessel engaged in the Aleutian trade.".

(3) For the purposes of chapter 73 of title 46, United States Code, the Secretary of Transportation shall accept the service used by an individual to qualify for an endorsement as able seaman—fishing industry as qualifying service toward an endorsement as an able seaman—

(A) under sections 7307 and 7309 of that title; or

(B) if the service is on board a vessel of at least 100 gross tons, under section 7308 of that title.

(f) EFFECTIVE DATES.—This section is effective on the date of enactment of this section except as follows:

(1) The requirements imposed by section 3302(c)(4) (B) and (C) of title 46, United States Code (as enacted by subsection (b) of this section), is effective 6 months after the date of enactment of this Act.

(2) Before January 1, 1993, section 4502(c) (as amended by subsection (c) of this section) does not apply to a fish tender vessel engaged in the Aleutian trade, if the vessel—

(A)(i) before September 8, 1990, operated in that trade; or

(ii) before September 8, 1990, was purchased to be used in that trade and, before June 1, 1992, entered into service in that trade; and

(B) does not undergo a major conversion.

(3) Before January 1, 2003, a fish tender vessel is exempt from chapter 51 of title 46, United States Code (as amended by subsection (d) of this section), when engaged in the Aleutian trade, if the vessel—

(A)(i) before September 8, 1990, operated in that trade; or

(ii) before September 8, 1990, was purchased to be used in this trade and, before June 1, 1992, entered into service in that trade;

(B) does not undergo a major conversion; and

(C) did not have a load line assigned at any time before the date of enactment of this Act.

(4) The requirements imposed by section 8702(b)(2) of title 46, United States Code (as amended by subsection (e)(2)(B) of this section), are effective 1 year after the date of enactment of this Act.

SEC. 603. MISCELLANEOUS TECHNICAL AMENDMENTS.

Title 46, United States Code, is amended as follows:

(1) Section 2101(14)(C) is amended by striking "(49 U.S.C. 1803)" and substituting "(49 App. U.S.C. 1803)".

(2) Section 3302(j)(2)(B) is amended by striking "(46 App. U.S.C. 1295(c))" and substituting "(46 App. U.S.C. 1295c)".

(3)(A) Section 4104 is repealed.

(B) The chapter analysis for chapter 41 is amended by striking item 4104.

(4) The catch line of section 5114 is amended by striking "officers employees" and substituting "officers and employees".

(5)(A) Section 5115 is repealed.

(B) The chapter analysis for chapter 51 is amended by striking item 5115.

(6) Section 8103(i)(1)(C) is amended by striking "Naturalization" and substituting "Nationality".

(7)(A) Section 8105 is repealed.

(B) the analysis for chapter 81 is amended by striking item 8105.

(8) The chapter analysis is amended by striking items 12113-12116, 12118, and 12121.

(9) Section 12109(b) is amended by striking "aboard such a pleasure vessel" and substitute "on board that recreational vessel".

(10) Sections 12501(b)(2)(A) and 12503(a)(2)(A) are amended to read as follows:

"(A) the owner's social security number or, if that number is not available, other means of identification acceptable to the Secretary; or".

(11) Section 12505 is amended by—

(A) striking subsections (b), (c), (d), and (f); and

(B) redesignating subsection (e) as subsection (b).

(12)(A) Section 14102 is repealed.

(B) The chapter analysis for chapter 141 is amended by striking item 14102.

(13) Section 31308 is amended by striking "(46 App. U.S.C. 1241 et seq.)" and substituting "(46 App. U.S.C. 1211 et seq.)".

Mr. BREAUX. Mr. President, I move the Senate now concur in the House amendment, with a further amendment which I will now send to the desk for myself.

AMENDMENT NO. 3220

(Purpose: To make an amendment in the nature of a substitute)

Mr. BREAUX. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX] proposes an amendment numbered 3220.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the motion.

The motion was agreed to.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BREAUX. Mr. President, I rise in support of H.R. 4009, a bill to authorize the appropriations for the Federal Maritime Commission [FMC] and the Maritime Administration [MarAd] for fiscal year 1991. The Senate passed an FMC authorization bill, S. 2759, in August. The House recently passed the authorization bills for both of these agencies. The Senate bill before us combines the best features of both.

The FMC provisions authorize $15,894,000 to be used for agency functions. This is the same amount requested by the President in his budget request and the same amount included in the FMC authorization bill passed by the House.

The FMC is an independent agency whose primary function is to regulate the practices of both international and domestic maritime trade. Its regulatory authority is contained in the Shipping Act of 1984, the Shipping Act of 1916, and other related statutes. The FMC reviews tariff filings and service contracts, but does not regulate international ocean transportation rates. It does approve freight rates for transportation between domestic ports and domestic offshore ports such as Hawaii and Puerto Rico. In addition to those duties, the FMC investigates and takes enforcement action in instances where unjust discriminatory rates have been found, or other improper activities exist among shippers, carriers, and terminal operations. The bill strengthens the FMC's authority to address and correct unfair conditions and practices unfavorable to shipping in our foreign commerce.

This legislation is necessary for the FMC to carry out all of these functions that are so important to regulation of the waterborne commerce of the United States.

Regarding the MarAd provisions, the bill authorizes the same funding levels for maritime programs that were contained in the President's budget request, totaling $557,887,000. The bill is very similar to S. 2760, which was reported by the Committee on Commerce, Science, and Transportation earlier this year.

Maritime programs funded in this bill include operating differential subsidy; operation of the U.S. Merchant Marine Academy and the State maritime academies; and maintenance of the Ready Reserve Force which is now transporting equipment to support Operation Desert Shield.

The bill also contains miscellaneous Coast Guard provisions including penalties for making a false distress report to the Coast Guard and new health care provisions for retirees and dependents which will permit the use of HMO's.

For the purpose of establishing a merchant mariner memorial, this bill permits the Secretary of Transportation to convey to qualifying nonprofit organizations a vessel in the National Defense Reserve Fleet which is no longer useful to the Government and scheduled to be scrapped. These provisions have also been passed by the House.

Finally, Mr. President, the Secretary of Transportation is directed to assist approved maritime training institutions in establishing a maritime oil pollution prevention, response, and cleanup program by providing them with U.S.-built offshore supply and tug/supply vessels which are held by MarAd due to defaults on loans guaranteed under title XI of the 1936 Merchant Marine Act.

This legislation is necessary for the FMC, MarAd, and the Coast Guard to carry out their functions in the next fiscal year. I, therefore, urge its quick passage.

Mr. HOLLINGS. Mr. President, I rise in support of H.R. 4009, a bill to authorize appropriations for fiscal year 1991 for the Federal Maritime Commission [FMC] and the Maritime Administration [MarAd]. The Senate passed the FMC bill (S. 2759) in August 1990, and the MarAd bill (S. 2760) was reported by the Committee on Commerce, Science, and Transportation in June 1990. The House passed both bills earlier this month, and this bill combines them with other provisions which require enactment before this session ends.

The FMC and MarAd authorization amounts are the same as those contained in the President's budget. The FMC's statutory responsibilities are to administer and enforce various shipping statutes affecting U.S. waterborne commerce. This bill strengthens the FMC's authority to address and correct unfair conditions and practices unfavorable to shipping in our foreign commerce.

MarAd's role is to promote the development and maintenance of an adequate and well-balanced American merchant marine, which is capable of acting as a naval and military auxiliary during a national emergency. This bill includes full funding for the Ready Reserve Force [RRF] in the amount requested by the administration, $225,000,000. The RRF consists of 96 ships which are required to be maintained in a high state of readiness for quick activation in time of war or national emergency. Over 40 of these ships have been activated to carry equipment to support Operation Desert Shield, and these fiscal year 1991 funds are necessary for fleet additions and maintenance.

This bill also will permit MarAd to sell or acquire suitable vessels for the National Defense Reserve Fleet when prices are advantageous, thus maximizing the use of Government resources.

In addition, the miscellaneous Coast Guard provisions will permit medical care contracts for retirees, dependents, and survivors to be entered into with HMO's or other health care provider organizations.

This bill contains important provisions for the functions of these agencies in fiscal year 1991. I urge my colleagues to support swift passage.

PIPELINE SAFETY

Mr. BREAUX. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 4888, regarding pipeline safety, just received from the House.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4888) to improve navigational safety and to reduce hazard to safety resulting from vessel collisions with pipelines.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BREAUX. Mr. President, I rise today to announce my strong support for H.R. 4888, a bill to improve navigational safety and to reduce the hazard to navigation resulting from vessel collisions with pipelines. I have introduced the companion bill, S. 3168, in the Senate. Mr. TAUZIN, the author of H.R. 4888, and his staff have performed an exemplary public service in developing and, with urgency, moving this bill through the House of Representatives. I hope that we can move it with equal dispatch in the Senate.

This legislation, Mr. President, is responsive to a dangerous problem requiring our immediate attention. In July 1987 and in October 1989 fishing vessels in shallow waters, the *Sea Chief* and the *Northumberland*, respectively, struck exposed natural gas pipelines in the Gulf of Mexico.

In each instance lives were lost. Two died in 1987. Eleven crewmembers died in the October 1989 mishap; 10 of those who perished in the fire and explosion surrounding the 1989 tragedy were members of Louisiana families.

Divers investigating the 1989 accident reported that the struck pipeline was exposed above the mudline. Mr. President, it is clear that Federal law requires an initial burial of offshore pipelines. Whether there is a requirement of continued burial maintenance is disputed.

This bill resolves the dispute in favor of saving lives. This bill, Mr. President, is a narrowly focused waterhighway safety bill, which serves the immediate end of having our coastline waters permanently cleared of the potentially dangerous obstructions of exposed underwater pipelines. The bill says that once pipelines are buried, as is presently required by law, pipeline operations must keep them buried.

This is noncontroversial legislation, Mr. President. Interested industries, including appropriate fisheries, gas, pipelines, and oil company representatives, recognize the necessity and have participated in the development of the legislation. To their credit, some pipeline operators have inspection programs already underway.

Of equal importance is the support for this legislation provided by the Army Corps of Engineers and the Departments of Transportation, the Coast Guard and the Office of Pipeline Safety, and the Interior, the Office of Minerals Management. They are to be commended for providing the interagency cooperation that was necessary in drafting an effective bill of limited reach, and that was necessary to getting the quick action needed to move the legislation through the Congress.

I repeat, Mr. President, that this bill is intended to resolve the urgent need to protect the lives of fishermen and others who make their living plying the shallow coastal waters of, mainly, the Gulf of Mexico. I recognize that there are other pipeline problems, and anticipate that many of them will be appropriately addressed in the next Congress. I believe that my Senate colleagues will recognize the immediacy of the problems raised in this legislation, and will act to present this bill to the President for his signature during the 101st Congress.

Mr. EXON. Mr. President, today the Senate will consider H.R. 4888, a bill to improve navigational safety to reduce the hazards to navigation resulting from vessel collisions with pipelines. This bill passed the House on October 15, 1990, and is the companion measure to S. 3168, introduced by my colleague on the Commerce Committee, Senator BREAUX and cosponsored by Senators BENTSEN, ROBB, and LOTT, among others.

As chairman of the Surface Transportation Subcommittee, I am pleased that this legislation will address the safety of offshore and submerged pipelines and their impact on the navigation of marine vessels. Furthermore, there has been cooperation in the development of this legislation between the Departments of Transportation and Interior, the Army Corps of Engineers as well as gas, oil, and pipeline company representatives, and appropriate fisheries.

The Surface Transportation Subcommittee will review the progress in resolving the safety issues this legislation is designed to address in oversight hearings as we reauthorize the Federal pipeline safety program during the next Congress. I urge my colleagues to support passage of this bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 4888) was ordered to a third reading, was read the third time, and passed.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania is again recognized.

Mr. SPECTER. I thank the Chair. I think that unanimous consent has already been requested and granted, but to be sure I renew the request my comments immediately follow the com-

ments on the appropriations conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I suggest the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. SPECTER. Mr. President, the final addendum that I wanted to add is what may be the most important part of the entire proceedings on this issue about a dedicated source of funding for urban mass transit in Pennsylvania. That is the undertaking by the distinguished President pro tempore, Senator BYRD, to convene a meeting of the Pennsylvania authorities, the Governor and the leaders of the Pennsylvania House and Senate, together with Senator HEINZ, Congressman GRAY, and myself, and other parties who may be interested in the subject. Because the most important issue at stake here is, really, finding a dedicated source of revenue for urban mass transit, which caused the entire controversy.

As we have said, there was agreement among Senator HEINZ, Congressman GRAY, and myself, about the substantive merits of accomplishing that. There was a very sharp disagreement on whether the Federal Government could properly compel the State government of Pennsylvania to accomplish that end.

I noted that my distinguished colleague, Senator HEINZ, expressed his concerns that, as he put it, this matter opened, however briefly, a chapter in the Senate history which we should not have gotten into. I agree with him about that, but I would say all is well that ends well.

When the Senator from New Jersey reopened the question about the proprietary of excluding a Member—I am sorry; he has left the floor. Well, since he has left the floor, I will not get into that any further.

But I would just compliment Senator HEINZ for his tenacity here. I think we have protected the vital interests of the Commonwealth of Pennsylvania. I think all is well now because it did end well. I thank the Chair and yield the floor.

EXPRESSION OF GRATITUDE

Mr. WARNER. Mr. President, I would like to take a moment of the Senate's time to express this Senator's gratitude for the many persons who make possible the functioning of the U.S. Senate from the guards to the elevator operators to our distinguished Chaplain, to the groundkeepers, and many others. This Senator daily appreciates their quiet and faithful and loyal service, not the least of which are both cloakrooms which I find equally accessible and equally friendly.

Mr. President, I will close by saying we are privileged to have two such fine Americans as our distinguished majority leader and the distinguished Republican leader to lead this Chamber. I wish to congratulate the majority leader at the conclusion of his first 2 years, and it would be my hope and expectation that he would continue in that office.

Mr. President, if my colleagues will indulge me in a little story, corny as it may be, but each of us has his own escapes in life. Mine is to go down to the country to my farm where I have a pickup truck. And on that truck are several bumper stickers like "Country Boys Will Survive," and "I Like Country Music," and so forth.

Several years ago, I got the idea that I ought to change my license plate. So I wrote the motor vehicle commissioner in the State of Virginia and asked if the plate "sine die" could be made. Sure enough, it was made. I paid the appropriate price and put it on my truck. As I drove up and down the roads of Virginia, I would see people looking at it. As I would stop at the country stores—and those are institutions from whence I gain a great deal of my knowledge as to how to conduct my affairs in this institution—people would look at it. And finally in this one little country store nearest my farm called the Atoka General Store, the oldtimers said "Senator, we rather like you. We don't want you to die. We'd appreciate it if you'd take those plates off that truck."

Those statements occurred several months before the budget crisis started months ago. I am not sure the feeling of wanting me to stay alive is still the same.

Anyway, I wrote the motor vehicle commissioner and surrendered this plate. If anybody wants to claim it, they can do so. I now have replaced it with another plate which says "recess."

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Nebraska.

RESOLUTION TRUST CORPORATION

Mr. KERREY. Mr. President, earlier I indicated my desire to have a rollcall vote on the RTC bill. In discussing it with the distinguished Senator from Michigan, the chairman of the Banking Committee and the distinguished majority leader, it is clear to me that, given the number of people who are probably unavailable for a vote, it would not be wise to press a rollcall vote on this particular issue.

Let me observe, though, Mr. President, that it is my considered judgment that if we had a rollcall vote, that if this body were pressed with the question, do you think we should appropriate $10 billion additional money for the next 90 days for the savings and loan bailout, that we might not have a majority here.

The assertion that I am making is that in spite of the comments made earlier by the distinguished Senator from Utah—and I quite agree with him that there is a need to get money over the next 90 days that Congress needs to make this action—the problem is, Mr. President, I think the American people's confidence in the way this money is being spent has eroded so substantially as a result of the way the RTC has operated that it is not likely that a majority of us either on this side or over on the House side would be able to, in good faith, vote yes. In other words, we do not have permission from our own people to spend the money. I have some say in private we have to spend the money. People are wrong. There are only so many times you can go to the people and say you are wrong, and I am going to vote this $10 billion, Mr. President.

My good friend, the distinguished chairman of the Banking Committee, has just informed me there is a good possibility that the House may not pass this at all; that we may not take it up here this evening. I would like at this time, given that, to engage the distinguished chairman of the Banking Committee in a very short colloquy on the subject for the purpose of merely discovering whether it would be possible for a bill that I and the distinguished chairman have talked about on a number of occasions could be heard relatively quickly after we returned in January.

The bill essentially, Mr. President, does something rather simple for a change. It merely says that the oversight board for the Resolution Trust Corporation, composed of the Treasury Secretary, Mr. Brady, composed of the Chairman of the Federal Reserve, Mr. Greenspan, composed of the head of the Housing and Urban Development, Mr. Kemp, and two other individuals, that these people struggle to give full time and attention to the task of evaluating the policy of the Resolution Trust Corporation.

I say with respect to all three of these gentleman that it is because we do not have that full time and attention given to it that we have had a deterioration of trust in what that organization is doing.

I would just simply ask the chairman of the Banking Committee if it would be possible, upon our coming back into session next January, to hear this particular bill?

Mr. RIEGLE. If the Senator will yield, let me just respond by saying it is the intention of the Banking Committee next year, of course, to take a look at this whole situation, how it is going, how the structure is working,

what the financial situation is, what adjustments may be needed in the law. The law has been in place now, including the structural arrangements, for about a year and a half. So we have had that degree of experience. We will have a longer experience by the time the next Congress convenes. So these will be matters that we look at very carefully.

I want the Senator from Nebraska to know that, as always, his ideas are very welcomed before our committee, as is he. We have maintained a practice on the Banking Committee where if other Senators have a keen interest in the issues that are there and ask to come and participate, obviously not as committee members, but Senators with an interest, that they are welcome to do so. The Senator from Ohio who is seated before me has done that on occasion. The Senator from Nebraska has previously on occasion. So we will certainly be interested in any and all good ideas, including those of the Senator from Nebraska. When these issues are taken up next year, I will make it a point to see to it that the Senator from Nebraska is informed in good time so that he can be part of our thought process.

Mr. KERREY. I thank the distinguished chairman of the Banking Committee. Just for emphasis, Mr. President, I say this is not, in my judgment, at least, comparable to the situation in 1986. The distinguished Senator from Utah earlier was giving very thoughtful and, to me at least, helpful, since I was not here in 1986, explanation of an attempt to provide some resources in that year. I think that is not comparable to that where the administration has put a request in. In this particular case, the Senate Banking Committee has heard their request, has considered it very carefully, has recommended, in fact, that the full Senate take action on it.

This is not a situation where Congress is saying that we are not going to respond. We have seen the problem. The distinguished chairman from Michigan has brought this problem, I think, thoughtfully to the Senate. The problem I think we have is the American people are not prepared to make my more expenditures principally because they do not trust the way the money is being spent. They do not trust the kind of accountability and information they need to feel the money is being spent appropriately. So I appreciate the majority leader's indulgence and the chairman as well, his willingness to look at this bill next year.

SECOND GOLDEN GAVEL AWARD TO SENATOR ROBB

Mr. MITCHELL. Mr. President, on October 19 of this year the junior Senator from Virginia [Mr. ROBB] presided over the Senate for his 100th hour during the 2d session of the 101st Congress. Senator ROBB became the first Senator to preside for 100 hours during each session of this Congress. A Senator must commit substantial time from a busy schedule to devote as much as 100 hours presiding over the Senate. The Senator from Virginia has shown great dedication to duty by his willingness to preside for 200 hours during the 101st Congress.

In order to achieve this milestone, he has presided for many hours during the last few weeks of this session. I particularly appreciate the time spent presiding by Senator ROBB during this very busy legislative period.

I might add a personal note, Mr. President. Since I am almost always the first Senator here in the morning, I take special pride in noting that Senator ROBB is usually presiding first thing in the morning. I am especially grateful for that. I hope he is planning to seek his third consecutive Golden Gavel during the first session of the 102d Congress.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BURNS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BURNS. Mr. President, while we have a minute here, what is the order of business?

The PRESIDING OFFICER. The Chair informs the Senator we are in morning business.

SENATORS McCLURE, ARMSTRONG, AND HUMPHREY

Mr. BURNS. I thank the Chair. I want to take this opportunity to recognize three of our colleagues who will not be coming back to this body, Senator MCCLURE of Idaho, the good Senator from Colorado, Mr. ARMSTRONG, and Senator HUMPHREY.

For a new man joining this body it has been truly a magnificent experience for me to serve with these Senators. I think it will be a long time before this body is again graced with such men who knew what they were, and their fiber, their tenacity, and their dedication to this great country. They will be missed here—especially by this Senator, who learned so much from them.

So to them, I do not say goodbye. I say so long. We hope they will come back and visit us. We hope we can use them as a resource in the future.

I say so long.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, if the leaders wish to transact any business, I will be happy to yield.

SENATOR JAMES A. McCLURE

Mr. BYRD. Mr. President, I have mentioned previously that I would be sad to lose the senior Senator from Idaho when his term expires this year.

Senator MCCLURE has been very helpful to me over the years, serving, as he did, as chairman of the Appropriations Subcommittee on the Interior, and more recently, as the ranking member on that subcommittee.

I want to say how much I admire him for his work, for his cooperation, his splendid knowledge of the subject matter that comes under the jurisdiction of that subcommittee. It is something at which to marvel.

Senator MCCLURE has been of invaluable assistance to me. He does his homework. He has brought expertise on complicated issues to our hearings, to our markups, and to our conference dealings with our House counterparts.

Senator MCCLURE has steadfastly used his knowledge to assist in making sure that our Senate appropriations received due consideration in conferences with the House. I have just experienced during, the last 2 or 3 days, very intense, long, tiring, and detailed negotiations with the House on this year's Interior appropriations bill. Right there at my side every step of the way, Senator MCCLURE was defending the Senate position.

We covered some 1,200 specific amendments. I could not possibly have concluded those negotiations so quickly without his knowledge and cooperation. I know what it is like to work with Senator MCCLURE. At whichever side of the fence I was on, whether as the ranking minority member or as the chairman of that subcommittee, over the years, I was fortunate to be associated with the senior Senator from Idaho.

So, Mr. President, as we struggle to close this 101st Congress, I bid a fond farewell to my friend and colleague from Idaho, insofar as our working together on the Appropriations Committee is concerned.

I wish him smooth paths in the future, and I hope that he will come back to see us whenever he can.

It was my pleasure to join with him, and Senator SASSER, Senator REID, and Senator STEVENS as we worked together last June with our English col-

leagues who served on the British-United States Parliamentary Group. It was one of the most enjoyable experiences I have ever had, working as we did with those Britishers, who were so knowledgeable, so very alert, and who were able to speak so knowledgeably and at length on various subjects of common interest to our two nations.

Senator MCCLURE made a fine contribution to those meetings as did my other colleagues whom I have named.

True friendship is a plant of slow growth and must undergo and withstand the shocks of adversity before it is entitled to appellation. JIM MCCLURE and I have endured the shocks of adversity well together. Our friendship is well tried, and will continue.

So I say to my friend, Senator MCCLURE, may the roads rise to meet you, may the Sun always shine upon your face, may the wind always be at your back, and may the rains fall softly upon your fertile fields, and may God always hold you in the palm of his hand.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

MILITARY CONSTRUCTION APPROPRIATIONS ACT, FISCAL YEAR 1991—CONFERENCE REPORT

Mr. SASSER. Mr. President, I submit a report of the committee of conference on H.R. 5313 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5313) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1991, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 16, 1990.)

MILITARY CONSTRUCTION BILL

Mr. SASSER. Mr. President, I am pleased to bring before the Senate the conference report on the military construction appropriations bill for fiscal year 1991.

Mr. President, the conference report is below the revised 302(b) budget allocation for both budget authority and outlays.

The conference agreement is almost $800 million under the President's budget request. It is more than $300 million under the amounts authorized in the armed services conference report. And significantly, this conference agreement is $200 million under the amounts approved by the conferees last year.

Mr. President, the appropriations conferees have been good stewards of the public purse. It is my personal belief that the military construction budget could be cut even deeper. I want to give the Pentagon fair warning. Next year the burden of proof for each and every project in the request will be up to the administration. During this period of massive troop reductions in Europe, during this period of base closures throughout the United States and the world, we should be dramatically reducing the construction for the active military forces.

It is no longer business as usual. We must further reduce the amount being spent on the military infrastructure throughout the world.

CROTONE

Mr. President, the conference agreement provides no funds for construction of a new air base in Crotone, Italy.

The committee has been advised that the President's senior advisors will recommend that the President veto this bill because there is no money provided to build this new military base in a foreign country.

I want my colleagues and the American people to clearly understand the meaning of this veto threat.

The President of the United States will veto an appropriation bill that is $800 million under his budget request because we did not provide enough spending for projects overseas. Who is the big spender here, the President or the Congress?

The President wants to build a new $800 million Air Force base in Italy at the same time he is closing dozens of military bases throughout the United States and in Europe.

I do not believe that the President of the United States will veto this bill because it contains no money for a new foreign military base in the same week he is supporting raising the gasoline tax on Americans to pay for it.

Mr. President, I was prepared to consider supporting a bare bones austere base at Crotone, one that provides base access for our F-16's in southern Europe near the Mediterranean.

But the Department of Defense was unwilling to compromise. When it became clear the conference committee would cancel U.S. contributions to the project without an acceptable compromise, the Air Force came up with a so-called lower cost austere basing plan for Crotone 72 hours before the conferees were to meet.

They told us, "Trust us, we have done what you wanted. We have given you an austere base. You have won the issue."

Well, Mr. President, the Pentagon classified their new "austere" base concept secret, so we cannot talk about the specifics of the new plan here in open session.

But it is clear the Pentagon and the appropriations conferees have different definitions of the words "austere, lower cost base." They have trimmed the cost of the base by a mere 7 percent. Mr. President, what is austere about that?

They have agreed to cut out the golf course, a golf course NATO had never approved in the first place. They have agreed to cut out the Aero Club. They have agreed to cut out the rod and gun club. They have agreed to cut out a snack bar.

But they would still ask NATO to spend over $700 million on a new foreign military base that we do not need.

Cosmetics, Mr. President.

That is all it is. They presented us with the same base and called it austere. That would be laughable if it were not so serious. Such tactics are an insult to the Congress and the American people. And it certainly does not engender trust between the Congress and the Department of Defense.

Mr. President, under the new facility investment plan for Crotone, the Air Force would still be building a single air base that would cost more than the six new homeports being built by the Navy throughout the United States. One air base—costing more than six new Navy homeports.

How, Mr. President, can the Air Force say a base is austere when they would cut out a rod and gun club but they still are planning to build a skeet and trap range.

How can the Air Force call a base austere when they would cut out a golf course but they will still build 13 baseball and softball diamonds, 2 basketball courts, 3 sets of tennis courts, 3 volleyball courts, swimming pools, a track, football field, and a paved bicycle path.

How can they call Crotone austere when they would still build a base that is sized for almost 10,000 people, complete with a hotel, clubs, auto hobby center, schools, mini-malls, food courts, theaters, and more family housing than exists on any Air Force base anywhere else in Europe?

How can they call the base austere when they have to move an Italian highway to make room for the base?

How can they call it austere when they do not even know if or how they can provide enough potable water for the base. They need 2 million gallons a day and they cannot even supply half of that.

Mr. President, how can they call the base austere, when the design specifications called for the engineering firms to design each building with a "Mediterranean motif." A Mediterra-

nean motif. Some of our NATO allies have started calling Crotone the "American theme park."

Mr. President, the Air Force started out planning a base with 4,000 acres. Now it is 3,000 acres. They didn't reduce the size of the buffer land because they wanted to; they reduced it because the price of the land went up from a few hundred dollars an acre to $12,000 an acre.

So, in the face of all this, Mr. President, the conferees did the right thing and agreed to provide no funds in this bill for the new Crotone air base.

The Pentagon must now go back to the drawing board and come back to the Congress and to NATO with a deployment plan that is acceptable and one that achieves true cost savings. But if they come back next year with another fig leaf, one that attempts to cover up the facts, the conferees will again deny any funding for Crotone.

Now, Mr. President, these airplanes will not be without a home. Under the current Air Force basing plan these aircraft will leave Spain next year and will be located on an interim basis at other locations in Europe for at least 5 years, while the Crotone construction proceeds.

The only impact of the action of the conferees, denying funds in this bill, is that the interim basing plan might have to be extended another year while the cost issues are resolved.

And to those who might be concerned that our F-16 aircraft be available for deployment to the Middle East region, I can tell you that the interim basing plan, which itself is classified, places all the F-16's from the 401st Tactical Fighter Wing several hundred miles closer to the Middle East than they have been for the past decade while they were based in Spain.

So we are not leaving our flanks uncovered. That is not the issue. We will still have the 401st aircraft in Europe even if Crotone is never built. And they will be located closer to the Middle East than they are now.

Mr. President, this is not an issue of military strategy. Whether Crotone is ever built or not, our strategy in Europe will not be effected. Nor will our strategy in the Middle East.

The practical impact of not building Crotone is that we would close one less air base in Germany instead of building a new $800 million air base in Italy.

It is my view that later on, if the Germans decide to close down all our air bases in Germany, we should ask them to pay for building a new base in Italy or elsewhere in Europe. But the Germans have not kicked us out yet. So let's stop acting like it. The Germans are still members of NATO. If they want us out later, they are a wealthy ally. I am sure they will do the right thing and build a new NATO base somewhere else in Europe. After all, they have already agreed to provide $4 billion to build the Russian Army, now deployed in what was East Germany, new facilities and housing in mother Russia.

Why should we now be building a new $800 million air base in Italy when we already have billions invested in perfectly good air bases throughout Western Europe? Air bases which will have the capacity to absorb the 401st as the CFE agreement is implemented. Air bases which are closer to the Middle East than the base in Spain we are being forced to vacate.

Mr. President, this issue is not about military strategy. It is about Federal spending. This issue is about the deficit. This issue is about the fiscal priorities of the Federal Government.

The Pentagon believes it can still engage in business as usual. The Pentagon believes that a basing plan for the 401st Tactical Fighter Wing, which was hatched during the cold war, still should be implemented, whatever the cost.

Well, Mr. President, the times have indeed changed. Clearly, we must maintain our ability to project air power in southern Europe, in the Mediterranean, and in the Middle East.

We are doing that very effectively now. The F-16's of the 401st are on patrol right now, today, in the Persian Gulf. And they did not need Crotone Air Base to get there.

And when they are finished in the Persian Gulf, they will be sent back to Spain where they will be based farther away from the Persian Gulf than they would be in existing bases the Pentagon may choose to close in Germany.

Mr. President, the appropriations conferees took the responsible course of action on Crotone. The Pentagon and our NATO allies need to reconsider the options to Crotone. Once those options have been fully considered and a financially sound basing plan for the 401st Tactical Fighter Wing has been developed, the Pentagon should come back to the Congress.

We will review that plan when it is presented. But we are not going to ratify business as usual. We are not going to approve the expenditure of $300 million or more as the U.S. share of a $800 million NATO base, when we could accomplish the task for far less cost.

CROTONE AND NATO

Mr. President, this issue has been handled very poorly, indeed, by the administration.

The Department of Defense had fair warning that Crotone was in trouble. Last May, I wrote General Galvin that support for Crotone was greatly diminished and that a compromise needed to be found. It was in that letter that I first suggested an austere base with rotational aircraft.

In August, when the Senate Appropriations Committee reported out this bill, we made a clear statement in the bill and report: that the Crotone base, as presented, was not acceptable and that we urged the Air Force to come up with a compromise.

Unfortunately, the Pentagon fiddled while Rome burned. The conferees never even heard from the Air Force and the Department until 72 hours before the conference began. And, as I have indicated, instead of offering a true compromise, the Pentagon presented the conferees with the same base and called it "austere."

Mr. President, that was the last straw for the conferees. We had let it be known for months that we were open to a legitimate compromise that substantially reduced the cost of Crotone. The administration, instead, sought to stonewall the issue.

Now the conference has spoken. There are no funds in this bill for Crotone and all prior year funds have been fenced as well.

Mr. President, I am frankly amazed that the administration would permit its representatives to play Russian roulette on this issue. It is an important issue which impacts our bilateral relations with Italy and our relations with the other member nations of NATO.

It is for the benefit of those allies that I address the following remarks.

Mr. President, the intent of the conferees is clear, that there be no U.S. funds available for construction of Crotone during fiscal year 1991. However, it must also be made clear that the conferees took no action that prevents NATO, itself, from proceeding with construction at Crotone. That was not within the scope of the conference.

Under the terms of the authorization conference report, NATO will be asked to certify that a base at Crotone is still necessary. If NATO determines that continuing with Crotone is still an appropriate step for NATO, nothing in this legislation before us prevents NATO from prefinancing construction at Crotone.

So, Mr. President, the action of the conferees can be seen as a 1 year moratorium on U.S. funds. During the coming year, the administration must again secure NATO's commitment to Crotone. And during the coming year, the administration must direct the Air Force to strip the gold plate off any new base and present NATO and the Congress with an austere base that provides minimum essential facilities for base access at a cost consistent with the need to moderate Federal spending.

Mr. President, I think the record should show the history of this project. When I first visited the 401st in Spain during the base negotiations, I was briefed that it would cost as much as $300 million to replicate the

Torrejon Base anywhere else in Europe.

But once the air staff and the headquarters engineers got their hands on it, the cost skyrocketed to over $800 million according to the General Accounting Office.

Mr. President, there is no reason for this base to have almost tripled in cost. I believe that many of our NATO allies are as concerned with the exorbitant cost of Crotone as the Congress.

Mr. President, I would like to tell our colleagues that the conferees have killed Crotone. That is how frustrated I am over this issue. But we have not done that. There is a year's moratorium on U.S. funds. But the U.S. Congress does not have jurisdiction over the expenditures of other NATO member nations. Nothing in this appropriations bill prevents NATO, should it choose, from prefinancing construction at Crotone without U.S. funds during the current fiscal year. Prefinancing is a well used tool throughout the NATO organization. It is an option which NATO can pursue while the administration goes back to the drawing board and comes up with a plan to cut project costs and substantially reduce the financial exposure of the U.S. Government.

Frankly, Mr. President, after reviewing the flow of contracts and construction, it is the opinion of the staff of this subcommittee that, if necessary, NATO could carefully manage the project without the need for any U.S. contributions during the current fiscal year.

Mr. President, I firmly believe that our NATO allies, themselves, are concerned with the cost of this base, and like the U.S. Congress, will welcome the opportunity to see the investment costs associated with the 401st relocation substantially reduced. After all, our NATO allies all have fiscal and budget problems just as the United States.

Mr. President, I also want to take this opportunity to reiterate that the United States and NATO owe Italy a debt of gratitude for stepping up to the plate and accepting the 401st when Spain decided to kick the F-16's out of that country. I have expressed my gratitude to the Italian prime minister personally.

But Italian officials would be the first to say that there is nothing in the agreement that requires NATO to build an $800 million gold-plated air base at Crotone. The Italians are clearly interested in commercial air facilities to open up that part of the country to be sure. But it does not take the expenditure of $800 million to help Italy achieve her goal in exchange for base access for our F-16's.

Mr. President an $800 million base was only a gleam in the eye of the U.S. Air Force air staff. It is time for the Air Force to go back to the drawing board and develop a plan that will win the approval of our allies and the Congress.

Mr. President, this is a fair and equitable conference agreement. I urge its approval by the Senate.

Mr. NUNN. Mr. President, I wish to congratulate the managers of the military construction appropriations conference for their excellent work. The conference report, like the bill reported earlier by the Senate Appropriations Committee, closely tracks the military construction authorization contained in the conference report accompanying the national defense authorization bill for fiscal year 1991, which was recently approved by this body.

I particularly appreciate the close cooperation the Armed Services Committee has enjoyed from Chairman SASSER of the Military Construction Appropriations Subcommittee, the ranking minority member, Senator GRASSLEY, and their staffs.

There is, however, one issue of disagreement which I wish to highlight, Mr. President. It involves the NATO initiative to construct a new airbase at Crotone, Italy. This base will support the United States Air Force fighter wing which will soon be leaving Torrejon Air Base, Spain. As I read the military construction appropriations conference report, amendments 11, 12, and 13 prohibit the use of funds appropriated in this bill or any other act from being used to construct the new base at Crotone.

The issue of building this new base has been a matter of intense debate during the past 2 years. Last year, in the face of strong opposition from the other body, the authorization conferees agreed to a $360 million cap on U.S. funding for this project, as well as for any other overseas redeployment of U.S. forces from Torrejon Air Base.

This year, the issue of the new base at Crotone was again considered. During the Senate's consideration of the fiscal year 1991 national defense authorization bill, we had a spirited debate over the need for the new airbase. A majority of the Senate supported the NATO plan and we took the matter to conference, facing strong opposition from the other body.

The resolution of the authorization of further construction at Crotone was one of the most contentious issues in the conference, one which was among the last to be resolved. But it was resolved, Mr. President, and I am concerned that the appropriations conference agreement before us now runs counter to the carefully balanced compromise we reached in the authorization conference.

In that agreement, recently supported by both the Senate and House of Representatives, further authorization to proceed with the development of Crotone was held in abeyance until NATO's North Atlantic Council has an opportunity to reconsider the requirement for this installation in light of the changing threats to NATO and the alliance's emerging strategy.

I believe that this reevaluation is overdue. A great deal has changed since the Crotone base was first proposed. We have seen dramatic changes in the threat to NATO from the Warsaw Pact. We have also seen dramatic changes in threats to NATO's economic security from the Middle East. I believe it prudent to reassess the rationale for building a new airbase in Southern Italy, and I look forward to the Alliance's report on this matter.

I continue to support the construction of the new base at Crotone because I believe that it is more important than ever in light of the changes we have seen in both Europe and the Middle East. Our senior NATO leaders, Ambassador Taft and General Galvin, remain adamant that the new base at Crotone will be a critically important installation for forward deployed U.S. forces in the years ahead when overall levels of U.S. forces in Europe will be substantially—very substantially—below current levels.

I am concerned that the position taken by the appropriations conferees will create obstacles to moving forward with the construction of the base at Crotone if the North Atlantic Council revalidates its need, as I believe it will. The prohibition will sow the seeds of confusion about the Congress' views of the Crotone initiative.

I want to make clear my personal support for the Crotone initiative and my support for an expeditious revalidation of the project by the North Atlantic Council. Once this revalidation is in hand, I hope the appropriations committees will revisit this matter and lift the funding prohibition through reprogramming or subsequent legislation.

MILITARY CONSTRUCTION APPROPRIATIONS CONFERENCE REPORT, CROTONE AMENDMENT

Mr. WARNER. Mr. President, I rise to express my opposition to amendments numbers 11, 12 and 13 in the pending conference report which have the effect of prohibiting United States funding for the continuing construction of an airbase at Crotone, Italy, for the United States 401st Tactical Fighter Wing.

The forward basing of the 401st makes a powerful contribution to deterrence and defense in NATO's southern flank by providing modern, flexible and immediately available military strength to counter threats in both the European theater and the adjacent Mediterranean and Middle East region. The 72 F-16 aircraft of the 401st represent the only U.S. tactical aviation presence in the southern flank of NATO, 72 percent of the total

third generation NATO aircraft in the region, and 75 percent of the southern flank's airborne nuclear deterrent. Our NATO allies considered it so important to maintain the 401st in the southern flank that in May 1988 they took the unprecedented step of agreeing to use NATO infrastructure funds—of which the allies contribute 72 percent—to construct a new airbase in Italy.

In addition, the current crisis in the Persian Gulf has highlighted the importance of the 401st for Middle East contingencies. Currently, two of the three squadrons of the 401st are forward deployed form their present base in Spain in support of Operation Desert Shield. And, thus far, there have been over 2,000 Mac flights into Torrejon—which would be replaced by Crotone—in support of Desert Shield.

Gen. John Galvin, Commander in Chief, U.S. European Command and Supreme Allied Commander has stated that if only two U.S. air wings were to remain in Europe, he would place one of them at Crotone.

Mr. President, I am surprised that this conference report comes back to the Senate with a resolution on the issue of Crotone which conflicts not only with the views of our NATO allies and our top military leaders, but also with the views of the majority of the Members of this body. As my colleagues will recall, during Senate consideration of the DOD authorization bill, the Senate defeated an amendment to prohibit construction at Crotone. And now we are faced with a conference report which does just that.

The issue of Crotone was carefully considered in the DOD authorization conference. The compromise which we reached in that conference was to allow construction at Crotone following the reaffirmation of the need for the airbase by the North Atlantic Council. We must keep in mind the decision to build a new airbase at Crotone was a NATO decision—one which was made by all 16 of the NATO allies. If the Crotone amendments in the current conference report remain unchanged, the Congress would be unilaterally canceling a decision which was made unanimously by our NATO allies. I submit that this is not the proper way to treat one's allies.

Mr. President, Secretary Cheney has stated that he will recommend that President Bush veto the military construction appropriations bill because of the restrictions on Crotone. If the managers of this bill are not able to give the administration and our NATO allies more flexibility on this issue, I will strongly urge the President to veto this bill and I will work hard to help sustain that veto.

PROVISION IN MILCON APPROPRIATIONS PROHIBIT FUNDING FOR CROTONE AFB

Mr. THURMOND. Mr. President, I am dismayed that the conference report on military construction appropriations prohibits funding for the Air Force Base at Crotone, Italy. As all of you will recall, the construction of this base was thoroughly debated by this body over the past 2 years, each time we agreed that the base should be funded.

Mr. President, in my judgment, there is no one more qualified to speak on the military reality than Gen. John Galvin, Commander in Chief, U.S. European Command. In a letter to ranking minority member of the Armed Services Committee, Senator WARNER, the general wrote:

> At a time when NATO forces face major reductions, it is vital that forces remain deployed in a balanced manner. Soviet force reductions in the Central Region have not reduced Soviet capability in the Southern Region. The 401st Tactical Fighter Wing's presence sends a strong signal to all nations underscoring U.S. interest throughout the Mediterranean area. It is absolutely necessary for stability and deterrence in the Southern Region that the wing be based at Crotone. If I had only two U.S. Air Force wings remaining in Europe, I would place one of them at Crotone.

I want to repeat that last statement: "If I had only two U.S. Air Force wings remaining in Europe, I would place one of them at Crotone." Mr. President, that statement was made by the senior military commander in NATO. I would hope that his judgment has some credibility in this body.

In last year's Defense Authorization Act, the Congress authorized continuation of the Crotone project but capped United States expenditures at $360 million for the relocation of any military functions located at Torrejon, Spain, to any location outside the United States. This language protects the U.S. taxpayer from any additional financial burden in building the base.

It is also important to note that proceeding with construction of an airbase at Crotone has no budgetary impact on the United States. The U.S. share of the money for the base will come from funds appropriated in prior years for the NATO Infrastructure account.

There is no money for Crotone in this year's budget. If the money in the Infrastructure account is not used at Crotone, it will be used on other NATO Infrastructure projects. No funds would be returned to the United States.

Mr. President, regardless of the diminished threat in central Europe, the threat of turmoil in the Mediterranean region still exists. Building the airbase at Crotone will put our Air Force where it can best meet that threat.

I am a realist and understand that at this late hour we will not reverse the decision of the conference. I want to go on record, however, that I will urge the Armed Services Committee to review this matter in the next Congress. I am convinced that prohibiting construction of the Crotone Air Base is not in the best interest of the Nation.

Mr. DOMENICI. Mr. President, I rise tonight in support of the Milcon appropriations bill as agreed to by the House and Senate conferees. This bill appropriates funds for many of the vital military installations that are located in the State of New Mexico, and they significantly contribute to our country's national defense.

This bill will appropriate $45 million for the construction of the large blast thermal simulator [LBTS] which will be located at the White Sands Missile Range [WSMR] in southern New Mexico.

The LBTS will be a large facility that simulates certain aspects of the blast wave and the thermal pulse generated by a nuclear detonation. The greatest attribute of the LBTS is that no nuclear radiation processes will be involved.

Compressed gas is released at one end of 20-meter tube. It travels through the chamber and exposes a test object, such as a vehicle, to specific dynamic and overpressure conditions. A thermal radiation source would be installed just upstream of the test chamber and would expose selected test items to thermal pulse in addition to the blast wave. The data obtained would be used to evaluate the survivability of U.S. military equipment.

The LBTS will provide valuable information about needs and strengths of our military hardware, and will do it in a safe way. I commend the conferees for supporting this vital initiative.

Mr. President, this bill also provides significant funds for the Air Force Bases and National Guard facilities that are located in my State, and I would like to mention these now.

The fiscal year 1991 construction appropriations bill provides $39,219,000 for construction of facilities at Holloman Air Force Base in Alamogordo, NM; $36 million of this will provide for the construction of hangars that are necessary to house the 37th Tactical Fighter Wing due to arrive at Holloman during fiscal year 1992.

I want to commend all the conferees for appropriating these funds. With these funds, the Air Force will be able to maintain its schedule for the transfer of the wing. Staying on schedule will save the American taxpayer at least $130 million in fiscal year 1991.

Holloman and Kirtland Air Force Bases will also receive appropriations to remodel dormitories, add security improvements, build family housing, and alter helicopter training areas.

Finally, Mr. President, this bill provides approximately $13 million for Army National Guard construction projects in New Mexico. Among these are the Armories in Espanola, Portales, and Rio Puerco; the organizational maintenance shop and the utilities shop in Rio Puerco; the training site in Albuquerque; and the organizational maintenance shop in Santa Fe.

This funding will ensure that the National Guard maintains a high level of quality and readiness.

I am very pleased that the conferees agreed to fund the important military construction projects that are taking place in New Mexico. My State has been a great contributor to our country's national defense and security, and this bill will help the bases and facilities in New Mexico charged with this difficult task the resources they need to continue to do the job.

Mr. GRASSLEY. Mr. President, I rise in support of the conference agreement to H.R. 5313, the military construction appropriations bill for fiscal year 1991.

Mr. President, the Senate conferees worked diligently with our House colleagues to bring forth a conference agreement which will provide for the majority of facility requirements in the Department of Defense requested for this fiscal year.

Before addressing some of the details of the conference agreement, as well as my concerns over the possible veto of the legislation, I want to thank the distinguished chairman of the Subcommittee on Military Construction Appropriations, the Senior Senator from Tennessee [Mr. SASSER], for his outstanding leadership in bringing this matter back to the Senate.

Mr. President, there are a number of specific items I wish to address on this conference agreement. Let me begin with the amendment I offered on the floor which was adopted without objection. This provision, known as the Antiterrorism Act of 1990, was reported favorably from the Judiciary Subcommittee on Courts and Administrative Practice; it was supported by the full Judiciary Committee; and it had been introduced in the House. Unfortunately, the conferees were forced to take this amendment back to their respective bodies in true disagreement. The House conferees objection was strictly on jurisdictional grounds in that the chairman of the House Judiciary Committee, Mr. BROOKS of Texas, expressed concern over handling the matter on an appropriations bill.

Mr. President, I will reluctantly agree to the House position and drop the amendment from this legislation. However, I will work in the next Congress to get this legislation passed. Mr. BROOKS has stated that his committee will hold hearings on the matter, and I commend him for this position. This is important legislation; it is time now to protect American citizens.

Mr. President, the conference report before us will provide new budget authority of $8.4 billion for military construction, family housing construction, and family housing operation and maintenance. That amount represents a decrease from the President's budget request of about $764 million and a decrease from the fiscal year 1990 appropriation of about $132 million. In addition, we are nearly $138 million below our allocation for budget authority and some $15 million below our allocation for outlays.

The conference report provides funding for authorized projects with only one exception. The exception is for a project at the Air Force Academy which the conferees supported and therefore provided funding subject to authorization.

Mr. President, on the issue of facilities to support the Guard and Reserve, the conferees were in full agreement. For several years now, the Congress has supported increased funding for the Guard and Reserve. This funding is not limited to military construction, and increased appropriations for the Guard and Reserve can be noted in the various accounts in the Defense appropriations bills.

The Congress has spoken often and clearly in its strong supports for the Guard and Reserve as a vital part of our total force. With regard to facilities, we are slowly replacing and modernizing the old, outdated, and dilapidated buildings now occupied by many of our Guard and Reserve units. Mr. President, the vast majority of the projects included in this bill are for replacement. We are not establishing new missions. I know in my own State of Iowa that some of the armories, for example, are literally falling apart. The conferees have provided over $690 million for Guard and Reserve projects. That is about $22 million over last year's appropriation, and $409 million over the budget request.

I hope that the Department of Defense will realize the importance to which the Congress continues to give this facilities account. And, I further hope that the Department of Defense will see that it is not only this committee that supports the program, but the entire Congress.

Mr. President, with regard to the Guard and Reserve increases, we have received word that the Secretary of Defense thinks that the increased funding for this account was taken—at least partially—from the decrease agreed to for the NATO infrastructure account. Let me tell you, we are mixing apples and oranges here. The Senate supported the full amount authorized for the NATO account when we passed the bill; and the conference report before us now supports the full amount authorized by the Defense authorization conference. That is all we can do.

Mr. President, turning to another issue, that of the construction moratorium which the Secretary of Defense implemented in January of this year. My good friend the Secretary of Defense, Dick Cheney, put this moratorium into place while he reviewed our worldwide basing structure. I commend him for this move, and I support him in his attempts to close unnecessary bases. And in addition, I believe there are numerous projects which should continue to be deferred because they are at bases which are being reviewed for possible closure. However, the moratorium is no longer needed, and it is a violation of the Budget and Impoundment Control Act. The General Accounting Office has informed Congress that the moratorium represents an illegal and unreported deferral of budget authority.

Mr. President, the House- and Senate-passed bills on military construction appropriations included identical provisions which lift the moratorium with the enactment date of this legislation. It does not take any flexibility away from the Secretary, but it will hopefully encourage him to have the President transmit to Congress an official deferral message. The moratorium issue was not a conference item. However, I believe that I can safely say that the conferees are very concerned as to the impact on the overall program, especially the Guard and Reserve, if the moratorium continues. While a waiver process is in place within the Defense Department, few projects have been waived. I am concerned about the increased costs to projects if there was never any question that they were needed.

Mr. President, I support the Secretary of Defense in his attempt to close bases, and I will work with him to close bases; but this illegal moratorium has gone on long enough.

Mr. President, the last specific issue I would like to address concerns the conference position with regard to the proposed new NATO air base at Crotone, Italy. The conference position is opposed by the Secretary of Defense, and he has indicated that he will recommend that the President veto the bill because of the conference position.

I am hopeful that the President will not veto this bill over this one item. There is a history to the project within our subcommittee in support of the project. And in addition, it should be understood by all that the conference position is a 1-year moratorium on construction at this new base.

The new base at Crotone which will be funded through the NATO infrastructure account is a replacement for our base at Torrejon, Spain. Our subcommittee was instrumental in encouraging our NATO allies to fund

this base. And I must commend the Government of Italy—always a strong ally—for their cooperation in this matter. The concerns of the conferees have nothing to do with the location. It is merely a matter of overall scope and cost of the base. And quite frankly, Mr. President, I would think that our NATO allies would also have reservations about this $800 million base.

It is obvious that this is an important location for the future. What is not so obvious is the sizing and scope of the base as presented to the conference. The conferees understand that the Defense authorization conference will require further review by NATO. I believe this review should also include a detailed review of the overall scope of this new base.

Mr. President, I must say that since the United States contributes about 28 percent of the NATO infrastructure account and normally gets back about 50 percent of the value of the facilities constructed that this account is probably one of the best examples of burden sharing. And it is indeed a good deal for the United States.

Mr. President, I believe that had our conferees been kept informed on a continuing basis as to the negotiations with regard to Crotone that a resolution to the problem could have been worked. However, I believe that a solution can be reached early in the next Congress if all parties involved work together. I further believe and understand that the 1-year moratorium on new construction at Crotone will probably not have much, if any, impact.

Mr. President, I would urge that Secretary of Defense and the President carefully review all options before a veto decision is made with regard to this excellent piece of legislation. While there appears to be agreement within the authorization conference on this matter, a veto of this bill would bring the entire matter within full view of the Congress and the American people. Emotions have run high on this issue; facts, unfortunately, have somewhat been misconstrued. However, I believe that further review and study can very likely provide a solution to the problem and then a majority of the Members of Congress can support it.

Mr. President, I believe that the conference report before the Senate is a good one. I strongly support it, and I urge my colleagues to vote for its approval.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. SASSER. Mr. President, I ask unanimous consent that the Senate concur en bloc with the amendments of the House to the amendments of the Senate, and that the Senate recede from its disagreement on amendments numbered 30 and 31.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SASSER. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I want to thank the distinguished chairman of the Military Construction Subcommittee. He has had a very difficult job here in the last few days particularly on this bill.

We are very appreciative of the work he and the chairman of our full committte have done to make certain this bill will go to the President this evening.

Mr. SASSER. Mr. President, I thank the distinguished Senator from Alaska for his very kind comments. I might say it has been a great pleasure for me to work this year with the distinguished Senator from Alaska on the Military Construction Subcommittee, and on the full Appropriations Committee.

And I would be remiss, Mr. President, if I did not also express my appreciation and gratitude to the distinguished Senator from Iowa [Mr. GRASSLEY] for the fine work and kind cooperation he has given this year, as always, on the Military Construction Appropriations Subcommittee.

Mr. President, at this time, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from West Virginia.

EXPRESSING THANKS TO CONGRESSIONAL PARTICIPANTS IN BIPARTISAN SUMMIT NEGOTIATIONS

Mr. BYRD. Mr. President, I take this opportunity to express my thanks to the congressional participants in the bipartisan summit negotiations.

Throughout the long days and nights over the weeks and months of these negotiations, these men have shown a splendid sense of dedication to the task at hand. During the early stages of these negotiations, a great deal of time was required to educate each of us on the vast number of issues which had to be addressed.

That process was necessary in order to ensure that the decisions made on this deficit reduction package were made only after careful review of the issues. This process enabled us to receive the views of the chairman and ranking minority members of committees with jurisdiction over various Federal programs. For example, the opinions of the Armed Services Committee chairmen and ranking minority members were most helpful to us as we struggled with the issues of how much and how fast to reduce military spending, while maintaining a strong national defense. As we all know, the crisis in the Middle East arose during these budget negotiations and that matter had to be addressed as well.

Mr. President, in recent days I have heard Senators complain that these negotiations were conducted in secret by only a handful of Senators and Members of the House. That is just not true. Throughout the entire process, over the many months of meetings, the majority and minority leaders of the Senate held regular conference luncheons, where Senators were informed of the status of the negotiations.

The summiteers have been scorned, belittled, and berated. Yet, none of the summiteers volunteered to be participants. The President, after recognizing that the deficit was totally out of control, called on our leaders and asked them to join him in seeking a bipartisan deficit reduction agreement that would be multiyear and would make a substantial reduction in the deficit. Early in the negotiations, it was determined by all participants, that the optimal level of deficit reduction—the level that would produce long-term economic benefits for our Nation as a whole, without leading to an adverse outcome in the near-term—was a package containing $50 billion of deficit reduction in the first year, fiscal year 1991, and $500 billion over 5 years.

Having agreed on those deficit-reduction targets, we then set out on the incredibly difficult task of actually putting together a package of spending cuts, revenue increases, and enforcement measures that would achieve the agreed-upon targets. While reaching agreement on the targets themselves was difficult enough, reaching agreement on how to achieve those targets was even more difficult, requiring great patience and perseverance on the part of each summit participant.

I do not believe there was any Member of the summit who showed greater patience or perseverance than the chairman of the summit proceedings, the majority leader of the U.S. House of Representatives, Mr. RICHARD GEPHARDT. As chairman, Mr. GEPHARDT conducted himself and carried out his responsibilites in a most exemplary manner. Throughout the proceedings, he kept the summit on track. With an unmatched air of calm, he kept the process moving ahead, toward a resolution.

Credit and praise should also be given to the leaders of both the House and Senate. Speaker THOMAS FOLEY, Senate Majority Leader GEORGE MITCHELL, and Senate Republican Leader ROBERT DOLE are to be commended for the extent to which they personally participated in the summit proceedings and helped to push the process forward. Despite their busy schedules, despite the termendous responsibilities each faced outside the summit, each found the time to participate, to be there. And through their personal participation, they contributed greatly to the success of the summit.

I also commend the minority leader of the House, Mr. MICHEL, for the role he played in making the summit a success. He consistently urged all present to remain focused on the task at hand, rather than succumb to the temptation to engage in partisan rhetoric.

I would give special praise to my good friend from Texas, Senator LLOYD BENTSEN, the chairman of the Senate Committee on Finance. In my years as majority leader, I found no other Member of the U.S. Senate more willing to accept a call to duty than LLOYD BENTSEN, a characteristic that remained true throughout the summit as well. No matter what he was asked to do, Chairman BENTSEN came through. He came up with the spending cuts and the revenue increases he was asked to produce. Time and time again, as the targets moved, as the parameters changed, the chairman of the Finance Committee did what was asked, willingly and without complaint.

Credit should also be given to Senator BENTSEN's counterpart in the House, Representative DAN ROSTENKOWSKI, the chairman of the House Ways and Means Committee. With the same willing attitude, Chairman ROSTENKOWSKI repeatedly met the challenges put before him. Absent the leadership and assistance of these able chairmen, and their ranking members, Senator BOB PACKWOOD and Representative BILL ARCHER, the budget summit would never have moved out of the starting blocks.

Mr. President, I would be remiss not to extend thanks and praise to my fellow appropriators, Senator MARK HATFIELD, the ranking member of the Senate Appropriations Committee, as well as chairman JAMIE WHITTEN of the House Appropriations Committee and Representative SILVIO CONTE, the ranking member on the House side. Each helped to bring a sense of balance to the proceedings that helped to ensure that the eventual outcome would be a fair one, supportable by Members on both sides of the aisle.

Great credit must also be given to those Members of the Senate and House Budget Committees, Senators JIM SASSER and PETE DOMENICI and Congressmen LEON PANETTA, and BILL FRENZEL, for the tremendous contributions they made throughout the proceedings. Each brought to the summit a remarkable command of our Federal budget and the budget process. Putting together a package of spending cuts and revenue increases to meet the agreed-upon targets was a difficult task. Yet, equally difficult was the task of constructing a budget process and enforcement program for implementing whatever package of spending and tax changes would eventually be agreed upon. In this regard, I believe each of these gentlemen deserves special credit.

Likewise, I note the contributions made in this area by another colleague from Texas, Senator PHIL GRAMM. Although we often approach issues from different perspectives, Mr. GRAMM deserves special recognition for the contributions he made. In addition, let me give special praise to Senator WYCHE FOWLER for the role he played in the summit. Always encouraging his fellow summiteers to remain focused on the national interest, always pushing to make the hard choices, Mr. FOWLER deserves special recognition for his contributions to the summit. Finally, Congressman BILL GRAY, who has previously served as House Budget Committee chairman, deserves recognition for his timely and sound advice on numerous issues that arose.

As I noted earlier, the President is to be given credit for acknowledging the seriousness of our budget problems and for convening the budget summit. I also believe the President should be commended for helping keep the entire budget process moving forward by signing several temporary continuing resolutions as the negotiations have stopped and started over these last few weeks.

In addition, I believe special recognition should be given to Mr. RICHARD DARMAN, the Director of the Office of Management and Budget, for the role he has played in the summit process.

I know that Mr. Darman has been the subject of much criticism and controversy in recent weeks, but let me say that while Mr. Darman is a tough, hard negotiator, he is also a man who has kept his word with me. He is a tremendously intelligent and capable public servant; his knowledge of an incredibly broad range of budgetary issues is impressive. I always try to remember that he has a boss to whom he must be loyal. He has a boss and he tries to carry out the bidding of that boss.

I look forward to continuing to work with Mr. Darman in the years ahead. He has strived to maintain the commitments made in the budget agreement.

I also express appreciation for the hard work of Mr. Darman's chief deputy, Mr. William Diefenderfer. We owe a debt of gratitude to him for the long hours he devoted to bringing the summit process to a successful conclusion. He worked many days and nights with my own staff and others in an effort to put together this monumental budget package.

I also express my thanks to Mr. Nicholas Brady, the Secretary of the Treasury, for the role he played in the summit. His constant reminders that a budget agreement was necessary to ease the concerns of the financial markets were constructive. Mr. Brady's presence and participation helped the summiteers, and I commend him for his contributions.

Mr. President, I was at the summit day in and day out. I was there early in the morning and late at night. The summit participants struggled to put together the largest deficit production package in the history of our country. It was not an easy task. It was not a simple task. It was difficult, often exhausting, and, yet, many hurdles have been overcome, and I believe that now is the time to give credit to all those who worked so hard to put this package together.

It is my hope that we will never be forced to climb the mountain again. Should we be required to do so, I cannot find any group more capable of rising to the occasion, getting the job done, that those who participated in this year's budget summit.

There were many staff people who worked equally long hours and, in some cases, even longer hours than did we summiteers. I want to pay special tribute, very special tribute to Jim English, the director of the Senate Appropriations Committee staff, and also to Barbara Videnieks, my chief of staff; Jack Conway, Jon Wood, Dick D'Amato, Marsha Berry, Mary Dewald Keith Kennedy, Charlotte Holt, Kathy McNally, Brenda Teutsch, Anita Skadden, Jim Allen, John Hilley, Bill Dauster, Marina Weiss, Terry Sauvain, Richard Larson, and Bill Hoagland. They were all unstinting in the application of their talents, indefatigable in their labors, and, at all times, most agreeable and most helpful to me and to the others who worked in that summit. Without them, we certainly could not have succeeded in achieving the summit agreement.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISCLAIM OF INTEREST OF THE UNITED STATES IN CERTAIN LANDS ON SAN JUAN ISLAND, WASHINGTON

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 994, H.R. 2566, the San Juan Island disclaimer bill.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 2566) to disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which was reported from the Committee on Energy and Natural Resources, with amendments; as follows:

(The parts of the bill intended to be proposed are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

H.R. 2566

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

As used in this Act, the following terms shall have the following meanings:

(1) The term "1921 Act" means the Act of August 23, 1921 (42 Stat. 173), whereby the United States granted to the State of Washington, for the use of the University of Washington for purposes of a biological station and general university research purposes, certain lands comprising a military reservation at San Juan Island, in San Juan County, Washington.

(2) The term "encroached lands" means those portions of the lands granted to the State of Washington by the 1921 Act that are designated as "Encroached Lands" **[**on a map entitled "Encroachments on Research Station Lands, San Juan Island, Washington" dated March 1990, and comprising approximately thirteen acres.**]** *on a map to be prepared by the Secretary of the Interior pursuant ot section 2 of this Act.*

(3) The term "University" means the University of Washington.

(4) The term "the State" means the State of Washington.

(5) The term "The Secretary" means the Secretary of the Interior.

(6) The term "occupants" means the parties who, on March 1, 1990, were listed on the tax records of San Juan County, Washington, as the owners of the encroached lands, and their heirs and assigns.

SEC. 2. SURVEY AND MAP.

Within one year after the date of enactment of this Act, the Secretary, acting through the Director of the Bureau of Land Management, shall complete a survey of the lands granted to the State by the 1921 Act, and shall prepare a map detailing those portions of the lands granted to the State that have been encroached upon: Provided, That not more than 50 per centum of the cost of such survey shall be paid by the Federal Government.

[SEC. 2. EXEMPTION.**]**

SEC. 3. EXEMPTION, DISCLAIMER AND CONDITIONS.

[Subject to the provisions of section 3(b),**]** *(a) Subject to the limitation in subsection (c),* the provisions of the 1921 Act relating to the right of the United States to assume control of, hold, use, and occupy the lands granted to the State by the 1921 Act, the provisions of such Act providing for reversion of such lands to the United States, and section 2 of such Act as amended by this Act shall not apply to the encroached lands.

[SEC. 3. DISCLAIMER AND CONDITIONS.**]**

[(a) Subject to the provisions of subsection (b) of this section**]** *(b) Subject to the limitation of subsection (c),* the United States hereby disclaims all right, title, and interest in the encroached lands and, effective one year after **[**the date of enactment of this Act,**]** *the map is prepared pursuant to section 2,* all right, title, and interest of the United States in such lands shall vest in the University.

[(b)(1) Sections 2 and 3 of this Act shall not take effect unless, not later than one year after the date of enactment of this Act, the State and the University have entered into a**]** *(c)(1) Subsections (a) and (b) of this section shall not take effect unless, within one year after the map is prepared pursuant to section 2, the State and the University have entered into a* binding agreement with the Secretary whereby the State and the University agree—

(A) to accept the map referred to in **[**section 1(2)**]** *section 2* as accurate and conclusive and that the University and the State will not attempt to convey or otherwise transfer any portion of the encroached lands to any party or parties other than the occupants; and

(B) to pay to the Secretary, on behalf of the United States, an amount equal to the total amounts that the State and the University receive as consideration for conveyance of some or all of the encroached lands to any of the occupants in excess of reasonable costs incurred by the University and the State incident to such conveyance.

(2) All amounts received by the Secretary pursuant to this subsection shall be retained by the Secretary and, subject to appropriation, shall be used for the management of public lands managed by the Bureau of Land Management and shall remain available until expended.

SEC. 4. AVAILABILITY OF MAP.

The map referred to in **[**section 1(2)**]** *section 2* shall be available for public inspection in the offices of the Secretary and the State Director of the Bureau of Land Management for the State of Washington, and the Secretary shall transmit copies thereof to the University and to the appropriate officials of the State and of San Juan County, Washington.

SEC. 5. AMENDMENT.

The 1921 Act is hereby amended by the addition at the end thereof of the following new section:

"SEC. 2. (a) Notwithstanding any other provision of this Act, if any land, or portion thereof, granted or otherwise conveyed to the State of Washington by this Act is or shall become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of (42 U.S.C. 9601)), or if such land, or portion thereof, has been used for purposes that the Secretary of the Interior finds may result in the disposal, placement or release of any hazardous substance, such land shall not, under any circumstances, revert to the United States.

"(b) If lands granted or conveyed to the State by this Act shall be used for purposes that Secretary of the Interior finds: (1) inconsistent with the purposes of this Act, and (2) which may result in the disposal, placement or release of any hazardous substance, the State shall be liable to pay to the Secretary of the Interior, on behalf of the United States, the fair market value of the land, including the value of any improvements thereon, as of the date of conversion of the land to the nonconforming purpose. All amounts received by the Secretary of the Interior pursuant to this subsection shall be retained by the Secretary of the Interior and used, subject to appropriations, for the management of public lands and shall remain available until expended.".

The PRESIDING OFFICER. Without objection, the committee amendments are agreed to.

AMENDMENT NO. 3221

Mr. CRANSTON. Mr. President, I send an amendment to the desk for Mr. BUMPERS and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California [Mr. CRANSTON], for Mr. BUMPERS, proposes an amendment numbered 3221.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SECTION 1. SHORT TITLE.

This title may be cited as the 'Civil War Sites Study Act of 1990'.

SEC. 2. DEFINITIONS.

For the purposes of this title—

(a) the term 'Commission' means the Civil War Sites Advisory Commission established in section 5 of this title;

(b) the term 'Secretary' means the Secretary of the Interior; and

(c) the term 'Shenandoah Valley Civil War sites' means those sites and structures situated in the Shenandoah Valley in the Commonwealth of Virginia which are thematically tied with the nationally significant events that occurred in the region during the Civil War, including, but not limited to, General Thomas 'Stonewall' Jackson's 1862 'Valley Campaign' and General Philip Sheridan's 1864 campaign culminating in the battle of Cedar Creek on October 19, 1864.

SEC. 3. FINDINGS.

The Congress finds that—

(1) many sites and structures associated with the Civil War are located in regions which are undergoing rapid urban and suburban development;

(2) such sites and structures represent important means by which the Civil War may continue to be understood and interpreted by the public; and

(3) it is important to obtain current information on the significance of such sites, threats to their integrity, and alternatives

for their preservation and interpretation for the benefit of the Nation.

SEC. 4. SHENANDOAH VALLEY CIVIL WAR SITES STUDY.

(a) STUDY.—(1) The Secretary is authorized and directed to prepare a study of Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State and local governments, or other public or private entities, as may be appropriate. Such alternatives may include, but shall not be limited to, designation as units of the National Park System or as affiliated areas.

(2) The study shall contain an analysis of the economic effect that protection of Shenandoah Valley Civil War sites would have on the economy in the Shenandoah Valley.

(3) The study shall include the views and recommendations of the National Park System Advisory Board.

(b) TRANSMITTAL TO CONGRESS.—Not later than 1 year after the date that funds are made available for the study referred to in subsection (a), the Secretary shall transmit such study to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

SEC. 5. ESTABLISHMENT OF CIVIL WAR SITES ADVISORY COMMISSION.

(a) IN GENERAL.—There is hereby established the Civil War Sites Advisory Commission. The Commission shall consist of thirteen members appointed as follows:

(1) five citizens who are nationally recognized as experts and authorities in the history of the Civil War, appointed by the Secretary;

(2) the Director of the National Park Service or his or her designee;

(3) the Chairman of the Advisory Council on Historic Preservation, or his or her designee;

(4) three citizens appointed by the President Pro Tempore of the United States Senate in consultation with the Chairman and Ranking Minority Member of the Committee on Energy and Natural Resources; and

(6) three citizens appointed by the Speaker of the United States House of Representatives in consultation with the Chairman and Ranking Minority Member of the Committee on Interior and Insular Affairs.

(b) CHAIRMAN.—The Commission shall elect a chairman from among its members.

(c) VACANCIES.—Vacancies occurring on the Commission shall not affect the authority of the remaining members of the Commission to carry out the functions of the Commission. Any vacancy in the Commission shall be promptly filled in the same manner in which the original appointment was made.

(d) QUORUM.—A simple majority of Commission members shall constitute a quorum.

(e) MEETINGS.—The Commission shall meet at least quarterly or upon the call of the Chairman or a majority of the members of the Commission.

(f) COMPENSATION.—Members of the Commission shall serve without compensation. Members of the Commission, when engaged in official Commission business, shall be entitled to travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service under section 5703 of title 5, United States Code.

(g) TERMINATION.—The Commission established pursuant to this section shall terminate 180 days after the transmittal of the report to Congress as provided in section (8).

SEC. 6. STAFF OF THE COMMISSION.

(a) EXECUTIVE DIRECTOR.—The Director of the National Park Service, or his or her designee, shall serve as the Executive Director of the Commission.

(b) STAFF.—The Director of the National Park Service shall, on a reimbursable basis, detail such staff as the Commission may require to carry out its duties.

(c) STAFF OF OTHER AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

(d) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

SEC. 7. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission may, for the purpose of carrying out this title hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission may deem advisable.

(b) BYLAWS.—The Commission may make such bylaws, rules and regulations, consistent with this title, as it considers necessary to carry out its functions under this title.

(c) DELEGATION.—When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(d) DONATIONS.—Notwithstanding any other provision of law, the Commission may seek and accept donation of funds, property, or services from individuals, foundations, corporations, and other private entities, and from public entities, for the purpose of carrying out its duties.

(e) MAILS.—The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

SEC. 8. DUTIES OF THE COMMISSION.

(a) PREPARATION OF STUDY.—The Commission shall prepare a study of historically significant sites and stuctures in the United States associated with military action during the Civil War, other than Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State and local governments, or other public or private entities, as may be appropriate. Such alternatives may include, but shall not be limited to, designation as units of the National Park System or as affiliated areas. The study may include existing units of the National Park System.

(b) CONSULTATION.—During the preparation of the study referred to in subsection (a), the Commission shall consult with the Governors of affected States, affected units of local government, State and local historic preservation organizations, and such other interested parties as the Commission deems advisable.

(c) TRANSMITTAL TO THE SECRETARY AND CONGRESS.—Not later than 2 years after the date that funds are made available for the study referred to in subsection (a), the Commission shall transmit such study to the Secretary and the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(d) NO PRIOR REVIEW.—No officer or agency of the United States shall have any authority to require the Commission to submit the study referred to in subsection (a), or any other recommendations or testimony the Commission may provide, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such study, recommendations, or testimony to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its study, recommendations, or testimony which it transmits to the Congress.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums not to exceed $2,000,000 to carry out the purposes of this title.

The PRESIDING OFFICER. Is there further debate on amendment No. 3221? If not, the question is on agreeing to the amendment.

The amendment (No. 3221) was agreed to.

AMENDMENT NO. 3222

(Purpose: To release restrictions on certain property located in Calcasieu Parish, Louisiana)

Mr. CRANSTON. Mr. President, I send an amendment to the desk on behalf of Mr. BREAUX and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California [Mr. CRANSTON], for Mr. BREAUX, proposes an amendment numbered 3222.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following new title:

"TITLE II—CALCASIEU PARISH, LOUISIANA

SEC. 201. RELEASE OF RESTRICTIONS.

(a) IN GENERAL.—Subject to subsection (b), the United States hereby releases, without monetary consideration, all restrictions, conditions, and limitations on the use, encumbrance, or conveyance of the property described in section 202, to the extent such restrictions, conditions, and limitations are enforceable by the United States.

(b) LIMITATION.—Notwithstanding subsection (a), the United States shall have the right of access to, and use of, the property described in section 202 for national defense purposes in time of war or national emergency.

SEC. 202. PROPERTY DESCRIBED.

The property referred to in section 201 consists of the following parcels of lands and improvement thereto located in Calcasieu Parish, Louisiana:

(1) A parcel commonly known as the Calcasieu Women's Shelter, consisting of 3 contiguous tracts described as follows:

Tract A—Commencing at a point N 45°28'31" E 198.3 feet from point A; thence S 44°29'9" E 169.3 feet; thence S 45°28'31" W 75 feet; thence N 44°29'9" W 169.3 feet; thence N 45°28'31" E 75 feet to the point of commencement.

Tract B—Commencing at a point N 45°28'31" E 198.3 feet from point A; thence S 44°29'9" E 220 feet; thence N 45°28'31" E 50 feet; thence N 44°29'9" W 220 feet; thence S 45°28'31" E 50 feet to the point of commencement.

Tract C—Commencing at a point N 45°28'31" E 248.3 feet from point A; thence S 44°29'9" E 220 feet; thence N 45°28'31" E 50 feet; thence N 44°29'9" W 220 feet; thence S 45°28'31" E 50 feet to the point of commencement.

(2) A parcel, consisting of a tract of land containing 33.351 acres, more or less, in section 11, township 10 south, range 8 west, and described as follows:

Commencing at a point N 0°22'09" W 88.18 feet from the northeast corner of the southeast quarter of section 10. T 10 S—R 8 W; said point being point D of plat of survey entitled "Boundary Agreement of CAFB" dated August 7, 1973, and recorded in plat book 23, page 20 records of Calcasieu Parish, Louisiana: thence N 0°22'09" W 183.6 feet; thence S 79°45'09" E 226.33 feet to the point of commencement: thence S 79°45'09" E 1843.02; thence N 11°36'26" E 965.89 feet, thence N 80°30'11" W 1196.35 feet, thence S 45°25'51" W 1162.28 feet to the point of commencement.

SEC. 203. MINERAL RESOURCES.

Nothing in this Act shall affect the disposition or ownership of oil, gas, or other mineral resources associated with property described in section 202.

The PRESIDING OFFICER. Is there further debate on amendment No. 3222? Hearing none, the question is on agreeing to the amendment.

The amendment (No. 3222) was agreed to.

The PRESIDING OFFICER. Are there further amendments to be proposed?

The Chair recognizes the Senator from Pennsylvania.

AMENDMENT NO. 3223

Mr. HEINZ. Mr. President, I send an amendment to the desk on behalf of Mr. DOMENICI and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. HEINZ], for Mr. DOMENICI, proposes an amendment numbered 3223.

Mr. HEINZ. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following:

TITLE .—CHACOAN OUTLIERS PROTECTION ACT OF 1990

SEC. . SHORT TITLE.

This title may be cited as the "Chacoan Outliers Protection Act of 1990".

Newcomb	50
Peach Springs	1,046
Pierre's Site	440
Raton Well	23
Salmon Ruin	5
San Mateo	61
Sanostee	1,565
Section 8	10
Skunk Springs/Crumbled House	553
Stand Rock	348
Toh-la-kai	10
Twin Angels	40
Upper Kin Klizhin	60.".

SEC. . MAP.

A map entitled "Chaco Culture Archeological Protection Sites" generally depicting the 37 outlying sites shall be kept on file and available for public inspection in the office of the Headquarters of the Chaco Culture National Historical Park, the office of the State Director of the Bureau of Land Management in Santa Fe, New Mexico, the Office of the Area Director of the Bureau of Indian Affairs in Window Rock, Arizona, and the offices of the State Historic Preservation Officers of Arizona and New Mexico.

SEC. . AMENDMENT TO THE MASAU TRAIL.

Section 201 of Public Law 100-225 (101 Stat. 1539, 460uu-11) is hereby amended by striking "New Mexico and eastern Arizona" wherever it occurs and inserting in lieu thereof "New Mexico, eastern Arizona, and southwestern Colorado".

SEC. . AMENDMENTS OF PURPOSES.

Subsection (b) of section 501 of the Act of December 19, 1980 (94 Stat. 3228, Public Law 96-550), is hereby amended by striking "San Juan Basin;" and inserting in lieu thereof "San Juan Basin and surrounding areas;".

SEC. . ADDITIONS TO ARCHEOLOGICAL PROTECTION SITES.

Subsection (b) of section 502 of the Act of December 19, 1980 (94 Stat. 3228, Public Law 96-550), is hereby amended by deleting it in its entirety and replacing it with the following new subsection (b):

"(b) Thirty-seven outlying sites are hereby designated as 'Chaco Culture Archeological Protection Sites'. The thirty-seven archeological protection sites totalling approximately 13,767 acres identified as follows:

"Name:	*Acres*
Allentown	380
Andrews Ranch	950
Bee Burrow	480
Bisa'ani	131
Casa del Rio	40
Casamero	160
Chimney Rock	3,160
Coolidge	450
Dalton Pass	135
Great Bend	26
Greenlee Ruin	60
Grey Hill Spring	23
Guadalupe	115
Halfway House	40
Haystack	565
Hogback	453
Indian Creek	100
Jaquez	26
Kin Nizhoni	726
Lake Valley	30
Manuelito-Atsee Nitsaa	60
Manuelito-Kin Hochoi	116
Muddy Water	1,090
Navajo Springs	260

TITLE —LECHUGUILLA CAVE STUDY ACT

SEC. . SHORT TITLE.

This title shall be cited as the "Lechuguilla Cave Study Act of 1990".

SEC. . FINDINGS.

The Congress finds that—

(1) International attention has been focused on the outstanding cave resources of Carlsbad Caverns National Park by recent explorations of Lechuguilla Cave.

(2) The recent explorations of Lechuguilla Cave have exposed spectacular wonders and revealed Lechuguilla Cave to be a world-class cave that is the longest deep cave and the second-deepest cave in the United States, is at least thirty-six miles long, and is filled with unique and awe-inspiring gypsum formations, and have caused organizations such as the National Speleological Society to describe Lechuguilla Cave as possibly the finest cave in America.

(3) Broad public interest has developed over methods to manage Lechuguilla Cave and other resources of Carlsbad Caverns National Park and to facilitate greater public enjoyment of park resources.

SEC. . AUTHORIZATION OF STUDY.

(a) IN GENERAL.—In recognition of the international significance of Lechuguilla Cave and other resources of Carlsbad Caverns National Park and the need for careful consideration of future management options, the Secretary of the Interior, acting through the Director of the National Park Service, is authorized and directed to revise the existing general management plan for Carlsbad Caverns National Park to include a study of the most appropriate ways to protect and interpret Lechuguilla Cave. The revision of the plan shall also include an evaluation of methods to facilitate greater enjoyment of other caves within the park by the public.

(b) REVISION.—Not later than two years from the date that funds are made available for the revision referred to in subsection (a), the Secretary shall submit the revision to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

SEC. . APPROPRIATION AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE —BOOTS AND SADDLES TOUR STUDY ACT

SEC. . SHORT TITLE.

This title may be cited as the "Boots and Saddles Tour Study Act of 1990".

SEC. . FINDINGS.

The Congress finds that—

(1) historic cavalry forts occupied during the Civil War and Indian campaigns in New Mexico represent a unique time period of American history, the study and interpretation of which can contribute to an understanding of the American frontier;

(2) these forts are deteriorating due to natural weathering, unsupervised human visitation, and lack of maintenance and repair; and

(3) in light of the precarious state of preservation at most of these significant cultural resources and the urgent need to protect and manage them, it is necessary to determine, through a comprehensive study, appropriate means by which the systematic interpretation, stabilization, and restoration of these valuable sites can be provided for.

SEC. . STUDY AND REPORT BY THE BUREAU OF LAND MANAGEMENT AND THE NATIONAL PARK SERVICE.

(a) STUDY.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management and the Director of the National Park Service, shall conduct a study of the following historic forts in the State of New Mexico occupied during the Civil War and Indian campaigns:

(1) Fort Stanton;
(2) Fort Union;
(3) Fort Sumner;
(4) Fort Craig;
(5) Fort Cummings;
(6) Fort Seldon;
(7) Fort Bayard; and
(8) Fort McRae.

(b) REPORT.—Not later than 1 year from the date that funds are made available for the study referred to in subsection (a), the Secretary shall transmit the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(c) STUDY CONTENT.—The study shall develop alternative means of interpreting and preserving the forts referred to in subsection (a) including the feasibility of establishing tour routes for vehicles and horse-mounted visitors which may encompass common themes and link appropriate sites, and such other information as the Secretary may deem necessary.

SEC. . APPROPRIATION AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

The PRESIDING OFFICER. Is there further debate on amendment No. 3223? The Chair, hearing none, the question is on agreeing to the amendment.

The amendment (No. 3223) was agreed to.

The PRESIDING OFFICER. Are there further amendments?

Mr. HEINZ. Mr. President, I suggest we move to third reading and final passage.

The PRESIDING OFFICER. The Chair, hearing of no further amendments, without objection the bill is deemed read the third time and passed.

So the bill (H.R. 2566), as amended, was passed.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF WILLIAM A. CASSITY

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 1017, an act for the relief of William A. Cassity.

The PRESIDING OFFICER. Without objection, the Judiciary Committee is discharged.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1017) for the relief of William A. Cassity.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3224

(Purpose: to reduce the cost to the Government of a 328-mile move from $14,312.01 to $5,000.00)

Mr. HEINZ. Mr. President, I send an amendment to the desk for Mr. THURMOND and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. HEINZ], for Mr. THURMOND, proposes an amendment numbered 3224.

Mr. HEINZ. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 7, delete "$14,312.01" and insert in lieu thereof "$5,000.00".

The PRESIDING OFFICER. Is there debate on amendment No. 3224? The Chair hearing none, the question is on agreeing to the amendment.

The amendment (No. 3224) was agreed to.

Mr. HEINZ. Mr. President, I suggest we move to third reading and final passage.

The PRESIDING OFFICER. Without objection, the bill is deemed to have been read the third time and passed.

So the bill (H.R. 1017) was passed.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF JOCELYNE CARAYANNIS AND MARIE CARAYANNIS

RELIEF OF BENJAMIN H. FONOROW

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of the following bills:

H.R. 1230. An act for the relief of Jocelyne Carayannis and Marie Carayannis; and

H.R. 3298. An act for the relief of Benjamin H. Fonorow.

That the Senate proceed to their immediate consideration en bloc, that they be read a third time and passed, and that the motions to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bills (H.R. 1230) and (H.R. 3298) were passed.

Mr. CRANSTON. Mr. President, I move to reconsider the vote.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LITHUANIAN INDEPENDENCE DAY

A NATIONAL DAY OF PRAYER FOR MEMBERS OF AMERICAN FORCES AND AMERICAN CITIZENS STATIONED OR HELD IN THE MIDDLE EAST, AND FOR THEIR FAMILIES

NATIONAL HUMANITIES WEEK

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of the following joint resolutions:

H.J. Res. 606. Joint resolution designating February 16, 1991, as "Lithuanian Independence Day;"

H.J. Res. 673. Joint resolution designating November 2, 1990, as "A National Day of Prayer for Members of American Forces and American citizens Stationed or Held in the Middle East, and for Their Families"; and

H.J. Res. 562. Joint resolution designating October 21 through October 27, 1990, as "National Humanities Week."

That the Senate proceed to their immediate consideration en bloc, that they be read a third time and passed, and preambles where indicated be agreed to, and that the motions to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the joint resolutions (H.J. Res. 606, H.J. Res. 673, and H.J. Res. 562) were passed.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the joint resolutions were passed.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZE THE LEASE OF LANDS ON THE MILLE LACS INDIAN RESERVATION

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be discharged from further consideration of H.R. 3618, a bill to authorize the lease of lands on the Mille Lacs Indian Reservation, and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the committee is discharged.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3618) to authorize the lease of lands on the Mille Lacs Indian Reservation for a term not to exceed 99 years.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3225

(Purpose: To provide a substitute for the bill)

Mr. CRANSTON. Mr. President, I send a substitute amendment to the desk on behalf of Senator INOUYE, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mr. CRANSTON], for Mr. INOUYE, proposes an amendment numbered 3225.

Mr. CRANSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. INOUYE. Mr. President, the amendment I am offering today to H.R. 3618 concerns the Pueblo de Cochiti of New Mexico.

The amendment will protect the Pueblo de Cochiti from development of lands within the pueblo's borders that it strongly opposes and which seriously threaten the pueblo's religious practices.

In recent years, there have been efforts by various parties to secure the construction of a major hydroelectric facility at Cochiti Dam. Over the protest of the pueblo, the Federal Energy Regulatory Commission [FERC] granted a developer a preliminary permit allowing feasibility studies to be made for a project at the site. It is anticipated that further proceedings will take place before FERC on a license application for development of the site next year, although the pueblo recently filed a motion with FERC to cancel the preliminary permit.

Mr. President, the pueblo has suffered greatly from conditions that have arisen due to seepage from the Cochiti Dam. Under Public Law 100-202, Congress took action directing the Corps of Engineers to study alternative solutions and to come to agreement with the pueblo on the best alternative for resolving the seepage problem. The pueblo recently reported to the Select Committee on Indian Affairs that negotiations with the corps are going well and that this problem is on its way to being resolved.

The pueblo believes, however, that the threat to its traditional way of life from hydroelectric development may present an even greater threat than the seepage problem that is now being successfully addressed. The pueblo has been advised that any development of the dam for electric power will involve further interference with a sacred rock located near the outlet works of the dam. The pueblo strongly believe that further interference with the rock will be a desecration that will seriously and adversely affect its traditional religious practices.

The amendment I offer today states simply that the Federal Energy Regulatory Commission may not issue a license to hydroelectric power at the Army Corps of Engineers' Cochiti Dam. This is a fair resolution of a serious potential threat to native American religious freedom.

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS OF H.R. 3618 AS AMENDED

TITLE I—INDIAN ARTS AND CRAFTS

Section 101. Short Title.

Section 101 cites the title as the "Indian Arts and Crafts Act of 1989."

Section 102. Powers of Indian Arts and Crafts Board.

Section 102 amends the 1935 Act to promote the development of Indian arts and crafts by expanding the powers of the Indian Arts and Crafts Board to include registration of trademarks by the Government without charge, and to assign them to individual Indians or tribes, again without charge.

Section 103. Referral for Criminal and Civil Violations.

Section 103 adds a new section 5 to the 1935 Act establishing the Arts and Crafts Board. Subsection (a) of this new section authorizes the Board to refer complaints to the FBI for investigation. It further authorizes the Board, on the basis of such investigation, to recommend to the Attorney General that criminal proceedings under that section be instituted.

Section 104. Criminal Penalty for Misrepresentation of Indian Produced Goods and Products.

Subsection (b) of the new section also authorizes the Board to recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action under section 6 of the Act.

Section 104(a) amends section 1159 of title 18, United States Code, which establishes existing penalties for criminal misrepresentation of any item as an Indian product when that product is not Indian made. Section 1159, as amended, includes four subsections.

Subsection (a) of section 1159, as amended, merely restates existing law making it a crime to misrepresent a product as Indian-produced.

Subsection (b) of section 1159, as amended, expands the criminal penalties by increasing the fines and prison terms for the first and subsequent violations. Pursuant to a suggestion from the Department of Commerce, the criminal penalties provided for in the bill as introduced, were increased by the subcommittee amendment to make them more consistent with penalties for comparable offenses under existing law.

Subsection (c) of section 1159, as amended, defines the terms "Indian," "Indian product," "Indian tribe," and "Indian arts and crafts organization" for purposes of the section. Several members of Congress, who have state recognized but not Federally recognized Indian tribes in their districts, objected to the definition of Indian tribe, on the grounds that it did not include state recognized tribes. Because such tribes were not "Indian tribes" within the meaning of the bill, artisans in those tribes who represented their goods as Indian made would arguably be in violation of the Act. To avoid this problem, the definition of Indian tribe was revised to include state recognized tribes.

Subsection (d) of section 1159, as amended, adds a severability clause.

Section 104(b) is a conforming amendment to the table of sections for chapter 53 of title 18.

Section 105. Cause of Action for Misrepresentation of Indian Produced Goods and Products.

Section 105 adds a new section 6 to the 1934 Act, establishing the Indian Arts and Crafts Board, as follows:

Subsection (a) of the new section 6 adds new civil penalties for misrepresentation that may be sought by a tribe, Indian or Indian arts and crafts organization to obtain injunctive or other equitable relief and damages including treble damages.

Subsection (b) of the new section 6 provides that, in addition to the relief as defined in subsection (a), the plaintiff may be awarded punitive damages and the cost of the suit as well as reasonable attorney's fees.

Subsection (c)(1) establishes that a civil action may be commenced under subsection (a) in the following situations: (A) by the Attorney General of the United States upon the request of the Secretary of the Interior on behalf of an Indian, an Indian tribe or an Indian arts and crafts organization; (B) by an Indian tribe on behalf of itself or a tribal member, or on behalf of an Indian arts and crafts organization.

Subsection (c)(2) provides that in such cases any amount recovered pursuant to this section shall be paid to the prevailing plaintiff after the cost of the suit and attorney's fees are reimbursed to the Attorney General. In cases where the Indian tribe files on behalf of itself, the amount recovered for the cost of the suit and attorney's fees may be deducted from the total amount awarded under subsection (a)(2)(c).

Subsection (d)(1) defines the term "Indian" to be any individual who is a member of an Indian tribe; or any individual who is certified by the tribe as an Indian artisan.

Section (d)(2) defines the term "Indian product" and "product of a particular Indian tribe or tribal organization."

Section (d)(3) defines the term "Indian tribe" to mean any Indian tribe, band, nation, Alaska Native village, or other organized group of community which is recognized by a state government or the United States as eligible for special services because of the status of its members as Indians.

Section (d)(4) defines the term "Indian arts and crafts organization" to mean a marketing organization composed of members of Indian tribes.

Section (e) adds a severability clause.

Section 106. Penalty for Counterfeiting Indian Arts and Crafts Board Trademark.

Section 106 expands the existing criminal penalties for counterfeiting an Indian Arts and Crafts Board trademark as established under section 1158 of title 18, United States Code, by raising the maximum fines and terms of imprisonment for first and subsequent violations.

Section 107. Certification of Indian Artisans.

Section 107 authorizes Indian tribes, as defined by the Act, to certify individuals as Indian artisans who would not otherwise qualify as members of the tribe.

TITLE II—TECHNICAL AND CLARIFYING AMENDMENTS

Section 201. Amendments to Indian Self-Determination and Education Assistance Act.

Section 201(1) clarifies that a tribal organization's right to request that its contract be considered mature applies to all past and future contracts, and is not limited to contracts in effect on the date of enactment of the 1988 amendments. The clause deleted by this subsection has led to confusion regarding the process for designating as "mature" those contracts that are awarded for the first time after the 1988 amendments.

Section 201(2) clarifies that the benefits accorded tribes elsewhere in the Act relating to contracts (such as funding amounts, prohibited funding reductions, savings, carryover, etc.) apply equally to grants and cooperative agreements which, under section 9, may be utilized in lieu of a contract when mutually agreed to by the tribal organization and the Secretary.

Section 201(3) makes a correction to the 1975 Act that was overlooked during the 1988 amendments. Under those amendments, Section 106(a)(3) authorizes tribes to retain savings of unexpended funds to be used for specific purposes and section 8 authorizes tribes to carry over unexpended funds into the next fiscal year. However, in making these changes, Congress did not show these new provisions as exceptions to section 5(d) of the Act, which is a general requirement that unexpended funds be returned to the Treasury. This amendment will make those exceptions part of section 5(d).

Section 202. Amendments to the Indian Self-Determination Act

Section 202(a) amends section 106 of the Act by extending to fiscal year 1992 the time under which tribes and tribal organizations are exempt from liability for theoretical or actual under-recoveries and over-recoveries of indirect costs. This will allow an additional period for the tribes and the agencies to resolve outstanding issues.

Section 202(b) amends Section 102(d) of the Act which reflects a comprehensive effort by Congress to make the Federal Tort Claims Act applicable to all medically-related liabilities arising out of the administration by tribal contractors of Federal medical programs. Despite the congressional intent to comprehensively cover this entire area in subsection (d), the Public Health Service has taken the position that only health services delivered in connection with the operation of ambulances or other emergency medical motor vehicles are within the scope of the Federal Tort Claims Act. The amendment addresses this issue by expressly making the Federal Tort Claims Act also applicable to the actual operation of vehicles.

Section 202(c) corrects an oversight in the 1988 amendments which suggests that despite a tribal organization's desire otherwise, a contract declared to be "mature" must *always* be for an indefinite term, and may never have a termination date. This oversight yields the peculiar result of not permitting a mature contract to ever end unless the special retrocession procedures set forth in section 109 of the Act are triggered.

Congress intended to expand the range of options available to tribes through the more liberalized "mature" designation, not to restrict those options, and the section as presently written is defective. The amendment makes clear that a mature contract can be for either a fixed term or for an indefinite term, with the choice to be made by the affected tribe or tribal organization. The amendment also makes clear that a tribal organization, as in all instances, is limited by any applicable restrictions contained in a tribal resolution when requesting mature contract status. For instance, if a tribe has only granted a tribal organization authority to contract for five years, the tribal organization cannot request as a term of a mature contract a provision which would result in a contract lasting longer than five years.

Section 202(d) corrects current law which "defaults" to the calendar year as the funding period for self-determination contracts, beginning with fiscal year 1990. That is, unless a tribe or tribal organization affirmatively selects a different funding period and the Secretary agrees to it, all contracts and agreements are automatically converted to the calendar year.

Although the current law reflects the desires of many tribes and will typically improve financial management, many tribal contractors do not want to convert to the calendar year in 1990. This includes many school contractors who hope that Congress will enable schools to convert to a July-June period by making the necessary one-time additional funds available in fiscal year 1991. Under the current law, these contractors are required to obtain concurrence from the appropriate Secretary to maintain the status quo. Similarly, any contractor wishing to move to any funding period other than the calendar year (or the government's fiscal year) must first obtain the Secretary's concurrence.

Moving from the government's fiscal year to the calendar year (or to any other contract period) necessarily has one-time funding implications for the transition year (the year in which conversion to the new contract period is effected). In the case of conversion from the fiscal to the calendar year, funds for one additional quarter must be appropriated (as was done for fiscal year 1990). If any other contract period is agreed upon, one-time additional appropriations would be needed for two or three extra quarters in the transition year. Yet, existing law requires the BIA and IHS to only report the amount of the additional funding needed for contract conversion in fiscal year 1989. In fiscal year 1990, a one-time appropriation was made available to convert all contracts to a calendar year basis. Some contractors wish to retain a fiscal year basis of funding, or in the case of school contractors, to convert to a July-June period, and some contractors are unaware that their contracts will be automatically converted to a calendar year basis. Accordingly, section 2(d) provides the flexibility for a tribal contractor and the Secretary to agree upon a different basis of funding, subject to the availability of appropriations to effect a conversion from a calendar year basis of funding.

Existing law does not provide a mechanism for exercising calendar year contracting rights after 1990, where a contractor decides to stay with fiscal year contracting for the time being. Nor does it require the Secretary to report on the additional funding needed for contract conversions effected after fiscal year 1989. The proposed amendment corrects these technical deficiencies.

Section 202(e) clarifies that Congress, in enacting the 1988 amendments, understood that the Secretary of the Interior and the Secretary of Health and Human Services had statutory authority to convey real property to an Indian tribe or tribal organization. Although the Secretary of the Interior agrees that such authority exists (25 U.S.C. 443a), officials within the Department of Health and Human Services have raised the question of whether their authority goes so far. If it does not, DHHS would have to make an interagency transfer to Interior, so Interior could then convey the property to a tribe. The amendment clarifies that both Secretaries have the authority to convey real property to an Indian tribe or tribal organization under the circumstances addressed in subsections (f)(2) and (f)(3).

Section 202(f) conforms with the 1988 amendments in which Congress made clear in subsection (b) that the Secretary was to formulate appropriate regulations to implement the Act, as amended, "with the participation of Indian tribes." Subsection (c) of section 107, which deal with future amendments to such regulations, was not similarly amended. Obviously, it is equally important that Indian tribes participate in the development of future amendments. The proposed amendment clarifies the intent of the Congress on this issue.

TITLE III—AMENDMENTS TO OTHER ACTS

Section 301. Amendments to other acts.

Section 301(a) amends the Indian Land Consolidation Act to make clear that lands within a reservation or other trust lands outside of reservations subject to the escheat provision of the Act, escheat to the recognized tribal government of the particular reservation, or to the tribal government that has jurisdiction over the off-reservation lands, and not to a different tribal government. For example, if a member of the Quinault Indian Nation who owns land within the Lummi Indian Reservation that is subject to the escheat provision of the Indian Land Consolidation Act, dies intestate, his land would escheat to the Lummi Indian Tribe and not the Quinault Indian Nation.

Section 301(b) clarifies the quinault Indian Nation Land Act of 1988 so that both the map and its attachments make up the Quinault Indian Reservation boundary description. The referenced map and attached metes and bounds description appears in printed record of the hearing on S. 2772, which was enacted as P.L. 100-638; see, S. Hrg. 100-927, at 134-135.

Section 301(c) amends 25 U.S.C. 483, a law enacted in 1956 that authorized Indian owners of land held in trust or restricted status by the United States to mortgage the land with the approval of the Secretary of the Interior. In 1984 Congress amended 25 U.S.C. 483 to allow foreclosed land purchased by an Indian or an Indian tribe to remain in trust status. Under the 1956 version of section 483, Indian land foreclosed upon was required to lose its trust status. Adherence to state foreclosure law was mandated. Unfortunately, the 1984 perfecting amendment to 25 U.S.C. 483 only partially cured the problem: it protected the trust status of foreclosed lands when the purchas-

er was Indian, but it did not authorize application of tribal foreclosure law on Indian trust land.

Increasingly, Indian tribes seek to advance economic independence and self-government through tribal credit loan programs benefitting Indians and Indian businesses. In order for loan programs to operate efficiently, foreclosure must be an option. Many tribes, therefore, are in the process of adopting tribal foreclosure ordinances. This amendment will ensure that tribes are able to enforce foreclosure laws not only on Indian fee lands but on Indian trust lands.

Section 302. Amendment to the Act of June 24, 1938

Section 302 amends section 1 of the 1938 Act by adding a new subsection (b):

The new section (b)(1) authorizes the Secretary, at the request of an Indian tribe or individual Indian, to invest trust funds in debt obligations issued or guaranteed by the United States, or in a mutual fund registered with the Securities and Exchange Commission, provided that the trust funds to be invested exceed $50,000, the guarantee is to both principal and interest, and the Secretary is satisfied with the protection against loss of the principal of such funds.

The new section (b)(2) authorizes the Secretary to require the tribe or individual Indian to relieve the United States of liability in connection with interest income during the time the funds are invested under the authority of section (b)(2). The Committee intends that any management fees associated with investment in a mutual fund as authorized by this subsection will be the responsibility of the tribe or individual Indian requesting such investment.

The new section (b)(3) clarifies that the tax exempt status of income from trust funds will continue if this option is exercised.

Section 303. Amendment to the Indian Financing Act of 1974

Section 303(a) amends section 101 of the Act to authorize the Secretary to use Revolving Loan Fund monies: (a) in loans to Indians who are also receiving a bank loan, (b) as a contribution to the Loan Guarantee Fund or (c) as interest subsidy payments.

Section 303(b) amends section 204 of the Act to eliminate the word "prior" and to make the Secretary's review of applications for certain purposes discretionary rather than mandatory. This is intended to give the Secretary the flexibility necessary to reorganize the Loan Guarantee program along the lines of the Preferred Lenders Program of the Small Business Administration.

TITLE IV—PUBLIC HEALTH SERVICE ACT

Section 401. Amendment to Public Health Service Act.

Section 401 amends the Public Health Service Act to provide that funds for scholarships for Native Hawaiians may be provided to Kamehameha Schools/Bishop Estate by means other than a contract.

TITLE V—BOARD OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

Section 501. General Powers of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development

Section 501(a) amends section 1507 of the Act to clarify that interest on earnings of funds invested by the Institute may be used by the Institute to carry out its purposes, providing the Board of Trustees uses reasonable and prudent standards of care in exercising their fiduciary responsibilities.

Section 501(b) amends 1507(a)(11) to expand the authority of the Institute to purchase property and liability insurance.

Section 502. Establishments within the Institute.

Section 502 amends 1510(b) of the Act to clarify that the President of the Institute shall give direction to the Museum of American Indian and Alaska Native Arts.

Section 503. Transfer of Functions.

Section 503 adds a new subsection to section 1514 of the Act to clarify that the Institute is responsible only for any requirements or actions that occurred after the transfer of the Institute from the United States Department of the Interior to the new Board of Trustees in June 1988 and provides that the Institute is held harmless from any prior obligations or actions, the responsibility for which remains with the Department of the Interior, Bureau of Indian Affairs.

Section 504. Compliance with other Acts.

Section 504 adds a new subsection (c) to section 1517 of the Act to clarify that funds received by the Institute through its regular appropriation will not be considered Federal funds for purposes of matching requirements of other laws.

Section 505. Endowment Programs.

Section 505 splits the existing endowment program of section 1518 into two parts: a program enhancement endowment and a capital improvement endowment. In addition, this section clarifies that in-kind contributions may count toward matching requirements, that interest earned from endowment funds may be used as part of the non-Federal match, and that the Federal share of the principal of the construction endowment may be removed and used without penalty.

Section 506. Authorization of Appropriations.

Section 506 amends section 1531(a) of the Act by providing for expeditious transfer of appropriated funds to the Institute by the Secretary of the Treasury and by authorizing forward funding.

COCHITI DAM

Mr. DOMENICI. Mr. President, I wish to commend the Select Committee on Indian Affairs for moving this legislation, and I would like to point out to my colleagues a provision of importance to the people of New Mexico.

Cochiti Dam was built a number of years ago on land of the Cochiti Pueblo. Since that time, there has been interest expressed by private parties to obtain a Federal license to construct a hydroelectric plant at the dam.

Such a plant, however, would infringe on sacred lands of the pueblo. The Cochiti people strongly oppose such a facility.

The provision added by the Select Committee on Indian Affairs, a provision I strongly support, would prohibit the issuance of any license by the Federal Government for such a hydro plant.

I believe that this provision is sound, and important to the Cochiti Pueblo. I comment the committee and others in the Senate who recognize the fairness of this language preventing construction of a facility that would seriously infringe on the Cochiti Pueblo.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3225) was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Without objection, the bill is deemed to have been read a third time and passed.

So the bill (H.R. 3618) was passed.

Mr. REID. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REPAYMENT OF LOANS MADE TO WOLF TRAP FARM PARK

Mr. CRANSTON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1859, the Wolf Trap repayment bill.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1859) entitled "An act to restructure repayment terms and conditions for loans made by the Secretary of the Interior to the Wolf Trap Foundation for the Performing Arts for the reconstruction of Filene Center in Wolf Trap Farm Park in Fairfax, County, Virginia, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. REPAYMENT OF LOANS MADE WITH RESPECT TO WOLF TRAP FARM PARK.

Section 4(b) of the Wolf Trap Farm Park Act (16 U.S.C. 284c(b)) is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by inserting at the end the following:

"(2)(A) The term of the loans made pursuant to paragraph (1) which are outstanding on the effective date of this paragraph may not exceed the 25-year period beginning on such date. The remaining obligation of such loans shall be paid in equal annual installments, commencing June 1, 1991, except that for the first 3 payments, the payment shall be $215,000 each year. In addition, such payments (including the first 3 payments) may be reduced in any year by a credit not to exceed $60,000 annually. Such credit shall equal 100 percent of the market value of public service tickets determined at prevailing Foundation box office prices. Such credit shall be allowed only for tickets contributed to entities holding a status referred to in section 501(c)(3) of the Internal Revenue Code of 1986.

"(B)(i) Unpaid interest on such amount which accrued before the effective date of this paragraph is hereby forgiven.

"(ii) Notwithstanding paragraph (1), there shall be no interest on the loan referred to in

subparagraph (A) after the effective date of this paragraph if, within 120 days after such date, the Foundation modifies its agreement with the Secretary to implement this paragraph, paragraph (3), and section 5(c)(4). If such agreement is not modified within the 120-day period, interest shall accrue from the effective date of this paragraph in accordance with paragraph (1).

"(C) Notwithstanding any other provision of law, amounts paid to the Secretary pursuant to this paragraph may be retained until expended by the Secretary, in consultation with the Foundation, for the maintenance of structures, facilities, and equipment of the Park.

"(D) The Secretary shall, within 120 days after the effective date of this paragraph, submit a payment schedule to the Foundation specifying the amount of each annual payment to be made by the Foundation pursuant to this paragraph.

"(3) If the Foundation is in default on its obligations under this subsection for more than 60 consecutive days, the Secretary, acting in the public interest, shall terminate the cooperative agreement described in section 5. In the event of a major catastrophe or severe economic situation, the Secretary may submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a recommendation that this paragraph be temporarily suspended. In submitting such a request, the Secretary shall submit clear evidence of the financial status of the Foundation.".

SEC. 2. PROHIBITION OF COMMINGLING FOUNDATION FUNDS AND PARK FUNDS.

Section 5(c) of the Wolf Trap Farm Park Act (16 U.S.C. 284d(c)) is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; and"; and

(3) by adding after paragraph (3) the following:

"(4) the Foundation will maintain accounts for Foundation activities outside of the Park separate from Foundation accounts for presentation of performing arts and related programs presented at the Center and other areas of the Park.".

SEC. 3. STUDY OF PARK FUTURE.

The Wolf Trap Farm Park Act (16 U.S.C. 284 et seq.) is amended by adding at the end the following:

"SEC. 13. STUDY.

"The Secretary, acting jointly with the Foundation, shall conduct a study and analysis of the operations and management practices which are being used to carry out the purposes of this Act. The study shall include analysis of the management relationship between the Foundation and the Park, a delineation of the operational responsibilities of the Foundation and the Park, and an analysis of the financial condition of the Foundation. Not later than 2 years after the date of enactment of this section, the Secretary shall submit a report of such study and analysis to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.".

SEC. 4. EFFECTIVE DATES.

(a) The amendments made by sections 1 and 2 shall take effect on the date on which the Wolf Trap Foundation for the Performing Arts modifies its agreements entered into pursuant to the Wolf Trap Farm Park Act in a manner which is consistent with and takes into account the amendments made by this Act, as determined by the Secretary of the Interior.

(b) The amendment made by section 3 shall take effect on the date of enactment of this Act.

Mr. CRANSTON. Mr. President, I move that the Senate concur the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTING THE ENROLLMENT OF H.R. 5835

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Concurrent Resolution 159, submitted earlier today by Senator FORD, to correct an enrollment of the aviation section of H.R. 5835; that the concurrent resolution be agreed to; and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the concurrent resolution (S. Con. Res. 159) was agreed to, as follows:

S. CON. RES. 159

Resolved by the Senate (the House of Representatives concurring), That, in enrolling the bill (H.R. 5835) to provide a reconciliation pursuant to section 4 of Senate Concurrent Resolution 310, the Clerk of the House of Representatives shall make the following changes:

On page 67, line 22, after "changes", strike the period and all that follows through the end of the subparagraph and insert the following: ", unless an agreement relating to noise reductions at such airport is entered into between the airport proprietor and an airline or airlines constituting a majority of the airline use of such airport, in which case the exception to subsections (b) and (d) provided by this sentence shall apply only to local actions to enforce such agreement.".

Delete the word "and" after the semicolon at the end of subparagraph (v);

Delete the comma at the end of subparagraph (vi) and insert in lieu thereof "; and"; and

Insert a new subparagraph (vii) at the end of Section 9304(a)(2)(C) which reads as follows:

"(vii) a local action to enforce a negotiated airport aircraft access agreement between the airport operator and the aircraft operator in effect on the date of enactment of this Act and to establish on a mandatory basis the voluntary access restrictions currently in effect at said airport pursuant to a legal agreement and to a resolution of the County Board of Legislators in effect prior to enactment of this Act.".

EXECUTIVE SESSION

ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar 1068, Michael Joseph Bayer, to be Federal inspector of the Alaska Natural Gas Transportation System.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. I further ask unanimous consent that the nominee be confirmed, that any statements appear in the RECORD as if read, that the motion to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

Michael Joseph Bayer, of Ohio, to be Federal Inspector of the Alaska Natural Gas Transportation System.

Mr. McCLURE. Mr. President, on October 19, 1990, the Committee on Energy and Natural Resources held a hearing on the nomination of Michael Joseph Bayer to be Federal Inspector of the Alaska Natural Gas Transportation System. Mr. Bayer has submitted all required information under the committee rules and by unanimous consent the committee has been discharged from further consideration of his nomination.

Mr. Bayer began his career in Washington, DC, as a senior adviser and counsel to Congressman Brown of Ohio, from 1977 to 1981. He then served as Deputy Assistant Secretary for Congressional Affairs at the Department of Energy, 1981-82; Associate Deputy Secretary, Department of Commerce, 1982-83; political consultant, 1983-84; and counselor to the U.S. Synthetic Fuels Corporation, 1984-85. Since 1985, he has served as manager of Washington operations for Panhandle Eastern Corp.

Mr. Bayer holds a J.D. from Capital University School of Law in Ohio, and an M.B.A. and B.S. in international economics from Ohio State University.

Mr. Bayer's experience in the Federal Government, the Congress, and the private sector qualify him for the position of Federal inspector for the Alaska Natural Gas Transportation System. I urge my colleagues to join me in supporting his nomination.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

NATIONAL MEDAL OF HONOR DAY

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of House Joint Resolution 652, designating March 25, 1991, as "National Medal of Honor Day," and proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, the committee is discharged.

The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 652) to designate March 25, 1991, as "National Medal of Honor Day."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. Is there further debate? Without objection, the joint resolution is deemed to have been read a third time and passed, and the preamble agreed to.

So the joint resolution (H.J. Res. 652) was passed.

Mr. CRANSTON. Mr. President, I move to reconsider the vote.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMUNITY CENTER MONTH

Mr. CRANSTON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 357.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res 357) entitled "Joint resolution to designate September 15, 1990 to October 15, 1990 as 'Community Center Month'," do pass with the following amendments:

Page 2, line 3, strike out "September 15, 1990, to October 15, 1990,", and insert "October 1-31, 1991,".

Amend the title so as to read: "Joint resolution to designate October 1-31, 1991, as 'Community Center Month'.".

Mr. CRANSTON. I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. Without objection, the motion to concur is agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INSULAR AREAS ACT OF 1990

Mr. CRANSTON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2362.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2362) entitled "An act to enhance the survivability and recovery of the insular areas from severe storms," do pass with the following amendment:

Strike out all after the enacting clause, and insert:

This Act may be cited as the "Omnibus Insular Areas Act of 1990".

TITLE I—INSULAR AREAS DISASTER SURVIVAL AND RECOVERY ACT OF 1990

SECTION 101. SHORT TITLE.

This title may be cited as the "Insular Areas Disaster Survival and Recovery Act of 1990".

SEC. 102. DEFINITIONS.

As used in this title—

(1) the term "insular area" means any of the following: American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(2) the term "disaster" means that the President has declared a major disaster pursuant to section 401 of the Disaster Relief and Emergency Assistance Amendments of 1988 (42 U.S.C. 5170 et seq.) after September 1, 1989; and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 103. AUTHORIZATION.

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to construct facilities to protect public health and safety and to enhance the survivability of essential infrastructure in the event of disasters in the insular areas. Such sums shall remain available until expended.

SEC. 104. TECHNICAL ASSISTANCE.

(a) Upon the declaration by the President of a disaster in an insular area, the President shall assess, in cooperation with the Secretary and chief executive of such insular area, the capability of the insular government to respond to the disaster, including the capability to: assess damage; coordinate activities with federal agencies, particularly the Federal Emergency Management Agency; develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular government lacks these or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area which the President deems necessary for the recovery effort.

(b) One year following the declaration by the President of a disaster in an insular area, the Secretary shall report to Congress on the status of the recovery effort, including an audit of Federal funds expended in the recovery effort and recommendations on how to improve public health and safety, survivability on infrastructure, recovery efforts, and effective use of funds in the event of future disasters.

SEC. 105. HAZARD MITIGATION.

Upon determination by the President, the total of contributions under section 404 of the Disaster Relief and Emergency Assistance Amendments of 1988 (42 U.S.C 4121 et seq.) for insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections 403, 406, 407, 408, and 411 of such Act for any disaster: *Provided*, That the President may require a 50 percent local match for assistance in excess of 10 percent of the estimated aggregate amount of grants to be made under section 406 of such Act for any disaster.

SEC. 106. TECHNICAL AMENDMENT.

Section 102(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) is amended by inserting after the words "American Samoa," wherever it appears, the following: "the Northern Mariana Islands,".

TITLE II—GUAM EXCESS LANDS ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Guam Excess Lands Act".

SEC. 202. IN GENERAL.

(a) TRANSFER.—The Administrator of General Services shall, subject to section 203, transfer all right, title, and interest of the United States in and to the lands described in subsection (b) (together with any improvements thereon) to the Government of Guam for public benefit, by quitclaim deed and without reimbursement, after the head of the Federal agency which controls such lands determines whether any of those parcels are excess to the needs of such agency.

(b) LANDS DESCRIBED.—The lands referred to in subsection (a) consist of—

(1) those parcels in Guam generally described in Tab A of the March 19, 1986, Memorandum for the Secretary of Defense entitled "Retention of Excess Military Lands on Guam" and more particularly described on a map identified as "Appendix B—GLUP Disposal Parcels" of the "Implementation Plan for the Guam Land Use Plan" on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii, which have not already been disposed of on or before the date of enactment of this title;

(2) Talofofo "HH" (homer) facility shown on a map identified as "Drawing No. PC-D-723-8" on file at the Western-Pacific Regional Branch of the Federal Aviation Administration in Honolulu, Hawaii;

(3) Andersen Radio Beacon Annex, AJKG shown on a map entitled "Drawing # Tab C-1, sheet 8 of 12" on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii; and

(4) Parcel 3, NAVSTA Guam shown on a map entitled "NAVFAC Drawing No. 7,053,119 marked as Exhibit 'A'" on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii.

(c) LEGAL DESCRIPTIONS.—The exact acreages and legal descriptions of all lands to be transferred under this title shall be determined by surveys which are satisfactory to the head of the controlling Federal agency referred in subsection (a). The cost of such surveys, together with all direct and indirect costs related to any conveyance under this section, shall be borne by such controlling Federal agency.

SEC. 203. TERMS AND CONDITIONS.

(a) FURTHER FEDERAL UTILIZATION SCREENING.—Lands determined to be excess property pursuant to section 202 shall be screened for further Federal utilization in accordance

with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and such screening will be completed within 45 days after the date on which they are determined to be excess.

(b) APPRAISAL.—The Administrator shall promptly appraise those parcels that are not needed for further Federal utilization to determine their estimated fair market value. The head of the Federal agency which controls such lands shall cooperate with the Administrator in carrying out appraisals under this section. The Administrator shall submit a copy of the appraisals to the committees of the Congress specified in subsection (d). The cost of such appraisals shall be paid for under section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b)).

(c) LAND USE PLANS.—The lands to be transferred under this title shall be eligible for transfer after the Government of Guam enacts legislation which establishes a detailed plan for the public benefit use of such lands and the Governor of Guam submits such plan to the committees of the Congress specified in subsection (d), and provides copies of such plan to the Secretary of the Interior and the Secretary of Defense.

(d) SUBMISSIONS.—The appraisals and plans required to be submitted to the committees of the Congress under subsections (b) and (c) shall be submitted to the Committee on Interior and Insular Affairs, the Committee on Armed Services, and the Committee on Government Operations of the House of Representatives and the Committee on Energy and Natural Resources, the Committee on Armed Services, and the Committee on Governmental Affairs of the Senate.

(e) REVIEW BY COMMITTEES.—Lands may not be transferred under this title until 180 days after the submission to the committees of the Congress specified in subsection (d) of—

(1) the appraisal provided for in subsection (b), and

(2) the land use plan provided for in subsection (c).

SEC. 204. OBJECTS AFFECTING NAVIGABLE AIRSPACE.

The conveyance document for any land transferred under this title located within six nautical miles of an airport shall contain a provision that requires a determination of no hazard to air navigation to be obtained from the Federal Aviation Administration in accordance with applicable regulations governing objects affecting navigable airspace or under the authority of the Federal Aviation Act of 1958, Public Law 85-726, as amended, in order for construction or alteration on the property to be permitted.

SEC. 205. SEVERE CONTAMINATION.

Notwithstanding any other provision of this title, the Administrator of General Services, in his discretion, may choose not to transfer any parcel under this title on which there is severe contamination, the remedy of which would require the United States to incur extraordinary costs.

SEC. 206. APPLICATION OF FEDERAL AND TERRITORIAL LAWS.

All Federal and territorial environmental laws and regulations shall apply to the parcels transferred pursuant to this title during and after the transfer of such parcels.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. GUAM HOSPITAL.

There is hereby authorized to be appropriated $2,500,000 to the Secretary of the Interior for a grant to the Government of Guam to complete medical facilities in Guam.

SEC. 302. THE INSULAR AREAS ENERGY ASSISTANCE AMENDMENT OF 1990.

Section 604 of the Act entitled "An Act to authorize appropriations for certain insular areas of the United States, and for other purposes", Public Law 96-597, as amended by Public Law 98-213 (48 U.S.C. 1492), is amended by adding the following subsection—

"(g)(1) There are hereby authorized to be appropriated $500,000 to the Secretary of Energy for each fiscal year for grants to insular area governments to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy measures which reduce the dependence of the insular area on imported fuels and improve the quality of life in the insular area.

"(2) Factors which shall be considered in determining the amount of financial assistance to be provided for a proposed energy-efficency or renewable energy grant under this subsection shall include, but not be limited to, the following—

"(A) Whether the measure will reduce the relative dependence of the insular area on imported fuels;

"(B) The ease and costs of operation and maintenance of any facility contemplated as part of the project;

"(C) Whether the project will rely on the use of conservation measures or indigenous, renewable energy resources that were identified in the report by the Secretary of Energy pursuant to this section or identified by the Secretary as consistent with the purposes of this section; and

"(D) Whether the measure will contribute significantly to the quality of the environment in the insular area.".

SEC. 303. INSULAR GOVERNMENT PURCHASES.

The governments of American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands are authorized to make purchases through the General Services Administration.

SEC. 304. FREELY ASSOCIATED STATE CARRIER.

(a) In furtherance of the objectives of the Compact of Free Association Act of 1986 (P.L. (99-239) and notwithstanding any other provision of law, a Freely Associated State Air Carrier shall not be precluded from transportation, between a place in the United States and a place in a state in free association with the United States, by air of persons (and their personal effects) and property procured, contracted for, or otherwise obtained by any executive department or other agency or instrumentality of the United States for its own account or in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into under which payment is made by the United States or payment is made from funds appropriated, owned, controlled, granted, or conditionally granted or utilized by or otherwise established for the account of the United States, or shall be furnished to or for the account of any foreign nation, or any international agency, or other organization, of whatever nationality, without provisions for reimbursement.

(b) The term "Freely Associated State Air Carrier" shall apply exclusively to a carrier referred to in Article IX(5)(b) of the Federal Programs and Services Agreement Concluded Pursuant to Article II of Title II and section 232 of the Compact of Free Association.

TITLE IV—VIRGIN ISLANDS REUNIFICATION ACT

SEC. 401. SHORT TITLE.

This title may be cited as the "Virgin Islands Reunification Act".

SEC. 402. TRANSFER.

Subject to the provisions of section 403 of this Act, the Secretary of the Interior is authorized and directed to transfer Water Island to the Government of the Virgin Islands pursuant to option numbered 7 of the report of the Department of Interior submitted pursuant to section 6 of the Omnibus Insular Areas Act of 1986 (P.L. 99-396, 100 Stat. 839).

SEC. 403. EFFECTIVE DATE.

The Secretary may convey title to Water Island by quitclaim deed 90 days after—

(1) an appraisal has been completed determining the land value of Water Island and the value of the improvements made by the holders of the Master Lease and/or Subleases;

(2) the Governor of the Virgin Islands submits a detailed plan for its use which has been approved by the Legislature of the Virgin Islands to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and which will hold the Government of the United States harmless with regard to any obligations under provisions of the 1952 lease between the Department of the Interior and Water Island Incorporated (assigned to Water Isle Hotel and Beach Club Ltd.); and

(3) after the Governor of the Virgin Islands grants conservation easements aceptable to the Secretary of the Interior on the following tracts of land owned by the Government of the Virgin Islands within the boundaries of the Virgin Islands National Park—

Tract No.	Acreage	Description
01-115	1.00	Perkins Cay.
01-118	2.15	North Shore at Hawksnest Bay.
02-101	18.00	Whistling Cay (Island).
07-108	0.06	Booby Cay (Island).
15-108	0.41	Hassel Island.
15-109	0.20	Hassel Island (shoreline).
15-110	0.29	Do.

The conservation easements shall have the effect of prohibiting all new construction, protecting the lands in their natural state in perpetuity, providing for maintenance and protection of historic structures in accordance with the Secretary's standards on archaeology and historic preservation, and permitting such recreational use as will leave the natural and historic resources unimpaired.

TITLE V—U.S. INSULAR AREAS WATER, SEWAGE, AND POWER NEEDS

SEC. 501. FINDINGS.

The Congress hereby finds and declares that assuring adequate supplies of water, sewage, and power for the residents of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands has become a problem of such magnitude that the welfare and prosperity of these insular areas require the Federal Government to assist in finding permanent, long-term solutions to their water, sewerage, and power problems.

SEC. 502. AUTHORIZATION OF STUDY.

The Secretary of Interior is authorized and directed to undertake a comprehensive study of how the long-term water, sewage, and power needs of American Samoa, Guam the Northern Mariana Islands, Puerto Rico, and the Virgin Islands can be resolved. Such study shall be conducted in consultation with the governments of these insular areas.

SEC. 503. REQUIREMENTS OF STUDY.

Such study shall include for each jurisdiction, but not be limited to—

(1) an assessment of the magnitude and extent of current and expected needs;

(2) an assessment of how the needs can be resolved;

(3) the costs and benefits of alternative solutions;

(4) the need for additional legal authority for the President to take actions to meet the needs; and

(5) specific recommendations for the role of the Federal Government and each insular government in solving the needs.

AMENDMENT NO. 3226

Mr. CRANSTON. Mr. President, I move that the Senate concur in the House amendment with the following amendment on behalf of Senator JOHNSTON, which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mr. CRANSTON], for Mr. JOHNSTON, proposes an amendment numbered 3226.

Mr. CRANSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The question is on agreeing to the motion

The motion was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. CRANSTON. I ask unanimous consent that the Senate go into executive session to consider Executive Calendar No. 24, Investment Treaty with Panama and Executive Calendar No. 25, Treaty With Poland Concerning Business and Economic Relations, en bloc, that both treaties be considered as having been advanced through the various parliamentary stages up to and including the presentation of the resolutions of ratification, that statements be inserted, as if read; that no amendments, declarations, understandings, reservations or conditions be in order; that following the using or yielding back of time, without any intervening action, the Senate proceed to vote on the resolutions of ratification, en bloc, that the motions to reconsider be laid upon the table; that the President be immediately notified of the Senate's action and that the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The treaties will be considered to have passed through their various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

TREATY WITH POLAND CONCERNING BUSINESS AND ECONOMIC RELATIONS

The resolution of ratification was read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to ratification of the Treaty between the United States of America and the Republic of Poland concerning business and economic relations with protocol and four related exchanges of letters, signed March 21, 1990, at Washington (Treaty Doc. 101-18).

Mr. SARBANES. Mr. President, today the Senate is considering two investment-related treaties with Panama and Poland, currently before the Senate for its advice and consent. The stated objectives, for entering into these treaties are to encourage, facilitate, and protect U.S. investments undertaken in these countries. In the case of Poland, this treaty should have the additional benefit of helping to foster the development and strengthening of market institutions in that country.

The treaties with Panama and Poland represent the continuation and expansion of the United States bilateral investment treaty program first embarked upon in 1981. The pending treaties represent both old and new aspects of the bilateral investment treaty program. The treaty with Panama is one of the first treaties negotiated under the auspices of this program and has been pending in the Senate since March 25, 1986. The treaty with Poland is the latest investment treaty in the series, the first of its kind concluded with an Eastern European Country, and has only been pending before the Senate since June 19 of this year.

Both treaties contain important provisions designed to further and strengthen adherence to certain principles of international law in the area of foreign investment activities. Let me highlight just a few of these. First, both treaties contain assurances to investors of treaty parties that they will be accorded the better of national or most-favored-nation treatment in the jurisdiction of the other party, thereby providing in the case of U.S. companies a level playing field in competing with national and third-country investor. In addition, these treaties codify for treaty parties, international law standards for expropriation and for payment of prompt and fair compensation. Moreover, U.S. investors are also guaranteed access to foreign exchange and the right to repatriate capital in the conduct of their business activities. Finally, both treaties ensure investors will have access to international arbitration for settlement of investment disputes if it is so desired.

The treaty with Poland has particular importance at this juncture in the economic transformation of that country. It also provides an important benchmark for other governments in Eastern and central Europe that are interested in attracting foreign capital to assist in the transformation of their economies. This treaty contains a number of provisions that are specifically tailored to meet the unique challenges facing the Polish economy as Polish officials seek to transform that economy from one that is central controlled to one that is market-directed. In addition, certain provisions in this treaty have been included to provide additional assurances to investors from the West to encourage them to undertake activities in this newly opened economy. This includes a special provision dealing with the free transfer of funds associated with investments keeping in mind the serious balance of payments crisis confronting Poland currently. It also includes guarantees to ensure that United States investors receive nondiscriminatory treatment with respect to certain procedural matters related to the conduct of their business in Poland. Finally, this treaty provides extensive protections for intellectual property rights—a new feature in our bilateral treaty program.

Mr. President, the Poland and Panama treaties will greatly serve United States interests in promoting the strengthening of our economic relations with Panama and Poland and I urge my colleagues to give advice and consent to their ratification.

INVESTMENT TREATY WITH PANAMA

The resolution of ratification was read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to ratification of the Treaty between the United States of America and the Republic of Panama concerning the treatment and protection of investments, with agreed minutes, signed at Washington, October 27, 1982 (Treaty Doc. 99-14).

Mr. CRANSTON. Mr. President, I ask for a division vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the adoption of the resolution of ratification, and a division vote has been requested.

All those in favor, please rise and remain standing until counted.

All those opposed, please stand and remain standing until counted.

The PRESIDING OFFICER. Two-thirds of the Senators present appear to have voted in the affirmative. The resolutions of ratification are adopted.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

SUNSET CRATER VOLCANO NATIONAL MONUMENT

Mr. CRANSTON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2566.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2566) entitled "An act to redesignate the Sunset Crater National Monument as the Sunset Crater Volcano National Monument," do pass with the following amendments:

SECTION 1. SHORT TITLE.

Sections 1 through 14 of this Act may be cited as the "Smith River National Recreation Area Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Smith River, undammed and free-flowing from its headwaters to the Pacific Ocean, represents one of the last wholly intact vestiges of an invaluable legacy of wild and scenic rivers;

(2) the Smith River watershed, from the diverse conifer forests of the Siskiyou Mountains and unique botanical communities of the North Fork serpentine to the ancient redwoods along the river's lower reaches, exhibits a richness of ecological diversity unusual in a basin of its size;

(3) the Smith River watershed's scenic beauty, renowned anadromous fisheries, exceptional water quality, and abundant wildlife combine with its ready accessibility to offer exceptional opportunities for a wide range of recreational activities, including wilderness, water sports, fishing, hunting, camping, and sightseeing;

(4) careful development and utilization at mutually compatible levels of recreation, fisheries, and timber resources on public lands will ensure the continuation of the Smith River watershed's historic role as a significant contributor to the region's local economy; and

(5) protection of the Smith River's unique values can be enhanced by a cooperative effort by Federal, State and local governments to coordinate land-use planning, management, and development of Federal and non-Federal lands throughout the watershed.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term "excluded area" means one of the four areas specifically excluded from the recreation area, as generally depicted on the map referred to in section 4(b);

(2) the term "forest plan" means the land and resource management plan for the Six Rivers National Forest prepared pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

(3) the term "recreation area" means the Smith River National Recreation Area established by section 4;

(4) the term "Secretary" means the Secretary of Agriculture; and

(5) the term "inner gorge" means the inherently unstable steep slope (65 percent gradient or more) immediately adjacent to the stream or river channel, extending from the channel or recent floodplain to the first significant break in slope (usually 15 percent or more).

SEC. 4. SMITH RIVER NATIONAL RECREATION AREA.

(a) ESTABLISHMENT.—For the purposes of ensuring the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural resources, there is hereby established the Smith River National Recreation Area.

(b) BOUNDARIES.—(1) The recreation area shall consist of those lands within the area generally depicted on the map entitled "Proposed Smith River National Recreation Area" and dated July 1990. The map shall be on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture. The Secretary may, by publication of availability of a revised map and after public comment, make corrections or minor changes to the boundary of the recreation area.

(2) The exterior boundary of the recreation area, as generally depicted on the map, shall encompass the recreation area and the four excluded areas.

(c) BOUNDARY MODIFICATION.—The boundaries of the Six Rivers National Forest are hereby modified as generally depicted on the map referred to in subsection (b). A map and legal description of the boundary of the Six Rivers National Forest as modified by this subsection shall be on file and available for public inspection in the Office of the Chief, Forest Service, and the Office of the Forest Supervisor of the Six Rivers National Forest.

(d) TRANSFER.—The federally owned lands within the recreation area administered by the Secretary of the Interior on the date of enactment of this Act, comprising approximately 20 acres, are hereby transferred to the jurisdiction of the Secretary of Agriculture and shall be managed in accordance with the laws applicable to the National Forest System and this Act.

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the recreation area in accordance with this Act and the laws, rules, and regulations applicable to the National Forest System in furtherance of the purposes for which the recreation area was established. In administering the recreation area, the Secretary shall, consistent with the applicable area management emphasis provided under subsection (b), undertake the following:

(1) Provide for a broad range of recreation uses and provide recreational and interpretive services and facilities (including trails and campgrounds) for the public.

(2) Provide and maintain adequate public access, including vehicular roads for general recreational activities such as camping, hiking, hunting, and fishing.

(3) Improve the anadromous fishery and water quality, including (but not limited to) stabilizing landslides, improving fish spawning and rearing habitat, and placing appropriate restrictions or limitations on soil disturbing activities.

(4) Permit the use of off-road vehicles only on designated routes.

(5) Provide for public health and safety and for the protection of the recreation area in the event of fire or infestation of insects or disease.

(6) Permit programmed timber harvest only in those management areas where timber harvest is specifically authorized by subsection (b). Timber management in these areas shall incorporate the use of strategies to reduce habitat fragmentation and employ silvicultural prescriptions designed to maintain or enhance biological diversity and wildlife habitats (such as retention of standing green trees, snags, and other coarse woody debris) by providing for a high level of structural and compositional diversity in managed stands.

(7) Permit removal of trees within streamside protection zones along those rivers and river segments specified in section 11 of this Act only when necessary for human health and safety, to maintain trails or existing roads, for the development of recreation or other facilities, for the protection of the recreation area in the event of fire, or to improve fish and wildlife habitat.

(8) Consistent with applicable requirements of law, permit removal of trees in those management areas where timber harvest is not specifically authorized by subsection (b) when necessary for human health and safety, to maintain trails or existing roads, for the development of recreation or other facilities, for the protection of the recreation area in the event of fire, or to improve fish and wildlife habitat. Timber damaged or down in these areas as a result of fire, insects, disease, blowdown or other natural events shall otherwise be retained in its natural condition, with removal permitted only upon a written determination by the Secretary, based upon written findings, that such removal is necessary to provide for or maintain or enhance biological and ecological diversity, without regard for the commodity value of the timber. Such a decision shall not be delegable by the Secretary but shall be subject to administrative appeal and judicial review.

(9) Provide for the long-term viability and presence of Port-Orford-cedar and ensure its continued present economic and noneconomic uses through implementation of management strategies developed by the Forest Service.

(10) Except where timber harvest is specifically authorized by subsection (b), protect, preserve, and increase old growth forest habitat in the recreation area.

(11) Provide for the restoration of landscapes damaged by past human activity consistent with the purposes of this Act.

(12) Develop a monitoring program to consistently gather water quality, air quality, wildlife, and fisheries data from representative Smith River subwatersheds.

(13) Develop and implement a management plan to maintain, protect, and promote habitat for native resident trout species in the recreation area.

(14) Cooperate with other Federal, State, and local government agencies in coordinating planning efforts throughout the Smith River watershed.

(b) MANAGEMENT AREAS.—(1) The recreation area shall contain eight management

areas, as generally depicted on the map referred to in section 4(b). The Secretary may, pursuant to section 4(b), make minor revisions or amendments to the boundaries of the management areas.

(2) The Secretary shall administer each mangement area within the recreation area in accordance with the following:

(A) The management emphasis for the North Fork management area shall be on back-country and whitewater recreation, while recognizing unique botanic communities, outstanding whitewater, and historic and scenic values.

(B) The management emphasis for the Upper Middle Fork management area shall be on providing and maintaining ecologic and biologic diversity. Timber harvest shall be permitted, consistent with subsection (a)(6), only in existing plantations.

(C) The management emphasis for the Middle Fork-Highway 199 management area shall be on maintaining wildlife values and providing for a full range of recreation uses, with particular emphasis on the scenic and recreation values associated with the Smith River, old growth redwoods, and California State Highway 199.

(D) The management emphasis for the Upper South Fork management area shall be on wild river and roadless back-country recreation.

(E) The management emphasis for the Lower South Fork management area shall be on maintaining and protecting natural scenic values in the river canyon while providing for traditional and compatible river sports, including white water rafting, angling, sightseeing, and developed and dispersed recreation. Timber harvests based on uneven-aged management with extended rotations shall be allowed where consistent with protection of the scenic values of the recreation area.

(F) The management emphasis for the Lower Hurdygurdy Creek management area shall be on maintenance of wildlife values while providing rustic family and group recreation facilities for fishing, swimming, hunting, and camping. Timber harvests based on uneven-aged management with extended rotations shall be allowed where consistent with protection of scenic and wildlife values.

(G) The management emphasis for the prescribed timber management area shall be on providing a sustained yield of wood products while maintaining biological and ecological diversity.

(H) The management of the Siskiyou Wilderness management area shall be pursuant to the provisions of the Wilderness Act (16 U.S.C. 1131 et seq.). The Gasquet-Orleans Road corridor between the eastern edge of section 36, T. 14 N., R. 3 E, and the corridor's eastern terminus in the middle of section 26, T. 14 N., R. 4 E. shall be added to the Siskiyou Wilderness.

(c) WILD AND SCENIC RIVERS.—The river segments designated as wild and scenic rivers by the amendments made by section 10(b) of this Act shall be administered in accordance with this Act and the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.). In case of conflict between the provisions of these Acts, the more restrictive provision shall apply.

SEC. 6. ACQUISITION AND DISPOSAL OF LANDS AND OTHER PROPERTY.

(a) ACQUISITION.—The Secretary is authorized to acquire by purchase, donation, exchange, or otherwise lands, waters, or interests therein (including scenic or other easements), and structures or other improvements thereon, within the boundaries of the recreation area as the Secretary determines appropriate for the purposes of this Act. In exercising this authority, the Secretary is directed to give prompt and careful consideration to any offer to sell, exchange, or othewise dispose of such property made by an individual or organization. The Secretary shall not acquire any land or interest in land owned by the State of California or any of its political subdivisions within the recreation area except by donation or exchange. All lands acquired by the Secretary pursuant to this Act shall be subject to the laws and regulations pertaining to the National Forest System and this Act.

(b) TRANSFERS TO DEL NORTE COUNTY.—(1) Upon the adoption of a resolution by the Board of Supervisors of the County of Del Norte, California, accepting title to the lands decribed in paragraph (2) and subject to the County of Del Norte bearing the cost of the survey of such lands, the Secretary shall transfer all right, title, and interest of the United States in and to the lands described in paragraph (2).

(2) The lands referred to in paragraph (1) are described as follows:

(A) Lands north of tract 37, T. 17 N., R. 3 E., H.M., containing 6 acres, more or less, and more particularly described as:

Commencing at the N.E. corner of tract 37, T. 17 N., R. 3 E., H.M.; thence, northerly on a line continuing the eastern boundary of said tract 37 to a point where it intersects the southern boundary of the easement for State highway conveyed to the State of California, Department of Transportation, on the 17th day of May 1977, and recorded on June 22, 1977 at book 206 of Official Records, page 256; thence, southwesterly along the southern boundary of said easement to the point where it intersects the northern boundary of said tract 37; thence, easterly along the northern boundary of said tract 37 to the point of beginning.

(B) Lands east of tract 37, T. 17 N., R. 3 E., H.M., containing 6 acres, more or less, and more particularly described as:

Commencing at a point on the eastern boundary of tract 37, T. 17 N., R. 3 E., H.M., lying 332 feet southerly of the N.E. corner of said tract 37; thence, due east to the high water line of the Middle Fork of the Smith River; thence, southwesterly along the high water line of the Middle Fork of the Smith River to its intersection with the northern boundary of tract 38, T. 17 N., R. 3 E.; thence, westerly along the northern boundary of said tract 38 to its intersection with said track 37; thence, northerly along the eastern boundary of said tract 37 to the point of beginning.

(c) CONDITIONS OF TRANSFER.—Transfer of the lands and interests described in subsection (b)(2) of this section shall be subject to the condition that all right, title, and interest therein shall revert to the United States if the county of Del Norte, California, attempts to transfer any portion of such lands to any other entity or person or if Del Norte County permits any portion of such lands to be used for any purpose incompatible with the purposes of this Act. The Secretary shall include in any document of conveyance whereby such lands are transferred to the county of Del Norte appropriate provisions to implement this subsection.

(d) WITHDRAWAL.—Subject to valid existing rights, all public lands within the recreation area are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States. This subsection shall not affect the exchange authorities of the Secretary.

SEC. 7. FISH AND GAME.

Nothing in this Act shall be construed to affect the jurisdiction or responsibilities of the State of California with respect to fish and wildlife, including the regulation of hunting, fishing, and trapping on any lands managed by the Secretary under this Act, except that the Secretary may designate zones where, and establish periods when, no hunting, fishing, or trapping shall be permitted for reasons of protecting nongame species and their habitats, public safety, administration, or public use and enjoyment. Except in emergencies, any regulation of the Secretary pursuant to this section shall be put into effect only after consultation with the fish and wildlife agency of the State of California.

SEC. 8. MINERALS.

(a) WITHDRAWAL.—Subject to valid existing rights, Federal lands within the exterior boundary of the recreation area are hereby withdrawn from all forms of location, entry, and patent under the United States mining laws and from disposition under the mineral leasing laws, including all laws pertaining to geothermal leasing.

(b) PATENTS.—Patents may not be issued under the mining laws of the United States after the date of enactment of this Act for locations and claims made before the date of enactment of this Act on Federal lands located within the exterior boundaries of the recreation area.

(c) ADMINISTRATION.—Subject to valid existing rights, except for extraction of common variety minerals such as stone, sand, and gravel for use in construction and maintenance of roads and other facilities within the recreation area and the excluded areas, all other mineral development on federally owned lands within the recreation area is prohibited.

(d) REGULATIONS.—The Secretary is authorized and directed to issue supplementary regulations to promote and protect the purposes for which the recreation area is designated.

SEC. 9. MANAGEMENT PLANNING.

The Secretary shall revise the document entitled "Smith River National Recreation Area Management Plan" dated February 1990 to conform to the provisions of this Act, and such revised plan shall guide management of the recreation area and shall be incorporated in its entirety into the forest plan for the Six Rivers National Forest. This incorporation shall not be deemed a revision or amendment to the forest plan for purposes of the section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974. The Secretary shall make such further revisions to the management plan as are necessary in order to include more specific development and use plans for the recreation areas. Such revisions shall be made no later than 5 years after the enactment of this Act. Such revisions and any other modifications of the management plan shall be made only through the processes of revision or amendment of the forest plan pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, including appropriate consultation with State and local government officials and provision for full public participation considering the views of all interested parties, organizations, and individuals.

SEC. 10. WILD AND SCENIC RIVERS.

(a) PREVIOUS DESIGNATIONS.—Previous designations dated January 19, 1990, by the Secretary of the Interior (46 Fed. Reg. 7483-84) under section 2(a)(ii) of the Wild and

Scenic Rivers Act (16 U.S.C. 1273) of rivers within the exterior boundary of the recreation area are superseded by this Act.

(b) DESIGNATIONS.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274) is amended by adding at the end thereof the following new paragraphs:

"( ) SMITH RIVER, CALIFORNIA.—The segment from the confluence of the Middle Fork Smith River and the North Fork Smith River to the Six Rivers National Forest boundary, including the following segments of the mainstem and certain tributaries, to be administered by the Secretary of Agriculture in the following classes:

"(A) The segment from the confluence of the Middle Fork Smith River and the South Fork Smith River to the National Forest boundary, as a recreational river.

"(B) Rowdy Creek from the California-Oregon State line to the National Forest boundary, as a recreational river.

"( ) MIDDLE FORK SMITH RIVER, CALIFORNIA.—The segment from the headwaters to its confluence with the North Fork Smith River, including the following segments of the mainstem and certain tributaries, to be administered by the Secretary of Agriculture in the following classes:

"(A) The segment from its headwaters about 3 miles south of Sanger Lake, as depicted on the 1956 USGS 15' Preston Peak topographic map, to the center of section 7, T. 17 N., R. 5 E., as a wild river.

"(B) The segment from the center of section 7, T. 17 N., R. 5 E., to the center of section 6, T. 17 N., R. 5 E., as a scenic river.

"(C) The segment from the center of section 6, T. 17 N., R. 5 E., to one-half mile upstream from its confluence with Knopki Creek, as a wild river.

"(D) The segment from one-half mile upstream of its confluence with Knopki Creek to its confluence with the South Fork Smith River, as a recreational river.

"(E) Myrtle Creek from its headwaters in section 9, T. 17 N., R. 1 E., as depicted on the 1952 USGS 15' Crescent City topographic map, to the middle of section 28, T. 17 N., R. 1 E., as a scenic river.

"(F) Myrtle Creek from the middle of section 28, T. 17 N., R. 1 E., to its confluence with the Middle Fork Smith River, as a wild river.

"(G) Shelly Creek from its headwaters in section 1, T. 18 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Patrick Creek, as a recreational river.

"(H) Kelly Creek from its headwaters in section 32, T. 17 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the Middle Fork Smith River, as a scenic river.

"(I) Packsaddle Creek from its headwaters about 0.8 miles southwest of Broken Rib Mountain, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Middle Fork Smith River, as a scenic river.

"(J) East Fork Patrick Creek from its headwaters in section 10, T. 18 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the West Fork of Patrick Creek, as a recreational river.

"(K) West Fork Patrick Creek from its headwaters in section 18, T. 18 N., R. 3 E., as depicted on the 1951 15' Gasquet topographic map to its confluence with the East Fork Patrick Creek, as a recreational river.

"(L) Little Jones Creek from its headwaters in section 34, T. 17 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map to its confluence with the Middle Fork Smith River, as a recreational river.

"(M) Griffin Creek from its headwaters about 0.2 miles southwest of Hazel View Summit, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

"(N) Knopki Creek from its headwaters about 0.4 mile west of Sanger Peak, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

"(O) Monkey Creek from its headwaters in the northeast quadrant of section 12, T. 18 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

"(P) Patrick Creek from the junction of East and West Forks of Patrick Creek to its confluence with Middle Fork Smith River, as a recreational river.

"(Q) Hardscrabble Creek from its headwaters in the northeast quarter of section 2, T. 17 N., R. 1 E., as depicted on the 1952 USGS 15' Crescent City topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

"( ) NORTH FORK SMITH RIVER, CALIFORNIA.—The segment from the California-Oregon State line to its confluence with the Middle Fork Smith River, including the following segments of the mainstem and certain tributaries, to be administered by the Secretary of Agriculture in the following classes:

"(A) The segment from the California-Oregon State line to its confluence with an unnamed tributary in the northeast quarter of section 5, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, as a wild river.

"(B) The segment from its confluence with an unnamed tributary in the northeast quarter of section 5, T. 18 N., R. 2 E., to its southern-most intersection with the eastern section line of section 5, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, as a scenic river.

"(C) The segment from its southern-most intersection with the eastern section line of section 5, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Stony Creek, as a wild river.

"(D) The segment from its confluence with Stony Creek to its confluence with the Middle Fork Smith River, as a recreational river.

"(E) Diamond Creek from California-Oregon State line to its confluence with Bear Creek, as a recreational river.

"(F) Diamond Creek from its confluence with Bear Creek to its confluence with the North Fork Smith River, as a scenic river.

"(G) Bear Creek from its headwaters in section 24, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Diamond Creek, as a scenic river.

"(H) Still Creek from its headwaters in section 11, T. 18 N., R. 1 E., as depicted on the 1952 USGS 15' Crescent City topographic map, to its confluence with the North Fork Smith River, as a scenic river.

"(I) North Fork Diamond Creek from the California-Oregon State line to its confluence with Diamond Creek, as a recreational river.

"(J) High Plateau Creek from its headwaters in section 26, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Diamond Creek, as a scenic river.

"(K) Stony Creek from its headwaters in section 25, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the North Fork Smith River, as a scenic river.

"(L) Peridotite Creek from its headwaters in section 34, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the North Fork Smith River, as a wild river.

"( ) SISKIYOU FORK SMITH RIVER, CALIFORNIA.—The segment from its headwaters to its confluence with the Middle Fork Smith River, and the following tributaries, to be administered by the Secretary of Agriculture in the following classes:

"(A) The segment from its headwaters about 0.7 miles southeast of Broken Rib Mountain, as depicted on the 1956 USGS 15' Preston Peak Topographic map, to its confluence with the South Siskiyou Fork Smith River, as a wild river.

"(B) The segment from its confluence with the South Siskiyou Fork Smith River to its confluence with the Middle Fork Smith River, as a recreational river.

"(C) South Siskiyou Fork Smith River from its headwaters about 0.6 miles southwest of Buck Lake, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Siskiyou Fork Smith River, as a wild river.

"( ) SOUTH FORK SMITH RIVER, CALIFORNIA.—The segment from its headwaters to its confluence with the main stem of the Smith River, and the following tributaries, to be administered by the Secretary of Agriculture in the following classes:

"(A) The segment from its headwaters about 0.5 miles southwest of Bear Mountain, as depicted on 1956 USGS 15' Preston Peak topographic map, to Blackhawk Bar, as a wild river.

"(B) The segment from Blackhawk Bar to its confluence with the main stem of the Smith River, as a recreational river.

"(C) Williams Creek from its headwaters in section 31, T. 14 N., R. 4 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with Eight Mile Creek, as a wild river.

"(D) Eightmile Creek from its headwaters in section 29, T. 14 N., R. 4 E., as depicted on the 1955 USGS 15' Dillon Mtn. topographic map, to its confluence with the South Fork Smith River, as a wild river.

"(E) Harrington Creek from its source to its confluence with the South Fork Smith River, as a wild river.

"(F) Prescott Fork of the Smith River from its headwaters about 0.5 miles southeast of Island Lake, as depicted on the 1955 USGS 15' Dillon Mtn. topographic map, to its confluence with the South Fork Smith River, as a wild river.

"(G) Quartz Creek from its headwaters in section 31, T. 16 N., R. 4 E., as depicted on the 1952 15' USGS Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(H) Jones Creek from its headwaters in section 36, T. 16 N., R. 3 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(I) Hurdygurdy Creek from its headwaters about 0.4 miles southwest of Bear Basin Butte as depicted on the 1956 USGS 15' Preston Peak topographic map, to its con-

fluence with the South Fork Smith River, as a recreational river.

"(J) Gordon Creek from its headwaters in section 18, T. 16 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(K) Coon Creek from the junction of its two headwaters tributaries in the southeast quadrant of section 31, T. 17 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(L) Craigs Creek from its headwaters in section 36, T. 17 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(M) Goose Creek from its headwaters in section 13, T. 13 N., R. 2 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(N) East Fork Goose Creek from its headwaters in section 18, T. 13 N., R. 3 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with Goose Creek, as a recreational river.

"(O) Buck Creek from its headwaters at Cedar Camp Spring, as depicted on the 1952 USGS 15' Ship Mountain topographic map, to the northeast corner of section 8, T. 14 N., R. 3 E., as a scenic river.

"(P) Buck Creek from the northeast corner of section 8, T. 14 N., R. 3 E., to its confluence with the South Fork Smith River, as a wild river.

"(Q) Muzzleloader Creek from its headwaters in section 2, T. 15 N., R. 3 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with Jones Creek, as a recreational river.

"(R) Canthook Creek from its headwaters in section 2, T. 15 N., R. 2 E., as depicted in the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(S) Rock Creek from the national forest boundary in section 6, T. 15 N., R. 2 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(T) Blackhawk Creek from its headwaters in section 21, T. 15 N., R. 2 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.".

(c) MANAGEMENT.—The management plan prepared under section 9 of this Act shall be deemed to satisfy the requirement for a comprehensive management plan required under section 3(d)(1) of the Wild and Scenic Rivers Act.

SEC. 11. STREAMSIDE PROTECTION ZONES.

(a) For each of the rivers and river segments specified in this subsection, there is hereby established a streamside protection zone in which timber harvesting shall be prohibited except as permitted by section 5(a)(7). Such zone shall extend 300 feet from each bank of the rivers and river segments, or 100 feet from the inner gorge of said rivers and river segments, or within the limit of high and extreme landslide hazards on said rivers and river segments, whichever is greater. The provisions of this subsection shall apply to the following rivers and river segments:

(1) Rowdy Creek (from California-Oregon border to NRA boundary).

(2) Shelly Creek (from its headwaters to Patrick Creek).

(3) East Fork Patrick Creek (from its headwaters to Patrick Creek).

(4) West Fork Patrick Creek (from its headwaters to Patrick Creek).

(5) Little Jones Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(6) Patrick Creek (from the confluence of the East and West forks of Patrick Creek to the Middle Fork of the Smith River).

(7) Monkey Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(8) Hardscrabble Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(9) Quartz Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(10) Jones Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(11) Upper Hurdygurdy Creek (from its headwaters to Dry Lake).

(12) Gordon Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(13) Coon Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(14) Craigs Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(15) Goose Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(16) East Fork of Goose Creek (from its headwaters to its confluence with Goose Creek).

(17) Muzzleloader Creek (from its headwaters to its confluence with Jones Creek).

(18) Canthook Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(19) Rock Creek (from the NRA boundary to its confluence with the South Fork of the Smith River).

(20) Blackhawk Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(b) For each of the rivers and river segments specified in this subsection there is established a streamside protection zone in which timber harvesting shall be prohibited except as permitted in section 5(a)(7). Such zone shall extend on the average of one-quarter mile on either side of said rivers and river segments, or 100 feet from the inner gorge of said rivers and river segments, or within the limit of high and extreme landslide hazards on said rivers and river segments, whichever is greater. The provisions of this subsection shall apply to the following rivers and river segments:

(1) Main stem Smith (from the South Fork to the NRA boundary).

(2) Middle Fork Smith (from its headwaters to its confluence with the Middle Fork of the Smith River).

(3) Myrtle Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(4) Kelly Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(5) Packsaddle Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(6) Griffin Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(7) Knopti Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(8) North Fork of the Smith River (from the California/Oregon border to its confluence with the Middle Fork of the Smith River).

(9) Diamond Creek (from the California/Oregon border to its confluence with the North Fork of the Smith River).

(10) Bear Creek (from its headwaters to its confluence with Diamond Creek).

(11) Still Creek (from its headwaters to its confluence with the North Fork of the Smith River).

(12) North Fork of Diamond Creek (from the California/Oregon border to its confluence with Diamond Creek).

(13) High Plateau Creek (from its headwaters to its confluence with Diamond Creek).

(14) Stony Creek (from its headwaters to its confluence with the North Fork of the Smith River).

(15) Peridotite Creek (from its headwaters to its confluence with the North Fork of the Smith River).

(16) Siskiyou Fork, Smith River (from its headwaters to the Middle Fork of the Smith River).

(17) South Siskiyou Fork of the Smith River (from its headwaters to its confluence with the Siskiyou Fork of the Smith River).

(18) South Fork Smith River (from its headwaters to its confluence with the Middle Fork of the Smith River).

(19) Williams Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(20) Eight Mile Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(21) Harrington Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(22) Prescott Fork of the Smith River (from its headwaters to its confluence with the South Fork of the Smith River).

(23) Buck Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(c) For the Lower Hurdygurdy Creek (from Dry Lake to its confluence with the South Fork of the Smith River) there is established a streamside protection zone in which timber harvesting shall be prohibited except as permitted by section 5(a)(7). Such zone shall extend one-eighth mile on either side of said Lower Hurdygurdy Creek.

(d) The provisions of this section shall be in addition to, and not in lieu of, any restrictions on timber harvesting or other activities applicable to the streamside protection zones established by this section under any other applicable provision of this Act.

SEC. 12. STATE AND LOCAL JURISDICTION AND ASSISTANCE.

(a) STATE AND LOCAL JURISDICTION.—Nothing in this Act shall diminish, enlarge, or modify any right of the State of California or any political subdivision thereof, to exercise civil and criminal jurisdiction or to carry out State fish and game laws, rules, and regulations within the recreation area, or to tax persons, franchise, or private property on the lands and waters included in the recreation area, or to regulate the private lands within the recreation area.

(b) COOPERATIVE AGREEMENTS.—The Secretary is authorized and encouraged to enter into cooperative agreements with the State of California or its political subdivisions for—

(1) the rendering on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and fire prevention agencies; and

(2) the planning for use, management, and development of non-Federal lands within the recreation area and elsewhere in the Smith River watershed in the furtherance of the purposes of this Act.

(c) TECHNICAL ASSISTANCE.—To enable the State of California and its political subdivisions to develop and implement programs compatible with the purposes of this Act, the Secretary, in consultation with the Secretaries of the Interior, Commerce, and Housing and Urban Development, shall consider upon request such technical assistance to the State and its political subdivisions as is necessary to fulfill the purposes of this section. Such assistance may include payments or grants, within existing programs, for technical aid and program development.

(d) LAND INFORMATION SYSTEM.—The Secretary of Agriculture shall assist the county of Del Norte in developing a land information system that will be compatible with the Forest Service and National Park Service systems for the Federal lands in Del Norte County and such non-Federal systems as may be appropriate and that will be made available to Federal and non-Federal entities for use in coordinating planning for the recreation area and other lands in the Smith River watershed.

SEC. 13. SAVING PROVISIONS.

(a) ACTIVITIES ON LANDS OUTSIDE OF RECREATION AREA.—Nothing in this Act shall limit, restrict, or require specific management practices on lands outside the recreation area boundary. The fact that activities or uses outside the recreation area can be seen, heard, or otherwise perceived within the recreation area shall not, of itself, limit, restrict, or preclude such activities or uses up to the boundary of the recreation area.

(b) PRIOR RIGHTS.—(1) Nothing in this Act shall limit, restrict, or preclude the implementation of valid timber sale contracts or other contracts or agreements executed by the Secretary before the date of enactment of this Act.

(2) Except as specifically provided herein nothing in this Act shall be construed as diminishing or relinquishing any right, title, or interest of the United States in any lands, waters, or interests therein within the boundaries of the recreation area designated by this Act.

(c) ROAD EASEMENTS.—Nothing in this Act shall be construed as affecting the responsibilities of the State of California or any of its political subdivisions with respect to road easements, including maintenance and improvement of State Highway 199 and County Route 427.

(d) RIGHTS OF ACCESS.—Existing rights provided by Federal law for access by private landowners across National Forest System lands shall not be affected by this Act.

(e) ENTITLEMENT MONEYS.—Annually for the first two full fiscal years after the date of enactment of this Act, the Secretary shall pay for use by units of local government within the recreation area an amount equal to the difference between the amounts payable for such purposes pursuant to the Act of May 23, 1908 (chapter 193, 35 Stat. 251; 16 U.S.C. 500) and the average amount paid for such purpose under such Act during the five fiscal years preceding the date of enactment of this Act. The amount payable under this subsection shall be reduced by 10 percent annually thereafter for each succeeding fiscal year until the amount payable shall be reduced 100 percent by the end of the twelfth fiscal year after the date of enactment. This subsection shall expire 11 years after the first payment pursuant to this subsection.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this Act and the amendments made by this Act.

SEC. 15. REDESIGNATION.

The Sunset Crater National Monument, Arizona, shall, on and after the date of enactment of this Act, be known and designated as the "Sunset Crater Volcano National Monument". Any reference to the Sunset Crater National Monument in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Sunset Crater Volcano National Monument.

Amend the title so as to read: "An Act to establish the Smith River National Recreation Area, to redesignate the Sunset Crater National Monument, and for other purposes.".

Mr. CRANSTON. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RESOLUTION TRUST CORPORATION FUNDING ACT OF 1990

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1011, S. 3222, a bill to amend the Federal Home Loan Bank Act to enable the Resolution Trust Corporation to meet its obligation to depositors and others by the least expensive means.

The PRESIDING OFFICER. Is there objection?

Mr. HEINZ. Mr. President, reserving the right to object, and I hope I do not have to object, I do not have any information on this.

Mr. President, I withdraw my reservation.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the Senator from Michigan [Mr. RIEGLE]? The Chair hears none. Without objection, it is so ordered.

The bill will be read by title.

The legislative clerk read as follows:

A bill (S. 3222) to amend the Federal Home Loan Bank Act to enable the Resolution Trust Corporation to meet its obligations to depositors and others by the least expensive means.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. RIEGLE. Mr. President, let me briefly explain the provisions of the amendment which is in the nature of a substitute, to S. 3222, the bill reported out of the Banking Committee. The amendment conforms S. 3222 to legislation marked up and reported by the House Banking Committee in all respects. It has three key features.

First, it gives the RTC an additional $10 billion to pay off insured depositors at failed savings and loans. This is far less than the $57 billion in the bill reported by the Senate Banking Committee, and it will keep the RTC on a very tight leash. As indicated, the administration estimates it will carry the RTC on until February.

That means the RTC funding will likely be the first major issue confronting the next Congress. Frankly, I wish we were providing a larger amount, but that is not feasible as we meet tonight.

Second, the amendment includes a provision that requires the RTC and the FDIC to submit detailed budgets to Congress as part of any request for additional funds. I know many of my colleagues have expressed dismay over the lack of detailed justification, and I share that dismay for the RTC's current request for funds.

This provision is an attempt to address that problem. It is essentially identical to a provision in the bill marked up by the House Banking Committee.

Finally, the amendment includes a provision that expresses the sense of Congress that the RTC should not use taxpayer money to pay off uninsured depositors at failed savings and loans.

I want to underscore two points. First, if we do not give the RTC more money before the end of this Congress, the RTC will run out of money before the next Congress has a chance to act. Second, when the RTC runs out of money, the cost to America's taxpayers of resolving the savings and loan crisis will rise. And it will keep rising until Congress finally does act. Let me explain these points in more detail.

The cost of the bailout will rise.

Savings and loans that should be closed will have to stay open because the RTC will not have enough money to close them. Right now, the 204 institutions in the RTC's backlog are losing $30 million each day because they have huge amounts of nonperforming loans, their management and staffing are inadequate, and they are paying too much for their funds. And the taxpayers will have to make good every dollar of their losses.

Because those failing institutions cannot retain qualified managers and employees, their assets are deteriorating. The longer we delay until the

RTC acquires those assets, the less they will be worth when the RTC finally does acquire them, and the more the taxpayer will have to pay.

As those failing savings and loans compete in the marketplace for funds, they will drive up the cost of funds for all other depository institutions.

The public will once again begin to doubt the strength of the Federal Government's commitment to its deposit insurance obligations. And that doubt will increase the already dangerously high level of instability in our financial system and further drive up the cost of funds to depository institutions.

It is impossible to say what the total cost of failing to give the RTC more money would be. FDIC Chairman Seidman has estimated $300 million for a funding delay of one quarter and $850 to $950 million if the delay lasts two quarters. Robert Reischauer, Director of the Congressional Budget Office, stated in an October 26 letter that the CBO expects that "if the RTC experienced a three-month delay at this time, the Federal Government would have to spend, on a present value basis an additional $300 to $400 million to pay for insurance losses in failed thrifts." Information provided by the RTC indicates the cost will be $900 million if we simply delay until February. And these estimates include only the most easily quantified components of the total cost.

Mr. President, I ask unanimous consent to place all of these estimates in the RECORD.

The RTC really will run out of money if we do not act today.

Right now, the RTC has scheduled 80 failed savings and loans for resolution in the first quarter of fiscal year 1991—before January 1. When the RTC has resolved those institutions, it will have only $1 to $2 billion remaining to it of the original $50 billion in loss funds provided by last year's savings and loans legislation.

Already, the RTC has had to defer resolution of 17 larger institutions, with approximately $25 billion in assets. That in itself adds to the total costs to taxpayers. If we wait until February or March to provide more funds, resolution of these institutions will be delayed until June.

The RTC cannot fund its operations by selling assets. Most of its assets are already, in effect, pledged against its working capital borrowings. And even if the RTC had enough assets to sell, the time it would take to sell them would delay its operations extremely. And those delays would cost the taxpayers a great deal of money.

I know many of my colleagues are disturbed that we must so soon confront once again the need to provide additional funds to close failed savings and loans. But today the funds that Congress provided for thrift resolutions only 14 months ago are virtually exhausted, and a massive job remains to be done. Over 400 failed savings and loans, with over $250 billion in assets, remain open for business, losing money every day.

How much money should Congress provide?

S. 3222 would give the RTC an additional $57 billion to pay off the depositors of failed savings and loans—an amount calculated to carry the RTC through its funding needs for fiscal year 1991. I sponsored that bill and I supported it. But it is apparent to me now, in view of the House Banking Committee's recent markup of only $10 billion in additional RTC funding, that $57 billion is not a realistic figure. For better or worse, that is reality. The number simply must be lower.

I want to note that I am sensitive to the arguments that several of my colleagues and some public interest groups have raised about giving the RTC so much money, so soon after we gave it the first $50 billion, without looking more closely at whether the RTC and the Federal Government's approach to resolving the thrift crisis should not be fundamentally reformed. Maybe we need fundamental reform. Maybe we don't. But anything this expensive deserves close scrutiny and more careful explanation than the administration has thus far provided. So I want to indicate to my colleagues that the Banking Committee will conduct comprehensive oversight hearings on the RTC early in the next Congress, and will listen at that time to proposals for reforming the RTC's operations.

Accordingly, I will offer at the appropriate time an amendment in the nature of a substitute to S. 3222. The amendment would give the RTC additional spending authority of only $10 billion—the same amount approved by the House Banking Committee. I am convinced it is the best we can do.

I urge my colleagues to lend it their support as well.

AMENDMENT NO. 3227

(Purpose: To provide a complete substitute)

Mr. RIEGLE. Mr. President, on behalf of myself and Senator GARN, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE], for himself and Mr. GARN, proposes an amendment numbered 3227.

Mr. RIEGLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Resolution Trust Corporation Funding Act".

SEC. 2. THRIFT RESOLUTION FUNDING PROVISIONS.

(a) REQUESTS FOR ADDITIONAL FUNDING REQUIRED TO CONTAIN ADDITIONAL FINANCIAL INFORMATION.—Section 21A(k)(7) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(k)(7)) is amended to read as follows:

"(7) REQUESTS FOR ADDITIONAL FUNDING.—Any request for legislative action to provide new or additional financial resources for the Corporation shall—

"(A) be submitted to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

"(B) contain a complete and detailed 6-month financial plan for spending such resources and any relevant information described in paragraph (5)(B) and (6)(A).".

(b) INTERIM FUNDING.—Section 21A(i) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(i)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and moving the left margin of such subparagraphs (as so redesignated) 2 ems to the right;

(2) in the heading, by striking "BORROWING" and inserting "FUNDING";

(30 by inserting after such heading the following new paragraph designation and heading:

"(1) BORROWING.—"; and

(4) by adding at the end the following new paragraph:

"(2) INTERIM FUNDING.—The Secretary of the Treasury shall provide the Corporation with the sum of $10,000,000,000 for use during fiscal year 1991 for—

"(A) covering any loss incurred by the Corporation in managing and resolving cases involving insured depository institutions described in subsection (b)(3)(A); and

"(B) administrative expenses of the Corportion and Oversight Board under this section.".

(c) SENSE OF THE CONGRESS REGARDING ENFORCEMENT OF $100,000 INSURANCE LIMIT.—

(1) IN GENERAL.—It is the sense of the Congress that no funds appropriated to the Secretary of the Treasury for use by the Resolution Trust Corporation and no amount authorized to be otherwise obtained by the Resolution Trust Corporation from the Secretary, the Federal Financing Bank, or the Resolution Funding Corporation should be used to—

(A) provide any assistance under section 13(c) of the Federal Deposit Insurance Act, as applicable to the Resolution Trust Corporation pursuant to section 21A(b)(4) of the Federal Home Loan Bank Act; or

(B) pay any depositor at any insurred depository institution any amount (with respect to deposits of the depositor) in excess of the amount the depositor would have received if the Corporation had liquidated the depository institution,

unless the Resolution Trust Corporation determines, on the basis of written documentation, that the provision of such assistance or the making of such payment results in a lower cost to the Corporation than if the Corporation had liquidated the depository institution.

(2) REPORTS REQUIRED.—If the Resolution Trust Corporation engages in any transaction which has the effect of treating the uninsured deposits of any depositor as incurred depostis (as defined in section 3(m) of the

Federal Deposit Insurance Act), the Corporation shall provide to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate the written documentation on the basis of which the Corporation determined that the treatment of such uninsured deposits as insured deposits results in a lower cost of the Corporation than if the Corporation had liquidated the depository institution.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 21A(j)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(j)(1)) is amended—

(1) in subparagraph (A)—

(A) by striking "and" at the end of clause (i);

(B) by striking "minus" at the end of clause (ii) and inserting "and"; and

(C) by inserting after clause (ii) the following new clause:

"(iii) the total amount of contributions received from the Secretary of the Treasury under subsection (i)(2) for fiscal years beginning after September 30, 1990; minus"; and

(2) by striking "$50,000,000,000" and inserting "the sum of $50,000,000,000 and the total amount of contributions required to be made by the Secretary of the Treasury under subsection (i)(2) for fiscal years beginning after September 30, 1990".

The PRESIDING OFFICER. The Senator from Utah [Mr. GARN].

Mr. GARN. Mr. President, I will be very brief because this was discussed extensively a couple of hours ago when I had the opportunity at that time to explain my position on this issue.

I simply add, we must do this. We cannot afford to leave this session without providing the RTC sufficient money to carry on the closure of the troubled institutions. If we do not, they stay open and we can increase the costs of the bailout, which is already horrendous, by billions and billions of dollars. Even this $10 billion, in my opinion is not sufficient. I think that might cost us as much as $150, $250 million a month. It is the absolute minimum. We must pass it. If we cannot, then we must stay in session until we do or we will increase the cost of the S&L bailout.

The PRESIDING OFFICER. Is there further debate?

Mr. METZENBAUM. Will the Senator from Michigan yield for a question?

Mr. RIEGLE. Yes, I yield for a question to the Senator from Ohio.

Mr. METZENBAUM. I have seated next to me Congresswoman MARCY KAPTUR, a very distinguished Member of Congress, representing Toledo and the area in that community, who also serves on the Banking Committee in the House, and raises a very good question with me, for which I did not have the answer. That is, that the RTC has $140 billion in assets and about $40 billion in negotiable securities. Why can they not be liquidated in order to make these necessary payments, rather than having the Federal Government provide additional funding?

Mr. RIEGLE. We have asked that question on numerous occasions. The RTC indicates it is attempting to dispose of assets of various types and categories in an orderly fashion and receive as full a value for those assets as possible. So there is a certain disposition process underway.

It is easier, for example, to sell some classifications of assets like marketable securities than it is, for example, certain real estate assets in certain areas of the country that are very difficult to sell.

By the same token, you have new case resolutions occurring all the time so you have new assets coming into the RTC. So, while they are disposing of some assets, the inflow of new assets has actually been greater than what they have been able thus far to dispose of. So, rather steadily, the net volume of assets under their control has been rising.

We have put as much constructive pressure on them as we can to try to get them to move faster to resolve the disposition of these assets. They have had some false starts. You may recall there was a story recently that they planned an auction of certain kinds of assets. There was a lot of advance publicity. They got up quite close to the date of the public auction and then decided not to go ahead with it for reasons that were still not quite clear.

Certainly this is a potential source of funds to them in terms of liquidation of these assets. We hope they will move as rapidly as they can in that area.

Mr. METZENBAUM. As my friend and colleague from Michigan knows, the House has a good deal of reluctance to pass anything in this area.

And there has been much consideration given to the subject there. At this moment, I gather not much of a disposition has happened. If the House was to accept the $10 billion that you have in this particular proposal, it is obvious the RTC will have to return for additional funds since they originally had asked for $57 billion.

Would it be reasonable to require of the RTC, before they return for additional funding, to give a report as to what efforts had been made, what actual securities had been sold, what real estate had been sold and give some actual import as to what transactions had occurred, to get some idea as to whether they have very seriously tried to dispose of the $183 billion in assets that they presently have, which does make it difficult to understand why can they not find $10, $15, $20 billion out of that in order to begin making these payments?

Mr. RIEGLE. Let me say we have had them in recently during oversight hearings. We pressed them on those very issues. I would be glad to make available to the Senator and perhaps to the Congressman as well, the testimony from that hearing record when the head of the RTC, the asset disposal section came in to talk about those very things.

I am told that they anticipate selling something over 12 billion dollars' worth of receivership assets over the next 6 months. That seems to be a relatively modest figure in relationship to the size of the total asset value that they have to deal with.

Mr. METZENBAUM. Certainly, if they have $40 billion of marketable securities, one would think if they are marketable, they would market them.

Mr. RIEGLE. It is more complicated than it seems on the surface. Many of the marketable securities are in conservatorships as opposed to receiverships. The assets are there, but they are not readily available to be used by the RTC to fund losses. It is not a simple process to turn around tomorrow morning and sell these at market value.

And when assets are sold, most of that money will be needed to repay borrowing that is already outstanding. I might say the $10 billion figure—if I could have the Senator's attention just for a minute here—comes from the House. We have sought a larger figure here. We have now moved to try to accommodate the figure that has come out of the House Banking Committee, which is a figure of $10 billion which, as you have noted and I have affirmed, only carries us to the very early part of next year.

So the first item up in the practical sense that we are going to have to deal with is going to have to be this issue. If William Seidman is right and this amount will only carry into the early part of 1991, we are going to find ourselves right back here in this setting having to make a new decision with respect to additional resources. Otherwise, we are going to have this situation where failed S&L's have to remain open and extra costs will have to accrue to the taxpayer because there will not be funds available to shut them down and pay off the depositors.

I think we have confirmed virtually to the letter what the House Banking Committee itself has decided to do in this area. In so doing, we have lowered the amounts down to an amount that we can actually think is less than we ought to be providing, but we are doing that as an accommodation, I might say.

Mr. METZENBAUM. I thank the Senator from Michigan.

The PRESIDING OFFICER. Is there further debate? The Senator from Florida [Mr. GRAHAM] is recognized.

Mr. GRAHAM. Am I correct, the parliamentary status of the matter is that a bill has been submitted and we are now debating an amendment to that bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. GRAHAM. The amendment we are currently debating is in the first degree?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 3228 TO AMENDMENT NO. 3227

(Purpose: To terminate REFCORP financing)

Mr. GRAHAM. Mr. President, I send to the desk an amendment in the second degree and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 3228 to amendment No. 3227.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment add the following:

SEC. . RESOLUTION FUNDING CORPORATION BORROWING.

(a) IN GENERAL.—Section 21B(f)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(1)) is amended—

(1) by inserting "(A) OBLIGATIONS.—" after "(1) ISSUANCE—"; and

(2) by adding at the end the following:

"(B) TERMINATION DATE.—The Funding Corporation may not issue any bond, note, debenture, or other obligation under subparagraph (A) after October 31, 1990.".

(b) RTC AUTHORIZATION.—Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)) is amended by adding at the end the following:

"(16) FUNDING TO REPLACE UNUSED REFCORP AUTHORITY.—The Secretary of the Treasury shall make available to the Corporation from monies not otherwise appropriated an amount equal to the difference between $30,000,000,000 and the amount of obligations issued by the Funding Corporation under section 21B(f) prior to October 31, 1990.".

Mr. GRAHAM. Mr. President, as our distinguished chairman of the Banking Committee has indicated, one of the reasons that we are taking this action at this late hour is in order to save the American taxpayers the maximum amount of money by not causing a shutdown of the Resolution Trust Corporation, not causing them to be unable to close institutions which are effectively insolvent, therefore, saving the American taxpayers the kind of hemorrhaging which occurred when we were unable to close those institutions several years ago.

The distinguished Senator from Utah has spoken very eloquently about the consequences of repeating that lesson again.

The amendment which I have offered gives us another opportunity to save taxpayers money. We had an extended debate on this floor in 1989 over the question of how should we finance the cost of the savings and loan bailout. At that time, the assumption was that this is going to cost us $50 billion.

Now, of course, we know that that number was substantially understated. When the proposal was initially made by the administration it was that all of that $50 billion would be off budget.

A new borrowing entity called RevCorp was established. RevCorp would borrow the $50 billion. The thesis was that it was going to be supported by payments by the savings and loan industry, that through their premiums and by recapturing some surplus which had accumulated over the years that $50 billion that would be financed by RevCorp would be essentially paid for by the industry.

Frankly, nobody really believed that. It was predicated on the assumption that the industry was going to grow at 7 percent a year, therefore, there would be sufficient premiums paid in to the successor of the Federal Savings and Loan Insurance Corporation to make them whole. The Federal General Treasury stood behind all of that assumption of what the industry could do.

What have we found out, Mr. President? We found, one, that the economic assumptions upon which the whole plan were predicated were woefully inadequate. Witness the fact that we are back tonight asking for an additional $10 billion as a downpayment toward $50 billion as an installment toward substantially more for this bailout.

We have also learned, Mr. President, that we have paid a heavy price for this convoluted financing. In 1990, there have been four issues under RevCorp. Comparing those four issues to sales that were made by the General Treasury of 30-year Treasury notes on dates as close as possible to the dates, of the RevCorp borrowing, we have paid, we the American taxpayers, approximately 40 basis points more, that is four-tenths of 1 percent more to borrow through RevCorp than if we had just done it through the Treasury. We borrowed approximately $18 billion. My calculation is that that is going to cost us every year in additional interest approximately $72 million. That is what we paid for the privilege of this very Rube Goldberg type of financing.

We have $7 billion, actually $6.9 billion, left of that original $30 billion that we put off budget. This amendment would put that last $6.9 billion on budget. We have already lost $72 million this year alone in terms of higher interest charges to the American taxpayers by kneeling at the deity of this convoluted financing scheme. Let us not kneel any longer.

The Congressional Budget Office in a letter to me dated October 18 estimates that by putting this last $6.9 billion on budget, borrowing at the lowest rate of interest which is available to the U.S. Treasury, we will save $20 million a year for 30 years on that component of the borrowing.

So, Mr. President, I urge adoption of this amendment, which will save us $20 million, will end what I consider to have been a masquerade to the American people. It is not quite Halloween but it is time to take the mask off. Let us put this on budget, aboveboard at the lowest cost to the American taxpayer. I urge adopting of this amendment to the amendment.

Mr. RIEGLE. Mr. President, I am sympathetic to this point because the savings provided by switching the remaining RevCorp authority to Treasury funding would be helpful financially. I put such a provision in the original bill that I presented to the Banking Committee for consideration.

But at the markup, Senator GARN joined me in asking that this provision be stricken because, however meritorious, it would have subjected this legislation to a 60-vote point of order.

And the same concerns are relevant here. I understand that if the amendment passes, the underlying bill will not be subject to a point of order. However, it would make our funding legislation next year subject to a 60-vote point of order. Not knowing now what the circumstances will be then, I would prefer not to take that risk. But in any event, I think we ought to vote on the amendment.

If there is no further debate, I would like to suggest we do so.

Mr. GRAHAM. I ask for a division.

The PRESIDING OFFICER. Division vote has been requested.

The question occurs on the amendment by the Senator from Florida.

All those that favor, stand and remain standing until they can be counted. (After a pause.) Those opposed will rise and remain standing until they can be counted.

On a division, the amendment (No. 3228) was rejected.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. RIEGLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BRADLEY. Mr. President, I do not support, without further reform, this expenditure of $15 billion for continued bailouts of the S&L industry. It is simply more of the same when what we need is fundamental reform of both deposit insurance and overall financial regulation. The cost should be laid out for all to see, not passed quiet-

ly at 11 p.m. We also need risk-shared premiums and, above all, a board of financial overseers with extraordinary powers to reconcile conflicting practice in S&L, bank, and insurance sectors. We need more and better paid regulators to protect the public from fraudulent operating, to enhance our position in international capital markets, and to allow our economy to grow with the lowest possible interest rates.

If we just continue to appropriate and authorize more and more funds, $15 billion here, $20 billion there, without insisting on reform, things will not get better. They will deteriorate. It is for those reasons that I wish to be recorded as opposed to these additional funds for the S&L bailout.

Mr. REIGLE. Mr. President, I know of no other amendments or request for time. I would suggest that we move ahead with the bill.

The PRESIDING OFFICER. If there is no further debate on the amendment, the question occurs on the amendment.

The amendment (No. 3227) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. REIGLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now occurs on the bill itself.

The bill (S. 3222), as amended, was passed.

Mr. GARN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. REIGLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REIGLE. Let me just thank the Chair, the Presiding Officer, and others for their part in this. I appreciate the cooperation of all.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I ask unanimous consent to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATORS McCLURE, ARMSTRONG, AND HUMPHREY

Mr. NICKLES. Mr. President, we have three of our most distinguished colleagues who are retiring. I expect that this will be their last day of service in the Senate while we are still in this Congress in session.

First, I would like to pay my congratulations to the career of Senator JIM MCCLURE and his wife, Louise. Senator MCCLURE was first elected in 1951, served as county prosecutor, county attorney. Subsequent to that, he served in the Idaho Legislature. He also served 6 years in the U.S. House of Representatives and just now is completing 18 distinguished years of service in the U.S. Senate.

I have had the pleasure of serving with Senator MCCLURE on the Energy Committee where he was chairman of the committee and also ranking member of the committee. I have also had the pleasure of serving with him on the Appropriations Committee and also where he served as ranking member of the Interior Subcommittee.

Mr. President, Senator MCCLURE is a very distinguished legislator, a very effective legislator. I could not help but think last night as were working on the Interior Appropriations Committee where Senator MCCLURE and Senator BYRD handled that bill with the great deal of patience, a great deal of expertise, they handled it very knowledgeably and, quite frankly, I was very proud of the leadership of both Senator MCCLURE and Senator BYRD.

Both are to be commended. I think it shows the type of leadership that we had, and certainly Senator MCCLURE has been one of the real distinguished leaders. As chairman of the Energy Committee and also ranking member of the Energy Committee, Senator MCCLURE is one of the foremost leaders of energy policy in this country. Certainly his knowledge is almost without equal. He is truly a recognized world leader in energy policy. He has helped shepherd through some very valuable pieces of legislation on energy, including deregulation of natural gas and Federal lands policy. He is probably one of the most knowledgable persons on lands and water policy in the country. Certainly, he will be missed by this Senator and by the country, as well. So I wish my colleague and friend, Senator MCCLURE, and his wife Louise all the best in their retirement years.

Mr. President, it is also my pleasure to acknowledge the friendship and relationship that I have had with Senator HUMPHREY from New Hampshire. Senator HUMPHREY is completing 12 years of distinguished service in the U.S. Senate. I have had the pleasure of personally getting to know GORDON HUMPHREY and his wife Patty over the last several years. They are truly an outstanding couple.

Senator HUMPHREY is almost unique in the fact that he has a great deal of courage and conviction. His background in coming to the Senate is somewhat unique, being an airline pilot. He served our country well in the Air Force.

He has made a real commitment to protect the lives of unborn children. I respect him for that. That is not an easy stand. I can think of many times where he stood in this Chamber, sometimes very late at night, sometimes maybe not the most popular of positions, but he did it with a great deal of courage and conviction. He also did it with a great deal of effectiveness. I think Senator HUMPHREY is personally responsible for saving the lives of countless unborn children. I compliment him for that.

He also certainly has been a leader, if not the leader, in the Congress in helping the freedom fighters in Afghanistan. He took on that case and that cause before it was popular, before it was well known. And he did it very effectively, as well. Certainly GORDON HUMPHREY has made an impact in the U.S. Senate, and I am very proud to call him a very good personal friend.

Mr. President, finally, I would like to pay tribute to a very good friend and certainly a leader in the U.S. Senate, Senator BILL ARMSTRONG, of the State of Colorado.

Senator ARMSTRONG, as I think most people are aware, served in the Colorado Legislature for 10 years, both in the House and Senate. He served in the U.S. House of Representatives for 6 years, and he is completing 12 very distinguished years of service in the U.S. Senate.

BILL ARMSTRONG, in this Senator's opinion, is one of the true leaders in the U.S. Senate. He is one of the most articulate Members of the Senate. He is a business person of background. He has brought a great deal of business expertise and experience to the Senate. As a result of that, I think it has proven to be effective.

Senator ARMSTRONG really is, as Senator DOLE said earlier, the "father of indexing," which has saved taxpayers billions and billions of dollars. He is the leader in the Senate for making changes in what we call the Social Security earnings limit. As a result of his efforts, the senior citizens have been able to keep a greater percentage of their retirement income and their Social Security income.

Senator ARMSTRONG has been probably the leader in the Senate for the last 12 years in trying to protect religious freedom for people in the United States and in other areas of the world. He was the leader in trying to restore religious freedom in other countries, whether that country be Romania or the People's Republic of China.

Senator ARMSTRONG has been a leader in the Senate in protecting the lives of unborn children. I compliment him for that. He has shown a great deal of courage and expertise in that.

Certainly, without doubt, he is one of the real fiscal conservatives of the U.S. Senate, a fiscally prudent, sound leader, a person who has courage and conviction and has certainly made a valuable impact on this body. I believe

he made a very valuable impact on the United States as a whole.

Mr. President, BILL ARMSTRONG and his wife, Ellen are very good friends. We will miss him in the U.S. Senate certainly, and I wish him and his family all the best.

Mr. President, I yield the floor.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a-1928d, as amended, appoints the following Senators as members of the Senate delegation to the North Atlantic Assembly fall meeting during the 2d session of the 101st Congress, to be held in London, England, November 25-30, 1990:

The Senator from Rhode Island, Mr. PELL; the Senator from North Dakota, Mr. BURDICK; the Senator from Arkansas, Mr. BUMPERS; the Senator from Tennessee, Mr. SASSER; and the Senator from Tennessee, Mr. GORE.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Virginia [Mr. WARNER].

CONTROL OF NATIONAL AND DULLES INTERNATIONAL QUESTIONED BY COURT

Mr. WARNER. Mr. President, recently the Federal courts ruled unconstitutional a law which controls much of the operations of the National Airport and the Dulles International Airport. That was the law that I worked on, along with many others in this Chamber, for several years.

While we recognized at the time of its passage there was the potential for a constitutional issue, we had no other course of action but to go ahead, in the spirit of compromise, and accept this particular provision, which was thrust on us by others.

I think it is imperative that the Congress, as soon as it returns, address such legislation as might be composed by those now in control of the remnants of this organization. Because, absent action and clarification, the financial funding required to go ahead with the modernization, not only of the airports but of the access roads and other projects which are part of the infrastructure, could well be jeopardized. It is not certain at this point to what extent these funds might be in jeopardy.

I pledge to work with other Members of this body immediately upon our return to try to devise legislation to resolve this constitutional issue. I will, in the interim between now and the return of the new Congress, meet with others as appropriate, draft legislation, and share it with Members of the Senate and others in hopes that we can expedite the resolution of this matter shortly after our return.

Mr. President, I ask unanimous consent that an article that appeared in the Washington Post today be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 26, 1990]

LAW SHIFTING CONTROL OF AIRPORTS RULED UNCONSTITUTIONAL

(By David Lindsey)

A $1.5 billion redevelopment plan at National and Dulles International airports may be delayed by a federal appeals court ruling yesterday that took away much of the power of the authority that runs Washington's airports.

In a split ruling, the three-judge panel declared that part of the 1986 law that transferred the airports from federal to local control is unconstitutional. The decision ordered the authority not to approve another budget, change its redevelopment plan or authorize the sale of more construction bonds until the case is resolved.

The court ruled that a nine-member congressional review board that has veto power over decisions by the authority's board of directors is unconstitutional because it allows Congress to go beyond its legislative boundaries.

The ruling was the latest twist in a two-year-old lawsuit pitting the airports authority against a group of airport neighbors upset by the noise of takeoffs and landings. The group is trying to block National's $735 million renovation plan, which it says would pave the way for larger aircraft and more flights at the 50-year-old airport.

Patti Goldman, a lawyer representing Citizens for the Abatement of Airport Noise, said yesterday's ruling means that "at some point, the airports authority will not be able to function . . . and Congress will have to decide whether to bring the airports back under federal control or cut them loose completely."

Airport officials predicted yesterday that daily operations at National and Dulles will not be affected by the ruling.

They said they are unsure how many construction projects could be delayed, but acknowledge that proposals to build a new control tower at National and to allocate right-of-way for a toll road to Dulles could be held up because they have not been approved by the authority.

"The development of our expansion plan is bound to run into some obstacles because of this," and Linwood Holton Jr., Chairman of the authority's board of directors. The tower and the toll road plans "are examples of how we can be handicapped," he said.

The authority already has authorized more than $1.5 billion in bonds to finance construction at the airports, but only about $500 million of those bonds have been sold.

Although the ruling does not prevent the authority from issuing more construction bonds, financial analysts said yesterday that the authority could have a difficult time selling more bonds until its future is more settled. David Hess, a spokesman for the authority, said yesterday it has no plans to sell any more bonds in the next several months.

Airport officials said yesterday they have not decided how to respond to the ruling, but indicated that the authority could appeal the case to the U.S. Supreme Court or ask Congress to change the legislation.

"We may have to ask Congress for corrective action at some point," Holton said.

Constitutionality questions have dogged the congressional review board since it was created four years ago as part of the law that allowed the local authority to operate the federally owned airports under a 50-year lease.

The legislation creating the board was designed to satisfy members of Congress who worried that a local authority might take away their parking privileges at the airports or stop air service to their districts.

The appeals court ruled yesterday that in establishing the board, Congress granted itself an executive function, a violation of the constitutional principle of separation of powers.

The congressional review board has used its veto power only once, when it overturned the authority's decision to allow car pools on the eastbound Dulles Access Road during the morning rush hour.

In a dissenting opinion, Judge Abner J. Mikva said that the appeals court ruling "thwarts local control over and planning for the airports. I see no reason for this court to reach the drastic result of invalidating a delicately-balanced and innovative institution of federalism."

Goldman, the lawyer for the anti-noise group, said the group hopes the ruling will lead to a rethinking of expansion plans at National, which she said would create more aircraft noise along the Potomac River.

Airport officials said their goal in renovating National is to improve the airport's efficiency while not significantly adding to its traffic.

SENATORS McCLURE, ARMSTRONG, AND HUMPHREY

Mr. SYMMS. Mr. President, I note that tonight will be the last night of the 101st Congress, and three of my friends, who are the more conservative Members of this body, will be retiring. As many of my friends in the Senate know, I have always been a Member of the Senate that has favored the citizen politicians in our political structure and having people not stay for too long a period of time. But I must say that when I find three of my friends with whom I share the philosophical beliefs of the more conservative approach of limited Government philosophy, I am saddened to see them leave.

I have said many times what my senior colleague, Senator MCCLURE, has meant to me in my political life. As a Member of Congress, he has been my leader here in Washington. I expect to have a continued friendship with him.

I have come to know Senator GORDON HUMPHREY, who I have the most respect for, and I find that he truly is a Senator who marches to his own drummer and is a unique individual in the Senate, and I think that it is marvelous what he is doing, that he has had a career before he came here as an airline pilot, spends 12 years in the U.S. Senate, and is returning back to his native New Hampshire to seek election in the State legislature.

I wish him well, and I hope to keep a continued friendship with him, and I shall miss him. I also will have a special place for my friend, BILL ARMSTRONG, who came to the Congress with me, and many others who are here in the Senate now.

Today, as a matter of fact, when there was a rather large class of new Members in the House, and in the 93d Congress, and when I was called by the Denver Post, when Senator ARMSTRONG had announced his retirement, I was, of course, disappointed that he was retiring. But I said that most of the time when the great philosophical battles were fought during the 16 years, that at that time that BILL ARMSTRONG and I had been in the Congress together, we were together.

I have always had the utmost respect for him, and I know of no other Senator in this Chamber who has been able to articulate succinctly his position in a very direct manner, so clear to his colleagues, and yet in such a gentlemanly fashion as BILL ARMSTRONG, and so easily to communicate with.

I will miss his presence in this Chamber next year, but I wish all three of my colleagues and their families every success in their future endeavors, and Godspeed to all of them.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Senator form California [Mr. CRANSTON].

S. 2100: THE PROPOSED VETERANS BENEFITS AND HEALTH CARE AMENDMENTS OF 1990

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I rise to express my profound disappointment that, as the result of objections raised on the other side of the aisle, the Senate has been unable to consider S. 2100, the proposed Veterans Benefits and Health Care Amendments of 1990.

This is an omnibus veterans bill which would provide a cost-of-living adjustment in the rates of disability compensation paid to 2.2 million veterans with service-connected disabilities and in the rates of dependency and indemnity compensation [DIC] for over 300,000 survivors of those who died from service-connected disabilities. The bill also contains more than 80 other substantive provisions making improvements in veterans compensation, pension, housing, education, employment, rehabilitation, and insurance programs, and in VA health-care services.

COMMITTEE ACTION

This bill was reported to the Senate on July 19. It was reported after full debate in the Committee on Veterans' Affairs. I, with the other Members, worked diligently in the committee to report a good bill, a responsible bill. There were differences of opinion about some of the provisions, and all members of the committee had abundant opportunity during two markup sessions to offer amendments in committee.

EFFORTS TO OBTAIN SENATE ACTION

Mr. President, after the filing of the reported bill, I sought on a continuing basis—both before and after the August recess—to arrange a reasonable time agreement to make prompt consideration of the bill possible. Unfortunately, the other side was slow to respond. In fact, it was not until September 25 that I was advised that the earlier, incomplete agreements we had worked on were not actually steps toward a complete and reasonable time agreement. On the late date, I was first advised that the minority would not enter into any time agreement because one member of the committee would not agree to enter into a time agreement.

Then, on Thursday, October 4, we learned that, because of the objection of one or two Members, the minority would not even give consent to proceeding to the consideration of this measure.

That brought us to the situation we faced on October 10.

MOTION TO PROCEED TO CONSIDERATION

On that date, the distinguished majority leader, Mr. MITCHELL, requested unanimous consent for the Senate to take up S. 2100. Two Senators on the other side of the aisle objected. At that point, a motion was made to proceed to the consideration of the bill and, during that debate, we repeatedly urged that the objections be withdrawn so that the Senate could pass the merits of the bill and debate and vote on any amendments that might be proposed to it. Unfortunately, the objections were never dropped.

The debate appears in the RECORD for October 10, 1990, beginning on page S14874.

Mr. President, those who objected are members of the Veterans' Affairs Committee who were given every opportunity to help develop this legislation while it was still in committee. I certainly understand that, if a particular viewpoint does not prevail in committee, it is entirely appropriate for the member involved to come to the full Senate and appeal to the rest of our colleagues to reverse the committee's position. Every Senator rightly has that prerogative. But I disagree totally with the tactic of blocking Senate consideration of such important veterans' legislation as S. 2100 because of objections to provisions that the Senate would, if given the chance, sustain.

Mr. President, during the debate on October 10, considerable confusion about the bill itself and what it contains was raised on the other side. Subsequently, on October 17, in a statement that begins on page S15548 of the RECORD, I clarified the issues regarding the procedural and budgetary objections that were lodged against this bill. My hope was that, by addressing some of the points of confusion, we might be able to put those matters behind us and gain agreement to move forward on this very important bill.

CONTINUING EFFORTS TO REACH AGREEMENT

Mr. President, in the face of the obstruction that S. 2100 was facing on and after October 10, I continued my efforts to gain fair consideration of the bill. This has included extended negotiations with the Department of Veterans Affairs, which wanted the bill to be acted upon, and the opponents of Senate action on the bill. What these discussions brought to light is that the major stumbling block was title I-C of S. 2100, the provisions which relate to agent orange. As a result of extraordinary discussions that the Department of Veterans Affairs requested last Friday, October 19, in order to help move the bill, the Department advised that, as part of an overall agreement, it agreed to the provisions of title I-C with certain significant modifications, to which Senator DASCHLE and I agreed. We did so despite the overwhelming 92-to-8 vote in the Senate in support of these provisions on August 3, 1989, and despite the fact that the House of Representatives passed very similar provisions in H.R. 5326. We did so because we believe and hoped that making the compromise would facilitate Senate consideration of S. 2100.

Notwithstanding the broad consensus that had emreged between the House, the Senate, and the VA on this issue, those who object to the consideration of S. 2100 also objected to the proposed compromise on the agent orange provisions. In response, we offered further concessions, but this was all to no avial. The minority within a minority maintained its lonely, adamant obstruction.

Mr. President, had we been able to reach agreement on the compromise, we would have been able to enact a very substantial package of legislation including, in addition to the agent orange provisions, the compensation/DIC COLA, physicians' and dentists' special-pay, labor-management, transitional therapeutic housing, insurance, and several other provisions to improve veterans' programs. Such legislation would have been of tremendous benefit to our Nation's veterans and their families.

It is tragic that the adamant refusal of such a very, very few has frustrated the will of both Houses on the agent orange issue—along with so many other provisions—and prevented the enactment of this very valuable legislation.

Mr. President, one aspect of this debate needs to be corrected. It was stated on the floor earlier today—on the other side of the aisle—that the insistence on the agent orange legislation reflects the efforts of Senator TOM DASCHLE of South Dakota, who is not on the committee. That, most emphatically, is just not so. That statement totally ignores the incontrovertible history of this position in our committee and in the Senate, as well as my own position on it. The agent orange provisions in S. 2100 against which objection has been lodged were reported by the Committee on Veterans' Affairs twice—on July 24, 1989, in S. 1153 and again on July 19, 1990, in S. 2100—with clear, strong, overwhelming support in the committee. As noted earlier, the Senate passed this legislation twice last year. The Veterans' Affairs Committee strongly supports it; I support it; and the Senate has supported it and, I strongly believe, will do so again when given the chance. Any statement to the contrary ignores the plain facts and my views.

Mr. President, blame for blocking action of this COLA cannot be shifted in this fashion. We all know who blocked Senate action on this legislation. That fact will not disappear or diminish.

PROVISIONS AT ISSUE

Mr. President, we must ask ourselves what are the provisions of this bill that prompted this extreme opposition to a veterans bill.

They are the following:

First is section 112, which provides for reasonable updates to a 1988 law that provides benefits for certain veterans who were exposed to radiation from nuclear blasts and later developed certain cancers. The updating that would be made by section 112 of the committee bill is necessary to ensure that the law reflects current scientific knowledge about the biological effects of ionizing radiation.

The 1988 law relied heavily on the third report of the National Academy of Sciences' Committee on the Biological Efforts of Ionizing Radiation, the so-called BEIR-III report. The provisions in the committee bill arise directly from the National Academy Committee's most recent report, the BEIR-V report, which contains new and important analyses of the effects of radiation.

The BEIR-V report estimates that the lifetime excess cancer risk following low-level radiation exposure is three to four times greater than previously thought. This must heighten our concern about the healthy effects of exposure to low-level ionizing radiation during military service. It also supports the approach to compensation Congress adopted in Public Law 100-321 and on which the committee bill would expand by adding two cancers—cancer of the salivary glands and cancer of the urinary tract—and eliminating latency-period limitations.

BEIR-V found a dose-dependent increase in atomic bomb survivors in Japan that indicated relatively high susceptibility of salivary glands to radiation-induced cancer. The report also includes data that demonstrate notable associations between bladder and kidney cancer and radiation exposure. The data show an especially strong, dose-dependent connection between radiation and bladder cancer.

In addition, previous studies, discussed in BEIR-V, have indicated that cancers of other organs in the urinary system are associated with radiation exposure.

BEIR-V also shows that the latency-period limitations in current law, 30 years for leukemia, and 40 years for the other cancers, are not longer supportable.

Mr. President, I know that my friend from Wyoming believes that common sense calls for some cutoff point for this time between exposure and the appearance of disease. His views on this have an intuitive appeal. But the committee's provision is based on science—not intuition—and the best-available science, in BEIR-V, which is based on the experience of the survivors of Hiroshima and Nagasaki, does not support a cutoff. It shows that the increase risk is a continuing one.

Mr. President, with respect to the new cancers proposed in the committee bill, I note that, during the committee's May 18 hearing, the administration testified in support of the legislation to establish presumptions of service connection for cancer of the salivary gland and cancers of the kidney or bladder, the two major organs of the urinary tract.

At the same hearing, Deputy Secretary Principi also agreed that the latency-period limitations in the 1988 law no longer reflect state-of-the-art scientific knowledge. In fact, VA itself proposed increasing the period for leukemia from 30 to 40 years. He also testified that VA does not object to eliminating each of the time limits except the one for leukemia, which VA would prefer only to increase to 40 years.

So, section 112 of the committee bill is very much in step with the administration's views.

Is this the kind of provision that warrants the obstruction this bill faces today, Mr. President? Clearly it is not.

A second provision at issue is section 113 of the committee bill. Section 113 was derived from section 3 of S. 2556, which the administration opposed, arguing that it would be administratively infeasible. Based on these concerns, which the ranking minority member, Senator MURKOWSKI, shared and ably represented, the committee made fundamental changes in this provision.

Section 113 of the committee bill would establish a mechanism to require VA to look into military activities that involved potential exposure to ionizing radiation but that don't qualify as radiation-risk activities under current law. This is essential at this time, Mr. President. Although Congress has dealt dealt with the issues relating to the health effects of exposure to radiation for veterans who participated in the nuclear weapons test program or the occupation of Hiroshima or Nagasaki, we have not addressed these issues in the context of other activities that may have involved exposure to ionizing radiation.

Reputable scientists, including some of those involved in the BEIR-V report, recently have raised questions about many types of activities not covered by current law that could have exposed service members to an increased risk of certain diseases, primarily cancer.

For example, an article in the March 1, 1990, New York Times reported that independent measurements of radiation received by flight crews on commercial—and thus, presumbly, military—aircraft exceed some Federal radiation standards. The data confirmed an estimate by the Federal Aviation Administration last year that some pilots absorb dangerous levels of ionizing radiation.

The committee also has received expressions of concern from veterans who might have been exposed to radiation during their service aboard U.S. Navy ships that took part in the disposal of radioactive waste and from veterans who served aboard nuclear submarines.

Mr. President, we clearly owe to our Nation's veterans at least to investigate these significant possibilities of exposure. We cannot leave this burden of investigation and review on veterans' shoulders. The Government must take the lead, and this provision would assure that it does so.

Mr. President, once a radiation-exposure activity is identified, section 113 would provide for VA to consider the activity under the mechanism that Senator SIMPSON and I coauthored in the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, which Congress enacted in 1984. This is a major improvement over the provision as introduced. The mechanism that Senator SIMPSON and I developed in the 1984 law provides for VA decisions on service connection to be "based on sound scientific and medical evidence." Any service connection under that law and this provision, must be based on that standard.

Again, is this the kind of provision that should provoke the obstruction of this bill, Mr. President? It clearly is not; it is a reasonable provision of importance to veterans. It is a reason to

move ahead with—not to hold up—this bill.

The next issues to which Senator SIMPSON objects relate to agent orange and Vietnam service—title I-C of the bill as reported.

Mr. President, what the major provisions in title I-C would do is, first, to codify in title 38, United States Code, presumptions of service connection for non-Hodgkin's lymphoma and soft-tissue sarcoma that the Secretary of Veterans Affairs is already creating by regulation, and, second, establish a truly independent, comprehensive review of scientific knowledge on the health effects of agent orange and similar herbicides used in Vietnam and require full VA consideration of the review. The funds for such a study are earmarked in the conference report on H.R. 5158, the fiscal year 1991 VA-HUD Appropriations Act.

The Secretary's decision to grant compensation for non-Hodgkin's lymphoma was based on a Centers for Disease Control study which found that veterans who served in Vietnam are 50 percent more likely to incur this cancer than similarly aged male non-veterans and veterans who did not go to Vietnam.

The Secretary's decision to compensate veterans for soft tissue sarcoma, STS, was the product of the deliberative process I mentioned earlier that Senator SIMPSON and I coauthored in 1984. Thus, on May 18 VA's Advisory Committee on Environmental Hazards, which we established, concluded, and the Secretary agreed, that available scientific evidence demonstrated it is "at least as likely as not" that exposure to agent orange can cause STS and recommended that VA grant service-connected disability compensation for STS.

Mr. President, Senate action stripping these provisions undoubtedly would be seen by Vietnam veterans as a repudiation of the Secretary's actions. It would also repudiate the very process that Senator SIMPSON and I worked together to establish in 1984. That would be an absurd result and would be a major, justifiable disappointment to many Vietnam veterans.

As to the other agent orange provisions in this bill, Mr. President, the full Senate already has approved these provisions and has done so twice: First, in S. 1153, which passed the Senate on August 3 of last year after a tabling motion failed by a vote of 8 to 92, and second, in title 8 of S. 13, which passed the Senate on October 3 as a substitute amendment to H.R. 901.

The agent orange provisions in the committee bill are truly modest efforts to deal fairly and in a straightforward way with the agent orange issue. It is extremely difficult to see how anyone could rationally view them as a reason to hold up this bill.

Mr. President, I am certain my colleagues are also disappointed that another provision of the committee bill to which there is opposition is section 201, which would require VA to provide care on a priority basis for veterans with posttraumatic stress disorder related to their service. As we debate this legislation, over 800,000 veterans of Vietnam are suffering from psychological pain related to their service. I believe we owe these veterans access to care for their war-related injuries, and there is no provision in the pending legislation about which I feel more strongly and which I believe is more badly needed. In my opinion, because of the strong relationship between combat and posttraumatic stress disorder, known as PTSD, it is essential for VA to assume a much greater leadership role in the diagnosis and treatment of this disorder. Although VA has made some strides over the years, largely as a result of congressional prodding, it is clear that much more must be done.

As my colleagues on the Veterans' Affairs Committee are aware, the National Vietnam Veterans Readjustment Study conducted pursuant to Public Law 98-160 found that 479,000 Vietnam-era veterans—almost a half million—suffer from full-blown cases of PTSD. Additionally, another 350,000 suffer from some degree of PTSD symptoms. The study found that approximately 40 percent of these veterans had never been seen by a mental-health professional and that, within the 12 months proceeding the study, only 20 percent of the veterans with PTSD had utilized any mental-health services. Of those 20 percent, it is unclear how many underwent a full course of treatment.

In response to this massive need, VA currently has only 19 specialized inpatient PTSD units. All but one of these units have waiting lists, ranging from several weeks to 1 year, for admission to the treatment program. In addition, most of these units have waiting lists for admission even for screening programs, in which veterans are admitted for a few days, assessed, discharged, and, if in need of care, then put on a waiting list for admission. The average length of time a veteran must wait for screening is 10 weeks, and at the American Lake VA Medical Center in Tacoma, veterans wait 6 to 8 months just to be assessed. On average, veterans with this highly troubling mental disorder must wait 6 months for treatment for acute conditions. These waiting lists represent a tremendous inadequacy in the system's ability to meet its top priority responsibility—the provision of quality care in a timely way to veterans suffering from service-related disabilities.

In short, this provision would facilitate access to the VA health care system for these veterans who need treatment and for whom it has not been available for far too long and would do so only if VA determines that the veteran's PTSD is the result of the veteran's combat experience.

Mr. President, because the provision has been so terribly inaccurately described on the other side, I want to repeat this. This provision would require priority care only if a physican designated by the chief medical director has determined both that the veteran is suffering from posttraumatic stress disorder and that the PTSD is related to the veteran's combat service. In addition, the veteran's record of combat-threater service would have to be verified. This is a tightly drawn provision that focusses in on the most fundamental mission of the VA health-care system. The Senate passed this legislation last year in S. 13, and passed a similar provision in the last Congress in S. 2011, and I am hopeful that, with persistence, we can achieve enactment of meaningful legislation this year.

Mr. President, the idea that this provision could be viewed as a reason to obstruct this bill is incomprehensible to me.

Wounds of the mind are less obvious to us then those of the body, but they are certainly no less painful to the veteran and no less needful or deserving of rehabilitation and care. The idea of leaving a wounded comrade on the battlefield is totally unacceptable to any American. I believe strongly that we must attend to those still bearing the psycohological wounds of combat with the same kind of concern and compassion we show to the warrior fallen in battle.

That's all that this provision attempts to do.

How could be possibly agree to strip it from the committee bill?

Mr. President, the next committee bill provision to which opposition has been voiced is section 202, which would authorize the Secretary of Veterans Affairs to expand eligibility for readjustment counseling to include veterans of service in theaters of combat operations during any periods of war prior to Vietnam and veterans of service at other times in areas in which U.S. personnel were subjected to danger from armed conflict comparable to that occurring in battle during war.

Under current law, section 612A(a) of title 38, entitlement for readjustment counseling services is limited to Vietnam-era veterans. In recent years, the committee has considered various proposals to expand access to such services, both for those veterans who have served since the end of the Vietnam era in combat or similarly dangerous situations and for veterans of earlier wars.

With regard to veterans who have served in our Armed Forces since the Vietnam era, the committee recognizes that military personnel are at times exposed to hositle situations short of declared war, such as existed in Beirut or Grenada or in connection with our actions against Libya, or in Panama. These kinds of situations involve violent and serious injuries of one's comrades or the necessity to kill soldiers on the other side. These terrible conditions of armed conflict produce the need among some of our soldiers, sailors, airmen, and marines for readjustment counseling or treatment to help deal with the psychological aftermath of their combat-related experiences. The expanded eligibility proposed in the committee bill is particularly important in light of the current understanding—as noted in VA's testimony at our committee's July 14, 1988, hearing—that early intervention can ameliorate the severity and persistence of PTSD symptoms in an individual following exposure to a traumatic event. I can see no basis for denying veterans of these operations the specific expertise of vet center staff who deal with combat veterans on a daily basis and prossess tremendous insight into the psychological problems which at times result from exposure to combat. Mental health professionals at vet centers provide—and provide cost effectively—exactly the kinds of treatment that many combat veterans need.

Mr. President, as to the eligibility for veterans of prior wars, it is important to note that several studies have found PTSD in older veterans. Simply stated, PTSD and other psychological problems resulting from exposure to combat do affect veterans of all wars.

The need of veterans of wars prior to Vietnam for vet center services is not a hypothetical concept. At our committee's June 16, 1988, hearing, Dr. Arthur Blank, director of the VA's Readjustment Counseling Service, testified that vet centers nationwide were seeing as new clients approximately 375 World War II and 400 Korean conflict veterans per month. Whether we in this Chamber choose to acknowledge it or not, veterans from earlier wars do suffer—often times many, many years later—from psychological readjustment problems directly related to their experiences in combat. Having psychiatric care available in conventional hospital settings is well and good, but it is not enough. There are many that we can reach only through community-based treatment and outreach programs such as vet centers. Mr. President, our Nation's military personnel did not abandon their fallen comrades on the beaches of Normandy, Iwo Jima, or Inchon, or at the Battle of the Bulge, or at Okinawa or Pork Chop Hill. There are veterans of battles like these who are in psychological pain today, and we ought to be doing all we can to meet their needs. Our Government has no more fundamental obligation.

I also note that VA Deputy Secretary Anthony Principi, during his confirmation hearing on March 16, 1989, indicated that he would favor making readjustment counseling available to veterans of periods of war other than the Vietnam era and also to veterans of armed hostilities such as Lebanon or Grenada.

Mr. President, denying that older veterans or post-Vietnam veterans may need readjustment counseling directly contradicts everything we have learned over the years about wars and the psychological effects on those who fight them.

This again is a provision that the Senate should hasten to enact. It is not a reasonable basis for opposing action on this bill. That is not even a close question in my mind.

Finally, Mr. President, there is opposition to section 706 of the committee bill, which would make VA's medical care account exempt from sequestration under the Gramm-Rudman-Hollings law.

Mr. President, although medical care account funds that are used for direct medical-care services are subject to a maximum sequestration of 2 percent, funds in the account needed for administrative costs are subject to the full, across-the-board cut. According to OMB calculations in its Mid-Session Review of the Budget, released on July 16, 1990, $911 million of the medical care account would be considered administrative expenses, subject to the full 38.4-percent cut, a $350 million reduction. The direct care portion of the account, $11 billion, is subject to the 2-percent cap and would be cut by $220 million.

This would mean a total reduction of $570 million in the VA medical care account. Any reduction even approaching this amount inevitably would force VA to cut back sharply on its health-care services—eliminating care for hundreds of thousands of veterans—and would imperil the quality of care at VA medical centers.

OMB itself has described, on page 35 of the Mid-Session Review, the impact that this magnitude of a sequestration would have:

> A sequester * * * would * * * require significant reductions in purchases of medical and other supplies and equipment, prevent the opening of new facilities; cancel 1991 initiatives (e.g., increases for drug abuse treatment, quality assurance, physician and nurses pay), reduce medical care staff years by 15,600 or eight percent; and reduce the number of incidents of care provided to * * * veterans by 2.0 million * * *.

The proposed exemption for the VA medical care account has ample precedent. Many accounts and programs are exempt from or otherwise receive special treatment under sequestration. Several VA programs for veterans with service-connected disabilities or their survivors are fully exempt from the reductions. A 1988 compilation prepared by the Senate Budget Committee lists a total of 103 Federal programs or accounts that are fully exempt. Veterans medical care belongs among the more than 100 exempt programs.

Mr. President, these appear to be the provisions that have led to the current effort to prevent Senate consideration of this vitally important veterans bill. Each of these provisions is supported by veterans and each would improve the programs by which the Nation seeks to fulfill its obligations to those whose service and sacrifices have kept our Nation free and strong throughout this century.

ACTION NEXT YEAR

Mr. President, I deeply regret that the refusal to allow the Senate to consider S. 2100 will mean that the compensation/DIC COLA will not be paid on time. I hereby pledge my very best efforts to obtain enactment of it as early as possible next year. I will introduce the bill at the very start of the next Congress, making the COLA retroactive so that veterans will receive their benefits in full measure after this unfair and unfortunate delay. I will do all I can to move it through committee and to the Senate as quickly as possible. At that point, if we meet any objections on the floor, time will be on our side, not on the other side. If we need to invoke cloture, I am confident that we will do so.

On behalf of veterans and survivors, we will consider and vote on any amendments then—as we should be permitted to do now. We will move the legislation through the Senate and, I'm confident, achieve its enactment on an expedited basis.

Mr. KERRY. Mr. President, if the Congress does nothing else before adjournment, it must pass the S. 2100, the omnibus veterans bill. This legislation is critical because it provides the most fundamental of benefits, a cost-of-living increase.

Mr. President, there are 2.2 million veterans with service-connected disabilities and 911,000 survivors of veterans who died from service-connected disabilities who depend on the COLA in order to keep pace with inflation. If Congress does not act, these people, who served their country, will undoubtedly suffer.

The COLA has become even more critical in the face of this year's budget. The Department of Veterans Affairs, is slated to be cut substantially. It seems clear that the Department will be forced to make deep cuts in many programs.

Moreover, this year's budget continues to rely on a regressive tax structure that will only hurt the veteran. That is one of the many reasons why I oppose this budget.

It is my understanding that S. 2100 continues to be held up by the Republican leadership of the Senate Veterans' Affairs Committee. They have refused to allow the Senate even to debate the merits of S. 2100. The week before last I came to the floor of the Senate and spoke about this filibuster. At that time, I warned that if those Senators didn't stop their political games the COLA would be placed in jeopardy. Now it appears that, sadly, S. 2100 will not receive a vote in the Congress. That is an outrage and the Senators responsible should be ashamed.

S. 2100 contains more than 80 substantive provisions making improvements in veterans compensations, pension, housing, education, employment, rehabilitation, and insurance programs and in VA health care services.

I care deeply about many of the provisions, such as those relating to homeless veterans, PTSD and particularly, agent orange. Senator DASCHLE and I have led the fight for agent orange legislation in the Senate. We have twice passed legislation related to agent orange in the Senate, only to have it scuttled in the House. The House Veterans' Affairs Committee, incidentally, recently voted favorably on agent orange compensation. They have finally added their voice to the Senate, the Department of Veterans Affairs, the Federal courts and most importantly, to the veterans themselves.

There are many issues in S. 2100 on which I have been active.

None of these issues is as important as the COLA.

Mr. President, I want the record to be clear on this legislation. The Republican leadership of the Veterans' Affairs Committee has delayed and delayed and delayed in bringing this legislation to the floor of the Senate. And now it's my understanding that they plan to blame the Democrats. Those Republicans, who would not let S. 2100 even be debated on the floor, are now prepared to claim that agent orange is the reason the legislation cannot be passed. That is simply false.

What riles me is that these are the same Republicans who talk tough about the Persian Gulf and who claim to be the President's best friends on defense. They are more than willing to send our young men and women into combat—I've seen it before. But after the war is over, these same Senators forget who actually engaged in the fighting—who actually served in defense of our country. Believe me, I have seen it before.

Agent orange is not the issue here. The issue is providing our veterans with the financial means to put food on their families' tables.

The Republican leadership of the Senate Veterans' Affairs Committee should be ashamed of their deplorable, petty behavior.

These men are no friends of the veteran and they alone must bear the full responsibility if Congress is unable to pass the COLA at this time.

SOLDIERS AND SAILORS CIVIL RELIEF ACT AMENDMENTS

Mr. CRANSTON. Mr. President, I am also saddened and extremely disappointed to learn—as I did just a few moments ago—that one or more Republican Senators are also now blocking legislation to assist reservists who have been called to active duty as part of Operation Desert Shield. This legislation was worked out in collaboration with the House Committee on Veterans' Affairs and should rightfully be enacted this year.

This legislation was cosponsored in the Senate by, among others, the ranking minority member of the Committee on Veterans' Affairs, Mr. MURKOWSKI. It is a shame and a tragedy that this legislation to provide needed help to those whose lives have been disrupted by the need to respond to the crisis in the Persian Gulf is being blocked by one or more unknown Senators who are members of the minority who refuse to block this vital measure openly.

Our service members who are making sacrifices for our Nation deserve all of our best efforts to help—not the obstruction of a few.

Mr. President, it is indeed regrettable that not only veterans legislation is being obstructed by one or more Senators on the other side of the aisle—but also legislation of value and assistance to those serving on active duty in this time of crisis.

REDESIGNING OF COINS

Mr. CRANSTON. Finally, Mr. President, on one more matter, I endeavored to bring before the Senate tonight a provision that would bring about a redesigning of six coins that would lead to five coins, rather that would lead to great profit for the U.S. Government.

We have changed coin designs 65 times before in our Nation's history, and every change has made a profit for the Government.

In the reconciliation bill that we adopted earlier this evening, we fell $10 million short of the goal of deficit reduction of $500 million, half a billion over the next 5 years. We would not have fallen short had this measure been included in reconciliation, as I tried, along with Senator WALLOP and Chairman GONZALEZ in the House, to have it included.

Tonight, I made another effort, but it was blocked by the Republicans from being brought before the Senate tonight. I deeply regret that, and frankly I do not understand it.

Secretary Brady reportedly said in the sessions of the summit, in the closing moments dealing with reconciliation, that he did not know that designing coins would produce any profit. The fact is that the Director of the Mint testified three times to congressional committees in testimony approved by OMB that a very substantial amount of money would be made by redesigning coins.

OMB has estimated that at least $278 million, or something like that, would be made by redesigning these coins. To prefer to raise taxes instead, or to cut programs that people need for their welfare in our country, as an alternative to this very painless way of raising a very substantial amount of money is incredible to me.

Mr. President, let me sum up the case for coin redesign.

PRECEDENT AND CAPACITY

The United States has changed coin design 65 times before in our Nation's history. Every change has made a profit for the Government.

This legislation would require new designs on the reverses—tail sides—of the penny, nickel, dime, quarter, and half dollar. The Presidents on the obverses—face sides—would remain on the coins. The size, shape, weight, color and metallic content would remain the same. All inscriptions including "In God We Trust" will remain on the coins.

The 1975-76 Bicentennial reverses of the quarter, half dollar, and dollar minted in celebration of the 200th anniversary of our Nation's independence were very favorably received by the public and raised substantial profit for the Treasury.

Every Western nation changes its coins with great regularity.

The Mint has "sufficient capacity to implement the 6-year coinage redesign legislation"—Mint Director Donna Pope, testimony before House Subcommittee on Consumer Affairs and Coinage, July 12, 1990.

The first coin redesign could be in production within weeks after enactment. It must be in circulation within 1 year after enactment. This is a longer production time than many other circulating coins. The Kennedy half dollar was authorized by Congress on December 30, 1963 and circulation started on January 30, 1964. The total time elapsed was 1 month. The Lincoln Memorial reverse design was started on September 1, 1958. Circulation began January 3, 1959. Time elapsed was 4 months. The 1921 Peace Dollar competition was held November 25, 1921. The coin was put into circulation January 13, 1922. Time elapsed was 6 weeks.

PROVEN REVENUE RAISER

The Post Office changes stamp designs 24 times every year. It makes a huge profit because of purchases by 10

million stamp collectors. The 1989 profit was approximately $200 million.

The Nation's 10 million coin collectors ensure that coin design change will produce huge profits. On June 23, 1988, a conservative CBO study estimated that the proposed six new designs will produce a total profit of $155 million through above-normal seignorage in 4 years: $36 million in year 1, $42 million in year 2, $47 million in year 3, $30 million in year 4. CBO estimated that this increased seignorage will also reduce Federal interest costs by $29 million in the first 4 years. CBO additionally stated that there will be $18 million profit in collector sets sales over a 6-year period. This money will go directly to the Treasury to reduce national debt. Seignorage is the difference between the cost and the sale price of a coin. Example: it costs 2.5 cents to make a quarter for a seignorage profit of 22.5 cents.

CONGRESSIONAL SUPPORT

Senate support: the coin redesign bill was approved by the Senate unanimously six times in this Congress. It has 68 cosponsors.

House support: the coin redesign bill has 278 cosponsors.

Opponents of this legislation erroneously state that the public disfavor in 1978 over the Susan B. Anthony dollar indicates that the public will not accept these proposed coin redesigns. The Anthony dollar was not a design change. It was different in shape and size. It was not the design on the coin to which the public objected. The Anthony dollar also failed because the dollar bill was not taken out of circulation.

I am shocked that that has been the position of the administration. I am shocked that some Members of this body have prevented us once again tonight from making an effort to move this legislation forward. I assure you this will not be the final act. The effort will continue until success is achieved.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Does any Senator seek recognition?

Mr. CRANSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROVIDING FOR THE SINE DIE ADJOURNMENT OF THE 101ST CONGRESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 399, providing for the sine die adjournment of the 101st Congress.

The PRESIDING OFFICER. the clerk will report.

The assistant legislative Clerk read as follows:

H. CON. RES. 399

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of October 27, 1990, and the Senate adjourns on Saturday, October 27, Sunday, October 28 or Monday, October 29, 1990, they stand adjourned sine die or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 3399) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FORT McDOWELL INDIAN COMMUNITY WATER RIGHTS SETTLEMENT ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 905, H.R. 5063, a bill to provide for the settlement of the Fort McDowell Indian water rights claims.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5063) to provide for the settlement of the water rights claims of the Fort McDowell Indian Community in Arizona, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3229

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Senator WALLOP and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. WALLOP, proposes an amendment numbered 3229.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3229) was agreed to.

The PRESIDING OFFICER. Are there further amendments?

Mr. DECONCINI. Mr. President, I rise today to join my colleague, Senator MCCAIN, in urging Senators to support H.R. 5063, the Fort McDowell Indian Water Settlement Act of 1990. This legislation is identical to S. 2900, which the Senate Select Committee on Indian Affairs reported out of committee just last week.

For the past 5 years, local parties and representatives of the Federal Government have been negotiating and have reached agreement with the Fort McDowell Indian Community on their outstanding water rights claims. This agreement will permanently settle all water rights claims of that Indian community as well as dismissing a number of pending lawsuits brought by the community. H.R. 5063 is needed to implement the Fort McDowell agreement.

Mr. President, as many of my colleagues know, there are over 50 lawsuits currently pending before State and Federal courts to resolve disputes over tribal rights to water flowing on, or past, Indian reservations. Litigation is costly, time consuming, uncertain in outcome, and once decided, can displace existing water uses and provide only paper rights, not "wet water." This prolonged uncertainty clouds the validity of water rights for Indians and non-Indians alike, forestalling investment based on the availability of, and rights to, water. This hurts tribes, businesses, States, and the Nation. As a result of this pending litigation, there has been an effort to undertake an aggressive program to negotiate settlements for the outstanding Indian water rights claims throughout the west. The Fort McDowell settlement is a product of these efforts.

The three major purposes of H.R. 5063 are: First, to approve, ratify and confirm the agreement which will be entered into by the community, the Federal Government and the local parties; second, to authorize and direct the Secretary of the Interior to execute and perform such agreement; and third, to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the community as provided in the agreement and the act.

Under the settlement, the Fort McDowell Indian Community will receive 36,350 acre feet per year (AF/Y) of water from a variety of sources as well as sufficient money from the Federal Government, the State of Arizona

and receipts from long-term leasing of water in order to develop agricultural and other beneficial uses of water on the reservation. H.R. 5063 directs the Secretary to acquire for the Fort McDowell community 13,933 acre feet/year of water, having a CAP municipal and industrial [M&I] priority or greater. The bill specifically spells out two possible sources for this water. They are: First, CAP water permanently relinquished by the Harquahala Valley Irrigation District pursuant to contract with the Secretary; and second, CAP M&I and Indian priority water permanently relinquished by the city of Prescott, the Prescott-Yavapai Apache Tribe, and other entities. If for some reason, the Secretary is unable to use either one of these sources, the bill gives him the authority to use any other source of water at his disposal to fulfill his obligations in this regard.

The Senate Select Committee on Indian Affairs held a joint hearing with the House Interior Committee on July 17, 1990, during which a number of issues were raised concerning both bills. These issues were addressed by the committee and reflected in both S. 2900, as amended by the select committee, and the bill sent over by the House. I would like to go into at least a few of these issues in detail.

First, H.R. 5063 as introduced, contained a repeal of section 304(c)(3) of the Colorado River Basin Project Act. The bill as amended by the committee removes any reference to section 304(c)(3). For the benefit of my colleagues, this provision prevents the pumping of ground water from within a CAP contract area and transferring it out of the contract area. Rural water interests testified that a blanket repeal of this provision would remove an incentive for the cities to negotiate a water transfer bill with them in the Arizona State Legislature. Further, compelling testimony was offered indicating that a repeal of section 304(c)(3) is not necessary to fulfill the purposes of the legislation. The Arizona State Legislature has devoted a considerable amount of time to the issue of ground water transfers. In this Senator's opinion, it would be counter productive for Congress to interject itself into this discussion at this point in time and I am supportive of the committee's decision to leave it a State matter. I am hopeful that all of the parties in Arizona will be able to come to some sort of resolution on this issue in the not too distant future.

Arizona's rural water interests also expressed their concerns about the Secretary exercising his authority to convert the Harquahala Valley Irrigation District's CAP agricultural priority water to an M&I priority to be used for the Fort McDowell settlement. They contend that the ultimate consequence of this action would be to reduce the pool of agricultural water to be used as a basis for the reallocation of uncontracted CAP agricultural supplies. There is, however, a compromise to this problem known as a wrap-around proposal. Briefly, the Secretary could contract to provide the Gila River Indian Community with the entire amount of the acquired Harquahala water, provided such water retained its agricultural priority. The Gila River Indian Community would then contract to provide the Fort McDowell with 13,933 acre/feet of Gila River's Indian pool. This would keep the Harquahala water in the Ag pool. Both the House and Senate reports accompanying the bill contain language strongly recommending that the Secretary utilize the wrap-around proposal if Harquahala water is needed for the Fort McDowell settlement. The conversion is to be used only as a last resort. I support this solution.

Concerns were also raised during the hearing about the Prescott option. The Prescott option consists of the Secretary acquiring ground water rights in the Big Chino Valley north of Prescott. After acquiring these rights, the Secretary would construct wells and a pipeline to convey this water to Sullivan Lake, approximately 17 miles north of Prescott. From Sullivan Lake, the city of Prescott would construct a pipeline and pumping stations necessary to transfer this water from Sullivan Lake to the city for the use by the city of Prescott and the Prescott-Yavapai Apache Tribe. In return, these entities would relinquish their CAP entitlement to the Secretary to be used in the Fort McDowell settlement.

The obvious benefit of the Prescott option is that it gives the participating municipalities and tribes an opportunity to utilize their CAP allocations. In view of the fact that it is unlikely that a conveyance would ever be built from the CAP aqueduct to Prescott or to the Prescott-Yavapai Apache Tribe, the Prescott option offers a real possibility for them to benefit from the project. The city of Prescott wholeheartedly supports the Prescott option.

The concerns with the Prescott option relate to the impact that ground water pumping and the augmentation may have on the flows of the Verde River. Testimony received from various entities in the Lower Verde Valley indicated that they want to be sure, as this Senator does, that the aquifer from which the ground water would be pumped is not connected to the Verde River. If it were, ground water pumping from the Big Chino Valley could impact the entitlement diverted from the Verde River downstream. The committee has taken steps to address these concerns in the bill before the Senate today. Language was included stating that the Secretary, "shall not acquire any land or water rights in Big Chino Valley of the Verde River watershed until he has completed a study to determine whether * * * the exercise of such water rights will not have an adverse affect on the flow or the biota of Verda River * * *" and "* * * If the Secretary determines, based upon the findings of the study, that the exercise of water rights will not have an adverse effect on the flow or the biota of the Verde River * * * the Secretary shall be authorized to acquire land in the Big Chino Valley * * *." Language was also included in both the House and Senate reports supporting this bill language.

In this Senator's opinion, I believe the changes made to H.R. 5063 by the select committee have made it a much better bill.

One other issue I would like to touch upon briefly is the inclusion into H.R. 5063, the bill authorizing the Secretary to acquire the CAP water of the Harquahala Valley Irrigation District for use in the settlement of Indian water right claims in Arizona. As I mentioned previously, the CAP water from the Harquahala Valley Irrigation District is one of two specific sources for the 13,933 acre feet/year of water the Secretary is required to obtain for the Fort McDowell settlement. This legislation simply allows the Secretary to forgive an amount of this district's debt to the U.S. commensurate with the value of the water to be acquired. To quote my friend, the chairman of the House Interior Committee, Mo UDALL, "this bill makes possible one of those fabled win-win outcomes from a tough situation." It enables the Secretary to acquire the water necessary to settle Indian water rights disputes while at the same time allowing the financially strapped landowners in the District to settle their debts with the United States and sell their land and ground water to the Central Arizona Water Conservation District and Arizona cities.

Some concern has been brought to this Senator's attention that the Secretary's possible acquisition of the Harquahala Valley Irrigation District's CAP water could impact existing business relationships between farmers in the district and third parties. While the Secretary has no legal obligation to any of these parties with respect to their business relationships to one another, this Senator expects that the Secretary, should he proceed with the Harquahala acquisition, be cognizant of the effect such acquisition may have on those parties.

Mr. President, the parties in Arizona and the Fort McDowell community are to be commended for successfully negotiating this agreement. It is a fair and equitable settlement and most im-

portantly redresses the Fort McDowell community's legitimate claims. I also want to thank my colleague Senator McCAIN for his efforts to move this legislation forward. His endeavors in this regard serve as just one more example of his commitment to protecting the best interests of native Americans. I would also like to recognize the chairman of the House Interior Committee and the senior member of the Arizona delegation, my good friend, MO UDALL. His leadership in enacting Indian water settlements has truly been an inspiration to this Senator. Mike Jackson of the chairman's staff deserves special recognition. The expertise that Mike has acquired over the years has served the delegation well on water issues affecting Arizona. This Senator appreciates his counsel. Also, I would like to mention the efforts of the staff of the select committee, particularly Eric Eberhard. Eric has been instrumental in working with all of the concerned parties to address their various concerns. Finally, I would like to thank the distinguished chairman of the Senate Select Committee on Indian Affairs, Senator INOUYE. I believe that he and I share the same feelings concerning the need to resolve these disputes in a negotiated fashion. His efforts to get the Fort McDowell legislation to the floor is certainly appreciated.

The Fort McDowell Indian Water Settlement Act of 1990 is a good piece of legislation and I ask my colleagues to join me in supporting it.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 5063), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF IZZYDOR SHEVER

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 3642, a private relief bill, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3642 for the relief of Izzydor Shever to the Committee on Governmental Affairs.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 3642) was ordered to a third reading, was read the third time, and passed.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

The bill (H.R. 3642) was passed.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BILL INDEFINITELY POSTPONED—S. 3207

Mr. MITCHELL. Mr. President, I ask unanimous consent that Calendar No. 990, S. 3207, the Senate-originated legislative appropriations bill, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

TAFT INSTITUTE REAUTHORIZATION—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on S. 1939 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1939) to extend the Authorization of Appropriations of the Taft Institute, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 16, 1990.)

Mr. MITCHELL. Mr. President, I urge the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VISITOR CENTER AT SALEM MARITIME NATIONAL HISTORIC SITE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 942, H.R. 4834, a bill to provide for the visitor center at Salem Maritime National Historic Site in Massachusetts.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4834) to provide for a visitor center at Salem Maritime National Historic Site in the Commonwealth of Massachusetts.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. KERRY. Mr. President, I rise today to express my support for H.R. 4834 the House companion bill to S. 2818, legislation I introduced last June to provide for a visitor center at the Salem National Historic Site in Salem, MA. My colleague from Massachusetts, Representative MAVROULES, introduced H.R. 4839 in the House, and we have been working closely to ensure its final passage.

In 1938, Congress established Salem maritime as this country's first national historical site. The motives behind this farsighted congressional action remain as clear today as they were more than half a century ago. The city of Salem and its waterfront have an important story to tell about America's history of maritime shipping and commerce. It provides people with a unique educational and recreational opportunity.

Over the years, visitors from around the world have come to this 9-acre site to visit its buildings and old wharves and learn about the golden age of sail. In 1989, the Salem maritime site continued its long process of improvement and renovation by acquiring the St. Josephs Polish Club and its irreplaceable museum objects and artifacts. That same year, according to the National Park Service, the site was visited by nearly 700,000 people.

The city is anticipating the number of tourists and visitors to continue to increase, with more than 1 million people expected to come to Salem in 1992 to mark the 300th anniversary of the famous Salem witchcraft trials.

Today tourism is the cornerstone of the economy of Salem. The Federal commitment to the visitors center and other park projects provide a focal

point for the development of that tremendous tourism potential and is a critical component in the economic revitalization of the city.

The visitors center project is part of a multimillion-dollar revitalization plan for the city. The visitors center effort has helped forge a partnership between the city, the Park Service, local businesses, the Essex Institute, the Peabody Museum and the State. It is critical to this total development effort which will bring tens of millions of dollars to the city and hundreds of thousands of additional tourists into the community. This major economic revitalization effort will not only provide many businesses with further growth opportunities, but will create hundreds of construction jobs. Further it will add hundreds of permanent jobs for Salem residents long after construction is completed and millions of dollars in additional income to families in this historic community.

Currently when tourists come to visit Salem, there is no central area for them to get oriented to the maritime site. In 1978, the Park Service in their general management plan, suggested the great need for a visitors center. Last year in order to better understand the tourism potential and associated problems, Salem State College conducted its own independent comprehensive visitors use study. The survey reinforced the Park Service's earlier report that there is a need for Salem maritime to have a visitors center where people can get information and orientation. Furthermore the survey suggested that the center be located near the downtown area, where tourists generally come when they first enter the city. Moreover, it determined that the center would best be located at the Salem Armory.

Mr. President, H.R. 4834 addresses three things: First, it will enable the Park Service to establish a visitors center in the city of Salem. Second, it will give the Park Service the authority to acquire or lease up to 12,000 square feet for the center. Last, it directs the Park Service to do an economic analysis on whether acquiring space or leasing space is more economically feasible and appropriate. I should note that this bill gives the Park Service access to the armory which is not a federally owned property. Also I would like to point out that the bill has the full support of local officials and the local business community.

This week the Senate Appropriations Committee passed legislation which included $2 million for the first phase of the visitors center.

Mr. President, it is essential that a visitors center at the Salem National Historic Site be established before the 300th anniversary of the Salem witch trials. Such actions would be an important step in fulfilling a goal set forth by Congress over 40 years ago. It will help us enrich our future by learning more about our past, while enhancing the economic vitality of an area that thrives on its tourist industry. I urge my colleagues to join Senator KENNEDY and me in supporting this bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 4834) was ordered to a third reading, was read the third time, and passed.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

The bill (H.R. 4834) was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDIAN ARTS AND CRAFTS BOARD

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2006.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 2006) entitled "An act to expand the powers of the Indian Arts and Crafts Board, and for other purposes," with the following amendments:

Page 17, strike line 3 and all that follows through line 10.

Page 27, after line 19, insert:

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. COCHITI DAM LICENSE.

Notwithstanding the provisions of any other Federal law, no license shall be issued by the Federal Energy Regulatory Commission for the development of hydroelectric power at the Army Corps of Engineers' Cochiti Dam located on the Pueblo de Cochiti Indian Reservation in the State of New Mexico.

SEC. 602. DAKOTA WESLEYAN UNIVERSITY.

Notwithstanding the provisions of section 487(c)(2)(B) of the Higher Education Act of 1965, the Secretary of Education shall reassess the amount owed by the Dakota Wesleyan University, located in Mitchell, South Dakota, in the amount of $159,260, plus any accrued interest thereon to $16,113.

Mr. MITCHELL. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPROVING FOR FORT HALL INDIAN WATER RIGHTS SETTLEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5308, the Fort Hall Indian Water Rights Act of 1990 now at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5308) to improve the Fort Hall Indian Water Rights Settlement.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 5308) was ordered to a third reading, was read the third time, and passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GLOBAL CHANGE RESEARCH ACT

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 169.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 169) entitled "An act to amend the National Science and Technology Policy, Organization, and Priorities Act of 1976 in order to provide for improved coordination of national scientific research efforts and to provide for a national plan to improve scientific understanding of the Earth system and the effect of changes in that system on climate and human well-being," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Global Change Research Act of 1990".

SEC. 2. DEFINITIONS.

As used in this Act, the term—

(1) "Committee" means the Committee on Earth and Environmental Sciences established under section 102;

(2) "Council" means the Federal Coordinating Council on Science, Engineering, and Technology;

(3) "global change" means changes in the global environment (including alterations in climate, land productivity, oceans or other water resources, atmospheric chemistry, and ecological systems) that may alter the capacity of the Earth to sustain life;

(4) "global change research" means study monitoring, assessment, prediction, and information management activities to describe and understand—

(A) the interactive physical, chemical, and biological processes that regulate the total Earth system;

(B) the unique environment that the Earth provides for life;

(C) changes that are occurring in the Earth system; and

(D) the manner in which such system, environment, and changes are influenced by human actions;

(5) "Plan" means the National Global Change Research Plan developed under section 104, or any revision thereof; and

(6) "Program" means the United States Global Change Research Program established under section 103.

TITLE I—UNITED STATES GLOBAL CHANGE RESEARCH PROGRAM

SEC. 101. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress makes the following findings:

(1) Industrial, agricultural, and other human activities, coupled with an expanding world population, are contributing to processes of global change that may significantly alter the Earth habitat within a few human generations.

(2) Such human-induced changes, in conjunction with natural fluctuations, may lead to significant global warming and thus alter world climate patterns and increase global sea levels. Over the next century, these consequences could adversely affect world agricultural and marine production, coastal habitability, biological diversity, human health, and global economic and social well-being.

(3) The release of chlorofluorocarbons and other stratospheric ozone-depleting substances is rapidly reducing the ability of the atmosphere to screen out harmful ultraviolet radiation, which could adversely affect human health and ecological systems.

(4) Development of effective policies to abate, mitigate, and cope with global change will rely on greatly improved scientific understanding of global environmental processes and on our ability to distinguish human-induced from natural global change.

(5) New developments in interdisciplinary Earth sciences, global observing systems, and computing technology make possible significant advances in the scientific understanding and prediction of these global changes and their effects.

(6) Although significant Federal global change research efforts are underway, an effective Federal research program will require efficient interagency coordination, and coordination with the research activities of State, private, and international entities.

(b) PURPOSE.—The purpose of this title is to provide for development and coordination of a comprehensive and integrated United States research program which will assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change.

SEC. 102. COMMITTEE ON EARTH AND ENVIRONMENTAL SCIENCES.

(a) ESTABLISHMENT.—The President, through the Council, shall establish a Committee on Earth and Environmental Sciences. The Committee shall carry out Council functions under section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651) relating to global change research, for the purpose of increasing the overall effectiveness and productivity of Federal global change research efforts.

(b) MEMBERSHIP.—The Committee shall consist of at least one representative from—

(1) the National Science Foundation;

(2) the National Aeronautics and Space Administration;

(3) the National Oceanic and Atmospheric Administration of the Department of Commerce;

(4) the Environmental Protection Agency;

(5) the Department of Energy;

(6) the Department of State;

(7) the Department of Defense;

(8) the Department of the Interior;

(9) the Department of Agriculture;

(10) the Department of Transportation;

(11) the Office of Management and Budget;

(12) the Office of Science and Technology Policy;

(13) the Council on Environmental Quality;

(14) the National Institute of Environmental Health Sciences of the National Institutes of Health; and

(15) such other agencies and departments of the United States as the President or the Chairman of the Council considers appropriate.

Such representatives shall be high ranking officials of their agency or department, wherever possible the head of the portion of that agency or department that is most relevant to the purpose of the title described in section 101(b).

(c) CHAIRPERSON.—The Chairman of the Council, in consultation with the Committee, biennially shall select one of the Committee members to serve as Chairperson. The Chairperson shall be knowledgeable and experienced with regard to the administration of scientific research programs, and shall be a representative of an agency that contributes substantially, in terms of scientific research capability and budget, to the Program.

(d) SUPPORT PERSONNEL.—An Executive Secretary shall be appointed by the Chairperson of the Committee, with the approval of the Committee. The Executive Secretary shall be a permanent employee of one of the agencies or departments represented on the Committee, and shall remain in the employ of such agency or department. The Chairman of the Council shall have the authority to make personnel decisons regarding any employees detailed to the Council for purposes of working on business of the Committee pursuant to section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651).

(e) FUNCTIONS RELATIVE TO GLOBAL CHANGE.—The Council, through the Committee, shall be responsible for planning and coordinating the Program. In carrying out this responsibility, the Committee shall—

(1) serve as the forum for developing the Plan and for overseeing its implementation;

(2) improve cooperation among Federal agencies and departments with respect to global change research activities;

(3) provide budgetary advice as specified in section 105;

(4) work with academic, State, industry, and other groups conducting global change research, to provide for periodic public and peer review of the Program;

(5) cooperate with the Secretary of State in—

(A) providing representation at international meetings and conferences on global change research in which the United States participates; and

(B) coordinating the Federal activities of the United States with programs of other nations and with international global change research activities such as the International Geosphere-Biosphere Program;

(6) consult with actual and potential users of the results of the Program to ensure that such results are useful in developing national and international policy responses to global change; and

(7) report at least annually to the President and the Congress, through the Chairman of the Council, on Federal global change research priorities, policies, and programs.

SEC. 103. UNITED STATES GLOBAL CHANGE RESEARCH PROGRAM.

The President shall establish an interagency United States Global Change Research Program to improve understanding of global change. The Program shall be implemented by the Plan developed under section 104.

SEC. 104. NATIONAL GLOBAL CHANGE RESEARCH PLAN.

(a) IN GENERAL.—The Chairman of the Council, through the Committee, shall develop a National Global Change Research Plan for implementation of the Program. The Plan shall contain recommendations for national global change research. The Chairman of the Council shall submit the Plan to the Congress within one year after the date of enactment of this title, and a revised Plan shall be submitted at least once every three years thereafter.

(b) CONTENTS OF THE PLAN.—The Plan shall—

(1) establish, for the 10-year period beginning in the year the Plan is submitted, the goals and priorities for Federal global change research which most effectively advance scientific understanding of global change and provide usable information on which to base policy decisions relating to global change;

(2) describe specific activities, including research activities, data collection and data analysis requirements, predictive modeling, participation in international research efforts, and information management, required to achieve such goals and priorities;

(3) identify and address, as appropriate, relevant programs and activities of the Federal agencies and departments represented on the Committee that contribute to the Program;

(4) set forth the role of each Federal agency and department in implementing the Plan;

(5) consider and utilize, as appropriate, reports and studies conducted by Federal agencies and departments, the National Research Council, or other entities;

(6) make recommendations for the coordination of the global change research activities of the United States with such activities of other nations and international organizations, including—

(A) a description of the extent and nature of necessary international cooperation;

(B) the development by the Committee, in consultation when appropriate with the National Space Council, of proposals for cooperation on major capital projects;

(C) bilateral and multilateral proposals for improving worldwide access to scientific data and information; and

(D) methods for improving participation in international global change research by developing nations; and

(7) estimate, to the extent practicable, Federal funding for global change research activities to be conducted under the Plan.

(c) RESEARCH ELEMENTS.—The Plan shall provide for, but not be limited to, the following research elements:

(1) Global measurements, establishing worldwide observations necessary to understand the physical, chemical, and biological processes responsible for change in the Earth system on all relevant spatial and time scales.

(2) Documentation of global change, including the development of mechanisms for recording changes that will actually occur in the Earth system over the coming decades.

(3) Studies of earlier changes in the Earth system, using evidence from the geological and fossil record.

(4) Predictions, using quantitative models of the Earth system to identify and simulate global environmental processes and trends, and the regional implications of such processes and trends.

(5) Focused research initiatives to understand the nature of and interaction among physical, chemical, biological, and social processes related to global change.

(d) INFORMATION MANAGEMENT.—The Plan shall provide recommendations for collaboration within the Federal Government and among nations to—

(1) establish, develop, and maintain information bases, including necessary management systems which will promote consistent, efficient, and compatible transfer and use of data;

(2) create globally accessible formats for data collected by various international sources; and

(3) combine and interpret data from various sources to produce information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating, and adapting to the effects of global change.

(e) NATIONAL RESEARCH COUNCIL EVALUATION.—The Chairman of the Council shall enter into an agreement with the National Research Council under which the National Research Council shall—

(1) evaluate the scientific content of the Plan; and

(2) provide information and advice obtained from United States and international sources, and recommended priorities for future global change research.

(f) PUBLIC PARTICIPATION.—In developing the Plan, the Committee shall consult with academic, State, industry, and environmental groups and representatives. Not later than 90 days before the Chairman of the Council submits the Plan, or any revision thereof, to the Congress, a summary of the proposed Plan shall be published in the Federal Register for a public comment period of not less than 60 days.

SEC. 105. BUDGET COORDINATION.

(a) COMMITTEE GUIDANCE.—The Committee shall each year provide general guidance to each Federal agency or department participating in the Program with respect to the preparation of requests for appropriations for activities related to the Program.

(b) SUBMISSION OF REPORTS WITH AGENCY APPROPRIATIONS REQUESTS.—(1) Working in conjunction with the Committee, each Federal agency or department involved in global change research shall include with its annual request for appropriations submitted to the President under section 1108 of title 31, United States Code, a report which—

(A) identifies each element of the proposed global change research activities of the agency or department;

(B) specifies whether each element (i) contributes directly to the Program or (ii) contributes indirectly but in important ways to the Program; and

(C) states the portion of its request for appropriations allocated to each element of the Program.

(2) Each agency or department that submits a report under paragraph (1) shall submit such report simultaneously to the Committee.

(c) CONSIDERATION IN PRESIDENT'S BUDGET.—(1) The President shall, in a timely fashion, provide the Committee with an opportunity to review and comment on the budget estimate of each agency and department involved in global change research in the context of the Plan.

(2) The President shall identify in each annual budget submitted to the Congress under section 1105 of title 31, United States Code, those items in each agency's or department's annual budget which are elements of the Program.

SEC. 106. SCIENTIFIC ASSESSMENT.

On a periodic basis (not less frequently than every 4 years), the Council, through the Committee, shall prepare and submit to the President and the Congress an assessment which—

(1) integrates, evaluates, and interprets the findings of the Program and discusses the scientific uncertainties associated with such findings;

(2) analyzes the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and

(3) analyzes current trends in global change, both human-induced and natural, and projects major trends for the subsequent 25 to 100 years.

SEC. 107. ANNUAL REPORT.

(a) GENERAL.—Each year at the time of submission to the Congress of the President's budget, the Chairman of the Council shall submit to the Congress a report on the activities conducted by the Committee pursuant to this title, including—

(1) a summary of the achievements of the Program during the period covered by the report and of priorities for future global change research;

(2) an analysis of the progress made toward achieving the goals of the Plan;

(3) expenditures required by each agency or department for carrying out its portion of the Program, including—

(A) the amounts spent during the fiscal year most recently ended;

(B) the amounts expected to be spent during the current fiscal year; and

(C) the amounts requested for the fiscal year for which the budget is being submitted.

(b) RECOMMENDATIONS.—The report required by subsection (b) shall include recommendations by the President concerning—

(1) changes in agency or department roles needed to improve implementation of the Plan; and

(2) additional legislation which may be required to achieve the purposes of this title.

SEC. 108. RELATION TO OTHER AUTHORITIES.

(a) NATIONAL CLIMATE PROGRAM RESEARCH ACTIVITIES.—The President, the Chairman of the Council, and the Secretary of Commerce shall ensure that relevant research activities of the National Climate Program, established by the National Climate Program Act (15 U.S.C. 2901 et seq.), are considered in developing national global change research efforts.

(b) AVAILABILITY OF RESEARCH FINDINGS.—The President, the Chairman of the Council, and the heads of the agencies and departments represented on the Committee, shall ensure that the research findings of the Committee, and of Federal agencies and department, are available to—

(1) the Environmental Protection Agency for use in the formulation of a coordinated national policy on global climate change pursuant to section 1103 of the Global Climate Protection Act of 1987 (15 U.S.C. 2901 note); and

(2) all Federal agencies and departments for use in the formulation of coordinated national policies for responding to human-induced and natural processes of global change pursuant to other statutory responsibilities and obligations.

(c) EFFECT ON FEDERAL RESPONSE ACTIONS.—Nothing in this title shall be construed, interpreted, or applied to preclude or delay the planning or implementation of any Federal action designed, in whole or in part, to address the threats of stratospheric ozone depletion or global climate change.

TITLE II—INTERNATIONAL COOPERATION IN GLOBAL CHANGE RESEARCH

SEC. 201. SHORT TITLE.

This title may be cited as the "International Cooperation in Global Change Research Act of 1990".

SEC. 202. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Pooling of international resources and scientific capabilities will be essential to a successful international global change program.

(2) While international scientific planning is already underway, there is currently no comprehensive intergovernmental mechanism for planning, coordinating, or implementing research to understand global change and to mitigate possible adverse effects.

(3) An international global change research program will be important in building future consensus on methods for reducing global environmental degradation.

(4) The United States, as a world leader in environmental and Earth sciences, should help provide leadership in developing and implementing an international global change research program.

(b) PURPOSES.—The purposes of this title are to—

(1) promote international, intergovernmental cooperation on global change research;

(2) involve scientists and policymakers from developing nations in such cooperative global change research programs; and

(3) promote international efforts to provide technical and other assistance to developing nations which will facilitate improvements in their domestic standard of living while minimizing damage to the global or regional environment.

SEC. 203. INTERNATIONAL DISCUSSIONS.

(a) GLOBAL CHANGE RESEARCH.—The President should direct the Secretary of State, in cooperation with the Committee, to initiate discussions with other nations leading

toward international protocols and other agreements to coordinate global change research activities. Such discussions should include the following issues:

(1) Allocation of costs in global change research programs, especially with respect to major capital projects.

(2) Coordination of global change research plans with those developed by international organizations such as the International Council on Scientific Unions, the World Meteorological Organization, and the United Nations Environment Program.

(3) Establishment of global change research centers and training programs for scientists especially those from developing nations.

(4) Development of innovative methods for management of international global change research, including—

(A) use of new or existing intergovernmental organizations for the coordination of funding of global change research; and

(B) creation of a limited foundation for global change research.

(5) The prompt establishment of international projects to—

(A) create globally accessible formats for data collected by various international sources; and

(B) combine and interpret data from various sources to produce information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating, and adapting to possible adverse effects of global change.

(6) Establish of international offices to disseminate information useful in identifying, preventing, mitigating, or adapting to the possible effects of global change.

(b) ENERGY RESEARCH.—The President should direct the Secretary of State (in cooperation with the Secretary of Energy, the Secretary of Commerce, the United States Trade Representative, and other appropriate members of the Committee) to initiate discussions with other nations leading toward an international research protocal for cooperation in the development of energy technologies which have minimally adverse effects on the environment. Such discussions should include, but not be limited to, the following issues:

(1) Creation of an international cooperative program to fund research related to energy efficiency, solar and other renewable energy sources, and passively safe and diversion-resistant nuclear reactors.

(2) Creation of an international cooperative program to develop low cost energy technologies which are appropriate to the environmental, economic, and social needs of developing nations.

(3) Exchange of information concerning environmentally safe energy technologies and practices, including those described in paragraphs (1) and (2).

SEC. 204. GLOBAL CHANGE RESEARCH INFORMATION OFFICE.

Not more than 180 days after the date of enactment of this Act, the President shall, in consultation with the Committee and all relevant Federal agencies, establish an Office of Global Change Research Information. The purpose of the Office shall be to disseminate to foreign governments, businesses, and institutions, as well as the citizens of foreign countries, scientific research information available in the United States which would be useful in preventing, mitigating, or adopting to the effects of global change. Such information shall include, but not be limited to, results of scientific research and development on technologies useful for—

(1) reducing energy consumption through convervation and energy efficiency;

(2) promoting the use of solar and renewable energy sources which reduce the amount of greenhouse gases released into the atmosphere;

(3) developing replacements for chlorofluorocarbons, halons, and other ozone-depleting substances which exhibit a significantly reduced potential for depleting stratospheric ozone;

(4) promoting the conservation of forest resources which help reduce the amount of carbon dioxide in the atmosphere;

(5) assisting developing countries in ecological pest management practices and in the proper use of agricultural and industrial chemicals; and

(6) promoting recycling and source reduction of pollutants in order to reduce the volume of waste which must be disposed of, thus decreasing energy use and greenhouse gas emissions.

TITLE III—GROWTH DECISION AID

SEC. 301. STUDY AND DECISION AID.

(a) The Secretary of Commerce shall conduct a study of the implications and potential consequences of growth and development on urban, suburban, and rural communities. Based upon the findings of the study, the Secretary shall produce a decision aid to assist State and local authorities in planning and managing urban, suburban, and rural growth and development while preserving community character.

(b) The Secretary of Commerce shall consult with other appropriate Federal departments and agencies as necessary in carrying out this section.

(c) The Secretary of Commerce shall submit to the Congress a report containing the decision aid produced under subsection (a) no later than January 30, 1992. The Secretary shall notify appropriate State and local authorities that such decision aid is available on request.

Amend the title so as to read: "An Act to require the establishment of a United States Global Change Research Program aimed at understanding and responding to global change, including the cumulative effects of human activities and natural processes on the environment, to promote discussions toward international protocols in global change research, and for other purposes.".

Mr. GORE. Mr. President, I rise to offer my thanks and congratulations to my distinguished colleague and chairman, Senator HOLLINGS, for his hard work on the Global Change Research Act and for his leadership in sheparding the bill to passage.

As the rest of us who have been very much involved in this issue know well, more and better research on climate change is necessary if we are going to build the broad political consensus necessary for action. And, Mr. President, the time for action is now.

Recent news from Antarctica reinforces both the sense of urgency and the unparalleled scope of the environmental crisis we face. Researchers are telling us that the chemicals we've been pouring into our atmosphere are creating a hole of historic proportions in the stratospheric ozone layer. This year could be as bad as 1987 and that year, stratospheric ozone levels above Antarctica fell to record lows—nearly 50 percent of the upper ozone layer destroyed and a continent-sized hole created.

And the damage is not limited to Antarctica. In hearings before my Subcommittee on Science, Technology, and Space, an international scientific team told us that the Arctic atmosphere is also primed with the chlorofluorocarbons that cause ozone depletion. And right here at home, over the United States, we have experienced a 3-percent ozone loss since 1969.

The threat that halogenated chemicals pose to life on Earth simply cannot be overstated. The ozone layer is an essential shield against the sun's deadliest radiation, and scientists tell us that the incidence of cancer and blindness rises exponentially with increased exposure to ultraviolet radiation. Studies show, for example, that each 1 percent loss of ozone can lead to a 3-percent rise in nonmelanoma skin cancer. Moreover, ultraviolet radiation jeopardizes the entire food chain because the microscopic phytoplankton which are the base of the chain cannot survive increased exposure.

But ozone depletion is only part of the problem. CFC's are also potent greenhouse gases—responsible for some 15 to 20 percent of the global warming we have been experiencing. And it is clear that the longer we delay action to control these gases, the threat that we face magnifies. A working group of the Intergovernmental Panel on Climate Change, the body established jointly by the U.N. Environment Program and the World Meteorological Organization to evaluate available scientific information on—and the likely environmental and socio-economic impacts of—global climate change, recently issued its assessment. If we continue on our current course, the IPCC predicts that global temperatures will increase by about 3 degrees celcius by the end of the next century. A warming of this magnitude is greater than any seen over the past 10,000 years, and increasingly severe storm systems, massive crop failure, and the extinction of delicate species are its likely legacy. And people living in coastal communities are also in jeopardy. Because of global warming, sea levels will rise by about 6cm per decade for the next century; coastal communities in low lying countries like Bangladesh and communities right here at home—along the eastern seaboard—Florida, Georgia, South Carolina, and on up the coast—may be devastated.

To date, Mr. President, our campaign against this terrible threat has been weak, at best. In a hearing that I chaired recently, scientists from NOAA and the University of East Anglia reported that the last decade

was the warmest on record, and that the data for 1990 show that this year will be warmer still. We also were presented with shocking evidence of what may be the first biological confirmation of global warming. Coral reefs—those beautiful creations of tiny animals that are critical to the marine ecosystem and to shoring our coasts against pounding waves—are starving and dying as the seas have become dangerously warmer.

In the face of this evidence, Mr. President, Dr. John Knauss—Mr. Bush's delegate to the Second World Climate Conference that will begin in Geneva on Monday—reported that his mission at the conference will be, in effect, to thwart any effort to bring greenhouse gases under control. At the planning sessions for the conference, the strategy for achieving this objective became all too clear. Calling for the deletion of every suggestion that targets for stabilizing and reducing emissions be reached, the U.S. delegation also offered an outrageous number of amendments to what was to have been a 2-page declaration.

Mr. President, we are increasingly alone in our obstructionist tactics. With Japan's announcement last week that it will cap emissions at current levels by 2000, we are the last major industrial country to fail to commit to action.

It is my hope, Mr. President, that the focused research program that is called for under the National Global Change Research Act will spur the administration to take the action that is so desperately needed.

Mr. HOLLINGS. Mr. President, I rise today in support of S. 169, the Global Change Research Act of 1990. In the course of the 101st Congress, phrases like "ozone depletion," "greenhouse effect," and "global warming" have moved from the esoteric vocabulary of a few atmospheric chemists to become household concerns.

World attention has focused increasingly on a litany of climate and environmental concerns. Average global temperatures in the past decade have been the warmest on record. Droughts have devastated parts of India, Africa, and North America, and at the same time, heavy rainfall has occurred in traditionally arid regions of South America. Floods have threatened thousands in Bangladesh, and the Sahara Desert continues its slow spread over northern Africa. The atmosphere's protective ozone layer is thinning perceptibly, and each spring, ozone concentrations over Antarctica drop dramatically. The extinction of plant and animal species continues at a rate of about 10,000 species lost each year.

Some of these global changes may be a result of natural causes, but there is increasing evidence that human activity is having profoundly negative effects on our climate and our world. Like the canary in the coal mine, planet Earth is sending us loud and clear warning signals that its ability to sustain human life may face a long-term threat. And in response to those signals, the nations of the world have initiated a debate on steps which should be taken now to deal with greenhouse warming, climate change, and stratospheric ozone depletion.

We all recognize that the debate will be both long and devisive. However, there is one point on which all sides—scientists, politicians, environmentalists, and businessmen—now agree. We need better information on how our planet works. I think that the analogy made by Dr. Francis Bretherton at a Commerce Committee hearing last year is an appropriate one. Dr. Bretherton, a noted atmospheric physicist, compared the global environment to an automobile. He pointed out that when we have a car problem, we take the car to a repair shop or fix it ourselves using the operator's manual. For the global environment, however, there are no mechanics or manuals. We do not understand how the machinery of the planet works. Consequently, we do not have a very good idea of how to fix it—or in some areas, even a very clear understanding of what's wrong.

The task before us now is to obtain the knowledge we need to train the mechanics and write the manual before this global machinery is irreversibly damaged.

Scientists have already recognized the need to start that task. Researchers have embarked on a study of the Earth as a complex, interdependent system, in which oceans, atmosphere, and life all affect one another and all help shape the face of the planet. They are making major strides in understanding how changes in the oceans and atmosphere in one part of the world drastically affect weather conditions, lives, and livelihoods in another.

An extraordinary effort has begun, involving scientists from many different backgrounds and nations. Government and university researchers, working with their colleagues overseas, have initiated planning efforts to ensure the necessary research for answering our critical questions. The issue now is how best to encourage that planning, particularly here in the United States.

The bill before the Senate today, the Global Change Research Act of 1990, will provide needed support and a national framework for that effort. S. 169 mandates a Federal research plan to study global change, including greenhouse warming and ozone depletion. The bill will direct and strengthen the new Interagency Global Change Research Program, leading to improved coordination.

The Federal Government already spends millions of dollars on programs which could contribute to our understanding of global change and a number of different Federal agencies are involved. S. 169 does not authorize additional research funding, but would instead pull together these existing agency programs and activities and form the basis for building a comprehensive national effort.

Responsibility for developing and coordinating a national program and plan would be given to the Federal Coordinating Council for Science, Engineering, and Technology [FCCSET]. FCCSET, the Government's interagency committee for science, already coordinates Federal global change research through its Committee on Earth and Environmental Sciences [CEES]. FCCSET, through CEES, is the logical group to assume responsibility for the U.S. Global Change Research Program.

In developing a national plan for such an interagency program, CEES would establish national goals and priorities for global change research, define the roles of each agency and department in the program, and review related agency budget estimates. An annual report to Congress would outline Federal progress in implementing the plan.

S. 169 also recognizes that the U.S. Global Change Research Program must be complemented by international efforts. While planning for programs like the International Geosphere-Biosphere Program are well under way, there currently is no comprehensive intergovernmental mechanism for planning, coordinating, or implementing global change research efforts among nations. The United States has taken the lead in developing multination research efforts. However, pooling of international resources and scientific capabilities will clearly be essential for the success of such efforts. For these reasons, S. 169 contains a second title to encourage international agreements on global change research and to promote the sharing of scientific information among nations.

In summary, the problem that we face is potentially enormous. Global warming could radically change world climate and world agriculture. Ozone depletion could cause tens of thousands of new cases of skin cancer. Sea level rise threatens coastal communities throughout the world. No one should underestimate the seriousness of our situation.

But if the challenge is enormous, the skill and tools of our scientists have never been better. Good answers to the pressing questions we face will not come easily, and probably not cheaply. We need a determined and coordinated research effort, both here in the

United States and with other nations, to get the facts about the exact causes and consequences of global change.

For our children and grandchildren, now is the time to start that effort. I thank my many colleagues who have cosponsored this legislation, and I urge its passage.

Mr. MITCHELL. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AWARDS TO FEDERAL EMPLOYEES FOR SUPERIOR ACCOMPLISHMENTS OR COST SAVINGS DISCLOSURES

Mr. MITCHELL. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 1022, H.R. 4983, regarding the Incentive Award Program.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4983) to amend title 5, United States Code, with respect to certain programs under which awards may be made to Federal employees for superior accomplishments or cost savings disclosures, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with an amendment on page 2: strike line 2, through and including "Provision." on page 5, line 24.

So as to make the bill read:

H.R. 4983

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AWARDS FOR COST SAVINGS DISCLOSURES.

Section 4514 of title 5, United States Code, and the item relating to such section in the analysis for chapter 45 of such title are repealed.

SEC. 2. AWARDS FOR SUPERIOR ACCOMPLISHMENTS.

(a) PROGRAM MODIFICATIONS.—Title 5, United States Code, is amended by striking sections 4502 through 4504 and inserting the following:

"§ 4502. General provisions

"(a) A cash award under this subchapter is in addition to the regular pay of the recipient. Acceptance of a cash award under this subchapter constitutes an agreement that the use by the Government of an idea, method, or device for which the award is made does not form the basis of a further claim of any nature against the Government by the employee or such employee's heirs or assigns.

"(b) A cash award to, and expenses for the honorary recognition of, an employee may be paid from the fund or appropriation available to the activity primarily benefiting or the various activities benefiting. The head of the agency concerned determines the amount to be paid by each activity for an agency award under section 4503. The President determines the amount to be paid by each activity for a Presidential award under section 4504.

§ 4503. Agency awards

"(a) The head of an agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, an employee who—

"(1) by such employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs a special act or service in the public interest in connection with or related to such employee's official employment.

"(b)(1) Except as provided in paragraph (2), a cash award under this section may not exceed—

"(A) an amount equal to 10 percent of the agency's cost savings attributable to the employee's accomplishments, or the annual rate of basic pay payable for grade GS-18 of the General Schedule, whichever is less; or

"(B) if no cost savings are involved, the annual rate of basic pay payable for grade GS-18 of the General Schedule.

"(2) When the head of an agency certifies to the Office of Personnel Management that the highly exceptional or unusually outstanding nature of the accomplishments of an employee so warrants, a cash award in excess of the maximum amount allowable under paragraph (1), but not in excess of an amount equal to two times such maximum amounts, may be granted with the approval of the Office.

"§ 4504. Presidential awards

"(a) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, an employee who—

"(1) by such employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs a special act or service in the public interest in connection with or related to such employee's official employment.

A Presidential award may be in addition to an agency award under section 4503.

"(b) The President determines the amount of a cash award under this section.".

(b) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT.—Subchapter I of chapter 45 of title 5, United States Code, is amended—

(i) by redesignating section 4507 as section 4508; and

(ii) by inserting after section 4506 the following:

"§ 4507. Reports

"(a)(1) Each agency shall prepare and transmit to the Office of Personnel Management on an annual basis a report on such agency's awards program under section 4503.

"(2) An agency report under this subsection shall include, for the period covered by that report—

"(A) the number of cash awards made by the agency under the agency's awards program (as referred to in paragraph (1)), and the amount of each such award;

"(B) if no cash award was made, a statement of the reasons why no such award was made, particularly any difficulties which the agency may have encountered with respect to administering its awards program;

"(C) a statement of any measures taken, or proposed to be taken, by the agency in order to overcome any difficulties identified under subparagraph (B); and

"(D) any other information which the Office may require in preparing a report under subsection (b).

"(b)(1) The Office shall, on an annual basis, transmit to the Committee on Post Office and Civil Service of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the head of each agency, a report under this subsection. The report shall include—

"(A) the name of any agency which either did not make any cash award under section 4503 during the period covered by the Office's report (including any explanation given by the agency) or did not submit a report under subsection (a) with respect to the period involved;

"(B) a description and evaluation of each agency's cash awards program under section 4503; and

"(C) recommendations for any legislation or administrative action which may be necessary in order that section 4503 may more effectively be carried out.

"(2) Any information which, pursuant to paragraph (1)(A), is included in a report under this subsection shall be published in the Federal Register.".

(B) CHAPTER ANALYSIS.—The analysis for chapter 45 of title 5, United States Code, is amended by striking the item relating to section 4507 and inserting in lieu thereof the following:

"4507. Reports.
"4508. Awarding of ranks in the Senior Executive Service.".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Sections 3151(c), 5383(b)(1), and 5384(a)(2) of title 5, United States Code, section 1601(c) of title 10, United States Code, section 405(b) of the Foreign Service Act of 1980 (22 U.S.C. 3965(b)), section 733(a)(5) of title 31, United States Code, and sections 4101(e) and 4107(c) of title 38, United States Code, are each amended by striking "4507" and inserting in lieu thereof "4508".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall be effective as of October 1, 1990.

Mr. CRANSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

Mr. SIMPSON. Mr. President, I object.

Mr. CRANSTON. Mr. President, I withdraw the amendment.

May I say that is the amendment I referred to a while ago relating to a way to make a lot of money without raising taxes and without cutting programs that are important to the American people by redesigning coins and making a huge sum.

Mr. SIMPSON. Mr. President, may I say to the majority leader and my

friend from California that my objection on that amendment was rendered on behalf of a member of the Banking Committee or the committee itself, and not by your loyal correspondent. Because I do know the principal active layman sponsor of that amendment. She is a very remarkable woman and a great personal friend of mine as is her family. I just want that to be part of the record.

The PRESIDING OFFICER. Are there further amendments?

Without objection, the reported committee amendment is agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 4983), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

As if in executive session I ask unanimous consent that the following nominations be discharged from the Foreign Relations Committee and the Senate proceed to their immediate consideration:

G. Philip Hughes, to be Ambassador to Barbados, St. Lucia, St. Vincent, and the Grenadines;

John P. Leonard, to be Ambassador to Suriname;

Ryan C. Crocker, to be Ambassador to the Republic of Lebanon;

Barry Zorthian, to be a member, Board for International Broadcasting;

Robert E. Lamb, to be Ambassador to the Republic of Cyprus;

Linton F. Brooks, for the rank of Ambassador as Deputy Head of Delegation to the Nuclear and Space Talks;

Juliette C. McLennan, for the rank of Ambassador as U.S. Representative on the Commission on the Status of Women of the Economic and Social Council of the United Nations;

Paula J. Dobriansky, to be Associate Director for Programs, USIA;

Robert A. Flaten, to be Ambassador to Rwanda;

Ruth G. Cox, to be a member of the Peace Corps National Advisory Council, for a term expiring October 6, 1991;

Tahlman Krumm, Jr., to be a member of the Peace Corps National Advisory Council, for a term expiring October 6, 1991;

Meredith M. Dale to be a member of the Peace Corps National Advisory Council, for a term expiring on October 6, 1992;

Senators BIDEN and MACK, to be U.S. Representatives to the 45th session of the U.N. General Assembly;

William W. Treat, to be a U.S. Representative to the 45th session of the General Assembly of the United Nations; and

Scott M. Spangler, to be a member of the Board of Directors, African Development Foundation.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

INTERNAL REVENUE CODE AMENDMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 4468, a bill to amend the Internal Revenue Code to modify the employment tax treatment of certain crew members on official vessels just received from the House.

The PRESIDING OFFICER. Is there objection?

Mr. SYMMS. Mr. President, on behalf of a member of the committee, I object.

The PRESIDING OFFICER. Objection is heard.

ALIEN FELON PROVISIONS OF IMMIGRATION ACT

Mr. GRAHAM. Mr. President, I am pleased that a package of criminal alien amendments I have long sought will be included as part of Immigration Act of 1990. Most of these provisions were passed last year in the Senate as part of the bill to implement the President's 1989 drug strategy and earlier this year as part of the omnibus crime bill.

These amendments tighten existing laws regarding the categorization and deportation of aliens who commit serious crimes—crimes defined in the Anti-Drug Abuse Act of 1988 as "aggravated felonies." The aggravated felony aliens' provisions in the 1988 act were important steps toward solving a major problem faced by Federal and State criminal justice systems—the problem of how to expeditiously remove from our streets those aliens who are convicted of murder, or trafficking in drugs or weapons.

There are thousands of such aliens in our criminal justice system, and countless others who have somehow escaped justice or deportation. The 1988 act gave the Immigration and Naturalization Service and the Department of Justice new tools to close the loopholes through which criminal aliens were escaping. I would like now to reiterate the specific provisions we passed in 1988 and explain how my amendments would improve them.

In 1988, Congress defined aggravated felony aliens and wrote specific guidelines for the INS to detain and deport these aliens. We told INS that these serious criminals had to be held accountable for their crimes, serve their full sentence, and, once their sentence was completed, they must be taken into immediate custody by the INS in order to prevent them from disappearing prior to deportation. The 1988 act requires that the INS process these criminals as quickly as possible to effectuate their deportation. And finally, Congress mandated tough penalties if the criminal alien returns to the United States.

The amendments I am proposing will:

Extend the definition of aggravated felony to include aliens convicted of like State crimes, codifying a recent ruling of the Immigration Board of Appeals. If enacted, this provision will allow States to turn over criminal aliens directly into INS custody, and require the INS to implement expedited deportation proceedings;

Require the Attorney General to make information about deportable aliens available to Federal, State, and local law enforcement agencies;

Remove aggravated felony aliens from the category of aliens eligible for suspended deportation or automatic stays of deportation;

Apply aggravated felony procedure to excludable aliens; and

Make technical amendments to the Immigration and Nationality Act consistent with the provisions of the 1988 act.

Of the 2,400 criminal aliens the Florida statewide Prosecutor's Office could provide me information on, 657 were convicted on cocaine trafficking—over 25 percent. This number indicates the magnitude of the problem and the ur-

gency of the need to provide States with relief. It is the Federal Government's responsibility to protect our borders. If the Government fails to prevent dangerous aliens from crossing our borders, it then becomes the responsibility of the Federal Government to help the States cope with the crime and the costs of prosecuting criminal aliens. Finally, the Federal Government must make sure that dangerous aliens are not on the streets, not allowed to commit new crimes, and not caught in a lengthy deportation process.

In my opinion, the Federal Government has not been successful in any of these areas. I question particularly the Department of Justice's commitment in carrying out the provisions of the 1988 Anti-Drug Abuse Act relating to aggravated felony aliens. I hope that passage of my amendments will not only bring the serious problem of criminal aliens back into the focus of Congress and the administration, but will also remind the administration of the tools we have given them to help deal with aggravated felony aliens.

CONGRESSIONAL CONSULTATIVE GROUP

Mr. MITCHELL. Mr. President, on Thursday, October 25, I announced the formation of a bipartisan congressional group to regularly consult with the President regarding developments in the Persian Gulf after the sine die adjournment of the Congress.

In addition to the Members already named to this group, I am including the chairman of the Subcommittee on Defense Appropriations, the Senator from Hawaii [Mr. INOUYE] and the ranking member, the Senator from Alaska [Mr. STEVENS].

EISENHOWER TRIBUTE, GETTYSBURG, PA

Mr. DOLE. Mr. President, on October 14, I was privileged to take part in a special tribute in Abilene, KS, to one of America's most remarkable leaders, Dwight David Eisenhower. It was the final event in a year-long celebration of the 100th anniversary of President Eisenhower's birth.

Meanwhile, in Gettysburg, PA, on the very same day, another outstanding tribute took place in honor of the man from Abilene. It was at the Pennsylvania farmhouse that the President and the First Lady loved so much, especially when Ike wanted to get away from the Oval Office pressure cooker.

A fine tribute by Maj. Gen. Donald Dawson was a highlight of that Eisenhower event and I ask that it be printed in the CONGRESSIONAL RECORD. Major General Dawson's message is well worth reading.

Mr. Chairman, President Ford, fellow Americans, you might say, I am a life long, conscientious, contentious Democrat.

I worked as President Harry Truman's administrative assistant and was a member of the Truman centennial steering committee just six years ago.

But I also served under General Eisenhower, in war, as so many of us did, and was on the first organized Presidential transition team, between the Truman and Eisenhower administrations.

So, it has been an equal privilege for me to serve as a vice chairman of the Eisenhower Society Centennial Committee with General Roberts, Charlie Wolf, and Bob Hope.

And, a great honor, because I know that Dwight David Eisenhower, the general, the President, the man, walked in shoes impossible to fill, with strides that can never be matched.

This centennial, like President Truman's is the celebration of a great American, soldier, statesman, who made America great and left the world better off.

Forget the party labels, the essence of both men was to bring our country through war, to peace and prosperity in a greater, stronger, better America for all the people.

As general, Dwight Eisenhower the supreme commander of all allied forces in war, was a soldier of democracy.

As President, he was a pre-eminent statesman in leading all Americans and indeed the world in peace.

A beloved citizen.

A real American in life.

He fought in war and peace, and politics, for what he believed in, as every American should.

We honor him and revere his name. Not as Democrats or Republicans but as Americans, we like Ike.

EISENHOWER CENTENNIAL CELEBRATION, OCTOBER 14, 1990, ABILENE, KS, "WE STILL LIKE IKE"

Mr. DOLE. Mr. President, on Sunday, October 14, 1990, a year-long celebration of the birth of one of America's true heroes—Dwight David Eisenhower—came to a glorious end in Abilene.

As a chairman of the National Eisenhower Centennial Commission, but especially as a Kansan. I was honored to be there, along with 20,000 onlookers, recalling the historic contributions to world peace this man from Abilene gave to mankind. Whether it was at the Eisenhower Chapel or on the steps of Ike's boyhood home, or just visiting with his friends and admirers, it was an inspirational day spent remembering the contributions of this great Kansan.

On that day, I also joined thousands of people worldwide who still "like Ike," in celebrating not only the 100th anniversary of the birth of our 34th President, but also the birth of a man who helped save the world from tyranny, during and after the Second World War.

The roster of dignitaries that day read like a who's who with each one of our guests offering their own special insights on Dwight David Eisenhower, the man, the general, the President, the World leader. The speakers included: Rev. Billy Graham, who offered true inspiration in his moving remarks at his ecumenical service on Sunday morning. During the afternoon Tribute to Ike, the huge and festive crowd also listened to Winston Churchill II, Chairman of the Joint Chiefs of Staff, Colin Powell, who represented President Bush, Gen. John S.D. Eisenhower, Senator NANCY KASSEBAUM, Congressman PAT ROBERTS, and the U.S. Senate's Chaplain, Rev. Richard Halverson, who delivered a moving extemporaneous invocation and benediction.

Mr. President, I ask unanimous consent that these remarks be printed in the RECORD.

They are well worth remembering, not only for Ike's generation, or this generation, but for every generation to come so that they may learn from the giant legacy of the man from Abilene. I am certain Ike's words and deeds and the remarks at the wonderful Abilene tribute, will be just as relevant and just as inspirational, when the world celebrates, Dwight David Eisenhower's bicentennial.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REMARKS BY JOHN EISENHOWER, ABILENE, KS, OCTOBER 14, 1990

General Powell,[1] Senator Dole, Senator Kassebaum, Mr. Churchill, Friends, this is a significant day for the Eisenhower clan. It is, of course, the 100th birthday anniversary of the 34th President of the United States. But this public event also affords to the grandchildren, great grandchildren, and even great-great grandchildren of Ida and David Eisenhower an occasion for a grand family reunion. All the surviving grandchildren are here, and our numbers total thirty-five. It is my privilege to speak as one of those Eisenhower grandchildren, recognizing that nobody can represent this diverse group and that this is a shrine, not just to Dwight, but to the rest of the Ikes as well.

I mention the "Ikes" in the plural, for the visitor to Abilene must realize that the name "Ike" can apply to any one of the six Eisenhower brothers. "Ike" used to be a fairly common nickname on the frontier, connoting a sort of "good ol' boy," and for some reason it became the label for that generation of this family. But each "Ike" had his own modifying adjective. Thus Ed, big and strong, was "Big Ike." The auburn-haired Earl was known as "Red Ike." Dwight was known as "Ugly Ike," a name I'm sure he contested hotly. But they were all "Ikes" from Abilene.

For my part, I harbor rich memories of Abilene, and I have taken full advantage of a couple of days here to show them to my wife Joanne. For to me, revisiting these spots is like re-enacting the days of Dwight Eisenhower's youth. Indispensable, of course, is a visit to the Abilene cemetery, where David and Ida are buried in a small plot surrounded by a simple iron fence. And while at the cemetery, any Eisenhower must

[1] General Colin Powell, representing the President.

also visit the grave of Tom Smith, the one-time New York cop who, as marshal of Abilene, brought law and order temporarily when this was a wild cow town. Smith scorned firearms, and he enforced the law for a time using only his fists. In 1871 he met his end, however, when he was murdered by an axe through his head, whereupon the people of Abilene sent for the famous gun-slinger, Bill Hickock, who put an end to this lawlessness. But despite Hickock's fame, the Eisenhower idol was always Smith, the peaceful lawman. My father and I paid our respects at his grave every time we visited here.

Joanne and I have savored all the important spots of Dwight's Abilene. We went to the Belle Springs Creamery, then down to the center of town, where Charlie Harger once edited the Abilene Reflector. Harger, Charlie Case, Art Hurd, and others helped farm boy Dwight Eisenhower secure an appointment to West Point in 1911. I pointed out the former site of Joner Callahan's soft drink stand, the town social center, where the proprietor spent part of his time behind the soda fountain and the rest as mayor of Abilene. The position of mayor did not pay a living wage.

But the spot of greatest significance is that little frame house on the corner that my cousins and I remember as Granddad and Grandma Eisenhower's home. The outside is changed, of course. That little chicken coop that I proudly built for Granddad one summer has long since disappeared. In fact, the whole hen yard has been removed. But the small square of concrete that Uncle Earl, Dad, and I constructed for a patio over fifty years ago still remains. Inside that house David and Ida imbued their boys with a spirit of independence, a feeling of security, and a desire to get ahead in the world. As my dad was fond of saying, "the Eisenhowers were poor but they didn't know it."

With this centennial celebration, President Dwight Eisenhower takes one more step into becoming an historical figure rather than a contemporary one. With the passage of time, of course, the policies he pursued in office can no longer be applied without taking into consideration vast changes in our society. His principles and his example, however, remain.

In closing, I would like to say once again how happy I am that this Library and Museum have been established and that they are located here, in the town that Ike referred to as "the heart of America." The papers contained therein are precious contributions to the body of our political thought. Because of them, the students of history are learning that the people of the United States had judged rightly when they twice elected Dwight Eisenhower president.

Yesterday Bill Jeffcoat, a prominent Abilene citizen, gave me the latest edition of Holiday Magazine. It includes an article on Abilene and this centennial by William Zinsser. It ends with a quote from Dwight Eisenhower that aptly summarizes what this center and what this centennial are all about.

"As you enter these buildings, think of them not as a memorial to one man, or one family, but rather as a symbol of what America gives her children—the opportunity to aspire and achieve."

REMARKS BY BILLY GRAHAM, EISENHOWER CENTENNIAL CHURCH SERVICE, ABILENE, KS, OCTOBER 14, 1990

It is certainly a great privilege for me to be here today to participate in this memorial service to remember one of the greatest of all Americans not only of this century but of any century.

I've been asked to speak about the religious life of President Eisenhower as I knew him and as I knew it. He had an interesting definition of an intellectual. He said an intellectual was a man who takes more words than are necessary to tell more than he knows.

As you know, he was a president of Columbia University and at one dinner he was to be the last of several speakers. And each of the other speakers spoke at great length, and it was so late when Eisenhower's turn came that he decided to discard his prepared speech. And after being introduced he stood up and reminded his audience that every speech, written or otherwise, had to have a punctuation. He said, "Tonight I am the punctuation, the period." And he sat down. And he later said that that was one of the most popular speeches he ever gave.

It reminds me of Disraeli who once said, "A speech to be immortal does not have to be eternal." So I'm not going to speak a long time today. One reason is I have an extremely sore throat. And I hope that all the doctors that are here will not come to me afterward with your remedy because I've got some cough drops.

But I don't know any American in modern times who deserves more recognition on his hundredth birthday anniversary than Dwight Eisenhower. He was not only a great general who commanded the greatest military force in the history of the world, but he was also a great statesman, a wonderful family man, and had a genuine compassion for the down-and-out, and he was a warm friend. We remember him as a general who was admired and respected by our nation and by peoples around the world.

But the people who admired him the most were the men who served under him. General Eisenhower cared about the troops and inspired them through his personal example. During the invasion of North Africa, he spent many anxious hours prayerfully awaiting news from the landings. And in his memoirs he recalled thinking then, "The key to success was the quality of leadership we had provided our troops. The men had both the intuitive and the ingenuity that, fed by courage, could decide the course of battle—if their leaders, from the platoon to division were men who could inspire them to do their best."

General Eisenhower always worked hard to set the example himself. During the four months just before D-Day, he talked individually with hundreds of his men. One of his biographers noted that he visited twenty-six divisions, twenty-four airfields, five ships of war, and countless depots, shops, hospitals and other installations. He would have the men break ranks, gather around him while he made a short speech, then go around shaking hands. He wanted to let as many people as possible see him personally. He made certain that they had the opportunity to at least look at the man who was commanding them in battle.

This past June, the 6th, on the anniversary of D-Day, thousands of allied veterans returned to Omaha Beach to pay tribute to the man who sent them ashore in the biggest seaborne invasion in history. And during those ceremonies his son, John Eisenhower, said that the most difficult decision his father ever made was giving the order for the Normandy invasion.

But the men who obeyed the order and went into battle admired General Eisenhower and respected his leadership. I think they knew that he gladly would have been the first man ashore. He was a man who led by example.

Yet, he was a man who never gloried in war. He was always aware that the death of each soldier brought anguish and suffering to a family back home.

In a letter to his wife Mamie he once wrote: "How I wish this cruel business of war could be completed quickly. I think that all these trials and tribulations must come upon the world because of some great wickedness, yet one would feel that man's mere intelligence to say nothing of his spiritual perceptions would find some way of eliminating war."

General Eisenhower said that whenever he returned to Normandy, his foremost thoughts were not with the planes and the ships or the guns, not even the victory. He said, "I thought of the families back home that had lost men at this place."

Not only was he a great general but he was a great President. We remember him as a great President especially by his efforts to provide a spiritual leadership. He was the first President we had in a long time who talked openly about God and religion and set an example by going to church almost every Sunday.

I first met him in Paris in the early spring of 1952. I had been sent there by Mr. Sid Richardson of Fort Worth, Texas, to talk to him about running for President. I did not know whether he was a Republican or a Democrat, but I told him that I thought that any man who was loved and respected by so many Americans should at least offer himself.

Then I talked to him about his religious faith. I'll never forget that he looked down and seemed to be embarrassed to say that while he had been in the military he had rarely attended chapel or had much spiritual life.

Two days after the Republican Convention in 1952, Senator Frank Carlson, who—I underscore what Mr. Halverson said, and a wonderful personal friend to me for many years—called and asked me if I would come to Chicago. He said the nominee for President would like to see me at the Blackstone Hotel. Senator Carlson had somehow got the idea that I'd be a good speech writer to work on his staff. I told him that I would be glad to help him in any religious part of his speeches or look up any Scripture verses that he would like to use in his speeches. And so Eisenhower invited me to the Brown Palace Hotel in Denver the following month, and during the course of the conversations that we held I recommended that he join a church. He said, "If I join a church now, people will think I'm doing it to get votes, but I promise I will join a church whether I win or lose."

He asked me about the churches particularly in Washington and since I had just recently held a crusade in Washington, I asked him what denomiation he was interested in. He said, "Well, I don't have any particular denomination, but my wife is a Presbyterian, so I suppose we would feel at home with the Presbyterians." I recommended two Presbyterian churches where I felt that he could worship freely and be nourished with solid preaching from the Bible. After his inauguration, he joined the National Presbyterian Church pastored by one of his former chaplains in Europe, Dr. Ed Elson. Dr. Elson met him on several occasions to talk to him about what it meant to be a member of a church and what it

meant to be a Christian and to follow Christ. And I believe it was during those sessions that Eisenhower made a personal commitment to Jesus Christ.

During his tenure at the White House he attended church almost every Sunday. During his Presidency he also encouraged us as individuals and as a nation to place our trust in Almighty God. He once said, "This is what I have found out about religion: It gives you courage to make the decisions you must make in a crisis and then the confidence to leave the results to a higher Power. Only by trusting in God can a man carrying responsibility find peace and repose."

That December 1952 I spent in Korea at the invitation of General Mark Clark, who had replaced General MacArthur as overall commander. I preached to our troops from one end of South Korea to the other. And on Christmas Sunday I had lunch with Colonel John Eisenhower who was there. I was able to get copies of a number of pictures taken by the Associated Press. When I arrived back in the States I called President-elect Eisenhower and told him of some of my experiences. He said, "Come on up here to New York. I want to talk to you about my inaugural speech, and I'd like to see those pictures."

I went to his suite at the Commodore Hotel just before the inauguration and walked over to the window and looked out across New York. And he said, "You know, I believe that one of the reasons that I was elected is to help bring a spiritual renewal to the world." And he said, "I'd like for you to give me three or four Scripture verses that I can use and place my hand on when I take the Oath of Office or use in my inaugural address." I gave him four of which he used only one. In spite of what a few commentators said, I had no part in his prayer. He wrote that prayer himself, and the whole country was encouraged and blessed by that prayer. He was not afraid to acknowledge God privately or publicly from that moment on.

Many people have forgotten that it was President Eisenhower who signed the law for the inclusion of the words "under God" in the Pledge of Allegiance. When he signed that law on June 14, 1954, he said, "From this day forward the millions of our schoolchildren will daily proclaim in every city and town, every village and rural schoolhouse, the dedication of our nation and our people to Almighty God."

He also recognized the need for the Scriptures, the Word of God. When he was seventy-five years of age he told the editor of the Saturday Review that as a boy he had been taught to read the Bible here in Abilene and had memorized portions of the Bible. In that same interview he wondered if many young people today even read the Bible and thought it was a shame if they didn't.

It is fitting that we should remember Dwight Eisenhower here in his boyhood home. In most cases a man's adult life is the test of his boyhood. It reveals the foundation that was laid early in life by his parents, family, teachers, and friends right here in this place. Dwight Eisenhower's foundation included the Word of God, and I hope yours does as well.

A number of newspaper accounts said that he kept a Bible on the table by his bed and that he read it every night before he went to sleep. I believe he kept his Bible not as a charm but as God's guidebook to be read, studied, and followed.

As President, he also saw the need for prayer. At one of the early National Prayer Breakfasts—in fact, there wouldn't have been a National Prayer Breakfast probably had it not been for his cooperation with Senator Carlson and those others that started the first prayer breakfast—he asked George Beverly Shea to sing "What a Friend We Have in Jesus." He told Bev Shea, "This is my favorite hymn." I'm sure you've heard it many times:

What a friend we have in Jesus,
All our sins and griefs to bear!
What a privilege to carry
Everything to God in prayer!

A man can carry a great load of responsibility in life, but he cannot carry the weight of his sins and his sorrows. God never intended that we should. That's why Christ came, to remove those burdens from us.

General Eisenhower, just like each of us here today, knew his own sins and griefs better than anyone else. And he knew that he could not carry them alone. And neither can you.

One of the great chapters of the Bible is Isaiah 53, the prophecy and promise of the coming Messiah that is so relevant to us at this moment when so many people are writing and asking questions about the Mid-East and is this the prelude to Armageddon. Are we standing at the very end of the world? The Scripture says, "Surely he [the Messiah] took up our infirmities and carried our sorrows, yet we considered him stricken by God, smitten by him * * * afflicted. But he was pierced for our transgressions, he was crushed for our iniquities; the punishment that brought us peace was upon him, and by his wounds we are healed. We all, like sheep, have gone astray, each of us has turned * * * his own way; and the Lord has laid on him the iniquity of us all."

In other words, the Bible teaches that all of us have sinned. We have iniquity. We have a disease, a spiritual disease that causes death in this life and death in the life to come. But God sent His Son, Jesus Christ, to take our sins and our transgressions on the cross.

Today, as we conclude this service of remembrance, I don't think General Eisenhower would want us to be content with looking back. He once said, "Neither a wise man nor a brave man lies down on the tracks of history to wait for the train of the future to run over him." Every remembrance of a great man should also be a service of rededication for those of us who are still living.

Our challenge today is to run the race marked out for us, fixing our eyes on Jesus, the author and perfecter of our faith. As we remember the birth of General or President Eisenhower, how can we continue his legacy? We can become men and women of faith for our generation and for the next, for our children and our granchildren.

In the century since Dwight Eisenhower was born, society and the home in America have undergone dramatic changes. Much of the emotional and spiritual soil that nurtured past generations has been eroded, but I believe it can be restored by men and women who are willing to take God at His Word and make their faith and their families their greatest priorities.

I once asked Mrs. Eisenhower, Mamie, whom we knew very well, if I could tell this little incident. President Eisenhower was in Walter Reed Hospital—the doctors did not give him much of a chance to survive—when I visited him the last time. I was to stay twenty minutes, but it extended to thirty. And he asked the doctors and nurses to leave the room. Then he took me by the hand and looked up at me and said, "Billy, you've told me several times how to be sure of my salvation. Would you tell me again?" I took out my New Testament, read him several passages of Scripture, and I could sense that he had the assurance that he was going to go to heaven. I know that one day we're going to meet General Eisenhower in heaven. Perhaps he can even see us here today and knows what we're doing. Hebrews 12:1 says that we're surrounded by a great cloud of witnesses that have gone on before. His eternal destiny and his place in heaven were not determined by being a great president or a great general. His achievements as a man had nothing to do with his standing before God. Salvation is a gift from God, given freely to all who will place their faith and their trust in Jesus Christ as God's provision.

President Eisenhower is in heaven today because he accepted Jesus Christ as his personal Savior and came to know Jesus as the one Friend who could bear all his sins and sorrows.

The greatest thing that could happen here today on his birthday would be for you to have a spiritual birthday. Because Jesus said, "You must be born from above." You can have a spiritual birthday. Just like you had a physical birth, you have a spiritual birth and that birth comes about when you repent of sins and receive Christ into your heart.

And you know he once said, "The thing that I like is something that I read about Abraham Lincoln. He said, 'When I go to hear a man preach, I like to hear him preach as though he's fighting a swarm of bees, and I like to hear him preach the straight Gospel.'"

And today the straight Gospel is—the word "gospel" means good news, and the good news is that god loves you and He's interested in you and wants you to turn from your own sins and receive Jesus Christ, His son, as Lord and Savior.

Shall we pray. Our Father and our God, we thank thee for this man who set an example in so many ways in his life that we feel very humble and very small comparing ourselves to him. But we all look to the same God and the same Christ for forgiveness, for courage, for strength, for joy, for peace, for the strength to go on in the struggles of life. And, Lord, at this moment, we pray for the country that he fought for, that he believed in, because we face a very serious crisis at this moment, both abroad and at home, and we pray that thou wouldst help us. Help our leaders, we pray. For we ask it in the name of our Lord Jesus Christ. Amen.

REMARKS BY GEN. COLIN L. POWELL, CHAIRMAN OF THE JOINT CHIEFS OF STAFF, EISENHOWER CENTER'S CELEBRATION OF PRESIDENT EISENHOWER'S 100TH BIRTHDAY ANNIVERSARY, ABILENE, KS, OCTOBER 14, 1990

Thank you, Richard, for that very kind introduction.

Distinguished guests, members of the Eisenhower family, ladies and gentlemen, I'm very pleased to be with you today and I'm very happy to be back in Kansas.

I was at Kansas State University for the Landon Lecture in November of last year, then I was back in Kansas again this summer to attend groundbreaking ceremonies for the Buffalo Soldier Monument at Fort Leavenworth.

Now I'm here in Abilene—the center of the United States. I'm here where literally I can touch the heart of America.

And I know something about that heart. Because of my two years at Fort Leavenworth, I feel a little like a native Kansan.

And I never miss an opportunity to advise foreign leaders that I meet around the world to visit Kansas. I always want them to see the American heartland.

I want them to see where America's values were forged. Where our principles and our values were planted and nurtured.

Kansas is the real America. Even for an Eastern, New York Yankee such as I am, to come to Kansas always refreshes the soul.

And today in particular is an occasion to refresh our souls as we come together to celebrate the one-hundredth birthday of a great Kansan, a great American.

As we've heard so eloquently from all these wonderful speakers, Dwight Eisenhower was soldier, statesman, scholar, and President. As all these titles suggest, there are many pieces to the Eisenhower legend.

Those pieces stretch across half a century of service—from the Plain at West Point where he took the Oath, to the Louisiana Maneuvers in 1941 where he was Third Army's brilliant chief of staff, to his superb orchestration of allied fighting power in World War II, to the White House days that marked eight years of unparalleled American progress.

And those history-making years in the White House did something else as well. Something that's of more than passing relevance to our world today. Those years in the White House validated America's postwar foreign policy, our policy of containment.

George Kennan had advised that if we kept the Soviets contained, eventually their own internal failures would change their way of thinking. President Eisenhower accepted that judgment, as had President Truman before him. And as would seven presidents after him.

But Eisenhower, more than any other president, put the indelible stamp of authenticity on that policy. Truman and his advisors had devised the policy and first given utterance to its structure. They put plans in motion. They sparked the American will.

Eisenhower gave the policy long-term coherence. Eisenhower gave the policy a statesman of the first order. He brought the same consummate skill to the execution of containment that he had exercised in the leadership of the greatest coalition of wartime military power the world has ever known.

Listen to the shape he gave the policy with his words. "We are opposed," he said, to "a hostile ideology—global in scope, atheistic in character, ruthless in purpose, and insidious in method. Unhappily, the danger it poses promises to be of infinite duration. To meet it successfully, there is called for, not so much the emotional and transitory sacrifices of crisis, but rather those which enable us to carry forward steadily, surely and without complaint the burdens of a prolonged and complex struggle—with liberty at stake."

When Eisenhower left the White House in 1961, the containment policy was firmly in place. The policy had all the dimensions that would, over the ensuing years, bring the ultimate success we are seeing now.

It had the personal dimension. President Eisenhower hosted Premier Khrushchev on his first visit to America. The President began the direct exposure of Soviet leaders to the power of the American example, to the power of America herself, from California to Kansas to New York.

The policy had the economic dimension. President Eisenhower presided over the most dynamic single-country economy the world has ever known.

It had the diplomatic dimension—the promise "to go to Korea," the Eisenhower Doctrine, and the concept of "summitry."

And it had the military dimension. As so often happens in this particular aspect of policy, Eisenhower's successor would benefit most from Ike's having taken care of this military dimension.

President Kennedy skillfully mixed American military power with American diplomacy to confront the Soviet challenge in 1962 during the Cuban missile crisis. Had Eisenhower not maintained strong armed forces, President Kennedy would have found that crisis far more difficult to handle.

For eight years President Eisenhower validated every vital component of the American policy that brought about the dramatic change happening in the world today.

How proud Citizen Eisenhower would be today were he here to see the results of that dramatic change, the breathtaking results of the containment policy he validated. Results that include:

The fall of the Berlin Wall.

A disappearing Warsaw Pact.

A Soviet Union re-evaluating itself from the inside out.

A united Germany. Hungary a member of the Council of Europe—and Poland and Czechoslovakia to follow soon.

America and the Soviet Union on the verge of the most important arms control agreements in history.

A United Nations standing firm against a tyrant's aggression. The Soviet Union, our old enemy, cooperating in opposing that aggression.

Yes, today Ike would be a very, very proud man. Proud of America and what she's done. Proud of how strong she is.

And proud that with all her strength America and her allies still seek no territory, seek not to occupy, seek not to oppress—but rather to liberate.

We keep our strength so the world can keep its peace. Our power has a purpose. A purpose that gave Eisenhower great strength throughout his life. A purpose best defined by the words we live by—peace, freedom, democracy and the rule of law.

As a man who had seen the face of war first-hand, General Eisenhower knew that America must have all the essential parts of power to protect that purpose. He knew as well as any man in our history that America's armed forces are one of those essential parts of power.

In his famous farewell address as President, he told us that "A vital element in keeping the peace is our military establishment. Our arms," he said, "must be mighty, ready for instant action, so that no potential aggressor may be tempted to risk his own destruction."

General Eisenhower was no proponent of war. He was a proponent of peace. At the foot of the great statue here at the Library we see the words, "Champion of Peace." And so he was. But to be a proponent of peace in an uncertain and potentially dangerous world, he knew he also had to be an advocate of strong, trained, proud and ready armed forces—armed forces such as we have today, such as are defending our interests and the interests of our friends in the Persian Gulf at this very hour.

[Pause.]

About seven years ago, when I was a Major General assigned to the Pentagon, I undertook what I thought would be a simple project. It was a project to re-decorate the Eisenhower Corridor in the Pentagon. The corridor that contains the Office of the Secretary of Defense.

Over a period of about eight or nine months, we put a series of 13 displays along this corridor that trace the General's entire life on the walls outside the Secretary of Defense's office—his life from Abilene, Kansas to the White House. And finally to retirement.

Many memorable words adorn those walls. Many memory-stirring photographs, newspapers, books, and uniform items are carefully placed in the display cabinets to give texture to the words.

In the first display, there's a sign some of you might recognize. When Ike graduated from Abilene High School in 1909, he went to work at the Belle Springs Creamery—working 80 hours a week. In the display case is a blue and white sign from Abilene days. It reads, "Buying Station—The Belle Springs Creamery." And in that display is an old 4-quart milk pail like the type Ike used to carry.

In the next display and in the next several displays, there are pictures of a young Ike that make you instantly realize how smitten Mamie was when she said she believed Lieutenant Eisenhower was "just about the handsomest male [she had] ever seen."

And his yearbook from West Point is in the third display. His classmates inscribed, "Daredevil Dwight, the Dauntless Don * * *. He's the handsomest man in the Corps * * *."

In the display that follows are Ike's words about his oath-taking on the Plain at West Point. He said, "From here on it would be the nation I would be serving, not myself."

And then you glance over at the opposite wall in that corridor in the Pentagon, and you see inscribed underneath his portrait the words: "Half A Century of Service."

And there are more displays. There is so much to show of this great man's life. In one display there is a plaque describing the presentation to Eisenhower of "Wellington's Sword" in the great Guildhall, London, June, 1945. There the Lord Mayor of London made Ike an honorary citizen.

In his address at Guildhall, the soldier in him came out, the soldier who had commanded more military power than any other general in history. The soldier said, "Humility must always be the portion of any man who receives acclaim earned in the blood of his followers and the sacrifices of his friends * * *. If all the allied men and women that have served with me in this war can only know that it is they this august body is really honoring today, then, indeed, I will be content."

But the one section in this corridor of displays that is most revealing of the character and the service of the man whom we celebrate today is at the end of the corridor in the last display, in the 13th display.

In that last display, you'll find an open copy of Life Magazine opened to the page entitled "Home to Abilene." On that page too are brief words describing how the five-star general, the former President of the United States, and the man who had devoted 50 years of his life to America, wanted to be buried in an 80-dollar, military coffin.

And in that display too you will find the simple words that we heard in the musical tribute a few months ago, that the General

spoke on the final day of his life. To me, these words portray the man better than any other words on those walls or in any of the books that have been written about him.

His final words were: "I've always loved my wife. I've always loved my children. I've always loved my grandchildren. I've always loved my country."

These are the words of a man who looked straight through the complexities of this world and saw with great clarity the things that really matter. And they are words that describe a man who looked with equal intensity at both the present and the future. A man who dedicated his life to making the present create the future.

I can think of no words more fitting to close the life of a great American, a great patriot, and a great man.

That man and his selfless service we commemorate here today. Let us leave here inspired by his example. Let us leave here renewed by his faith and service to our beloved country.

General Eisenhower's spirit is as much alive today as ever, so——

Happy Birthday, Ike!

Thank you.

REMARKS AT EISENHOWER CENTENNIAL, NANCY LANDON KASSEBAUM, U.S. SENATOR

It was in Kansas that President Eisenhower learned the values that were to guide him all his life. Hard work. Common sense. Careful planning. Dogged determination.

He was never interested in the fantasies of the extremes. He preferred the solid achievements of the middle ground.

In 1958, President Eisenhower said, "If there ever was an issue that called for intelligence instead of prejudice, conviction instead of expediency, purpose instead of drifting, courage instead of timidity, that issue is the farm bill."

The wisdom of those words could apply to any issue. The values behind those words came from growing up in Kansas.

DOLE REMEMBERS "MAN FROM ABILENE" ON 100TH ANNIVERSARY OF EISENHOWER'S BIRTH

This is a very special day for me, as for everyone else who still likes Ike. We are a diverse group assembled here on the grounds of the Eisenhower Center. We have come from all over the world.

Sharing this platform are two distinguished military men, whose presence recalls our century's greatest soldier of democracy; two eloquent men of the cloth, who embody Dwight Eisenhower's abiding faith in God; and lawmakers from both sides of the Atlantic who remind us that the man from Abilene led nations in peace as effectively as he commanded their wartime armies.

A SOLDIER'S SOLDIER AND POLITICAL HERO

Most of all, however, this afternoon belongs to the brave men and women who fought in those armies. Many will forever bear the mark of those years, whether in mind, body or spirit. We take pride in what we did, and inspiration from how we did it.

Perhaps no general in history so identified with his soldiers or so personified the cause for which they fought. Dwight Eisenhower never needed five stars on his shoulder to win our loyalty. He had only to be himself, an uncommon man, full of common sense. Kansas common sense.

Wherever he went, Ike never forgot where he came from. So it was only natural that when he launched his campaign for the White House in the spring of 1952, he did so here, in the heart of America. Lost in the huge crowd that turned out for his homecoming was a young second lieutenant, scarred by war and struggling to find his place in postwar America. What I heard that day confirmed what I already suspected—that my commanding general was also my political hero.

For millions of Americans too young to remember those days, Dwight Eisenhower stands today as a popular symbol of the 1950's. But it would be a gross underestimation of his Presidency to think of it in nostalgic terms alone, or to mistake the famous grin for easygoing acceptance of business as usual.

IKE'S PROPHETIC WARNINGS

It is often said that Ike made us feel good. And he did. But he also challenged us to discard conventional thinking and govern with more than the next election in mind. In his 1961 farewell address, President Eisenhower issued two warnings: One alerting us to the military-industrial complex, and another, just as prophetic and even more timely:

"As we peer into society's future," he said, "we must avoid the impulse to live only for today, plundering for our own ease and convenience the precious resources of tomorrow. We cannot mortgage the material assets of our grandchildren without risking the loss also of their political and spiritual heritage. We want democracy to survive for all generations to come, not to become the insolvent phantom of tomorrow."

Ladies and gentlemen, nearly three decades after he sounded that firebell in the night, Dwight Eisenhower should be recalled—not just as a solider in uniform, nor even as the leader of a great crusade for freedom, but as a patriot whose love of country outweighed any desire for personal popularity.

IKE'S ENDURING VISION OF LEADERSHIP

It is easy to be popular—for a while. What is difficult is to provide leadership that stands the test of time. It is easy to vote for more programs and benefits. What is difficult is to restrain our appetites, and to do what is necessary to sustain real economic growth for generations to come. All last night, Ike's boys stood vigil over their old commander's resting place in the place of meditation. Like General Eisenhower himself, they know how it feels to make short-term sacrifices for long-term goals. They know that history will judge harshly those who write off tomorrow for a few votes today.

In life Dwight Eisenhower gave us leadership; in memory he inspires us to lead. If we really wish to honor the man from Abilene on this, the centennial of his birth, we won't just quote his words. We will follow his example. We will make the hard choices; we will accept the obligations of leadership. And then Ike's greatest memorial will be an America as strong economically and spiritually as she is militarily.

This is what he meant when he spoke of "the chance for peace." This is what we owe to our children, to his memory and to the country he loved.

ADDRESS BY WINSTON S. CHURCHILL, MP, ABILENE, KS, ON THE OCCASION OF THE EISENHOWER CENTENNIAL, OCTOBER 14, 1990

General Eisenhower, members of the Eisenhower family, Senators and Congressmen, Chairman of the Joint Chiefs of Staff, Dr. Graham, citizens of Abilene, friends of Eisenhower!

We are gathered here in Abilene to pay tribute to a great American, a man whose name is legend among the free peoples of the world. It was here, amidst the prairies in the very heart of America, that Ike was brought up as a simple farm-boy with the values of small-town America. Let no-one deride those values—they are great values! They are the values of honesty, humility and hard work; of love of neighbor over love of self; of courage in adversity, love of country and fear of God. These are enduring values and they are the values that have made this nation great.

As Churchill's grandson, I feel privileged to be here today to honour the memory of a man who was my Grandfather's friend and who—in the greatest war of history—was his comrade-in-arms. Of course they had their differences but these were but trifles, dwarfed by the regard each had for the other's integrity and ability.

But one which springs to mind was an occasion when the Prime Minister announced that he wished to accompany the D-Day invasion force to the Normandy Beaches. Ike told him bluntly he could not. The Prime Minister replied that the General might be the Supreme Allied Commander but since when did he have the authority to dictate the composition of the crews of His Majesty's ships? If the Prime Minister chose to ship himself as "crew" aboard a Royal Naval ship, there was nothing the Supreme Allied Commander could do about it. Ike, exasperated, had to concede the point but, at that moment, help came from an unexpected quarter. My Grandmother asked the King, George VI, to intervene. Whereupon the King announced that, if the Prime Minister were to accompany the invasion force on D-day, then he (the King) would feel impelled to be there at the head of his troops as Commander-in-Chief of Britain's Armed Forces. The Prime Minister found himself outmanoeuvered. General Eisenhower and my Grandmother got their way.

If Eisenhower is remembered in his homeland as the 34th President, it is above all as Supreme Commander of the Allied Expeditionary Force that he is remembered in Europe. Roosevelt and Churchill appointed him to command the greatest invasion force the world has ever seen. Thus, Eisenhower led to victory an army of 20 nations which included soldiers from as far afield as Poland and Czechoslovakia, Australia and New Zealand, South Africa and Rhodesia, France and Canada, India and Nepal, Belgium, Holland and Norway.

The survivors of that great army of 3 million Americans and 2 million British and Commonwealth soldiers, who marched to victory with Eisenhower, recall him with enduring affection simply as "Ike".

Here at the tombside of their Commander-in-Chief and in the presence of many thousands of veterans who served under Ike's command, I would like to pay tribute to that valiant army, whose courage and determination led to the defeat of Hitler and purged the world of Nazi tyranny. It is thanks to Eisenhower and the men who served under him, that Western Europe was liberated and—thanks to their legacy—that, even now, the nations of Eastern Europe are at last becoming free.

In honouring Eisenhower, let us also recall those who never came back. The 300,000 Americans and 450,000 British who made the supreme sacrifice so that we, who came after, might live in Peace and Freedom. We owe them an enduring debt of gratitude that can never be repaid.

As storm-clouds gather over the Persian Gulf, I am sure that Eisenhower and Churchill would be glad to know that 50 years on from World War II, British and American Forces are once again standing shoulder-to-shoulder to face a common enemy. Churchill had an abiding conviction, born perhaps of the fact that he himself was half American, that so long as the British and American peoples marched together in harmony and friendship, we had little to fear from the future.

We are honoured today by the presence of the Chairman of the Joint Chiefs representing the President. May I say to you, General Powell, that when the moment comes for action—and it may not be far away now—the 15,000 British soldiers, sailors and airmen deployed to the gulf, will be happy to fight at the side of Americans and indeed to serve under US command to defeat another tyrant. Our forces had a good experience of US military leadership under General Eisenhower. As a result they have no worries on that score today. But, I have to say, he certainly set a very high standard. Our thoughts and prayers are with your young men—and ours—in the desert today. We know that, when the moment comes, they will acquit themselves with honour and distinction, as did their grandfathers who marched and fought together under Eisenhower.

Today, 100 years from his birth, we in Britain join with you in America in saluting the name and memory of Dwight D. Eisenhower, the farm boy from Abilene who led the armies of 20 nations to victory in the greatest war in history, a son of America who liberated Europe. Thus we shall remember him.

REMARKS BY CONGRESSMAN PAT ROBERTS, EISENHOWER WREATH LAYING, OCTOBER 14, 1990

Ladies and gentlemen, honored guests, fellow Kansans and family and friends of Dwight David Eisenhower.

It is an honor and a privilege to be here with you today as we gather to celebrate the 100-year birth of a distinguished American and native son of Kansas.

This weekend marks the finale of this Eisenhower centennial year. And, what a year it has been. I have the privilege of representing Abilene in the United States Congress—and so to our honored guests and to you all—welcome to Abilene, Kansas, America.

I want to pay special thanks to all of the people who have made it possible to deepen our appreciation of the hard work, the intelligence and the foresight and legacy of this great man. Thanks to Dr. Richard Norton Smith, the acting director—the Cecil B. DeMille of this centennial, to Don Wilson, our U.S. Archivist who has been literally the Godfather of this effort, to Marge Braden and the Kansas Eisenhower Centennial Commission and the advisory commission who have made this year so meaningful and memorable. And, special, special thanks to the people of Abilene for their untiring work to display to Kansas, our nation and the whole world what we are all about.

As I said, what a year it has been for us and for Abilene. Bob, Nancy, General Powell, honored guests, John, you should have been here yesterday for the issuance of the Eisenhower stamp. The speeches were short, the weather was good and Bob and Nancy people actually came up after the ceremony and wanted an autograph from a Member of Congress—I found out later they were all from out of state and were stamp collectors.

Over the last few years, the Kansas Congressional delegation has worked to ensure that Ike will be remembered at the national level as well. I am proud to serve on the national commission along with Congressman Jim Slattery, Senator Nancy and our chairman Bob Dole.

We have succeeded in winning approval for a permanent endowment for the Eisenhower Exchange Fellowship Program, a $5 million annual endowment for the fellowships.

We won approval of the Eisenhower coin and the centennial stamp. We have made needed and necessary improvements to the Center including a new orientation film that updates and highlights the continuing importance of Ike's leadership in the modern world.

So we in the delegation are proud of our most famous native son and we are working hard to make this centennial something that will endure. In visiting with the Eisenhower family, I told them we Kansans all have Ike recollections and stories and family ties to the extent we think we have at least written footnotes to that time in history and personally own a piece of the monument that is Ike.

To be sure, Ike touched the lives of many but nowhere was it more special and more meaningful than here in Abilene. And yes, it is Kansas. Step off the porch of the Eisenhower home and the visitor sees the dome of blue sky that ends only when it meets the fertile soil on the distant horizon, a panorama of rolling prairie, where Ike used to hunt and fish, a backdrop for Abilene which is literally small town America and what we are all about.

Ike knew it and lived it and loved it. We all are aware of the famous Guidhall speech in London where he drew the parallel between London and the plains of Kansas. Not so well known is his homecoming speech of June 22, 1945.

Then, as now, thousands of Kansans paid him tribute. Then, our six Dickinson County towns portrayed his life in a pageant, later on this evening we will do the same with laser beams, fireworks and a 3-D hologram. Ike would not have believed it.

Then, no less than 18 4H clubs and band after band after band marched in a parade for the better part of four miles. Today, after General Powell lays the wreath at the Chapel, thousands of people will gather at the park to see, touch, feel and remember W.W. II and history.

Then in 1945, Ike was driven to the city park and he said this:

"No man is really a man who has lost out of himself all of the boy. I want to speak of the dreams of a barefoot boy. Frequently, they are to be a conductor, or policeman, or an engineer, but always in his dreams is that day when he finally comes home, comes home to a welcome from his home town. Today, that dream of 45 years has been realized beyond the wildest stretches of my own imagination. I come here first to thank you and to say the proudest thing I can claim is that I am from Abilene."

The General went on to say, "In this world, it has been my fortune and misfortune, to wander at considerable distance, but never has this town been outside my heart and memory. Here are my oldest and dearest friends, the men that helped me start my own career and helped my son start his. Here are people that are lifelong friends of my mother and father who made sure that each of us had an upbringing at home and an education that equipped us to gain a respectable place in our own profession. We are the products of the loving care, labor and work of my father and mother—just another average Abilene family."

Well. That average Abilene family has now become our heritage and it lives within us all. As author Richard Norton Smith has said, "The centennial will reach a climax on October 14, today, Dwight D. Eisenhower Day. But, of course, it will not really be over even then. Not as long as people in darkness yearn for the light, for qualities synonymous with the name of Eisenhower, freedom, dignity, decency and faith. Let this centennial year of his birth enable us to begin a new century in which his legacy continues as a beacon and a reality.

Welcome to Abilene.

EXPRESSION OF APPRECIATION TO THE DEMOCRATIC FLOOR STAFF

Mr. NUNN. Mr. President, as the 101st Congress draws to a close, I want to say a special word of appreciation to our Democratic support staff for all of their help to the members and staff of the Armed Services Committee during the past 2 years. It is a tribute to Senator MITCHELL's leadership and style that his staff is so supportive of the committee process and helps to insure that the work of the Senate is accomplished.

In particular, I want to thank Martha Pope, Senator MITCHELL's chief of staff, and Diane Dewhirst, the communications director, for all of their help. Scott Harris and Sara Sewall on the Democratic Policy Committee have also worked very effectively with the Armed Services Committee members and staff on national security issues and legislation.

Our floor staff works under the capable direction of Abby Saffold, the secretary of the majority. Abby's thorough knowledge and attention to the details of the legislative process have made her indispensible in the U.S. Senate. Abby and her deputy, Bob Bean, have always been available to provide counsel and assistance whenever they were needed.

Mr. President, I cannot say enough about the excellent day-to-day support we have had from the Democratic floor staff of Charles Kinney, Marty Paone and Lula Davis. It has not been easy passing the Defense authorization bills and other legislative items in this Congress. Charles, Marty, and Lula have always been very helpful in assisting us in moving our committee bills through the Senate.

I also want to thank our excellent Democratic cloakroom staff of Patrick Hines, Joe Hart, Lenny Oursler, Art Cameron, and Kathy Drummond for all of their assistance during the past 2 years. Their selfless dedicated service has made all of our jobs easier.

I should also note that while not working with them on a day-to-day

basis as we do with our own floor staff, the Republican floor staff, Howard Greene and Liz Greene and their capable assistants have always tracked down and helped to resolve any problem areas associated with our committee's work.

Finally, I want to express my appreciation to the Senate Paliamentarian, Alan Frumin, and his assistants Kevin Kayes, James Weber, and Jennifer Smith. Alan and his staff have consistently provided objective and timely answers to the many questions that our committee has directed to them.

Mr. President, I am constantly reminded by my personal staff and my committee staff that the Senate could not operate without the assistance we get from the staff people I have mentioned here and many others. On behalf of the members and staff of the Armed Services Committee, I want to say thanks to all of the Senate support staff for a job well done during the 101st Congress.

DEMOCRATIC POLICY COMMITTEE

Mr. DASCHLE. Mr. President, as the 101st Congress draws to a close, I would be remiss if I did not express my appreciation to the staff of the Democratic Policy Committee. They are the heart and soul of the committee, and they have my sincere appreciation.

Charles Kinney, the committee's counsel, Marty Paone and Lula Davis have directed the floor activites for the Senate and helped to advance the Senate's Democratic agenda. They were assisted ably by Nancy Iacomini, Pierre Golpira, and, until her recent change to the Office of the Majority Leader, Alice Aughtry. Without the assistance of this excellent staff, the smooth flow of the Senate's legislation would not be possible.

The DPC's communication office has been under the able guidance of Diane Dewhirst, director of communications. The assistance provided through the staff of this office, including Mary Helen Fuller, Jim Manley, Brad Austin, Kevin McManus, Christine Dekel, Claire Flood, Kevin Kelleher, and Mark Marchinoe, has not gone unnoticed and is greatly appreciated.

Under the director of services, Greg Billings, the Policy Committee has made important strides in distributing legislative and policy information to Democratic Senators. His counsel has been invaluable to me throughout my tenure in Congress, and his contribution to my cochairmanship of the DPC cannot be overstated.

All Democratic Senators and their staffs are indebted to the invaluable services of the publications staff. Editor Marguerite Beck-Rex brings to her demanding job a level of tenacity and commitment to excellence that is unparalleled. She and her assistant, Lynn Terpstra and Holly Kroon, often work late into the night to make certain that the scheduling information in the "Daily Report" is on our desks first thing and every morning the Seante is in session, and that our legislative bulletins contain the most current and complete legislative information.

One of the most valuable services provided to Senators and staffs is compiled under the direction of the DPC's chief clerk, Marian Bertram. That is the ongoing floor voting record information provided to Democratic Senators and their staffs. Working with Doug Connolly, Colleen Brady, and Celia Mahoney, this staff provides an invaluable service to Senators with this timely and important information.

In addition, there are a number of DPC policy analysts I would like to thank. They are members of the domestic policy and foreign policy staffs that are responsible for monitoring and summarizing legislation and writing the legislative bulletins and special reports that have become valuable policy resources to many Senators and their staffs.

Individually, I'd like to thank Kim Wallace on budget and appropriations issues, Brenda Sargent on health care, Charlotte Hayes on education and labor, George Carenbauer on judiciary issues, Ken Jarboe on trade and banking issues, Barbara Chow and Michael Feldman on agriculture, energy, and enviromental issues, and David Corbin for the committee's research.

On the foreign policy staff, Sarah Sewall, Ed King, Scott Harris, Brett O'Brien, and Wendy Deker, have done an excellent job in advancing a Democratic agenda based on improving America's national security. They all have my sincere appreciation.

The DPC entered a new information phase with the implementation of DPC-channel 18. Kathleen Mueller and Juliana Blome, the staff who operate channel 18, are on the job each and every minute the Senate is in session, often well into the evening hours. I thank them for their diligence as well as their outstanding work on this new service for Democratic Senators.

My thanks also go to the DPC's other staff assistants, Heather Hart, Nathan Johnson, Terrance Mahoney, and Clare Amoruso for the integral role they play in the smooth functioning of the DPC.

Mr. President, I know that the Democratic leadership, the members of the Democratic Policy Committee, and all Democratic Senators join me in thanking the DPC staff for a productive and successful Congress.

TRIBUTE TO CLIFFORD M. CLARKE, CAE

Mr. NUNN. Mr. President, our great country has been formed by countless individuals who place others before themselves. Sometimes, an individual arises who combines many of these acts into a lifetime of service. I hope you and my colleagues will join me today in recognizing one of these Americans, Clifford M. Clarke, the president of the Arthritis Foundation.

Cliff has served as president of the Arthritis Foundation since 1975, and was an active volunteer for many years prior to his appointment. During his tenure, Cliff has brought the Arthritis Foundation's income from $15 million to nearly $60 million. He has maintained high standards for this nonprofit national health organization and has established the foundation as the source of help and hope for the estimated 37 million Americans who have arthritis.

Under Cliffs leadership, the foundation is increasing awareness about the disabling personal consequences of the arthritis diseases, as well as the $35 billion drain to our U.S. economy in lost wages and medical bills. The foundation leads the fight against arthritis with educational programs, community services, and the support of both Federal and private arthritis research.

Under Cliff's leadership, the Arthritis Foundation reaches out to people in every State of our Union. He has placed the foundation in the forefront of nonprofit organizations by guiding its development of the market-driven plant to assure the organization's effectiveness in the 1990's and beyond. Arthritis affects all ages and all peoples. Cliff has recognized the importance of cooperative efforts by leading an international fight against arthritis in conjunction with other leaders of arthritis organizations around the world.

In many ways, Cliff's service to the Arthritis Foundation is the culmination of years of public service. He joined the U.S. Army and fought in France in 1944 as a combat rifleman in the 16th Infantry of the First Division. His combat decorations include the Silver Star, the Bronze Star, and the Purple Heart with two Oak Leaf Clusters.

Following his discharge he worked as a junior college instructor, a radio announcer, assistant superintendent of the Savannah Park and Tree Commission, and as the manager of employee services and assistant to the president of Lockheed Aircraft Corp.

In 1952, Lockheed loaned Cliff for 3 months to the American Red Cross to organize its blood recruitment campaign and program to meet the needs of the Korean conflict. In 1953, Lockheed once again loaned Cliff to serve as the Executive Vice President and

then the President of the Associated Industries of Georgia, which became the Georgia Business and Industry Association.

In 1973, Cliff was named the executive director of the Bicentennial Council of the Thirteen Original States.

Cliff has long been active in professional and service organizations. He is a past president of the American Society of Association Executive [ASAE] and the Georgia Society of Association Executives [GSAE], which in 1970 established the Clifford M. Clarke Award, given annually to the most outstanding association executive in Georgia. The GSAE selected Cliff to receive the 1990 award, in an unprecedented gesture recognizing his achievement. He also has received the ASAE Key Man Award (1962), three ASAE Management Achievement Awards, three ASAE Idea Fair first prizes, and three Distinguished Achievement Awards from the U.S. Chamber of Commerce. Cliff currently serves on several ASAE and the GSAE committees.

Education, government, and history are close to Cliff's heart. He has chaired the Legislative Compensation Study Commission, the Georgia Bicentennial Commission, the Georgia Education Improvement Council, and the Georgia Higher Education Council. He was instrumental in founding the Georgia Heritage Trust, the Georgia Trust for the Historic Preservation, and the Georgia Industrial Arts Program. Cliff currently serves on the Board of Advisers for the Freedoms Foundation at Valley Forge.

This distinguished career marks an American of the highest calibre. We do well to recognize him here today, and wish him well as he prepares to retire from his position as the President of the Arthritis Foundation. I am honored to have this opportunity to present the accomplishements of Clifford M. Clarke, my fellow Georgian, to you today.

HEALTH OF THE FDIC

Mr. LAUTENBERG. Mr. President, I rise to express my continuing concern about the financial health of the Federal Deposit Insurance Corporation. Recent reports from the General Accounting Office, the Congressional Budget Office, and others suggest that the FDIC could face severe problems in the near future. This is a matter that deserves serious and prompt attention in both the Congress and the administration.

Mr. President, as the saying goes, those who would ignore history are condemned to repeat it. And we simply cannot allow a repeat of the savings and loan fiasco. It is outrageous that taxpayers are being asked to pay billions of dollars to clean up the S&L mess. It would be even worse if we did not try our best to prevent a similar crisis at the FDIC.

It is clear that the Congress will not be able to produce comprehensive legislation to address the problems at the FDIC before the end of the 101st Congress. I am disappointed by that, though I am hopeful that we will turn to this issue early in the next Congress. In the meantime, the President, the Congress, the banking regulators, and the public have some hard thinking to do about how this matter should be addressed.

I have some preliminary thoughts that I would like to share with my colleagues.

It seems to me that a major component of any effort to avoid a repeat of the S&L fiasco must be a reform of the deposit insurance system. Although the thrift crisis is a result of many factors, particularly the Reagan administration's extremely poor oversight of the industry, defects in the deposit insurance system clearly appear to be a vital element of the problem.

Mr. President, the basic premise of the deposit insurance system makes sense. In the 1930's, a lack of public confidence in the banking system led to thousands of bank failures. So I know the importance of stability in the financial system and the value of deposit insurance in promoting such stability.

At the same time, Mr. President, recent events have brought to light some real problems in the Federal deposit insurance system. These problems are now costing taxpayers billions, probably hundreds of billions, of dollars.

Perhaps the central problem with Federal deposit insurance is what's known as the "moral hazard" it creates. That is, deposit insurance gives financial institutions, particularly those with financial problems, an incentive to make riskier investments than they would otherwise make. By reducing the risk that depositors will withdraw their deposits if the institution engages in unduly risky activities, deposit insurance removes some of the discipline that a free market can provide.

Mr. President, one way to address this problem is to establish a system of setting FDIC premiums based on risk. I have supported the concept of risk-based premiums for some time, and was one of a minority of Senators who voted for an amendment to the FIRREA legislation that would have established such a system.

It makes so sense to me for the FDIC to assess the same level of premiums on institutions, regardless of the extent to which the institutions are engaged in risky activities. A private insurance company would never set premiums in such a manner. The Government shouldn't either.

Beyond establishing a risk-based premium system, I believe Congress also must take a close look at the adequacy of our regulatory system in this area. I am concerned that Federal regulators are not overseeing commercial banks as effectively as they should. Commercial banks sometimes go several years between examinations. That appears insufficient.

Both the U.S. General Accounting Office and Federal Reserve Board Chairman Alan Greenspan have advocated annual onsite examinations of banks and thrifts. On its face, I think that probably makes sense, and I am hopeful that the Banking Committee will consider such a requirement.

In addition, the Congress must ensure that capital requirements are adequate, and are effectively enforced. If owners of banks and thrifts have significant capital at risk, they will be less likely to undertake excessive risks at taxpayers' expense. I cannot say today exactly what the proper capital requirements may be, but I believe the current requirements deserve prompt review and adjustment to ensure that they provide an adequate margin of safety.

I also believe that regulators should be required to take corrective action promptly when capital levels fall to dangerous levels. One of the problems we saw in the thrift crisis was that Federal regulators failed to step in promptly when problems developed at failing thrifts. All too often, their delay allowed these problems to mushroom dramatically, and later meant millions of additional expenses for the taxpayer.

We in Congress should ensure that similar delays are avoided in the future. Weak institutions, even if they are not technically insolvent, should face stringent limitations on their activities. And if their capital levels deteriorate beyond a certain point, we should seriously consider closing them down altogether if that is necessary to protect taxpayers' interests.

Similarly, I believe Congress must look hard at the possibility of imposing specific restrictions on particularly risky activities of State-chartered banks. Again, this is an area where we need to learn from the history of the thrift crisis. One of the most important causes of that crisis was excessive deregulation of thrifts that were chartered and regulated by the States, while insured by the Federal Government. The State of Texas, in particular, lifted restrictions on the types of activities in which State-chartered thrifts could engage, and as a result Texas thrifts moved into a variety of high-risk investments. When those investments went sour, it was the taxpayers around the country who paid the price.

The problem of inadequate State regulation of thrifts should not be allowed to be repeated in the banking context. Although the risks posed by State-chartered banks do not now appear comparable to those posed earlier by State-chartered thrifts, that could change. Congress should make sure that it does not.

Finally, let me make a broader point. The health of the Federal deposit insurance system depends in large measure on the health of the banking industry generally. To a large extent, the initial problems at the FSLIC were a product of a high-inflation environment in which thrifts were unable to make a profit through their traditionally narrow range of investment activities.

Similarly, the financial health of our deposit insurance system is linked to the issue of bank powers. The problems at the FDIC may lead some to urge tight restrictions on those powers. At the same time, we must avoid restrictions that choke the profitability of responsibly run institutions. The ultimate loser could be the American taxpayer and the economy generally.

So, Mr. President, there obviously is much work to do and many hard issues to resolve. I have mentioned only a few today. There are many more.

I know the Banking Committee is well under way in its examination of these issues. I urge the committee to make recommendations early next year.

The one thing I want to emphasize for now, however, is the need to act, and the need to act quickly. These are hard issues, and there will be strong pressures for Congress to avoid them. We must resist those pressures, however, and face up to the hard choices that the times demand. To do less would be to ignore the lessons of history and to place at risk the taxpayers and the long-term health of the American economy.

CLEAN AIR ACT AMENDMENTS OF 1990

Mr. DODD. I rise to express my strong support for the conference report on S. 1630, the Clean Air Act amendments.

The conference report on the Clean Air Act amendments is landmark legislation, the most far-reaching, comprehensive and complex piece of environmental legislation Congress has ever considered. At long last, after a decade of delay, we have a clean air bill that truly balances environmental and economic concerns and competing regional interests; 1990 is a fitting year to pass a new Clean Air Act. It is the 20th anniversary of the original Clean Air Act, the 20th anniversary of the Environmental Protection Agency, and the 20th anniversary of Earth Day.

Our air is cleaner than it was on Earth Day 1970. But the job of cleaning up our air is unfinished. Like any legislation, the original Clean Air Act had shortcomings. What's more, the environment of the law eroded during the 1980's, in the hands of an administration that was, at best, unconcerned about environmental protection.

Moreover, science and advanced technology has continued to pierce the veil of ignorance and allowed us to discover dangerous environmental problems that simply were not apparent 20 years ago:

Airborne pollutants that cause acid rain deposition—particularly sulfur dioxide and nitrogen oxides—aggravate human respiratory illnesses and cause deadly lung disease, and destroy thousands of lakes and forests;

The disintegrating ozone layer, which leaves us naked against the Sun's cancerous rays;

The Greenhouse effect, which could cause a climate change equivalent to another ice age;

And the deadly dangers of invisible toxic pollutants.

These new problems, combined with the unfinished agenda of the 1970's, have revived the spirit of Earth Day.

All across our land, Americans are demanding that we do more to clean up the environment. The Clean Air Act amendments provide a good starting point for protecting public health and environmental resources well into the next century.

The conference report includes many key provisions.

The agreement will provide for progress in cleaning up urban air pollution. Cities violating the ozone air quality standard would be given 3 to 20 years to attain the standard, depending on the severity of the pollution. States would have to impose tighter controls on a wide variety of industries and businesses, and institute additional measures to reduce motor vehicle emission in dirty air areas. EPA would assist by issuing control guidelines and regulations for a variety of pollution sources.

Analogous requirements would apply to cities with carbon monoxide or fine particle pollution.

Cleaner, reformulated gasoline would be required in the nine cities with the worst ozone pollution. States could elect to apply the requirements in other cities with ozone pollution.

Tighter tailpipe emissions standards for cars and trucks would be phased in between 1994 and 1998. A California pilot program and a fleet program in approximately 25 cities would be established to promote development and use of clean-fueled vehicles.

EPA would be required to issue regulations for all major industrial sources of toxic air pollution within 10 years. Other provisions would require control of small air toxic sources, which include dry cleaners and gas stations, and establish a program to prevent accidental release of extremely hazardous air pollutants. The bill would spur the use of technology to control the pollutants that are known to cause cancer and other health threats.

The bill includes a new program to control acid rain, a major environmental problem in the Northeast. The program will achieve a 10 million ton or nearly 50 percent reduction in annual emissions of sulfur dioxide over 1980 levels. Utility emissions of nitrogen oxides also would be reduced. The bill would establish an innovative system of marketable pollution allowances to reduce the costs of controlling acid rain.

Operating permits would be required for major emitters and many other regulated air pollution sources. Enforcement provisions of the Clean Air Act would be strengthened, and research programs expanded.

A phaseout of ozone-depleting chemicals would be required. Use and emissions would be limited to the lowest achievable level, and recycling and disposal controlled.

An important feature of the legislation is the creation of a regional commission with authority to order States to cut pollution within their borders. Without such a panel, my home State of Connecticut probably never would be able to meet Federal standards, because so many pollutants are blown in from neighboring States. The regional commission will embrace States from Maine to Maryland.

I am pleased that the conference report includes an amendment I authored concerning the regulation of emissions of oxides of nitrogen from enclosed jet engine test cells. This amendment requires that the EPA and FAA, in consultation with the Department of Defense, study the impact, state of control technology, the economics of such controls, and the impact on testing of jet engines in enclosed test cells using such technologies. The purpose of the provision is to identify those technologies which are available to control emissions of oxides of nitrogen from enclosed engine test cells, but which would not affect the safety of flight of the engines being designed or manufactured.

Mr. President, I know that many people have argued that this legislation overall would impose too high a cost on business. I would respond by pointing out the incredible human costs associated with dirty air.

No single study has ever derived a total dollar figure representing all the health costs associated with human exposure to air pollution; this may be an impossible task given today's data base and methodological approaches.

However, estimates approaching $100 billion annually are defensible based on the reasonable middle ranges of the comprehensive, multipollutant studies.

Moreover, it is noteworthy to observe that health costs, while the dominant result, are only a portion of the economic effects resulting from air pollution. Other effects—such as reduced agricultural and forest yields, corrosion of buildings and reduced visibility—also have substantial costs associated with them.

The cost of air pollution continues to grow. Clearly enactment of strong clean air legislation can cut this price tag.

Mr. President, the Clean Air Act Amendments will significantly benefit human health and the environment. Implementation of this legislation will bring our Nation much closer to our 20-year goal of clean air for all Americans. I urge passage of the Clean Air Act amendments.

ID CARD/DRIVER'S LICENSE PILOT PROGRAM

Mr. DECONCINI. Mr. President, last night the Senate passed a comprehensive legal immigration reform bill, S. 358, by a vote of 89 to 8. I supported the legislation although there are some provisions in the bill that concern me. One of those provisions is the pilot program on the use of certain drivers' licenses as documents establishing both employment authorization and identity. In my opinion, this controversial provision deserves additional consideration and debate. The idea of a national ID card has been discussed in the past, and serious questions have been raised regarding the need for such a system. Even more disturbing is the impact such a system could have on minority groups. If employer sanctions are not working, will a national identification card be any more effective?

I am pleased, therefore, that after the House initially voted down the conference report because of many Member's concerns about the ID Card Pilot Program, the final immigration package we are sending to the President for signature does not include this provision. I believe we now have an even better legal immigration reform bill.

Once again, I would like to acknowledge that the Immigration Act of 1990 would not have passed without Senator KENNEDY's and Senator SIMPSON's willingness to compromise. I would also like to thank Rosalie Lopez of my staff for her work with Arizona minority groups on this issue.

Mr. President, I ask unanimous consent that a letter I received from the American Civil Liberties Union regarding their concerns about the implementation of the ID Card Pilot Program be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, October 23, 1990.

Re Proposal for ID Card Pilot Program in Immigration Act of 1990 (H.R. 4300/S. 358).

To: Interested Persons.

From: Wade Henderson and Janlori Goldman.

On behalf of the American Civil Liberties Union (ACLU), we write to oppose the ID card/driver's license pilot program currently being considered for inclusion in the House/Senate conference version of the Immigration Act of 1990 (proposal attached). We believe that the ID card proposal raises troubling civil rights and civil liberties issues that have not been adequately examined.

Since the passage of the Immigration Reform and Control Act of 1986 (IRCA), Hispanic Americans in particular have encountered increased discrimination in seeking employment and in obtaining necessary government services. The ID card/driver's license proposal threatens to exacerbate this discrimination. For example, Hispanic citizens and lawful residents already encounter difficulty in their efforts to obtain driver's licenses because of discriminatory and unreasonable document requirements (see, "Md. Hispanics Allege Bias By Motor Vehicle Office: Agency May Ease Its Requirements for ID", *Washington Post*, 10/23/90, p. B3; article attached).

The ACLU opposes the "Pilot Program on Use of Certain Drivers' Licenses as Documents Establishing Both Employment Authorization and Identity" for the following reasons:

The driver's license is America's primary form of personal identification. However, because the license was never intended to be used as an identification document, driver's licenses used this way have many drawbacks. First, the states differ in the type of identification information they require from applicants. In many states, driver's licenses are issued on the individual's mere representation as to his or her identity. Second, states generally have not adopted statutes which adequately prevent or penalize the possession or use of fraudulent licenses. Third, only 29 of the states presently use social security numbers as driver's license identification and thus far, there is no national requirement that states participate in such a program. Finally, there is a serious, unresolved problem of fraudulently obtained social security numbers (see, "A Social Security Number Validation System: Feasibility, Costs and Privacy Considerations," Rept. of Dept. Health and Human Services, November 1988, at 5).

The use of fraudulent social security numbers and driver's licenses is a fundamental impediment to secure identification that is neither addressed nor resolved in the proposed pilot project.

Despite its apparently decentralized nature, the effective use of various state drivers' licenses with the social security numbers as a single work authorization and identity card inevitably requires a centralized federal system that can instantly link, share and verify computerized information. Such a system is tantamount to creating a national ID card and database, with its inherent threat to the privacy and security of personal information. As with many other databases created for limited purposes, the temptation for the government to use the ID card and underlying databases for other purposes will be compelling.

If implemented, the proposal to establish an ID card/driver's license for work authorization and identity purposes would require the creation of a massive and reliable federal database of underlying documents (i.e., social security numbers, birth certificates, passports). Such a database does not currently exist, and to create one would cost billions of dollars and still be vulnerable to fraud and error. (See GAO Report to Congressional Committees, "Immigration Control: A New Role for the Social Security Card," March 1998).

The ID card pilot program fails to address the problem of underlying documents being fraudulent and inaccurate. The proposed system will not eliminate document fraud since there is no foolproof method of verifying identity and work authorization even with some form of biometric identification. For example, what good is a fingerprint on a driver's license if the person has not provided a fingerprint for another database by which to compare?

Further, the social security number is not a reliable form of positive identification given that a larger percentage of the numbers held by the Social Security Administration are inaccurate, outdated, duplicate, or fraudulently obtained. Of the 210 million social security numbers in use today, about 75 percent were issued before evidence of age, identity, and citizenship or alien status were required. (See, "A Social Security Number Validation System: Feasibility, Costs and Privacy Considerations," Rep't of HHS, November 1988).

It is important to note that the ID card/driver's license proposal was not part of either immigration bill when it was considered and passed by the House and Senate. Moreover, this highly controversial proposal has had not a single hearing or review by appropriate congressional committees. In addition, Congress and the Executive branch already have ample statutory authority and an established procedure to alter the employment verification system of the 1986 Immigration Act without resorting to "trial and error" pilot projects. In fact, IRCA mandated various reports from federal agencies on a range of employee verification systems, many of which have not yet been completed.

For the reasons stated above, we urge conferees to reject the ID card/drivers license proposal as part of the Immigration Act of 1990 until it can be more fully considered.

CLEAN AIR ACT AMENDMENTS OF 1990

Mr. WIRTH. Mr. President, the Clean Air Act amendments of 1990 are a giant step forward in our commitment to a healthier environment for all Americans. I was one of the many Senators in this body who wanted to do even more, to make an even greater commitment of resources to cleaning up our air. But though this bill does not go as far as I would like to clean up our air or to set a path toward the use of alternative fuels, it does achieve significant gains in both of those areas, ones that I think we should be proud of.

I am particularly glad to see in this final version of the bill a number of provisions that specifically address the problems of high-altitude cities like Denver and Colorado Springs, to help them fight carbon monoxide pollution and the brown cloud.

The bill establishes a new cold-start standard which will require autos to run clean even on cold winter mornings—the time when our carbon monoxide problems are at their worst. The bill also provides for a even tougher cold-start standard to take effect if six or more cities around the country are still not meeting Clean Air Act standards for healthy air in 1996.

There are also three provisions for additional research and monitoring which are specifically targeted to high-altitude cities and their problems. These provisions authorize the continuation of a program to test cars to see that they continue to meet clean air standards over the life of the car at high altitude.

The second provision provides for a program to research ways to make heavy duty engines for trucks, buses, and construction equipment run cleaner at high-altitude conditions. The third provides for research on ways to tailor inspection and maintenance programs, the use of alternative fuel vehicles, and the training of auto mechanics, to cope with the special problems of getting cars to run clean in our thinner air. I have high hopes that the Colorado School of Mines and Colorado State University will successfully compete to participate in these programs.

This bill mandated signficant reductions in the sulfur content of diesel fuel, which will immediately translate into a reduction in the black smoke produced by diesel trucks and buses. It also provides new standards which will require the development of new, cleaner-running diesel engines for the future.

In addition, the bill calls for reducing the smog-forming emissions from passenger cars and light trucks. Denver and the surrounding communities do not have a smog problem today—but these provisions are important to assure that we can grow and not find ourselves with a smog problem in the future.

Lastly, this bill sets up a program to require and to encourage the use of alternative fuel vehicles by commercial and government vehicle fleets. Clean-burning fuels like natural gas not only have immense potential for cleaning up our environment—they also are an important step forward for our Nation's energy policy. Finding alternatives to gasoline is essential if we are ever to extract ourselves from our dangerous dependence on petroleum from the Middle East.

This bill affects far more in my home State than the cities of the Front Range. It pushes the EPA to get on with its long-stalled program to address the West's regional haze problem, which threatens the scenic vistas which are one of our most important heritages. I, personally, had hoped we would take a far stronger approach to this problem, such as the one the House passed. I believe that this remains an important problem, and will be even more important in the future as the Western economy grows.

These Clean Air Act amendments will have another important effect on Colorado's western slope. Early on, I advocated the adoption of an acid rain program that worked on market principles, with utilities allowed to reduce acid rain in whatever manner they found to be the most cost efficient. With the help of President Bush this program overcame earlier versions of acid rain control legislation, which were built around requiring expensive pollution control equipment in older powerplants. Those earlier versions would have frozen existing coal markets by insulating high-sulfur coals in the East and Midwest from having to compete with low-sulfur coal.

The final bill includes the market-based system I have championed, and that will translate into increasing demand for the clean-burning, low-sulfur, coal and natural gas that Colorado can supply to powerplants to our east. That's good for our State's economy, and its good for the air in the Midwest, in the Applachian States, in the Northeast, and in Canada.

Finally, I think the country should be very proud that this bill provides for phasing out the use of the chemicals that deplete the protective ozone layer of the Earth's upper stratosphere. These same chemicals are important contributors to the global warming that threatens the climate of the entire Earth. This is an internationally important step. It shows that the United States is still willing and capable of taking leadership in the world effort to fight for a sustainable world.

In short, Mr. President, we have achieved an enormous amount in this bill. We should all thank the leadership of the Committee on Environment and Public Works for the immense amount of work that went in to the forging of this bill.

The majority leader, Mr. MITCHELL, also deserves our thanks. He started this process years ago. He stuck with it. He was determined. He was an able advocate for the environment. He worked with all Members, on all sides of the complicated and sometimes very divisive issues that are encompassed in this bill. When he became majority leader, he devoted the power of that office and his own powers of leadership and statesmanship to keep this bill moving forward despite the controversy that swirled around it. He didn't hesitate to set aside interests that he had long been the champion for, when that was necessary to achieve agreement within the Senate, working with the minority leader and the administration, and with Senators dedicated to their own regional and ideological perspectives. What has been accomplished is a milestone. I think we will look back on this bill as an enormous achievement for the environment.

I have spoken about what it will do in Colorado. But all Americans want and deserve clean healthy air to breathe and this bill provides us with the tools we will need to be able to achieve that.

TRIBUTE TO ROBERT FRIEDMAN—A LEADER IN CLEVELAND

Mr. METZENBAUM. Mr. President, I rise today to pay tribute to a close personal friend, Robert Friedman who recently passed away. A civic leader in the Cleveland community, Robert Friedman leaves behind a legacy of selfless dedication to the people of Cleveland.

As a young adult, Robert served his country during World War II in the Air Force in North Africa and Italy. He returned to his native Cleveland to set up a used car business with his brothers Max and Allen. During the early years, Robert worked long and grueling hours, often working late into the evening, striving to make the business succeed during good times and bad. Business blossomed for Robert and his brothers. They opened two additional lots, and started a finance company in 1951. In 1957 Robert and his brothers acquired Ralph Stewart Buick, which they subsequently renamed Friedman Buick. And to this day, as a result of the toils of Robert and his brothers, Friedman Buick remains one of the premier Buick dealerships in the State of Ohio.

Business prospered for Robert and his brothers not only because they were bright, or simply because they worked exhausting hours, but because Robert and his brothers always insisted that the customer was king. This business philosophy not only explains how Robert and his brothers established a reputation for excellence, but it also reveals how Robert cared for his customer and the members of his community. He and his brothers established a reputation for integrity. In 44 years of business they were only sued twice, and in both cases they prevailed.

Robert's heartfelt concern for the members of his community extended beyond work. Robert was a leader in his community, serving as a lifetime trustee of Menorah Park, and on the boards of the Kidney Foundation, the

Alcacia on the Green Condominium Association, and the Cleveland Automobile Dealers Association. At the Temple—Tifereth Israel, Robert was an usher for over 25 years. A leading member of the Jewish community in Cleveland, Robert also was the chairman of the auto division of the Jewish welfare fund.

Robert Friedman, however, was more than just a successful self-made businessman, more than a civic leader, Robert was a true humanitarian. As his wife Lynne and children Richard, Robyn, and Randi can attest, Robert's generosity and compassion knew no bounds. As he placed his concern for his fellow man well above his concern for his own needs, Robert provided a shining example to the community, an example that we will cherish in our memories.

Cleveland will miss Robert Friedman, for he knew not only how to serve the needs of his community as a businessman, but he knew how to serve the needs of his community as a leader, and as a human being. And I will miss him. He was my friend.

MILLS RIVER WILD AND SCENIC DESIGNATION

Mr. SANFORD. Mr. President, we have accomplished a great deal in this Congress with respect to protection of our Nation's natural resources. We have now passed an historic Clean Air Act. We have focused efforts through the appropriations process on programs such as the land and water conservation fund. We have passed numerous measures designed to help make sure that we will leave to our children a healthy environment; that we are providing good stewardship for the natural resources and the environment that we have inherited.

I would like, Mr. President, to remark briefly on one such measure. This legislation may not be viewed as having the national significance of some of the other environmental bills we have passed, but I can assure my colleagues that it is a matter of intense interest and concern in western North Carolina. To me and to my friends in Henderson County, NC, protection of the Mills River is something that is of great importance indeed.

Mr. President, I would like to express my gratitude to my colleagues for their support of H.R. 5004, a bill to designate and protect the Mills River as it is studied for potential inclusion in the Wild and Scenic Rivers System. The bill is now at the President's desk, and I hope he will sign the legislation expeditiously.

I would especially like to thank the distinguished chairman of the Public Lands Subcommittee, my friend Senator BUMPERS, for his assistance in allowing us to move this bill rapidly through the Senate during the final days of the 101st Congress.

Mr. President, H.R. 5004 was introduced in the House by Congressman JAMIE CLARKE, who has always done an outstanding job of looking out for both the people and the unique natural resources of our North Carolina mountains. S. 3199, which I introduced in the Senate earlier this month, is a companion measure to Congressman CLARKE's bill.

Let me briefly describe H.R. 5004. The measure will designate some 33 miles of the North Fork, the South Fork, and the main stem of the Mills River for potential addition to the Wild and Scenic Rivers System. The Forest Service will complete studies of those river segments, and will recommend the appropriate details for final inclusion in the system. While the studies go forward, the Mills will be protected from dam construction, water diversion, or other inappropriate measures which would detract from its natural values.

Mr. President, the residents of Henderson and Transylvania Counties in North Carolina have long been interested in protection for the Mills. That interest was heightened this past spring when the Mills was considered as a possible source of a drinking water reservoir for Buncombe County. A firestorm of local opposition led to the retraction of that particular threat. However, after fighting off several proposals for inappropriate diversion of the Mills over the past five decades, Henderson County residents are virtually unanimous in their desire for permanent protection.

H.R. 5004 will allow the city of Hendersonville to relocate its existing water intake upstream of a highway bridge which is scheduled for widening in the near future. This effort is supported by the residents of the Mills River community.

Mr. President, this bill is a good example of grassroots democracy in action. The residents of Mills River, Henderson County, and nearby areas joined together to ask protection for some outstanding natural and scenic areas. Congressman CLARKE, who is ever attentive to the needs of western North Carolinians, acted swiftly to introduce legislation and steer that legislation quickly through the House of Representatives. I am pleased that we have now moved quickly to pass H.R. 5004 in the Senate.

North Carolina has many outstanding natural and free-flowing rivers, Mr. President, especially in our renowned western mountains. But few have received the honor of Federal wild and scenic designation to this point. The Mills will join the New, Chattooga, and Horsepasture Rivers as North Carolina rivers which have received that tribute and that protection. Our scenic mountain rivers, with their spectacular views, white water and waterfalls, and topnotch trout fishing, are one of our greatest resources, and we should ensure that these values are preserved.

Mr. President, it was just a few weeks ago that I met with a number of my constituents from the Mills River area, including Phil and Phyllis Brittain and Ramona Bryson who had testified in support of the legislation on the House side. It is really the work of fine, conservation-minded North Carolinians like the Brittains and Ms. Bryson, and their able congressman JAMIE CLARKE, who have made this measure possible. It is a great pleasure for me to announce to all these good people that their efforts have resulted in the passage of this legislation.

COASTAL BARRIER RESOURCES ACT

Mr. SANFORD. Mr. President, I want to add my voice in support of H.R. 2840, the Coastal Barrier Resources Act. This is important environmental legislation that recognizes the fragility and unique value of our fragile barrier islands. Since we in North Carolina are extemely proud of our well-known Outer Banks, it will come as no surprise to my colleagues to hear my praise for this legislation.

H.R. 2840, Mr. President, also represents very sound fiscal policy. The premise of this legislation is simple: we are going to discourage inappropriate development in protected barrier island areas, and we are going to save Federal dollars in doing so. H.R. 2840 continues and expands the sense of the original coastal barriers legislation, which denies any Federal subsidies within the designated Coastal Barrier Resources System.

This is a simple but ingenious idea. The system does not impose particular regulatory requirements on private landowners, so there is no Federal intrusion into private property matters. But there will be no Federal flood insurance, no highway assistance, no Federal loan or guarantees, for development in these areas. Since building on many portions of our fragile barrier islands is a risky proposition, the denial of subsidies often ensures that inappropriate development does not result. So we are truly using market forces to achieve an environmental goal.

Mr. President, I will not go into great detail on the various provisions of the bill. I do want to briefly describe three provisions which I had proposed to the Senate for inclusion in this bill. These provisions are of great importance to North Carolina, and I am pleased to say that all have been included in the legislation we have now approved.

First, the Nags Head Woods property under the control of the Resolution Trust Corporation has been added to the Coastal Barriers System. Congressman WALTER JONES had successfully added this provision to the House bill. I commend Chairman JONES for his work on this matter, and am pleased that the Senate has also agreed to this provision.

I have had a keen interest in the Nags Head Woods property since I first learned that the property was at risk. This is a rare maritime forest area that has sparked national attention and a great deal of interest from conservation groups. My colleagues may be aware that natural maritime forest is now rare, and that we need to seek every opportunity to preserve such areas along our barrier islands. H.R. 2840 will ensure that Nags Head Woods cannot be developed with Federal subsidies. It is my hope that the property will soon receive permanent protection, and I will continue to work with Dare County residents, conservation groups, and the Resolution Trust Corporation toward this end.

Second, H.R. 2840 includes broader provisions relating to the Resolution Trust Corporation and the FDIC. These provisions were sponsored in the House by Chairman BRUCE VENTO and Chairman JONES, and I am pleased that this body has also approved them at my request.

These provisions should not impose an undue burden on the RTC or the FDIC, but will at least ensure that properties under the control of these agencies will not be sold for development without the knowledge and consideration of local, State, and Federal conservation agencies and nonprofit conservation organizations.

Section 10 of the bill will only apply to properties to which the RTC has acquired title in either its corporate or receivership capacity, or which was acquired by either the FDIC or the former FSLIC in their corporate capacities. It will only apply to areas that either are located within the Coastal Barrier Resources System, or are undeveloped, greater than 50 acres in size, and adjacent to or contiguous with lands managed by any Government agency for conservation, recreation, or other listed purposes.

These provisions have been narrowly drawn to focus only on a limited list of properties which clearly ought to receive attention for conservation. Frankly, I might have preferred to draw the provision more broadly, but chose not to do so in order to expedite Senate passage of the House-passed language. This is a matter which ought to receive careful attention in the next Congress. As a member of the Senate Banking Committee, I will continue to pay careful attention to issues involving environmentally sensitive lands under RTC or FDIC control.

The covered properties described above may not be sold by the RTC or FDIC until a Federal Register notice describing the availability and characteristics of the property has been published and a 90-day waiting period has passed. If a Government agency or qualified conservation organization formally expresses interest in the particular property, the RTC or FDIC cannot sell the property to anyone other than such an agency or organization for an additional 90 days.

Mr. President, it is my hope that this provision will result in increased RTC and FDIC attention to the conservation values of property under their control, and to the protection of more areas with exceptional natural values.

The third provision in H.R. 2840 which is of particular interest to North Carolina directs the transfer of the Oregon Inlet Coast Guard Station to Dare County, NC. Unfortunately, the Coast Guard has found that it is no longer able to use the station for traditional purposes, and the county has expressed interest in taking over the property for the beneficial use of its citizens. I am delighted that we have been able to accomplish this goal as part of this bill, and would like to thank the leadership and staff of both the Environment and Commerce Committees for their assistance with this matter. Congressman WALTER JONES had been successful in steering a similar provision through the House on other legislation, and he deserves great credit for his leadership on this matter.

Mr. President, let me close by commending our distinguished colleague from Rhode Island, Senator CHAFEE, for the fine work he has done on this bill. Senator CHAFEE continues to be a leader on environmental legislation, and as the lead Senate sponsor of this bill, he deserves our praise. I would also like to thank the Senate Environment Committee staff, particularly Janet Coit and Bob Davison, for all their good work and assistance on this legislation.

THE CREATION OF ADDITIONAL FEDERAL JUDGESHIPS

Mr. DIXON. Mr. President, I rise to support this legislation creating additional Federal judgeships. The Administrative Office of the U.S. Courts recommended in 1989 that these additional judgeships be created. They are long overdue.

Along with my colleague, Senator SIMON, we introduced legislation to implement the recommendations made by the administrative office for Illinois. Illinois' three Federal judicial districts are burdened with heavy caseloads. In a ranking of the 94 Federal judicial districts, according to the Administrative Office of the U.S. Courts, the Northern District of Illinois, which includes the Chicago metropolitan area, ranked seventh highest in terms of weighted filings per authorized Federal judgeship. According to the 1989 Federal court management statistics report, the central district has one of the top 15 criminal felony filings per judgeship ratios in the country. The southern district, which includes my home area, ranks 13th highest in the country on the basis of pending cases per authorized judgeship.

There has been a great deal of talk in this body, and in the country, about the need to win the war on drugs. Numerous high profile programs have been initiated to combat this war. But, Mr. President, sometimes the most effective programs are the low-profile ones. Sometimes they are programs that are not sexy; that do not get discussed on "Nightline," or on the Sunday morning news programs. This proposal is one of them.

Additional judges will reduce caseload, backlog, and unnecessary delays. To win the war on drugs, we need to provide the necessary tools to achieve our goals. More judges, more prosecutors, more prison beds, more cops on the beat are all part of the solution.

If we do not deal with the shortage of judges, our judicial system, already overworked and fatigued, will grind to a halt. If we are serious about the war on drugs, we must act on our words of commitment to the cause. Adoption of this legislation is an important step in the right direction.

INTERIM REPORT ON POW/MIA'S

Mr. HELMS. Mr. President, as ranking member of the Committee on Foreign Relations, I have today sent an interim report to the Republican members of that committee on the sensitive topic of our POW/MIA's. This report has been prepared by minority staff members of the committee for the minority members. It is a preliminary report, with preliminary findings, on an investigation which has been in progress for 1 year.

Mr. President, this report is particularly significant because it is the first time that the Department of Defense [DOD] has permitted any outside oversight of its process of accounting for POW/MIA's. DOD has in its files 1,400 so-called live-sighting reports, but it has never acknowledged that any of these reports pertained to living American personnel. The reports are in general classified, but not highly classified. Nevertheless, DOD has asserted that the reports are too sensitive for oversight even by properly cleared and trained professional personnel.

To its credit, DOD finally relented, and allowed outside professionals on the minority committee staff to examine the files under very stringent conditions of access. Only about one-third of the files have been examined so far, but already the investigators have found serious errors in the methodology of DIA analysts in a disturbingly large number of cases.

Other preliminary findings include the following:

First, after the return of 591 POW's in Operation Homecoming in 1973, the Department of State and DOD publicly declared that no more POW's remained alive in Southeast Asia.

Second, nevertheless, a year later, DOD analysts still believed that POW's were alive in Southeast Asia.

Third, DOD analysts systematically rejected, or declared not pertinent, vitually all of the 1,400 live-sighting reports in its files.

Fourth, having declared beforehand in 1973 that no prisoners remained alive, DOD subsequently made case-by-case determinations that each name on the POW/MIA list should be presumed dead, based upon the rejection of the live-sighting reports and other evidence.

Fifth, in contrast to DOD's disinterest in confirming live-sighting reports, DOD has placed a disproportionate emphasis on identifying supposed sets of POW remains, resulting in a significant percentage of misidentifications. DOD seems more interested in finding dead POW's than living POW's.

Sixth, because U.S. covert military operations in Southeast Asia have never been revealed, it is impossible to determine whether any U.S. military personnel involved might be added to the list of known POW/MIA's. Participants in covert operations who were interviewed think that the number of covert POW/MIA's might be as large as the public list.

Mr. President, I ask unanimous consent that the interim report of the minority staff of the Committee on Foreign Relations be printed in the RECORD at the conclusion of my remarks, along with my cover letter transmitting it to Republican members of the committee.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, October 26, 1990.

DEAR REPUBLICAN COLLEAGUE: Enclosed is an Interim Report prepared by the Minority Staff of the Senate Committee on Foreign Relations on the U.S. Government's handling of the POW/MIA matter. This summary document represents a year of intensive investigation, culminating in a major breakthrough in the careful examination of DIA live-sighting reports on POW/MIAs—*the first time in 17 years* that an independent branch of the government has had an opportunity to make an objective evaluation of the methods used in accounting for those categorized as POW/MIAs in Southeast Asia.

On October 17, 1990, the Foreign Minister of Vietnam, Nguyen Cao Thac addressed a coffee at the Foreign Relations Committee and attended by Senators of the Committee as well as invited guests. In my opinion, the Department of State's invitation to Thac to visit the United States was inappropriate at a time when the Executive Branch is still unwilling to address the hard issue of living American POWs still being held captive in Southeast Asia.

The thrust of Thac's address was to call for the acceleration of the time table for renewal of relations between the governments of Vietnam and the United States. Thac indicated that the resolution of the POW/MIA issue is one of two major areas of contention. Furthermore, Thac stated that he had agreed to all terms levied by the President through his special envoy, General John Vessey USA (Ret.). But in re-stating the terms to which he had agreed, Thac never once mentioned that the issue of living American POWs in Vietnam had been addressed.

The position of the Executive Branch is that there is "no evidence" that living Americans exist in SE Asia, nor were any left after American prisoners were returned in 1973.

Nevertheless, public opinion polls continue to suggest that 62 percent of the American people believe that U.S. POW/MIAs are still alive in Vietnam, and 84 percent of Vietnam veterans believe so. Clearly the U.S. Government no longer maintains credibility on this issue.

For this reason, a year ago, I assigned an investigation on the Minority Staff of the Senate Foreign Relations Committee to conduct a staff investigation of the handling of the POW/MIA issue by the U.S. Government. These investigators are highly trained professionals, with a total of more than 68 years of investigative experience in the Executive Branch, including criminal investigative experience, as well as more than 17 years of experience in intelligence analysis. All served in Vietnam and are knowledgeable about the history, geography, and language of that unfortunate country.

The investigation has proceeded quietly, and without public fanfare. But much remains to be done. Information developed in the course of the inquiry was the result of the following methods: (1) face-to-face and telephonic interviews; (2) review of various classified and unclassified official documents; (3) corroborative information from government and private sources; and (4) historical research. This report is in all respects an interim report: It is incomplete and it is a summary report of conclusions which must be further tested.

The Committee on Foreign Relations has authority to engage in oversight of POW/MIA issues implicit in its broad mandate to study and review foreign policy. Senate Rule 25.1j specifically refers to the Committee on Foreign Relations matters dealing with: "[11.] Intervention abroad and declarations of war," and "[15.] Protection of United States citizens abroad and expatriation."

The focus of the inquiry has centered on the following questions:

1. Does the U.S. Government possess valid information concerning living POWs in Southeast Asia?

2. Has the U.S. Government failed to act on information concerning living POWs in Southeast Asia?

3. Has the U.S. Government acted improperly to intimidate, coerce, or discredit sources which have valid information concerning living POWs in Southeast Asia?

I believe that the investigators have come to valid conclusions, although of course much of the material they reviewed remains classified. Moreover, I believe that the American people have the right to see that this inquiry is pursued to a proper conclusion.

I am deeply grateful for the enormous contribution of Senator Chuck Grassley who, out of his deep concern for American service personnel, joined me at the very beginning and supported and encouraged it at every step.

Sincerely,

JESSE HELMS.

INTERIM REPORT

INTRODUCTION

One year ago, the Ranking Minority Member of the Senate Committee on Foreign Relations assigned members of the Minority Staff to investigate the following three questions:

(1) Whether the United States Government has received and still possesses valid information concerning living prisoners of war/missing in action—POW/MIAs—in Southeast Asia;

(2) Whether the U.S. Government has failed to act on such information; and,

(3) Whether the U.S. Government has acted improperly to intimidate and discredit sources of such information.

The primary purpose of this investigation has been, and will continue to be, to determine whether the U.S. Government has handled the question in a truthful and effective manner. But if it results in a determination that even one POW may still be alive, it will result in a dividend of blessings.

The inquiry remains on-going. It is based not only on the review of thousands of classified and non-classified documents, but also upon hundreds of telephonic and face-to-face interviews with government officials and those affected by their decisions with regard to POW/MIAs. A full report will require much additional investigation and analysis. The following, however, represents an interim report at the conclusion of one year's work. It allows the presentation of some preliminary conclusions.

PRELIMINARY CONCLUSIONS

The U.S. Government states it has no evidence that POWs were left behind in Southeast Asia. The official policy asserts that it is open to investigation of all reports. For example, the official Department of Defense (DOD) POW-MIA Fact Book, issued July, 1990, states:

"Although we have thus far been unable to prove that Americans are still detained against their will, the information available to us, precludes ruling out that possibility. Actions to investigate live sighting reports receive and will continue to receive necessary priority and resources based on the assumption that at least some Americans are still held captive. Should any report prove true, we will take appropriate action to ensure the return of those involved."

Notwithstanding this professed openness to new evidence, the U.S. Government has insisted since April 12, 1973, that it has no evidence of living POWs. In fact, on that date—at the conclusion of Operation Homecoming, which brought home 591 POWs—Dr. Roger Shields, then Assistant Secretary of Defense, stated that the DOD had "no

evidence that there were any more POWs still alive in all of Indochina."

This assertion has been consistent. For example, last July, Col. Joseph A. Schlatter, then chief of the Defense Intelligence Agency's Special Office for POW/MIAs, was saying that "If we look at everything we collected during the war and everything we've collected since the war, we don't find any evidence that Americans are captive."

Furthermore, as late as October, 1990, an unnamed "senior State Department official" was quoted in the press as saying the U.S. Government has "no evidence" of living American prisoners in Southeast Asia.

However, to say that the U.S. Government has "no evidence" is not the same as saying that no evidence exists. After all, there have been nearly 11,700 reports relating to POW/MIAs over the years, including 1,400 firsthand, live-sighting reports. The question is whether every single one of these reports can be dismissed from the category of credible evidence.

The U.S. Government position makes sense only if every single one of these reports can be shown to have been fabricated, erroneous, or not relating directly to a POW/MIA—for example, some reports may relate to Europeans in the area. In fact, DIA analysts have rejected the evidence of all these reports, except for a small pool of less than 150 still considered "unresolved."

The preliminary conclusions presented by staff for review by Senators are as follows:

(1) After the conclusion of Operation Homecoming in April, 1973, brought the return of the 591 POWs, official U.S. Government policy internally adopted and acted upon the presumption that all other POWs were dead, despite public assertions that the government was still open to investigating the possibility of discovering the existence of living prisoners.

(2) Following the adoption of an internal policy in April, 1973, that all POW/MIAs were presumed dead, the U.S. Government, convened commission in each military service to consider each case on the POW/MIA list in order to make a statutory declaration of presumption of death.

(3) While there is no reason to believe that the majority, if not most, of the declarations of presumptive death are incorrect, staff review of live-sighting reports files at DIA found a disturbing pattern of arbitrary rejection of evidence that connected a sighting to a specific POW/MIA or U.S. POW/MIAs in general.

(4) The pattern of arbitrary rejection resulted in a declaration of presumptive finding of death for every such individual case, except one.

(5) The internal policy that all POW/MIAs were presumed dead resulted in an emphasis on finding and identifying remains of dead personnel, rather than searching for living POW/MIAs.

(6) The desire to identify specific sets of remains with specific names on the POW/MIA list led DOD to an exaggeration of the capabilities of forensic science, and identification based on dubious presumptions and illogical deductions rather than actual physical identification—a process which resulted in numerous misidentifications of remains.

(7) Despite adherence to internal policies and public statements after April, 1973 that "no evidence" existed of living POWs, DIA authoritatively concluded as late as April, 1974 that several hundred living POW/MIAs were still held captive in South East Asia.

(8) Although the Pathet Lao declared on April 3, 1973, that Laotian Communist forces were holding American POWs and were prepared to give an accounting, nine days later a DOD spokesman declared that there were no more American prisoners anywhere in South East Asia. No POWs held by Laotian Communist forces ever returned. The evidence indicates that the U.S. Government made a decision to abandon U.S. citizens still in the custody of the Socialist Republic of Vietnam, Laos and Cambodia, at the conclusion of U.S. involvement in the Second Indochina War.

(9) U.S. casualties, including POW/MIAs in South East Asia, resulting from covert or cross border operation, may not be included on the list of those missing.

(10) The executive branch has failed to address adequately the concerns of the family members of the POW/MIAs, and has profoundly mishandled the POW/MIA problem.

DEFINITION OF POW/MIA

The subject of POW/MIAs requires some definitions. After the Second Indochina War—popularly known as the Vietnam War, even though Thailand, Burma, Laos and Cambodia saw U.S. combat action—hundreds of POWs returned alive, notably in Operation Homecoming, which concluded in April, 1973.

Those who did not return home are classified by the Department of Defense into two categories: POW/MIAs—that is, those for whom there is some documentation that they were captured but never repatriated; and KIA/BNRs—that is, those believed to have been killed in action, but whose bodies were not recovered. For the latter, there is no evidence of their death except DOD's evaluation of the circumstances, even though no physical evidence of death may be available.

In April, 1973, DOD reported that 2,383 personnel were unaccounted for: 1,259 POW/MIAs, and 1,124 KIA/BNRs. This study assumes that both categories of the unaccounted for deserve review. Since 1973, DOD has announced the return of 280 sets of remains, diminishing the over-all number by that amount.

In addition, there could well be an equal number of military personnel missing in action from various U.S. covert actions during the war. Since DOD files on covert actions have not been opened, and the participants in such actions never publicly identified, this inquiry could not establish any number for covert POW/MIAs. However, public source books and interviews with participants suggest that the issue of covert operations adds a substantial, but unknown, dimension of the MIA question which has received no scrutiny.

REVIEW OF LIVE-SIGHTING DOCUMENTS

In this inquiry, staff has reviewed hundreds of U.S. Government classified, declassified, and open-source documents. In addition, Senator Grassley and Committee Minority staff were given access to, and have reviewed personally, hundreds of classified live-sighting reports (accounts by Southeast Asians of live POWs in Southeast Asia) in the files of the Defense Intelligence Agency (DIA). According to DIA, this is the first time that either a United States Senator or any United States Congressional Committee staff have been given access to the raw intelligence contained in the 1,400 live-sighting reports.

Out of the 1,400 live-sighting reports, approximately 1,200 are considered by DIA to be "resolved." Each of the so-called "resolved" sightings was resolved by concluding that the live-sighting report did not pertain to U.S. POWs present after April 1979. Staff felt that in some cases such a conclusion was correct, but that in many it was not supported by the facts.

Staff began by first examining so-called resolved cases in order to study DIA methodology by which a conclusion of "resolution" was reached. Since the guidelines set by DIA for access to the files were extremely restrictive, the time available allowed review of only about one-quarter of the so-called "resolved" cases, and none of those in the category of "unresolved." Nevertheless, staff concluded that a significant number of the "resolved" cases reviewed showed that the DIA methodology was faulty, or that the evidence did not support the DIA conclusion in the case, or both.

The information collected and reviewed to date by the staff shows that the position held by the United States Government—namely, that no evidence exists that Americans are still being held against their will—cannot be supported. Rather, the information uncovered during this inquiry provides enough corroboration to cast doubt upon the veracity of the U.S. Government's conclusion.

Without revealing classified information, staff believes that the review of the classified live-sighting reports reinforces that doubt. Although more information remains to be reviewed, the evidence this inquiry has thus far uncovered shows that:

(1) Living U.S. citizens, military and civilian, were held in Southeast Asia against their will after the U.S. Government's statement on April 13, 1973, that no prisoners remained alive; and

(2) The information available to the U.S. Government does not rule out the probability that U.S. citizens are still being held in Southeast Asia.

In fact, classified and unclassified information all confirm one startling fact: That DOD in April, 1974, concluded beyond a doubt that several hundred living American POW's remained in captivity in Southeast Asia. This was a full year after DOD spokesmen were saying publicly that no prisoners remained alive.

Evidence uncovered in the several hundred cases reviewed thus far clearly demonstrates that, in a disturbing number of cases, DOD made significant errors in drawing conclusions about live-sighting reports, the presumed deaths of individuals, or about individuals that were unaccounted for at the conclusion of the war. Although many cases were resolved correctly based upon the files, there were too many errors apparent to rule out the need to undertake and complete the review of the "unresolved" cases.

Staff also concluded that DOD spent an excessive amount of effort in discrediting live-sighting reports, while exaggerating or mishandling forensic data in order to confirm a presumptive finding of death. DOD appeared to be more anxious to declare a presumptive finding of death than in following up reports of sightings with creative investigative work.

Furthermore, there is evidence of insensitivity on the part of the Executive Branch of the U.S. Government in providing complete and accurate information to the next-of-kin of missing American servicemen.

The classified evidence in DIA files suggests a pattern by a few U.S. Government officials of misleading Congressional inquiries by concealing information, and misinterpreting or manipulating data in government

files. Interested Senators and staff with proper clearances no doubt will want to review the classified files themselves and draw their own conclusions.

THE 1973 POLICY DECISION

Those who have not dealt with the POW/MIA issue may find it difficult to understand how DOD's analysis of the information could be in error. Unfortunately, staff believes that DOD has allowed its procedures to be dictated by a pre-conceived policy finding.

The New York Times reported on April 12, 1973, as follows:

"WASHINGTON, April 12 (AP)—The Pentagon, two months after the first American prisoners of war began coming home, said today that it had no evidence that there were any more prisoners still alive in all of Indochina.

"Despite the fact that interviews with all returning prisoners are nearly complete, a Pentagon official, Dr. Roger Shields, said that none of the 1,389 Americans listed as missing were now technically considered prisoners. 'We have no indication at this time that there are any Americans missing alive in Indochina,' Dr. Shields said at a news conference."

Dr. Shields was at that time Assistant Secretary of Defense, but he was following guidance issued on that date by the Department of State in a memorandum to DOD which stated that "There are no more prisoners in Southeast Asia. They are all dead." This directive was issued immediately after the return of the last POWs in Operation Homecoming. This finding was made despite that the fact that none of the hundreds of POW/MIAs that the Pathet Lao publicly acknowledged holding were ever returned from Laos. There were hundreds of live-sighting reports on file in 1973. Thousands of such reports have continued to be received since then.

PROCESS FOR "PRESUMPTION OF DEATH"

Since it was official policy, then, that all MIAs were dead, it became a bureaucratic necessity for all "unresolved" cases to be resolved in favor of a presumed finding of death.

Each respective military service from time to time convenes its own special commissions to pronounce on individual cases. Such a commission had before it at least three categories of information: The first is intelligence-related information concerning the individual. The second is eyewitness accounts of the loss event. The third is the so-called "incident report"—the official report of the loss incident.

If a year passes without new information, the respective military service can convene a commission to determine whether a presumptive finding of death should be delared.

The April, 1973, statement of policy was a political statement, rather than a finding according to statutory authority. As a result, the military services subsequently reviewed each individual case of those who previously had been declared dead en masse. And in every case except one, the commissions made a determination of a presumptive finding of death.

Because of this procedure, the bureaucratic necessity arose for discrediting any evidence that might cast doubt on the mass presumptive finding of death of April, 1973. From the standpoint of law and military regulations, the procedure followed in each case gave a legal affirmation to the original political statement.

Therefore, in order to discredit any information which might undermine the political thesis, the analysis of intelligence files fell into a systematic pattern of debunking information contrary to the thesis.

This systematic debunking included discrediting of reports, possible intimidation of witnesses, dismissal of credible evidence through technicalities, and—if all else failed—the arbitrary disregard of evidence contrary to the thesis.

DOD'S WORKING HYPOTHESIS

An analysis of DOD's working hypothesis for fully accounting for American MIAs is the key to understanding the discrepancies between DOD's position on the POW issue and the evidence uncovered by the staff.

DOD's premise, beginning in April, 1973, has been that all MIAs are dead; the corollary, therefore, is that DOD must never find any evidence that any MIA is alive. The best evidence, in DOD's opinion, is a set of physical remains that can be identified as a specific individual on the POW/MIA list. Once such an identification has been made, the case of that individual can be removed forever from the list. This is an easier task than to accept live-sighting reports that might point to a living POW, thereby necessitating appropriate follow-up action.

It is a reasonable assumption to remove POW/MIAs from the list when remains are identified, if the identification is correct. But the fact is that in a significant number of cases, such identifications have been made on the basis of inadequate physical evidence, using presumptive deductions that may or may not be true. The pressure to identify sets of remains even has resulted in specific cases where caskets have been buried with full military honors as the "remains" of the individual when, in fact, the casket is empty.

Therefore, DOD acts on its premise by vigorously investigating for the remains of dead MIAs. The list of MIAs presumed dead following the conclusion of the war totalled 2,383. DOD has received and claimed to have identified a total of 280 sets of remains since 1973.

Any full accounting of MIAs, according to DOD's working hypothesis, would necessarily involve only those cases in which either a presumptive finding of death could be made, or else full or partial remains could be discovered. As each presumptive finding of death is declared or set of remains is identified, DIA would remove, as accounted for, the names that matched those on the original MIA list. In this respect, DOD claims that DIA has vigorously investigated and resolved hundreds of such cases.

The policy of DOD is to focus attention on the cases where some evidence, no matter how small, of physical remains can be recovered. But even while DOD enthusiastically and vigorously investigates remains case—no matter how fragmentary—it just as vigorously discredits live-sighting and other witness accounts. Throughout the 1970s and 1980s hundreds of thousands of Asians fled Vietnam, Cambodia and Laos. These refugees provided many first-hand reports, or knew by second- or third-hand reports, of American prisoners being held in their respective countries.

To date, over 11,700 accounts have been received by DOD; 1,400 of these are first-hand, live-sighting reports. DIA claims to have analyzed fully each of these live-sighting reports, and to have left "no stone unturned" in searching for living prisoners. After analyzing the live-sighting reports, DIA has concluded that the majority are not related to living American POWs, with the possible exception of a small percentage of reports that DIA describes as "unresolved."

However, no "resolved" case has ever concluded that an American POW remains captive in Southeast Asia. In this way DIA concludes that there is no evidence of Americans currently being held captive in Southeast Asia. This contention is consistent with both the working hypothesis described above and with DIA's apparent success at removing from the MIA list names that involve only those cases in which remains are identified, or a finding of death declared.

Insofar as these discrepancies relate to the 1,400 first-hand reports of living prisoners, DOD's original premise comes into question. Numerous live-sighting reports have been erroneously discredited by DIA analysts. Moreover, staff has reason to believe that DOD has misidentified the remains of scores of MIA's, and has incorrectly presumed dead many others.

This analytical bias is typical of a bureaucracy defending an established policy at all costs, even if it means denying the obvious. It is also a typical characteristic of an out-moded paradigm that can no longer explain the real world or real facts. If the original premise of DOD had been that at least some of the 2,383 MIAs were alive, then DOD would have been forced by circumstance to view the evidence collected, including the hundreds of live-sighting reports, from an objective standpoint. The relevance and validity of each report could have been judged on its own merits rather than whether it supported a pre-determined hypothesis that no living POW/MIAs remained.

Unfortunately, DOD chooses to make its own analysis, without proper legislative oversight. Claiming extreme sensitivity and possible threats to sources and methods of intelligence gathering, DOD evaded the proper oversight that would have assured the objectivity of their process. The result has been a disservice to the POW/MIAs, their families and the American people.

IMPORTANCE OF THE PROBLEM

The resolution of these questions is important not only to any MIA/POWs who may be still alive, but also to the families involved. It is also important to the fate of any possible POWs in a future military action. With 200,000 U.S. troops now deployed to the Persian Gulf, the question of possible prisoners of war once again becomes an urgent matter.

Moreover, the resolution of issues relating to Southeast Asia is a key priority of our nation's foreign policy. Secretary of State James A. Baker III stated recently that the POW/MIA issue is the last remaining obstacle to resumption of relations with the government of Vietnam. But if it turns out that Vietnam has been concealing the existence of POWs, then it would be a complicating factor in initiating relations with the present regime.

LAKE ANDES-WAGNER/MARTY II IRRIGATION PROJECT

Mr. PRESSLER. Mr. President, I strongly support the Irrigation Drainage Demonstration Program and Lake Andes-Wagner/Marty II projects in South Dakota. These are included in title XI of H.R. 2567. This proposed research demonstration and irrigation

project is the result of more than 20 years of hard work by many people.

The Lake Andes-Wagner/Marty II Demonstration Program plan of study outlines the procedures for evaluation of subsurface drainage requirements determining return flow quantity and quality. Management practices will be developed to assure compliance with applicable water quality standards.

The information gained from the demonstration program will provide currently unavailable data necessary to construct and operate irrigation units in the Upper Missouri Basin and other areas of the country with similar concerns.

The benefits derived from a successful demonstration program with these objectives go far beyond the advancement of the Lake Andes-Wagner/Marty II units.

The proposed project provides a unique opportunity for the Bureau of Reclamation, Bureau of Indian Affairs, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Geological Survey, South Dakota Department of Game Fish and Parks, South Dakota Department of Water and Natural Resources, Yankton Sioux Tribe, and the Lake Andes-Wagner Water Systems, Inc., to contribute and participate in the 5-year study and to exchange and transfer information.

The project will provide data on agricultural nonpoint source pollution for sound management planning which protects soil and water resources. Study findings may substantially reduce project development and operating costs.

The Lake Andes-Wagner/Marty II area agricultural economy and future growth depend heavily on the development of irrigation, pending the completion of the demonstration program.

South Dakota has lost over 500,000 acres of land to the Pick-Sloan Reservoirs. The promise to South Dakota of Pick-Sloan irrigation has not been kept. Lake Andes-Wagner and Marty II would partially fulfill the commitment made to South Dakota.

Mr. President, the area around the Lake Andes/Marty II project is largely oriented to livestock production. Eighty percent of the personal income in the area comes from livestock. Crops are grown mainly for livestock feed. Precipitation is erratic. In most years rainfall is neither adequate nor timely. Over the last 3 years this area has experienced drought conditions resulting in feed shortages and movement of livestock out of the area. Many producers have been forced to sell off breeding stock.

Since 1950, the population of Charles Mix County has declined 57 percent to about 9,500. Indian unemployment is 85 percent, with many of those employed working in Government support programs. Outmigration includes mostly people under 40 years of age. The average age of the South Dakota farmer is 57 years. This trend must be stopped. The proposed project could reverse this trend and be the salvation of this area's economy.

Mr. President, I could elaborate for hours on the need for this proposed irrigation project. I have seen crops in South Dakota wither and die because of the shortage of rainfall at crucial times. Rural development is crucial to the survival of our small towns, businesses, farmers, and ranchers. This proposed project could bring new industries and processing plants to the area. It is rural development in its finest form. Hundreds of additional jobs would be created in an area that has lost hundreds of people over the last 30 years.

The proposed project has received the strong support of the State of South Dakota, the electrical power community including East River Electric and Mid-West Consumers Association, the South Dakota Department of Game Fish and Parks, the Industry and Commerce Association of South Dakota, and the National Water Resources Association, to name a few.

Mr. President, I urge my colleagues to support this bill.

JOB TRAINING AND BASIC SKILLS ACT

Mr. DOLE. Mr. President, I am joined by Senators HATCH, THURMOND, and SIMON in expressing disappointment and regret that Congress was unable to send a bill amending the Job Training Partnership Act of 1982 to the President for his signature during the 101st Congress.

Last Thursday evening, I introduced a perfecting amendment to an amendment offered by the distinguished Senator from New Mexico. This amendment was the Job Training and Basic Skills Act of 1989 that was reported by the Senate Labor and Human Resources Committee in September 1989, as subsequently modified by certain bipartisan changes. During debate on this legislation, a change to the bill was agreed upon which had the effect of requiring that a new formula for the allocation of JTPA funds would need to be devised and put in place beginning in fiscal year 1993.

Mr. President, this bill was passed by the Senate by a margin of 95 to 1. It is also my understanding that the only vote cast against the bill was based on objections to the procedure in which the bill was brought to the floor for action and not on the substance of the legislation.

It is, needless to say, unusual that any legislation receives such complete bipartisan support and I think in this case, the almost unanimous vote on this legislation is a testament to both the purpose and substance of this bill.

Indeed, Mr. President, I think it was a recognition by the Members of this body that while JTPA has been a success and deserves our support and encouragement, it also needs to be updated to reflect changes in the employment and poverty statistics and general working and training trends that have occurred since JTPA programs got underway more than 5 years ago.

In addition, Mr. President, I think the overwhelming support this legislation received represented a strong endorsement of the provisions of this bill designed to keep JTPA alive and in tune with the needs of those whom it was intended to help. This legislation addressed such important issues as the eligibility requirements of program participants, the scope and quality of JTPA programs, the coordination of JTPA with other State and local job training programs, and finally, program accountability with respect to performance standards and procurement policies.

Mr. President, it is unfortunate that the House chose not to consider this legislation after Senate passage last Thursday. The House passed its own version of this very important legislation on September 27, by a vote of 416 to 1, and while differences exist between the two bills, I firmly believe that these differences can be worked out.

With 511 Members of Congress voting in favor of JTPA reform, I hope that Congress will enact legislation early next Congress to address the needs of this important program to help those who need training to become productive and self-sufficient members of the work force.

SISTER MYRA: BUSINESS CITIZEN OF THE YEAR

Mr. WIRTH. Mr. President, everyone is familiar with the good works of Mother Teresa. But in Colorado Springs, CO, we have our own version of the saintly Mother Teresa in Sister Myra James Bradley. Now, Sister Myra differs from Mother Teresa in many ways: She doesn't work in the slums of India; she doesn't run worldwide food banks for the hungry; and she hasn't won a Nobel Prize.

But Sister Myra has won the hearts of each person she touches with her kindness, her energy, and her devotion to helping others. This dedication to other people has manifested itself in the sister's work to maintain a strong, viable hospital system in the Colorado Springs community. Currently, Sister Myra oversees more than 3,000 employees and an annual budget of $200 million in the nonprofit Penrose-St. Francis Catholic Healthcare Corp. Despite the size of this medical conglomerate, Sister Myra's personal attitude

and commitment to assisting others permeates the institution and is greatly appreciated throughout the city—so much so that she was named Business Citizen of the Year this week.

I join the city of Colorado Springs in praising her and her work and ask unanimous consent that an article that appeared in the Gazette Telegraph be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Gazette Telegraph, Oct. 25, 1990]

HOSPITAL CHIEF NAMED TOP BUSINESS CITIZEN

Sister Myra James Bradley, who guided the merger of the competing Penrose and St. Francis hospitals in 1987, was named Business Citizen of the Year on Wednesday.

The Colorado Springs Chamber of Commerce recognized Bradley for the annual award because of her determination and leadership in the consolidation.

"Sister Myra James is one of the few people I've met in this community that you can't say anything bad about," said chamber Chairman Thayer Tutt. "She represents the best business can offer."

Bradley, with 30 years of experience in the health care industry, is responsible for more than 3,000 employees and an annual budget of about $200 million as chief executive officer of the non-profit Penrose-St. Francis Catholic Healthcare Corp.

Tutt applauded her commitment to Colorado Springs and the strong financial performance of the hospital system.

"Her style is polite, yet her results are quite astonishing," Tutt said. "She really runs a good ship, yet she doesn't do it with a lot of fanfare."

Bradley is the award's 15th recipient and the second woman to be honored. Nechie Hall, co-founder and executive vice president of Praco Ltd. Advertisig and Public Relations, was chosen in 1988.

Bradley was chosen Business Citizen of the Year by a panel of seven who judged candidates on business stature, leadership and community involvement, cooperation and support.

She began serving as president of The Penrose Health System/Penrose Hospitals in 1965. twelve years later, she oversaw the merger of the Penrose and St. Francis hospitals, which together controlled more than 60 percent of the Colorado Springs hospital market.

THE NATIONAL HISTORIC PRESERVATION AMENDMENTS ACT

Mr. FOWLER. Mr. President, I recently introduced legislation designed to strengthen our national effort to preserve and protect our prehistoric and historic heritage: The National Historic Preservation Amendments Act of 1990 (S. 3196).

This legislation combines provisions of two bills I introduced earlier in the Congress and is the product of extensive consultation with members of the preservation community, Indian tribes, and affected Federal agencies. I ask unanimous consent that the following summary of my bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF NATIONAL HISTORIC PRESERVATION AMENDMENTS ACT OF 1990

The National Historic Preservation Amendments Act of 1990 (S. 3196) is aimed at strengthening, and improving the accountability of, our national preservation program. The bill provides for the first comprehensive update and fine-tuning of the National Historic Preservation Act since 1980.

S. 3196 combines features of two bills introduced earlier in the 101st Congress: S. 1578, the Historic Preservation Administration Act, and S. 1579, the National Historic Preservation Policy Act. The new legislation represents the portions of the two previous measures upon which widespread consensus has been reached within the preservation community. The National Park Service also provided valuable assistance in the development of the bill.

S. 3196 contains the following major features:

1. Re-asserting federal leadership in historic preservation while recognizing and providing for the Federal/state partnership which has evolved in recent years, and for the first time, extending this partnership to Indian tribes.

2. Strengthening federal protection for historic properties, especially by requiring Federal agencies to determine that there was no "feasible and prudent" way to carry out the recommendations of the Advisory Council on Historic Preservation for minimizing harm to historic properties before the agency can proceed with an undertaking.

3. Strengthening the federal archaeology program, both in protection and content. With the Federal government currently spending approximately $300 million a year on archaeological projects, taxpayers certainly have a right to expect that these projects produce the maximum return in increased understanding and enhanced protection for the archaeological record of our national heritage.

4. Further defining the role of States in the national preservation program by allowing State programs to take on additional responsibilities while insuring they receive adequate resources to do so.

5. Strengthening the role of Indian tribes in the national preservation program by providing statutory authority for Indian tribes to assume various preservation responsibilities on tribal lands.

6. Strengthening preservation education programs.

7. Creating a National Center for Preservation Technology in the Department of Interior to aid in the development and transfer of preservation and conservation technologies.

A summary of S. 3196 follows:

Section 1. Short title designates the bill as the "National Historic Preservation Amendments Act of 1990."

Section 2. Findings adds two new findings to the National Historic Preservation Act (NHPA).

Section 3. Policy amends NHPA by adding Indian tribes to the national historic preservation partnership.

Section 4. Review of threats to properties establishes a new requirement for the Secretary of Interior to report every three years to the President and the Congress on threats to properties on the National Register of Historic Places.

Section 5. State historic preservation programs revises the subsection of the NHPA which governs these programs as follows:

(1) expands the discretion of the Secretary of the Interior to allow the substitution of a State's system of fiscal audit and management for comparable Federal requirements.

(2) revises the listing of the responsibilities of State Historic Preservation Officers by adding the following items: consultation with Federal agencies; assistance with rehabilitation projects which may qualify for Federal assistance; authorization to undertake other responsibilities consistent with the purposes of NHPA.

(3) updates the date used in determining how long an existing approved State Historic Preservation program has to gain approval under NHPA, as amended, from 1980 to 1990.

(4) details new authority for the Secretary of Interior or the Advisory Council on Historic Preservation (ACHP) to delegate to a State Historic Preservation Officer specific authorities within the State: to identify and preserve historic properties; to determine eligibility for, and to expand, the National Register; to maintain historical and archaeological data bases; to certify eligibility for federal preservation incentives; to respond to actions of other governmental and private entities; and any other authority the secretary or the Council decides to delegate. This paragraph also sets out the conditions for the exercise of this delegation authority.

Section 6. Certification of local governments adds two new definitions (of "designation" and "protection") to the NHPA subsection on local preservation programs.

Section 7. Tribal historic preservation programs creates a new subsection of NHPA in order to establish and define the role of tribal preservation programs within the national preservation partnership.

(1) creates the mechanism for the development of a Federal assistance program for the preservation of tribal cultural heritage. This program is to be initiated by October 1, 1991.

(2) provides for the appointment of a tribal preservation official to administer the tribal preservation program.

(3) provides the means for tribal preservation officials to "assume all or any part of the functions of the State Historic Preservation Officer" and establishes the consultative process to be utilized by the Secretary of Interior in considering such requests. The authorization for partial assumption of these functions is a recognition of the highly divergent circumstances of tribes in terms of population, geography, and other factors.

(4) establishes the process for the Secretary of Interior to delegate preservation responsibilities to qualified tribal preservation programs. Included are requirements that the tribe be appropriately compensated for the costs of carrying out the delegated authority, that the tribal program is "sufficient" to carry out the responsibility, that the roles of the Secretary of Interior and the State Historic Preservation Officer(s) are specified, and that the participation of the tribe's traditional cultural authorities, other Indian tribes, and the interested public is provided for.

(5) authorizes the ACHP to allow qualified tribal procedures to be used in place of Federal procedures for the issuance of permits for undertakings on the tribe's lands.

(6) mandates the delegation of Bureau of Indian Affairs preservation responsibilities

to qualified tribal preservation programs (or when the tribe so requests, to a State Historic Preservation Officer) upon the request of the tribe and the concurrence of the ACHP.

(7) stipulates that religious and cultural historic properties of a tribe are eligible for inclusion on the National Register, and requires that the tribes which are associated with such properties must be consulted in advance of Federal undertakings under Section 106 of NHPA.

Section 8. Matching grants provides authority for the Secretary of Interior to make matching grants to the States, and direct grants to Indian tribes and the Micronesian states. In each case, this represents a modification or clarification of current law rather than a new authority.

Section 9. Education and training requires the Secretary of Interior to establish a comprehensive education and training program, designed to increase public awareness of preservation concerns, to increase opportunities for avocational preservationists to participate in the federal program and to expand training opportunities in the field (including special assistance to Historically Black Colleges and Universities and to schools with large numbers of American Indians). An annual authorization level of $5 million is also included.

Section 10. Requirements for awarding of grants revises NHPA provisions on grants to increase the flexibility of the Secretary of Interior in awarding grants to States and the National Trust for Historic Preservation.

Section 11. Apportionment of grant funds also increases the flexibility of NHPA grants to states and simplies the language of current law in this repect.

Section 12. Federal agency historic preservation programs clarifies and stengthens the preservation responsibilities of Federal agencies.

(1) is a conforming amendment.

(2) clarifies Federal agency responsibilities to give cognizance to national preservation policies by requiring each agency to "establish and implement a preservation program for the identification, evaluation, nomination to the National Register of Historic Places, and protection of historic properties," and specifies the content of that program: (A) expands current law's coverage of agency properties; (B) provides for the establishment of a management program for all historic properties owned or controlled by a Federal agency; (C) requires consideration of preservation concerns in the case of properties not under the direct control or jurisdiction of the agency, but subject to the agency's influence; (D) requires agency cooperation for preservation purposes with other governmental and nongovernmental entities; and (E) coordinates this section with section 106 of NHPA.

(3) adds the following subsections: (k) provides for the denial of all forms of Federal assistance to those who "adversely affect" a historic property related to the grant application (to address the situation in which a developer demolishes a historic property and then applies for Federal assistance in order to escape historic preservation review); (l) requires that in the less than one percent of cases in which the consultation carried out pursuant to Section 106 of NHPA does not result in an agreement (between a Federal agency and the ACHP), the Federal agency must follow the recommendations of the ACHP unless the agency finds that there is no "feasible and prudent" way to do so; and (m) allows an agency whose system of environmental review under the National Environmental Policy Act is found by the ACHP to provide sufficient attention to the protection of cultural resources to substitute this review for the requirements of Section 106 of NHPA.

Section 13. Lease or exchange of Federal historic properties requires Federal agencies to "establish and implement adaptive use alternatives for historic properties that are not needed for current or projected agency purposes."

Section 14. Disposition of archaeological materials creates a new section on archaeology in NHPA, and coordinates the latter with the Archaeological Resources Protection Act (ARPA).

(a)(1) requires that Federal agencies involved with archaeological resources be responsible for ensuring both agency personnel and contractors meet professional standards developed by the Secretary of Interior in consultation with the ACHP. In this process, existing standards and certification standards are to be taken into account and, where appropriate, utilized.

(a)(2) requires that Federal archaeological activities provide appropriate opportunities for the involvement of the interested public.

(a)(3) directs that Federal archaeological research be "designed, to the extent feasible, to address research topics of demonstrable significance to the sciences and humanities."

(a)(4) provides for the maintenance and dissemination of data produced by Federal archaeological research.

(b)(1) establishes a consultative process to govern the analysis and disposition of archaeological materials and records produced by Federally sponsored archaeological research.

(b)(2) replaces current law's requirement for permanent retention of the products of Federally sponsored archaeology with the option of permanent retention or appropriate disposal.

(b)(3) requires that, when the products of Federally sponsored archaeology are held for study and/or exhibition, such materials must be registered with an antiquities registration program.

(c) provides that archaeological work conducted under section 106 of NHPA will not require a permit under ARPA.

(d) establishes a consultative process to assist the Secretary of Interior in implementing this new archaeological section of NHPA.

(e) creates a requirement for the Secretary of Interior to promulgate guidelines to ensure that Federal, State, and tribal preservation programs include plans to promote voluntary preservation measures for archaeological resources on private lands.

Section 15. Interstate and international traffic in antiquities is aimed at combatting the looting and illegal trade of archaeological resources by requiring a study (with a $500,000 authorization) by the ACHP of "the suitability and feasibility" of establishing a new government-sponsored registration of antiquities program to both encourage the conduct of scientifically valid excavations and create a potential market incentive in favor of certified antiquities (Section 113); and by calling for an international conference in 1992 on the antiquities trade (Section 114).

Section 16. Membership of Advisory Council on Historic Preservation adds a Native American representative to the ACHP.

Section 17. Regulations of the Advisory Council on Historic Preservation clarifies the responsibility of the ACHP "to promulgate such rules and regulations it deems necessary to govern the implementation of section 106 of (NHPA) in its entirety.

Section 18. Definitions amends and adds definitions in NHPA.

(1) amends the definition of "agency" by dropping the exemption for certain agencies exempted from NHPA.

(2) updates the definition of "State."

(3) substitutes the more current and inclusive definition of "Indian tribe" found in section 4 of the Indian Self-Determination and Education Assistance Act.

(4) amends the definition of "historic property" by adding "landscape" to the list of property types, and specifying "material" remains as an included item.

(5) rewords and expands the definition of "undertaking," based largely on ACHP regulations, and specifically including programs carried out by States pursuant to Federal permits or funding (such as surface mining, and certain HUD, DOT, and Corps of Engineers programs).

(6) expands the definition of "preservation" to include "study, interpretation . . . education and training."

(7) expands the definition of "Cultural park" to include non-urban areas.

(8) expands the definition of "Historic conservation district" to include non-urban areas.

(9) expands the representation on "Historic preservation review commissions" to include "prehistoric and historic archaeology" and "folklore and cultural anthropology."

(10) adds new definitions to NHPA for: "Indian land manager," "Indian lands," "Traditional cultural authority," "Certified local government," "Cultural resources," and "Council" (ACHP).

Section 19. Cooperative agreements for the performance of functions of a Federal agency provides explicit authority for Federal agencies to delegate (with the consent of the ACHP) preservation responsibilities, and the necessary funding, to the ACHP or to State or tribal preservation programs.

Section 20. Access to information clarifies and expands this section of NHPA by: adding "invasion of privacy" and "impede the use of a traditional religious site by practitioners" to the grounds for the withholding of information; providing that, when information is withheld, the Secretary of the Interior will determine who may have access to that information; and coordinating the operation of this section with the ACHP.

Section 21. International activities rewords current law and adds the requirement that Federal agencies operating outside the United States "establish procedures, in consultation with the Advisory Council on Historic Preservation, the Department of Defense, and the Department of State" in order to carry out their international preservation responsibilities. This requirement is important because, in its absence, no Federal agency has taken substantive steps to comply with the existing section 402, which has been in effect since 1980.

(1) establishes a new requirement that "the appropriate preservation authorities in the host country are consulted."

(2) broadens coverage of properties to include those "significant to the history or prehistory of the host country or included on or eligible for inclusion on the host country's equivalent of the National Register" and requires that such properties be "identified and evaluated."

(3) and (4) provide that in addition to current law's requirement for Federal agencies to "take into account" their impact on foreign historic properties, "reasonable and effective steps are taken to avoid or mitigate adverse effects on such properties."

Section 22. National Center for Preservation Technology creates a National Center for Preservation Technology to research, develop, and disseminate historic and pre-historic preservation technologies. This Center, which is based on the recommendations of the National Coalition for Applied Preservation Technology, responds to the finding of a 1986 report by the Office of Technology Assessment that "the lack of adequate (preservation) technology transfer demonstrates a conspicuous need for an institution to coordinate research, disseminate information, and provide training about new technologies." To fund the Center, $500,000 is authorized for FY 91, and $5 million annually for FY 92-94.

Section 23. Report requires the Secretary to study and report to Congress, before and end of FY 92, on the inclusion of various items in the National Register of Historic Places.

[NOTE.—In the above, most grants of authority to the Department of the Interior will be exercised by the National Park Service.]

TRIBUTE TO SENATOR BILL ARMSTRONG

Mr. DURENBERGER. Mr. President, one of the bitter sweet realities of the end of this Congress is the departure of Members who will not be here with us in January. It is with sense of sandness and unmost repect that I rise to pay tribute to the Senator from Colorado, BILL ARMSTRONG's. I have had the opportunity to get to know this man well during our time together, and I will miss him dearly.

Mr. President, I have great respect for BILL ARMSTRONGS' conviction that we should be citizen legislators. I recall Senator Howard Baker's comments that the legislative branch starting going down hill as soon as air conditioning came the Capitol, so that we could be here year round and become "professional legislators." BILL has decided that two terms in the proper amount of time to spend in this body, and is returning to private life.

Mr. President, I have occupied seat on the dais of the Senate Finance Committee next to BILL ARMSTRONG for years. I have seen his incisive mind at work analysing and clarifying the complex issues of tax reform and international trade. He knows how this economy and our Government should work, and has been an aggressive proponent of economic growth.

In an era in the history when floor debate seems to be of less importance, despite the arrival of television, BILL ARMSTRONG has been a powerful persuader on the Senator floor. His preparation and reasoning have had the rare ability to change people's minds.

BILL ARMSTRONG has made a particular contribution to the Republican Party through this leadership of the Republican Policy Committee. While this is a partisan committee, I believe that the Senate as a whole, and the American people have benefited from documents and analysis of the Policy Committee.

Mr. President, the Senator from Colorado knows the affection I have for him as a person. I have valued the many chances we have had to share our lives with each other. He is a man of deep and powerful faith and has made this institution stronger by his active pursuit of his convictions.

There are not enough BILL ARMSTRONGS in government. Perhaps efforts around the country to place limitations on terms of office holders will mean that the American people will benefit from more of his brand of "citizen legislator." I certainly hope so.

I will certainly miss him as a colleague, and especially as a brother. I know that he and his wife Ellen will continue to make a contribution to the lives of many and to this country, and I wish them joy and success in the years ahead.

TRIBUTE TO GORDON HUMPHREY

Mr. DURENBERGER. Mr. President, the Senator from New Hampshire [Mr. HUMPHREY] will be leaving the Congress at the end of this session, and I want to take a moment to express my respect and appreciation for his work in the Senate, and for his friendship.

GORDON HUMPHREY is a person of strong convictions and he has a passion for putting those ideas into practice. That is a rare quality in an age of compromise and relativism. There was never any doubt where the Senator from New Hampshire stood. That is an important reason why he made such a significant contribution to the work of the body during his time here. The Senate is supposed to be the world's greatest deliberative body, and that means its membership should use this floor as a marketplace of ideas. GORDON HUMPHREY, to his credit, has not been a reluctant salesman in that market.

I particularly want to express my appreciation to the Senator for his leadership in defense of the rights of the unborn. He has been an ardent champion, and he will be very hard to replace.

GORDON HUMPHREY came to this body as a private citizen. He has chosen not to seek reelection to this body, and returns in the next few weeks to new Hampshire. He leaves behind a proposal which may bear fruit here and around the country in the near future: term limitation. I have long believed that the vitality of our political system would be enhanced if we ended the Federal job classification of professional politician. The last several weeks and last few years have demonstrated that our current incumbency-based system can be stymied when institutional prerogatives become more important than the national interest. The American people could care less about whose jurisdiction is violated; they want a Congress that can make decisions. I believe term limitation would advance that cause.

I while I am going to miss my colleague greatly, I admire his voluntary decision to abide by the term limit he seeks to apply, 12 years.

As well as being a colleague, GORDON HUMPHREY has been a steady and helpful friend to me. He knows how much I appreciate how he has shared his life with me, and shared my concerns as well. He has been a brother to me.

As he returns to New Hampshire, GORDON HUMPHREY should bring with him many memories of this place, and I hope at least some of them are fond ones. Because of his conviction and his courage to follow them, he has made a real difference in the U.S. Senate.

A TRIBUTE TO CONGRESSMAN WES WATKINS

Mr. BOREN. Mr. President, my friend and colleague, Representative WES WATKINS, concludes his service as a Member of Congress to the people of Oklahoma's Third District and the Nation upon his retirement at the end of the 101st Congress. I want to take this opportunity to say a few words about WES WATKINS and the remarkable record of public service he has compiled in his 14 years in the House. It is a record of accomplishment and effectiveness that has led the voters of the Third District to return him to Congress every time his name has appeared on the ballot, by overwhelming majorities and twice unopposed.

Prior to his election to the House in 1976, WES WATKINS served in the Oklahoma State Senate. In his short term, his record as a hardworking, effective State senator became well known throughout his native home area in southeastern Oklahoma. When House Speaker Carl Albert, who had represented Oklahoma's Third District, announced his retirement there was immediate concern about finding someone to assume the enourmous responsibility of following in the footsteps of the "Giant from Little Dixie."

WES WATKINS rose to that challenge, and upon his election to Congress in 1976, he immediately set upon the task of working tirelessly on behalf of his constituents. His initial House committee assignments included Banking and Finance, as well as Science, Space and Technology. It was from his position on the powerful House Appropriations Committee, however, which came after just a few short years of

service in Congress, that WES has been able to serve the Third District most effectively. He has held key subcommittee assignments on the Appropriations Committee, including energy and water development as well as agriculture and rural development.

Mention WES WATKINS' name to anyone in southeastern Oklahoma, and they will tell you about his endless activities to promote economic development. He knew from his own upbringing, about the hardship and challenges facing struggling families in rural America. Every area of his congressional district can attest to his success in creating jobs by helping attract new industry. During his term of office, more new jobs were created in his district than in any other part of Oklahoma. WES was the driving force in establishing the Kiamichi Economic Development District even before his public service began. He has promoted rural enterprises through a network of small business incubator programs throughout his district. And it was WES who gained congressional approval for creation of the South-Central Agricultural Research Station in Lane, OK, where research so vital to southeast Oklahoma's agricultural industry is conducted.

Wes also has shown a deep and abiding interest in the environment and conservation of the Third District's natural resources. He was the driving force in establishing the Winding Stair Mountain Wilderness Area in the Ouachita National Forest of southeast Oklahoma.

It has been my privilege to work with WES on education initiatives important not only to his district, but the entire Nation as well. WES is known across the State of Oklahoma as a champion of vocational education, a fact that is recognized by the naming of the Wes Watkins Area Vocational-Technical School, now under construction in Wewoka, OK. And it was Representative WATKINS who provided the leadership and vision in establishing the Center for International Trade Development at Oklahoma State University. In my judgment, it is efforts like these on behalf of our education system that will constitute one of WES WATKINS' greatest legacies to future generations of Oklahomans.

There is so much more that should be said about Representative WATKINS, but I wish to conclude by simply saying this. WES WATKINS is one of the most caring, compassionate, dedicated and sincere public servants I have ever known. It has been a personal privilege for me to serve with him in Congress. He is a friend in the truest sense of the word. I too live in the Third Congressional District, and therefore I speak today as a constituent and as a voter in that district. Those of us who live in his district will never forget what WES WATKINS has done for us. We will always deeply appreciate the sacrifices made by WES and by his family to help make life better for all of us. I know that the future holds new opportunities for WES, his wife Lou, and their family. Although we shall miss him in the Congress, the contribution of WES WATKINS to his State and Nation will continue.

SENATOR BILL ARMSTRONG

Mr. COCHRAN. Mr. President, when I was elected to the House of Representatives in 1972, I was in the class of new GOP Congressmen that included BILL ARMSTRONG, of Colorado.

We became friends then, and I have enjoyed his friendship and have admired and respected him for these 18 years we have served together. In 1978 we were both elected to the Senate. So I have observed him at very close range.

I do not know of anyone in this body who is more respected for this integrity and ability than is BILL ARMSTRONG. He is one of the Senate's finest speakers. He is one of our most dedicated Members. He is one of the most principled Members. His example is one of the Senate's best assets.

I wish him and his wife Ellen much happiness in the years ahead.

SENATOR JIM McCLURE

Mr. COCHRAN. Mr. President, one of the best Senators who ever served in this body is retiring this year, the senior Senator from Idaho, JIM MCCLURE.

It has been a genuine pleasure and honor to serve with JIM MCCLURE in the Senate. He is a thoughtful and courteous friend. He is very intelligent. He is conscientious in discharging his duties and responsibilities. He is simply one of the finest people I have ever known.

We will really miss him. I will personally miss having the benefit of his prudence and wise counsel on matters before the Appropriations Committee and the Republican Conference.

He served very capably when we were in the majority as chairman of the Energy Committee, and chairman of the Interior Appropriations Subcommittee. We also elected him to serve as chairman of the Republican Conference. In all of these positions of influence and responsibility, he served with great distinction.

JIM MCCLURE's diligent and thorough representation of the interests of his State of Idaho, and his statesmanship as a Senator of national renown, will be a legacy to be admired and emulated.

Mr. President, I wish our departing friend much happiness and satisfaction in the years ahead, and I include in this bon voyage, his very charming and lovely wife, Louise. They have earned some time to themselves after giving so much of themselves to the service of their State and our Nation.

OPERATION DAKOTA NOTES

Mr. PRESSLER. Mr. President, recently I established Operation Dakota Notes on a trip to Saudi Arabia to visit our troops. I saw our soldiers dug in in the hot desert. Also a visit to the U.S.S. *Wisconsin* afforded me a chance to visit some of our sailors. As a former Army lieutenant having served in Vietnam, I can attest to the personal sacrifice these young women and men are making.

Upon returning, a young student asked me how to write to our soldiers. That led me to establish a program called Operation Dakota Notes. Operation Dakota Notes is a program whereby students write letters to soldiers in Saudi Arabia via my office. Thus students can send their letters to me at: Senator LARRY PRESSLER, U.S. Senate, Washington, DC 20510, and I will forward them to our troops in Saudi Arabia. Here are some examples of letters sent and a summary:

OPERATION DAKOTA NOTES

South Dakota school children writing to service members taking part in Operation Desert Shield.

Idea was suggested by Eric White, an 11-year-old boy in the sixth grade at Brandon Elementary School in Brandon, SD.

We have received over 4,500 letters that our office will forward to the service members.

The letters express support for the soldiers and for a safe return. Many of the letters tell about current events in the community.

Dustin Flatten, Crocker, SD: To the Servicemen and Servicewomen in Saudi Arabia: I'm a 9-year-old boy who is very proud of all of you, and what you are doing for our country America and other countries like ours. Your families must be very proud of you also. I'm not sure exactly why you are there but I know that my parents say it is to protect my future and every one else's from a man who wants a lot of power. I put a flag in our window to help all of you return home safely. I love you and I will pray for all of you.

Tracy Stanton, Aberdeen, SD: Dear Soldier, I wish you could come back. We have yellow ribbons all over the place. I hope you come home safely. I hope there isn't a war. You are nice to help another country. You are brave to do what you are doing.

Amy Jo Halsey, Webster, SD: Dear Soldier, My name is Amy Halsey. I'm in 3rd Grade. I live in Webster, SD. I don't like war. But sometime we have to have war so people be free and not get bossed around. I've slept in a desert and your throat gets dry and it hurts. I hope you don't get hurt. My dad was in the National Guard or Army, I can't remember. Please write back.

Kevin Schrank, Fedora, SD: Dear Serviceman or Woman, There are a lot of things going on around Artesian, South Dakota. Pheasant season is just around the corner and dove season will end when pheasant season starts. Archery hunting for deer is very popular around here. The weather

here is getting cooler and I'm sure snow will start flying soon. Our football and basketball teams are doing fairly well this year. The athletes are working very hard and deserve a lot of credit. Good luck over there and I hope you will be home soon.

Jay, Wall, SD: Dear friend, I care very much and I hope there is not a war. Your friend, Jay.

Tory Watson, Rapid City, SD; Dear Soldiers, I'm sending this stuff for you because I thought you would be bored. I'm sorry you have to be in Saudi Arabia. I hope you will be able to come home soon. I'm sending you books to read when you have nothing else to do. The leaves are as close as I could get to giving you fall. I hope you don't have to stay there to much longer. A concerned 8th grader.

TRIBUTE TO SENATOR JAMES McCLURE

Mr. DURENBERGER. Mr. President, the distinguished senior Senator of Idaho, JAMES MCCLURE, is retiring at the end of this session. I want to pay tribute to this man who has served his State and this country for 24 years: 6 years in the U.S. House of Representatives and 18 years in the Senate.

Senator MCCLURE is known to us here in the Senate as among his peers as a thoughtful leader who is direct, forthright, and unpretentious. If there is any one in America who knows more about energy policy than JIM MCCLURE, I would like to meet them. He has served with great distinction on committees and task forces dealing with energy issues ever since he has come to the Senate. He has been the ranking Republican member of the Senate Energy and Natural Resources Committee, where he has played a major role in shaping legislation on energy, water, minerals, timber, and public lands issues.

Senator MCCLURE's approach to a strong national energy policy includes support for a balance of all energy sources, strategies and technologies, including nuclear, enhanced conservation, domestic oil and gas production, use of ethanol and other renewable fuels, advanced and hybrid vehicle use such as electric cars and vans, coal and clean coal technologies, and synthetic and other alternative fuels.

Mr. President, while the United States has been confronting the crisis in the gulf, and American consumers have been confronting sharply higher gas prices, I have been reminded of a measure that Senator MCCLURE and I worked on in the early eighties. It was our desire to use our strategic petroleum reserve, in coordination with buffer supplies of other nations, to cushion the impact of supply interruptions and insecurity. Had President Reagan not vetoed that bill, I believe we would have been in much better shape to handle the current crisis.

JIM MCCLURE has also made a sizeable contribution to the natural heritage of the United States through the passage and funding of many new parks, historical sites, battlefields, and other wilderness in the lower 48 during his 6 years as chairman on the Energy Committee.

I have also appreciated his consistent and vocal advocacy of fiscal restraint throughout his career in the Senate. Unfortunately, the Senate has not heeded his words and the result is the fiscal chaos and years of difficult choices we now face.

Senator MCCLURE's presence will be missed when the 102d Congress begins next year, especially as we turn our attention to a national energy policy. I know that he will continue to make a strong contribution to national policy as a source of perspective and history. He can be proud of a distinguished career as a statesman and policymaker. I wish he and his wife, Louise and their family all the best in the years ahead.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,051st day that Terry Anderson has been held captive in Lebanon.

Today also marks the 6th birthday Terry Anderson has spent in captivity. He is 43 years old today. Ordinarily a birthday is a time for celebration, for cake and ice cream. This birthday is a more solemn occasion. It serves to remind us that Terry Anderson's captivity—and the torment of his loved ones—grinds on day after day. Weeks turn into months and the months into years. Six birthdays. Five and a half long years. Longer than the American Civil War. Longer than America's long battle in the Pacific during World War II. Much, much too long.

And yet, it would be wrong to think that there is no reason to celebrate today. Although saddened by Terry's continued captivity, we should all join in celebrating his indomitable spirit. Recently released hostages who were imprisoned with Terry speak with admiration of his active mind, his undimmed enthusiasm for life, and his unbroken will to survive and regain his freedom. We should celebrate this victory over his captors—this triumph of the spirit—which Terry has achieved even in his bondage in Lebanon.

Let us earnestly pray that before much longer we will also celebrate his homecoming. I urge my colleagues to join with me on this special day in keeping Terry Anderson and his loved ones in their prayers.

Mr. President, I ask unanimous consent that an article concerning Terry's birthday be printed in the RECORD.

ANDERSON'S BIRTHDAY SPENT IN CAPTIVITY, REPORT SAYS WAITE TO BE FREED

(By Mohammed Salam)

BEIRUT, LEBANON.—Lebanese newspapers published birthday letters to American journalist Terry Anderson on Saturday, his 43rd birthday in captivity. One newspaper reported that fellow hostage Terry Waite will be freed soon.

Seven newspapers printed birthday greetings to Anderson, an Ohio native, from his sister, Peggy Say, his youngest daughter, Sulome, and Madeleine, Sulome's mother. They published the original English text so that Anderson, who did not know Arabic when he was kidnapped, would be able to read them if his kidnappers allowed him to.

The newspaper ad-Diyar, meanwhile, said British hostage Terry Waite would be freed either "by the end of this month or within the first half of the coming November, at the latest."

The short, front-page report attributed the information to an unnamed security source. The conservative ad-Diyar is not known to have special insight into the hostage issue, but the report was the latest predicting Waite's release since Iran and Britain agreed to restore diplomatic ties Sept. 27.

Waite, 51, and Anglican Church envoy, was kidnapped Jan. 20, 1987 after leaving his west Beirut hotel to negotiate with representatives of Anderson's kidnappers.

He is believed held by Islamic Jihad, the pro-Iranian group that abducted Anderson.

Anderson, chief Middle East correspondent for The Associated Press, is the longest-held of the 13 Western hostages in Lebanon. He was kidnapped March 16, 1985.

His birthday was marked by his colleagues as well as local and foreign journalists with a somber gathering at the Associated Press bureau. It was held in Anderson's office, which his colleagues refer to as "Terry's Room."

The staff sang "Happy birthday, Dear Terry" and blew out a candle on a white cake.

The newspapers also published an Arabic translation of Mrs. Say's open letter to the captors, pleading with them to release Anderson and the other captives.

"I beg you to release Terry and the others for humanitarian reasons. Please, in honor of his birthday, give Terry and the others the gift of freedom this year," Mrs. Say wrote.

"His daughter Sulome, who he has never seen, started school last month. His daughter Gabrielle has matured from a child of 8 to a young woman of 14," she added.

Along with Sulome's handwritten letter, some papers published a pencil drawing by the child, who was born 83 days after her father's abduction. The drawing showed happy children playing.

"To Dad. I love you. Happy birthday. I go to proper school. I do work, tracing, art, math. I can write and read. I love you," Sulome's letter said.

Former Irish hostage Brian Keenan said after his release Aug. 24 that he had spent part of his four years in captivity with Anderson, and he noted that Anderson has a photograph of Sulome and was given letters from his family published in the press.

"Terry and myself would sit through those long nights and speak with great pain and remorse and longing for his daughter," Keenan said.

Madeleine, addressing, "My Dearest Darling Terry," wrote:

"Another birthday, another year, another letter. A question I ask myself every day and the answer I always want to give is 'soon, soon.'"

In addition to Anderson and Waite, the Westerners missing in Lebanon are five Americans, three Britons, two Germans and an Italian.

REPRESSION IN BURMA

Mr. MOYNIHAN. Mr. President, in the closing hours of the 101st Congress. I want to once more draw the attention of my colleagues to the tragedy in Burma.

The darkness in Burma continues. The brutality of the ruling junta of Ne Win continues. The narcotics corruption of the Burmese military, and their Thai collaborators, continues. As does the suffering of the Burmese people.

The Congress has spoken on Burma many times. We have nothing but contempt for the Burmese Government, if it ought be called such. The election of May 27 was a profound statement of who the Government of Burma really is, the National league for Democracy, and who the leaders of Burma really are. Aung San Suu Kyi, U Tin Oo, and others. The Government of the Burmese people is most certainly not that of Ne Win or Saw Maung. They are but thugs.

During this Congress, we have directed that humanitarian assistance be provided to those courageous Burmese students and minorities who have fled to Thailand. The Congress has directed that no aid or assistance be provided that Burmese Government. The Congress has directed that the President impose economic sanctions on Burma. And I am certain that when the Congress returns in January we will renew our efforts to oppose the Burmese junta, and we will do our most to support the Burmese people.

Mr. President, I will close by asking unanimous consent that a New York Times article by Steven Erlanger on the latest wave of repression in Burma be printed in the RECORD. The article shows the horror and desperation of the junta, which has turned its violence once more against Burma's monks. These events remind us of the huge strength of Burma's monks, and the contemptible weakness of Burma's military. We in the Congress will not forget either.

I yield the floor.

There being no objection, the article ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 26, 1990]

BURMESE MILITARY CRUSHES PROTEST

(By Steven Erlanger)

BANGKOK, THAILAND, October 25.—The Burmese military Government has crushed resistance among the country's Buddhist monks and has moved swiftly to eliminate most other visible signs of opposition, senior diplomats based in the Burmese capital said today.

In the last two days, the military authorities of Myanmar, formerly Burma, have combined raids on political offices with arrests of party leaders and ultimatums to other opposition parties to cooperate with the military, the diplomats said in telephone, interviews from Yangon, the capital, formerly Rangoon.

In May, candidates of the National League for Democracy won more than 80 percent of the seats in apparently free and fair elections for a National Assembly, stunning the military, which has refused to hand over power to the assembly or allow it to convene.

The elections, which came a year and a half after pro-democracy demonstrations that were crushed by the army, were the first since the military took power in a coup in 1962.

MILITARY RULERS' DEMANDS

With the arrest on Tuesday night of 12 more league officials, including 6 from the party's central executive committee, only 3 of the original 16 members of the committee remain at large, a diplomat said.

The two main leaders of the league, Daw Aung San Suu Kyi and U Tin Oo, were put under house arrest in July 1989, with Mr. Tin Oo jailed in December. Both have been held incommunicado. The next level of the party's leadership was cut off with arrests in early September.

While new arrests have been taking place in the last few days, the diplomats said, the military authorities have been meeting with representatives of other opposition parties, which are all much smaller.

The military rulers, who call themselves the State Law and Order Restoration Council have warned the politicians that they must either agree to the military's plans for the writing of a new constitution and eventually new elections before any handover of power or have their parties disbanded, the diplomats said.

MONKS' RESISTANCE BROKEN

The opposition politicians were threatened with arrest if they did not comply, some party representatives told diplomats.

There is a strong military presence in the streets, one diplomat said. "The military made its point," he said, "that the game is up, that they won't turn over power to the National League for Democracy or allow any opposition, and that there's no point disputing it. So a lot of people feel open opposition is futile and will wait for something to change.

The streets in Yangon and Myanmar's second city, Mandalay, were quiet, the diplomats said.

The military also seems to have ended the resistance among Buddhist monks in Mandalay, a center of Burmese Buddhism, who had been refusing to minister to soldiers after the reported deaths of at least two monks in pro-democracy demonstrations Aug. 8. The Government denies that any monks were killed.

GIFTS FROM GENERAL

The monks refused to accept alms from the soldiers or minister to them or their families. Ordinary people, who revere the monks, understood the boycott as a judgment on the religious character of the military Govenrment, which was seen to have violated Buddhist ethics.

The protest was spreading to Yangon, the diplomats said, and the military decided to surround the 11 main monasteries in Mandalay, cutting water and electricity to some of them on Saturday.

The head of the military council, Gen. Saw Maung, announced that day that the authorities would dissolve groups of monks that had organized the boycott and expel their members from the monkhood for engaging openly in politics. He called for an immediate end to the boycott and empowered military commanders to try monks under martial-law decrees.

Then he traveled to Mandalay.

A series of raids on monasteries and the arrests of at least 20 monks ensued, according to Government and other reports. Then senior monks and abbots capitulated, and have been televised in the last few days greeting General Saw Maung and accepting gifts from him.

SUBVERSIVE MATERIAL

But the raids have continued, with 9 of the 11 monasteries in Mandalay now entered by soldiers, who have taken away, according to the Burmese state press, "subversive material," including documents copying machines, flags of the National League for Democracy and some ammunition. The military has also tried to tie the monks and the league to the Burmese Communist Party, which essentially disbanded last year.

"The boycott has collapsed and those organizing monks not already arrested seem in full retreat," a diplomat said today.

Some monks continued to refuse to accept alms to the military early this week, but such reports had now ended, he said.

The reaction of the people seemed more resigned than outraged, he said, with no reports of citizens turning out to defend the monasteries.

"There is astonishingly little reaction in the streets," he said. "It doesn't mean that Burmese are not very angry."

CUTTING THE CADETS

Mr. ARMSTRONG. Mr. President, yesterday the Senate approved a conference report on the Defense authorization bill that showed just how careless we here in Washington have become. In recent years, the hallmark of Congress has been to slam some of the country's most important legislation through at the last minute, without providing time or opportunity for review or comment by members.

Yesterday, Mr. President, when we began debate on the bill, we found a 4-pound, 1,600-page conference report on our desks. Sixteen hundred pages. Now, Mr. President, I do enjoy reading, and I don't see myself as a very slow reader, but to think any of us can even attempt to give any real consideration to more than a 1,000 pages of legislation in a few short hours is absolutely ridiculous. It is especially ridiculous for those of us not on the Armed Services Committee and unaware of the outcome of negotiations between the House and the Senate on a great number of provisions that differed between the two versions of the bill.

And, although the White House has said it will not veto the bill in its present form, there are many provisions that are absolutely unacceptable. Billions of dollars worth of airplanes,

ships, and fighting equipment the Defense Department did not even request are included in the bill at the expense of programs critical to our national defense. For instance, research for a strategic defense system was cut from $4.6 billion to $2.8 billion—$800 million lower even than last year's funding; funds for an important satellite communications system were drastically reduced; and a space-based wide area surveillance system touted by the Commander in Chief of U.S. Space Command as one of his top priorities, was completely eliminated.

As if that's not bad enough, hidden within the 14 pounds of Defense authorization conference report is a provision slashing the three service academies. For the Air Force Academy located in Colorado Springs, that will mean almost a 30-percent cut in the number of cadets allowed to enter over the next 5 years. A cut made, I might add, without any hearings, without any real studies on the impact on Air Force officers and with no look at the impact on the Air Force cadet wing.

The House-passed version of the Defense authorization bill included the provision adopted by both the House and Senate conferees which capped 1995 cadet wing admissions at 1,000 cadets. Since this cut was just a shot from the hip by some Members in the House, I think my colleagues will be interested to understand the rationale behind it. I certainly was. The rationale was this: since current AFA attrition rates hover close to 30 percent, reducing the number of cadets in each entering class will require the Academy to concentrate more heavily on keeping those who are already there, and will cause them to toughen their entrance requirements.

Frankly, if you take just a moment to look at the facts, you'll realize just how farfetched the House's rationale is. Consider that:

Of anywhere between 12,000 to 15,000 Air Force Academy applicants in the last few years, only 3,200 to 3,600 were deemed fully qualified. Of these more than 3,000 qualified to be cadets, about 1,700 offers were extended. In other words, the Air Force Academy already offers approximately one out of every two fully qualified applicants an appointment. Tightening their entrance requirements may make it almost impossible for the Academy to admit any of those who apply.

Of the approximately 30 percent who leave the Academy during their 4 years as cadets, 22 percent leave because of a change of career goals and 8 percent leave because of academics, honor violations or aptitude problems. To an 18- or 19-year-old, any commitment to the Air Force after graduation seems interminable, and many, after realizing the hard facts of life in the service—that it isn't all identical to the movie "Top Gun"— choose to go back to civilian life. We all remember the many different careers we considered when we were that age and how difficult it was to settle upon any one when our entire lives stretched before us. Blaming the Air Force Academy for the normal undecidedness of young adults is harebrained.

Furthermore, Air Force Academy cadets face a special challenge—namely, keeping themselves physically qualified to fly. Many who lose their pilot qualifications while students, opt to leave the Academy for civilian life rather than endure the hardship of the cadet wing without the reward of piloting. I am told that when you are not pilot-qualified in a service designed for pilots, the Academy's military training requirements like early Saturday morning clean room inspections just lose some of their charm.

The Congress has not helped the service academies either. The 5-year commitment after graduation seemed long to young cadets, but the additional year we added last year—and I might add many in this body wanted to increase a cadet's commitment to seven years—will continue to drive away some of the best qualified cadets.

It is especially important to note that, according to Air Force studies, academy graduates outscore Officer Training School and Reserve Officer Training School graduates in both performance and retention by a considerable margin. The Air Force reports Air Force Academy grads as a whole rank above other officers in professional military training, in the number of distinguished graduates, in gaining responsibility early in their careers, in the jobs held and in almost any area that can be measured.

Mr. President, the service academies provides the backbone of our Armed Services today, and they have historically done so. During those days of severe military cutbacks between the two World Wars, Annapolis and West Point graduates shouldered the burden of leading the Army and Navy. As we move into days of reduced military spending, we too must remember the lessons learned from the early part of this century—namely, that service academy graduates are the keystone of an effective military officer corps, indeed, to an effective American military.

TRIBUTE TO ENERGY ABSORPTION SYSTEMS, INC.

Mr. DIXON. Mr. President, I rise today to give recognition to Energy Absorption Systems, an Illinois company, which has been selected to receive the President's "E" award in recognition of its outstanding contributions toward increasing U.S. exports.

The President's "E" award is presented annually to persons, firms, or organizations that show significant contributions in increasing U.S. exports.

In previous centuries, a country's military power determined their position in the world. Today, a country's position is determined by their economic might. The ability of Americans to create and develop markets and products will determine our future.

President George D. Ebersole and his team have agressively sought new markets expanding their sales to Europe and Asia. The formula for their success—quality, innovation, and drive—have made them the world's leading manufacturer and marketer of a wide range of highway crash cushions.

Energy absorption systems' current line of 12 products range from the familiar yellow and black highway barrels to more advanced energy absorbing guard rail cushions. These products are being used to save lives on highways in the United States and 18 foreign countries. They are the leading crash cushions in America, Germany, and England. Who says America cannot make a good product?

In this time of increased international competition for markets, an American company like Energy Absorption Systems is dearly needed. Their quality products, marketing techniques, and resolve make energy absorption systems the world's leading manufacturer of highway crash cushions and shows what American companies can do at home as well as abroad.

During World War II, "E" pennants were presented to industrial plants in recognition of production excellence. The famous flag with the big "E" emblazoned on it became a badge of patriotism in action. Today, the manufacture and export of quality American products is also patriotism in action.

I commemorate George D. Ebersole and his team on showing us the way.

CLEAN AIR ACT AMENDMENTS OF 1990

Mr. DODD. Mr. President, I rise to express my strong support for the conference report on S. 1630, the Clean Air Act amendments.

The conference report on the Clean Air Act amendments is landmark legislation, the most far reaching, comprehensive and complex piece of environmental legislation Congress has ever considered. At long last, after a decade of delay, we have a clean air bill that truly balances environmental and economic concerns and competing regional interests.

A fitting year to pass a new Clean Air Act is 1990. It is the 20th anniversary of the original Clean Air Act, the 20th anniversary of the Environmen-

tal Protection Agency, and the 20th anniversary of Earth Day.

Our air is cleaner than it was on Earth Day 1970. But the job of cleaning up our air is unfinished. Like any legislation, the original Clean Air Act had shortcomings. What's more, the enforcement of the law eroded during the 1980's, in the hands of an administration that was, at best, unconcerned about environmental protection.

Moreover, science and advanced technology has continued to pierce the veil of ignorance and allowed us to discover dangerous environmental problems that simply were not apparent 20 years ago:

Airborne pollutants that cause acid rain deposition—particularly sulfur dioxide and nitrogen oxides—which aggravate human respiratory illnesses and cause deadly lung disease, and which destroy thousands of lakes and forests;

The disintegrating ozone layer, which leaves us naked against the Sun's cancerous rays;

The greenhouse effect, which could cause a climate change equivalent to another ice age; and

The deadly dangers of invisible toxic pollutants.

These new problems, combined with the unfinished agenda of the 1970's, have revived the spirit of Earth Day.

All across our land, Americans are demanding that we do more to clean up the environment. The Clean Air Act amendments provide a good starting point for protecting public health and environmental resources well into the next century.

The conference report includes many key provisions.

The agreement will provide for progress in cleaning up urban air pollution. Cities violating the ozone air quality standard will be given three to 20 years to attain the standard, depending on the severity of the pollution. States would have to impose tighter controls on a wide variety of industries and businesses, and institute additional measures to reduce motor vehicle emissions in dirty air areas. EPA would assist by issuing control guidelines and regulations for a variety of pollution sources.

Analogous requirements would apply to cities with carbon monoxide or fine particle pollution.

Cleaner, reformulated gasoline would be required in the nine cities with the worst ozone pollution. States could elect to apply the requirements in other cities with ozone pollution.

Tighter tailpipe emission standards for cars and trucks would be phased in between 1994 and 1998. A California pilot program and a fleet program in appoximately 25 cities would be established to promote development and use of clean-fueled vehicles.

EPA would be required to issue regulations for all major industrial sources of toxic air pollution within 10 years. Other provisions would require control of small air toxics sources, which include dry cleaners and gas stations, and establish a program to prevent accidental release of extremely hazardous air pollutants. The bill will spur the use of technology to control the pollutants that are known to cause cancer and other health threats.

The bill includes a new program to control acid rain, a major environmental problem in the Northeast. The program will achieve a 10 million ton or nearly 50 percent reduction in annual emissions of sulfur dioxide over 1980 levels. Utility emissions of nitrogen oxides also would be reduced. The bill would establish an innovative system of marketable pollution allowances to reduce the costs of controlling acid rain.

Operating permits would be required for major emitters and many other regulated air pollution sources. Enforcement provisions of the Clean Air Act would be strengthened, and research programs expanded.

A phaseout of ozone-depleting chemicals would be required. Use and emissions would be limited to the lowest achievable level, and recycling and disposal controlled.

An important feature of the legislation is the creation of a regional commission with authority to order States to cut pollution within their borders. Without such a panel, my home State of Connecticut probably never would be able to meet Federal standards, because so many pollutants are blown in from neighboring States. The regional commission will embrace States from Maine to Maryland.

I am pleased that the conference report includes an amendment I authored concerning the regulation of emissions of oxides of nitrogen from enclosed jet engine test cells. This amendment requires that the EPA and FAA, in consultation with the Department of Defense, study impact, state of control technology, the economics of such controls, and the impact on testing of jet engines in enclosed test cells using such technologies. The purpose of the provision is to identify those technologies which are available to control emissions of oxides of nitrogen from enclosed engine test cells, but which would not affect the safety of flight of the engines being designed or manufactured.

Mr. President, I know that many people have argued that this legislation overall would impose too high a cost on business. I would respond by pointing out the incredible human costs associated with dirty air.

No single study has ever derived a total dollar figure representing all the health costs associated with human exposure to air pollution; this may be an impossible task given today's data base and methodological approaches. However, estimates approaching $100 billion annually are defensible based on the reasonable middle ranges of the comprehensive, multipollutant studies.

Moreover, it is noteworthy to observe that health costs, while the dominant result, are only a portion of the economic effects resulting from air pollution. Other effects—such as reduced agricultural and forest yields, corrosion of buildings and reduced visibility—also have substantial costs associated with them.

The cost of air pollution continues to grow. Clearly enactment of strong clean air legislation can cut this price tab.

Mr. President, the Clean Air Act amendments will significantly benefit human health and the environment. Implementation of this legislation will bring our Nation much closer to our 20-year goal of clean air for all Americans. I urge passage of the Clean Air Act amendments.

FAMILY PLANNING FUNDING

Mr. PELL. Mr. President, today the Senate passed the conference report on H.R. 5114, the foreign operations appropriations bill. I would like to take a moment to express my views on the family planning provisions in that legislation.

I am very pleased with the funding levels for family planning assistance in the conference report. The bill agreed to by the conferees contains $330 million for these activities which represents an increase of $60 million over last year's funding levels. This marks the first increase for U.S. family planning assistance in 6 years. I especially welcome this increase in light of the fact that U.S. expenditures for population assistance fell by 3.3 percent between 1985 and 1990.

Mr. President, some people may ask why population assistance is important. I think the evidence speaks for itself. In the last 60 years, the Earth's population has doubled to the present level of 5.2 billion people. According to demographic statistics, the Earth's population will swell to 6 billion inhabitants by the year 2000, and will reach 8.5 billion by 2025. These staggering statistics translate to a quadrupling of our planet's population in a single century.

Moreover, between now and the year 2025, most of the population increases, roughly 3 billion people, will occur largely in developing nations. Rapid population increases have already placed severe strains on the economies, the environments and the natural resources of many developing nations. In some nations, the population may even have outstripped the carrying capacity of the land for critical natural resources such as firewood. Given this fact, it is doubtful that

these countries will be able to meet the needs of an additional 3 billion people. Clearly, urgent measures are needed to address population growth. There are several things we in the United States and the industrialized world can do.

First, we can provide assistance programs to help control population growth. Experience has shown that family planning and birth control education can reduce fertility rates. Last year, representatives of over 70 countries met in Amsterdam to discuss population assistance and set a goal for major aid donors to devote 4 percent of their development assistance towards population assistance. For the United States this would be about $500 million. Thus, despite this year's increases in family planning funding, the United States fell short of the Amsterdam forum goal. I believe that this is a figure we should strive to reach next year.

Second, we must recognize that we in the industrialized world are by far the greatest consumers of the world's natural resources. Therefore to the extent that developing countries suffer a shortage of resources, we are partly to blame. By reducing our consumption of resources, we can help minimize the global burdens that additional populations cause. Furthermore, we must identify and develop alternative, renewable resources to help meet the demands of an expanding population.

Finally, the developed and developing nations should work together to identify and develop alternative, renewable resources to help meet the demands of an expanding population.

Mr. President, today we have taken one step forward in meeting the challenge of population growth, but there are many more to go.

TRIBUTE TO JOHN W. MIXON

Mr. FOWLER. Mr. President, I rise today to commend my fellow Georgian, John W. Mixon, who, in recognition of his distinguished lifetime career in forestry, has recently been named president of the National Association of State Foresters [NASF].

As president of the NASF, Mixon will direct the 70-year-old association in its mission to promote cooperation in forestry matters between States, and with a variety of Federal agencies and private conservational and environmental organizations.

John's enthusiasm for forestry began when he worked to attain a B.S. from the University of Georgia, School of Forest Resources. He has served with the Georgia Forestry Commission since the early sixties. His performance and dedication were recognized in 1983 when he was appointed State Forester. John also served on NASF's executive committee for 3 years and has been an officer of the Southern Group of State Foresters.

As president of NASF, Mixon will oversee the directors of State forestry agencies in each State and territory. He will work with State Foresters to help manage State forest lands. NASF also provides management assistance to nonindustrial private forest landowners.

I want to take this opportunity to praise John Mixon for his strong commitment to the forest industry. His work and devotion has helped to make timber the No. 1 industry in the State of Georgia. He has created jobs and economic opportunities for many Georgians in his career. At the same time, he has been a noted leader in the protection and preservation of our natural resources.

When we consider the natural treasures with which this Nation has been blessed, the forestlands that stretch from one end of this country to the other have to head the list. John Mixon has always worked to sustain that heritage, for all the benefits it brings us. I look forward to continuing to work with him in his continued efforts as president of the National Association of State Foresters.

INTERPRETATIVE RULINGS OF THE SELECT COMMITTEE ON ETHICS

Mr. HEFLIN. Mr. President, on behalf of the Select Committee on Ethics, I submit for the information of the Senate unpublished interpretative rulings of the Select Committee on Ethics. These interpretative rulings are issued pursuant to section 206 of Senate Resolution 110, of the 95th Congress.

Interpretative rulings by the committee may be relied upon by an individual involved in a specific transaction or activity which is indistinguishable in all its material aspects from the facts on which a ruling has been rendered. The committee encourages written requests for rulings on specific situations not clearly covered by the Code of Official Conduct. The committee will continue to respond to written requests for interpretations, treat such requests confidentially, and publish its rulings with appropriate deletions to protect the privacy of individuals who seek committee guidance.

I ask that these unpublished rulings be printed in the RECORD.

There being no objection, the rulings were ordered to be printed in the RECORD, as follows:

INTERPRETATIVE RULING NO. 438

Date Issued: June 7, 1990.
Applicable Rule: 35.

QUESTIONS PRESENTED

Does the Ethics Reform Act of 1989 restrict Members, officers, or employees of the Senate from soliciting campaign contributions and charitable contributions from individuals or organizations with a direct interest in legislation?

APPLICABLE RULES AND LAWS

The Ethics Reform Act of 1989 added Section 7353 to Title 5 of the United States Code. That Section provides that "[e]xcept as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branches shall solicit or accept anything of value from a person—(1) seeking official action from, doing business with, or. . . conducting activities regulated by the individual's employing agency, or (2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties."

Subsection (b) provides that "[e]ach supervising ethics office [the Senate Ethics Committee for the Senate] is authorized to issue rules or regulations implementing the provisions of this section and providing for each reasonable exceptions as may be appropriate."

RULING

Senate Rule 35 allows for the acceptance of certain gifts from certain individuals; however, no Senate Rule, including the Senate Gifts Rule, specifically provides for or authorizes the solicitation of anything of value from someone who could be affected by the performance of one's official duties. However, the legislative history of the provision indicates that "[t]he prohibition on solicitation and acceptance of gifts in section 7353 applies only to those gifts solicited by or given to a covered person. It does not apply to donations solicited by a Member of Congress to be given to an entity such as a political campaign committee, whether or not it is the Member's own campaign committee." Based on the legislative history, the Committee has concluded that 5 U.S.C. 7353 was never intended to provide a broad new prohibition on solicitations. Notably, Section 7353 is entitled "Gifts To Federal Employees" (added). Thus, the Committee concludes that the range of activity intended to be proscribed by Section 7353 is only the solicitation and acceptance of gifts which are directly or indirectly for the Federal employee soliciting the gift. Since charitable contributions and campaign contributions do not come within this general area, they are not covered by Section 7353's prohibition on solicitation or acceptance of gifts. Therefore, Senators and employees[1] may solicit gifts for charitable organizations and their campaigns without violating Section 7353 or the Senate Gifts Rule 163.

INTERPRETATIVE RULING NO. 439

Date Issued: June 18, 1990.
Applicable Rule(s): 34 and 35.

QUESTION PRESENTED

Will the Committee grant waivers to the Senate Rules on Disclosure and Gifts for gifts from the person with whom an employee has a significant, personal, dating relationship?

APPLICABLE RULES

Senate Rule 35 provides:

"(1) No Member, officer, or employee of the Senate, or the spouse or dependent

[1] Restrictions on solicitations of campaign contributions by Senate employees are described in Senate Rule 41 and rulings interpreting that Rule. Generally, only 3 employees on a Member's personal staff may solicit, receive, act as the custodian of or distribute campaign funds in connection with a Federal election.

thereof, shall knowingly accept, directly or indirectly, any gift or gifts having an aggregate value exceeding $100 during a calendar year directly or indirectly from any person, organization, or corporation having a direct interest in legislation before the Congress or from any foreign national. . . ."

"(2) No Member, officer, or employee of the Senate, or the spouse or dependent thereof, shall knowingly accept, directly or indirectly, any gift or gifts having an aggregate value exceeding $300 during a calendar year from any person, organization, or corporation . . . [other than a relative]."

Section 102(a)(2) of Senate Rule 34 (The Ethics in Government Act of 1978 (as amended)) provides that an individual who is required to file a financial disclosure report must disclose "[t]he identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year" and "[t]he identity of the source and a brief description . . . of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year."

Both the Senate Gifts Rule and the Ethics in Government Act provide that, in an unusual case, the Senate Ethics Committee has the authority to waive their restrictions and requirements.

DISCUSSION

The legislative histories of the waiver provisions of both the Gifts Rule and the Ethics in Govenment Act indicate that the waiver authority was intended to be used to allow the acceptance and nondisclosure of gifts of an intimate nature given because of a close, personal relationship where the giving or acceptance of the gift could not create an appearance of impropriety or a conflict of interest and the disclosure of the gift would be embarrassing.

RULING

The Committee believes that no conflict of interest, or the appearance thereof, is created when gifts are given because of a significant, personal, dating relationship if the person giving the gift is not seeking official action from the person receiving the gift or that person's supervising Senator. Therefore, pursuant to the Committee's waiver authority under Senate Rule 35, the Committee has concluded that gifts in excess of the $100 or $300 limit, given under these circumstances, may be accepted. The Committee has also concluded that if the individual giving the gift has a direct interest in legislation or is a foreign national, as described in Senate Rule 35, a waiver is only appropriate if the acceptance of the gift has been disclosed in writing to the supervising Senator and approved by that Senator.

The Committee also notes that Members, officers, and employees of the Senate may request waivers of the disclosure rules of Senate Rule 34 and the Ethics in Government Act of 1978 (as amended). The Committee will address any future requests for waivers of the disclosure rules on a case-by-case basis.

INTERPRETATIVE RULING No. 440

Date Issued: July 31, 1990
Applicable Rule: 38.

QUESTION CONSIDERED

May excess campaign funds be used to make contributions to political campaigns other than the one for which they were collected?

APPLICABLE RULE

Senate Rule 38.2 provides that: [n]o contribution . . . shall be converted to the personal use of any Member or any former Member. For the purposes of this Rule "personal use" does not include reimbursement of expenses incurred by a Member in connection with his official duties."

DISCUSSION

Rule 38 explicitly states, and the Committee has repeatedly ruled, that excess campaign funds may be used to pay official and quasi-official expenses incurred in connection with the use of a Senator's office. In Interpretative Ruling 206, the Committee ruled that Senate Rule 38's prohibition on personal use of campaign funds would not prohibit using campaign funds for making donations to charitable organizations. Additionally, in Advisory Opinion 1980-113 the Federal Election Commission concluded that donating campaign funds to another federal, state or local campaign, even if it is one's own political campaign, is not a conversion to personal use for the purposes of 2 U.S.C. 539(a).

RULING

While "personal use" is not explicitly defined in Rule 38, the Committee does not believe that the donation of excess campaign funds to another political campaign is a "conversion to personal use" prohibited by Senate Rule 38. Any such donations would, of course, have to conform with the limits established by the Federal Election Campaign Act or applicable state election laws. Therefore, prior to using excess campaign funds to make a political contribution, a Member or former Member should check with the FEC or the appropriate state election authority. The Committee expresses no view as to the consequences of such a donation under the Internal Revenue Code.

IT'S TIME FOR PANAMA TO SIGN AN ANTI-MONEY-LAUNDERING AGREEMENT WITH THE UNITED STATES

Mr. D'AMATO. Mr. President, 2 weeks ago, I wrote to Assistant Secretary of State Melvyn Levitsky expressing my great concern over reports about extensive money laundering and drug smuggling in Panama, and asking for a status report on negotiations with Panama over a mutual legal assistance agreement.

This agreement is the key to an effective war on drugs in Panama, because it would give law enforcement authorities access to essential information about money laundering and other criminal activities.

But as recently as Monday, an article appeared in the New York Times, "Panama Resisting Move To Clean Up Banking System," which indicated that the Endara government has repudiated a preliminary draft of the agreement that both governments initialed in August.

Mr. President, no American opposed Manuel Noriega more vigorously than I did, and Panama has no greater friend than this Senator. As a friend, I think it is time for Panama to face the fact that further delay in concluding the mutual legal assistance agreement with the United States will be a tragic mistake.

Further delay risks a total loss of U.S. aid.

We have already held back $84 million in aid because of Panama's failure to conclude the agreement, and if tougher measures are needed, so be it; 10 months after the ouster of Manual Noriega, it is clear that some Panamanian bankers oppose this antimoney laundering agreement because they want to go back to business as usual.

Mr. President, that would be a betrayal of the brave Americans who gave their lives during Operation Just Cause. That is something we cannot and we will not tolerate.

I ask unanimous consent that a copy of my letter and the New York Times article be printed in their entirety immediately following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, October 10, 1990.

Hon. MELVYN LEVITSKY,
Assistant Secretary of State, Bureau of International Narcotics Matters, Washington, DC.

DEAR SECRETARY LEVITSKY: I am writing to request a report on the joint United States-Panama strategy to combat drug smuggling. While the September 1990 mid-year update of the International Narcotics Control Strategy Report summarize past efforts of the Panamanian government, it contains little indication of what our anti-narcotics strategy is for the future. I would also appreciate receiving a written status report on negotiations concerning the U.S.-Panama Multal Legal Assistance Treaty (MLAT) and prospects for its adoption by Panama.

Yesterday's Washington Post article ("Panama's Wealthy Bask in Boom Despite Sputtering U.S. Jump-Start", page A10) indicates that "$84 million is tied up in a dispute between Washington and the Endara government over efforts to track drug barons and other criminals who are involved in substantial transactions." The article quotes Ricardo Aleman, President of the Panamanian Chamber of Commerce, as saying: "The [MLAT] as it's now written is too broad. Please indicate in your report the status of the $84 million referred to in the Post article, and what our plans are for its use.

I cannot over-emphasize my concern over continuing reports regarding drug smuggling through Panama, the use of Panamanian bank secrecy to serve the interests of drug money launderers, and the possibility that the return of more than $1 billion in deposits to Panamanian banks may indicate an actual increase in the laundering of drug profits through Panama. It is essential that the progress against drug trafficking and money laundering made possible by the ouster of Manuel Noriega not be permitted to erode.

I look forward to hearing from you.

Sincerely,

ALFONSE D'AMATO,
Cochairman, Senate Caucus on International Narcotics Control.

PANAMA RESISTING MOVE TO CLEAN UP BANKING SYSTEM

(By Mark A. Uhlig)

PANAMA, October 21.—American officials are encountering unusually stiff opposition from Panamanian Government aides and businessmen in efforts to crack the shell of secrecy, and presumed illegality, surrounding Panama's multibillion dollar international banking trade.

When United States troops invaded Panama 10 months ago and deposed the leadership of Gen. Manuel Antonio Noriega, American officials felt that they would get cooperation and information on banking activity, including illegal money-laundering, much of it related to drug trafficking.

But while most Panamanians welcomed American help in ousting General Noriega, efforts to forge closer cooperation between the two countries in fighting money-laundering and other financial crimes are being opposed.

PRELIMINARY ACCORD DENOUNCED

A preliminary American-drafted Mutual Legal Assistance Agreement, intended to give United States officials greater access to evidence and information from Panamanian bank accounts was initiated by the two Governments in August.

But the agreement, which must be approved by the Panamanian National Assembly to take effect, has since become the subject of a bitter national debate here, provoking public denunciations from Government officials who say that it would violate Panama's national sovereignty, and from businessmen, who say it would ruin the country's lucrative position as a tax haven and dollar-based financial center.

"One of the main problems of the agreement is that it would end our ability to have deposits, from the United States or any other country, based on a secret agreement with the bank," said Guillermo Fernández Quijano, vice president of the Panamanian Chamber of Commerce. "We are against illegal activity anywhere in the world, but we have to be reasonable about our banking system."

American diplomats and law-enforcement officials have repeatedly discounted those objections, noting that similar agreements already exist between the United States and thriving banking nations like Switzerland, the Bahamas and the Cayman Islands.

They say that the pact is a minimal step toward restoring the integrity of Panama's banking center after years as a drug and money-laundering center under General Noriega. And they note that Panamanian bank deposits have rebounded by as much as $2 billion this year, to a total of about $14 billion, despite uncertainties over the new accord.

But the outcry, led in part by Foreign Minister Julio Linares, has forced the Government of President Guillermo Endara to repudiate the preliminary agreement, and American officials now acknowledge that the agreement would probably be rejected if submitted for formal legislative approval.

"There is a misunderstanding of what this is all about, and a vastly exaggerated reaction about what its effects might be," the United States Ambassador to Panama, Deane R. Hinton, said.

"Politically, it makes it difficult," Mr. Hinton said in an interview at his residence overlooking Panama City. "We want an agreement that will work, and an agreement that won't be ratified won't work."

"PATTERN OF CONNECTIONS"

Tensions have been heightened on the Panamanian side by provisions that make progress on the legal assistance agreement a condition for $84 million of the $420 million in United States aid to Panama that was approved by Congress this year. That linkage has inflamed nationalist sentiment, creating what many Panamanians describe as an American-imposed choice between the aid and the prospect of long-term damage to the banking industry.

Panamanian businessmen and some officials also denounce what they say are American attempts to extend the agreement beyond money-laundering to "fiscal crimes" like tax evasion, which many concede is a central motivation for foreign depositors who place their money here.

"If the proposed accord was limited to drug-trafficking and money-laundering it would have been signed a long time ago," Mr. Linares said in a speech this month.

But diplomats and Ameircan officials say that the proposed accord, which has not been made public, would cover tax-evasion cases only at the discretion of Panamanian authorities. And they express concern that nationalist objections to the agreement have been spurred by political infighting among Government officials and by Panamanians with vested interests in money-laundering or other illegal financial practices.

"You look at all this and there seems to be a pattern of connections," Mr. Hinton said, referring to banks that have taken the lead in opposing the new accord. "You have to ask yourself: Are they trying to protect criminal activities even though they are not criminals?"

BANKERS LOBBY AGAINST BILL

For Panamanians, any stigma associated with publicly opposing the pact, and thereby appearing to support money-laundering or other crimes, has been largely diluted by the nationalist sentiment. And bankers have lined up to lobbying with President Endara against the bill.

But against the weight of American aid restrictions and diplomatic pressure, officials on both sides say that the dispute cannot remain stalemated indefinitely. And even Panamanian experts say that the final issue will not be whether the banking industry chooses to accept some degree of outside scrutiny, but how and under what terms.

"Panama will outgrow the money-laundering problem and remain an important center of international banking operations," predicted Nicolas Barletta, an economist and former Panamanian President who was instrumental in creating the country's liberal banking legislation in 1970. "It is in the national interest to Panama to get rid of money-lanundering and to fight it with all we've got."

MONTREAL PROTOCOLS

Mr. DOLE. Mr. President, I am very pleased that, in the closing days of this session, the Congress has passed aviation security legislation that is so important to the families of the victims of airline terrorism. The legislation goes a long way toward implementing the recommendations of the President's Commission on Aviation Security and Terrorism.

It is now with the President, and I am hopeful he will sign it soon.

One important related task, however, remains before us. That is the subject of compensation for victims of all international airlines disasters. The President's Commission recommended that the Senate approve the Montreal Aviation Protocols, which were overwelmingly endorsed by the Foreign Relations Committee this year.

There has been some opposition to the protocols, but I believe the great majority of the Senate would vote for them if given the opportunity to do so.

Unfortunately, we ran out of time this session, and were unable to bring the protocols to the floor.

I certainly hope we will make final approval of these protocols a top priority of the next session. I look forward to working with the majority leader, the leadership of the Foreign Relations Committee, and the administration, toward that end.

ORPHAN DRUG ACT AMENDMENTS

Mr. HATCH. Mr. President, I rise to clarify issues regarding H.R. 4638, the Orphan Drug Act Amendments of 1990. This legislation recently passed both the Senate and the House, and it is my hope that it will become law in the near future. The act, first passed in 1982, has been a tremendous stimulus for the development of new therapies for persons with rare diseases and conditions. One of the reasons that this reauthorization received broad bipartisan support was because it did not disrupt existing business expectations.

Under the provisions of this legislation will be two new conditions under which a person with market exclusivity under the act can be forced to share that exclusivity. Let me make it clear that these new provisions are prospective and apply to future applications. First, a sponsor can be forced to share that exclusivity if the patient population exceeds the statutory definition of an orphan drug as a result of the prevalence of the disease increasing. The second way is a narrow set of circumstances in which a second company can establish that it simultaneously developed the same drug. The circumstances under which simultaneity can be established are very narrow.

As a general rule, the second company needs to meet three specific criteria. These new provisions with respect to simultaneity do not apply in any manner or shape to drugs which have already been approved, are awaiting approval, or which have applied for designation as an orphan drug by the date of enactment and which began

clinical trials by August 15, 1990. Thus, all approved drugs and virtually all drugs in the pipeline are exempt from these new reforms.

The grandfather clause in section 527(b) exempts from the reforms of section 3 of the bill all approved drugs, drugs awaiting approval, and those for which there is both an application for designation and commencement of human clinical trials. This is only fair because for the sponsors of these new drugs, the investment decisions were already made for these exempt drugs long before the enactment of this bill.

Mr. President, I was reluctant to change any provision of the Orphan Drug Act because I believe it has been a singular success. However, these changes provide a reasonable reform of the current law, and I urge my colleagues to continue their support for this important program.

TREASURY-POSTAL SERVICE APPROPRIATIONS

SENIOR BIOMEDICAL RESEARCH SERVICE

Mr. HATCH. Mr. President, on Tuesday we agreed to the conference report on 1991 Treasury-Postal Service appropriations. An important feature of this bill is the establishment of the Senior Biomedical Research Service.

The National Institutes of Health [NIH] is recognized as the premier biomedial research entity in the world. The Alcohol, Drug Abuse, and Mental Health Administration [ADAMHA] is recognized equally for its pioneer efforts in the areas of alcohol, drug abuse, and mental health research. Success in carrying out research under the auspices of NIH and ADAMHA is crucial to solving the most important health issues facing our Nation today. The long-term nature of their research demands uninterrupted, high caliber leadership.

The Food and Drug Administration [FDA] in the years ahead will be asked to respond to the many innovations in medicine, medical devices, and food products that American technology will inevitably develop. Developments in biotechnology alone are changing the face of science and adding to the demands on FDA.

In order to meet these challenges, and to continue to successfully react to unanticipated crisis, the agency needs a team of talented scientists, researchers, and other medical professionals. This scientific base must be continuously revitalized, and the agency must have the ability to recruit and maintain new talent.

It has been clear to me that we must do all we can to preserve the integrity of such scientific organizations. During the past two Congresses, I have joined with Senator KENNEDY to sponsor legislation to establish the Senior Biomedical Research Service to address the serious senior scientist recruitment and retention problems of the Public Health Service. The new Service established by this appropriations bill is very similar to that proposed in various Public Health Service-related legislation reported by the Committee on Labor and Human Resources. I believe it will help address a serious threat to the strength of the research programs of the agencies of the Public Health Service.

For some years there has been a widening gap between Federal salary levels for senior researchers and health scientist administrators and their university and industry counterparts. Further, the growth of the biotechnology industry has created additional competition and offered a range of attractive opportunities for capable researchers.

For example, the NIH has found it increasingly difficulty to attract senior-level investigators to the intramural program or to the top positions in the NIH administration. Surveys have revealed that, on average, NIH Senior Executive Service physicians are paid about half as much as their academic counterparts, and that other SES employees at NIH with doctorate degrees are paid 19 percent less than comparable positions in research-intensive universities.

Not only have the research agencies been unable to recruit new senior scientists, but they have also frequently found their top investigators being approached with enticing offers from commercial or academic institutions. For some, the salary restrictions inherent in Federal service are a considerable factor in a decision to move into the private sector. Rising young researchers who come eagerly to Public Health Service in the early years of their careers may find that noncompetitive pay scales force them to leave just as they are entering their most productive period.

The Service will allow for increases in senior scientist salary levels throughout the Public Health Service, and will ease certain other civil service provisions, such as performance appraisal and retention and retirement rules. This new personnel system should provide the research programs of the Public Health Service with the senior scientist personnel necessary to meet its mission to improve the health of the Nation's citizens.

SECTION 208 OF THE VOTING RIGHTS ACT AMENDMENTS OF 1982

Mr. CHAFEE. Mr. President, with election day just a few days away, I would like to take a moment to discuss one of our most fundamental rights—the right to vote.

Twenty-five years ago, Americans joined together to end discrimination with regard to voting practices. That effort led to the enactment of the Voting Rights Act of 1965, which President Johnson proclaimed as a triumph for freedom as huge as any ever won on any battlefield.

On three occasions—in 1970, 1975, and 1982—crucial povisions of this act were improved and extended. These improvements preserved the hard won progress of the past, and ensured that the effect to achieve full participation of all Americans in our democracy continues well into the future.

The Voting Rights Act Amendments of 1982—Public Law 97-205—included a section designed to protect the rights of people who require assistance to vote—people who are visually impaired, those with disabilities, and those who have difficulty reading or writing. Because of their need for assistance, these individuals may be more susceptible to influence or manipulation. They run the risk that their right to vote in State and Federal elections will not be protected and may be misused.

Voting is a personal and private matter. It is only natural for a voter requiring assistance to feel apprehensive about casting a ballot in the presence of someone not of his or her choosing. Sections 208 allows such voters to select an assistant. However, under current law, the assistant may be any individual, except the voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union.

Unfortunately, this provision is being abused. One example occurred in my own State of Rhode Island. A headline in the September 20, 1990, Providence Journal read, "Election Chief Assails Voting Assistance Law." The article begins by citing the chairman of the board of elections:

> Calling it "the most bizarre situation you'll ever see," Joseph R. DiStephano, chairman of the state Bord of Election, said yesterday that the state can do nothing to stop candidates and their supporters from going into the voting booths with voters * * * the possibility of mischief is very great * * *.

As Mr. DiStephano predicted, the mischief was very great in a recent primary in Providence. Over 500 voters requested assistance to vote, and in one ward, 70 out of 109 people who requested help were assisted by the same five assistants, all of whom worked for a specific primary candidate. Allegations have been made that campaign workers coerced voters into receiving assistance.

Some States have taken action to combat abuse of this provision. In South Carolina, for instance, it is illegal to approach a voter waiting in line and ask him or her if assistance to vote is needed. Rhode Island requires both the voter and the assistant to sign affidavits. In addition, the Providence Board of Canvassers announced

that city police officers will be stationed at the polls to monitor the November 6 election. I ask unanimous consent that an October 24 Providence Journal article on this subject be included in the RECORD.

The blatant abuse of voters that has resulted form this provision should not continue. Clearly, the purpose was not to allow candidates to pack the voting areas with their workers, masquerading as well-intentioned assistants for the visually impaired and other voters requiring assistance. People are interpreting this provision loosely—they have lost respect for the integrity of the voting process.

I plan to introduce legislation in the next session to restore the original intent of section 208. The legislation would prevent candidates appearing on the ballot and officers of their campaigns from providing assistance. It would close the loophole that allows unscrupulous candidates to take advantage of those individuals the law sought to assist.

As I move ahead with this legislation, I will welcome the suggestions of any of my colleagues who share my concern.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Providence Journal, Oct. 24, 1990]

PROVIDENCE POLICE WILL BE STATIONED AT POLLS TO ELIMINATE POSSIBLE FRAUD

(By Ken Mingis)

PROVIDENCE.—Saying it will be the most closely watched election in years, the head of the city's Board of Canvassers has vowed to station police at numerous polling places Nov. 6, remove poll wardens who don't do their jobs, and stop candidates and their supporters who coerce voters into seeking "help" in the voting booth.

Laurence K. Flynn, executive secretary of the board, says he does not want a repeat of the Sept. 11 primary, when questionable voting practices led to charges of voter fraud in Ward 6.

"Because of the problems in September, this is going to be the most closely monitored election since I've been here," Flynn said. "We want it to be called Election Day, not nightmare day. We've taken every precaution we can."

The hotly contested three-way race for mayor is expected to draw more than 60 percent of Providence's 77,000 eligible voters to the polls, Flynn said.

The September primary was plagued by voting irregularities that centered on a little-known federal law that allows some voters to seek assistance in the voting booth.

The law allows blind, disabled or illiterate voters to ask someone to accompany them into the voting booth. During the primary, hundreds of voters sought such help, and in more than 100 instances they were aided by candidates on the ballot or their supporters.

After the primary, the Journal-Bulletin found that many of those who were accompanied into the voting booth did not qualify under the law for help; one Ward 6 voter said an assistant cast votes for her in races she did not care about.

And in at least one polling place, poll workers referred voters who didn't know how to operate the voting machines to the assistants—even though the voters were not in any way disabled.

The State Board of Elections, which investigated, said it was given no evidence of fraud, and it eventually certified a winner in the Ward 6 Democratic primary.

To stop such irregularities from recurring, Flynn has scheduled a mandatory meeting Nov. 1 for all of the city's poll wardens. To make sure they all show up, Flynn plans to take attendance.

"We have 93 precincts; we have 93 wardens, and we expect the 93 wardens to be at this meeting," Flynn said. "If they're not, we'll have a backup meeting."

Flynn, City Solicitor Edward Clifton and Police Chief Walter Clark are all slated to talk to the wardens. The focus of the meeting is to clear up confusion about the federal Voter Assistance Act and explain to the wardens exactly who is eligible for assistance.

Flynn has spoken out against abuse of the law, but state election officials have told him there is little they can do to restrict who helps voters in the voting booth.

Nonetheless, Flynn said, he'll be on the lookout for "overzealous campaign workers telling wardens what to do."

"I don't want people loitering round the lines (of voters)." Flynn said. "We don't want people coercing people to take voter assistance. That's not what that statute is for."

POLICE DETAILS

In case there are problems, police will be stationed at every polling place in Ward 6 and at some polling places in Wards 4 through 9 and Wards 12 through 15. The only area of the city that won't have police watching the polls will be the East Side.

But even there, a roving police detail will make random checks.

"The police will be instructed how to handle any conflicts that come up, but they'll be the last line of defense." Flynn said. "It's up to the wardens to operate the polling places properly."

Because of the problems on primary day, Flynn has already asked the city's political parties to replace several wardens.

They are appointed by the Democratic and Republican City Committee chairmen. For their efforts, they are paid $105, get three meals and coffee and a soda in the afternoon.

On Election Day, Flynn and other members of the canvassors staff will check polling places frequently, to make sure all is going smoothly. If he finds that any wardens are neglecting their duties, they'll be fired.

"If they can't cut the mustard, we don't want them." Flynn said. "We'll go to the politician who appointed them and ask that they be replaced. Then the next person (the poll clerk) will take over."

Flynn also intends to make sure poll clerks—who are responsible for tallying up the votes after the polls close—perform their jobs well. Vote totals in two polling places went unrecorded on tally sheets on primary day, delaying the outcome of the Democratic mayoral primary.

"We're not going to have that shoddy kind of workmanship," he said. "There could be a close election in any district in the city of Providence. People expect the raw figures on Election Day. People deserve to know what the tally is."

RESIDENCY CHALLENGES

In a related development. Flynn said he will also remind the wardens that voters cannot be stopped from voting on Election Day—even if their residency is challenged.

Rep. Thomas Rossi, D-Providence, campaign manager for independent mayoral candidate Vincent A. Clanci Jr., said last week that Clanci workers on Election Day will be looking for voters who they believe are voting at the wrong polling places.

Rossi said the supporters would challenge those voters at the polls.

"They can file written challenges, Flynn said, but they can't stop people from voting.

POLLUTION PREVENTION ACT OF 1990

Mr. HEINZ. Mr. President, every man, woman and child in America goes to sleep each night with a time bomb under the bed. I am referring to the potentially explosive danger of hazardous, toxic waste dumped into our water, soil, air and ground water. We are spending close to $80 billion annually to manage our waste and yet still face daily threats to human health and the environment. Until now, Government policy has focused upon treating and cleaning up the mess after the fact. S. 585, the Pollution Prevention Act of 1990, rightly assumes that prevention is the best cure for this threat. I am proud to have contributed to developing this legislation, I am an original cosponsor and I rise today in continued support of this bill.

Pennsylvanians have experienced, and are subjected to, such potential threats from our nearly 100 Superfund sites—threats from arsenic at the Whitmoyer labs site in Lebanon County, threats from beryllium and other heavy metals at the Keystone Landfill in Adams County, and threats from PCB's at the Paoli Railyards outside of Philadelphia, to name a few.

In 1984, Congress recognized the threats posed by untreated hazardous waste by enacting the hazardous and solid waste amendments [HSWA] to the Solid Waste Disposal Act. The HSWA mandates require a phaseout of land disposal of these materials by the early 1990's. Superfund liability further discourages such waste management options. And the Clean Air Act of 1990 will add significantly to our statutory arsenal for cleaning these wastes from our environment.

However, no matter how stringent our end-of-pipe control laws, the root cause of waste pollution goes unaddressed—and that is the release of these wastes into our environment in the first place. Current regulations merely shift materials from one medium to another, at great expense but, in many cases, without corresponding environmental benefit. For example, wastewater treatment requirements prevent toxic substances from being discharged to surface

waters, but create a sludge which must be disposed of or, in light of the HSWA land bans, incinerated.

Current regulations may limit but don't prevent the production and release of these wastes. And the costs for cleanup are staggering. For release to land alone, EPA has identified nearly 32,000 hazardous waste dump sites throughout the United States. All potential Superfund sites. And the containment and removal costs at Superfund sites have ranged from $10 million to more than $100 million per site. Pumping and treating contaminated ground water can exceed $1 billion per plume and take years of effort.

It is time, indeed, way past time, that we change the direction of our institutionalized end-of-pipe control policy and develop a policy and program of pollution prevention. Specifically, we need to encourage generic waste prevention processes that include: First, process, operation, and/or equipment changes; second, product reformulation; third, material substitution; and forth, improved housekeeping.

There is tremendous potential for preventing the creation of toxic wastes before the fact. It is possible to eliminate or reduce these wastes during the manufacturing process, before they are created. The EPA estimates industry could reduce its waste output by 30 percent. OTA suggests that a 50-percent reduction is economically feasible. An Inform study of organic chemical manufacturers discovered some individual waste stream reductions of 80 percent.

In my State of Pennsylvania, DuPont Electronics in Emigsville uses an organic solvent—111-trichloroethane—for degreasing electronic connectors. They used to ship 30,000 gallons of used solvent—a RCRA classified hazardous waste—offsite. Now they run the solvent through a distilling/cleaning tank onsite and recycle it. First year savings totaled $148,000.

A Pittsburgh Company, Papercraft Corp., reduced toxic sludge output from 50 tons per year to less than 5 tons by shifting production from high solvent ink to a high solids, low solvent ink.

Based on the relatively conservative EPA estimate of waste reduction potential, aggressive reduction practices could cut over $23 billion from industry's annual waste management costs—and help diffuse the time bomb of fear these wastes represent to our citizens.

The importance of waste reduction and pollution prevention has already been widely recognized in principle. Congress, EPA, and industry have all endorsed a waste management hierarchial system that places waste reduction and recycling at the top, preferred waste management option. Disposal should only be employed as a last resort and then only in an environmentally safe manner.

While endorsing this hierarchial waste management scheme, neither Government policy nor general industry practice reflects full grasp of pollution prevention principles. More than 99 percent of the EPA budget is devoted to managing waste after it has been created. A study of 29 organic chemical facilities by Inform, an environmental research organization, found that only 12 facilities were engaged in waste reduction activities.

Clearly, there is a role for the Congress to play in encouraging the adoption of pollution prevention practices.

I believe the passage of Superfund's "right-to-know" provisions in 1986, requiring industry to publicly report chemical-specific emissions to air, land and water, are providing added incentives to industry to reduce emissions and avoid market share loss due to poor public image. It seems reasonable, further given the enormous costs of end-of-pipe technologies, that market conditions can encourage adoption of pollution prevention practices if adequate information is available to overcome institutional barriers.

The bill for which I am urging passage, S. 585, will go a long way toward providing that information and removing certain institutional barriers by altering the policy direction of government. Briefly, provisions of the bill would:

Improve collection of information on pollution prevention practices

Establish a national clearinghouse for information on waste reduction and recycling techniques

Provide grants to States for technical assistance in initiating or expanding their own pollution prevention programs, and

Establishes an office of waste reduction within EPA to carry out these requirements.

This bill provides for an appropriate Federal role in promoting hazardous waste reduction. Reporting requirements are not onerous. No new regulatory scheme is required. And it sends a clear, unmistakeable signal that Congress is very, very serious about halting the waste burden to air, land and water that is devastating our environment and threatening the health of our citizens.

Mr. President, a companion measure (H.R. 1457) has long since passed the House by a resounding margin. The Senate now has the opportunity, almost lost in the eleventh hour of this Congress, to redeem itself by passing this bill. The ultimate impacts of this legislation and its heirs may well reach beyond those of every environmental statute we have enacted to date. Mr. President, the time has well come for this bill. It will be irresponsible if we should let the time pass.

DR. ANTONIO SIMOES, PORTUGUESE MEDAL OF HONOR RECIPIENT

Mr. HEINZ. Mr. President, I rise today to pay tribute and acknowledge my respect for an outstanding citizen, leader, and friend, Dr. Antonio Simoes, who, on September 28, 1990, received the Decoration of the Order of Merit from the President of Portugal, Mario Soares. The award was presented to Dr. Simoes to thank him for his many contributions to the Portuguese people—both in Portugal and the United States, and for his ongoing efforts to ensure the health and welfare of his Portuguese comrades.

In addition to raising money to buy a CAT scan machine for a hospital in the city of Porto in Portugal—the first in the entire country, Dr. Simoes was instrumental in mobilizing Portuguese-Americans to: Procure an ambulance for the northern Portuguese town of Barcelos; purchase and delivery three fire trucks, a hook-and-ladder truck, and a foam truck—to be used in chemical fires—in northern Portugal; and obtain donations of blood pressure equipment and emergency ice packs also delivered to northern Portugal.

It is also important to note Dr. Simoes' many contributions to those Portuguese people living in the United States, particularly those living in Pennsylvania. Dr. Simoes is the chairman of two student exchange programs which are sponsored through Rotarians in Lansdale, PA, and a sister club in Guimaraes, Portugal. These exchanges between our cultures have done much to bring about an even better understanding and friendship between our people. Additionally, he was instrumental in securing the funds needed to establish a medical clinic for Portugese speaking people in the Lansdale/Philadelphia area.

Mr. President, beyond the shared values and common interests that link our Nation with Portugal, the Portuguese-American community has made a lasting contribution to the health and welfare of people in need from both countries. This contribution transcends borders and nationalities; it speaks to a person's humanity and commitment to others.

I am pleased to recognize this outstanding American, who has helped make our Nation a new and happier home for many families, and has provided our new citizens a chance to assimilate their own culture and beliefs with those of the United States. I ask that my distinguished colleagues join me in saluting him for this unwavering dedication to community and heritage, and congratulating him for receiving the Decoration of the Order of Merit.

GREAT LAKES CRITICAL PROGRAMS

Mr. LEVIN. Mr. President, today the House passed and sent to the President the Great Lakes Critical Programs Act. This bill is a most significant piece of legislation for the Great Lakes region. On a number of fronts, this legislation will not only protect but also improve the environmental quality of the largest body of freshwater in the world.

Passage of this bill was the result of the hard work of many people, but no one worked harder or did more than Elise J. Bean of the staff of the Subcommittee on Oversight of Government Management. Without question, Mr. President, we would not be able to realize the benefits of this important piece of legislation had Ms. Bean not committed herself to its passage. Her work has been exceptional, and everyone of us whose lives are touched by the resources and beauty of the Great Lakes owe her our thanks.

Mr. President, I commend and thank Ms. Bean for her exceptional efforts on the Great Lakes Critical Programs Act.

TRIBUTE TO THE LATE SENATOR JOHN DANAHER

Mr. DODD. Mr. President, it is with sorrow that I rise today to note the recent passing of John Danaher, a great American who served both Connecticut and this Nation with exceptional skill and honor as a Senator and Federal judge.

Mr. Danaher's intertwined legal and political careers spanned 61 years, and it began when he graduated from Yale University and its law school. After passing the bar in 1922, he served for 11 years as an assistant U.S. attorney for the district of Connecticut. From 1933 to 1935 Mr. Danaher was Connecticut's Secretary of State.

Elected to the Senate in 1938 at age 39, he was the youngest person to serve from Connecticut, a mark that held for more than three decades. After serving one Senate term and then three consecutive stints on Republican Senate campaign committees, Mr. Danaher practiced law with his own Washington firm of Danaher, Fahey, and Poole.

In 1954 he was appointed to the U.S. Court of Appeals for the District of Columbia by President Eisenhower. Judge Danaher served until 1969, when he became a senior circuit judge hearing cases part-time in Connecticut and New York. As a testament to his devotion to public service, Mr. Danaher didn't retire until 1983 at the age of 84.

Mr. President, I offer my sincerest condolences to John Danaher's wife of 69 years, Dorothy, and her entire family. For more than half a century, John Danaher made real, long lasting contributions to our State and to this Nation as a lawyer, senator, judge, and, just as important, as a man of great dignity, honor, and sincerity. The people of Connecticut feel a great sense of loss at his passing.

RESALE PRICE MAINTENANCE

Mr. LAUTENBERG. Mr. President, one disappointment of the 101st Congress was our inability to take up legislation of great importance to consumers of our Nation and to the efficient operation of a competitive retail marketplace.

I am speaking about S. 865, Senator METZENBAUM'S bill that declares that vertical price fixing is per se illegal and modifies the evidentiary standards the govern vertical price fixing cases. I am a cosponsor of that bill and have maintained a longstanding interest in enforcing the law against vertical price fixing.

Vertical price fixing, or resale price maintenance, typically involves an agreement between a manufacturer and one or more of his distributors to set a price for a product. One retailer may decide to discount a manufacturer's product. Then, another distributor—often a bigger, more powerful one—objects to the competition and leans on the manufacturer to terminate its contract with the discounting distributor. The result is that the competitor is denied a fair chance to compete and consumers are denied the benefits of that competition.

Senator METZENBAUM has been tireless in his efforts to get consideration on the floor of the Senate his legislation. Unfortunately, that effort will have to continue in the next Congress. I want to say for the record that I intend to continue to support him in that effort, to restore competition in our retail marketplace.

ADMINISTRATION PREPARATIONS FOR THE SECOND WORLD CLIMATE CONFERENCE

Mr. GORE. Mr. President, shortly after the Congress adjourns, the Second World Climate Conference will be held in Geneva under the auspices of the U.N. Environmental Programme and the World Meterological Organization. Participating nations from around the world will be represented by their relevant ministers, and 10 heads of state will make an appearance. Meanwhile, the United States is sending a much lower-level official, an Under Secretary of Commerce, Dr. John Knauss, Administrator of the National Oceanographic and Atmospheric Administration.

This week, on October 23, Dr. Alan Bromley, the President's science advisor, asserted in a speech at the National Press Club that actions such as the CFC phaseout, Clean Air Act, the Department of Energy's national energy strategy, and President Bush's tree-planting program, will collectively: "hold U.S. greenhouse gas emissions at 1987 levels until at least the year 2000. No other nation can make this claim. This will provide a 10-year window of opportunity to gather data, improve understanding, and determine what future actions are necessary."

I ask my colleagues to carefully note these words, because they offer an important clue into administration policy over the longer haul. The administration seems to be laying out a U.S. position that essentially claims to have already sufficiently reduced greenhouse gas emissions until the end of the century, and that all we need to do between now and 2000 is global change research. If the United States takes this position into international negotiations, and refuses to address the all-important carbon dioxide emissions, the results could be devastating.

Without U.S. leadership, global greenhouse gas emissions will grow tremendously throughout the 1990's, and into the 21st century. Third World nations, where over 90 percent of population growth will occur, and where economic growth must proceed, will easily overtake today's industrialized nations as the producers of the lion's share of greenhouse gases in the next century.

The administration's claim for greenhouse gas emissions reductions was based on a September 1990 report by the Environmental Protection Agency, which stated:

> Given current U.S. environmental commitments, total greenhouse gas emissions (including CFCs) will be held to 1987 levels in the year 2000. If CFCs are not included in the total greenhouse gas budget, total emissions in the year 2000 will exceed 1987 levels by approximately 115 million metric tonnes of carbon equivalent.

Note here that this report explicitly states that carbon dioxide emissions will increase, by 115 million metric tons of carbon equivalent over 1987 levels.

Now, consider Dr. Bromley's statements in a hearing before the Commerce Committee's national ocean policy study, on November 14, 1989, concerning the Bush administration's position going into a ministerial meeting on climate change, in Noordweijk, the Netherlands:

> What we were saying, and what we said repeatedly, was that we were committed in the period between now and November of 1990 to doing what was required so that we could come up at that time, at the Second World Climate Conference, with the kind of information that I hope that would make it possible for us to come forward and say that we could reduce CO_2 emissions.

Note here that Dr. Bromley stated that he hoped, 1 year ago, that the United States would come forward with a plan for reducing CO_2 emissions

in time for the Second World Climate Conference in November 1990.

The reality of today is that while the Administration has consistently argued against action to control carbon dioxide emissions because it would be a unilateral action, over one dozen other industrialized nations have committed to carbon dioxide emission stabilization or reduction, including Austria, Denmark, The Netherlands, New Zealand, (West) Germany, Belgium, Canada, Italy, Norway, Sweden, Switzerland, the United Kingdom, and Japan.

But rather than join with other nations in addressing this most serious global challenge, the Bush administration seems clearly to be reneging on Dr. Bromley's statements to a Senate committee 1 year ago, and instead is laying the foundation for not committing to carbon dioxide reductions, now or in the next 10 years.

In so doing, the administration threatens the very security of our planet in the 21st century.

TRIBUTE TO WILLIAM AND SHIRLEY FLEISCHER

Mr. MOYNIHAN. I rise today to commend the life-long achievements and generosity of William Fleischer of East Hills, NY.

In many ways, Mr. Fleischer embodies the story of our Nation after its victory over tyranny in World War II. He personifies innovation, ambition, and the willingness to reinvest a portion of his gains for the overall good of our society.

Like millions of young Americans, Bill Fleischer struggled to get settled after World War II. An educator from his alma mater, Ohio University, helped young Fleischer find his first job, for which he remained eternally grateful.

As America's economy expanded after the war, Mr. Fleischer emerged as one of the brightest and most successful product marketing men in the Nation. He devised countless ways to match new products with new buyers.

A generation after he started his first job, Mr. Fleischer decided to say thank you to the university that had educated him and had helped him find employment.

Mr. President, nearly 20 years ago, William and Shirley Fleischer endowed a scholarship fund at Ohio University with a unique mission. The Fleischer Fund, since 1971, has sent young journalists to intern with foreign correspondents in Tel Aviv and Jerusalem.

These young writers, in their early twenties, have had superlative opportunities of working with some of the smartest, fastest, and most experienced journalists in the world. This year, Fleischer scholarship recipient Deb Traynor is working at the Cable News Network bureau in Israel. Last year, Marty Kufus worked in the Associated Press office there.

Two decades after establishment of this foreign internship endowment, the enduring success of these scholarships can be seen in top newsrooms across the globe. Former Fleischer interms are now working for leading news organizations including the Wall Street Journal, the Associated Press and the Dallas Morning News.

After the war, someone helped Bill Fleischer get his first job. He has repaid that favor many times over, helping journalism students gain experience in perhaps the most fascinating datelines of the past two decades.

The generosity of William Fleischer has done more than match novices with veteran journalists and more than launch successful careers. His special gift also has allowed students to see Israel—students who otherwise may never have set foot in the Middle East.

So today, Mr. President, we offer tribute to this special couple. May their gift from yesterday continue to enlighten us tomorrow.

DEPARTMENT OF LABOR REGULATIONS

Mr. KERRY. Mr. President, a year and a half ago in April 1989, I cosponsored a floor amendment to H.R. 2 which would have required the Department of Labor to update its present rules so that computer programmers, systems analysts, software engineers, and similarly high skilled and well paid workers can be exempt from time and a half overtime as executives, administrative employees or professionals. Present Department of Labor rules state too narrowly that these computer industry employees cannot be considered professionals because "computer sciences are not generally recognized by colleges and universities as a bona fide academic discipline with standardized licensing, certification or registration procedures." That floor amendment also provided that the overtime exemption would apply even if these employees are paid on an hourly basis for hours worked at an hourly rate, rather than according to a weekly salary, as long as the hourly rate is at least 6.5 times the minimum wage. Present Department of Labor rules state that most employees who are paid on an hourly basis at an hourly rate for hours worked cannot be exempt from time and a half overtime. And that makes very good sense for the majority of hourly wage employees.

Mr. President, Senator DURENBERGER, the sponsor of the April 1989 floor amendment, and I both explained the reasons why that amendment was needed. In short, much of the Department of Labor rationale for its present rules is based upon an analysis of the computer industry as it existed almost 20 years ago. The rationale simply does not apply today.

I will not recount, in detail, what happened to that floor amendment. It is sufficient to say that it was accepted by the Senate and the House, and it became part of H.R. 2, which was ultimately vetoed by the President for other reasons. Thereafter, this computer overtime provision was included in all of the early drafts of the compromise minimum wage bill, but within an hour of the House vote on that bill there was a question about the language of the computer overtime provision and that question could not be answered in time. As a result, the provision was pulled from the bill, but its supporters agreed to pursue it again in 1991.

By our action today in passing S. 2930, with the computer overtime provision in it, we have kept our promise to the employees and employers in the computer industry. Congress has recognized again—for the same reasons that Senator DURENBERGER and I stated in April 1989—that times have changed in this industry, and that the Department of Labor must update its rules. Outdated rules that too narrowly define the duties and compensation requirements of exempt employees in the computer profession will be replaced as the result of S. 2930.

Mr. President, the provision we have adopted today will help both employers and employees. For example, now the Department of Labor will have to cease its audits of employers in the computer industry who are exposed to liability under these outdated Department of Labor rules on the ground that they do not pay premium overtime rates, even though these employers pay their employees hourly rates that range from about $25 per hour to sometimes over $100 per hour. In addition, in the many cases where employees have been prohibited by their employers from working any overtime—because few if any employers will pay time and a half rates at such high levels of compensation—the employees will be able to choose to work some overtime hours at their regular high rates, and they will earn more as a result. And the full range of duties typically performed by these employees will be more broadly defined and updated.

Mr. President, I want to emphasize the importance of updated Department of Labor rules to my own State of Massachusetts, which has a high concentration of high-technology companies. But such companies, I must note, also exist in many other places around the country, and so each of us has a stake in the provision we have adopted today. This bill has received enormous bipartisan support and lead-

ership on both sides of the aisle. Without taking away from the many supporters of this legislation, I can mention the particular leadership roles in the House of Congressman GOODLING and Congressman BARTLETT on the Republican side, and Chairman HAWKINS, Congressman MURPHY, and Congressman OWENS of New York on the Democratic side. Senator KENNEDY's leadership was critical to passage as was the work and support of Senator DURENBERGER and Senator HATCH. As Republicans and Democrats, we have recognized that our economy depends greatly on high-technology industries that must remain flexible, responsive and competitive. The step we have taken today may seem small in the context of the bigger problems facing us. But this is an important step that removes antiquated Government regulations from the backs of employees and employers and helps take at least one positive step toward more efficient management of our important human resources. And the future economic strength of Massachusetts and our Nation.

CLEAN AIR

Mr. DASCHLE. Mr. President, I ride today in support of the conference report on S. 1630, the Clean Air Act Amendments of 1990. This bill represents an appropriate balance between meeting essential environmental goals and allowing industry flexibility.

This is only the second revision of the Clean Air Act since 1970, and the first since 1977. Today, it is estimated that more than half the people in the country breathe air that does not meet minimum EPA standards. Acid rain and urban smog have become problems that we cannot afford to ignore any longer.

This long overdue revision was viewed with trepidation by many Western States where air pollution problems are not as severe as they are in Eastern States. There was a great fear that pollution abatement devices already installed in utilities would not be credited and that necessary future growth would be inhibited. There was fear that cars would be made more expensive and less safe just to solve someone else's problem.

The Clean Air Act is before us today, however, because efforts were made to bridge regional differences while ensuring environmental benefits. The clean States provisions both protect the economy's ability to grow in clean Western States while maintaining overall pollution abatement goals. While cars will become far cleaner burning under the new bill, gasoline refiners are finally required to share the burden with automakers.

It is on this last point that I would like to elaborate. The reformulated gasoline and oxygenated fuels provisions of the bill have been changed in the conference process, and while they are not as strong as what the Senate had previously passed, they are still good programs that will have an immediate impact on air quality.

The reformulated gasoline provision establishes performance standards for fuel quality that will minimize emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and hazardous air pollutants for in-use vehicles. Aromatics, including benzene, will be greatly reduced, and all gasoline will have at least 2 weight percent oxygen when this program is implemented in 1995. The program will maximize environmental benefit, minimize cost, and increase the role of alternative fuels by requiring the sale of cleaner burning gasolines in the worst ozone nonattainment areas in the country.

I am pleased that the Congress has conducted that replacing highly toxic and reactive octane boosters in gasoline with oxygenates will provide much cleaner, safer gasoline and yield tremendous reductions in ozone. Because of these strong standards in the Clean Air Act, oxygenated fuels will finally become mainstream components of gasoline, rather than just annoyances nipping at the heels of the big oil companies.

The CO nonattainment oxygenates program beginning in 1992 and the reformulated gasoline program that begins in 1995 will jointly mean that well more than 25 percent of our Nation's gasoline will contain oxygenates, including ethanol, ETBE, MTBE, and other oxygenates.

Because of the cost effectiveness of reformulating gasoline to achieve clean air needs, it is my hope that many cities beyond those defined in the bill will choose to opt into the program. The bill contains liberal opt-in provisions that could pave the way for a complete overhaul of the way we make gasoline. It also provides flexibility for the Administrator of EPA to set standards that are tailored to particular areas.

The standards that are set in the bill are minimum standards. There is nothing in the legislation that prohibits nonattainment areas from enacting more environmentally stringent requirements. For example, the legislation states that "the oxygen content of the gasoline shall equal or exceed 2.0 percent." Therefore, a nonattainment area could require 2.3, 2.5, or 2.7 weight percent oxygen if it deemed it necessary to assure or expedite compliance with pollution standards.

Many have asked, "Why oxygen?" I will explain.

In CO nonattainment areas, the answer is simple. Oxygenated fuels produce a reduction in CO emissions directly related to the leaning effect they have on a vehicle's engine. This linear relationship between oxygen and CO reductions means that the percentage of oxygen by weight in the automobile's final fuel determines the amount of CO emissions reduction.

Researchers have concluded that exposure to carbon monoxide is a serious public health concern. Even low levels of CO exacerbate cardiovascular disease, impair aerobic capacity, visual perception, manual dexterity, and learning ability. Thus, CO emission reduction will reduce public health risks associated with gasoline.

In order to achieve the greatest level of CO reduction, without disrupting current oxygenates markets, the legislation prohibits the sale of gasoline in carbon monoxide nonattainment areas that do not contain at least 2.7 percent oxygen beginning in 1992.

In ozone nonattainment areas, the oxygenates have several benefits. First, CO reductions have a beneficial impact on ozone formation, because CO is a catalyst in the formation of urban ozone. Second, oxygenates reduce exhaust VOC emissions. As gasoline is reformulated to reduce more reactive octane boosters, the beneficial impact of oxygenates will be realized. In fact, oxygenates are the least reactive octane enhancers currently available. One recent study demonstrated that if oxygenates are used to replace petroleum based octane such as xylene, VOC emissions are reduced more than 10 percent.

EPA has reported that 50 percent of all toxic-related cancer deaths are caused by automobile emissions. Much of the blame is in the gasoline. The reason for this is the high—and increasing—levels of toxic aromatics used to boost octane. As a result, the legislation requires that toxic levels be reduced year round. As oxygenates provides octane without the public health consequences associated with petrochemically derived octane boosters such as benzene, the legislation similarly requires that oxygenates be used year round to assure that the public health objectives of the bill are realized.

Successful implementation of the oxygenated fuels and reformulated gasoline provisions will be up to EPA and the oil companies themselves. Oil companies have raised some concerns that sufficient supplies of reformulated gasolines may not be available to meet the demand. The reduced scope of the program in the conference bill make such claims are implausible. Yet, given their source, they could become self-fulfilling prophecies.

The industry's commitment to clean air will be on stage in the next 5 years. If the industry drags its feet and attempts to challenge or find loopholes in the law, then they will be purposefully thwarting the goals of Congress and the American people. The Clean Air Act amendments lay out very

clearly what must be achieved in the years ahead. Both the oil industry and the alternative fuels industry must start to move immediately to accomplish the bill's stated goals and realize its promise. I would hope that these two groups will end the bitter acrimony of the past 6 months and work together for America's future.

In summary, I support the Clean Air Act amendments conference report before us. The bill is critical for the Nation.

GOVERNANCE BY MINORITY

Mr. DASCHLE. Mr. President, as we enter the final hours of this session of Congress, many of my colleagues will be speaking on the floor of the Senate to explain their actions. They will be explaining to their constituents their actions on the passage of many bills of importance to the Nation.

What will not be explained as frequently is the role my colleagues might have had in killing legislation of equal importance to the Nation.

A few days ago, my distinguished colleague from South Carolina, Senator HOLLINGS, spoke on this floor about governance by minority. He lamented the fact that a minority of Senators can effectively bring to a halt the legislative priorities of the majority of the Members of Congress.

We all understand the fact the Founding Fathers recognized the need to protect the rights of the minority. What I don't believe was envisioned was the repeated attempts by the minority to thwart the will of the majority and the Nation.

We have seen the minority kill 16 separate items of legislation by upholding the series of vetoes cast by the all-time champion of vetoes, President Bush. By a minority of the Congress joining with the President, important legislative initiatives that would improve the quality of life for all Americans, and Middle America, in particular, have been halted.

I ask unanimous consent that a list of President Bush's vetoes be entered into the RECORD, nothing that a minority of the Congress has sustained the President's vetoes on each and every occasion.

Frustrating the legislative process does not only occur when a President vetoes a bill. Within the past few days, the majority of this body supported an amendment by my colleague from Colorado, Senator WIRTH. That vote brought an immediate threat of a filibuster.

It was not good enough that the Senator from Colorado, in pursuit of a compromise, offered any number of options to free the underlying bill, including a limit on the amount of time for debate and removal of his amendment from the pending bill in return for a promised vote on a free-standing, sense of the Senate resolution.

My friend from Colorado bent over backwards to seek a reasonable solution to let the majority of the Senate work its will.

The answer repeatedly came back the same: the filibuster threat will continue unless the amendment is withdrawn. The amendment was withdrawn.

This is not the only example, Mr. President. Within the past few weeks, the distinguished Republican leader sought floor time to clear a series of President Bush's nominations. The majority leader was unable to proceed to those presidential nominations because of a filibuster threat by a member of the President's own party.

We reportedly are unable to proceed to the consideration of the aid to Eastern Europe bill because of a filibuster threat by one Republican Senator.

Let me make clear, Mr. President, that I understand the rules of the Senate protect the right of any single Senator to threaten to filibuster. But Senators choosing this course of action should be forthright in their explanation of their actions to their colleagues.

Veterans have been told that proponents of agent orage compensation, who have been successful in both the House and the Senate Veterans' Affairs Committee, are responsible for blocking consideration of COLA's for veterans.

Nothing could be further from the truth.

For the benefit of my colleagues, as well as the many veterans throughout the Nation who may not see a COLA in the immediate future, it is not this Senator who is blocking consideration of the COLA bill.

It is not this Senator who has threatened to filibuster the COLA bill because the Veterans' Affairs Committees in both the House and Senate have included compensation for Vietnam veterans suffering from agent orange in their respective COLA bills.

No Senator should go forward from this body following adjournment confused about the facts of why their veterans may not receive their COLA, because the facts are simple. The majority of the Senate should have the opportunity to register their votes on this issue and not be blocked by one or two Senators who believe they know what is in the best interest of veterans.

To ensure that my colleagues will have the chance to be heard on the COLA and agent orange issues, I will enter into any time agreement that those who are threatening the filibuster will suggest to break this impasse.

If they want to limit the debate to as few as 30 minutes, I will agree to that.

If they want to offer an amendment to strike the agent orange provisions, I will agree to that, and we can have a vote on it.

What I will not agree to is their demand that these provisions be killed, simply because one or two of my colleagues object, and do not want their colleagues to be heard on this issue.

MEASURES THAT PRESIDENT BUSH HAS VETOED

1. *Minimum Wage* increase (H.R. 2) on June 13, 1989.
2. *FS-X* plane co-development (S.J. Res. 113) on July 7, 1989.
3. *Thrift Bailout Bill* (H.J. Res. 390) on Aug. 16, 1989.
4. *Labor, HHS, Education Appropriations* (H.R. 2990) on Oct. 21, 1989.
5. *District of Columbia Appropriations* (H.R. 3026) on Oct. 27, 1989.
6. *Foreign Aid Appropriations* (H.R. 2939) on Nov. 19, 1989.
7. *District of Columbia Appropriations* (H.R. 3610) on Nov. 20, 1989.
8. *Eastern Airlines Advisory Committee* (H.R. 1231) on Nov. 21, 1989.
9. *State Department Authorization* (H.R. 1487) on Nov. 21, 1989.
10. *Chinese Immigrant* Status (H.R. 2712) on Nov. 30, 1989.
11. *Amtrak Authorization* (H.R. 2364) on May 24, 1990.
12. *Hatch Act* Revisions (H.R. 20) on June 15, 1990.
13. *Family Leave and Medical Leave* (H.R. 770) on June 29, 1990.
14. *Textile Bill* (H.R. 4328) on Oct. 5, 1990.
15. Continuing Appropriation (H.J. Res. 660) on Oct. 6, 1990.
16. *Civil Rights Act of 1990* (S. 2104) on Oct. 22, 1990.

SALUTE TO RAYMOND J. MURPHY

Mr. SASSER. Mr. President, on November 30, 1990, Raymond J. Murphy, an outstanding public servant, will retire from the Department of the Navy after serving our country with distinction for nearly four decades. During that time, Mr. Murphy has given tirelessly of himself in support of military construction for the Department of Defense. In the past decade, he has been justifiably recognized as the Navy's "expert" and "voice of knowledge" on Navy military construction requirements.

After graduating from the University of Rhode Island with a bachelor of science in civil engineering degree in 1953, Mr. Murphy began his career in the Government as an officer in the U.S. Army Corps of Engineers. From 1956 to 1967, he contributed to the military construction needs of our country by working as a civilian construction management engineer for the Corps of Engineers at Harmon Air Force Base, Newfoundland, Canada, and for the Naval Facilities Engineering Command at Keflavik, Iceland. In 1967 with over a decade of "hands on" field construction experience, Mr. Murphy came to Washington, DC, to work for the Naval Facilities Engineering Command and the Chief of Naval

Operations as a key civilian in developing, presenting and justifying the Navy's military construction programs within the Department of Defense and to the Congress.

During the past 23 years, Mr. Murphy has been the principal player in developing and supporting over $21 billion in Navy military construction that has been appropriated by Congress. A true professional, Mr. Murphy has been the "honest broker" in Navy programming, supporting only those projects that were truly required for the defense of our country by contributing to essential Navy operational missions and the quality of life of Navy personnel. His keen intellect, sound business approach to managing facilities, long working hours and an arduous travel schedule have provided him a singular understanding of the Navy's military construction needs and priorities. Mr. Murphy's contributions have been duly recognized within the Department of Defense by his receipt of numerous annual outstanding performance ratings, the Department of Navy Meritorious Civilian Service Award, and the highest Navy civilian award, the Navy Distinguished Civilian Service Award.

As the chairman of the Senate Appropriations Subcommittee on Military Construction for the past 4 years, the contributions of Mr. Murphy have been readily apparent to me. Concise and professional responses to committee inquiries and testimony at hearings on Navy military construction have always had Mr. Murphy's label on them. The Navy's military construction programs have been the most justifiable of all the military services. When having to meet reduced allocations in these times of huge deficits, it has been extremely difficult to justify reductions to the Navy military construction request. During the Navy's subcommittee mark of the military construction budget this year, we reduced the $9.1 billion request by 12.6 percent to slightly less than $8 billion. Of this $1.1 billion reduction we were able to only justify a reduction of $29 million or 2.6 percent of the Navy's $1.1 billion request. This is directly related to Mr. Murphy's knowledge, conscientiousness and dedication.

Mr. President, it is with sincere gratitude and respect that I recognize this fine gentleman whose magnificent career has well served the Nation, the Department of Defense, and the Navy.

INTERNATIONAL FOUNDATION FOR EDUCATION AND SELF HELP

Mr. SPECTER. Mr. President, the conference report on H.R. 5114 the fiscal year 1991 Foreign Assistance Appropriations bill expands funding for a unique model for education and human resource development which is being implemented in developing countries by Rev. Leon H. Sullivan and the International Foundation for Education and Self-Help [IFESH].

Through the "debt-for-development" initiative, IFESH purchases commercial debt at a discounted rate, negotiates with the debtor nation to make repayments in local currency, then uses these repayments to fund education, training and other initiatives which expend the human resource infrastructure in that nation. Currently, IFESH has such projects underway in Nigeria, Guinea, and Niger.

Specifically, the conference report to H.R. 5114 includes language, I offered, which would provide up to $10 million to expand the debt-for-development initiatives in Africa, and elsewhere in the developing world. IFESH currently has a waiting list of 15 countries that wish to participate in this initiative.

Mr. President, Reverend Sullivan and IFESH are to be commended for undertaking a difficult but vital task. As usual, Reverend Sullivan has found a way to turn an adverse situation—debt—into an opportunity-developing Nation's human resources.

Mr. SPECTER. Mr. President, I would like to bring to the attention of my colleagues a unique demonstration program for training health professionals which is being developed by Hahnemann University in Philadelphia. I am committed to supporting this program and its related activities which will help pave the way for higher quality, more cost-effective health care delivery in this country.

Hahnemann University is developing a comprehensive program to educate and train health professionals for the 21st century. Hahnemann's unique and innovative program will completely reform and redirect medical education to prepare physicians and health professionals to address the rapidly changing nature of health care in the United States, the increasing emphasis on ambulatory care, and the changing U.S. population. Their program includes many of the curriculum changes long recommended by the Association of American Medical Colleges.

Mr. President, the program is particularly important because it is focused on increasing the number of minority students and minority faculty at our major academic medical centers. Hahnemann has a long history of commitment to minority training in its medical school, allied health, and graduate programs. In response to projections of the increasing numbers of minorities our health care system must serve in the coming years, Hahnemann has proposed to recast their training programs to address minority needs and the urban setting where much of our medical care will be delivered.

Mr. President, I believe that the model being developed by Hahnemann will serve as an important demonstration project, both for its design and its program for training health professionals in new sites and settings. I commend Hahnemann University on its commitment to minority health and training and look forward to continued involvement with this important initiative.

OUR RETIRING COLLEAGUES FROM IDAHO, COLORADO, AND NEW HAMPSHIRE

Mr. HATCH. Mr. President, I want to add my best wishes to those offered by my colleagues to the Senator from Idaho, the Senator from Colorado, and the Senator from New Hampshire. Each of these gentlemen has served his State and his country with distinction.

The Senator from Idaho has been one of my mentors here in the Senate. When I was a freshman Senator back in 1977, JIM MCCLURE was one of those who helped me learn the ropes.

He has been a tireless defender of our second amendment rights as well as of our free enterprise system and the rights of workers all over America. I admire his tenacity and courage.

Senator MCCLURE will be heading home to Idaho after this congressional whistle finally blows. The Western States are special, Mr. President. The scenery is unparalleled, and the people are generous and warm. I envy JIM and our colleague BILL ARMSTRONG because they are moving home and will wake up in the morning and see mountains, not the Capital Beltway.

The Senator from Colorado has been a special friend. I was privileged to work with him during the brief time he served on the Labor and Human Resources Committee. Unfortunately, I could not persuade him to stay on our committee. That fact alone may demonstrate the superior intelligence of the Senator from Colorado.

Senator ARMSTRONG has been one of the most eloquent advocates in the Senate for his point of view. He has provided terrific leadership for our party as Chairman of the Republican Policy Committee. But, in addition to these qualities, one of the biggest reasons I admire BILL ARMSTRONG is that he has always exemplified his religious values, and we all know that the temptations around here to do otherwise are many.

The Senator from New Hampshire also served time on the Labor Committee and left his mark on many important programs to help address our Nation's alcohol and drug abuse problems. But, he may be best remembered as an indefatigable champion of alter-

natives to abortion and of the rights of the unborn. Whether any Member of this body agrees or disagrees with Senator HUMPHREY, one must admire his sincerity and perserverance on these issues.

GORDON HUMPHREY has always been willing to risk unpopularity in order to do what he believes is right. A Senator can't have any more integrity than that.

Finally, Mr. President, I want to say a word of farewell to Senator PETE WILSON, who I believe is going to be the next Governor of California. As Governor of our largest State, he will have big challenges ahead. But, after serving with PETE here in the Senate, I know that his experience and ability will serve him well. PETE WILSON has got guts, he's got know-how, and he's got ideas. He will be a great Governor for California. Unfortunately, California's gain in the statehouse is our loss here in the Senate.

Mr. President, in my 14 years here in the Senate, I have been honored to serve with many fine men and women. Senators MCCLURE, ARMSTRONG, HUMPHREY, and WILSON are among them. I wish them all the best in their future endeavors.

THE SUPPORT FOR EAST EUROPEAN DEMOCRACY ACT OF 1990

Mr. WIRTH. Mr. President, the events of 1989 represent a historic watershed—the end of the post-war era. For over four decades, the United States expended enormous treasure and human resources to defend against the perceived threats emanating from Warsaw Pact nations, to maintain a stable order until those countries could once again join the community of free nations. Today, after a long darkness, those countries are doing just that. Poland, Hungary, Czechoslovakia, Bulgaria, Romania are all struggling to rebuild, politically and economically.

We have just passed the foreign operations appropriations conference report which contains over $400 million in assistance to the emerging democracies of Eastern Europe. Yet because of what I understand to be a hold on the part of one Senator on the other side of the aisle, we may not be able to legislate the authorization for these appropriations.

One would think that those who were most vocal in their criticism of totalitarian government in Eastern Europe would be at the fore in the effort to build democracy and capitalism in the formerly Communist countries. Yet for unexplained reasons, it appears that one or perhaps a handful of Senators have sought to block this legislation.

Mr. President, we deserve to hear in detail from those who oppose this legislation. What do they object to so strenuously? This legislation has been available for months. It is supported by the American Chamber of Congress, the Polish-American Congress, AIPAC, and others. The administration is not opposed to this bill. It is simply outrageous that we have been prevented from considering this bill.

The United States has an opportunity and an obligation to play a constructive, meaningful role in this transition period in Eastern Europe. This bill provides a roadmap for that American involvement.

The Support for East European Democracy Act of 1990 represents America's response to the dramatic collapse of communism in Eastern Europe and the challenge of building democratic institutions and free market enterprise in its place:

U.S. participation in the European Bank for Reconstruction and Development;

Enterprise funds to promote private sector development;

Agricultural assistance;

Expanded trade programs through OPIC, Eximbank;

Educational, cultural, and scientific exchanges;

Democratic institution building, including aid to parliaments;

Health, housing, and humanitarian programs;

Support for American business activities in Eastern Europe; and

Finally, several important environmental initiatives.

Mr. President, this is an impressive mosaic of American initiative. I commend the distinguished chairman of the Foreign Relations Committee, Mr. PELL, for his hard work and vision in crafting this legislation, as well as the efforts of Mr. BIDEN, chairman of the European Subcommittee. They have held extensive hearings throughout the spring and summer with administration witnesses, business leaders, and outside experts. They and their staffs have spent hundreds of hours in meetings with administration officials to work out the provisions of this legislation.

In particular, Mr. President, I would like to commend the committee for the inclusion of several wide-ranging environmental initiatives in this legislation. We have all heard the absolute horror stories about the environmental devastation in Eastern Europe—and they are true. Communist governments have devastated the public common during their four decades in power.

The SEED bill proposes several key environmental initiatives:

Section 801 authorizes several environmental activities by EPA and DOE, including the establishment of a Regional Environmental Center in Budapest;

Section 802, which I authored along with the chairman, promotes American business involvement in the development of environmentally sound energy infrastructure modernization, including clean coal technology;

Section 803 calls for an international environmental conference to focus on the environmental challenges facing Eastern Europe;

Section 804 urges the creation of national energy and environmental institutes in Eastern Europe;

Section 805 calls for an aggressive program of U.S.-SEED country cooperation on conservation policies;

Section 806 outlines an ambitious agenda for regional environmental cooperation and action; and

Section 807 addresses the issue of safe nuclear power in Eastern Europe.

Mr. President, the administration does not oppose this bill. The House Foreign Affairs Committee has already overwhelmingly passed a very similar bill. This legislation contains many important initiatives and programs which, taken as a whole, constitute a coherent and comprehensive approach to the enormous challenge of rebuilding the economic and political institutions of Eastern Europe. It deserves to pass.

The policy guidance and congressional oversight contained in SEED is not contained in the appropriations bill we just passed. Without this authorization legislation, we will effectively have given the State Department and AID a blank check for $450 million. Mr. President, I recently sought to reverse the Mexico City policy on international family planning during floor consideration of the foreign operation bill. I was unsuccessful in that effort. I am sure that the senior Senator from North Carolina and others who opposed my amendment recognize that it is Congress—not the bureaucracy at the State Department—who should set standards, goals, and oversight over the funds that we appropriate.

Mr. President, it would be a real abdication of our responsibilities if this bill were not able to be enacted after all of the energy and thought which the distinguished chairman, Mr. PELL, and his colleagues on the Foreign Relations Committee have put into this matter in consultation with the administration.

Throughout the cold war, Eastern Europe has been at the center of U.S. foreign policy. For four decades, we devoted enormous treasure to defending against the Soviet bloc in Eastern Europe. Today that empire is gone and the nations of Eastern Europe are struggling to rebuild free institutions and markets. We have an obligation to carry on our involvement in the end game of this central drama of 20th century history. This bill points the

way. Let us not be held hostage to naysayers. Let us pass this bill.

RETIRING SENATORS

Mr. MURKOWSKI. Mr. President, as we rush to complete the work of the Senate in this the longest election year session since 1945, we will be looking ahead to campaigning or resting, or trying to rid ourselves of the frustrations of the past few weeks.

But, before we all rush away, I ask my colleagues to pause and take note of the fact that three of our colleagues will voluntarily not be returning to the Senate. When I pause to remember this, I am struck by the significant loss this will mean to the Senate.

Mr. President, Senator GORDON HUMPHREY has always stood for strongly held convictions, and has never hesitated to speak his mind. What is singularly impressive about the senior Senator from New Hampshire is that he not only speaks his convictions, but he takes action to make them a reality. This has affected his own career. Senator HUMPHREY has consistently advocated for a term limitation for elected officials. He strongly believes in the classic citizen-legislator, one who contributes his or her best to public service for a period of time and then returns to private life. GORDON HUMPHREY will act on his belief, and retire after two terms. He will return to New Hampshire, and I know he will continue to make significant contributions to his State and community.

Mr. President, Senator BILL ARMSTRONG will also be missed in this body. With his intelligence and his strong ability to clearly articulate conservative values, BILL ARMSTRONG has been able to persuade the Senate on many occasions.

BILL ARMSTRONG has provided strong representation for the military men and women who seek to keep our country safe and strong. As a western Senator, he has been a strong proponent of the rights of Western States and those of us who also come from the West will miss his leadership.

Mr. President, another westerner who is leaving our ranks is the ranking Republican and former chairman of the Senate Energy and Natural Resources Committee JAMES MCCLURE. He's been a forceful spokesman for western values and the entrepreneurial spirit. He understands the need for balance between the development and preservation of our Nation's resources. He has persuasively built consensus among widespread and conflicting interests.

JIM MCCLURE has been a true ally of the State of Alaska. He has stood with us in many a battle, and has understood better than any other non-Alaskan Senator the many complexities of our State's land issues. I have learned a lot from JIM MCCLURE. He has become my good friend in the many years that I have worked with him on the committee.

Mr. President, it has been a privilege for me to know and work alongside these men. They have served their States and the country with great distinction.

THE SITUATION IN THE PERSIAN GULF

Mr. LEAHY. Mr. President, Congress is finally nearing adjournment. The majority leader and all Members deserve some rest after the marathon hours we have put in over the past couple of weeks.

We look forward to time with our families and the chance to return to our home States and listen to our constituents. But we are well aware that this adjournment could be short-lived, and that we could be back here in a matter of days.

Since Iraq invaded Kuwait on August 2, President Bush has received the support of the internatioal community which universally condemns this aggression. The United Nations overwhelmingly voted to impose a stringent economic embargo against Iraq. Several nations, including Arab countries, have joined United States forces to enforce the embargo and deter further Iraqi advances.

Almost 1 million troops are now staring each other down in the gulf region. Recent reports indicate that Iraq has massed 450,000 troops near the Kuwait-Saudi Arabia border. The Iraqis seem to be digging in for a long stay in Kuwait. Saddam Hussein has ordered his men to prepare defensive lines that stretch over hundreds of miles. These include extensive mine fields, barbed wire, and tank traps lined with remote controlled napalm bombs. Iraqi engineers have also built earthen barriers to protect tank and artillery emplacements.

Mr. President, an impressive group of nations has contributed to the multinational force assembled to face the Iraqi Army. Over 200,000 U.S. troops have been deployed to the gulf region. Another 200,000 troops have been assembled from Saudi Arabia, the Gulf Cooperation Council, Egypt, Syria, and European countries. While the President and other world leaders should be commended for bringing this force together, serious questions remain about how and under what circumstances these troops will be used.

Against this potentially explosive backdrop, Congress is ready to adjourn for 3 months. I am deeply concerned that hostilities may break out before we are scheduled to reconvene in January. I strongly support the decision of the majority leader and the Speaker of the House to retain the authority to call Congress back for an emergency session.

The President's decision to deploy United States troops in coordination with Saudi Arabia and the international community was sound. We need to continue to work in careful conjunction with these countries. I feel confident that the unified multinational alliance will ultimately succeed in reversing the Iraqi gains in Kuwait.

Getting Iraq out of Kuwait will take patience and time. Time is necessary for the sanctions to take effect. The measures we imposed in August have only begun to be felt. Our alliance must hold together as these sanctions take hold. We must be patient.

Certainly, our troops must defend themselves if attacked. But the President must seek the full support of Congress and the American people before launching an offensive to remove Iraqis from Kuwait by force.

Over the past several days, Bush administration officials have questioned whether the U.S. and allied force in the gulf is enough. Secretary Cheney has said, "We are not at the point yet where we want to stop adding forces." Gen. Norman Schwarzkopf has apparently asked for at least 100,000 additional heavy armored troops—some equipped with our finest tank, the M1A1.

Our military leaders should be provided with all the resources they need. But our goals in the gulf region must remain clear.

The addition of 100,000 United States troops to the multinational force is a unilateral decision, made without any request that I am aware of from the United Nations or Saudi Arabia.

On October 25, Department of Defense spokesman Pete Williams stated, "* * * our mission today is, as it's always been, to deter further aggression, to defend Saudi Arabia, and to enforce the sanctions." He also noted that the Secretary of Defense will give the President a range of other options.

President Bush should be careful about exercising these other options—such as an offensive attack on Iraq—without careful consultation with Congress. And here I draw a distinction between true consultation and simple notification.

I urge the President to keep Congress fully briefed over recess—and to call a special session if hostilities are imminent. President Bush has done very well guiding U.S. policy in the gulf these past months. Unilateral action may serve only to divide, not unite, our allies and the American people.

THE WAR POWERS ACT AND THE USE OF FORCE IN THE PERSIAN GULF

Mr. AKAKA. Mr. President, as Congress approaches adjournment sine

die, and as the tense situation in the Persian Gulf remains unresolved, I feel compelled to convey a word of caution to the Bush administration in its handling of pending decisions related to gulf crisis. Specifically, I wish to urge the administration to follow the letter of both the law and the U.S. Constitution in matters pertaining to the use of force in the region.

It is important, however, to note that Congress and the President share the common objective of restoring the territorial integrity of Kuwait and removing Saddam Hussein from a postion of power in Iraq.

Nonetheless, I want to make absolutely certain that the Bush administration understands that it is Congress, and Congress alone, that has the power to declare war. Furthermore, under guidelines set forth in the War Powers Resolution of 1973, the President is required to consult with Congress in any decisions that might lead to war. In light of recent statements made by members of the Bush administration and given recent developments in the Persian Gulf, I believe regular consultation by the President is both useful and necessary.

As others have already stated, I firmly believe that such consultation is in the interest of the President, and more importantly, in the interest of our Nation. On matters such as these, we must act on the basis of consensus—shared commitment and shared responsibility.

In accordance with our Constitution and the law, Congress must be involved in any decision-making discussions that could lead to war. It is as simple and unequivocal as that.

Make no mistake about it. Until Congress and the President agree on a different course of action in the Persian Gulf, our troops are in the region solely for the purpose of defense and deterrence. Moreover, we now have evidence that the U.N.-sponsored economic sanctions against Iraq are working and, with time on our side, I believe we can accomplish our objectives without resorting to the use of military force.

PARTICIPATION OF BALTIC STATES IN THE HELSINKI PROCESS

Mr. LAUTENBERG. Mr. President, I rise today to add my voice to those calling for a meaningful role as participant or observer for Lithuania, Latvia, and Estonia, in the Helsinki process, and to call attention to a very important letter that I and many of my colleagues have sent to the President on this issue. The letter urges the President to formally raise the issue of Baltic participation in the November summit of the Conference on Security and Cooperation in Europe.

The upcoming November summit of the Conference on Security and Cooperation in Europe will be the first major international forum in which the emerging democracies in Eastern Europe can join forces with the West in promoting the ideals the Helsinki process was designed to foster—protection of human rights, national self determination, military stability, and economic, scientific, technical, environmental, and humanitarian cooperation. The Baltic States deserve to participate.

CSCE procedural guidelines entitle all European States to participate in the conference, and, according to the Helsinki Final Act, the Baltic States have never lost their de jure independence. Thus, the Baltic States are entitled to participate in the CSCE if they desire. They tried to exercise this right by petitioning for observer status last June at the CSCE meeting in Copenhagen, but their petitions were denied by the Danish Secretariat of the CSCE. The denial apparently was made in deference to the Soviet Union's position that the Baltic States are not independent. Ironically, a similar petition from Albania was approved.

The Baltic leaders have repeatedly asked that this issue be formally raised at a high-level CSCE meeting. Our Secretary of State has advocated observer status for the Baltic States at the ministerial level but is not prepared to formally raise this issue within the CSCE. He, too, apparently fears that the Soviet Union's position will prevent participation by the Baltic States.

The granting of membership or observer status in the CSCE would demonstrate that the Western democracies are truly committed, not just in words but in deeds, to Baltic freedom. It would reaffirm not only de jure independence enshrined in our own policy of nonrecognition of the illegal incorporation of the Baltics by the Soviet Union, but would strengthen the Baltic States in their negotiations for real independence.

The participation of the Baltic States in the Helsinki process is, however, not just a matter of principle. It is also a matter of recognizing emerging reality. As Europe moves toward a new political landscape, the fate of the Baltic States will be of vital significance to its development. There has been a lot of political and economic change in Europe and the Soviet Union already, and there is going to be a lot more. The Baltic States and their future will be a critical factor in the progress of this change.

Further, as their economic and political autonomy grows, the Baltic States will be an increasingly crucial link in trade relations between the East and West. Participation in the Helsinki process would facilitate not only those trade links but also the mission of the CSCE itself.

I urge my colleagues to support their participation in the Helsinki process, and I ask unanimous consent that a copy of the text of this letter be included in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, October 26, 1990.

The PRESIDENT,
White House, Washington, DC.

DEAR MR. PRESIDENT: On September 28, 1990, 22 Senators wrote to you urging you to "do everything possible to enable Estonia, Latvia and Lithuania to participate . . ." in the November summit of the Conference on Security and Cooperation in Europe "either as full members or as observers".

We were pleased to note that, following the recent CSCE Ministerial meeting in New York, Secretary of State Baker stated that the United States has advocated observer status for these nations as a step toward full membership. In his follow-up remarks, however, the Secretary seemed to indicate that the United States is not prepared to raise the issue within the CSCE because of the strong likelihood that consensus on the issue will be denied.

Nevertheless, Baltic leaders have repeatedly asked that the issue be formally raised at a high-level CSCE meeting. They believe that it is worth risking a potential denial of consensus in order to reaffirm publicly and unequivocally the non-recognition policy the United States has espoused for fifty years. In raising this issue at the November summit, we would be faithful to our longstanding poisition toward the Baltic States and would be utilizing the CSCE process for precisely the kind of political dialogue it seeks to promote. If, however, the United States, while nominally supporting the Baltic request to participate, fails to put this issue on the table in Paris, we will appear, at best, inconsistent and, at worst, patently hypocritical.

We therfore urge you, as head of the U.S. Delegation at the upcoming CSCE summit in Paris, to raise formally the issue of Baltic participation in the CSCE, and to continue to take all possible steps to help Estonia, Latvia and Lithuania reclaim their rightful place among the nations of Europe.

Sincerely,

Robert W. Kasten, Jr., John Heinz, Charles E. Grassley, Arlen Specter, Donald W. Riegle, Jr., Paul S. Sarbanes, Paul Simon, Dennis DeConcini, Alan J. Dixon, Christopher J. Dodd, Jesse Helms, Carl Levin, Gordon J. Humphrey, Alfonse M. D'Amato, John F. Kerry, Daniel K. Inouye, Bill Bradley, Barbara A. Mikulski, Joseph I. Lieberman, Dan Coats, Frank R. Lautenberg, Dave Durenberger, Jake Garn, John McCain, Richard H. Bryan, Malcolm Wallop, Daniel K. Akaka, Herbert Kohl.

THE THIRD QUESTION: THE LEAST UNDERSTOOD

Mr. MOYNIHAN. Mr. President, in the final hours of the last day of the 101st Congress, I rise to discuss the last of the three questions on Ameri-

can foreign policy which I spoke of yesterday morning.

The subject may come as a surprise to some Senators; possibly an unwelcome surprise. If this should be the case, however, I would plead that it will not be the first such occasion. In the CONGRESSIONAL RECORD of April 27, 1990, and again, of May 24, 1990, I addressed the same subject. On both occasions my remarks were given the same heading in the RECORD: "The Decolonization of Puerto Rico."

This question has been with us from the outset of the 101st Congress. In his address to the joint session of February 10—his first address as our new President—President Bush summoned us to a large undertaking.

There is another issue I decided to mention here tonight. I have long believed that the people of Puerto Rico should have the right to determine their own political future. Personally, I favor statehood. But I ask the Congress to take the necessary steps to let the people decide in a referendum.

That was at the beginning of the Congress; we are now at the close; we have done no such thing.

The House has passed a bill, albeit a perfunctory one. Two committees of the Senate have reported bills, or portions of bills, but none has reached the floor, and none has passed. In the meantime, the administration has been silent, save for the occasional aide dispatched to the island to urge that the new State vote Republican.

In fairness, we have worked hard, if intermittently on the matter here in the Senate. Even so we failed to finish our work. This does not speak well of the Senate for the simple fact that we failed to do our duty in a situation where we could accurately be described as irresponsible. That is to say the citizens of Puerto Rico do not have a vote in the U.S. Senate. No one represents them. None of us is responsible to them.

The more then ought we, as a matter of principle rather than politics, to have responded to the President's summons—1989 and 1990 were the years that saw the end of the cold war and the reestablishment in Eastern and central Europe of the effective sovereignty of the nations established there after the First World War.

Those events of 1917—when the Republic of Czechoslovakia was proclaimed in Pittsburgh—to 1920 were, in effect, the first great wave of decolonization of this century. It was not a matter of breaking away of one colony or another, but rather of the acceptance by the international community of the right to independence of former colonies. There was a relapse under Hitler, then Stalin, but the principle has emerged triumphant once more.

That principle, enunciated by Woodrow Wilson in an earlier address to a joint session of Congress, applies no less to American colonies than to those of the Hapsburgs or the Hohenzollerns, or their assorted "cousins" in other capitals of Europe. It applies to Puerto Rico. Which is what President Bush acknowledged in his first address to the Congress.

On April 27 I asked on the Senate floor: "Is Puerto Rico a colony today?" I had asked the same question at hearings of the Committee on Energy and Natural Resources in San Juan in 1989. And I gave the same answer:

Most obviously, not. In July 1952 Puerto Rico became a full self-governing commonwealth.

Even so, the issue of status, as the islanders correctly term the matter, remains unresolved.

Commonwealth is one option. There are two others. Statehood. Independence. Every President since Harry S. Truman has asserted that the people of Puerto Rico were and are free to choose any of the three. In 1952 Commonwealth status was achieved. As I have more than once stated during this nondebate, commonwealth status was not seen by those who conceived it as a way station to statehood, the position or an applicant or candidate for full membership in the Union. To the contrary, statehood was seen as a plenitudinous condition, comparable to that of commonwealths in other devolving empires. Or such is my understanding; I do not claim to speak in any sense for present day advocates of commonwealth status, nor yet to represent the views of the predecessors. I can claim to have known two generations of commonwealth leaders in Puerto Rico, but no more. Similarly, I have known two generations of statehood leaders. I can claim to understand their position with some confidence simply because statehood is a clearly understood concept within the American Union. Similarly, I assume that I can understand the position of those who advocate independence. I cannot claim any close acquaintance, which is surely a fault of mine, yet I have met "independistas," and have been most impressed with their presentations at Senate hearings.

What this Senator knows or does not know is of small consequence. What matters is that at the outset of the Congress, Puerto Rico was given to understand that it would have the opportunity to choose; but here we are at the end of the Congress having, in effect, denied that opportunity.

Let me be clear. I have to assume that we will get to work on this matter first thing in the next Congress. We have now, mercifully, finished with the endless work of the Summit. We have a 5-year budget plan. It will last at least until next April. The more then should we be about the business of Puerto Rico before next April.

The plain fact is that the Senate does not see this subject in the light that the rest of the world sees it, or would do if attention were called to it. This does us no discredit. Puerto Ricans are fellow citizens. As many live on the mainland today as live on the island itself—more properly, the islands. They fight in our wars, contribute to our affairs, add to our lives the special attributes of an hispanic culture. No matter. Puerto Rico remains a place of undertermined status. As a matter of honor, the Senate, the Congress must permit our fellow citizens there to choose. As a matter of elemental prudence, we ought to do so directly we return to Washinton next January.

If the Senate would indulge me, I would ask that a series of statements I have made on this subject in this Congress be placed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the CONGRESSIONAL RECORD, July 14, 1989]

POLITICAL STATUS OF PUERTO RICO

Mr. MOYNIHAN. Mr. President, early last spring Senators JOHNSTON, MCCLURE, and SIMON introduced S. 712, a bill "to provide for a referendum on the political status of Puerto Rico." This is a bill of the uttermost importance to the people of the commonwealth, and of no less moment to the American union.

The bill provides for a referendum to be held in 1991 presenting the choice of statehood; independence; or commonwealth status. In the event that no status option obtains a majority, there will be a runoff.

In his State of the Union Message, President Bush indicated his firm support of statehood, as does the just previous Governor of Puerto Rico, Romero Barcelo. The present Governor of Perto Rico, the Honorable Rafael Hernandez Colon, is a supporter of "enhanced" commonwealth status. There are, of course many supporters of independence.

There are many considerations involved. Obviously. Absolutely central, however, will be the tax provisions associated with the respective choices. I need not spell out for the Senate the importance, for example, of section 936 of the Internal Revenue Code which provides extraordinary tax incentives for manufacturing firms located on the island. Perhaps a third of Puerto Rican employment is attributable to "936" benefits. There is a great variety of tariff questions to be dealt with, maritime statutes, excise taxes, and the like. The Social Security law and related social welfare measures are of transcendent importance to Puerto Ricans as they are to all American citizens. Each of the three options that are to be presented to the people of Puerto Rico will entail different provisions with respect to these matters.

With these decisions in the offing, I have been assembling materials that I hope will be of use to the Finance Committee when we settle down to fill in the blanks having to do with the duration of present statutes and such like matters which will be referred to us by the Committee on Energy and Natural Resources.

Imagine our consternation, then, when the Treasury Department, testifying before the Energy Committee yesterday morning,

stated that it saw no reason why our plebicite bill should be "encumbered at this stage" by any specifics concerning the tax and financial provisions that would accompany the three options.

We are evidently to ask the people of Puerto Rico to make their decision in the dark. They are evidently not to know in advance whether, for example, statehood would mean the end of section 936 tax benefits or not; not to know whether "enhanced" commonwealth status will bring equal social welfare benefits to Puerto Rico, or perhaps yet further restricted ones. They are not to know anything about the very questions which will be most on the minds of the voters.

If the Treasury Department's position was not so transparently untenable, one would be forced to suspect that it is deliberately perverse. That somewhere in the upper echelons of the Department there are persons determined to thwart the President's state of the Union commitment.

This is not something the Congress can settle. But one would surely advise the President do so, and quickly, on his return from Paris. For obviously no plebiscite can go forward if the Treasury position remains that of the executive branch.

Mr. President, I ask to reproduce the opening portion of the testimony of Kenneth W. Gideon, Assistant Secretary—Tax Policy, U.S. Department of the Treasury, before the Senate Energy Committee.

The excerpt follows:

TESTIMONY OF KENNETH W. GIDEON

Mr. Chairman and Members of the Committee: It is a pleasure to be here today on behalf of the Administration, to discuss S. 712, a bill "To Provide for a Referendum on the Political Status of Puerto Rico." This bill would give the people of Puerto Rico an historic opportunity to vote upon the status of that island. The bill would provide for a referendum, to be held in 1991, in which the Puerto Rican people could decide among the options of statehood, independence, or commonwealth status.

The Administration strongly supports the right of the people of Puerto Rico to decide for themselves on the status of the island. Further, as the President has noted a number of times, he favors the admission of Puerto Rico to the Union as a state, thereby assuring the people of Puerto Rico an equal standing with other United States citizens. However, by providing for a status referendum, the United States Government would be assisting the Puerto Rican people to exercise the basic political right to determine the nature of their government.

The choice facing the people of Puerto Rico is fundamentally a political one, with long-term implications for their rights and obligations as citizens. Each voter must determine relationship that should exist between Puerto Rico and the United States. By its very nature, a status referendum determines a people's political future. Individual voters must weigh the implications of their vote not only for themselves but also for future generations.

The Administration firmly believes that the Puerto Rican people should be given an opportunity to express their will in a manner that recognizes the historic and fundamentally political nature of their decision of self-determination. The importance of the decision they face as people transcends any narrow concern about specific aspects of economic or fiscal structures.

For this reason, the Administration believes that the discussion of Puerto Rico's future status should not be encumbered at this stage by the tax and financial provisions in the current bill. The selection among the possible status options should be a choice made by the people of Puerto Rico unaffected by the bias which specific economic costs and benefits could bring to the process. After that choice has been made, appropriate tax and financial relationships between Puerto Rico and the United States could be formed consistent with the choice of the Puerto Rican people.

The Administration recognizes the difficulty of isolating the impact of tax and financial issues from the question of Puerto Rico's future status. Appropriate transition mechanisms will ultimately have to be developed to minimize economic disruption to Puerto Rico resulting from any change from the current commonwealth status. In addition, we believe that a transition to statehood can be structured so that the Puerto Rican government, after making appropriate use of its own resources, would not be forced to incur a net revenue loss during this transition. The Administration would support a "transition grant" to Puerto Rico to assist in achieving that result. The budgetary treatment of a transition to statehood should be consistent with sound budget discipline. Finally, we believe that there should be a level economic playing field among options.

The development of provisions which will properly achieve these goals will require a careful cooperative analysis by the Administration, Congress, and the government of Puerto Rico. The resulting package would probably consist of interrelated provisions affecting Puerto Rico's own tax system, the Federal tax system, and direct Federal grants. Accordingly, depending on the specific alternatives chosen, many will be involved in the process, including, for example, the tax-writing committees of the Congress.

The Administration looks forward to working with your committee at the appropriate time in fashioning an integrated economic package which meets the Administration's commitments to Puerto Rico and which is fully acceptable to both Congress and the Puerto Rican government. To lay a foundation for that process, I would like to review with you today some of the technical issues which are presented by the provisions in the current bill. While not intended as either an endorsement or rejection of these provisions, my comments will hopefully highlight particular problems which the current language raises.

Each of the political options covered by the bill—statehood, independence, and commonwealth status—raises special issues that affect the tax systems of both Puerto Rico and the United States. The following comments are limited to those issues. They are not intended to reflect any views on the desirability of any of the status options.

Regardless of the status option under consideration, we believe that a primary goal of the bill in question should be to ensure that the tax implications of the option are clearly defined. Certainty in the application of the tax law is always a goal of tax policy, and we believe that it is especially important to strive for that certainty in these circumstances, where the Puerto Rican people are facing the possibility of fundamental changes to their government's structure. The focus of my testimony, therefore, will be to identify the tax results of this bills' provisions as drafted, to note those ambiguities which the bill raises, and to highlight those issues which the bill's tax revisions do not currently address.

I. GENERAL REVENUE EFFECTS OF S. 712

It is difficult to present very precise estimates of the Federal revenue consequences of the various options described in the bill, but it may be helpful for purposes of this discussion to consider some rough guidelines.

Both the independence and the statehood options assume some form of reduction of the tax incentives currently provided under Internal Revenue Code ("Code") section 936. It should be noted that even under the commonwealth option, Congress can continue to review and revise section 936 and other tax benefits as necessary.

We estimate that in FY 1989 the tax benefits received by section 936 corporations amount to about $1.9 billion. If section 936 benefits are phased out, some section 936 corporations may choose to leave Puerto Rico. However, the nature of most section 936 company operations makes it unlikely that they could find a good substitute for Puerto Rico in some low-tax foreign location. Thus, if companies do leave the island, it is most likely that they would move back to the mainland where they would be subject to U.S. tax.

A phase-out of section 936 benefits would cause economic dislocation on Puerto Rico, at least in the short run. Employment in 936 companies now accounts for about 12 percent of total Puerto Rican employment. However, it is very difficult to project the extent to which Federal tax collections would be affected by this dislocation. Under the statehood option, collections of personal income tax may be somewhat reduced for a time; but as discussed below, fully phased-in Federal personal income tax collections from Puerto Rico can be expected to be relatively modest.

The statehood option presents the issue of how a newly-imposed Federal income tax will interact with a Puerto Rican state tax system. The effects of this change must be considered for both individual and business tax revenues.

[FROM THE CONGRESSIONAL RECORD, AUG. 4, 1989]

PUERTO RICO STATUS REFERENDUM ACT

Mr. MOYNIHAN. Mr. President, the Senate Committee on Energy and Natural Resources has now reported the Puerto Rico Status Referendum Act which has been referred to the Finance Committee for consideration of the taxation and social welfare aspects of the three options set forth which are, of course, independent statehood, or as the term has come to be used "enhanced commonwealth."

In anticipation of this consideration by the Finance Committee and the Senate's fuller debate on the whole matter, I asked the Congressional Research Service to analyze the effect on selected programs of each status option and also to assess how the Federal tax relationship with Puerto Rico would change under these various options. The first of the these analyses was completed earlier this week, and the other a month ago.

I am placing them in the Record today in order that the discussion of this hugely important matter may go forward on the basis of relevant facts, which is to say that we might, to some extent at least, know what we are talking about and ultimately voting about.

I would call attention to the important findings concerning social welfare programs under statehood, under the statehood option. I now cite the CRS studies.

Under statehood, extension of the earned income tax credit to Puerto Rico where it is not currently available inasmuch as the Federal income tax does not apply in Puerto Rico, could be a significant new program expenditure and a new social welfare benefit, it having had its origin for that precise purpose. If I may say, it is beginning to be the basis of an American family.

The Congressional Research Service estimates that the earned income tax credit could cover up to 65 percent of all families with children in Puerto Rico, two-thirds of the population which are families with children. That is a cash return, and as we expect it will be at the end of this Congress, a refundable tax refund.

It needs to be refundable in the case of Puerto Rico in particular because the relevance of Puerto Rico is that under the 1986 tax legislation we put an end to the taxation of families with children with incomes under the poverty line.

Mr. President, under statehood, the second finding, replacing the nutrition assistance block grant with the food stamp program, including open-ended funding, would greatly reduce Puerto Rico's program design flexibility and could expand the caseload and program costs by one-third or more.

The third finding, Mr. President, under statehood, replacing the program of aid to the aged, blind, or disabled with the supplemental security income program, an open-ended funding which is the case, would significantly expand the eligibility of the population in Puerto Rico for increased benefits to recipients by as much as tenfold, and consequently greatly increase Federal costs, but also greatly increase social welfare benefits.

I might add that the supplementary security income is the one provision of the family assistance plan that was sent to Congress in 1969 to be extended to the four income-determined, noncontributory, programs under Social Security: Aid to Families with Dependent Children, aid to the blind, aid to the permanently and totally disabled, and aid to old-age assistance.

It was the intention of that proposal that the benefits be nationwide and openended. So the great disparities, for example, in the program and benefits to AFDC would not continue. Well, the only group for whom that provision was to adopted were the children. But the other three programs were incorporated into SSI and now would make their way to the commonwealth under statehood.

Last of the findings, Mr. President, under statehood, the capital and Medicaid funds that currently apply to Puerto Rico would be removed, and a more generous Federal matching formula would be used. As a result, Federal spending for Medicaid in Puerto Rico would more than double. In addition, Puerto Rico would become subject to new requirements for furnishing more extensive coverage to some classes of individuals, while cutting off coverage to others, and Puerto Rico would no longer be able to restrict Medicaid providers to public facilities.

Mr. President, the analysis of the tax relationship that I shall include in the RECORD this afternoon is not as extensive as that concerning social welfare programs, as much as a further study from the staff of the Joint Committee on Taxation is, now in preparation. It should be available in little more than a week's time, and I would inform Senators that my office will have copies, should any of them wish to obtain them.

However, on the basis of what we already have, and indeed what we have some time known, I call attention at this time to a major central fact. The tax benefits associated with section 936 of the Internal Revenue Code now account for about one-third of the total employment in the Commonwealth of Puerto Rico. I should make explicit, Mr. President, that this is direct and indirect employment, but a third of the jobs there come from 936 industries—the multiplier effect, as economists call the further benefits from wages earned and then spent.

The legislation reported by the Energy and Natural Resources Committee provides for phaseout of section 936 benefits under statehood ending in 1998, obviously something such would be required under the uniformity laws of the Constitution.

I emphasize that by present reckoning, the majority of Puerto Rican families have incomes below the Federal poverty line, as I mentioned. In our 1986 tax legislation, we went to great lengths to see that no such family pays Federal income taxes. Hence, the majority of Puerto Rican families would, for the immediate future at least, be free of Federal income tax, while they would have available a very considerable range of Federal social welfare programs.

It would thus appear that statehood offers Puerto Ricans the prospect of immediate social welfare benefits, but long-term economic losses, the losses being those to be associated with the disappearance, at least as much as we know, the inevitable disappearance of section 936 benefits, and the assumed decline in those economic activities.

By contrast, the Commonwealth promises long-term economic gains, the continued availability of the very considerable tax incentives associated with 936, such that a third of the island's employment comes from that section, a section originally designed to promote economic investment by American firms in the Philippines, if I may say.

By contrast, the Commonwealth promises long-term economic gains, I say again, but with no immediate social welfare enhancements, or none in the legislation we have before us, and which we will take up in an openminded manner in the Finance Committee.

These are serious matters and will be seriously debated. A minimum responsibility here in Washington is to ensure that, as much as possible, the facts be made available to those who wish to make informed choices. Imagine our consternation when the Treasury Department testified before the Energy Committee on July 13, stated that it saw no reason why the referendum bill should be "encumbered at this stage" by any speculation concerning the tax and economic consequences of the three options. It cannot be that they would wish the people of Puerto Rico to make their decisions in the dark, but certainly they had not shed any light on those decisions. The people of the Commonwealth want, and should have, the facts necessary to make an informed choice.

Mr. President, earlier this year, the distinguished chairman of the Committee on Energy and Natural Resources, and the distinguished ranking member, held hearings in San Juan on this subject. I was asked to join as an observer from the Finance Committee, which I did, and I think it was probably the case that during our 3 days of hearings, something like half the adult population of Puerto Rico was attacking us on television. It was an extraordinary event in the evenings to walk about the old city and be recognized not just by the occasional viewer of the evening news, but by everyone. This is central to the lives of the people of the Commonwealth, as it ought to be.

Of course, it is very much in the mind of President Bush, who proposed this referendum to us in his State of the Union message and stated that his preference—very clear, and it has been well understood—was statehood. I am sure if President Bush were aware of the Treasury Department's view that there is no need to encumber this decision with facts, "do not trouble me with the facts" point of view, that he would be of a different view, and perhaps Treasury would respond.

In any event, Mr. President, the reports I now place in the Record are a beginning—I believe a good one. I would like most especially to express my appreciation to Carolyn Merck of the Congressional Research Service, which is a branch, of course, of the Library of Congress, and who headed the study on the effects of the proposal for a referendum on the status of Puerto Rico. I express my appreciation also to David Brumbaugh, of the CRS, who did the analysis of Federal taxes and Puerto Rico under statehood, independence, and commonwealth options.

Mr. President, may I say that I am aware that I place a large document in the Record on this concluding day, as we hope or expect, of this portion of the session of the 101st Congress, but I do so because we are at exactly the point where the issue of the consequences in terms of social welfare benefits and taxation of the three options to be considered by Puerto Rico comes before us.

The Senate Finance Committee will hold hearings, I am sure, in the autumn. Before we do, it is well that the public should have available the analysis of what the choices before us entail.

Mr. President, I ask unanimous consent to have two memoranda prepared by CRS printed in the Record at this time.

There being no objection, the material was ordered to be printed in the Record, as follows:

MEMORANDUM

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, July 6, 1989.

To: Hon. Daniel P. Moynihan. Attention: Ted Zukoski.

From: David L. Brumbaugh, Analyst in Public Finance, Economics Division.

Subject: Federal Taxes and Puerto Rico under the Statehood, Independence, and Commonwealth Options of S. 712, 101st Congress.

This memorandum responds to your request for an explanation of how the Federal tax relationship with Puerto Rico would change under each of the options that S. 712 would present to the people of Puerto Rico for referendum. The discussion that follows begins by explaining how current Federal tax laws apply to Puerto Rico. Under S. 712's Commonwealth option, these laws would generally remain in place. The memoradum continues by looking at the changes the particular statehood and independence options contained in S. 712 would bring.

CURRENT LAW

Puerto Rico's current tax relationship with the Federal Government is best understood by looking at how the United States defines its jurisdiction to tax and how Puerto Rico fits into that jurisdiction. In general, the United States asserts its tax jurisdiction on the basis of both the source of income and the identity of the person of firm earning the income. If income has its source in the United States, the United States generally taxes that income, regardless of who earns it. Thus, all individuals and corporations are generally subject to U.S. taxes on income earned in the United States, regardless of their nationality. On the other hand, if an individual is a U.S. citizen, the U.S. taxes the person's income regardless of the country in which it is earned; U.S. citizens are taxed on their foreign as well as domestic income. To alleviate double-taxation, however, the U.S. permits foreign taxes to be credited against U.S. taxes on foreign-source income.

As with U.S. citizens, the United States taxes corporations that are chartered in the United States on their worldwide income but permits the crediting of foreign taxes. Thus, if a firm conducts its foreign operations through a foreign branch of the U.S. parent corporation, its foreign income is subject to U.S. taxes on a current basis. At the same time, however, foreign-source income of foreign corporations is beyond the U.S. tax jurisdiction. Thus, if a U.S. firm conducts its foreign operations through a subsidiary corporation chartered in a foreign country, income the subsidiary earns is exempt from U.S. taxes until it is remitted to the U.S. parent corporation as intra-firm dividends. U.S. taxes on foreign-source income can thus be postponed indefinitely. This characteristic of the U.S. tax code is usually referred to as the "deferral principle."

Puerto Rico fits into this structure much like a foreign country but with some very important differences. U.S. corporations and firms, for example, are generally permitted to claim Puerto Rican taxes as foreign tax credits.[1] Also, Puerto Rico is not considered part of the United States for tax purposes.[2] For firms, the result is that corporations chartered in Puerto Rico are treated like foreign corporations and are not subject to U.S. taxes on income earned outside the mainland United States. As in foreign countries, then, the deferral principle is generally available in Puerto Rico for U.S. firms that wish to use it.

Instead of deferral, however, more firms that invest in Puerto Rico use the possessions tax credit: an alternative tax benefit that is not available in foreign countries. The credit, provided by section 936 of the Federal tax code, provides a full exemption from Federal taxes rather than mere postponement and is widely used by U.S. firms with operations in Puerto Rico. Under its terms, qualifying U.S. corporations can receive a tax credit equal to the Federal income taxes they would otherwise owe on income from active business operations and certain financial investments in Puerto Rico. Thus while section 936 technically provides a tax credit, the credit is, in effect, a tax exemption for income earned in Puerto Rico. To qualify for the credit, a firm must be incorporated in the United States (a subsidiary corporation cannot therefore qualify for both deferral and the possessions tax credit), must earn at least 80 percent of its income in the possessions, and must derive at least 75 percent of its income from the active conduct of a business in the possessions. Firms with extensive operations in the mainland United States and elsewhere ordinarily meet these requirement by setting up separate subsidiary corporations for their Puerto Rican operations.[3]

Section 936 generally provides a more generous tax benefit than the deferral principle. Under deferral, U.S. firms can invest in Puerto Rico, through corporations chartered in Puerto Rico, and, as long as the subsidiaries' earnings are not repatriated to the U.S. parent corporations, they are exempt from Federal taxes. When the earnings are repatriated, however, they are subject to Federal taxes in the hands of the U.S. parent corporation. Under section 936, possession-source business income of qualifying U.S. corporations is exempt from Federal taxes. Further, since parents can deduct from taxable income dividends received from subsidiary U.S. (but not foreign) corporations, the possessions-source income is also not taxed upon repatriation to the parent corporation.

Turning now to individuals, Puerto Ricans are citizens of the United States and, as noted above, U.S. citizens are subject to U.S. taxes on their worldwide income. Normally, then, Puerto Rican citizens would be subject to Federal taxes on their worldwide income just like other U.S. citizens. Special provision is made for Puerto Rico, however, by section 933 of the Internal Revenue Code. Under its terms, year-long residents of Puerto Rico are exempt from Federal taxes on income from Puerto Rican sources. Puerto Rican residents, however, are subject to Federal taxes on income from any other geographic source, including the mainland United States. Also Puerto Rico levies its own individual income tax on residents of Puerto Rico.

The tax code also makes special provision for Puerto Rico with regard to excise taxes. Under section 7652 of the Internal Revenue Code, revenues from Federal excise taxes on goods manufactured in Puerto Rico generally are rebated or "covered over" to the treasury of Puerto Rico, Since 1984, however, certain limitations have been imposed on the rebates. With respect to distilled spirits, rebated taxes are limited to those imposed on rum. Rebate of taxes on other items is prohibited unless more than 50 percent of the value of the taxed items is actually added in Puerto Rico.[4]

STATEHOOD

The statehood option specified by S. 712 generally provides that Puerto Rico will ultimately be treated like the fifty States for purposes of Federal income taxes. Individuals residing in Puerto Rico would be subject to Federal taxes on their worldwide income. And at least in the long run, corporations would be subjected to full Federal taxation on income earned in Puerto Rico; neither the possessions tax credit nor deferal would apply. But while the bill provides that "Provisions of the Internal Revenue Code concerning Federal Income Taxes shall immediately apply to Puerto Rico" (section 16 of the bill), S. 712's statehood language also contains important transition provisions designed to "expedite the adjustment of the Commonwealth of Puerto Rico from the tax structure of the territory to the fiscal and economic system of the State" (section 16(a)).

Among the transition provisions is a general statement that "Provision shall be made by Congress so that economic and fiscal exceptions of the Internal Revenue Code, already granted" would temporarily remain in effect. The possessions tax code is explicitly listed by the bill as one of the tax code's "exceptions." The bill would continue the full application of section 936 for an unspecified period of time before gradually phasing the credit out, also over an unspecified time period.

Section 993's tax exemption for individuals residing in Puerto Rico would certainly be construed as an "exception" to normally applicable tax treatment in the case of Puerto Rico. The nature of the deferral of taxes on income earned by corporations chartered in Puerto Rico is less certain, but could also be considered an exception. Still, neither of these tax provisions are explicitly listed as exceptions by S. 712. Whether they would be temporarily continued is thus uncertain.

Another transition provision relates to tax revenue. The statehood language of S. 172 provides that the existing income tax laws of Puerto Rico would stand repealed upon admission of Puerto Rico as a State, a measure that would deprive the State government of an important source of revenues. Under the statehood provisions, however, proceeds from the application of Federal income taxes to Puerto Rico are to be transferred into Puerto Rico's treasury in gradually diminishing amounts for an unspecified number of years.

Finally, the statehood language provides that an "omnibus act" will be enacted by Congress "to ensure that the people of Puerto Rico attain equal social and economic opportunities with the residents of the several States" (section 16(c)).

STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

I wish to state my growing sense that by the close of this session of Congress, and accordingly, of the 101st Congress itself, we will not have sent to the President a bill providing for a plebiscite on the status of Puerto Rico.

This would not be my wish. To the contrary. What I am about to say is sensitive. I have a limited, but I dare to hope, sufficient sense of just how sensitive. I mean no offense to anyone and devoutly hope that in the end I shall not have given any offense.

We recall with what great expectations this matter came before us at the outset of the first session of this Congress. On January 17 the Majority Leader received a letter from the heads of the three principle political parties of Puerto Rico (identical letters having been addressed to the Speaker of the House and to the President) asking for a "resolution of the status issue" through a vote of the people of the Commonwealth. The text is as follows:

---

[1] U.S. Internal Revenue Code, Section 901(b).

[2] U.S. Internal Revenue Code, Section 7701(a).

[3] For further information of the possession tax credit, see: U.S. Library of Congress. Congressional Research Service. *The possessions Tax Credit (IRC Section 936): Background and Issues.* Report No. 88-200 E, by David L. Brumbaugh. Washington, 1988. p. 9.

[4] For additional information on the cover-over of excise taxes. See: Hoff. Karla, U.S. Federal Tax Policy Toward the Territories: Past, Present, and Future. *Tax Law Review.* v. 37. Fall, 1981. p. 56-7. For information on the 1984 limitations, see: U.S. Congress. Joint Committee on Taxation. *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984.* Joint Committee Print., 98th Cong., 2d Sess. Washington, U.S. Govt. Print. Off. 1984. p. 1222. 1226.

"In the past election held on November 8, 1988, all three political parties, which represent the three alternatives for the ultimate political status of the People of Puerto Rico, included the need for the resolution of the status issue in the platforms they presented to the electorate.

"In accordance with the platform of the Popular Democratic Party, the Governor of Puerto Rico announced in his Inauguration the intention of the Government of Puerto Rico to pursue the resolution of the status question with the Government of the United States of America and convened a meeting of the leadership of the three political parties that represent the three formulas.

"As a result of this meeting we, the Presidents—of the Popular Democratic Party, representing Commonwealth, the New Progressive Party, representing Statehood, and the Independence Party, representing Independence—have agreed to express to the President and to the Congress of the United States of America, that the People of Puerto Rico wish to be consulted as to their preference with regards to their ultimate political status and the consultation should have the guarantee that the will of the People once expressed shall be implemented through an act of Congress which would establish the appropriate mechanisms and procedures to that effect.

"Towards the formulation of such an act of Congress and related policies, we request to meet with you at your earliest convenience.

"Conscious that since Puerto Rico came under the sovereignty of the United States of America through the Treaty of Paris in 1898, the People of Puerto Rico have not been formally consulted by the United States of America as to their choice of their ultimate political status, and in the understanding that we are taking a momentous decision in Puerto Rican history and confident of the commitment of the United States of Amercia and of the People of Puerto Rico to the principles of self-determination and government by the consent of the governed, we remain,

"Cordially yours,

"Baltasar Corrada del Rio, President, New Progressive Party; Rafael Hernandez Colon, President, Popular Democratic Party; Ruben Berrios Martinez, President, Puerto Rican Independence Party."

Some weeks thereafter, in an address to a Joint Session of the Congress on February 9, 1989, President Bush endorsed this proposal. He said:

"There's another issue that I've decided to mention here tonight. I've long believed that the people of Puerto Rico should have the right to determine their own political future. Personally, I strongly favor statehood. But I urge the Congress to take the **necessary steps to allow the people to decide in a referendum.**"

The response in Puerto Rico was one of great satisfaction and even greater interest. In June a year ago I accepted the kind invitation of the Committee on Energy and Natural Resources to take part in a hearing on the issue held in San Juan. I think it likely that a third of the population of the island watched our televised hearings all day long, and two-thirds watched the reruns during the evening. That same evening, I could not walk anywhere in town without being greeted by name, usually with some apt comment on the (few) questions which I had asked that day. The Energy Committee went forward with deliberate dispatch, and on August 2nd reported out the bill which is now before the Finance Committee.

That was three-quarters of a year ago. Nothing much has happened. It begins to look as if nothing might. On April 10, the chairman of the House Insular and International Affairs Subcommittee, Ron de Lugo, stated:

"The House is still waiting for legislation from the Senate that was promised last year. At some time soon, we will cross a point when it will become impossible to pass a bill in the House."

What happened?

Here I must declare, indeed assert, the limits of my knowledge, still more my understanding. I am no stranger to Puerto Rico. I first was there in the Navy near to half a century ago. (And, come to think, before that had spent more time than my mother knew in a pool hall called Los Muchachos in the original Manhattan barrio just north of 96th Street where the tracks come above ground on Park Avenue.) In the Kennedy years I came to know and to admire Luis Munoz Marin, and, indeed, worked with many of his lieutenants and associates. I did not fail to note that for them the English term "Commonwealth" was rendered "Estado Libre Asociado" with the further provision in one of the party conferences that the latter never be translated back in English.

At the United Nations I came upon the fierce accusations from Cuba and other elements of the so-called nonaligned nations that Puerto Rico was held in colonial captivity. On behalf of President Ford I answered back with, I hope, equal fierceness that it was the fixed policy of the United States that the people of Puerto Rico were free to choose any relationship with the United States that they wished: commonwealth, statehood, independence.

Shortly thereafter I came to the Senate and am now in my fourteenth year on the Finance Committee. During this time I have recurrently found myself dealing with matters affecting Puerto Rico in the most direct and important ways. I think it fair to say that my colleagues have assumed my interest in these matters reflects the large number of Puerto Rican residents in New York State, which it surely does. But it also reflects my experience at the United Nations and generally with the process of colonialization and decolonialization. For make no mistake: in the first instance Puerto Rico was the spoil of a colonial war. It became an American colony. It has since evolved into much more than that, yet no one should doubt the explosive nature of the original relationship.

Moreover, I began to sense how precarious the situation of Puerto Rico was in the Congress. Puerto Rico had friends; it had no fully empowered member. A nonvoting resident commissioner in the House; no one at all in the Senate. Thus, in November 1984 the Reagan administration announced a wholesale revision of the Internal Revenue Code. The first version, known as Treasury I, simply abolished Section 936 of the Code, the economic cornerstone of the whole development policy conceived by Munoz and those of his time. We managed to block this; but only just. Treasury I was the work of the permanent government; it would be back.

This experience only confirmed my view that statehood would come sooner than **anyone seemed to think. I had presented this view in a speech on the Senate floor the previous August.**

"Having known Luis Munoz Marin, and being a friend and admirer of so many Puerto Rican leaders who carry on in his tradition, I must say that I have always assumed that this tradition views Commonwealth status as interim, as transitional.

"Temporary economic advantages can help prepare a society for statehood but can never indefinitely outweigh the civil advantage of full citizenship, which only statehood can confirm.

"I look to a Puerto Rico that appears at our portals asserting that the obligation of citizenship can never be fully met by a citizenship that is incomplete. In a word, I look to the day when a Puerto Rican sense of equality will animate a sense of the shared responsibility of equals.

"What I dread is a Puerto Rico coming to us in frustration and resentment at what it considers unequal treatment, looking to statehood as a remedy for grievances rather than a call to duty. Do these terms seem archaic, idealized? Perhaps. Yet I believe they would be recognized by the founders of this Republic, who have nothing to apologize for as regards to the realism of their ideals."

I might add that on that occasion I was defending the right of Puerto Rico to receive back excise taxes paid on liquor produced there. Nothing new in this. The second bill enacted by the first Congress imposed a tariff on Caribbean rum. I concluded:

"I urge the Senate to give consideration to this measure, and especially hope that it will come to the attention of our distinguished majority and minority leaders, who will one day, they or their successors, stand on the floor of this Senate and deal with the application by the Commonwealth of Puerto Rico for entry into the American union, asking that a pledge repeatedly made to the people of Puerto Rico be honored."

In the course of the years my views have not changed. They are known in Puerto Rico, and ought to be made known in the present debate. But I would make an important point in this regard. I have no quarrel with commonwealth status. To the contrary I have come to sense that too many of Munoz's time, and those who follow him, commonwealth was not a way station, an interim period prior to statehood. It was, to the contrary, the closest economically viable option to independence. Or at least, it was something this side of absorption into the union of the mainland.

I respect that. Just as I respect those for whom independence is the only acceptable outcome. My concern is that the process of making a viable choice should continue.

Leaving aside independence, where neither consideration arises, those who would choose between statehood and commonwealth status face a basic dilemma.

It is this.

Statehood automatically brings a huge increase in social welfare benefits. By an order of magnitude! Consider Supplementary Security Income. The current benefit in the commonwealth is about $32 a month for the blind, disabled, and aged who have insufficient Social Security or other benefits. The day statehood becomes effective, this benefit rises to $386, a tenfold increase, thereafter automatically indexed to inflation. Similar results occur across what is now a very wide range of programs. In the 1950s and later these benefits in the United States either did not exist or varied greatly from state to state. In the past 30 years, however, we have more and more tended to national benefits standards.

The impact of statehood on perhaps half the population of the island would be instantaneous and profound. And yet, at the same time, statehood means the loss of Section 936 benefits to industry, such that the economy loses a stimulus which has been absolutely central to economic growth in the past two generations. (Section 936, incidentally, was a program begun in the 1920s to encourage investment in the Philippines.)

By contrast, commonwealth status retains—for a period at least—the economic stimulus of Section 936. But it probably means a continued low level of social welfare benefits. And the absence of a considerable range of Federal taxes. Given those perplexities, I would offer a number of suggestions.

First of all, the executive branch and the Congress have got to undertake as much analysis as the remaining time allows. With no intent to criticize, I must state that some of the departments of the executive branch have been fair to mute on this subject. The Treasury, at least, has come before us and "endorsed" S. 712 as reported out by the Energy Committee, and offered a number of suggestions and reservations. Other departments with programs affected have simply come up here with no views and less data.

Second, the parties in Puerto Rico should try to avoid taking positions that cause anxieties here in the Congress. Those supporting statehood should be most careful about advertising its welfare attractions. Members of Congress altogether friendly to the people of Puerto Rico—they are, after all, our fellow citizens—could very well not wish them to fall into the "welfare trap", as it is called, and not without reason. Take the Food Stamp program, as an example. This began in early 1975. By 1982 fully 60 percent of the Puerto Rican population was receiving food stamps. This cost the Federal government some $.9 billion a year. But what did it cost the people of Puerto Rico? I have to report that my impression from travels in the interior that it virtually destroyed Puerto Rican agriculture. As is well known, the Congress thereupon cut back on the program.

Similarly, those supporting continued commonwealth status should take great care that the present seeming preference for statehood, as reflected in opinion polls, not persuade them that the best course is to put off a plebiscite. It is now common to read of this in the Puerto Rican press. I would presume to suggest, for example, that there is no reason the House of Representaties should be waiting on the Senate for a bill.

Let them write their own bill, and we will go to conference with them. This is the normal way in which we do business. One could wish that voices were heard in San Juan asking why the House seems to be running out the clock. For there will be no winners in such an eventuality, or at all events, that is my view. As for "enchanced" commonwealth status, that is surely a matter the Finance Committee will want to consider. I will make proposals. I hope others will do so as well. But time presses.

In the end, the great issues involved here are civic, not economic. Do the people of Puerto Rico wish to become Americans? For that is what statehood ineluctably implies. That is what statehood brings. Or do they wish to retain a separate identity? Of, but not in, the American union. This could be a perfectly intelligent choice, and of course, the option of eventual statehood or independence remains.

But to say again, the Congress must act. It is almost a century now since William Graham Sumner composed his bitter epitaph on the Spanish American War entitled, "The Conquest of the United States by Spain." His thesis, of course, was that by entering the colonial lists, we would become like other imperial nations, and suffer all their decadence and decline. Well, that hasn't happened. But we won't know until it is made perfectly clear that our offer to Puerto Rico of choice is in fact a fair-minded and efficacious offer. Which is to say, an offer which will shortly issue in an actual choice being made.

I ask that two important editorials, one from The New York Times, the other from The Washington Post, be appended to this statement.

[From the New York Times, Apr. 1, 1990]

THE 51ST AND 52D STATES

Puerto Rico is not America's Lithuania, but it is unhappy with its status as a highly dependent commonwealth. An overwhelming majority of 3.3 million islanders are agreed that they want change. But as Congress is learning, agreement stops there. What adds to the perplexity is a parallel but unrelated campaign to grant statehood to the District of Columbia.

A Senate bill supported by the Bush Administration would offer Puerto Ricans a chance to choose, by a binding vote next year, statehood, improved commonwealth status or independence. The problem is to assure a fair choice. If one or another side has plausible reasons for charging bad faith, the referendum could prolong the argument it is meant to end.

Polls for the first time show a narrow majority of Puerto Ricans now favors statehood. As sentiment has shifted, so has the time of a longstanding debate. Statehood supporters now join with advocates of independence in decrying colonialism. Those clamoring for enhanced commonwealth status contend that the Senate bill is front-loaded unfairly in favor of statehood.

The argument springs from a complicated history. The U.S. acquired Puerto Rico from Spain almost incidentally in 1900. In 1917, Puerto Ricans became U.S. citizens, but not until 1947 did they elect a Governor. Five years later, Congress approved an ingenious commonwealth arrangement, giving a Spanish-speaking island home rule and exemption from Federal taxes but no vote in Federal elections.

Economically, the plan made sense. Using an additional tax break known as Section 936 of the revenue code, Pureto Rico has provided generous incentives for mainland investors. But politically, the island has been virtually a ward of Congress, without the clout it would wield with two senators and six or seven representatives, plus a Presidential vote.

The sense of being second-class citizens has given potent impetus to the statehood campaign. As statehood sentiment has waxed, so has uncertainty about Puerto Rico's tax ememptions, causing investors to hold back. To end the debate once and for all, Gov. Rafael Hernandez Colon, a commonwealth advocate, proposed a binding referendum.

But he now faults the Senate bill as "terribly, dangerously unbalanced." It would phase in Federal taxes and phase out Section 936 over four years. Meanwhile, says the Congressional Budget Office, statehood could cost other U.S. taxpayers as much as $9.4 billion in additional Federal social spending; more than half the island's population remains below the national poverty line.

A very different view is taken by former Gov. Carlos Romero Barcelo, a statehood proponent. He persuasively cites similar preferential treatment granted other incoming states. Congress can redress the balance by rewording the commonwealth choice to give its proponents more of what they seek: an increased international role, an open port for air carriers, a vioce in Federal appointments and jurisdiction over natural resources.

What is unarguable and fundamental is Puerto Rico's right to self-determination. The choice is primarily between two forms of association with the United States. Even the minority favoring independence relies on reason rather than passion. Congress can reciprocate by specifying clearly and fairly what Puerto Ricans can expect, whichever way they vote.

[From the Washington Post, Apr. 24, 1990]

PUERTO RICAN STATEHOOD

A game is being played in a mostly indifferent Congress with the people and the future of Puerto Rico. The issue is the recurrent one in island politics of statehood or independence versus the present mixed status of commonwealth.

The last election on the island in 1988 was won by the commonwealth party, but it was close. In hopes of taking the distracting status issue away from the statehood advocates nipping at their heels, the commonwealthers decided to ask Congress to authorize a binding referendum. Puerto Ricans would choose among the three broad relationships with the United States, and Congress would agree in advance to give effect to the result.

The other Puerto Rican parties also supported the idea, as did the administration, on record as favoring statehood. Then came the problem, which persists, of defining the alternatives that would be voted on. The administration wanted to leave them vague. The Senate Energy and Natural Resources Committee rightly resisted, on grounds that the voters should know what they were voting for. But the committee then produced a seriously misshapen bill, tilted sharply in favor of statehood. The legislation front-loaded the statehood option by providing that benefits would go up right away and taxes only later. Opinion polls on the island picked up an instant pro-statehood shift.

Now the Congressional Budget Office has done a study of the likely economic effects of statehood as outlined in the committee bill. From what might be called a welfare standpoint the island would gain (and the Treasury lose). Benefits would rise not just earlier than taxes, but as much as $2 billion to $3 billion a year more. But the Puerto Rican economy is dependent on a special provision in the U.S. tax code exempting from tax part of the income of U.S. companies that invest there. As a condition of statehood the exemption would be phased out. CBO says that would mean loss of jobs and calculates that within 10 years this loss on the job side would be greater than the gain in benefits. Puerto Rico would be both more dependent and worse off.

The bill has now gone to the Finance Committee, whose chairman ordered the CBO study. Finance, which has jurisdiction over taxes and many benefit programs, is scheduled to hold a hearing this week. The

Agriculture Committee, which has jurisdiction over the food stamp program, an island mainstay, must also be heard from before the legislation can go to the floor. Then the whole process would have to be repeated in the House. There isn't time, and therefore there isn't likely to be a bill. The way the idea has been abused and mangled thus far, that would be a merciful result. But in the meantime the people of Puerto Rico have been badly jerked around.

[From the CONGRESSIONAL RECORD, Apr. 27, 1990]

THE DECOLONIZATION OF PUERTO RICO

Mr. MOYNIHAN. Mr. President, the decolonization enterprise initiated by President Woodrow Wilson in his Fourteen Points speech is still very much with us. What was once known as the Mandatory Territory of South-West Africa has just become the independent nation of Namibia. The headlines are dominated by what is, in fact, a decolonization struggle between the Soviet Union and its colony, Lithuania. The Senate has just voted to appropriate funds for earthquake victims in another Soviet colony: Armenia. The decolonization of the Soviet empire is an issue which will occupy our attention for, perhaps, decades to come.

I rise today, however, to remind my colleagues that the United States has not been immune to the attractions of empire building. We once lived in the era of Admiral Mahan and the age of coal-fired ships of the line and the strategic need for a global string of coaling stations. American strategists wrote of the vital American need for stepping stones across the Pacific: Hawaii, Guam, the Philippines. The Hearst press whipped up a war hysteria against Spain over its treatment of Cuba. Then on February 15, 1898 the battleship *Maine* went to the bottom of Havana harbor with the loss of 266 American lives. The warhawks claimed that Spain was responsible and demanded revenge and America went to war with the cry "Remember the *Maine*!"

Mr. President, we now know that it was not a Spanish mine which sank the *Maine*. In a masterful investigation headed by Adm. Hyman Rickover the U.S. Navy concluded in 1976 that "In all probability, the *Maine* was destroyed by an accident which occurred inside the ship." But no matter.

We went to war with Spain ostensibly over its treatment of our neighbors in Cuba and the sinking of the *Maine* in Cuba, but it was in the Philippines that Admiral Dewey first struck, sinking the Spanish fleet handily and gaining for the United States an empire with an afternoon's work. We, therefore, invaded Cuba, defeated the Spanish forces and acquired, in the process, the island of Puerto Rico. At the close of the war and as a result of the Treaty of Paris, America became a transoceanic empire. America's imperial phase had all the trappings of the colonialist, paternalistic mentality. Many Americans snicker over the Frence mission civilitrice, but they forget William Howard Taft's commitment to look after "our little brown brothers" in the Philippines.

Most of this empire has now been shed, but we are still grappling with the problem of the island of Puerto Rico. For 2 years Puerto Rico was governed by the military and from 1900 to 1952 the island was governed, frankly, as a possession of the United States. It was "non-self-governing" in the language of the Charter of the United Nations.

Is Puerto Rico a colony today? Most obviously, not. In July 1952, Puerto Rico became a full self-governing Commonwealth. Its constitution was approved by nearly 82 percent of those voting. Repeatedly, its citizens have had the opportunity to express their opinion through free and open elections. In 1967 only 0.6 percent of its voters opted for independence.

And yet, Mr. President, it would be folly to ignore the island's colonial legacy. It was a colony. This fact requires a special sensitivity on the part of the United States, a sensitivity which I am not at all sure we are today demonstrating. If we do not pay attention to Puerto Rico's colonial legacy, the world does. Resolutions calling for investigations of Puerto Rico's status became standard fare in the U.N. Decolonization Committee during the early 1970's. Only the most intensive lobbying effort in 1975 prevented a similar resolution from being adopted, an event which the New York times hailed as "a victory for common sense." I am happy to report that since that time the United States has successfully resisted resolutions condemning the U.S. role in Puerto Rico.

Mr. President, will this situation continue? We cannot be sure. It is a matter of the utmost delicacy. We are in the process of considering arrangements for a plebiscite there and I fear that too little attention is being paid here to this important process. I ask unanimous consent that a statement which I made yesterday in the Committee on Finance and an article from the San Juan Star concerning a congressional visit to the island in June 1989.

I hope that my colleagues will pay close attention to this situation. Mr. President, I urge my colleagues to work diligently to ease the United States through this final stage of its own "decolonization" process.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR DANIEL PATRICK MOYHIHAN

I wish to state my growing sense that by the close of this session of Congress, and accordingly, of the 101st Congress itself, we will not have sent to the President a bill providing for a plebiscite on the status of Puerto Rico.

This would not be my wish. To the contrary. What I am about to say is sensitive. I have a limited, but I dare to hope, sufficient sense of just how sensitive. I mean no offense to anyone and devoutly hope that in the end I shall not have given any offense.

We recall with what great expectations this matter came before us at the outset of the first session of this Congress. On January 17 the Majority Leader received a letter from the heads of the three principle political parties of Puerto Rico (identical letters having been addressed to the Speaker of the House and to the President) asking for a "resolution of the status issue" through a vote of the people of the Commonwealth. The text is as follows:

"In the past election held on November 8, 1988, all three political parties, which represent the three alternatives for the ultimate political status of the People of Puerto Rico, included the need for the resolution of the status issue in the platforms they presented to the electorate.

"In accordance with the platform of the Popular Democratic Party, the Governor of Puerto Rico announced in his Inauguration the intention of the Government of Puerto Rico to pursue the resolution of the status question with the Govenment of the United States of America and convened a meeting of the leadership of the three political parties that represent the three formulas.

"As a result of this meeting we, the Presidents—of the Popular Democratic Party, representing Commonwealth, the New Progressive Party, representing Statehood, and the Independence Party, representing Independence—have agreed to express to the President and to the Congress of the United States of America, that the People of Puerto Rico wish to be consulted as to their preference with regards to their ultimate political status and the consultation should have the guarantee that the will of the People once expressed shall be implemented through an act of Congress which would establish the appropriate mechanisms and procedures to that effect.

"Towards the formulation of such an act of Congress and related policies, we request to meet with you at your earliest convenience.

"Conscious that since Puerto Rico came under the sovereignty of the United States of America through the Treaty of Paris in 1898, the People of Puerto Rico have not been formally consulted by the United States of America as to their choice of their ultimate political status, and in the understanding that we are taking a momentous decision in Puerto Rican history and confident of the commitment of the United States of America and of the People of Puerto Rico to the principles of self-determination and government by the consent of the governed, we remain,

"Cordially yours,

"Baltasar Corrada del Rio, President, New Progressive Party; Rafael Hernandez Colon, President, Popular Democratic Party; Ruben Berrios Martinez, President, Puerto Rican Independence Party."

Some weeks thereafter, in an address to a Joint Session of the Congress on February 9, 1989, President Bush endorsed this proposal. He said:

"There's another issue that I've decided to mention here tonight. I've long believed that the people of Puerto Rico should have the right to determine their own political future. Personally, I strongly favor statehood. But I urge the Congress to take the necessary steps to allow the people to decide in a referendum."

The response in Puerto Rico was one of great satisfaction and even greater interest. In June a year ago I accepted the kind invitation of the Committee on Energy and Natural Resources to take part in a hearing on the issue held in San Juan. I think it likely that a third of the population of the island watched our televised hearings all day long, and two-thirds watched the reruns during the evening. That same evening, I could not walk anywhere in town without being greeted by name, usually with some apt comment on the (few) questions which I had asked that day. The Energy Committee went forward with deliberate dispatch, and on August 2nd reported out the bill which is now before the Finance Committee.

That was three-quarters of a year ago. Nothing much has happened. It begins to look as if nothing might. On April 10, the chairman of the House Insular and International Affairs Committee, Ron de Lugo, stated:

"The House is still waiting for legislation from the Senate that was promised last year. At some time soon, we will cross a point when it will become impossible to pass a bill in the House."

What happened?

Here I must declare, indeed assert, the limits of my knowledge, still more my understanding. I am no stranger to Puerto Rico. I first was there in the Navy near to half a century ago. (And, come to think, before that had spent more time than my mother knew in a pool hall called Los Muchachos in the original Manhattan barrio just north of 96th Street where the tracks come above ground on Park Avenue.) In the Kennedy years I came to know and to admire Luis Munoz Marin, and, indeed, worked with many of his lieutenants and associates. I did not fail to note that for them the English term "Commonwealth" was rendered "Estado Libre Asociado" with the further provision in one of the party conferences that the latter never be translated back into English.

At the United Nations I came upon the fierce accusations from Cuba and other elements of the so-called nonaligned nations that Puerto Rico was held in colonial captivity. On behalf of President Ford I answered back with, I hope, equal fierceness that it was the fixed policy of the United States that the people of Puerto Rico were free to choose any relationship with the United States that they wished: commonwealth, statehood, independence.

Shortly thereafter I came to the Senate and am now in my fourteenth year on the Finance Committee. During this time I have recurrently found myself dealing with matters affecting Puerto Rico in the most direct and important ways. I think it fair to say that my colleagues have assumed my interest in these matters reflects the large number of Puerto Rican residents in New York State, which it surely does. But it also reflects my experience at the United Nations and generally with the process of colonization and decolonization. For make no mistake: in the first instance Puerto Rico was the spoil of a colonial war. It became an American colony. It has since evolved into much more than that, yet no one should doubt the explosive nature of the original relationship.

Moreover, I began to sense how precarious the situation of Puerto Rico was in the Congress. Puerto Rico had friends; it had no fully empowered member. A nonvoting resident commissioner in the House; no one at all in the Senate. Thus, in November 1984 the Reagan administration announced a wholesale revision of the Internal Revenue Code. The first version, known as Treasury I, simply abolished Section 936 of the Code, the economic cornerstone of the whole development policy conceived by Munoz and those of his time. We managed to block this; but only just. Treasury I was the work of the permanent government; it would be back.

This experience only confirmed my view that statehood would come sooner than anyone seemed to think. I had presented this view in a speech on the Senate floor the previous August.

"Having known Luis Munoz Marin, and being a friend and admirer of so many Puerto Rican leaders who carry on in his tradition, I must say that I have always assumed that this tradition views Commonwealth status as interim, as transitional.

"Temporary economic advantages can help prepare a society for statehood but can never indefinitely outweigh the civil advantage of full citizenship, which only statehood can confirm.

"I look to a Puerto Rico that appears at our portals asserting that the obligation of citizenship can never be fully met by a citizenship that is incomplete. In a word, I look at the day when a Puerto Rican sense of equality will animate a sense of the shared responsibility of equals.

"What I dread is a Puerto Rico coming to us in frustration and resentment at what it considers unequal treatment, looking to statehood as a remedy for grievances rather than a call to duty. Do these terms seem archaic, idealized? Perhaps. Yet I believe they would be recognized by the founders of this Republic, who have nothing to apologize for as regards to the realism of their ideals."

I might add that on that occasion I was defending the right of Puerto Rico to receive back excise taxes paid on liquor produced there. Nothing new in this. The second bill enacted by the first Congress imposed a tariff on Caribbean rum. I concluded:

"I urge the Senate to give consideration to this measure, and especially hope that it will come to the attention of our distinguished majority and minority leaders, who will one day, they or their successors, stand on the floor of this Senate and deal with the application by the Commonwealth of Puerto Rico for entry into the American union, asking that a pledge repeatedly made to the people of Pureto Rico be honored."

In the course of the years my views have not changed. They are known in Puerto Rico, and ought to be made known in the present debate. But I would make an important point in this regard. I have no quarrel with commonwealth status. To the contrary I have come to sense that to many of Munoz's time, and those who follow him, commonwealth was not a way station, an interim period prior to statehood. It was, to the contrary, the closest economically viable option to independence. Or at least, it was something this side of absorption into the union of the mainland.

I respect that. Just as I respect those for whom independence is the only acceptable outcome. My concern is that the process of making a viable choice should continue.

Leaving aside independence, where neither consideration arises, those who would choose between statehood and commonwealth status face a basic dilemma.

It is this.

Statehood automatically brings a huge increase in social welfare benefits. By an order of magnitude! Consider Supplementary Security Income. The current benefit in the commonwealth is about $32 a month for the blind, disabled, and aged who have insufficient Social Security or other benefits. The day statehood becomes effective, this benefit rises to $386, a tenfold increase, thereafter automatically indexed to inflation. Similar results occur across what is now a very wide range of programs. In the 1950s and later these benefits in the United States either did not exist or varied greatly from state to state. In the past 30 years, however, we have more and more tended to national benefit standards.

The impact of statehood on perhaps half the population of the island would be instantaneous and profound. And yet, at the same time, statehood means the loss of Section 936 benefits to industry, such that the economy loses a stimulus which has been absolutely central to economic growth in the past two generations. (Section 936, incidentally, was a program begun in the 1920s to encourage investment in the Philippines.)

By contrast, commonweatlh status retains—for a period at least—the economic stimulus of Section 936. But it probably means a continued low level of social welfare benefits. And the absence of a considerable range of Federal taxes. Given those perplexities, I would offer a number of suggestions.

First of all, the executive branch and the Congress have got to undertake as much analysis as the remaining time allows. With no intent to criticize, I must state that some of the departments of the executive branch have been fair to mute on this subject. The Treasury, at least, has come before us and "endorsed" S. 712 as reported out by the Energy Committee, and offered a number of suggestions and reservations. Other departments with programs affected have simply come up here with no views and less data.

Second, the parties in Puerto Rico should try to avoid taking positions that cause anxieties here in the Congress. Those supporting statehood should be most careful about advertising its welfare attractions. Members of Congress altogether friendly to the people of Puerto Rico—they are, after all, our fellow citizens—could very well not wish them to fall into the "welfare trap", as it is called, and not without reason. Take the Food Stamp program, as an example. This began in early 1975. By 1982 fully 60 percent of the Puerto Rican population was receiving food stamps. This cost the Federal government some $.9 billion a year. But what did it cost the people of Puerto Rico? I have to report that my impression from travels in the interior that it virtually destroyed Puerto Rican agriculture. As is well known, the Congress thereupon cut back on the program.

Similarly, those supporting continued commonwealth status should take great care that the present seeming preference for statehood, as reflected in opinion polls, not persuade them that the best course is to put off a plebiscite. It is now common to read of this in the Puerto Rican press. I would presume to suggest, for example, that there is no reason the House of Representatives should be waiting on the Senate for a bill.

Let them write their own bill, and we will go to conference with them. This is the normal way in which we do business. One could wish that voices were heard in San Juan asking why the House seems to be running out the clock. For there will be no winners in such an eventuality, or at all events, that is my view. As for "enhanced" commonwealth status, that is surely a matter the Finance Committee will want to consider. I will make proposals. I hope others will do so as well. But time presses.

In the end, the great issues involved here are civic, not economic. Do the people of Puerto Rico wish to become Americans? For that is what statehood ineluctably implies. That is what statehood brings. Or do they wish to retain a separate identity? Of, but not in, the American union. This could be a perfectly intelligent choice, and of course, the option of eventual statehood or independence remains.

But to say again, the Congress must act. It is almost a century now since William Graham Sumner composed his bitter epitaph on the Spanish American War entitled, "The Conquest of the United States by Spain." His thesis, of course, was that by entering the colonial lists, we would become like other imperial nations, and suffer all their decadence and decline. Well, that hasn't happened. But we won't know until it is made perfectly clear that our offer to Puerto Rico of choice is in fact a fair-minded and efficacious offer. Which is to

say, an offer which will shortly issue in an actual choice being made.

I ask that two important editorials, one from the New York Times, the other from the Washington Post, be appended to this statement.

[From the New York Times, Apr. 1, 1990]

THE 51ST AND 52D STATES

Puerto Rico is not America's Lithuania, but it is unhappy with its status as a highly dependent commonwealth. An overwhelming majority of 3.3 million islanders are agreed that they want change. But as Congress is learning, agreement stops there. What adds to the perplexity is a parallel but unrelated campaign to grant statehood to the District of Columbia.

A Senate bill supported by the Bush Administration would offer Puerto Ricans a chance to choose, by a binding vote next year, statehood, improved commonwealth status or independence. The problem is to assure a fair choice. If one or another side has plausible reasons for charging bad faith, the referendum could prolong the argument it is meant to end.

Polls for the first time show a narrow majority of Puerto Ricans now favors statehood. As sentiment has shifted, so has the tone of a longstanding debate. Statehood supporters now join with advocates of independence in decrying colonialism. Those clamoring for enhanced commonwealth status contend that the Senate bill is frontloaded unfairly in favor of statehood.

The argument springs from a complicated history. The U.S. acquired Puerto Rico from Spain almost incidentally in 1900. In 1917, Puerto Ricans became U.S. citizens, but not until 1947 did they elect a Governor. Five years later, Congress approved an ingenious commonwealth arrangement, giving a Spanish-speaking island home rule and exemption from Federal taxes but no vote in Federal elections.

Economically, the plan made sense. Using an additional tax break known as Section 936 of the revenue code, Puerto Rico has provided generous incentives for mainland investors. But politically, the island has been virtually a ward of Congress, without the clout it would wield with two senators and six or seven representatives, plus a Presidential vote.

This sense of being second-class citizens has given potent impetus to the statehood campaign. As statehood sentiment has waxed, so has uncertainty about Puerto Rico's tax exemptions, causing investors to hold back. To end the debate once and for all, Gov. Hafael Hernandez Colon, a commonwealth advocate, proposed a binding referendum.

But he now faults the Senate will as "terribly, dangerously unbalanced." It would phase in Federal taxes and phase out Section 936 over four years. Meanwhile, says the Congressional Budget Office, statehood could cost other U.S. taxpayers as much as $9.4 billion in additional Federal social spending; more than half the island's population remains below the national poverty line.

A very different view is taken by former Gov. Carlos Romero Barceló, a statehood proponent. He persuasively cites similar preferential treatment granted other incoming states. Congress can redress the balance by rewording the commonwealth choice to give its proponents more of what they seek: an increased international role, an open port for air carriers, a voice in Federal appointments and jurisdiction over natural resources.

What is unarguable and fundamental is Puerto Rico's right to self-determination. The choice is primarily between two forms of association with the United States. Even the minority favoring independence relies on reason rather than passion. Congress can reciprocate by specifying clearly and fairly what Puerto Ricans can expect, whichever way they vote.

[From the Washington Post, Apr. 24, 1990]

PUERTO RICAN STATEHOOD

A game is being played in a mostly indifferent Congress with the people and the future of Puerto Rico. The issue is the recurrent one in island politics of statehood or independence versus the present mixed status of commonwealth.

The last election on the island in 1988 was won by the commonwealth party, but it was close. In hopes of taking the distracting status issue away from the statehood advocates nipping at their heels, the commonwealthers decided to ask Congress to authorize a binding referendum. Puerto Ricans would choose among the three broad relationships with the United States, and Congress would agree in advance to give effect to the result.

The other Puerto Rican parties also supported the idea, as did the administration, on record as favoring statehood. Then came the problem, which persists, of defining the alternatives that would be voted on. The administration wanted to leave them vague. The Senate Energy and Natural Resources Committee rightly resisted, on grounds that the voters should know what they were voting for. But the committee then produced a seriously misshapen bill, tilted sharply in favor of statehood. The legislation front-loaded the statehood option by providing that benefits would go up right away and taxes only later. Opinion polls on the island picked up an instant pro-statehood shift.

Now the Congressional Budget Office has done a study of the likely economic effects of statehood as outlined in the committee bill. From what might be called a welfare standpoint the island would gain (and the Treasury lose). Benefits would rise not just earlier than taxes, but as much as $2 billion to $3 billion a year more. But the Puerto Rican economy is dependent on a special provision in the U.S. tax code exempting from tax part of the income of U.S. companies that invest there. As a condition of statehood the exemption would be phased out. CBO says that would mean loss of jobs and calculates that within 10 years this loss on the job side would be greater than the gain in benefits. Puerto Rico would be both more dependent and worse off.

The bill has now gone to the Finance Committee, whose chairman ordered the CBO study. Finance, which has jurisdiction over taxes and many benefit programs, is scheduled to hold a hearing this week. The Agriculture Committee, which has jurisdiction over the food stamp program, an island mainstay, must also be heard from before the legislation can go to the floor. Then the whole process would have to be repeated in the House. There isn't time, and therefore there isn't likely to be a bill. The way the idea has been abused and mangled thus far, that would be a merciful result. But in the meantime the people of Puerto Rico have been badly jerked around.

[From the San Juan Star, June 17, 1989]

SENATORS COOL TO PDP "SPECIAL TREATMENT" PLAN

(By Carlos Galarza)

The Popular Democratic Party's proposal for special federal policy treatment continued to get the cold shoulder from U.S. senators during status hearings in Old San Juan Friday.

When PDP Vice President Miguel Hernández Agosto defended the party's key proposal of getting special legislative treatment from Congress, the idea got the same rebuff as when Gov. Hernández Colón made the proposal in Washington two weeks ago.

Sen. J. Bennett Johnston, D-La., chairman of the Senate Energy and Natural Resources Committee, and ranking Republican Sen. James McClure of Idaho, rejected giving Puerto Rico the power to challenge the applicability of federal laws to Puerto Rico.

Hernández Agosto contended such a policy would cut litigation because Puerto Rico then could not challenge any federal law which Congress deemed to have "overriding national interest."

The senators, who were joined by Sen. Daniel P. Moynihan, a New York Democrat and member of the Finance Committee, did not appear to buy the argument.

Johnston offered Hernández Agosto a counter-proposal, suggesting that unless Congress mentioned Puerto Rico in federal legislation, it would not apply to the island.

"It's a good idea, but we like our idea better," Hernández Agosto said later during an interview. "I see a very positive attitude on their part of trying to understand our proposal and it all boils down to negotiations on this issue."

Hernández Agosto was one of the main speakers during the daylong hearings at the Government Reception Center that saw a parade of island political leaders address the senators about status and a proposed plebiscite.

PDP Resident Commissioner Jaime Fuster, who preceded Hernández Agosto on the stand, also made a defense of the federal policy proposal. "We are sensitive to the issue of federal policy as applied to Puerto Rico," he said.

Johnston and the other senators had a rough moment when they confronted the radical left of the island's independence movement.

Puerto Rican Socialist Party Secretary-General Carlos Gallisá pointed his finger at them and said, "You represent the colonial power and cannot be judge and player in this process."

Gallisa was followed to the witness stand by former PSP Secretary-General Juan Mari Bras, who predicted that the senators would see "thousands of independentistas" turn out for a demonstration today.

"You'll see that the people will not assimilate," Mari Bras told the senators.

The PIP-sponsored demonstration will begin with a 10 a.m. rally in front of the El Escambrón sports complex and conclude with a march to the site of the hearings.

Former Resident Commissioner Jaime Benitez made a pitch in favor of enhanced Commonwealth.

"If the PDP had not made the mistake of losing the elections in 1976, we would have had enhanced Commonwealth by now because that's what the people of Puerto Rico want," he said.

The other key PDP proponent to testify during the morning session was House

Speaker José "Rony" Jarabo, who greeted the senators by saying, "Welcome to the marvelous world of Puerto Rico status politics, where everything is black and white, good and evil . . ."

Former NPP President Baltasar Córrada del Río was one of four members of the pro-statehood faction who testified in the morning.

He attacked Commonwealth status, corporate tax exemption under Section 936 of the Internal Revenue Code. Corrada said that without statehood, Puerto Ricans would have "second-class citizenship."

Sen. Oreste Ramos, NPP-San Juan, said Puerto Rico is defined by U.S. law as an unincorporated territory and contended that Commonwealth status does not exist and thus cannot be enhanced.

Sen. Rolando Silva, NPP-San Juan, adding a personal touch to his testimony, said he is a Vietnam War veteran who fought for the United States and now wants the right to equal representation.

Sen. Nicolas Nogueras, NPP-at-large, proposed to the senators that Commonwealth status go alone in a referendum. He said that if it fails to garner 51 percent of the votes, then statehood and independence should go alone in a plebiscite run-off.

During the afternoon session development administrator Antonio J. Colorado was submitted to tough questioning on Section 936. He and representatives of the island's business sector said that without 936 benefits Puerto Rico's economy would collapse.

However, their testimony was disputed by prostatehood tax expert Luis Costas Elena who said 936 could be eliminated immediately without affecting the island's economy.

He quoted a U.S. Treasury report that said 936 tax breaks in Puerto Rico cost the Treasury $1.641 billion in 1983. However, Colorado had told the senators that 936 does not cost the United States anything.

Moynihan, who is a member of the Senate Finance Committee, said 936 is not safe from attempts by Congress to eliminate it as has been attempted in the past.

Today's hearings are scheduled from 9 a.m. to 12 p.m. After a day off Sunday, the hearings will conclude Monday with a session scheduled from 8:30 a.m. to 11:30 a.m.

SENATOR CALMS FEARS STIRRED BY MEMORANDUM

(By Manny Suarez)

Sen. J. Bennett Johnston, D-La., said categorically Friday that Puerto Ricans' U.S. citizenship could not be revoked by Congress under either commonwealth or statehood.

"Citizenship should not, will not and cannot be changed under statehood or commonwealth. Citizenship should not, will not and cannot be modified in any way under statehood or commonwealth. It is guaranteed," said Johnston in his opening statement at the Senate Energy and Natural Resources Committee hearings on status here.

Johnston's statement helped ease a controversy over Puerto Ricans' U.S. citizenship sparked at the start of June by a Library of Congress memo.

In the news conference before the hearings started at the Government Reception Center in Old San Juan, Johnston also said:

He did not have an opinion about the size of a majority that would be needed to permit Puerto Rico to become a state.

He did not consider that Puerto Rico was a colony under commonwealth.

That there was growing support in Congress for a "self-executing" bill that would enact whatever status preference the people select without more congressional legislation.

That the island's three parties would share equally in a $1.5 million federal appropriation to help them carry out their plebiscite campaigns.

The committee will not be able to extend the hearings in Puerto Rico as Gov. Hernández Colón had requested.

Johnston addressed the citizenship issue at a morning news conference, helping defuse the uproar sparked by a Library of Congress staff member. A memo from the staffer released during June 1-2 status hearings said Congress might be able to revoke Puerto Ricans' U.S. citizenship if the island became independent.

Johnston's comments that the memo was only concerned with the effects of Puerto Rican independence were praised by Hernández Colón, president of the proautonomy Popular Democrats.

Johnston's reassurance, however, had little impact on former Gov. Carlos Romero Barceló, leader of the pro-statehood New Progressive Party.

"The only way to guarantee citizenship is under statehood," he said. "Under commonwealth there will always be doubts, uncertainty and fear."

Also taking issue with Johnston were Dr. Myriam Ramírez de Ferrer, president of the pro-statehood Citizens in Civic Action, and by former Secretary of Justice Blas Herrero.

Ramírez de Ferrer said, "A little of what Johnston had to say was to resolve the hysteria that arose over the issue. But although we may not have it revoked under the present version of commonwealth, we do not know what would happen if the island became an 'associated republic.' "

"Associated republic" is used by the NPP to describe PDP plans for Puerto Rico's relations with the United States. NPP members contend it is a plan for independence.

Herrero said he had been studying the matter and found that citizenship legislation was contradictory.

"The matter is not as clear as Johnston presents it," he said. "I'll have my study done in about two weeks."

Johnston was also asked about another memo to the committee that said the island would have to vote overwhelmingly for statehood before Congress would grant it.

The memo pointed to such offshore states as Alaska and Hawaii that had several pro-statehood referendums in which the people voted 90 percent in favor before they were accepted into the union as examples of the "super majority" required.

"The question of the majority needed is not one to be decided right at this moment," Johnston said.

When asked for a reaction, Romero Barceló said the "super majority" issue was raised by Hernández Colón and the PDP.

"If you must have a super majority it should be for commonwealth which deprives you of representatives and senators and sovereignty," he said. "To be able to participate as a state all you would need is a majority."

Aida Montilla, who attended the news conference as an analyst with WPAB radio on Ponce, asked if the committee truly intended to resolve the island's colonial" status.

"That's a loaded question." Johnston responded. "To answer yes or no is to say I believe that Puerto Rico's status is colonial and I do not believe that."

Montilla, a retired University of Puerto Rico professor, is an outspoken advocate of independence and is scheduled to address the committee Monday.

Johnston said there were three bills submitted to deal with the plebiscite, one of which was "self-executing." That means Congress would spell out the terms under which statehood or independence would be granted depending on which alternative won or what enhancement would be given if commonwealth won.

[From the Washington Post, June 2, 1989]

SENATE COMMITTEE OPENS HEARINGS ON PUERTO RICO

(By Judith Havemann)

With impassioned testimony televised live to Puerto Rico, a Senate committee opened hearings yesterday aimed at the permanent settlement of the Puerto Rican question: should the island seek to become the 51st state, an independent nation, or an "enhanced commonwealth" of the United States?

The Senate Committee on Energy and Natural Resources, which has jurisdiction over territories, began consideration of legislation calling for Puerto Ricans to decide their fate in a referendum in 1991.

The issue is nearly 100 years old, and sentiments have run so strong in Puerto Rico that extremists attempted to assassinate President Harry S. Truman in 1950 and shot up the House of Representatives in 1954 in the cause of independence. The question of status has dominated politics on the island since the Spanish American War.

But with the strong support of President Bush, committee chairman J. Bennett Johnston (D-La.) and the three major Puerto Rican political parties, a referendum seems more likely now than it has in decades.

Details of the three alternatives have been submitted to the Senate for consideration in hearings in the energy, finance, judiciary, commerce and armed services committees.

"I can assure you that Congress will make substantial changes to all three definitions, and I fully expect that the advantages of each option will be reduced from what the parties have proposed," Johnston said. "Congress will make budget neutrality an objective." The island receives about $6 billion annually in federal funds.

Former governor Carlos Romero Barcelo argued for statehood. "We are U.S. citizens with a difference: we are second class citizens who have no voice in our nation's future, who have no vote in Washington."

When Americans attacked Libya, "a Puerto Rican Air Force Commander was in the eye of the raid, and [Capt. Fernando L.] Ribas-Dominicci gave his life for his country," Romero Barcelo testified. "His mother did not vote for the president who gave the order to take action against Libya. She has no right to vote—she lives in Utuado, Puerto Rico."

Ruben Berrios Martinez, the Oxford-educated president of the Puerto Rican Independence Party, countered with testimony echoing claims that usually garner 4 percent to 7 percent of the vote in island elections.

The U.S.-Puerto Rican relationship "by whatever name, and whether by imposition or consent, contradicts the principle of representative democracy, is inconsistent with the values and principles of the American people and constitutes a growing source of embarrassment to the United States in the international community," he said.

Gov. Rafael Hernandez Colon, speaking for what he called the "real world" solution

of an "enhanced commonwealth," called independence "impracticable," saying it "would wreck the Puerto Rican economy and it runs counter to the unswerving desire of the people of Puerto Rico to maintain their American citizenship."

"Statehood was and is unworkable because it would also disrupt the Puerto Rican economy and does not take into account another given: the fact that Puerto Ricans form a people, a distinct society with its own culture, ethos and language," Hernandez Colon said.

He was the only panel member to testify in detail, with the others scheduled to answer questions today.

Hernández Colón explored several major problems: the official language, whether Puerto Ricans should continue to be exempt from federal taxes, and whether the commonwealth can be legally enhanced to allow Puerto Rico the degree of autonomy it seeks.

The pro-commonwealth forces want tariffs on selected foreign imports; bilateral air transportation agreements with foreign counties; a non-voting commissioner in the Senate; recovery of excess federal lands; block grant funding from federal agencies; Spanish-language testimony in U.S. courts if requested; and the power to enter international organizations and agreements.

The existing commonwealth was established in 1952. In a 1967 plebiscite on Puerto Rico's status, 60 percent of the voters chose the commonwealth, 39 percent backed statehood and the independence party received less than 1 percent of the vote after boycotting the process.

[From the San Juan Star, June 2, 1989]

RHC STATUS PROPOSAL RAKED

(By Harry Turner)

WASHINGTON.—Gov. Hernández Colón and his vision of an enhanced Commonwealth ran into a buzzsaw of objections Thursday from Sen. J. Bennett Johnston, D-La., who found fault with nearly all the pro-autonomy proposals during a torturous afternoon for the governor.

One by one, Johnston picked apart the commonwealth provisions, suggested some be taken out of the plebiscite bill, said others should be sharply modified and contended still others were unworkable.

Johnston's unrelenting criticisms appeared to shake Hernández Colón, who looked worried and huddled with his advisers during breaks in the first day's plebiscite hearings by the Senate Energy and Natural Resources Committee.

To those with long memories, the attack was remindful of other occasions over the past 30 years when Popular Democratic Party leaders came enthusiastically to Congress with autonomy proposals, only to have their hopes shattered.

Johnston's views are all the more important because he is committee chairman and the driving force behind the plebiscite. It was to him that Hernández Colón first appealed late last year to get the plebiscite process moving.

Hernández Colón was the first witness to undergo extensive questioning by the committee. Puerto Rican Independence Party President Rubén Berrios and New Progressive Party President Carlos Romero will appear today.

The hearings are the start of the legislative process that is supposed to end in 1991 when Puerto Rico residents vote in a plebiscite between enhanced Commonwealth, statehood and independence and settle Puerto Rico's status turmoil for a long time, if not forever.

Johnston, although mild-mannered, was especially harsh with the centerpiece of the Popular Democratic Party's proposals—the creation of a federal policy that, in effect, would allow the Puerto Rican government to reject most federal laws and regulations.

This proposed policy mandates that almost all federal laws and regulations must take into consideration Puerto Rico's special economic, cultural, ecological and other conditions.

If a law doesn't, then Puerto Rico could either go to court to block its applicability or ask the president to declare it nonapplicable if Congress doesn't act.

"I think this (allowing the president to declare a law nonapplicable) would violate the separation of powers," Johnston told the governor. "This is probably not a good way to do it * * *. It may not be a good policy and it may not be workable."

The Louisiana Democrat also complained at several points that the proposed federal policy would result in "endless litigation."

He seemed more sympathetic, however, to giving Puerto Rico some kind of control over federal regulations and their administration on the island.

In what appeared to be a warning to all three statuses, Johnston said he believed that Congress, given the budget deficit situation, wouldn't pass a plebiscite bill that led to a further drain on the U.S. Treasury.

"It is certain that if a [status] definition includes an increased benefit, then Congress will be looking for a way to offset the cost of that benefit * * *. Congress will make budget 'neutrality' an objective during its consideration of these definitions."

Johnston backed up his words by telling Hernández Colón that the Commonwealth proposals of forcing Congress to treat Puerto Rico equally in all federal programs—worth between $850 million and $1 billion a year—were not feasible.

Johnston suggested that the mandatory provision be replaced with watered down language in which Congress would adopt equal treatment as a "goal" to be sought sometime in the future.

Although he didn't spell out his objections, Johnston also seemed disturbed by the PDP leadership's use of "autonomy" when describing the enhanced Commonwealth it seeks.

In the face of the committee chairman's steady objections, Hernández Colón appeared to backtrack on most issues during what must have been a long afternoon for him.

However, Johnston indicated in an opening statement that the other two statuses will also take their share of criticism from him and the rest of the committee.

"I can assure you that Congress will make substantial changes to all three definitions, and I fully expect that the advantages of each option will be reduced from what the parties have proposed," he said.

The Thursday hearings began in the morning with brief statements from Hernández Colón, Romaero and Berrios on their status goals. The three then sat together to take preliminary questions from committee members as a crowded hearing room audience, mostly from Puerto Rico, watched.

The political spectrum of those present ranged from San Juan attorney Jorge Farinacci, accused as a Machetero terrorist in a Hartford, Conn., armed robbery, to former Gov. Luis Ferré, 85, who recounted for the committee how he had first testified in Congress on behalf of statehood in 1936.

The morning session stayed pretty much on track until Romero and Hernández Colón got off on a tangent of why so many Puerto Ricans can't speak English.

A sizable number of committee members were on hand for the morning session, but in the afternoon usually only Johnston and Sen. James McClure, R-Ida., were present.

Berrios, in his testimony, made a strong plea to the committee to establish safeguards for the plebiscite campaigning so that neither the federal nor the Commonwealth government could skew the process.

Asked later whether he thought the Hernández Colón administration would use government resources to win the plebiscite, he snorted and said, "Of course."

Here are other major Commonwealth plebiscite proposals and Johnston's reaction to them:

The transfer to the Puerto Rican government of the power to negotiate with foreign countries over air routes. "It seems to me that that would be a burden for Puerto Rico," Johnston said, suggesting that Puerto Rico have some other kind of "input" on air routes.

The empowerment of Puerto Rico to license tuna boats, as part of its proposed jurisdiction 200 miles out to sea.

"We'd probably be better off not to accept that [tuna licensing]," the senator remarked.

[From the CONGRESSIONAL RECORD, May 24, 1990]

THE DECOLONIZATION OF PUERTO RICO

Mr. MOYNIHAN. Mr. President, yesterday's Washington Post carried an important article by Mr. Ruben Berrios-Martinez, the president of the Puerto Rican Independence Party. It is entitled, "Puerto Rico—Lithuania in Reverse?" It appears to me to raise many of the issues I addressed here on the Senate floor on April 27 in a statement which appears in the RECORD under this title, "The Decolonization of Puerto Rico."

May I first say that Mr. Berrios-Martinez' views deserve a most respectful hearing. Puerto Rico was acquired as a U.S. colony almost a century ago—91 years to be exact—in a classic colonial war. Nothing is more normal in our time than for colonies acquired in the 17th, 18th, or 19th century to demand independence in the 20th century. Indeed, all but tiny remnants have done so in what must now be called the aftermath of the age of decolonization. Puerto Rico is a singular exception.

The doctrine, for it is nothing less, of American exceptionalism leads us to think otherwise. We will note, for example, that since 1917 Puerto Ricans have been citizens of the United States. What is one to say? Algerians were free to be citizens of France. The cause of independence marches to a different drummer. In truth, when the Senate Committee on Energy and Natural Resources held hearings in San Juan a year ago June, by far the most impressive demonstration came on a Saturday morning when some 40,000 independence supporters peacefully marched passed the site of our hearings—I was present as a guest of the committee—chanting, "Yankees go home."

I have related before, and will not dwell on it here, my own involvement with this subject. In the Kennedy years I came to know the advocates of Commonwealth status—Estado Libre Asociado, as the term

is in Spanish. I acquired them, and still held the impression, it can be little more given my very limited knowledge, that Monoz and his followers were at heart nationalists. They did not see Commonwealth as a kind of way station on the road to full statehood. To the contrary, many saw it as an acceptable variation of independence. Later, as U.S. Representative to the United Nations, I had to deal with a Cuban resolution in the United Nations Decolonization Committee dealing with the "inalienable right of the people of Puerto Rico to self-determination and independence." Our view, stated with some force to the members of the Decolonization Committee, was that every President since Harry S. Truman had affirmed that right, and that we needed no advice from a Communist dictator on the subject of our political arrangements. Yet, note that it was thought a considerable "victory for common sense," as the New York Times observed in an editorial, when a motion not to take up the resolution carried by 11 votes to 9. For the word is made up of ex-colonies. Not least of which, of course, is the United States itself.

May I restate my own view that our relationship has, in fact, changed over the course of 91 years. On June 17 last year, the final day of our hearings, the issue of Puerto Rico's status was raised. I offered the comment: "Is Puerto Rico a colony? We can say it was a colony * * * but have things not changed?" This remark was widely reported and, I believe, is legitimate.

Even so, I quite understand the position of the independentistas who hold that there is no alternative save to establish a Puerto Rican nation. Mr. Berrios-Martinez writes:

"[W]hat is wrong with statehood, the traditional solution for dealing with territories peopled with settlers moving west, or with ethnic minorities coalescing around the American way of life?

"Just this: Puerto Rico, a distinct Latin American nationality 60 percent of whose people do not speak English, presents a radically different situation. We Puerto Rican independentistas will never give up our inalienable right to struggle for independence, even under statehood. Minorities and majorities come and go; but nationalities remain. The United States is a unitary, not a multinational, country, and statehood was made for Americans, not for Puerto Ricans or other distinct nationalities."

Then this, with a touch of sarcasm not undeserved:

"A recent study by the Congressional Budget Office has calculated the additional cost to the American taxpayer of Puerto Rico as a state at $25.6 billion in the first nine years. That is why the Puerto Rican statehooders' battle cry is 'Statehood is for the poor'—a far cry from 'Give me liberty or give me death!' Not to be outdone, Commonwealth leaders have petitioned the U.S. Senate for parity with the states in federal funding, but without Puerto Rican's paying federal taxes."

That is why in an opening statement at the Finance Committee hearing on April 26, I pleaded that at the rate we were moving—especially with no action in the House whatever—we were not going to get a bill to the President by the end of this Congress. Without intending we were going to break his promise of a free plebiscite in 1991. I reviewed the assorted economic forecasts and analyses. But concluded:

"In the end, the great issues involved here are civic, not economic. Do the people of Puerto Rico wish to become Americans? For that is what statehood ineluctably implies. That is what statehood brings. Or do they wish to retain a separate identity? Of, but not in, the American union. This could be a perfectly intelligent choice, and of course, the option of eventual statehood or independence remains.

"But to say again, the Congress must act. It is almost a century now since William Graham Sumner composed his better epitaph on the Spanish American War entitled, 'The Conquest of the United States by Spain.' His thesis, of course, was that by entering the colonial lists, we would become like other imperial nations, and suffer all their decadence and decline. Well, that hasn't happened. But we won't know until it is made perfectly clear that our offer to Puerto Rico of choice is in fact a far-mined and efficacious offer. Which is to say, an offer which will shortly issue in an actual choice being made."

Since then, things have got both better and worse. Better in the House where at long last there is some legislative activity. Worse on the island, where a recent visit of White House representatives produced a storm of controversy, having evidently given the appearance that statehood was the cause of the Republican Party in the United States. Whereupon Gov. Hernandez Colon accused "President Bush * * * of wanting self-determination for Puerto Rico the way the Soviet Premier Mikhail Gorbachev wants self-determination for Lithuania" (The San Juan Star, May 17, 1990).

As for the Senate, the Finance Committee will shortly be reporting our section of the plebiscite legislation which deals with taxes, tariffs, and social welfare benefits. In this respect, I believe three general observations are possible.

First, under independence, there will be none of the above. A parting gift, to be sure. A continuing relationship of some kind—Mr. Berrios-Martinez suggests some form of "sovereign free association option, as defined by international law." But no taxes, no tariffs, no Social Security benefits, save those already earned.

Second, under statehood, there will be full taxes, no refunding of tariffs—as is now partially the case—and full Social Security and other benefits. There may be a symmetrical phase-in of taxes and benefits, but at the end of the decade, the situation of Puerto Rico will be undistinguishable from that of Idaho, with just possibly—and why not—a few tax benefits such as Hawaii still enjoys.

It is inevitable that statehood will bring a huge increase in per capita Federal transfers to Puerto Ricans. I have recently received from the Congressional Budget Office an estimate of this increase.

"CBO estimated federal transfers in 1995, as specified in S. 712, for four entitlement programs—Food Stamps, Aid to Families with Dependent Children, Medicaid, and Supplemental Security Income (Aid to the Aged, Blind, and Disabled under commonwealth status). These are the major federal entitlement programs funded by general revenues. CBO estimates that per capita federal spending for these programs under commonwealth status would be about $400. Under statehood, this figure would rise to about $1,250. These figures compare with estimated per capita federal spending of $475 for these programs on the mainland in 1995. (May 15, 1990 Letter to Senator Moynihan from Robert D. Reischauer, Director, Congressional Budget Office.)"

Note that at present, under Commonwealth status, Puerto Ricans receive almost as much in per capita transfers as do residents of the 50 States. About $400 in the case of Puerto Rico, $475 for the mainland. Statehood almost triples this amount.

Let us consider what this implies. The only figures I have at hand at this moment were prepared last year by the Congressional Research Service. They show that in 1980 median family income in Puerto Rico was $6,080. Let us increase this by half, to allow for inflation and some growth in real income—the latter having been quite low in the United States as a whole. This gives us a current median family income in Puerto Rico of, say, $9,000. The difference between transfers under Commonwealth and those assumed under statehood is $850 per capita. For a hypothetical family of four this would come to an increase of $3,400. Bear in mind that median family income is only about $9,000. Clearly these dimensions—I mean only to be suggestive—constitute a considerable attraction.

In this context it is altogether understandable that advocates of continued Commonwealth status are asking that the present arrangements be enhanced. Which, in part, is to say that Federal assistance to the island population be increased. It appears to me that this case is unassailable, and that the Finance Committee must promptly assess what is possible in our present budgetary situation.

[From the Washington Post, July 31, 1990]

"TAKING PUERTO RICO SERIOUSLY"

Those involved with legislation that will provide for the forthcoming Puerto Rican status referendum will welcome The Post's July 13 editorial "Taking Puerto Rico Seriously." The referendum will, of course, present the choice of commonwealth, statehood or independence.

The Post writes: "The status issue is important in its own right. Puerto Ricans are U.S. citizens but have neither all the rights nor all the obligations of citizenship. The threshold question for them as for the U.S. public and Congress is whether that incomplete status is fair."

I wonder if these are quite the words The Post wants. The present commonwealth status dates from the time of Luis Munoz Marin, who in 1948 became the first elected governor of Puerto Rico. Puerto Ricans drafted the present constitution, Congress approved. As best I understand—here I am following Arnold Leibowitz in his authoritative "Defining Status"—this was seen as creating more than local self-government. To the contrary, it was contended that "a new legal entity was created, with a unique status in American law: the commonwealth, a status which is an internationally recognized non-colonial status."

The United States promptly informed the United Nations and requested that Puerto Rico be removed from the list of Non-Self-Governing Territories compiled by the General Assembly. The General Assembly thereafter passed Resolution 748(viii) (1953), which recognized that commonwealth had "achieved a new constitutional status" and that the people of Puerto Rico now had "attributes of political sovereignty which clearly identify the status . . . as that of an autonomous political entity." As U.N. ambassador in the mid-'70s, I had more than one occasion to refer to this resolution.

Mr. Leibowitz writes: "The Popular Democratic Party of Puerto Rico created commonwealth status as a permanent status equal in dignity to statehood and independ-

ence with a political validity on the island." (The PDP was, of course, Mr. Munoz's party, and is part of Gov. Rafael Hernandez Colon.)

In this view, commonwealth is not an "incomplete status." To ask whether it is "fair" is to adopt the language of those who think it is not desirable, opting instead for statehood. This, of course, is the view of the New Progressive Party, and its leader, former governor Carlos Romero-Barcelo. It would be my thought that, as much as possible, Congress ought to be neutral in the matter.

This takes us to the question of whether the forthcoming referendum should set forth the details of any of the choices. Again, it is the commonwealth position that is the sensitive one. The terms of independence and statewood are clear. Some transitional arrangements can be stipulated, but it can't much matter. In a very short space of time, statehood will mean statehood, period. Indpendence will mean independence.

On the other hand, the PDP is asking for "enhanced commonwealth" status to be stipulated in the referendum. This mostly comes down to greater social welfare benefits. These are not small matters in the lives of Puerto Ricans. Consider the Supplemental Security Income program. The current benefit in the commonwealth is about $32 a month for the needy blind, disabled and aged. Under statehood, these benefits automatically increase to $386. Is Congress willing to provide the same benefit under common wealth? Half? No change? I would have thought these are matters that want spelling out, if an informed choice is to be made. But perhaps I am wrong.

As for the question of a two-stage process whereby Congress first sets up the referendum, with or without details, and thereafter ratifies the results, I think The Post is right. The Senate should follow the House in this regard.

DANIEL P. MOYNIHAN,
U.S. Senator (D-NY),

NEW YORK.

THE MIDDLE EAST CRISIS: THE PRESIDENT AND CONGRESS

Mr. DOLE. Mr. President, prior to adjourning for recess, I believe it is important to address the issue of executive consultation with the Congress with respect to the crisis in the Middle East. The distinguished majority leader made a statement on this matter a few days ago.,

I think everyone in this body agrees with the majority leader's emphasis on the need for meaningful consultation between the President and the Congress. In my view, Presidential consultation with the Congress is indeed important, particularly as events change and critical decisions are made by our Commander in Chief to respond to those events. From the very start of this crisis, the President has done an excellent job of consulting with the Congress and keeping us informed.

The majority leader in his statement noted the Congress' constitutional role in the context of the deployment of American troops to the Persian Gulf. I would like to take note, too, of the President's constitutional role as Commander in Chief. In my view, these two constitutional roles should function in a complementary way during times of crisis such as the one we find ourselves in today. I believe that all of my colleagues would agree that faced with a situation as unpredictable as that in the Middle East, our Commander in Chief must have the flexibility to respond as necessary in a timely manner. The successful resolution of this crisis depends on such flexibility.

Therefore, we in the Congress need to make clear that limiting the President's ability to respond appropriately to events in the Middle East is not the Congress' objective in establishing a consultative mechanism. And, I believe that the course of action proposed by the distinguished majority leader in no way limts the options the President has at his disposal to deal with this crisis and to carry out his constitutional responsibilities as Commander in Chief.

Under the arrangement proposed by the majority leader and Speaker FOLEY, the bipartisan leadership and the chairman and ranking members of the relevant committees will be available to the President as a consultative group. I am confident that the President will make use of this means of consultation. In addition, should events warrant, the concurrent adjournment resolution provides for the majority leader, in consultation with myself, and the Speaker, in consultation with Mr. MICHEL, to recall the Congress to Washington, if necessary.

Mr. President, we are in the midst of a serious crisis. Let us act wisely and give our Commander in Chief the support he needs.

Mr. WARNER. Mr. President, prior to the adjournment sine die of the 101st Congress, I want to briefly address the issue of the role of Congress in the ongoing crisis in the Middle East.

On Thursday of this week, our distinguished majority leader, Senator MITCHELL, announced that he, along with the Speaker of the House, had decided, and I add wisely, to invite the joint bipartisan leadership, along with the chairmen and ranking members of the Committees on Foreign Relations, Armed Services, and Intelligence of the House and Senate to make themselves available for regular consultations with the President during the upcoming adjournment. A copy of his statement, given October 25 appear in full below.

I want to commend the majority leader for this important step, his foresight, and wisdom. This same wisdom is reflected in remarks of the Republican leader which precede. As the elected representatives of the American people, we have an obligation to be available to consult with and advise the President, when appropriate. This is especially important in times of crisis, such as we are now experiencing in the Persian Gulf. The designated group of Senators have already had a number of such consultative meetings with President Bush, who has always welcomed such exchanges. Often, the special meetings were initiated by the President.

While every Member of the Senate agrees with the basic "principle" of consultation with a President, the debate continues whether we can "require by law" such consultation and the timing. The leadership initiative now on the sine die resolution does not attempt to resolve this controversy. But there is little doubt that a successful foreign policy must be predicated upon the Congress and the President working together.

I am pleased that the initiative of the majority leader, occasioned by the upcoming recess, recognizes that the President should continue to consult with individuals from the Congress, depending on their fields of expertise, rather than attempting to require the President to consult with the Congress as a body. The most profitable consultations occur between individuals, not institutions. The views of Congress, as a body, must be expressed through legislation.

The President and his senior advisors have, in my opinion, done an outstanding job up to this point of keeping the Members of Congress fully informed of American actions and goals in the Middle East. I am sure they will continue to do so. But the consultations are a separate but parallel part of the process. The initiative announced by the majority leader helps ensure the process goes forward.

At the same time, Mr. President, I believe it is important that the American people fully understand that the crisis we now face in the Middle East is unlike any other situation in our history. For the first time, we face an adversary who has the means, and has shown the willingness, to use weapons of mass destruction—chemical and, according to press reports, biological. Hostilities, if they were to break out, could be swift and casualties could be massive. The battleground, if open conflict were to break out, could encompass the vast majority of the world's known oil reserves. The impact of this loss of energy to our economy, to the economies of the world, are incalculable.

While I fully support consultations with the President, there must be no doubt about the constitutional authority of the President to take whatever military actions may be necessary if our forces in the Middle East should be threatened. Should conflict, involving significant numbers of U.S. forces, commence during the period of the congressional adjournment, I am confident that the President, in consulta-

tion with congressional leadership, would consider the advisibility of promptly reconvening the Congress as a whole for the purpose of seeking a declaration of war as set forth in the Constitution. That is the only constitutional way in which the American people, through its elected representatives, can commit the full resources of this country to a successful conclusion of conflict. But I want to make it clear that I do not believe that Congress, by the creation of a consultative leadership group or by adjourning sine die "subject to recall," can restrict the President from exercising the full range of his constitutional powers as Commander in Chief of the Armed Forces of the United States.

Mr. President, I also believe it is important to comment on one other matter which has been debated here on the floor of the Senate in these last days. Yesterday, the Senate considered and passed the Department of Defense appropriations bill for fiscal year 1991. Contained in that bill was a legislative provision, previously rejected by the Armed Services Committee, authorizing the retention of reservists called to active duty as part of Operation Desert Shield for up to 1 year. The permanent law, section 673b of title 10, United States Code, authorizes reservists to be called for active duty for not more than 6 months, short of a declaration of war or of a national emergency declared by the President or the Congress. Yesterday, there was much opposition expressed to this appropriations provision, and it was suggested that, if reservists are needed for more than 6 months, the President should declare a national emergency. Yet, not a single speaker acknowledged that this particular legislative provision had its genesis here in the Congress—not in the administration. Not a single speaker mentioned that we in Congress can declare a national emergency making reservists subject to extended involuntary active duty—just as the President can. Both have, by statute, the same authority.

I mention this, Mr. President, for I fear that the Congress may be unwilling to face up to its authorities and responsibilities with respect to our military activities. Why, I ask, if there is a willingness to subject reservists to up to 1 year of involuntary active duty, is there not also a willingness to take that politically difficult step, and declare a national emergency? Do we in Congress not have as much responsibility for those decisions as the President? How do we explain to reservists that the crisis we face in the Middle East is serious enough to call them to involuntary active duty and to then extend the period they can be required to serve, but that we are not prepared to take that step that we accuse the President of being unwilling to take?

Mr. President, I pray that hostilities do not break out in the Middle East. I am confident that our President, in consultation with the Congress, will do all that he can to avoid such hostilities. I and other Members of this body are prepared to work with the President throughout this adjournment and after the Congress returns in January to help assure that outcome. But, Mr. President, we in Congress must be willing to assume our responsibilities if that outcome does not prove possible.

Mr. President, I ask unanimous consent that the majority leader's comments made this past Thursday appear in the RECORD immediately after my comments, with the date they were originally stated, October 25, clearly indicated.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL ACTIONS RELATING TO WAR POWERS

Mr. MITCHELL. Mr. President, during the past few months, many Senators from both sides of the aisle have rightfully stressed the need for Congress to be involved in decisions that might lead to war.

They have spoken of the need to ensure that Congress plays its proper constitutional role in the context of the deployment of American troops to the Persian Gulf. Several have reminded the President that, as our Founding Fathers clearly set forth in the Constitution, it is Congress, and Congress alone, that has the power to declare war.

Some Senators have expressed their concern at what they regard as the President's lack of meaningful consultation with the Congress, while conveying their hope that the President will follow the letter of both the law and the U.S. Constitution in matters pertaining to the use of force.

I commend and appreciate the active involvement of several Members of this body, including Senators Pell, Adams, Cohen, Kennedy, Moynihan, Sanford, Hatfield, and Nunn, in raising many important issues regarding Congress' role in the gulf crisis. These Senators have made clear that Congress must be a part of the grave decisions that could lead to war. As the law and the Constitution make clear, these Senators are right.

As the Congress approaches adjournment sine die, Speaker Foley and I will be taking several steps to facilitate the exercise of Congress' constitutional authorities with respect to war powers. We intend to ensure that the concurrent adjournment resolution provides that, in consultation with Mr. Mitchell and Senator Dole, we will be able to recall the Congress to Washington as necessary.

We also have decided to ask Members of the joint bipartisan leadership and the leaders of the House and Senate committees of jurisdiction to make themselves available as a group for regular consultation with the President. After Congress adjourns, this group would be available for consultation on developments in the Persian Gulf region. Presidential consultation with Congress is required by law under certain circumstances. We believe that regular consultation is necessary and useful, particularly given recent developments in the Persian Gulf.

The Members designated to be available for consultation are as follows: Speaker Foley, Majority Leader Mitchell, Majority Leader Gephardt, President pro tempore Byrd, House Republican Leader Michel, Senate Republican Leader Dole, Congressman Fascell, Seantor Pell, Congressman Broomfield, Senator Helms, Congressman Aspin, Senator Nunn, Congressman Dickinson, Senator Warner, Congressman Beilenson, Senator Boren, Congressman Hyde, and Senator Cohen.

I encourage the President to consult on a regular basis with this bipartisan group, even as I recognize that such a representative group cannot substitute for the whole of Congress.

I firmly believe that such consultation is in the interest of the President, and, more importantly, in the interest of our Nation.

For if the United States is to remain strong and united, it must act on the basis of consensus—shared commitment and shared responsibility. If the President fails to ensure this consensus, he risks weakening himself and weakening the Nation.

This we simply cannot afford.

I hope and trust that President Bush will follow the law and the Constitution in ensuring that Congress plays its rightful role in the weighty decisions that could lead to war.

TRIBUTE TO SENATOR JAMES McCLURE

Mr. DECONCINI. Mr. President, as we reach the end of the 101st Congress, I want to take a moment to recognize the departure of my friend and colleague, JIM MCCLURE. The citizens of Idaho, the Nation, and the Senate are losing an intelligent, thoughtful and respected statesman in the retirement of Senator MCCLURE.

Senator MCCLURE has served in the Congress for 24 years, 18 in the Senate and 6 in the House of Representatives. He is currently the ranking member of both the Energy and Natural Resources Committee and the Interior Appropriations Subcommittee. As a member on these important committees, JIM has been an advocate for the West. His leadership and expertise on issues such as energy production, mining, water, and the management of our public lands has been greatly appreciated by this Senator. He has tirelessly worked to find the proper balance between the need to protect our environment and to maintain a viable economy in the Western United States.

Despite the fact that Senator MCCLURE sits on the other side of the aisle from myself, he has never let partisan politics stand in the way of working with members of both parties to devlop sound public policy.

JIM MCCLURE has not just been a colleague, but also a friend. I will miss the company and wisdom of the esteemed Senator from Idaho, and I wish him, his wife Louise, and their family every success and happiness in the years ahead. JIM MCCLURE will

always have my deep respect and high regard.

FOREIGN OPERATIONS CONFERENCE SENDS STRONG MESSAGE

Mr. DOLE. Mr. President, in the early hours of yesterday morning, the conference committee on the foreign operations appropriations bill completed its work.

There are a number of important issues in that bill that may be the subject of further action or debate, but I wanted to make brief mention of one very important action by the conference.

By a vote of House Members, the House side receded to the Senate position on the Nickles amendment on human rights in Yugoslavia, as modified by Senator NICKLES during negotiations in the conference.

Conference approval of this amendment sends a very strong message of American concern about the human rights situation in Yugoslavia, and especially in the Republic of Serbia and Province of Kosova.

The amendment mandates that United States aid to Yugoslavia, and United States support for proposals of aid to Yugoslavia in the international financial institutions, be terminated in 6 months—unless, by then there have been free and fair elections in all of Yugoslavia's constituent republics, and an end to the systematic abuse of human rights in Serbia.

The amendment does not take sides in the several ethnic disputes which threaten to tear apart Yugoslavia—but it does put the United States squarely and unequivocally on the side of those who observe human rights and support democracy. That is exactly where this country ought to be, as the top priority of our foreign policy toward Yugoslavia.

I want to commend Senator NICKLES, who did such outstanding work on the amendment, both in committee and in conference. I also want to express thanks to Senator NICKLES' principal cosponsor, Senator D'AMATO, who has been at the forefront of the effort to focus United States policy on the human rights issue in Yugoslavia; to Senator KASTEN, who has made it clear that he does not want to take sides in the ethnic conflicts inside Yugoslavia, but who does support a strong, even-handed approach that encourages democracy and respect for human rights; and to Senator LAUTENBERG, who spoke on behalf of the Nickles amendment in conference.

I would also like to say special thanks to Congressman MICKEY EDWARDS, who played a key role in working out the modified Nickles amendment; to Congressman JERRY LEWIS, who has been very supportive of this effort; to Congressman JOHN PORTER, who spoke out strongly on behalf of the Nickles amendment; and to all those Members on the House side who cast a tough vote for the Nickles amendment in the decisive vote in conference.

I want to add one final and tragic footnote to the action by the conference on this issue.

When I was in Kosova in August, I met a young physician named Dr. Alush Gashi who heads the Kosova Human Rights Committee. Not coincidentally, he is also one of the 8,000 ethnic Albanian doctors who have been fired from their jobs in hospitals and clinics, because they happen to be Albanian.

Subsequently, Dr. Gashi came to the United States, and while here did what he could to bring the terrible situation in Kosova to the attention of American leaders. I again met him here, as did a number of other Senators.

After Gashi's return to Yugoslavia, I sent a telegram to our Ambassador in Yugoslavia, Warren Zimmerman, expressing concern that he might be subject to Serbian government retaliation for his advocacy of human rights.

Tragically, this morning, I have learned that Dr. Gashi has indeed been arrested, severely beaten, and taken off to parts unknown by Serbian Police.

I don't know whether he has been charged with any crime, or what the charge might be—but I do know what crime he has committed, in the eyes of the Serbian authorities. he spoke out, frankly and forcefully, on behalf of human rights. In Serbia today, that is a crime of the first order.

That is why passage of the Nickles amendment is so important and so timely.

The Serbian authorities continue to speak out in their own way—with brutal oppression.

We must speak out, too, using all the tools at our disposal.

The United States should not be subsidizing oppression.

And the United States will not subsidize oppression in Yugoslavia.

That is the strong, clear message of the Nickles amendment.

It comes just hours too late to help Dr. Gashi. But hopefully it will not be too late for the thousands of others now suffering under Serbian oppression.

DEPARTMENT OF LABOR WITHDRAWS IN DOLE VERSUS FARNUM

Mr. BYRD. Mr. President, on October 4, 1990, the Department of Labor [DOL] withdrew from the Federal District Court of Rhode Island a lawsuit it had filed on July 30, 1990. This lawsuit was styled *Dole* v. *Farnum, et al.*, Civil Action No. 90-0371 (D.R.I. July 30, 1990).

Because of the discussion triggered by this lawsuit, and its subsequent withdrawal, I want to take this time to set forth what the lawsuit alleged, and why so many supporters of employee stock ownership plans [ESOP's] were dismayed by the complaint filed by the Department of Labor.

But, before I delve into the facts of the lawsuit, let me quickly, and without hesitation, say that I congratulate the Department for making the decision to withdraw the lawsuit. I believe the DOL's decision to withdraw the lawsuit reflects a sound policy decision. I say this because I believe, along with many others, that the lawsuit's complaint took a position that was contrary to congressional intent toward leveraged ESOP's.

The facts involved in Dole versus Farnum are as follows: On December 18, 1985, the Wardwell Braiding Machine Co. ESOP purchased 80 percent of the Wardwell common stock from the Simon W. Wardwell estate. The ESOP paid $5.46 million for the stock. The ESOP obtained this money to purchase the stock in the following manner—$5.4 million from a loan guaranteed by the company and $60,000 cash.

The purchase price of $5.46 million was agreed upon by the buyer—the ESOP—and the seller—the estate—after the trustee had received and reviewed an independent valuation of the Wardwell stock. Approximately 1 year after the ESOP's acquisition of the Wardwell stock, another independent appraisal was made of the value of the stock. This appraisal concluded that on December 31, 1985, 10 days after the ESOP transaction closed, the ESOP's stock was worth $4.6 million because the corporation had new liabilities as a result of the ESOP loan, which is guaranteed by the corporation, not the employees. This same independent appraisal concluded that the stock was worth $5.83 million 1 year after the transaction, because of the reduction of the ESOP debt and the improving performance of the corporation, partially because the employees were 80 percent owners of the corporation.

In plain English, what did the DOL complaint mean? Private sector ESOP experts generally agree that the DOL position meant that an ESOP could acquire stock with debt only if the employees made wage concessions, or only if the ESOP was the purchaser of last resort, or only if a small amount of corporate stock was acquired. In other words, the DOL position, as interpreted by private sector experts, would have possibly rendered illegal 95 percent of the ESOP's that are still covered by the ERISA statute of limitations, and would have impeded the

creation of any new significant ESOP's.

Although the Department of Labor has not officially confirmed or denied the private sector interpretation of the Farnum complaint, interviews by the trade press that cover tax and labor matters with DOL officials in the solicitor's office seemed to confirm the ESOP community's worst fears about the DOL position.

Let me again say that I congratulate those officials at the Department who looked at the DOL position, and decided that the proper policy was to withdraw the lawsuit.

But, I do not want to leave this episode without an explanation of the reasons the DOL position in Farnum would have seriously impeded leveraged ESOP's, contrary to congressional action encouraging such ESOP's.

The basic flaw in the DOL's position, which might have called into question the legality of nearly all leveraged ESOP's, is that the complaint confuses valuation with financing. The price, or market value, is what a willing buyer will pay to a willing seller, and it does not matter whether the buyer uses cash on hand, or debt. If he uses debt, then he has to be prudent to ensure that he does not acquire an asset too expensive for him to amortize.

Turning back to the Wardwell case, clearly, after the corporation's guarantee of the ESOP's $5.4 million debt to buy 80 percent of the corporation's stock, the value of the equity, or the stock, was worth less because the corporation then had a new debt. It is not unusual for there to be a posttransaction drop in stock value when debt is used to buy the stock at its predebt, fair market value, if all other factors are equal.

Since the leveraged ESOP is the most logical way for employees, generally without adequate funds to pay for stock out of their pockets, and without the credit to borrow money, it is unreasonable to maintain that leveraged ESOP's are legal only if some seller is willing to sell to employees at less than fair market value.

Before concluding, Mr. President, I would like to comment on what I believe to be a rather novel, convoluted theory that is sometimes put forward by academic critics of leveraged ESOP's.

This theory, or thinking, holds that, a posttransaction drop in the value of a firm, resulting from the use of debt to purchase the firm, represents sound economic valuation practice. But, this thinking further holds that the ERISA legal standard requires the ESOP fiduciary to acquire stock at a price no greater than the posttransaction value, even if that price is less than what any other buyer would pay for the stock.

Frankly, Mr. President, I cannot accept this view. It would suggest that Congress has spent 15 years encouraging employee ownership through ESOP's, even though possibly 95 percent of all ESOP's would have been deemed illegal under this ERISA standards. The DOL's proposed adequate consideration regulations are perfectly in sync with common valuation principles and ERISA, in that they define adequate consideration as actions of willing buyers and willing sellers. The regulators of ESOP's should vigorously ensure all laws are complied with, but they should not deem, unilaterally, that certain laws are hopelessly irreconcilable. If this is what the DOL regulators think, they should come to Congress to explain the problem, not decide to eliminate unilaterally one part of the law.

Mr. President, in 1976, Congress passed a law admonishing the agencies not to shackle the use of ESOP's as a device of corporate finance. The 1976 action by Congress is still the law. The agencies, particularly those at DOL who wrote the complaint in the Farnum case, should keep this law in mind when analyzing ESOP issues. (See 90 Stat. 1590, S 803(h) of Public Law 94-455.)

In conclusion, Mr. President, I believe the DOL was initially headed in the wrong direction in the Farnum case. I am pleased, as I stated before, that the DOL has now recognized that the policy embodied in the Farnum case was wrong, and that the DOL complaint has been withdrawn. I thank the Senate for its attention to this important matter.

RENEWABLE ENERGY

Mr. REID. Mr. President, renewable energy has been given short shrift for all too long. The Nation's total electrical capacity margin has been dropping since the early 1980's and, if it continues on this pace, this margin is likely to fall below the minimum reserve margin, 20 percent by the mid-1990's. Projected electrical demand in Nevada, the State with the highest growth rate in America, and our neighboring States in the Southwest is large by comparison to the other regions of the country. There is little doubt that significant new electrical generating capacity will be needed to meet this demand.

There are options to new plant construction: tapping into existing excess capacity, extending the life of existing plants, repowering, or otherwise improving performance or efficiency at powerplants. Nevertheless, new power generating plants will still be required. In addition to the conventional fuel and nuclear powerplants that will be considered to meet the Nation's future energy demands, there are the other options. Conservation, load management and thermal storage, and renewable energy sources need to be factored into regional energy needs and the Nation's energy strategy.

We have spent considerable time debating clean coal, superclean, coal-fired plants, and nonpolluting natural gas facilities on this year's landmark environmental legislation: the clean air bill. Clearly, we must move in the direction of low or nonpolluting industrial practices and power production. The alternative of maintaining the status quo, allowing heavy emitters to continue to spoil the air we breathe and the environment in which we live, is clearly no longer a tenable position.

Mr. President, in 1978, as part of the Carter administration's national energy plan, the Public Utilities Regulatory Policy Act [PURPA] provided a window of opportunity for companies, other than utilities, to become involved in the construction of nonconventional powerplants. PURPA was to provide opportunties with preferential regulatory treatment to stimulate development and ensure that a market would exist to purchase the power produced by the qualifying facilities.

When originally enacted, PURPA had restrictions on the size of qualifying facilities; such limitations have clearly constrained the renewable energy industries. The size restriction was in conflict with the objective of stimulating development. This bill lifts the limit on qualifying facilities and, if prior experience is any indication of the likely impact, there should be a signficant increase in the installation of renewable energy power sources. This unlimited ceiling should be made permanent.

Mr. President, we are concerned with leveling off the playing field. In the clean air bill, a complex process was esablished to reduce emissions of acid rain precursors; these generally benefit plants that burn carbon-based fuels. In the bill, a system of allowances was created that provide incentives for conventional power sources to install emission control equipment. We were successful in providing a level playing field by including a provision to retain incentive allowances for solar, wind, geothermal, biomass, and other renewable energy sources.

At this time, with instability in the Persian Gulf, soaring energy and environmental costs using conventional fossil fuels, and our inability to resolve the nuclear waste issue, we envision that renewables can become a significant player in our energy mix to sustain development for future generations. In Nevada and other Western States, there is significant potential to tap the renewable energy options. This incentive will send a clear message that the Federal Government supports these environmentally compatible approaches to satisfy energy

demands and ensures that there are cost effective options to conventional and nuclear power.

Mr. President, I must profess excitement about the prospects for broader utilization of renewable energy sources. I have seen the opportunity that renewables affords us, first hand, and recognize its potential. During this session, I had the opportunity to visit the largest operational solar energy powerplant in the world in Kramer Junction, CA. This plant is owned and operated by the Southern California Edison Co. in a joint venture with an independent power producer, Luz, International.

The solar plant is modular; additional units can be added to it. Already greater than 200 megawatts, it is expected to expand to 600 megawatts by 1994. Using space age coatings technology, and optimal demand usage-insolation relationships, this facility has demonstrated that solar energy is closing in on economic viability. The potential for greater use of solar energy for large-scale application exists and it is environmentally benign.

On more than one occasion, I have had the opportunity to drive through the Altamont Pass in northern California and marvel at the windmill farms. Last year, the total electric power generation in the Altamont Pass exceeded 1,000 gigawatt hours; enough to meet the residential needs of nearly half a million people. Advances in wind energy technology have already increased system availability and decreased the cost to produce electricity. Heavily subsidized conventional fuels remain the primary obstacle to fair competition; lifting the 30 and 80 megawatt PURPA ceilings on unit size will permit renewables to take advantage of economies of scale.

Finally, in Nevada, we are beginning to realize the opportunity to utilize the energy potential from our natural thermal springs. In Steamboat Springs, for example, tapping this source of geothermal power has elevated Nevada into a position of being one of the leaders nationwide and worldwide.

Mr. President, we are beginning to realize the opportunity that renewables can offer us after years of neglect through the 1980's. The unfulfilled promise to better utilize renewable sources of energy to replace or supplement existing conventional sources can no longer be tolerated. We are not insulated from our reliance on foreign oil; today's instability will have profound economic consequences on our lifestyles and our livelihoods. In this bill, we have an opportunity to send a clear message. The 600-megawatt facility in Kramer Junction will displace the equivalent of over 100 million barrels of oil over its lifetime. We must seize this opportunity now.

The Department of Energy R&D budget for renewable energy had diminished over the last decade from over $800 million to nearly one-tenth of that level last year. As concern for the environment was put on hold during the last decade, the effort to include renewables as an essential element in the power production mix suffered a similar fate. This year, the clean air bill will become reality and DOE has doubled its efforts to stimulate development in the renewables arena. Renewables provide real alternatives that can make headway in pollution-free energy production. With the development of the next national energy strategy, we should provide the renewables an equal opportunity for consideration.

With the attention being afforded to the issue of climate change or global warming, the theme of sustainable development needs to be scrutinized with regard to energy. Sustainable development is the challenge that this generation must face and address. This impressive sounding concept deals with industrial and economic development for today that does not compromise achievement of the needs for tomorrow's generation. This covers the full gamut of issues including agricuture, transportation, manufacturing, housing, and energy production; an element of this issue includes optimizing the use of our limited natural resources in an environmentally benign manner.

We recognize that the attraction of the quality of life in Nevada resulted in the greatest growth rate of any State in the Nation. With such growth, residents expect that today's level of services will be maintained; tourists and newcomers expect that they will have access to the same. Our economic well-being in Nevada, heavily dependent on tourism and goodwill, mandates that services be maintained at a highly reliable level. To satisfy the energy needs of Nevada, I believe that there are alternatives to power production by conventional means. These alternatives are environmentally benign and must be considered in our energy mix.

Combustion of carbon-based fuels—oil and coal—to produces electricity also produces the primary greenhouse gas, carbon dioxide. The nuclear option does not produce greenhouse gases, and, the argument goes, does not contribute to global warming; therefore, the argument goes on, it is a viable alternative to the fossil fueled powerplants. At this time, it is not apparent to me that the nuclear option comports with the goal of sustainable development. Until and unless the nuclear waste issue is technically resolved without compromising the opportunities for future generations, nuclear power's future is dim. For these very reasons, renewable energy sources' future is bright.

Mr. President, the Nation's energy supply is crucial to maintaining a vibrant economy and maintaining the quality of life as we know it today. It can no longer be taken for granted.

THE JUDICIAL IMPROVEMENTS ACT—A BILL PROVIDING FOR CIVIL JUSTICE REFORM AND AUTHORIZING ADDITIONAL JUDGESHIPS

Mr. MACK. Mr. President, I rise to commend Senators BIDEN and THURMOND for introducing the Judicial Improvements Act, a bill providing for civil justice reform and authorizing additional Federal judgeships. As you are aware, this bill authorizes one new judgeship for the Northern District of Florida, two new judgeships for the Middle District of Florida and one new judgeship for the Southern District of Flordia.

It is imperative Florida be allocated these additional judgeships. Just recently, I spoke with the chief judge of the Southern District of Florida, Judge Lawrence King, regarding that district's need for additional judges. My staff and I have had similar conversations with judges in the Middle and Northern Districts of Florida.

Over the years, Florida has experienced a population explosion. The State's population growth rate is the highest in the Southeast and is the fourth highest in the United States. The Statistical Abstract of the United States, 1990 edition, states that Florida's current population is 12,335,000. This same document projects that in the year 2000, Florida will have a population of 15,415,000. With the new census, Florida is expected to receive four additional congressional seats.

In addition to the overall increase in caseload, Florida has been utilized as a drug transit point for many years. As a result of this unfortunate circumstance, the courts have been deluged with drug cases. In the middle district alone, the biennial judgeship survey noted that drug filings have increased 95 percent since 1985. As you are aware, many of these drug cases involve multiple defendants and result in protracted litigation.

I appreciate your commitment to ensuring an effective and equitable judiciary. Florida needs and deserves its fair share of judges and I will continue to work toward that end. I urge passage of this judgeship bill by both the Senate and the House, and I thank the Chair.

KISSIMMEE RIVER ENVIRONMENTAL RESTORATION ACT

Mr. MACK. Mr. President, I rise today in strong support of the Kissim-

mee River Environmental Restoration Act, S. 3262. The restoration of the Kissimmee River is essential to the health of the Everglades and ultimately Florida Bay and the living coral reef off of the Florida Keys. The Kissimmee River is the headwaters of the whole south Florida Everglades and in its original state prior to canalization it slowly meandered from the lake region south of Orlando over 134 miles to serve as the principal tributary of Lake Okeechobee.

The Kissimmee River, in its natural state, flowed over its 2-mile wide flood plain, meandering through oxbows, natural lakes, backwater areas and ridges draining 2,915 miles of central Florida. The Kissimmee River was a part of over 45,000 acres of natural wetlands supporting a diverse and rich fish and wildlife resource.

Channelization of the Kissimmee River began in the early 1960's in order to provide flood protection in response to a 1947 hurricane. The original 134-mile river was channelized into a 52-mile canal and the improvements in flood protection were achieved at the substantial cost of declines in valuable wetlands resources and associated fisheries and wildlife. The U.S. Fish and Wildlife Service indicates that the channelization of the Kissimmee River resulted in a loss of over 75 percent of the original wetlands and overall habitat values declined by 90 percent from prechannelization levels.

Dechannelizing the river and returning it largely to its original sheet flow path would restore a functioning river floodplain ecosystem, fully revitalize two-thirds of the original wetlands, and significantly improve most of the remaining wetlands. It would also greatly improve the capacity of the system to filter nutrients and contaminants going into Lake Okeechobee and down into the Everglades through Florida Bay and eventually into the coral reefs.

This will clearly be the flagship project in the Army Corps of Engineers new mission—environmental protection. I urge my colleagues to support this important legislation.

WATER RESOURCES DEVELOPMENT ACT/DEAUTHORIZATION OF THE CROSS FLORIDA BARGE CANAL

Mr. MACK. I want to thank the Environment and Public Works Committee and the staff for all of the work that they put into the Water Resources and Development Act. I believe that it is important to note that there is one project in this bill that is being deauthorized, and that is the Cross-Florida Barge Canal.

Congress authorized construction of this canal in 1933, but because of environmental concerns, President Nixon halted construction in 1971. Efforts to deauthorize the canal have been unsuccessful until today. The passage of this important legislation will eventually save the Federal Government $1.5 million in costs of maintaining the locks and dams along the 7-mile stretch that has been completed. The State of Florida will also benefit from a beautiful green belt stretching across the State instead of this potentially environmentally devastating canal.

CINCINNATI REDS WIN WORLD SERIES

Mr. GLENN. Mr. President, I wanted to take a moment to congratulate a great baseball team, the world champions, the Cincinnati Reds. In this year's world series, the underdog Reds went against the defending champs, the Oakland A's. In four straight games the Reds proved to be the best in baseball. I'm proud of the team and congratulate each and every player and coach. I have only one regret, Mr. President, because of the length of this year's legislative session, I was unable to attend any of the games.

I understand that the Cincinnati Reds will be in Washington next week to meet the President. I hope their triumphal visit will be a great success. I look forward to seeing the team and again extend my congratulations.

CONGRESSIONAL SUPPORT FOR UNITA IS MAINTAINED

Mr. DECONCINI. Mr. President, last week the House decisively defeated a proposal to end United States assistance to UNITA forces operating in Angola by a vote of 175 yeas to 246 nays. Later, by a one-vote margin, it adopted an amendment to the intelligence authorization bill offered by Representative SOLARZ which essentially placed conditions on containing this U.S. assistance. Because of valid concerns that this provision would frustrate the ongoing ceasefire negotiations between UNITA and the Angolan Government, the Solarz provision was substantially modified in conference on the Intelligence bill.

To the extent possible within the parameters of a covert program, I would like to clarify what action the conferees took regarding our policy toward UNITA. Some people who oppose peace and a democratically elected government, would like to make some short-term political gains by announcing that the U.S. commitment to achieving these goals through its continued support for UNITA has been diminished. This is clearly not true. If support for UNITA had been terminated or significantly altered in the intelligence authorization bill, President Bush would have vetoed the conference report.

The conference report fully authorizes the funds requested by President Bush for continued support for UNITA and makes approximately 75 percent of those funds immediately available. The remaining funds are also available to the President upon the approval of the House and Senate Intelligence Committees.

The Intelligence bill includes substantial funding for continued support for UNITA. This is intended to help achieve a negotiated settlement of the Angolan civil war, and a firm commitment by the MPLA, which until this point, has stalled the peace talks, to internationally supervised, multiparty elections.

I am disturbed by the transcript of an October 22 news commentary from the official Angolan news service [ANGOP] in Luanda, which alleges that Congress has struck a heavy blow to UNITA and is becoming aware of its terrorist nature. It also refers to UNITA as a "puppet gang" and seeks to send a message that UNITA is losing support in the United States.

In my view, these conclusions are totally erroneous, and this rhetoric does not help the process. Recent congressional action should be interpreted as support for UNITA and, more importantly, legislated supported for UNITA's announced goal of free and fair, multiparty elections. This action also concurs with UNITA's expressed hope that a cease-fire is just around the corner—if only the MPLA will agree to one.

The Angolan Government has begun the process of negotiating in earnest. It has stated that it is willing to move away from a one-party state and agree to internationally supervised multiparty elections. It is my hope that this process will continue, and that the actions taken by Congress will support those forces in the Angolan Government, who are seeking peace for their country.

I am similarly troubled that the Angolan Government is attempting to make political gains regarding the famine in Angola, and claiming political credit for calling for concrete steps to end this horrible event. The October 22 ANGOP statements states that a comment by a U.N. official, "clearly unmasks UNITA's allegations that it first advanced the idea, when it is well known that the so-called peace corridors are designed to channel arms and other military equipment to its [UNITA's] forces."

These statements, emanating from the Angolan Government, give me cause for great concern. These charges—that the Red Cross and the United Nations would allow themselves to be used as a front by the CIA, or perhaps other groups, to provide weapons to UNITA—prevented the Angolan Government and UNITA

from reaching an accord to allow private, international organizations from providing famine relief to devastated areas for a number of months this past summer.

I am pleased that these famine relief organizations are now allowed to operate throughout the country, but I remain concerned that these patently false charges continue to be raised against UNITA. Comments such as these will only bog down the cease-fire talks and heighten the fears of bad faith which have caused both sides to dig themselves into their respective positions.

The next round of talks between UNITA and the Angolan Government are scheduled for November 17, 1990. These talks have already been postponed once by the Angolan Government. The talks will demonstrate how committed the Government of Angola is to a real cease-fire and to bringing peace to the country. If further gains in the talks are achieved, we will know that the Angolan Government is serious about ending this civil war. If these gains are not realized, then we will recognize that the hardliners in the MPLA have gained the upper hand in order to continue the killing that has devastated Angola for 15 years. I truly hope that the cause of peace will be the winner in the next round of talks in Lisbon.

Mr. President, I ask unanimous consent that a letter from Secretary of State James Baker, a copy of a white paper, which I sent to the majority leader from a number of my Democratic colleagues regarding continued support for UNITA, and a copy of the October 22, 1990, ANGOP transcript referred to earlier in my statement, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF STATE,
Washington.

Hon. DENNIS DECONCINI,
U.S. Senate.

DEAR DENNIS: You soon will be voting on S. 3189, the Department of Defense Appropriations Bill. As you probably know, at least one amendment is contemplated which, if enacted, would seriously hinder efforts to achieve a negotiated settlement to the conflict in Angola.

As you know, I am engaged in active diplomacy aimed at achieving a negotiated settlement. Foreign Minister Shevardnadze and I are seeking a negotiated settlement to the Angolan conflict. This is due in no small measure to Moscow's understanding, despite the enormous and continuing Soviet commitment to the Luanda regime, of American resolve on this issue. Likewise, some, but not all, MPLA leaders are beginning to realize that they cannot defeat UNITA militarily and must negotiate a settlement, despite the wishes of hardliners in Luanda who continue to seek a military solution. After four rounds of UNITA-MPLA direct talks facilitated by the Portuguese Government, our policy may be on the verge of success. For his part, Dr. Savimbi has been flexible and reasonable in his negotiating positions. Furthermore, he has been steadfast in his calls for free and fair multi-party elections in which UNITA is free to participate.

I firmly believe that Angola, like other regional conflicts, can be resolved through negotiations, if both sides have the incentive to talk and compromise. Our ongoing program is important to persuading the Angolan Government that a military solution to the conflict is not an option. I urge in the strongest possible way that you continue your solid support for this peace process by not endorsing legislative proposals which, although packaged as "compromises", actually would have the effect of undercutting those in the MPLA who want to negotiate and of strengthening the hand of the MPLA hardliners who want to continue the bloodshed.

Any imposition of conditional language will be taken by hardliners in Luanda as the ray of hope they have been looking for and long predicting. They will argue that the U.S. is preoccupied elsewhere, "short of breath," and will only pull the rug out from under UNITA—and that there is thus no need for negotiations. This will only lengthen Angola's tragic war.

My view boils down to this: All Savimbi wants is a ceasefire and the ability to compete in fair and free multiparty elections. Some in the MPLA seem willing to move toward this peaceful, democratic approach as well. A vote to weaken our Angola program is a vote against this democratic solution at the absolutely worst time—and would be a vote for more killing, more stalemate, and more suffering.

Therefore, I ask that you strongly oppose any efforts to amend the Defense Appropriations Bill with respect to Angola.

Sincerely yours,

JAMES A. BAKER III.

U.S. SENATE,
Washington, DC, September 24, 1990.

Hon. GEORGE MITCHELL,
Majority Leader, U.S. Senate, Capitol, Washington, DC

DEAR MR. LEADER: We are aware of your interest in U.S. policy towards Angola. As Democrats, we are very supportive of the current policy and all efforts at achieving a verifiable cease-fire, national reconciliation, and internationally monitored, free and fair elections in this troubled country. We are heartened by the independence and free elections in Namibia and hopeful about the developments in this regard in South Africa.

The attached paper outlines our views about the current policy and why we feel that any change at this time could have a negative impact on the sensitive negotiations. It is provided for your consideration. We hope you may find it useful as background for future discussions on this issue.

We appreciate your consideration of its contents.

Sincerely,

BOB GRAHAM.
RICHARD C. SHELBY.
DENNIS DECONCINI.
ERNEST F. HOLLINGS.
ALAN J. DIXON.

In recent months, a number of questions have been raised about the foreign policy of the United States toward Angola and the tragic conflict that continues to plague that country. In the course of raising these questions, demands have been made that the United States end its policy of providing assistance to the National Union for the Total Independence of Angola (UNITA), which is led by Dr. Jonas Savimbi. In order to clarify some of these policy questions, we offer several thoughts for your consideration.

BACKGROUND

There should be little disagreement about the fact that the people of Angola have suffered tremendously for many decades. Prior to its independence in 1975, Portuguese colonial rule extracted a heavy price from Angolans in the form of political oppression and economic exploitation.

These conditions did not change, however, with the Portuguese departure in 1975. Although arrangements had been made among the three main liberation movements—the Popular Movement for the Liberation of Angola (MPLA), the National Union for the Total Independence of Angola (UNITA), and the National Front for the Liberation of Angola (FNLA)—for the establishment of a transitional government of national unity leading to free, multi-party elections, a series of events occurred which resulted in the forceful seizure of power by the Marxist MPLA.

This seizure of power by the MPLA was quickly supplemented by the introduction of Cuban troops—which at the height of Fidel Castro's involvement exceeded 50,000 troops—and military advisors from the Soviet Union, East Germany, North Korea and Czechoslovakia. What then followed was a familiar scenario: the MPLA declared itself the legitimate government of Angola, political parties were quickly outlawed, civil liberties were suspended, much of the economy was nationalized, and the press was placed under government control.

Most importantly, the MPLA became a principal beneficiary of the Soviet policy of providing financial and military assistance to Third World regimes. Soviet support for the MPLA at times exceeded $1 billion per year.

During the ensuing fifteen years, UNITA has waged an armed struggle against the MPLA and Cuban troops to bring the political situation in Angola back to the status quo ante. It has sought to re-establish the framework for national reconciliation and free, multi-party elections in Angola under international supervision.

UNITA is a legitimate and viable presence in Angola. It has the support of a substantial portion of the Angolan population and manages approximately one-third of the country. UNITA has health and education programs for those Angolans who live in its territory. Unlike many other rebel movements around the world, it is an organized party with a political platform, one which it hopes to put before the Angolan people at the ballot box. UNITA cannot be ignored in the context of a preaceful and comprehensive resolution to the conflict.

Sicne 1986, the United States has sought to assist UNITA in this process by offering "appropriate and effective assistance" as well as diplomatic support. This policy has been pursued with bipartisan support in Congress.

U.S. POLICY

The question confronting Congress is how the United States can play a role in promoting national reconciliation and a negotiated, democratic settlement to the conflict in Angola.

The need for such a settlement has become increasingly urgent in recent months. According to the United Nations, the International Red Cross, and U.S. Office of Foreign Disaster Assistance, Angola is threatened by a famine which has

been characterized as the worst humanitarian crisis on the African continent. Hundreds of thousands of Angolans are at risk of starvation, and the famine in Angola may rival those suffered by the Sudan and Ethiopia in recent years. On August 3, the House passed a resolution calling for both sides of the conflict to put humanitarian needs above military goals and agree to safe passage arrangements with neighboring countries to ensure that food can be delivered in the most cost efficient manner. Unfortunately, the government of Angola, so far, has not responed favorably to these and other efforts to address the famine.

Critics of U.S. policy towards Angola claim that our assistance to UNITA merely fuels the military conflict. Furthermore, some contend that the government of Angola has taken a number of internal steps, including a reduction in Soviet military assistance and movement toward privatization of the Angolan economy, which merit a reward, such as diplomatic recognition by the United States. Others even go so far as to assert that "tribal differences" among Angolans may preclude the country from joining the community of democratic nations at this time.

It should come as no surprise, though, that the MPLA is actively seeking U.S. recognition. With Cuban troops scheduled to be out of Angola by mid-1991 and an apparent desire by the Soviet Union to reduce its onerous financial burden in Angola (which, according to public reports was still approximately $800 million last year), the MPLA very likely sees U.S. support for UNITA as the most serious impediment to its maintenance of power.

While the United States should welcome steps by the MPLA to open its economy to foreign investments, the fundamental issue which perpetuates the Angolan conflict has yet to be fully addressed by the government: that the people of Angola have never given their consent to the establishment of a one-party "people's republic" led by the MPLA, and they have been unable to determine their own future at the ballot box since the country's independence. It is the lack of a democratic solution to the conflict—not U.S. support for UNITA—which drives the war in Angola. Until this question is resolved at the negotiating table, the prospects for an end to the war are remote at best.

Although the MPLA has stated that it may be willing to permit the evolution of a multi-party system of government sometime in the future, it is not unreasonable for UNITA to remain skeptical until a negotiated and signed agreement is reached on this critical point.

We also blieve that the people of Angola, despite any "tribal differences" that may exist, will, if given the opportinity, display an enthusiasm for democracy in much the same way the people of Eastern Europe, Namibia, and Nicaragua have in recent months.

Several negotiating sessions between the MPLA and UNITA have occurred in recent months under the auspices of the Portuguese government. Unfortunately, these talks continue to be plagued by deep mistrust on both sides and the inherent complexities of reaching a comprehansive ceasefire and political settlement. To overturn our present bipartisan policy would do little to encourage these negotiations. Indeed, it would likely upset the delicate momentum of negotiations that currently exists and embolden hardliners in the government who, as we saw during the MPLA's largest military offensive last December, still dream of a military victory over UNITA.

This is not to argue for a military solution to the conflict. U.S. policy is not designed to bring about a military victory over the MPLA, and UNITA's leadership continues to insist that a military solution is not feasible. (Our limited amount of assistance, which public reports indicate equals approximately $50–$80 million per year, would never enable UNITA to overcome $800 million in Soviet aid to the MPLA.) But our assistance to UNITA has been an effective source of pressure on the MPLA, and it certainly has contributed to the government's willingness to negotiate and agree to the withdrawal of Cuban troops.

The focus of our energies, therefore, should be to facilitate a negotiated settlement, not abandon our commitments to those seeking to rid Angola of its one-party system.

At the same time, however, we do not wish to underestimate the devastating consequences of the war in Angola on its people. They want and deserve peace as well as the opportunity to rebuild their country; they have suffered long enough.

But we urge Democratic leaders to recall the words of Nelson Mandela in his speech before a joint session of Congress: "We are engaged in a struggle to ensure that the rights of every individual are guaranteed and protected through a democratic constitution, the rule of law, and an entrenched bill of rights which should be enforced by an independent judiciary, as well as a multiparty political system."

Shouldn't the people of Angola possess the same guarantees?

Yet when the Angolan Catholic Bishops last year called for genuine negotiations, free elections, and a democratic settlement, they were publicly rebuked by the MPLA.

Peace should be the ultimate goal of our policy towards Angola. But for a just and lasting peace to be realized, conditions for the free expression of basic human and political rights must be firmly in place. Therefore, we believe that the wise counsel of former Costa Rican President Oscar Arias about Central America also applies to Angola and the rest of southern Africa: "Without democracy, there can be no peace."

Angola is a country with great economic potential. Once Angolans are at peace with themselves, the United States should be prepared to assist them in rebuilding their country and strengthening democratic institutions, as we have done for the other new members of the international community of democratic nations.

We appreciate your consideration of these views and believe that by speaking with a single, bipartisan voice, the United States stands the best hope of achieving its objectives of peace and democracy in Angola.

COMMENTARY NOTES "HEAVY BLOW" TO UNITA

It's not yet the victory wished for by the Angolan people and which would permit them to easily achieve their long desired peace.

Yet, it's certainly a heavy blow to the UNITA [National Union for the Total Independence of Angola] puppet gangs who have had to hastily swallow their public arrogance which they openly displayed in the past few days.

By approving the "Solarz Amendment," which provides for a three-month conditional suspension of the Bush Administration's proposal of about $60 million in aid to UNITA, the U.S. Congress has in practice showed that it has finally begun to be in step with the new world order which is contrary to armed confrontation and the "ghosts" of cold war.

Congressman Ronald Dellums, who had placed another amendment calling for a pure and simple cut in aid to UNITA, was quite clear in his explanation. He urged his fellow congressmen to remove the Angolan question from the context of cold war, and look at it "in human terms."

It has been this new "sight" of the congressmen which permitted a majority of 213 voices to be openly heard in favor of an end to massacres, maiming, absurd destruction of assets and infrastructures, and other acts of terrorism that UNITA had been carrying out with the effective support of the U.S. authorities.

The amendment now needs to be ratified by the Senate in order to come into effect. The conditions set by the "Solarz Amendment" [word indistinct], free elections under a multiparty system, an end to Soviet military support as well as the removal of Soviet advisors from the Angolan Army, coincide with the stand publicly taken by the People's Republic of Angola. It was the Angolan Government which first defended and supported the so-called "Triple Zero" plan which calls for an end to military aid to all sides involved in the Angolan conflict.

Obviously, those conditions can only affect UNITA, which has been disturbed by such an unexpected blow to its expectations for additional aid. Now, UNITA wishes to be regarded as a victim that has been misunderstood, and has stated that "like in the past, it has been forced to fight alone, without any support."

With such a statement from their "Political Bureau," the puppet gangs are seeking to make one forget that the voluminous aid that has so far been provided by the United States could last for a long time, while diverting attention from the overt support provided for by the most backward circles of the apartheid regime, and even the aid that some long-standing African friends are still giving them.

Regardless, UNITA is right when it feels increasingly isolated. This is due to a growing awareness throughout the world, including its former "protectors," about UNITA's terrorist nature, its dictatorial style of leadership, and the scandalous dimension of its victims and crimes.

Such a terrorist nature, as well as a political and diplomatic campaign marked by ambiguity, retreats, and subterfuges, contrasts with the coherent and responsible stance taken by the Government of the People's Republic of Angola both during the peace talks, the domestic reforms, and the adherence to international accords as seen in the scrupulous compliance with the timetable for the withdrawal of Cuban forces from the country.

It was not by chance that Mr. Abdulrahim Farah, UN under secretary general for political questions, regional cooperation and development, recently praised in Luanda the initiatives and personal commitment of President Jose Eduardo dos Santos to the creation of conditions for the fulfillment of international humanitarian assistance to Angola's drought and war victims.

Such a stand publicly taken by the senior UN official, clearly unmasks UNITA's allegations that it first advanced the idea, when it is well known that the so-called "peace corridors" are designed to channel arms and other military equipment to its forces.

The intense political and diplomatic campaign that the Angolan head of state has carried out in relation to the United States throughout 1990 has begun to bear fruit. The most recent examples of this campaign were the televised debate with congressmen and the letters President Dos Santos personally addressed to some of them.

The seriousness and commitment showed by the Angolan president in the search for a negotiated peaceful solution to the Angolan conflict, as well as his personal undertaking to see to it that all the publicly announced political and economic reforms will be implemented, have certainly had a decisive influence in the congressmen's debates which, for the first time, openly discussed the continued assistance to UNITA.

Jonas Savimbi's hasty trip to the United States was worthless. It seems that the fact that he had "an invitation" (sic), and was received by President Bush did not help to secure continued assistance which has systematically prevented UNITA from assuming a more realistic and less arrogant stance at the negotiating table.

If it is true to say that a definitive cut in that aid will confine UNITA to its true dimension of an armed gang seeking to assert itself through terror and destruction, then it is correct to say that that suspension, though temporary and conditional, represents a positive evolution in the U.S. policy toward Angola, and amounts to the first and significant victory for common sense.

A TRIBUTE TO ROBIN GOLDSTEIN

Mr. BRADLEY. Mr. President, some reporters make a lasting impression, not just for the quality of their work, but because of the way they approach their work. Robin Goldstein was one of those reporters.

Born and raised in New Jersey, Robin first made her reputation as a reporter in her home State. I knew her as a reporter for the Asbury Park Press. And when she died of cancer at such a young age, all of the New Jersey and all of the hard-working reporters in the press galleries felt the loss.

I remember the way she conducted an interview. She always did her homework, she was always prepared. You could let your guard down, because when Robin Goldstein did a story, you knew it would be fair, and that the issues would be addressed seriously.

Robin's friends described her as selfless. And you could see this in her reporting. You could always count on her objectivity. Her ego never spilled into her stories. Robin Goldstein immersed herself in her stories, and while she always saw the issue clearly, she didn't ignore the human elements that are a part of every story.

Her friend, Dale Russakoff recently devoted a column in the Washington Post to Robin Goldstein. Her story is a tribute to Robin's life and her work, and I ask that it be printed in the RECORD:

There being no objection, the article was ordered to be printed in the RECORD, as follows:

HONORING A SELFLESS LOVE OF REPORTING

(By Dale Russakoff)

The Robin Goldstein Award was presented the other day. You may not have heard of it, or of Robin Goldstein. She didn't gain fame or power here. She didn't have the time, or the nature, to go looking for it.

She was a regional reporter, one of some 600 men and women who write news of interest to hometown readers—how the budget will hit the senior center, how lobbyists court your congressman, how the feds found toxics in the local dump. These reporters don't tend to bring down presidents, win glitzy awards, have TV series based on them.

No, they tend to work in cramped, one-person bureaus, fight to get calls returned, keep daily tabs on multiple hearings, briefings and regulations, write 10 or more stories a week, act as their own countries and janitors.

Most arrive here as hometown stars, only to labor in obscurity. Goldstein, for one, was a legend in New Jersey for covering the Mafia. She had extensive sources inside the powerful Genovese crime family.

When Genovese family members faced murder charges, they subpoenaed letters a rival hit man had sent Goldstein. She refused to turn them over and was threatened with jail for contempt. She appealed, and won a state supreme court case that is a landmark of reporters' confidentiality rights. She was then 25.

The mobsters apparently lamented putting her at risk of prison. Their lawyer even apologized. "Robin, if they make you go to jail, I'll go with you."

"There won't be room," she responded, "My mother's coming."

"Did you think I was going to let her go to jail alone?" asked Rhoda Goldstein, a New Jersey social worker.

And oh, by the way, Robin Goldstein had cancer. I say it that way because if you didn't know her well, and I was lucky enough to be one who did, you wouldn't have known until the end that she faced obstacles others didn't.

The cancer was found in 1983, and she fought it with flair, scarcely letting it cramp her work or life. On days she had chemotherapy, she lay on the living room couch and interviewed by phone. If she got bad results from a CAT scan, she went back to work, finished her story and carried on. Once she had surgery on Monday, and insisted she and her husband go to a friend's dance party that Saturday.

Weeks before her death, too weak to leave home, she stayed up late watching President Bush's first budget address and calling local lawmakers for reaction. Her paper, the Orange County (Calif.) Register, spread the story across Page 1.

Robin Goldstein died in March 1989 at age 34. Soon after, her friends decided to create an award to honor her breed of reporters—the ones uncelebrated here, but counted on by people across the country to explain how Washington affects their lives in ways the national media can't.

Her friends wanted to find someone every year who, like Robin Goldstein, churned out 10 or 15 stories a week on hearings and news conferences, and also went beyond the dished-out news to produce distinguished reports and graceful writing.

Lee Davidson, 32 Washington correspondent for the Deseret News of Salt Lake City, was named this week as winner of the first Robin Goldstein Award, an annual $1,000 prize of the National Press Club, which appoints the judges and presents the award. He had exposed nerve gas leaks in Utah military installations, covered Bush's inauguration on deadline in 20 minutes and detailed the liberal alliances of Utah conservative Sen. Orrin Hatch (R) long before big-time political reporters noticed them and much more.

The day after winning the award, Davidson arrived at 6:30 a.m. at his office, an unused kitchen in a Capitol Hill think tank—the finest quarters the paper could spring for, by 9:30, he had filed three stories for the first edition, including a short item on a Salt Lake City school that has honored at the White House, stopped in at hearings on a Utah water project and on the Senate confirmation hearings on Supreme Court nominee David Souter and buttonholed Hatch in a hallway for an interview for a daily story and a column.

He also was making final arrangements for the release of 1,500 pages of FBI records for an investigative article on a polygamous Utah sect leader, documents he is obtaining under a Freedom of Information Act request he has pursued for three years. He stores his FOIA records in the kitchen's cabinets.

"It's my Harry Truman Memorial Office," he said. "If I can't stand the heat, I get out of the kitchen."

Robin Goldstein's husband, John Mintz, an editor at The Washington Post, presented the award to Davidson at a press club banquet. He told of Robin Goldstein's life: her trials, her triumphs, her undying passion for reporting, whatever the hurdles.

Rhoda Goldstein and her husband Raymond, embraced Mintz afterwards. Then, as only a mother-in-law can, Rhoda Goldstein deadpanned: "You forgot something important. You didnt say that her first office was the extra bedroom in your apartment."

CONFERENCE REPORT OF DOD APPROPRIATION AND AUTHORIZATION

Mr. BRADLEY. Mr. President, I voted against these conference reports because they spent more than is needed to defend American interests around the world.

Indeed, they failed to take sufficient account of the radical political transformation of Eastern Europe which has already largely neutralized the Soviet threat to our interests and Allies in Western Europe. Within the last year, America has finally succeeded in the long, hard struggle to contain the Soviet military power and to encourage the emergency of democratizing forces in Central Europe as well as the Soviet Union itself. This was not only a dramatic triumph of the human spirit over the dangerous remnants of repressive regimes, it was also a vindication of American leadership and staying power during four long decades of alliance-based strategic containment.

The old dangers of East-West confrontation will be receding still further

in the next few months as deadlines are officially agreed to for the complete withdrawal of Soviet forces from eastern Germany in 1993 or 1994. The Soviet Union will also be facing disruptive changes in its political and economic system. As a result, it will have growing difficulty conscripting the manpower, modernizing the weapons, and providing the resources needed to maintain and operate its Armed Forces, even as they are withdrawn from Central Europe and greatly reduced in size. Moreover, Soviet Armed Forces are already in turmoil due to widespread discontent with their poor housing, low wages, unpopularity, and uncertain future. They will cut drastically as a result of the recent agreement on Conventional Forces in Europe [CFE], which will convert them from on offensive to a defensive army.

While these events are likely to further reduce the Soviet military threat to the West, the United States will nevertheles face a proliferating array of military challenges, including Northeast Asia, the states around the Persian Gulf, and the Mediterranean littoral. That is why the United States both can and should reduce, restructure and reorient its Armed Forces to meet these widespread and diverse military threats which, although much smaller than their Soviet counterparts, are nevertheless potentially very damaging to American interests.

While the Defense authorization and appropriation conference reports recognized some of these new realities, and certainly more than the President's requests acknowledge, they did not go nearly far enough. In general, they maintained a higher level of defense spending than the United States needs to protect vital American interests around the world. In particilar, they funded too many gold-plated weapons and not enough of the right sorts of forces to meet real threats more cheaply and effectively. For example, they did not equip our new fleet of B1-B bombers to carry cruise missiles, which cost about a 10th as much as B-2 bombers and can do the same job. Moreover, they continued spending too much on maintaining defenses in Europe. Soviet forces are much less threatening to our Allies because they are literally surrounded by people in a newly free Eastern Europe who do not welcome the Soviet presence and are forcing them to withdraw.

These conference reports will thus burden the American taxpayers unduly by keeping the exorbitantly expensive B-2 program alive, by prolonging an oversized United States military presence in Europe, and by retaining more battleships, aircraft carriers, and support ships than are needed in the active U.S. Navy. The legislation wastes scarce resources on strategically obsolete missions in Central Europe and fails to concentrate them instead on the still critical missions of countering North Korean threats to our allies in the South, containing Iraqi aggression around the Persian Gulf, and responding forcefully to any other realistic threats to American interests around the world. At a time of mounting deficits, we no longer have the luxury of buying weapons or maintaining forces that we do not need. Mr. President, in my view more effective U.S. military strength can be achieved at substantially lower cost, but only if Congress had rejected more than it has of the President's pork-barrel defense budget.

Mr. President, in voting against these Conference reports, I also opposed their failure to provide and limit funds for Desert Shield, which I wholeheartedly support as a fully warranted strategic deployment and precautionary show of force. This multinational exercise in Saudi Arabia and the Persian Gulf region is intended to deter Iraq from further acts of aggression, to defend American and allied interests there if deterrence fails, and to enforce international compliance with the U.N. sanctions. These sanctions are aimed at forcing Iraq to end its occupation of Kuwait. While I endorsed each of these aims, the Congress should not be giving the President a blank check to build up forces well beyond current levels for what could only be a ground invasion against Iraq—an action fraught with uncertainty. I did not give Jimmy Carter or Ronald Reagan a blank check and I won't give George Bush one, either.

The multilateral commitment is deterring Iraq. Time will allow the sanctions to work. Diplomacy must be actively seeking a settlement even while force, particularly air power, cannot be forsworn. Patience is critical. Precipitous action could leave us isolated in a hostile region. Any military action must have the full and open support of the American people and it must be an action that is quickly winnable and clearly in defense of our national interests. Having erred seriously in not putting up a red light to warn Saddam Hussein before his invasion, and having successfully isolated him diplomatically, the President and the Secretary of State now have difficult choices to make. They and our Nation must live with the consequences of their action for many years.

CONFERENCE REPORT ON SAFE MEDICAL DEVICES ACT OF 1990

Mr. DODD. Mr. President, I am pleased to express my support for the conference report on the Safe Medical Devices Act of 1990.

The purpose of the Safe Medical Devices Act of 1990 is to improve the Medical Device Amendments of 1976, the basic law under which the Food and Drug Administration regulates medical devices and ensures their safety and effectiveness.

In the past few years, interest in the medical device amendments has grown because of problems associated with implementation of the law as well as concerns regarding the costs of some provisions relative to the incremental gains in safety and effectiveness.

Simply stated, the 1976 law sought to avoid overregulation, thus eliminating unnecessary resource costs to industry and the Government, foster incentives to encourage innovation in a relatively youthful industry and, most importantly, provide the public reasonable assurance of safe and effective medical devices.

While implementation of the 1976 law by FDA has led to a substantial improvement in the safety and efficiency of devices, refinement of the law is necessary to achieve the original purpose of the amendments.

For the past 2 years, I have been working to develop balanced medical device reform legislation which would improve the regulatory scheme for medical devices and would ensure continued public access to safe, effective, high-quality medical devices. The bill before us is the product of lengthy discussions and negotiations with every segment of the medical device community, including the industry, consumer groups, and the FDA.

I am pleased that the conference report on the Safe Medical Devices Act successfully culminates that effort. It strikes an effective and appropriate balance, achieving the objective of ensuring that devices entering the market are safe and effective, that problems with devices are identified quickly, and that defective devices are removed from the market as soon as possible, while also ensuring the continued growth and innovation of our medical device industry so it retains its status as the world leader.

The legislation is truly comprehensive—it will modify virtually all medical device program activities at FDA and will promote improved actions by FDA.

On the premarket side of device regulation, the bill responds to current weaknesses of the law. Numerous provisions in the bill are intended to enhance device safety and effectiveness.

The premarket review process will be made more effective by clarifying the appropriate classification of devices, thus avoiding overregulation and the needless expenditure of FDA resources. The premarket review process also will be strengthened by essentially codifying FDA's interpretation of the premarket notification process, the process by which some 95 percent of devices are approved for marketing by FDA.

39-059 O—92-17 (Pt. 25)

Other improvements in premarket regulations relate to streamlining the law and making regulations more efficient. The bill streamlines the process of promulgating performance standards and expands the type of special controls that can be imposed on class II devices.

Class II is redefined so that FDA will be better able to reclassify certain devices out of class III, while ensuring safety and effectiveness. However, for those devices that are purported or represented to be for a use in supporting or sustaining human life; this is, higher risk devices, the FDA, at the time the device is classified or reclassified, must examine and identify the special controls that are necessary to provide adequate assurance of safety and efficacy, and to describe how such controls provide such assurance for those devices which may pose a heightened potential for injury or death. This will enable FDA to evaluate and ensure the safety and effectiveness of other similar devices.

The legislation also provides for an orderly transition away from the current prohibition against FDA's access to data in one manufacturer's device approval application as a way of facilitating approval or reclassification of another manufacturer's device. This provison strikes the appropriate balance between preserving incentives for innovation and research and development on the one hand, and inefficient use of industry and FDA resources on the other.

The bill thus enables FDA to avoid meaningless duplication in the premarket review process, and likewise, provides FDA with the means of moving certain types of devices out of the resource intensive premarket review arena.

The legislation includes three unique provisions which recognize the tremendous growth in biotechnology and the new challenges of global competition which will be brought about the changes in the European community in 1992. The bill contains an humanitarian device exemption which is intended to increase the availabilty of devices designed to treat a disease or condition affecting fewer than 4,000 individuals. The legislation also streamlines the regulatory review procedures for so-called combination products comprising any combination of drugs, devices, or biologics. Finally, the bill provides for the establishment of an Office of International Relations that will facilitate the mutual recognition of device regulations and testing protocols between the United States and foreign countries.

On the postmarket side, the bill provides additional means to protect the public health. The bill establishes a reporting system which will allow FDA to receive reports from hospitals and other health care facilities about serious injuries or deaths that may have been caused by medical devices. While I feel that user reporting requirements are important and necessary, in all candor, Mr. President, I have some concerns about the scope of the reporting provisions and the potential for needless duplication. While I am pleased with the moderating changes made in the user reporting section during the conference, I do worry that, given the limited FDA resources available to process these reports, it may be difficult to properly evaluate and utilize user reports in a useful manner. My fervent hope is that FDA will use the discretionary authority provided in this section to strike an appropriate balance between the administrative burdens imposed by this requirement and the useful information which can be generated from users reporting.

The bill also provides for mandatory clinical monitoring and postmarket surveillance, soon after market introduction, of certain devices that may pose substantial risks. The bill provides several provisions, such as explicit recall authority, which will allow FDA to ensure that unsafe devices are quickly identified and appropriately modifed or removed from the market.

Finally, the legislation gives new authority for civil penalties as a means of enforcing the Food, Drug and Cosmetic Act. Frankly, I opposed including the civil penalties provision to this conference report because the legislation already provides FDA with many other effective tools to correct violations of the medical devices provisions in the FD&C Act. However, because our House counterparts had such a strong and persistent interest in civil penalties, the reality was that a compromise of penalties was necessary if we wanted to complete action on medical device reform. I take some comfort in the fact that the Senate conferees succeeded in moderating the penalty provisions from the House bill.

Mr. President, three major themes dominate the Safe Medical Devices Act of 1990: First, enhancing the safety and effectiveness of devices by defining and streamlining the premarket review mechanisms and by creating a series of postmarket controls that alert the FDA to device problems and provide the means for responding quickly and effectively to situations that may present serious, adverse health consequences; second, preserving and focusing FDA resources on the most important public health issues associated with medical device regulation; and third, avoiding overregulation, thus maintaining a highly competitive, innovative industry.

Mr. President, I wish to commend Senator KENNEDY and his staff for their hard work and cooperation in helping to develop this legislation. I also wish to recognize the significant contributions made by Senators DURENBERGER, COATS, and HATCH, and their fine staffs.

Mr. President, I urge adoption of the conference report on the Safe Medical Devices Act of 1990.

Mr. DASCHLE. Mr. President, the remark was made here on the floor earlier today that we are in a grotesque situation with respect to the veterans' compensation bill, S. 2100. I agree wholeheartedly with that statement.

Veterans are in danger of losing their COLA. VA physicians and dentists are in danger of losing their pay reform. Agent orange victims are in danger of losing their chance at a meaningful, a political resolution of their disability claims and medical needs.

S. 2100 contains 2 years of the Senate Veterans' Affairs Committee's work—valuable work—and we are in danger of losing it all.

How did we get into this situation?

There is no doubt that you will hear several different versions of the story. If S. 2100 and the veterans' COLA do not go through before this Congress adjourns, you will see a mad rush to assess blame for that failure. In fact, it has been suggested on the Senate floor today that we are in this dire situation because the proponents of agent orange legislation insist on having their way.

That argument turns reality on its head. Two of one hundred Senators are blocking this bill because there are several provisions in it they don't like. They don't like them, but they don't have the votes to defeat them. In fact, it isn't even close. They are, in essence, a minority of two that wants to bind and gag the Senate and prevent it from working its will.

Mr. President, every Senator, every veteran, every American must determine for himself or herself who is insisting on having his way.

Is it the Senators whose legislation has passed the Senate three times and is included in the committee-reported version of S. 2100? Or, is it the small minority that refuses to let the Senate vote on S. 2100—or even bring up the bill?

So who is blocking the COLA?

The minority of two say they support the COLA, but that they cannot support other provisions the bill has been loaded down with.

These are veteran legislators. They understand parliamentary procedure very well.

It is no secret that the veterans compensation bill is an omnibus bill—just like the Defense authorization bill or the farm bill. Every year, like clockwork, we have an omnibus veterans compensation bill, and every year it is the vehicle for all veteran-related proposals.

This should be of no surprise to the Senators blocking this bill. They are members of the Veterans' Affairs Committee and are quite familiar with how this process works.

In blocking S. 2100, these Senators announce to the world their willingness to block the COLA and all the other vital provisions in this bill. Their protestations to the contrary insult the intelligence of other Senators.

Of course, their rationalizations are not intended to convince other Senators. Senators know what is going on. They know about holds and filibusters. They know that the Senate suffers from a growing tendency toward minority rule by obfuscation.

The Senators' pronouncements are intended to convince veterans and the public, most of whom have understandably not followed the convoluted series of actions that have brought us to this point.

These Senators say they have done all they can to resolve this issue. That is an incredible statement.

It was October 10 that the majority leader moved to proceed to consideration of S. 2100. It was October 10 that a minority of two said that they would refuse to allow the Senate to act on the veterans compensation bill unless the provisions they did not like were stripped from the measure.

Contrary to the impression left on the floor earlier today, all of these provisions were passed in the Senate Veterans' Affairs Committee. The agent orange provisions, which seem to be causing the strongest objections, passed the Senate in August 1989 after a tabling motion failed by a vote of 92 to 8.

The vote was 92 to 8.

The only difference between the bill voted on last year and the provisions in S. 2100 is that S. 2100 contains a no-cost provision codifying the Secretary of Veterans Affairs' recent decisions relating to permanent compensation for soft-tissue sarcoma and non-Hodgkin's lymphoma. Furthermore, that provision is not one of those to which an objection has been raised.

Last week, when many of us were beginning to see the dire situation we were approaching, the Secretary of Veterans' Affairs decided he would try to break the deadlock. The VA proposed a compromise that was, at least reportedly, acceptable to the administration. They asked the proponents to exclude two entire sections from the House- and Senate-passed bills and to make a change in another section. In exchange, they asked the opponents to allow S. 2100 to be considered on the Senate floor.

I want everyone to understand what happened when a Republican administration asked the lead sponsors of the agent orange legislation, who happen to be Democrats, to accept changes and deletions from our bill that had already passed the House and the Senate. We agreed to accept them. We agreed to accept them because we felt it was worth the sacrifice to save veterans from the impasse we are now experiencing.

I also want everyone to understand exactly what happened when the Republican administration asked the opponents of our legislation, who happen to be Republicans, to allow the bill to come to the Senate floor in exchange for our accommodations. They rejected their own administration's deal.

So I have little patience when the opponents of our legislation claim they have done all they can do, and suggest that we have not been willing to negotiate. Both claims are simply untrue. Given our position of strength, I think we have been quite generous in the negotiating process. As for doing all they can do, the opponents can easily exhaust that option by allowing S. 2100 on the floor.

Any Senator has the right, even at this late point in the session, to block consideration of a bill. Protection of the rights of the minority is a hallmark of the U.S. Senate.

I do think, however, that it is irresponsible to exercise that right in the case of S. 2100.

It is irresponsible to block the bill that means so much to veterans over a $1 million literature review to be conducted by the National Academy of Sciences, one of the most esteemed scientific bodies in this country. And, it is disingenuous at best to argue that those who support these provisions are holding up this process because they insist that the Senate have an opportunity to debate and vote on a compensation bill reported to the floor by the Senate Veterans' Affairs Committee.

If the Senate is allowed to take up S. 2100, the opponents of specific provisions, including that relating to agent orange, will have an opportunity to offer amendments to modify or delete them. At that point, the majority view on each provision will prevail, as it should in a representative democracy.

The minority of two defend their position by claiming they object to the way the legislation directing the National Academy of Sciences review is written. That is their right, but it is hard to believe.

The NAS review is the most important section of the agent orange legislation, and its language was carefully negotiated 2 years ago by people on both sides of this issue. Our staffs worked carefully with scientists to develop guidelines for the review that would make it a meaningful scientific document as well as a useful tool for determining veterans' compensation policy. There were major differences of opinion, but the parties compromised and agreed to the final language.

In the last few days, we, the proponents of agent orange legislation, have offered to make some of the changes in the NAS review section suggested by the opponents. This offer was extended in spite of the fact that the NAS review language in S. 2100 is identical to the NAS review language in the House-passed bill, as well as S. 1153 and S. 13, two-Senate-passed bills now pending in the House.

A clear majority of the Senate Veterans' Affairs Committee has endorsed this legislation and sent it, once again, to the Senate floor. As I mentioned earlier, the full Senate has passed the NAS review section not one, but three times.

It does not take a cynic to speculate on what has happened here. It appears that the opponents of this provision were willing to let it pass the Senate until they realized that its passage in the House would ensure its enactment.

In other words, as long as they felt assured that the bill was dead in the House, their objections were somewhat mild. But when the agent orange opponents realized that this legislation was on its way to being a reality, suddenly it is worth sacrificing the entire contents of S. 2100, including the COLA, to stop it.

I find it particularly ironic that one Senator who actually helped write that section of the bill is now one of its most fervent opponents. I find it difficult to understand how that Senator could feel this provision is suddenly so odious that it is worth jeopardizing veterans' COLA's.

Mr. President, I know there are strong, sincere feelings on both sides of this debate. I do not question or denigrate the depth of conviction of those who seek to block consideration of S. 2100.

At the same time, however, I am disappointed and saddened by our opponents' efforts to blame veterans and their advocates for the fact that the Senate cannot break this deadlock. Given the opponents' public admission of their unwillingness to consider S. 2100, the attempt to throw blame in this direction is ludicrous on its face. Furthermore, those efforts are divisive, and they serve neither the institution of the Senate nor the interests of veterans about whom we all profess to be concerned.

Finally, Mr. President, I want to let my colleagues know what a strong advocate for veterans the distinguished chairman of the Senate Veterans' Affairs Committee, Senator CRANSTON, has been throughout this difficult period. He and his very able staff have worked steadily to defend veterans' rights and benefits.

The suggestion was made earlier today that the distinguished chairman and I were not fully together on this

issue. This is apparently another attempt to create a divisive atmosphere. However, it is a weak attempt, and it will not work. The chairman, the Senator from Massachusetts [Mr. KERRY], and I have been partners in this process and will continue to be. The chairman has stood firmly behind this agent orange legislation and all of S. 2100. In doing so, he has done a great service to all veterans.

The chairman of the committee deserves a great deal of credit for all his efforts to address veterans' needs during this Congress. It is tragic that 2 years of that work is now in jeopardy. I want to commend the chairman and pledge to him my continued support of his efforts to bring S. 2100 to the floor before this Congress adjourns. But, if the opponents of the bill make that impossible, I pledge to the chairman, to all veterans, and, of course, to our opponents, that we will be back in January to continue the fight.

RESOLUTION TRUST CORPORATION FUNDING

Mr. ADAMS. Mr. President, I rise to speak to providing additional funding for the Resolution Trust Corporation.

Mr. President, the original bill here today as it came out of the Senate Banking Committee, provided $57 billion to the Resolution Trust Corporation to keep it going throughout 1991. I want to make it clear that I find this figure unacceptable.

Over the time since we last voted to provide the Resolution Trust Corporation funds, I have seen uncovered prior deals by thrift executives that have been especially harmful to the local and national economy. In fact, that is why I cosponsored the Wirth amendment to the recently passed crime bill that enhanced bank fraud and embezzlement penalties.

Let me also say that I have many questions on how the Resolution Trust Corporation administrates thrift takeovers.

Accordingly Mr. President, I find it compulsory that until Mr. Brady, Secretary of the Treasury, comes to the Hill to answer my questions and the questions of many of my colleagues, funding for the Resolution Trust Corporation be kept to a strict minimum. That means only until the Congress comes back into session next February. In that context, I will support a proposal to amend this bill to substantially reduce funding for the Resolution Trust Corporation.

CLEAN AIR BILL REPRESENTS AN ENVIRONMENTAL LANDMARK

Mr. PELL. Mr. President, the clean air bill, which I joined in cosponsoring, is an environmental landmark. We have finally reached the end of a very long road toward passage—a road that many of us have traveled for quite some time.

The senior Senator from Maine [Mr. MITCHELL] has been battling to improve the clean air bill since he came to the Senate. I, too, am accustomed to working over a span of years to enact legislation, but his tenacity is a model to us all.

My colleague, the junior Senator from Rhode Island [Mr. CHAFEE] has done an exemplary job of negotiating a tough compromise and sticking to it in the face of strong, and sometimes strident, opposition.

When I cite their examples of environmental leadership, I do not mean any slight to other leaders—including the chairman of the Environmental Protection Subcommittee, the senior Senator from Montana [Mr. BAUCUS], who have done more than their part.

We owe a tremendous debt to the bipartisan leadership which hammered out this compromise measure. It is far from perfect, but it clearly is a big step toward our mutual goal of protecting the health of our citizens and our planet.

Although leaders on both sides had to endure broadsides from their traditional allies, I have been most impressed by the strength, vision, and tenacity of those who battled tirelessly for the strongest possible measure.

As we know, leadership carries with it the weight of special obligations and responsibilities. There were times and there were votes when the burden compromise was extraordinarily frustrating to all of us.

Throughout Senate consideration of the Clean Air Act, I joined in fighting weakening amendments and in introducing strengthening ones. We lost some big ones but we also won a few.

Frankly, I would have preferred a stronger, as well as a more compassionate, Clean Air Act. This measure, however, represents a tremendous step forward. It literally means that we will be improving the quality of the air that we breathe.

I believe the Clean Air Act is an important step toward our goal of protecting the health of our citizens and our planet. This measure represents a good start, but much work remains to be done. We must not forget that—after decades of environmental progress—our work has just begun.

DEDUCTION OF ADMINISTRATIVE COSTS FROM STATE ONSHORE MINERAL RECEIPTS

Mr. WALLOP. Mr. President, had the conference report to the Interior appropriations bill been put to a rollcall vote I would have voted against this legislation. During the conference, a last minute deal was cut to deduct a portion of the States' Federal onshore mineral receipts before those receipts are distributed to the States. This is a proposal I have adamantly opposed for over a decade and will continue to do so.

This is nothing but a backdoor approach to changing the laws dealing with mineral resources which specify that States will receive 50 percent of these receipts—period. These laws do not mention skimming off a percentage for the Federal Treasury or for the costs of managing this program. Mr. President, about one-quarter of the administrative costs, or approximately $30 million will not be distributed to the mineral-producing States under the provision contained in this legislation.

What is so completely outrageous about this proposal, Mr. President, is that many of these States, such as my State of Wyoming, already share in a portion of these costs by conducting the majority of the audits of these very Federal oil and gas leases. Truly, it is the States that should be reimbursed for doing the Federal Government's work and saving the Government money by being diligent and thorough in their efforts to conduct these mineral audits.

Mr. President, if the States are to be double-billed for their efforts, I will work next year to see that the States receive full auditing authority from the Department of the Interior for doing the Department's work.

THE EXCELLENCE IN MATHEMATICS, SCIENCE AND ENGINEERING EDUCATION ACT OF 1991

Mr. KERREY. Mr. President, last night the Senate adopted the conference report on H.R. 996, the Excellence in Mathematics, Science, and Engineering Education Act of 1991.

As an original cosponsor of S. 2114, the Senate version of the math and science legislation, which was conferenced with the House bill to produce this final version, I want to commend the conferees for the bill which they developed and which has been sent to the President for his signature. I also wish to thank them for the courtesies which they and their staffs extended to me during the many weeks when this legislation was moving through the Congress.

Several of the programs in the legislation hold, I believe, particular promise and I want to comment briefly on several of these.

First, there is a statutory base for the fledgling statewide systemic reform program. This is an exciting effort to bring together the academic, business, and public policy sectors of a State in order to devise a statewide program for changing the way that math and science is taught and, ultimately, learned. It recognizes that we

can make true progress toward improved performance of our students and a higher skilled work force only if we address the deficiencies which we see at all levels of math and science education. As I noted in correspondence with the committee, this proposal "would create an immediate, extensive program to help elementary and secondary schools." A statutory base helps to ensure that the program will continue over the years and reach a large number of States. I am also pleased that we were able to obtain language directing that these funds be made available on a geographically dispersed basis.

The VA-HUD-Independent Agencies Appropriations Subcommittee of which I am a member recommended a $15 million appropriation for this program in fiscal 1991, and our distinguished Chair saw that this was retained in conference.

Second, there is authorization for a math and science teacher corps. This program would provide scholarships to undergraduates who commit to teaching math or science upon graduation. This is similar to legislation which Senator ROCKEFELLER and I introduced in 1989, and should help alleviate the shortages of trained teachers which exist in certain areas.

Third, there is provision for a centers of excellence program. Early on, I expressed concern about the fact that many colleges and institutions have been unable to upgrade science, mathematics, and engineering education and thereby become more competitive in the Federal research arena. It is something of a chicken-and-egg situation now. Many institutions across the country simply do not receive a proportionate share, or even close to one, of Federal research funds. They are told they need to improve their facilities, faculties, and offerings in order to become more competitive, but they do not get the research funds which have enabled many of our large and more established institutions to maintain the quality and reputation which enables them to continue to compete so successfully. This program takes nothing away from the successful institutions but is focused on those that need to improve individual programs and departments.

Four, graduate traineeships are included. One of the most successful of the National Science Foundation's programs is the Graduate Fellowship Program which makes awards to outstanding graduate students to pursue their studies at the institutions of their choice. Beneficiaries of the fellowship program have made outstanding contributions to our country and I strongly support the expansion of this program. I am also, however, pleased that the traineeship program is authorized, because traineeships go to individual institutions which develop outstanding research programs and those institutions in turn select the graduate students who will participate. Again, this tends to spread the awards geographically and to benefit some of the colleges and universities which might not otherwise receive support.

Five, H.R. 996 includes a statewide and multistate Star Schools Program. This is an outgrowth of the Star School Program which has been remarkably successful in my State on a much smaller basis, usually the individual school district. It will also encourage the National Science Foundation to expand its work on the use of telecommunications and computer technology in math, science, and engineering education.

Six, the conference version of the legislation recognizes that the Department of Energy, the National Aeronautics and Space Administration, the Environmental Protection Agency, and other departments and agencies can make an important contribution to science, mathematics, and engineering education and that the laboratories and facilities of these agencies are an excellent resource for teacher training. I remain concerned about the fact that the location of these facilities was determined by factors other than teacher training or retraining and hope that efforts will be made to ensure that all parts of our country have access to them. I also hope that the very solid expertise of the National Science Foundation in teacher preparation and enhancement is utilized by these other agencies in developing programs.

Finally, I would note the expansion of informal, hands-on programs in science, mathematics, and engineering. This is a proven way to get to American youth and I applaud the decision to provide for additional efforts in this area.

As I noted in testimony and have remarked on several occasions, we are on our 3,000-some day march to the year 2000, when our students are supposed to be first in the world in science and mathematics. Whether or not they are will be determined largely by what we do now and in the near future. H.R. 966 is a fine building block. Again I commend and thank the conferees.

MASSACHUSETTS COURT RECOGNIZES BOSTON HOUSING AUTHORITY PROGRESS

Mr. KERRY. Mr. President, on September 7, 1990, Judge Guy Volterra ended the Massachusetts Superior Court's active supervision of the Boston Housing Authority. This decision marked an end to the 15-year Perez case, which placed the Boston Housing Authority into Court-controlled receivership for substandard housing conditions. The BHA is the only housing authority to have been placed under court control.

Judge Volterra stated that his decision to end court supervision was made possible by the BHA's extensive achievements during the 1990's, in partnership with its tenants.

The story of the BHA's devastation, receivership, and recovery is instructive to all of us who care about public housing in general and about urban public housing in particular. The case was brought as a class action by the BHA's tenants in 1975. By the time receivership was ordered and affirmed in early 1980, conditions were horrendous. The court stated at the time that many common areas and most apartments in family developments were unsafe, unsanitary, indecent, and in violation of basic standards of habitability. The family developments were one-third vacant.

Judge Volterra's September 7 opinion describes how, first under control of the court and BHA Receiver Harry Spence, and then in 1984 under the control of Mayor Raymond Flynn acting as receiver and his appointed administrator, Doris Bunte, the BHA undertook sweeping improvements. These improvements included the stabilization and full redevelopment of several developments; rehabilitation of vacant and dilapidated buildings; extensive capital commitments; overhaul of maintenance systems, and innovative and successful initiatives regarding security, tenant selection, litigation, and other areas of operations.

In addition, the court points to the effective role played by tenants in the receivership effort, including their participation in the political process on relevant issues and their efforts to ensure that the BHA adhered to proper priorities.

The results have been dramatic. Even as late as 1985, fewer than half of the BHA's occupied family units met State sanitary code requirements. Now, over 90 percent do. The BHA's redevelopment efforts have resulted in the complete redesign and rehabilitation of several large developments to be used for public housing and the conversion of one into a privately owned, mixed-income development. These redevelopment efforts are among a number of BHA initiatives which other cities should examine for possible duplication.

Mr. President, all too often the Public Housing Program as carried out in our large urban centers is portrayed as ineffective. That always has been a false picture for many cities, brought about in part by lack of repair funds and design mistakes decades ago. That image, however, makes all the more critical the need to note substantial progress where it has occurred.

Clearly, the Boston Housing Authority and its tenants have made tremen-

dous strides over the past decade. I commend all of the many individuals and organizations which have made this progress possible. Despite these successes, the BHA still faces significant tasks in the future and continued progress in these areas will require diligence and cooperation on the part of the BHA and its tenants.

So that others will be made fully aware of this progress in our public housing program, I ask unanimous consent that excerpts from Judge Volterra's final order and judgment be inserted in the RECORD following my remarks.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

EXERPTS FROM FINAL ORDER AND JUDGMENT, PEREZ VERSUS BOSTON HOUSING AUTHORITY, MASSACHUSETTS SUPERIOR COURT CIVIL ACTION NO. 17222 (SIGNED BY JUSTICE GUY VOLTERRA, SEPTEMBER 1990).

NOTE.—Case citations, footnotes, and appendices are omitted.)

I. INTRODUCTION

This Order terminates the Superior court's active supervision of the Boston Housing Authority. It successfully ends fifteen years of litigation, and the effort supervised by this Court to bring decent, safe and sanitary housing conditions to Boston's public housing residents.

Entry of this order follows notice to class members, including individual notice to all current BHA tenants, and a hearing on the poposed order. Prior to and at the hearing, affected individuals were permitted to file objections to or comments upon the proposed order.

A Final Order in this case is made possible by the BHA's extensive achievements during the 1980's first under a receivership directly supervised by the Court and then during a restorative period in which the Mayor of Boston assumed the powers of Receiver and appointed an Administrator, Doris Bunte, to exercise those powers. Just as fundamentally, the BHA's tenants have helped assure that the BHA adhered to proper priorities, effectively have participated in the political process on issues such as obtaining money for public housing renovations, and otherwise have played a vital role in assuring the success of the receivership effort. Essential funding support came from the federal and state governments, through the U.S. Department of Housing and Urban Development (HUD) and the state Executive Office of Communities and Development (EOCD).

The Court's orders regarding receivership and restorative governance of the BHA were superceded on May 23, 1989, when Governor Dukakis signed a Home Rule Petition restructuring the BHA's governance (Chapter 88 of the Acts of 1989). Today's order completes the Court's withdrawal from any ongoing supervisory role, which again will become fuly the responsibility of the executive rather than the judiciary. The order also incorporates as directives some of the lessons learned during the past decade. This is done to increase the likelihood that the tragic decline of public housing and which occurred prior to receivership never will be repeated under a future City administration, and that the BHA will carry out the actions needed to provide and maintain decent, safe and sanitary public housing.

The undersigned is the third Superior Court Justice assigned to this action. Justice Paul G. Garrity presided from the commencement of this action until his departure from the bench in 1985. At that time, the action was specially assigned to Associate Justice Harry J. Elam at Justice Elam's request. The undersigned took over responsibility for this action by special assignment in the fall of 1988 upon Associate Justice Elam's retirement. Given these transitions, I have relied heavily upon the work of the prior justices in this action, as well as on the representations and proposals of counsel and my own observations, in crafting the present order.

II. HISTORY OF THE CASE

A. Pre-Receivership Phase

As early as 1967, a privately sponsored study of the BHA indicated servere management problems, with maintenance far below acceptable standards. Additional studies in 1972 and 1973 confirmed these problems. In the early 1970's tenants brought suits in state and federal court in which they demonstrated deplorable public housing conditions. The courts, however, were not ready to impose remedies. The courts found that they could not order BHA's funding agencies to provide additional money or compel BHA to make management changes, or determined that tenants had not exhausted other potential means of relief such as additional tenant participation in BHA decisions or newly legislated or judicially developed remedies.

On February 7, 1975, Armando Perez and eight other named residents of several of the BHA's developments, on behalf of all BHA current and future tenants, filed the complaint in the Housing Court of the City of Boston which commenced this case. The Complaint sought to have remedied widespread violations of the State Sanitary Code in BHA apartments and common areas, and claimed that the alleged Sanitary Code violations "caused irreparable physical and/or emotional injury" to those residing in the developments.

After hearing, the Court confirmed these conditions and ordered the Department of Community Affairs (DCA), the predecessor of EOCD, to fund such efforts. The Supreme Judicial Court reversed this decision as to required DCA funding, but remanded to the Housing Court for further proceedings.

The Housing Court, in the meantime, had appointed a Master in the case. The Court issued various orders directed toward improving the BHA's performance, but the BHA could not or would not carry out such orders. After issuance by the Master of a comprehensive report documenting the BHA's shortcomings, a detailed Consent Decree covering most areas of BHA operations was negotiated. The Consent Decree became effective on June 1, 1977.

The BHA, the Master and the Court struggled within the framework of the Consent Decree for two years. During this time, conditions at the developments deteriorated dramatically. Finally, in its July 25, 1979 Findings, Rulings, Opinion and Orders (page 102), the Court determined, after 34 days of trial, that—

"The history of this case and the repeated efforts by the (plaintiff class of) tenants over the years in seeking and following up every remedy short of receivership in order to obtain safe, sanitary and decent housing as mandated by law requires that they be permitted the only remedy which has not yet been attempted."

The Court decided, on the basis of overwhelming evidence including many visits to and observations of conditions in most BHA developments, that the Authority was unable to perform with any competence or consistency the basic functions of a public housing authority. The Court found that many of the common areas and most of the apartments situated in the BHA's developments were unsafe, unsanitary, indecent and in violation of basic standards of habitability.

The BHA's conditions have improved in the past decade to such an extent that it is easy to forget how intolerable conditions had become by 1979. For that reason, the Court includes as Appendix 1 Judge Garrity's memoranda of recorded observations at various developments from its site inspections during the Spring of 1979. Excerpts from the site visits to the Commonwealth and Mission Hill Extension developments provide the flavor:

"We are now entering apartment 392 with the tenant's permission. The walls in this apartment have flaking and chipping paint. I am now entering a vestibule just off the bathroom. The walls in the vestibule appear to be disintegrating as a result of leaks. I have just entered the bathroom which is literally disgusting. There is an entire section of the wall just in back of the toilet which is totally destroyed. There is a hole in the wall about one foot wide and three feet high, revealing pipes to the toilet. The pipes in the wall are leaking and appear to have been leaking for a substantial period of time. There appears to be substantial danger to the occupants from an electrical fixture over the bathroom cabinet. Over the window in the bathroom there appears to be tile which has fallen down. The floor appears to be substantially ravaged also as a result of leaks. Much of the floor tile is missing. The condition that I am observing appears to have been like this for a fairly long period of time. I am now entering the kitchen of this apartment. One of the interior walls of the kitchen abuts the interior wall of the bathroom. The tenant of this unit has just emptied out one fairly large, approximately one-half gallon in size, container full of water which container was under a drip from the ceiling above the kitchen cabinets. The ceiling is flaking and chipping and very damp and the wall appears to be substantially disintegrated. Most of the floor tiles are substantially damaged."

"We are now approaching some high-rise buildings. The first building that I see, that I am observing, appears to be totally vacant. It is mostly boarded up except at the ground level where approximately half of the openings are unsecured. There is a fair amount of debris on the walkways as I observe it. At a basement at 68 Annunciation Road there is approximately six feet deep of rubbish and debris in the stairwell to the basement, including broken furniture. We are now approaching 64 Annunciation Road. There is evidence of a matress to the left of the entranceway to this building which appears to have been burned. The building is occupied in part. The front door to this building is off the hinges. In fact, there are no hinges and there is no wood frame around it. To my left, as we are walking in there is a vacant apartment that is filled with debris. I am observing the mailboxes which appear to be half vandalized and half rusted out. I am now at 54 Annunciation Road. There is evidence of another fire to the front of the entrance here. There are

the remnants of a motorcycle which appears to at one time have been secured to the front steps.

"We are now about to enter the portion or a wing of the high-rise which has been totally rehabilitated. As we approach it I observe dumpsters that are overflowing and an abandoned automobile. The grounds are littered with much broken glass. There is an unbelievable stench coming from another building's basement. The basement of 54 Annunciation Road appears to be an open sewer, sludge on the floor and the stench of excrement. The basement is open. There are small children running around the grounds. It appears to be most unsafe."

As conditions worsened, more and more of BHA's units became abandoned. Vacancies tripled between 1975 and 1979 at a number of developments that had already had high vacancy rates. The Court noted:

"As in 1975, many of the BHA's vacancies in 1979 could be prevented by the BHA's rehabilitating and rerenting vacant apartments quickly to persons on its waiting list of apartments for housing. Instead of housing those people, the BHA's incompetence in quickly rehabilitating and rerenting vacated apartments permit many such apartments to fall prey to vandalism and become non-repairable except at enormous cost."

The well-documented record of horrendous conditions and the BHA's incompetence was exacerbated by the inability and unwillingness of its governing body, the Authority's Board of Commissioners, to provide even the barest minimum of housing services to its tenants. Not only had the political leadership of the City abandoned the BHA in terms of police protection and trash collection services, but it had actively contributed to the BHA's deterioration by its reliance on the BHA for patronage hiring. With few exceptions, the Mayor's appointments to the BHA's Board of Commissioners were both unable and unwilling to govern the BHA in compliance with not only legal, but also humane norms. Receivership clearly was the last opportunity to retain the possibility of decent, safe and sanitary low-income housing for the approximately 10% of Boston's residents most in need of it.

(NOTE.—Part IIB, describing the 1980-1984 receivership period, and Part IIC, describing the post-1984 "restorative phase" under Mayor Flynn and Administrator Bunte, are omitted. These periods are referenced in the following Findings.)

III. FINDINGS

1. *State Sanitary Code compliance.*—State Sanitary Code compliance is the heart of this case. The injunctive orders presently in effect require a showing by the BHA of substantial compliance with the State Sanitary Code as a precondition for a final order.

As Judge Garrity's site visits described in Appendix 1 make abundantly clear, the deplorable conditions at many BHA sites when receivership commenced amounted to total noncompliance with the State Sanitary Code. Thus, discussion of degree of compliance in 1979 at many of the sites would have been fruitless. In any event, the BHA made no organized assessment of conditions and could not have answered questions regarding degree of compliance.

Between 1980 and 1984, BHA took steps to halt the spreading cancer of wholesale vacancies. Through its redevelopment efforts, BHA showed that, with sufficient funding and skillful management, it could successfully rehabilitate vacant and dilapidated buildings.

Nonetheless, while these efforts showed tremendous promise, at the time of the October 1984 Order, conditions in the majority of BHA's buildings and apartments remained in violation of the State Sanitary Code. The BHA had not yet inspected all of its apartments, and its data collection form system did not provide sufficient information to determine any inspected unit's compliance. Many very serious problems in housing conditions still existed. A large backlog of work orders plagued BHA's efforts to respond in a timely fashion to new work orders.

During the restorative period, the BHA planned and undertook a comprehensive unit code compliance program with $4.9 million in state funding appropriated for this purpose. BHA first instituted an annual unit inspection program, so that it could know the extent of code compliance. Then BHA systematically scheduled work by building and unit, and eliminated all outstanding work orders. The program has been completed except at Bromley Park, where it is virtually completed.

The BHA defines compliance with the State Sanitary Code as no outstanding work orders in a unit. The percentage of occupied family units in compliance, defined in this manner, was reported by BHA as under 50% in 1984 (estimated to be as low as 20% in some BHA materials), 53% in September 1985, 70% in December 1986 and approximately 90% during the two past years. Thus, since 1984, at least 3,500 additional occupied family units have been brought into and remain in compliance with the Code.

There are no similar statistics available for family development common areas. They also have been improved, although maintenance demands are consistent and substantial. The percentage of code compliance for more than 3400 occupied units at the BHA's developments designed for the elderly is approximately 90%.

2. *State Sanitary Code Maintenance.*—Substantial compliance with the Sanitary Code only can be maintained over time with a consistent response to new work orders. At the beginning of the receivership, maintenance generally was managed on a crisis basis, with even emergency work orders sometimes unattended for weeks or longer. As of October 1984, average response time remained an unacceptable seven days for emergency work orders and fifty-six days for routine work orders.

During the restoration period, this performance was greatly improved. Response to emergency work orders consistently has averaged one day in all developments for the past several years. Response time for completed work orders since the completion of the concentrated code compliance program has averaged around seven days for family developments and eighteen days for elderly developments. To assure quality, maintenance superintendents have inspected significantly more than BHA's goal of ten percent of all completed work orders.

3. *Vacancy Reduction.*—Vacancy reduction is part and parcel of long-term Sanitary Code compliance and, therefore, of the primary relief sought in this action. The BHA's prereceivership inability to keep developments fully occupied left them open to additional deterioration, vandalism and use for illicit activities, and thus contributed heavily to an indecent, unsafe and unsanitary living environment. Full relief for the plaintiff class of present and future BHA tenants must include the restoration of BHA's developments to full occupancy.

During the years prior to receivership, vacancies in family developments spiraled—from 13% in January 1977 (1,662) to 32% in January 1979 (4,380). The Receiver's Second Semi-Annual Report to the Court (February 1981), states higher vacancy numbers, including 4,377 vacancies in family units other than Bromley/Health, by 1980.

The receivership stemmed the tide of increasing vacancies, a substantial accomplishment, but did not dramatically reduce them. At the time of the October 1984 Order, there remained approximately 3,850 family unit vacancies including 1,100 in Columbia Point.

Largely through the completion of redevelopment and vacancy rehabilitation efforts, the number of vacancies was reduced substantially during the restoration period. There are 1,796 vacancies in family developments as of June 30, 1990. Of these, 478 are or soon will be available for occupancy, 1,169 are in buildings funded for rehabilitation or held for relocation and thus are not being filled purposely, and 149 need but do not have capital funding commitments.

While the reduction in vacancies demonstrates very substantial progress, the number of vacancies increased after July 1988. The BHA states that this resulted from federal regulatory changes and requirements. BHA's fair housing agreements allow applicants multiple offers, which ties up available units. The agreements no longer allow applicants to choose developments, which has increased the offer refusal rate. Changes in HUD regulations governing tenant selection priorities required a temporary cessation of offers and an overhaul of BHA's waiting list.

BHA temporarily has beefed up its staff involved in reoccupancy of its developments, and progress has resumed. The BHA must continue to asses staffing patterns and seek additional resources if necessary to assure that it is taking every reasonable action to reduce vacancies as rapidly as possible.

4. *Redevelopment.*—The receivership was faced with staggering vacancies and total physical and social disintegration at a number of BHA sites. A number of Boston's public housing sites originally were constructed as overly dense high rises for families. At many sites apartment sizes were not even close to Sanitary Code or contemporary standards, and common areas were so unassociated with specific units or buildings that they had become useless at best and often were paved over. The Receiver recognized that fundamental redesign and redevelopment would be needed to maintain viability at these developments over the coming years.

During both the receivership and the restorative period, the BHA has had unparalleled success among housing authorities in marshalling the necessary resources for redevelopment of its sites and in carrying out redevelopment. These efforts were preceded early in the receivership by a "Stabilization Program" at six of the BHA's most distressed family developments, with goals of making basic repairs, consolidating occupancy by filling buildings in some areas of the site and boarding others, and improving security. The receivership also obtained funding for the redevelopment of the Commonwealth and Franklin Field developments and partial funding for West Broadway, Mission Extension, Bromley Park, Cathedral and Columbia Point. The BHA's innovative use of existing state and federal programs and state legislative initiatives made each of these efforts possible. During the

receivership, construction commencd and progressed on Commonwealth, Franklin Fied and West Broadway.

During the restoration period, the BHA obtained additional funding for Mission Extension, Bromley Park, Cathedral and Columbia Point. In addition, at the urging of the BHA Administrator and others, the State Legislature provided very substantial capital funding for federally assisted BHA developments and made Massachusetts the national leader in this respect. Construction was completed for the three redevelopment efforts commenced during the receivership. Construction also was commenced and virtualy completed for redevelopment of the second phase of West Broadway, the high-rises at Mission Hill Extension, and two buildings at Bromley Park.

As a result of these efforts, the BHA now has completed the redevelopment or partial redevelopment of five public housing sites—Commonwealth, Franklin Field, West Broadway, Mission Hill Extension and Bromley Park. 1,502 redeveloped units have been completed at these sites. These redevelopment efforts have included demolition of some high-rise buildings; reconfiguration of remaining high-rise buildings, to provide for large-family duplex apartments with direct outdoor access on ground levels and small family units above the second floor to reduce elevator usage by children and teenagers; reconfiguration of low-rise buildings to eliminate dangerous common corridors and provide large-family rowhouses with direct outdoor access and sometimes individual yards; and rationalization of sites to improve security and assign space to particular tenant families. These changes greatly improve the likelihood that the sites in question will offer viable public housing for many years. In addition to these redevelopment efforts, entire areas of the Mission Hill and Charlestown developments, boarded up during the receivership's Stabilization Program, were renovated by BHA construction crews and reopened during the restoration period. These buildings contain 391 units.

The BHA also undertook and completed its development responsibilities for one redevelopment effort where the public housing site was converted into a privately owned, mixed-income community—Columbia Point. Columbia Point was New England's largest and most visibly distressed public housing development. With the approval of the tenant representatives and this Court, the BHA negotiated for the retention of four hundred low-income units geographically dispersed throughout the 1283-unit development, with equal amenities to all market-rate tenants. Most fundamentally, all prior Columbia Point tenants had the right to move into the new development as long as they adhered to their public housing leases. The BHA negotiated a ground lease which included these provisions and gave BHA a potential share in future developer profits. The BHA also conceived and negotiated a subsidy plan, involving a "swap" of various BHA subsidies, new state legislation, a number of bond financing actions and other steps, which provided the financial underpinning for the continuation of the low-income units on a long-term basis. Construction is largely complete, and virtually all Columbia Point tenants who retained their rights to units in the new community (approximately 335) have been rehoused there. The BHA is charged with continued enforcement of the ground lease, to assure delivery of the contemplated benefits of redevelopment to past and current BHA tenants.

In addition to these efforts involving 2,293 completed low-income units, the BHA has garnered funds for redevelopment or substantial rehabilitation of approximately another 800 units. These include approximately sixty units for West Broadway, 180 for Orient Heights in East Boston, at least eighty-seven for Cathedral, 293 for Heath Street, and 168 for the low-rise buildings at Mission Hill Extension (recently renamed Alice Heyward Taylor Homes). All of these jobs have commenced construction except Cathedral. Partial funding also is available for redevelopment efforts at Charlestown, Mission Hill and the remaining portions of Cathedral.

Of the redevelopment jobs largely conceived and funded during the receivership, only Cathedral remains in the preconstruction stage. The BHA and the chosen developer completed all preconstruction activities by September 1989. HUD determined, however, that the relocation and reconfiguration of nine of the proposed units, required for economy and fire safety, constituted a "major deviation" from the original proposal, and required rebidding. HUD proposed a means of rebidding which the Authority now is pursuing.

Even with the BHA's enormous redevelopment success, recognized but unfunded redevelopment needs remain. These include, most notably, redevelopment funds for Orchard Park and the completion of efforts at Bromley Park, Charlestown, Mission Hill, Orient Heights and West Broadway.

5. *Capital improvements and modernization.*—A number of the BHA's serious Sanitary Code violations, such as roof leaks and heating deficiencies, only can be corrected effectively by the expenditure of modernization (capital improvement) funds. The BHA was provided relatively modest levels of modernization funds prior to the receivership by HUD and EOCD, but could not spend even these funds in a timely fashion. By the beginning of receivership, there was a substantial backlog of unspent modernization funds, and the awarding agencies had threatened to recapture these funds.

This performance improved substantially during receivership. Basic improvements such as large window, roof and heating jobs were completed. In many cases this work provided a sound basis for later unit code compliance work within individual apartments. There remained significant inefficiency in the execution of BHA's force account construction efforts.

During the restorative period, the BHA substantially increased its rate of commitment of modernization funds. Its force account program expanded to a level of nearly 400 workers and contributed to total modernization commitment levels of up to $30 million annually. All fund obligation deadlines imposed by the funding agencies were met. Development conditions of all kinds, including roofs, heating, elevators, site improvements, electrical systems and the like, were upgraded effectively as a result of this work. In total, BHA obligated well over $130 million in capital funds other than redevelopment during the past five fiscal years.

Nonetheless, as of the date of this order, much capital improvement work remains to be done. Many of BHA's family developments require a complete electrical upgrade to meet modern usage requirements; work is in progress but is not slated for completion until the early 1990's. Appendix 2 sets forth estimates of costs of capital improvements that are needed by the BHA.

Appendix 2 illustrates the need for substantial continuing federal and state capital investments in BHA's public housing stock. BHA will continue to face a Herculean task in keeping pace with the need to replace or repair aging systems to maintain development viability. In addition, the work will have to be implemented on a schedule meeting all federal and state requirements, and properly planned and carried out so that BHA obtains the most possible benefit from scarce modernization dollars.

6. *Security.*—Prior to receivership, BHA's tenants had significant problems obtaining security resources from the Boston police. Early in the receivership, the BHA began to contract for police services with its operating subsidy funds. The BHA also began to build its own investigations and police force, and to evict tenants for cause (drugs, violence, etc.) for the first time in many years.

During the restoration period, Mayor Flynn has made clear that he recognizes BHA tenants' right to an equitable share of Boston Police services. In addition, the volume of work and effectiveness of the BHA's Boston Housing Police has grown, to the point that in the fiscal year 1989 the Housing Police made 1,076 arrests compared to 421 arrests four years earlier.

The BHA's efforts to evict tenants for cause who are dealing drugs, violent or otherwise substantially disrupting others also have been expanded, to a present level of over 125 successfully resolved cases annually. These results have been made possible, in part, by a successful BHA effort to amend state legislation so that housing authorities can move against drug dealers under the nuisance statute. BHA also obtained the second HUD regulatory authorization nationally for waiver of administrative, pre-court grievance hearings to expedite serious cause evictions.

The BHA needs federal and state funding in addition to its usual allocations of operating funds to continue these security-related efforts effectively. The availability of such funding has been a year-to-year proposition. The BHA and its tenants have emphasized repeatedly to this Court, and the Court now emphasizes, that the continuation and improvement of such efforts is essential and that the necessary resources must be found.

(NOTE.—The following Findings are summarized from the "Final Order":)

7. *City Services.*—Notes BHA's successful litigation during receivership to have the City of Boston pay for trash collection. Notes cooperation between the Flynn Administration and the BHA regarding a number of issues, incuding fair housing, formulation and passage of the BHA's governance staute and redevelopment of Columbia Point.

8. *Fiscal Stability.*—Notes the BHA's efforts to achieve both statutory changes and an implementation notice from HUD which will fully fund its substantial number of "breakthrough" units (combinations of existing units to make larger ones). Notes the BHA's initiatives to lower electricity rates through litigation by about $700,000 annually, negotiate a multi-million dollar credit against its water bills, and undetake energy conservation activities funded by the utilities after BHA brought administrative utility rate proceedings. Notes that BHA implemented personnel cutbacks last year in response to federal and state cutbacks and is implementing more now, and that continuing state and federal fiscal difficulties jeopardize severely the BHA's progress and its hard-fought gains. Notes in particular the

BHA's need for extraordinary funding for security, in addition to public housing operating subsidy funds.

9. *Labor/Management Issues.*—Notes the BHA's efforts to limit maintenance wage rates to truly prevailing wages through litigation, negotiate contract provisions achieving more efficient deployment of its workers and undertake an employee safety program which appears to have prevented injuries and reduced workers' compensation exposure significantly.

10. *Tenant Selection and Continuing Occupancy.*—Notes BHA's effective efforts to screen applicants and increase the efficiency of its operations. Notes BHA implementation of policies to require overhoused or underhoused residents to transfer to appropriately sized units, require households with very high incomes to relocate out of public housing after a grace period for finding alternative housing, and phase out ceiling rents.

11. *Fair Housing.*—Notes significant BHA progress during the 1980s in both maintaining integration where it previously existed and instituting integration is some areas of the City such as Hyde Park and East Boston. Notes that the BHA did not implement a provision of its 1978 Tenant Selection Plan which required that minority applicants to the Charlestown and South Boston developments be given preference over all other applicants except emergencies. Notes that BHA entered into a 1988 Compliance Agreement with HUD, principally allowing any applicants who could have been placed under the preference to receive placement offers and eliminating at least temporarily the BHA's development-specific waiting list for families, pending further discussions with HUD. Notes that BHA settled a lawsuit with the NAACP, Boston Chapter, principally providing modest payments over a three-year period for such applicants. Notes that in the two years after the Compliance Agreement was signed in 1988, the number of minority households in the Charlestown and South Boston developments increased by 181% (201 households).

12. *Community Services and Resident Employment.*—Reviews the BHA's extensive community services and resident employment programs.

13. *Leased Housing.*—Notes that this program now includes almost 8800 units. Notes that the Leased Housing Department emerged from chaos, exemplified by reputation for very late landlord payments and substantial underutilizaton of subsidies, to 100% occupancy of Section 8 units, no leasing backlog and an operation generally recognized as efficient.

14. *Development of Additional Housing.*—Notes that new development was stopped during the receivership but that since that time, the BHA has added 147 units through acquisition and renovation of rowhouse properties and purchased 122 condominium units. Cautions that the BHA must undertake development programs only when sufficient resources clearly have been made available.

15. *Tenant Participation.*—Notes the critical importance of tenant participation in the BHA's prospects for continuing success. Notes the BHA's extensive and carefully drawn policy for local tenant participation and its successes at the development level, but notes that no fully effective citywide tenant organization has emerged.

16. *Governance.*—Notes that the BHA's recently enacted governance legislation includes several aspects which bode well for the future of the BHA. "First, as in the receivership and restorative period (the legislation) concentrates authority to run in BHA in one person, the Administrator, rather than dispersing this authority among a board of commissioners. Moreover, the responsibility for the housing authority's performance clearly will rest the Mayor who can hire and fire the Administrator at will. No future Mayor can blame any shortcomings in the Authority performance on a Board of Commissioners. The new law also institutionalizes a Monitoring Committee to be composed of a majority of tenants, to provide for an independent voice regarding the performance of the BHA. It provides the Committee initial authority to approve or disapprove BHA budgets, but with a potential override by the Mayor. Thus, the Committee has a vehicle to bring any serious concerns as to the BHA's performance to the Mayor directly, but the Mayor remains finally accountable for BHA decisions. Finally, it institutionalizes the BHA's public reporting of its performance, by requiring the continuation and filing with City Council of the BHA's management reports as well as annual reports to the Mayor by the Monitoring Committee."

IV. RULINGS

Based upon the extensive record in this action, previous Findings, Rulings and Orders which reflect numerous hearings and reports to this Court by the parties and views by the Court of many of the BHA's developments, and recent hearings and submissions of the parties since the undersigned was assigned this case, I rule that the BHA has demonstrated substantial compliance with the State Sanitary Code. Given the progress made under Receiver Spence, Administrator Bunte and Mayor Flynn, it is no longer necessary to continue this Court's active supervision of the BHA.

Further modernization is necessary in many of BHA's developments to bring them to a condition where they will meet the State Sanitary Code on a continuing and longstanding basis. In addition, full reoccupancy must be achieved both for overall habitability and so that relief is provided for the largest potential number of future tenants. BHA's current operational program makes it likely that such work will be carried out in as expeditious a fashion as possible within fiscal constraints.

The very basic injunctive orders which follow all are orders which the current BHA has demonstrated the willingness and ability to follow. Future BHA administrations must continue to follow them, to promote the continuation of substantial compliance with law. The Court hopes and expects that these orders never will have to be enforced through further judicial action.

(NOTE.—Part V., Orders, is omitted. The Orders contain basic directives to the BHA regarding issuance of management reports, compliance with the State Sanitary Code, vacancy reoccupancy, construction management, redevelopment, resident employment, resident participation, labor/management issues, evictions, tenant selection, City of Boston relations and services and personnel practices.)

(The Court concludes that all previous substantive orders are dissolved and that "the BHA, therefore, may take any activity otherwise legally authorized and consistent with (the) Final Order.")

CLEAN AIR ACT AMENDMENTS OF 1990

Mr. JOHNSTON. Mr. President, I wish to state my concerns about an important, but often overlooked, provision of the acid rain title in the Clean Air Act amendments—namely, the sale and auction of special reserves of allowances as provided for in section 416. I am deeply disappointed that virtually none of the sale and auction provisions that passed the Senate last April have survived in the conference report; instead, the conferees adopted a slightly modified version of the House provisions on sales and auctions. In doing so, the conferees have rejected provisions aimed at helping a major environmental policy initiative succeed. Instead, the adopted provisions will disrupt this initiative and are a thinly disguised form of cost sharing.

The Clean Air Act amendments will launch a bold experiment in environmental policy. They will create a market mechanism aimed at: First, capping sulphur dioxide emissions from electric utilities and 8.9 million tons annually; and second, keeping the cost of meeting that goal as low as possible. Market mechanisms are a very promising alternative to the old command-and-control style of regulation that has been predominant in this country and that has made the costs of environmental regulation needlessly high.

If this experiment fails, I see three disturbing consequences. First, the costs to electricity consumers will be higher by billions of dollars. Second, legislators and regulators will be discouraged from using market mechanisms in other areas of environmental policy. Third, failure of this experiment will damage the emerging competition in the electric industry provided by independent power producers [IPP's]. Holding few or no grandfathered allowances, IPP's will be critically dependent on a well-functioning market. If the experiment fails, IPP's will be unable to obtain allowances at market prices and will thus be at a competitive disadvantage. Consumers will lose the benefits of lower electricity prices that would result from greater competition in the electricity market.

Sales and auctions of allowance reserves can play an important role in enhancing the performance of the allowance market. As my colleagues will recall, I worked hard to ensure that the Senate version of the Clean Air Act amendments contained sale and auction provisions that would do just that. The Senate adopted my amendment on this subject, amendment No. 1388. In developing that amendment, my staff worked closely with the staff of the Environment Committee; they also consulted with electric utilities,

IPP's, State regulators, economists, financial analysts, and academics.

The Senate bill recognized that there will be both short-term and long-term markets for allowances. Further recognizing that the long-term market will be slow in developing, the Senate bill focused its sales and auctions on the long-term market. EPA was directed to offer long-term streams of allowances for sale, that is, 100 allowances per year for 15 to 20 years. This is the type of long-term contract that will be readily available in a mature allowance market, but may be rare in the immediate future.

In contrast, the House sale and auction provisions adopted by the conferees offer allowances only in a short-term market. Buyers with long-term needs will compete with buyers with short-term needs for the same short-term allowances. Prices will be artificially inflated. Successful buyers with long-term needs will have to bank large numbers of allowances. This will drive up costs. The price signals generated will not be useful in helping the private market to develop.

Supporters of the House provisions have never offered a coherent rationale for their short-term design. The only apparent motive is to sell and auction allowances in a way that inflates prices and thus raises the most money possible. The money is then rebated to the original allowance holders. This allows for the transfer of a few more dollars from consumers in some regions to other consumers in other regions. This is thinly disguised cost sharing.

Those who seek to turn the allowance auction into a cost-sharing mechanism apparently are never satisfied. The allocation of allowances to existing units deliberately put various regions of the Nation in the position of either being either sellers or buyers of allowances. These regions that will end up as sellers are enjoying a form of cost sharing. Certain regions will also benefit from bonus allowances when they choose scrubbers for their power-plants. This is another form of cost sharing—allowances are, after all, a valuable commodity.

When it comes to auctions, supporters of the House provisions seem willing to disrupt the allowance market, put this important environmental policy initiative at risk, and reduce competition in the electric industry. Why? To extract a few more dollars for cost-sharing.

This mentality is reflected in a second way in section 416(d) in a provision that comes close to mandating a discriminative auction. The main alternative is a single-price, market-clearing auction. The Senate version properly left this design detail to EPA rulemaking. However, supporters of the House provisions hope that a discriminative auction will raise more money. Economists generally support a single-price auction as a better market-enhancing device.

Finally, I must draw attention to the fact that the conferees inexplicably cut a reserve that was devoted exclusively to new powerplants from 100,000 allowances to 50,000 allowances. This reserve had 100,000 allowances in both House and Senate versions—perhaps the apparent cut is a drafting error. This reserve provision was intended to be the ultimate safety valve for new plants in the event that the market was not working. EPA would sell from this reserve at $1,500 per allowance. This shrinkage in the direct sale reserve provided for in section 416(c) is an additional threat to independent power producers who are most likely to need this reserve.

It is my understanding that these issues were resolved in conference at the staff level with little or no input from conferees and under extreme time constraints. Not surprisingly, the result is poor policymaking. Given the importance of these provisions, I intend to try to correct this situation. I urge my colleagues to join me in that effort.

FLORIDA KEYS NATIONAL MARINE SANCTUARY AND PROTECTION ACT

Mr. MACK. Mr. President, I rise in support of the Florida Keys National Marine Sanctuary and Protection Act. The intention of this act is to preserve the beauty and productivity of the only living coral reefs in the continental United States. Nothing in this legislation is intended to restrict commercial fishing, recreational fishing, diving, or other activities which do not pose harm to the sanctuary resources. This bill assigns the responsibility of spelling out what uses of the resource are acceptable to the public advisory committee and the agencies with jurisdiction and allows for ample public comment.

This legislation is designed to allow the maximum input from the people who depend on the reef for their economic well-being and provides for a plan to preserve it for future generations. I urge my collagues to support this important legislation.

PRODUCT LIABILITY REFORM WILL BE A PRIORITY IN THE 102D CONGRESS

Mr. KASTEN. Mr. President, I rise tonight on the eve of the adjournment of the 101st Congress to point out to this body that once again we are about to depart without enacting an important piece of legislation that is cosponsored by over one-third of this body, and would pass handily on its merits—product liability reform.

Thirty-four other Senators, from both sides of the aisle, have joined me in cosponsoring S. 1400, the Product Liability Reform Act, during this 101st Congress. This bill was passed out of the Commerce Committee on a 13 to 7 vote, and was returned to the Senate Calendar after no action in the Judiciary Committee. Unfortunately, the full Senate has again avoided this issue.

Let me promise my colleagues that a bill identical to S. 1400 will be introduced in the first few days of the 102d Congress, and I am confident that the Senate will act on product liability reform early in 1991.

The effort to enact product liabilty reform has been one which the Senate Commerce Committee has considered since 1981. In S. 1400, we brought before the Senate a measure that is balanced, does not deprive injured victims of any causes of action, does not contain any limits on damages, no caps, and one that has the cosponsorship of nearly one-third of this body.

President Bush and his administration are strongly in support of this measure. The President called for product liability reform in his State of the Union Address. He also instructed his Competitiveness Council, headed by Vice President QUAYLE, to make this issue its number one priority. All of this is reflective of the concerns that large and small businesses alike have with our current system.

Our product liability reform measure is justified on several grounds. We have a system that is slow in compensating victims who deserve compensation, costly to all parties, and unpredictable due to the State by State patchwork that we have today. Above all, we seek a system based on fairness.

Provisions of our bill would address the costs imposed on all parties by the current system. The transaction costs see the lawyers of both the plaintiff and the defendants taking in as much, or more, than the injured parties. Recent data collected by the National Machine Tool Builders Association indicates that in cases involving their members in 1989, only 17 percent of the moneys paid out went to claimants.

However, it is important to note that our legislation would not reduce the costs by restricting the rights of persons to sue for damages, or by instituting caps on the amounts that could be recovered. There were understandable objections made by the organized consumer interests to these provisions in prior bills. Thus, this bill may not lower insurance rates or premiums the way former bills would have.

Rather, by establishing some uniformity on certain matters, both parties should be able to better assess the nature of their cases, and even hopefully take advantage of the expedited

settlements or alternative dispute resolution systems in the amendment. The uniformity we seek will make the assessment of risk easier, and thus help to stabilize the insurance market.

It is important to note that we have a national problem that deserves a moderate, Federal approach. Though the current rules have developed through the judical activism of the various State courts, the time has come for Congress to recognize the burdens on interstate commerce and U.S. competitiveness that our current system imposes.

Let me briefly describe the major provisions of our product liability package which will reduce unnecessary legal costs, provide incentives for the manufacture of safe products, and provide more fairness to all concerned:

This measure establishes procedures designed to expedite the settlement of product liability cases. The rules are based on rule 68 of the Federal Rules of Civil Procedure. This will help reduce the burgeoning and unnecessary legal costs that so impact the current system.

We encourage the States to make greater use of alternative dispute resolution procedures, to also help reduce the legal costs.

The product seller provision also addresses the unnecessary legal costs of the system. Today product sellers are brought into almost every case, and yet ultimate liability is imposed on them in less than 5 percent of the cases. Under our bill, sellers are only liable for their own negligence, failing to provide warnings from the manufacturer, breaching an express warranty, or when the manufacturer is unavailable.

Legal costs are also saved by the provision dealing with the interaction between the product liability system and the workers compensation system. We have taken steps to help keep these two systems separate, and avoid the excessive and unnecessary lawsuits between manufacturers and employers.

Another priority is creating incentives for safety. Our joint and several liability provision maintains joint and several liability for economic damages, eliminating joint and several liability, or the deep pockets, problem, only for noneconomic damages such as pain and suffering.

Our package also encourages safety by barring the claims of individuals who are the cause of their own injuries because they were intoxicated or under the influence of illicit drugs.

Basic fairness is also accomplished in the very pro-plaintiff statute of limitation. The time begins to run upon the claimant's discovery of the harm and the cause of that harm. This is a more pro-plaintiff standard than most current State standards now in existence.

Fairness is also provided for in our statute of repose, which sets an outer time limit for liability at 25 years for capital goods, where the injury is covered by workers compensation.

Fairness is also the thrust of the punitive damages provision. We recognize the quasi-criminal aspect of these damages, which are intended to be awarded in aggregious cases, not every case. Therefore we establish a national standard for their imposition and the burden of proof required. Thus, these damages are to be awarded where the claimant establishes by clear and convincing evidence that the harm evidenced a "conscious, flagrant indifference to the safety of those persons who may be harmed by the product." We have a burden of proof that falls between the normal civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. The punitive aspect of the cases may be heard separately from the case in chief if the defendant so elects.

No one wants manufacturers to introduce or keep in the marketplace any unsafe products. However, it is just as abhorrent if the uncertainties of our product liability system prevent new, useful, and safer products from being brought to market. The cost to society of this innovation never pursued, or improvements never made, is not obvious at first blush, but it is a cost that hurts American consumers, manufacturers, and workers just the same.

There has been some research indicating that the rapid expansion of product liability law, which the courts were pursuing in the past, has slowed somewhat. The courts themselves may be moving the judge-made law away from the situation where even reasonable manufacturers are held liable.

Professor Henderson, of Cornell Law School, who has been conducting this research, cautions:

> However, to conclude that this trend will resolve all of the serious inequities and legal conundrums that still exist would be a misuse of the data collected in the study. * * * The better, more efficient way to address some of the profound problems product liability law has caused our legal system and society is through thoughtful, sparing and modest legislation at the federal level. * * * S. 1400 is a worthwhile attempt at some of the needed reforms.

It is our job to make this "attempt" a reality.

Another point was made in our hearings—that this is neither a pro-plaintiff, nor a pro-defendant bill. And just because it is balanced between the rights of the parties, not favoring the plaintiffs, does not make our amendment anticonsumer. The most anticonsumer effects which I have seen arise from the costs, inefficiencies and inequities of our present system.

The proponents of S. 1400, and of this amendment, recognize that it is not a panacea for all of the problems that have plagued our product liability system. It is, however, a sound, reasoned, and balanced piece of legislation that deserves to be enacted into law.

There are those who seem to want to impugn our motives in pursuing product liability reform. They assert that the basis for this legislation has changed over the years. In fact, what I have sought since 1981 are rules to assure product safety, to estalish uniformity because of the interstate nature of the problem, and to reduce the costs borne by all Americans, not just manufacturers or sellers of products. There have been immediate concerns dealing with insurance, litigation, and competitiveness all growing out of a search for fairness.

Some witnesses before the Commerce Committee suggested that competitiveness was the new buzzword to justify reform. Anyone who researches or recalls the debates of some 10 years ago would also find the testimony of such parties as the American Textile Machinery Association and the National Machine Tool Builders Association concerned not only about their domestic situation, but also explaining their loss of international competitiveness as a result of American product liability laws that we have yet to reform.

We cannot have product liability insurance costs that are 20 to 50 times those of our competitors and remain viable. Product liability reform is not the only answer to our competitive posture, but it is certainly one important element that we can address.

Mr. President, I am of course disappointed that we did not enact S. 1400 in the closing days of this Congress. However, I am pleased that this bill has garnered more cosponsors than any of our previous efforts, passed the Commerce Committee by a substantial 13 to 7 margin, and after 1 hearing in the Judiciary Committee, was returned to the calendar. I believe the majority of the Senate agrees with the 35 of us who are cosponsors of this bill that it is time to enact this reasoned and moderate product liability reform measure. I intend to give them this chance about 3 months from now.

FISCAL YEAR 1991 LEGISLATIVE BRANCH APPROPRIATIONS BILL CONFERENCE REPORT

Mr. NICKLES. Mr. President, during Senate consideration of the fiscal year 1991 legislative branch appropriations bill, I successfully offered an amendment to reduce the total amount of funds provided in the bill by 5 percent.

The bill before us today, the conference report on H.R. 5399, the Fiscal Year 1991 Legislative Branch Appropriations Act, provides $2,161,366,500 in new budget authority. This constitutes a $219,453,400 or 11.3 percent in-

crease over 1990 levels. A funding level which, in this Senator's opinion, is much too high.

The conference report does make reductions from the 12.6 percent increase provided in the bill originally before the Senate and from the 24.2-percent increase requested by legislative branch agencies and offices, but the bill fails to make the necessary reductions called for in my amendment. Therefore, I will vote against the conference report.

My amendment would have reduced spending in the legislative branch by 5 percent or $109 million from the levels provided in the Senate bill. An additional $5.5 million in savings were provided when funds for Senate mail were reduced. The mail savings were retained by the conference but the majority of the other savings I proposed were rejected in the conference.

In addition to the House and Senate, this bill includes funds for agencies such as the General Accounting Office, Congressional Budget Office, Library of Congress, Government Printing Office, and Office of Technology Assessment.

On the issue of mail, I should point out the significant franked mail reforms in this bill for both the House and the Senate. The Senate mail reforms are primarily fine-tuning provisions, building on the disclosure and allocation rules which were previously established. I authored Senate provisions to prohibit carryover of mail funds except from the first session to the second session of a Congress, prohibit the transfer of official mail funds between Members and prohibit the use of any funds for mailings other than the funds specifically appropriated for official mail.

For the House, the bill contains mail reforms which will require significant change from past mailing practices. Unlike the Senate, the House has not publicly disclosed Members' use of the frank for mass mailings. Nor has the House required its Members to live within the appropriated amount. Over $33 million of the funds provided in this bill are actually for 1990 House mail costs. The lack of reforms in the House resulted in this cost overrun. But the mail reforms in this bill should change that.

For the first time, House Members mail costs will be disclosed. Each Member will be provided a limit, albeit a high limit, on the postage costs they can incur. But together, these reforms and other relating to carryovers and transfers should keep the House within the appropriated amount. It should be pointed out, however, that House Members are provided four times as much mail funds as Senators on a per constituent basis. Unfortunately, this bill does not address this longstanding inequity between the House and Senate. Last year, according to the latest estimates, House Members on average spent nine times as much on postage as Senators on a per constituent basis.

Mr. President, in addition to mail reform proponents in the Senate and House, credit for the House franking reforms is due the 208 individual Members of the House who on May 24 of this year, in a 208-to-161 vote, voted against the politics-as-usual proposal to increase House mail funds by $25 million without accompanying reform. They said "no reform, no money." They forced the House to be responsible and those 208 Members are to be commended.

While the franking reforms in this conference report are very positive and significant changes, the funding levels the legislative branch will be providing itself with this bill are out of line. Mr. President, as I indicated when this bill was first considered in the Senate Appropriations Committee, the requests received for the items within the legislative branch appropriations comprised a $469,967,900 increase, 24.2 percent, over 1990 levels.

The Senate Appropriations Committee pared down the requests, exclusive of House items, to a 12.5-percent increase. I proposed amendments trimming the increase to 6.4 percent for all items including the House. The bill before us today, the product of the House-Senate conference, provides $2,161,366,500 in total, an 11.3-percent increase over 1990.

Although this is far less than the 24.2 percent, $470 million increase the various legislative branch agencies requested, it remains far more than I am willing to support.

THE CLEAN AIR ACT AMENDMENTS OF 1990

Mr. WARNER. Mr. President, I am pleased to rise in support of the conference report to accompany S. 1630, the Clean Air Act Amendments of 1990. This is truly a landmark piece of legislation that will have far-reaching impacts on almost all aspects of our economy and everyday life.

S. 1630 is comprehensive in nature: It provides for a renewed attack on smog in our cities, as well as much-needed new regulation of acid rain and toxic air pollutants. Additional controls in these areas are vital for the protection of the health and welfare of all Americans.

In my analysis of the final product of the conference committee on S. 1630, I have found many portions of this bill that will be helpful to the citizens of the Commonwealth of Virginia. First, S. 1630 will authorize the additional measures necessary for ozone nonattainment areas like northern Virginia, Richmond, and Norfolk to impove air quality for all of its citizens. In addition, the legislation will address the problems of acidification in the lakes and rivers of Virginia, as well as the Chesapeake Bay, and of visibility in one of our State's most precious resources, the Shenandoah National Park. Finally, it will set standards to reduce toxic air emissions, a serious problem in our State.

Mr. President, I am pleased that the conferees approved several provisions on which I worked during Senate consideration of S. 1630. First, I support the decision to adopt a large portion of the Senate version of the acid rain title. In my view, these provisions distribute allowances in an equitable fashion to those States that have already begun to reduce their sulfur dioxide emissions. The bill also properly recognizes the need for transition rules for units in progress and independent power producers. In addition, the bill provides vital opportunities for the clean coal of Virginia to compete in the marketplace.

Second, I am extremely pleased that the conferees decided, after much deliberation, to adopt the Senate version of the visibility provision. That provision will go a long way to address a serious problem that is marring the beauty of our national parks—without authorizing the complete Federal preemption of the State permitting process.

The conferees also adopted language very similar to an amendment I offered to the ozone nonattainment title of S. 1630 during Senate consideration of the bill. My amendment, which was approved unanimously by the Senate, is designed to ensure the continued testing of rocket engines and motors, an activity of paramount importance to our national defense.

Finally, the conferees approved NO_x and particulate matter standards for light-duty diesel vehicles identical to those currently in effect in California. This NO_x standard for diesels, in conjuction with the particulate matter standard that light-duty diesel vehicles will be required to meet, will ensure that one of the most fuel-efficient automobile engines is available to the American public in the future.

Mr. President, I have touched on only a small number of the benefits this clean air bill will bring—there will be many others. However, the American people should be aware that there are enormous costs attached to this bill as well. Those who have analyzed S. 1630 estimate that it will impose costs of up to $25 billion per year on the American economy. That is a staggering figure. The conferees did, however, struggle to make this bill as cost-effective as possible.

Mr. President, I would like to conclude by expressing my gratitude to a number of individuals for bringing the 1990 Clean Air Act amendments to final action. First, and most impor-

tantly, the President of the United States deserves a tremendous amount of credit for moving this debate off the dime last year. The President broke an enormous deadlock in sending clean air legislation to the Congress.

In addition, the majority leader and the ranking Republican on the Senate Committee on Environment and Public Works, Senator CHAFEE, have expended many years and substantial amounts of energy to bring about passage of these amendments. We are all grateful to them for their efforts. In addition, the chairman of the Environment Committee, Senator BURDICK, as well as Senator BAUCUS deserve our thanks.

It has been a long road to this day, Mr. President. Let us hope that this legislation will truly bring clean air to us and to the generations to come.

CONCERNING ALAN R. SCHWARTZ

Mr. D'AMATO. Mr. President, I rise today to thank Alan Schwartz for his outstanding efforts in helping to ensure passage of H.R. 5732, the Aviation Security Improvement Act of 1990. This legislation will be instrumental in our future efforts to combat terrorism, and implements the findings of the report of the President's Commission on Aviation Security and Terrorism, dated May 15, 1990. This Commission was formed to investigate the bombing of Pan Am World Airways Flight 103 over Lockerbie, Scotland on December 21, 1988.

Alan was a key staff member of the President's Commission, and provided invaluable advice to myself and other Commission members. He drafted extensive parts of the Commission's final report. Alan is an extremely talented attorney, whose analytic skills and principled approach to resolving difficult policy issues were major factors in the successful completion of the Commission's work and the passage of this historic legislation.

Alan never shied away from the tough issues. His negotiating skills made it possible to safeguard the important elements of this legislation, while reaching the compromises that needed to be made. His tireless work was helpful to all of those involved in the research, drafting, and negotiations with respect to this legislation.

It was a pleasure to work with Alan and I believe that sentiment is shared by all those who worked shoulder to shoulder with him on this difficult, and important issue. It is my sincere hope that H.R. 5732 will make real and lasting improvements in our aviation security program, and in the manner in which families and friends of victims are treated by our State Department in the aftermath of tragedies abroad. If these improvements occur, Alan R. Schwarz will have played a central role in making them happen.

AUTHORIZATION OF NEW FUNDS FOR THE RESOLUTION TRUST CORPORATION

Mr. KOHL. Mr. President, I rise tonight in weak support of the authorization of new funds for the Resolution Trust Corporation [RTC], the S&L bailout agency. This measure, which authorizes $10 billion for the RTC, is certainly better than the one passed out of the Banking Committee about a month ago. That would have provided $57 billion for the RTC, enough to fund the RTC for another year.

And that would have been an insupportable request. We have not discussed this funding effort here on the floor of the Senate. We have not had hearings on the administration's request for the money. We have not included this request in our recent, detailed budget talks. A $57 billion spending bill is not the sort of measure that ought to be passed in the middle of the last night of session by voice vote.

Nor is a $10 billion spending measure, which is what we have before us now. I support it, however, for two reasons.

First, this bill only authorizes spending for the RTC through February of next year. The administration will have to come back at that time and publicly justify the use of the bailout funds. They should have been willing to do that this year, and we should have had a full debate on the issue in Congress before passing any new reauthorization. However, it's too late for that now, and this temporary, contingent $10 billion authorization is a poor, but necessary, alternative.

The second reason I support this measure is that we do not have the luxury of simply rejecting it. The RTC will run out of funds while we are in between sessions. We have promised to make good on up to $100,000 in deposits for each depositholder in failed S&L's. It would be unsound economic policy and unfair social policy to go back on that promise now.

However, the manner in which this Government is going about keeping its promises is untenable. We cannot make the S&L crisis go away by ignoring it. We cannot make the billions and billions of dollars that the RTC is spending less by keeping them off budget. We are going to have to live with the S&L mess until we are willing to face squarely the actions we have to take to clean it up. It's that simple.

Tonight, by passing this bill by voice vote, we're showing a deplorable lack of respect for the intelligence and concern of the American people. Do we really believe we are going to be able to sneak this chunk of spending by them? Do we really believe they want us to fight and fight and fight over $40 billion of deficit reduction and then, on the same day, quietly approve $10 billion of S&L bailout money without a debate or a vote?

For the reasons I stated above, I won't hold up this bill tonight. But I sincerely hope that next year we will take our responsibilities for managing the S&L bailout more seriously. I hope we will do enough oversight of the RTC, consider enough legislation reforming FIRREA and our deposit insurance system, and spend our S&L bailout money wisely enough that, next year, we will be able to state our policy on the RTC and the S&L's openly and publicly.

RESOLUTION TRUST CORPORATION

Mr. KERRY. Mr. President, I rise in support of the RTC funding bill that will allow the RTC to continue to function with a $10 billion authorization.

Mr. President, the $10 billion figure is well below the $57 billion that the administration has requested for continuation of the savings and loan bailout. I have opposed the $57 billion authorization because I do not believe that they have justified this extraordinary request. I was the only Senator in the Banking Committee to vote against the original $57 billion funding bill. I was the only Senator to file a dissenting view to the committee's report on the authorization.

I simply could not vote to approve $57 billion primarily on the basis of a two-page letter which the Secretary Brady sent to the Senate Banking Committee on October 10. That letter contained a paucity of detail.

In his letter to the Banking Committee, Secretary Brady complained that unless Congress acted quickly, "RTC case resolutions will virtually cease within the next 2 months."

Obviously, we cannot allow the RTC to cease operations—that would be irresponsible. But it would be equally irresponsible to write a blank check for the RTC.

It is for this reason that earlier in the week I came to the Senate floor and laid out the issues which I believe Secretary Brady needs to address before I can seriously consider approving his request.

I want to know, for example, how many thrifts Secretary Brady believes are going to fail. I want to know the type and amount of seller financing contemplated and how much it will add to the cost of the bailout.

Given the administration's history on calculating the cost of the bailout, we need to know what economic calculations were used to calculate this request. I want to know, for example,

the fair market value of assets expected to be placed under receivership by quarter for the fiscal year 1991. I want to know the details of the OTS' open thrift assistance plan, an approach that failed under the leadership of Danny Wall, but one which Mr. Seidman and Mr. Ryan believe should be resuscitated.

We need to know how the last $50 billion was spent and where in that process we made mistakes. I want to know, for example, in light of the recent setbacks, what are the future plans of the Board and the RTC concerning the disposition of assets by open bidding auctions. I want to know whether the staffing level of the inspector general's office is adequate to perform its role as the RTC watchdog.

We need to know what the RTC plans to do to prevent a buyer who was in some way responsible for the collapse of a particular institution from buying a property or asset from the Corporation. I asked the RTC to lay out their policy to me on this issue in writing. Their response was that "We have drafted a policy which would bar certain individuals from buying RTC assets but it is not yet in its final form." That is not satisfactory. We are a year into this process, the Governemnt is spending billions of dollars on the cleanup and RTC is still selling property to the same crooks and swindlers who were responsible for this mess in the first place.

Mr. President, these are all important questions that bear on the final cost to the taxpayer.

When I came to the floor of the Senate earlier this week, I urged my colleagues to follow the lead of the House Banking Committee. I clearly stated my belief that the House Banking Committee had adopted a more prudent course in approving only $10 billion for the RTC; $10 billion is still an enormous sum of money, but it does not amount to a blank check. The RTC will not be crippled, but they will have to come back to Congress at some point next year and make their case. At that time I hope Secretary Brady will provide the Congress with the detailed request that is necessary.

Secretary Brady understands, because he has been a Senator, that one of the primary responsibilities of the Congress is oversight. We want the Secretary to succeed, but he needs to work with us. This is more than simple protocol—it is an obligation that each and every one of us as elected officials has to our constituents.

STATEMENT OF THE BUDGET RECONCILIATION

Mr. HEINZ. Mr. President, the deficit reduction package before us promises to reduce the deficit we expect over the next 5 years by $490 billion. I take the floor to discuss this measure and my position on it. Let me start by answering the question: How does this legislation claim to achieve that deficit reduction?

It is achieved by reducing spending from what it is claimed would otherwise be spent by some $263 billion. About $182 billion is presumed to come from savings in the defense budget and just over $80 billion in reduced entitlement spending. Net interest paid is estimated to be $64 billion lower than if we did not act. And increased revenues—user fees, taxes, and enhanced IRS enforcement are estimated to total just over $165 billion.

Mr. President, I want to comment briefly on this package and its elements. And I wish to start with easily the most controversial part, taxes.

REVENUES AND TAXES

Mr. President, for most Americans, the question is how fair tax increases are and that means who is going to pay what.

It appears, indeed, that wealthier individuals take the heaviest hit. About $50 billion of the tax increase lands on people whose adjusted gross income is $100,000 a year or more. The second highest hit is corporations; another $35 to $40 billion will come from business. The 5-cent gas tax increase accounts for $25 billion, with half of it going to the highway trust fund. The sin taxes—on alcohol and cigarettes—total $15 billion and the increase in the hospital insurance tax base from $51,000 to $125,000 raises another $13.5 billion.

According to the best analysis of this measure, the roughly 2 million taxpayers earning more than $100,000 will bear 60 percent of the taxes in this bill. The 70-million taxpayers earning under $35,000 will as a group, have their net income taxes neither increased or decreased. For the 55 million taxpayers earning under $20,000, the provisions of this bill amount to a 2 percent to 3.2 percent cut on their income taxes. These 55 million taxpayers represent a majority of the 107 million taxpayers filing returns.

On the whole, then, distasteful as any tax increases may be then, the tax increases on individuals appear to be fair, falling most heavily on those most able to contribute the most to solving this national deficit crisis.

The other question we should ask about the taxes in this bill is what kind of policy we are creating. On that point, Mr. President, the answer is less clear cut.

On the downside, the limitation on itemized deductions is an added element of complexity which threatens to discourage charitable contributions and housing. The personal exemption phaseout discriminates against large families. In my view, it would be better to have an adjustment in rates that are visible so that the public can see what Congress is doing.

On the other hand, the so-called bubble, to the extent it was an anomaly, has been almost entirely eliminated; it is now more of a small, flat blister than a bubble. Between 2 and 3 million taxpayers in the blister will have an average tax rate less than those above them but will be paying a slightly higher rate of tax—some 2 to 3 percent—at the margin. The bubble differential amounted to 5 percent at the margin and affected a much larger number of middle and upper middle income taxpayers.

While no one likes the gas taxes in this bill, the good news is that half the funds raised will go to the highway trust fund; and 20 percent of the 2½ cents will go to mass transit.

Also on the minus side is the treatment of the extenders. It is simply bad policy to only extend for 1 year provisions like the targeted jobs tax credit, the research and development tax credit, and the employer provided education tax credit. These and the other extenders affect millions of Americans, are proven tools for job creation, skills upgrading and competitiveness. They deserve more than a short-term lease on life.

The increased pension reversion penalty to 50 percent is pure folly. At best it means a massive discouragement to the establishment of defined benefit plans at a time when we should be encouraging employers to establish and expand such plans. At worst, it is an arbitrary and draconianly confiscatory policy that locks pension assets into overfunded plan without any discrimination whatsoever.

The least attractive and, from a policy point of view, least justifiable tax is the increase in the Medicare wage cap from $51,900 to $125,000. There are two reasons. First, the increase in taxes amounts to using the HI trust fund to disguise the real size of the deficit. Second, much of this increase falls most heavily on many people who are by no means wealthy.

SPENDING

The second portion of this deficit reduction package are spending constraints.

The $1 trillion increase in the debt ceiling indicates that the agreement scarcely makes the kind of dent we really need. It fails to mount any major attack on increases in spending in either entitlements or the discretionary categories.

In the discretionary spending categories, most of the savings come from our national defense. Elsewhere, particularly through counting user fees as cuts, savings in spending are mostly a sham.

Only 15 percent of all deficit reduction in this package is achieved through savings in entitlement and mandatory spending despite the fact that it is by far the largest share of

the Federal budget. About $44 billion in savings come from the Medicare Program where the major reductions in spending are restricted to providers; another $15 billion comes from agricultural programs through reduced eligibility for deficiency payments and acreage reductions.

MEDICARE AND MEDICAID

Let me observe that under this budget, the Medicare beneficiary has fared better than under the budget summit agreement. The bill before us today raises the Medicare part B deductible from $75 to $100 and gradually increases the Medicare part B premium from $29.90 in 1991 to $46.10 in 1995. In contrast, the budget summit agreement would have raised the part B deductible to $150 by 1993, set the part B premium at 30 percent of program costs, rather than its current 25 percent, and reinstated a 25-percent coinsurance for clinical laboratory services.

The part B cost increases included in the reconciliation bill—while small in aggregate—are nevertheless partially offset by benefit expansions under Medicare, Medicaid, Social Security, and private pension plans. For example, Medicare benefits are expanded to include coverage for mammograms every 2 years, and Medicaid benefits will now include two important changes to help the most economically and physically impaired elderly. First, coverage for home and community-based care is expanded to assist the frail elderly avoid premature and unnecessary placement into a nursing home, and second, Medicaid payments for the Medicare part B premiums will be expanded over the next 5 years to cover these costs for all elderly whose incomes are below 120 percent of poverty. In addition, the disability insurance program for widows and widowers has been reformed to make it fair and equitable.

It is also important to recognize how this legislation continues to ratchet down on reimbursement to Medicare providers. Over the next 5 years, hospitals, doctors, and other providers will receive $32 billion less in reimbursement than they would have under current law. Let there be no mistake, every time Congress cuts Medicare payments to providers, a considerable amount of cost shifting occurs, and someone else ends up paying the bill—usually you and me.

Despite the more than $100 billion that we will spend on Medicare next year, the fact remains that the Medicare Program is woefully inadequate and desperately in need of overhaul. The safety net that used to protect the Medicare beneficiary is now full of gaping holes—holes that fail to recognize the unique needs of a changing aging society.

SOCIAL SECURITY

The legislation before us today also includes some very important changes to the Social Security Program—changes that will greatly help thousands of older Americans. First, the definition of disability for disabled widows has been liberalized so that it is the same for all individuals. This means that the ability of a disabled widow to perform work in the economy will be considered when applying for disability benefits. Prior to this change, only medical factors were given consideration in making disability determination for widows. Because of this change, in the first year about 8,000 disabled widows will receive disability benefits and about 24,000 over the next 5 years.

Second, the legislation also protects women who unknowingly find themselves in an invalid marriage. These are women who have entered into a marriage in good faith, later to discover that their spouse had failed to sever his previous marriage.

Prior to this change, the second or deemed spouse of a worker would automatically lose Social Security benefits if the prior spouse was receiving or filed for retirement benefits based on her husband's employment record.

Third, the bill also contains a number of improvements in beneficiary services under the Social Security Program. When a beneficiary is unable to get through on the SSA 1-800 number, they will now once again be able to call the local Social Security office.

Mr. President, the bad news is that most of the reforms contained in this miniscule effort on the mandatory and entitlement side are illusory. For example, the savings attributed to the reforms of the Federal Housing Administration [FHA] would have had to have been made with or without the reconciliation. The FHA reforms are, in fact, contained in the housing conference report which passed this body earlier today. The increase in premiums paid into the bank insurance fund will not produce real revenues. All of those funds will disappear once the FDIC pays depositors for bank failures expected to occur in the future. The elimination of the lump sum retirement benefit for Federal workers will produce $7.6 billion in apparent savings. But this savings in the short term is more than counterbalanced by long-term cost increases in Federal retirements annuities. In addition, the elimination of lump sum will put pressure on Federal employees to retire before this new provision takes effect, squeezing able civil servants out of the work force.

Mr. President, it's hard to be enthusiastic about a deficit reduction package like this. If you exclude the anticipated savings in net interest, revenues, taxes, and user fees total nearly 40 percent of all promised savings. But, we are not here to debate passing this unattractive package or something else. We have had 9 months of negotiations. We have had better package debated—and rejected. No, Mr. President, the choice is to pass this package or to do nothing. And, in my judgment, the alternative of doing nothing is worse than the sum of this deficit reduction bill.

The past weeks' turmoil in the financial markets, the volatility in the oil and dollar exchanges and in the economy generally are sober warnings. Clearly, the inability of Congress and the administration to make any choices would be a potential source of panic in the credit markets. These markets are critical to every American seeking credit.

Interest rates are important to many people: the millions of average Americans with adjustable rate mortgages and to those who hope to buy a home in the future. Keeping interest rates lower is essential to those working to purchase cars on credit and those working to make them, and reasonable interst rates are essential to the competitiveness of American business and industry.

There is no doubt that without Congress acting affirmatively on a deficit reduction effort of this scale, interest rates would rise and rise dramatically. With enactment rates will be far more stable and lower.

What does a 1.5-percent lower interest rate mean in human terms? It means 100,000 to 150,000 more housing starts a year. It means 500,000 more auto sales a year. The typical mortgage would be $100 less a month. By encouraging long term employment and productivity, lower rates mean the creation of more jobs rather than increases in unemployment.

And there is one other consequence of inaction: sequester. Should Congress fail to act on a budget, even with enactment of a continuing resolution, virtually all Government discretionary programs would be subject to across-the-board cuts of 40 percent. About half the cuts would fall on the Defense Department, and the other half on all other domestic discretionary spending from child nutrition to the FBI. To cut the defense budget by over one-third at a time when young Americans are engaged in Operation Desert Shield would be irresponsible. Across-the-board cuts which are by their nature arbitrary and nonsensical would paralyze many segments of the economy and severely undercut legitimate Government activities like air traffic control and meat inspection.

Mr. President, if I thought that by defeating this we could get a better budget later this year or early next, I would unhesitantly do so. But defeat would throw the Government into

confusion, and the economy into a tailspin.

Furthermore, defeat of this package would also undermine the President and those who have tried to support the policies he stands for. Defeat of this budget package would result in fewer of those supporters being elected or reelected to the coming Congress. Perhaps this observation has no place in considering this bill on its merits, but in all honestly and candor, in my judgment, the political consequences of failure today would not be inflicted on those who have counseled and urged more spending and higher taxes. To the contrary, because the public ultimately looks to the White House for determined leadership, it is those who have supported the far more responsible course urged by the President, such as the original bipartisan budget summit agreement, that would pay the most heavily at the polls.

I therefore will vote "aye" reluctantly and with the deepest regret for the political and institutional failure to seriously attack the enormous deficits we face today and for years to come. This is an opportunity squandered, and the problem will return to haunt us—and the huge and burgeoning national debt we are heaping upon the next generation—until we have a wholesale overhaul of the Congress to make it more accountable and fresh faces to replace those who continue to pursue the business-as-usual policies that have all but paralyzed our ability to take responsible and decisive action.

THE NEED FOR CONTINUED CONGRESSIONAL ACTION TO PROTECT RETIRED COAL MINERS

Mr. HEINZ. Mr. President, in the next few weeks, the Coal Commission that was appointed by Department of Labor Secretary Dole will issue its recommendation on how to solve the health care crisis facing retired coal miners. Although the report is not yet complete, it is important for Congress to begin thinking about how best to solve the impending problems.

As a first step, I requested the Congressional Research Service prepare the following analysis regarding policy precedents for Federal involvement in coal health matters. It is clear from the analysis that the Federal Government has been heavily involved in matters affecting coal miners, particularly as it pertains to ensuring that their rights and safety are protected.

I ask that it be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, October 4, 1990.

To: Senate Special Committee on Aging. Attention: Jeffrey R. Lewis.

From: Congressional Research Service (CRS) Research Team.

Subject: Policy Precedents for Federal Involvement in Coal Health Matters.

INTRODUCTION

This memorandum is in response to your request of September 25, 1990, for an examination of the policy precedents for Federal involvement in health benefits for coal mine workers and their families. Prepared by a team of Congressional Research Service (CRS) analysts headed by Beth Fuchs and Ray Schmitt, this memorandum examines the following:

The original Welfare and Retirement Fund negotiated by the Federal Government and United Mine Workers of America (UMWA) in 1946.

The service of U.S. Senator Styles Bridges as the neutral trustee for the miners' Welfare and Retirement Fund in 1948.

The special section of the Internal Revenue Code of 1954 making coal industry contributions to the fund deductible even though the trust was not a qualified trust.

Availability of Federal funds under the Kennedy Administration to enable the Presbyterian Church to purchase hospitals operated by the health and welfare trust funds.

The Federal Coal Mine Health and Safety Act of 1969.

Black Lung programs.

The President's Commission on Coal.

The 1950 and 1974 UMWA Benefit Plans are multiemployer plans that provide health benefits to retired coal miners and their families. They are financed by contributions from unionized coal companies signatory to a 4-year wage agreement between the unions and the Bituminous Coal Operators' Association (BCOA). These funds are already operating in a deficit; by one estimate the combined deficits of the two funds could reach $450 million by 1993 if present trends continue.[1] Solutions for improving the financial status of the funds and ensuring the ability of the funds to meet their obligations are complicated by the fact that the number of contributing companies is declining, while the costs of the plan continue to rise.

UMWA WELFARE AND RETIREMENT FUND [2]

The roots of the Federal Government's involvement with health matters in the coal industry go back to the collection bargaining agreement negotiated between the UMWA and the Federal Government almost 50 years ago.

The National Bituminous Coal Wage Agreement expired on March 31, 1946. Without a new contract, coal miners stopped working the following day. On May 22, 1946, President Harry S Truman ordered the Nation's coal mines seized under the War Labor Disputes Act. This was considered necessary in order to assure continuation of coal mining for essential purposes.

One of the results of subsequent negotiations with Secretary of the Interior Julius A. Krug to turn the mines back over to the operators was an agreement that the industry establish a health and retirement fund. Thus, UMWA President John L. Lewis was able to win a demand that the industry had rejected during the previous year's negotiation. The agreement that ended the strike and established the Welfare and Retirement Fund was signed on May 29, 1946, by John L. Lewis and Secretary of the Interior Krug.

According to the agreement, there was to be a two part program consisting of a *Medical and Hospital Fund* and a *Welfare and Retirement Fund.* The benefit program was to be financed by a "royalty" of 5 cents per ton of coal mined. The royalties were to be paid by the signatory coal operators. The agreement called for a tripartite board of trustees. One trustee was to be appointed by the UMWA and would serve as chairman of the board of trustees; one was to be appointed by the coal operators; the third was to be a neutral trustee appointed by the first two, whose role would be to resolve differences between the other two parties. Management and disbursement of the funds' revenues were to be governed by resolutions agreed upon by the trustees.

In July 1946, royalties began to be collected. The income was to be used to pay benefits to coal miners for sickness, disability, death and retirement. However, disbursements could not be made without the authorization of the trustees. Captain N.H. Collison, who had been appointed by the Government to serve as the industry representative during the mine seizure, could not agree with the UMWA trustee (John L. Lewis) on the selection of the neutral trustee. Agreement on the third trustee was not reached until April 1947, when Thomas E. Murray was appointed.

Notwithstanding the Krug-Lewis agreement, arguments between the union and the Federal Government continued. UMWA President Lewis notified Secretary Krug that the union was terminating the agreement on November 20, 1946. Without an agreement, the coal miners left work again. This touched off a legal chain of events that led to the issuance on November 17, 1946, of a restraining order by Judge T. Alan Goldsborough of the U.S. District Court in Washington, D.C., against Mr. Lewis and the UMWA. However, the coal miners remained off the job, and President Truman ordered the Justice Department to push for contempt of court. On December 3, 1946, Judge Goldsborough found Lewis and the UMWA guilty of civil and criminal contempt of court and imposed fines on Lewis and the union. The UMWA immediately appealed the decision. Meanwhile, the coal miners returned to work on December 7, 1946.[3]

On March 7, 1947, the U.S. Supreme Court upheld the Goldsborough decision. The union immediately complied with the Supreme Court's order, although the mines continued to be operated by the Federal Government under the restraint of the Goldsborough injunction. But on June 30, 1947, after more than a year of Government control, the mines were returned to their owners. Mine operators, who signed an agreement with the UMWA effective July 1, 1947, agreed for the first time to the Welfare and Retirement Fund. At this time the royalty payments were increased to 10 cents a ton.[4]

SENATOR STYLES BRIDGES

Early in 1948, after failing to break the deadlock between the operators and the union on whether the Welfare and Retirement Fund should operate on a "pay-as-you-go" basis or as an advance funded trust, the neutral trustee (Thomas E. Murray) resigned.[5] Some time went by before the union and the operators could agree on a replacement. John L. Lewis asked U.S. Senator Styles Bridges of New Hampshire to serve in this capacity. Senator Bridges, who was acceptable to the coal operators because of his conservative Republican background,[6]

was appointed neutral trustee in April of that year.

SECTION 404(C) OF THE INTERNAL REVENUE CODE OF 1954

The UMWA Welfare and Retirement Fund provided both pension and welfare benefits from the same plan without the segregation of funds. Normally, employers would be denied tax deductions for their contributions to such a fund.

The Internal Revenue Code of 1954 provided special rules concerning the deductibility of employer contributions made to certain negotiated pension or other deferred compensation plans, even though such a plan would not comport with all the requirements for favorable tax qualification. (These rules are continued in the Internal Revenue Code of 1986.)

While the statutory language in the 1954 tax code does not mention the UMWA Welfare and Retirement Fund by name, it is clear that the purpose of section 404(c) was to relieve some of the potential income tax burdens on the mine operators arising from the agreements entered into between the union and the Government incident to the seizure of the mines by the Government.[7] "Therefore, the Congress deemed it appropriate and equitable to provide statutorily that such trusts would be treated in a special manner, and that contributions to those trusts would be deductible although the trust was not actually qualified." [8]

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Congress overhauled the rules for pension plans with the passage of the Employee Retirement Income Security Act of 1974 (ERISA), including the rules for tax qualification. ERISA provided special rules to facilitate the restructuring of the UMWA Welfare and Retirement Fund into two separate plans—one for the payment of welfare benefits, and one for the payment of retirement benefits. This enabled the retirement trust to satisfy the general requirements for favorable tax treatment associated with tax-qualified pension plans.

MINERS' MEMORIAL HOSPITALS [9]

During the 1950s, the UMWA Welfare and Retirement Fund, in order to meet the need for hospital facilities in southern Appalachia, set up a nonprofit corporation to finance the construction of 10 hopsitals in Kentucky, Virginia, and West Virginia. The 10 hospitals, operated by the Miners' Memorial Hospital Association, opened between December 1955 and May 1956. They provided medical services in the communities in which they were located, with reimbursement from the Welfare and Retirement Fund for services provided to union beneficiaries.

By the early 1960s, the bottom had fallen out of the coal industry, and the number of union coal miners had dropped significantly. Increasingly, fewer and fewer patients in the Miners' hospitals were Fund beneficiaries. As a result, the hospitals became a financial drain on the Welfare and Retirement Fund, and in October 1962, the Fund announced that it would have to sell the hospitals. In December 1962, the Board of National Missions of the United Presbyterian Church, U.S.A., began discussions with the Miners' Hospital Association and the Welfare and Retirement Fund regarding the possibility of the Board's purchasing the hospitals. In April 1963, the Board voted to act as an enabling agency to create a regional hospital authority and arrange for funds to enable the authority to purchase and operate the hospitals.

With assistance in the amount of $8 million [10] from the newly created Area Redevelopment Administration of the U.S. Department of Commerce, the new regional authority established by the Board of Missions, Appalachian Regional Hospitals, Inc., effected a two-stage purchase of the hospitals. The new authority took over five hospitals located in Kentucky on September 30, 1963, and the remaining five, in Virginia and West Virginia, on June 30, 1964. This grant was obtained, according to some sources, after the personal involvement of Assistant Secretary of Labor Daniel P. Moynihan and President John Kennedy. The new regional authority planned to operate the facilities as community hospitals, with the Welfare and Retirement Fund providing reimbursement for care provided to union beneficiaries on the same basis as for other hospitals throughout the region.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969 [11]

The Federal Coal Mine Health and Safety Act of 1969 was the first Federal law to address health as well as safety problems of coal mining. It estblished health and safety standards for coal mines and required regular medical tests for miners. It also set up a system of Federal "black lung" benefits payable to miners disabled from pneumoconiosis,[12] or their widows. Five main political and policy reasons supported its enactment.

First, before passage of the Coal Act of 1969, Congress had shown continuing interest in the mining community. Congress created the Bureau of Mines in the Department of the Interior in 1910, charging it with "diligent investigation of the methods of mining, especially in relation to the safety of miners," [13] and by 1969 had already passed three other coal acts. The first was the Federal Mine Inspection Act of 1941. The second was the comprehensive Federal Coal Mine Safety Act of 1952 (which applied only to mines with 15 or more employees). The third was the Federal Coal Mine Safety Act of 1966, which brought small mines under the 1952 Act.

Second, mining has traditionally been one of the most hazardous occupations. Its disease, "black lung," was well known. In 1968 mining had a higher fatality rate than any of the other major industry divisions, including construction and farming, according to National Safety Council data. Methane explosions in the coal mines brought death to some miners, and black lung disease disabled many more. The disease often brought extreme pain and shortness of breath for 15 to 20 years before finally killing its victim. Technological advances in the coal mining industry had increased the miners' chances of contracting black lung disease, because high powered drills and mechanized loaders mined coal faster and therefore created more dust than had picks and shovels. (Mining processes using water to suppress coal dust had not yet been adopted.)

Third, coal was a vital resource. Therefore, it was important to protect the workers who mined it. Historically, coal has been in great demand in this country. The number of houses heated with coal had been dwindling for decades by the time Congress held hearings that led to the 1969 Coal Act. Nevertheless, coal was a crucial input in the still-vital steel production industry. Coal also was needed in large amounts to produce ever-expanding quantities of electrical energy. (Even today coal supplies 23 percent of U.S. energy needs.[14]) Because coal was a key source of energy in this country, protecting its workers—the heart of the industry—was in the national interest of the Government and of prime concern to Congress.

Fourth, coal mining appeared to be an industry with a bright future. Therefore, it was important to keep its jobs attractive to workers. Major research efforts were underway to convert coal to competitive gasoline and pipeline gas. In 1969, when hearings were held to consider new coal mine safety and health legislation, mining already was one of the highest paid jobs in the country. In order to keep attracting a sufficient labor supply, argued Senator Jennings Randolph of West Virginia, something had to be done to make the industry safer. With coal production "surely to grow—rather than diminish, . . . there is a greater obligation on industry, on the union of miners, and on government to make sure that safety in the mines is enhanced." [15]

Finally, strong lobbying efforts helped promote passage of the Coal Act. Bills leading up to passage of the 1969 Act were drafted by representatives of the UMWA and presented to various congressional committees at the UMWA's behest. However, the final thrust that gave the political push for passage was a mine disaster. In November 1968, 78 miners were killed in an explosion in Farmington, West Virginia. As Senator Harrison Williams, committee chairman, said in the hearings, "Dead miners have always been the most powerful influence in securing passage of mining legislation." [16] A little over a year later, Congress passed the Federal Coal Mine Health and Safety Act of 1969.

BLACK LUNG [17]

Major Federal intervention with respect to compensation for miners totally disabled by "complicated" pneumoconiosis (black lung), and their survivors, has occurred twice. In 1969, title IV of the Federal Coal Mine Health and Safety Act established federally funded benefits for preexisting claims by black lung victims and survivors and provided that States and coal mine operators would take over responsibility for new claims after a few years. Under the 1977 amendments, the system was revamped, and an industry-financed trust fund was set up for most claims submitted after the program's early years.

As noted above, the original black lung benefits program was established as part of the larger 1969 Federal Coal Mine Health and Safety Act. The Act was passed in response to the perceived lack of adequate Federal and State health and safety measures under previous, more limited legislation and safety codes, highlighted by the 1968 Farmington, West Virginia, coal mine explosion. Title IV of the Act, establishing a program of cash benefits for black lung, was included because: (1) although the new standards in the Act would "substantially reduce the prevalence" of black lung, coal miners had been exposed to dust levels "in excess of recommended standards" for years, and (2) State workers' compensation programs, the normal remedy for work-related injuries or death, rarely provided benefits for black lung-related disability or death.

In enacting the law, Congress found that: * * * there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's

underground coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents.[18]

In addition to the "failure of the States to assume compensation responsibilities" for miners disabled by black lung and their survivors, the report of the House Committee on Education and Labor accompanying the legislation noted that the dispersal of miners throughout the country after World War II brought them to noncoal-producing States where it was "understandable" that there would be no wish to assume responsibility for residents who may have contracted the ailment mining coal in another State: "These men took with them an irreversible disease, but because of their present location are denied benefits." [19]

The 1969 law envisioned a limited, federally administered and funded benefit program for miners already totally disabled from black lung and survivors of those who had died with the disease (the "part B" program). Claims were to be taken for 3 (later extended to 5) years, and they became a responsibility of the Federal treasury. The financing of benefits for later claims (under the "part C" program) was to be assumed by State workers' compensation systems approved by the U.S. Department of Labor as providing "adequate coverage." However, if no State system were approved, benefits were to be paid by "responsible coal operators," or in the event a responsible coal operator could not be identified, the Federal Government. In reaction to the barriers to compensation under State workers' compensation laws, the Federal black lung law established special rules (e.g., presumptions of work-relatedness) to assist claimants in establishing entitlement to benefits where medical evidence was not conclusive.

In the 1977 Black Lung Benefits Revenue Act, the Federal Government took major action to reform the system for paying black lung benefits. Although the original law had assumed that part C claims would be paid under updated State workers' compensation systems or by responsible coal mine operators after the Federal Government took responsibility for the initial (part B) caseload, by the mid-1970s the Federal Government was financing practically all benefits. Committee reports cited two reasons for this situation as important arguments for the 1977 Revenue Act: (1) no State workers' compensation law had yet been deemed "adequate" under part C; and (2) the Department of Labor had been successful in identifying responsible coal operators for only 25 to 30 percent of part C claims, and, in 97 percent of these cases, liability was being litigated.

In response, Black Lung Benefits Revenue Act set up a new system for funding benefits. It imposed a special excise tax on coal to be used, through a newly established trust fund, to finance most part C cash benefits, in those States without an adequate State workers' compensation plan and where no responsible coal operator could be identified to pay benefits, as well as medical benefits for all claims.[20] Moreover, the 1977 Act permitted coal mine operators to establish tax-exempt trusts to cover their obligations for payment of black lung benefits where they were identified as the responsible operator.

THE PRESIDENT'S COMMISSION ON COAL [21]

The President's Commission on Coal was established by President Jimmy Carter in the spring of 1978. At that time there was a national concern about the consequences of a strike in the coal industry that had lasted 111 days. This concern was heightened by domestic and world events (OPEC oil price increases, the nuclear accident at Three Mile Island, and the revolution in oil-rich-rich Iran). The Commission concluded that the problems associated with coal use could be overcome and that the Nation must begin to rely more heavily on its vast coal deposits to reduce "much of our intolerable dependence on imported oil."

In its 1980 report to the President, the Commission outlined a series of findings and recommendations for replacing foreign oil with domestic coal, along with other recommendations relating to concerns for environmental protection and public health, coal mine safety, stability in labor-management relations, and coalfield living conditions. Of note, the Commission stated that increased reliance on coal "will require greater stability in labor-management relations.

OTHER POLICY REASONS [22]

As you requested, this section outlines policy reasons justifying Federal Government participation (other than precedent) in resolving the current financial crisis of the UMWA health funds.

There are several possible justifications for Federal involvement in the resolution of the current financial distress of the health funds. First, while most issues affecting the coal industry can be and have been successfully resolved through collective bargaining, the problems facing the UMWA health funds appear to be unresolvable through such means. The combination of ballooning health care costs and a shrinking number of companies to shoulder the costs have produced enormous liabilities for the funds. The coal operators and the UMWA are unlikely to reach a funding solution by themselves; the costs to either side would be so high that it seems improbable that the two parties could negotiate a solution. A neutral external party, such as the Federal Government, may have to become involved in order to develop and implement a solution that will be acceptable to both the coal operators and the union. In addition, several possible solutions that have been suggested, such as transferring surplus assets from the 1950 UMWA Pension Plan to the 1950 and 1974 Welfare Benefit Plans, or spreading the costs of the funds across the entire coal industry, might require Federal legislation. Thus, it could be argued that the Federal Government has a direct interest in participating in the search for a solution.

Second, the UMWA health trust funds are in fragile financial condition, reportedly making it increasingly difficult for beneficiaries in the health plans to secure certain health care services. According to the Coal Commission, the trust funds are 120 days behind in paying their bills. Also, according to the Commission, some health care providers are threatening to end their participation in the health benefit plans. For example, pharmacists are saying that they will pull out because they are not being paid. This development means diminished access to services for retired coal miners and their families. As noted earlier, the Federal Government became involved in the delivery of health care to coal miners and their dependents partly to ensure that they received care that was otherwise unavailable to them. It may be in the Federal Government's interest to expedite a solution to the trust fund problem in order to ensure continued access to health services for the retired miners and their dependents.

Together, the 1950 and 1974 UMWA health plans provide an important source of health insurance to about 128,000 retirees and their families.[23] If the health plan trust funds go bankrupt, many beneficiaries could lost their only source of health insurance. Alternative sources of health insurance for retirees not yet eligible for Medicare are likely to be prohibitively expensive, or for some with serious health conditions, impossible to find. For those beneficiaries who are Medicare-eligible, the termination of UMWA retiree health coverge could result in substantial increases in their out-of-pocket costs for medical care. It could be argued that the Federal Government has an interest in seeing that the ranks of the uninsured are not swelled by retired coal miners and that the limited resources of these families are not depleted by out-of-pocket health care costs.

In the same vein, the health care needs of retired coal miners and their families will not disappear if the UMWA health trust funds go bankrupt. Some of the costs of delaying care and/or getting less care than needed are likely to be passed on to public programs such as Medicare and Medicaid. As a result, the Federal Government could end up incurring some of the costs of care for retirees and their dependents who are no longer able to get services from the UMWA health plans.

Finally, coal remains a critical national energy resource. It could be argued that it is in the Federal Government's interest to assure continuous operation of the coal mines. Uncertainty over the future of the UMWA health trust funds could lead to protracted albeit limited labor actions, thus interrupting the mining of this energy resource. The next round of collective between the UMWA and the Bituminous Coal Operators' Association (BCOA) occurs in 1992.

It should be noted that policy-based arguments also could be offered against Federal involvement in this issue. They include the following:

There is no Federal requirement that employers provide health benefits or retiree health benefits, and, thus, no direct Federal responsibility for ensuring that employers continue such benefits.[24] In addition, the Government is not responsible for the poor financial condition of the trust funds and has no obligation to ensure that the funds remain solvent. Employer-sponsored retiree health benefits are universally under strain as health care costs continue to rise. Many industries, some just as critical to the national interest as coal, are saddled with enormous liabilities for these benefits and will shortly have to account for them on their financial statements as a result of the new Financial Accounting Standards Board (FASB) requirements. It might be asked whether the Federal Government should become responsible for resolving the future of these retiree health plans as well. (See the attached CRS issue brief on retiree health benefits for further discussion of the role of Congress in respect to ensuring the security of retiree health benefits.)

Finally, the provisions of UMWA health plan are more generous than the prevailing practice in employer plans. Most other plans have instituted deductible and coinsurance requirements to discourage overutilization of health care services, and many plans now oversee hospital admissions of enrollees and manage high-cost cases to curb

rising costs. Some could argue that it is not in the national interest to deter the UMWA plan from adopting cost control measures by subsidizing the status quo.

FOOTNOTES

[1] Horkitz, Karen S., and Dallas L. Salisbury. *United Mine Workers of America Benefit Trust Funds: An Evaluation.* Employee Benefit Research Institute (EBRI) Special Report. Washington, Jan. 1990.

[2] This section was prepared by Ray Schmitt, Specialist in Social Legislation, Education and Public Welfare Dvision. It is derived from the attached CRS report, *History of the United Mineworkers of America Welfare and Retirement Fund,* Jan. 22, 1980.

[3] Marley, Faye, A History of the UMWA. *United Mine Workers Journal,* May 1, 1971.

[4] Ibid.

[5] In addition to three actuarial studies prepared by private consulting firms before the establishment of the plan, the Social Security Administration also prepared estimates of the actuarial cost of the plan because the coal mines were under Government operation at that time.

[6] Marley, A History of the UMWA.

[7] The special rules applied to a plan providing welfare and retirement benefits only if the plan were established before 1954 as a result of an agreement between a union and the Government. Moreover, it had to be established during a period of Government operations under its seizure powers of a major part of the productive facilities of the industry in which the employer was engaged (sec. 404(c)(2)). Furthermore, the plan had to hold contributions in trust in order to pay medical or hospital care of employees and their families, or pensions on retirement or death (sec. 404(c)(1)).

[8] U.S. Library of Congress. Congressional Research Service. *Legislative History of Internal Revenue Code Section 404(c): Certain Negotiated Plans.* Howard Zaritsky, American Law Division, Jan. 16. 1980.

[9] This section was prepared by Ed Klebe, Specialist in Social Legislation, Education and Public Welfare Division.

[10] This was comprised of $3.9 million in a grant in June 1963, and $4.1 million in a loan in June 1964. The loan was forgiven in 1972 by Private Law 92-161.

[11] This section as prepared by Mary Jane Bolle, Specialist in Labor Economics, Economics Division.

[12] Coal miners' pneumoconiosis is a chronic chest disease cause by the accumulation of fine coal dust particles in the lungs. In its advanced form, it leads to severe disability and premature death.

[13] U.S. Congress. Senate. Committee on Labor and Public Welfare. Subcommittee on Labor. *Legislative History of the Federal Coal Mine Health and Safety Act of 1969,* Part 1, Aug. 1975. Washington, U.S. Govt. Print. Off., 1975. p. 129.

[14] *Monthly Energy Review,* May 1990. The figure is for 1989.

[15] U.S. Congress. Senate. Committee on Labor and Public Welfare. Subcommittee on Labor. *Coal Mine Health and Safety.* Hearings, 91st Cong., 1st Sess., Feb.-May, 1969. Washington, U.S. Govt. Print. Off., 1969, p. 480.

[16] Ibid., p. 449.

[17] This section was prepared by Joe Richardson, Specialist in Social Legislation, Education and Public Welare Division.

[18] Section 401 of the Federal Coal Mine Health and Safety Act of 1969.

[19] House Report 91-563, p. 14.

[20] Companion legislation, the Black Lung Benefits Reform Act of 1977, liberalized eligibility standards and extended medical benefits to both part B and part C claimants.

[21] This section was prepared by Ray Schmitt, Specialist in Social Legislation, Education and Public Welfare Division.

[22] This section was prepared by Beth Fuchs, Specialist in Social Legislation, Education and Public Welfare Division. Jim Storey, Specialist in Social Legislation, also made contributions to this and other sections.

[23] Horkitz and Salisbury, *United Mine Workers of America Benefit Trust Funds.*

[24] Retiree health benefit protections under existing Federal laws are described in: U.S. Library of Congress. Congressional Research Service *Health Benefits for Retirees: An Uncertain Future.* Issue Brief No. IB88004, by Beth C. Fuchs, Aug. 7, 1990 (continually updated). As noted in this document, certain employers in chapter XI bankruptcy of the U.S. bankruptcy Code are required to provide continued health insurance coverage under their group health plan to retirees and their dependents.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, May 20, 1982.

From: Edward Klebe, Analyst in Social Legislation, Education and Public Welfare Division.

Subject: Black Lung Clinics Program.

This memorandum was prepared at your request for information on the history and operation of the black lung clinics program authorized under section 427(a) of the Federal Coal Mine Health and Safety Act, as amended. Information available concerning the program is limited. Most of the information included in this paper on the early funding and operation of the black lung clinics was obtained in telephone conversations with program officials of the Department of Health and Human Services. As far as we have been able to determine from the Department and the General Accounting Office, there have been no reports, evaluations, or assessments prepared on the black lung clinics program during its 10-year history.

BLACK LUNG CLINICS

1. Legislative history

In 1972, the 92nd Congress, in the Black Lung Benefits Act of 1972 (P.L. 92-303) amended the 1969 Federal Coal Mine Health and Safety Act (P.L. 91-173) by adding a new section 427(a) to the Act which authorized $10 million a year for 3 years, through fiscal year 1975, to build and operate fixed site and mobile clinics for analysis, examination, and treatment of respiratory and pulmonary impairments in both active and inactive coal miners. This section also authorized research to devise simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments.

The amendment, which originated in the Senate Committee on Labor and Public Welfare, was offered, according to the Senate report (S. Rept. No. 92-743), in response to "an urgent need for more and improved medical facilities in the coal regions, to provide a variety of diagnostic and health care services." The Committee had heard testimony that there was a particular need for "more facilities with adequate and proper equipment and staff to diagnose the health problems of miners and to perform the battery of tests needed to diagnose black lung and other respiratory diseases and the extent of the resultant disability"; and that "good health facilities generally are not located in areas with heavy concentrations of coal miners." According to the report, the Committee expected the result of this provision to be "better care and treatment facilities for disabled coal miners, who now may be forced to travel hundreds of miles for adequate medical assistance."

In 1977, the Black Lung Benefits Reform Act (P.L. 95-239) replaced the year-by-year authorization of appropriations for black lung clinical facilities with a permanent authorization of $10 million a year. According to the Senate report (S. Rept. No. 95-209), additional clinical facilities for the analysis, examination, and treatment of disabled coal miners were "desperately needed."

In 1981, the Administration proposed including the program in a health services block grant. The proposal was not considered by the Congress as the program is not within the jurisdiction of the House Energy and Commerce Committee, which was the only House Committee considering block grants in the area of health.

2. Program data

The Appalachian Region Commission (ARC) in 1972 had established black lung examination and treatment projects as part of its demonstration health program. According to the Department of HHS the Congress in FY 1973, appropriated $3.5 million under the Sec. 427(a) authority to the National Institute of Occupational Safety and Health (NIOSH) for operation of black lung clinics. NIOSH awarded $2.5 million to the ARC to supplement the Black Lung anaylsis, examination, and treatment activities it was carrying out in its own program. In addition, NIOSH awarded a contract of $1 million to the United Mine Workers union to carry out such activities in States outside the Appalachian region which had active and inactive coal miners suffering from respiratory and pulmonary disorders from black lung disease.

The fiscal year 1973 appropriations to NIOSH under the sec. 427(a) authority was the only funding for the black lung clinics program until FR 1979, when $7.5 million was appropriated for the program under the new permanent authority. At that time, the administration of the program was taken over by the Bureau of Community Health Services (BCH) of the Health Services Administration, which operated it as part of its Community Health Services program, which included the community health centers program. In FY 1979, the $7.5 million allocated for black lung clinics supported the operation of 75 black lung in 14 States and provided services to approximately 26,000 active and inactive coal miners.

The Bureau of Community Health Services allocates funds to the Department of HHS regional offices for the areas in which projects are located. The regional offices award grants either (1) to State governments which subcontract with local governments hospitals or clinics; or (2) directly to hospital or clinic grantees. Grantees which provide services are community health centers, hospital ambulatory health care facilities, or free-standing black lung clinics. These facilities provide such services as case-finding and outreach; patient and family education; followup; and medical services such as the analysis, examination, and treatment of respiratory or pulmony impairments of persons with black lung disease.

In FY 1980 the black lung clinics program was again funded at a level of $7.5 million. In FY 1981, the level of funding was $4 million, and in FY 1982, an estimated $3 million.

The following tables show: (1) the allocation of funds for grants under the program on a State-by-State basis in FY 1981; and (2) Numbers of persons receiving services under the program on a State-by-State basis in Calendar Year 1981.

Black Lung Clinics Allocations to States for Grants: Fiscal Year 1981

State:	*Total costs*
Alabama	$90,000
Colorado	50,000
Illinois	355,000
Indiana	662,000
Kentucky	639,000
Michigan	70,000
New Mexico	50,000
Ohio	543,000
Pennsylvania	1,000,000
Tennessee	421,000
Utah	75,000

Virginia	241,000
West Virginia	1,261,000
Wyoming	62,000
Total	[1] 5,519,000

[1] Totals to more than the fiscal 1981 appropriations because of the use of money appropriated in prior years and the multiple-year nature of grants.

Source: Bureau of Community Health Services, Health Services Administration, Department of Health and Human Services.

Number of Persons Receiving Services From Black Lung Clinics, Calendar Year 1981

State:	Persons
Alabama	163
Colorado	67
Illinois	729
Indiana	644
Kentucky	1,362
Michigan	236
New Mexico	248
Ohio	740
Pennsylvania	11,258
Tennessee	721
Utah	417
Virginia	72
West Virginia	1,625
Wyoming	411
Total	18,693

Source: Bureau of Community Health Services, Health Services Administration, Department of Health and Human Services.

PROPOSED URBAN MASS TRANSIT ACT

Mr. CRANSTON. Mr. President, the Senate Subcommittee on Housing and Urban Affairs, which I chair, has just successfully concluded a massive, nationwide effort to address our appalling lack of affordable housing. This effort is now complete. Congress recently passed the Cranston-Gonzalez National Affordable Housing Act.

Now I intend to launch a similar effort to address the growing problems due to traffic congestion that so many regions of the country are experiencing. As chairman of the Subcommittee on Housing and Urban Affairs, which has jurisdiction over the mass transit programs, I want to let my colleagues know of my plans with respect to the reauthorization of the Urban Mass Transit Act next year.

Federal, State, and local governments along with private interests have worked together for 25 years to develop and maintain mass transit systems across the country. But, as with most domestic problems, the Federal role has languished behind while local needs have escalated. At the same time, we are beginning to recognize more and more that problems such as pollution and congestion, which have traditionally been local in nature, threaten our national interests as well. We must reaffirm our Federal commitment to public transportation for at least four reasons.

First, the investment is so great and of such long duration that State and local governments simply are incapable of mounting effective solutions without adequate Federal support.

Second, the degradation of lives, property, and agriculture due to air pollution may be local problems but they have national impact. One report after another has established that automobiles generate the largest single share of smog forming pollutants in urban areas. The California Air Resources Board estimates that smog is creating crop losses of over $300 million a year in California alone. This hurts not only California but also other parts of the country that rely on produce grown in my home State.

Third, our overdependence on the automobile makes us economically and militarily vulnerable to rising prices and unstable foreign oil supplies. A bad situation has been made even worse by the current crisis in the Persian Gulf. When Iraq's invasion of Kuwait can trigger the large surge in world oil prices that we have just seen, the dangers of short sighted transportation policy should be clear to everyone. Our Federal transportation system must recognize and be made part of our long-range national energy and security policy.

Fourth, our productivity and international competitiveness suffers when the Federal Government fails to assist States and localities with their congestion problems. Japan and Western Europe invest heavily to build efficient, ultra-modern mass transit systems that get workers to and from work with the greatest ease. Meanwhile, the American work force must sit for hours on congested roadways. Local congestion affects the entire country when workers can't get to jobs and when goods can't get to markets.

We must do more than simply reauthorize the Urban Mass Transportation Act as it currently exists. We must pass significant new legislation to help relieve the intolerable traffic congestion that is choking California and much of the rest of the Nation.

Thirty-five years ago this country undertook a monumental effort to construct an Interstate Highway System. I continue to support the maintenance of this program, which has been a great success and one in which we all have a right to be proud.

But we must now direct our efforts with equal ambition and commitment toward providing a successful public transportation system that will ensure the health of our environment and the economic soundness of our urban and suburban centers. The effort must recognize the different transportation needs of each area of the country. And the effort must involve the country's top transit leaders.

At hearings that I recently chaired in California, I announced my intention to initiate a major review of the Nation's mass transit policy.

First, Senator D'AMATO, the distinguished ranking minority member of the Housing Subcommittee, has joined me in inviting the leading organizations and individuals who understand mass transit to submit by November 30, 1990, their recommendations for the future of national mass transit policy. The subcommittee will publish these recommendations.

Second, I intend to convene early next year a major national conference of the country's top mass transit experts. The conference will be held in the U.S. Capitol and will review the recommendations included in the response to our invitation and other suggestions.

Third, the Senate Subcommittee on Housing and Urban Affairs will hold an extensive series of public hearings in preparation for major new mass transit legislation.

This will be made part of the Surface Transportation Act reauthorizes that is due by September 30, 1991.

The UMTA reauthorization and the completion of the Interstate Highway System gives us a tremendous opportunity to reevaluate the ways that the Federal Government can help address our problems of congestion, pollution, land use, and dependence on foreign oil. I intend to work for enactment of that legislation in the next Congress.

RETIREMENT OF SENATOR GORDON HUMPHREY (R-NH)

Mr. THURMOND. Mr. President, I rise this evening to pay tribute to a courageous individual and patriotic leader Senator GORDON J. HUMPHREY of New Hampshire who will retire at the conclusion of this Congress. Senator HUMPHREY will be greatly missed by his colleagues, and I would like to express my appreciation for his distinguished service to this body and the people of New Hampshire.

Senator HUMPHREY is a man of conviction, capacity, compassion and integrity. He was elected to the Senate in 1978 and quickly gained prominence as a leader in the conservative movement. He has, on many occasions, stood alone in support or in opposition to issues about which he held strong beliefs. In doing so, he has gained the respect and admiration of his colleagues on both sides of the aisle. Every Member of this body knows that GORDON HUMPHREY is a man who makes up his own mind, and who never compromises his values or ideals.

As ranking member of the Judiciary Committee, I have had the opportunity to work closely with Senator HUMPHREY on many occasions. From Supreme Court nominations to legislative initiatives, Senator HUMPHREY has left his mark on the course of our Nation. As a member of the committee, Senator HUMPHREY has always been dependable, honest and faithful to the constitutional principles which we all serve to protect. His presence and insight will be greatly missed, and I know I speak for many others when I say good luck and Godspeed.

My wife, Nancy, joins me in sending Senator HUMPHREY and his lovely wife, Patricia, our very best wishes. May God bless him richly, and may God bless the Nation which he has served with such distinction.

RETIREMENT OF SENATOR JAMES A. McCLURE

Mr. THURMOND. Mr. President, I rise this evening to pay tribute to a man of great intellect, integrity, and patriotism, Senator JAMES A. MCCLURE of Idaho. After almost 25 years of service in Congress, Senator MCCLURE has chosen to retire when this session of the Senate adjourns. Although his presence will be sorely missed in this body, I would like to take this opportunity to express my appreciation for his outstanding service to the people of Idaho and our Nation.

Senator MCCLURE began his public service as a city attorney in Payette County, ID. He then served as a prosecuting attorney, State senator, and Member of the U.S. House of Representatives. Senator MCCLURE has been the Rock of Gibraltar of the Senate. His personal integrity and his ability to successfully apply good old commonsense to the most complicated issues have guided this body on many occasions. He has the uncommon ability to cut through the unimportant to uncover the heart of a matter, and he has often served to remind us of our duties as elected officials. He leaves this body with a legacy of accomplishment, And I am confident that he will continue to meet the many challenges which lie ahead in whatever field he may choose to pursue.

The people of Idaho should take justifiable pride in the many accomplishments of their senior Senator and the service which he has rendered to them during his tenure in this body. I hope that others will look to the example which he has set as a model for public service, and I trust this body will long remember the impact which he has had on the future of our Nation.

My wife, Nancy, joins me in wishing Senator MCCLURE and his lovely wife, Louise, our very best wishes. May God bless him richly, and may God bless the Nation which he has served with such distinction.

DOMENICI AMENDMENT H.R. 2566

Mr. DOMENICI. Mr. President, the amendment I am offering to H.R. 2566 would expand the bill to include the provisions of 2 bills that I authored, S. 798—the Chacoan Outliers Protection Act and S. 558—the Lechuguilla Cave Study Act, as well as S. 560, the Boots and Saddles Tour Study Act, which Senator BINGAMAN introduced.

THE CHACOAN OUTLIERS PROTECTION ACT

The Chacoan Outliers Protection Act of 1990, S. 798, would expand the Chaco Culture Archeological Protection Sites to include an additional 4,996 acres containing structures and artifacts associated with the Chacoan Anasazi Indian culture of the San Juan Basin of New Mexico.

The San Juan Basin is an area of major significance to the cultural history of North America. It is here that a people that we now call the Anasazi, which is Navajo for the ancient ones, mysteriously appeared, flourished, and suddenly disappeared in the space of 400 years, from 900 to 1300 A.D. The center of this civilization was Chaco Canyon, a remote and barren site.

The Anasazi built many pueblos and structures around Chaco Canyon and established a large network of outlying communities, known as Chacoan outliers. The Chacoan outliers were spread over an area of over 30,000 square miles and linked by an extensive system of roads.

Archeologists debate the purpose of Chaco Canyon and its outlying communities. The traditional view is that Chaco was a trade center, but an emerging body of evidence, bolstered by the archeoastronomy work of the Solstice Project, points to Chaco as a religious and ceremonial site.

Chaco Canyon has long been recognized as being a nationally and internationally significant site. In 1907, Chaco Canyon was designated a national monument. The United Nations demonstrated the international significance of Chaco Canyon when it recently designated Chaco Canyon and five Chacoan outliers as World Heritage Cultural Properties.

In 1980, I introduced and the Congress passed the Chaco Culture National Historical Park Establishment Act, which became Public Law 96-550. This act enlarged the park and reestablished it as the Chaco Culture National Historical Park, consisting of the main body of the park and three noncontiguous units. The act also mandated procedures for the protection, preservation, and administration of archeological remnants of the Chacoan culture.

When Chaco Canyon was first afforded Federal protection in 1907, numerous archeological sites were known to exist outside the boundaries of the national monument. Their relationship to Chaco Canyon, however, was unclear. Archeologists subsequently determined that many of these sites—some as far as 100 miles from Chaco Canyon—were part of the Chacoan culture.

To the untrained eye, the physical remains of the Chacoan outliers are difficult to discern. At some of the sites, walls still stand. At most sites, however, the magnificent structures of the Anasazi people have collapsed into a mound of rubble, which over the years have been buried by the desert sands.

Unfortunately, over the years, many of these sites were vandalized by unscrupulous pothunters or degraded by development activities.

In order to protect these outliers, the Chaco Culture National Historical Park Establishment Act designated 33 sites as Chaco Culture Archeological Protection Sites. The Secretary of the Interior is charged with managing these sites in order to preserve them and provide for their interpretation and study. Activities that would endanger the cultural values of the sites are prohibited.

Ownership of the lands containing the archeological protection sites is a checkerboard of private, State, Federal, and Indian interests. The Indian interests include trust, allotted, and fee parcels. In addition, some surface and subsurface ownerships are divided between two or more entities. Therefore, the act mandated that these lands be protected by cooperative agreements, rather than Federal acquisition, where possible.

The Chacoan outliers are not included in the National Park System. Rather, they are managed primarily by the Bureau of Indian Affairs and the Bureau of Land Management. These entities are responsible for resource protection and preservation at the sites.

The Chacoan Outliers Protection Act will expand the existing Chaco Culture Archeological Protection Sites system to provide protection to seven new sites. It also will expand the boundaries of 13 of the existing protection sites to include 2,328 additional acres.

Three existing sites would be deleted from the system, and four sites would be reduced by a total of 219 acres.

The net result of the changes to be made by the Chacoan Outliers Protection Act would be to increase the number of Chaco Culture Archeological Protection Sites from 33 to 37 and to increase the acreage of the system by 4,996 acres to 13,767 acres.

The bill also includes technical changes to the Chaco Culture National Historical Park Establishment Act to clarify that some sites lie outside the San Juan Basin, to correct the spelling of the name of the Jaquez site, and to direct that maps of the sites be filed with various agencies that have management responsibility for the sites.

The bill also has been amended to include a technical correction of Public Law 100-225, the El Malpais Act, to clarify that the Masau Trail automobile touring route established by that act may extend into southwestern Colorado.

These changes, which are the result of 9 years of research by Federal, State, and Indian archeologists, were recommended by the Interagency Management Group for the Chaco Culture Archeological Protection Sites, consisting of the National Park Service, the Bureau of Indian Affairs, the Bureau of Land Management, the Forest Service, the Navajo Nation, and the State of New Mexico. They also are in accordance with the 1983 Joint Management Plan for the Chaco Culture Archeological Protection Sites.

Mr. President, the Chacoan Outliers Protection Act would preserve sites of major cultural significance for future generations and assure that the sites are protected from further degradation. These sites are part of the cultural heritage of all Americans, and we must act to preserve them, for cultural resources, once lost, can never be restored or regained.

THE LECHUGUILLA CAVE STUDY ACT

The Lechuguilla Cave Study Act, S. 558, would direct the Department of the Interior to update its general management plan for Carlsbad Cavern National Park to include a study to determine how best to protect and interpret Lechuguilla Cave and to identify ways to facilitate greater public enjoyment of other caves within the park.

It is particularly important that we determine just how Lechuguilla Cave, which has some of the most unique cave formations discovered in this century, can be perserved and utilized.

Although the existence of Lechuguilla Cave has been known for over 75 years, for most of that time it was considered just another minor cave in Carlsbad Caverns National Park, which contains 75 caves.

Recent explorations of Lechuguilla Cave, however, have turned up amazing new information about the cave that has captured the interest of cave enthusiasts from around the world.

The new discoveries at Lechuguilla Cave are among the most remarkable and exciting discoveries of this century. They have prompted the National Speleological Society to describe Lechuguilla Cave as possibly the finest cave in America.

The recent explorations of Lechuguilla Cave have established that the cave is 1,565 feet deep, making it the deepest cave in the United States. At over 51 miles long, it is the 4th longest cave in the United States and the 14th longest in the world.

Taking into account both its length and its depth, Lechuguilla Cave is the longest deep cave—which is defined as a cave greater than 1,000 feet deep—in the country and probably contains more passage below 800 feet than all the other deep caves in the country combined.

Lechuguilla Cave is filled with awe-inspiring gypsum deposits and formations, such as 15-foot-long gypsum crystal chandeliers, delicate gypsum flowers, gypsum threads as fine as angel's hair, cave pearls, popcorn, gigantic soda straws, and billowy cloud formations. Because of these features, it has been said that Lechuguilla contains the best display of gypsum speleothems in the world.

The exploration of Lechuguilla Cave has attracted international attention. Last year, Soviet spelunkers accompanied National Park Service personnel into the cave. The Soviets stated that Lechuguilla Cave is truly a world-class cave and compares very favorably to the best caves in Africa, Europe, and the Soviet Union.

Since introducing this legislation, I have heard from cave enthusiasts all over America. They are excited about Lechuguilla Cave and want to see it protected. I agree that we need to develop a plan for protecting and interpreting this magnificent resource. The study that will be authorized by this bill will set that process in motion.

In addition to determining how best to protect and interpret Lechuguilla Cave, the updated review of the national park that would be mandated by the Lechuguilla Cave Study Act may show that the Park Service can develop additional caves for general visitation, designate some caves for specialized tours, and restrict access to others.

A key aspect of this study act is that it encourages the participation of the public. I am interested in what New Mexicans think are the best ways to present magnificent resources of Carlsbad Caverns to the general public.

Last year, a task force convened by Carlsbad Mayor Robert Forrest determined that the "the development of a general management plan for Carlsbad Caverns National Park which includes as a major component a study of Lechuguilla and how it can best be communicated to the public is critical."

Mr. President, the Lechuguilla Cave Study Act will help protect the unique features of Lechuguilla Cave and determine how best to present the resources of Carlsbad Caverns National Park to the public.

BOOTS AND SADDLES TOUR STUDY ACT

S. 560, the Boots and Saddles Tour Study Act, will direct the Secretary of the Interior to conduct a study of methods for the preservation of eight historic military forts in New Mexico.

Located along the trails that guided thousands of travelers, settlers, and soldiers across the rugged New Mexico terrain, these outposts played a key role in the European settlement of the American frontier, providing way stations on the trail to the West. They also were an essential part of a darker episode of American history—the subjugation of the American Indian.

The dry climate and sparse population of New Mexico has preserved many of these forts and historic trails, leaving remnants of days gone by for the public to view. But, due to the forces of nature and man, these historic landmarks are slowly being obliterated from the New Mexico landscape. These forts should be nationally recognized for their historic significance and their contribution in settling the western frontier.

S. 560 will authorize the Secretary of the Interior, through the Bureau of Land Management and the National Park Service, to conduct a 1-year study of eight historical forts that were used during the Civil War and the Indian campaigns.

The forts to be included in the study are:

Fort Bayard: Now a hospital, this fort, which played a major role in the campaigns against Geronimo, was established as the Nation's original Indian reservation by President Grant, and its cemetery is now a national cemetery.

Fort Craig: Built in 1854 to protect travelers between El Paso and Albuquerque, it was the largest Civil War fort in the West, and the largest Civil War battle in New Mexico occurred just north of the fort.

Fort Cummings: Fort Cummings protected the stagecoach route between San Diego and San Antonio, TX, and was also used as base during the Apache wars.

Fort McRae: The mission of this fort was to prevent the Apache and Navajo from using the Jornada del Muerto trail.

Fort Seldon: Fort Seldon protected settlers and travelers from the dangers of the frontier and was once home to Douglas MacArthur.

Fort Stanton: This fort was occupied by both Union and Confederate troops during the Civil War, was subsequently used as a staging point by Kit Carson in his campaigns against the Apache and the Navajo, and was once commanded by Black Jack Pershing. It is now a school for the mentally handicapped.

Fort Sumner: An outpost for the U.S. cavalry during the campaigns to repress Indian resistance to American expansion, it is most famous as the site where Sheriff Pat Garrett killed "Billy the Kid."

Fort Union: Fort Union was a major outpost guarding the Santa Fe trail and was the principal quartermaster depot for the Southwest.

The study will focus on the feasibility of establishing vehicle tour routes and hiking or horseback-riding trails linking the forts. Visitors could reach the forts via existing roadways or, if more time was available, could hike or ride on horseback along the same

trails that travelers used to reach the forts in the 19th century.

This exciting proposal is based upon the Masau trail that I established last Congress in the El Malpais Act, Public Law 100-225. The Masau trail is an automobile touring route linking the riches of our many historic, cultural, and natural sites in northwestern New Mexico: Aztec Ruins, Bandelier, El Malpais, El Morro, and Pecos National Monuments, Chaco Culture National Historical Park, various Indian pueblos, and other important sites.

I am pleased that this innovative concept is being adopted for the interpretation of other areas.

Mr. President, the Boots and Saddles Tour Study Act will promote greater public knowledge and enjoyment of the military history of the American Southwest.

RETIREMENT OF SENATOR WILLIAM L. ARMSTRONG (R-CO)

Mr. THURMOND. Mr. President, I rise this evening to pay tribute to an outstanding statesman, a great leader and perhaps this body's most eloquent speaker, Senator WILLIAM L. ARMSTRONG of Colorado. Senator ARMSTRONG has chosen to retire at the conclusion of this Congress, and although we will all feel a great loss with his departure, I would like to express my gratitude for his personal friendship and public service over the past 12 years.

Senator ARMSTRONG has served the people of Colorado with dedication, vigor and enthusiasm. He was elected to the Senate in 1978 after having served for several years in the Colorado House of Representatives and the Colorado State Senate. Throughout his tenure in this body, he has deported himself as a man of great generosity, conviction and spiritual strength. His unyielding devotion to his christian principles and his personal beliefs, as well as his courageous leadership on sensitive issues of great national interest will serve as a model for other Senators for generations to come.

Over the years, I have had the opportunity to get to know Senator ARMSTRONG as a person as well as a statesman during our times together as members of the Senate Prayer Breakfast. Each Wednesday morning, we have met together with a group of our colleagues to study the Bible and pray. I have often been inspired by Senator ARMSTRONG's religious faith, and I shall miss his insight and his thoughtful observations on such occasions in the future.

The people of Colorado can take pride in the many accomplishments of their senior Senator and the service which he has rendered to them during his tenure in this body. I am confident that Senator ARMSTRONG will continue to serve the public and share his faith in whatever path he chooses to follow. I hope that he will look back on his time in this body with fondness and justifiable pride, and I trust that the years ahead will bring good health, happiness, and contentment for the entire Armstrong family.

My wife, Nancy, joins me in wishing Senator ARMSTRONG and his lovely wife, Ellen, our very best wishes. May God bless him richly, and may God bless the Nation which he has served with such distinction.

Mr. DOMENICI. Mr. President, today I would like to take a few moments to recognize the accomplishments of my dear friend and longtime colleague, the senior Senator from Colorado, BILL ARMSTRONG.

During the past 12 years, I have had the pleasure of working with BILL ARMSTRONG, both on the Senate floor and more closely during the years we served together on the Budget Committee. His presence here will be sorely missed.

BILL ARMSTRONG was born in Fremont, NE, where as a boy he held his first radio job. He was a member of the detate team at Northeast High School in Lincoln, NE, where he first displayed those oratory skills that helped make his place in the Senate. After graduating, ARMSTRONG went on to attend Tulane University and the University of Minnesota, where his interests in broadcasting, business, and public service continued to mature.

In 1963, BILL began his 28 years in public office with his election to the Colorado House of Representatives, where he served from 1963 to 1965. He was consequently elected to serve in the Colorado Senate from 1965 through 1973, where he was the majority leader.

Washington welcomed BILL ARMSTRONG in 1973, when he won his first seat in the U.S. House of Representatives, beginning an 18-year career in the U.S. Congress. His intellect and dedication led to his reelection on two occassions, and then in 1978 the people of Colorado selected him to serve in the U.S. Senate.

During the last 12 years, I have had many opportunities to work closely with Senator BILL ARMSTRONG. His knowledge of economic issues earned him a seat on the Budget Committee. During the budget meetings, I have had many opportunities to learn from BILL's informed and principled opinions.

Senator ARMSTRONG's position on the Budget Committee helped him to make several bold moves to eliminate waste and streamline the Federal Government. Winner of the National Taxpayer's Union's "Taxpayer's Friend" Award, BILL has designed provisions expected to save taxpayers about $100 billion over the next 3 years. This income tax indexing provision in the 1982 Reagan tax cut bill was recognized by experts as the most important tax reform in decades. He also sponsored a constitutional amendment to require a balanced Federal budget, and, in the last Congress, saved taxpayers some $4 billion with a tough compromise on Federal housing legislation.

However, his influence goes far beyond the realm of the Budget Committee. Although he is not on the Energy and Natural Resources Committee, he is one of the Senate's foremost advocates for Western natural resource issues. The Army Times has tagged BILL as the pay champion of the military for his work on their behalf. He was a major proponent of the restoration of the GI bill, and supported making this permanent legislation.

BILL has also been a strong supporter of legislation for the elderly. Appointed to the President's National Commission on Social Security Reform, he initiated concern for the status of Social Security funding. Recently, he brought amendments through Congress liberalizing the earnings test, and has gathered support to repeal the Social Security earnings limit.

In 1985, BILL was elected chairman of the Senate Republican Policy Committee. In this position, he conducts weekly meetings with GOP Senators and meets with the President in the White House to determine policy positions for Republican Senators. He has helped modernize the committee by implementing closed circuit television, thereby demonstrating how his interest in broadcasting still thrives today.

I could continue, but I am certain that each Senator here has personal memories of how Senator BILL ARMSTRONG has made an impact on the legislative accomplishments of this Congress. However, his influence goes far beyond that which remains on paper.

His refreshing candor and integrity are just two of the qualities that have led BILL to be dubbed "one of the truly nice guys in Washington." I could not agree more.

Now, BILL has declined to run for a third term in the Senate in order to return to his first interest of broadcasting. Certainly, in this field he will never be far from public service matters. As this stage of his productive career in service to the people of Colorado and this Nation comes to end, I wish him and his family the very best.

NATIONAL COMMISSION ON DEFENSE AND NATIONAL SECURITY

Mr. WARNER. Mr. President, this amendment which I intended to propose pertains to a provision in the Defense Appropriations Act passed this

week by the Senate. The provision provides for the establishment of a National Commission for Defense and National Security.

My amendment would have delayed the establishment of the Commission for 1 year, which would allow time for proper study and evaluation of the provision by the appropriate authorizing committees, including hearings where administration and private sector witnesses could present their views on the establishment of the Commission.

I am astonished that such a provision would be included in an appropriations conference report, as it is clearly legislation. The distinguished chairman of the Senate Appropriations Committee only a few days ago described quite eloquently why we should not legislate on appropriations measures, and I agree with him, as I usually do.

I am also surprised that such a provision would be included in the Defense appropriations conference report, since such matters of policy are clearly not within the purview or expertise of the Appropriations Committee. Such legislation should be considered by the authorization committees of jurisdiction—namely, the Armed Services and Foreign Relations Committees—and should be undertaken only after extensive hearings and full debate of the proposal.

Moreover, I strongly oppose the establishment of such a Commission, as it is another step in challenging the authority of the Presidency in the very important areas of defense and foreign policy. The Constitution states that the President is the Commander in Chief of the Army and Navy and, with the advice and consent of the Senate, makes treaties and appoints our Ambassadors. The American people look to the President to define and articulate our foreign policy and national security strategy.

What is the urgent need to establish a Commission on Defense and National Security before the Congress, the administration, and outside witnesses have considered the purpose, objectives, and structure for such a Commission? I agree with the basic thrust of the legislation, namely the need for a reassessment of our national security strategy in light of the major changes that have transpired around the world in the past year. I question, however, whether such a Commission of unlimited duration is the appropriate forum to help define our new national strategy.

Certainly, the conditions and changes in the world after World War II were far more dramatic and challenging than those before us today. In 1945, we faced such challenging problems as the implications of the economic chaos in Europe following the defeat of nazism, the advent of nuclear weapons, and the emergence of the cold war, to name a few. Yet no Commission was convened like that proposed by this provision.

Mr. President, the changes in Eastern Europe, the Soviet Union, and even the Middle East clearly warrant serious reconsideration of our national security strategy. In doing so, we must not forget that the citizens of the United States elect the President and Members of Congress to govern and provide such leadership of the Nation. We do not need this Commission to do so, particularly when, in my opinion, there is no serious or urgent crisis that brings into question the basic thrust of our national security strategy.

Mr. President, the leadership of this country, Congress, and the executive branch already have access to numerous sources of expert advice in the defense and foreign policy arena. Within the executive branch, the President may seek the advice of the Secretaries of Defense and State and experts from various organizations, such as the National Security Council, the Central Intelligence Agency and the Defense Inteligence Agency, the Arms Control and Disarmament Agency, and the President's Foreign Intelligence Advisory Board, to name just a few. There are also numerous independent advisory groups within these Departments such as the Defense Policy Board, the Defense Science Board, and the President's General Advisory Committee on Arms Control.

Within the Congress, we may seek expert advice from the staffs of the Armed Services, Foreign Relations, and Intelligence Committees. In addition, numerous independent organizations are available for consultation with the Congress and the administration. These include at least five Federal Contract Research Centers such as the RAND Corp. and ANSER Corp. As well as numerous academic institutions and research centers, including the Institute for Foreign Policy Analysis [IFPA], Center for Strategic and International Studies [CSIS], American Enterprise Institute, National Institute for Public Policy, Carnegie Foundation, Heritage Foundation, Brookings Institution, School of Advanced International Studies of Johns Hopkins University, and Georgetown University.

Mr. President, in 1986, I introduced legislation requiring the administration to submit to the Congress each year a document describing the national security strategy. This provision was eventually incorporated in the Goldwater-Nichols Department of Defense Reorganization Act. This legislation was the result of years of study, numerous hearings, and one of the most lengthy, complex debates in the history of the Armed Services Committee. This provision in the DOD Appropriations Act deserves no less study and consideration.

In short, the provision for a National Commission for Defense and National Security, which originated in the other body, has not been exposed to the process of hearings and debate and, as a result, is an ill-conceived idea. In my opinion, there are a number of things wrong with this provision, and I will mention just a few.

The duties or objectives mandated by the provision are overly broad, unfocused, and fail to provide a coherent outline for the Commission.

To the extent that the Commission's duties are clearly defined, it is unclear why such a Commission needs to be of unlimited duration. This Commission will only create another permanent Government bureaucracy at a time when we are trying to reduce the size of Government. The most successful Commissions are those of limited duration and with a clearly defined purpose.

Only three of the members of the Commission are appointed by the President; seven are appointed by the Congress. Yet the principal beneficiary of their work product is to be the President and his staff. Moreover, I have never seen a Commission in which the House of Representatives is allowed to appoint more Commissioners than the Senate and the Speaker of the House has sole authority to appoint the Vice Chairman.

Members are appointed, to serve without pay, for the life of the Commission—which is not specified and, therefore, assumed to be indefinite. We must ask what conflict of interest laws apply to these quasipublic servants.

Any number of members of the Commission may hold hearings even if the Chairman of the Commission feels that such hearings are unnecessary or beyond the scope of the Commission. This section of the provision is particularly ironic since the purpose of the Commission is to formulate a bipartisan consensus on U.S. national security strategy. We should also ask whether the Commission will be empowered to issue suboenas or place witnesses under oath.

There is no limit on staff or consultants; staff members are not subject to any of the regular General Schedule provisions except that their pay may not exceed that of a GS-18.

DOD funds may be used to finance the Commission as required, with no limitations on the total cost. In this time of declining defense budgets, and reductions in both military and civilian personnel, the Commission could be a drain on defense resources.

The way the legislation is currently written, the Commission has unlimited access to any information in the administration. There is no provision rec-

ognizing executive privilege of the President or necessary restrictions on access to classified information by the Commission and its staff.

Mr. President, because of the late hour and the request of the distinguished chairman of the Appropriations Committee, I will not introduce this amendment. But I will propose that the Armed Services Committee hold hearings next year and give this important matter the study and attention it deserves.

UNIVERSITY RESEARCH PROJECTS

Mr. WARNER. I join the chairman of the Armed Services Committee in opposing the continuing practice of earmarking funds for university research projects in the Defense appropriations bill.

Every year, we receive numerous requests on the Armed Services Committee from Senators requesting the DOD research and development [R&D] funds be specifically earmarked for universities in their respective States. The chairman and I have consistently discouraged these requests, insisting that these kinds of R&D projects be awarded on a competitive basis. Through the years, our committee has had extensive debate on and off the Senate floor on this subject.

Now, having adhered again to a policy based on competition and fairness, we are faced with a significant number of earmarkings for university research in the DOD appropriations bill.

Mr. President, I understand that during joint conference proceedings, some of these earmarkings may be forced on our Senate conferees. If this practice continues, however, sooner or later, we will have to accommodate requests from Armed Services Senators on behalf of universities and colleges in their States. This will eventually become an unmanageable situation.

The chairman of our Armed Services Committee has graciously consented not to push for adoption of his amendment at this late date and this late hour. This decision follows a lengthy meeting we had with the chairman and other senior members of the Appropriations Committee this evening. The chairman, Senator BYRD, was most understanding.

The message to cease and desist from these earmarking practices, however, must be transmitted strongly to those in the other body as well as to those in the Senate. We cannot continue this inequitable practice.

I pledge my continuing support to the chairman of the Armed Services Committee in our efforts to bring this problem under control.

BUDGET RECONCILIATION BILL

Mr. AKAKA. Mr. President, I rise to express my support for the budget reconciliation package. This bill is an essential deficit reduction measure. It will move the Federal Government firmly in the direction of real deficit reduction.

The bill we first considered in the Senate was too harsh on the elderly, too easy on the wealthy, and passed too much of the price tag on to working Americans. That's why I sought changes in the name of fairness. I fought to soften the impact on the elderly.

I voted for amendments to burst the bubble and make the wealthy start paying their fair share. And, I voted to cut the gas tax increase. The agreement that emerged from conference was a great improvement over the original Senate proposal on all of these fronts.

It is also a vast improvement over the current Tax Code. For the first time since the Reagan tax giveaway, the wealthy will pay taxes in line with their incomes. That's because most of the bubble has been eliminated. This makes the bill far more progressive than the Tax Code today. It is a giant step in the direction of tax fairness. My deepest regret is that part of the bubble remains. But I know that the Senate will have an opportunity to revisit this subject and eliminate the inexcusable tax break in full.

Had it not been for the insistence of the Republicans and the White House, we could have achieved a greater degree of tax fairness. We could have gone all the way in bursting the bubble. We could have imposed a millionaire surtax. That is what the majority of Americans want and expect. But the Republicans were too concerned about protecting tax breaks for the rich. And the President also demonstrated his willingness to shut down Government services that millions of middle-income Americans depend on rather than end this tax giveaway for the wealthy.

In this agreement, the burden on elderly and disabled Medicare beneficiaries has been lightened. The increase in out-of-pocket costs for beneficiaries has been reduced dramatically to $10 billion from the $30 billion originally proposed.

And there is one especially bright spot to this package. A long-awaited child care block grant has been established, providing $2.5 billion over the next 3 years. This will come as welcome news to two-income and single-parent families who need greater access to day care.

It's not a perfect package. Few bills are of this magnitude are. And there are a number of provisions which I do not like. But there are times when we, as Senators, must look beyond aspects of a bill which may not be to our individual liking, and do what is right for the country. This is one of those times, Mr. President. Congress and the Nation is at a watershed. In one direction we face chaos, disorder and the disruption of Government services we witnessed in early October. We face economic instability and uncertainty within our financial markets.

And perhaps most importantly, we will witness a further erosion in the American public's confidence in our ability to lead. In the other direction lies the reasonable path toward deficit reduction, fiscal sanity, and economic health for our Nation.

I choose the second path. I chose this path because I have heard the call of people in Hawaii who want leadership in Washington. They know, as I know, that we cannot sweep this deficit problem under the rug. The only way to address it is to tackle it head-on.

And that is what we have done in the Senate today. It would have been easy for me to oppose the budget agreement. It is well known that I am up for election this November. To vote "no" would have been a safe vote. But it takes courage to work for solutions to tough problems. When it comes to the most important budget decisions facing our Nation, I refuse to sit simply on the sidelines and let others fight the battle. This is what being a Senator is all about.

MR. BARRY ZORTHIAN

Mr. PRESSLER. Mr. President, the Senate Foreign Relations Committee has favorably reported the nomination of Barry Zorthian to be a member of the Board for International Broadcasting.

I strongly support Mr. Zorthian's nomination. His public and private service over the years clearly demonstrate his competence to serve on this board. When I served in the U.S. Army in Vietnam in the 1966-68 period, Barry served as the chief press spokesman for our Embasssy in Saigon. Since then, he has been active in a wide variety of public roles, including leadership positions in the American Armenian community.

Mr. President, Barry Zorthian will ably represent the interests of our Nation as a member of the Board for International Broadcasting. I urge the Senate to confirm Mr. Zorthian for that position.

AMBASSADOR JULIETTE C. McLENNAN

Mr. PRESSLER. Mr. President, I call attention to the nomination of Juliette C. McLennan to be the U.S. Representative on the Commission on the Status of Women of the Economic and

Social Council of the United Nations, with the rank of Ambassador.

The Senate Foreign Relations Committee, on which I serve, has favorably reported the nomination of Ms. McLennan, and I urge the Senate to confirm the nomination promptly. I have known Judy McLennan for several years. Her experience and accomplishments clearly demonstrate her competence to serve as the U.S. Representative on the U.N. Commission on the Status of Women.

Judy McLennan has effectively represented U.S. interests on this Commission since last year. Over the years, she has actively participated in a number of organizations and events that serve the interests of women, children and the general public.

I urge the Senate to approve Ms. McLennan's nomination.

THE SUDBURY, ASSABET, AND CONCORD WILD AND SCENIC RIVER STUDY ACT

Mr. KERRY. Mr. President, I rise today to urge the Senate to pass H.R. 2570, the Sudbury, Assabet, and Concord Wild and Scenic River Study Act. This bill is identical to the companion bill, S. 262, which I authored. Although it may at first seem that this bill deals with an isolated, provincial matter, I think that when one looks closely at this legislation, one finds that it is extremely important to a great number of people, and is instructive to the Nation as a whole.

This legislation, cosponsored by my senior colleague Senator KENNEDY, will designate parts of Massachusett's Sudbury, Assabet, and Concord Rivers as a study area for inclusion in the National Wild and Scenic Rivers System. It will set in motion a 3-year study by the U.S. Department of the Interior, the Commonwealth of Massachusetts, and the 8 towns that border these rivers, to explore various methods of managing the rivers system.

Throughout the history of this country, the Sudbury, Assabet, and Concord rivers have shaped the lives of those who lived around them. Those people have, in turn, been vital to the formation of this Nation. Indeed, when one looks closely at the history of these rivers, one sees a microcosm of all that is positive in man's interaction with the American outdoors:

There is archeological evidence that shows that before the arrival of Europeans on this continent these rivers supported Native American settlements and were a major trading route along the northeastern seaboard.

America's early industrial development was bolstered by the construction of an iron works and a cotton mill on the Assabet River, while the flood planes of the Sudbury River provided valuable grazing lands for the town of Sudbury when it was settled in 1636.

The Revolutionary War, from which this Nation was born, began within ear-shot of the Concord River.

In the 19th century both Nathaniel Hawthorne and Henry David Thoreau spent time on and around these rivers, and enriched our literature and philosophy with the inspiration they gained from their experiences there. Clearly, the historical legacy of these rivers is worth preserving.

Yet this bill does not merely recall what has occurred in the past, but also recognizes, and moves toward preserving, the rivers' immense present value. Today, thousands spend valuable time along these waterways enjoying one of our Nation's most unspoiled natural landscapes. As residential areas expand and the pressure to develop open lands increases, these rivers and the land around them provide our best hope at maintaining a truly natural public land—a green corridor running through an increasingly concrete world.

However, the uniqueness of these rivers is not limited to man's interaction with them. It is only along rivers and streams like these that one sees such a diverse and bountiful natural environment. Hundreds of acres of marshland exist around the rivers creating an important environmental buffer and a home for fish and wildlife. Also, this river system provides one of the few homes for the Blandings turtle, it contains rookeries for the blue herin, and it gives sanctuary and shelter for countless other birds and animals. With our Nation's wetlands already under siege, we simply cannot afford to lose areas like this.

Unfortunately, the prospects for the long-term preservation of these rivers is uncertain, Federal dams, water diversions, hydroelectric plants, and Army Corps of Engineers edifices, could pose a serious threat to their delicate environmental structure. Inclusion under the Scenic Rivers Act would protect the rivers, and the people who live near them, from such destructive incursions by the Federal Government. It should be emphasized, however, that this legislation only provides for a study. It does not set any limits, nor do anything to hinder future activities on the river. The further step of having the river included under the Scenic Rivers Act necessitates a separate designation bill. Such a bill will only be introduced if it is conclusively determined by all parties involved that designation is the best long-term interest of the region.

Since 1968, there have been 25 similar studies, 6 of which have led to rivers being designated wild and scenic. In all instances, however, a study has provided an opportunity for local, State, and Federal officials to gain a better understanding of the river system and to develop an informed plan for the preservation and use of valuable natural resources. This collection of information and coordination of effort is the bill's chief purpose.

This bill is extremely sensitive to the need of the local communities that look to the river system to help meet their water supply and waste treatment needs. As the bill went through the legislative process, the Concord Board of Selectmen and other local bodies added considerably to the final shape of the bill. Recently, the board of selectmen voted to accept the final version of the bill. Indeed, although this is a bill that creates action at the Federal level, it does so only after tailoring those action to the needs of the localities. In fact rather than taking power away from local towns, this bill enhances local control relative to the Federal Government.

Mr. President, I want to take a moment to commend Congressman CHET ATKINS for his work in getting this bill passed in the House of Representatives. I would also like to thank the members of the Committee on Energy and Natural Resources, especially the chairman of the Subcommittee on Public Lands, National Parks and Forests, Senator BUMPERS, for their judicious handling of the bill.

Mr. President, this is a well constructed bill that balances immediate needs with environmental concern, and provides Federal resources without jeopardizing local jurisdiction. I urge my colleagues to join me in supporting it.

MONEY LAUNDERING

Mr. MITCHELL. Mr. President, after 4 days of filibuster, the Money Laundering Amendments Act of 1990 passed the Senate 3 weeks ago by unanimous consent. It has twice passed the House of Representatives, both times without opposition. It represents a bipartisan effort by members of the Banking Committees in both Houses.

Despite this overwhelming support, a Member on the other side of the aisle has placed a hold on this bill.

Money laundering is a serious issue in this country. I am told that the Treasury Department estimates that over $100 billion is laundering in U.S. financial institutions each year. That is a staggering sum. I cannot understand why one Senator would thwart the will of the rest of this body on legislation as important as this.

Money laundering is not only an integral part of the drug trade: We are learning that it is also a part of the S&L disaster. S&L swindlers frequently laundered ill-gotten funds to offshore institutions. We had the opportunity to do something about that to-

night and let the record show that one Senator is responsible for the failure of this legislation to pass.

Mr. KERRY. Mr. President, it appears tonight that we will not pass a money laundering bill. That is a great shame.

It is a shame because the money laundering bill has already passed the Senate once. It is a shame because it has twice passed the House unanimously. It is a shame because both Democrats and Republicans have worked hard to craft this legislation. It is a shame because it has the support of the administration. It even has the support of the banking industry itself. It is a shame because it is a good bill.

Money laundering is a $110 billion illegal industry in this country. It is, as I have said many times, the achilles heel of the drug cartels. The drug lords would not be able to function if their money supply were cutoff.

No one can dispute that money laundering continues to be a central part of the drug trade. In my view, there is also a close connection between money laundering and the savings and loan crisis, which I have outlined on numerous occasions both here on the floor of the Senate and in the Committee.

Mr. President, I am deeply disturbed that drug dealers and S&L profiteers continue to use the depository institutions of this country to launder their ill-gotten gains.

This legislation would have given law enforcement a new tool in the war on drugs, and in the effort to put the S&L swindlers in jail.

This bill also contained money laundering provisions originally introduced by Senator D'AMATO. Senator D'AMATO's provisions improve cooperation between Federal and State authorities, improves the oversight and enforcement of money laundering compliance programs of nonbank financial institutions, and addresses wire transfer transactions that currently are not monitored for detection of money laundering.

In hearings which I had last fall, the Senate Banking Committee received testimony on the problems of money laundering in nonbanking financial institutions, such as money transmitters, check cashers and money exchange houses. This legislation will make it a Federal felony for these institutions to transmit money without a license.

The legislation also requires the Secretary of the Treasury to issue final regulations concerning recordkeeping for international wire transfers. As we heard in our hearings last year, once money has been deposited into the banking system, it can be transmitted electronically from bank to bank around the world. Accordingly to the Federal Reserve, an estimated 1 trillion U.S. dollars in international wire transfers occurs each day. Despite this huge volume of transactions, there is important information that can be gleaned from these transfers and the entire system needs to be reevaluated. Senator D'AMATO's legislation requires that the Treasury Department, in promulgating regulations governing wire transfers, must consider the usefulness of the records in criminal, tax, or regulatory investigations or proceedings and the effect of recordkeeping in the cost and efficiency of the payment system.

There are many other important provisions in this legislation. Suffice it to say, this legislation would have improved our ability to fight a real war on drugs and to close down corrupt savings and loans.

Mr. President, this bill represented months of hard work in both the Senate and the House. It represented a bipartisan effort. It was sound legislation. It is a shame that it has fallen victim to political maneuvering in the 11th hour. This important measure had the unanimous support of the Democrats in the Senate—not one objected to it in any way. It is a tragedy that the objection of one anonymous Republican Senator prevented this important legislation from being enacted. I hope as future revelations of millionaire drug dealers and S&L profiteers laundering millions that they have ripped off from the American people become public that all will remember just how this bill was killed.

THE RECLAMATION PROJECTS AUTHORIZATION ACT

Mr. HEINZ. Mr. President, last night—late last night—the Senate passed H.R. 2567, the Reclamation Projects Authorization and Adjustment Act of 1990 by voice vote. I was involved in arduous negotiations to ensure that the bill would include reclamation reform measures. We desperately need reclamation reform—to restore fiscal integrity to the reclamation program, foster environmental protection, and promote equity among farmers. The bill we passed last night does not contain a single reform measure—not one. That, Mr. President, is a travesty.

The bill fails to close loopholes some farmers have used since passage of the Reclamation Reform Act of 1982 to circumvent restrictions on the delivery of subsidized irrigation water to farms exceeding 960 acres. One 12,345-acre California cotton farm the General Accounting Office [GAO] investigated, for instance, reorganized into 15 separate landholdings, involving an elaborate network of partnerships, corporations, and trusts, to continue receiving subsidized irrigation water on its excess acreage following passage of the 1982 act. GAO determined that the owners continued to operate the landholdings as a single farm, and cheated the Federal Government of $551,000—just in 1987. This is not an isolated instance.

Mr. President, how can we condone that? We just approved the biggest tax increase in history. The conference report on reconciliation we just passed will cut domestic discretionary spending by $180 billion. But reclamation reform? No way. Make a farmer with over 12,000 acres of cotton pay the $551,000 he owes the Federal Government for his water? Absolutely not. Debate reclamation reform on the floor of the U.S. Senate? Heaven forbid—the majority of the Senate might decide abuses of the reclamation program have gone on long enough.

Some 150,000 farmers depend on irrigation water from Federal reclamation projects. The overwhelming majority are honest, hard-working farmers. They are not ripping off the system. But a handful—such as the one I just mentioned—are. The handful who rob the taxpayers blind jeopardize popular support for the entire reclamation program. They jeopardize benefits accruing to true family farms that legitimately require Federal assistance. It is just a matter of time, Mr. President, before a majority of Senators become educated about the type of abuse going on in the reclamation program and say "Enough."

Another serious problem with H.R. 2567 is that it does not include any provision to require farmers to pay full-cost rates for their irrigation water if they use it to grow surplus crops. We have to reconcile contradictory reclamation and agriculture policies. The first encourages production; the second discourages it. We cannot afford both. Reclamation farmers grow surplus crops on roughly 37 percent of the 10 million federally irrigated acres in the West. The Department of Agriculture estimates that in 1986, certain reclamation farmers received $66.5 million in water subsidies to grow surplus crops for which they received $378.8 million in price and income supports.

I am particularly disappointed that certain Senators objected to two reclamation reform provisions the junior Senator from Wisconsin and I authored. The first provided that henceforth, benefit-cost analyses of future reclamation projects or additions to current projects would include calculations using prices for agricultural commodities free of the effects of various Federal subsidies. In other words, we would have been able to determine whether proposed projects or additions really make economic sense.

The other reclamation reform the junior Senator from Wisconsin and I authored provided that henceforth, water contract terms guarantee repayment of some capital—construction—

costs as well as current operation and maintenance [O&M] costs. Under reclamation law, construction costs associated with the irrigation feature of a reclamation project are apportioned to farmers based on their ability to pay. The balance of the irrigators' construction costs is charged to power users. Of course, the Federal Government borrows money to build the project, and pays interest on that debt. Taxpayers pick up all of that foregone interest, a subsidy CBO estimates at between $33 billion and $70 billion since reclamation construction began at the turn of the century.

Mr. President, most irrigation districts do pay their negotiated share of construction costs. But some do not. This isn't fair—either to the conscientious districts or to the Nation's taxpayers. I find it galling that some contractors fail to pay any capital costs, such as the Rapid Valley Water Conservancy District in South Dakota. Some even fail to pay O&M costs. And then there's the Vermejo Conservancy District in New Mexico, which hasn't paid anything since 1975. Those who game the system jeopardize funding for the districts attempting to meet their obligations. Our amendment would have corrected such abuses.

These reform provisions are significant and they are reasonable. But certain Senators objected to them. I think those Senators are being shortsighted. As the deficit vise tightens, as other worthwhile programs are cut and eliminated, we will be forced increasingly to scrutinize reclamation. And we will wonder why we should eliminate general revenue sharing but do nothing about reclamation abuses? We will wonder why we should eliminate urban development action grants but do nothing about reclamation abuses? I can't think of a good answer to those questions.

Mr. President, title XVI of the version of H.R. 2567 the House of Representatives passed on June 14, has strict provisions regarding 960-acre loopholes. And it addresses the double subsidy issue. The House-passed bill requires that farmers must pay full-cost rates for their Federal irrigation water if they use it to grow surplus crops and they receive price and income supports on those crops. I earnestly hope the House of Representatives will insist on those provisions. Otherwise, the bill is completely unacceptable.

In the aggregate, reclamation reform amendments are designed to direct reclamation policy back to its original—and laudable—mission: To provide the benefits of subsidized irrigation to family farms—not to millionaires or large corporations. The Reclamation Act of 1902 was passed, according to F.H. Newell, the Bureau of Reclamation's first Commissioner, "not to irrigate the lands which now belong to large corporations * * * not to make these men wealthy; but * * * to bring about a condition whereby that land shall be put into the hands of the smaller owner."

The amount of irrigated acreage continues to grow, but the number of irrigated farms peaked 35 years ago and has declined ever since. The concentration of farmers receiving ever-larger irrigation benefits has attendant social consequences. Professor Walter Goldschmidt's pioneering work in the 1940's delineated the correlation between farm size and community well-being in California. Communities surrounded by large farms had poorer social conditions than communities surrounded by smaller farms.

Prof. Dean MacCannell refined and extended the study throughout the Sunbelt in the 1980's. He confirmed the inverse relationship between farm size and community well-being.

More recently, a study by Don Villarejo and Judith Redmond on the California Central Valley reported that "while agriculture flourishes, much of the populace in the Central Valley live in poverty." "Missed Opportunities—Squandered Resources: Why Prosperity Brought by Water Doesn't Trickle Down in the California Central Valley," California Institute for Rural Studies, 1988. Villareho and Redmond uncovered "a pervasive pattern involving considerable effort on the part of large operations [to circumvent] the Reclamation Reform Act [of 1982] goal of assisting family-scale farms."

Mr. President, Federal reclamation benefits accrue to just 5 percent of the Nation's farmers, in 17 States. If Federal reclamation policy is to enjoy the support of the Senate—particularly in an era of crippling budget deficits—it must be fiscally responsible, it must foster environmental protection, and it must be true to its original social purposes. Resistance to incremental reform all but guarantees more drastic measures as the costs—and abuses—of reclamation become more and more apparent. The reform measures we failed to adopt last night would have moved reclamation policy—modestly—toward fiscal, environmental, and social soundness. But we failed to do that. We'll need to do more next year.

RED ROCK CANYON NATIONAL CONSERVATION AREA

Mr. REID. Mr. President, it is with a deep sense of gratification that I mark the passage of H.R. 4559, a bill to establish the Red Rock Canyon National Conservation Area. I thank my distinguished colleagues in the Senate for their support.

This is a great day for Nevada and a great day for conservation. Red Rock Canyon represents only the fifth national conservation area that has been established in the history of this great Nation. The many, many hours of hard work have not only resulted in the designation of Red Rock Canyon as a national conservation area but has produced a model for which future national conservation areas will be based.

When I introduced the companion bill to H.R. 4559 in the Senate on April 19 of this year, I knew it would take herculean effort to bring this dream to fruition before the adjournment of the 101st Congress.

However, I felt so strongly about Red Rock Canyon, the precarious protection of its fragile age-old resources, and the growing need of the citizens of southern Nevada for outdoor recreation opportunities. I was compelled to seek and secure meaningful protection of the priceless natural treasures which lie within and around Red Rock Canyon.

As I pressed on in this endeavor, I was continually reminded of the words of Galord Nelson, the distinguished gentleman from Wisconsin and founder of Earth Day, "Right now and in the long haul * * * no other issue is more relevant to the condition of human life than our resources."

And so with the passage of the Red Rock Canyon bill, we reaffirm our commitment to protection and wise use of the natural resources this country is so blessed with. We have taken the imperative measure of conserving for our children and their children the crown jewel of Nevada's public lands, Red Rock Canyon. We are protecting one of America's great treasures.

PERMIT ROLLOVERS INTO INDIVIDUAL RETIREMENT ACCOUNTS OF SEPARATION PAY FROM THE ARMED FORCES

Mr. WARNER. Mr. President, I rise to address the Senate with respect to a very interesting approach to compensation for the men and women of the Armed Forces.

One of my valued staff persons, who is proudly married to an active duty Army officer, has worked with me in developing this new concept. She is Nancy Pomerleau, a well-experienced professional.

I place this proposed bill in this closing RECORD so that I can receive the comments of the Department of Defense and military associations and commentators.

Depending on the acceptance it may receive, I will consider incorporating the concept in the 1992 Department of Defense authorization bill.

There being no objection, the proposed bill was ordered to be printed in the RECORD, as follows:

S. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. IRA ROLLOVERS OF MILITARY SEPARATION PAY.

(a) IN GENERAL.—Section 402(a)(6) of the Internal Revenue Code of 1986 (relating to special rollover rules) is amended by adding at the end thereof the following new subparagraph:

"(J) MILITARY SEPARATION PAY.—If—

"(i) an individual receives separation pay under section 1174 of title 10, United States Code, and

"(ii) such individual transfers any portion of such pay within 60 days after the receipt of such pay to an eligible retirement plan described in subclause (I) or (II) of paragraph (5)(E)(iv),

then the portion of the pay so transferred shall be treated as a transfer from a qualified trust to such a plan which meets the requirements of paragraph (5) and which is a transfer of a distribution of amounts other than employee contributions."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to pay received after December 31, 1990.

THE DEDICATION OF THE NIXON LIBRARY AND BIRTHPLACE

Mr. WARNER. Mr. President, A historic event occurred on July 19, 1990, when former Presidents Ford and Reagan as well as President Bush gathered in the town of Yorba Linda, CA, to honor former President Richard M. Nixon. There, in his hometown, the Richard Nixon Library was dedicated in order to preserve and display many of the artifacts and memorabilia of President Nixon's life.

The Nixon Library and birthplace is unique in that it is a privately funded project utilizing over $21 million that was raised by admirers of Richard Nixon in order to construct and maintain the facility without the use of Federal funds. This library is distinct from the other Presidential libraries because it will not house the official papers from the Nixon administration. Instead, it includes memorabilia from Nixon's entire life inclusive of special exhibits that highlight his Presidency while exemplifying the positive aspects, such as his work to promote world peace, the creation of the Environmental Protection Agency, and his war on cancer.

My friendship with President Nixon spans much of my political career. As Vice President in 1960, he encouraged me to pursue public service. During his campaign for the Presidency in the summer and fall of 1960, I traveled with him as an aide and advanceman to a dozen or more States. Although he lost, I was privileged to observe firsthand a tough and fair campaign in the full spirit of American political traditions. I rejoined him in the 1968 campaign and subsequently served in his administration as Under Secretary and Secretary of the Navy. After over 5 years in the Navy Department, he encouraged me to direct the activities of the Federal Bicentennial, a program he greatly wanted to succeed in view of his intense interest in our Nation's history.

Today, Americans enjoy his continuing contributions to history as an author and lecturer. This library will serve Americans and visitors from abroad in viewing his role in this period of our Nation's history.

HARASSMENT OF AFRICAN-AMERICAN ELECTED OFFICIALS BY VARIOUS FEDERAL AGENCIES

Mr. HEFLIN. Mr. President, I ask unanimous consent that the attached letter from attorney Donald C. Watkins, of Birmingham, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DONALD V. WATKINS, P.C.,
ATTORNEY-AT-LAW,
Birmingham, AL, September 21, 1990.

Re amendment to the city of Birmingham, Alabama's, July 21, 1989 complaint filed with the United States Senate Judiciary Committee regarding the harassment of its African-American elected officials by various Federal agencies.

Hon. JOSEPH BIDEN, Jr.,
U.S. Senator, and Chairman, Senate Judiciary Committee, Russell Senate Office Building, Washington, DC.

Mr. DAVID BOBZIEN,
Assistant Counsel, Department of Justice, Office of Professional Responsibility, 10th and Constitutional Street, Washington, DC.

DEAR SENATOR BIDEN AND ATTORNEY BOBZIEN: On July 21, 1989, the City of Birmingham, Alabama filed a formal complaint with the U.S. Senate Judiciary Committee (hereinafter referred to as "Judiciary Committee") regarding the harassment of several of the City's African-American elected officials by various federal law enforcement and prosecutorial agencies, including the U.S. Attorneys office (N.D. Ala.), the Internal Revenue Service Criminal Investigation Division (IRS) and the Federal Bureau of Investigation (FBI). On February 21, 1990, the City filed a report with the Judiciary Committee outlining the supportive evidence in connection with its July 21, 1989 complaint. The City's complaint and report, along with an introductory statement from U.S. Senator and Judiciary Committee Member Howell Heflin (D-Ala.), are published in the U.S. Congressional Record—Senate, March 9, 1990, pages 2533-2546, a copy of which is attached hereto.

On June 26, 1990, the City received the first of several Grand Jury subpoenas from the U.S. Attorney's Office and the IRS seeking various financial records dealing with about a dozen black-owned businesses that have obtained contracts with the City between 1985-1990. The subpoenas were issued by AUSA Bill Barnett. The IRS is taking the lead in this latest investigation. However, the City has learned that Barnett is supervising and coordinating the investigation. He has made trips to Atlanta, Georgia and other places with IRS Special Agent Ron Brunson to interview witnesses in this probe. Barnett, whose name was first reported to OPR in connection with the Robert Moussallem revelations in the City's July 21, 1989 Judiciary Committee complaint, is reportedly determined to prosecute Birmingham Mayor Richard Arrington, Jr., on the mistaken belief that pay-offs are involved with the awarding of various City contracts. Barnett reportedly believes that he has identified the "bag lady" who allegedly picks up and delivers money to politicians at City Hall. Barnett, according to the City's informed sources, is determined to nail Arrington on criminal charges, whether the Mayor is in office or not, and whether it takes one year or ten years. He reportedly was embarrassed by the aggressive stance taken by Arrington in the wake of the 1989 Moussallem revelations.

In the City's February 21, 1990 report to the Judiciary Committee, the City described, at page 58, footnote 51, an attempt by the U.S. Attorney's Office to force a cooperating government witness to give "creative testimony" against the Mayor in connection with a 1985 land deal involving the City. When the witness could offer none, he was indicted in December, 1989. The indictment was dismissed, without explanation, in January, 1990. This action occurred several days after the City talked to the witness. Earlier this month, the City corroborated the witness's initial report that Barnett was the prosecutor who tried to elicit the "creative testimony" against Arrington. This matter was reported to OPR by the City in a January 24, 1990 letter from the undersigned to Mr. Bobzien.

Barnett is also probing a now defunct corporation called ABD, Inc. His recent subpoena to the City (and others) seeks financial records and documents on ABD, Inc. (and other black-owned businesses). This is another thinly veiled effort to harass Arrington. ABD, Inc. was a company formed in the mid 1980s by Arrington, Atlanta-based architect Tarlee Brown, and former Mayoral aide Willie Davis to market energy saving products to governmental entities around the country, excluding the City of Birmingham. The business venture was reported to the Alabama State Ethics Commission by Arrington prior to its operation. The Ethics Commission precleared Arrington's participation in the company. This preclearance is public record. Despite the preclearance, ABD, Inc. and Arrington's business relationship with Tarlee Brown were the subjects of in-depth U.S. Attorneys' Office and FBI probes in 1985 and 1986. These probes concluded with a finding by prosecutors that no violations of federal (or State) criminal laws had been committed by Arrington.

ABD, Inc. is again the focus of a U.S. Attorney's Office criminal probe. This time, however, IRS special agents are performing the investigative work. The City's legal counsel sat in on several IRS interviews with City personnel. Counsel has also interviewed other persons in connection with this matter. It is now apparent that the IRS probe is simply a vehicle of convenience to give the U.S. Attorney's Office one more shot at Arrington and other Birmingham African-American officials. The IRS's focus on possible tax problems of the individual vendors identified in the City's subpoenas is minimal when compared to the investigatory time and effort its special agents have spent attempting to develop evidence of fraud, racketeering and Hobbs Act violations. Hence, it appears that the IRS is the

new vehicle for harassing Arrington and others while the City's July 21, 1990 Judiciary Committee complaint is being investigated by the Judiciary Committee and OPR.

Also, FBI records obtained by the City show that the unsuccessful 1987 FBI efforts to "sting" Arrington and other City elected officials was pushed by Bill Barnett (and others). The 1987 attempted sting was part of operation "BOWTYE; OO:BH", a Birmingham Division FBI operation which utilized Atlanta undercover agents from the "VESPINE" covert operation. The 1987 sting attempt is set-out in the City's February 21, 1990 report to the Judiciary Committee.

The City wants the apparent vendetta Barnett has against Arrington thoroughly investigated by OPR. Please treat this letter as an amendment to the July 21, 1989 complaint that the City filed with the Judiciary Committee regarding the harassment of its African-American elected officials, and process it accordingly. Mayor Arrington and the City stand ready to share their information on this complaint with the Senate Judiciary Committee and OPR.

Respectfully submitted,

DONALD V. WATKINS,

Attorney for the City of Birmingham, AL.

DONALD V. WATKINS, P.C.,
ATTORNEY-AT-LAW,
Birmingham, AL, October 18, 1990.

Hon. JOSEPH BIDEN, Jr.,
U.S. Senator, and Chairman, Senate Judiciary Committee, Russell Senate Office Building, Washington, DC.

Mr. DAVID BOBZIEN,
Assistant Counsel, Department of Justice, Office of Professional Responsibility, 10th and Constitutional Street, Washington, DC.

Re second amendment to the city of Birmingham, Alabama's July 21, 1989, complaint filed with the United States Senate Judiciary Committee regarding the harassment of its African-American elected officials by various Federal law enforcement agencies

DEAR SENATOR BIDEN AND ATTORNEY BOBZIEN: On July 21, 1989, the City of Birmingham, Alabama (hereinafter referred to as "the City") filed a formal complaint with the U.S. Senate Judiciary Committee (hereinafter referred to as "Judiciary Committee") and the U.S. Justice Department's Office of Professional Responsibility (hereinafter referred to as "OPR") regarding the harassment of several of the City's African-American elected officials by various federal law enforcement and prosecutorial agencies including the U.S. Attorney's office (N.D. Ala.), the Internal Revenue Criminal Investigation Division (hereinafter referred to as "IRS") and the Federal Bureau of Investigation (hereinafter referred to as "FBI"). On February 21, 1990, the City filed a report with the Judiciary Committee outlining the supportive evidence in connection with its July 21, 1989, complaint. The City's complaint and report, along with an introductory statement from U.S. Senator Howell Helfin (D-Ala.), are published in the U.S. Congressional Record-Senate (March 9, 1990, pages 2533-2546.

On September 21, 1990, the City filed its first amendment to the original July 21, 1989, complaint. That amendment detailed various investigative and prosecutorial activities by Assistant U.S. Attorney Bill Barnett in connection with on-going probes conducted by the U.S. Attorney's office in Birmingham, in conjunction with the IRS. Reportedly, the present probes are vindictive in nature and motivated by the aggressive stance taken by Birmingham Mayor Richard Arrington, Jr., in the aftermath of unsuccessful 1988-89 federal government efforts to entrap him in some form of criminal activity. The City's July 21, 1989, complaint is one by-product of Arrington's aggressive stance.

On Sunday, October 14, 1990, The Birmingham News published a front page article entitled "Prosecutor Out To Get Arrington, Counsel says", which reported the substance of the City's September 21, 1990, amendment to its original complaint. A copy of this article is attached hereto as Attachment "A".

On October 17, 1990, The Birmingham News published a front page article entitled, "Donaldson Says Mayor's Protests Could Be Bid To Sway Investigation." The article described an "angry" U.S. Attorney Frank Donaldson as suggesting that Mayor Arrington had a hidden agenda when the City filed its September 21, 1990, amendment to its July 21, 1989, U.S. Senate Judiciary Committee and OPR complaint. Specifically, Donaldson was quoted as stating, *inter alia*:

"Is it possible that they're [Arrington and the undersigned attorney for the City] trying to put out an oil slick to interfere with an investigation? . . . Is it possible that the message is being sent out there for witnesses not to cooperate? Is it possible there is an effort of poisoning the minds of potential jurors if there is a prosecution later?"

A copy of this article is attached hereto as Attachment "B".

The City filed its September 21, 1990, amendment to its pending Judiciary Committee and OPR complaints in an effort to avail itself of established governmental procedures for challenging law enforcement and prosecutorial misconduct. The City has been assured by OPR that efforts by its public officials to cooperate with the OPR investigation were not only encouraged but also would not subject the City or its officials to unlawful acts of retailation and reprisals by the subjects of the OPR investigation.

The above-quoted comments from Mr. Donaldson were made by him prior to any determination by OPR regarding the merits of the matters contained in the September 21, 1990, amendment to the complaint. Also, Donaldson's comments constitute a thinly veiled threat that the mere filing of the amended complaint amounted to: (1) "interference of an investigation"; (2) a suggestion that witnesses not cooperate with the federal investigations; and, (3) efforts toward "poisoning the minds of potential jurors". Furthermore, it is apparent to the City that Mr. Donaldson's comments are designed to have a "chilling effect" on those citizens and governmental entities, including the City, who choose to file law enforcement and prosecutorial misconduct complaints with the Judiciary Committee and OPR.

The First Amendment to the Constitution of the United States protects the "right of the people . . . to petition the government for a redress of grievances." This Constitutional guarantee is being sorely tested in this matter by the conduct and words of the U.S. Attorney in his official capacity. Nevertheless, the City must persevere and safeguard this time-honored right, even if doing so subjects the City and its public officials to further acts of overt harassment and intimidation. The City's duty in this regard overshadows any potential adverse consequences which may be inflicted upon its officeholders who seek to preserve the integrity of the United States Constitution.

Based upon the facts shown in the complaint of the City, the first amendment to the complaint, and the facts recited in this second amendment, OPR should take action pursuant to the 28 U.S.C. Section 528 to remove Mr. Donaldson and all members of his staff, including Mr. Barnett, from participating in any investigation or proceeding of any kind involving the City or any of its officials including Mayor Arrington. The provisions of section 528 "require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof." (Emph. supp.) In light of the actions of Mr. Barnett and the public comments of Mr. Donaldson, they have created at the very least an appearance of a personal or political conflict of interest, and they should be disqualified by OPR from further involvement in the pending investigation. If Donaldson, Barnett, and all members of their staff are not immediately disqualified by OPR, then the City hereby requests from the Justice Department all rules and regulations issued under Section 528 so that the City may exhaust all formal proceeding to enforce the provisions of that statute.

You should note that Section 528 calls for possible "removal from office" if there is a "willful violation" of the statute. If your investigation or other facts disclose that Mr. Donaldson, Mr. Barnett, or anyone on their staff committed a willful violation of Section 528, then the City shall seek Mr. Donaldson's immediate removal from office.

In addition, the City is requesting that this latest threat against its black elected officials be thoroughly investigated by the Judiciary Committee. Please treat this letter as the City's second amendment to its July 21, 1989, Judiciary Committee and OPR complaint in this matter. Mayor Arrington and the City stand ready to share their information on this complaint with the Senate Judiciary Committee and OPR.

Respectfully submitted,

DONALD V. WATKINS,

Attorney for the City of Birmingham, AL.

ATTACHMENT "A"

[From the Birmingahm (AL) News, Oct. 14, 1990]

PROSECUTOR OUT TO GET ARRINGTON, COUNSEL SAYS

(By Bob Blalock)

As assistant U.S. attorney is out to get Birmingham Mayor Richard Arrington and believes the mayor takes kickbacks in exchange for city business, Arrington's special counsel maintains.

Assistant U.S. Attorney Bill Barnett "is reportedly determined to prosecute him (Arrington) on the mistaken belief that payoffs are involved with the awarding of various city contracts," attorney Donald Watkins has written in a Sept. 21 amendment to a complaint filed with the U.S. Senate Judiciary Committee last year.

"Barnett reportedly believes that he has identified the 'bag lady' who allegedly picks up and delivers money to politicians at City Hall," Watkins wrote. "Barnett, according to the city's informed sources, is determined to nail Arrington on criminal charges,

whether the mayor is in office or not, and whether it takes one year or 10 years."

Efforts to reach Barnett for comment were unsuccessful.

With the complaint, Arrington continued an offensive against federal investigators, having accused them of unfairly targeting black elected officials for prosecution. He testified in Washington, D.C., on Sept. 27 before the Congressional Black Caucus that he and other black elected officials are being harassed by the FBI, the U.S. Department of Justice and the Internal Revenue Service.

"I am totally convinced that black elected officials who constitute less than 2 percent of our nation's elected officials are being disproportionately singled out," Arrington said.

In the complaint, Watkins said Barnett is to blame for problems in Birmingham.

"Barnett is also probing a now-defunct corporation called ABD Inc. His recent subpoena to the city (and others) seek financial records and documents on ABD Inc. (and other black-owned businesses)," the complaint said. "This is another thinly veiled effort to harass Arrington."

Arrington, Atlanta architect Tarlee Brown and former mayoral aide Willie Davis formed the company in 1985 to market energy-saving products to governments, excluding Birmingham, around the nation. Arrington reported the venture to the State Ethics Commission before ABD began operating, the complaint said, with the commission approving his participation in the company.

"Despite the pre-clearance, ABD Inc. and Arrington's business relatoinship with Tarlee Brown were the subjects of in-depth U.S. Attorney's Office and FBI probes in 1985 and 1986," the complaint said. "These probes concluded with a finding by prosecutors that no violations of federal (or state) criminal laws had been committed by Arrington," the complaint said.

Arrington in August 1985 awarded an unbid city contract to Brown to design renovations for Boutwell Auditorium. Arrington defended hiring a business partner for a contract that was expected to be worth more than $240,000.

Although Jefferson County Probate Court records show Arrington and Brown dissolved ABD in December 1987, the company received a payment of more than $70,000 from Power Recovery Systems Inc., a Massachusetts waste management company, The Washington Post has reported. The Post also reported that the FBI had attempted to track payments made by ABD.

The present investigation of ABD is part of a U.S. attorney-IRS probe into at least a dozen companies doing business with the city.

"It is now apparent that the IRS probe is simply a vehicle of convenience to give the U.S. Attorney's Office one more shot at Arrington and other Birmingham African-American officials," the complaint said.

Among the companies under investigation are those associated with consultant Marjorie Peters. Ms. Peters' companies were paid at least $335,000 in city money the last two fiscal years, Finance Department records show. Ms. Peters also has a joint venture with Brown—PMC that city records show will earn up to $805,000 over the next three years overseeing projects for $11 million in city bond money.

Ms. Peters has claimed false college credentials and has a trail of unpaid bills, bounced checks and outstanding tax liens in Alabama and Georgia, The Birmingham News has reported.

She has refused to answer questions about her problems. In a memo Ms. Peters sent to business associates and city officials after initial media reports, she said the federal investigation is part of an attempt to selectively prosecute black politicians and businesses.

Efforts to reach Ms. Peters for comment were unsuccessful.

"The IRS's focus on possible tax problems of the individual vendors identified in the city's subpoenas is minimal when compared to the investigatory time and effort its special agents have spent attempting to develop evidence of fraud, racketeering and Hobbs Act violations," the complaint said.

ATTACHMENT "B"

[From the Birmingham News, Oct. 17, 1990]

DONALDSON SAYS MAYOR'S PROTESTS COULD BE BID TO SWAY INVESTIGATION

(By Bob Blalock)

An angry U.S. Attorney Frank Donaldson on Tuesday suggested that Birmingham Mayor Richard Arrington has a hidden agenda in saying federal investigators are unfairly targeting black elected officials.

"Is it possible that they're trying to put out an oil slick to interfere with an investigation?" Donaldson asked, referring to Arrington and his special counsel. Donald Watkins. "Is it possible the message is being sent out there for witnesses not to cooperate? Is it possible there's an effort of poisoning the minds of potential jurors if there's a prosecution later?"

Arrington denied trying to influence a federal investigation. "I'm not trying to hinder any prosecution. I didn't know there was going to be any prosecution," he said.

While Arrington said he is not trying to hinder the investigation. "I am certainly taking actions that need to be taken so that any investigation that targets me is carried out fairly.

"That's why we have gone to the Justice Department and filed our complaints. I think that's the proper thing to do," Arrington said. "That's also why we've gone to the Senate Judiciary Committee and asked for an investigation.

"Where we have made statements and charges, I stand on those. I think we're in a very strong position where we can document them in the proper setting," the major said.

That could mean a hearing before the Judiciary Committee or "working with the (U.S. Department of Justice's) Office of Professional Responsibility," Arrington said.

Donaldson discounted Arrington's allegations.

"We follow the evidence wherever it goes," Donaldson said. "I have no higher obligation in the world than to make sure we never prosecute an innocent person."

In the past two years, Donaldson's office has prosecuted 12 public officials, including three blacks, he said.

The U.S. attorney is colorblind. Color doesn't enter the picture. We follow the evidence wherever it leads us," Donaldson said.

"I've been here over nine years. During that period of time, I don't know what the statistics are, but very few black public officials have been prosecuted," he said.

"There's no such thing as aiming investigations at anybody," Donaldson said. "Allegations that have credibility, some of them result in indictments, and some of them result in no action being taken."

Donaldson was responding to a story in The Birmingham News on Sunday detailing a September amendment to a complaint filed by Watkins with the U.S. Judiciary Committee in July 1989, alleging federal harassment of black elected officials.

Watkins in the amendment contended that Assistant U.S. Attorney Bill Barnett believes Arrington takes kickbacks in exchange for business and that Barnett is determined to prosecute the mayor "whether it takes one year or 10 years."

"Barnett reportedly believes that he has indentified the 'bag lady' who allegedly picks up and delivers money to politicians at City Hall," Watkins wrote.

Watkins charged that Barnett was using an ongoing federal investigation into several companies doing business with the City of Birmingham as "another thinly veiled effort to harass Arrington" and other black elected officials.

"What I read in Sunday's paper was false and slanderous," Donaldson said. "It's so false it's sinful, shameful. Such allegations have no basis in fact, whatsoever. We don't do business that way."

Donaldson defended Barnett, who is a senior litigation counsel for the Justice Department's Birmingham office. Only about 1 percent of all lawyers working for the Justice Department earn that title, Donaldson said.

"It's a tremendous compliment to a person. He does his job, and does it well," he said.

EXCELLENCE IN EDUCATION ACT

Mr. DOMENICI. Mr. President, I rise to support passage of the conference report to the Excellence in Education Act. This bill includes important provisions to promote the quality of American education.

This bill includes a number of provisions first proposed by President Bush last year to create programs to help improve our schools and reward excellence. I cosponsored that proposal which was introduced last year into the Senate by the distinguished ranking member of the Education Subcommittee, Mrs. KASSEBAUM.

This package before us tonight also includes provisions of the National Literacy Act, which passed the Senate by a wide margin not too long ago. The literacy provisions of this bill would authorize an interagency task force and other programs to combat the frighteningly high rate of illiteracy in this country. I supported that bill as well.

In addition, this package includes Senator KENNEDY's teacher training bill that I cosponsored. Our Nation faces a critical need to improve the quality of teaching in our schools. We need to do much to attract more brighter, energetic youth into teaching, particularly in the fields of mathematics and science.

Last year I introduced S. 688, a bill called the College Honors Program. That bill proposed to provide scholarships to excelling college students who

are seeking a teaching career. That bill also provided for a student loan foregiveness program for graduates who excelled in school, and who commit to teaching. Special consideration would have been given in my bill to those students pursuing fields of study in which we have a particular national need—like math and science.

I was pleased that the ideas in my bill were included in the teacher training bill, and in this final package. I highly commend Senators KENNEDY, HATCH, PELL, and KASSEBAUM, and their staffs, for their hard work on this bill.

This bill will take a very positive step toward improving education throughout the Nation and in my State of New Mexico. I hope we will be able to address this tonight.

Thank you, Mr. President.

THE FUTURE OF EAST-WEST RELATIONS

Mr. LIEBERMAN. Mr. President, today we are debating the future of our Nation's economic health. This most important debate has understandably taken up most of our time and attention over the past few weeks. Despite our justified preoccupation with our own fiscal health and with events in the Middle East, there are other equally important events going on in the world that deserve attention.

East-West relations dominated the news for the first half of this year. Changes in the Eastern bloc and what those changes mean to the West were on all of our minds. But as other events took over the front page, we put East-West relations on the back burner.

Thankfully, work is still being done on these issues by many thoughtful institutions and individuals. One such organization doing creative and thoughtful work on East-West relations is the Atlantic Council. The Council recently held a series of meetings with the Soviet Institute of World Economy and International Relations and the Soviet Academy of Sciences [IMEMO]. The Atlantic Council, under the able guidance of its president, Ambassador Roz Ridgway, put together a first rate policy statement and policy recommendations as a result of its joint meetings with IMEMO.

I am inserting in the RECORD a copy of that report for my colleagues' perusal. I hope my colleagues will take a moment to look at the report as they reflect on East-West relations.

There being no objections, the policy statement was ordered to be printed in the RECORD, as follows:

[Joint Policy Statement and Joint Policy Recommendations]

THE FUTURE OF SOVIET-AMERICAN RELATIONS IS A PLURALISTIC WORLD

(By The Atlantic Council of the United States and the Institute of World Economy and International Relations of the Soviet Academy of Sciences, Sept. 26, 1990)

PREFACE

The Atlantic Council of the United States was invited in December 1988 by the Institute of World Economy and International Relations of the Soviet Academy of Sciences (IMEMO) to consider long-term institutional collaboration. The two organizations agreed to begin with a joint policy project aimed at producing findings, conclusions and recommendations addressed to both governments on critical political, economic and security issues.

The project was called "The Future of Soviet-American Relations in a Pluralistic World." The first joint conference was held in Moscow, February 11-15, 1990, and in Leningrad, February 16-17, 1990. Each delegation prepared seven brief background papers to focus discussion: Lessons of the 70s and 80s; Indicators of Change: Perestroika in the Soviet Union and Changes in the United States; Settlement of Regional Conflicts; Stability of the World Economy: USSR/US Economic Interactions; Developed and Developing Countries: Imperatives of Constructive Interaction; and The Future of Democracy: Soviet and American Points of View. Two Atlantic Council special reports, issued as policy bulletins, were published summarizing highlights of those off-the-record meetings: "Sources of Change in Soviet Foreign Policy" and "Searching for a New Economic Model."

The consensus that began to emerge in the course of the Moscow meetings, combined with the rapidity of developments in the Soviet Union and Eastern Europe, and in Soviet-American relations, led the leadership of IMEMO and the Atlantic Council to accelerate the schedule: instead of leaving consideration of joint policy recommendations until the spring, 1991 meetings, the leadership decided to attempt reaching agreement on joint policy recommendations at the autumn, 1990, meetings in Washington, D.C.

That attempt was successful. The second Atlantic Council-IMEMO joint meetings held in Washington, D.C., and Richmond, Virginia, September 22-29, 1990 included three working groups for the development of joint findings, conclusions and recommendations on economic, political and security issues, together with plenary sessions for final consideration of the joint policy recommendations. The results of these meetings were issued as the enclosed "Joint Policy Statement and Joint Policy Recommendations," released on September 27.

With this first project successfully completed, the Atlantic Council and IMEMO leadership have agreed to move on to phase II of the long-term institutional collaboration. The next meetings will be held in Moscow in spring, 1991.

JOINT POLICY STATEMENT AND JOINT POLICY RECOMMENDATIONS

The dramatic and deep-seated changes in the Soviet Union and Eastern Europe are reshaping fundamentally the bipolar East-West confrontation of the past 45 years. Historic opportunities exist for the U.S. and the USSR to shift their focus towards enhancing national economic well-being and assuring stability, unimpeded commerce, and the peaceful resolution of disputes throughout the emerging multipolar—but interdependent—world. One of the most challenging tasks now confronting both of our countries is to convert these opportunities into concrete achievements in many fields:

—Politically, the basis for interaction between the United States and the Soviet Union has changed fundamentally. What this new relationship now requires is the building of a well understood set of principles to govern their behavior toward one another and toward third parties, supplanting those that defined the "Cold War" period now behind us.

—For both countries, security is now viewed much more broadly than in the past, and is seen as best achieved not through confrontation, especially nuclear confrontation, but through measures to reduce confrontation and the heavy burdens of massive military programs, while reshaping military forces to emphasize defensive capabilities and initiating steps needed for the building of mutual confidence between the two countries.

—In the economic arena, as the Soviet Union grapples with the demanding tasks of economic reform, and as the West extends the hand of cooperation in the transition of the Soviet Union toward a true market system and a convertible currency, the goal of Soviet entry into the world trading system is welcomed and supported.

In recognition of the opportunities now before us, the Institute of World Economy and International Relations of the Soviet Academy of Sciences (IMEMO) and the Atlantic Council of the United States (ACUS) have undertaken studies aimed at developing joint recommendations for constructive actions on these issues. We recognize the inescapable linkages between internal and external reforms and the web that integrates economic, political and security actions and opportunities. Political reform and stability at home go hand-in-hand with economic progress; a favorable international political climate eases entry into world economic institutions; economic and ideological reforms pave the way for cooperation in multinational political institutions; military reductions ease global political relations, and help economic growth; reduced world preoccupation with superpower confrontation and ideological competition tends to enhance the role of regional political and economic organizations.

POLITICAL RELATIONS

U.S./Soviet political relations have entered a new era; dialogue between the leaderships is extensive; there are no longer acute risks of confrontation; ideology now plays a much smaller part; and the remaining difficulties seem no more serious, frequent, or important than between other major world powers. No basis remains for an arms race between the two, and a new foundation has been established for jointly assisting in reducing the causes for conflict around the world. The dominance of the superpowers is over: decades of "East-West" distinctions are past; greater attention must now be given to "North-South" issues;

Internal Developments

It is inescapable that each country will be concerned about internal developments in the other, especially at this moment concerning events in the Soviet Union. The United States has made clear its support for the basic transformation that is under way

in the Soviet Union and for its deeper, peaceful enagement in the outside world.

Policy Recommendations

The USSR should continue with its constitutional reforms and legislative measures promoting the development of a pluralistic society based on the rule of law and an economy based on some form of a market system;

The U.S. and other Western states should be prepared to help the Soviet Union as it makes these domestic changes, through technical assistance in a wide variety of political, social and economic areas, people-to-people exchanges, the development of open media institutions, and the free flow of information (at home and abroad);

An expanded effort at Soviet-American interchanges at republic/state and local as well as federal/union levels on day-to-day problems of governance, organization and decision-making would be particularly well-received;

Both sides should promote the principles of the Helsinki Final Act; as the Soviet Union deals with its nationalities questions the United States should show its interest in a peaceful transformation of the Soviet Union, with both a new legitimacy and a just legal and social system.

International Institutions and the Rule of Law

In recent years the United States and the Soviet Union have grown closer together in their support of the United Nations and its associated global and regional agencies, and have shown their interest in seeing these institutions flourish, especially where they can contribute to the easing of tensions and the prevention or containment of conflict elsewhere in the world. Their own actions will encourage others along the same lines.

Policy Recommendations

The United States and the Soviet Union should support the original aims and the "de-ideologization" of the UN, encouraging the use of conciliatory and other conflict-resolution functions of the UN, while recognizing that states will not give up their rights to individual and collective defense under Article 51;

They should seek to develop further respect for the rule of law in their international behavior, not just toward one another but toward other states as well, and should encourage and make greater use of institutions like the International Court of Justice for settling disputes.

International Considerations

The United States and the Soviet Union have shown their interests in containing regional conflicts and preventing them from damaging their emerging cooperative relationship. Indeed, in several instances, both powers have gone beyond mere cooperative relationship. Indeed, in several instances, both powers have gone beyond mere conflict restraint and moved towards positive cooperative and resolution problems. More stress needs to be put on cooperative and peaceful settlement of issues in the international arena. No doubt, their interests will not be congruent in all parts of the world. Nevertheless, understandings can and should be developed on the respective interests of each country on possibilities for cooperation in areas of critical interest to one or both, and on mutual abstention from engagement in the problems of particular regions.

Policy Recommendations

As powers sharing a strong interest in European security, for themselves, and for allies, partners and others, the United States and the Soviet Union should support the development of the European Community and other Pan-European institutions, the transformation to pluralistic, democratic societies in Eastern Europe, strengthened and even binding means for peaceful settlement of regional and ethnic disputes, and future arms control efforts as well as other means for promoting security, peace and economic development throughout Europe such as development of the CSCE from a forum into a genuine institutional body;

In the highly volatile Middle East and Southwest Asia, which engages the interests of the U.S. and USSR to different degrees in different place, the two countries should recognize and pursue a shared interest in supporting efforts to prevent conflict and promoting the peaceful resolution of conflict where it occurs. The Iraq aggression and annexation of Kuwait is a highly dangerous development, an act of terrorism and an affront to world order requiring continued U.S.-Soviet cooperation in the context of the UN and its resolutions as well as further measures which might be needed to cause the aggressor to relinquish his gains and withdraw; [1]

In Asia and the Pacific both should continue to determine common interests that include the political and economic transformation of China and its constructive emergence into the outside world; a growing role for Japan especially in the global and regional economic and political systems; the resolution of conflict between North and South Korea; the continuation of regional economic progress; an increased economic relationship between the Soviet Union and countries like South Korea, as part of efforts to restructure the Soviet economy; and steps to reduce tensions in the region and help to resolve regional disputes (Cambodia, for example) through multilateral institutions;

In other chronic conflict areas, such as, Namibia, South Africa, and Nicaragua, where competition between the U.S. and the Soviet Union is greatly reduced and their direct interests are much more limited, the policies of the two countries should range from mutual abstention and recognition of the local roots of conflict to cooperation in preventing regional conflict from prejudicing U.S.-Soviet relations in other areas; for progress and stability, regional groupings and the UN may have a major role.

In sum, it is in the interest of both powers to go beyond conflict prevention and to cooperate by promoting stability and the resolution of conflicts.

SECURITY RELATIONS

The Changed Security Environment

The global security environment has fundamentally changed as a result of the end of the Cold War, even though the superpowers retain military forces of unequalled power and technical sophistication. The superpower confrontation is no longer the major determinant of diplomatic and military approaches to regional conflicts. The superpowers remain, however, the only two truly global military actors. Now cooperatively disposed, they have unprecedented opportunity and, should they choose it, responsibility for facilitating a global rule of law and orderly non-violent discourse among the nations of the world. They also have the ability to mitigate the adverse consequences of the cold war confrontation on regional rivalries and internal struggles in the Third World. The two countries can now cooperate to counter threats to their individual or mutual vital interests and to defuse potential conflicts with each other.

Western and Soviet security depends on many factors, including the balance between military forces, the global political interaction, and political relationships to regional powers. Further, both countries have come to accept an expanded definition of security as comprising not only the preservation of peace and territorial integrity, but also the creation of the preconditions for economic prosperity. They understand that their security interests are intertwined, and that each must be attentive to the broadly defined security interests of the other—indeed, that each has an interest in facilitating a global security environment in which all nations enjoy secure boundaries and economic opportunity, and all nations guarantee to their citizens fundamental human rights. They also understand that the past East-West confrontation must not shift to a North-South confrontation.

Policy Recommendations

Within the new security framework, the continued U.S. military presence in Western Europe and the Asia-Pacific area, in the framework of U.S./Soviet and East/West security arrangements, will play a positive role to help ensure the stability of each region. Further cooperation of all kinds between the U.S. and the Soviet Union in regional conflict situations, particularly in the context of multilateral actions, is desirable in the future.

Better relations will not eliminate the need to negotiate the major elements of the security relationship between the two major nuclear powers. While neither nation currently sees the other as an immediate military threat, the absence of negotiated regimes assuring continued global military equilibrium could ultimately undermine the emerging cooperative relationship.

Strategic Nuclear Weapons

With the approaching elimination of the INF forces, strategic nuclear forces and their limitation remain of dominant importance. Both sides agree that a war using such forces can never be won and must never be fought; further, the control of these weapons must soon include the other custodians of their destructive potential.

Policy Recommendations

It is appropriate to capitalize on the favorable climate of today's U.S./Soviet relations by going forward promptly with substantive agreements controlling nuclear weapons. In particular, a START treaty should be promptly completed and ratified.

To a large extent, START has become a victim of the negotiating process. While a large number of differences remain in the draft text between the two sides, no issues are so great that a compromise would threaten essential interests of either side. It is important that presidential commitments to finish a START agreement this year be maintained to reaffirm the credibility of U.S./Soviet summit decisions. Additional in-

[1] Dr. G.I. Mirsky submitted a statement as follows: "It is to be desired that the Soviet Government (1) immediately withdraw the remaining military personnel from Iraq; (2) abrogate the 1972 Treaty of Friendship and Cooperation with Iraq; and (3) pledge not to obstruct any UN Security Council resolution providing for additional actions to force the Iraqis out should non-military means prove ineffective (insufficient)." Some members of the Soviet delegation have associated themselves with the above statement.

volvement by senior officials on each side will be necessary to achieve this goal.

The objectives of nuclear arms control after START is completed should be (1) to strengthen strategic stability, in particular by maximizing each side's confidence in the survivability of its forces and (2) to provide increased predictability and transparency of each side's nuclear forces.

Policy Recommendations

The reduction of strategic nuclear destructive power begun by the superpowers in START must be continued, with aggregate numbers to the lowest level consistent with continued global military equilibrium and the security of both nations vis-a-vis other military threats.

Reductions should be focused on the progressive elimination of those systems which produce the most anxiety and whose characteristics engender the greatest degree of crisis instability and the greatest destructive power. To this end, a variety of measures should be considered, including reducing the weapons loading of currently MIRVed missiles, reducing the ratio of warheads to launchers, and reducing the vulnerability of command and control systems through measures such as controlling depressed trajectory testing of SLBMs and anti-satellite (ASAT) capabilities.

Conventional Forces

The reduction of conventional forces in Europe has become a race between negotiated reductions and their driven by host country demands and unilateral resource reallocations away from military expenditures. That this somewhat disorderly process may disrupt force balances carefully nurtured over the years is secondary to the fact that force reductions are being effectively pursued.

Policy Recommendations

It would be appropriate to step up the pace of conventional arms reductions negotiations. The objective should be to sustain the Vienna CFE process while reconciling it with the radically changed geo-political and geo-strategic situation.

If necessary in order to complete the CFE agreement this year, sublimits on forces in the central zone, which has been radically transformed since the beginning of the negotiations by the unification of Germany, should be deferred to the next phase of negotiations. Limits on aircraft and manpower, along with other provisions currently presenting technical obstacles to agreement, could also be deferred without damaging the benefits of the remaining provisions or setting counterproductive precedents.

In the context of the CFE reductions and the unilateral actions already announced to remove most SNF warheads from Central Europe, it should now be possible to reach agreement concerning the ultimate role and level of SNF weapons.

Beyond the reduction of fielded conventional forces, arms control should enter a preventive phase, including attempts to control armaments procurement, force reconstitution capabilities, and modernization rates. As in nuclear weapons, defensive sufficiency should be the conventional force objective for all participants, with asymmetries of responsibilities, location, and geography taken into account.

Naval Forces

With the exception of sea-based strategic nuclear weapons, naval forces have to date been excluded from negotiated reductions. But naval forces have already been the object of unilateral reductions on both sides.

Policy Recommendations

It is now appropriate to explore new agreements covering naval forces that could provide an improvement in the mutual security of the U.S. and the USSR while leaving sufficient force strength for national missions and international tasks which may have to be performed by either national forces alone or under the auspices of international organizations.

The U.S., the Soviet Union, and the other military powers should also prepare for cooperative naval, air, and ground force employment on internationally authorized missions.

Exploitation of Advanced Technologies

Policy Recommendation

There should be cooperative exploitation and constraint of military technologies for the maintenance of peace. Key applications should include arms control verification, the technological limitation of the destabilizing effects of already proliferated technologies, consultation on advanced defensive technologies, and the sharing in the UN Military Staff Committee and regional fora of the products of intelligence which reveal threats to peace from any quarter.

Non-Proliferation

There have been important but imperfectly effective steps taken to slow the proliferation of nuclear, chemical, and biological, and ballistic missile technologies and weapons. The coming arms reductions in industrialized countries may provide a further stimulus to proliferation as military industries seek alternative markets.

Policy Recommendations

Existing efforts to slow proliferation of dangerous military capabilities and production technologies should be intensified.

Arms control arrangements among the possessors of sophisticated military technologies should provide multilateral constraints on the export of new weapons and their constituent components and technologies.

But these brakes on the pace of military technology development would likely be circumvented without also rendering proliferation an expensive and unnecessary luxury through the issuance of security guarantees by regional and international organizations, backed by negotiated and internationally committed national forces.

Policy Recommendations

These and other measures should be taken in anticipation of the 1995 Non-Proliferation Treaty (NPT) review conference which should be used as a forum to strengthen the existing NPT regime.

Eliminating the threat of chemical, biological, missile, and nuclear proliferation will require the creation of an effective international regime to control the proliferation of threatening technologies.

The current crisis in the Persian Gulf may have opened a window of opportunity to use the United Nations as a vehicle to create such a regime. The Gulf crisis has strengthened support for use of the UN, and Iraqi missile, chemical, and nuclear capabilities, now perceived as dangerous threats to peace that must be controlled, have increased sensitivity to the dangers of technology proliferation.

The creation of a technology proliferation control regime will require the world's major military powers and other arms exporters to forgo many activities that they have heretofore refused to constrain. Such activities include export of related technologies, components, and weapons systems, continued maintenance of unnecessary systems prohibited to other nations, and certain development and testing activities. It is important that the powers already possessing the technologies to be controlled demonstrate their willingness to accept restraints on their own activities. Completion of the international convention prohibiting all chemical weapons, now under negotiation through the UN, and a dramatic further reduction in the permitted yield and number of nuclear tests are both feasible near-term steps that should be taken.

Policy Recommendations

In order to provide positive incentives to join the regime, various forms of international assistance, both security and economic, should be provided only to those nations who adhere to a new proliferation control regime. Information must be shared in multilateral fora among regime adherents to ensure the earliest possible identification of potential violations. Security guarantees should be supplemented by internationally enforced sanctions against proliferators.

International Organizations

International organization security arrangements should be strengthened in ways acceptable to both the West and to the Soviet Union. The United Nations Security Council system is now functioning as originally envisioned as a result of the Iraq-Kuwait crisis.

Policy Recommendations

Supplemented by effective regional security organizations such as NATO and the CSCE, the Security Council should become the focus of a global mutual security system capable of preventing regional conflicts, requiring their cessation, and curtailing their consequences.

The UN response to the Iraqi invasion of Kuwait and the international effort to contain its consequences have provided heartening glimpses of the conflict resolution potentials of the United Nations Security Council and its Military Staff Committee. Both the Atlantic Council and IMEMO participants strongly urge the strengthening of global and noncompetitive regional collective security structures capable of managing threats to peace.

ECONOMIC RELATIONS

One ultimate goal of Soviet reforms is to achieve economic prosperity comparable to other industrialized powers. In contrast to Soviet political and security changes, economic reform thus far has not been successful in overcoming the obstacles to the accomplishment of essential goals: structural reform; monetary stabilization; price reform; and opening to the world economy. Improvement in civilian goods production has not yet been achieved. Progress remains erratic and unsystematic; popular confidence appears at an ebb. Taking account of these critical conditions, we make the following recommendations.

Policy Recommendations

Economic Reconstruction

Creation through legal provisions of a climate, environment framework that allow all kinds of non-state entities, including private enterprises, to come into existence and operate. An obligatory first step is constitutional provision for non-state property, for the protection of associated rights and the freedom to exercise them, implementing this

provision through appropriate legislation. Other measures such as tax incentives for establishing new business and for reorienting, modernizing and expanding existing enterprises should be introduced without delay.

Governmental bodies (central, provincial and local) should avoid operational economic activity as a result of reform; their main mission is to provide the conditions conducive to entrepreneurial activity and free circulation of all market factors including labor. Concerete measures should be elaborated to define clearly the competence of different levels of governing authorities, and to assure effective exercise of responsibility and accountability in enterprises removed from governmental control.

Parallel and concurrent with other aspects of economic reform, progressive liberalization of prices should be undertaken, including those items playing a determinant role in the economy whose prices are unrealistic.

The expansion and creation of all kinds of different legal markets should be encouraged and facilitated.

Excess capacity of military-defense industries should be redirected to the output of high-quality/modern civilian items, for export as well as for domestic consumption. Control of "converted" enterprises should be transferred into civilian hands, along the lines to be developed under the second recommendation above. It is fully recognized that war industry conversion is immensely complex and difficult whether in Western or Soviet circumstances.

International Cooperation

International cooperation should be sought on an urgent basis respecting legal economic activity generating hard currency and the composition, diversification, expansion, and management of foreign trade. Both sides should also focus on new projects that will lay a basis for the future development of foreign trade.

A main priority in the foreign economic sphere is to assure openness of the Soviet economy; to create a legislative structure compatible with world legal structure. Limitation on the foreign share of equity capital should be abolished. Prohibitions of most types of entrepreneurial activity should be lifted and clearly defined political guarantees for attracting foreign capital should be given.

International cooperation should be enlisted to assist the reorganization and modernization of the housing industry in the U.S.S.R., including all forms of ownership, new methods of construction, sale and leasing, construction financing, mortgages, titles and land ownership.

International cooperation should also include the area of food production, processing, storage, transportation and distribution.

Coincident with Soviet implementation of economic reforms currently planned or underway, we support the efforts of the World Bank, IMF, and other international financial and economic development institutions to examine the types of short term and long term financial and other assistance which would encourage the effective implementation of those reforms.

The Soviet Union and the Western industrialized market economies should forge a well-structured, long-term, large-scale, international partnership to provide and disseminate technical knowledge and expertise on all facets of converting the current Soviet economy to a self-sustaining market economy scheduled over a five-to-ten year period.

For their part, willing Western governments and institutions, notably including the U.S. (but possibly largely privately financed), should form a new international agency (or perhaps an adjunct to an existing one) to provide a central clearing house for educational and communication materials and hands-on know-how from senior (including retired) businessmen, educators, accountants, legislators, and other experts practiced and successful in all aspects of the many and diverse market economies.

For their part, the Soviets should provide clear channels and organizations for the distribution of materials, for providing housing and subsistence to personnel, and for the objective "feedback" of program successes and failures for "course corrections."

Extensive provision should be made for training Soviet managers in Western methods of business management, in both Western and Soviet institutions. Arrangements should be made by Western institutions for retraining of Soviet economic faculties in modern economic concepts and methods. Support should be given to jointly managed schools in economics and in business administration. Planning should be urgently undertaken, directed to the training of relevant Soviet experts through private, professional associations, and to on-the-job training of Soviet managers within Western business concerns.

The major free-market countries should seek ways to cooperate in reform efforts to move the Soviet Union towards a market economy, to open the Soviet economy to foreign participation, and to facilitate its integration into the world trading and financial systems.

THE RETIREMENT OF JERRY EHRENFREUND

Mr. MITCHELL. Mr. President, I wish to take this opportunity to commend and congratulate Jerry Ehrenfreund, chief clerk in the Office of Printing Services, upon the occasion of his retirement today. Jerry is one of the Senate staff who labor selflessly every day to perform the administrative tasks of the Senate. Jerry is a master printer who began practicing his craft in 1951, and purchased his own print shop in 1962. In 1969 he began working for the Government Printing Office and worked on the staff which compiled the Federal Register. Shortly thereafter he was detailed to the Senate where he became the staff printer on the Senate Select Committee on Nutrition and Human Needs, and later, the staff printer for the Senate Foreign Relations Committee. In 1985 he joined the staff of the Secretary of the Senate, from which he is now retiring. Jerry recently became a grandfather for the third and fourth time. Therefore, in addition to wishing you and your lovely wife Sylvia good luck and Godspeed in your retirement, we also wish long and happy lives to your grandchildren, Michael, Brittany, Jessica, and Brian.

CONFERENCE REPORT ON H.R. 5399

Mr. REID. Mr. President, the report of the committee of conference on H.R. 5399, the legislative branch appropriations bill for fiscal year 1991 is at the desk. I ask that the Chair lay it before the Senate.

Mr. President, the conference on H.R. 5399 was spirited, constructive, and quite late. The product, which is before the Senate in this conference report, reconciles the differences between the two Houses fairly. It also, I believe, establishes a sound framework for the question of the people's branch of the government in fiscal 1991.

In aggregate, the conference agreement will make available a total $2,161,366,500 for this fiscal year. This represents a reduction from the President's budget of almost $251 million, or 11 percent.

What is more, Mr. President, the bill produced by the conference is below our budget allocation by $63 million in budget authority and $111 million in outlays. Thus this conference agreement will reduce the deficit assumed in the budget plan the President and the Congress have adopted by an additional $111 million.

This may not be a lot in the context of a deficit of over $250 billion. But then the amounts in this bill, which funds one of the three basic branches of our Government, make up only about eight-tenths of 1 percent of the overall Federal deficit.

To put these numbers in a more concrete perspective, $2.2 billion will buy two B-2 bombers. It would maintain our military deployment in the Middle East in its current noncombat status for about 6 weeks. And we spend about $6.5 billion every year on foreign aid to just two countries—Egypt and Israel.

In any event, an additional savings of $111 million is a significant accomplishment. It shows that the legislative branch and this committee are pulling their share of the deficit reduction load.

Now let me briefly summarize the highlights of the conference agreement. It provides: $437,082,500 for the operations of the Senate, including $30,000,000 for official mail costs; $643,050,000 for the operations of the House of Representatives, including $58,984,000 for official mail costs; $60,299,000 for the Capitol Police, along with limited authority for the fiscal year to make arrests within the District of Columbia for violent crimes as defined in Federal statute; $21,183,000 for the Congressional Budget Office; $138,454,000 for the Architect of the Capitol, including $33,732,000 for Senate Office Buildings; $51,885,000 for the Congressional Research Service; $227,285,000 for the

Library of Congress; and $409,247,000 for the General Accounting Office.

Now, Mr. President, the conference agreement continues the progress we achieved last year on franking reform. The major changes included in this agreement are as follows:

Separate appropriations for official mail are established within the account structure of each House. Henceforth, mail appropriations will no longer be a joint item. Each House will be entirely responsible for its mail costs.

The House will now have a franking allowance for each Member coupled with disclosure of each Members mail expenditures. The Senate, of course, has a well established allocation scheme for keeping mail costs within the amount available.

Transfers of mail allocations among Members in both Houses are now prohibited and carryover of allowances is limited to sessions of the same Congress.

Now, Mr. President, before I yield to my friend and ranking Member, for any observation he cares to make, I want to thank him for his help and cooperation. This was a tough year for us. I know the conference agreement does not meet all his objectives. But he has nonetheless cooperated and contributed throughout the process.

I also wish to express my appreciation to our colleagues in the House who served on the conference committee. We had several very contentious issues to resolve. Debate was vigorous. Time was short. The conference was sometimes tumultuous but never intemperate or hostile. We disagreed but were not disagreeable.

A lot of the credit goes to my friend and counterpart, VIC FAZIO. He is always cooperative and reasonable. The headway we have had on franking and other needed institutional reforms in both our respective Houses would have been impossible without his dedication and leadership. I salute him.

I am also grateful to the ranking Republican, Mr. JERRY LEWIS. Both gentlemen are rising rapidly in their respective party structures within the House. Having worked with them on this bill now for 2 years, it is easy to see why.

I also wish to thank the other Senate conferees, especially our chairman, Senator BYRD, for their assistance. Their steadfast support was indispensable.

I yield the floor.

FOREIGN OPERATIONS APPROPRIATIONS S. 5114

Mr. BURDICK. Mr. President, I regretfully announce that I must vote against the conference report on H.R. 5114, the foreign operations appropriations bill. My decision to vote against this bill is based upon the inclusion of the Egyptian debt relief provision.

During consideration of this matter on the Senate floor, I voted for Senator HARKIN'S effort to modify this provision so that the debt was not written off, but instead restructured. This amendment was not successful and, as a result I voted against the entire bill.

While I certainly agree with the supporters of this provision that Egypt is a valuable friend of the United States and that Egypt is playing a crucial role in the Persian Gulf crisis, I cannot agree that the United States must forgive Egypt almost $7 billion in military debts. I think this debt write-off sets an unfortunate precedent that other countries will not hestiate to attempt to follow.

In a time of budgetary crisis, we just cannot afford to write off this debt. We have too many people in this country who are in need and we claim we cannot help them because of our massive Federal deficit. Why then do we turn around and forgive $7 billion to a foreign country?

At a time when American farmers are facing at least a $12 billion cut in farm programs over 5 years, I think it is misguided to forgive an amount roughly equal to half those cuts. How do you explain to a farmer who has just suffered a 15-percent cut directly from farm income that we cannot provide adequate support for those who grow our food, but that we can afford to write off $7 billion owed by a foreign country?

Even in voting against this bill I would like to acknowledge that there are many provisions that reaffirm our friendship with countries around the world. I would like to speak about one of these friendships in particular, that of Israel.

Our longstanding relationship with Israel is an important, vital relationship. Israel is a valued friend and true friendship requires that we stand together in times of crisis. Israel stands now with the United States during the current Persian Gulf crisis and has played a role that possibly Israel would not have chosen, but which we asked that it play. This is something we must not forget.

INTERIOR APPROPRIATIONS CONFERENCE REPORT

Mr. LAUTENBERG. Mr. President, I rise in support of the conference report on H.R. 5769, the fiscal year 1991 Interior apppropriations bill, and to commend the distinguished Senate apppropriations chairman, Senator BYRD for his efforts on this bill.

This legislation makes important investments in the preservation of our Nation's natural heritage, through its support of the National Park Service, the U.S. Fish and Wildlife Service, and the Forest Service. It also provides essential support for the National Foundation on the Arts and Humanities and the Smithsonian Institute. It also contains money for health and education programs that are vital to native Americans.

I would like to discuss a number of items involving the park and open space in my State that are addressed in this conference report.

OCS MORATORIUM

The conference report includes the House passed moratorium on activities leading up to leasing for energy development in Outer Continental Shelf areas in the mid-Atlantic.

I raised this matter with Secretary of the Interior Lujan when he appeared before the Interior Subcommittee earlier this year. Recently, the Secretary sent me a letter assuring me that the Department would not conduct lease sale 121 under its current 5-year program which extends to July 1992. Consequently, it is my expectation, and it is the expectation of the committee as expressed in its report, that the Department shall not conduct preleasing activities including area identification and activities requiring public participation in the area until July 1992.

The adoption of the House moratorium assures in the statute that no preleasing activities will occur within 50 miles of the shoreline during the fiscal year ending September 1991.

The combination of the statutory provision, and the administration's assurances provides the continued protection of New Jersey's previous coastal environment from the reckless, wholesale leasing of waters off my State.

ELLIS ISLAND BRIDGE

Mr. President, the conference also preserved a directive that the Senate committee issued to the National Park Service regarding another vexing problem for people from my State: the cost of access to the new Immigration Museum at Ellis Island.

A basic premise of Ellis Island was that America was open and available to just about everyone. Flanked by the Statue of Liberty, it was a gateway for people of all backgrounds and classes. We didn't ask that immigrants be of significant means.

Unfortunately, the same can't be said of the restored Ellis Island. The cost and inconvenience of reaching the island threaten to keep out many American families who would like to visit the facility, to reestablish a link with their past.

Today, it costs a family of four $18 to visit the island. On top of that, they may have to wait in line for several hours before boarding the ferry. When our parents and grandparents came to Ellis Island, they expected certain hardships. Visitors today shouldn't have to endure the same.

These fares were adopted in spite of a National Park Service staff recommendation. In May of this year, even the Park Service recommended that the fare for an adult be no more than $5. But, the concessionaire was eventually allowed to boost that to $6—a 20-percent increase. And, under the existing system, the current concessionaire, which runs the ferries to and from Ellis Island, has exclusive rights to provide that transportation. There can be no competition.

There may be cases where such a policy makes sense. But in this case, the policy is disserving the public. Others have expressed interest in providing ferry service at lower cost. But they aren't allowed.

There's one way to make it more available: Use the bridge that currently connects Ellis Island with Liberty State Park in New Jersey. That's why I asked the distinguished chairman of the committee to include a two-part directive to the National Park Service: First, directing the Park Service to work with the Statue of Liberty-Ellis Island Foundation, which controls the bridge, to keep the bridge open and second, directing the Park Service to conduct a review of issues that have to be resolved as we consider making the bridge permanent, and open to the public.

It's important that we move ahead with this. Few places hold as important a place in our culture and history as Ellis Island. Through those immigration facilities came millions of people, all looking to become part of the American dream. No doubt, many in this room can trace their families' beginnings in the United States to the gates of Ellis Island. My roots trace back through Ellis Island. Because of that, it will always be a special place to me.

The ability of American citizens to visit a national treasure like Ellis Island should not be unreasonably restricted. The option of making the bridge available to the public should be considered, and I again thank the chairman for addressing this matter.

STERLING FOREST STUDY

Mr. President, I would point out that the conference report also contains language to fund a study of the Sterling Forest in New York and New Jersey. This is an initiative which was developed by my colleague in the House, Representative ROBERT TORRICELLI, and which I am pleased to support in the Senate.

Sterling Forest is a beautiful, environmentally sensitive and significant area which lies along the New Jersey-New York border. The study will provide us with information on how best to preserve and manage this area. And let me say Mr. President, that this study is all the more important because inadequate management of Sterling Forest could have grave consequences for the quality of drinking water in my State. Two reservoirs—Monksville and Wanaque—are fed by streams with headwaters located within the forest. Also, ill-considered development could aggravate flooding in the Passaic River basin in New Jersey.

I'm hopeful that the study will help preserve a pristine area and ensure the safety of New Jersey's drinking water.

LAND ACQUISITION FOR WILDLIFE REFUGES AND PARKS

Mr. President, this legislation also contains funding for refuge and park land acquisition that is of special significance to my State. New Jersey is the most densely populated and urbanized State in the Nation, but New Jersey also has some beautiful areas that are home to diverse plant and animal life. The fact that New Jersey is so urbanized, makes the preservation of our remaining pristine areas that much more important.

Last night, the Senate passed legislatation H.R. 3338 incorporating my bill to establish in law the Wallkill National Wildlife Refuge. Today, we are now about to pass this appropriations measure which contains $4 million for land acquisition at the refuge.

These actions will allow for the conservation of land in my State that is of significant ecological value. The Wallkill River and its adjacent lands comprise one of the last high-quality waterfowl concentration areas in northwestern New Jersey, and is home to a diversity of wildlife including 16 State-listed endangered species.

I'm extremely pleased that we are taking these important steps to protect and preserve the Wallkill for ourselves and our children.

Mr. President, I would also like to point out that at my request, the bill contains $2 milion for land acquisition at the Great Swamp National Wildlife Refuge. This refuge, located 25 miles west of New York City, is under heavy development pressure. The acquisition of land provided for in the bill will prevent encroachment from residential development that is rapidly destroying valuable habitat, degrading water quality and threatening the ecological integrity of the swamp.

Additionally, the bill contains $585,000 to purchase land adjacent to the Morristown National Historic Park, which is not only historically significant due to its use as a wintering place for the Continental Army, but also because it contains the headwater stream leading to the Great Swamp Refuge. I'm especially grateful to Chairman BYRD for recognizing the importance of maintaining funding for this acquisition in the final version of the legislation.

For the Forsythe National Wildlife Refuge the bill provides $3.25 million for the acquisition of the Herring Point/Reedy Creek area. This figure represents more than a $2 million increase over the administration request, as well as an increase over the House level. The E.B. Forsythe Refuge includes habitat for black ducks, Atlantic brant, and piping plover, as well as the Swan Point Relay, which is crucial to New Jersey's clamming industry.

The bill provides $3.5 million for land acquisition at the Cape May National Wildlife Refuge—more than triple the amount appropriated last year. This refuge is divided into two sections, the Delaware Bay Division and the Cedar Swamp Division, and includes land considered among the Atlantic Flyway's most important staging and wintering areas during spring and fall migration, as well as habitats important for at least five plant species being considered for Federal threatened or endangered listing.

GATEWAY AND DELAWARE WATER GAP RECREATION AREAS

Mr. President, I also want to point out that the bill contains over $5 million for Gateway National Recreation Area's Sandy Hook unit. Gateway quickly became one of the Nation's most popular national parks, and each year millions of people travel to New Jersey to take advantage of Sandy Hook's acres of barrier beaches, bays, lighthouse, and historical forts. With this money that Senator BRADLEY and I requested, the Park Service can now begin construction of a number of important projects including construction of much needed new restrooms, lifeguard facilities, concessions, and the improvement and expansion of parking at Sandy Hook.

The Delaware Water Gap National Recreation Area is another heavily visited natural area in my State. However, this important recreational and educational resource is in need of a number of essential improvements. Last year, funding was provided for initiation of some of these projects. The conference agreement includes $1.53 million that I requested so that the Park Service can continue its work on the new Weygadt Visitor's Center. Also, funding is provided for added visitor protection, the stabilization of historic structures in the park, and land acquisition.

HISTORIC PRESERVATION

Mr. President, there are also significant funds here for a number of historic preservation projects in my State. In particular, the bill would provide $1.5 million I requested to aid in the renovation of Newark Symphony Hall.

Listed in the National Historic Register, Newark Symphony Hall is currently being refurbished in coordination with development of the New Jersey Performing Arts Center, a $200,000,000 public-private partnership for a multitheater cultural and arts center to be located in downtown

Newark. The completion of this project is essential to the revitalization of New Jersey's largest city because it will bring jobs, new businesses, and new life to the central city.

Symphony Hall is an integral part of the revitalization project and this money is needed to complete the renovation of this historic structure which is home to the New Jersey Symphony, the Garden State Ballet, and the Newark Boys' Chorus. By providing this money the Senate is helping scores of urban families and children to have access to cultural events and education that they might not otherwise have. As well, we aid in the rebuilding of one of New Jersey's most important cities.

The bill also contains funding I requested for surveys of historic structures in both Millville and Commercial Townships. These funds will go toward a comprehensive study of structures in these towns so that we can preserve those that are historically important for our children.

The relatively small amount of funds provided for the operation of the Edison National Historic Site in West Orange, NJ, will go a long way toward allowing an increased number of people from all over the country to view this historic structure. The labs and home of the great inventor Thomas Edison are currently open only part time. The $150,000 operating subsidy included in the bill will allow for expanded operation of the labs and Edison's home, Glenmont.

ABANDONED MINES

Last, Mr. President, North Arlington and Mine Hill are two communities in my State that face a grave situation, one which may be familiar to the distinguished chairman. Both these New Jersey towns have abandoned mine shafts running underneath them. New Jersey has hundreds of abandoned mining shafts running underneath it. However, in both North Arlington and Mine Hill, many of these shafts have begun to collapse, or in some cases already collapsed, causing damage to property for some and posing a potential danger to others. Also, residents have had difficulty in securing bank loans and insurance since the incidents.

Both towns have been working with the Bureau of Mines and Office of Surface Mining Reclamation and Enforcement, and North Arlington has already sealed the mine that first collapsed. However, these towns need the financial and technical help of the Federal Government.

I again thank the Senate Interior Subcommittee for providing $1.4 million for remediation efforts in North Arlington and $450,000 for work in Mine Hill. I regret that the House would not recede from its lower figure of $250,000 for Mine Hill, because the additional $200,000 provided by the Senate would have been extremely helpful to Mine Hill in its subsidence efforts. However, I am pleased that the conferees could provide a total of $1.65 million for these distressed communities.

Mr. President, I would again like to commend the distinguished chairman for his outstanding work on this bill and for his cooperation and attention to the needs of the State of New Jersey. I would also like to thank his most able chief clerk Charles Estes for his assistance and attention.

I urge my colleagues to support adoption of the conference report.

EMPLOYMENT TAX TREATMENT OF CERTAIN CREW MEMBERS ON FISHING VESSELS

Mr. KERRY. Mr. President, for 2 years now, my higest priority in terms of resolving a critical and unfair tax issue confronting a Massachusetts industry was to get IRS to change its policy. To solve this terrible inequity, I've written to the IRS, introduced legislation in the Senate, worked closely with leadership of the Senate Finance Committee and with my colleagues in the House, Representatives STUDDS and DONNELLY.

It was with fervent hope that I thought we could include this in reconciliation this year. Unfortunately, a decision was made that only road policy matters could be dealt with in reconciliation to address deficit reduction. As a result, no issue of this type were included in the reconciliation package.

That presented us with only one option, to attempt to introduce and pass an individual bill to relieve the plight of the New Bedford fishermen. This is a highly unusual procedure, but one that I felt was merited in view of the inability of Congress to solve this or of the IRS to cooperate by refraining from its current unfair policy.

I was therefore very pleased today when Congressmen DONNELLY and STUDDS introduced and passed legislation in the House of Representatives to solve this problem. After a great deal of effort, I was also pleased to win the support of Senators BENTSEN, BREAUX, and MITCHELL, and all other Democrats for this bill.

Tragically, under Senate procedures, the objection of only one Senator is sufficient to kill this type of legislation at this time. In fact, innumerable examples of this occurred here in the Senate tonight.

Republican Senators, under the cloak of anonymity, frustrated many attempts to do what was right. This included, for example, killing the educational excellence bill which passed the House unanimously, had the full support of the President, and previously passed the Senate by a vote of 98 to 2.

An anonymous Republican Senator objected to passage of H.R. 4468 which would have solved the problem in New Bedford. I deeply regret that they saw fit to take this unwise and unfair action.

The case for this legislation is clear and compelling. Owners of small fishing vessels have never withheld taxes for crew members. When IRS challenged this practice in the early 1970's, Congress responded in 1976 by revising the Tax Code to explicitly state that crew members on small fishing vessels should be treated as self-employed for tax purposes.

But a recent IRS audit contradicts this clear congressional intent by asserting that certain crew members were employees. As a result, IRS is asking boat owners to pay over $10 million for tax years 1985–87. The boat owners already paid this money to crew members. This assessment will drive most of them out of business.

This bill makes two minor changes to the Tax Code to reestablish the self-employment status that Congress intended for these crew members. On substance, this bill has strong support. In fact, I would like to thank Senators KENNEDY, BENTSEN, PACKWOOD, MITCHELL, and BREAUX for their help and support on this. Unfortunately it has been a casualty of the reconciliation process for the past 2 years.

The first change redefines small vessel as consisting of "normally 10 or fewer" crew members rather than the current requirement of "normally fewer than 10." Certain New England vessels fish with 9 or 10 crew members. In the height of the fishing season, the vessels are more likely to carry 10 fishermen than 9.

IRS' interpretation of normally on a quarterly basis caused many of these vessels to not meet the fewer than 10 condition. The industry had always defined normally to mean "on average over the year," a perfectly reasonable definition. The IRS definition was never made available to the fishing industry or published in public documents. In fact, an IRS guide to the commercial fishing industry states the normally fewer than 10 rule but contains no definition of normally.

Changing the condition to "normally fewer than 10" will allow these boat owners to meet this condition regardless of which definition of normally is used.

The second change this bill makes is to allow for de minimus payments to crew members. Self-employed crew members must currently be compensated solely as a share of the catch. Since the whaling days, it has been traditional to give the cook, first mate, and engineer small payments, called pers in New Bedford, in recognition of additional duties. These payments account for only 1 to 5 percent of the

total compensation to these crew members and should not be used to subject the entire compensation to withholding.

Finally, to avoid a catastrophe, it is essential that these provisions be made retroactive to tax year 1985. There is a precedent for this, Mr. President. This provision, when originally passed in 1976 was made retroactive to make it clear to the IRS when they tried to change the rules the first time.

I understand that there are noncompliance problems within the fishing industry and I urge IRS to pursue strong enforcement efforts. But the boat owners are not the problem. They paid the full compensation to their crewmembers and filed 1099 forms with the IRS. To now ask them to pay full taxes for all crewmembers back to 1985 because some of these crewmembers may not have paid their taxes is clearly unfair.

If we let this injustice occur, it will have a devastating effect on the already depressed New Bedford economy. In addition, it will set a bad precedent for other fishing communities around the country.

I intend to do everything I can to continue my crusade to do what is only right by our New Bedford fishermen and overturn this unfair stance by the IRS. With the support of Senator BENTSEN, chairman of the Senate Finance Committee, I intend to immediately petition IRS to delay any further action to inflict financial pain unfairly on the fishing industry of New Bedford. And I will continue that fight until I win. We cannot permit action of one or a very few Republican Senators from thwarting the will of the majority of Congress and thereby permit IRS to continue under current policy.

SENATE CONFERENCE REPORT ON INTERIOR APPROPRIATIONS BILL

Mr. SIMPSON. I am very pleased to speak in support of the final Interior appropriations bill for fiscal year 1991. This bill is vitally important for a State like Wyoming, where one-half of our land is owned by the Federal Government. This is a good final bill. It reflects hours of hard work and negotiations. I would like to thank Senator JIM MCCLURE for his efforts this year, and in all past years, to ensure that our interests and concerns are always properly addressed. I would thank his staff person, Mark Walker, who also serves Senator MARK HATFIELD and has worked many long and hard hours on this bill. I thank my friend Senator ROBERT BYRD for his generous and fine efforts. He has crafted a fair and well-balanced bill for the future management of our public lands. I also thank his staff persons, Charlie Estes and Sue Masica, for their willingness to accommodate so many of my requests. I deeply thank them all.

Not only does this bill contain a number of important provisions for public land management issues across the Nation, there are several particularly significant provisions which will benefit Wyoming: $600,000 for the Continental Divide Snowmobile Trail that will link Fremont, Sublette, Teton, and Park Counties with Teton and Yellowstone National Park; $300,000 for a feasibility study for a campground location at Fishing Bridge in Yellowstone; $1 million for winter operations in Yellowstone National Park; $5.2 million for the Western Research Institute at the University of Wyoming; $4 million for road construction and maintenance of roads in Yellowstone National Park; $500,000 for a shale cleanup site at Rock Springs; $100,000 for the forestry science laboratory in Laramie; language which establishes a 10-member Commission to study the introduction of grey wolves in Yellowstone. Members of the Commission will be the appropriate game and fish officials from Idaho, Montana, and Wyoming, officials of each of the National Park Service, National Forest Service, and National Fish and Wildlife Service, plus two representatives from the conservation community and two representatives from the commodity groups. This is a compromise solution to a problem we will have to deal with. An issue that will not go away. These fine professionals can assist us greatly.

The bill maintains the current level of abandoned mine land funds to the States at their current level. This means tens of millions of dollars will come to Wyoming every year for worthwhile mine reclamation projects. These moneys are paid by our Wyoming coal producers and rightfully should be available to benefit our State. A number of communities have properly benefited from these funds in the past, and this ensures their continuation. The budget package contained a provision to extend this program for another 3 years, and allows AML money to go for beneficial uses other than for just mine reclamation, since most of these projects in Wyoming have already been completed.

Beyond the scope of Wyoming projects, this bill addressed a number of important issues involving the economies of western states. Efforts were defeated which would have included a moratorium on the issuance of mining patents on certain claims which have been issued under the authority of the 1872 mining law. Senator WALLOP and I joined with Senator MCCLURE and a number of other Senators to ensure that no moratorium on patents was to be enforced by this appropriations bill. Furthermore, there is no $100 fee assessed to each holder of a mining claim in order to keep that claim valid. That would have been a real expense for a number of small, independent miners in the State.

This final bill does not include any change in the grazing fee formula that many Wyoming ranchers depend upon. Language which would have increased those fees in the House version of the bill was stripped in the conference committee. Many Wyoming ranchers depend on grazing their cattle on Federal lands during the spring and summer months. The amount of increase that the House proposed—up to 500 percent—was clearly absurd. It would have simply put some of our Wyoming ranchers out of business.

This final bill also does include full funding for the Forest Service road account. The vast majority of roads on Forest Service lands are constructed by private timber companies, but the rights-of-way can be later used by the public to get into the forests. The Federal money included in this bill will not all be used for construction, but for the administration and environmental studies to ensure that the roads are constructed in a sound and sensible way. These moneys ensure that the roads can still be built, while still being sensitive to the environmental standards that our Nation so richly deserves. Wyoming has seven forests, so this is important to us.

The only real disappointment is that the final bill does reserve a certain percentage of the money for the Onshore Mineral Receipts Program to be used to defray the Federal Government's share of administrative costs for this program. Especially today, where we see such an effort to reduce Federal spending, there is a need to share in these costs with the States. But I can assure you that if the States are going to have to share in more administrative costs, they are going to have more of a say in how that program is administered. I am talking primarily about the mineral audit program—that has always been a bone of contention since Senator Cliff Hansen's days here. This situation needs to be fully addressed in the next Congress and if I am here—God willing—I will see that the issue is fully aired and debated and the State's concerns are voiced and heard.

Again, I believe this is a good bill, for Wyoming and for the Nation, and I am pleased to give it my support.

RETIREMENT OF PHILIP EDWARDS, LOYAL SENATE FRIEND

Mr. MITCHELL. Mr. President, the adjournment of the 101st Congress will be accompanied by the retirement, after 30 years of service, of one of the Senate's most loyal friends, Philip Ed-

wards, of the Government Printing Office.

Phil began his career at the GPO in September 1960, and for the next 15 years held various positions and received a number of promotions in the bindery office. In June 1975, Phil was promoted to a driver position in the Customer Service Division. In his 15 years with Customer Service, he received several performance and safe driving awards.

Phil makes the trip back and forth between the GPO and the Senate side of the Capitol several times each evening as he delivers the Senate's CONGRESSIONAL RECORD copy and all bill and report copy to the Congress' printer. His work demands that Phil be dependable, timely, and available for rush duty at any moment. In addition to those qualities, Phil will be remembered by his friends in the Senate for the enthusiasm, dedication, and constant good humor he has brought to his job. His eagerness to be helpful whenever extra work is to be done has made many late night sessions less hectic.

Phil plans, after retirement, to travel across the United States. We wish him all the best in these travels and in all his other endeavors. He has earned through dedicated service a long and happy retirement. We wish Phil and his wife, Dorothy, good health and Godspeed.

THE 101ST CONGRESS

Mr. MITCHELL. The 101st Congress is the first Congress as our Nation enters its third century. It is appropriate that this Congress marks a turning point in the national debate.

The most significant accomplishment of the 101st Congress is not a single piece of legislation, but it is as important as any piece of legislation we could have passed.

It is the renewal of realistic debate over national needs, national resources and national priorities after a decade of feel-good rhetoric that avoided the tough choices.

With the passage of the deficit reduction plan, we have taken the first step in restoring fiscal responsibility to our National Government. That is an action we owe to our children and their children as much as to ourselves.

The lengthy budget debate should not overshadow the achievements of what has been a remarkably productive Congress. Legislation long overdue was finally enacted into law during this Congress. Programs to respond to national needs were renewed and restored to serve their purposes better.

We increased the minimum wage for the first time in 10 years. The hardest-working and lowest-paid Americans were long overdue for a raise. Passage of the minimum wage act gave it to them. Any American who works full time should earn enough to live decently. That is only fair. It is a principle we must never again disregard.

For the first time in our history, we enacted civil rights legislation to give those with disabilities the rights every American takes for granted. With enactment of the Americans with Disabilities Act, the productive capacities of all our people will be employed. It will become true that in America, people will be judged by their abilities, not limited by their disabilities. The ADA is landmark legislation of which we can all be proud.

We passed the National Service Act to reinvigorate the spirit of public service. It puts into practice the principle that everyone lucky enough to live in this great country has a responsibility to give something back.

Millions of American volunteers already do. The National Service Act includes the President's Thousand Points of Light Foundation to encourage even more to do so. The bill will encourage young people to take their energy and their idealism and devote both to service of their fellow Americans.

It is a building block on which we can recapture the old American tradition of being a community of people with common interests and mutual responsibilities.

This Congress passed the first major housing bill in over a decade. It is a first step in reversing the alarming decline in home ownership by younger families. For 50 years, the American dream has been a home of your own. We must not let that dream dissolve for today's young families. The housing bill creates a trust fund for first-time moderate income home buyers which will be a step up for young families priced out of today's housing market.

The housing bill also gives the States assistance in a way which lets local officials choose local housing priorities and direct resources to those priorities. The bill is a restortion of an important national priority, the improvement and expansion of our Nation's housing stock.

Young families need homes and young parents need child care. As more mothers of young children are forced to work, the care of their children has become increasingly urgent. For the first time in 20 years, this Congress passed a child care act that responds to the workplace realities of our time.

This program is an essential complement to the changes occurring in our work force and our workplaces today. It is needed to help families function in today's world. We cannot expect to preserve the stable family environment that children need unless the society adapts. Child care is not the whole family agenda, but it is an essential first step.

The massive oil spill in Prince William Sound in Alaska was the catalyst for a major piece of environmental protection, the oil spill legislation. For too many decades, our coastlines and fisheries were at continuous risk of damage by oil spills. As oil imports rose, the risk of spills rose. Now, for the first time, we have oil spill legislation to ensure thorough and swift cleanup. This is essential protection for our coastlines against a hazard that can never be entirely eliminated by human effort.

The oil spill legislation also marked the first major action on the environmental agenda which faces every nation today. The central item on that agenda in this Congress was the reauthorization after 13 years of the Clean Air Act.

The Clean Air Act reauthorization has been a personal goal of mine since I first came to the Senate. The bill the Senate passed today represents the culmination of 10 years' work. It sets the course for real improvement in the future.

Clean air is nothing less than a public health matter, as much as clean drinking water and adequate sewage treatment. At a time when more than three-fifths of Americans breathe air that does not meet health standards, there is no more fundamentally important legislation.

The Clean Air Act renews the effort to clean the air in our Nation's urban areas; for the first time it sets realistic deadlines for reducing toxic emissions from manufacturing and commercial processes. It breaks new ground in dealing with the pollution caused by automobiles and other vehicles. It begins the long overdue reduction of sulfur dioxide and nitrogen oxide emissions that cause acid rain. It mandates the phaseout of CFC's and other chemicals that are destgroying the protective ozone layer in the upper atmosphere.

These provisions were the work of many Senators over many years. But the contribution of the President in breaking the deadlock that prevented action for so long deserves mention. The President's willingness to break with the past helped make this legislation possible.

Other important legislation has been passed by the Senate in this Congress as well. We passed a drug control bill that significantly shifts resources to prevention and treatment to reduce the demand that fuels the drug trade.

We passed a 5-year farm bill which lays the basis for American agriculture in the next century. We approved the first major overhaul of immigration law in a quarter century. We set in place a significant cost-reducing restructuring of the way that tax dollars are spent on health care services.

None of these legislative achievements, however, will mean much in the long term if we do not restore fiscal responsibility to our Government.

A great nation—and ours is a great Nation—must recognize limits as well as rising to opportunities. A great nation must acknowledge the demands of the real world, as well as working for a better one.

The 101st Congress has taken the first serious action to restore fiscal responsibility and fairness in taxation to our national budget. The 5-year deficit reduction bill passed today will make real savings.

It ensures that the cost of deficit reduction is shared by those who can best afford to pay their share. It raises the tax burden of the most well-off people in our Nation—those earning over $200,000 a year—much more than it raises the tax burden on working Americans.

It ensures that our Nation's urgent unmet needs will not be held hostage for years into the future while we make up for the indulgences of the past.

Americans have been disappointed and frustrated at the delays and interminable negotiations that occurred before an agreement could be reached. We have all been disappointed and frustrated. But it should not be surprising that the differences which have divided us for a decade delayed us for months.

The differences are real and the budget agreement, as a result, reflects the concerns of both sides. It is not agreement which, working alone, President Bush would have produced. It is not the agreement which, working alone, Senate Democrats would have produced. It is an agreement in which everyone can find something to criticize.

Like all successful legislation, it is a compromise. But it is a compromise that preserves the central issue on which all of us agree: The overriding need to put our fiscal house in order, to reduce the deficit, to reduce the tax dollars that must now be devoted to the payment of interest on past debt each year.

The debate on this budget agreement was no ordinary debate because this is no ordinary budget agreement.

It is a turning point in a decade-long trend that has made our Nation the world's largest debtor. It is the first step in the return to a national debate over the kind of Nation we will be as we enter the next century.

Difficult as the budget agreement has been, it is only the groundwork for the challenges we face in the future.

Although this has been a productive Congress, there have been disappointments as well.

I regret that an important goal for middle income working people could not be enacted this year: The President's veto of the family leave bill means we will have to revisit that issue next year.

The President's veto of the Civil Rights Act of 1990 was a grave disappointment. That, too, will be revisited.

The Senate-passed campaign finance reform bill represented real progress in limiting spending for election campaigns. But we were unable to reach conclusive action. It also faced a veto threat because the President opposes any campaign spending limits.

Despite our differences, the 101st Congress has successfully worked in a bipartisan fashion in many areas. The Central American accord of last year ended a rancorous decade-long national debate. Bipartisan and enthusiastic support for the emerging democracies in Eastern Europe unites us. We agree on the goal of helping strengthen those movements and ensuring successful restoration of free market economies in those nations.

We still seek agreement on the reshaping of our military commitments to meet the national security needs of the future. The American people question why we must maintain an enormously costly Star Wars Defense Program. Senate Democrats agree that this question demands a clearer answer. We must recast our defense and foreign policies to meet the opportunities and the challenges of the emerging world order; we should not reflexively continue each and every existing program without change.

The changes abroad demand innovative and creative responses. The changes at home demand no less.

We must complete the unfinished agenda in the next Congress: The health care needs of the uninsured and the need for long-term care. That will demand changes in the structure of the health care system, not just additional resources added to those already devoted to this sector.

The environmental agenda will demand further attention: Communities face overfull landfills; we must make a serious beginning on recycling.

The administration's first energy policy is due in December. The crisis in the Persian Gulf has dramatized how central it is to our national economy and our national security to act to conserve existing energy resources and develop new, sustainable supplies and technologies.

When the next Congress takes up these issues and others, we will do so on the sound foundation that has been laid down by the 101st Congress.

THANKS TO THE STAFF

Mr. MITCHELL. Mr. President, as the 101st Congress comes to a close, I want to take time to recognize and to express my deep appreciation to the people who make the life and work of the 100 U.S. Senators much easier and more productive, the men and women who constitute the Senate staff. These outstanding Americans, for the most part, work in the backstage of history, but their work is fundamental to this Chamber. They are dedicated and professional public servants, and I commend them for their service to their country, and their contributions to the U.S. Senate.

Every Member of the Senate is indebted to the invaluable services of the Secretary of the Senate, Walter (Joe) Stewart. His loyalty to the institution and his efforts on behalf of the Senate are well known to all Members. He is ably assisted by Jeri Thomson, Assistant Secretary; and by Michelle Haynes, Dot Svendson, Muriel Anderson, and Kathy Dignan.

The secretary for the majority, Abby Saffold, gets a sincere thank you. Hers is a demanding job that requires a high degree of competence and dedication. She meets these requirements with such professionalism and such pleasantness that there is never a question that I and my Democratic colleagues are indeed fortunate to have her in this position. Likewise, she is indeed fortunate to have as her assistants Jerri Davis and Sue Spatz.

The assistant secretary for the majority, Robert Bean, performs his important duties with diligence and enthusiasm.

Every Democrat Senator is well aware of and very appreciative of the staff of the Democratic Cloakroom, Joe Hart, Lenny Oursler, Patrick Hynes, Art Cameron, and Kathy Drummond. They meet the demands of their important jobs and respond to the requests put before them so effectively that there might be a tendency to take them for granted. I do not. I assure them that I know their work, and I appreciate it.

I feel safe in saying that not only Democratic Senators, but each and every Senator truly appreciates the work of the Democratic floor staff, Charles Kinney, Marty Paone, and Lula Davis. Their attention to detail, their professionalism, their cooperation, their willingness to work long into the night, and many other skills and job demands make them invaluable to the effective workings of this chamber. I thank them.

Mr. President, I want to take this opportunity to express my appreciation for the Republican counterparts to the Democratic staff I have just mentioned. Their work and their cooperation has been appreciated, and it has certainly contributed to the successes of the 101st Congress. I am especially grateful for the help I have received from Sheila Burke, chief of staff to the Republican Leader. I also thank the Secretary for the Minority Howard O. Greene and his assistant,

John L. Doney, and the staff of the Republican Cloakroom. And Elizabeth Green of the Republican floor staff is always courteous and helpful. I thank these and other staff on the other side of the aisle. I want them to know that I am certainly aware of their cooperation and I appreciate it.

With great pleasure I now call attention to the services of Senate Parliamentarian Alan Frumin, executive assistant Sally Goffinet, and their assistants, Kevin Kayes, Jim Weber, and Jennifer Smith. Their knowledge of the Senate's complex rules, and their ability to interpret them are respected and essential to the functioning of this chamber. We are fortunate to have them.

I commend Russell Jackson and the entire morning Service Department staff who stay here while the Senate is in session and beyond—often into the wee hours of the morning—to make sure that Senate publications are ready the next day. Their dedicated efforts in ensuring that the publications of the Democratic Policy Committee, including the DPC Daily Reports, Legislative Bulletins, Special Reports, and Issue Alerts are ready when needed is especially commended and deeply appreciated.

Important work is also performed by the official reporters of debates, chief reporter, Chick Reynolds, the assistant chief reporter, Scott Sanborn, morning business editor, Mark Lacovara and his assistant Larry Duncan, and their staffs, Frank Smonskey, Ron Kavulick, Jerry Linnell, Raleigh Milton, Joel Breitner, Mary Jane McCarthy, and Paul Nelson all have my deep gratitude for jobs well done.

Tedious, but needed tasks are performed by legislative clerk William Farmer and his assistant, Scott Bates; bill clerk Vincent Del Balzo, and his assistants, Kathie Alvarez and Coleen Kuehn; journal clerks William Lackey, Dave Tinsley, and Pat Makanui; and enrolling clerk Brian Hallen and his assistant, Tom Lundregan. They have my thanks for their dedication to their work and their attention to detail.

Barry Wolk and his printing services staff, Jerry Ehrenfreund, John Steen and Kurt Stelter; the superintendent of the document room, Jeanie Bowles, and her staff; executive clerk, Gerry Hackett; Daily Digest editor, Tom Pellikaan, and the Director of the Office of Senate Security Michael DiSilvestro work hard to make our jobs a little easier by their willingness to work long and hard.

I thank the Sergeant at Arms, Henry Giugni, his deputy Jeanine Drysdale Lowe, and their assistants Linda Takiama and Loretta Fuller for the skill and dedication with which they perform their duties.

The enormous responsibility for protecting the U.S. Capitol belongs to Chief Kerrigan and the U.S. Capitol Police. I thank them for the professional way in which they perform their important and sometimes dangerous duties while, at the same time, ensuring the right of the people to observe their Government in action and to petition it.

The director of the computer center, Mary Ruth Alter, postmaster Gayle Cory, and the director of telecommunications, Robert McCormick, and all of their staffs do outstanding work in very demanding jobs.

Mr. President, former Senate majority leader Lyndon Johnson was fond of saying, "information is power." While I always understood what he meant by the phrase, it is as majority leader I have come to appreciate what he meant. It is as majority leader I have come to appreciate the outstanding work of the Congressional Research Service and the Senate Library. Their abilities to provide reliable information so quickly make them a fundamental part of the effective workings of the U.S. Senate.

In the same vein, I call attention to and express my appreciation for the work of Senate historian, Dr. Richard Baker. He and his talented staff perform a difficult, but invaluable service in documenting the history of this great institution.

Rev. Dr. Richard Halverson, the Senate Chaplain, is an inspiration and a comfort for every Member of the Senate family in times of grief, sickness, or need.

While Reverend Halverson attends to our spiritual needs, attending physician, Dr. Robert Krasner and his staff, attend to our physical needs. Also attending to our physical needs are the outstanding staffs of the Senate restaurants who make sure that we are well fed.

Those who work in the Senate press galleries, including Bob Peterson, Roy McGhee, Maurice Johnson, and Larry Janezich, perform a valuable service in assisting the media in following the activities in this Chamber, and I thank them for it.

The dedicated staff of the TV control offices enables the American people to follow the deliberations of the Chamber. I thank this staff for their diligence, their outstanding work, and their success in helping to bring the workings of the U.S. government into the homes of millions of Americans.

I especially thank the people who manage the Senate reception room, Brandon Penney, "Irish" McLain, and Ruby Paone. Their friendliness and cooperation with everyone is well known and needs no elaboration, but it does deserve a thank you. Also deserving of a special thank you are the Senate doorkeepers who are with us each hour we are in session. Their long hours are always noted, and their work is always appreciated.

Finally, I want to express special attention to the Senate pages. These young men and women are here learning how their Federal Government operates, while assisting each Member of this body with enthusiasm. They are a valuable part of the Senate. I thank them for their work, and wish them the best in what I know will be rich and rewarding careers.

Mr. President, there are many other people that contribute to the workings of the Senate. While time does not permit me to thank everyone by name, each has my most profound and sincere appreciation for the work they do for this body.

THANKS OF THE SENATE TO THE MINORITY LEADER

Mr. MITCHELL. Mr. President, I send a resolution to the desk and ask for its immediate consideration and that it be read by the clerk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 353) to commend the exemplary leadership of the minority leader.

S. RES. 353

Resolved, That the thanks of the Senate are hereby tendered to the distinguished minority leader, the Senator from Kansas, the Honorable Robert Dole, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 101st Congress.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 353) was agreed to.

Mr. MITCHELL. I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THANKS OF THE SENATE TO THE MAJORITY LEADER

Mr. SIMPSON. Mr. President, I send a resolution to the desk and ask that it be read in full.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 354) to commend the exemplary leadership of the majority leader.

S. RES. 354

Resolved, That the thanks of the Senate are hereby tendered to the distinguished majority leader, the Senator from Maine, the Honorable George J. Mitchell, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 101st Congress.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 354) was agreed to.

Mr. MITCHELL. I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THANKS OF THE SENATE TO THE VICE PRESIDENT

Mr. SIMPSON. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

S. RES. 355

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Dan Quayle, Vice President, of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred First Congress.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 355) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE

Mr. MITCHELL. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

S. RES. 356

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Robert C. Byrd, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred First Congress.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 356) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZING THE PRESIDENT OF THE SENATE, THE PRESIDENT OF THE SENATE PRO TEMPORE, AND THE MAJORITY AND MINORITY LEADERS TO MAKE CERTAIN APPOINTMENTS AFTER THE SINE DIE ADJOURNMENT OF THE PRESENT SESSION

Mr. MITCHELL. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 357) authorizing the President of the Senate, the President of the Senate pro tempore, and the majority and minority leaders to make certain appointments after the sine die adjournment of the present session.

S. RES. 357

Resolved, That notwithstanding the sine die adjournment of the present session of the Congress, the President of the Senate, the President of the Senate pro tempore, the majority leader of the Senate, and the minority leader of the Senate be, and they are hereby, authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 357) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. SIMPSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

TRIBUTE TO THE MAJORITY LEADER

Mr. SIMPSON. Mr. President, before that might be entered, let me say for expressing ourselves on resolutions I want to personally pay tribute to the majority leader for his leadership in this session of the Congress.

He treated those of us on this side of the aisle with great fairness, and ultimate patience.

I have seen him protect our Members procedurally when he did not have to issue that grace. We have appreciated it.

There is an element of trust here. We know that is important to the operation of the legislative body.

I happen to have the great opportunity to serve with him on two committees, and I have enjoyed it thoroughly.

His leadership is directly responsible for the Clean Air Act which we passed today. Without his extraordinary grasp of it, his attention to it, and the ability to resolve the conflict of so many, it would certainly not come to pass.

I wanted to express that to our minority leader, BOB DOLE, one of the most extraordinary men, a man who lives and breathes this institution and all of its vagaries, and one who has been very kind to me. It is a great pleasure to serve as his lieutenant, as he leads our side of the aisle. I commend the relationship of the majority leader and minority leader.

Also, I want to pay special tribute to my friend, AL CRANSTON, of California, who serves as the majority whip, as I serve as the minority whip. He, too, is a long-time friend. We try to work closely together, without partisan and destructive tendencies. I think that is, hopefully, for the betterment of the body. It is a great pleasure to work with these three gentlemen, indeed.

Mr. MITCHELL. Mr. President, such words are always gratifying, but in this case they are especially gratifying, because they come from a friend and a colleague who I and all other Senators admire and respect, the Senator from Wyoming. It has been a pleasure for me to work closely with him and the distinguished Republican leader during this, my first Congress as majority leader. Their unfailing courtesy has made it possible for me to get through this first 2-year period. I look forward to working with them very closely in the next Congress, as the distinguished Senator from Wyoming said, for the good of this institution and our beloved country.

Mr. President, I yield the floor.

THE MAJORITY LEADER

Mr. RIEGLE. Mr. President, if the leader will yield, I want to make an observation about the leadership of the majority leader during this session of Congress. We had a Democratic caucus today during lunch, and some well-deserved accolades were addressed to GEORGE MITCHELL for the truly outstanding leadership he has given the U.S. Senate. As those words were spoken, all of the members of the caucus got to their feet to give him a standing ovation to express the feeling that we all have about him and about the job that he has done.

I think at a time when the country is wondering about many of the issues that confront us and feels an uncertainty in many areas—troops in Saudi Arabia, budget problems, and many other things—the one voice, among others, that has come through strong and clear, and I think on the mark time after time, has been that of our majority leader.

We are very fortunate to have his leadership. I do not think anyone can understand the requirement of time and effort that attaches to this work.

Tonight is just one example, on the last night of the session, but there are countless nights throughout the year where the work requirements on the majority leader run to midnight or later, because the work of the Senate so requires.

I have never seen an occasion where GEORGE MITCHELL has not been in full command and giving his all at every hour of the day and night. As one citizen and as one Senator, I am just deeply grateful for his leadership, and I thank him for a herculean effort and a great job.

Mr. MITCHELL. I thank my colleague for the kind remarks. They are very much appreciated.

THE MAJORITY LEADER

Mr. CRANSTON. Mr. President, I want to join in the remarks made by the distinguished Senator from Michigan. We have a great leader in GEORGE MITCHELL. It has been my great pleasure to work with him during these 2 years as the assistant whip. I think we developed a great record, not just for the Democratic Party but for the Senate and the country, under his leadership. I think he is proving to be a remarkably effective leader in the very short time that he has been our leader. I am very proud to serve under and with him.

Mr. President, I want to read a concurrent resolution that I submitted a few days ago, along with Senator PACKWOOD and Senator METZENBAUM.

S. CON. RES. —

Whereas there is no parallel between Iraq's unprovoked aggression against Kuwait and Israel's act of self-defense in the war against it by all the surrounding Arab nations in 1967;

Whereas Israel acted in response to an outside invasion to protect its "right to live in peace within secure and recognized boundaries free from threats and acts of force" (United Nations Security Council Resolution 242), and Iraq defied all norms of international law and deprived an entire nation of these fundemantal rights; and

Whereas the President and the Secretary of State have repeatedly stated that the policy of the United States is to keep the resolution of the Iraqi-Kuwaiti crisis separate from any other conflict in the region; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) the crisis created by Iraq's invasion and occupation of Kuwait must be addressed and resolved on its own terms separately from other conflicts in the region; and

(2) the President should continue to resist any effort to link the Iraqi-Kuwait crisis with the Arab-Israeli conflict.

That ends the resolution.

Mr. President, although it was impossible in these closing moments to get this resolution before the Senate for consideration, I am very confident that that resolution expressed the overwhelming will and view of the Members of this body.

The House of Representatives considered an identical measure a few days ago introduced by Congressman MEL LEVINE of California and Congressman CHARLES SCHUMER of New York. It was passed by an overwhelming vote. I do not remember the exact numbers, but it was overwhelming on both sides of the aisle for it, with a scant handful of Members of the House against it.

I am confident that the vote in this body would have been something better than 90 votes for it, and something less than 10 against it. That is without doubt the will of this body expressed in this resolution.

I regret that we have not had the opportunity formally to have the Senate go on record in support of this resolution.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant clerk called the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I would like to make clear that the views expressed by the Senator from California, I am sure, reflect the views of the overwhelming majority of Members of this body, and Congress generally, and that is the conflict between Iraq and Kuwait is in no way comparable to the problems that exist in Israel with its neighbors. And there has been too much of an effort on the part of too many to make that comparable.

Certainly Saddam Hussein has made that effort. We in the Congress know better than that, and I think American people know better than that. That is the reason I think it is so important, and I am so pleased that the Senator from California, and the Senator from Oregon, Senator PACKWOOD, and myself offered this resolution.

It is too late to expect it to pass this evening, but certainly I am certain that if it were called up to be passed, it would overwhelmingly pass this body, as well as the House of Representatives. I commend the Senator for his leadership.

THE LEADERSHIP

Mr. METZENBAUM. Mr. President, with respect to the leadership of the distinguished majority leader, I think it is fair to say that it has been an incredible one. He has been a stalwart. He has kept his feet on the ground under very difficult circumstances. When the fur was flying and everybody else was losing their tempers, he was resolute in his determination to move the agenda of the Senate forward. And he did so with grace and good humor, and he has the respect of all of us. I think we are indeed fortunate to have his leadership in this body.

In the same sense, I might say it has been a privilege of mine to have the opportunity to work with the distinguished minority leader. I have had my differences with him on occasion, but overall I certainly respect his ability as a minority leader. And I certainly recognize that he has been very fair as far as my dealings with him, and I think fair in his dealings with all Members of this body.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR McCLURE—DEDICATED LEGISLATOR, ALWAYS TRUE TO HIS PRINCIPLES

Mr. DOLE. Mr. President, I will just take a minute or two to say goodbye to my three departing colleagues on this side.

First, I guess the one I have served the longest with is JIM MCCLURE. We shared a term in the House. We have gone from the minority to the majority and back again in the Senate. We have even listened together to the ramblings of Saddam Hussein. But above all, we became good friends.

Mr. President, the final day of the 101st Congress will mark the end of a distinguished Senate career for our colleague from Idaho, JIM MCCLURE. During the past 24 years, JIM and I have been through a lot together—we shared a term in the House, in the Senate we have gone from the minority to the majority and back again, and we have even listened together to the ramblings of Saddam Hussein. But above all, we have become good friends.

As public servants, we are all here to make a difference. And no doubt about it, JIM MCCLURE has done that and more. JIM leaves behind an impressive legislative legacy, not only for the people of Idaho but for the Nation. Legislating may fast become a lost art, but as the former chairman and current ranking member of the Senate Energy Committee, JIM has demonstrated a can-do spirit of bipartisanship and dedication to detail that always pay off in real legislative achievement. That is what matters to JIM—the bottomline, not the headline.

Mr. President, during JIM MCCLURE's tenure as chairman of the Energy and Natural Resources Committee, America was graced with countless new parks, historical sites, and battlefields, along with the approval of more acres of wilderness in the continental United States during his 6-year chairmanship than at any other time in American history. JIM has earned the title of Senate energy expert through years of old-fashioned hard work. He has pushed hard for a commonsense national energy policy, based on the belief that America should determine its energy future, not some Middle Eastern madman. JIM also pushed through important water reclamation reforms that will benefit Idaho farmers for decades to come. Ask anyone who has had to debate JIM on the floor—he is one tenacious and articulate defender of the American West.

But his accomplishments far exceed the energy and natural resources arena. As a member of the Helsinki Commission, JIM MCCLURE has been a staunch fighter for human rights. When it came time to ratify the Intermediate Range Nuclear Forces [INF] Treaty with the Soviets, JIM MCCLURE asked all the right questions. Ensuring we gave this critical treaty the careful scrutiny it deserved. And after keeping the heat on the Soviet Union for repeated arms control violations, no one can take greater satisfaction in the breakup of the Soviet military empire than JIM MCCLURE.

Always true to his principles, JIM never let the Senate change him—but he changed the Senate, and for his distinguished service to our Nation, all Americans owe him a great debt of gratitude. Mr. President, I know my colleagues join me in wishing JIM and his wife of 40 years, Louise, all the best as this good man from Payette, ID, takes on exciting new challenges in Washington and in his cherished home State.

BILL ARMSTRONG: THE SENATE'S MR. CONSERVATIVE

Mr. DOLE. Mr. President, sometimes we find Members we work with who should not retire because they are too young, too bright, to articulate, too dedicated, too committed. And we are losing one of our brighest, most respected Members in BILL ARMSTRONG.

I have told my good friend, BILL ARMSTRONG, many years ago that I viewed him as Mr. Conservative. There has been a lot of talk in this country about who really is Mr. Conservative. In my view he is BILL ARMSTRONG. He believes it. He is committed to it. He is sincere, he is dedicated, and he does not deviate.

Certainly, I think my colleagues on both side of the aisle will miss BILL ARMSTRONG. He speaks with one clear voice. He is easily understood. He has been one of the real leaders on fiscal issues.

As I said earlier today, and as I have heard other of my colleagues say, someday American working men and women will understand the importance of indexing the Tax Code and the brackets and the exemptions, and someday somebody might look up and determine, well, just who did that? Who did this for the working people of America?

For example, I think this year it means about $36 billion to men and women in America. Only 1 percent of that goes to anybody who might be earning more than $200,000. The great bulk of it goes to the working people. I had the great pleasure of working with Senator ARMSTRONG on this particular project but it was his again doggedness, determination, commitment, that made it possible to bring it to the Senate floor where we had a pretty healthy debate, and passed by a vote of as I recall 60-some to 30-some.

So the American taxpayer and the American working men and women never had a better friend than BILL ARMSTRONG. I hope that someday when we look back and talk about fairness, talk about the Tax Code, talk about what it means to people, there will be some recognition—not that BILL ARMSTRONG ever sought recognition—that one of the most important forward steps was the idea of the Senator from Colorado.

Now working men and women are not forced into higher tax brackets because of inflation. It saved them millions and millions and billions and billions of dollars that maybe they do not know about, but if we had not changed the law it would not have happened.

Mr. President, at the conclusion of the 101st Congress the Senate will be losing one its brightest and most respected Members. I am talking about my friend BILL ARMSTRONG, the senior Senator from Colorado, whose distinguished career in the Senate has earned him the title of "Mr. Conservative."

BILL came to the Senate in 1978 after three quality terms in the House, and his departure will leave some mighty big footprints in this Chamber.

He has been one of the real leaders on fiscal issues, insisting on balanced budgets, line items vetoes, lower taxes, less spending and a lot more accountability when it comes to budget policy on Capitol Hill. No doubt about it, the American taxpayer never had a better friend than BILL ARMSTRONG.

I was proud to join him in 1981 when the Senate enacted—and President Reagan signed into law—our proposal to index the tax tables so that inflation wouldn't force working men and women into higher tax brackets; that good idea has saved working America millions and millions of dollars.

BILL has also been a eloquent and passionate spokesman for the right to life, and has stood tall for freedom fighters and an American defense force second to none. He understood better than most what the people expected from Washington—less Government, less redtape and a lot more common sense.

Senator ARMSTRONG has also been widely recognized as one of our most gifted and persuasive speakers, a Senator whose knowledge of the issues and the rules always made him a formidable debate opponent on the Senate floor.

BILL ARMSTRONG has made a difference for the people of Colorado and for America, too. His intellect and his commitment to principle will be sorely missed.

So for all kinds of reasons, I think we are all going to miss BILL ARMSTRONG, and we all wish he had not retired.

But as a young man, he has a long, long career ahead of him. As the Senate Republican leader, I certainly want to wish him the best after almost two decades of dedicated service on Capitol Hill. To his wife, Ellen, and to his family, we wish the Armstrong family the best.

He is a good man with Christian values and, again, Mr. Conservative.

GORDON HUMPHREY—TIRELESS CHAMPION OF CONSERVATISM

Mr. DOLE. Mr. President, the distinguished senior Senator from New Hampshire, GORDON HUMPHREY, is retiring from the Senate at the conclusion of the 101st Congress. The good news is, he is not leaving public service. In fact, he will still be a senator, a newly elected State senator working hard in Concord for the people of his district.

Senator HUMPHREY's decision to return to his home State tells you a lot about his special commitment to commonsense government. He understands that Washington is not the end-all, be-all for the American people. Senator HUMPHREY has it right—the less Washington the better.

He has been a tireless champion for conservatism, pushing hard for lower taxes, less spending, a defense system second to none, and aid to freedom fighters around the globe; and no one has argued more effectively or compassionately for the rights of the unborn.

I know something about the people of New Hampshire. They are fiercely independent, proud, and determined—let me tell you something, that's GORDON HUMPHREY.

Mr. President, there has been a lot of talk lately about limiting the terms

of Congressmen and State representatives—it's the only way to guarantee accountability and good government, many people are saying. Well, GORDON HUMPHREY has been way ahead of the curve on this one. When he was first elected to the U.S. Senate in 1978 he made a promise to the voters: Two terms is enough.

Now, after 12 years of good work in the Senate, the distinguished Senator from New Hampshire is heading home, making good on his promise not to make Washington politics a career.

Mr. President, GORDON HUMPHREY has been true to his convictions throughout his career on Capitol Hill. He will do the same in Concord, and that's just what the people of New Hampshire want, and what they have always expected from their newest State senator.

The Senate Republican leader wishes him all the best as Senator GORDON HUMPHREY continues his distinguished career in public service.

KANSAS CONGRESSMAN BOB WHITTAKER

Mr. DOLE Mr. President, one of my Kansas colleagues in the House is retiring at the conclusion of the 101st Congress and I just wanted to take a few moments to salute the outstanding career of Fifth District Representative BOB WHITTAKER.

BOB is leaving Capitol Hill after six terms of dedicated service to the people of southeast Kansas. An effective, commonsense conservative, his retirement was something of a surprise to some folks, given BOB's tremendous popularity throughout the district. In fact, his reelection margins have stayed in the whopping 40- to 50-percent range, indicating that BOB was just about unbeatable.

But those who know BOB WHITTAKER really were not too surprised; they know BOB has always made his family priority No. 1, and he was not about to make a career out of Washington.

Nevertheless, BOB WHITTAKER can be proud of his legislative accomplishments, especially in an area that is so critical to the citizens of his district—rural health care. BOB understands that there can be no revitalization of rural America if it does not include a revitalized rural health care system.

BOB has also been a leader on the fiscal responsibility front, voting for lower taxes, less spending, and the kind of budget discipline the American people are demanding, such as the line item veto and the balanced budget amendment.

BOB WHITTAKER is a good man, a man of faith and values. He has stayed true to those principles throughout his career on Capitol Hill, and I wish him all the best as he leaves the Kansas delegation.

I have enjoyed working with him for the past 12 years. No doubt about it, BOB WHITTAKER has made a difference for the people of Kansas.

ARIZONA DESERT WILDERNESS ACT

Mr. MITCHELL. Mr. President, I ask that the Chairman lay before the Senate a message from the House of Representatives on H.R. 2570.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 2570) entitled "An act to provide for the designation of certain public lands as wilderness in the State of Arizona." with the following amendment:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE.—Titles I through III of this Act may be cited as the "Arizona Desert Wilderness Act of 1990".

TITLE I—DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT

SEC. 101. DESIGNATION AND MANAGEMENT.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following public lands are hereby designated as wilderness and therefore, as components of the National Wilderness Preservation System:

(1) certain lands in Mohave County, Arizona, which comprise approximately 23,600 acres, as generally depicted on a map entitled "Mount Wilson Wilderness" and dated February 1990, and which shall be known as the Mount Wilson Wilderness;

(2) certain lands in Mohave County, Arizona, which comprise approximately 31,070 acres, as generally depicted on a map entitled "Mount Tipton Wilderness" and dated February 1990, and which shall be known as the Mount Tipton Wilderness;

(3) certain lands in Mohave County, Arizona, which comprise approximately 27,530 acres, as generally depicted on a map entitled "Mount Nutt Wilderness" and dated February 1990, and which shall be known as the Mount Nutt Wilderness: *Provided,* That the existing water pipeline for the town of Oatman, together with the right of ingress and egress thereto, may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(4) certain lands in Mohave County, Arizona, which comprise approximately 90,600 acres, as generally depicted on a map entitled "Warm Springs Wilderness" and dated February 1990, and which shall be known as the Warm Springs Wilderness;

(5) certain lands in Mohave County, Arizona, which comprise approximately 15,900 acres, as generally depicted on a map entitled "Aubrey Peak Wilderness" and dated February 1990, and which shall be known as the Aubrey Peak Wilderness;

(6) certain lands in La Paz County, Arizona, which comprise approximately 14,630 acres, as generally depicted on a map entitled "East Cactus Plain Wilderness" and dated February 1990, and which shall be known as the East Cactus Plain Wilderness;

(7) certain lands in Mohave and La Paz Counties, Arizona, which comprise approximately 41,600 acres, as generally depicted on a map entitled "Rawhide Mountains Wilderness" and dated February 1990, and which shall be known as the Rawhide Mountains Wilderness;

(8) certain lands in Mohave, Yavapai, and La Paz Counties, Arizona, which comprise approximately 126,760 acres, as generally depicted on a map entitled "Arrastra Mountain Wilderness" and dated February 1990, and which shall be known as the Arrastra Mountain Wilderness;

(9) certain lands in La Paz County, Arizona, which comprise approximately 25,287 acres, as generally depicted on a map entitled "Harcuvar Mountains Wilderness" and dated February 1990, and which shall be known as the Harcuvar Mountains Wilderness;

(10) certain lands in La Paz and Maricopa Counties, Arizona, which comprise approximately 22,865 acres, as generally depicted on a map entitled "Harquahala Mountains Wilderness" and dated February 1990, and which shall be known as the Harquahala Mountains Wilderness;

(11) certain lands in Maricopa County, Arizona, which comprise approximately 20,600 acres, as generally depicted on a map entitled "Big Horn Mountains Wilderness" and dated February 1990, and which shall be known as the Big Horn Mountains Wilderness;

(12) certain lands in Maricopa County, Arizona, which comprise approximately 30,170 acres, as generally depicted on a map entitled "Hummingbird Springs Wilderness" and dated February 1990, and which shall be known as the Hummingbird Springs Wilderness;

(13) certain lands in La Paz, Yuma, and Maricopa Counties, Arizona, which comprise approximately 89,000 acres, as generally depicted on a map entitled "Eagletail Mountains Wilderness" and dated February 1990, and which shall be known as the Eagletail Mountains Wilderness;

(14) certain lands in Maricopa County, Arizona, which comprise approximately 15,250 acres, as generally depicted on a map entitled "Signal Mountain Wilderness" and dated February 1990, and which shall be known as the Signal Mountains Wilderness;

(15) certain lands in Maricopa County, Arizona, which comprise approximately 61,000 acres, as generally depicted on a map entitled "Woolsey Peak Wilderness" and dated February 1990, and which shall be known as the Woolsey Peak Wilderness;

(16) certain lands in Maricopa County, Arizona, which comprise approximately 14,500 acres, as generally depicted on a map entitled "Sierra Estrella Wilderness" and dated February 1990, and which shall be known as the Sierra Estrella Wilderness;

(17) certain lands in Maricopa and Pinal Counties, Arizona, which comprise approximately 34,400 acres, as generally depicted on a map entitled "Table Top Wilderness" and dated February 1990, and which shall be known as the Table Top Wilderness;

(18) certain lands in Pima County, Arizona, which comprise approximately 5,080 acres, as generally depicted on a map entitled "Coyote Mountains Wilderness" and dated February 1990, and which shall be known as the Coyote Mountains Wilderness;

(19) certain lands in Pima County, Arizona, which comprise approximately 2,065 acres, as generally depicted on a map entitled "Baboquivari Peak Wilderness" and dated February 1990, and which shall be known as the Baboquivari Peak Wilderness;

(20) certain lands in Gila County, Arizona, which comprise approximately 9,201 acres,

as generally depicted on a map entitled "Needle's Eye Wilderness" and dated February 1990, and which shall be known as the Needle's Eye Wilderness: *Provided*, That the right-of-way reserved by right-of-way reservation A-16043 dated October 20, 1986, together with the right of ingress and egress thereto, shall not be affected by this Act, and the existing powerline utilizing such right-of-way may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(21) certain lands in Graham County, Arizona, which comprise approximately 6,590 acres, as generally depicted on a map entitled "North Santa Teresa Wilderness" and dated February 1990, and which shall be known as the North Santa Teresa Wilderness;

(22) certain lands in Graham County, Arizona, which comprise approximately 10,883 acres, as generally depicted on a map entitled "Fishhooks Wilderness" and dated February 1990, and which shall be known as the Fishhooks Wilderness;

(23) certain lands in Cochise County, Arizona, which comprise approximately 11,998 acres, as generally depicted on a map entitled "Dos Cabezas Mountains Wilderness" and dated February 1990, and which shall be known as the Dos Cabezas Mountains Wilderness;

(24) certain lands in Graham and Cochise Counties, Arizona, which comprise approximately 6,600 acres, as generally depicted on a map entitled "Redfield Canyon Wilderness" and dated February 1990, and which shall be known as the Redfield Canyon Wilderness;

(25) certain lands in La Paz County, Arizona, which comprise approximately 18,805 acres, as generally depicted on a map entitled "Gibraltar Mountain Wilderness" and dated February 1990, and which shall be known as the Gibraltar Mountain Wilderness;

(26) certain lands in La Paz and Mohave Counties, Arizona, which comprise approximately 15,755 acres, as generally depicted on a map entitled "Swansea Wilderness" and dated February 1990, and which shall be known as the Swansea Wilderness;

(27) certain lands in LaPaz County, Arizona, which comprise approximately 29,095 acres, as generally depicted on a map entitled "Trigo Mountain Wilderness" and dated February 1990, and which shall be known as the Trigo Mountain Wilderness;

(28) certain lands in Yuma County, Arizona, which comprise approximately 8,855 acres, as generally depicted on a map entitled "Muggins Mountain Wilderness" and dated February 1990, and which shall be known as the Muggins Mountain Wilderness;

(29) certain lands in Yavapai and Maricopa Counties, Arizona, which comprise approximately 9,200 acres, as generally depicted on a map entitled "Hells Canyon Wilderness" and dated February 1990, and which shall be known as the Hells Canyon Wilderness;

(30) certain lands in Maricopa County, Arizona, which comprise approximately 63,600 acres, as generally depicted on a map entitled "North Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the North Maricopa Mountains Wilderness;

(31) certain lands in Maricopa County, Arizona, which comprise approximately 60,800 acres, as generally depicted on a map entitled "South Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the South Maricopa Mountains Wilderness;

(32) certain lands in Mohave County, Arizona, which comprise approximately 38,400 acres, as generally depicted on a map entitled "Wabayuma Peak Wilderness" and dated February 1990, and which shall be known as the Wabayuma Peak Wilderness;

(33) certain lands in Yavapai and Mohave Counties, Arizona, which comprise approximately 27,900 acres, as generally depicted on a map entitled "Upper Burro Creek Wilderness" and dated June 1990, and which shall be known as the Upper Burro Creek Wilderness;

(34) certain lands in Yavapai County, Arizona, which comprise approximately 11,840 acres, as generally depicted on a map entitled "Hassayampa River Canyon Wilderness" and dated February 1990, and which shall be known as the Hassayampa River Canyon Wilderness;

(35) certain lands in Pinal County, Arizona, which comprise approximately 5,800 acres, as generally depicted on a map entitled "White Canyon Wilderness" and dated February 1990, and which shall be known as the White Canyon Wilderness;

(36) certain lands in Yavapai County, Arizona, which comprise approximately 8,700 acres, as generally depicted on a map entitled "Tres Alamos Wilderness" and dated February 1990, and which shall be known as the Tres Alamos Wilderness;

(37) certain lands in Cochise, Greenlee, and Graham Counties, Arizona, which comprise approximately 19,650 acres, as generally depicted on a map entitled "Peloncillo Mountains Wilderness" and dated February 1990, and which shall be known as the Peloncillo Mountains Wilderness;

(38) certain lands in La Paz County, Arizona, which comprise approximately 21,680 acres, as generally depicted on a map entitled "New Water Mountains Wilderness" and dated February 1990, and which shall be known as the New Water Mountains Wilderness;

(39) certain lands in Pinal and Graham Counties, Arizona, which comprise approximately 12,711 acres, as generally depicted on a map entitled "Aravaipa Wilderness Additions" and dated February 1990, and which are hereby incorporated in and shall be deemed to be a part of the Aravaipa Canyon Wilderness (designated in Public Law 98-406, 98 Stat. 1491).

(b) MANAGEMENT.—Subject to valid existing rights, the wilderness areas designated by this title shall be administered by the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this Act.

(c) MAP AND LEGAL DESCRIPTION.—As soon as practicable after enactment of this Act, the Secretary shall file a map and a legal description of each wilderness area designated under this title with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such legal description and map may be made. Copies of such map and legal description shall be on file and available for public inspection in the Office of the Director, Bureau of Land Management, United States Department of the Interior, and in the appropriate office of the Bureau of Land Management in Arizona.

(d) NO BUFFER ZONES.—The Congress does not intend for the designation of wilderness areas in the State of Arizona pursuant to this title to lead to the creation of protective perimeters or buffer zones around any such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(e) FISH AND WILDLIFE.—As provided in paragraph (7) of section 4(d) of the Wilderness Act, nothing in this title or in the Wilderness Act shall be construed as affecting the jurisdiction or responsibilities of the State of Arizona with respect to wildlife and fish on the public lands located in that State.

(f) LIVESTOCK.—(1) Grazing of livestock in wilderness areas designated by this title, where established prior to the date of the enactment of this Act, shall be administered in accordance with section 4(d)(4) of the Wilderness Act and the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(2) The Secretary is directed to review all policies, practices, and regulations of the Bureau of Land Management regarding livestock grazing in Bureau of Land Management administered wilderness areas in Arizona in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this title.

(g) WATER.—(1) With respect to each wilderness area designated by this title, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this title. The priority date of such reserved rights shall be the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(h) WILDLIFE MANAGEMENT.—In furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title, where consistent with relevant wilderness management plans, in accordance with appropriate poli-

cies and guidelines such as those set forth in Appendix B of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(i) MILITARY ACTIVITIES.—Nothing in this title shall preclude low level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes over wilderness areas designated by this title.

(j) MINERAL EXCHANGES.—It is the intent of Congress that private mineral rights within wilderness areas designated by this title be acquired as expeditiously as possible by the Secretary using existing authority to acquire such rights by exchange.

(k) BLACK ROCK WASH ROAD ACCESS.—(1) Section 101(a)(23) of the Arizona Wilderness Act of 1984 (98 Stat. 1487) is amended by striking "the governmental agency having jurisdictional authority may authorize limited access to the area, for private and administrative purposes, from U.S. Route 70 along Black Rock Wash to the vicinity of Black Rock;".

(2)(A) In order to permit adequate public and private access to Federal, State, and private lands on the east side of the Santa Teresa Mountains, the Secretary, acting through the Bureau of Indian Affairs, shall administer that portion of Black Rock Wash Road located within the boundaries of the San Carlos Apache Reservation so as to allow reasonable use of the road for private and administrative purposes and may permit limited public use of such road for the purpose of access to the public lands outside of the reservation boundary.

(B) The Secretary, acting through the Bureau of Indian Affairs, is authorized, subject to the provisions of the Act of June 18, 1934, Chapter 576, Section 16 (25 U.S.C. 476; 48 Stat. 987), to enter into cooperative agreements with the Bureau of Land Management, the Forest Service, and Graham County, Arizona, for signing, fencing, and maintenance of the portion of Black Rock Wash Road referred to in paragraph (A). The entering into of cooperative agreements as authorized by this subsection shall not be construed in any way as a determination of the ownership of such portion of Black Rock Wash Road.

(3) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(l) ALAMO DAM.—Nothing in this title shall be construed to affect the operation for flood control purposes of the Alamo Dam located on the Bill Williams River.

SEC. 102. AREAS RELEASED.

Excepting for the Baker Canyon area (AZ-040-070), and the approximately 57,800 acres of public land as generally depicted on a map entitled "Cactus Plain Wilderness Study Area" dated February, 1990, the Congress hereby finds and directs that all public lands in Arizona, administered by the Bureau of Land Management pursuant to the Federal Land Policy and Management Act of 1976 not designated as wilderness by this title, or previous Acts of Congress, have been adequately studied for wilderness designation pursuant to section 603 of such Act and are no longer subject to the requirement of section 603(c) of such Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

TITLE II—DESIGNATION OF THE GILA BOX RIPARIAN NATIONAL CONSERVATION AREA

SEC. 201. DESIGNATION AND MANAGEMENT.

(a) PURPOSES.—In order to conserve, protect, and enhance the riparian and associated areas described in subsection (b) and the aquatic, wildlife, archeological, paleontological, scientific, cultural, recreational, educational, scenic, and other resources and values of such areas, there is hereby established the Gila Box Riparian National Conservation Area (hereafter in this title referred to as the "conservation area").

(b) AREAS INCLUDED.—The conservation area shall consist of the public lands generally depicted on a map entitled "Gila Box Riparian National Conservation Area" dated February 1990, and comprising approximately 20,900 acres.

(c) MAP.—As soon as practicable after the date of enactment of this Act, a map and legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such map shall have the same force and effect as if included in this section. Copies of such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in the appropriate office of the Bureau of Land Management in Arizona.

(d) MANAGEMENT OF CONSERVATION AREA.—(1) The Secretary shall manage the conservation area in a manner that conserves, protects and enhances its resources and values, including the resources and values specified in subsection (a), pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this title.

(2) The Secretary shall allow only such uses of the conservation area as the Secretary finds will further the purposes for which the conservation area is established. Except where needed for administrative purposes or to respond to an emergency, use of motorized vehicles in the conservation area shall be permitted only on roads specifically designated for such use as part of the management plan prepared pursuant to subsection (g).

(e) WITHDRAWAL.—Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing, and all amendments thereto.

(f) WATER.—(1) Congress hereby reserves a quantity of water sufficient to fulfill the purposes, as specified in subsection (a), for which the conservation area is established. The priority date of this reserved right shall be the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take all steps necessary to protect the right reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such right in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal rights reserved by this title are specific to the conservation area located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(5) Nothing in this title shall be construed to impair or conflict with the implementation of the authorization contained in section 304(f) of Public Law 90-537, approved September 30, 1968.

(g) MANAGEMENT PLAN.—(1) No later than two years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the conservation area (hereinafter in this title referred to as the "management plan") in order to fulfill the purposes for which the conservation area is established. The management plan shall be developed with full public participation and shall include provisions designed to assure protection of the resources and values (including the resources and values specified in subsection (a)) of the conservation area.

(2) The management plan shall include a discussion of the desirability of the inclusion in the conservation area of additional lands, including the lands not in Federal ownership that are contiguous to the boundary of the conservation area (as depicted on the map referenced in subsection (b) or as hereafter adjusted pursuant to subsection (h)) and within the area extending two miles on either side of the centerline of Eagle Creek from the point where Eagle Creek crosses the southern boundary of the Apache National Forest to the confluence of Eagle Creek with the Gila River (this area is hereafter referred to in this title as the "Eagle Creek riparian area").

(3) In order to better implement the management plan, the Secretary may enter into cooperative agreements with appropriate State and local agencies pursuant to section 307(b) of the Federal Land Policy and Management Act of 1976.

(4) In order to assist in the development and implementation of the management plan, the Secretary may authorize appropriate research, including research concerning the environmental, biological, hydrological, cultural, and other characteristics, resources, and values of the conservation area, pursuant to section 307(a) of the Federal Land Policy and Management Act of 1976.

(h) ACQUISITION AND BOUNDARY ADJUSTMENTS.—(1) Subject to the limitations set forth in paragraph (3), the Secretary is authorized to acquire non-Federal lands or interests therein within the boundaries of the conservation area or within the Eagle Creek riparian area.

(2) The Secretary is authorized to adjust the boundaries of the conservation area so as to incorporate within the conservation area any lands or interests within the Eagle Creek riparian area that may be acquired after the date of enactment of this Act as well as public lands within that portion of the Eagle Creek riparian area west of the centerline of Eagle Creek that the Secretary finds appropriate in order to properly manage such acquired lands as part of the conservation area. Any lands or interests so incorporated shall be managed as part of the conservation area.

(3) No lands or interests therein owned by the State of Arizona or any political subdivision of such State shall be acquired pursuant to this subsection except through donation or exchange, and no lands or interests within the conservation area or the Eagle Creek riparian area shall be acquired from any other party or entity except by donation, exchange, or purchase with the consent of the owner of such lands or interests.

(i) NO BUFFER ZONES.—The Congress does not intend for the establishment of the conservation area to lead to the creation of protective perimeters or buffer zones around the conservation area. The fact that there may be activities or uses on lands outside the conservation area that would not be permitted in the conservation area shall not preclude such activities or uses on such lands up to the boundary of the conservation area to the extent consistent with other applicable law.

(j) ADVISORY COMMITTEE.—The Secretary shall establish an advisory committee to advise the Secretary with respect to the preparation and implementation of the management plan. Such advisory committee shall consist of seven members appointed by the Secretary. One member shall be appointed from among recommendations submitted by the Governor of Arizona, one member shall be appointed from among recommendations submitted by the Graham County Board of Supervisors and one member shall be appointed from among recommendations submitted by the Greenlee County Board of Supervisors. The remaining members shall be persons recognized as experts in wildlife conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the purposes for which the conservation area is established.

(k) REPORT.—No later than five years after the date of enactment of this Act, and at least each ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate on the implementation of this title, the condition of the resources and values of the conservation area, and the progress of the Secretary in achieving the purposes for which the conservation area is established.

(l) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this title shall be subject to a fine in accordance with applicable provisions of the Sentencing Reform Act of 1984, or imprisonment of not more than 1 year, or both such fine and imprisonment.

(m) AUTHORIZATION.—There are hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this title.

TITLE III—DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE UNITED STATES FISH AND WILDLIFE SERVICE

SEC. 301. DESIGNATION AND MANAGEMENT

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following lands are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

(1) certain lands in the Havasu National Wildlife Refuge, Arizona, which comprise approximately 14,606 acres, as generally depicted on a map entitled "Havasu Wilderness" and dated March 13, 1990, and which shall be known as the Havasu Wilderness;

(2) certain lands in the Imperial National Wildlife Refuge, Arizona, which comprise approximately 9,220 acres, as generally depicted on a map entitled "Imperial Refuge Wilderness" and dated March 13, 1990, and which shall be known as the Imperil Refuge Wilderness;

(3) certain lands in the Kofa National Wildlife Refuge, Arizona, which comprise approximately 510,900 acres, and certain other public lands comprising approximately 5,300 acres which are hereby added to and incorporated within such refuge (and which shall be managed accordingly), all as generally depicted on a map entitled "Kofa Wilderness" and dated August 1, 1990, and which shall be known as the Kofa Wilderness; and

(4) certain lands in the Cabeza Prieta National Wildlife Refuge, Arizona, which comprise approximately 803,418 acres, as generally depicted on a map entitled "Cabeza Prieta Wilderness" and dated March 13, 1990, and which shall be known as the Cabeza Prieta Wilderness.

(b) MANAGEMENT.—Subject to valid existing rights, the wilderness areas designated under this title shall be administered by the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this title.

(c) MAP AND LEGAL DESCRIPTION.—As soon as practicable after enactment of this title, the Secretary shall file a map and a legal description of each wilderness area designated under this section with the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the United States House of Representatives and with the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such legal description and map may be made. Such map and legal description shall be on file and available for public inspection in the Office of the Director, United States Fish and Wildlife Service, United States Department of the Interior.

(1)(A) With respect to each wilderness area designated by this title, and subject to the limitations set forth in subparagraph (B), Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this title. The priority date of such reserved rights shall be the date of enactment of this Act.

(B) With respect to the Havasu and Imperial wilderness areas designated by subsections (a)(1) and (a)(2) of this section, no rights to water of the Colorado River are reserved, either expressly, impliedly, or otherwise.

(2) The Secretary and all other officers of the United States shall take all steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate steam adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water right reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(e) NO EFFECT ON COLORADO RIVER DAMS.—Nothing in this title shall be construed to affect the operation of Federally owned dams located on the Colorado River in the Lower Basin.

(f) MILITARY ACTIVITIES.—Nothing in this title including the designation as wilderness of lands within the Cabeza Prieta National Wildlife Refuge, shall be construed as—

(1) precluding or otherwise affecting continued low-level overflights by military aircraft over such refuge or the maintenance of existing associated ground instrumentation, in accordance with any applicable interagency agreements in effect on the date of enactment of this Act; or

(2) precluding the Secretary of Defense from entering into new or renewed agreements with the Secretary concerning use by military aircraft of airspace over such refuge or the maintenance of existing associated ground instrumentation, consistent with management of the refuge for the purpose for which such refuge was established and in accordance with laws applicable to the National Wildlife Refuge System.

(g) LAW ENFORCEMENT BORDER ACTIVITIES.—Nothing in this title, including the designation as wilderness of lands within the Cabeza Prista National Wildlife Refuge, shall be construed as—

(1) precluding or otherwise affecting continued border operations by the Immigration and Naturalization Service, the Drug Enforcement Administration, or the United States Customs Service within such refuge, in accordance with any applicable interagency agreements in effect on the date of enactment of this Act; or

(2) precluding the Attorney General of the United States or the Secretary of the Treasury from entering into new or renewed agreements with the Secretary concerning Immigration and Naturalization Service, Drug Enforcement Administration, or United States Customs Service border operations within such refuge, consistent with management of the refuge for the purpose for which such refuge was established, and in accordance with laws applicable to the National Wildlife Refuge System.

SEC. 302. NO EFFECT ON UPPER BASIN.

Nothing in titles I, II, or III of this Act shall amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty pertaining to the Colorado River (including its tributaries) in the Upper Basin, including, but not limited to, the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

TITLE IV—FORT McDOWELL INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

SECTION 401. SHORT TITLE.

This Title may be cited as the "Fort McDowell Indian Community Water Rights Settlement Act of 1990".

SEC. 402. CONGRESSIONAL FINDINGS AND DECLARATIONS.

(a) The Congress finds that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on September 15, 1903, the United States Government established a reservation for the Fort McDowell Indian Community in Arizona north of the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to water and the financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self-sufficiency;

(6) proceedings to determine the full extent and nature of the Community's water rights and damages thereto are currently pending before the United States District Court in Arizona, the United States Claims Court, the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source, and before various federal agencies under the Federal Tort Claims Act;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle disputes over water and reduce the burdens of litigation;

(8) after more than five years of negotiation, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who are all party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, and to provide for the orderly development of the Community's lands;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately twelve thousand acre-feet of surface water to the Community; provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, the Congress declares that the purposes of this Act are: (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary of the Interior to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act.

SEC. 403. DEFINITIONS.

For purposes of this Act—

(a) "Agreement" means that agreement among the Fort McDowell Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District, the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is approved and executed by the Secretary of the Interior pursuant to sections 411(d) and 412(a)(8) of this Act.

(b) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(c) "CAWCD" means the Central Arizona Water Conservation District organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(d) "Community" means the Fort McDowell Indian Community, a community of Yavapai Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476), and duly recognized by the Secretary.

(e) "HVID" means the Harquahala Valley Irrigation District, an irrigation district organized under the laws of the State of Arizona.

(f) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(g) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(h) "Secretary" means the Secretary of the United States Department of the Interior.

(i) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

SEC. 404. KENT DECREE REREGULATION.

(a) To permit the Community to more fully utilize its water rights under the Kent Decree as provided in the Agreement and subsection (b) of this section, the agreement between the United States and the SRP dated June 3, 1935, as amended on November 26, 1935, relating to the Verde River Storage Works, and the agreement among the SRP, Phelps Dodge Corporation, and the Defense Plant Corporation dated March 1, 1944, including, but not limited to, the provisions of such agreements by which SRP saves and holds harmless the United States, and the rights of the United States and SRP to Verde River storage, are hereby ratified, confirmed and declared to be valid: *Provided, however,* That the priority date and quantification of these storage rights, and such other storage rights as may exist, shall be determined in an appropriate state proceeding in the State of Arizona. Nothing in this Act or the Agreement shall affect the validity or invalidity of any permit, right-of-way, license or grant held by Phelps Dodge Corporation for the utilization of land or water within the San Carlos Apache Reservation.

(b) The Secretary is authorized and directed to contract with SRP, for a period of not more than twenty-five years from the date the authorizations contained in section 409(b) of this Act become effective, for the utilization of up to three thousand acre-feet of the existing storage right of the United States and SRP behind Bartlett and Horseshoe Dams on the Verde River for the reregulation of the Community's rights to water under the Kent Decree. This storage space shall be for seasonal regulation only, with no annual carryover past October 1.

SEC. 405. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) The contract between the SRP and RWCD dated October 24, 1924, together with all amendments thereto and any extension thereof entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

(b) The Secretary is authorized and directed to revise the subcontract of the RWCD agricultural water service from the CAP to include an addendum substantially in the form of exhibit "10.3.2" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(c) The lands within the RWCD and the lands within the SRP shall be free from the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(d) Neither SRP nor the RWCD shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either of their participation in the settlement or their execution and performance of the Agreement, including, but not limited to, any exchanges provided for in the Agreement.

SEC. 406. OTHER WATER.

(a) The Secretary is authorized and directed to acquire for the Community thirteen thousand nine hundred thirty-three acre-feet of water from one or a combination of the following sources:

(1) CAP water permanently relinquished by the HVID pursuant to contract with the Secretary.

(2) CAP municipal and industrial water and CAP Indian priority water permanently relinquished by the City of Prescott, the Yavapai-Prescott Tribe, the Yavapai-

Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company pursuant to contract with the Secretary. Any water acquired by the Secretary pursuant to this section shall be acquired with the consent of the contracting entity and shall be assigned to the Community in partial satisfaction of the Secretary's obligation under this section.

(3) In the event that the Secretary cannot acquire thirteen thousand nine hundred and thirty-three acre-feet of water, solely or in combination, from the sources identified in subsections (a)(1) and (a)(2) of this section, then the Secretary is authorized to acquire, from all water resources within the State of Arizona at the disposal of the United States, water in amounts necessary to meet the requirements of this section.

HARQUAHALA VALLEY IRRIGATION DISTRICT

(b) The Secretary is authorized to contract with the HVID for the permanent relinquishment of any portion of HVID's rights to CAP agricultural water.

(1) The Secretary may use HVID water with its original CAP agricultural priority or may convert it, at the rate of one acre-foot per CAP-eligible acre, to a maximum of thirty-three thousand two hundred and sixty-three acre-feet of CAP Indian priority water. Up to thirteen thousand nine hundred and thirty-three acre-feet of such water shall be made available to the Community by contract with the Secretary.

(2) As consideration for the fair value of water relinquished under subsection (b) of this section, the Secretary is authorized:

(i) to credit the HVID with an appropriate share of its outstanding CAP distribution system debt, with such share reflecting the relationship between the amount of HVID CAP rights acquired by the Secretary and the total CAP allocation of the HVID; and

(ii) to offset the annual repayment requirements of the CAWCD under repayment contract numbered 14-06-W-245 in amounts which total the balance of the fair value of the water acquired and not accounted for under (i) above until such value is exhausted.

(3) In the event that the Secretary acquires all or a part of the CAP water rights of the HVID, the following shall apply:

(i) The Secretary is authorized to transfer title to existing federal facilities within HVID that are no longer needed for CAP purposes to the CAWCD or to other non-Federal entities.

(ii) The Secretary is authorized to approve or execute any agreements that are necessary to accomplish the transfer of HVID's CAP agricultural water rights to the Secretary for Indian water rights settlement purposes. As a condition of the transfer of such entitlement, the lands which are purchased by non-Federal interests within HVID must be excluded from HVID. Except as provided for in Article 8.7 of the December 1, 1988, contract between the United States and CAWCD, the excluded lands shall not be entitled to a supply of CAP water for agricultural purposes and shall not be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(iii) The agreement implementing the transfer of HVID's CAP agricultural water rights to the Secretary shall provide that any lands which remain in HVID or its successor shall continue to be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law as long as HVID, or its successor, has a Federal repayment obligation for the cost of the CAP distribution system. The agreement implementing the transfer shall provide that lands remaining in HVID, or its successor, will not bear costs of operation, maintenance, and replacement for the CAP distribution system greater than that which they would have in the absence of the transfer of HVID's CAP agricultural water rights.

(4) Water acquired by the Secretary for the Fort McDowell Indian Community pursuant to this subsection shall be delivered to the Community as provided for in the Agreement. Any remaining water acquired by the Secretary pursuant to this subsection (b) shall be used only in the settlement of water rights claims of other Indian tribes having claims to the water in the Salt and Verde River system.

VERDE RIVER WATERSHED

(c) Providing that the Secretary first acquires at least seven thousand acre-feet of CAP water from one or more of the entities named in subsection (a)(2), of this section, the Secretary is authorized to acquire, by purchase from willing sellers, land and water rights in the Big Chino Valley of the Verde River watershed, in an amount sufficient to replace all such water so acquired.

(1) The Secretary shall not acquire any land or water rights in the Big Chino Valley of the Verde River watershed until he has completed a study to determine whether, through the construction of water diversion, collection, and conveyance facilities to deliver water to a point near Sullivan Lake in Yavapai County, Arizona (hereinafter referred to as the "Sullivan Lake delivery point"), the exercise of such water rights will not have an adverse affect on the flow or the biota of the Verde River and that such exercise is not likely to jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species. The Secretary shall make the study required by this paragraph available to the public for inspection and comment upon its completion.

(2) The Secretary is authorized to enter into an agreement with the City of Prescott to reimburse the city for not to exceed $800,000 advanced to the Secretary by the city for the purpose of expediting completion of the study required in subsection (c)(1) of this section.

(3) If the Secretary determines, based upon the findings of the study, that the exercise of water rights will not have an adverse effect on the flow or the biota of the Verde River and is not likely to jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species, the Secretary shall be authorized to acquire land in the Big Chino Valley and to construct diversion, collection, and conveyance facilities sufficient to deliver the water to the Sullivan Lake delivery point.

(4) The Secretary shall develop and implement a continuous monitoring program to ensure that groundwater pumping from land acquired pursuant to this subsection (c) shall not adversely affect the flow or the biota of the Verde River and to ensure that it will not jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species. The program shall be developed prior to and implemented concurrent with the construction of the facilities described in subsection (c)(3) of this section.

(d) If the Secretary acquires the CAP contract or subcontracts of the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to a point downstream on the Verde River. Subject to the study required in subsection (d)(1) of this section and all applicable law, the Secretary is further authorized to place into the Verde River at the point downstream an amount of water sufficient, including all losses, to replace the water assigned by such entity or entities pursuant to this subsection.

(1) The Secretary shall not construct any water conveyance facilities from the Sullivan Lake delivery point to any point downstream on the Verde River to replace water assigned pursuant to subsection (a)(2) of this section, until he has completed a study to determine whether the flow of the Verde River may be augmented without jeopardizing the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species and, if the flow of the Verde may be so augmented, at what point or points downstream from the Sullivan Lake delivery point such augmentation would be most appropriate.

(2) The Secretary shall, in conjunction with arrangements for the delivery of water pursuant to this subsection (d), develop and implement a monitoring program to ensure that the augmentation of the Verde River will not jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species.

(e) If the Secretary acquires the CAP contract or subcontract of the Yavapai-Prescott Tribe or the City of Prescott, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to the City of Prescott's existing pumping facilities in the Little Chino Valley, Yavapai County, Arizona. If the Secretary constructs such water conveyance facilities, the City of Prescott shall repay the Secretary for the costs thereof. Nothing in this subsection shall be construed to prevent the City of Prescott from constructing such conveyance facilities itself.

(1) The Secretary shall deliver water to the City of Prescott's existing pumping facilities or to such other point as the Secretary and the City of Prescott may agree, in an amount sufficient, including all losses, to replace the water acquired from the City of Prescott and the Yavapai-Prescott Tribe.

(2) The Secretary is authorized and directed to enter into such agreements as are necessary to ensure that the Yavapai-Prescott Tribe will receive its share of the water to be developed by the Secretary pursuant to this subsection (e). Such agreement shall set forth the cost and other terms of delivery of such water.

(3) The Secretary is authorized and directed, at the request of the Yavapai-Prescott Indian Tribe, to enter into and renew agreements granting the Yavapai-Prescott Indian Tribe long-term grazing privileges on the land acquired by the Secretary pursuant to subsection (a)(2) of this section: *Provided*, That the exercise of such privileges by the Yavapai-Prescott Indian Tribe shall not interfere with the exercise of water rights upon such land except for water reasonably needed by the Yavapai-Prescott Indian Tribe in connection with grazing.

(f) The Secretary is authorized to contract to deliver replacement water to the entities identified in subsections (d) and (e) of this section which relinquish CAP water to the Secretary for the benefit of the Community.

The replacement water shall be delivered by the Secretary at the Sullivan Lake delivery point unless otherwise agreed by the Secretary and the entity to receive the water. No replacement water may be delivered to any entity other than those identified in subsection (a)(2) of their section or their agents, and no replacement water may be used directly or indirectly outside Yavapai County, Arizona.

(g) The entities which relinquish CAP water to the Community pursuant to subsection (a)(2) of this section shall not be required to repay costs incurred by the United States pusuant to subsections (c) and (c)(3) of this section. The entities identified in subsection (d) of this section, except for any entity which is an Indian tribe, shall repay the United States so much of the cost of the undertaking identified in subsection (d) as the entities and the United States shall agree. The costs of any undertaking pursuant so this subsection (g) allocated to an Indian tribe shall be nonreimbursable.

(h) The Secretary is authorized and directed to study the sources and cost of the water supplies, other than those identified in this section, that can be used to satisfy the water rights of the Yavapai-Prescott Indian Tribe and of the Yavapai-Apache Indian Community of the Camp Verde Reservation. A separate study shall be made for each tribe. Each study shall be commenced within one hundred and eighty days after the enactment of this Act and shall be completed within one year after it is commenced. Copies of such studies shall be provided to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate.

(i) If the Secretary acquires water for the Community pursuant to subsection (a)(2) of this section, then the Secretary shall exclude, for the purpose of determining the allocation and repayment of costs of the CAP-as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be non-reimbursable.

(j) The Secretary shall, in the exercise of the authorities provided in subsection (a) of this section, comply with all applicable environmental law.

(k) If the Secretary acquires at least seven thousand acre-feet of CAP water from the entities identified in subsection (a)(2) of this section, there is authorized to be appropriated not to exceed $30,000,000 to pay the costs of acquiring the land and water resources identified in subsection (c) of this section and the costs allocable to the construction of diversion, collection, and conveyance facilities described in subsection (c); costs allocable to the construction or diversion, collection, and conveyance facilities shall be adjusted by such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein.

(l) There is authorized to be appropriated such sums as may be necessary to provide for the studies required in subsections (c)(1), (d)(1), and (h) of this section and for the monitoring programs described in subsections (c)(4) and (d)(2) of this section.

SEC. 407. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE.

(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2099, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the City of Phoenix under the terms and conditions of the Project Water lease set forth in exhibit "20.2.2" to the Agreement for a term commencing January 1, 2001, and ending December 31, 2099.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "20.2.1" to the Agreement and the terms and conditions of the Project Water Lease set forth in exhibit "20.2.2" to the Agreement are hereby authorized, approved, and confirmed.

(c) The United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section "6(b)" of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the City of Phoenix as lessee of the Project Water Lease herein authorized.

(d) The Community and the Secretary shall lease to the City of Phoenix, for a term commencing on January 1, 2001, and ending December 2099, for consideration in an amount agreed to by the Community and the City to be paid by the City to the Community, upon those reflected in the Project Water Lease set forth in exhibit "20.2.2" to the Agreement, the four thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Lease shall specifically provide that—

(1) the City of Phoenix, in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the CAWCD: *Provided*, That such payments shall not be commenced earlier than October 1, 1999;

(2) except as otherwise provided in the Project Water Lease, the City of Phoenix shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 shall be United States of America and the CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Lease referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Notwithstanding any other provision statutory of or common law, the Community may, with the approval of the Secretary, lease water provided to the Community under section 406 of this Act for its fair market value for a term not to exceed 100 years as provided in the Agreement but in no event for use outside Pima, Pinal or Maricopa Counties, State of Arizona. If some or all of the water provided to the Community under section 406 of this Act is CAP water, the provisions of subsections (a), (b), (c), (d), and (e) of this section 407 shall apply to any lease of such water.

(g) Except as authorized by this section, no water made available to the Community or its members pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

(h) If water is acquired from the Salt and Verde watershed pursuant to section 406(a)(3), no such water may be sold, leased, transferred, or in any way be used off of the Community's reservation.

SEC. 408. FORT McDOWELL INDIAN COMMUNITY DEVELOPMENT FUND; LOAN.

(a) As soon as practicable, the Community shall establish the Fort McDowell Indian Community Development Fund into which shall be deposited—

(1) by the Secretary, the funds appropriated pursuant to subsection (b) of this section; and

(2) by the State of Arizona, $2,000,000 required by paragraph 21.4 of the Agreement.

(b) There is hereby authorized to be appropriated, together with interest accruing from one year after the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into account the average market yield on outstanding Federal obligations of comparable maturity, $23,000,000 which the Secretary shall deposit into the Community Development Fund for the Community to use in the design and construction of facilities to put to beneficial use the Community's water entitlement and for other economic and community development on the Fort McDowell Indian Reservation.

(c) As of the date the authorizations contained in section 409(b) of this Act become effective, the Community, in its discretion, may use the Development Fund, principal and income, to fulfill the purposes of the Agreement and this title: *Provided*, That no amount of the Federal or State appropriations deposited into the Development Fund may be used to make per capita payments to members of the Community.

(d) As of the date the authorizations contained in section 409(b) of this Act become effective—

(1) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from, the Development Fund, and

(2) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Development Fund.

(e) The Secretary is authorized and directed to provide to the Community a loan pursuant to the Small Reclamation Projects Act (Ch. 972, 70 Stat. 1044, 43 U.S.C. 422a, as amended), in the amount of $13,000,000, to be repaid over a term of fifty years without interest, for the purpose of constructing facilities for the conveyance and delivery of water on the Fort McDowell Indian Reservation: *Provided*, That any requirements for qualifying for the loan are hereby waived, including, but not limited to, the provisions of section 3, 4(b)(2), 5(a) and 5(c) of the Small Reclamation Projects Act.

(1) The Community shall establish an account into which the Community shall de-

posit $1,000,000. The principal and all accrued income shall be retained in such fund until such time as the Community's obligation to repay the loan under subsection (e) is fulfilled.

(2) No appropriations for the construction of the CAP made after the date of enactment of this Act shall be used to plan, design, construct, or operate any facilities on the Fort McDowell Indian Reservation.

SEC. 409. SATISFACTION OF CLAIMS.

(a) The benefits realized by the Community's members under this Act shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this Act, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this Act.

(b) The Community and the Secretary on behalf of the United States are authorized, as part of the performance of the obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the effective date of this Act, which the Community and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(c) Except as provided in paragraphs 19.2 and 19.5 of the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona in its own right or on behalf of the Community based upon—

(1) water rights or injuries to water rights of the Community and its members; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community and its members.

(d) In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 412(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

SEC. 410. ENVIRONMENTAL COMPLIANCE.

(a) Execution of the settlement Agreement by the Secretary as provided for in section 411(d) shall not constitute major Federal action under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance, except as specifically directed otherwise herein, during the implementation phase of this settlement.

(b) There is hereby authorized to be appropriated such sums as may be necessary to carry out all necessary environmental compliance associated with this settlement, including mitigation measures adopted by the Secretary.

(c) With respect to this settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable environmental laws.

(d) Except as specifically set forth herein, the Secretary shall comply with all aspects of NEPA and the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), and other applicable environmental acts and regulations in proceeding through the implementation phase of this settlement: *Provided, however,* That in regard to NEPA compliance, the Secretary is precluded from studying or considering alternatives to the Community's on-reservation agriculture development plans which will be facilitated by the settlement, or performed under the Small Reclamation Projects loan made pursuant to section 408(e).

SEC. 411. MISCELLANEOUS PROVISIONS.

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court relating only and directly to the interpretation or enforcement of this title or the Agreement, naming the United States of America or the Community as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

(b) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this title or the Agreement against any lands within the Fort McDowell Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) Water received by entities other than the Community pursuant to the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(d) To the extent the Agreement does not conflict with the provisions of this title, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(e) As of the date the authorizations contained in section 409(b) of this Act become effective, section 302(a) of the Colorado River Basin Project Act (43 U.S.C. 1522(a)) shall no longer apply to the Community.

(f) An easement for the construction, operation and maintenance of the Community's water diversion system on and within the lands identified in the Community's special permit extension application dated July 12, 1990, filed with the United States Forest Service, Department of Agriculture, is hereby granted in perpetuity.

(g) As of the date the authorizations contained in section 409(b) of this Act and in section 410(b) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act (102 Stat. 2549) become effective, subsection 404(a) of this Act shall become effective as to the Salt River Pima-Maricopa Indian Community and the United States.

(h) Section 7(a) of the Salt River Pima-Maricopa Indian Community Water Rights Act (102 Stat. 2549) is hereby amended by striking the date "1990" and inserting in lieu thereof "1991."

SEC. 412. EFFECTIVE DATE.

(a) The authorizations contained in section 409(b) of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that:

(1) the Secretary has signed a contract with the SRP for the storage and reregulation of the Community's Kent Decree water pursuant to section 404;

(2) the RWCD subcontract for agricultural water service from CAP has been revised and executed as provided in section 405(b);

(3) the Secretary has acquired water pursuant to section 406 and made it available for delivery for the benefit of the Community;

(4) the funds authorized by section 408(b) have been appropriated and deposited into the Community Development Fund;

(5) the loan authorized by section 408(e) has been provided to the Community;

(6) the State of Arizona has appropriated and deposited into the Community Development Fund the $2,000,000 required by paragraph 21.4 of the Agreement;

(7) the stipulation which is attached to the Agreement as exhibit "19.5" has been approved; and

(8) the Agreement has been modified to the extent it is in conflict with this title and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) of this section have not occurred by December 31, 1993, sections 4, 5(a), and 5(b), if they have not theretofore become effective pursuant to the provisions of the Act of October 20, 1988 (Public Law 100-512), and sections 407, 408(a), 408(b), 408(e), 409(b), 409(c), 411(a), 411(b), 411(c), 411(d), 411(e) and 411(f) of this Act and any contracts entered into pursuant to those provisions shall not thereafter be effective, and any funds appropriated pursuant to section 408(b) of this Act shall revert to the Treasury, and any funds appropriated pursuant to paragraph 21.4 of the Agreement shall revert to the State of Arizona.

SEC. 413. OTHER CLAIMS.

Nothing in the Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community.

TITLE V—NATIONAL PARK SYSTEM UNITS IN TEXAS

SECTION 501. EXPANSION OF SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARK.

(a) EXPANSION.—Section 201(a) of the Act entitled "An Act to amend the Pennsylvania Avenue Development Corporation Act of 1972; to provide for the establishment of the San Antonio Missions National Historical Park; and other purposes" (16 U.S.C. 410ee(a)) is amended by inserting after the first sentence the following: "The park shall also consist of the lands and interests therein within the area bounded by the line depicted as 'Proposed Boundary Extension' on the maps entitled 'San Antonio Missions National Historical Park', numbered 472-80,075, 472-80,076, 472-80,077, 472-80,078, 472-80,079, 472-80,080, and 472-80,081 and dated June 7, 1990, which shall be on file and available for public inspection in the same manner as is such drawing.".

(b) DEVELOPMENT OF ESSENTIAL PUBLIC FACILITIES.—Section 201(f)(2) of such Act is amended by striking "not more than $500,000." and inserting "not more than $15,000,000.".

SECTION 502. LAKE MEREDITH NATIONAL RECREATION AREA.

(a) ESTABLISHMENT.—In order to provide for public outdoor recreation use and enjoyment of the lands and waters associated with Lake Meredith in the State of Texas, and to protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters, there is hereby established the Lake Meredith National Recreation Area (hereafter in this Act referred to as the "recreation area").

(b) AREA INCLUDED.—The recreation area shall consist of the lands, waters, and interests therein within the area generally depicted on the map entitled "Lake Meredith National Recreation Area Boundary Map, 'Fee-Take Line'", numbered SWRO—80,023-A, and dated September 1990. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereafter in this Act referred to as the "Secretary") may from time to time make minor revisions in the boundary of the recreation area.

(c) TRANSFER.—(1) Except as provided in paragraph (2), the Federal lands, waters, and interests therein within the recreation area are hereby transferred to the National Park Service.

(2) Those lands depicted on the map referred to in subsection (b) that are necessary for the continued operation, maintenance, and replacement of the Canadian River Project facilities and its purposes of providing for municipal and industrial water supply and flood control shall remain under the jurisdiction of the Bureau of Reclamation.

SEC. 503. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the recreation area in accordance with this Act and the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4), and the Act of August 7, 1946 (60 Stat. 885). In the administration of such recreation area, the Secretary may utilize such statutory authority as may be available to him for the protection of natural and cultural resources as he deems necessary to carry out the purposes of this Act.

(b) OPERATION OF CANADIAN RIVER PROJECT.—Nothing in this Act shall be construed to affect or interfere with the authority of the Secretary under the Act of December 29, 1950 (Public Law 81-898; 43 U.S.C. 600b et seq.), to operate Sanford Dam and Lake Meredith in accordance with and for the purposes set forth in that Act.

(c) LAND ACQUISITION.—Within the boundary of the recreation area, the Secretary may acquire lands and interests in lands by purchase with donated or appropriated funds, exchange, or transfer without reimbursement from any Federal agency.

(d) CULTURAL RESOURCES.—The Secretary shall conduct a survey of the cultural resources in the immediate vicinity of the recreation area. The Secretary is authorized to enter into cooperative agreements with the public or private entities, including landowners, for the purpose of conducting the survey required by this subsection. Not later than three years after the date on which funds have been made available, the Secretary shall submit a report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and National Resources of the Senate on the results of the survey required by this subsection.

(e) HUNTING AND FISHING.—(1) The Secretary shall permit hunting and fishing on lands and waters under the Secretary's jurisdiction within the recreation area in accordance with applicable Federal and State law. The Secretary may designate zones where, and establish periods when, hunting or fishing will not be permitted for reasons of public safety, administration, fish and wildlife management, or public use and enjoyment.

(2) Except in emergencies any regulations issued by the Secretary under this subsection shall be put into effect only after consultation with the appropriate State agencies responsible for hunting and fishing activities.

(f) COOPERATIVE AGREEMENTS.—For purposes of administering the recreational area, the Secretary may enter into cooperative agreements with any Federal agency, the State of Texas, or any political subdivision thereof, including the Canadian River Municipal Water Authority, for the rendering, on a reimbursable basis, of rescue, firefighting, law enforcement, fire prevention assistance, and other needs. The Secretary may enter into a cooperative agreement with the city of Fritch, Texas, to develop and operate a joint venture information center. Federal funds may be expended on non-Federal lands and improvements through cooperative agreements for the purpose of this section on a 50-50 matching basis.

SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of Sections 502 and 503 of this Act.

SEC. 505. ESTABLISHMENT OF AMISTAD NATIONAL RECREATIONAL AREA.

(a) In order to—

(1) provide for public outdoor recreation use and enjoyment of the lands and waters associated with the United States portion of the reservoir known as Lake Amistad, located on the boundary between the State of Texas and Mexico, and

(2) protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters.

there is hereby established the Amistad National Recreation Area (hereafter in this section and section 506 referred to as the "recreation area").

(b) The recreation area shall consist of the Federal lands, waters, and interests therein within the area generally depicted on the map entitled "Boundary Map, Proposed Amistad National Recreation Area", numbered 621/20,013-B, and dated July 1969. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereafter in this Act referred to as the "Secretary") may from time to time make minor revisions in the boundary of the recreation area, but the total acreage of the recreation area may not exceed 58,500 acres. Within the boundary of the recreation area, the Secretary may acquire lands and interests in lands by purchase with donated or appropriated funds, exchange, or transfer without reimbursement from any Federal agency.

SEC. 506. ADMINISTRATION.

(a) The Secretary shall administer the recreation area in accordance with applicable provisions of this Act and the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4), and the Act of August 7, 1946 (60 Stat. 885). In the administration of such recreation area, the Secretary may utilize such statutory authority as may be available to him for the protection of natural and cultural resources as he deems necessary to carry out the purposes of this Act. Nothing in this Act shall be construed to amend or alter the responsibilities of the International Boundary and Water Commission, United States and Mexico, under any applicable treaty.

(b) The administration of the recreation area by the Secretary shall be subject to and in accordance with all applicable treaties, including the treaty between the United States and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, entered into force November 8, 1945 (59 Stat. 1219), and in accordance with the Act of July 7, 1960 (Public Law 86.605; 74 Stat. 360), and any commitment or agreement entered into pursuant to such treaty or Act, including (but not limited to) commitments or agreements relating to—

(1) the demarcation and maintenance of boundaries;

(2) the use, storage, and furnishing of water;

(3) control of floods;

(4) investigations relative to the operation of the Amistad Dam; and

(5) the production of hydroelectric energy.

(c) The Secretary shall conduct a survey of the cultural resources in the immediate vicinity of the recreation area. The Secretary is authorized to enter into cooperative agreements with public or private entities, including landowners, for the purpose of conducting the survey required by this subsection. Not later than two years after the date of enactment of this act, the Secretary shall submit a report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the results of the survey required by this subsection.

(d)(1) The Secretary shall permit hunting and fishing on lands and waters under the Secretary's jurisdiction within the recreation area in accordance with applicable Federal and State law. The Secretary may designate zones where, and establish periods when, hunting or fishing will not be permitted for reasons of public safety, administration, fish and wildlife management, or public use and enjoyment.

(2) Except in emergencies any regulations issued by the Secretary under this subsection shall be put into effect only after consultation with the appropriate state agencies responsible for hunting and fishing activities.

(e) For purposes of administering the recreation area, the Secretary may enter into cooperative agreements with any Federal agency, the State of Texas, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement and fire preventive assistance.

SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of sections 505 and 506 of this Act.

TITLE VI—UNDERGROUND RAILROAD STUDY

SECTION 601. PURPOSE.

The purpose of this title is to study the Underground Railroad, its routes and operations in order to preserve and interpret this aspect of American history.

SEC. 602. (a) The Secretary of the Interior, acting through the Director of the National Park Service, shall conduct a study of alternatives for commemorating and interpreting the Underground Railroad, the approximate routes taken by slaves escaping to freedom before the conclusion of the Civil War. The study shall include—

(1) the consideration of the establishment of a new unit of the national park system;

(2) the consideration of the establishment of various appropriate designations for those routes and sites utilized by the Underground Railroad, and alternative means to link those sites, including in Canada and Mexico;

(3) recommendations for cooperative arrangements which State and local governments, local historical organizations, and other entities; and

(4) cost estimates for the alternatives.

(b) The study shall be—

(1) conducted with public involvement and in consultation with the advisory committee established by section 4, State and local officials, scholarly and other interested organizations and individuals,

(2) completed no later than two years after the date on which funds are made available for the study, and

(3) submitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 603. Within three years after the date of enactment of this Act, the Secretary of the Interior, acting through the Director of the National Park Service, shall prepare and publish an interpretive handbook on the Underground Railroad in the larger context of American antebellum society, including the history of slavery and abolitionism.

SEC. 604. (a) the Secretary, upon funds being made available to carry out this title, shall establish the Underground Railroad Advisory Committee (hereafter in this subsection referred to as the "Advisory Committee"). The Advisory Committee shall be composed of nine members, appointed by the Secretary of the Interior, of whom—

(1) three shall have expertise in African-American History;

(2) two shall have expertise in historic preservation;

(3) one shall have expertise in American History; and

(4) three shall be from the general public.

The Advisory Committee shall designate one of its members as Chairperson.

(b) The Secretary, or the Secretary's designee, shall from time to time, but at least on three occasions, meet and consult with the Advisory Committee on matters relating to the study conducted under section 2.

(c) Members of the Advisory Committee shall serve without compensation as such, but the Secretary may pay expenses reasonably incurred in carrying out their responsibilities under this Act on vouchers signed by the Chairperson.

SEC. 605. There are authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE VII—SUDBURY, ASSABET, AND CONCORD RIVERS STUDY

SECTION 701. SHORT TITLE.

This title may be cited as the "Sudbury, Assabet, and Concord Wild and Scenic River Study Act".

SEC. 702. FINDINGS.

The Congress finds that—

(1) The Sudbury, Assabet, and Concord Rivers in the Commonweatlh of Massachusetts possess resource values of national significance, including outstanding wildlife and ecological values, historic sites, and a cultural past important to America's literary heritage.

(2) Portions of this study segment have been listed on the Nationwide Rivers Inventory by the National Park Service.

(3) There is strong support among State and local officials and area residents and river users for a cooperative wild and scenic study of the area.

(4) In view of the longstanding Federal practice of assisting States and local governments in protecting conserving and enhancing rivers of national significance, the United States has an interest in assisting the Commonwealth of Massachusetts and the appropriate local governments in studying and developing a resource conservation and management plan for the river, consistent with the Wild and Scenic Rivers Act.

703. WILD AND SCENIC RIVER STUDY.

(a) LISTING FOR STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding the following new paragraph at the end thereof:

"( ) SUDBURY, ASSABET, AND CONCORD, MASSACHUSETTS.—The segment of the Sudbury from the Danforth Street Bridge in the town of Framingham, to its confluence with the Assabet, the Assabet from 1,000 feet downstream of the Damon Mill Dam in Concord to its confluence with the Sudbury and the Concord from the confluence of the Sudbury and Assabet downstream to the Route 3 Bridge in the town of Billerica. The study of such river segments shall be completed and the report submitted thereon not later than at the end of the third fiscal year beginning after the date of enactment of this paragraph.".

SEC. 704. ADVISORY COMMITTEE.

(a) APPOINTMENT.—At the earliest practicable date following the enactment of this Act, but not later than forty-five days after enactment, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall establish the Sudbury, Assabet, and Concord Rivers Study Committee (hereinafter referred to as the "Committee"). The Secretary shall consult with the Committee on a regular basis during the conduct of the study required by section 3 of this Act (hereafter "the study") and the preparation and submission, pursuant to section 4 of the Wild and Scenic Rivers Act, of a report with respect to the river segments covered by the study.

(b) MEMBERSHIP AND PROCEDURES.—

(1) Membership on the Committee shall consist of 13 members appointed by the Secretary as follows:

(A) One member shall be appointed by the Secretary from the Fish and Wildlife Service.

(B) Two members shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Governor of the Commonwealth of Massachusetts.

(C) One member shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Sudbury Valley Trustees.

(D) One member shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Organization for the Assabet River.

(E) One member each shall be appointed by the Secretary from lists of candidates supplied to the Secretary by the Board of Selectmen or equivalent local governing body of each of the eight towns located within the area covered by the study.

(2) The members of the Committee shall elect a chairman, vice chairman, and recording secretary from the membership at the first official meeting of the Committee. Official minutes shall be kept of each regular and special meeting of the Committee and shall be open for public inspection.

(3) Any vacancy of the Committee shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Vacancies in the membership of the Committee shall not affect its power to function if there remain sufficient members to constitute a quorum under paragraph (4) of this subsection.

(4) A majority of the members of the Committee shall constitute a quorum for all meetings.

(5) The Committee shall advise the Secretary in conducting the study and concerning management alternatives should some or all of the river segments studied be included in the National Wild and Scenic Rivers System.

(6) Members of the Committee shall serve without compensation but may be reimbursed by the Secretary for reasonable and necessary expenses incurred by them in the performance of their duties as members of the Committee.

(7) The Committee may accept and utilize the services of voluntary, uncompensated pesonnel.

(8) The Committee shall terminate upon the submission to the President, pursuant to section 4 of the Wild and Scenic Rivers Act, of the report with respect to the river segments covered by the study.

SEC. 705. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE VIII—PRIVATE RELIEF PROVISIONS

SEC. 801. (a) Notwithstanding any other provision of law, including but not limited to section 8 of the Wild and Scenic Rivers Act (16 U.S.C. 1279) or any provision of the public land laws of the United States, the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall survey and convey all right, title, and interest of the United States to the property described in subsection (b) to Leroy W. Shebal in exchange for the sum of $650 in 1965 dollars adjusted for inflation to 1990 dollars, or $3,000 dollars, whichever is less, and subject to the following conditions:

(1) any deed of conveyance shall provide that existing improvements on such property shall not be substantially expanded and the use of such property shall be limited to prior or current levels; and

(2) the United States shall reserve a right of first refusal to reacquire such property at fair market value (as set forth in the Uniform Relocation Assistance and Land Acqui-

sition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1905)) upon a decision by Leroy W. Shebal to convey such property or upon his death: *Provided*, That such right shall be extinguished if not exercised by the Secretary by payment in full within one year from (i) the date on which Leroy W. Shebal notifies the Secretary in writing of his decision to convey the property, or (ii) the death of Leroy W. Shebal, whichever occurs first.

(b) The property referred to in subsection (a) is the approximately five acres of land located at Township 8 North, Range 1 West, Section 36, west half of the southwest quarter, Fairbanks Meridian, and described in Small Tract Application #F-021611, which is currently under permit to Leroy W. Shebal.

SEC. 802. Section 1110(b) of the Alaska National Interest Lands Conservation Act (Public Law 96-487, 94 Stat. 2371) shall not apply to the property described in section 501(b).

SEC. 803. The provisions of this title shall be effective only if Leroy W. Shebal notifies the Secretary in writing within one year from the date of enactment of this Act of his intention to purchase from the United States the property described in section 801(b).

SEC. 804. Notwithstanding any other provision of law, the Secretary of the Interior shall convey to Mr. and Mrs. Kenneth Blevins of Kuna, Idaho, by quitclaim deed or other appropriate instrument and without consideration, al right, title, and interest of the United States, excluding oil, gas, and other mineral deposits, in and to a parcel of public land described as the East half, Southeast Quarter (E½SE¼) of Section 33, Township 2 North, Range 1 East, of the Boise Meridian in Ada County, Idaho.

TITLE IX—CAMP W.G. WILLIAMS LAND EXCHANGE

SECTION 901. SHORT TITLE AND DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the "Camp W.G. Williams Land Exchange Act of 1989".

(b) DEFINITIONS.—As used in this title—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "camp boundaries" means the exterior boundaries of Camp W.G. Williams after enactment of this Act, in Utah and Salt Lake Counties, Utah, as generally depicted on the map referenced in section 902(a) of this Act.

SEC. 902. EXCHANGE.

(a) OFFERS.—Notwithstanding any other provision of law, as soon as possible but not later than six months after the date of enactment of this Act, the Secretary shall offer to exchange lands identified as "FEDERAL LANDS OFFERED FOR EXCHANGE" on a map entitled "PROPOSED EXCHANGE FOR CAMP W.G. WILLIAMS, UTAH", dated August 25, 1989 (hereinafter referred to as the "map"), to the owners of tracts of private lands identified as "PRIVATE LANDS TO BE ADDED TO CAMP W.G. WILLIAMS BY EXCHANGE AND WITHDRAWAL" on such map. If the owners of any or all of such tracts of private lands accept the offer within two years after the date of enactment of this Act, then the Secretary as soon as practicable shall convey to such owner or owners or their designee title to so much of the identified land as is approximately equal in value to such tracts of private lands as are simultaneously conveyed to the United States.

(b) Any lands, identified on the map as "FEDERAL LANDS OFFERED FOR EXCHANGE", not exchanged shall be returned to the public domain.

SEC. 903. BUREAU OF LAND MANAGEMENT LANDS.

Lands identified on the map as "PUBLIC LANDS AT CAMP W.G. WILLIAMS TO BE WITHDRAWN" shall be transferred to the Department of the Army.

SEC. 904. ARMY LANDS.

Subject to the provisions of section 907, lands identified on the map as "WITHDRAWN LANDS TO BE RETURNED TO PUBLIC DOMAIN" shall be transferred to the Department of the Interior, returned to the public domain and managed accordingly.

SEC. 905. ACQUISITIONS.

The Secretary, in accordance with applicable law, is authorized to acquire, solely by donation or exchange from a willing seller, lands that are identified as 2a and 2b on the map, and is directed to transfer such lands to the Department of the Army for the explicit purpose of addition to Camp W.G. Williams. The Secretary of the Army shall modify the camp boundaries so as to encompass lands acquired pursuant to this subection.

SEC. 906. DEPARTMENT OF THE ARMY LANDS.

(a) All lands transferred, exchanged, or acquired by this Act within the camp boundaries shall immediately become a part of Camp W.G. Williams and shall be administered and managed by the Department of the Army in accordance with the same laws, regulations, and executive orders applicable to the lands under the jurisdiction of the Department of the Army adjoining such acquired tracts.

(b) Subject to valid existing rights, no lands owned by the United States within the camp boundaries shall be available for any form of settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral or geothermal leasing laws, and such lands shall be administered and managed by the Department of the Army.

(c) The provisions of this section shall be effective for a period of 20 years after the date of enactment of this Act, unless at the end of such 20-year period, the Secretary of the Army determines that such lands are still required for purposes of national security, in which case the provisions of this section shall be effective for a period of 40 years after the date of enactment of this Act.

SEC. 907. REVOCATION OF EXECUTIVE ORDER, ETC.

(a) REVOCATION.—(1) Executive Order 1922 of April 24, 1914, shall be revoked, only insofar as it affects lands outside of the camp boundaries and only upon acceptance by the Secretary of an appropriate certification by the Secretary of the Army that such lands do not contain any hazardous materials or substances, as defined by applicable Federal law. Upon such revocation, affected lands shall be returned to the public domain and managed accordingly.

(2) The Secretary of the Army shall perform all inspections and other actions necessary to make the certification required in paragraph (1), and shall report his findings to the Secretary, within one year after the date of enactment of this Act. Thereafter the Secretary of the Army shall hold harmless the Secretary for any liability associated with any hazardous materials or substances as defined by applicable Federal law that were placed upon or reasonably appear to have been placed upon the land prior to the return of the subject lands to the public domain.

(b) LIABILITY.—Upon the acquisition by the United States of any lands or interest in land pursuant to this title, any liability accruing to the United States as a result of such acquisition shall be deemed to vest in the United States Department of the Army. In no event shall liability vest in the Department of the Interior.

SEC. 908. MAPS AND LEGAL DESCRIPTIONS.

As soon as practicable after the date of enactment of this Act, the Secretary shall publish in the Federal Register a legal description of the lands proposed to be exchanged by this title and shall file such maps and the legal descriptions with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives.

TITLE X—TECHNICAL AMENDMENT TO TITLE V OF THE ARIZONA-IDAHO CONSERVATION ACT OF 1988

SEC. 1001. Title V of the Arizona-Idaho Conservation Act of 1988 (Public Law 100-696; 102 Stat. 4571) is amended as follows:

(a) Section 501 is amended by inserting after the parenthetical phrase and before the words "which the Secretary deems necessary" the words "or other appropriate lands as selected by the State of Arizona under section 28 of the Act of June 20, 1910 (30 Stat. 557, as amended by the Act of June 5, 1935, 49 Stat. 1477)".

(b) Section 502(b) is amended by adding the following new sentence at the end thereof: "With the consent of the State of Arizona and to the extent that the lands referred to in subsection (a) of this section are acquired by eminent domain, the Secretary may use as compensation the lands described in sections 501, and 507 (a)(1) and (a)(2) of this Act, and such other lands as the Secretary determines necessary to constitute the fair market value of the State of Arizona lands acquired by eminent domain.".

(c) Section 507(b) is redesignated as section 507(c), and the following new subsection (b) is added as follows:

"(b) CONVEYANCE TO THE STATE OF ARIZONA.—The Federal lands described in section 506(a) of this Act may be conveyed to the State of Arizona by the Secretary to the extent such conveyance is necessary to establish fair market value compensation for State lands described in section 502(a) acquired by eminent domain pursuant to section 502(b).".

TITLE XI—TAKE PRIDE IN AMERICA PROGRAM

SECTION 1101. SHORT TITLE.

This title may be cited as the "Take Pride in America Act".

SEC. 1102. ESTABLISHMENT OF TAKE PRIDE IN AMERICA PROGRAM.

(a) IN GENERAL.—There is hereby established the Take Pride in America Program within the Department of the Interior (hereinafter referred to as the "TPIA Program").

(b) PURPOSES.—The purposes of the TPIA Program shall include the following:

(1) To establish and maintain a public awareness campaign in cooperation with public and private organizations and individuals—

(A) to instill in the public the importance of the appropriate use of, and appreciation

for Federal, State, and local lands, facilities, and natural and cultural resources;

(B) to encourage an attitude of stewardship and responsibility toward these lands, facilities, and resources; and

(C) to promote participation by individuals, organizations, and communities of a conservation ethic in caring for these lands, facilities, and resources.

(2) To conduct a national awards program to honor those individuals and entities which, in the opinion of the Secretary of the Interior (hereafter in this Act referred to as the "Secretary"), have distinguished themselves in the activities described in paragraph (1) of this subsection.

SEC. 1103. GIFTS AND BEQUESTS.

(a) AUTHORITY.—The Secretary may solicit, accept, hold, administer, invest in government securities, and use gifts and bequests of money and other personal property to aid or facilitate the purposes of the TPIA Program. Property so donated and accepted shall not be subject to sequestration.

(b) ACCOUNTING.—The Secretary shall maintain a full accounting of such gifts and bequests.

(c) TREATMENT OF DONATIONS, ETC.—For purposes of Federal law, property accepted pursuant to this section shall be considered as a gift, bequest, or devise to the United States.

(d) USE OF PROPERTY.—Any property and the proceeds thereof shall be used as nearly as practicable in accordance with the terms of the gift or bequest.

SEC. 1104. ADMINISTRATIVE SERVICES.

The Secretary of the Interior shall provide such facilities, administrative services, personnel, and support to the TPIA Program as the Secretary determines is necessary and appropriate.

SEC. 1105. VOLUNTEERS.

(a) AUTHORITY TO USE VOLUNTEERS.—The Secretary is authorized to recruit, train, and accept the services of individuals or entities, without compensation, as volunteers for or in aid of the purposes of the TPIA Program, without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that related to classification and General Schedule pay rates.

(b) INCIDENTAL EXPENSES.—The Secretary is authorized to provide for the incidental expenses of such volunteers, such as transportation, uniforms, lodging, or subsistence.

(c) VOLUNTEERS' STATUS AS FEDERAL EMPLOYEES.—(1) Except as otherwise provided in this subsection, a volunteer shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those provisions relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(2) For purposes of chapter 171 of title 28, United States Code (commonly referred to as the "Federal Tort Claims Act"), a volunteer under this subsection shall be considered an employee of the government (as defined in section 2671 of such title).

(3) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, a volunteer under this subsection shall be considered an employee (as defined in section 8101 of title 5, United States Code).

SEC. 1106. AUTHORITY TO EXECUTE CONTRACTS.

The Secretary is authorized to enter into contracts and cooperative agreements and generally to do any and all lawful acts necessary or appropriate to further the purposes of the TPIA Program.

SEC. 1107. DISTRIBUTION OF APPROPRIATE ITEMS.

The Secretary is authorized to distribute pamphlets and other such appropriate items in order to promote the purposes of the TPIA Program.

SEC. 1108. SLOGAN AND LOGO.

The "Take Pride in America" slogan and logo, which are registered by the Department of the Interior, and the goodwill associated with such slogan and logo, shall be administered pursuant to the TPIA Program.

SEC. 1109. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this title, not to exceed the amount expended for such purposes for fiscal year 1990.

(b) OTHER FEDERAL AGENCIES.—There are authorized to be appropriated to other Federal departments and agencies such sums as may be necessary to carry out the provisions of any other Take Pride in America programs established by such departments or agencies.

TITLE XII—CIVIL WAR AND OTHER STUDIES

SEC. 1201. SHORT TITLE.

This title may be cited as the "Civil War Sites Study Act of 1990".

SEC. 1202. DEFINITIONS.

For the purposes of this title—

(1) the term "Commission" means the Civil War Sites Advisory Commission established in section 105;

(2) the term "Secretary" means the Secretary of the Interior; and

(3) the term "Shenandoah Valley Civil War sites" means those sites and structures situated in the Shenandoah Valley in the Commonwealth of Virginia which are thematically tied with the nationally significant events that occurred in the region during the Civil War, including, but not limited to, General Thomas "Stonewall" Jackson's 1862 "Valley Campaign" and General Philip Sheridan's 1864 campaign culminating in the battle of Cedar Creek on October 19, 1864.

SEC. 1203. FINDINGS.

The Congress finds that—

(1) many sites and structures associated with the Civil War which represent important means by which the Civil War may continue to be understood and interpreted by the public are located in regions which are undergoing rapid urban and suburban development; and

(2) it is important to obtain current information on the significance of such sites, threats to their integrity, and alternatives for their preservation and interpretation for the benefit of the Nation.

SEC. 1204. SHENANDOAH VALLEY CIVIL WAR SITES STUDY.

(a) STUDY.—(1) The Secretary is authorized and directed to prepare a study of Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short- and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State, and local governments, or other public or private entities, as may be appropriate. Such alternatives may include, but shall not be limited to, designation as units of the National Park System or as affiliated areas. The study shall examine methods and make recommendations to continue current land use practices, such as agriculture, where feasible.

(2) The Secretary shall designate at least two nationally recognized Civil War historians to participate in the study required by paragraph (1).

(3) The study shall include the views and recommendations of the National Park System Advisory Board.

(b) TRANSMITTAL TO CONGRESS.—Not later than 1 year after the date that funds are made available for the study referred to in subsection (a), the Secretary shall transmit such study to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

SEC. 1205. ESTABLISHMENT OF CIVIL WAR SITES ADVISORY COMMISSION.

(a) IN GENERAL.—There is hereby established the Civil War Sites Advisory Commission. The Commission shall consist of thirteen members appointed as follows:

(1) Three individuals who are nationally recognized as experts and authorities on the history of the Civil War, and two individuals who are nationally recognized as experts and authorities in historic preservation and land use planning, appointed by the Secretary.

(2) The Director of the National Park Service or his or her designee.

(3) The chair of the Advisory Council on Historic Preservation, or his or her designee.

(4) Three individuals appointed by the Speaker of the United States House of Representatives in consultation with the Chairman and Ranking Minority Member of the Committee on Interior and Insular Affairs.

(5) Three individuals appointed by the President Pro Tempore of the United States Senate in consultation with the Chairman and Ranking Minority Member of the Committee on Energy and Natural Resources.

(b) CHAIR.—The Commission shall elect a chair from among its members.

(c) VACANCIES.—Vacancies occurring on the Commission shall not affect the authority of the remaining members of the Commission to carry out the functions of the Commission. Any vacancy in the Commission shall be promptly filled in the same manner in which the original appointment was made.

(d) QUORUM.—A simple majority of Commission members shall constitute a quorum.

(e) MEETINGS.—The Commission shall meet at least quarterly or upon the call of the chair or a majority of the members of the Commission.

(f) COMPENSATION.—Members of the Commission shall serve without compensation. Members of the Commission, when engaged in official Commission business, shall be entitled to travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service under section 5703 of title 5, United States Code.

(g) TERMINATION.—The Commission established pursuant to this section shall terminate 90 days after the transmittal of the report to Congress as provided in section 8(c).

SEC. 1206. STAFF OF THE COMMISSION.

(a) EXECUTIVE DIRECTOR.—The Director of the National Park Service, or his or her designee, shall serve as the Executive Director of the Commission.

(b) STAFF.—The Director of the National Park Service shall, on a reimbursable basis, detail such staff as the Commission may require to carry out its duties.

(c) STAFF OF OTHER AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

(d) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

SEC. 1207. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission may for the purpose of carrying out this title hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence as the Commission may deem advisable.

(b) BYLAWS.—The Commission may make such bylaws, rules and regulations, consistent with this title, as it considers necessary to carry out its functions under this title.

(c) DELEGATION.—When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(d) MAILS.—The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

SEC. 1208. DUTIES OF THE COMMISSION.

(a) PREPARATION OF STUDY.—The Commission shall prepare a study of historically significant sites and structures in the United States associated with the Civil War, other than Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short- and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State and local governments, or other public or private entities, as may be appropriate. The Commission shall research and propose innovative open space and land preservation techniques. Such alternatives may include but shall not be limited to designation as units of the National Park System or as affiliated areas. The study may include existing units of the National Park System.

(b) CONSULTATION.—During the preparation of the study referred to in subsection (a), the Commission shall consult with the Governors of affected States, affected units of local government, State and local historic preservation organizations, scholarly organizations, and such other interested parties as the Commission deems advisable.

(c) TRANSMITTAL TO THE SECRETARY AND CONGRESS.—Not later than 2 years after the date that funds are made available for the study referred to in subsection (a), the Commission shall transmit such study to the Secretary and the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

(d) REPORT.—Whenever the Commission submits a report of the study to the Secretary or the Office of Management and Budget, it shall concurrently transmit copies of that report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

SEC. 1209. REVISION OF THEMATIC FRAMEWORK.

In coordination with the major scholarly and professional organizations associated with the disciplines of history, archeology, architecture, and closely related fields, the Secretary shall undertake a complete revision of the National Park Service "Thematic Framework" to reflect current scholarship and research on (1) American history and culture, (2) historic and prehistoric archeology, and (3) architecture. The revision shall be transmitted to the United States House of Representatives Committee on Interior and Insular Affairs and the United States Senate Committee on Energy and Natural Resources not later than 18 months after the date of enactment of this Act. In making such revision, the Secretary shall ensure that the full diversity of American history and prehistory are represented in the revised "Thematic Framework".

SEC. 1210. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums not to exceed $2,000,000 to carry out the purposes of this title.

SEC. 1211. NATIONAL PARK SYSTEM ADVISORY BOARD.

Section 3 of the Act of August 21, 1935, entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. 461-467; 49 Stat. 666 et seq.) is amended—

(1) in the first sentence of subsection (a)—

(A) by striking "twelve" and inserting "sixteen";

(B) by striking "United States," and inserting "United States who have a demonstrated commitment to the National Park System,"; and

(C) by striking "and natural science," and inserting "anthropology, biology, geology, and related disciplines,";

(2) by adding at the end of subsection (a) the following: "Such board shall also provide recommendations on the designation of national historic landmarks and national natural landmarks. Such board is strongly encouraged to consult with the major scholarly and professional organizations in the appropriate disciplines in making such recommendations.";

(3) in the first sentence of subsection (b), by striking "1990" and inserting "1995"; and

(4) in the second sentence of subsection (b), by striking "In" and inserting "The provisions of section 14(b) of the Federal Advisory Committee Act (the Act of October 6, 1972; 86 Stat. 776) are hereby waived with respect to the Board, but in".

SEC. 1212. NATIONAL PARK SYSTEM ADVISORY COUNCIL.

Section 3 of the Act of August 21, 1935, entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. 461-467; 49 Stat. 666 et seq.) is amended by adding at the end the following:

"(c) There is hereby established the National Park Service Advisory Council (hereafter in this section referred to as the "advisory council") which shall provide advice and counsel to the National Park System Advisory Board. Membership on the advisory council shall be limited to those individuals whose term on the advisory board has expired. Such individuals may serve as long as they remain active except that not more than 12 members may serve on the advisory council at any one time. Members of the advisory council shall not have a vote on the National Park System Advisory Board. Members of the advisory council shall receive no salary but may be paid expenses incidental to travel when engaged in discharging their duties as members. Initially, the Secretary shall choose 12 former members of the Advisory Board to constitute the advisory council. In so doing, the Secretary shall consider their professional expertise and demonstrated commitment to the National Park System and to the Advisory Board.".

SEC. 1213. The Secretary of the Interior (hereafter in this title referred to as the 'Secretary') is authorized and directed to conduct a systematic and comprehensive review of certain aspects of the National Park System and to submit on a periodic basis but not later than every 3 years a report to the Committee on Interior and Insular Affairs and the Committee on Appropriations of the United States House of Representatives and the Committee on Energy and Natural Resources and the Committee on Appropriations of the United States Senate on the findings of such review, together with such recommendations as the Secretary determines necessary. The first report shall be submitted no later than 3 years after the date of enactment of this Act.

SEC. 1214. In conducting and preparing the report referred to in section 1, the Secretary shall consult with appropriate officials of affected Federal, State and local agencies, together with national, regional, and local organizations, including but not limited to holding such public hearings as the Secretary determines to be appropriate to provide a full opportunity for public comment.

SEC. 1215. The report shall contain—

(a) A comprehensive listing of all authorized but unacquired lands within the exterior boundaries of each unit of the National Park System as of the date of enactment.

(b) A priority listing of all such unacquired parcels by individual park unit and for the National Park System as a whole. The list shall describe the acreage and ownership of each parcel, the estimated cost of acquisition for each parcel (subject to any statutory acquisition limitations for such lands), and the basis for such estimate.

(c) An analysis and evaluation of the current and future needs of each unit of the National Park System for resources management, interpretation, construction, operation and maintenance, personnel, housing, together with an estimate of the costs thereof.

SEC. 1216. Within one year after the date of enactment, the Secretary shall develop criteria to evaluate any proposed changes to the existing boundaries of individual park units including—

(a) analysis of whether or not the existing boundary provides for the adequate protection and preservation of the natural, historic, cultural, scenic and recreational resources integral to the unit;

(b) an evaluation of each parcel proposed for addition or deletion to the unit based on the analysis under paragraph (1);

(c) an assessment of the impact of potential boundary adjustments taking into consideration the factors in paragraph (c) as well as the effect of the adjustments on the local communities and surrounding area;

SEC. 1217. In proposing any boundary change after the date of enactment of this section, the Secretary shall—

(a) consult with affected agencies of state and local governments surrounding commu-

nities, affected land owners and private national, regional, and local organizations;

(b) apply the criteria developed pursuant to section 1216 and accompany this proposal with a statement reflecting the results of the application of such criteria;

(c) include with such an estimate of the cost for acquisition of my parcels proposed for acquisition together with the basis for the estimate and a statement on the relative priority for the acquisition of each parcel within the priorities for acquisition of other lands for such unit and for the National Park System.

TITLE XIII

SEC. 1301. This Act may be cited as the "Clarks Fork Wild and Scenic River Designation Act of 1990".

SEC. 1302 DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)), as amended, is further amended by adding at the end the following:

"( ) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out this paragraph, there is authorized to be appropriated $500,000 for development and $750,000 for the acquisition of land and interests therein.

"(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any other Federal action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Provided that water from any development shall not intrude upon such segment. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designation as a component of the Wild and Scenic Rivers System.

"(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of Wyoming: Provided, That, notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

"(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such measures as may be necessary in the control of fire, insects, and diseases to fully protect the values for which the segment is designated as a wild river.".

Mr. MITCHELL. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER TO VITIATE ACTION ON S. 2343

Mr. MITCHELL. Mr. President, I ask unanimous consent that previous Senate action on Calendar No. 1009, S. 2343 be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

WILD AND SCENIC RIVERS ACT AMENDMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 1009, S. 2343, the Clark Fork River bill, that the bill be advanced to third reading and passed and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 2343) was passed.

DESIGNATION OF LOWER MERCED RIVER AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 941, H.R. 4687, regarding the Merced River.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4687) to amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. DESIGNATION OF THE LOWER MERCED RIVER FOR INCLUSION IN THE WILD AND SCENIC RIVERS SYSTEM.

Section 3(a)(62) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(62)) is hereby amended—

(1) by striking "The main stem" and inserting in lieu thereof, "(A) The main stem";

(2) by striking "paragraph" whenever it appears and inserting in lieu thereof, "subparagraph"; and

(3) by adding the following new subparagraphs at the end thereof:

"(B)(i) The main stem from a point 300 feet upstream of the confluence with Bear Creek downstream to the point of maximum flood control storage of Lake McClure, consisting of approximately 8 miles, as generally depicted on the map entitled 'Merced Wild and Scenic River', dated April, 1990. The Secretary of the Interior shall administer the segment as recreational, from a point 300 feet upstream of the confluence with Bear Creek downstream to a point 300 feet west of the boundary of the Mountain King Mine, and as wild, from a point 300 feet west of the boundary of the Mountain King Mine to the point of maximum flood control storage of Lake McClure. The requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the Sierra Management Framework Plan for the Sierra Planning Area of the Folsom Resource Area, Bakersfield District, Bureau of Land Management. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subparagraph.

"(ii) To the extent permitted by, and in a manner consistent with section 7 of this Act (16 U.S.C. 1278), and in accordance with other applicable law, the Secretary of the Interior shall permit the construction and operation of such pumping facilities and associated pipelines as identified in the Bureau of Land Management right-of-way application CACA 26084, filed by the Mariposa County Water Agency on November 7, 1989, and known as the 'Saxon Creek Project', to assure an adequate supply of water from the Merced River to Mariposa County.

"(C) With respect to the segments on the main stem of the Merced River and the South Fork Merced River designated as recreational or scenic pursuant to this paragraph or by the appropriate agency pursuant to subsection (b), the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.".

SEC. 2. STUDY OF THE NORTH FORK OF THE MERCED RIVER.

Section 5(a) of the Wild and Scenic Rivers Act, as amended, (16 U.S.C. 1276(a)), is further amended by adding the following new paragraph at the end thereof:

"( ) North Fork Merced, California.—The segment from its headwaters to its confluence with the Merced River, by the Secretary of Agriculture and the Secretary of the Interior.".

The PRESIDING OFFICER. Are there amendments to the substitute? The question is on agreeing to the substitute amendment.

The substitute amendment was agreed to.

The PRESIDING OFFICER. If there are not further amendments, the bill is deemed to have been read a third time and passed.

So the bill (H.R. 4687) was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

J. WILL ROBINSON FEDERAL BUILDING

Mr. MITCHELL. Mr. President, I ask unanimus consent that the Senate proceed to the immediate consideration of H.R. 5419, designating a Federal building in Utah now at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5419) to designate the Federal Building at 88 West 100 North in Provo, Utah, as the "J. Will Robinson Federal Building".

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Without objection, the bill is deemed read a third time and passed.

So the bill (H.R. 5419) was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. While we are waiting for the Senate to proceed, I would like to make a couple of comments on the passage of the Arizona wilderness bill which this body passed. It is a product of over 2 years of work on the part of thousands of citizens in the State of Arizona who are committed to preserving the great natural beauty and treasures of our State.

We owe a great debt of gratitude to all the members of the congressional delegation but, most importantly, to the men and women of Arizona who are committed to preserve this 2.4 million acres in pristine status. To them, not only our present generations of Arizonans will be grateful but also future generations as well.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, I would like to thank my colleagues for the passage of the "Take Pride in America" bill. This bill will have an impact that will improve the environment in the United States through volunteer action. It will be a permanent part of the Interior Department to encourage and enchance volunteer action to take the private contributions to make America a better place even though we all know it is the best place in the world. I am very pleased and I thank my colleagues for its passage.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZING SENATOR CRANSTON TO SIGN HOUSE JOINT RESOLUTION 687

Mr. MITCHELL. Mr. President, I ask unanimous consent that the majority whip, Senator CRANSTON, be authorized to sign House Joint Resolution 687.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE ARMS CONTROL OBSERVER GROUP RESOLUTION

Mr. MITCHELL. Mr. President, on behalf of myself and Senator DOLE, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 358) extending the provisions of Senate Resolution 105 of the 101st Congress (agreed to April 13, 1989).

Resolved, That the provisions of Senate Resolution 105 of the One Hundred First Congress (agreed to April 13, 1989) shall remain in effect during the One Hundred Second Congress and terminate upon the adjourment sine die thereof.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 358) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON NATIONAL EMERGENCY WITH RESPECT TO PANAMA—MESSAGE FROM THE PRESIDENT—PM 156

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

1. I hereby report to the Congress on developments since the last Presidential report of April 30, 1990, concerning the national emergency with respect to Panama. This report is submitted pursuant to section 207(d) of the International Emergency Economic Powers Act, 50 U.S.C. 1706(d).

2. On April 5, 1990, I issued Executive Order No. 12710, terminating the national emergency declared on April 8, 1988, with respect to Panama. While this order terminated the sanctions, the blocking of Panamanian government assets in the United States was continued to permit completion of the orderly unblocking and transfer of funds I directed on December 20, 1989, and to foster the resolution of claims of U.S. creditors involving Panama, pursuant to 50 U.S.C. 1706(a). The termination of the national emergency did not affect the continuation of compliance audits and enforcement actions with respect to activities taking place during the sanctions period, pursuant to 50 U.S.C. 1622(a).

3. Since March 12, 1990, the Office of Foreign Assets Control ("FAC") has

released $39 million of the remaining $169.7 million blocked to the control of the Government of Panama. This $39 million was comprised of $600,000 from blocked accounts at commercial banks, and $38.4 million from blocked reserve accounts established under section 509 of the Panamanian Transactions Regulations, 31 C.F.R. 565.509 ("509 accounts").

The $130.7 million remaining blocked consists of $127.8 million in the Federal Reserve Bank of New York that continues to be held in escrow at the request of the Government of Panama to fund a portion of Panama's arrearage to international financial institutions, $1.5 million in commercial banks for which the Government of Panama has not requested unblocking, and $1.4 million in 509 accounts. The remaining 509 account balances are subject to bilateral negotiations between the Government of Panama and U.S. firms that have both debts to and obligations owed from the Government of Panama. We will continue to work with the Government of Panama to resolve its outstanding obligations.

4. Representatives of the Department of the Treasury visited Panama to discuss with senior Panamanian officials and representatives of the business community the conclusion of the Panama emergency and the unblocking of funds, and to request their assistance in enforcement and compliance actions that may still occur. The Department of the Treasury is in the process of reviewing potential civil penalty cases involving violations of the Panamanian Transactions Regulations, 31 C.F.R. Part 565, which occurred prior to the end of the economic sanctions program against the Noriega regime. Prepenalty Notices have been issued in two such cases as of this date.

5. I will continue to report periodically to the Congress on the exercise of authorities to prohibit transactions involving property in which the Government of Panama has an interest, pursuant to 50 U.S.C. 1706(d).

GEORGE BUSH.

THE WHITE HOUSE, *October 27, 1990.*

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on October 27, 1990, during the recess of the Senate, received a message from the House of Representatives announcing that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3095) to amend the Federal Food, Drug, and Cosmetic Act to make improvements in the regulation of medical devices, and for other purposes.

MESSAGES FROM THE HOUSE

At 2:39 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, each without amendment:

S. 459. An act to amend the title 35, United States Code with respect to the use of inventions in outer space;

S. 2946. An act to amend the Public Health Service Act to revise and extend the program establishing the National Bone Marrow Donor Registry, and for other purposes; and

S. 3187. An act to address immediate problems affecting environmental cleanup activities.

The message also announced that the House has agreed to the concurrent resolution (S. Con. Res. 158) directing the Clerk of the House of Representatives to make technical corrections in the enrollment of the bill H.R. 4739; without amendment.

The message further announced that the House has passed the following bills, each with amendments, in which it requests the concurrence of the Senate:

S. 1931. An act to prevent the discharge in a chapter 13 bankruptcy proceeding of certain debts arisig out of the debtor's operation of a motor vehicle while legally intoxicated; and

S. 2056. An act to amend title XIX of the Public Health Service Act to provide grants to States to establish and implement State health objectives plans, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1396) to amend the Federal securities laws in order to facilitate cooperation between the United States and foreign countries in securities law enforcement.

The message further announced that the House agrees to the report of the committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1602) to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3045) to amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities.

The message further announced that the House agrees to the amendment of the Senate to each of the following bills:

H.R. 2497. An act to authorize and encourage Federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes;

H.R. 3134. An act for the relief of Mrs. Joan R. Daronco;

H.R. 3310. An act to authorize appropriations for activities of the National Telecommunications and Information Administration for fiscal years 1990 and 1991;

H.R. 3977. An act to protect and conserve the continent of Antarctica, and for other purposes; and

H.R. 5113. An act to amend the Public Health Service Act to revise and extend the program for the prevention and control of injuries.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 3562) to amend the Federal Food, Drug, and Cosmetic Act to prescribe nutrition labeling for foods, and for other purposes.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5931. An act to implement the national objectives of pollution prevention by establishing a source reduction program at the Environmental Protection Agency, by assisting States in providing information and technical assistance regarding source reduction, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 392. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 4653; and

H. Con. Res. 393. Concurrent resolution to correct a technical error in the enrollment of the bill S. 459.

At 4:10 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the concurrent resolution (H. Con. Res. 394) directing the Secretary of the Senate to make corrections in the enrollment of the bill S. 358; in which it requests the concurrence of the Senate.

At 4:36 p.m., a message from the House of Representatives announced that the House has passed the follow-

ing bills and joint resolutions, each without amendment:

S. 3156. An act to correct a clerical error in Public Law 101-383;

S. 3176. An act to promote environmental education, and for other purposes;

S. 3237. An act to authorize the Secretary of the Treasury to sell certain silver proof coin sets;

S.J. Res. 364. Joint resolution to designate the third week of February 1991 as "National Parents and Teachers Association Week;" and

S.J. Res. 375. Joint resolution to designate October 30, 1990, as "Refugee Day."

The message also announced that the House has passed the following bills, each with amendments, in which it requests the concurrence of the Senate:

S. 169. An act to amend the National Science and Technology Policy, Organization, and Priorities Act of 1976 in order to provide for improved coordination of national scientific research efforts and to provide for a national plan to improve scientific understanding of the Earth system and the effect of changes in that system on climate and human well-being;

S. 2566. An act to redesignate the Sunset Crater National Monument as the Sunset Crater Volcano National Monument; and

S. 2857. An act to amend the Public Health Service Act to reauthorize certain Institutes of the National Institutes of Health, and for other purposes.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3630) to amend the Public Health Service Act with respect to the prevention and treatment of substance abuse, including establishing separate block grants with respect to substance abuse and mental health.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 3000) to require that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured, to provide for accreditation of laboratories engaged in fastener testing, to require inspection, testing, and certification, in accordance with standardized methods, of fasteners used in critical applications to increase fastener quality and reduce the danger of fastener failure, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 2840) to reauthorize the Coastal Barrier Resources Act, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 5140) to amend the Elementary and Secondary Education Act of 1965 to improve secondary school programs for basic skills improvement and dropout prevention and reentry, and for other purposes.

The message further announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 5933. An act to provide for the temporary extension of the certain laws relating to housing and community development; and

H.J. Res. 652. Joint resolution to designate March 25, 1991, as "National Medal of Honor Day."

At 7:16 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the joint resolution (S.J. Res. 329) to designate the week of November 3, 1990, through November 10, 1990, as "National Week to Commemorate the Victims of The Famine in the Ukraine, 1932-1933," and to commemorate the Ukrainian famine of 1932-33 and the policies of Russification to suppress Ukrainian identity.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2740) to provide for the conservation and development of water and related resources, to authorize the U.S. Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes.

The message further announced that the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (H.R. 5399) making appropriations for the legislative branch for the fiscal year ending September 30, 1991, and for other purposes.

The message also announced that the House agree to the amendment of the Senate to the bill (H.R. 4323) to amend the Federal Water Pollution Control relating to water quality in the Great Lakes.

The message further announced that the House agrees to the amendments of the Senate to each of the following bills:

H.R. 3338. An act to direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes; and

H.R. 4630. An act to acquire and study certain lands in the State of New Mexico, and for other purposes; and

H.R. 5567. An act to authorize international narcotics control activities for fiscal year 1991, and for other purposes.

The message also announced that the House recedes from its amendments to the bill (S. 1805) to authorize the Secretary of the Interior to reinstate oil and gas lease LA 033164.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4468. An act to amend the Internal Revenue Code of 1986 to modify the employment tax treatment of certain crew members on fishing vessels.

At 9:56 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the bill (S. 2362) to enhance the survivability and recovery of the insular areas from severe storms; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 5237) to provide for the protection of Native American graves, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 398. Concurrent resolution directing the Clerk of the House of Representatives to change the enrollment of H.R. 5932; and

H. Con. Res. 399. Concurrent resolution providing for the sine die adjournment of the 101st Congress.

ENROLLED BILL SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

H.R. 3562. An act to amend the Federal Food, Drug, and Cosmetic Act to prescribe nutrition labeling for foods, and for other purposes.

At 10:58 p.m., a message from the House of Representatives announced that the House has passed the bill (S. 845) to amend the Federal Food, Drug, and Cosmetic Act to revitalize the Food and Drug Administration, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5114) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on

the amendments of the Senate to the bill (H.R. 5769) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 2061) to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1993, and for other purposes.

The message further announced that the House has passed the bill (S. 1957) to provide for the efficient and cost-effective acquisition of nondevelopmental items for Federal agencies, and for other purposes; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 687. Joint resolution making further continuing appropriations for the fiscal year 1991, and for other purposes.

ENROLLED BILL SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

S. 1430. An act to enhance national and community service, and for other purposes.

At 12:49 p.m., a message from the House of Representatives, delivered by Ms. Goetz, announced that the House agrees to the amendment of the Senate to the bill (H.R. 2006) to expand the powers of the Indian Arts and Crafts Board, and for other purposes; with amendments, in which it requests the concurrence of the Senate.

The message also announced that pursuant to the provisions of 19 U.S.C. 2211, the Speaker selected the following members of the Committee on Energy and Commerce to be accredited by the President as additional official advisors to the United States delegations to international conferences, meetings, and negotiation sessions relating to trade agreements on the part of the House: Mr. MARKEY, Mr. WALGREN, and Mr. LENT.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 5390) to prevent and control infestations of the coastal inland waters of the United States by the zebra mussel and other nonindigenous aquatic nuisance species, to reauthorize the National Sea Grant College Program, and for other purposes.

The message also announced that the House has passed the following bills, each with amendments, in which it requests the concurrence of the Senate:

H.R. 3656. An act to amend the Securities Exchange Act of 1934 to improve the clearance and settlement of transactions in securities and related instruments, and for other purposes; and

H.R. 5933. An act to provide for the temporary extension of the certain laws relating to housing and community development.

At 1:48 p.m., a message from the House of Representatives announced that the House has passed the following bills, each without amendment:

S. 620. An act for the relief of Leroy W. Shebal of North Pole, Alaska;

S. 3012. An act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1991, 1992, and 1993, and for other purposes;

S. 3069. An act to provide a method of locating private and Government research on environmental issues by geographic location; and

S. 3266. An act to control crime.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 2570) to provide for the designation of certain public lands as wilderness in the State of Arizona; with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 5316) to provide for the appointment of additional Federal circuit and district judges, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate on the bill (H.R. 29) to amend the Clayton Act regarding interlocking directorates and officers.

ENROLLED JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 687. Joint resolution making further continuing appropriations for the fiscal year 1991, and for other purposes.

Pursuant to the order of October 27, 1990, the enrolled joint resolution was signed by Mr. CRANSTON.

MEASURES REFERRED

The following bills and joint resolutions, previously received from the House of Representatives for concurrence, were read the first and second times by unanimous consent, and referred as indicated:

H.R. 736. An act to require the clear and uniform disclosure by depository institutions of interest rates payable and fees assessable with respect to deposit accounts; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 4468. An act to amend the Internal Revenue Code of 1986 to modify the employment tax treatment of certain crew members on fishing vessels; to the Committee on Finance.

H.R. 4808. An act to encourage solar, wind, waste, and geothermal power production by removing the size limitations contained in the Public Utility Regulatory Policies Act of 1978; to the Committee on Energy and Natural Resources.

H.R. 4888. An act to improve navigational safety and to reduce the hazards to navigation resulting from vessel collisions with pipelines in the marine environment, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 4939. An act regarding the extension of most-favored-nation treatment to the products of the People's Republic of China, and for other purposes; to the Committee on Finance.

H.R. 5308. An act to approve the Fort Hall Indian Water Rights Settlement, and for other purposes; to the Select Committee on Indian Affairs.

H.R. 5326. An act to amend title 38, United States Code, to revise the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans, to make miscellaneous improvements in veterans' compensation and pension programs, to provide a presumption of service-connection between the occurrence of certain diseases incurred by veterans of active service in Vietnam during the Vietnam era and exposure to certain toxic herbicide agents used in Vietnam, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 5419. An act to designate the Federal Building at 88 West 100 North in Provo, Utah, as the "J. Will Robinson Federal Building"; to the Committee on Environment and Public Works.

H.R. 5539. An act to provide for the settlement of water rights claims of the San Carlos Apache Tribe in Arizona, and for other purposes; to the Select Committee on Indian Affairs.

H.R. 5708. An act to authorize acquisition of certain real property for the Library of Congress, and for other purposes; to the Committee on Rules and Administration.

H.R. 5740. An act to amend title 38, United States Code, to make improvements in veterans' health-care programs, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 5762. An act to promote Caribbean regional development; to the Committee on Foreign Relations.

H.R. 5889. An act to require the Federal depository institution regulatory agencies to take additional enforcement actions against depository institutions engaging in money laundering, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 5909. An act to establish the Florida Keys National Marine Sanctuary, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 5922. An act to authorize the Secretary of Commerce to conduct a marine biotechnology research, training, and technology transfer study and program; to the Committee on Commerce, Science, and Transportation.

H.R. 5931. An act to implement the national objective of pollution prevention by establishing a source reduction program at the Environmental Protection Agency, by assisting States in providing information and technical assistance regarding source reduction, and for other purposes; to the Committee on Environment and Public Works.

H.R. 5933. An act to provide for the temporary extension of the certain laws relating to housing and community development;

to the Committee on Banking, Housing, and Urban Affairs.

H.J. Res. 652. Joint resolution to designate March 25, 1991, as "National Medal of Honor Day"; to the Committee on the Judiciary.

H.J. Res. 676. Joint resolution waving certain enrollment requirements with respect to any reconciliation bill or continuing resolution for the remainder of the One Hundred First Congress; to the Committee on Rules and Administration.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 382. Concurrent resolution expressing the sense of the Congress that the crisis created by Iraq's invasion and occupation of Kuwait must be addressed and resolved on its own terms separately from other conflicts in the region; to the Committee on Foreign Relations.

H. Con. Res. 398. Concurrent resolution directing the Clerk of the House of Representatives to change the enrollment of H.R. 5932.

MEASURES PLACED ON THE CALENDAR

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5707. An act to limit the jurisdiction of the Federal Energy Regulatory Commission over local distribution company wholesalers of natural gas for ultimate consumption as a fuel in motor vehicles.

The Committee on Governmental Affairs was discharged from the further consideration of the following bills; which were placed on the calendar:

S. 447. A bill to require the Congress and the President to use the spending levels for the current fiscal year (without adjustment for inflation) in the preparation of the budget for each new fiscal year in order to clearly identify spending increases from one fiscal year to the next fiscal year; and

S. 3121. A bill to amend title 31 of the United States Code to restrict the use of appropriations amounts available for definite periods.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 930. A bill to amend the Occupational Safety and Health Act of 1970 to establish an Office of Construction, Safety, Health, and Education within OSHA to improve inspections, investigations, reporting, and recordkeeping in the construction industry, to require certain construction contractors to establish construction safety and health programs and onsite plans and appoint construction safety specialists, and for other purposes (Rept. No. 101-558).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Howard E. Simmons, of Delaware, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 1996;

Phillip A. Griffiths, of North Carolina, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 1996;

Jaime Oaxaca, of California, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 1996;

Mary Louise Smith, of Iowa, to be a Member of the Board of Directors of the United States Institute of Peace for the remainder of the term expiring January 19, 1991;

Mary Louise Smith, of Iowa, to be a Member of the Board of Directors of the United States Institute for Peace for a term expiring January 19, 1995;

Arlene Holen, of the District of Columbia, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 1996;

Jon N. Moline, of Minnesota, to be a Member of the National Council on the Humanities for a term expiring January 26, 1996;

Elsie V. Vartanian, of New Hampshire, to be Director of the Women's Bureau, Department of Labor; and

David A. Kessler, of New York, to be Commissioner of Food and Drugs, Department of Health and Human Services.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. NUNN, from the Committee on Armed Services:

General Michael J. Dugan, U.S. Air Force, for appointment to the grade of general on the retired list (Exec. Rept. 101-35).

Mr. NUNN. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations.

Those identified with a single asterisk (*) are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk are printed in the RECORDS of September 10, September 17, September 21, September 27, September 28, October 12, October 16, October 25, and October 27, 1990, at the end of the Senate proceedings.)

* Brig. Gen. John L. Fugh, USA, to be the Assistant Judge Advocate General and Major General (Reference No. 350).

* In the Navy there are 34 promotions to the grade of read admiral (lower half) (list begins with Lloyd Edward Allen, Jr.) (Reference No. 979).

* In the Navy there are 5 promotions to the grade of rear admiral (lower half) (list begins with William J. McDaniel) (Reference No. 980).

* In the Navy there are 2 promotions to the grade of rear admiral (list begins with John Sydney Claman) (Reference No. 1087).

* Rear Adm. (Selectee) David M. Bennett, USN, to be vice admiral (Reference No. 1214).

* Vice Adm. Robert K.U. Kihune, USN, for appointment to the grade of vice admiral (Reference no. 1268).

* Rear Adm. Edwin R. Kohn, Jr., USN, to be vice admiral (Reference No. 1269).

* Rear Adm. Joseph P. Reason, USN, to be vice admiral (Reference No. 1270).

* Rear Adm. John E. Gordon, Judge Advocate General's Corps, USN, to be rear admiral and to serve as Judge Advocate General of the Navy (Reference No. 1371).

* Rear Adm. (Lower Half) William L. Schachte, Jr., Judge Advocate General's Corps, USN, to be rear admiral and to serve as Deputy Judge Advocate General of the Navy (Reference No. 1372).

* Capt. Duvall M. Williams, Jr., Judge Advocate General's Corps, USN, to be rear admiral (lower half) and to serve as Assistant Judge Advocate General of the Navy (Reference No. 1373).

* Brig. Gen. John J. Closner III (USAF) (Reserve), to be major general and to serve as Chief of Air Force Reserve (Reference No. 1404).

* Vice Adm. Joseph S. Donnell III, USN to be placed on the retired list in the grade of vice admiral (Reference No. 1412).

* In the Army there is 1 appointment to the grade of brigadier general (Donald W. Shea) (Reference No. 1436).

* Lt. Gen. Harry A. Goodall, USAF to be placed on the retired list in the grade of lieutenant general (Reference No. 1451).

* Lt. Gen. Craven C. Rogers, Jr., USAF to be placed on the retired list in the grade of lieutenant general (Reference No. 1452).

* Lt. Gen. Carl R. Smith, USAF to be placed on the retired list in the grade of lieutenant general (Reference No. 1453).

* Maj. Gen. James T. Callaghan, USAF to be lieutenant general (Reference No. 1454).

* Gen. Robert D. Russ, USAF, to be placed on the retired list in the grade of general (Reference no. 1488).

* Lt. Gen. Robert P. McCoy, USAF, to be placed on the retired list in the grade of lieutenant general (Reference No. 1491).

* Maj. Gen. Trevor A. Hammond, USAF, to be lieutenant general (Reference No. 1492).

* Maj. Gen. Robert H. Ludwig, USAF, to be lieutenant general (Reference No. 1493).

* Maj. Gen. Michael A. Nelson, USAF, to be lieutenant general (Reference No. 1494).

* Vice Adm. John S. Disher, USN, to be placed on the retired list in the grade of vice admiral (Reference no. 1495).

* Vice Adm. Diego E. Hernandez, USN, to be placed on the retired list in the grade of vice admiral (Reference No. 1496).

* Vice Adm. John W. Nyquist, USN, to be placed on the retired list in the grade of vice admiral (Reference No. 1497).

* Vice Adm. John H. Fetterman, Jr., USN, for reappointment to the grade of vice admiral (Reference No. 1498).

* Vice Adm. Henry H. Mauz, Jr., USN, for reappointment to the grade of vice admiral (Reference No. 1499).

* Vice Adm. James D. Williams, USN, for reappointment to the grade of vice admiral (Reference No. 1500).

* Brig. Gen. William A. Navas, Jr., ANG, to be major general (Reference No. 1501).

* In the Army National Guard there are 20 appointments to the grade of major general and below (list begins with John H. McDonald) (Reference No. 1502).

** In the Army Reserve there are 48 appointments to the grade of colonel and below (list begins with John E. Butler) (Reference No. 1505).

** In the Navy there is 1 promotion to the grade of lieutenant commander (Donald J. Center) (Reference No. 1506).

** In the Navy there are 49 appointments to the grade of lieutenant and below (list begins with Max R. Dawkins) (Reference No. 1507).

** In the Navy and Naval Reserve there are 26 appointments to the grade of commander and below (list begins with Edward E. Simpson) (Reference No. 1508).

** In the Army Reserve there are 53 promotions to the grade of colonel and below (list begins with Claudius M. Bonner) (Reference No. 1510).

** In the Army Reserve there are 1,344 promotions to the grade of colonel and below (list begins with Nancy L. Adams) (Reference No. 1511).

** In the Marine Corps Reserve there are 139 appointments to the grade of lieutenant colonel (list begins with Charles H. Allen) (Reference No. 1512).

** In the Navy there are 888 appointments and reappointments to the grade of captain and below (list begins with James Arling Hazlett) (Reference No. 1513).

* Lt. Gen. George L. Butler, USAF, to be general (Reference No. 1518).

* In the Marine Corps there is 1 appointment to the grade of brigadier general (Gerald L. Miller) (Reference No. 1522).

* Maj. Gen. Charles A. May, Jr., USAF, to be lieutenant general and to serve as Senior Air Force Member, Military Staff Committee of the United Nations (Reference No. 1537).

* Adm. Powell F. Carter, Jr., USN, to be placed on the retired list in the grade of admiral (Reference No. 1538).

* Vice Adm. Paul D. Miller, USN, to be admiral (Reference No. 1539).

* Vice Adm. Roger F. Bacon, USN, for reappointment to the grade of vice admiral (Reference No. 1540).

* Rear Adm. Henry G. Chiles, Jr., USN, to be vice admiral (Reference No. 1541).

* Rear Adm. William A. Dougherty, Jr., USN, to be vice admiral (Reference No. 1542).

* Rear Adm. Leighton W. Smith, Jr., USN, to be vice admiral and to serve as Senior Navy Member of the Military Staff Committee of the United Nations (Reference No. 1543).

** In the Air Force Reserve there are 13 promotions to the grade of lieutenant colonel (list begins with Charles O. Barry III) (Reference No. 1544).

* Vice Adm. Robert J. Kelly, USN, to be admiral (Reference No. 1547).

* Adm. Charles R. Larson, USN, for reappointment to the grade of admiral (Reference No. 1548).

* Vice Adm. William D. Smith, USN, to be admiral (Reference No. 1549).

* Brig. Gen. Thomas R. Tempel, USA, to be major general and to serve as Assistant Surgeon General/Chief, Dental Corps (Reference No. 1550).

* Brig. Gen. Michael J. Scotti, USA, to be major general and Col. Ronald R. Blanch, USA, to be brigadier general (Reference No. 1551).

* Gen. Merrill A. McPeak, USAF, to be general and to serve as Chief of Staff, United States Air Force (Reference No. 1558).

** In the Army there are 68 promotions to the grade of major (list begins with Rose J. Anderson) (Reference No. 1560).

* Gen. John T. Chain, Jr., USAF, to be placed on the retired list in the grade of general (Reference No. 1566).

* In the Army Reserve there are 13 appointments to the grade of major general (list begins with Michael M. Berzowski) (Reference No. 1567).

** In the Air Force Reserve there are 2 appointments to the grade of lieutenant colonel (list begins with Moira J. Burke) (Reference No. 1568).

** In the Army there are 6 promotions and appointments to the grade of lieutenant colonel and below (list begins with Dominick A. Crea) (Reference No. 1569).

** In the Army there are 307 promotions and appointments to the grade of colonel and below (list begins with Tony G. Arnold) (Reference No. 1570).

* Maj. Gen. Martin L. Brandtner, USMC, to be lieutenant general (Reference No. 1573).

* Adm. James R. Hogg, USN, to be placed on the retired list in the grade of admiral (Reference No. 1574).

* Rear Adm. (Selectee) Jerry L. Unruh, USN, to be vice admiral (Reference No. 1575).

* Lt. Gen. George A. Joulwan, USA, to be general (Reference No. 1580).

* Gen. Maxwell R. Thurman, USA, to be placed on the retired list in the grade of general (Reference No. 1581).

* Adm. Huntington Hardisty, USN, to be placed on the retired list in the grade of admiral (Reference No. 1582).

* Vice Adm. Daniel L. Cooper, USN, to be placed on the retired list in the grade of admiral (Reference No. 1583).

* Gen. Michael J. Dugan, USAF, to be appointed to the grade of general on the retired list (Reference No. 1586) (with report).

** In the Air Force there are 8 promotions and appointments to the grade of lieutenant colonel and below (Reference No. 1587).

** In the Air Force there are 11 appointments and promotions to the grade of colonel and below (list begins with Dennis G. Caralis) (Reference No. 1588).

** In the Marine Corps there are 46 appointments and designations as unrestricted officers (list begins with Michael W. Gaston) (Reference No. 1589).

** In the Marine Corps there are 212 transfer into the regular Marine Corps in the grade of captain (list begins with Gary S. Barthel) (Reference No. 1590).

** In the Army Reserve there are 52 promotions to the grade of colonel and below (list begins with Michael J. Dugan) (Reference No. 1595).

** In the Army Reserve there are 1,934 promotions to the grade of lieutenant colonel (list begins with Aaron Reid) (Reference No. 1599).

* Lt. Gen. Thomas W. Kelly, USA, to be placed on the retired list in the grade of lieutenant general (Reference No. 1599).

* Lt. Gen. Edwin S. Leland, Jr., USA, for reappointment to the grade of lieutenant general (Reference No. 1600.)

* Maj. Gen. David M. Maddox, USA, for appointment to the grade of general (Reference No. 1601).

* Maj. Gen. Robert D. Chelberg, USA, to be lieutenant general (Reference No. 1605).

** In the Army there are 4 promotions and appointments to the grade of lieutenant colonel and below (list begins with Dennis E. Brower) (Reference No. 1614).

** In the Army there are 6 promotions and appointments to the grade of lieutenant colonel (list begins with Patrick J. Farace, Jr.) (Reference No. 1615).

** In the Army there are 7 promotions to the grade of lieutenant colonel and below (list begins with Larry J. Godfrey) (Reference No. 1616).

** In the Army there are 6 promotions to the grade of major (list begins with Jimmie W. Riggins) (Reference No. 1617).

Total—5,360.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GRAHAM (for himself and Mr. MACK):

S. 3262. A bill to modify the authorities for a flood control project on the Kissimmee River, Florida, and for other purposes; ordered held at the desk.

By Mr. JEFFORDS (for himself, Mr. MCCLURE and Mr. DOMENICI):

S. 3263. A bill to establish a replacement fuels and alternative fuels program, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GARN (for himself, Mr. HATCH, and Mr. ARMSTRONG):

S. 3264. A bill to amend the Federal Water Pollution Control Act to provide for the use of biomonitoring and whole effluent toxicity testing in connection with publicly owned treatment works, and for other purposes; to the Committee on Environment and Public Works.

By Mr. RIEGLE (for himself and Mr. CHAFEE):

S. 3265. A bill to amend title XIX of the Social Security Act to provide for medicaid provider improvements; to the Committee on Finance.

By Mr. MITCHELL (for Mr. BIDEN, (for himself and Mr. THURMOND)):

S. 3266. A bill to control crime; considered and passed.

By Mr. DOLE (by request):

S. 3267. A bill to improve enforcement of the Employee Retirement Income Security Act of 1974, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DECONCINI:

S. 3268. A bill granting the consent of Congress to States to enter into the Interstate Compact on Industrialized/Modular Buildings; to the Committee on the Judiciary.

By Mr. SPECTER (for himself and Mr. HELMS):

S. 3269. A bill to direct the Federal Communications Commission to proscribe indecent material transmitted by means of interstate communications by amending sections 223 of the Communications Act of 1934; to the Committee on Commerce, Science, and Transportation.

By Mr. DOMENICI:

S. 3270. A bill to promote competition in the natural gas marketplace by eliminating discrimination against domestic natural gas; to the Committee on Energy and Natural Resources.

39-059 O—92-19 (Pt. 25)

By Mr. BUMPERS (for himself, Mr. HARKIN, Mr. PRYOR, Mr. BOSCHWITZ, Mr. EXON, Mr. STEVENS, Mr. BAUCUS, Mr. HEFLIN, Mr. COATS, Mr. SHELBY, Mr. WALLOP, Mr. BRYAN, Mr. ARMSTRONG, Mr. KOHL, Mr. DOLE, Mr. DIXON, and Mr. DECONCINI):

S. 3271. A bill to amend the Fair Labor Standards Act of 1938, to clarify the application of such act, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. MITCHELL (for Mr. LEAHY (for himself and Mr. LUGAR)):

S.J. Res. 388. Joint resolution waiving certain enrollment requirements with respect to S. 2830, the Food, Agriculture, Conservation, and Trade Act of 1990; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon) as indicated:

By Mr. SANFORD:

S. Res. 348. Resolution to establish the sense of Congress regarding petroleum prices and to request that the President develop a plan to prevent the prices of petroleum and petroleum products from rising beyond levels reflecting actual supply and demand and for other purposes; placed on the calendar.

By Mr. SANFORD (for Mr. MITCHELL):

S. Res. 349. Resolution expressing the gratitude of the Senate for the service of Douglas B. Hester; considered and agreed to.

By Mr. MOYNIHAN (for himself and Mr. KOHL):

S. Res. 350. Resolution to support improvements to the Federal statistical database; to the Committee on Governmental Affairs.

By Mr. REID (for Mr. MITCHELL (for himself and DOLE)):

S. Res. 351. Resolution extending the provisions of Senate Resolution 106 of the 101st Congress (agreed to April 13, 1989); considered and agreed to.

S. Res. 352. Resolution to extend the authorization of the Commission on the Bicentennial of the United States Senate through the 102d Congress; considered and agreed to.

By Mr. MITCHELL:

S. Res. 353. Resolution to commend the exemplary leadership of the minority leader; considered and agreed to.

By Mr. SIMPSON (for Mr. DOLE):

S. Res. 354. Resolution to commend the exemplary leadership of the majority leader; considered and agreed to.

S. Res. 355. Resolution tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. MITCHELL:

S. Res. 356. Resolution tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

S. Res. 357. Resolution authorizing the President of the Senate, the President of the Senate pro tempore, and the majority and minority leaders to make certain appointments after the sine die adjournment of the present session; considered and agreed to.

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 358. Resolution extending the provisions of Senate Resolution 105 of the 101st Congress, the Senate Arms Control Observer Group Resolution; considered and agreed to.

By Mr. CRANSTON (for Mr. FORD):

S. Con. Res. 159. Concurrent resolution directing the Clerk of the House of Representatives to change the enrollment of H.R. 5835; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JEFFORDS (for himself, Mr. MCCLURE, and Mr. DOMENICI):

S. 3263. A bill to establish a replacement and alternative fuels program, and for other purposes; to the Committee on Energy and Natural Resources.

REPLACEMENT AND ALTERNATIVE FUEL PROGRAM

Mr. JEFFORDS. Mr. President, our overwhelming desire to adjourn masks our fatigue as we work through these final, but crucial decisions. As we seek to establish policies to assure greater domestic security, we should not lose track of American forces positioned for battle in the Persian Gulf. Just as we pray that the role of those troops remains one of deterrence, so too should we be mindful of policies changes that might prevent this situation from being repeated in the future.

This is the second time in the last 3 years that we have been dragged into military operations in the Persian Gulf because of our dependence upon Mideast oil. So far we have been lucky enough to avoid war, but it is not wise policy to count on avoiding it in the future. Hopefully, we can use the confluence of international condemnation of Saddam Hussein and United Nation's support for our actions to pressure Iraq to withdraw from Kuwait without a military conflict. However, if we successfully resolve this crisis, history indicates that there will be another one forming.

The Mideast has been in turmoil for centuries. Unprovoked aggression, territorial grabs by autocratic leaders with unbridled personal ambition, and national and religious animosities have frequently led to bloodshed and oppression. Even today, a cursory look at the region points up many potential flashpoints.

Several autocratic and ruthless leaders continue to be a source of concern. In addition to Saddam, Qadhafi is always ready to exploit any situation of instability. While Syrian leader Assad has been sounding more reasonable of late, his domestic record is one of brutality and he clearly has far-reaching personal ambitions. The few democracies in the region are still in their infancy, struggling to deal with the stresses of self-government and to resist the strong undercurrents of radical Islamic movements that threaten to over them.

Wide disparities in income both between nations and within many Mid-East nations are a constant source of potential unrest. Kuwait's wealth and high per capita income have not endeared it to many of its Arab neighbors. The Shah of Iran was toppled in part because of the obvious and offensive disparity between the resources of the upper class and the poverty of the majority of Iranians.

We must not underestimate the general Arab feeling of anger at the Western World, and the United States in particular, for what they see as a long-standing bias against them. The current volatility of the Palestinian situation and the degree to which most of the Arab world identifies with this struggle is indicative of the depth of this feeling. Historically, the Arab world has not been overly concerned with the plight of the Palestinians, but the struggle now strikes a cord throughout the region. It seems to me that resolution of this issue is a prerequisite for any regional stability.

Overlaying all these tensions is the growing militarization of the region. Fueled by both the East and the West and fed by the flames of regional discord, nations are increasing their military expenditures at the expenses of desperately needed social and economic investment. While the per capita incomes of the majority of people are very low in comparison with the developed world, several countries have or soon may have nuclear and chemical weapons capability.

We are not going to solve these problems any time soon. The region is likely to continue to be very volatile for the coming decades and maybe longer. And as long as we are dependent upon the region to fuel our economy, we will have to invest huge amounts in terms of dollars, diplomatic energy and maybe even American lives every time a crisis arises. And this cost must be factored in to the price of oil as we compare the cost of the various energy alternatives.

Oil speculators bidding on Wall Street mirror the lack of confidence of the investment community in a lasting, peaceful solution in the Mideast. Indeed, the opposite emotion reigns. The fear of supply disruptions due to an outbreak of war has driven the cost of crude above $40 per barrel although now the price fluctuates between $30 and $35. This war dividend, as it is so perversely described by those who gain by such speculations, comes from the pockets of working Americans each moment they commute to work or heat their homes.

Terms like "budget reconciliation" and "agree with a motion in disagree-

ment" mean very little to a housewife in Vermont as she wonders how to pay for the fuel delivery whose price is double that which was budgeted.

Mr. President, never has the need to free ourselves from the shackles of dependency on imported oil been more obvious. While a goal of energy independence may currently be overly ambitious, a goal of establishing the technological infrastructure to utilize our energy resources is not.

The transportation sector of our economy, which operates almost exclusively on petroluem fuel, consumes over 60 percent of the oil we import. And in contrast to the industrial sector and the utility sector, the technological infrastructure of the transportation sector is not currently conducive to fuels other than petroleum.

In other words, a powerplant can choose between coal, oil, or natural gas. Electricity can likewise be produced from wind, wood, the Sun, or rotting biomass. But many of us have friends with cars that burn anything but gas or diesel fuel?

My bill seeks to get our country beyond this technological dilemma along two distinct tracks. First, the bill requires petroleum refiners to mix their gasoline with a minimum level of liquids that are not derived from crude oil. My bill stimulates the production of these replacement fuels by simply mandating a demand. The percentage requirements are designed to encourage investments in the replacement fuels industry by assuring that there will be a market for the fuels produced.

Second, the bill allows refiners to meet their production mandates by introducing, or supporting the introduction of, alternative fuels into the transportation market. These fuels include products that are not readily mixable with gasoline, such as natural gas and electricity. In addition, the bill includes incentives for the production and sale of automobiles that would utilize such fuels. By getting these cars into the existing vehicle inventory, we begin to get a foothold on the ability to switch fuels in response to changing supply situations. The bill gives further incentives for cooperation between the automobile and alternative fuel industries by moving the Rockefeller/Sharp cap according to the alternative fuel actually used.

Are these radical suggestions? Not at all. It is not a new approach, but it may be the only approach. Subsidies and direct Government investments have not worked because the volatile nature of oil prices, combined with inherent disincentives to adhere to least cost decisionmaking have always worked against the development of a stable synthetic or alternative fuels industry.

Production mandates have worked in the past. Witness the successful program to phaseout leaded gasoline. Congress banned it, and industry responded. Now, it's a great success story. Witness the automobile fuel economy standards. Congress required that automakers produce cars with better gas mileage, and industry responded. Now, it's a great success story.

These programs were in the national interest. Today the Nation is better served because they were instituted by Congress.

So, my bill requires petroleum refiners to incorporate a fixed percentage of replacement fuels in their gasoline, or get credit by enhancing the use of alternative fuels.

What are these replacement resources? Some are existing, such as ethanol. Ethanol production is currently almost a billion gallons annually. The General Services Administration has found that the industry could triple in size. There is similar potential for methanol production, derived from methane currently being flared from oil wells. Methane can also be derived from biolass sources, as is done in Vermont at a landfill and likewise at a cow manure storage pit.

This country has larger reserves by far, however, in the form of coal, oil shale, and tar sands. Our current excess coal production capacity could supply about a million barrels per day of liquid fuel. I repeat, this is current excess coal production potential.

A similarly robust fuel potential lies below the surface of the Rocky Mountain States of Colorado and Wyoming in the form of oil shale. Estimates of the potential for energy from oil shale in Colorado exceed the oil energy existing in Saudi Arabia. United States and Canadian tar sand resources have a similar capacity.

The technologies for producing liquid fuels from coal and oil shale have been demonstrated. In fact, liquids from these two sources are being produced today. The cost prohibits these liquids from being able to compete in the normal market. However, under the program described by my bill, a market for these fuels will be created, and production costs will go down as technologies mature and economies of scale take over.

Mr. President, the cost of producing liquids from coal and shale may never be as low as the historic cost of oil. But remember, as I previously mentioned, our oil prices today do not incorporate the indirect costs that are also required due to international factors. Nor do they reflect the incredible human sacrifices that might be asked.

With domestic supplies, produced under the policies and laws of the United States, what you see is what you get.

Furthermore, because we now lack the ability to extract these resources to their full potential, we are vulnerable to being held as fiscal hostages to those who control world oil supplies. If however, we had the developed technologies and the industrial means to produce our own fuel, supply disruptions would not have such a disasterous effect. Further developing these options will lessen the desire to cause disruptions.

There will be cost implications; that I will not deny. But my bill phases in these requirements over the years, starting at 10 percent in 1998 and moving to 30 percent by 2005. Even at a benchmark cost of $35 to $45 per barrel, which is ballpark for the bulk of the replacement fuels, that's not much above today's crude oil price. Even so, that slightly higher cost would only be reflected in a small percentage of the total. Further, that domestic cost does not require the sorts of uncalculated costs associated with defending the oil supplies of the Mideast.

I believe that it is in our national interest to stimulate the development of domestic, diverse energy supplies. I believe it is in the national interest to develop diverse means to utilize these domestic supplies of energy.

Mr. President, other attempts to accomplish this end have failed for obvious reasons. In the 1970's, we began to make good progress on alternative fuels through the Synfuels Corporation and other measures. When the bottom fell out of the price of oil, we abandoned those efforts.

My bill would accomplish these goals with no Federal budget effect. I believe this replacement fuels program is in the national interest, and I am introducing this revised bill today in order to be ready to fully explore its potential during the full course of the coming congressional session.

Mr. President, I ask unanimous consent that a summary of the bill and the full text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3263

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPLACEMENT AND ALTERNATIVE FUELS PROGRAM.

(a) FINDINGS.—The Congress finds and declares that—

(1) United States national security demands that we develop an energy program to reduce our dependency on imported oil;

(2) domestic resources are available to eliminate or substantially reduce our dependency on imported oil;

(3) transportation uses account for more than 60 percent of our national oil consumption;

(4) a comprehensive energy program is needed to reduce pollution as well as reduce our dependency on imported oil, including the stimulation of the production and use of

automobiles capable of using alternative fuels;

(5) such program should be designed to create a positive impact on the economy, our national trade balance, and our national budget;

(6) such program should allow market forces, within appropriate environmental parameters, to affect the selection of replacement or alternative fuels; and

(7) such program should provide long-term stability to industries producing replacement and alternative fuels.

(b) PURPOSE.—The purposes of this Act are to enhance energy security, reduce air pollution, improve our balance of trade, reduce the budget deficit, improve the marketability of alternative and flexible fuel vehicles, and improve the condition of the national economy through the creation of a replacement fuel industry and the enhancement of the alternative fuel industry.

(c) DEFINITIONS.—For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "alcohol" means methanol, ethanol, or any other alcohol which is produced from renewable resources or coal and which is suitable for use by itself or in combination with other fuels as a motor fuel;

(3) the term "conventional petroleum" means petroleum derived from oil wells, including stripper wells, domestic or imported;

(4) the term "domestic" means derived from resources within the 50 States, the territories of the United States, and the continental North America;

(5) the term "motor fuel" means any substance suitable as a fuel for self-propelled vehicles designed primarily for use on public streets, roads, and highways;

(6) the term "alternative motor fuel" means a motor fuel not designed to be mixed with gasoline, including propane, natural gas, "neat" alcohol, hydrogen, and electricity;

(7) the term "replacement fuel" means fuels capable of mixing with gasoline, including alcohol and liquids derived from coal, tar sands, and shale, but not fuels derived from conventional petroleum;

(8) the term "replacement motor fuel" means any fuel described in paragraph (7) that is mixed with gasoline in accordance with the provisions of this Act, or an alternative motor fuel used for vehicle transportation purposes;

(9) the term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, traffic, transportation, exchange, or other commerce described in subparagraph (A);

(10) the term "motor fuel" means any substance suitable as a fuel for self-propelled vehicles designed primarily for use on public streets, roads, and highways;

(11) the term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, including any affiliate of such person, or any importer of gasoline for use as a motor fuel;

(12) the term "Secretary" means the Secretary of Energy;

(13) the term "United States" means each State of the several States and the District of Columbia; and

(14) the term "renewable" means any source of energy which is available in an inexhaustible supply in the foreseeable future.

(d) REPLACEMENT AND ALTERNATIVE FUEL PROGRAM.—The Secretary shall establish, pursuant to this section, a program to promote the development and use in the United States of domestic-produced replacement and alternative fuels. Such program shall be designed to promote the replacement of gasoline to be used as a motor fuel with replacement motor fuel containing the maximum percentage of replacement fuel as is economically and technically feasible for use as a motor fuel, and to promote the use of alternative motor fuels. Such program shall, to the extent practicable, ensure the availability of those replacement fuels and alternative motor fuels which will have the greatest impact in improving air quality in urban areas, along transportation corridors, and nationwide.

(e) DEVELOPMENT PLAN AND PRODUCTION GOALS.—Under the program established under subsection (c), the Secretary, in consultation with the Administrator, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, and the heads of other appropriate agencies, shall review appropriate information and determine—

(1) the most suitable raw materials, other than conventional petroleum, for the production in the United States of replacement fuels;

(2) the nature of the replacement motor fuel distribution systems, and the various production processes which use feedstock other than conventional petroleum, necessary for the rapid development of a replacement motor fuel industry in the United States, including a proposed timetable for the development of such systems and processes;

(3) the most suitable means and methods of developing and encouraging the production, distribution, and use of alternative motor fuels;

(4) the technical and economic feasibility of producing in the United States sufficient replacement fuels and alternative fuels, by the calendar year 2005 in order to replace 30 percent or more, by volume, of the projected consumption of gasoline used as a motor fuel in the United States for that year.

The Secretary shall prescribe, by rule, a substitute percentage goal for purposes of paragraph (4) if he determines that 30 percent is inappropriate.

(f) RULE.—The Secretary shall, by rule, establish production goals for the optimal production of replacement fuel and alternative motor fuel in the United States in each of calendar years 1996 and 1997. In establishing such goals, the Secretary shall—

(1) take into account the availability of reliable sources of replacement fuel and alternative fuel produced from renewable resources; and

(2) provide that the production goal for replacement fuel and alternative fuel for calendar year 1998 and thereafter shall be not less than 10 percent by volume of the projected consumption of gasoline used as a motor fuel in the United States for each year.

(g) RELIABLE REPLACEMENT FUEL AND ALTERNATIVE FUEL INDUSTRIES.—In carrying out subsection (d), the Secretary shall—

(1) identify ways to encourage the development of reliable replacement fuel and alternative fuel industries in the United States, and the technical, economic, and institutional barriers to such development; and

(2) include an estimation of the production capacity in the United States of replacement fuel and alternative fuel needed to implement the provisions of this section.

(h) REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall complete his review and determinations under this section and prepare and transmit a report thereon to each House of the Congress.

(i) GASOLINE AND REPLACEMENT MOTOR FUEL REQUIREMENTS.—Of the total quantity of gasoline and replacement motor fuel sold in commerce during any of the following years by any refiner (including sales to the Federal Government), replacement fuel and alternative fuel produced domestically shall constitute the minimum percentage determined in accordance with the following table:

In the calendar year:	The minimum percentage of that volume which replacement fuel constitutes, shall be—
1996, 1997	Determined by the Secretary under subsection (i) of this section.
1998, 1999, 2000, 2001, 2002, 2003, 2004.	10 percent.
2005 and each year thereafter.	The percentage determined feasible under subsection (d)(4).

(j) MINIMUM PERCENTAGE.—Not later than January 1, 1993, the Secretary shall prescribe, by rule, the minimum percentage of domestic-produced replacement fuel and alternative fuel, by volume, required to be contained in the total quantity of gasoline sold each year in commerce in the United States in calendar years 1996 and 1997 by any refiner for use as a motor fuel. Such percentage shall apply to each refiner, and shall be set for each such calendar year at a level which the Secretary determines—

(1) is technically and economically feasible, and

(2) will result in steady progress toward meeting the requirements under this section for calendar year 1998.

(k) REPORT.—Each refiner shall report annually to the Secretary the percentage of domestic-produced replacement fuel by volume contained on the average in the total quantity of gasoline for use as a motor fuel that such refiner sold during the preceding calendar year, and the amount of alternative motor fuels, sold and distributed by such refiner during such year for market credits. Each manufacturer of alternative fuel shall report annually to the Secretary the amount of alternative fuel manufactured and sold into commerce for transportation purposes by such manufacturer during such year. Each manufacturer of duel fuel or alternative fuel vehicles shall report annually to the Secretary the number of duel fuel and alternative fuel vehicles manufactured and the number of duel fuel and alternative fuel vehicles sold into commerce by such manufacturer during such year.

(l) SATISFACTION OF REQUIREMENTS.—The Secretary shall, not later than January 1, 1993, promulgate regulations allowing the sale and other exchange of marketable credits among—

(1) refiners;

(2) manufacturers of replacement fuels; and

(3) distributors of alternative motor fuels sold into commerce for transportation purposes;

in order to satisfy the requirements of subsection (i), and to further the purposes of

this Act. In determining the relative value of such credits for the various fuel sources, the Secretary shall consider the fuel's environmental impacts and domestic availability.

(m) COORDINATION OF AUTOMOBILES WITH ALTERNATIVE FUELS.—Subsection (g) of section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) is amended as follows:

"(g) AMENDMENT OF AVERAGE FUEL ECONOMY STANDARDS.—In carrying out section 502 (a)(4) and (f), the Secretary shall not consider the fuel economy of alcohol powered automobiles or natural gas powered automobiles, and the Secretary shall consider dual energy automobiles and natural gas dual energy automobiles to be operated on gasoline and diesel fuel to the extent that alternative motor fuel sales indicate that such fuels are being used to displace the use of gasoline and diesel fuel as a transportation fuel.".

(n) APPLICATION.—The Secretary may, on the application of any person, make adjustments to reduce the minimum percentage requirement as it applies to that person, but only if and to the extent that such adjustments are consistent with the purposes of this section.

(o) ENFORCEMENT BY THE SECRETARY.—(1) Any person who violates any requirement of subsection (i) is subject to a civil penalty of not more than $1 per gallon for each gallon of fuel sold that is not in compliance with subsection (i). Such penalties shall be assessed by the Secretary.

(2) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(p) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this Act not to exceed $10,000,000 for each of the fiscal years 1991 through 1995.

(q) COORDINATION WITH OTHER ACTS.—This Act shall be administered and enforced in coordination with the administration and enforcement of the Energy Security Act, as amended, and the Clean Air Act, as amended.

(r) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to require retailers of gasoline fuel to have available for sale, in addition to replacement motor fuels, other alternative motor fuels, for the transportation needs of consumers.

(s) REPORT TO CONGRESS.—The Administrator shall report to Congress not later than 24 months after the date of the enactment of this Act on the environmental impact potential of developing replacement fuels and alternative motor fuels. Such report shall analyze potential benefits and detriments to air and water quality, the ramifications on solid and hazardous waste management, and implications for public land management.

SUMMARY OF REPLACEMENT AND ALTERNATIVE FUELS BILL

Purpose: to stimulate replacement fuels industry and bolster alternative fuels industry.

Defines:

"replacement fuel" as liquids derived from coal, oil shale and tar sands that are capable of being mixed with gasoline during refinery process.

"alternative fuel" as fuels capable of powering automobiles but not readily mixable with gasoline (natural gas, propane, * * *)

Requires:

gasoline refiners to mix a fixed percentage of replacement fuel into their gasoline product, or

refiners may satisfy requirement by enhancing equivalent alternative fuels sales into transportation sector, or

refiners may obtain marketable credits from other vendors of replacement fuels and/or alternative fuels, with preference given to environmentally cleaner fuels.

Per cent requirements:

Years 1996-1997—Secretary of Energy discretion.

Years 1998-2004—10 percent.

Years 2005—30 percent.

Secretary may adjust year 2005 requirement.

Raises cap on Rockefeller/Sharp CAFE credit for dual fuel vehicles based on alternative fuel sales.

By Mr. GARN (for himself, Mr. HATCH, and Mr. ARMSTRONG):

S. 3264. A bill to amend the Federal Water Pollution Control Act to provide for the use of biomonitoring and whole effluent toxicity testing in connection with publicly owned treatment works, and for other purposes; to the Committee on Environment and Public Works.

PUBLICLY OWNED TREATMENT WORKS BIOMONITORING USE ACT

● Mr. GARN. Mr. President, toxicity in the Nation's waters is a major concern for both human health and the environment. The 1987 Amendments to the Clean Water Act established major requirements for the Environmental Protection Agency and the States to address water related toxics. EPA's approach to biomonitoring and testing, however, is discouraging the use of this important tool for controlling toxicity.

Section 303(c)(2)(B) of the Clean Water Act requires the adoption of numeric criteria for toxic pollutants listed under section 307(a) of the act "the discharge or pressure of which in the affected waters could reasonably be expected to interfere with designated uses adopted by the State." The focus of such criteria is on toxicity in streams not at the end of a sewage treatment plant pipe.

Where numeric criteria is not available, States are to adopt criteria based on biological monitoring or assessment methods based on information to be published by EPA under section 304(a)(8) of the act.

Neither section 304(a)(8) nor any other provision of the act requires the establishment of enforceable biomonitoring and testing limits or that the failure of a single biomonitoring test constitutes a permit violation.

Even so, the Environmental Protection Agency has established regulations the preamble for which requires that a single biomonitoring test be treated as a violations of the Clean Water Act. Civil penalties of up to $25,000 per day are provided for discharge permit violations.

Since biomonitoring and testing is often required on a monthly or quarterly basis, a single test exceedance can result in a finding of 30 or 90 days of violation at $25,000 per day. Total penalty liability for quarterly testing can amount to $2,250,000.

Since EPA believes that it is bound by this unfortunate approach, it is now including enforceable biomonitoring requirements in the individual NPDES permits and is insisting that delegated States include them in their own regulations.

EPA's single test failure violation approach is not supported by Agency scientists who have developed the technical protocols for conducting these tests. These scientists have recognized that these tests were never designed, and are inappropriate for, compliance and enforcement use because of the variability of test results and the fact that repeated tests are needed to identify and locate toxicity.

The use of biomonitoring for enforcement purposes is particularly inappropriate for publicly owned treatment works or "POTW's" which have not been designed to control toxics. Repeated biomonitoring tests are needed to identify the causes of toxicity which can then be corrected by a variety of means including pretreatment program enforcement, best management practices, and changes to the POTW.

Treatment plants have limited control over what is discharged to them. Illegal discharges such as midnight dumps for instance cannot be anticipated nor controlled.

Household products such as cleaners, and plumbing can sometimes cause toxicity that cannot be controlled at the POTW. The interaction of combined and complex influent provided to treatment plants cannot be anticipated until detected.

While municipal pretreatment programs are important measures for controlling toxicity and protecting POTW's, even an adequately implemented program does not guarantee against biomonitoring test failures.

Under EPA regulations, the POTW would retain major fine and penalty liability for those problems without the opportunity to stop them before they occur. This is indeed a fundamentally unfair and technically unsound result which the Agency would do well to correct on its own as repeatedly requested.

Most importantly, Mr. President, EPA regulations can serve as a disin-

centive to use biomonitoring and testing, an important tool for detecting, identifying, investigating, and ultimately controlling toxicity.

While quarterly tests are now required, more frequent testing is often needed to locate toxicity. The more frequently it is used, the more likely existing toxics will be found. POTWs should be encouraged to test as frequently as they can within permit frequency requirements.

Scientific protocols often provide for accelerated testing once toxics are detected. Under EPA regulations, each test failure would subject POTW's to major penalties. It is clear, however, that if every test failure is the basis for fine and penalty liability, the opposite result will be likely achieved. Treatment plant operators would be understandably reluctant to conduct frequent tests if penalty totals are to be the result.

EPA's answer to all of this is their exercise of prosecutorial discretion. Agency discretion can often lead to abuse and uneven enforcement throughout the country in order to meet recognized Agency compliance goals and enforcement personnel performance objectives. This result is fundamentally bad public policy especially because municipal enforcement cases have not up to this point included judicial due process review.

The bill that I and my colleagues introduce today, the Publicly Owned Treatment Works Biomonitoring Use Act is designated to eliminate these problems and encourage the wider use of biomonitoring and testing.

First, this bill would clarify congressional intent by expressly recognizing that no authority would exist under the Federal Clean Water Act to use a single biomonitoring test failure as a basis for determining violation subject to fines and penalties under the act.

Second, the bill provides that EPA or States NPDES permitting agencies could include enforceable programs and schedules of compliance or other restrictions in discharge permits if toxicity is detected in POTW discharges. Treatment plant failure to comply with such programs for detecting, identifying, locating, and controlling toxicity would continue to be subject to enforcement action penalties as provided by the Clean Water Act.

This bill would resolve disputes between EPA and some States such as Colorado which have included this bill's approach in State regulations and some individual NPDES permits. EPA has challenged these permits in Colorado, but have failed to issue a written statement as to the basis for that challenge.

If Colorado and the other States which have adopted similar approaches do not succumb to the Agency's demand, they face the loss of the act's delegated permit responsibilities. This would be an unfortunate result for the effective administration of this important environmental compliance program.

Mr. President, this bill would clairfy by eliminating what EPA believes is a mandate and assure a fair approach to biomonitoring and tests while encouraging their more frequent use. By providing greater enforcement fairness, both the environment and public health will benefit from wider biomonitoring use which our bill encourages. It is my hope that the committee will undertake its early consideration.●

By Mr. RIEGLE (for himself and Mr. CHAFEE):

S. 3265. A bill to amend title XIX of the Social Security Act to provide for Medicaid provider improvements; to the Committee on Finance.

MEDICAID HOSPITAL EQUITY ACT

● Mr. RIEGLE. Mr. President I am pleased to introduce the Medicaid Hospital Equity Act of 1990 with Senator CHAFEE. Today's legislation is in follow-up to the Finance Subcommittee on Health hearing I held in July of this year on the impact of uncompensated scare costs on health care providers, including hospitals and doctors. Uncompensated care costs are threatening the availability and quality of health care in this country. The adverse impact of uncompensated care has hit the entire health care system, however, it has disproportionately fallen on a more select group of health care providers, those that care for the majority of the uninsured and low-income individuals on Medicaid. We introduce the Medicaid Hospital Equity Act today to begin the necessary dialog for the next session on ways to ensure that providers can fully function in the current Medicaid system. We have been developing this bill for the past few months. It also includes provisions that are likely to be included in this year's final budget reconciliation bill that would help hospitals that serve a disproportionate number of people on Medicaid.

For the last 10 years, the rate of uncompensated care reported by hospitals has been increasing. The net costs for bad debt and charity care was over $8 billion or nearly 5 percent of hospital expenses. These costs have more than doubled in the last 10 years. In Michigan alone, hospitals lost $350 million last year providing care for those who could not pay. Many of these institutions are in underserved areas and serve primarily uninsured individuals or patients on Medicaid. As a result, they have very little flexibility to make up for these losses, so the burden on them is particularly extreme.

A recent study of Medicaid payments of Michigan hospitals, conducted by the Michigan Hospital Association, and the Healthcare Financial Management Association, revealed that hospitals were reimbursed for only 86 percent of their inpatient treatment costs and only 70 percent of their outpatient costs. Financial viability is threatened for those hospitals providing a majority of services to Medicaid patients.

Mr. President, as chairman of the Finance Subcommittee on Health for Families and the Uninsured, I, together with the ranking member, the distinguished Senator from Rhode Island, Senator CHAFEE, have sponsored a Medicaid bill to begin to address some of the difficulties that these institutions are now facing, so that they may continue to serve the most needy. Earlier this year, we introduced with Senator BENTSEN, the Medicaid Child Health Act of 1990, S. 2459, which included provisions that expanded Medicaid coverage and improved benefits for the delivery of health care services for children.

The legislation we are introducing today would help hospitals that serve a disproportionate number of patients on Medicaid keep their doors open by ensuring they receive adequate payment for inpatient and outpatient services. But it does more than that. The bill also contains provisions to improve current Medicaid enrollment procedures including more effective outreach.

The Medicaid Hospital Equity Act addresses some of the more immediate inadequacies of our current system and also make strides toward developing a long-term solution. The bill builds upon Congress' intent and activities in past years to improve payments to disproportionate share hospitals serving infants on Medicaid. The parts of this bill that specifically address the problems of children on Medicaid are likely to be a part of the final budget reconciliation bill. This may include prohibiting limits on the number of days of paid coverage, requiring additional payments for exceptionally needy patients, and allowing States flexibility to continue using their own methodology for determining disproportionate share payment adjustments.

As a first step toward a more comprehensive review of the adequacy and equity of Medicaid hospital reimbursement policies, Congress would direct the Government Accounting Office to conduct a study to examine the adequacy and equity of Medicaid payments to hospitals. In addition, the legislation begins to move in the direction of assuring adequate payment for outpatient services. Michigan is one State that provides more Medicaid payment for outpatient services in disproportionate share hospitals.

We have been working closely with the American Hospital Association, the National Association of Children's

Hospitals and the Related Institutions, the National Association of Public Hospitals, and the Western Children's Hospital Association who all support this legislation. We will continue to work closely with these groups and all other interested groups as we refine and improve the bill.

Mr. President, more than ever before, this country needs a national strategy for reforming our health care system. This legislation is part of a current ongoing effort to solve the problems of the 37 million Americans without health insurance and growing health care costs. Until a national strategy for reforming our health care system is accepted that would provide health coverage for all, we must protect providers that treat individuals with no health insurance.

I will continue working with other members of the Finance and Labor and Human Resources Committees to develop a comprehensive proposal that guarantees universal access to health insurance for all Americans. High quality, affordable health care is one of my top priorities in Congress. I ask unanimous consent that a summary of the bill and the full text of the bill be printed in the RECORD.●

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE MEDICAID HOSPITAL EQUITY ACT

1. Enrollment:

Require states to receive initial processing of applications for Medicaid outside of welfare offices, such as hospitals or clinics that provide services for individuals.

Requires Secretary to Report to Congress on error rates by States in eligibility determinations for pregnant women and children. Pending completion of report, the application of error rates to this population would be suspended.

Mandatory redetermination of eligibility for Medicaid when a child loses eligibility due to a change in the family's financial situation. No penalties would apply during period of redetermination.

2. Inpatient Hospital Services in Disproportionate Share Hospitals:

Prohibits the application of fixed durational limits to medically necessary inpatient hospital services for all Medicaid eligible individuals regardless of age.

Prohibits general or institutional volume caps which would limit medically necessary days or result in arbitrary reductions in established payment rates for days exceeding such caps.

Outlier adjustments would be required under state prospective payment plans for medically necessary inpatient hospital services for very high cost or exceptionally lengthy cases regardless of the age of the Medicaid eligible patient.

In all cases above, requirements could not be waived.

3. Minimum Medicaid Disproportionate Share Adjustment:

Require a uniform national minimum Medicaid disproportionate share adjustment, equal at least to the amount of the adjustment that would result from using the Medicare adjustment formula as specified in Sec. 1923(c). States would have the flexibility to establish varying disproportionate share adjustment levels that exceed this minimum for different providers.

4. Outpatient Hospital Services in Disproportionate Share Hospitals:

Prohibits application of visit limits to medically necessary covered outpatient services provided to individuals in disproportionate share hospitals (as defined by the States under current law for inpatient payment adjustment).

Requires States to provide an adjustment to payments for outpatient services provided to individuals by disproportionate share hospitals.

In all cases above, requirements could not be waived.

5. GAO Study of Medicaid Payment Policies:

Directs the Government Accounting Office to conduct a comprehensive study of Medicaid hospital reimbursement comparing payment levels with cost of providing care to Medicaid patients using Medicaid cost finding principles to examine the adequacy and equity of reimbursement.

S. 3265

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. APPLICATIONS USING OUTREACH LOCATIONS.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (52),

(2) by striking the period at the end of paragraph (53) and inserting "; and", and

(3) by inserting after paragraph (53) the following new paragraph:

"(54) provide for receipt and initial processing of applications of individuals for medical assistance under subsections (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX)—

"(A) at locations which include locations (such as hospitals or clinics providing covered services to such individuals, without discrimination based on whether the hospital or clinic is public or private) which are other than those used for the receipt and processing of applications for aid under part A of title IV, and

"(B) using applications which are other than those used for application for aid under such part.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 2. MANDATORY CONTINUATION OF COVERAGE FOR CHILDREN OTHERWISE QUALIFIED FOR BENEFITS UNTIL REDETERMINATION.

(a) IN GENERAL.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following new paragraph:

"(11) With respect to an individual who has not attained the age of 18, who is receiving medical assistance under this title, and who is determined to be no longer eligible for such assistance, the State may not discontinue such assistance until the State has determined that the individual is not eligible for assistance under this title on any basis.".

(b) CONFORMING AMENDMENT TO QUALITY CONTROL.—Section 1903(u)(1)(D) of such Act (42 U.S.C. 1396b(u)(1)(D)) is amended by adding at the end the following new clause:

"(vi) In determining the amount of erroneous excess payments for quarters beginning on or after July 1, 1991, there shall not be included any erroneous payments which are attributable to individuals described in section 1902(e)(11) who are determined to be no longer eligible for assistance but whose assistance has not been discontinued because a determination on other bases for such assistance has not been made.".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to eligibility determinations for medical assistance under title XIX of the Social Security Act on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

SEC. 3. INPATIENT HOSPITAL SERVICES.

(a) COVERAGE OF MEDICALLY NECESSARY SERVICES.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended, in the subdivision (X) following subparagraph (E), by—

(1) striking "under one year of age"; and

(2) inserting "regardless of age".

(b) ASSURING ADEQUATE VOLUME OF SERVICES.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended in the paragraph following subparagraph (E) by—

(1) at the end of subdivision (IX), striking the word "and";

(2) adding at the end of the paragraph the following new subdivision:

"(XI) if the plan provides for any aggregate or institutional volume limitations or caps for inpatient hospital services, the plan must establish exceptions to such limits for medically necessary inpatient hospital services furnished in a hospital defined under the State plan, pursuant to section 1923(a)(1)(A), as a disproportionate share hospital, if the limits would have the effect of limiting medically necessary days or would result in arbitrary reductions in established payment rates for days exceeding such limits,".

(c) ASSURING ADEQUATE PAYMENT FOR INPATIENT HOSPITAL SERVICES FOR ALL CHILDREN IN DISPROPORTIONATE SHARE HOSPITALS.—Section 1923(a)(2) of such Act (42 U.S.C. 1396r-4) is amended by—

(1) in subparagraph (C), striking "July 1, 1989" both places it appears and inserting "July 1, 1991" in both places;

(2) in subparagraph (C), striking "April 1, 1989" and inserting "April 1, 1991"; and

(3) at the end of subparagraph (C), striking the phrase "individuals under one year of age" and inserting "all individuals regardless of age."

(d) PROHIBITING WAIVER OF PROVISIONS.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a) is amended in the matter following subparagraph (E) by—

(1) inserting the word "and" at the end of subdivision (XI); and

(2) inserting the following new subdivision:

"(XII) the requirements of subdivisions (X) and (XI) may not be waived under section 1915(b)(4).".

SEC. 4. MINIMUM PAYMENT ADJUSTMENT FOR DISPROPORTIONATE SHARE HOSPITALS AND STATE FLEXIBILITY IN SETTING ADJUSTMENTS.

(a) MINIMUM PAYMENT ADJUSTMENT FOR DISPROPORTIONATE SHARE HOSPITALS.—Sec-

tion 1923(c) of the Social Security Act (42 U.S.C. 1396r-4) is amended by inserting after the first sentence the following:

"Regardless of the formula a State uses to calculate the payment adjustment, for a disproportionate share hospital, the amount of such payment adjustment shall be at least equal to the amount of the payment adjustment that would result if the payment adjustment were calculated using the formula specified in paragraph (1) of this subsection.".

(1) and by inserting after the second sentence the following:

"The amount of a payment adjustment to such hospitals shall be at least equal to the amount of the payment adjustment that would result if the payment adjustment were calculated using the formula specified in paragraph (1)(B) as modified by the third sentence of this paragraph.".

(b) STATE FLEXIBILITY IN ESTABLISHING DISPROPORTIONATE SHARE PAYMENT ADJUSTMENTS.—Section 1923(c) (42 U.S.C. 1396r-4) is amended by adding after the last sentence the following:

"Nothing in this section shall prohibit a State from establishing different payment adjustments for different types of hospitals that are defined or deemed to be disproportionate share hospitals, provided the amount of each payment adjustment is equal to or greater than the minimum adjustment amount as specified in this section.".

SEC. 5. OUTPATIENT HOSPITAL SERVICES.

(a) ASSURING ADEQUATE OUTPATIENT SERVICES AND PAINT FOR OUTPATIENT SERVICES IN DISPROPORTIONATE SHARE HOSPITALS.—

(1) Section 1902(a) of the Social Security Act (42 U.S.C. 1396a) as amended by section 1, is further amended by—

(A) striking "and" at the end of paragraph (53);

(B) striking the period at the end of paragraph (54) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(55) provide—

"(A) if the plan provides for any fixed limits on visits for outpatient services, provide for an exception for covered medically necessary services provided to individuals in a hospital defined under the State plan, pursuant to section 1923(a), as a disproportionate share hospital which is eligible for a payment adjustment for inpatient hospital services under section 1923(c); and

"(B) for an adjustment of a minimum specified payment for outpatient services furnished by hospitals which qualify as disproportionate share hospitals under section 1923(b) of the Act for purposes of payments for inpatient hospital services.".

(2) The requirements of this subsection may not be waived under section 1915(b)(4).

SEC. 6. REPORT AND TRANSITION OF ERRORS IN ELIGIBILITY DETERMINATIONS.

(a) REPORT.—The Secretary of Health and Human Services shall report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1902(l)(1) of the Social Security Act for medical assistance under plans approved under title XIX of such Act. Such report may include data for medical assistance provided before July 1, 1989.

(b) ERROR RATE TRANSITION.—There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act, payments and expenditures for medical assistance which—

(1) are attributable to medical assistance for individuals described in subparagraph (A) or (B) of section 1902(l)(1) of such Act, and

(2) are made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the report under paragraph (1).

SEC. 7. STUDY OF MEDICAID PAYMENT POLICIES BY GAO.

(a) IN GENERAL.—The General Accounting Office shall conduct a study and report to Congress on Medicaid hospital reimbursement, to compare Medicaid payment levels with the cost of providing care to Medicaid patients. The study, where appropriate, shall be conducted using Medicare cost finding principles to examine the adequacy and equity of Medicaid reimbursement. The study should identify which types of hospitals or hospitals located in certain States experience payment shortfalls, if such shortfalls exist.

(b) DATE REQUIRED.—The GAO study and report to Congress shall be completed by the first day of the first month following one year from the date of enactment of this Act.●

● Mr. CHAFEE. Mr. President, I am pleased to join with my colleague from Michigan [Mr. RIEGLE] in sponsoring the Medicaid Hospital Equity Act of 1990, which will maintain and improve access to hospital services for Medicaid beneficiaries.

In recent years, as a member of the Finance Committee, I have worked to enact passage of legislation which increased access to health care services under the Medicaid Program by expanding eligibility to pregnant women and children, by expanding benefits, and by improving Medicaid reimbursement for health care providers such as community and migrant health centers.

However, additional measures are needed. In certain communities, hospitals have become safety nets for low-income families. These hospitals, frequently located in poor and inner-city neighborhoods, not only provide inpatient care to a large number of low-income families on Medicaid, but also are a major source of crucial primary care services through their outpatient clinics. For these hospitals, a disproportionate percentage of patients have Medicaid, and the hospitals depend heavily on this program for income.

A number of difficulties in the current system create problems for both beneficiaries and providers. The cumbersome Medicaid enrollment process prevents roughly one-quarter of the eligible individuals from enrolling. Hospitals which provide care to these eligible individuals are unable to receive any Medicaid payments. Increasingly, the Medicaid payments which hospitals do receive do not cover costs. This is resulting in fewer and fewer providers bearing an ever growing share of Medicaid reimbursement shortfalls. Some providers are being forced to curtail services, and when a hospital's doors close, the entire community loses.

Several studies have indicated that Medicaid reimbursement levels do not adequately reflect the cost of providing services. One study of children's hospitals found that Medicaid payments cover about 75 percent of their inpatient costs. Law suits in several States have challenged the adequacy of Medicaid payments to hospitals, and the Supreme Court ruled last spring in Wilder versus Virginia Hospital Association that hospitals have standing in Federal court to challenge Medicaid reimbursement levels.

The Medicaid Hospital Equity Act of 1990 will make substantial progress toward assuring the financial integrity of those disproportionate share hospitals which render laudable public service by providing care to large numbers of Medicaid families.

Provisions of the bill would require States to process Medicaid applications outside welfare offices in locations such as hospitals. States would be prohibited from imposing arbitrary limits on payments to disproportionate share hospitals for medically necessary inpatient care, and would be required to ensure that their disproportionate share payment adjustments meet minimum requirements of law. The law also provides the flexibility to award different adjustments to different types of hospitals.

In addition, States would be required to provide outpatient payment adjustments to disproportionate share hospitals and would be prohibited from limiting the number of medically necessary visits.

Together, the provisions of the Medicaid Hospital Equity Act of 1990 represent essential reforms carefully targeted to sustain the ability of disproportionate share hospitals to continue to serve the low-income individuals and families who depend so much on their services for health care. Thank you, Mr. President.●

By Mr. DOLE (by request):

S. 3267. A bill to improve enforcement of the Employee Retirement Income Security Act of 1974, and for other purposes; to the Committee on Labor and Human Resources.

EMPLOYEE RETIREMENT INCOME SECURITY ACT AMENDMENTS

Mr. DOLE. Mr. President, I am pleased to introduce legislation at the request and on behalf of the Secretary of Labor and the administration which is intended to improve the security of employee benefits received by 70 million American workers and retirees.

Today, more Americans than ever rely on voluntary, privately provided benefits to help secure their working and retirement years. These benefits include pensions, disability, health insurance, and life insurance. Such employee benefits now account for approximately 20 percent of the value of

a typical worker's compensation package.

In addition, these benefits, which are so important to the financial security of our working and retired population, are essential to the Nation's economic health. Pension plans are now the single largest source of savings and are the largest source of capital to the financial markets.

This legislation is designed to further protect the benefits promised to workers and retirees. The proposal will improve the quality of plan audits, improve existing provisions that enable private participants to protect their rights, create additional disincentives for unlawful behavior, and strengthen the proxy voting and corporate governance duties borne by fiduciaries.

While this legislation is important by itself, the proposal is only one part of the Department's effort to improve the security of employee benefits. In its fiscal year 1991 budget request, the Department asked Congress for the largest increase in the number of pension and welfare enforcement and legal staff since ERISA was passed in 1974. The Department has also recently completed a departmentwide review of enforcement strategies. As a result of this study, more effective civil and criminal enforcement of ERISA can be expected.

Mr. President, this Nation's employee benefits policy is built on providing tax incentives for employers to voluntarily provide needed benefits. We have wisely chosen to avoid the crippling mandates that so many other countries have used which restrict business flexibility and economic growth.

Encouraging privately sponsored benefits, however, does not come cheap. Over $50 billion in Federal tax revenues is loss on an annual basis to provide the necessary incentives for employers to sponsor pension plans. An additional $30 billion is foregone through deductions for health insurance. In return for these tax incentives, the Government sets certain standards under ERISA and the Internal Revenue Code to ensure that the benefits promised are there when employees need them.

The goal of this legislation is to strengthen these standards and to improve benefit security, without creating onerous rules which would discourage the voluntary sponsorship of employee benefit plans or make them unduly difficult to administer.

The Department, under Secretary Dole's leadership, has worked hard to maintain a balance between incentives for compliance with incentives for sponsorship. I understand the Department has made great efforts in the development of this proposal to meet with all groups affected by this legislation, including particpants rights organizations and labor and business organizations.

Although there may be concern expressed over some of these provisions, and although I believe that some provisions may merit revision after the process of public review and comment is completed, I know that the Secretary has sought to strike an appropriate balance between the legitimate interests of both participants and employers.

I recognize, as does the Labor Secretary, that the vast majority of employers take their obligations to their workers seriously. There are, however, some weaknesses in ERISA which need to be strengthened. In addition, there are also some who do not take their obligations under the law as seriously as they should. And even, worse, there are a few engaged in criminal activity—ripping off pension plan assets and harming participants through fraudulent unfunded health insurance schemes. This legislation, and the Secretary's related enforcement initiatives, will address these critical problems.

Mr. President, I hope this legislation will encourage a wide ranging debate and thorough review in the next Congress. The benefit security of 70 million American workers and retirees deserves no less.

Mr. President, I ask unanimous consent that the text of the bill, a section-by-section analaysis, and Secretary Dole's letter of transmittal be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3267

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the Employee Retirement Income Security Act Amendments of 1990.

SEC. 2. REQUIREMENT FOR MULTIPLE EMPLOYER WELFARE ARRANGEMENTS TO FILE REGISTRATION FORM.

(a) IN GENEREAL.—Section 101 of the Employee Retirement Income Security Act of 1974, as amended, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) and before subsection (f) the following:

"(e)(1) For all years beginning January 1, 1991, each multiple employer welfare arrangement shall file with the Secretary an annual registration statement described in paragraph (2) no later than February 15th of each year.

"(2) A registration statement shall:

"(A) be filed on a form and contain such information concerning the multiple employer welfare arrangement and any persons involved in its operation in accordance with regulations promulgated by the Secretary.

"(B) contain a certification that copies of such registration statement have been transmitted by certified mail to the Insurance Commissioner of each State in which the multiple employer welfare arrangement currently conducts business, or intends to conduct business, during the following twelve-month period.

"(3) The person or persons responsible for filing the annual registration statement are—

"(A) the trustee or trustees so designated by the terms of the instrument under which the multiple employer welfare arrangement is established or maintained; or

"(B) in the case of a multiple employer welfare arrangement for which the trustee or trustees cannot be identified, the person or persons actually responsible for the acquisition, disposition, control or management of the cash or property of the multiple employer welfare arrangement, irrespective of whether such acquisition, disposition, control or management is exercised directly by such person or persons or through an agent designated by such person or persons."

(b) EFFECTIVE DATE.—This section shall be effective upon enactment.

SEC. 3. REPEAL OF LIMITED SCOPE AUDIT.

(a) IN GENEREAL.—Section 103(a)(3)(C) of the Employee Retirement Income Security Act of 1974, as amended, is amended by adding at the end thereof the following sentence: "This subparagraph shall not apply to opinions required by subparagraph (A) for plan years beginning on or after January 1, 1992."

(b) EFFECTIVE DATE.—This section shall be effective upon enactment.

SEC. 4. PEER REVIEW REQUIREMENT FOR QUALIFIED PUBLIC ACCOUNTANTS.

(a) IN GENERAL.—Section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974, as amended, is amended by adding at the end thereof the following: "Notwithstanding clauses (i), (ii) and (iii), after January 1, 1994, a person shall not be considered a 'qualified public accountant' unless such person has undergone a peer review of the person's accounting and auditing practice with respect to employee benefit plans during the three year period immediately preceding an engagement for purposes of subparagraph (A). Such peer reviews shall be performed in accordance with the requirements of the peer review programs of recognized auditing standard-setting bodies, as determined by the Secretary in regulations."

(b) EFFECTIVE DATE.—This section shall be effective upon enactment.

SEC. 5. REQUIREMENT WITH RESPECT TO VOTING POLICY.

(a) IN GENERAL.—Section 3(38) of the Employee Retirement Income Security Act of 1974, as amended, is amended:

(1) by deleting the word "and" at the end of subsection (B);

(2) by deleting the period at the end of subsection (C) and substituting therefor "; and", and

(3) by adding after section 3(38)(C) the following:

"(D) who has a written policy governing the voting of any securities which he manages and provide a copy of such policy to the plan administrator."

(b) Section 402(a)(2) of the Employee Retirement Income Security Act of 1974, as amended, is amended by adding at the end thereof the following:

"(3) Any named fiduciary who has authority pursuant to section 403(a)(1) to direct a trustee in matters related to the exercise of any voting rights of securities held by the plan shall have a written policy governing

the exercise of such authority and provide a copy of such policy to the plan administrator."

(c) Section 403(a) shall be amended by adding at the end thereof the following flush language:

"Such trustee or trustees, to the extent that they retain the power to exercise any voting rights of any securities held by the plan, shall have a written policy governing the exercise of any such voting rights and provide a copy of such policy to the plan administrator."

(d) Section 104(b) of the Employee Retirement Income Security Act of 1974, as amended, is amended:

(1) by inserting in paragraph (2) after the word "operated" and before the word "available" the phrase ", and for plan years beginning on or after January 1, 1991, a copy of the voting policy of all persons responsible for voting securities held by the plan," and

(2) by striking paragraph (4) and inserting in lieu thereof the following:

"(4) The administrator shall furnish:

"(A) Upon written request of a participant or beneficiary, a copy of the latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated; and

"(B) For plan years beginning on or after January 1, 1991, upon written request of any participant or beneficiary, a copy of the voting policy of any person responsible for exercising any voting rights of securities held by the plan or directing the exercise of any such voting rights.

"The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence."

(3) EFFECTIVE DATE.—This section shall be effective upon enactment.

SEC. 6. PARTICIPANT OR BENEFICIARY RIGHT TO JUDICIAL REVIEW UNDER CERTAIN CIRCUMSTANCES.

(a) IN GENERAL.—Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended, is amended by adding at the end thereof the following: "In any civil action brought by a participant or beneficiary under paragraph (1)(B), if the action involves a matter previously decided by a named fiduciary who has a significant interest which would be adversely affected by a decision in favor of the participant or beneficiary, the court shall review the decision of the fiduciary without according any deference to any findings or conclusions of such fiduciary, provided, however, that deference may be accorded to such findings and conclusions, to the extent that such findings and conclusions affirm those of a party who did not have a significant interest which would be adversely affected by a decision in favor of the participant or beneficiary."

(b) EFFECTIVE DATE.—This section shall be effective upon enactment for cases commenced in courts of competent jurisdiction on or after the date of enactment.

SEC. 7. AWARD OF ATTORNEY'S AND EXPERT WITNESS' FEES TO SUCCESSFUL PLAINTIFF UNDER CERTAIN CIRCUMSTANCES.

(a) Section 502(g) of the Employee Retirement Income Security Act of 1974, as amended, is amended—

(1) by deleting paragraph (1) and substituting therefor the following:

"(1) In any action under part 4 of this title brought by a participant, beneficiary or fiduciary, in which a judgment in favor of the participant, beneficiary, or the fiduciary is awarded, the court shall award the participant, beneficiary, or fiduciary reasonable attorney's and expert witness, fees and cost of the action, to be paid by the defendant. The preceding sentence shall not apply to any action arising from a claim for failure to pay benefits or for failure to approve a request for clarification of rights to future benefits."

(2) by adding after paragraph (2) the following:

"(3) In any action under this title (other than an action described in paragraph (1) of (2)) by a participant, beneficiary, or fiduciary, the court in its discretion may allow reasonable attorney's and expert witness' fees and costs of action to either party. In actions described in paragraphs (1) and (2), fees and costs may be awarded in the court's discretion to a party who is not entitled to mandatory fees and costs.

(b) EFFECTIVE DATE.—This section shall be effective upon enactment for cases commended in courts of competent jurisdiction on or after the date of enactment.

SEC. 8. INCREASE IN THE CIVIL PENALTY AND EXCISE TAX FOR ENGAGING IN A PROHIBITED TRANSACTION.

(a) IN GENERAL.—Section 502(i) of the Employee Retirement Income Security Act of 1974, as amended, is amended by striking the phrase "5 percent" and inserting the phrase "10 percent".

(b) AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.—Section 4975(a) of the Internal Revenue Code of 1986, as amended, is amended by striking the phrase "5 percent" and inserting the phrase "10" percent'.

(c) EFFECTIVE DATE. —This section shall be effective upon enactment.

SEC. 9. DISCRETIONARY AWARD OF A PORTION OF PENALTY COLLECTED TO PERSONS BRINGING INFORMATION TO THE SECRETARY THAT LEADS TO THE COLLECTION OF THE PENALTY UNDER SECTION 502(l).

(a) IN GENERAL.—Section 502(l) of the Employee Retirement Income Security Act of 1974, as amended, is amended by adding at the end thereof the following:

"(5) Notwithstanding the provision of paragraph (1), or any other provision of law, the Secretary is authorized to pay from the amounts collected as a penalty under this subsection by the Secretary such sums, not to exceed 10 percent of such amount, as the Secretary deems appropriate, to the person or persons who provide information leading the Secretary to initiate an investigation, or to bring an action, which resulted in the collection of such penalty. Any determinations under this paragraph, including whether, to whom, or in what amount to make payments shall be in the sole discretion of the Secretary, except that no such payment shall be made to any person for information gained in the course of their duties as an officer or employee of any government agency, nor shall any relative of such person receive any payment for such information. Any such determination shall be final and not subject to judicial review."

(b) EFFECTIVE DATE.—This section shall be effective upon enactment.

SECTION-BY-SECTION SUMMARY: PROPOSED LEGISLATION TO IMPLEMENT THE DEPARTMENT'S ERISA ENFORCEMENT INITIATIVES

SECTION 1. SHORT TITLE

This Act may be cited as the Employee Retirement Income Security Act Amendments of 1990.

SEC. 2. REQUIREMENT FOR MULTIPLE EMPLOYER WELFARE ARRANGEMENTS TO FILE REGISTRATION FORM

Current law.—There is no registration requirement for multiple employer welfare arrangements (MEWAs) under current law.

Description of provision.—Section 2 amends ERISA section 101 to require, beginning January 1, 1991, that all MEWAs must file an annual registration statement with the Department of Labor each February 15th. It also defines the person or persons who are responsible for ensuring that the registration statement is filed. Willful failure to file by a trustee or other responsible person would be a violation of ERISA section 501.

The registration requirement does not create any inference that a MEWA is a "plan" under ERISA; however, even where a MEWA is a plan, ERISA section 514(b)(6) would still limit the extent to which ERISA preempts State insurance laws seeking to regulate such MEWAs.

The provision does not specify the contents of the registration statement (which would be determined in regulations promulgated by the Department of Labor), except that it must include a certification that a copy of the registration statement has been sent to the Insurance Commissioner of each State in which the MEWA conducts business or intends to conduct business during the following year. The annual registration statement is expected to contain information identifying: the name of the corporation or partnership administering the MEWA, including the names of the shareholders in such corporation or the members of such partnership; the names of the designated administrative officers and trustees of the MEWA; the names of any service providers to the MEWA; and information relating to any criminal offenses by such persons or corporations which they controlled and as to any violations of State insurance laws by such persons or entities.

SEC. 3. REPEAL OF LIMITED SCOPE AUDIT

Current law.—Section 103(a)(3)(A) of ERISA requires the administrator to engage an independent public accountant to conduct an audit of the financial statements and of certain required schedules contained in the annual report to determine whether the financial statements are prepared and presented in accordance with Generally Accepted Accounting Principles (GAAP). Section 103(a)(3)(C) contains the so-called "limited scope exemption" which allows plan administrators to exclude assets which are held by regulated financial institutions (e.g., banks, insurance companies or similar entities) from the scope of the required financial audit.

Description of provision.—Section 3 amends ERISA section 103(A)(3)(C) by adding a sunset provision to effectively repeal the limited scope exemption for plan year beginning on or after January 1, 1992.

The provision, by eliminating the statutory scope limitation, would encourage the use of the preferable "single audit approach". This would fulfill the purposes of the audit requirement without imposing the addition-

al cost of independently reviewing the financial institution's records.

SEC. 4. PEER REVIEW REQUIREMENTS FOR QUALIFIED PUBLIC ACCOUNTANTS

Current law.—There is no peer review requirement for qualified public accountants under current law.

ERISA requires that certain plans obtain an audit of the financial statements included in their annual reports. This audit is required to be conducted by a "qualified public accountant" as defined by section 103(a)(3)(D). The definition incorporates public accountants certified or licensed by a regulatory authority of a State of certified by the Secretary of Labor. The definition contained in the statute qualifies accountants solely on the basis of licensing or certification. Accountants in many states need not participate in continuing education programs to assure the quality of their work remains sufficient to be licensed or that they are qualified to conduct employee benefit plan audits.

Description of provision.—Section 4 amends section 103(a)(3)(D) to include in the definition of a qualified public accountant a requirement to have participated in a peer review within the three year period prior to engagement to conduct an audit. The requirement is effective January 1, 1994, creating a three-year transition period which provides an opportunity for the completion of initial peer reviews, to be conducted by recognized auditing standard-setting bodies.

SEC. 5. REQUIREMENT WITH RESPECT TO VOTING POLICY

Current law.—There is no requirement that persons who invest plan assets have an articulated proxy voting policy under current law.

Description of provisions.—Section 5 amends the definition of the term "investment manager" in ERISA section 3(38) to require that an investment manager maintain a written policy governing the voting of any securities which it manages and provide a copy of such policy to the plan administrator. ERISA Section 402(a)(2) is also amended to require that any named fiduciary who has authority to direct a trustee to vote securities held by the plan shall have a written policy governing the voting of such securities and provide a copy of such policy to the plan administrator. ERISA section 403(a) is also amended to require that trustees, to the extent that they retain the power to vote securities held by the plan, have a written policy governing the voting of such securities and provide copy of such policy to the plan administrator. Finally, ERISA section 104(b) is amended to require the plan administrator to furnish, upon request of any participant or beneficiary, a copy of the proxy voting policy of any person responsible for voting securities held by the plan.

SEC. 6. PARTICIPANT OR BENEFICIARY RIGHT TO JUDICIAL REVIEW UNDER CERTAIN CIRCUMSTANCES

Current law.—There is no current requirement under ERISA for a trial *de novo* with respect to civil actions brought by participants and beneficiaries with respect to benefit claims.

Description of provision.—Section 6 amends ERISA section 502(a) to require *de novo* judicial review in benefit claims cases where the fiduciary making the final decision regarding the benefit claim had a significant interest which would have been adversely affected by a decision in favor of the participant or beneficiary. In cases where an independent party is the final arbitrator of a claim, a deferential standard would continue to apply provided that such party has discretionary authority as that term is used in *Firestone Tire & Rubber Co.* v. *Bruch*, 489 US 101 (1989).

Plan sponsors who have a completely internal claims procedure would have a significant adverse interest, as would insurance companies deciding claims under a fully insured plan. However, where the claimant has an opportunity to have a claim decided at some stage, either in the first instance or an appeal, by a party without a significant adverse interest, a decision by a plan sponsor or its employees which affirms that prior decision will be accorded deference.

Generally, a professional third party administrator retained by a plan sponsor to process claims would not be viewed as having a significant adverse interest. Also there would not be a significant adverse interest if a denial of a claim may be appealed to an independent arbitrator.

SEC. 7. AWARD OF ATTORNEY'S FEES AND EXPERT WITNESS' FEES TO SUCCESSFUL PLAINTIFFS UNDER CERTAIN CIRCUMSTANCES

Current law.—Under current law, courts have the discretion to award such fees and costs against the defendant, but are not required to do so. Where awarded, such fees are often paid from the plan, which reduces the amount received by the plan in a fiduciary breach case.

Description of provision.—Section 7 amends ERISA section 502(g) to require the award of reasonable attorney's fees and expert witness' fees to prevailing plaintiffs in successful fiduciary breach cases, to be paid by the defendant, and specifically excludes the mandatory award of such fees in benefit claims cases. Section 7 also amends ERISA section 502(g) to provide that the court in its discretion may award reasonable attorney's and expert witness' fees to a party in suits brought under ERISA in situations in which section 502 does not mandate the award of such fees to such party.

SEC. 8. INCREASE IN THE CIVIL PENALTY AND EXCISE TAX FOR ENGAGING IN A PROHIBITED TRANSACTION

Current law.—ERISA contains several provisions which are designed to provide economic disincentives for plans to commit violation of the statute. These include several civil penalties which may be assessed by the government. Section 4975 of the Internal Revenue Code provides for the assessment of an excise tax penalty equal to 5 percent of the amount involved in a prohibited transaction by a tax qualified plan, and section 502(i) of ERISA contains a parallel provision providing for a 5 percent civil penalty applicable to welfare plans.

Description of provision.—Section 8 amends ERISA section 502(i) to increase the civil penalty from 5 percent to 10 percent. A related amendment to section 4975(a) of the Internal Revenue Code is also included.

SEC. 9. DISCRETIONARY AWARD OF A PORTION OF PENALTY COLLECTED TO PERSONS BRINGING INFORMATION TO THE SECRETARY THAT LEADS TO THE COLLECTION OF THE PENALTY UNDER SECTION 502(1)

Current law.—Under current law there is no grant of authority to the Secretary of Labor to award a portion of penalties collected to persons who provide information that leads to the collection of such penalties.

Description of provision.—Section 9 amends ERISA section 502(1) to permit the Secretary of Labor, in his or her sole discretion, to award up to 10 percent of any amount collected by the government under the new section 502(1) civil penalty to any person who brought information (which was not obtained in the course of employment for a government agency) to the Department where such information results in the collection of the penalty.

U.S. DEPARTMENT OF LABOR,
Washington, DC, October 26, 1990.

Hon. ROBERT J. DOLE,
Minority Leader,
U.S. Senate,
Washington, DC.

DEAR BOB: I have enclosed for the consideration of the Congress a draft bill "To improve enforcement of the Employee Retirement Income Security Act of 1974, and for other purposes."

The Department of Labor has previously outlined proposals it was considering to enhance ongoing efforts to protect the interests of participants and beneficiaries in 900,000 private pension plans and 4.5 million private health and welfare benefit plans subject to regulation under ERISA. This draft bill language implements the final ERISA enforcement proposals.

The Department of Labor is committed to vigilant and effective ERISA enforcement to protect the benefits of America's workers and retirees. Although we have seen no evidence of widespread fraud and abuse of employee benefit plans subject to ERISA, shortly after taking office, I directed the Department to undertake a comprehensive review of the Departmental enforcement efforts which addressed issues raised by the Office of Inspector General (OIG). This review addressed issues related to audit procedures and increased incentives for private enforcement efforts.

Upon concluding its review, the Department of Labor developed proposals which served as the basis for the enclosed series of draft amendments to ERISA. This draft bill language would have the following effect:

Amend ERISA to provide additional incentives for participants and beneficiaries to exercise their private rights of action under ERISA by: (1) requiring the mandatory award of expert witness' and attorneys fees and costs to successful plaintiffs in private civil actions for fiduciary violations of ERISA, and clarifying that expert witness fees may be awarded in the court's discretion in a benefits claims case; (2) granting the Secretary discretion to award a portion of the civil penalties assessed for a fiduciary violation of ERISA section 502(1) to the individual who brought information to the Department of Labor regarding the violation; and (3) requiring *de novo* judicial review in benefit claims cases where the fiduciary making the final decision regarding the benefit claim had a significant interest which would have been adversely affected by a decision in favor of the participant or beneficiary.

Amend ERISA to repeal the limited scope exemption for certain plan audits, permitting employee benefit plans and financial institutions to utilize a "single audit" approach instead.

Amend ERISA to require that Independent Public Accountants conducting required ERISA audits obtain a peer review every three years in order to remain qualified to perform such audits.

Amend ERISA to strengthen the disincentives for unlawful behavior by: (1) increasing the existing excise tax penalty and civil

penalties for prohibited transactions under the Internal Revenue Code and ERISA from 5% to 10%; and (2) requiring multiple employer welfare arrangements (MEWAs) to file annual registration statements with the Department of Labor and certify that copies of the registration statements have been transmitted to Insurance Commissioners in the States in which the MEWAs conduct business.

Amend ERISA to require investment managers and anyone else who manages the investment of plan assets to maintain a written proxy voting policy and make it available to the plan administrator, who would furnish a copy to any participant or beneficiary upon request.

I believe these initiatives will significantly enhance the Federal Government's ability to protect the assets of employee benefit plans, as well as enhance the ability of participants and beneficiaries in the private employee benefits system to protect their rights and interests. I urge the Congress to give the draft bill prompt and favorable consideration.

The Office of Management and Budget has advised that there is no objection to the transmittal of the draft bill to Congress from the standpoint of the Administration's program.

Sincerely,

ELIZABETH DOLE.

By Mr. DECONCINI:

S. 3268. A bill granting the consent of Congress to States to enter into the Interstate Compact on Industrialized/Modular Buildings; to the Committee on the Judiciary.

INTERSTATE COMPACT ON INDUSTRIALIZED/MODULAR BUILDINGS

Mr. DECONCINI. Mr. President, I rise during this time of Federal deficits, growing U.S. dependence upon foreign energy sources and of momentous changes in the world's political and economic history to introduce a bill which should improve our Nation's economic position. This bill will assist State governments and the Federal Government to fulfill their constitutional responsibilities to protect their citizen's health, life, safety and welfare, and help this Nation recover its economic competitiveness of yesterday in tomorrow's world economy. The bill has been developed over the past 3 years by State officials working in cooperation with industry, consumer organizations and other interest groups. The bill offers a cooperative solution to a growing problem involving cost overlapping, duplicative and confusing layers of State and local regulation of an industry of growing importance to our public's welfare—factory-built, industrialized/modular building.

The bill, the interstate compact on industrialized/modular buildings, seeks to establish, at no cost to the American taxpayers, uniformly accepted regulatory procedures, including effective building codes governing energy conservation health and life safety for factory-built structures throughout the United States.

Today, 36 States have statewide regulatory programs governing the design and construction of residential and commercial industrialized/modular buildings. These are structures built in a factory and installed on site. It does not include mobile home/manufactured housing which is regulated by the U.S. Department of Housing and Urban Development—under 1974 preemptive Federal law. Approximately 110,000 modular residential structures are built in America each year. Over 100,000 modular commercial structures are produced annually.

Over the past few years, there has been significant activity among the States and within industry to streamline and make more uniform the overlapping and conflicting regulation of the industrialized/modular building industry. The goal of these efforts has not only been to reduce the cost and increase the efficiency of such regulation, but to enable the States to enter into and maintain effective interstate reciprocity. Some States have created reciprocity agreements on a State-to-State basis, or among groups of States, but these have not proven effective at providing regulatory relief, largely because they are not lasting and do not create uniformity in the States' administrative requirements.

In December 1986, the State building regulators initiated discussions with industry which resulted in the formation of a consensus body called the Joint Council on Industrialized/Modular Buildings. The joint council is comprised of representatives from both the private and public sectors which has worked over the past 3 years to develop uniform model rules and regulations for the States to use in regulating such structures. In July 1987, the National Governors' Association adopted a housing policy supporting the streamlining of such regulation and encouraging the States to enter into interstate reciprocity.

In late 1987, section 572 of the Housing and Community Development Act called upon the National Institute of Building Sciences [NIBS] to develop a report on possible "voluntary preemptive Federal regulatory system for industrialized/modular buildings." In August 1988, that report was completed and submitted to Congress with the understanding that the 101st Congress would hold hearings and consider taking action on the report. Unfortunately, oversight hearings were not held in the 101st Congress, but I am confident that this legislation or its companion in the House, H.R. 4157, introduced by Representative ERDREICH, will be considered early in the next Congress.

This legislation is based upon one of the four proposals contained in the 1988 NIBS report and is one of two proposed national regulatory approaches contained in that report that have been incorporated into legislation. The other bill would federally preempt State and local governments and award it to a private organization.

Interstate compacts are no stranger to the U.S. Congress. Through over 95 functioning compacts, State governments today cooperatively manage natural resources, transportation facilities, disposal of low-level nuclear waste and even exchange prisoners. Through the establishment and effective functioning of this compact, the American consumer will receive a better, safer product at a lower cost. In turn, the improved domestic marketplace will strengthen the international competitive position of American produced factory-built buildings. This later benefit is especially important in light of our balance of payments deficit and the current European Community—1992 process by which the 12 Common Market nations soon will produce buildings under a single European building code and regulatory system.

The compact has been reviewed by the staff of the Council of State Governments, the National Governors' Association, and the National Association of Home Builders. Supporters of the compact not only include the States, but national consumer organizations, the national association of manufacturers of commercial modular buildings [MMOA] and many of our Nations' residential modular builders.

Radical changes throughout the world are propelling this Nation into a new era of international economic competition. The interstate compact on industrialized modular buildings offers this Nation a building block in that competitive area. It provides our respective State governments with a meaningful and effective role through which to participate in our Federal system. I urge all my colleagues to support this bill.

Mr. President, I ask unanimous consent the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3268

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds that—

(1) there is a need for a nationwide uniform regulatory system for assembly, construction, and inspection of modular structures, known as industrialized/modular buildings;

(2) construction of industrialized/modular buildings includes modular housing, which is essential to providing a solution to the problem of available, affordable housing;

(3) the current system of State and local regulation, utilizing varying standards and inspection processes, creates confusion, adds unnecessary costs to the construction of industrialized/modular buildings, restricts market access, discourages development of

new technologies, and impedes commerce between and among the various States; and

(4) the Interstate Compact on Industrialized/Modular Buildings is a method for uniform regulation of modular construction which, if enacted by the various States, will eliminate the need for further Federal regulatory action as contemplated by the Housing and Community Development Act of 1987 (Public Law 100-242).

SEC. 2. CONSENT OF CONGRESS.

The Congress hereby consents to the Interstate Compact on Industrialized/Modular Buildings, which compact is as follows:

"SECTION 1. The Interstate Compact on Industrialized/Modular Buildings is enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows:

"ARTICLE I—FINDINGS AND DECLARATIONS OF POLICY

"(a) The compacting States find that—

"(1) industrialized/modular buildings are constructed in factories in the various States and are a growing segment of the Nation's affordable housing and commercial building stock;

"(2) the regulation of industrialized/modular buildings varies from State to State and locality to locality, which creates confusion and burdens State and local building officials and the industrialized/modular building industry; and

"(3) regulation by multiple jurisdictions imposes additional costs, which are ultimately borne by the owners and users of industrialized/modular buildings, restricts market access and discourages the development and incorporation of new technologies.

"(b) It is the policy of each of the compacting States to—

"(1) provide the States which regulate the design and construction of industrialized/modular buildings with a program to coordinate and uniformly adopt and administer the States' rules and regulations for such buildings, all in a manner to assure interstate reciprocity; and

"(2) provide to the United States Congress assurances that would preclude the need for a voluntary preemptive Federal regulatory system for modular housing, as outlined in section 572 of the Housing and Community Development Act of 1987, including development of model standards for modular housing construction, such that design and performance will insure quality, durability and safety and will be in accordance with lifecycle cost-effective energy conservation standards, all to promote the lowest total construction and operating costs over the life of such housing.

"ARTICLE II—DEFINITIONS

"As used in this compact, unless the context clearly requires otherwise—

"(1) The term 'Commission' means the Interstate Industrialized/Modular Buildings Commission.

"(2) The term 'industrialized/modular building' means any building which is of closed construction, that is, constructed in such a manner that concealed parts or processes of manufacture cannot be inspected at the site, without disassembly, damage or destruction, and which is made or assembled in manufacturing facilities, off the building site, for installation, or assembly and installation, on the building site. The term includes, modular housing which is factory-built single-family and multifamily housing (including closed wall panelized housing) and other modular, nonresidential buildings. The term does not include any structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974.

"(3) The term 'Interim Reciprocal Agreement' means a formal reciprocity agreement between a noncompacting State wherein the noncompacting State agrees that labels evidencing compliance with the model rules and regulations for industrialized/modular buildings, as authorized in section (9) of article VIII, shall be accepted by the State and its subdivisions to permit installation and use of industrialized/modular buildings. Further, the noncompacting State agrees that by legislation or regulation, and appropriate enforcement by uniform administrative procedures, the noncompacting State requires all industrialized/modular building manufacturers within that State to comply with the model rules and regulations for industrialized/modular buildings.

"(4) The term 'State' means a State of the United States, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"(5) The term 'uniform administrative procedures' means the procedures adopted by the Commission (after consideration of any recommendations from the rules development committee) which State and local officials, and other parties, in one State, will utilize to assure State and local officials, and other parties, in other States, of the substantial compliance of industrialized/modular building construction with the construction standard of requirements of such other States; to assess the adequacy of building systems; and to verify and assure the competency and performance of evaluation and inspection agencies.

"(6) The term 'model rules and regulations for industrialized/modular buildings' means the construction standards adopted by the Commission (after consideration of any recommendations from the rules development committee) which govern the design, manufacture, handling, storage, delivery and installation of industrialized/modular buildings and building components. The construction standards and any amendments thereof shall conform insofar as practicable to model building codes and referenced standards generally accepted and in use throughout the United States.

"ARTICLE III—CREATION OF COMMISSION

"The compacting States hereby create the Interstate Industrialized/Modular Buildings Commission, hereinafter called Commission. The Commission shall be a body corporate of each compacting State and an agency thereof. The Commission shall have all the powers and duties set forth in this compact and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting States.

"ARTICLE IV—SELECTION OF COMMISSIONERS

"The Commission shall be selected as follows:

"(1) As each State becomes a compacting State, one resident shall be appointed as Commissioner. The Commissioner shall be selected by the Governor of the compacting State, being designated from the State agency charged with regulating industrialized/modular buildings or, if such State agency does not exist, being designated from among those building officials with the most appropriate responsibilities in the State. The Commissioner may designate another official as an alternate to act on behalf of the Commissioner at Commission meetings which the Commissioner is unable to attend.

"(2) Each State Commissioner shall be appointed, suspended or removed and shall serve subject to and in accordance with the laws of the State which said Commissioner represents. Each vacancy in the office of Commissioner occurring shall be filled in accordance with the laws of the State wherein the vacancy exists.

"(3) When three State Commissioners have been appointed in the manner described, those State Commissioners shall select two additional Commissioners who shall represent, respectively, manufacturers of industrial- or commercial-use industrialized/modular buildings and consumers of industrialized/modular buildings. When 6 State Commissioners have been appointed, the State Commissioners shall select a third additional Commissioner who shall be a representative of manufacturers of residential-use industrialized/modular buildings. With each addition of 3 State Commissioners, the State Commissioners shall appoint one additional manufacturing representative Commissioner, alternating between a representative of manufacturers of industrial- or commercial-use industrialized/modular buildings and residential-use industrialized/modular buildings. With each addition of 12 State Commissioners, the State Commissioners shall appoint one additional Commissioner, who represents consumers of industrialized/modular buildings. The subsequent appointment of all representative Commissioners shall be in this same manner, maintaining a ratio of manufacturer representatives to consumer representatives of four to one.

"(4) In the event States withdraw from the compact or, for any other reason, the number of State Commissioners is reduced, the State Commissioners shall remove the last added representative Commissioners as necessary to maintain a balance of State Commissioners to representative Commissioners in the same proportion as the appointments outlined in this article.

"(5) Upon a majority vote of the State Commissioners, the State Commissioners may remove, fill a vacancy created by or replace any representative Commissioner, provided that any replacement is made from the same representative group and a three to one ratio is maintained. Unless provided otherwise, the representative Commissioners have the same authority and responsibility as the State Commissioners.

"(6) In addition, the Commission may have as a member one Commissioner representing the United States Government if Federal law authorizes such representation. Such Commissioner shall not vote on matters before the Commission. Such Commissioner shall be appointed by the President of the United States, or in such other manner as may be provided by Congress.

"ARTICLE V—VOTING

"Each Commissioner (except the Commissioner representing the United States Government) shall be entitled to one vote on the Commission. A majority of the Commissioners shall constitute a quorum for the transaction of business. Any business transacted at any meeting of the Commission must be by affirmative vote of a majority of the quorum present and voting.

"ARTICLE VI—ORGANIZATION AND MANAGEMENT

"(a) The Commission shall elect annually, from among its members, a Chairman, a Vice Chairman and a Treasurer. The Commission shall also select a Secretariat, which shall provide an individual who shall serve as Secretary of the Commission. The Commission shall fix and determine the duties and compensation of the Secretariat.

"(b) The Commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the Commission.

"(c) The Commission shall adopt a seal.

"(d) The Commission shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations.

"(e) The Commission shall establish and maintain an office at the same location as the office maintained by the secretariat for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The Chairman may call additional meetings and upon the request of a majority of the Commissioners of three or more of the compacting States shall call an additional meeting.

"(f) The Commission annually shall make the Governor and legislature of each compacting State a report covering its activities for the preceding year. Any donation or grant accepted by the Commission or services borrowed shall be reported in the annual report of the Commission and shall include the nature, amount and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The Commission may make additional reports as it may deem desirable.

"ARTICLE VII—COMMITTEES

"The Commission will establish such committees as it deems necessary, including the following:

"(1) An executive committee which functions when the full Commission is not meeting, as provided in the bylaws of the Commission. The executive committee will ensure that proper procedures are followed in implementing the Commission's programs and in carrying out the activities of the compact. The executive committee shall be elected by vote of the Commission. It shall be comprised of at least 3 and no more than 9 Commissioners, selected from those Commissioners who are representatives of the Governor of their respective State.

"(2) A rules development committee appointed by the Commission. The Committee shall be consensus-based and consist of not less than 7 nor more than 21 members. Committee members will include State building regulatory officials; manufacturers of industrialized/modular buildings; private, third-party inspection agencies; and consumers. This committee may recommend procedures which State and local officials, and other parties, in one State, may utilize to assure State and local officials, and other parties, in other States, of the substantial compliance of industrialized/modular building construction with the construction standard requirements of such other States; to assess the adequacy of building systems; and to verify and assure the competency and performance of evaluation and inspection agencies. This committee may also recommend construction standards for the design, manufacture, handling, storage, delivery and installation of industrialized/modular buildings and building components. The committee will submit its recommendations to the Commission, for the Commission's consideration in adopting and amending the uniform administrative procedures and the model rules and regulations for industrialized/modular buildings. The committee may also review the regulatory programs of the compacting States to determine whether those programs are consistent with the uniform administrative procedures or the model rules and regulations for industrialized/modular buildings and may make recommendations concerning the States' programs to the Commission. In carrying out its functions, the rules committee may conduct public hearings and otherwise solicit public input and comment.

"(3) Any other advisory, coordinating or technical committees, membership on which may include private persons, public officials, associations or organizations. Such committees may consider any matter of concern to the Commission.

"(4) Such additional committees as the Commission's bylaws may provide.

"ARTICLE VIII—POWER AND AUTHORITY

"In addition to the powers conferred elsewhere in this compact, the Commission shall have power to—

"(1) collect, analyze and disseminate information relating to industrialized/modular buildings;

"(2) undertake studies of existing laws, codes, rules and regulations, and administrative practices of the States relating to industrialized/modular buildings;

"(3) assist and support committees and organizations which promulgate, maintain and update model codes or recommendations for uniform administrative procedures or model rules and regulations for industrialized/modular buildings;

"(4) adopt and amend uniform administrative procedures and model rules and regulations for industrialized/modular buildings;

"(5) make recommendations to compacting States for the purpose of bringing such States' laws, codes, rules and regulations and administrative practices into conformance with the uniform administrative procedures or the model rules and regulations for industrialized/modular buildings: *Provided,* That such recommendations shall be made to the appropriate State agency with due consideration for the desirability of uniformity while also giving appropriate consideration to special circumstances which may justify variations necessary to meet unique local conditions;

"(6) assist and support the compacting States and monitoring of plan review programs and inspection programs, which will assure that the compacting States have the benefit of uniform industrialized/modular building plan review and inspection programs;

"(7) assist and support organizations which train State and local government and other program personnel in the use of uniform industrialized/modular building plan review and inspection programs;

"(8) encourage and promote coordination of State regulatory action relating to manufacturers, public or private inspection programs;

"(9) create and sell labels to be affixed to industrialized/modular building units, constructed in or regulated by compacting States, where such labels will evidence compliance with the model rules and regulations for industrialized/modular buildings, enforced in accordance with the uniform administrative procedures (the Commission may use receipts from the sale of labels to help defray the operating expenses of the Commission);

"(10) assist and support compacting States' investigations into and resolutions of consumer complaints which relate to industrialized/modular buildings constructed in one compacting State and sited in another compacting State;

"(11) borrow, accept or contract for the services of personnel from any State or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, association, person, firm, or corporation;

"(12) accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services (conditional or otherwise) from any State or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same;

"(13) establish and maintain such facilities as may be necessary for the transacting of its business which includes the authority to acquire, hold, and convey real and personal property and any interest therein; and

"(14) enter into contracts and agreements, including but not limited to, interim reciprocal agreements with noncompacting States.

"ARTICLE IX—FINANCE

"(a) The Commission shall submit to the Governor or designated officer or officers of each compacting State a budget of its estimated expenditures for such period as may be required by the laws of that State for presentation to the legislature thereof.

"(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the compacting States. The total amount of appropriations requested under any such budget shall be apportioned among the compacting States as follows: one-half in equal shares; one-fourth among the compacting States in accordance with the ratio of their populations to the total population of the compacting States, based on the last decimal Federal census; and one-fourth among the compacting States in accordance with the ratio of industrialized/modular building units manufactured in each State to the total of all units manufactured in all of the compacting States.

"(c) The Commission shall not pledge the credit of any compacting State. The Commission may meet any of its obligations in whole or in part with funds available to it by donations, grants, or sale of labels, provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it by donations, grants, or sale of labels, the Commission shall not incur any obligation prior to the allotment of funds by the compacting States adequate to meet the same.

"(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

"(e) The accounts of the Commission shall be open at any reasonable time for inspec-

tion by duly constituted officers of the compacting States and any person authorized by the Commission.

"(f) Nothing contained in this article shall be construed to prevent Commission compliance relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

"ARTICLE X—ENTRY INTO FORCE AND WITHDRAWAL

"(a) This compact shall enter into force when enacted into law by any three States. Thereafter, this compact shall become effective as to any other State upon its enactment thereof. The Commission shall arrange for notification of all compacting States whenever there is a new enactment of the compact.

"(b) Any compacting State may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a compacting State prior to the time of such withdrawal.

"ARTICLE XI—RECIPROCITY

"If the Commission determines that the standards for industrialized/modular buildings prescribed by statute, rule or regulation of compacting State are at least equal to the Commission's model rules and regulations for industrialized/modular buildings, and that such State standards are enforced by the compacting State in accordance with the uniform administrative procedures, industrialized/modular buildings approved by such a compacting State shall be deemed to have been approved by all the compacting States for placement in those States in accordance with procedures prescribed by the Commission.

"ARTICLE XII—EFFECT ON OTHER LAND AND JURISDICTION

"Nothing in this compact shall be construed to—

"(1) withdraw or limit the jurisdiction of any State or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction pursuant to this compact, is expressly conferred upon another agency or body; and

"(2) supersede or limit the jurisdiction of any court of the United States.

"ARTICLE XIII—CONSTRUCTION AND SEVERABILITY

"This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any State or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating therein, the compact shall remain in full force and effect as to the remaining party States and in full force and effect as to the State affected as to all severable matters.".

SEC. 3. APPOINTMENT OF FEDERAL REPRESENTATIVE.

(a) IN GENERAL.—

(1) APPOINTMENT.—When 3 States enact the Interstate Compact on Industrialized/Modular Buildings, the President shall appoint one person, as a nonvoting member of the Interstate Industrialized/Modular Buildings Commission, to serve for a term of 6 years.

(2) VACANCY.—In the event of a vacancy, the President shall appoint another member for the remainder of the term of the appointee's predecessor.

(3) LIMIT ON TERMS.—No member appointed pursuant to this section shall be eligible to serve in excess of 2 consecutive terms. Notwithstanding the preceding sentence, a member whose term has expired may serve until his successor is qualified.

(b) FEDERAL STATUS OF MEMBER.—The member appointed pursuant to this section shall not, by reason of such membership, be deemed to be an employee of the United States. The member shall, while attending meetings of the Commission or while engaged in duties related to such meetings or in other activities of the Commission, be entitled to receive compensation at the rate of $100 per day including traveltime, and while away from the member's home or regular place of business, may be allowed travel expenses, including per diem in lieu of subsistence, equal to that authorized under section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

SEC. 4. ANNUAL REPORT TO PRESIDENT AND CONGRESS.

Not later than 1 year and 120 days after the date the compact is enacted by the third of the first 3 States to enact the compact, and not later than 120 days after the anniversary of that date for each year thereafter, the Commission shall prepare and submit to the President and to the Congress a full report of its activities during such year. The report shall include a comprehensive and detailed report of the Commission's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as the Commission deems appropriate.

SEC. 5. AUDIT OF FINANCIAL TRANSACTIONS.

(a) IN GENERAL.—The financial transactions of the Commission shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Commission and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. The audit shall cover the fiscal year corresponding to that of the United States Government. Such audit shall be made at least once every 4 years.

(b) REPORTS.—

(1) TIMING.—A report of each such audit shall be made by the Comptroller General to the Congress not later than 6½ months following the close of the last year covered by such audit.

(2) CONTENTS.—The report shall set forth the scope of the audit and shall include—

(A) a statement of assets and liabilities, capital, and surplus or deficit;

(B) a statement of sources and application of funds;

(C) such comments and information as may be deemed necessary to keep the Congress informed of the operations and financial condition of the Commission; and

(D) such recommendations with respect to the improvement of the operations of the Commission as the Comptroller General may deem advisable.

(3) COPIES OF REPORT.— A copy of each report shall be furnished to the President and to the Commission at the time submitted to the Congress.

SEC. 6. FAILURE TO FORM COMPACT.

(a) CONSIDERATION OF FEDERAL SYSTEM.—If 2 years pass from the date of enactment of this Act and at least 3 States have not enacted the Interstate Compact on Industrialized/Modular Buildings, Congress shall consider adopting and implementing a preemptive Federal regulatory system for modular construction.

(b) EFFECTIVE DATE OF AMENDMENTS.—

(1) LESS THAN 3 STATES ADOPT COMPACT.—If 2 years pass from the date of this Act and at least 3 States have not adopted the Interstate Compact on Industrialized/Modular Buildings, the amendments made by sections 7, 8, and 9 shall not take effect.

(c) AT LEAST 3 STATES ADOPT COMPACT.—

(1) IN GENERAL.—If 2 years pass from the date of this Act and at least 3 States adopt the Interstate Compact on Industrialized/Modular Buildings, the amendments made by sections 7, 8, and 9, shall take effect in all noncompacting States, unless the noncompacting State, within 2 years from the date of this Act, enters into an interim reciprocal agreement with the Interstate Industrialized/Modular Buildings Commission.

(2) INTERIM RECIPROCAL AGREEMENT.—For purposes of paragraph (1), an interim reciprocal agreement means a formal reciprocity agreement between a noncompacting State in which the noncompacting State agrees—

(A) that labels evidencing compliance with the model rules and regulations for industrialized/modular buildings shall be accepted by the State and its subdivisions to permit installation and use of industrialized/modular buildings; and

(B) that by legislation or regulation, and appropriate enforcement by uniform administrative procedures, the noncompacting State will require all industrialized/modular building manufacturers within that State to comply with the model rules and regulations for industrialized/modular buildings.

SEC. 7. VETERANS' HOME LOANS.

Section 1810(b) of title 38, United States Code, is amended to read as follows:

"(b) No loan may be guaranteed under this section or made under section 1811 of this title unless—

"(1) the proceeds of such loan will be used to pay for the property purchased, constructed, or improved;

"(2) the contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or the construction cost bear a proper relation to the veteran's present and anticipated income and expenses;

"(3) the veteran is a satisfactory credit risk, as determined in accordance with the credit underwriting standards established pursuant to subsection (g) of this section;

"(4) the nature and condition of the property is such as to be suitable for dwelling purposes;

"(5) the loan to be paid by the veteran for such property or for the cost of construction, repairs, or alterations, does not exceed the reasonable value thereof as determined pursuant to section 1831 of this title;

"(6) if the loan is for repair, alteration, or improvement of property, such repair, alter-

ation, or improvement substantially protects or improves the basic livability or utility of such property; and

"(7) commencing 2 years after [the date of this amendment], the State or States where the property purchased, constructed, or improved with such loan proceeds have adopted the Interstate Compact on Industrialized/Modular Buildings, as authorized by resolution of Congress dated [date].".

SEC. 8. RURAL HOUSING.

Section 501(c) of the Housing Act of 1949 (42 U.S.C. 1471(c)) is amended to read as follows:

"(c) In order to be eligible for the assistance authorized by subsection (a) of this section, the applicant must show—

"(1) that he is the owner of a farm which is without a decent, safe, and sanitary dwelling for himself and his family and necessary resident farm labor, or for the family of the operating tenant, lessee, or sharecropper, or without other farm buildings adequate for the type of farming in which he engages or desires to engage, or that he is the owner of other real estate in a rural area or a rural resident without an adequate dwelling or related facilities for his own use or buildings adequate for his farming operations, or that the applicant is an elderly or handicapped person or family in a rural area without an adequate dwelling or related facility for its own use, or that he is the owner of a farm or other real estate in a rural area who needs refinancing of indebtedness described in clause (4) of subsection (a) of this section;

"(2) that he is without sufficient resources to provide the necessary housing and buildings on his own account; and

"(3) that he is unable to secure the credit necessary for such housing and buildings from other sources upon terms and conditions which he could reasonably be expected to fulfill.

If an applicant is a State or local public agency or Indian tribe—

"(A) the provisions of clause (3) shall not apply to its application; and

"(B) the applicant shall be eligible to participate in any program under this subchapter if the person or families to be served by the applicant with the assistance being sought would be eligible to participate in such program.

Commencing 2 years after [the date of this amendment], no applicant shall be eligible for assistance authorized by subsection (a) of this section unless the assistance will be used in connection with dwellings, facilities, or buildings located or constructed in a State or States which have adopted the Interstate Compact on Industrialized/Modular Buildings, as authorized by resolution of Congress dated [date].".

SEC. 9. NATIONAL HOUSING PARTNERSHIPS.

Section 906(a) of the Housing and Urban Development Act of 1968 (42 U.S.C. 3936(a)) is amended to read as follows:

"(a) In order to achieve the objectives and carry out the purposes of this title, the corporation is authorized to—

"(1) plan, initiate, and carry out, pursuant to Federal programs or otherwise, the building, rehabilitation, acquisition, and financing of housing and related facilities primarily for the benefit of families and individuals of low or moderate income;

"(2) buy, own, manage, lease, or otherwise acquire or dispose of property in connection with the developments, projects, or undertakings referred to in paragraph (1);

"(3) provide such funds as may be necessary to accomplish the developments, projects, or undertakings referred to in paragraph (1); and

"(4) for the purpose of generating income to support the building or rehabilitation of housing primarily for the benefit of families and individuals of low or moderate income (A) design, develop, manufacture and sell products and services for use in the construction, sale, or financing of housing, and (B) design and develop commercial, industrial, or retail facilities that are not directly related to housing, except that the development and preservation of housing for families and individuals of low or moderate income shall be the primary activity of the corporation.

Commencing 2 years after [the date of this amendment], the corporation may not engage in or undertake any activity which the corporation has not already commenced in a State which has not adopted the Interstate Compact on Industrialized/Modular Buildings, as authorized by resolution of Congress dated [date].".

By Mr. SPECTER (for himself and Mr. HELMS):

S. 3269. A bill to direct the Federal Communications Commission to proscribe indecent material transmitted by means of interstate and intrastate communications by amending section 223 of the Communications Act of 1934; to the Committee on Commerce, Science, and Transportation.

REGULATION OF CERTAIN PHONE SERVICES

Mr. SPECTER. Mr. President, this legislation, addressing the subject of dial-a-porn, is being introduced now in order to provide an opportunity for Senators and others, who may be interested, to study this proposal in advance of the 102d Congress when this legislation will be reintroduced with an opportunity for hearings, detailed consideration, debate, and hopefully ultimate passage.

During my tenure as district attorney of Philadelphia from 1966 to 1974, I was concerned about the impact of obscene materials, especially on juveniles. In my work on the Judiciary Committee, especially my tenure as chairman of the Juvenile Justice Subcommittee from 1981 to 1987, I have sponsored and supported legislation to deal with the impact of obscenity on juveniles.

I became familiar with the problem of dial-a-porn a few years ago when my wife, Philadelphia Councilwoman Joan Specter, called me about the distribution of leaflets in Center City, Philadelphia, with a solicitation apparently directed to children to dial for pornographic telephone messages. I placed a telephone call to the indicated number and was amazed, really flabbergasted, with what I heard on the other telephone line. To say it "would make a sailor blush" is to put it mildly. The sexual comments were explicit, direct, provocative, filled with "oohs," "ahhs," "sighs" and generally repugnant.

The Supreme Court of the United States has long held that there is a different standard on obscenity for materials distributed to juveniles as contrasted with adults. In *Ginsberg* v. *New York*, 390 U.S. 629 (1968), the Supreme court upheld a State law protecting children from literature which, while it was lewd and obscene, fell short of the legal test for obscenity.

In *Sable Communications of California, Inc.* v. *F.C.C.*, 109 S. Ct. 2829 (1989), the Supreme Court of the United States said that there was "a legitimate interest in protecting children from exposure to indecent dial-a-porn messages * * *" providing the limitation was sufficiently narrowly drawn and carefully tailored to achieve those ends:

The government may, however, regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest. We have recognized that there is a compelling interest in protecting the physical and psychological well-being of minors. This interest extends to shielding minors from the influence of literature that is not obscene by adult standards. 109 S. Ct. at 2836.

In Sable, the Supreme Court held unconstitutional a 1988 act which imposed a blanket prohibition on indecent as well as obscene interstate commercial telephone messages. In part, the Court said:

The bill that was enacted, however, was introduced on the floor; nor was there a committee report on the bill from which the language of the enacted bill was taken. No Congressman or Senator purported to present a considered judgment with respect to how often or to what extent minors could or would circumvent the rules and have access to dial-a-porn messages. 109 S. Ct. at 2838.

Following the Supreme Court's decision in Sable, an amendment was offered by the distinguished Senator from North Carolina, Senator HELMS, to the Labor, Health and Human Services and Education appropriations bill on November 16, 1989. In my capacity as a comanager of the bill as ranking minority member of the Appropriations Subcommittee, I joined in the extensive debate on the amendment. I raised the issues discussed by the Supreme Court in Sable and attempted in a colloquy with the amendment's sponsor, Senator HELMS, to:

* * * meet the constitutional requirement that we have a carefully tailored bill to meet these compelling interests. CONG. REC. S15797 (November 16, 1989).

Obviously that was difficult to accomplish in the course of limited floor debate.

On August 10, 1990, the U.S. District Court for the Southern District of New York in the case of American Information Enterprises, Inc. versus Thornburgh held the amendment unconstitutional stating:

With respect to the 1989 Helms Amendment, Senator Specter attempted to compensate by proposing a "colloquy for purposes of legislative history * * * to do our

very best to satisfy the Supreme Court." CONG. REC. S15800 (Nov. 16, 1989). However, the ensuing colloquy failed to provide what the Supreme Court had asked Congress for in Sable: "evidence of how effective or ineffective" various options for restricting access to minors might prove to be. 109 S. Ct. at 2838. There were neither hearings nor presentations of reports. Slip Opinion at 21.

The issue of dial-a-porn messages should be addressed to meet the constitutional standards established by the Federal courts. To do that, we should hold hearings and consider the extent minors could or would circumvent proposed safeguards and have access to dial-a-porn messages, and then craft carefully tailored legislation to address the compelling interest, recognized by the Federal courts, to protect minors.

Senator HELMS and I have discussed this matter on many occasions and have collaborated on the best method to achieve that result. While it is possible that the District Court's judgment in American Enterprises versus Thornburgh may be reversed on appeal, it is nevertheless worthwhile to initiate legislation, as a precautionary matter, to meet the constitutional requirements articulated in Sable and American Information Enterprises.

Accordingly, this legislation is being introduced at the conclusion of the 101st Congress with a view toward reintroduction at the start of the 102d Congress to proceed with legislation to meet the Court's standards. The proposed legislation addresses the courts' concerns.

Comments would be welcome between now and January 1991 when the 102d Congress will reconvene. During that interim and later during the course of hearings, there will doubtless be modifications to refine this bill. The introduction at this time will expedite the process to deal with dial-a-porn for minors in accordance with the requirements of the first amendment of the U.S. Constitution.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3269

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 223 of the Communications Act of 1934 (47 U.S.C. 223) is amended as follows:

(1) At the end of subsection (b)(2)(A), add the following: "As used in this subsection, 'indecent communication' means any communication in which any discussion or any reference is made to the genitals, breasts or buttocks, actual or simulated sexual intercourse or contact, actual or simulated deviant sexual intercourse or contact, actual or simulated sexual bestiality, actual or simulated masturbation, and actual or simulated sado-masochistic sexual abuse, which is patently offensive as measured by contemporary community standards."

(2) Strike subsection (c) and replace it with the following:

"(c) A common carrier within the District of Columbia or within any State, or in interstate or foreign commerce, shall, to the extent technically feasible, make available a separate, easily distinguishable telephone prefix number for providers who offer access to a communication specified in subsection (b) of this section and require every provider to designate which prefix corresponds to the type of message it proposes to provide. Any provider who offers access to a communication specified in subsection (b) of this section through any telephone number other than one within the prefix assigned to providers offering access to a communication specified in subsection (b) of this section is in violation of subsection (b). Common carriers shall not, to the extent technically feasible, provide access to a communication specified in subsection (b) of this section from the telephone of any subscriber who has not previously requested the carrier to provide access to such communication if the carrier collects from subscribers an identifiable charge for such communication that the carrier remits, in whole or in part, to the provider of such communication."

(3) EFFECTIVE DATE.—The amendments made herein shall take effect 120 days after the date of enactment of this Act.

Mr. HELMS. Mr. President, the distinguished Senator from Pennsylvania [Mr. SPECTER] has produced a fine piece of legislation to limit and diminish the ravages of "dial-a-porn." I commend him for his diligent work.

Dial-a-porn continues to destroy the lives of young people all over America. This garbage is gnawing away at the very fabric of our Nation. It is undermining the moral foundation of this land.

Mr. President, Congress passed my legislation in 1989 to ban obscene dial-a-porn and regulate indecent dial-a-porn. The law was challenged and one judge in a lower court has ruled that he thinks there are problems with this legislation.

Well, Mr. President, that is only one lower court judge's opinion. And it is only one battle in the war against dial-a-porn. I am confident that the dial-a-porn law will be upheld on appeal.

Let nobody be misled—the introduction of this bill by Senator SPECTER and me does not signal that we concede that the current law is inadequate or unconstitutional. This bill is intended to provide a basis for discussion, so that Senators and others can be encouraged to give thought to the depressing impact of this sordid industry.

I look forward to working with my friend from Pennsylvania on this important issue.

By Mr. DOMENICI:

S. 3270. A bill to promote competition in the natural gas marketplace by eliminating discrimination against domestic natural gas; to the Committee on Energy and Natural Resources.

NATURAL GAS COMPETITION ACT

● Mr. DOMENICI. Mr. President, I am today introducing the Natural Gas Competition Act of 1990 in order to correct a growing problem in the natural gas marketplace; namely, that of an artificial competitive advantage bestowed upon imported natural gas due to differential rate design between Canadian and United States pipelines serving the same markets here in the United States.

This problem harms both consumers and domestic producers of natural gas. Consumers are hurt because they are paying more for their gas than they otherwise would have to. Domestic producers of natural gas, particularly independents, are hurt because they are required to compete against imported natural gas to which our regulatory process gives an artificial competitive advantage.

This problem arises because United States regulators use one system of rate design for United States pipelines, and Canadian regulators employ a different rate design system for their pipelines. Canada uses what is known as a fixed-variable rate design, whereas the United States uses a modified fixed-variable rate design system.

Now while neither system is intrinsically better than the other, they are substantially different, and those differences confer a large—and artificial—competitive advantage to Canadian natural gas when competing for markets here in the United States.

It is important to note that the competitive advantage that Canadian gas enjoys does not make that gas cheaper to United States consumers. Overall, for the same distance of transportation, the total cost of delivering natural gas will be the same.

However, the system that Canada uses gives the appearance of reducing the cost of gas, and that is what presently gives Canadian gas a competitive advantage here in the United States.

That occurs because the Canadian rate design system puts more costs into what is known as the fixed component and less into the variable component than does the United States system. To show the difference this makes, let me give an analogy.

Assume you are purchasing a $10,000 car and you are given two options on how to pay for it. In the first option, you pay $5,000 down and make 50 monthly payments of $100. In the second option, you pay nothing down and make 50 monthly payments of $200. Now which option is cheaper?

In both cases the total price of the car is the same. But in the second option, on a monthly basis, the car looks more expensive; it is $200 a month as compared to $100 per month as in the first case. Now, is the car cheaper in option 2? No, but on a monthly basis it may appear that way.

That is roughly analogous to the difference between the Canadian system of fixed-variable rates, and the United States system of modified fixed-variable rates.

In both cases the overall cost of delivering gas is the same, but the variable cost is different. Neither is cheaper in total delivered cost to consumers after adding fixed and variable costs, but one appears to be cheaper. That is the problem that this legislation proposes to address.

In the past, efforts to remedy the problem have focused on what could be done to eliminate or offset this artificial competitive advantage, but opponents of those efforts have prevented that from occurring. In large part, they have argued that the United States-Canada Free-Trade Agreement prevents United States regulators from taking action.

To this Senator it is absolutely clear that the free-trade agreement does not prevent the United States from eliminating or offsetting artificial regulatory advantages for Canadian natural gas—and I have appeared before the Federal Energy Regulatory Commission and so testified. But that issue is not relevant to this bill.

The bill addresses only the U.S. side of the pipeline rate issue. Thus, the free-trade agreement argument, even if valid, is not germane to this bill.

Let me now take a moment to summarize the legislation. The first subsection says that immediately after the Federal Energy Regulatory Commission authorizes the construction or operation of a pipeline project to import natural gas, it must initiate a proceeding, pursuant to its existing statutory authority, to determine if the rates on U.S. pipelines who bring gas to the same market confer a competitive disadvantage upon domestic producers of natural gas.

The second subsection states that after completing the investigation, if the FERC finds that the rates of U.S. pipelines do in fact put domestic producers at an unfair disadvantage, the FERC, pursuant to its existing statutory authority, must act to change the rates on U.S. pipelines so as to eliminate that discrimination.

Now some may try to argue that enactment of this bill could disrupt domestic pipeline operations. However, that is simply not true.

First, the bill calls upon FERC to undertake an examination of domestic pipeline rates only under certain circumstances. And then, only if the rates on those domestic pipelines are found to unfairly discriminate against domestic natural gas would the FERC be required to use its existing statutory authority to remedy the problem.

But until the normal regulatory process is completed, including giving everyone a full and fair opportunity to review the situation and make their recommendations to FERC, nothing occurs. Changes to a pipeline's rates would be implemented only if FERC issues an order and, of course, such order is subject to the regular administrative and judicial review process.

Second, virtually every U.S. pipeline, including those who sell gas into regions which new import projects are slated to serve, are now in a general rate case. Thus, the predicate investigation required by subsection 2(a) of this bill is, to a large extent, already underway. Thus, no additional regulatory burden would necessarily be imposed in these circumstances.

Third, this bill would not impact on the United States-Canada Free-Trade Agreement because it would not require the FERC to take any action with respect to a project for the importation of Canadian natural gas.

Fourth, this legislation would be entirely consistent with existing law. The Commission is to review the rates using the existing standard in the National Gas Act; no new standard would be created by this legislation.

Finally, the legislation would also be entirely consistent with Commission policy, which was outlined by FERC in their September 13, 1990, order on Tennessee Gas. In the order FERC said:

We advise the parties that any domestic interstate pipeline which believes that its current rate design places the domestic gas which it transports at a competitive disadvantage with imported supplies may file an application to modify its existing rate design with the Commission under section 4 of the NGA. Moreover, regarding the redesigning of the rate structure, of domestic pipelines, the Commission has issued a policy statement initiating a process whereby our rate design process and policies are being examined in-depth in the context of individaul rate proceedings before the Commission. Those proceedings are the appropriate forums within our jurisdiction for addressing the real concerns voiced by IPAA. *If IPAA or others raise the issue of a potential anticompetitive preference for Canadian versus domestic gas supply in those proceedings, all interested parties and the ALJ's (sic) will have the opportunity to thoroughly examine the issue and devise and consider appropriate and effective solutions which will ensure that both sales and transportation of Canadian and U.S. domestic gas are treated in a fair and nondiscriminatory manner."* (Emphasis supplied.)

In summary, another way of looking at this legislation is that it would make more automatic that review which the FERC clearly believes to be lawful and in public interest.

The bill's requirement that FERC investigate and remedy unfair discrimination against domestic producers in these situations would not only give domestic producers a fair competitive opportunity, it would also benefit consumers by enhancing competition in the marketplace. This problem has already been recognized by FERC which, some time ago, issued a rate design policy statement. Unfortunately, FERC's efforts to implement that policy have not gotten very far.

The bill would not cause any delay in FERC approval of projects to import Canadian gas, as some may assert, because it would require an investigation only after FERC approval of such projects. In addition, such investigation would only focus on the rates on competing U.S. pipelines, not on those of the import project which triggered the proceeding.

This bill is entirely proper, it is entirely reasonable, and it will help insure that U.S. producers have a fair and competitive chance to sell their natural gas, particularly in the Northeast region of the United States which desperately needs new supplies of secure domestic energy. And, most importantly, it would clear away the regulatory fog of various pipeline rate designs which prevent consumers from making informed and rational decisions as to which source of natural gas is the least expensive overall to purchase.

It is for these reasons that I am today introducing this legislation and am urging my colleagues to cosponsor it.●

ADDITIONAL COSPONSORS

S. 1636

At the request of Mr. BRYAN, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1636, a bill to amend the Internal Revenue Code of 1986 to extend the period for issuing small issue bonds for manufacturing facilities through 1991.

S. 2647

At the request of Mr. SARBANES, his name was added as a cosponsor of S. 2647, a bill to provide for the admission of the State of New Columbia into the Union.

S. 2925

At the request of Mr. DIXON, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 2925, a bill to authorize the minting and issuance of coins in commemoration of the quincentenary of the discovery of America and to authorize the payment of the proceeds of the sale of such coins to the Christopher Columbus Quincentenary Scholarship Foundation for the purpose of establishing a scholarship program, and for other purposes.

AMENDMENT NO. 2942

At the request of Mr. HARKIN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of amendment No. 2942 proposed to S. 3167, a bill to cut Social Security contribution rates and return Social Security to pay-as-you-go financing, and for other purposes.

SENATE CONCURRENT RESOLUTION 159—CHANGING THE ENROLLMENT OF H.R. 5835

Mr. CRANSTON (for Mr. FORD) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 159

Resolved by the Senate (the House of Representatives concurring), That, in enrolling the bill (H.R. 5835) to provide a reconciliation pursuant to section 4 of Senate Concurrent Resolution 310, the Clerk of the House of Representatives shall make the following changes:

On page 67, line 22, after "changes", strike the period and all that follows through the end of subparagraph and insert the following: ", unless an agreement relating to noise reductions at such airport is entered into between the airport proprietor and an airline or airlines constituting a majority of the airline use of such airport, in which case the exception to subsections (b) and (d) provided by this sentence shall apply only to local actions to enforce such agreement.".

SENATE RESOLUTION 348—RELATIVE TO PETROLEUM PRICES

Mr. SANFORD submitted the following resolutions; which was ordered to lie over under the rule:

S. RES. 348

Whereas, since the Iraqi invasion of Kuwait on August 2, 1990, retail gasoline prices have risen in the United States by 30 cents per gallon;

Whereas, since August 2, 1990, unleaded gasoline spot market prices in the United States have varied widely, at times rising as much as 34 cents per gallon above the United States unleaded gasoline spot market prices as of August 2, 1990;

Whereas, since August 2, 1990, crude oil spot market prices in the United States have varied widely, at times rising as much as $17.36 per barrel above the United States crude oil spot market prices as of August 2, 1990;

Whereas, such prices constitute an effective "tax" upon the American public which is greater than the gasoline taxes currently being considered by Congress, but the American public is receiving no public benefits in exchange for paying this effective "tax" to the sellers of petroleum products;

Whereas, the crude oil and gasoline prices referenced above can in no way be fully explained by an actual supply shortage;

Whereas, while some price increases for petroleum and petroleum products are expected in the event of a supply disruption, the actual price rises for petroleum and petroleum products witnessed in the United States since August 2, 1990 are excessive due to speculation on the spot markets and to sharp rises in profit margins for some sellers of petroleum and petroleum products;

Whereas, retail prices for petroleum products do not tend to fall nearly as rapidly as they rise, providing further evidence that market imperfections exist with respect to such products: Now, therefore, be it

Resolved, That it is the sense of the Congress that:

(1) The President should develop a plan to prevent prices for petroleum and petroleum products from rising beyond levels reflecting actual supply and demand;

(2) Such plan should include measures to establish ceiling prices for petroleum and petroleum products, based upon acquisition costs, production costs, and reasonable profit margins;

(3) Such plan should further include appropriate measures to discourage excessive variations in spot market prices for crude oil and petroleum products, when such variations are based upon speculation rather than actual supply and demand conditions;

(4) Such plan should provide for the availability of civil remedies against persons who may sell, or have sold, petroleum or petroleum products at prices exceeding ceiling prices determined in accordance with the plan, if such sales occur or occurred after August 2, 1990;

(5) Such plan should provide that such persons should be made liable to the Federal government for sums equal to at least twice the sum representing the amount of profits earned by such persons from the sale of petroleum or petroleum products since August 2, 1990 less the amount of profits that would have been earned by such persons from the sale of petroleum or petroleum products had such persons sold petroleum or petroleum products at the ceiling prices determined in accordance with the plan;

(6) Such plan should provide for the use of sums collected through the use of the civil remedies described above for the purpose of reduction of the federal deficit;

(7) If the President has not developed such a plan by February 1, 1991, the Senate should act expeditiously to enact legislation providing for the implementation of such a plan.

SENATE RESOLUTION 349—EXPRESSING GRATITUDE FOR THE SERVICE OF DOUGLAS B. HESTER TO THE SENATE

Mr. SANFORD (for Mr. MITCHELL) submitted the following resolution; which was considered and agreed to:

S. RES. 349

Whereas Douglas B. Hester was appointed to the Office of the Legislative Counsel of the Senate on February 19, 1952, and was appointed the 11th Legislative Counsel of the Senate of March 1, 1980;

Whereas Douglas B. Hester has made major contributions in the drafting of all social security, health, and related legislation enacted by the Congress since 1952; and

Whereas Douglas B. Hester is retiring after having served the United States Senate with distinction for nearly 39 years; Now, therefore, be it

Resolved, That the Senate of the United States extends its appreciation and gratitude to Douglas B. Hester, the Legislative Counsel of the Senate, for his long and faithful service to the Senate.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Douglas B. Hester.

SENATE RESOLUTION 350—RELATING TO IMPROVEMENTS IN THE FEDERAL STATISTICAL DATABASE

Mr. MOYNIHAN (for himself and Mr. KOHL) submitted the following resolution; which was referred to the Committee on Governmental Affairs:

S. RES. 350

Whereas the framers of the Constitution understood the importance of social data and built this idea into the Constitution by requiring a decennial census;

Whereas it is a singular accomplishment that we have avoided government direction of the economy and concomitant problems by providing sufficient data, through government agencies, for the economy to direct itself;

Whereas the Congress relies on adequate and accurate statistical information to recognize and define problems facing the country and to develop solutions, as do Federal agencies themselves;

Whereas we spend less than a tenth of a percent of the Federal budget on statistics and then make decisions involving hundreds of billions of dollars based on the results;

Whereas our statistical system, while among the finest in the world, has areas in need of improvement, as demonstrated by the frequent revisions of vital economic statistics, the lack of emphasis on the burgeoning service sector of the economy, and the necessity of reconciling data from different agencies that use different definitions;

Whereas reduced financial support has left the various Federal statistical agencies with insufficient resources, in many cases resulting in less frequent surveys, reduced content and sample sizes, extended periods between data collection and dissemination, and reduced dissemination efforts;

Whereas smaller budgets have also resulted in less research into how to keep surveys reliably measuring what they seek to measure, and into what areas need to be measured; and

Whereas the dispersal throughout the Federal Government of numerous statistical agencies and offices requires leadership and oversight to set priorities, improve coordination among the agencies, eliminate overlap, improve management in each agency, and ensure that the needs of those who use Federal statistics are being met: Now, therefore, be it

Resolved, That the Senate—

(1) supports a vigorous, efficient, and up-to-date Federal statistical system with the ability to provide reliable data on pertinent topics and to effectively set priorities to best use its resources;

(2) supports adequate funding and qualified personnel for the Federal statistical agencies and offices;

(3) supports efforts to improve economic statistics so that both government and business users can make sound business and economic policy decisions;

(4) believes a sound statistical system is essential to our efforts to compete in international markets; and

(5) believes a sustained effort is necessary to bring our Federal statistical database up to the necessary level of performance.

● Mr. MOYNIHAN. Mr. President, I rise to introduce a Senate resolution that expresses our support for improvements to the Federal statistical system. Senator KOHL, chairman of the Subcommittee on Government Information, joins me.

Mr. President, timely and accurate statistical information is vital to the work of Congress and to the business of the Nation. The framers of the Constitution knew the importance of social statistics and built that idea into the Constitution by requiring a decennial census. Today we rely on the Bureau of the Census, the Bureau of

Labor Statistics, the Bureau of Economic Analysis, the National Center for Health Statistics, and a dozen other agencies for the information that identifies and defines the problems we face.

Despite the importance of having reliable information, we spend less than a tenth of a percent of the Federal budget on statistics, and then make decisions involving hundreds of billions of dollars based on the results. And I am unhappy to report that the statistical agencies, their products, our statistical system itself, are not all they must be. Basic economic data is frequently revised. Coordination among the agencies is lacking, even insofar as failing to use the same definitions for identical subjects or criteria. Topics growing in importance such as the service economy and all kinds of international data are underrepresented.

Of central importance to this issue is that our statistical system is decentralized, spread among different agencies and offices, and the requisite amount of leadership for such a system is lacking. This topic must be addressed, for bringing the individual agencies up to standard will not help us much if priorities are not examined, duplication is not eliminated, and the need to reconcile data grounded in different definitions is not ended.

Therefore, Senator KOHL and I join together to put the Senate on record in support of a vigorous federal statistical system, one that can provide enough information so that the economy can remain self-guided. Our statistical system has saved us from the calamity of a government directed economy. It must continue to.

Senator KOHL and I are asking for the help of the General Accounting Office in this effort. This resolution will accompany our request to the Comptroller General that GAO begin to plan an extensive investigation of the statistical agencies; their strengths, their weaknesses, and, we trust, some recommendations for improvement.

Mr. President, earlier this month the New York Times printed a piece by Prof. Wassily Leontief of New York University, a Nobel Prize winner. It was succinctly entitled "Federal Statistics are in Big Trouble." Professor Leontief said:

> In the 1980's when government came to be viewed in some influential quarters as the enemy of the people, the census and the entire Federal statistical system fell on hard times. While our system employs very dedicated, highly qualified individuals, the budgetary appropriations provided for their task fall far short of what's needed.

He is right, and we must begin to correct this situation.

Professor Leontief knows something of the statistical system in Japan as well, and he explained how in recent trade talks it became apparent that in crucial areas, the Japanese know more about our economy than we do. I ask unanimous consent that Professor Leontief's piece be printed in the RECORD, and I hope it will be heeded.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 1, 1990]

FEDERAL STATISTICS ARE IN BIG TROUBLE

(By Wassily Leontief)

The problems with the recent census are shocking not just because of their impact on regional apportionment but also because they show the sad state of the Federal statistical system.

The publication in 1790 of the first census, compiled under Thomas Jefferson's direction, showed how serious our Founding Fathers were about being able to gauge the changing state of society and the economy. Indeed, in the next 200 years the census became a model for the development of similar statistical systems throughout the world.

In the 1980's, when government came to be viewed in some influential quarters as an enemy of the people, the census and entire Federal statistical system fell on hard times.

While our system employs very dedicated, highly, qualified individuals, the budgetary appropriations provided for their task fall far short of what's needed. Moreover, with a rapidly changing economy, the job has become more complex. Today's census difficulties testify to this.

To give another example, in my field—the compilation of the input-output tables that describe the flow of goods and services between the different sectors of our economy in a given year—the state of affairs is equally bad. Those of us at the New York University Institute for Economic Analysis are far from happy about this situation.

The Federal input-output unit has been reduced to 22 people, including office help. There is also a hiring freeze. No wonder the input-output tables for 1972 have not yet come out. With the changes in our economy, these figures, when published, will be only of historical interest.

By contrast, in Japan the compilation of imput-output tables is done by 200 economists and statisticians under the direction of the powerful Administrative Management Agency. A four-volume table for 1975 was published in March 1979. The 1985 table has already been published.

Moreover, the Japanese published a U.S.-Japan table showing the dependence of each U.S. industry on each Japanese industry, and vice-versa. Therefore, I wasn't surprised when a member of the U.S. team negotiating trade matters with the Japanese told me that his Japanese counterparts seemed to know more about our economy than we do.

Some proponents of privatization suggest that diminished support for Federal statistical services will eventually be compensated by private corporate data-gathering organizations. This solution seems about as effective as replacing the klieg lights in a baseball stadium with player-held flashlights. As the U.S. struggles to maintain its competitive position in the world, we can ill afford further deterioration in the data base indispensable to the efficient conduct of all public and private business.●

● Mr. KOHL. Mr. President, I am pleased to cosponsor this legislation introduced by my distinguished colleague, the senior Senator from New York. This bill emphasizes the need for renewed attention to the Federal information infrastructure and to the quality of major Federal statistical data. These issues are of great significance to the Governmental Affairs Subcommittee on Government Information and Regulation which I chair.

During this session, the subcommittee has held a number of hearings which have focused on the quality and uses of Federal information. Through its oversight of the decennial census, the subcommittee has examined the conduct of the 1990 census and efforts to evaluate the quality of that massive effort. It is essential that the Census Bureau produce the best, most accurate census possible.

While there are many uses of census data, none is more important than the constitutionally mandated use of census population counts to determine the number of seats each State is apportioned in the House of Representatives. Relatedly, the States use census data to determine the boundaries of congressional and State legislative districts. When individuals are missed by the Census, they are deprived of their fundamental right to be represented. I am particularly concerned that minorities and the poor continue to be disproportionately undercounted in this census as they have been for decades.

Census data are also used to distribute billions of Federal dollars each year. Again, it is essential that the data be as accurate as possible to ensure equity and fairness in our political and economic systems. Business, researchers and educational institutions all extensively use census data in carrying out their critical missions. They need accurate, appropriate, and timely information and we must see that it is available.

Other Federal statistical programs also provide vital information for citizens, for government, for the private sector, for research and education, and for policy making. In subcommittee hearings, witnesses from each of these groups have testified to the need for better information and statistics. To keep pace in a rapidly changing world, it is essential that we devote more attention to the information systems that tell us where we are and enable us to measure our progress toward achieving our goals. Global economic competitiveness, health care and education are just a few of the areas requiring a strong statistical base.

The United States has been cutting back its Federal statistical system at just the time it needs to devote additional attention to enhancing current statistical programs and developing information bases to take us into the next century. Through a decade of ne-

glect, many statistical agencies and activities have been curtailed. Professional staffs have declined and agencies have been unable to invest in the critical developmental work required to keep up-to-date.

The bill before us echoes the refrain heard over and over in our subcommittee hearings. It is time for renewed attention to these issues. We must look for ways to ensure that the U.S. statistical system remains preeminent and that we have the information required for decision making now and into the next century. I urge my colleagues to support this resolution.●

SENATE RESOLUTION 351—EXTENDING THE PROVISIONS OF SENATE RESOLUTION 106

Mr. REID (for Mr. MITCHELL, for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 351

Resolved, That section 9 of Senate Resolution 106 of the One Hundred First Congress (agreed to April 13, 1989) is amended by striking "One Hundred First Congress" and inserting in lieu thereof "One Hundred Second Congress".

SENATE RESOLUTION 352—EXTENDING THE AUTHORIZATION OF THE COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES SENATE

Mr. REID (for Mr. MITCHELL, for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to.

S. RES. 352

Resolved, That section 10 of Senate Resolution 144, agreed to June 13, 1989 (101st Congress, 1st Session), is amended by striking "one hundred and first Congress" and inserting "one hundred and second Congress".

SENATE RESOLUTION 353—RELATING TO THE LEADERSHIP OF THE MINORITY LEADER

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. RES. 353

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Minority Leader, the Senator from Kansas, the Honorable Robert Dole, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 101st Congress.

SENATE RESOLUTION 354—RELATING TO THE LEADERSHIP OF THE MAJORITY LEADER

Mr. SIMPSON (for Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 354

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Majority Leader, the Senator from Maine, the Honorable George J. Mitchell, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 101st Congress.

SENATE RESOLUTION 355—RELATING TO THE VICE PRESIDENT AND THE MANNER IN WHICH HE PRESIDED OVER THE SENATE

Mr. SIMPSON (for Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 355

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Dan Quayle, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred First Congress.

SENATE RESOLUTION 356—RELATING TO THE PRESIDENT PRO TEMPORE AND THE MANNER IN WHICH HE PRESIDED OVER THE SENATE

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. RES. 356

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Robert C. Byrd, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred First Congress.

SENATE RESOLUTION 357—RELATING TO THE AUTHORIZATION OF THE SINE DIE ADJOURNMENT OF THE PRESENT SESSION

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. RES. 357

Resolved, That notwithstanding the sine die adjournment of the present session of Congress, the President of the Senate, the President of the Senate pro tempore, the Majority Leader of the Senate, and the Minority Leader of the Senate be, and they are hereby, authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

SENATE RESOLUTION 358—RELATING TO THE EXTENDED PROVISONS OF SENATE RESOLUTION 105 OF THE 101ST CONGRESS, THE SENATE ARMS CONTROL OBSERVER GROUP RESOLUTION

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 358

Resolved, That the provisions of Senate Resolution 105 of the One Hundred First Congress (agreed to April 13, 1989) shall remain in effect during the One Hundred Second Congress and terminate upon the adjournment sine die thereof.

AMENDMENTS SUBMITTED

FISHERY CONSERVATION AMENDMENTS

KERRY (AND STEVENS) AMENDMENT NO. 3197

Mr. SANFORD (for Mr. KERRY, for himself and Mr. STEVENS) proposed an amendment to the amendment of the House to the amendment of the Senate to the bill (H.R. 2061) to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1993, and for other purposes, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE; TABLE OF CONTENTS

Section 1. (a) SHORT TITLE.—The Act may be cited as the "Fishery Conservation Amendments of 1990".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
TITLE I—AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT
Sec. 101 Findings, purposes, and policy.
Sec. 102. Definitions.
Sec. 103. Authority with respect to highly migratory species.
Sec. 104. Foreign fishing.
Sec. 105. Existing international fishery agreements.
Sec. 106. Permits for foreign fishing.
Sec. 107. Driftnet fishing.
Sec. 108. Regional Councils.
Sec. 109. Contents of fishery management plans.
Sec. 110. Action by Secretary on fishery management plans.
Sec. 111. Implementation of fishery management plans.
Sec. 112. State jurisdiction.
Sec. 113. Prohibition of certain acts.
Sec. 114. Civil penalties and permit sanctions.
Sec. 115. Criminal offenses and penalties.
Sec. 116. Criminal forfeitures.
Sec. 117. Enforcement.
Sec. 118 North Pacific fisheries research plan.
Sec. 119. Authorization of appropriations.
Sec. 120. Miscellaneous technical amendments.

TITLE II—ATLANTIC TUNAS CONVENTION ACT OF 1975
Sec. 201. Limitations on appointments of Commissioners.
Sec. 202. Termination of current terms and completion of pending appointments.
Sec. 203. Travel expenses of Commissioners.
Sec. 204. Travel expenses of advisory committee.
Sec. 205. Species working group.
Sec. 206. Regulations to carry out Commission recommendations.
Sec. 207. Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic Swordfish.
Sec. 208. Authorization of appropriations.
TITLE III—FISHERMEN'S PROTECTIVE ACT OF 1967
Sec. 301. Vessel seizure reimbursement authority.
TITLE IV—ANADROMUS FISH CONSERVATION ACT
Sec. 401. Authorization of appropriations.
TITLE V—INTERJURISDICTIONAL FISHERIES ACT OF 1986
Sec. 501. Clarification of appointment limitations.
Sec. 502. Federal share of activities carried out with additional appropriations.
Sec. 503. Authorization of appropriations.
TITLE VI—CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT
Sec. 601. Authorization of appropriations.
TITLE VII—NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL
Sec. 701. Extension of termination date.
Sec. 702. Authorization of appropriations.
Sec. 703. Transfer of Saltonstall-Kennedy funds.
Sec. 704. Continuity of National Council membership.
Sec. 705. Continuity of Council functions, contracts, and personnel.
TITLE VIII—MISCELLANEOUS
Sec. 801. Certificate of legal origin for anadromous fish product.
TITLE IX—DOLPHIN PROTECTION CONSUMER INFORMATION
Sec. 901. Dolphin protection.
TITLE X—FISHERIES COMMISSION
Sec. 1001. Redesignation of Fisheries Commission.
TITLE XI—REPORT ON MARINE MAMMALS
Sec. 1101. Report on certain marine mammal populations.

TITLE I—AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

FINDINGS, PURPOSES, AND POLICY

SEC. 101 (a) FINDINGS.—Section 2(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(a)) is amended by adding at the end the following new paragraph:

"(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.".

(b) PURPOSES.—(1) Section 2(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(b)(1)) is amended by striking "except highly migratory species".

(2) Section 2(b)(5) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(b)(5)) is amended by striking "prepare, monitor, and revise" and inserting in lieu thereof "exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of".

(c) POLICY.—Section 2(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(c)) is amended—

(1) in paragraph (3) by inserting "considers the effects of fishing on immature fish and encourages development of practical measures that avoid unnecessary waste of fish;" immediately after "and enforcement;"

(2) by striking "and" at the end of paragraph (4);

(3) by striking the period at the end of paragraph (5) and inserting in lieu thereof ", and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation; and"; and

(4) by adding at the end of the following new paragraph:

"(6) to foster and maintain the diversity of fisheries in the United States.".

DEFINITIONS

SEC. 102. (a) GENERAL.—Section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802) is amended—

(1) by redesignating paragraphs (16) as paragraph (17), by redesignating paragraph (17) as paragraph (19), by redesignating paragraphs (18) through (23) as paragraphs (21) through (26), respectively, and by redesignating paragraphs (24) through (27) as paragraphs (28) through (31), respectively;

(2) in paragraph (7), by striking ", birds, and highly migratory species" and inserting in lieu thereof "and birds";

(3) by amending paragraph (14) to read as follows:

"(14) The term 'highly migratory species' means tuna species, marlin (Tetrapturus spp. and Makaira spp.), oceanic sharks, sailfishes (Istiophorus spp.), and swordfish (Xiphias gladius).";

(4) by inserting immediately after paragraph (15 the following new paragraph:

"(16) The term 'large-scale driftnet fishing' means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.";

(5) by inserting immediately after paragraph (17), as so redesignated, the following new paragraph:

"(18) The term 'migratory range' means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.";

(6) by inserting immediately after paragraph (19), as so redesignated, the following new paragraph:

"(20) The term 'observer' means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.";

(7) by inserting immediately after paragraph (26), as so redesignated, the following new paragraph:

"(27) The term 'tuna species' means the following:

"Albacore Tuna—Thunnus alalunga;

"Bigeye Tuna—Thunnus obesus;

"Bluefin Tuna—Thunnus thynnus;

"Skipjack Tuna—Katsuwonus pelamis; and

"Yellowfin Tuna—Thunnus albacares."; and

(8) by adding at the end the following new paragraph:

"(32) The term 'waters of a foreign nation' means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.".

(b) CONFORMING AMENDMENT.—Section 101(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811(b)(1)) is amended by striking "any foreign nation's" and all that follows and inserting in lieu thereof "any waters of a foreign nation.".

AUTHORITY WITH RESPECT TO HIGHLY MIGRATORY SPECIES

SEC. 103. (a) GENERAL.—Section 102 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1812) is amended to read as follows:

"SEC. 102. HIGHLY MIGRATORY SPECIES.

"The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout their range, both within and beyond the exclusive economic zone.".

(b) CONFORMING AMENDMENT.—The entry for section 102 in the table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

Sec. 102. Highly migratory species.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1992.

FOREIGN FISHING

SEC. 104. Subsection (d) of section 201 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821) is amended to read as follows:

"(d) TOTAL ALLOWANCE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this Act.".

INTERNATIONAL FISHERY AGREEMENTS

SEC. 105.(a) HIGHLY MIGRATORY SPECIES AGREEMENTS.—Section 202 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822) is amended by redesignating subsection (e) as subsection (f) and by inserting immediately after subsection (d) the following new subsection:

"(e) HIGHLY MIGRATORY SPECIES AGREEMENTS.—

"(1) EVALUATION.—The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—

"(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear

used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the preseent and probable future condition of any stock of fish involved;

"(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;

"(C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

"(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

"(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

"(2) ACCESS NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

"(3) REPORTS.—The Secretary of State shall report to the Congress—

"(A) within 12 months after the date of enactment of this subsection, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequancies identified; and

"(B) within six months after such date of enactment, on the results of the access negotiations required under paragraph (2).

"(4) NEGOTIATION.—The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

"(5) SOUTH PACIFIC TUNA TREATY.—It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and it Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.".

"(b) DETERMINATIONS OF SECRETARY OF STATE.—(1) Section 205(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1825(a)) is amended—

(1) in paragraph (1) by striking "traditional" and by inserting "including fisheries for tuna species," immediately after "authority,"; and

(2) in paragraph (2) by striking "highly migratory" and inserting in lieu thereof "tuna".

(2) The amendments made by this subsection shall take effect on January 1, 1992.

PERMITS FOR FOREIGN FISHING

SEC. 106. (a) FEES.—Section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(10)) is amended to read as follows:

"(10) FEES.—

"(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in conclusion with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

"(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.".

"(b) SANCTIONS.—Section 204(b)(12) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(12)) is repealed.

DRIFTNET FISHING

SEC. 107. (a) GENERAL.—Section 206 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1826) is amended to read as follows:

"SEC 206. LARGE-SCALE DRIFTNET FISHING.

"(a) SHORT TITLE.—This section incorporates and expends upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the 'Driftnet Act Amendments of 1990'.

"(b) FINDINGS.—The Congress finds that—

"(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world's oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

"(2) the use of large-scale driftnets is expanding into new regions of the world's oceans, including the Atlantic Ocean and Carribean Sea;

"(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

"(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

"(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

"(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

"(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation.

"(c) POLICY.—It is declared to be the policy of the Congress in this section that the United States should—

"(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;

"(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and

"(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

"(d) INTERNATIONAL AGREEMENTS.—The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international ban or large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

"(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

"(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

"(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed by large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

"(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel if operating in designated areas beyond the exclusive economic zone of any ation;

"(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

"(6) time and area restrictons are imposed on the use of large-scale driftnet in order to prevent interception of anadromous species;

"(7) all large-scale driftnet used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

"(8) all large-scale driftnet are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

"(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

"(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

"(e) REPORT.—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the depart-

ment in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—

"(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

"(3) identifying and evaluating the effectiveness of unilateral measures and multilateral measures, including sanctions, that are available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize any additional measures that are needed if those are considerated ineffective;

"(4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against fishing vessels engaged in fishing beyond the exclusive economic zone of any nation;

"(5) containing a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

"(6) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is party or otherwise subscribes.

"(f) CERTIFICATION.—If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (e)(6), the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

"(g) EFFECT ON SOVEREIGN RIGHTS.—This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this Act or other existing law.

"(h) DEFINITION.—As used in this section, the term 'living marine resources' includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.".

"(b) CONFORMING AMENDMENT.—The entry for section 206 in the table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"Sec. 206. Large-scale driftnet fishing.".

REGIONAL COUNCILS

SEC. 108.(a) AUTHORITY OVER CERTAIN FISHERIES.—Section 302(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(a)) is amended by inserting "(except as provided in section 304(f)(3))" immediately before the period at the end of the first sentence in each of paragraphs (1) through (5).

(b) MEMBERS' QUALIFICATIONS.—Paragraph (2) of section 302(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(b)) is amended to read as follows:

"(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

"(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall—

"(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguished characteristics;

"(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

"(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

"(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

"(D) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.".

(c) LIMITATION ON TERMS OF VOTING MEMBERS.—Section 302(b)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(b)(3)) is amended by adding at the end the following new sentences: "No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term completed prior to January 1, 1986, shall not be counted in determining the number of consecutive terms served by any Council member.".

(d) COMPENSATION AND EXPENSES.—Section 302(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(d)) is amended to read as follows:

"(d) COMPENSATION AND EXPENSES.—The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall, until January 1, 1992, receive compensation at the daily rate for GS-18 of the General Schedule, and after December 31, 1991, at the daily rate for GS-16 of the General Schedule, when engaged in the actual performance of duties for each Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.".

(e) TRANSACTION OF BUSINESS.—(1) Section 302(e)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(e)(3)) is amended by striking "in the geographical area concerned" and inserting in lieu thereof "at appropriate times and places in any of the constituent States of the Council.".

(2) Section 302(e)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(e)(4)) is amended by adding at the end the following new sentence: "The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.".

(f) COMMITTEES AND PANELS.—Section 302(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(g)) is amended by adding at the end the following new paragraph:

"(3)(A) Each Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plan and amendments to such plans.

"(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographic area of authority of the Council.

"(4) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.".

(g) COUNCIL FUNCTIONS.—Paragraphs (1) and (5) of section 302(h) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(h)) are each amended by inserting "(except as provided in section 304(f)(3))" immediately before "within its geographical".

(h) FISHERY HABITAT CONCERNS.—Section 302(i) of the Magnuson Fishery Conserva-

tion and Management Act (16 U.S.C. 1852(i)) is amended to read as follows:

"(i) FISHERY HABITAT CONCERNS.—(1) Each Council—

"(A) may comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; and

"(B) shall comment on and make recommendations concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction.

"(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measures being considered by the agency for mitigating or offsetting the impact of the activity on such habitat.".

(i) CLOSED MEETINGS.—Section 302(j)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1952(j)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking the semicolon at the end of clause (ii) and all that follows through "time and place of the meeting." and inserting in lieu thereof a period; and

(B) by inserting "of paragraph (2)" immediately after "(D) and (F)"; and

(2) by adding at the end the following new subparagraph:

"(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment matters or other internal administrative matters.".

(j) CONSIDERATION OF NEW INFORMATION.—Section 302(j) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)) is amended by adding at the end the following new paragraph:

"(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.".

(k) INTERIM MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.—Nothwithstanding the amendments made by subsections (a) and (g), any fishery management plan or amendment which—

(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (as amended by this Act) applies,

(2) was prepared by one or more Regional Fishery Management councils, and

(3) was in force and effect on January 1, 1990, shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.

CONTENTS OF FISHERY MANAGEMENT PLANS

SEC. 109. (a) REQUIRED DATA COLLECTION AND GEAR.—Section 303(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(a)) is amended—

(1) in paragraph (1)(A) by inserting ", to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery" immediately before the semicolon at the end;

(2) in paragraph (1)(C) by inserting "regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits)" immediately after "this Act,";

(3) by amending paragraph (6) to read as follows:

"(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;";

(4) by striking the period at the end of paragraph (7) and inserting in lieu thereof a semicolon; and

(5) by adding at the end the following new paragraphs:

"(8) in the case of a fishery management plan that, after Janaury 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan; and

"(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on—

"(A) participants in the fisheries affected by the plan or amendment; and

"(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants.".

(b) DISCRETIONARY PROVISIONS.—(1) Paragraph (1) of section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)) is amended to read as follows:

"(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

"(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or for anadromous species or Continental Shelf fishery resources beyond such zone;

"(B) the operator of any such vessel; or

"(C) any United States fish processor who first receives fish that are subject to the plan;".

(2) Section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)) is amended by redesignating paragraphs (7) and (8) as paragraphs (9) and (10), respectively, and by inserting immediately after paragraph (6) the following new paragraphs:

"(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

"(8) require that observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;".

(c) CONFIDENTIALITY OF STATISTICS.—Section 303(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(d)) is amended—

(1) in the matter preceding paragraph (1) by striking "subsection (a)(5)" and inserting in lieu thereof "subsections (a) and (b)";

(2) by striking "or" at the end of paragraph (1);

(3) by redesignating paragraph (2) as paragraph (3);

(4) by inserting immediately after paragraph (1) the following new paragraph:

"(2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or"; and

(5) by adding at the end the following new sentence: "Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any statistic submitted in compliance with a requirement under subsection (a) or (b).".

(d) USE OF CERTAIN DATA.—Section 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853) is further amendment by adding at the end the following new subsection:

"(f) RESTRICTION ON USE OF CERTAIN DATA.—The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), or the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

ACTION BY SECRETARY ON FISHERY MANAGEMENT PLANS

SEC. 110. (a) FISHERIES RESEARCH.—Subsection (e) of section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended to read as follows:

"(e) FISHERIES RESEARCH.—(1) Within one year after the date of enactment of the Fishery Conservation Amendments of 1990, and at least every three years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the five years immediately following such publication. The plan shall—

"(A) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in paragraph (2); and

"(B) indicate the goals and timetables for the program described in subparagraph (A); and

"(C) provide a role for affected commercial fishermen in such research, including involvement in field testing.

"(2) The areas of research referred to in paragraph (1) are as follows:

"(A) Research to support fishery conservation and management, including research on the economics of fisheries and biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

"(B) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize the harvest of nontarget species and promote efficient harvest of target species.

"(C) Information management research, including the development of a fishery information base and an information management system that will permit the full use of data in the support of effective fishery conservation and management.

"(3) In developing the plan required under paragraph (1), the Secretary shall consult with relevant Federal agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.".

(b) MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.—(1) Section 304(f) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(f)) is amended—

(A) by striking "MISCELLANEOUS DUTIES" and inserting in lieu thereof "FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL";

(B) in paragraph (1) by striking "If" and inserting in lieu thereof "Except as provided in paragraph (3), if"; and

(C) by adding at the end the following new paragraph:

"(3)(A) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

"(B) In accordance with the provisions of this Act and any other applicable law, the Secretary shall—

"(i) identify research and information priorities, including observer requirements and necessary data collection and analysis for the conservation and management of highly migratory species;

"(ii) prepare and amend fishery management plans with respect to highly migratory species fisheries to which this paragraph applies; and

"(iii) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), international fishery management measures with respect to fishing for highly migratory species.

"(C) In preparing or amending any fishery management plan under this paragraph, the Secretary shall—

"(i) conduct public hearings, at appropriate times and in appropriate locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan;

"(ii) consult with and consider the comments and views of commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species;

"(iii) consult with and consider the comments and views of affected Council;

"(iv) evaluate the likely effects, if any, of conservation and management measures on participants in the fisheries affected by the plan and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors; and

"(v) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan.

"(D) Conservation and management measures contained in any fishery management plan under this paragraph shall—

"(i) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

"(ii) be fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose; and

"(iii) promote international conservation.

"(E) With respect to a highly migratory species for which the United States is authorized to harvest an allocation or quota under a relevant international fishery agreement, the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota.

"(F) In implementing the provisions of this paragraph, the Secretary shall consult with—

"(i) the Secretary of State;

"(ii) commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

"(iii) appropriate Councils.".

(2) Section "305(a)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(a)(3)), as redesignated by section 111(a)(1) of this Act, is amended by inserting "or (f)(3)" immediately after "304(c)".

(c) INCIDENTAL HARVEST RESEARCH.—Section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended by adding at the end the following new subsection:

"(g) INCIDENTAL HARVEST RESEARCH.—(1) Within 9 months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, after consultation with the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, establish by regulation a 3-year program to assess the impact of fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils.

"(2) The program established pursuant to paragraph (1) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

"(3) For stocks of fish identified pursuant to paragraph (2), with priority given to stocks which (based upon the best available scientific information) are considered to be overfished, the Secretary shall conduct—

"(A) a program to collect and evaluate data on the nature and extent (including the spatial and temporal distribution) of incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

"(B) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

"(C) a program of data collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

"(4) The Secretary shall, in cooperation with affected interests, commence a program to design, and evaluate the efficacy of, technological devices and other changes in fishing technology for the reduction of incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing activity. Such program shall take into account local conditions and include evaluation of any reduction in incidental mortality, as well as any reduction or increase in the retention of shrimp in the course of normal fishing activity.

"(5) The Secretary shall, upon completion of the programs required by this subsection, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

"(6)(A) Except as provided in this paragraph, the Secretary may not implement any measures under this Act to reduce incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing which would restrict the period during which shrimp are harvested or would require the use of any technological device or other change in fishing technology.

"(B) The prohibition contained in subparagraph (A) shall cease on January 1, 1994.

"(C) This paragraph does not apply to any law or regulation in effect on the date of enactment of this paragraph, nor does it limit in any way the Secretary's authority to take action, including any limitation on entry permitted by this Act, for the conservation and management of the shrimp fishery resource.".

(d) ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN.—(1) The New England Fishery Management Council may submit to the Secretary of Commerce an amendment to the Atlantic Sea Scallop Fishery Management Plan. Any amendment submitted under this section shall—

(A) contain measures providing for the conservation and management of Atlantic sea scallops, that are not based primarily on the scallop meat count but which may include controls on scallop harvesting effort; and

(B) consider the views of fishermen and fish processors involved in the Atlantic sea scallop fishery.

(2) If no amendment is submitted under paragraph (1) before one year after the date of enactment of this Act, the Secretary of Commerce is encouraged to prepare the amendment described in paragraph (1) under section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854).

IMPLEMENTATION OF FISHERY MANAGEMENT PLANS

SEC. 111. (a) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855) is amended—

(A) by redesignating subsections (c), (d), and (e) as subsections (a), (b), and (c), respectively; and

(B) by redesignating subsections (g) and (h) as subsections (d) and (e), respectively.

(2) Section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended—

(A) in subsection (b)(1) by striking "305(c)" in the first sentence and inserting in lieu thereof "305(a)";

(B) in subsection (b)(3)(D) by striking "305(c)" and inserting in lieu thereof "305(a)"; and

(C) in subsection (c)(2)(B) by striking "305(c)" and inserting in lieu thereof "305(a)".

(b) JUDICIAL REVIEW OF CERTAIN IMPLEMENTING ACTIONS.—Section 305(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(b)), as redesignated by subsection (a)(1)(A), is amended to read as follows:

"(b) JUDICIAL REVIEW.—(1) Regulations promulgated by the Secretary under this Act and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable; except that—

"(A) section 705 of such title is not applicable, and

"(B) the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2)(A), (B), (C), or (D) of such title.

"(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing.

"(3)(A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1), not later than 45 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

"(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

"(4) Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way.".

STATE JURISDICTION

SEC. 112. Section 306(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856(c)) is amended—

(1) in paragraph (1)(B) by inserting "and the application specifies the species to be processed" before the period at the end; and

(2) by striking paragraph (2) and inserting in lieu thereof the following:

"(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)—

"(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after—

"(i) consulting with the appropriate Council and Marine Fisheries Commission, and

"(ii) considering any comments received from the Governor of any other State where the fishery occurs; and

"(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.".

PROHIBITION OF CERTAIN ACTS

SEC. 113.(a) PROHIBITIONS WITH RESPECT TO THEFT, ASSAULT, AND LARGE-SCALE DRIFTNET FISHING.—Section 307(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857(1)) is amended—

(1) by striking "or" at the end of subparagraph (I);

(2) by striking the period at the end of subparagraph (J) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(K) to knowingly steal, or without authorization, to remove, damage, or tamper with—

"(i) fishing gear owned by another person, which is located in the exclusive economic zone, or

"(ii) fish contained in such fishing gear,

or to attempt to do so;

"(L) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any observer on a vessel under this Act;

"(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation; or

"(N) to strip pollock of its roe and discard the flesh of the pollock.".

(b) VIOLATION OF INTERNATIONAL FISHERY AGREEMENT.—Section 307 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

(1) in paragraph (3) by striking "; and" and inserting in lieu thereof a semicolon;

(2) in paragraph (4) by striking the period at the end and inserting in lieu thereof "; and;" and

(3) by adding at the end the following new paragraph:

"(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.".

CIVIL PENALTIES AND PERMIT SANCTIONS

SEC. 114. (a) INCREASED PENALTY; PERMIT SANCTIONS.—Section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858) is amended—

(1) in the section heading by inserting "AND PERMIT SANCTIONS" immediately after "CIVIL PENALTIES";

(2) in subsection (a) by striking "$25,000 in the second sentence and inserting in lieu thereof "$100,000"; and

(3) by adding at the end the following:

"(g) PERMIT SANCTIONS.—(1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, or (C) any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any fishery resource law statute enforced by the Secretary has not been paid and is overdue, the Secretary may—

"(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

"(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

"(iii) deny such permit; or

"(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

"(2) In imposing a sanction under this subsection, the Secretary shall take into account—

"(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

"(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

"(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.

"(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

"(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.".

(b) CONFORMING AMENDMENT.—The entry for section 308 in the table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"Sec. 308. Civil penalties and permit sanctions.".

CRIMINAL OFFENSES AND PENALTIES

SEC. 115. (a) OFFENSES.—Paragraph (1) of section 309(a) of the Magnuson Fishery Conservation and Management Act (16

U.S.C. 1859(a)) is amended to read as follows:

"(1) section 307(1)(D), (E), (F), (H), (I), or (L); or".

(b) PUNISHMENT.—Section 309(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1859(b)) is amended—

(1) by striking "$50,000" and insertng in lieu thereof "$100,000";

(2) by striking "$100,000" each place it appears and inserting in lieu thereof "$200,000";

(3) by inserting "any observer described in section 307(1)(L) or" immediately after "injury to"; and

(4) by inserting "observer or" immediately before "officer in fear".

CIVIL FORFEITURES

SEC. 116. Section 310(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1860(e)) is amended—

(1) by inserting "(1)" immediately before "For purposes"; and

(2) by adding at the end the following:

"(2) For purposes of this Act, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.".

ENFORCEMENT

SEC. 117. Section 311(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(e)) is amended to read as follows:

"(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provisions of this Act or of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—

"(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other fishery resource law enforced by the Secretary with respect to that fish or other property;

"(B) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other fishery resource law enforced by the Secretary;

"(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

"(D) any valid liens or mortgages against any property that has been forfeited;

"(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)) or under other provisions of the customs laws, as made applicable by section 310(c) of this Act to seizures made by the Secretary under this Act, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

"(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law.

"(2) Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation.".

NORTH PACIFIC FISHERIES RESEARCH PLAN

SEC. 118. (a) Title III of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) is amended by adding at the end the following new section:

"SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN.

"(a) IN GENERAL.—The North Pacific Fishery Management Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which—

"(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

"(2) establishes a system of fees to pay for the costs of implementing the plan.

"(b) STANDARDS.—Any plan or plan amendment prepared under this section shall be reasonably calculated to—

"(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

"(B) be fair and equitable to all vessels and processors;

"(C) be consistent with applicable provisions of law; and

"(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

"(2) Any system of fees established under this section shall—

"(A) provide that the total number of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purposes from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

"(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

"(D) not be used to offset amounts authorized under other provisions of law;

"(E) be expressed as a percentage, not to exceed 1 per centum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

"(H) provide that fees collected will only be used for implementing the plan established under this section; and

"(I) meet the requirements of section 9701(b) of title 31, United States Code.

"(c) ACTION BY SECRETARY.—(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

"(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

"(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

"(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

"(d) FISHERY OBSERVER FUND.—There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(e) SPECIAL PROVISIONS REGARDING OBSERVERS.—(1) The Secretary shall review—

"(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

"(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

"(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—

"(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

"(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.".

"(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended by inserting immediately after the entry for section 312 the following new entry:

"Sec. 313. North Pacific fisheries research plan.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 119. Section 406 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1882) is amended by adding at the end the following new paragraphs:

"(16) $77,200,000 for the fiscal year ending September 30, 1990.

"(17) $94,000,000 for the fiscal year ending September 30, 1991, of which $6,500,000 shall be used for enforcement and $5,000,000 shall be used to increase research and assessment efforts.

"(18) $98,000,000 for the fiscal year ending September 30, 1992.

"(19) $102,000,000 for the fiscal year ending September 30, 1993.".

MISCELLANEOUS TECHNICAL AMENDMENTS

SEC. 120. (a) INTERNATIONAL FISHERY AGREEMENTS.—Section 202(f) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822(f)), as so redesignated by section 105 of this Act, is amended by striking "a exclusive economic zone" and inserting in lieu thereof "an exclusive economic zone".

"(b) FOREIGN FISHING PERMITS.—Section 204(b)(4)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(4)(C)) is amended by striking "council" and inserting in lieu thereof "Council".

(c) COUNCIL PROCEDURAL MATTERS.—Section 302(j)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)(4)) is amended by striking "council employee" and inserting in lieu thereof "Council employee".

(d) ACTION BY SECRETARY.—Section 304(c)(2)(B) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(c)(2)(B)) is amended by striking "appropriate council" and inserting in lieu thereof "appropriate Council".

TITLE II—ATLANTIC TUNAS CONVENTION ACT OF 1975

LIMITATIONS ON APPOINTMENTS OF COMMISSIONERS

SEC. 201. (a) IN GENERAL.—Section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

(2) by adding at the end the following:

"(2) Of the Commissioners appointed under paragraph (1) who are not governmental employees—

"(A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

"(B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

"(3)(A) The term of a Commissioner shall be three years.

"(B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner.".

(b) APPLICATION TO CURRENT COMMISSIONERS.—(1) Paragraph (2) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)), as added by this section, shall not apply to reappointment of an individual as a United States Commissioner of the International Commission for the Conservation of Atlantic Tunas (hereinafter in this title referred to as a "Commissioner") if that individual is serving in that position on the date of enactment of this Act.

(2) An individual serving a term as a Commissioner on the date of enactment of this Act shall not, by reason of that term of service, be ineligible under paragraph (3)(B) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)), as added by this section, for reappointment as a Commissioner.

TERMINATION OF CURRENT TERMS AND COMPLETION OF PENDING APPOINTMENTS

SEC. 202. The term as Commissioner of each individual serving in that position on the date of enactment of this Act shall terminate March 1, 1991. Not later than that date, the President shall complete appointment (or reappointment) of individuals to serve as Commissioners on and after that date.

TRAVEL EXPENSES OF COMMISSIONERS

SEC. 203. Section 3 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a) is amended by adding at the end the following new subsection:

"(d)(1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

"(2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.".

TRAVEL EXPENSES OF ADVISORY COMMITTEE

SEC. 204. Section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) is amended by striking "On approval" and all that follows and inserting in lieu thereof the following: "The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.".

SPECIES WORKING GROUPS

SEC. 205. The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.) is amended by inserting immediately after section 4 the following new section:

"SPECIES WORKING GROUPS

"SEC. 4A. The United States Commissioners may establish species working groups for the purpose of providing advice and recommendations to the Commissioners and the advisory committee on matters relating to the conservation and management of any highly migratory species covered by the Convention. Any species working group shall consist of no more than 7 members of the advisory committee and no more than 4 scientific or technical personnel, as considered necessary by the Commissioner.".

REGULATIONS TO CARRY OUT COMMISSION RECOMMENDATIONS

SEC. 206. (a) Section 6(c)(1) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(1)) is amended by redesignating the existing text as subparagraph (A) and by adding at the end the following new subparagraphs:

"(B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

"(C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson Fishery Conservation and Management Act (16. U.S.C. 1801 et seq.).".

(b) Section 6(c)(3) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(3)) is amended—

(1) in subparagraph (H) by striking "; and" and inserting in lieu thereof a semicolon; and

(2) by striking subparagraph (I) and inserting in lieu thereof the following:

"(I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

"(J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

"(K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention; except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission.".

RECOMMENDED COMMISSION ACTIONS REGARDING LARGE-SCALE DRIFTNET FISHING AND CONSERVATION OF ATLANTIC SWORDFISH

SEC. 207. Section 6(d) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(d)) is amended to read as follows:

"(d)(1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(16) of the Magnuson Fishery Conservation and Management Act) in the Convention area.

"(2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary within 3 months after each annual meeting of the Commission shall notify Congress as to the nature or results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 208. Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 10. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in article X of the Convention, not more than $2,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.".

TITLE III—FISHERMEN'S PROTECTIVE ACT OF 1967

VESSEL SEIZURE REIMBURSEMENT AUTHORITY

SEC. 301. Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended by striking "October 1, 1989" and inserting in lieu thereof "October 1, 1993".

TITLE IV—ANADROMOUS FISH CONSERVATION ACT

AUTHORIZATION OF APPROPRIATIONS

SEC. 401. Section 4(a) of the Anadromous Fish Conservation Act (16 U.S.C. 757d(a)) is amended—

(1) by striking paragraphs (1), (2), (3), (4), (5), and (6);

(2) by redesignating paragraph (7) as paragraph (1); and

(3) by adding at the end the following new paragraph:

"(2) $8,000,000 for each of the fiscal years 1990, 1991, 1992, 1993, 1994, and 1995.".

TITLE V—INTERJURISDICTIONAL FISHERIES ACT OF 1986

CLARIFICATION OF APPORTIONMENT LIMITATION

SEC. 501. Section 304(c)(3)(B) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4103(c)(3)(B)) is amended by inserting "which are managed under an interstate fishery management plan" immediately after "fishery resources".

FEDERAL SHARE OF ACTIVITIES CARRIED OUT WITH ADDITIONAL APPROPRIATIONS

SEC. 502. Section 308(b) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(b)) is amended—

(1) in paragraph (1) by striking "and" at the end;

(2) in paragraph (2) by striking the period at the end and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (2) the following new paragraph:

"(3) the Federal share of the cost of any activity carried out with an amount appropriated under the authority of this subsection shall be 75 percent of the cost of that activity.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 503. Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) in subsection (a) by striking "fiscal years 1987, 1988, and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995";

(2) in subsection (b) by striking "fiscal years 1988 and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995"; and

(3) in subsection (c) by striking "fiscal years 1988 and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, and 1993".

TITLE VI—CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT

AUTHORIZATION OF APPROPRIATIONS

SEC. 601. Section 7 of the Central, Western, and South Pacific Fisheries Development Act (16 U.S.C. 758e-5) is amended by striking "and 1988" and inserting in lieu thereof "1988, 1989, 1990, 1991, 1992, 1993, 1994, and 1995".

TITLE VII—NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL

EXTENSION OF TERMINATION DATE

SEC. 701. Section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(g)) is amended by striking "October 1, 1990" and inserting in lieu thereof "December 31, 1991".

AUTHORIZATION OF APPROPRIATIONS

SEC. 702. Section 209(d) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4008(d)) is amended by striking "1990" and inserting in lieu thereof "1991".

TRANSFER OF SALTONSTALL-KENNEDY FUNDS

SEC. 703. Section 2(b)(2) of the Act of August 11, 1939 (commonly known as the Saltonstall-Kennedy Act; 15 U.S.C. 713c-3(b)(2)), is amended by striking "fiscal year 1990" and inserting in lieu thereof "each of fiscal years 1990 and 1991".

CONTINUITY OF NATIONAL COUNCIL MEMBERSHIP

SEC. 704. (a) UNINTERRUPTED SERVICE.—Individuals serving on September 30, 1990, as members of the National Fish and Seafood Promotional Council shall be deemed to continue as members in uninterrupted service since the date of their initial appointment.

(b) FILLING OF VACANCIES.—Notwithstanding section 206(e) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(e)), any vacancy on the National Fish and Seafood Promotion Act not filled as of September 30, 1990, shall be filled within 60 days after the date of enactment of this Act.

(c) TECHNICAL AMENDMENT.—Section 207(a)(5) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4006(a)(5)) is amended by inserting "initial" immediately before "appointments".

CONTINUITY OF COUNCIL FUNCTIONS, CONTRACTS, AND PERSONNEL

SEC. 705. All current functions, contracts in force, and existing personnel of the National Fish and Seafood Promotional Council as of September 30, 1990, are reauthorized and extended, and shall continue as if uninterrupted, notwithstanding section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(g)) as in effect on September 30, 1990.

TITLE VIII—MISCELLANEOUS

CERTIFICATE OF LEGAL ORIGIN FOR ANADROMOUS FISH PRODUCTS

SEC. 801. (a) NEOGTIATIONS.—Within 60 days after the date of enactment of this Act, the Secretary of State shall commence negotiations with nations which import or export anadromous fish or anadromous fish products for the purpose of securing general agreement among such nations to implement effective measures to prohibit international trade in anadromous fish or anadromous fish products unless such fish or fish products are accompanied by a valid certificate of legal origin attesting that the fish or fish product was lawfully harvested—

(1) within the jurisdiction of a nation having naturally occurring or artificially established anadromous fish populations of the same species as the imported or exported product; or

(2) on the high seas according to an international agreement among nations with jurisdiction over more than 1 percent of the stocks of anadromous fish being so harvested.

(b) ISSUANCE OF CERTIFICATES.—For the purposes of subsection (a), a valid certificate of legal origin may be issued only by a nation which—

(1) is the nation having jurisdiction over the vessels or other means by which the fish or fish product was harvested; and

(2) maintains regular harvests of anadromous fish in a manner consistent with the criteria for lawful harvests set out in subsection (a).

(c) BILATERAL OR MULTILATERAL AGREEMENTS.—Efforts undertaken by the Secretary of State pursuant to subsection (a) may, at the discretion of the Secretary, be directed toward achieving either bilateral or multilateral agreements, including trade agreements, whichever the Secretary determines to be most likely to result in the earliest possible date or dates of agreement by those nations which individually have in excess of $1,000,000, or the equivalent, in import or export trade in anadromous fish and anadromous fish products.

(d) REGULATIONS.—The Secretary of Commerce shall, within 180 days after the date of enactment of this Act, romulgate regulations providing for—

(1) the issuance of certificates of legal origin pursuant to agreements under subsection (a) for anadromous fish and anadromous fish products legally harvested by vessels of the United States;

(2) the delegation of the authority to issue certificates of legal origin to States, territories, or possessions of the United States which the Secretary of Commerce determines to have implemented a program which is sufficient to accomplish the purposes of subsection (a); and

(3) an orderly transition to such regulations, sufficient to ensure that United States commerce in anadromous fish and anadroumous fish products is not unduly disrupted.

(e) REPORT REQUIRED.—The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall, within 180 days after the date of enactment of this Act, submit to the Congress a report—

(1) making recommendations as to the need for the adoption of United States import and export restrictions on anadromous fish and anadromous fish products consistent with subsection (a); and

(2) identifying, evaluating, and making recommendations regarding any specific statutory for the adoption of such restrictions.

(f) CERTIFICATION.—If, at any time following the promulgation of the regulations required by subsection (d), the Secretary of Commerce finds that any nation is engaging in trade in unlawfully taken anadromous fish or anadromous fish products, the Secretary shall certify that fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a)(1) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)(1)).

TITLE IX—DOLPHIN PROTECTION CONSUMER INFORMATION

DOLPHIN PROTECTION

SEC. 901. (a) SHORT TITLE.—This section may be cited as the "Dolphin Protection Consumer Information Act".

(b) FINDINGS.—The Congress finds that—

(1) dolphins and other marine mammals are frequently killed in the course of tuna fishing operations in the eastern tropical Pacific Ocean and high seas driftnet fishing in other parts of the world;

(2) it is the policy of the United States to support a worldwide ban on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins; and

(3) consumers would like to know if the tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on dolphins.

(c) DEFINITIONS.—For the purposes of this section—

(1) the terms "driftnet" and "driftnet fishing" have the meanings given those terms in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note);

(2) the term "eastern tropical Pacific Ocean" means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, 160 degrees west longitude, and the western coastlines of North, Central, and South America;

(3) the term "label" means a display of written, printed, or graphic matter on or affixed to the immediate container of any article;

(4) the term "Secretary" means the Secretary of Commerce; and

(5) the term "tuna product" means a food item which contains tuna and which has been processed for retail sale, except perishable sandwiches, salads, or other products with a shelf life of less than 3 days.

(d) LABELING STANDARD.—(1) It is a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term "Dolphin Safe" or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains—

(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing; or

(B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements for being considered dolphin safe under paragraph (2).

(2) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if—

(A) the vessel is of a type and size that the Secretary has determined is not capable of deploying its purse seine nets on or to encircle dolphin; or

(B)(i) the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphin;

(ii) the product is accompanied by a written statement executed by—

(I) the Secretary or the Secretary's designee, or

(II) a representative of the Inter-American Tropical Tuna Commission,

which states that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on or to encircle dolphin; and

(iii) the statement referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product.

(e) ENFORCEMENT.—Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) that is false is liable for a civil penalty of not to exceed $100,000 assessed in an action brought in any appropriate district court of the United States on behalf of the Secretary.

(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 6 months after the date of the enactment of this Act, including regulations establishing procedures and requirements for ensuring that tuna products are labeled in accordance with subsection (d).

(g) TREATMENT OF FISH CAUGHT WITH DRIFTNETS.—Section 101(a)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2)) is amended—

(1) in subparagraph (C) by striking "and" after the semicolon at the end;

(2) in subparagraph (D) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(E)(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other waters of the high seas after July 1, 1992; and

"(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (E), the term "driftnet" has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note).".

(h) NEGOTIATIONS.—The Secretary of State shall immediately seek, through negotiations and discussions with appropriate foreign governments, to reduce and, as soon as possible, eliminate the practice of harvesting tuna through the use of purse seine nets intentionally deployed to encircle dolphins.

(i) EFFECTIVE DATE.—Subsections (d) and (e) shall take effect 6 months after the date of the enactment of this Act.

TITLE X—FISHERIES COMMISSION

REDESIGNATION OF FISHERIES COMMISSION

SEC. 1001. (a) IN GENERAL.—The Congress consents to and approves of the amendments described in subsection (b) to the interstate compact which constituted the Pacific Marine Fisheries Commission, approved by the Act of July 24, 1947 (61 Stat. 419; hereafter in this section referred to as the "compact").

(b) AMENDMENT DESCRIBED.—The amendments referred to in subsection (a) are the amendments approved and ratified before the effective date of this section by the contracting States to the compact, which—

(1) amend Article III of the compact to redesignate the Pacific Marine Fisheries Commission as the "Pacific States Marine Fisheries Commission"; and

(2) make such other amendments to the compact as are necessary solely to conform the text of the compact to the amendment described in paragraph (1).

(c) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Pacific Marine Fisheries Commission constituted by the compact is deemed to be a reference to the "Pacific States Marine Fisheries Commission".

TITLE XI—REPORT ON MARINE MAMMALS

REPORT ON MARINE MAMMAL POPULATIONS

SEC. 1101. The Secretary of Commerce, in consultation with the Secretary of the Interior, shall provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives within 12 months after the date of enactment of this Act a report—

(1) assessing population sizes and trends of harbor seals, sea otters, California sea lions, and northern sea lions off the coast of the State of Washington, which assessment shall include the historic, present, and projected population sizes and the overall health of current populations of such marine mammals;

(2) assessing the effectiveness of sections 101(a)(3)(A) and 109(h) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(3)(A) and 1379(h)) with particular emphasis on the management of the lower Columbia River and Puget Sound marine mammal populations, which assessment shall describe how the agencies are interpreting and implementing such sections, how often such sections have been invoked, and whether such sections have been effective in the management of marine mammal populations and in responding to the problems which such sections were intended to address; and

(3) specifying long range management plans for the species of marine mammals listed in paragraph (1).

FAIR LENDING ENFORCEMENT ACT

DIXON AMENDMENT NO. 3198

Mr. SANFORD (for Mr. DIXON) proposed an amendment to the bill (S. 3049) to amend the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act, as follows:

On page 3, line 8, strike "FREQUENCY" and insert "IN GENERAL".

On page 3, line 9, strike "a separate" and insert "an", and, lines 11 through 14, after the word "jurisdiction" delete the remainder of the sentence.

On page 3, line 19, after the period insert the following: "Each appropriate Federal banking agency may consider the size of the depository institution and the complexity of the consumer compliance examination issues presented in determining whether to

assign to a particular examination a consumer compliance examiner who exclusively conducts consumer compliance examinations or an examiner who has only received specialized training in consumer compliance examinations. In making this determination each appropriate federal banking agency shall also consider whether substantive questions of compliance have been raised in previous examinations or in comments or complaints from the public."

On page 4, line 16, strike "paths" and insert "opportunities".

On page 5, lines 12 and 13, strike "an annual report describing" and insert "a description of" and strike ". Such report shall be transmitted to the Congress or" and insert ", which shall be".

On page 6, line 10, strike "FREQUENCY" and insert "IN GENERAL".

On page 6, lines 10 and 11, strike "a separate" and insert "an".

On page 6, lines 12 through 14, after the word "jurisdiction" strike the remainder of the sentence.

On page 6, line 20, after the period insert the following: "The Board may consider the size of the institution and the complexity of the consumer compliance examination issues presented in determining whether to assign to a particular examination a consumer compliance examiner who exclusively conducts consumer compliance examinations or an examiner who has only received specialized training in consumer compliance examinations. In making this determination the Board shall also consider whether substantive questions of compliance have been raised in previous examinations or in comments or complaints from the public."

On page 7, line 5, strike "paths" and insert "opportunities".

On page 7, line 23, strike " head of the", and on line 24, strike "an annual report describing" and insert "a description of". Or page 8, line 1, strike ". Such report shall be transmitted to the Congress or" and insert ", which shall be".

On page 8, between lines 2 and 3, insert the following:

(c) STATE CHARTERED CREDIT UNIONS.—Section 204 of the Federal Credit Union Act is amended by adding after the second sentence a new sentence to read: "The Board shall conduct consumer compliance examinations as set forth in section 130 of State chartered insured credit unions only if the appropriate State supervisory agency has not established an examination program similar to that described in section 130.

ARIZONA WILDERNESS ACT

McCLURE AMENDMENT NO. 3199

Mr. SANFORD (for Mr. McCLURE) proposed an amendment to the bill (H.R. 2570) to provide for the designation of certain public lands as wilderness in the State of Arizona, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT

SEC. 101. DESIGNATION AND MANAGEMENT.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following public lands are hereby designated as wilderness and therefore, as components of the National Wilderness Preservation System:

(1) certain lands in Mohave County, Arizona, which comprise approximately 23,600 acres, as generally depicted on a map entitled "Mount Wilson Wilderness" and dated February 1990, and which shall be known as the Mount Wilson Wilderness;

(2) certain lands in Mohave County, Arizona, which comprise approximately 31,070 acres, as generally depicted on a map entitled "Mount Tipton Wilderness" and dated February 1990, and which shall be known as the Mount Tipton Wilderness;

(3) certain lands in Mohave County, Arizona, which comprise approximately 27,530 acres, as generally depicted on a map entitled "Mount Nutt Wilderness" and dated February 1990, and which shall be known as the Mount Nutt Wilderness: *Provided,* That the existing water pipeline for the town of Oatman, together with the right of ingress and egress thereto, may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(4) certain lands in Mohave County, Arizona, which comprise approximately 90,600 acres, as generally depicted on a map entitled "Warm Springs Wilderness" and dated February 1990, and which shall be known as the Warm Springs Wilderness;

(5) certain lands in Mohave County, Arizona, which comprise approximately 15,900 acres, as generally depicted on a map entitled "Aubrey Peak Wilderness" and dated February 1990, and which shall be known as the Aubrey Peak Wilderness;

(6) certain lands in La Paz County, Arizona, which comprise approximately 14,630 acres, as generally depicted on a map entitled "East Cactus Plain Wilderness" and dated February 1990, and which shall be known as the East Cactus Plain Wilderness;

(7) certain lands in Mohave and La Paz Counties, Arizona, which comprise approximately 41,600 acres, as generally depicted on a map entitled "Rawhide Mountains Wilderness" and dated February 1990, and which shall be known as the Rawhide Mountains Wilderness;

(8) certain lands in Mohave, Yavapai, and La Paz Counties, Arizona, which comprise approximately 126,760 acres, as generally depicted on a map entitled "Arrastra Mountain Wilderness" and dated February 1990, and which shall be known as the Arrastra Mountain Wilderness;

(9) certain lands in La Paz County, Arizona, which comprise approximately 25,287 acres, as generally depicted on a map entitled "Harcuvar Mountains Wilderness" and dated February 1990, and which shall be known as the Harcuvar Mountains Wilderness;

(10) certain lands in La Paz and Maricopa Counties, Arizona, which comprise approximately 22,865 acres, as generally depicted on a map entitled "Harquahala Mountains Wilderness" and dated February 1990, and which shall be known as the Harquahala Mountains Wilderness;

(11) certain lands in Maricopa County, Arizona, which comprise approximately 20,600 acres, as generally depicted on a map entitled "Big Horn Mountains Wilderness" and dated February 1990, and which shall be known as the Big Horn Mountains Wilderness;

(12) certain lands in Maricopa County, Arizona, which comprise approximately 30,170 acres, as generally depicted on a map entitled "Hummingbird Springs Wilderness" and dated February 1990, and which shall be known as the Hummingbird Springs Wilderness;

(13) certain lands in La Paz, Yuma, and Maricopa Counties, Arizona, which comprise approximately 89,000 acres, as generally depicted on a map entitled "Eagletail Mountains Wilderness" and dated February 1990, and which shall be known as the Eagletail Mountains Wilderness;

(14) certain lands in Maricopa County, Arizona, which comprise approximately 15,250 acres, as generally depicted on a map entitled "Signal Mountain Wilderness" and dated February 1990, and which shall be known as the Signal Mountains Wilderness;

(15) certain lands in Maricopa County, Arizona, which comprise approximately 61,000 acres, as generally depicted on a map entitled "Woolsey Peak Wilderness" and dated February 1990, and which shall be known as the Woolsey Peak Wilderness;

(16) certain lands in Maricopa County, Arizona, which comprise approximately 14,500 acres, as generally depicted on a map entitled "Sierra Estrella Wilderness" and dated February 1990, and which shall be known as the Sierra Estrella Wilderness;

(17) certain lands in Maricopa and Pinal Counties, Arizona, which comprise approximately 34,400 acres, as generally depicted on a map entitled "Table Top Wilderness" and dated February 1990, and which shall be known as the Table Top Wilderness;

(18) certain lands in Pima County, Arizona, which comprise approximately 5,080 acres, as generally depicted on a map entitled "Coyote Mountains Wilderness" and dated February 1990, and which shall be known as the Coyote Mountains Wilderness;

(19) certain lands in Pima County, Arizona, which comprise approximately 2,065 acres, as generally depicted on a map entitled "Baboquivari Peak Wilderness" and dated February 1990, and which shall be known as the Baboquivari Peak Wilderness;

(20) certain lands in Gila County, Arizona, which comprise approximately 9,201 acres, as generally depicted on a map entitled "Needle's Eye Wilderness" and dated February 1990, and which shall be known as the Needle's Eye Wilderness: *Provided,* That the right-of-way reserved by right-of-way reservation A-16043 dated October 20, 1986, together with the right of ingress and egress thereto, shall not be affected by this Act, and the existing powerline utilizing such right-of-way may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(21) certain lands in Graham County, Arizona, which comprise approximately 6,590 acres, as generally depicted on a map entitled "North Santa Teresa Wilderness" and dated February 1990, and which shall be known as the North Santa Teresa Wilderness;

(22) certain lands in Graham County, Arizona, which comprise approximately 10,883 acres, as generally depicted on a map entitled "Fishhooks Wilderness" and dated February 1990, and which shall be known as the Fishhooks Wilderness;

(23) certain lands in Cochise County, Arizona, which comprise approximately 11,998 acres, as generally depicted on a map entitled "Dos Cabezas Mountains Wilderness" and dated February 1990, and which shall be known as the Dos Cabezas Mountains Wilderness;

(24) certain lands in Graham and Cochise Counties, Arizona, which comprise approximately 6,600 acres, as generally depicted on a map entitled "Redfield Canyon Wilderness" and dated February 1990, and which

shall be known as the Redfield Canyon Wilderness;

(25) certain lands in La Paz County, Arizona, which comprise approximately 18,805 acres, as generally depicted on a map entitled "Gibraltar Mountain Wilderness" and dated February 1990, and which shall be known as the Gibraltar Mountain Wilderness;

(26) certain lands in La Paz and Mohave Counties, Arizona, which comprise approximately 15,755 acres, as generally depicted on a map entitled "Swansea Wilderness" and dated February 1990, and which shall be known as the Swansea Wilderness;

(27) certain lands in LaPaz County, Arizona, which comprise approximately 29,095 acres, as generally depicted on a map entitled "Trigo Mountain Wilderness" and dated February 1990, and which shall be known as the Trigo Mountain Wilderness;

(28) certain lands in Yuma County, Arizona, which comprise approximately 8,855 acres, as generally depicted on a map entitled "Muggins Mountain Wilderness" and dated February 1990, and which shall be known as the Muggins Mountain Wilderness;

(29) certain lands in Yavapai and Maricopa Counties, Arizona, which comprise approximately 9,200 acres, as generally depicted on a map entitled "Hells Canyon Wilderness" and dated February 1990, and which shall be known as the Hells Canyon Wilderness;

(30) certain lands in Maricopa County, Arizona, which comprise approximately 63,600 acres, as generally depicted on a map entitled "North Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the North Maricopa Mountains Wilderness;

(31) certain lands in Maricopa County, Arizona, which comprise approximately 60,800 acres, as generally depicted on a map entitled "South Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the South Maricopa Mountains Wilderness;

(32) certain lands in Mohave County, Arizona, which comprise approximately 38,400 acres, as generally depicted on a map entitled "Wabayuma Peak Wilderness" and dated February 1990, and which shall be known as the Wabayuma Peak Wilderness;

(33) certain lands in Yavapai and Mohave Counties, Arizona, which comprise approximately 27,900 acres, as generally depicted on a map entitled "Upper Burro Creek Wilderness" and dated June 1990, and which shall be known as the Upper Burro Creek Wilderness;

(34) certain lands in Yavapai County, Arizona, which comprise approximately 11,840 acres, as generally depicted on a map entitled "Hassayampa River Canyon Wilderness" and dated February 1990, and which shall be known as the Hassayampa River Canyon Wilderness;

(35) certain lands in Pinal County, Arizona, which comprise approximately 5,800 acres, as generally depicted on a map entitled "White Canyon Wilderness" and dated February 1990, and which shall be known as the White Canyon Wilderness;

(36) certain lands in Yavapai County, Arizona, which comprise approximately 8,700 acres, as generally depicted on a map entitled "Tres Alamos Wilderness" and dated February 1990, and which shall be known as the Tres Alamos Wilderness;

(37) certain lands in Cochise, Greenlee, and Graham Counties, Arizona, which comprise approximately 19,650 acres, as generally depicted on a map entitled "Peloncillo Mountains Wilderness" and dated February 1990, and which shall be known as the Peloncillo Mountains Wilderness;

(38) certain lands in La Paz County, Arizona, which comprise approximately 21,680 acres, as generally depicted on a map entitled "New Water Mountains Wilderness" and dated February 1990, and which shall be known as the New Water Mountains Wilderness;

(39) certain lands in Pinal and Graham Counties, Arizona, which comprise approximately 12,711 acres, as generally depicted on a map entitled "Aravaipa Wilderness Additions" and dated February 1990, and which are hereby incorporated in and shall be deemed to be a part of the Aravaipa Canyon Wilderness (designated in Public Law 98-406, 98 Stat. 1491).

(b) MANAGEMENT.—Subject to valid existing rights, the wilderness areas designated by this title shall be administered by the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this Act.

(c) MAP AND LEGAL DESCRIPTION.—As soon as practicable after enactment of this Act, the Secretary shall file a map and a legal description of each wilderness area designated under this title with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such legal description and map may be made. Copies of such map and legal description shall be on file and available for public inspection in the Office of the Director, Bureau of Land Management, United States Department of the Interior, and in the appropriate office of the Bureau of Land Management in Arizona.

(d) NO BUFFER ZONES.—The Congress does not intend for the designation of wilderness areas in the State of Arizona pursuant to this title to lead to the creation of protective perimeters or buffer zones around any such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(e) FISH AND WILDLIFE.—As provided in paragraph (7) of section 4(d) of the Wilderness Act, nothing in this title or in the Wilderness Act shall be construed as affecting the jurisdiction or responsibilities of the State of Arizona with respect to wildlife and fish on the public lands located in that State.

(f) LIVESTOCK.—(1) Grazing of livestock in wilderness areas designated by this title, where established prior to the date of the enactment of this Act, shall be administered in accordance with section 4(d)(4) of the Wilderness Act and the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(2) The Secretary is directed to review all policies, practices, and regulations of the Bureau of Land Management regarding livestock grazing in Bureau of Land Management administered wilderness areas in Arizona in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this title.

(g) WATER.—(1) With respect to each wilderness area designated by this title, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this title. The priority date of such reserved rights shall be the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(h) WILDLIFE MANAGEMENT.—In furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title, where consistent with relevant wilderness management plans, in accordance with appropriate policies and guidelines such as those set forth in Appendix B of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(i) MILITARY ACTIVITIES.—Nothing in this title shall preclude low level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes over wilderness areas designated by this title.

(j) MINERAL EXCHANGES.—It is the intent of Congress that private mineral rights within wilderness areas designated by this title be acquired as expeditiously as possible by the Secretary using existing authority to acquire such rights by exchange.

(k) BLACK ROCK WASH ROAD ACCESS.—(1) Section 101(a)(23) of the Arizona Wilderness Act of 1984 (98 Stat. 1487) is amended by striking "the governmental agency having jurisdictional authority may authorize limited access to the area, for private and administrative purposes, from U.S. Route 70 along Black Rock Wash to the vicinity of Black Rock;".

(2)(A) In order to permit adequate public and private access to Federal, State, and private lands on the east side of the Santa Teresa Mountains, the Secretary, acting through the Bureau of Indian Affairs, shall administer that portion of Black Rock Wash Road located within the boundaries of the San Carlos Apache Reservation so as to allow reasonable use of the road for private and administrative purposes and may

permit limited public use of such road for the purpose of access to the public lands outside of the reservation boundary.

(B) The Secretary, acting through the Bureau of Indian Affairs, is authorized, subject to the provisions of the Act of June 18, 1934, Chapter 576, Section 16 (25 U.S.C. 476; 48 Stat. 987), to enter into cooperative agreements with the Bureau of Land Management, the Forest Service, and Graham County, Arizona, for signing, fencing, and maintenance of the portion of Black Rock Wash Road referred to in paragraph (A). The entering into of cooperative agreements as authorized by this subsection shall not be construed in any way as a determination of the ownership of such portion of Black Rock Wash Road.

(3) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(1) ALAMO DAM.—Nothing in this title shall be construed to affect the operation for flood control purposes of the Alamo Dam located on the Bill Williams River.

SEC. 102. AREAS RELEASED.

Excepting for the Baker Canyon area (AZ-040-070), and the approximately 57,800 acres of public land as generally depicted on a map entitled "Cactus Plain Wilderness Study Area" dated February, 1990, the Congress hereby finds and directs that all public lands in Arizona, administered by the Bureau of Land Management pursuant to the Federal Land Policy and Management Act of 1976 not designated as wilderness by this title, or previous Acts of Congress, have been adequately studied for wilderness designation pursuant to section 603 of such Act and are no longer subject to the requirement of section 603(c) of such Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for perservation as wilderness.

TITLE II—DESIGNATION OF THE GILA BOX RIPARIAN NATIONAL CONSERVATION AREA

SEC. 201. DESIGNATION AND MANAGEMENT.

(a) PURPOSES.—In order to conserve, protect, and enhance the riparian and associated areas described in subsection (b) and the aquatic, wildlife, archeological, paleontological, scientific, cultural, recreational, educational, scenic, and other resources and values of such areas, there is hereby established the Gila Box Riparian National Conservation Area (hereafter in this title referred to as the "conservation area").

(b) AREAS INCLUDED.—The conservation area shall consist of the public lands generally depicted on a map entitled "Gila Box Riparian National Conservation Area" dated February 1990, and comprising approximately 20,900 acres.

(c) MAP.—As soon as practicable after the date of enactment of this Act, a map and legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such map shall have the same force and effect as if included in this section. Copies of such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in the appropriate office of the Bureau of Land Management in Arizona.

(d) MANAGEMENT OF CONSERVATION AREA.—(1) The Secretary shall manage the conservation area in a manner that conserves, protects and enhances its resources and values, including the resources and values specified in subsection (a), pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this title.

(2) The Secretary shall allow only such uses of the conservation area as the Secretary finds will further the purposes for which the conservation area is established. Except where needed for administrative purposes or to respond to an emergency, use of motorized vehicles in the conservation area shall be permitted only on roads specifically designated for such use as part of the management plan prepared pursuant to subsection (g).

(e) WITHDRAWAL.—Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing, and all amendments thereto.

(f) WATER.—(1) Congress hereby reserves a quantity of water sufficient to fulfill the purposes, as specified in subsection (a), for which the conservation area is established. The priority date of this reserved right shall be the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take all steps necessary to protect the right reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such right in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal rights reserved by this title are specific to the conservation area located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(5) Nothing in this title shall be construed to impair or conflict with the implementation of the authorization contained in section 304(f) of Public Law 90-537, approved September 30, 1968.

(g) MANAGEMENT PLAN.—(1) No later than two years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the conservation area (hereinafter in this title referred to as the "management plan") in order to fulfill the purposes for which the conservation area is established. The management plan shall be developed with full public participation and shall include provisions designed to assure protection of the resources and values (including the resources and values specified in subsection (a)) of the conservation area.

(2) The management plan shall include a discussion of the desirability of the inclusion in the conservation area of additional lands, including the lands not in Federal ownership that are contiguous to the boundary of the conservation area (as depicted on the map referenced in subsection (b) or as hereafter adjusted pursuant to subsection (h)) and within the area extending two miles on either side of the centerline of Eagle Creek from the point where Eagle Creek crosses the southern boundary of the Apache National Forest to the confluence of Eagle Creek with the Gila River (this area is hereafter referred to in this title as the "Eagle Creek riparian area").

(3) In order to better implement the management plan, the Secretary may enter into cooperative agreements with appropriate State and local agencies pursuant to section 307(b) of the Federal Land Policy and Management Act of 1976.

(4) In order to assist in the development and implementation of the management plan, the Secretary may authorize appropriate research, including research concerning the environmental, biological, hydrological, cultural, and other characteristics, resources, and values of the conservation area, pursuant to section 307(a) of the Federal Land Policy and Management Act of 1976.

(h) ACQUISITION AND BOUNDARY ADJUSTMENTS.—(1) Subject to the limitations set forth in paragraph (3), the Secretary is authorized to acquire non-Federal lands or interests therein within the boundaries of the conservation area or within the Eagle Creek riparian area.

(2) The Secretary is authorized to adjust the boundaries of the conservation area so as to incorporate within the conservation area any lands or interests within the Eagle Creek riparian area that may be acquired after the date of enactment of this Act as well as public lands within that portion of the Eagle Creek riparian area west of the centerline of Eagle Creek that the Secretary finds appropriate in order to properly manage such acquired lands as part of the conservation area. Any lands or interests so incorporated shall be managed as part of the conservation area.

(3) No lands or interests therein owned by the State of Arizona or any political subdivision of such State shall be acquired pursuant to this subsection except through donation or exchange, and no lands or interests within the conservation area or the Eagle Creek riparian area shall be acquired from any other party or entity except by donation, exchange, or purchase with the consent of the owner of such lands or interests.

(i) NO BUFFER ZONES.—The Congress does not intend for the establishment of the conservation area to lead to the creation of protective perimeters or buffer zones around the conservation area. The fact that there may be activities or uses on lands outside the conservation area that would not be permitted in the conservation area shall not preclude such activities or uses on such lands up to the boundary of the conservation area to the extent consistent with other applicable law.

(j) ADVISORY COMMITTEE.—The Secretary shall establish an advisory committee to advise the Secretary with respect to the preparation and implementation of the management plan. Such advisory committee shall consist of seven members appointed by the Secretary. One member shall be appointed from among recommendations submitted by the Governor of Arizona, one member shall be appointed from among recommendations submitted by the Graham County Board of Supervisors and one member shall be appointed from among recommendations submitted by the Greenlee County Board of Supervisors. The remaining members shall be persons recognized as experts in wildlife conservation, riparian

ecology, archeology, paleontology, or other disciplines directly related to the purposes for which the conservation area is established.

(k) REPORT.—No later than five years after the date of enactment of this Act, and at least each ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate on the implementation of this title, the condition of the resources and values of the conservation area, and the progress of the Secretary in achieving the purposes for which the conservation area is established.

(l) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this title shall be subject to a fine in accordance with applicable provisions of the Sentencing Reform Act of 1984, or imprisonment of not more than 1 year, or both such fine and imprisonment.

(m) AUTHORIZATION.—There are hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this title.

TITLE III—DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE UNITED STATES FISH AND WILDLIFE SERVICE

SEC. 301. DESIGNATION AND MANAGEMENT.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following lands are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

(1) certain lands in the Havasu National Wildlife Refuge, Arizona, which comprise approximately 14,606 acres, as generally depicted on a map entitled "Havasu Wilderness" and dated March 13, 1990, and which shall be known as the Havasu Wilderness;

(2) certain lands in the Imperial National Wildlife Refuge, Arizona, which comprise approximately 9,220 acres, as generally depicted on a map entitled "Imperial Refuge Wilderness" and dated March 13, 1990, and which shall be known as the Imperil Refuge Wilderness;

(3) certain lands in the Kofa National Wildlife Refuge, Arizona, which comprise approximately 510,900 acres, and certain other public lands comprising approximately 5,300 acres which are hereby added to and incorporated within such refuge (and which shall be managed accordingly), all as generally depicted on a map entitled "Kofa Wilderness" and dated August 1, 1990, and which shall be known as the Kofa Wilderness; and

(4) certain lands in the Cabeza Prieta National Wildlife Refuge, Arizona, which comprise approximately 803,418 acres, as generally depicted on a map entitled "Cabeza Prieta Wilderness" and dated March 13, 1990, and which shall be known as the Cabeza Prieta Wilderness.

(b) MANAGEMENT.—Subject to valid existing rights, the wilderness areas designated under this title shall be administered by the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this title.

(c) MAP AND LEGAL DESCRIPTION.—As soon as practicable after enactment of this title, the Secretary shall file a map and a legal description of each wilderness area designated under this section with the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the United States House of Representatives and with the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such legal description and map may be made. Such map and legal description shall be on file and available for public inspection in the Office of the Director, United States Fish and Wildlife Service, United States Department of the Interior.

(1)(A) With respect to each wilderness area designated by this title, and subject to the limitations set forth in subparagraph (B), Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this title. The priority date of such reserved rights shall be the date of enactment of this Act.

(B) With respect to the Havasu and Imperial wilderness areas designated by subsections (a)(1) and (a)(2) of this section, no rights to water of the Colorado River are reserved, either expressly, impliedly, or otherwise.

(2) The Secretary and all other officers of the United States shall take all steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate steam adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water right reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(e) NO EFFECT ON COLORADO RIVER DAMS.—Nothing in this title shall be construed to affect the operation of Federally owned dams located on the Colorado River in the Lower Basin.

(f) MILITARY ACTIVITIES.—Nothing in this title including the designation as wilderness of lands within the Cabeza Prieta National Wildlife Refuge, shall be construed as—

(1) precluding or otherwise affecting continued low-level overflights by military aircraft over such refuge or the maintenance of existing associated ground instrumentation, in accordance with any applicable interagency agreements in effect on the date of enactment of this Act; or

(2) precluding the Secretary of Defense from entering into new or renewed agreements with the Secretary concerning use by military aircraft of airspace over such refuge or the maintenance of existing associated ground instrumentation, consistent with management of the refuge for the purpose for which such refuge was established and in accordance with laws applicable to the National Wildlife Refuge System.

(g) LAW ENFORCEMENT BORDER ACTIVITIES.—Nothing in this title, including the designation as wilderness of lands within the Cabeza Prista National Wildlife Refuge, shall be construed as—

(1) precluding or otherwise affecting continued border operations by the Immigration and Naturalization Service, the Drug Enforcement Administration, or the United States Customs Service within such refuge, in accordance with any applicable interagency agreements in effect on the date of enactment of this Act; or

(2) precluding the Attorney General of the United States or the Secretary of the Treasury from entering into new or renewed agreements with the Secretary concerning Immigration and Naturalization Service, Drug Enforcement Administration, or United States Customs Service border operations within such refuge, consistent with management of the refuge for the purpose for which such refuge was established, and in accordance with laws applicable to the National Wildlife Refuge System.

SEC. 302. NO EFFECT ON UPPER BASIN.

Nothing in titles I, II, or III of this Act shall amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty pertaining to the Colorado River (including its tributaries) in the Upper Basin, including, but not limited to, the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

SEC. 303. TITLE I, II, AND III MAY BE CITED AS THE "ARIZONA DESERT WILDERNESS ACT OF 1990.

TITLE IV—FORT McDOWELL INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

SECTION 401. SHORT TITLE.

This Title may be cited as the "Fort McDowell Indian Community Water Rights Settlement Act of 1990".

SEC. 402. CONGRESSIONAL FINDINGS AND DECLARATIONS.

(a) The Congress finds that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on September 15, 1903, the United States Government established a reservation for the Fort McDowell Indian Community in Arizona north of the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to water and the financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaning-

ful self-determination and economic self-sufficiency;

(6) proceedings to determine the full extent and nature of the Community's water rights and damages thereto are currently pending before the United States District Court in Arizona, the United States Claims Court, the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source, and before various federal agencies under the Federal Tort Claims Act;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle disputes over water and reduce the burdens of litigation;

(8) after more than five years of negotiation, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who are all party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, and to provide for the orderly development of the Community's lands;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately twelve thousand acre-feet of surface water to the Community; provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, the Congress declares that the purposes of this Act are: (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary of the Interior to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act.

SEC. 403. DEFINITIONS.

For purposes of this Act—

(a) "Agreement" means that agreement among the Fort McDowell Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District, the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is approved and executed by the Secretary of the Interior pursuant to sections 411(d) and 412(a)(8) of this Act.

(b) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(c) "CAWCD" means the Central Arizona Water Conservation District organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(d) "Community" means the Fort McDowell Indian Community, a community of Yavapai Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476), and duly recognized by the Secretary.

(e) "HVID" means the Harquahala Valley Irrigation District, an irrigation district organized under the laws of the State of Arizona.

(f) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(g) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(h) "Secretary" means the Secretary of the United States Department of the Interior.

(i) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

SEC. 404. KENT DECREE REREGULATION.

(a) To permit the Community to more fully utilize its water rights under the Kent Decree as provided in the Agreement and subsection (b) of this section, the agreement between the United States and the SRP dated June 3, 1935, as amended on November 26, 1935, relating to the Verde River Storage Works, and the agreement among the SRP, Phelps Dodge Corporation, and the Defense Plant Corporation dated March 1, 1944, including, but not limited to, the provisions of such agreements by which SRP saves and holds harmless the United States, and the rights of the United States and SRP to Verde River storage, are hereby ratified, confirmed and declared to be valid: *Provided, however,* That the priority date and quantification of these storage rights, and such other storage rights as may exist, shall be determined in an appropriate state proceeding in the State of Arizona. Nothing in this Act or the Agreement shall affect the validity or invalidity of any permit, right-of-way, license or grant held by Phelps Dodge Corporation for the utilization of land or water within the San Carlos Apache Reservation.

(b) The Secretary is authorized and directed to contract with SRP, for a period of not more than twenty-five years from the date the authorizations contained in section 409(b) of this Act become effective, for the utilization of up to three thousand acre-feet of the existing storage right of the United States and SRP behind Bartlett and Horseshoe Dams on the Verde River for the reregulation of the Community's rights to water under the Kent Decree. This storage space shall be for seasonal regulation only, with no annual carryover past October 1.

SEC. 405. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) The contract between the SRP and RWCD dated October 24, 1924, together with all amendments thereto and any extension thereof entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

(b) The Secretary is authorized and directed to revise the subcontract of the RWCD agricultural water service from the CAP to include an addendum substantially in the form of exhibit "10.3.2" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(c) The lands within the RWCD and the lands within the SRP shall be free from the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(d) Neither SRP nor the RWCD shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either of their participation in the settlement or their execution and performance of the Agreement, including, but not limited to, any exchanges provided for in the Agreement.

SEC. 406. OTHER WATER.

(a) The Secretary is authorized and directed to acquire for the Community thirteen thousand nine hundred thirty-three acre-feet of water from one or a combination of the following sources:

(1) CAP water permanently relinquished by the HVID pursuant to contract with the Secretary.

(2) CAP municipal and industrial water and CAP Indian priority water permanently relinquished by the City of Prescott, the Yavapai-Prescott Tribe, the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company pursuant to contract with the Secretary. Any water acquired by the Secretary pursuant to this section shall be acquired with the consent of the contracting entity and shall be assigned to the Community in partial satisfaction of the Secretary's obligation under this section.

(3) In the event that the Secretary cannot acquire thirteen thousand nine hundred and thirty-three acre-feet of water, solely or in combination, from the sources identified in subsections (a)(1) and (a)(2) of this section, then the Secretary is authorized to acquire, from all water resources within the State of Arizona at the disposal of the United States, water in amounts necessary to meet the requirements of this section.

HARQUAHALA VALLEY IRRIGATION DISTRICT

(b) The Secretary is authorized to contract with the HVID for the permanent relinquishment of any portion of HVID's rights to CAP agricultural water.

(1) The Secretary may use HVID water with its original CAP agricultural priority or may convert it, at the rate of one acre-foot per CAP-eligible acre, to a maximum of thirty-three thousand two hundred and sixty-three acre-feet of CAP Indian priority water. Up to thirteen thousand nine hundred and thirty-three acre-feet of such water shall be made available to the Community by contract with the Secretary.

(2) As consideration for the fair value of water relinquished under subsection (b) of this section, the Secretary is authorized:

(i) to credit the HVID with an appropriate share of its outstanding CAP distribution system debt, with such share reflecting the relationship between the amount of HVID CAP rights acquired by the Secretary and the total CAP allocation of the HVID; and

(ii) to offset the annual repayment requirements of the CAWCD under repayment contract numbered 14-06-W-245 in amounts which total the balance of the fair value of the water acquired and not accounted for under (i) above until such value is exhausted.

(3) In the event that the Secretary acquires all or a part of the CAP water rights of the HVID, the following shall apply:

(i) The Secretary is authorized to transfer title to existing federal facilities within HVID that are no longer needed for CAP purposes to the CAWCD or to other non-Federal entities.

(ii) The Secretary is authorized to approve or execute any agreements that are necessary to accomplish the transfer of HVID's CAP agricultural water rights to the Secretary for Indian water rights settlement purposes. As a condition of the transfer of such entitlement, the lands which are purchased by non-Federal interests within HVID must be excluded from HVID. Except as provided for in Article 8.7 of the December 1, 1988, contract between the United States and CAWCD, the excluded lands shall not be entitled to a supply of CAP water for agricultural purposes and shall not be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(iii) The agreement implementing the transfer of HVID's CAP agricultural water rights to the Secretary shall provide that any lands which remain in HVID or its successor shall continue to be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law as long as HVID, or its successor, has a Federal repayment obligation for the cost of the CAP distribution system. The agreement implementing the transfer shall provide that lands remaining in HVID, or its successor, will not bear costs of operation, maintenance, and replacement for the CAP distribution system greater than that which they would have in the absence of the transfer of HVID's CAP agricultural water rights.

(4) Water acquired by the Secretary for the Fort McDowell Indian Community pursuant to this subsection shall be delivered to the Community as provided for in the Agreement. Any remaining water acquired by the Secretary pursuant to this subsection (b) shall be used only in the settlement of water rights claims of other Indian tribes having claims to the water in the Salt and Verde River system.

VERDE RIVER WATERSHED

(c) Providing that the Secretary first acquires at least seven thousand acre-feet of CAP water from one or more of the entities named in subsection (a)(2), of this section, the Secretary is authorized to acquire, by purchase from willing sellers, land and water rights in the Big Chino Valley of the Verde River watershed, in an amount sufficient to replace all such water so acquired.

(1) The Secretary shall not acquire any land or water rights in the Big Chino Valley of the Verde River watershed until he has completed a study to determine whether, through the construction of water diversion, collection, and conveyance facilities to deliver water to a point near Sullivan Lake in Yavapai County, Arizona (hereinafter referred to as the "Sullivan Lake delivery point"), the exercise of such water rights will not have an adverse affect on the flow or the biota of the Verde River and that such exercise is not likely to jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species. The Secretary shall make the study required by this paragraph available to the public for inspection and comment upon its completion.

(2) The Secretary is authorized to enter into an agreement with the City of Prescott to reimburse the city for not to exceed $800,000 advanced to the Secretary by the city for the purpose of expediting completion of the study required in subsection (c)(1) of this section.

(3) If the Secretary determines, based upon the findings of the study, that the exercise of water rights will not have an adverse effect on the flow or the biota of the Verde River and is not likely to jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species, the Secretary shall be authorized to acquire land in the Big Chino Valley and to construct diversion, collection, and conveyance facilities sufficient to deliver the water to the Sullivan Lake delivery point.

(4) The Secretary shall develop and implement a continuous monitoring program to ensure that groundwater pumping from land acquired pursuant to this subsection (c) shall not adversely affect the flow or the biota of the Verde River and to ensure that it will not jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species. The program shall be developed prior to and implemented concurrent with the construction of the facilities described in subsection (c)(3) of this section.

(d) If the Secretary acquires the CAP contract or subcontracts of the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to a point downstream on the Verde River. Subject to the study required in subsection (d)(1) of this section and all applicable law, the Secretary is further authorized to place into the Verde River at the point downstream an amount of water sufficient, including all losses, to replace the water assigned by such entity or entities pursuant to this subsection.

(1) The Secretary shall not construct any water conveyance facilities from the Sullivan Lake delivery point to any point downstream on the Verde River to replace water assigned pursuant to subsection (a)(2) of this section, until he has completed a study to determine whether the flow of the Verde River may be augmented without jeopardizing the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species and, if the flow of the Verde may be so augmented, at what point or points downstream from the Sullivan Lake delivery point such augmentation would be most appropriate.

(2) The Secretary shall, in conjunction with arrangements for the delivery of water pursuant to this subsection (d), develop and implement a monitoring program to ensure that the augmentation of the Verde River will not jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species.

(e) If the Secretary acquires the CAP contract or subcontract of the Yavapai-Prescott Tribe or the City of Prescott, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to the City of Prescott's existing pumping facilities in the Little Chino Valley, Yavapai County, Arizona. If the Secretary constructs such water conveyance facilities, the City of Prescott shall repay the Secretary for the costs thereof. Nothing in this subsection shall be construed to prevent the City of Prescott from constructing such conveyance facilities itself.

(1) The Secretary shall deliver water to the City of Prescott's existing pumping facilities or to such other point as the Secretary and the City of Prescott may agree, in an amount sufficient, including all losses, to replace the water acquired from the City of Prescott and the Yavapai-Prescott Tribe.

(2) The Secretary is authorized and directed to enter into such agreements as are necessary to ensure that the Yavapai-Prescott Tribe will receive its share of the water to be developed by the Secretary pursuant to this subsection (e). Such agreement shall set forth the cost and other terms of delivery of such water.

(3) The Secretary is authorized and directed, at the request of the Yavapai-Prescott Indian Tribe, to enter into and renew agreements granting the Yavapai-Prescott Indian Tribe long-term grazing privileges on the land acquired by the Secretary pursuant to subsection (a)(2) of this section: *Provided,* That the exercise of such privileges by the Yavapai-Prescott Indian Tribe shall not interfere with the exercise of water rights upon such land except for water reasonably needed by the Yavapai-Prescott Indian Tribe in connection with grazing.

(f) The Secretary is authorized to contract to deliver replacement water to the entities identified in subsections (d) and (e) of this section which relinquish CAP water to the Secretary for the benefit of the Community. The replacement water shall be delivered by the Secretary at the Sullivan Lake delivery point unless otherwise agreed by the Secretary and the entity to receive the water. No replacement water may be delivered to any entity other than those identified in subsection (a)(2) of their section or their agents, and no replacement water may be used directly or indirectly outside Yavapai County, Arizona.

(g) The entities which relinquish CAP water to the Community pursuant to subsection (a)(2) of this section shall not be required to repay costs incurred by the United States pusuant to subsections (c) and (c)(3) of this section. The entities identified in subsection (d) of this section, except for any entity which is an Indian tribe, shall repay the United States so much of the cost of the undertaking identified in subsection (d) as the entities and the United States shall agree. The costs of any undertaking pursuant so this subsection (g) allocated to an Indian tribe shall be nonreimbursable.

(h) The Secretary is authorized and directed to study the sources and cost of the water supplies, other than those identified in this section, that can be used to satisfy the water rights of the Yavapai-Prescott Indian Tribe and of the Yavapai-Apache Indian Community of the Camp Verde Reservation. A separate study shall be made for each tribe. Each study shall be commenced within one hundred and eighty days after the enactment of this Act and shall be com-

pleted within one year after it is commenced. Copies of such studies shall be provided to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate.

(i) If the Secretary acquires water for the Community pursuant to subsection (a)(2) of this section, then the Secretary shall exclude, for the purpose of determining the allocation and repayment of costs of the CAP-as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be non-reimbursable.

(j) The Secretary shall, in the exercise of the authorities provided in subsection (a) of this section, comply with all applicable environmental law.

(k) If the Secretary acquires at least seven thousand acre-feet of CAP water from the entities identified in subsection (a)(2) of this section, there is authorized to be appropriated not to exceed $30,000,000 to pay the costs of acquiring the land and water resources identified in subsection (c) of this section and the costs allocable to the construction of diversion, collection, and conveyance facilities described in subsection (c); costs allocable to the construction or diversion, collection, and conveyance facilities shall be adjusted by such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein.

(l) There is authorized to be appropriated such sums as may be necessary to provide for the studies required in subsections (c)(1), (d)(1), and (h) of this section and for the monitoring programs described in subsections (c)(4) and (d)(2) of this section.

SEC. 407. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE.

(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2099, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the City of Phoenix under the terms and conditions of the Project Water lease set forth in exhibit "20.2.2" to the Agreement for a term commencing January 1, 2001, and ending December 31, 2099.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "20.2.1" to the Agreement and the terms and conditions of the Project Water Lease set forth in exhibit "20.2.2" to the Agreement are hereby authorized, approved, and confirmed.

(c) The United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section "6(b)" of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the City of Phoenix as lessee of the Project Water Lease herein authorized.

(d) The Community and the Secretary shall lease to the City of Phoenix, for a term commencing on January 1, 2001, and ending December 2099, for consideration in an amount agreed to by the Community and the City to be paid by the City to the Community, upon those reflected in the Project Water Lease set forth in exhibit "20.2.2" to the Agreement, the four thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Lease shall specifically provide that—

(1) the City of Phoenix, in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the CAWCD: *Provided*, That such payments shall not be commenced earlier than October 1, 1999;

(2) except as otherwise provided in the Project Water Lease, the City of Phoenix shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 shall be United States of America and the CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Lease referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Notwithstanding any other provision statutory of or common law, the Community may, with the approval of the Secretary, lease water provided to the Community under section 406 of this Act for its fair market value for a term not to exceed 100 years as provided in the Agreement but in no event for use outside Pima, Pinal or Maricopa Counties, State of Arizona. If some or all of the water provided to the Community under section 406 of this Act is CAP water, the provisions of subsections of (a), (b), (c), (d), and (e) of this section 407 shall apply to any lease of such water.

(g) Except as authorized by this section, no water made available to the Community or its members pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

(h) If water is acquired from the Salt and Verde watershed pursuant to section 406(a)(3), no such water may be sold, leased, transferred, or in any way be used off of the Community's reservation.

SEC. 408. FORT McDOWELL INDIAN COMMUNITY DEVELOPMENT FUND; LOAN.

(a) As soon as practicable, the Community shall establish the Fort McDowell Indian Community Development Fund into which shall be deposited—

(1) by the Secretary, the funds appropriated pursuant to subsection (b) of this section; and

(2) by the State of Arizona, $2,000,000 required by paragraph 21.4 of the Agreement.

(b) There is hereby authorized to be appropriated, together with interest accruing from one year after the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into account the average market yield on outstanding Federal obligations of comparable maturity, $23,000,000 which the Secretary shall deposit into the Community Development Fund for the Community to use in the design and construction of facilities to put to beneficial use the Community's water entitlement and for other economic and community development on the Fort McDowell Indian Reservation.

(c) As of the date the authorizations contained in section 409(b) of this Act become effective, the Community, in its discretion, may use the Development Fund, principal and income, to fulfill the purposes of the Agreement and this title: *Provided*, That no amount of the Federal or State appropriations deposited into the Development Fund may be used to make per capita payments to members of the Community.

(d) As of the date the authorizations contained in section 409(b) of this Act become effective—

(1) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from, the Development Fund, and

(2) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Development Fund.

(e) The Secretary is authorized and directed to provide to the Community a loan pursuant to the Small Reclamation Projects Act (Ch. 972, 70 Stat. 1044, 43 U.S.C. 422a, as amended), in the amount of $13,000,000, to be repaid over a term of fifty years without interest, for the purpose of constructing facilities for the conveyance and delivery of water on the Fort McDowell Indian Reservation: *Provided*, That any requirements for qualifying for the loan are hereby waived, including, but not limited to, the provisions of section 3, 4(b)(2), 5(a) and 5(c) of the Small Reclamation Projects Act.

(1) The Community shall establish an account into which the Community shall deposit $1,000,000. The principal and all accrued income shall be retained in such fund until such time as the Community's obligation to repay the loan under subsection (e) is fulfilled.

(2) No appropriations for the construction of the CAP made after the date of enactment of this Act shall be used to plan, design, construct, or operate any facilities on the Fort McDowell Indian Reservation.

SEC. 409. SATISFACTION OF CLAIMS.

(a) The benefits realized by the Community's members under this Act shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this Act, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this Act.

(b) The Community and the Secretary on behalf of the United States are authorized, as part of the performance of the obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent),

from and after the effective date of this Act, which the Community and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(c) Except as provided in paragraphs 19.2 and 19.5 of the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona in its own right or on behalf of the Community based upon—

(1) water rights or injuries to water rights of the Community and its members; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community and its members.

(d) In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 412(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

SEC. 410. ENVIRONMENTAL COMPLIANCE.

(a) Execution of the settlement Agreement by the Secretary as provided for in section 411(d) shall not constitute major Federal action under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance, except as specifically directed otherwise herein, during the implementation phase of this settlement.

(b) There is hereby authorized to be appropriated such sums as may be necessary to carry out all necessary environmental compliance associated with this settlement, including mitigation measures adopted by the Secretary.

(c) With respect to this settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable environmental laws.

(d) Except as specifically set forth herein, the Secretary shall comply with all aspects of NEPA and the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), and other applicable environmental acts and regulations in proceeding through the implementation phase of this settlement: *Provided, however,* That in regard to NEPA compliance, the Secretary is precluded from studying or considering alternatives to the Community's on-reservation agriculture development plans which will be facilitated by the settlement, or performed under the Small Reclamation Projects loan made pursuant to section 408(e).

SEC. 411. MISCELLANEOUS PROVISIONS.

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court relating only and directly to the interpretation or enforcement of this title or the Agreement, naming the United States of America or the Community as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

(b) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this title or the Agreement against any lands within the Fort McDowell Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) Water received by entities other than the Community pursuant to the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(d) To the extent the Agreement does not conflict with the provisions of this title, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(e) As of the date the authorizations contained in section 409(b) of this Act become effective, section 302(a) of the Colorado River Basin Project Act (43 U.S.C. 1522(a)) shall no longer apply to the Community.

(f) An easement for the construction, operation and maintenance of the Community's water diversion system on and within the lands identified in the Community's special permit extension application dated July 12, 1990, filed with the United States Forest Service, Department of Agriculture, is hereby granted in perpetuity.

(g) As of the date the authorizations contained in section 409(b) of this Act and in section 410(b) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act (102 Stat. 2549) become effective, subsection 404(a) of this Act shall become effective as to the Salt River Pima-Maricopa Indian Community and the United States.

(h) Section 7(a) of the Salt River Pima-Maricopa Indian Community Water Rights Act (102 Stat. 2549) is hereby amended by striking the date "1990" and inserting in lieu thereof "1991."

SEC. 412. EFFECTIVE DATE.

(a) The authorizations contained in section 409(b) of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that:

(1) the Secretary has signed a contract with the SRP for the storage and reregulation of the Community's Kent Decree water pursuant to section 404;

(2) the RWCD subcontract for agricultural water service from CAP has been revised and executed as provided in section 405(b);

(3) the Secretary has acquired water pursuant to section 406 and made it available for delivery for the benefit of the Community;

(4) the funds authorized by section 408(b) have been appropriated and deposited into the Community Development Fund;

(5) the loan authorized by section 408(e) has been provided to the Community;

(6) the State of Arizona has appropriated and deposited into the Community Development Fund the $2,000,000 required by paragraph 21.4 of the Agreement;

(7) the stipulation which is attached to the Agreement as exhibit "19.5" has been approved; and

(8) the Agreement has been modified to the extent it is in conflict with this title and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) of this section have not occurred by December 31, 1993, sections 4, 5(a), and 5(b), if they have not theretofore become effective pursuant to the provisions of the Act of October 20, 1988 (Public Law 100-512), and sections 407, 408(a), 408(b), 408(e), 409(b), 409(c), 411(a), 411(b), 411(c), 411(d), 411(e) and 411(f) of this Act and any contracts entered into pursuant to those provisions shall not thereafter be effective, and any funds appropriated pursuant to section 408(b) of this Act shall revert to the Treasury, and any funds appropriated pursuant to paragraph 21.4 of the Agreement shall revert to the State of Arizona.

SEC. 413. OTHER CLAIMS.

Nothing in the Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community.

TITLE V—CLARKS FORK WILD AND SCENIC RIVER DESIGNATION

SECTION 501. SHORT TITLE.

This title may be cited as the "Clarks Fork Wild and Scenic River Designation Act of 1990".

SEC. 502 DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)), as amended, is further amended by adding at the end the following:

"( ) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out this paragraph, there is authorized to be appropriated $500,000 for development and $750,000 for the acquisition of land and interests therein.

"(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any other Federal action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designaton as a component of the Wild and Scenic Rivers System.

"(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of Wyoming: *Provided,* That, notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

"(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such measures as may be necessary in the control of fire, insects, and diseases to fully protect the values for which the segment is designated as a wild river.".

TITLE VI—CAMP W.G. WILLIAMS LAND EXCHANGE

SECTION 601. SHORT TITLE AND DEFINITIONS.

(a) SHORT TITLE.—This Title may be cited as the "Camp W.G. Williams Land Exchange Act of 1989".

(b) DEFINITIONS.—As used in this title—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "camp boundaries" means the exterior boundaries of Camp W.G. Williams after enactment of this Act, in Utah and Salt Lake Counties, Utah, as generally depicted on the map referenced in section 602(a) of this Act.

SEC. 602. EXCHANGE.

(a) OFFERS.—Notwithstanding any other provision of law, as soon as possible but not later than six months after the date of enactment of this Act, the Secretary shall offer to exchange lands identified as "FEDERAL LANDS OFFERED FOR EXCHANGE" on a map entitled "PROPOSED EXCHANGE FOR CAMP W.G. WILLIAMS, UTAH", dated August 25, 1989 (hereinafter referred to as the "map"), to the owners of tracts of private lands identified as "PRIVATE LANDS TO BE ADDED TO CAMP W.G. WILLIAMS BY EXCHANGE AND WITHDRAWAL" on such map. If the owners of any or all of such tracts of privte lands accept the offer within two years after the date of enactment of this Act, then the Secretary as soon as practicable shall convey to such owner or owners or their designee title to so much of the identified land as is approximately equal in value to such tracts of private land as are simultaneously conveyed to the United States.

(b) Any lands, identified on the map as "FEDERAL LANDS OFFERED FOR EXCHANGE", not exchanged shall be returned to the public domain.

SEC. 603. BUREAU OF LAND MANAGEMENT LANDS.

Lands identified on the map as "PUBLIC LANDS AT CAMP W.G. WILLIAMS TO BE WITHDRAWN" shall be transferred to the Department of the Army.

SEC. 604. ARMY LANDS.

Subject to the provisions of section 607, lands identified on the map as "WITHDRAWN LANDS TO BE RETURNED TO PUBLIC DOMAIN" shall be transferred to the Department of the Interior, returned to the public domain and managed accordingly.

SEC. 605. ACQUISITIONS.

The Secretary, in accordance with applicable law, is authorized to acquire, solely by donation or exchange from a willing seller, lands that are identified as 2a and 2b on the map, and is directed to transfer such lands to the Department of the Army for the explicit purpose of addition to Camp W.G. Williams. The Secretary of the Army shall modify the camp boundaries so as to encompass lands acquired pursuant to this subsection.

SEC. 606. DEPARTMENT OF THE ARMY LANDS.

(a) All lands transferred, exchanged, or acquired by this Act within the camp boundaries shall immediately become a part of Camp W.G. Williams and shall immediately become a part of Camp W.G. Williams and shall be administered and managed by the Department of the Army in accordance with the same laws, regulations, and executive orders applicable to the lands under the jurisdiction of the Department of the Army adjoining such acquired tracts.

(b) Subject to valid existing rights, no lands owned by the United States within the camp boundaries shall be available for any form of settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral or geothermal leasing laws, and such lands shall be administered and managed by the Department of the Army.

(c) The provisions of this section shall be effective for a period of 20 years after the date of enactment of this Act, unless at the end of such 20-year period, the Secretary of the Army determines that such lands are still required for purposes of national security, in which case the provisions of this section shall be effective for a period of 40 years after the date of enactment of this Act.

SEC. 607. REVOCATION OF EXECUTIVE ORDER, ETC.

(a) REVOCATION.—(1) Executive Order 1922 of April 24, 1914, shall be revoked, only insofar as it affects lands outside of the camp boundaries and only upon acceptance by the Secretary of an appropriate certification by the Secretary of the Army that such lands do not contain any hazardous materials or substances, as defined by applicable Federal law. Upon such revocation, affected lands shall be returned to the public domain and managed accordingly.

(2) The Secretary of the Army shall perform all inspections and other actions necessary to make the certification required in paragraph (1), and shall report his findings to the Secretary, within one year after the date of enactment of this Act. Thereafter the Secretary of the Army shall hold harmless the Secretary for any liablity associated with any hazardous materials or substances as defined by applicable Federal law that were placed upon or reasonably appear to have been place upon the land prior to the return of the subject lands to the public domain.

(b) LIABILITY.—Upon the acquisition by the United States of any lands or interest in land pursuant to this title, any liability accuring to the United States as a result of such acquisition shall be deemed to vest in the United States Department of the Army. In no event shall liability vest in the Department of the Interior.

SEC. 608. MAPS AND LEGAL DESCRIPTIONS.

As soon as practicable after the date of enactment of this Act, the Secretary shall publish in the Federal Register a legal description of the lands proposed to be exchanged by this title and shall file such maps and the legal descriptions with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives.

"TITLE VII—TECHNICAL AMENDMENT TO TITLE V OF THE ARIZONA-IDAHO CONSERVATION ACT OF 1988

SEC. 701. TITLE V OF THE ARIZONA-IDAHO CONSERVATION ACT OF 1988 (PUBLIC LAW 100-696; 102 STAT. 4571) IS AMENDED AS FOLLOWS:

(a) Section 501 is amended by inserting after the parenthetical phrase and before the words "which the Secretary deems necessary" the words "or other appropriate lands as selected by the State of Arizona under section 28 of the Act of June 20, 1910 (30 Stat. 557, as amended by the Act of June 5, 1935, 49 Stat. 1477)".

(b) Section 502(b) is amended by adding the following new sentence at the end thereof: "With the consent of the State of Arizona and to the extent that the lands referred to in subsection (a) of this section are acquired by eminent domain, the Secretary may use as compensation the lands described in sections 501, and 507(a)(1) and (a)(2) of this Act, and such other lands as the Secretary determines necessary to constitute the fair market value of the State of Arizona lands acquired by eminent domain.".

(c) Section 507(b) is redesignated as section 507(c), and the following new subsection (b) is added as follows:

"(b) CONVEYANCE TO THE STATE OF ARIZONA.—The Federal lands described in section 506(a) of this Act may be conveyed to the State of Arizona by the Secretary to the extent such conveyance is necessary to establish fair market value compensation for State lands described in section 502(a) acquired by eminent domain pursuant to section 502(b).".

"TITLE VIII—CIVIL WAR SITES STUDIES

SECTION 801. SHORT TITLE.

This title may be cited as the 'Civil War Sites Study Act of 1990'.

SEC. 802. DEFINITIONS.

For the purposes of this title—

(a) the term 'Commission' means the Civil War Sites Advisory Commission established in section 805 of this title;

(b) the term 'Secretary' means the Secretary of the Interior; and

(c) the term 'Shenandoah Valley Civil War sites' means those sites and structures situated in the Shenandoah Valley in the Commonwealth of Virginia which are thematically tied with the nationally significant events that occurred in the region during the Civil War, including, but not limited to, General Thomas 'Stonewall' Jackson's 1862 'Valley Campaign' and General Philip Sheridan's 1864 campaign culminating in the battle of Cedar Creek on October 19, 1864.

SEC. 803. FINDINGS.

The Congress finds that—

(1) many sites and structures associated with the Civil War are located in regions which are undergoing rapid urban and suburban development;

(2) such sites and structures represent important means by which the Civil War may continue to be understood and interpreted by the public; and

(3) it is important to obtain current information on the significance of such sites, threats to their integrity, and alternatives for their preservation and interpretation for the benefit of the Nation.

SEC. 804. SHENANDOAH VALLEY CIVIL WAR SITES STUDY.

(a) STUDY.—(1) The Secretary is authorized and directed to prepare a study of Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State and local governments, or other public or private entities, as may be appropriate. Such alternatives may include, but shall not be limited to, designation as units of the National Park System or as affiliated areas.

(2) The study shall contain an analysis of the economic effect that protection of Shenandoah Valley Civil War sites would have on the economy in the Shenandoah Valley.

(3) The study shall include the views and recommendations of the National Park System Advisory Board.

(b) TRANSMITTAL TO CONGRESS.—Not later than 1 year after the date that funds are made available for the study referred to in subsection (a), the Secretary shall transmit such study to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

SEC. 805. ESTABLISHMENT OF CIVIL WAR SITES ADVISORY COMMISSION.

(a) IN GENERAL.—There is hereby established the Civil War Sites Advisory Commission. The Commission shall consist of thirteen members appointed as follows:

(1) five citizens who are nationally recognized as experts and authorities in the history of the Civil War, appointed by the Secretary;

(2) the Director of the National Park Service or his or her designee;

(3) the Chairman of the Advisory Council on Historic Preservation, or his or her designee;

(4) three citizens appointed by the President Pro Tempore of the United States Senate in consultation with the Chairman and Ranking Minority Member of the Committee on Energy and Natural Resources; and

(6) three citizens appointed by the Speaker of the United States House of Representatives in consultation with the Chairman and Ranking Minority Member of the Committee on Interior and Insular Affairs.

(b) CHAIRMAN.—The Commission shall elect a chairman from among its members.

(c) VACANCIES.—Vacancies occurring on the Commission shall not affect the authority of the remaining members of the Commission to carry out the functions of the Commission. Any vacancy in the Commission shall be promptly filled in the same manner in which the original appointment was made.

(d) QUORUM.—A simple majority of Commission members shall constitute a quorum.

(e) MEETINGS.—The Commission shall meet at least quarterly or upon the call of the Chairman or a majority of the members of the Commission.

(f) COMPENSATION.—Members of the Commission shall serve without compensation. Members of the Commission, when engaged in official Commission business, shall be entitled to travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service under section 5703 of title 5, United States Code.

(g) TERMINATION.—The Commission established pursuant to this section shall terminate 180 days after the transmittal of the report to Congress as provided in section 808(c).

SEC. 806. STAFF OF THE COMMISSION.

(a) EXECUTIVE DIRECTOR.—The Director of the National Park Service, or his or her designee, shall serve as the Executive Director of the Commission.

(b) STAFF.—The Director of the National Park Service shall, on a reimbursable basis, detail such staff as the Commission may require to carry out its duties.

(c) STAFF OF OTHER AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

(d) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

SEC. 807. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission, may for the purpose of carrying out this title hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission may deem advisable.

(b) BYLAWS.—The Commission may make such bylaws, rules and regulations, consistent with this title, as it considers necessary to carry out its functions under this title.

(c) DELEGATION.—When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(d) DONATIONS.—Notwithstanding any other provision of law, the Commission may seek and accept donation of funds, property, or services from individuals, foundations, corporations, and other private entities, and from public entities, for the purpose of carrying out its duties.

(e) MAILS.—The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

SEC. 808. DUTIES OF THE COMMISSION.

(a) PREPARATION OF STUDY.—The Commission shall prepare a study of historically significant sites and structures in the United States associated with military action during the Civil War, other than Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State and local governments, or other public or private entities, as may be appropriate. Such alternatives may include, but shall not be limited to, designation as units of the National Park System or as affiliated areas. The study may include existing units of the National Park System.

(b) CONSULTATION.—During the preparation of the study * * *
State of Idaho, the Shoshone-Bannock Tribes, the United States, and other participating parties.

(2) The term "Committee of Nine" means the advisory committee of water district 01, which is the instrumentality created by the Director of the Idaho Department of Water Resources pursuant to Idaho Code 42-604.

(3) The term "Final Decree" means the partial decree confirming the Tribal water rights described and quantified in Article 7 of the Agreement to be entered after the date of enactment of this Act and following submission of the Agreement as provided for in Article 10 of the Agreement in Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System.

(4) The term "Fort Hall Indian Irrigation Project" means the Federal project constructed to provide water for the irrigation of Reservation lands and certain ceded lands.

(5) The term "Idaho Water Resource Board" means the Idaho State Water Resource Agency consti * * *

* * * * *

(10) The term "Michaud Division" means that division of the Fort Hall Indian Irrigation Project authorized by the Act of August 31, 1954, chapter 1159, 68 Stat. 1026.

(11) The term "Party" or "Parties" means any entity or entities that are party to the Agreement.

(12) The term "Reservation" means the Fort Hall Indian Reservation.

(13) The term "Secretary" means the Secretary of the Interior.

(14) The term "Tribes" or "Tribal" means the Shoshone-Bannock Tribes, its members, and its allottees.

(15) The term "Upper Snake River Basin" means that portion of the Snake River Basin upstream from the Hells Canyon Dam, the lowest of the 3 dams authorized as FERC Project No. 1971.

SEC. 903. FINDINGS.

The purpose of the Fort Hall Indian Water Rights Settlement Act of 1990 is to achieve a fair, equitable, and final settlement of all claims of the Shoshone-Bannock Tribes, its members, and its allottees and the United States on behalf of the Shoshone-Bannock Tribes, its members, and its allottees to water rights in the Upper Snake River Basin.

SEC. 904. RATIFICATION OF AGREEMENT.

The Agreement is hereby approved, ratified, and confimed. The Secretary is authorized and directed to implement the Agreement on behalf of the United States.

SEC. 905. PROTECTION OF EXISTING USES.

(a) CONTRACT FOR STORAGE SPACE.—The Secretary is authorized and directed to contract with the Idaho Water Resource Board or another appropriate contracting entity acceptable to the Commission of Nine for 18,900 acre feet of storage space in the Palisades Reservior and the 80,500 acre feet of storage space in the Ririe Reservior provided that the contracting entity makes application for the noncontracted storage space within 1 year of the date of this Act and the contracting party agrees to pay all operation and maintenance costs associated with the space. The repayment obligation asssociated with the construction costs for such noncontracted storage space is hereby deemed repaid by this title. All exemptions that result from such a repayment shall be deemed to be applicable further qualficiation on the part of such contracting entity, and with respect to subsequent users of this water, the Reclamation laws shall apply only to the extent such laws would have applied to such subsequent users prior to the date of this Act.

(b) LIMITATION ON SETTING ASIDE FINAL DECREE.—Neither the Committee of Nine nor the State shall have the right to set aside the Final Decree because either fails to make application for the storage space referred to in subsection (a) of this section within 1 year of the date of this Act.

SEC. 906. USE, TRANSFER, AND LEASE OF TRIBAL WATER RIGHTS.

(a) TRANSFER AND LEASE OF TRIBAL WATER RIGHTS WITHIN THE RESERVATION.—The Tribes shall have the right to transfer or lease within the Reservation all or any part of the Tribal water right confirmed in the Final Decree on the terms and conditions set forth in article 7 of the Agreement.

(b) RENTAL OF THE TRIBES FEDERAL CONTRACT STORAGE WATER.—The Tribes shall have the right to rent, pursuant to Idaho Code 42-1761 through 42-1765 as specified in article 7 of the Agreement, the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act.

(c) INSTREAM FLOWS—The Tribes shall have the right to use any or all of the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act for instream flows for rivers reaches on or adjacent to the Reservation and up to 15,000 acre feet per year of the storage water rights described in articles 7.1.19 and 7.1.20 of the Agreement for instream flows in reaches of the Backfoot River on the terms and conditions set forth in article 7.4 of the Agreement.

(d) REQUISITE CONGRESSIONAL APPROVAL—Ratification of the Agreement as provided for by section 904 of this Act shall constitute the congressional approval, to the extent it is required by Federal law, of the uses described in subsections (a), (b), and (c) of this section.

(e) AMENDMENT OF MICHAUD ACT AND CONTRACT.—

The Michaud Act and the Michaud Contract are hereby amended to the extent necessary to authorize the uses described in subsections (a), (b), and (c) of the proprietary rights described in article 7 of the Agreement.

(f) NO ALIENATION OR TAXATION OF PROCEEDS.—The proceeds from leasing water pursuant to subsection (a) of this section or from renting all or any part of the water accruing to the Federal contract storage space pursuant to subsection (b) of this section shall not be subject to any form of taxation or alienation by the State.

(g) NO FORFEITURE, ABANDONMENT, LOSS, OR CONSTRAINTS ON INCOME.—The Tribes' exercise of the rights described in subsections (a), (b), and (c) of this section or nonuse of the Tribal water rights shall in no event be construed or interpreted as any forfeiture, abandonment, relinquishment, or other loss of all or any part of the Tribal water rights. Nor shall the exercise of the rights described in subsections (a) and (b) of this section be subject to any constraints on the amount of income or other compensation received by the Tribes.

(h) LIMITATION ON OFF-RESERVATION USE.—Except as authorized by this section, no Tribal water rights or water described in the Agreement may be sold, leased, rented, transferred, or otherwise used off the Fort Hall Indian Reservation.

SEC. 907. CONTRIBUTION TO SETTLEMENT.

(a) TRIBAL DEVELOPMENT FUND.—There are hereby authorized to be appropriated to the Department of the Interior Bureau of Indian Affairs $4,000,000 in the first fiscal year, $3,000,000 in the second fiscal year, and $3,000,000 in the third fiscal year following the effective date of this Act for payment to the Tribal Development Fund, which the Secretary is authorized and directed to establish for the Shoshone-Bannock Tribes. Within 60 days of appropriation of moneys for the Tribal Development Fund, the Secretary shall allocate and make payment to the Fund. Once the funds are deposited into the Tribal Development Fund, the Secretary shall disburse the funds to the Tribes upon request.

(b) RESERVATION WATER MANAGEMENT SYSTEM.—There is hereby authorized to be appropriated to the Department of the Interior Bureau of Indian Affairs the sum of $3,000,000 in the first fiscal year, $2,000,000 in the second fiscal year, and $2,000,000 in the third fiscal year following the effective date of this Act for use by the Tribes for development of a Reservation water management system. Within 60 days of appropriation of moneys for the Reservation water management system, the Secretary shall allocate and make payment to the Tribes for the purposes described in this section.

(c) ACQUISITION OF LANDS, GRAZING RIGHTS, AND IMPROVEMENTS.—There are hereby authorized to be appropriated to the Department of the Interior Bureau of Indian Affairs $5,000,000 for the primary purposes of acquiring for the Fort Hall Indian Irrigation Project available lands and grazing rights adjacent to Grays Lake to enhance the operation and management of the project and of making related improvements as well as providing collateral benefits for the operation of the Fish and Wildlife Service Refuge at Grays Lake.

(d) LIMITATION OF PER CAPITA DISTRIBUTIONS.—Under no circumstances may any appropriated funds authorized by subsections (a), (b), and (c) of this section be distributed on a per capita basis to members of the Tribes.

(e) LIMITATION ON SETTING ASIDE FINAL DECREE.—Neither the Tribes nor the United States shall have the right to set aside the Final Decree because Congress fails to appropriate the funds authorized by subsection (a), (b), or (c) of this section or because the United States fails to acquire the grazing allotments adjacent to Grays Lake.

(f) TRUST RESPONSIBILITY.—Nothing in this title shall be construed or interpreted to alter the future trust responsibility of the United States to the Tribes nor to prohibit the Tribes from seeking additional authorization or appropriation of funds for Tribal programs or purposes.

SEC. 908. WAIVER OF CLAIMS.

(a) GENERAL AUTHORITY.—Upon the effective date of the Agreement, the Tribes and the United States shall be deemed to have waived and released any and all water rights or claims to water rights of the Tribes, its members and its allottees from any source within the Upper Snake River Basin other than those set forth in article 7 of the Agreement. This release shall not apply to water right claims under State law of Tribal members for lands not defined as Indian lands for purposes of this title nor to any other Indian tribe or to any Federal agency other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

(b) WAIVER OF CLAIMS AGAINST THE UNITED STATES.—In consideration of performance by the United States of all actions required by the Agreement and this title, including the congressional authorization, appropriation, and payment of all funds authorized in section 907 of this Act, the Tribes shall be deemed to have executed in return a waiver and release of any and all existing claims against the United States arising in whole or in part from or concerning water rights finally settled by the Agreement and for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir.

(c) WAIVER OF CLAIMS AGAINST NON-FEDERAL PERSONS.—Upon entry of the Final Decree confirming the Tribal water rights, the United States and the Tribes agree not to make any claims against, or seek compensation from any non-Federal person for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir. In the event funds are not paid as set forth in section 907, the Tribes are authorized to bring an action in the United States Claims Court for such funds plus applicable interest. The United States hereby waives any defense of soverign immunity to * * *.

SEC. 909. INDIVIDUAL MEMBERS AND ALLOTTEES OF THE TRIBES.

The water rights described in the Agreement and confirmed in the Final Decree are in full satisfaction of all water right claims of members of the Tribes and allottees for Indian lands in the Upper Snake River Basin. If any Tribal member or allottee is decreed a water right for Indian lands in Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled "In Re The General Adjudication of Rights to the Use of Water from the Snake River Basin Water System", there shall be a corresponding reduction made in the Tribal water rights set forth in the Agreement and the Final Decree.

SEC. 910. EFFECTIVE DATE.

(a) DISBURSEMENT OF FUNDS UPON EFFECTIVE DATE.—The moneys appropriated pursuant to the authorization in section 907 of this Act shall not be disbursed until such time as the Agreement becomes effective. If the Agreement does not become effective, the moneys shall be returned to the General Fund of the Treasury, and the Agreement may be voided by any party to the Agreement.

(b) FORCE AND EFFECT.—No provision of this title shall be of any force unless the Agreement becomes effective as provided by article 18 of the Agreement.

SEC. 911. DISCLAIMER.

(a) GENERAL DISCLAIMER.—Nothing in the Agreement or this title shall be construed in any way to quantify or otherwise affect the water rights or water right claims of the city of Pocatello, Idaho, or of any Indian tribe, band, or community, other than the Shoshone-Bannock Tribes.

(b) RESERVATION OF TRIBAL CLAIMS.—Nothing in this title shall be construed to waive any water rights or water right claims of the Tribe or the United States on behalf of the Tribes except as set forth in the Agreement. Nor shall anything in the Agreement or this title affect the water rights or water right claims of any Federal agency, other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

(c) RESERVATION OF RIGHTS.—The parties expressly reserve all rights not granted, recognized, or settled by the Agreement or this title.

(d) DISCLAIMER REGARDING OTHER AGREEMENTS.—Except as expressly provided in this title, nothing herein shall be considered to amend, construe, supersede, or preempt any State law, Federal law, Tribal law, or interstate compact that pertains to the Snake River or its tributaries.

SEC. 912. PROTECTON OF TRIBAL WATER RIGHTS.

The Tribal water rights confirmed by the Final Decree shall bind and inure to the benefit of the Tribes and shall not be taken from them absent their consent and payment of just compensation.

TITLE X—REFORMULATION OF THE CEDAR BLUFF UNIT OF THE PICK-SLOAN MISSOURI BASIN PROGRAM, KANSAS

SEC. 1001. AUTHORIZATION OF REFORMULATION.

The Secretary of the Interior (hereafter in this title referred to as the "Secretary"), pursuant to the provisions of the Memorandum of Understanding between the Bureau

of Reclamation and the Fish and Wildlife Service of the Department of the Interior, the State of Kansas, and the Cedar Bluff Irrigation District No. 6, dated December 17, 1987, is authorized to reformulate the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, including reallocation of the conservation capacity of the Cedar Bluff Reservoir, to create—

(1) a designated operating pool, as defined in such Memorandum of Understanding, for fish, wildlife, and recreation purposes, for groundwater recharge for environmental, domestic, municipal, industrial, and irrigation uses, and for other purposes; and

(2) a joint-use pool, as defined in such Memorandum of Understanding, for flood control, for water sales, for fish, wildlife, and recreation purposes, and for other purposes.

SEC. 1002. CONTRACT WITH THE STATE OF KANSAS FOR OPERATING POOL.

The Secretary may enter into a contract with the State of Kansas for the sale, use and control of the designated operating pool, with the exception of water reserved for the city of Russell, Kansas, and to allow the State of Kansas to acquire use and control of water in the joint-use pool: *Provided,* That the State of Kansas shall not permit utilization of water from Cedar Bluff Reservoir to increase irrigation of lands in the Smoky Hill River Basin from Cedar Bluff Reservoir to its confluence with Big Creek.

SEC. 1003. CONTRACT WITH THE STATE OF KANSAS FOR CEDAR BLUFF DAM AND RESERVOIR.

(a) AUTHORIZATION.—The Secretary may enter into a contract with the State of Kansas, accepting a payment of $365,424, and the State's commitment to pay a proportionate share of the annual operation, maintenance, and replacement charges for the Cedar Bluff Dam and Reservoir, as full satisfaction of reimbursable costs associated with irrigation of the Cedar Bluff Unit, including the Cedar Bluff Irrigation District's obligations under Contract No. 0-07-70-W0064. After the reformulation of the Cedar Bluff Unit authorized by this title, any revenues in excess of operating and maintenance expenses received by the State of Kansas from the sale of water from the Cedar Bluff Unit shall be paid to the United States and covered into the Reclamation Fund to the extent that an operation, maintenance and replacement charge or reimbursable capital obligation exists for the Cedar Bluff Unit under Reclamation law. Once all such operation, maintenance and replacement charges or reimbursable obligations are satisfied, any additinal revenues shall be retained by the State of Kansas.

(b) TRANSFER OF FISH HATCHERY.—The Secretary may transfer ownership of the buildings fixtures, and equipment of the United States Fish and Wildlife Service fish hatchery facility at Cedar Bluff Dam, and the related water rights, to the State of Kansas for its use and operation for fish, wildlife, and related purposes. If any of the property transferred by this subsection to the State of Kansas is subsequently transferred from State ownership or used for any purpose other than those provided for in this subsection, title to such property shall revert to the United States.

SEC. 1004. TRANSFER OF DISTRICT HEADQUARTERS.

The Secretary may transfer title to all interests in real property, buildings, fixtures, equipment, and tools associated with the Cedar Bluff Irrigation District headquarters located near Hays, Kansas, contingent upon the District's agreement to close down the irrigation system to the satisfaction of the Secretary at no additional cost to the United States, after which all easement rights shall revert to the owners of the lands to which the easements are attached.

SEC. 1005. LIABILITY AND INDEMNIFICATION.

The transferee of any interest conveyed pursuant to this title shall assume all liability with respect to such interests and shall indemnify the United States against all such liability.

SEC. 1006. ADDITIONAL ACTIONS.

The Secretary may take all other actions consistent with the provisions of the Memorandum of Understanding referred to in section 1001 that the Secretary deems necessary to accomplish the reformulation of the Cedar Bluff Unit.

TITLE XI—LAKE MEREDITY SALINITY CONTROL PROJECT, NEW MEXICO AND TEXAS

SECTION 1101. AUTHORIZATION TO CONSTRUCT AND TEST.

The Secretary of the Interior (hereafter in this title referred as the "Secretary") is authorized to construct and test the Lake Meredith Salinity Control Project, New Mexico and Texas, in accordance with the Federal Reclamation laws (Act of June 17, 1902, 32 Stat. 788, and Acts amendatory thereof or supplementary thereto) and the provisions of this title and the plan set out in the June 1985 Technical Report of the Bureau of Reclamation on this project with such modification of, omissions from, or additions to the works, as the Secretary may find proper and necessary for the purpose of improving the quality of water delivered to the Canadian River downstream of Ute Reservoir, New Mexico, and entering Lake Meredith, Texas. This principal features of the project shall consist of production wells, observation wells, pipelines, pumping plants, brine disposal facilities, and other appurtenant facilities.

SEC. 1102. CONSTRUCTION CONTRACT WITH THE CANADIAN RIVER MUNICIPAL WATER AUTHORITY.

(a) AUTHORITY TO CONTRACT.—The Secretary is authorized to enter into a contract with the Canadian River Municipal Water Authority of Texas for the design and construction management of project facilities by the Bureau of Reclamation and for the payment of construction costs by the Canadian River Municipal Water Authority. Operation and maintenance of project facilities upon completion of construction and testing shall be the responsibility of the Canadian River Municipal Water Authority.

(b) CONSTRUCTION CONTINGENT ON CONTRACT.—Construction of the project shall not be commenced until a suitable contract has been executed by the Secretary with the Canadian River Municipal Water Authority of Texas and the State of New Mexico has granted the necessary permits for the project facilities.

SEC. 1103. PROJECT COSTS.

(a) CANADIAN RIVER MUNICIPAL WATER AUTHORITY SHARE.—All costs of construction of project facilities shall be advanced by the Canadian River Municipal Water Authority as the non-Federal contribution toward implementation of this title. Pursuant to the terms of the contract authorized by section 1102, these funds shall be advanced on a schedule mutually acceptable to the Canadian River Municipal Water Authority and the Secretary, as necessary to meet the expense of carrying out construction and land acquisition activities.

(b) FEDERAL SHARE.—All project costs for verification, design preparation, and construction management (estimated to be approximately 33 percent of the total project cost) shall be nonreimbursable as the Federal contribution for environmental enhancement by water quality improvement.

SEC. 1104. CONSTRUCTION AND CONTROL.

(a) PRECONSTRUCTION.—The Secretary shall, upon entering into a mutually acceptable agreement with the Canadian River Municipal Water Authority, proceed with precontruction planning, preparation of designs and specifications, acquiring permits, acquisition of land and rights, and award of construction contracts pending availability of appropriated funds.

(b) TERMINATION OF CONSTRUCTION.—At any time following the first advance of funds by the Canadian River Municipal Water Authority, the Canadian River Municipal Water Authority may request that the Secretary terminate activities then in progress, and such request shall be binding upon the Secretary: *Provided, however,* That upon termination of construction pursuant to this section, the Canadian River Municipal Water Authority shall reimburse to the Secretary of the Interior a sum equal to 67 percent of all costs incurred by the Secretary in project verification, design and construction management reduced by any sums previously paid by the Authority to the Secretary for such purposes. Upon such termination, the United States is under no obligation to complete the project as a nonreimbursable development.

(c) TRANSFER OF CONTROL.—Upon completion of construction and testing of the project, or upon termination of activities at the request of the Canadian River Municipal Water Authority, and reimbursement of Federal costs pursuant to subsection 1104(b) of this Act, the Secretary shall transfer the care, operation, and maintenance of the project works to the Canadian River Municipal Water Authority or to a bonafide entity mutually agreeable to the States of New Mexico and Texas. As part of such transfer, the Secretary shall return unexpended balances of the funds advanced, assign to the Canadian River Municipal Water Authority or the bonafide entity the rights to any contract in force, convey to the Canadian River Municipal Water Authority or the bonafide entity any real estate, easements, or personal property acquired by the advanced funds, and provide any data, drawings, or other items of value procured with advanced funds.

SEC. 1105. AUTHORIZATION.

There is hereby authorized to be appropriated to carry out the provisions of this title the sum of $3,000,000 (October 1989 price levels), plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein.

SEC. 1106. WETLANDS INVENTORY AND REPORT.

(a) The Secretary of the Interior is directed to inventory all wetlands on Federal lands or interests therein owned by or withdrawn for the use of the Bureau of Reclamation and, to the extent practicable, other Federal lands associated with reclamation projects. As part of the inventory, the Secretary shall make an initial determination of the value of such wetlands for purposes such as, but not limited to, recruitment and survival of waterfowl and other wetland dependent species, flood control, water quality, and sedimentation control.

(b) In assessing the value of wetlands for recruitment and survival of waterfowl and other wetland dependent species, the Secretary shall consider, among other things, the presence of factors supporting abundant and diverse wetland ecosystems, including, but not limited to:

(1) high primary productivity and functioning food chains;

(2) seasonal values for waterfowl breeding, nesting, staging, and wintering; and

(3) protection from predation and disease.

(c) The Secretary shall indicate those wetland areas identified pursuant to subsection (a) of this section which also have been identified for protection or restoration pursuant to the North American Waterfowl Management Plan or by such entities as the Secretary deems appropriate.

(d) In fulfillment of this section, the Secretary is encouraged to consult with appropriate State and private entities.

(e) Not later than February 1, 1991, the Secretary shall report to the Senate Committee on Energy and Natural Resources, the Senate Committee on Appropriations, the House Committee on Interior and Insular Affairs, and the House Committee on Appropriations a plan for implementation of this section, including identification of any reprogramming of funds required in fiscal year 1991 and such other resources as may be required.

(f) The Secretary shall report the results of the inventory authorized by this section to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs not later than December 31, 1991.

TITLE XII—LAKE MEREDITH NATIONAL RECREATION AREA, TEXAS

SECTION 1201. ESTABLISHMENT.

(a) ESTABLISHMENT.—In order to provide for public outdoor recreation use and enjoyment of the lands and waters associated with Lake Meredith in the State of Texas, and to protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters, there is hereby established the Lake Meredith National Recreation Area (hereafter in this Act referred to as the "recreation area").

(b) AREA INCLUDED.—The recreation area shall consist of the lands, waters, and interests therein within the area generally depicted on the map entitled "Lake Meredith National Recreation Area Boundary Map, 'Fee-Take Line' ", numbered SWRO-80,023-A, and dated September 1990. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereafter in this Act referred to as the "Secretary") may from time to time make minor revisions in the boundary of the recreation area.

(c) TRANSFER.—(1) Except as provided in paragraph (2), the Federal lands, waters, and interests therein within the recreation area are hereby transferred to the National Park Service.

(2) Those lands depicted on the map referred to in subsection (b) that are necessary for the continued operation, maintenance, and replacement of the Canadian River Project facilities and its purposes of providing for municipal and industrial water supply and flood control shall remain under the jurisdiction of the Bureau of Reclamation.

SEC. 1202. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the recreation area in accordance with this Act and the provisions of law generally applicable to units of the National Park System, including the Act entitled "An Act to establish a National Park Service, and for other purposes," approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4), and the Act of August 7, 1946 (60 Stat. 885). In the administration of such recreation area, the Secretary may utilize such statutory authority as may be available to him for the protection of natural and cultural resources as he deems necessary to carry out the purposes of this Act.

(b) OPERATION OF CANADIAN RIVER PROJECT.—Nothing in this Act shall be construed to affect or interfere with the authority of the Secretary under the Act of December 29, 1950 (Public Law 81-898; 43 U.S.C. 600b et seq.), to operate Sanford Dam and Lake Meredith in accordance with and for the purposes set forth in that Act.

(c) LAND ACQUISITON.—Within the boundary of the recreation area, the Secretary may acquire lands and interests in lands by purchase with donated or appropriated funds, exchange, or transfer without reimbursement from any Federal agency.

(d) CULTURAL RESOURCES.—The Secretary shall conduct a survey of the cultural resources in the immediate vicinity of the recreation area. The Secretary is authorized to enter into cooperative agreements with public or private entities, including landowners, for the purpose of conducting the survey required by this subsection. Not later than three years after the date on which funds have been made available, the Secretary shall submit a report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the results of the survey required by this subsection.

(c) HUNTING AND FISHING.—(1) The Secretary shall permit hunting and fishing on lands and waters under the Secretary's jurisdiction within the recreation area in accordance with applicable Federal and State law. The Secretary may designate zones where, and establish periods when, hunting or fishing will not be permitted for reasons of public safety, administration, fish and wildlife management, or public use and enjoyment.

(2) Except in emergencies any regulations issued by the Secretary under this subsection shall be put into effect only after consultation with the appropriate State agencies responsible for hunting and fishing activities.

(f) COOPERATIVE AGREEMENTS.—For purposes of administering the recreation area, the Secretary may enter into cooperative agreements with any Federal agency, the State of Texas, or any political subdivision thereof, including the Canadian River Municipal Water Authority, for the rendering, on a reimbursable basis, of rescue, firefighting, law enforcement, fire preventive assistance, and other needs. The Secretary may enter into a cooperative agreement with the city of Fritch, Texas, to develop and operate a joint venture information center. Federal funds may be expended on non-Federal lands and improvements through cooperative agreements for the purpose of this section on a 50-50 matching basis.

SEC. 1203. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

SEC. 1204. SHORT TITLE

This title may be cited as "the" Lake Meredith National Recreation Area Act of 1990."

TITLE XIII—AMISTAD NATIONAL RECREATION AREA, TEXAS

SECTION 1301. ESTABLISHMENT.

(a) In order to—

(1) provide for public outdoor recreation use and enjoyment of the lands and waters associated with the United States portion of the reservoir known as Lake Amistad, located on the boundary between the State of Texas and Mexico, and

(2) protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters,

there is hereby established the Amistad National Recreation Area (hereafter in this Act referred to as the "recreation area").

(b) The recreation area shall consist of the Federal lands, waters, and interest therein within the area generally depicted on the map entitled "Boundary Map, Proposed Amistad National Recreation Area," numbered 621/20,013-B, and dated July 1969. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereafter in this Act referred to as the "Secretary") may from time to time make minor revisions in the boundary of the recreation area, but the total acreage of the recreation area may not exceed 58,500 acres. Within the boundary of the recreation area, the Secretary may acquire lands and interests in loans by purchase with donated or appropriated funds, exchange, or transfer without reimbursement from any Federal agency.

SEC. 1302. ADMINISTRATION.

(a) The Secretary shall administer the recreation area in accordance with this Act and the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4), and the Act of August 7, 1946 (60 Stat. 885). In the administration of such recreation area, the Secretary may utilize such statutory authority as may be available to him for the protection of natural and cultural resources as he deems necessary to carry out the purposes of this Act. Nothing in this Act shall be construed to amend or alter the responsibilities of the International Boundary and Water Commission, United States and Mexico, under any applicable treaty.

(b) The administration of the recreation area by the Secretary shall be subject to and in accordance with all applicable treaties, including the treaty between the United States and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, entered into force November 8, 1945 (59 Stat. 1219), and in accordance with the Act of July 7, 1960 (Public law 86-605; 74 Stat. 360), and any commitment or agreement entered into pursuant to such treaty or Act, including (but not limited to) commitments or agreements relating to—

(1) the demarcation and maintenance of boundaries;

(2) the use, storage, and furnishing of water;

(3) control of floods;

(4) investigations relative to the operation of the Amistad Dam; and

(5) the production of hydroelectric energy.

(c) The Secretary shall conduct a survey of the cultural resources in the immediate vicinity of the recreation area. The Secre-

tary is authorized to enter into cooperative agreements with public or private entities, including landowners, for the purpose of conducting the survey required by this subsection. Not later than two years after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the results of the survey required by this subsection.

(d)(1) The Secretary shall permit hunting and fishing on lands and waters under the Secretary's jurisdiction within the recreation area in accordance with applicable Federal and State law. The Secretary may designate zones where, and establish periods when, hunting or fishing will not be permitted for reasons of public safety, administration, fish and wildlife management; or public use and enjoyment.

(2) Except in emergencies any regulations issued by the Secretary under this subsection shall be put into effect only after consultation with the appropriate State agencies responsible for hunting and fishing activities.

(e) For purposes of administering the recreation area, the Secretary may enter into cooperative agreements with any Federal agency, the State of Texas, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement and fire preventive assistance.

SEC. 1303. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

SEC. 1304. SHORT TITLE.

This title may be cited as the "Amistad National Recreation Area Act of 1990".

TITLE XIV—SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARK EXPANSION

SEC. 1401. EXPANSION OF SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARK.

(a) EXPANSION.—Section 201(a) of the Act entitled "An Act to amend the Pennsylvania Avenue Development Corporation Act of 1972; to provide for the establishment of the San Antonio Missions National Historical Park; and other purposes" (16 U.S.C. 410ee(a)) is amended by inserting after the first sentence the following: "The park shall also consist of the lands and inserts therein within the area bounded by the line depicted as 'Proposed Boundary Extension' on the maps entitled 'San Antonio Missions National Historical Park', numbered 472-80,075, 472-80,076, 472-80,077, 472-80,078 472-80,079, 472-80,080, and 472-80,081 and dated June 7, 1990, which shall be on file and available for public inspection in the same manner as is such drawing.".

(b) DEVELOPMENT OF ESSENTIAL PUBLIC FACILITIES.—Section 201(f)(2) of such Act is amended by striking "not more than $500,000." and inserting "not more than $15,000,000.".

SEC. 1402. SHORT TITLE.

This title may be cited as the "San Antonio Missions National Historical Park Expansion Act of 1990".

TITLE XV—SUDBURY, ASSABET, AND CONCORD WILD AND SCENIC RIVER STUDY

SEC. 1501. SHORT TITLE.

This title may be cited as the "Sudbury, Assabet, and Concord Wild and Scenic River Study Act".

SEC. 1502. FINDINGS.

The Congress finds that—

(1) The Sudbury, Assabet, and Concord Rivers in the Commonwealth of Massachusetts possess resource values of national significance, including outstanding wildlife and ecological values, historic sites, and a cultural past important to America's literary heritage.

(2) Portions of this study segment have been listed on the Nationwide Rivers Inventory by the National Park Service.

(3) There is strong support among State and local officials and area residents and river users for a cooperative wild and scenic river study of the area.

(4) In view of the longstanding Federal practice of assisting States and local governments in protecting, conserving, and enhancing rivers of national significance, the United States has an interest in assisting the Commonwealth of Massachusetts and the appropriate local governments in studying and developing a resource conservation and management plan for the river, consistent with the Wild and Scenic Rivers Act.

SEC. 1503. WILD AND SCENIC RIVER STUDY.

(a) LISTING FOR STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding the following new paragraph at the end thereof:

"( ) SUDBURY, ASSABET, AND CONCORD, MASSACHUSETTS.—The segment of the Sudbury from the Danforth Street Bridge in the town of Framingham, to its confluence with the Assabet, the Assabet from 1,000 feet downstream of Sudbury and the Concord from the confluence of the Sudbury and Assabet downstream to the Route 3 Bridge in the town of Billerica. The study of such river segments shall be completed and the report submitted thereon not later than at the end of the third fiscal year beginning after the date of enactment of this paragraph.".

SEC. 1504. ADVISORY COMMITTEE.

(a) APPOINTMENT.—At the earliest practicable date following the enactment of this Act, but not later than forty-five days after enactment, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall establish the Sudbury, Assabet, and Concord Rivers Study Committee (hereinafter referred to as the "Committee"). The Secretary shall consult with the Committee on a regular basis during the conduct of the study required by section 1503 of this title (hereafter "the study") and the preparation and submission, pursuant to section 4 of the Wild and Scenic Rivers Act, of a report with respect to the river segments covered by the study.

(b) MEMBERSHIP AND PROCEDURES.—

(1) Membership on the Committee shall consist of 13 members appointed by the Secretary as follows:

(A) One member shall be appointed by the Secretary from the Fish and Wildlife Service.

(B) Two members shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Governor of the Commonwealth of Massachusetts.

(C) One member shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Sudbury Valley Trustees.

(D) One member shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Organization for the Assabet River.

(E) One member shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Board of Selectmen or equivalent local governing body of each of the eight towns located within the area covered by the study.

(2) The members of the Committee shall elect a chairman, vice chairman, and recording secretary from the membership at the first official meeting of the Committee. Official minutes shall be kept of each regular and special meeting of the Committee and shall be open for public inspection.

(3) Any vacancy on the Committee shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Vacancies in the membership of the Committee shall not affect its power to function if there remain sufficient members to constitute a quorum under paragraph (4) of this subsection.

(4) A majority of the members of the Committee shall constitute a quorum for all meetings.

(5) The Committee shall advise the Secretary in conducting the study and concerning management alternatives should some or all of the river segments studied be included in the National Wild and Scenic Rivers System.

(6) Members of the Committee shall serve without compensation but may be reimbursed by the Secretary for reasonable and necessary expenses incurred by them in the performance of their duties as members of the Committee.

(7) The Committee may accept and utilize the services of voluntary, uncompensated personnel.

(8) The Committee shall terminate upon the submission to the President, pursuant to section 1504 of the Wild and Scenic Rivers Act, of the report with respect to the river segments covered by the study.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

PELL (AND HELMS) EXEC. AMENDMENT NOS. 3200 THROUGH 3203

Mr. PELL (for himself and Mr. HELMS) proposed four amendments to the resolution of ratification to accompany Treaty Doc. 100-20, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as follows:

AMENDMENT No. 3200

Strike the first reservation dealing with Federal/state issues in part I of the resolution of ratification.

AMENDMENT No. 3201

Insert the following understanding on Federal/state issues in part II of the resolution of ratification:

"That the United States understands that this Convention shall be implemented by the United States Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered by the Convention and otherwise by the state and local governments. Accordingly, in implementing Articles 10-14 and 16, the United States Government shall take measures ap-

propriate to the Federal system to the end that the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfillment of the Convention.".

AMENDMENT No. 3202

In part c of the first understanding under part II of the resolution of ratification, strike everything after the word "law" on line 5 and insert in lieu thereof the following:

". Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.".

AMENDMENT No. 3203

At the end of the resolution of ratification, add the following:

"IV. The Senate's advice and consent is subject to the following proviso, which shall not be included in the instrument of ratification to be deposited by the President:

The President of the United States shall not deposit the instrument of ratification until such time as he has notified all present and prospective ratifying parties to this Convention that nothing in this Convention requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.".

JUDICIAL IMPROVEMENTS ACT OF 1990

BIDEN (AND THURMOND) AMENDMENT NO. 3204

Mr. BIDEN (for himself and Mr. THURMOND) proposed an amendment to the bill (S. 2648) to amend title 28, United States Code, to provide for civil justice expense and delay reduction plans, authorize additional judicial positions for the courts of appeals and district courts of the United States, and for other purposes, as follows:

On page 32, line 1, strike out all through the end of the bill and insert in lieu thereof:

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

The Congress finds that:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"471. Requirement for a district court civil justice expense and delay reduction plan.
"472. Development and implementation of a civil justice expense and delay reduction plan.
"473. Content of civil justice expense and delay reduction plans.
"474. Review of district court action.
"475. Periodic district court assessment.
"476. Enhancement of judicial information dissemination.
"477. Model civil justice expense and delay reduction plan.
"478. Advisory groups.
"479. Information on litigation management and cost and delay reduction.
"480. Training programs.
"481. Automated case information.
"482. Definitions.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other re-

sources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months of the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years of filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such

group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 479. Information on litigation management and cost and delay reduction

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States Courts shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991 and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

(3) Within eighteen months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such districts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof:

"23. Civil justice expense and delay reduction plans ..... 471".

SEC. 104. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the four-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM.

(a) IN GENERAL.—(1) During the four-year period beginning on January 1, 1991, the Judicial Conference shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the six principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least five of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of three years. At the end of that three-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the six principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of

the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the six principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

SEC. 106. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

(2) 4 additional circuit judges for the fourth circuit court of appeals;

(3) 1 additional circuit judge for the fifth circuit court of appeals;

(4) 1 additional circuit judge for the sixth circuit court of appeals;

(5) 1 additional circuit judge for the eighth circuit court of appeals; and

(6) 2 additional circuit judges for the tenth circuit court of appeals.

(b) TABLES.—In order that the table contained in section 44(a) of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

"Circuits	Number of Judges
District of Columbia	12
First	6
Second	13
Third	14
Fourth	15
Fifth	17
Sixth	16
Seventh	11
Eighth	11
Ninth	28
Tenth	12
Eleventh	12
Federal	12.".

SEC. 203. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the western district of Arkansas;

(2) 2 additional district judges for the northern district of California;

(3) 5 additional district judges for the central district of California;

(4) 1 additional district judge for the southern district of California;

(5) 2 additional district judges for the district of Connecticut;

(6) 2 additional district judges for the middle district of Florida;

(7) 1 additional district judge for the northern district of Florida;

(8) 1 additional district judge for the southern district of Florida;

(9) 1 additional district judge for the middle district of Georgia;

(10) 1 additional district judge for the northern district of Illinois;

(11) 1 additional district judge for the southern district of Iowa;

(12) 1 additional district judge for the western district of Louisiana;

(13) 1 additional district judge for the district of Maine;

(14) 1 additional district judge for the district of Massachusetts;

(15) 1 additional district judge for the southern district of Mississippi;

(16) 1 additional district judge for the eastern district of Missouri;

(17) 1 additional district judge for the district of New Hampshire;

(18) 3 additional district judges for the district of New Jersey;

(19) 1 additional district judge for the district of New Mexico;

(20) 1 additional district judge for the southern district of New York;

(21) 3 additional district judges for the eastern district of New York;

(22) 1 additional district judge for the middle district of North Carolina;

(23) 1 additional district judge for the southern district of Ohio.

(24) 1 additional district judge for the northern district of Oklahoma;

(25) 1 additional district judge for the western district of Oklahoma;

(26) 1 additional district judge for the district of Oregon;

(27) 3 additional district judges for the eastern district of Pennsylvania;

(28) 1 additional district judge for the middle district of Pennsylvania;

(29) 1 additional district judge for the district of South Carolina;

(30) 1 additional district judge for the eastern district of Tennessee;

(31) 1 additional district judge for the western district of Tennessee;

(32) 1 additional district judge for the middle district of Tennessee;

(33) 2 additional district judges for the northern district of Texas;

(34) 1 additional district judge for the eastern district of Texas;

(35) 5 additional district judges for the southern district of Texas;

(36) 3 additional district judges for the western district of Texas;

(37) 1 additional district judge for the district of Utah;

(38) 1 additional district judge for the eastern district of Washington;

(39) 1 additional district judge for the northern district of West Virginia;

(40) 1 additional district judge for the southern district of West Virginia; and

(41) 1 additional district judge for the district of Wyoming.

(b) EXISTING JUDGESHIPS.—(1) The existing district judgeships for the western district of Arkansas, the northern district of Illinois, the northern district of Indiana, the district of Massachusetts, the western district of New York, the eastern district of North Carolina, the northern district of Ohio, and the western district of Washington authorized by section 202(b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353, 98 Stat. 347-348) shall, as of the effective date of this title, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(2)(A) The existing two district judgeships for the eastern and western districts of Arkansas (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be district judgeships for the eastern district of Arkansas only, and the incumbents of such judgeships shall hold the offices under section 133 of title 28, United States Code, as amended by this title.

(B) The existing district judgeship for the northern and southern districts of Iowa (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be a district judgeship for the northern district of Iowa only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(C) The existing district judgeship for the northern, eastern, and western districts of Oklahoma (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) and the occupant of which has his official duty station at Oklahoma City on the date of enactment of this title, shall be a district judgeship for the western district of Oklahoma only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the northern district of Alabama;

(2) 1 additional district judge for the eastern district of California;

(3) 1 additional district judge for the district of Hawaii;

(4) 1 additional district judge for the central district of Illinois;

(5) 1 additional district judge for the southern district of Illinois;

(6) 1 additional district judge for the district of Kansas;

(7) 1 additional district judge for the western district of Michigan;

(8) 1 additional district judge for the eastern district of Missouri;

(9) 1 additional district judge for the district of Nebraska;

(10) 1 additional district judge for the northern district of New York;

(11) 1 additional district judge for the northern district of Ohio;

(12) 1 additional district judge for the eastern district of Pennsylvania; and

(13) 1 additional district judge for the eastern district of Virginia.

The first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring five years or more after the effective date of this title, shall not be filled.

(d) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsections (a) and (b) of this section, such table is amended to read as follows:

"DISTRICTS	JUDGES
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	8
Arkansas:	
Eastern	5
Western	3
California:	
Northern	14
Eastern	6
Central	27
Southern	8
Colorado	7
Connecticut	8
Delaware	4
District of Columbia	15
Florida:	
Northern	4
Middle	11
Southern	16
Georgia:	
Northern	11
Middle	4
Southern	3
Hawaii	3
Idaho	2
Illinois:	
Northern	22
Central	3
Southern	3
Indiana:	
Northern	5
Southern	5
Iowa:	
Northern	2
Southern	3
Kansas	5
Kentucky:	
Eastern	4
Western	4
Eastern and Western	1
Louisiana:	
Eastern	13
Middle	2
Western	7
Maine	3
Maryland	10
Massachusetts	13
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	
Northern	3
Southern	6
Missouri:	
Eastern	6
Western	5
Eastern and Western	2
Montana	3
Nebraska	3
Nevada	4
New Hampshire	3
New Jersey	17
New Mexico	5
New York:	
Northern	4
Southern	28
Eastern	15
Western	4
North Carolina:	
Eastern	4
Middle	4
Western	3
North Dakota	2
Ohio:	
Northern	11
Southern	8
Oklahoma:	
Northern	3
Eastern	1
Western	6
Northern, Eastern, and Western	1
Oregon	6
Pennsylvania:	
Eastern	22
Middle	6
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	9
South Dakota	3
Tennessee:	
Eastern	5
Middle	4
Western	5
Texas:	
Northern	12
Southern	18
Eastern	7
Western	10
Utah	5
Vermont	2
Virginia:	
Eastern	9
Western	4
Washington:	
Eastern	4
Western	7
West Virginia:	
Northern	3
Southern	5
Wisconsin:	
Eastern	4
Western	2
Wyoming	3.".

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this title.

SEC. 205. STUDY BY GENERAL ACCOUNTING OFFICE.

(a) IN GENERAL.—The Comptroller General of the United States shall review the policies, procedures, and methodologies used by the Judicial Conference of the United States in recommending to the Congress the creation of additional Federal judgeships. In conducting such review the Comptroller General shall, at a minimum, determine the extent to which such policies, procedures, and methodologies—

(1) provide an accurate measure of the workload of existing judges;

(2) are applied consistently to the various circuit courts of appeals and district courts; and

(3) provide an accurate indicator of the need for additional judgeships.

(b) REPORT TO CONGRESS.—The Comptroller General shall, not later than 18 months after the date of the enactment of this Act, report the results of the review conducted under subsection (a) to the Committees on the Judiciary of the House of Representatives and the Senate. The report shall include such recommendations as the Comptroller General considers appropriate for revisions of the policies, procedures, and methodologies used by the Judicial Conference that were reviewed in the report.

SEC. 206. EFFECTIVE DATE.

This title shall take effect on the date of enactment of this title.

TITLE III—IMPLEMENTATION OF FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

SEC. 301. SHORT TITLE.

This title may be cited as the "Federal Courts Study Committee Implementation Act of 1990".

SEC. 302. STUDY OF INTERCIRCUIT CONFLICTS AND STRUCTURAL ALTERNATIVES FOR THE COURTS OF APPEALS BY FEDERAL JUDICIAL CENTER.

(a) INTERCIRCUIT CONFLICTS.—The Board of the Federal Judicial Center is requested to conduct a study and submit to the Congress a report by January 1, 1992, on the number and frequency of conflicts among the judicial circuits in interpreting the law that remain unresolved because they are not heard by the Supreme Court.

(b) FACTORS TO CONSIDER IN STUDY.—In conducting such a study, the Center should consider, to the extent feasible, all relevant factors, such as whether the conflict—

(1) imposes economic costs or other harm on persons engaging in interstate commerce;

(2) encourages forum shopping among circuits;

(3) creates unfairness to litigants in different circuits, as in allowing Federal benefits in one circuit that are denied in other circuits; or

(4) encourages nonacquiescence by Federal agencies in the holdings of the courts of appeals for different circuits,

but are unlikely to be resolved by the Supreme Court.

(c) STRUCTURAL ALTERNATIVES FOR THE COURTS OF APPEALS.—The Board of the Federal Judicial Center is requested to study the full range of structural alternatives for the Federal Courts of Appeals and submit its report to the Congress and the Judicial Conference of the United States, no later than 2 years after the date of the enactment of this Act.

SEC. 303. EFFECT OF APPOINTMENT OF JUDGE AS DIRECTOR OF CERTAIN JUDICIAL BRANCH AGENCIES.

Section 133 of title 28, United States Code, is amended by adding at the end thereof the following:

(1) by inserting "(a)" before "The President"; and

(2) by adding at the end thereof the following:

"(b)(1) In any case in which a judge of the United States (other than a senior judge) assumes the duties of a full-time office of Federal judicial administration, the President shall appoint, by and with the advice and consent of the Senate, an additional judge for the court on which such judge serves. If the judge who assumes the duties of such full-time office leaves that office and resumes the duties as an active judge of the court, then the President shall not appoint a judge to fill the first vacancy which occurs thereafter in that court.

"(2) For purposes of paragraph (1), the term 'office of Federal judicial administration' means a position as Director of the Federal Judicial Center, Director of the Administrative Office of the United States Courts, administrative assistant to the Chief Justice.".

SEC. 304. EXTENSION OF TERMS OF OFFICE OF BANKRUPTCY JUDGES.

Section 152(a) of title 28, United States Code, is amended by inserting after the third sentence the following: "However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor.".

SEC. 305. APPEALS OF JUDGMENTS, ORDERS, AND DECREES OF BANKRUPTCY COURTS.

Section 158(b) of title 28, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and

(2) by inserting after paragraph (1) the following:

"(2) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.".

SEC. 306. RETIREMENT SYSTEM FOR CLAIMS COURT JUDGES.

(a) NEW RETIREMENT SYSTEM.—(1) Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 178. Retirement of judges of the Claims Court

"(a) A judge of the United States Claims Court who retires from office after attaining the age and meeting the service requirements, whether continuously or otherwise, of this subsection shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime, an annuity equal to the salary payable to Claims Court judges in regular active service. The age and service requirements for retirement under this subsection are as follows:

"Attained Age:	Years of Service:
65	15
66	14
67	13
68	12
69	11
70	10.

"(b) A judge of the Claims Court who is not reappointed following the expiration of the term of office of such judge, and who retires upon the completion of such term shall, subject to subsection (f), be entitled to receive, during the remainder of such judge's lifetime, an annuity equal to the salary payable to Claims Court judges in regular active service, if—

"(1) such judge has served at least 1 full term as judge of the Claims Court, and

"(2) not earlier than 9 months before the date on which the term of office of such judge expired, and not later than 6 months before such date, such judge advised the President in writing that such judge was willing to accept reappointment as a judge of the Claims Court.

"(c) A judge of the Claims Court who has served at least 5 years, whether continuously or otherwise, as such a judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime—

"(1) an annuity equal to 50 percent of the salary payable to Claims Court judges in regular active service, if before retirement such judge served less than 10 years, or

"(2) an annuity equal to the salary payable to Claims Court judges in regular active service, if before retirement such judge served at least 10 years.

"(d) A judge who retires under subsection (a) or (b), may, at or after such retirement, be called upon by the chief judge of the Claims Court to perform such judicial duties with the Claims Court as may be requested of the retired judge for any period or periods specified by the chief judge, except that in the case of any such judge—

"(1) the aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and

"(2) he or she shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a Claims Court judge in regular active service. Any individual performing judicial duties pursuant to this subsection shall receive the allowances for official travel and other expenses of a judge in regular active service.

"(e)(1) Any judge who retires under the provisions of subsection (a) or (b) of this section shall be designated 'senior judge'.

"(2) Any judge who retires under this section shall not be counted as a judge of the Claims Court for purposes of the number of judgeships authorized by section 171 of this title.

"(f)(1) A judge shall be entitled to an annuity under this section if the judge elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts in writing. Such an election—

"(A) may be made only while an individual is a judge of the Claims Court (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, such election may be made at any time before the day after the day on which his or her successor takes office); and

"(B) once made, shall, subject to subsection (k), be irrevocable.

"(2) A judge who elects to receive an annuity under this section shall not be entitled to receive—

"(A) any annuity to which such judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84, of title 5, for service performed as a judge or otherwise;

"(B) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

"(C) retired pay under section 7447 of the Internal Revenue Code of 1986; or

"(D) retired pay under section 4096 of title 38.

"(g) For purposes of calculating the years of service of an individual under subsections (a) and (c), only those years of service as a judge of the Claims Court or a commissioner of the United States Court of Claims shall be credited, and that portion of the aggregate number of years of such service that is a fractional part of 1 year shall not be credited if it is less than 6 months, and shall be credited if it is 6 months or more.

"(h) An annuity under this section shall be payable at the times and in the same manner as the salary of a Claims Court judge in regular active service. Such annuity shall begin to accrue on the day following the day on which the annuitant's salary as a judge in regular active service ceases to accrue.

"(i)(1) Payments under this section which would otherwise be made to a judge of the Claims Court based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

"(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

"(3) As used in this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or court of Indian offense.

"(j)(1) Subject to paragraph (2), any judge of the Claims Court who retires under this section and who thereafter in the practice of law represents (or supervises or directs the representation of) a client in making any civil claim against the United States or any agency thereof shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he so practices law.

"(2) If a judge of the Claims Court who retires under this section fails during any calendar year to perform judicial duties required of such judge by subsection (d), such judge shall forfeit all rights to an annuity under this section for the 1-year period which begins on the first day on which he or she so fails to perform such duties.

"(3) If a judge of the Claims Court who retires under this section accepts compensation for civil office or employment under the Government of the United States (other than the performance of judicial duties under subsection (d)), such judge shall forfeit all rights to an annuity under this section for the period for which such compensation is received.

"(4)(A) If a judge makes an election under this paragraph—

"(i) paragraphs (1) and (2) (and subsection (d)) shall not apply to such judge beginning on the date such election takes effect, and

"(ii) the annuity payable under this section to such judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such judge is entitled on the day before such effective date.

"(B) An election under subparagraph (A)—

"(i) may be made by a judge only if such judge meets the age and service requirements for retirement under subsection (a),

"(ii) may be made only during the period during which such judge may make an election to receive an annuity under this section or while the judge is receiving an annuity under this section, and

"(iii) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

"(C) Any election under this paragraph shall take effect on the first day of the first month following the month in which the election is made.

"(k)(1) Notwithstanding subsection (f)(1)(B), an individual who has filed an election under subsection (f) to receive an annuity may revoke such election at any time before the first day on which such annuity would (but for such revocation) begin to accrue with respect to such individual.

"(2) Any revocation under this subsection shall be made by filing a notice thereof in writing with the Director of Administrative Office of the United States Courts.

"(3) In the case of any revocation under this subsection—

"(A) for purposes of this section, the individual shall be treated as not having filed an election under subsection (b) to receive an annuity,

"(B) for purposes of section 376 of this title—

"(i) the individual shall be treated as not having filed an election under section 376(a)(1), and

"(ii) section 376(g) shall not apply, and the amount credited to such individual's account (together with interest at 3 percent per annum, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual,

"(C) no credit shall be allowed for any service as a judge of the Claims Court or as a commissioner of the United States Court of Claims unless with respect to such service either there has been deducted and withheld the amount required by chapter 83 or 84 (as the case may be) of title 5 or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

"(D) the Claims Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (f), and

"(E) if subparagraph (D) is complied with, service on the Claims Court or as a commissioner of the United States Court of Claims shall be treated as service with respect to which deductions and contributions had been made during the period of service.

"(l)(1) There is established in the Treasury a fund which shall be known as the 'Claims Court Judges Retirement Fund'. The Fund is appropriated for the payment of annuities and other payments under this section.

"(2) The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Claims Court Judges Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

"(3)(A) There are authorized to be appropriated to the Claims Court Judges Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

"(B) For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Claims Court Judges Retirement Fund, over the balance in the Fund as of the date the unfunded liability is determined. In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

"(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.".

(2) The table of sections at the beginning of chapter 7 of title 28, United States Code, is amended by adding at the end the following new item:

"178. Retirement of judges of the Claims Court.".

(b) JUDICIAL SURVIVORS' ANNUITIES.—(1) Section 376 of title 28, United States Code, is amended as follows:

(A) Subsection (a)(1) is amended—

(i) by striking out "or" at the end of subparagraph (E);

(ii) by adding "or" at the end of subparagraph (F);

(iii) by inserting after subparagraph (F) the following:

"(G) a judge of the United States Claims Court;";

(iv) by striking out "or (v)" and inserting in lieu thereof "(v)"; and

(v) by inserting before the semicolon at the end thereof the following: ", or (vi) the date of the enactment of the Federal Court Study Committee Implementation Act of 1990, in the case of a full-time judge of the Claims Court in active service on that date".

(B) Subsection (a)(2) is amended—

(i) by striking out "and" at the end of subparagraph (E);

(ii) by adding "and" at the end of subparagraph (F); and

(iii) by adding at the end thereof the following:

"(G) in the case of a judge of the United States Claims Court, an annuity paid under section 178 of this title;".

(C) Subsection (b) is amended in the last sentence by striking out "section 377" each place it appears and inserting in each such place "section 178 or 377".

(c) CIVIL SERVICE RETIREMENT SYSTEM.—(1) Section 8331 of title 5, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (24);

(B) by striking out the period at the end of paragraph (25) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(26) 'Claims Court judge' means a judge of the United States Claims Court who is appointed under chapter 7 of title 28 or who has served under section 167 of the Federal Courts Improvement Act of 1982.".

(2) Section 8334 of title 5, United States Code, is amended—

(A) in subsection (a)(1), by inserting "a Claims Court judge," after "Member,"; and

(B) in subsection (c), by inserting at the end of the table the following:

"Claims Court Judge.....	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to September 30, 1988.
	8	After September 30, 1988.".

(3) Section 8336(k) of title 5, United States Code, is amended to read as follows:

"(k) A bankruptcy judge, United States magistrate, or Claims Court judge who is separated from service, except by removal, after becoming 62 years of age and completing 5 years of civilian service, or after becoming 60 years of age and completing 10 years of service as a bankruptcy judge, United States magistrate, or Claims Court judge, is entitled to an annuity.".

(4) Section 8339(n) of title 5, United States Code, is amended to read as follows:

"(n) The annuity of an employee who is a Claims Court judge, bankruptcy judge, or United States magistrate is computed, with respect to service as a Claims Court judge, as a commissioner of the Court of Claims, as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate, and as a United States commissioner and with respect to the military service of any such individual (not exceeding 5 years) creditable under section 8332 of this title, by multiplying 2½ percent of the individual's average pay by the years of that service.".

(d) THRIFT SAVINGS PLAN.—(1) Subchapter III of chapter 84 of title 5, United States Code, is amended by adding at the end thereof the following:

"§ 8440b. Claims Court judges

"(a)(1) A judge of the United States Claims Court who is covered by section 178 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

"(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to this chapter.

"(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to Claims Court judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

"(2) The amount contributed by a Claims Court judge for any pay period shall not exceed 5 percent of basic pay for such pay period.

"(3) No contributions shall be made under section 8432(c) of this title for the benefit of a Claims Court judge making contributions under subsection (a) of this section.

"(4)(A) Section 8433(b) of this title applies to a Claims Court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an annuity under section 178 of title 28 (including a disability annuity under subsection (d) of such section).

"(B) Section 8433(d) of this title applies to any Claims Court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an annuity under section 178 of title 28.

"(5) With respect to Claims Court judges to whom this section applies, retirement under section 178 of title 28 is a separation from service for purposes of this subchapter and subchapter VII.

"(6) For purposes of this section, the terms 'retirement' and 'retire' include removal from office under section 178(c) of title 28 on the sole ground of mental or physical disability.

"(7) Sums contributed pursuant to this section by Claims Court judges, as well as all previous contributions to the Thrift Savings Fund by those judges, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

"(8) In the case of a Claims Court judge who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 178 of title 28, such annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.".

(2) The table of sections at the beginning of chapter 84 of title 5, United States Code, is amended by adding at the end thereof the following:

"8440b. Claims Court judges.".

(e) TECHNICAL AND CONFORMING AMENDMENTS.—(1)(A) Section 402(1) of the Judicial Improvements and Access to Justice Act (102 Stat. 4650) is amended by striking out "redesignating paragraph (18)" and inserting in lieu thereof "redesignating paragraph (19)".

(B) Section 604(a) of title 28, United States Code, (relating to the duties of the Director of the Administrative Office of the United States Courts), as amended pursuant to the amendment made by subparagraph (A) of this paragraph, is amended—

(i) in paragraph (7) by inserting "judges of the United States Claims Court," after "judges of the United States,";

(ii) in paragraph (22) by adding "; and" after the semicolon;

(iii) by redesignating paragraph (23) as paragraph (24); and

(iv) by inserting after paragraph (22) the following:

"(23) Regulate and pay annuities to judges of the United States Claims Court in accordance with section 178 of this title; and".

(2) Section 8334(i) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) Notwithstanding any other provision of law, a judge of the United States Claims Court who is covered by section 178 of title 28 shall not be subject to deductions and contributions to the Fund if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge shall be entitled to a lump-sum credit under section 8342(a) of this title.".

(3) Section 8402 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(g) A judge of the United States Claims Court who is covered by section 178 of title 28 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.".

(f) EFFECTIVE DATE.—This section and the amendments made by this section shall apply to judges of, and senior judges in active service with, the United States Claims Court on or after the date of the enactment of this Act.

SEC. 307. APPOINTMENT OF DIRECTOR AND DEPUTY DIRECTOR OF THE ADMINISTRATIVE OFFICE.

Section 601 of title 28, United States Code, is amended in the second sentence by striking out "Supreme Court" and inserting in lieu thereof "Chief Justice of the United States, after consulting with the Judicial Conference".

SEC. 308. MAGISTRATES.

(a) CONSENT TO TRIAL IN CIVIL ACTIONS.—Section 636(c)(2) of title 28, United States Code, is amended—

(1) in the first sentence, by striking out "their right to consent to the exercise of" and inserting in lieu thereof "the availability of a magistrate to exercise"; and

(2) by striking out the third sentence and inserting in lieu thereof the following: "Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences.".

(b) EXTENSION OF TERMS OF OFFICE OF MAGISTRATES.—Section 631(f) of title 28, United States Code, is amended by striking out "60" and inserting in lieu thereof "180".

SEC. 309. APPEAL OF CERTAIN DETERMINATIONS RELATING TO BANKRUPTCY CASES.

(a) ABSTENTION DETERMINATIONS UNDER TITLE 11, UNITED STATES CODE.—Section 305(c) of title 11, United States Code, is amended by inserting before the period the following: "by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title".

(b) ABSTENTION DETERMINATIONS UNDER TITLE 28, UNITED STATES CODE.—The second sentence of section 1334(c)(2) of title 28, United States Code, is amended—

(1) by inserting "or not to abstain" after "to abstain", and

(2) by inserting the following before the period: "by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title".

(c) REMAND DETERMINATIONS UNDER TITLE 28, UNITED STATES CODE.—The second sentence of section 1452(b) of title 28, United States Code, is amended by inserting the following before the period: "by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title".

SEC. 310. SUPPLEMENTAL JURISDICTION.

(a) GRANT OF JURISDICTION.—Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1367. Supplemental jurisdiction

"(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

"(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

"(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

"(1) the claim raises a novel or complex issue of State law,

"(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

"(3) the district court has dismissed all claims over which it has original jurisdiction, or

"(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

"(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

"(e) As used in this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1367. Supplemental jurisdiction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to civil ac-

tions commenced on or after the date of the enactment of this Act.

SEC. 311. VENUE.

Section 1391 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "the judicial district" and all that follows through "arose" and inserting in lieu thereof the following: "(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced";

(2) in subsection (b), by striking out "may be brought" and all that follows through "law" and inserting in lieu thereof the following: "may, except as otherwise provided by law, be brought only if (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought";

(3) in subsection (e) by striking out "or (2)" and all that follows through "(4)", and inserting in lieu thereof "(2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3)".

SEC. 312. REMOVAL OF SEPARATE AND INDEPENDENT CLAIMS.

Section 1441(c) of title 28, United States Code, is amended—

(1) by striking out ", which would be removable if sued upon alone" and inserting in lieu thereof "within the jurisdiction conferred by section 1331 of this title"; and

(2) by striking out "remand all matters not otherwise within its original jurisdiction" and inserting in lieu thereof "may remand all matters in which State law predominates".

SEC. 313. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following:

"§ 1658. Time limitations on the commencement of civil actions arising under Acts of Congress

"Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1658. Time limitations on the commencement of civil actions arising under Acts of Congress.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to causes of action accruing on or after the date of the enactment of this Act.

SEC. 314. WITNESS AND JUROR FEES.

(a) WITNESS FEES.—Section 1821(b) of title 28, United States Code, is amended by striking out "$30" and inserting in lieu thereof "$40".

(b) JUROR FEES.—Section 1871(b) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "$30" and inserting in lieu thereof "$40";

(2) in paragraph (2) by striking out "$5" and inserting in lieu thereof "$10"; and

(3) in paragraph (3) by striking out "$5" and inserting in lieu thereof "$10".

SEC. 315. POWER OF SUPREME COURT TO DEFINE FINAL DECISION FOR PURPOSES OF SECTION 1291 OF TITLE 28, UNITED STATES CODE.

Section 2072 of title 28, United States Code, is amended by adding at the end thereof the following:

"(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.".

SEC. 316. EXTENSION OF LIFE OF PAROLE COMMISSION.

For the purposes of section 235(b) of Public Law 98-473 as it relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to "five years" or a "five-year period" shall be deemed a reference to "ten years" or a "ten-year period", respectively.

SEC. 317. BANKRUPTCY ADMINISTRATOR PROGRAM.

(a) EXTENSION.—Section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 28 U.S.C. 581 note) is amended—

(1) in subparagraph (A)(ii), by striking out "October 1, 1992" and inserting in lieu thereof "October 1, 2002";

(2) in subparagraph (F)(i)(II), by striking out "October 1, 1992" and inserting in lieu thereof "October 1, 2002";

(3) in subparagraph (F)(i), by striking out "October 1, 1993" and inserting in lieu thereof "October 1, 2003"; and

(4) in subparagraph (F)(ii), by striking out "October 1, 1993" and inserting in lieu thereof "October 1, 2003".

(b) STANDING.—A bankruptcy administrator may raise and may appear and be heard on any issue in any case under title 11, United States Code, but may not file a plan pursuant to section 1121(c) of such title.

(c) POWER OF THE COURT.—Section 302(d)(3)(A)(ii) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, as amended by subsection (a), is further amended by inserting before the period at the end thereof the following: ", except that the amendment to section 105(a) of title 11, United States Code, shall become effective as of the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990".

SEC. 318. STUDY OF FEDERAL DEFENDER PROGRAM.

(a) STUDY REQUIRED.—The Judicial Conference of the United States shall conduct a study of the Federal defender program under the Criminal Justice Act of 1964, as amended (enacting section 3006A of title 18, United States Code).

(b) ASSESSMENT OF PROGRAM.—In conducting the study, the Judicial Conference shall assess the effectiveness of the Federal defender program, including the following:

(1) The impact of judicial involvement in the selection and compensation of the Federal public defenders and the independence of Federal defender organizations, including the establishment and termination of Federal defender organizations and the Federal public defender and the community defender options.

(2) Equal employment and affirmative action procedures in the various Federal defender programs.

(3) Judicial involvement in the appointment and compensation of panel attorneys and experts.

(4) Adequacy of compensation for legal services provided under the Criminal Justice Act of 1964.

(5) The quality of the Criminal Justice Act of 1964 representation.

(6) The adequacy of administrative support for defender services programs.

(7) Maximum amounts of compensation for attorneys with regard to appeals of habeas corpus proceedings.

(8) Contempt, sanctions, and malpractice representation of panel attorneys.

(9) Appointment of counsel in multidefendant cases.

(10) Early appointment of counsel in general, and prior to the pretrial services interview in particular.

(11) The method and source of payment of the fees and expenses of fact witnesses for defendants with limited funds.

(12) The provisions of services or funds to financially eligible arrested but unconvicted persons for noncustodial transportation and subsistence expenses, including food and lodging, both prior to and during judicial proceedings.

(c) REPORT.—No later than March 31, 1992, the Judicial Conference shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the results of the study required under subsection (a). The report shall include—

(1) any recommendations for legislation that the Judicial Conference finds appropriate;

(2) a proposed formula for the compensation of Federal defender program counsel that includes an amount to cover reasonable overhead and a reasonable hourly fee; and

(3) a discussion of any procedural or operational changes that the Judicial Conference finds appropriate for implementation by the courts of the United States.

SEC. 319. AMENDMENTS TO THE ETHICS IN GOVERNMENT ACT OF 1978.

Section 502 of the Ethics in Government Act of 1978 (5 U.S.C. App.), as amended by the Ethics Reform Act of 1989, is amended—

(1) by inserting "(a) LIMITATIONS.—" before the first sentence; and

(2) by adding at the at the end thereof the following new subsection:

"(b) SENIOR JUDGES TEACHING COMPENSATION.—Any compensation for teaching received by a senior judge (as designated under section 294(b) of title 28, United States Code) approved under subsection (a)(5) of this section shall not be treated as outside earned income for the purpose of the limitation under section 501(a).".

SEC. 320. BIENNIAL CIRCUIT JUDICIAL CONFERENCE.

The first paragraph of section 333 of title 28, United States Code, is amended—

(1) in the first sentence, by striking out "annually" and inserting "biennially, and may summon annually,"; and

(2) in the last sentence—

(A) by striking out "the United States District Court for the District of the Canal Zone,"; and

(B) by striking out "and the District Court of the Virgin Islands shall also be summoned annually" and inserting in lieu thereof "the District Court of the Virgin Islands, and the District Court of the North-

ern Mariana Islands shall also be summoned biennially, and may be summoned annually.".

SEC. 321. CHANGE OF NAME OF UNITED STATES MAGISTRATES.

After the enactment of this Act, each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge, and any reference to any United States magistrate or magistrate that is contained in title 28, United States Code, in any other Federal statute, or in any regulation of any department or agency of the United States in the executive branch that was issued before the enactment of this Act, shall be deemed to refer to a United States magistrate judge appointed under section 631 of title 28, United States Code.

SEC. 322. LENGTH OF SERVICE REQUIRED FOR ELIGIBILITY UNDER THE JUDICIAL SURVIVORS' ANNUITIES ACT.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Section 376(h)(1) of title 28, United States Code, is amended—

(1) in the matter preceding subparagraph (A)—

(A) by inserting "(A)" before "after having completed"; and

(B) by inserting after "have actually been made" the following: ", or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made";

(2) by redesignating existing subparagraph (A) as clause (i);

(3) in existing subparagraph (B)—

(A) by striking out "(B)" and inserting in lieu thereof "(ii)";

(B) by striking out "(i)" and inserting in lieu thereof "(I)"; and

(C) by striking out "(ii)" and inserting in lieu thereof "(II)";

(4) in existing subparagraph (C)—

(A) by striking out "(C)" and inserting in lieu thereof "(iii)";

(B) in clause (i)—

(i) by striking out "(i)" and inserting in lieu thereof "(I)";

(ii) by striking out "subparagraph (1)(A) of this subsection" and inserting in lieu thereof "clause (i) of this paragraph";

(iii) by striking out "(ii)" and inserting in lieu thereof "(II)"; and

(iv) by striking out "(iii)" and inserting in lieu thereof "(III)"; and

(5) by adding at the end of subsection (h) the following:

"(6) In the case of the survivor or survivors of a judicial official to whom paragraph (1)(B) applies, there shall be deducted from the annuities otherwise payable under this section an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months prior to the judicial official's death.".

(b) DEFINITION OF ASSASSINATION.—Section 376(a) of title 28, United States Code, is amended—

(1) in paragraph (5)(C) by striking out "and" after the semicolon;

(2) in paragraph (6) by striking out the period and inserting in lieu thereof "; and"; and

(3) by inserting at the end the following new paragraph:

"(7) 'assassinated' and 'assassination' mean the killing of a judicial official described in paragraph (1) (A), (B), (F), or (G) of this section that is motivated by the performance by that judicial official of his or her official duties.".

(c) DETERMINATION OF ASSASSINATION BY DIRECTOR.—Section 376(i) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(i)"; and

(2) by adding at the end thereof the following:

"(2) The Director of the Administrative Office of the United States Courts shall determine whether the killing of a judicial official was an assassination, subject to review only by the Judicial Conference of the United States. The head of any Federal agency that investigates the killing of a judicial official shall provide information to the Director that would assist the Director in making such determination.".

(d) COMPUTATION OF WIDOW'S AND WIDOWER'S ANNUITY.—Section 376(l)(1)(ii) of title 28, United States Code, is amended by striking out "but more than eighteen months,".

(e) REFUND OF CONTRIBUTIONS TO FUND.—Section 376(o) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(o)";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) in subparagraph (A) as so redesignated, by inserting "subject to paragraph (2) of this subsection," before "before having completed"; and

(4) by adding at the end thereof the following new paragraph:

"(2) In cases in which a judicial official dies as a result of assassination and leaves a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section, paragraph (1)(A) of this subsection shall not apply.".

(f) OTHER BENEFITS.—Section 376 of title 28, United States Code, is amended by adding at the end thereof the following:

"(u) In the case of a judicial official who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of title 5 for any year would exceed the current salary for that year of the office of the judicial official.".

(g) EFFECTIVE DATE AND TRANSITION.—

(1) EFFECTIVE DATE.—Subject to paragraph (2), the amendments made by this Act shall apply to all judicial officials assassinated on or after May 28, 1979.

(2) RULES FOR RETROACTIVE APPLICATION.—(A) In the case of a judicial official who was assassinated on or after May 28, 1979, and before the date of the enactment of this Act, if the salary deductions provided by subsection (b) of section 376 of title 28, United States Code, or the deposits required by subsection (d) of such section, have been withdrawn pursuant to subsection (o) of such section, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount so withdrawn, with interest on the amount withdrawn at 3 percent per annum compounded on December 31 of each year.

(B) In the case of the survivor or survivors of a judicial official to whom this paragraph applies who had less than 18 months of service before being assassinated, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount of salary deductions that would have been made if such deductions been made for 18 months before the judicial official's death, plus interest as described in subparagraph (A).

(C) Subject to subparagraphs (A) and (B), the survivor or survivors of a judicial official to whom this paragraph applies shall be entitled to the payment of annuities they would have received under section 376 of title 28, United States Code, for the period beginning on the date such judicial official was assassinated and ending the date of the enactment of this Act. The Secretary of the Treasury shall pay into the Judicial Survivors' Annuities fund, out of any money in the Treasury not otherwise appropriated, the amount of the annuities to which the survivor or survivors are entitled under this subparagraph.

(3) DEFINITION.—For purposes of this subsection, the term—

(A) "assassinated" and "assassination" have the meanings given those terms in section 376(a)(7) of title 28, United States Code, as added by this section; and

(B) "judicial official" has the meaning given that term in section 376(a)(1)(A) and (B) of title 28, United States Code.

(g) CONFORMING AMENDMENTS.—Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (h) is amended—

(A) in paragraph (2) by striking out "subparagraphs (1)(A) or (1)(B)" and inserting in lieu thereof "clause (i) or (ii) of paragraph (1)";

(B) in paragraph (3) by striking out "subparagraph" each place it appears and inserting in each such place "paragraph";

(C) in paragraph (4)—

(i) by striking out "subparagraph (1)(B)" each place it appears and inserting in each such place "paragraph (1)(ii)"; and

(ii) by striking out "subparagraph (1)(C)" and inserting in lieu thereof "paragraph (1)(iii)".

(2) Subsection (a)(5)(C) is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

SEC. 323. COMPOSITION OF JUDICIAL COUNCILS.

(a) COMPOSITION OF COUNCILS.—Section 332(a)(1) of title 28, United States Code, is amended to read as follows:

"(a)(1) The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he or she may designate, a meeting of the judicial council of the circuit, consisting of the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit, as such member is determined by majority vote of all such judges of the circuit in regular active services.".

(b) CONFORMING AMENDMENT.—Section 332(a) of title 28, United States Code, is amended by striking out paragraph (3) and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively.

SEC. 324. MISCELLANEOUS PROVISIONS.

(a) PLACE OF HOLDING COURT.—(1) Section 108 of title 28, United States Code, is amended by striking out "and Reno" in the last sentence and inserting in lieu thereof ", Reno, Ely and Lovelock".

(2) Section 112(a) of title 28, United States Code, is amended by striking out "and Utica" in the last sentence and inserting in lieu thereof "Utica, and Watertown".

(b) REVISION OF DIVISIONS OF SOUTH DAKOTA JUDICIAL DISTRICT.—Section 122 of title 28, United States Code, is amended—

(1) in paragraph (3), by striking out "Jackson,"; and

(2) by paragraph (4)—

(A) by inserting "Jackson," after "Harding,"; and

(B) by striking out "Shannon, Washabaugh, and Washington" and inserting in lieu thereof "and Shannon".

SEC. 325. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) TITLE 9, UNITED STATES CODE.—

(1) The section 15 of title 9, United States Code, that is designated "Appeals" is amended by redesignating such section as section 16.

(2) The table of sections at the beginning of chapter 1 of title 9, United States Code, is amended by striking out

"15. Appeals."

and inserting in lieu thereof

"15. Inapplicability of the Act of State doctrine.

"16. Appeals.".

(b) TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended as follows:

(1) Section 332(f)(1) is amended by striking out "(5 U.S.C. 5316)" and inserting in lieu thereof "under section 5315 of title 5".

(2) Section 375(a)(1) is amended by striking out "377 of title" and inserting in lieu thereof "377 of this title".

(3) Section 377 is amended—

(A) in subsection (f) by striking out "any annuity to which" and all that follows through the end of the subsection and inserting in lieu thereof the following:

"(1) any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as such a judge or magistrate or otherwise;

"(2) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

"(3) retired pay under section 7447 of the Internal Revenue Code of 1986; or

"(4) retired pay under section 4096 of title 38."; and

(B) in subsection (h) by striking out "in or after" and inserting in lieu thereof "on or after".

(4) Section 602(b) is amended by striking out "604(a)(15)(B)" and inserting in lieu thereof "604(a)(16)(B)".

(5) Section 995(a)(22) is amended by striking out "and" after the semicolon.

(6) Section 996(b) is amended by striking out "89 (Health Insurance), and 91 (Conflicts of Interest)" and inserting in lieu thereof "and 89 (Health Insurance)".

(7) Section 1499 is amended by inserting "and Safety" after "Hours".

(8) Section 1605(a)(6) is amended by striking out "State" and inserting in lieu thereof "state".

(9) Section 1610 is amended—

(A) in subsection (a)(6) by striking out "State" and inserting in lieu thereof "state"; and

(B) in subsection (e) by striking out "State" and inserting in lieu thereof "state".

(c) OTHER PROVISIONS OF LAW.—(1) Section 1011 of the Judicial Improvements and Access to Justice Act (102 Stat. 4668) is amended—

(A) by striking out "inserting a comma in lieu of the semicolon at the end thereof and adding thereafter" and inserting in lieu thereof "at the end"; and

(B) by striking out ": *Provided*, That" and inserting in lieu thereof ", except that".

(2) Section 204(b)(5)(A)(ii) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (102 Stat. 2201) is amended by striking out "whichever, occurs later," and inserting in lieu thereof "whichever occurs later,".

TITLE IV—JUDICIAL DISCIPLINE AND JUDICIAL REMOVAL

SEC. 401. SHORT TITLE.

This title may be cited as the "Judicial Discipline and Removal Reform Act of 1990".

Subtitle I—Judicial Discipline

SEC. 402. AMENDMENTS TO JUDICIAL COUNCILS REFORM AND JUDICIAL CONDUCT AND DISABILITY ACT OF 1980.

(a) IDENTIFICATION OF COMPLAINTS BY CHIEF JUDGE.—Paragraph (1) of section 372(c) of title 28, United States Code, is amended by adding at the end thereof the following: "In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.".

(b) MEMBERSHIP OF SPECIAL INVESTIGATIVE COMMITTEES.—Paragraph (4) of section 372(c) of such title is amended by adding at the end thereof the following: "A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.".

(c) PUBLIC AVAILABILITY OF IMPEACHMENT RECOMMENDATION.—(1) Paragraph (8) of section 372(c) of such title is amended by adding at the end thereof the following sentence: "Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.".

(2) Paragraph (14) of such section is amended—

(A) by striking out "All" and inserting in lieu thereof "Except as provided in paragraph (8), all";

(B) by striking out "unless" and inserting in lieu thereof "except to the extent that";

(C) in subparagraph (B) by inserting "such disclosure is" before "authorized";

(D) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(E) by inserting the following new subparagraph (A) immediately before subparagraph (B) (as so redesignated):

"(A) the judicial council of the circuit in its discretion releases a copy of a report of a special investigative committee under paragraph (5) to the complainant whose complaint initiated the investigation by that special committee and to the judge or magistrate whose conduct is the subject of the complaint;".

(d) IMPEACHMENT RECOMMENDATIONS WITH RESPECT TO CONVICTED JUDGES.—Section 372(c) of such title is further amended in paragraph (8)—

(1) by inserting "(A)" after "(8)"; and

(2) by adding at the end thereof the following:

"(B) If a judge or magistrate has been convicted of a felony and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under paragraph (7), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.".

(e) RULES BY JUDICIAL CONFERENCE AND JUDICIAL COUNCILS.—Paragraph (11) of section 372(c) of such title is amended by adding at the end thereof the following: "No rule promulgated under this subsection may limit the period of time within which a person may file a complaint under this subsection.".

(f) CONCLUSION OF PROCEEDINGS BY CHIEF JUDGE.—Paragraph (3)(B) of section 372(c) of such title is amended by inserting before the period the following: "or that action on the complaint is no longer necessary because of intervening events".

(g) DISMISSAL OF COMPLAINTS BY JUDICIAL COUNCILS.—Paragraph (6) of section 372(c) of such title is amended—

(1) by striking out "and" at the end of subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following:

"(C) may dismiss the complaint; and".

(h) REIMBURSEMENT FOR EXPENSES AND ATTORNEYS' FEES.—Section 372(c) of such title is further amended—

(1) by redesignating paragraphs (16) and (17) as paragraphs (17) and (18); and

(2) by inserting after paragraph (15) the following new paragraph:

"(16) Upon the request of a judge or magistrate whose conduct is the subject of a complaint under this subsection, the judicial council may, if the complaint has been finally dismissed under paragraph (6)(C), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge or magistrate during the investigation which would not have been incurred but for the requirements of this subsection.".

(i) TECHNICAL CORRECTIONS.—(1) Paragraph (7)(B) of section 372(c) of such title is amended—

(A) by striking out "has engaged in conduct" and inserting in lieu thereof "may have engaged in conduct"; and

(B) in clause (i) by striking out "article I" and inserting in lieu thereof "article II".

(2) Paragraph (14)(C) of such section, as redesignated by subsection (c)(2)(D) of this section, is amended by striking out "subject to the complaint" and inserting in lieu thereof "subject of the complaint".

SEC. 403. CONTEMPT POWER FOR CIRCUIT COUNCILS.

Section 332(d)(2) of title 28, United States Code, is amended by adding at the end thereof the following: "In the case of failure to comply with an order made under this subsection or a subpoena issued under section 372(c) of this title, a judicial council or a special committee appointed under section 372(c)(4) of this title may institute a contempt proceeding in any district court in which the judicial officer or employee of the circuit who fails to comply with the order made under this subsection shall be ordered to show cause before the court why he or she should not be held in contempt of court.".

SEC. 404. AMENDMENT TO OATH OF JUSTICES AND JUDGES.

Section 453 of title 28, United States Code, is amended by striking out "according to the best of my abilities and understanding, agreeably to" and inserting "under".

SEC. 405. AMENDMENT TO ETHICS IN GOVERNMENT ACT.

Section 104(b) of the Ethics in Government Act of 1978 (5 U.S.C. App. 104(b)) is amended by adding at the end thereof the following: "Whenever the Judicial Conference refers a name to the Attorney General under this subsection, the Judicial Conference also shall notify the judicial council of the circuit in which the named individual serves of the referral.".

SEC. 406. ADVISORY COMMITTEES FOR JUDICIAL DISCIPLINE RULES.

Section 2077(b) of title 28, United States Code, is amended by inserting before the period at the end of the first sentence the following: "and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit".

SEC. 407. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect 90 days after the date of the enactment of this Act.

Subtitle II—National Commission on Judicial Impeachment

SEC. 408. SHORT TITLE.

This subtitle may be cited as the "National Commission on Judicial Discipline and Removal Act".

SEC. 409. ESTABLISHMENT.

There is hereby established a commission to be known as the "National Commission on Judicial Discipline and Removal" (hereafter in this subtitle referred to as the "Commission").

SEC. 410. DUTIES OF COMMISSION.

The duties of the Commission are—

(1) to investigate and study the problems and issues involved in the tenure (including discipline and removal) of an article III judge;

(2) to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for discipline or removal of judges that would require amendment to the Constitution; and

(3) to prepare and submit to the Congress, the Chief Justice of the United States, and the President a report in accordance with section 415.

SEC. 411. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 13 members as follows:

(1) Three appointed by the President pro tempore of the Senate.

(2) Three appointed by the Speaker of the House of Representatives.

(3) Three appointed by the Chief Justice of the United States.

(4) Three appointed by the President.

(5) One appointed by the Conference of Chief Justices of the States of the United States.

(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

(c) QUORUM.—Six members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(d) CHAIRMAN.—The members of the Commission shall select one of the members to be the Chairman.

(e) APPOINTMENT DEADLINE.—The first appointments made under subsection (a) shall be made within 60 days after the date of the enactment of this Act.

(f) FIRST MEETING.—The first meeting of the Commission shall be called by the Chairman and shall be held within 90 days after the date of the enactment of this Act.

(g) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(h) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a Member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of a government becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

SEC. 412. COMPENSATION OF THE COMMISSION.

(a) PAY.—(1) Except as provided in paragraph (2), each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

(2) A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

(b) TRAVEL.—All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 413. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) DIRECTOR.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

(b) STAFF.—The Chairman of the Commission may appoint and fix the pay of such additional personnel as the Chairman finds necessary to enable the Commission to carry out its duties. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the annual rate of pay for any individual so appointed may not exceed a rate equal to the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of such title.

(c) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

SEC. 414. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission or, on authorization of the Commission, a member of the Commission may, for the purpose of carrying out this subtitle, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(b) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department, agency, or entity within the executive or judicial branch of the Federal Government information necessary to enable it to carry out this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of any Federal agency is authorized to make any of the facilities and services of such agency available to the Commission to assist the Commission in carrying out its duties under this subtitle.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 415. REPORT.

The Commission shall submit to each House of Congress, the Chief Justice of the United States, and the President a report not later than one year after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

SEC. 416. TERMINATION.

The Commission shall cease to exist on the date 30 days after the date it submits its report to the President and the Congress under section 415.

SEC. 417. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated the sum of $750,000 to carry out the provisions of this subtitle.

SEC. 418. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this Act.

TITLE V—TELEVISION PROGRAM IMPROVEMENT

SEC. 501. TELEVISION PROGRAM IMPROVEMENT.

(a) SHORT TITLE.—This section may be cited as the "Television Program Improvement Act of 1990".

(b) DEFINITIONS.—For purposes of this section—

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition;

(2) the term "person in the television industry" means a television network, any entity which produces programming (including theatrical motion pictures) for telecasting or telecasts programming, the National Cable Television Association, the Association of Independent Television Stations, Incorporated, the National Association of Broadcasters, the Motion Picture Association of America, the Community Antenna Television Association, and each of the networks' affiliate organizations, and shall include any individual acting on behalf of such person; and

(3) the term "telecast" means—

(A) to broadcast by a television broadcast station; or

(B) to transmit by a cable television system or a satellite television distribution service.

(c) EXEMPTION.—The antitrust laws shall not apply to any joint discussion, consideration, review, action, or agreement by or among persons in the television industry for the purpose of, and limited to, developing and disseminating voluntary guidelines designed to alleviate the negative impact of violence in telecast material.

(d) LIMITATIONS.—(1) The exemption provided in subsection (c) shall not apply to any joint discussion, consideration, review, action, or agreement which results in a boycott of any person.

(2) The exemption provided in subsection (c) shall apply only to any joint discussion, consideration, review, action, or agreement engaged in only during the 3-year period beginning on the date of the enactment of this section.

TITLE VI—VISUAL ARTISTS RIGHTS

SEC. 601. SHORT TITLE.

This title may be cited as the "Visual Artists Rights Act of 1990".

SEC. 602. WORK OF VISUAL ART DEFINED.

Section 101 of title 17, United States Code, is amended by inserting after the paragraph defining "widow" the following:

"A 'work of visual art' is—

"(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of two hundred or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

"(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include—

"(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

"(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

"(iii) any portion or part of any item described in clause (i) or (ii);

"(B) any work made for hire; or

"(C) any work not subject to copyright protection under this title.".

SEC. 603. RIGHTS OF ATTRIBUTION AND INTEGRITY.

(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Chapter 1 of title 17, United States Code, is amended by inserting after section 106 the following new section:

§ 106A. Rights of certain authors to attribution and integrity

"(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

"(1) shall have the right—

"(A) to claim authorship of that work, and

"(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

"(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation and

"(3) subject to the limitations set forth in section 113(d), shall have the right—

"(A) to prevent any intentions distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

"(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

"(b) SCOPE AND EXERCISE OF RIGHTS.—Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are coowners of the rights conferred by subsection (a) in that work.

"(c) EXCEPTIONS.—(1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

"(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

"(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of 'work of visual art' in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

"(d) DURATION OF RIGHTS.—(1) With respect to works of visual art created on or after the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

"(2) With respect to works of visual art created before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

"(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

"(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

"(e) TRANSFER AND WAIVER.—(1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

"(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by inserting after the item relating to section 106 the following new item:

"106A. Rights of certain authors to attribution and integrity.".

SEC. 604. REMOVAL OF WORKS OF VISUAL ART FROM BUILDINGS.

Section 113 of title 17, United States Code, is amended by adding at the end thereof the following:

"(d)(1) In a case in which—

"(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), and

"(B) the author consented to the installation of the work in the building either before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal,

then the rights conferred by paragraphs (2) and (3) of section 106A(a) shall not apply.

"(2) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), the author's rights under paragraphs (2) and (3) of section 106A(a) shall apply unless—

"(A) the owner has made a diligent, good faith attempt without success to notify the author of the owner's intended action affecting the work of visual art, or

"(B) the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal.

For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.

"(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection.".

SEC. 605. PREEMPTION.

Section 301 of title 17, United States Code, is amended by adding at the end the following:

"(f)(1) On or after the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, all legal or equitable rights that are equivalent to any of the rights conferred by section 106A with respect to works of visual art to which the rights conferred by section 106A apply are governed exclusively by section 106A and section 113(d) and the provisions of this title relating to such sections. Thereafter, no person is entitled to any such right or equivalent right in any work of visual art under the common law or statutes of any State.

"(2) Nothing in paragraph (1) annuls or limits any right or remedies under the common law or statutes of any State with respect to—

"(A) any cause of action from undertakings commenced before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990;

"(B) activities violating legal or equitable rights that are not equivalent to any of the rights conferred by section 106A with respect to works of visual art; or

"(C) activities violating legal or requitable rights which extend beyond the life of the author.".

SEC. 606. INFRINGEMENT ACTIONS.

(a) IN GENERAL.—Section 501(a) of title 17, United States Code, is amended—

(1) by inserting after "118" the following: "or of the author as provided in section 106A(a)"; and

(2) by striking out "copyright." and inserting in lieu thereof "copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a).".

(b) EXCLUSION OF CRIMINAL PENALTIES.—Section 506 of title 17, United States Code, is amended by adding at the end thereof the following:

"(f) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Nothing in this section applies to infringement of the rights conferred by section 106A(a).".

(c) REGISTRATION NOT A PREREQUISITE TO SUIT AND CERTAIN REMEDIES.—(1) Section 411(a) of title 17, United States Code, is amended in the first sentence by inserting after "United States" the following: "and an action brought for a violation of the rights of the author under section 106A(a)".

(2) Section 412 of title 17, United States Code, is amended by inserting "an action brought for a violation of the rights of the author under section 106A(a) or" after "other than".

SEC. 607. FAIR USE.

Section 107 of title 17, United States Code, is amended by striking out "section 106" and inserting in lieu thereof "sections 106 and 106A".

SEC. 608. STUDIES BY COPYRIGHT OFFICE.

(a) STUDY ON WAVIER OF RIGHTS PROVISION.—

(1) STUDY.—The Register of Copyrights shall conduct a study on the extent to which rights conferred by subsection (a) of section 106A of title 17, United States Code, have been waived under subsection (e)(1) of such section.

(2) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report on the progress of the study conducted under paragraph (1). Not later than 5 years after such date of enactment, the Register of Copyrights shall submit to the Congress a final report on the results of the study conducted under paragraph (1), and any recommendations that the Register may have as a result of the study.

(b) STUDY ON RESALE ROYALTIES.—

(1) NATURE OF STUDY.—The Register of Copyrights, in consultation with the Chair of the National Endowment for the Arts, shall conduct a study on the feasibility of implementing—

(A) a requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and

(B) other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work.

(2) GROUPS TO BE CONSULTED.—The study under paragraph (1) shall be conducted in consultation with other appropriate departments and agencies of the United States, foreign governments, and groups involved in the creation, exhibition, dissemination, and preservation of works of art, including artists, art dealers, collectors of fine art, and curators of art museums.

(3) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report containing the results of the study conducted under this subsection.

SEC. 609. FIRST AMENDMENT APPLICATION.

This title does not authorize any governmental entity to take any action or enforce restrictions prohibited by the First Amendment to the Constitution of the United States.

SEC. 610. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b) and except as provided in subsection (c), this title and the amendments made by this title take effect 6 months after the date of the enactment of this Act.

(b) APPLICABILITY.—The rights created by section 106A of title 17, United States Code, shall apply to—

(1) works created before the effective date set forth in subsection (a) but title to which has not, as of such effective date, been transferred from the author, and

(2) works created on or after such effective date, but shall not apply to any destruction, distortion, mutilation, or other modification (as described in section 106A(a)(3) of such title) of any work which occurred before such effective date.

(c) SECTION 608.—Section 608 takes effect on the date of the enactment of this Act.

TITLE VII—ARCHITECTURAL WORKS

SEC. 701. SHORT TITLE.

This title may be cited as the "Architectural Works Copyright Protection Act".

SEC. 702. DEFINITIONS.

(a) ARCHITECTURAL WORKS.—Section 101 of title 17, United States Code, is amended by inserting after the definition of "anonymous work" the following:

"An 'architectural work' is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.".

(b) BERNE CONVENTION WORK.—Section 101 of title 17, United States Code, is amended in the definition of "Berne Convention Work"—

(1) in paragraph (3)(B) by striking "or" after the semicolon;

(2) in paragraph (4) by striking the period and inserting "; or"; and

(3) by inserting after paragraph (4) the following:

"(5) in the case of an architectural work embodied in a building, such building is erected in a country adhering to the Berne Convention.".

SEC. 703. SUBJECT MATTER OF COPYRIGHT.

Section 102(a) of title 17; United States Code, is amended—

(1) in paragraph (6) by striking "and" after the semicolon;

(2) in paragraph (7) by striking the period and inserting "; and"; and

(3) by adding after paragraph (7) the following: "(8) architectural works.".

SEC. 704. SCOPE OF EXCLUSIVE RIGHTS IN ARCHITECTURAL WORKS.

(a) IN GENERAL.—Chapter 1 of title 17, United States Code, is amended by adding at the end the following:

"§ 120. Scope of exclusive rights in architectural works

"(a) PICTORIAL REPRESENTATIONS PERMITTED.—The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

"(b) ALTERATIONS TO AND DESTRUCTION OF BUILDINGS.—Notwithstanding the provisions of section 106(2), the owners of a building

embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.".

(b) CONFORMING AMENDMENTS.—(1) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end the following:

"120. Scope of exclusive rights in architectural works.".

(2) Section 106 of title 17, United States Code, is amended by striking "119" and inserting "120".

SEC. 705. PREEMPTION.

Section 301(b) of title 17, United States Code, is amended—

(1) in paragraph (2) by striking "or" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; or"; and

(3) by adding after paragraph (3) the following:

"(4) State and local landmarks, historic preservation, zoning, or building codes, relating to architectural works protected under section 102(a)(8).".

SEC. 706. EFFECTIVE DATE.

The amendments made by this title apply to—

(1) any architectural work created on or after the date of the enactment of this Act; and

(2) any architectural work that, on the date of the enactment of this Act, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under title 17, United States Code, by virtue of the amendments made by this title, shall terminate on December 31, 2002, unless the work is constructed by that date.

TITLE VIII.—COMPUTER SOFTWARE

SEN. 801. SHORT TITLE.

This title may be cited as the "Computer Software Rental Amendments Act of 1990".

SEC. 802. R ENTAL OF COMPUTER PROGRAMS.

Section 109(b) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(2) by striking paragraph (1) and inserting the following:

"(b)(1)(A) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording or the owner of copyright in a computer program (including any tape, disk, or other medium embodying such program), and in the case of a sound recording in the musical works embodied therein, neither the owner of a particular phonorecord nor any person in possession of a particular copy of a computer program (including any tape, disk, or other medium embodying such program), may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord or computer program (including any tape, disk, or other medium embodying such program) by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution. The transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes under this subsection.

"(B) This subsection does not apply to—

"(i) a computer program which is embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; or

"(ii) a computer program embodied in or used in conjunction with a limited purpose computer that is designed for playing video games and may be designed for other purposes.

"(C) Nothing in this subsection affects any provision of chapter 9 of this title.

"(2)(A) Nothing in this subsection shall apply to the lending of a computer program for nonprofit purposes by a nonprofit library, if each copy of a computer program which is lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with requirements that the Register of Copyright shall prescribe by regulation.

"(B) Not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990, and at such times thereafter as the Register of Copyright considers appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether this paragraph has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations that the Register of Copyrights considers necessary to carry out the purposes of this subsection."; and

(3) by striking paragraph (4), as redesignated by paragraph (1) of this section, and inserting the following:

"(4) Any person who distributes a phonorecord or a copy of a computer program (including any tape, disk, or other medium embodying such program) in violation of paragraph (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18.".

SEC. 803. PUBLIC DISPLAY OF ELECTRONIC VIDEO GAMES.

Section 109 of title 17, United States Code, is amended by adding at the end the following:

"(e) Notwithstanding the provisions of sections 106(4) and 106(5), in the case of an electronic audiovisual game intended for use in coin-operated equipment, the owner of a particular copy of such game lawfully made under this title, is entitled, without the authority of the copyright owner of the game, to publicly perform or display that game in coin-operated equipment, except that this subsection shall not apply to the any work of authorship embodied in the audiovisual game if the copyright owner of the electronic audiovisual game is not also the copyright owner of the work of authorship.".

SEC. 804. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made in sections 102, 104 and 105 shall take effect on the date of enactment. The amendments made by section 103 shall take effect one year from the date of enactment.

(b) PROSPECTIVE APPLICATION.—Section 109(b) of title 17, United States Code, as amended by section 102 of this Act, shall not affect the right of a person in possession of a particular copy of a computer program, who acquired such copy before the date of the enactment of this Act, to dispose of the possession of the copy on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code, as in effect on the day before such date of enactment.

(c) TERMINATION.—The amendments made by section 102 shall not apply to rentals, leasings, or lendings) occurring on or after October 1, 1997. The amendments made by section 103 shall not apply to public performances or displays that occur on or after October 1, 1995.

SEC. 805. RECORDATION OF SHAREWARE.

(a) IN GENERAL.—The Register of Copyrights is authorized, upon receipt of any document designated as pertaining to computer shareware and the fee prescribed by section 708 of title 17, United States Code, to record the document and return it with a certificate of recordation.

(b) MAINTENANCE OF RECORDS; PUBLICATION OF INFORMATION.—The Register of Copyrights is authorized to maintain current, separate records relating to the recordation of information of documents under subsection (a), and to compile and publish at periodic intervals information relating to such recordations. Such publications shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

(c) DEPOSIT OF COPIES IN LIBRARY OF CONGRESS.—In the case of public domain computer software, at the election of the person recording a document under subsection (a), 2 complete copies of the best edition (as defined in section 101 of title 17, United States Code) of the computer software as embodied in machine-readable form may be deposited for the benefit of the Machine-readable Collections Reading Room of the Library of Congress.

(d) REGULATIONS.—The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions of the Register under this section. All regulations established by the Register are subject to the approval of the Librarian of Congress.

INTER-LOCKING DIRECTORATES AND OFFICERS

METZENBAUM (AND THURMOND) AMENDMENT NO. 3205

Mr. BIDEN (for Mr. METZENBAUM, for himself and Mr. THURMOND) proposed an amendment to the bill (H.R. 29) to amend the Clayton Act regarding inter-locking directorates and officers, as follows:

Strike all after the enacting clause and insert the following:

That this Act may be cited as the antitrust amendments Act of 1990".

SEC. 2. Section 8 of the Clayton Act (15 U.S.C. 19) is amended to read as follows:

"Sec. 8. (a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

"(A) engaged in whole or in part in commerce; and

"(B) by virtue of their business and location of operation, competitors, so that the

elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than $10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

"(2) Notwithstanding the provisions of paragraph (1), simultaneous service as director or officer in any two corporations shall not be prohibited by this section if—

"(A) the competitive sales of either corporation are less than $1,000,000 as adjusted pursuant to paragraph (5) of this subsection;

"(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

"(C) the competitive sale of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, 'competitive sales' means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, 'total sales' means the gross revenues for all products and services sold by one corporation over the corporation's last fiscal year.

"(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

"(4) For purposes of this section, the term 'officer' means an officer elected or chosen by the Board of Directors.

"(5) For each fiscal year commencing after September 30, 1990, the $10,000,000 and $1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than October 30 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

"(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.".

SEC. 3. Section 10 of the Clayton Act (15 U.S.C. 20) is hereby repealed.

SEC. 4. AMENDMENTS.

(a) RESTRAINT OF TRADE AMONG THE STATES.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended—

(1) by striking "one million dollars" and inserting "$10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

(b) MONOPOLY.—Section 2 of the Sherman Act (15 U.S.C. 2) is amended—

(1) by striking "one million dollars" and inserting $10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

(c) OTHER RESTRAINTS OF TRADE.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended—

(1) by striking "one million dollars" and inserting $10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

TREBLE DAMAGES FOR THE UNITED STATES

SEC. 5. Section 4A of the Clayton Act (15 U.S.C. 15a), is amended by striking out "actual" and inserting in lieu thereof "threefold the".

COORDINATED CLEARANCE AND SETTLEMENT ACT

D'AMATO (AND OTHERS) AMENDMENT NO. 3206

Mr. THURMOND (for Mr. D'AMATO, for himself, Mr. BREAUX, Mr. BURDICK, Mr. ROTH and Mr. HEINZ) proposed an amendment to the bill (H.R. 3656) to amend the Secretaries Exchange Act of 1934 to improve the clearance and settlement of transactions in securities and rebated instruments, and for other purposes, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Gas Related Activities Act of 1990".

SEC. 2. RULE OF CONSTRUCTION.

(a) TREATMENT OF CERTAIN ACQUISITIONS INVOLVING GAS COMPANIES OR GAS TRANSPORTATION OR STORAGE.—The acquisition of a registered company of any interest in any natural gas company or of any interest in any company organized to participate in activities involving the transportation or storage of natural gas, shall be deemed, for the purposes of section 11(b)(1) of the Act, to be reasonably incidental or economicallay necessary or appropriate to the operation of such gas utility companies.

(b) TREATMENT OF ACQUISITIONS RELATED TO SUPPLY OF NATURAL GAS; COMMISSION DETERMINATION OF CUSTOMER INTEREST.—The acquisition by a registered company organized to participate in activities (other than those of a natural gas company or involving the transmission or storage of natural gas) related to the supply of natural gas, including exploration, development, production, marketing, manufacture, or other similar activities related to the supply of natural or manufactured gas, shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies, if—

(1) the Commission determines, after notice and opportunity for hearing in which the company proposing the acqusition shall have the burden of proving, that such acquisition is in the interest of consumers of each gas utility company of such registered company or consumers of any other subsidiary of such registered company; and

(2) the Commission determines that such acquisition will not be detrimental to the interest of consumers of any such gas utility company or other subsidiary or to the proper functioning of the registered holding company system.

(c) CASE-BY-CASE DECISIONS REQUIRED.—Each such determination under this section shall be made on a case-by-case basis, and not be based on any preset criteria.

(d) SAVINGS PROVISION.—Nothing herein shall be construed to affect the applicability of any other provision of the Act to the acquisition or retention of any such interest by any such company.

(e) DEFINITIONS.—For purposes of this section—

(1) the term "registered company" means a company registered under the Act solely by reason of direct or indirect ownership of voting securities of one or more gas utility companies, or any subsidiary company of such registered company;

(2) the term "natural gas company" has the meaning given such term under the Natural Gas Act (15 U.S.C. 717(a) et seq.)); and

(3) the term "the Act" means the Public Utility Holding Company Act of 1935.

Amend the title so as to read: "An Act to clarify the application of the functional relationship test to gas utility holding companies registered under the Public Utility Holding Company Act of 1935.".

TEMPORARY EXTENSION OF CERTAIN HOUSING AND COMMUNITY DEVELOPMENT LAWS

CRANSTON (AND D'AMATO) AMENDMENT NO. 3207

Mr. CRANSTON (for himself and Mr. D'AMATO) proposed an amendment to the bill (H.R. 5933) to provide for the temporary extension of the certain laws relating to housing and community development, as follows:

Amend the bill by striking "February 1, 1991" wherever it appears and inserting in lieu thereof "November 30, 1990".

NIOBRARA SCENIC RIVER DESIGNATION ACT

EXON AMENDMENT NO. 3208

Mr. REID (for Mr. EXON) proposed an amendment to the amendment of the House to the bill (S. 280) to amend the Wild and Scenic Rivers Act by designating a segment of the Niobrara River in Nebraska as a component of the National Wild and Scenic Rivers System, as follows:

Beginning on page 1, line 4, of the House amendment, delete section 2 in its entirety, insert the following new sections, and renumber the subsequent sections accordingly:

"SEC. 2. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274 (a)) is amended by adding at the end thereof the following:

"( ) NIOBRARA, NEBRASKA.—(A) The 40-mile segment from Borman Bridge southeast of Valentine downstream to its confluence with Chimney Creek and the 30-mile segment from the river's confluence with Rock Creek downstream to the State Highway 137 bridge, both segments to be classified as scenic and administered by the Secretary of the Interior. That portion of the 40-mile segment designated by this subparagraph located within the Fort Niobrara Na-

tional Wildlife Refuge shall continue to be managed by the Secretary through the Director of the United States Fish and Wildlife Service.

"(B) The 25-mile segment from the western boundary of Knox County to its confluence with the Missouri River, including that segment of the Verdigre Creek from the North municipal boundary of Verdigre, Nebraska, to its confluence with the Niobrara, to be administered by the Secretary of the Interior as a recreational river.

After the consultation with State and local governments and the interested public, the Secretary shall take such action as is required under subsection (b) of this section.

"( ) MISSOURI RIVER, NEBRASKA AND SOUTH DAKOTA.—The 39-mile segment from the headwaters of Lewis and Clark Lake to the Fort Randall Dam, to be administered by the Secretary of the Interior as a recreational river."

SEC. 3. STUDY OF 6-MILE SEGMENT.

(a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276 (a)) is amended by adding the following at the end:

"( ) NIOBRARA, NEBRASKA.—The 6-mile segment of the river from its confluence with Chimney Creek to its confluence with Rock Creek."

(b) WATER RESOURCES PROJECT.—If funds are not authorized and appropriated, within 5 years after the date of the enactment of this Act, for the construction of a water resources project on the 6-mile segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek, at the expiration of such 5-year period, the 6-mile segment shall be designated as a component of the national wild and scenic rivers system, by operation of law, to be Administered by the Secretary of the Interior in accordance with sections 4 and 5 of this Act and the applicable provisions of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287). The Secretary of the Interior shall publish notification to the effect in the Federal Register.

SEC. 4. LIMITATIONS ON CERTAIN ACQUISITION.

(a) LIMITATIONS.—In the case of the 40-mile and 30-mile segments of the Niobrara River described in the amendment to the Wild and Scenic Rivers Act made by section 2 of this Act, the Secretary of the Interior shall not, without the consent of the owner, acquire for purposes of such segment land or interests in land in more than 5 percent of the area within the boundaries of such segments, and the Secretary shall not acquire, without the consent of the owner, fee ownership of more than 2 percent of such area. The limitations on land acquisition contained in this subsection shall be in addition to, and not in lieu of, the limitations on acquisition contained in section 6 of the Wild and Scenic Rivers Act.

(b) FINDINGS; EXCEPTION.—The 5 percent limitation and the 2 percent limitation contained in subsection (a) of this section shall not apply if the Secretary of the Interior finds, after notice and opportunity for public comment, that State or local governments are not, through statute, regulation, ordinance, or otherwise, adequately protecting the values of which the segment concerned is designated as a component of the national wild and scenic rivers system.

On page 2, line 23, after "pertaining to" insert "the development of a management plan, and".

Beginning on page 2, line 24, strike "that portion of the 76-mile segment of the Niobrara River designated by section 2 of this Act which lies outside the boundary of the Fort Niobrara National Wildlife Refuge." and insert in lieu thereof "the 40-mile and 30-mile segments of the Niobrara River designated by section 2 of this Act which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.".

On page 4, line 16, strike "coordination with and pursuant to the advice of" and insert in lieu thereof "consultation with". On line 18, strike "such group may" and insert in lieu thereof "such group shall".

On page 5, beginning on line 3, strike subsection (c) in its entirety and insert in lieu thereof the following:

(c) EROSION CONTROL.—Within the Missouri River segment designated by the amendment made by section 2 of this Act, the Secretary shall permit the use of erosion control techniques, including the use of rocks from the area for streambank stabilization purposes, subject to such conditions as the Secretary may prescribe, in consultation with the advisory group described in subsection (a) of this section, to protect the resources values for which such river segment was designated."

On page 7, line 11, strike "conduct" and insert in lieu thereof "undertake and complete".

On page 7, on lines 19 and 20, strike "March 1990, and such other lands in the immediate area that are relevant to such study." and insert in lieu thereof "March 1990.".

SMALL BUSINESS REAUTHORIZATION AND AMENDMENTS ACT

BUMPERS AMENDMENT NO. 3209

Mr. REID (for Mr. BUMPERS) proposed an amendment to the bill (H.R. 4793) to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Administration Reauthorization and Amendments Act of 1990".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.
TITLE I—AUTHORIZATION OF SMALL BUSINESS ADMINISTRATION PROGRAMS
Sec. 101. Authorizations.
Sec. 102. Disaster salaries and expenses.
TITLE II—AMENDMENTS TO THE SMALL BUSINESS ACT AND RELATED ACTS
PART A—SMALL BUSINESS ACT
Sec. 201. Small business development centers.
Sec. 202. Export revolving line of credit.
Sec. 203. Two-year rule for eligibility in the minority small business and capital ownership development program.
Sec. 204. Size determinations relating to tribally owned business concerns.
Sec. 205. Joint ventures with tribally owned participants in the 8(a) program.
Sec. 206. Surety bond waiver authority.
Sec. 207. Establishing award eligibility for contract opportunities competed under section 8(a).
Sec. 208. Bundling of contracts.
Sec. 209. Designated procurement center representatives.
Sec. 210. Nonmanufacturer rule.
Sec. 211. Commission on Minority Business Development.
Sec. 212. Sunset on authority to provide technical and managerial assistance through private sector sources.
PART B—SMALL BUSINESS INVESTMENT ACT
Sec. 214. Development company financings.
Sec. 215. Small business investment companies.
Sec. 216. Pilot Preferred Surety Bond Guarantee Program.
PART C—SMALL BUSINESS ADMINISTRATION MANAGEMENT
Sec. 221. Regulations.
Sec. 222. Small Business Administration Deputy Administrator.
PART D—DEMONSTRATION PROGRAMS AND STUDIES
Sec. 231. Small Business Technology Transfer Demonstration Program.
Sec. 232. Pilot Technology Access Program.
Sec. 233. Feasibility study of business cooperation network.
Sec. 234. Study on impact of electronic data interchange technology.
PART E—REPEALERS AND TECHNICAL AMENDMENTS
Sec. 241. Department of Defense procurement reporting.
Sec. 242. Expired provision.
Sec. 243. Reporting of subcontracting activity.
Sec. 244. Notices of proposed procurement opportunities.
Sec. 245. Time limit on secondary market sales.
TITLE III—ASSISTANCE FOR RURAL SMALL BUSINESS CONCERNS
Sec. 301. Short title.
Sec. 302. Establishment of Office of Rural Affairs.
Sec. 303. SBDC rural activities.
Sec. 304. Catalog of programs to assist rural small business concerns.
Sec. 305. Area statistics in Presidential report.
Sec. 306. Rural small business conferences.
Sec. 307. Pilot rural development loan program.
Sec. 308. Rural small business incubators.
Sec. 309. Effects of deregulation on rural America.
Sec. 310. Tourism demonstration program.
Sec. 311. Rural tourism training program.
TITLE IV—MISCELLANEOUS AMENDMENTS
Sec. 401. Contract goals for minorities in printing related services.
Sec. 402. Suspension of liquidated damages under comprehensive small business subcontracting plans.
Sec. 403. Definition of architectural and engineering services.

TITLE I—AUTHORIZATION OF SMALL BUSINESS ADMINISTRATION PROGRAMS

SEC. 101. AUTHORIZATIONS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) by striking subsections (b) through (g),

(2) by redesignating subsection (h) as subsection (b), and

(3) by adding after subsection (b), as redesignated, the following new subsections:

"(c) The following program levels are authorized for fiscal year 1991:

"(1) For the programs authorized by this Act, the Administration is authorized to make $72,000,000 in direct and immediate participation loans; and of such sum the Administration is authorized to make $19,000,000 in loans as provided in section 7(a)(10), $24,000,000 in loans as provided in section 7(a)(11), $10,000,000 in loans as provided in section 7(a)(20), and $19,000,000 in loans to disabled veterans and Vietnam era veterans (as defined in section 1841, title 38, United States Code) under the general terms and conditions of section 7(a) of this Act.

"(2) For the programs authorized by this Act, the Administration is authorized to make $4,070,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $3,500,000,000 in general business loans as provided in section 7(a), $50,000,000 in loans as provided in section 7(a)(12)(B), and $520,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $19,000,000 in purchases of preferred stock and $200,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,800,000,000.

"(d) There are authorized to be appropriated to the Administration for fiscal year 1991 such sums as may be necessary to carry out the provisions of this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the provisions of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(e) The following program levels are authorized for fiscal year 1992:

"(1) For the programs authorized by this Act, the Administration is authorized to make $75,000,000 in direct and immediate participation loans; and of such sum the Administration is authorized to make $20,000,000 in loans as provided in section 7(a)(10), $25,000,000 in loans as provided in section 7(a)(11), $10,000,000 in loans as provided in section 7(a)(20), and $20,000,000 in loans to disabled veterans and Vietnam era veterans (as defined in section 1841, title 38, United States Code) under the general terms and conditions of section 7(a) of this Act.

"(2) For the programs authorized by this Act, the Administration is authorized to make $4,449,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $3,850,000,000 in general business loans as provided in section 7(a), $53,000,000 in loans as provided in section 7(a)(12)(B), and $546,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $20,000,000 in purchases of preferred stock and $210,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,890,000,000.

"(f) There are authorized to be appropriated to the Administration for fiscal year 1992 such sums as may be necessary to carry out the provisions of this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the provisions of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(g) The following program levels are authorized for fiscal year 1993:

"(1) For the programs authorized by this Act, the Administration is authorized to make $79,000,000 in direct and immediate participation loans; and of such sum the Administration is authorized to make $21,000,000 in loans as provided in section 7(a)(10), $26,000,000 in loans as provided in section 7(a)(11), $11,000,000 in loans as provided in section 7(a)(20), and $21,000,000 in loans to disabled veterans and Vietnam era veterans (as defined in section 1841, title 38, United States Code) under the general terms and conditions of section 7(a) of this Act.

"(2) For the programs authorized by this Act, the Administration is authorized to make $4,671,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $4,043,000,000 in general business loans as provided in section 7(a), $55,000,000 in loans as provided in section 7(a)(12)(B), and $573,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $21,000,000 in purchases of preferred stock and $221,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,985,000,000.

"(h) There are authorized to be appropriated to the Administration for fiscal year 1993 such sums as may be necessary to carry out the provisions of this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the provisions of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(i) The following program levels are authorized for fiscal year 1994:

"(1) For the programs authorized by this Act, the Administration is authorized to make $83,000,000 in direct and immediate participation loans; and of such sum the Administration is authorized to make $22,000,000 in loans as provided in section 7(a)(10), $27,000,000 in loans as provided in section 7(a)(11), $12,000,000 in loans as provided in section 7(a)(20), and $22,000,000 in loans to disabled veterans and Vietnam era veterans (as defined in section 1841, title 38, United States Code) under the general terms and conditions of section 7(a) of this Act.

"(2) For the programs authorized by this Act, the Administration is authorized to make $4,905,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $4,245,000,000 in general business loans as provided in section 7(a), $58,000,000 in loans as provided in section 7(a)(12)(B), and $602,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $22,000,000 in purchases of preferred stock and $232,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $2,084,000,000.

"(j) There are authorized to be appropriated to the Administration for fiscal year 1994 such sums as may be necessary to carry out the provisions of this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the provisions of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.".

SEC. 102. DISASTER SALARIES AND EXPENSES.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by adding at the end of subsection (a) the following new paragraph:

"(3) There are authorized to be transferred from the disaster loan revolving fund such sums as may be necessary and appropriate for administrative expenses of the Administration.".

TITLE II—AMENDMENTS TO THE SMALL BUSINESS ACT AND RELATED ACTS

PART A—SMALL BUSINESS ACT

SEC. 21. SMALL BUSINESS DEVELOPMENT CENTERS.

(a) FUNDING FORMULAS.—

(1) IN GENERAL.—Section 21 of the Small Business Act (15 U.S.C. 648) is amended by striking the second proviso in subsection (a)(4) and inserting the following: "*Provided further*, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population of the United States, plus $100,000 for each State, but no State shall receive less than $200,000.";

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts, grants, or cooperative agreements for performance commencing on or after October 1, 1991. Contracts, grants, or cooperative agreements the performance of which commences before October 1, 1991, shall receive funding for the entire term of performance without regard to the amendment made by paragraph (1) and according to the State's pro rata share of a $65,000,000 program as computed on the effective date of this section under population estimates used for calendar year 1990 agreements, plus $50,000 for each State, but no State shall receive less than $200,000.

(b) SMALL BUSINESS DEVELOPMENT CENTER ACT.—Section 204 of the Small Business Development Center Act of 1980 (Public Law 96-302) is hereby repealed.

SEC. 202. EXPORT REVOLVING LINE OF CREDIT.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) by striking "for pre-export" in paragraph (14)(A), and

(2) by striking "18 months" and inserting "3 years" in paragraph (14)(A).

SEC. 203. TWO-YEAR RULE FOR ELIGIBILITY IN THE MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Small Business Administration may prescribe a minimum period of time during which a prospective Program Participant must be in operation in order to meet the eligibility requirements of section 8(a)(7)(A) of the Small Business Act (15 U.S.C. 637(a)(7)(A)), only if the Administration provides a waiver of such minimum period as set forth in subsection (b).

(b) WAIVER OF MINIMUM PERIOD OF OPERATION.—(1) The Administration shall provide that any requirement it establishes regarding the period of time a prospective Program Participant must be in operation may be waived and, a prospective Program Participant, who otherwise meets the requirements of section 8(a)(7)(A) of the Small Business Act, shall be considered to have demonstrated reasonable prospects for success, if—

(A) the individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;

(B) the prospective Program Participant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success;

(C) the prospective Program Participant has adequate capital to carry out its business plan;

(D) the prospective Program Participant has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category in which the prospective Program Participant is seeking Program certification; and

(E) the prospective Program Participant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform such contracts.

(2) The authority to make the determination that a prospective Program Participant has demonstrated its potential for success by meeting the criteria specified in paragraph (1) of this subsection shall be made by the Administrator of the Small Business Administration, or a designee of such officer.

SEC. 204. SIZE DETERMINATIONS RELATING TO TRIBALLY OWNED BUSINESS CONCERNS.

(a) AFFILIATION RULES.—Section 7(j)(10)(J)(ii) of the Small Business Act (15 U.S.C. 636(j)(10)(J)(ii)) is amended to read as follows:

"(ii)(I) Except as authorized by subclauses (II) or (III), no award shall be made pursuant to section 8(a) to a concern other than a small business concern.

"(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

"(III) Any joint venture established under the authority of section 602(b) of Public Law 100-656, the 'Business Opportunity Development Reform Act of 1988', shall be eligible for award of a contract pursuant to section 8(a).".

(b) TRIBAL HOLDING COMPANIES.—Section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)) is amended by inserting—

(1) in clause (A)(i)(II), after the word "tribe" the parenthetical phrase "(or a wholly owned business entity of such tribe)"; and

(2) in clause (A)(ii)(II), after the word "tribe" the parenthetical phrase "(or a wholly owned business entity of such tribe)".

SEC. 205. JOINT VENTURES WITH TRIBALLY OWNED PARTICIPANTS IN THE 8(a) PROGRAM.

Section 602 of the Business Opportunity Development Reform Act of 1988 (15 U.S.C. 637 note) is amended—

(1) in subsection (c), by striking "two" and inserting "5", and

(2) in subsection (e), by striking "September 30, 1991" and inserting "September 30, 1994".

SEC. 206. SURETY BOND WAIVER AUTHORITY.

Section 7(j)(13)(D)(iii) of the Small Business Act (15 U.S.C. 636(j)(13)(D)(iii)) is amended by striking "October 1, 1992" and inserting "October 1, 1994".

SEC. 207. ESTABLISHING AWARD ELIGIBILITY FOR CONTRACT OPPORTUNITIES COMPLETED UNDER SECTION 8(a).

Section 8(a)(1) of the Small Business Act (15 U.S.C. 637(a)(1)) is amended—

(1) by striking subparagraph (B);

(2) by striking the flush left sentence following subparagraph (C);

(3) by redesignating subparagraph (C) as subparagraph (B); and

(4) by adding a new subparagraph (C) as follows:

"(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 7(j)(15), if—

"(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

"(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation.".

SEC. 208. BUNDLING OF CONTRACTS.

Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended by adding before "Whenever" the following new sentences: "If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, or (4) why construction cannot be procured as separate discrete projects. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities.".

SEC. 209. DESIGNATED PROCUREMENT CENTER REPRESENTATIVES.

Not later than 180 days after the date of the enactment of this Act, the Administrator of the Small Business Administration shall station a traditional procurement center representative at the Department of Agriculture, the Navy Sea Systems Command, and the Environmental Protection Agency. Such representatives shall be in addition to the representatives stationed or designated to be stationed on the date of enactment of this Act.

SEC. 210. NONMANUFACTURER RULE.

Section 8(a)(17)(B)(iv) of the Small Business Act (15 U.S.C. 637(a)(17)(B)(iv)) is amended to read as follows:

"(iv) represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

"(I) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

"(II) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.".

SEC. 211. COMMISSION ON MINORITY BUSINESS DEVELOPMENT.

Section 505(c)(1)(A)(ii) of the Business Opportunity Development Reform Act of 1988 (15 U.S.C. 636 note) is amended to read as follows:

"(ii) The Under Secretary of Defense for Acquisition, or a designee of such Under Secretary.".

SEC. 212. SUNSET ON AUTHORITY TO PROVIDE TECHNICAL AND MANAGERIAL ASSISTANCE THROUGH PRIVATE SECTOR SOURCES.

Section 7(b) of the Small Business Computer Security and Education Act of 1984 (15 U.S.C. 633 note) is amended by striking "October 1, 1990" and inserting "March 31, 1991".

PART B—SMALL BUSINESS INVESTMENT ACT

SEC. 214. DEVELOPMENT COMPANY FINANCINGS.

(a) CONGRESSIONAL FINDINGS.—Section 501(a) of the Small Business Investment Act of 1958 (15 U.S.C. 695(a)) is amended to read as follows:

"(a) The Congress hereby finds and declares that the purpose of this title is to foster economic development and to create or preserve job opportunities in both urban

and rural areas by providing long-term financing for small business concerns through the development company program authorized by this title.".

(b) POLICY CONSIDERATIONS.—Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended by adding at the end thereof the following new subsection:

"(d) In order to qualify for assistance under this title, the development company must demonstrate that the project to be funded is directed toward at least one of the following economic development objectives—

"(1) the creation of job opportunities within two years of the completion of the project or the preservation or retention of jobs attributable to the project;

"(2) improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy; or

"(3) the achievement of one or more of the following public policy goals:

"(A) business district revitalization,

"(B) expansion of exports,

"(C) expansion of minority business development,

"(D) rural development,

"(E) enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports,

"(F) changes necessitated by Federal budget cutbacks, including defense related industries, or

"(G) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees.

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria.".

(c) SPECIAL LOAN LIMITATIONS.—Section 502 of the Small Business Investment Act of 1958 is amended by striking the period at the end of paragraph (2) and by inserting the following: ", except loans meeting the criteria specified in section 501(d)(3) shall be limited to $1,000,000 for each such identifiable small business concern.".

SEC. 215. SMALL BUSINESS INVESTMENT COMPANIES.

(a) LIMITS IN CASES OF COMMON CONTROL.—

(1) IN GENERAL.—The last sentence of section 303(b)(1) of the Small Business Investment Act of 1958 is amended to read as follows: "In no event shall the debentures guaranteed and outstanding under this title of any such company or companies which are commonly controlled as determined by the Administration exceed $35,000,000.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall become effective on July 1, 1991.

(b) AMOUNT OF ASSISTANCE.—Section 303 of the Small Business Investment Act of 1958 (15 U.S.C. 683) is amended—

(1) by inserting "under the provisions of this title," in paragraph (6) of subsection (c) after "debentures or securities"; and

(2) by striking the third sentence in subsection (d).

SEC. 216. PILOT PREFERRED SURETY BOND GUARANTEE PROGRAM.

(a) SUNSET.—Section 207 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590, is amended to read as follows:

"The provisions contained in section 411(a)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(3)) shall cease to be effective after September 30, 1994.".

(b) EVALUATION AND REPORT.—Section 206 of the Small Business Administration Reauthorization and Amendment Act of 1988 is amended—

(1) in the first sentence, by striking "Not later than" and inserting "(a) not later than"; and

(2) by striking the last sentence and inserting:

"(b) The report required by subsection (a) shall be transmitted not later than March 1, 1994 and cover the period October 1, 1990 through September 30, 1993.".

PART C—SMALL BUSINESS ADMINISTRATION MANAGEMENT

SEC. 221. SMALL BUSINESS ADMINISTRATION DEPUTY ADMINISTRATOR.

(a) IN GENERAL.—Section 4 of the Small Business Act (15 U.S.C. 633) is amended by striking "The Administrator is authorized to appoint a Deputy Administrator and" in the fourth sentence of subsection (b)(1) and inserting the following: "The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate. The Administrator is authorized to appoint".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to any vacancy in the position of Deputy Administrator of the Small Business Administration after the date of the enactment of this Act.

PART D—DEMONSTRATION PROGRAMS AND STUDIES

SEC. 231. SMALL BUSINESS TECHNOLOGY TRANSFER DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—There is established within the Small Business Administration a Small Business Technology Transfer Demonstration Program (hereafter referred to as the "Program").

(b) PURPOSE OF PROGRAM.—The purpose of the Program is to demonstrate the feasibility of providing small businesses with education, training, and technical assistance with respect to technology transfer and application through an eligible entity.

(c) PROGRAM ACTIVITIES.—The eligible entity shall undertake, through a regional network of participating community and technical colleges, a program of activities to provide small business concerns training and assistance with respect to—

(1) technological innovations,

(2) statistical process control,

(3) computer-assisted design,

(4) computer-assisted manufacturing and computer-integrated manufacturing,

(5) implementation and deployment of telecommunications and other interactive systems, and

(6) other new equipment and advanced manufacturing processes.

(d) COOPERATIVE AGREEMENT.—The Administration is authorized to award a cooperative agreement to an eligible entity to undertake a demonstration program pursuant to this subsection.

(e) REGULATIONS.—

(1) IN GENERAL.—The Administrator shall issue regulations for the implementation of the Program within 180 days of the date of the enactment of this Act.

(2) ALLOCATION OF FUNDING.—In addition to any other matters which the Administration deems appropriate, such Program regulations shall provide for the allocation of funds among the educational institutions that comprise the eligible entity on the basis of scope of the assistance and training activities to be offered small business concerns under the Program and the capability of the educational institution to provide such Program activities.

(f) USE OF SMALL BUSINESS DEVELOPMENT CENTERS AND OTHER RESOURCES.—In implementing the Program, the Administrator shall assure that the eligible entity uses to the maximum extent feasible Small Business Development Centers, receiving support pursuant to section 21 of the Small Business Act (15 U.S.C. 648), and other available sources in conducting the Program.

(g) DURATION OF THE PROGRAM.—The Program shall terminate on September 30, 1993.

(h) REPORT.—The Administrator shall monitor the implementation of the Program established by this section and submit a report evaluating such implementation to the Committees on Small Business of the Senate and the House of Representatives by not later than June 30, 1993, including appropriate recommendations regarding continuation of the Program and its extension to other regions in the country.

(i) AUTHORIZATION.—There is authorized to be appropriated to the Small Business Administration $5,000,000 for each of the fiscal years 1991, 1992, and 1993 to carry out the Program established by this section.

(j) DEFINITIONS.—For purposes of this section:

(1) The term "eligible entity" means the Community College Association for Technology Transfer or, if such organization is not available, another not-for-profit association of community and technical colleges determined to be eligible for an award of a cooperative agreement, under the regulations issued pursuant to subsection (e).

(2) The term "Community College Association for Technology Transfer" ("CCATT") means a coalition currently composed of 16 community and technical colleges located in the Midwest which has proposed a cooperative regional program for technology transfer and application for the benefit of small businesses to revitalize the regional economy.

SEC. 232. PILOT TECHNOLOGY ACCESS PROGRAM.

(a) ESTABLISHMENT.—The Small Business Administration, in consultation with the National Institute of Standards and Technology and the National Technical Information Service, shall establish a Pilot Technology Access Program (hereafter in this section referred to as the "Program"), for making grants under this section to a maximum of 5 States.

(b) CRITERIA FOR SELECTION OF STATES.—The Administrator of the Small Business Administration shall establish competitive, merit-based criteria for the selection of States to receive grants on the basis of—

(1) the ability of the State to carry out the purposes described in subsection (d) in a manner relevant to the needs of industries in that State;

(2) the ability of the State to integrate the implementation of the Program with existing Federal and State technical and business assistance resources, including Small Business Development Centers; and

(3) the ability of the State to continue the program established pursuant to this section after the termination of the Program.

(c) MATCHING REQUIREMENT.—To be eligible to receive a grant under this section, a State shall be required to provide at least an equal amount of funds as that received under such grant.

(d) PURPOSE OF GRANTS.—Grants made to States under this section shall be for the purpose of increasing access by small businesses to on-line data base services that provide technical and business information, and access to technical experts, in a wide range of technologies, through such activities as—

(1) defraying the cost of access by small businesses to the data base services;

(2) training small businesses in the use of the data base services; and

(3) establishing a public point of access to the data base services.

Activities described in paragraphs (1) through (3) may be carried out through contract with a private entity.

(e) EVALUATION.—After the completion of 3 years after the date on which the first grant is issued under this section, and within 6 months after the termination of the Program, the General Accounting Office shall evaluate the effectiveness of the Program in stimulating technological progress, and shall report the findings to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science, and Transportation of the Senate.

(f) TERMINATION.—The Program shall terminate on September 30, 1995.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Small Business Administration for carrying out this section—

(1) $2,000,000 for fiscal year 1991; and

(2) $5,000,000 for each of the fiscal years 1992, 1993, 1994, and 1995.

SEC. 233. FEASIBILITY STUDY OF BUSINESS COOPERATION NETWORK.

(a) IN GENERAL.—The Administrator of the Small Business Administration shall conduct a study of the feasibility of establishing a business cooperation system similar to the Business Cooperation Network developed by the European Economic Community.

(b) PURPOSE.—The purpose of the study shall be to identify—

(1) the total cost to implement such a system in this country;

(2) all existing business data systems at the Federal, state local government levels which would be of assistance in developing a program similar to either the Euro-Info-Centre and/or the European Business Cooperation Network;

(3) all existing business data systems in the private sector which would be of assistance in developing a program similar to either the Euro-Info-Centre and/or the European Business Cooperation Network;

(4) the amount of time it would take to fully implement this program in all fifty States; and

(5) the benefits to the international competitiveness of the United States.

(c) PARTICIPATION.—In conducting the study, the Administrator shall encourage participation of all appropriate Federal departments and agencies, appropriate State departments and agencies, appropriate small business representative groups, and any other public and/or private entities which would play a role in the development of such a system.

(d) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the study together with recommendations for such legislative and administrative actions as the Administrator considers appropriate.

SEC. 234. STUDY ON IMPACT OF ELECTRONIC DATA INTERCHANGE TECHNOLOGY.

(a) IN GENERAL.—The Administrator of the Small Business Administration shall conduct a study of the impact of electronic data interchange technology on small business concerns.

(b) PURPOSE.—The purpose of the study shall be to identify—

(1) the benefits of electronic data interchange technology with respect to small business concerns;

(2) the adverse effects of electronic data interchange technology with respect to small business concerns;

(3) technical and financial assistance which the Small Business Administration can offer to small business concerns which seek to use electronic data interchange technology;

(4) measures which may be taken to implement a uniform technical standard for electronic data interchange technology;

(5) measures which may be taken to prevent electronic data interchange technology in the Federal procurement process from having an adverse effect on small business concerns; and

(6) other measures which may be taken to prevent electronic data interchange technology from becoming a competitive barrier to small business concerns.

(c) PARTICIPATION.—In conducting the study, the Administrator shall encourage participation by Federal departments and agencies, small business concerns, and other private and public entities.

(d) REPORT.—Not later than one hundred and eighty days after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the study together with recommendations for such legislative and administrative actions as the Administrator considers appropriate.

PART E—REPEALERS AND TECHNICAL AMENDMENTS

SEC. 241. DEPARTMENT OF DEFENSE PROCUREMENT REPORTING.

Section 10(d) of the Small Business Act (15 U.S.C. 639(d)) is amended—

(1) by striking "the Department of Defense shall make a monthly report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives not less than 45 days after the close of the month" and inserting "the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives";

(2) by striking "small-business concerns" and inserting "small business concerns"; and

(3) by striking "such monthly reports" and inserting "such reports".

SEC. 242. EXPIRED PROVISION.

Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is amended—

(1) by striking subparagraphs (A) and (B) of paragraph (3); and

(2) by striking paragraph (8).

SEC. 243. REPORTING OF SUBCONTRACTING ACTIVITY.

Section 714 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) is amended by striking subsection (b) and by redesignating subsection (c) as subsection (b).

SEC. 244. NOTICES OF PROPOSED PROCUREMENT OPPORTUNITIES.

Section 8(g)(1) of the Small Business Act (15 U.S.C. 637(g)(1)) is amended by striking "(a)(1)" and inserting "(e)(1)".

SEC. 245. TIME LIMIT ON SECONDARY MARKET SALES.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by striking the last sentence of subparagraph (A) of paragraph (16).

TITLE III—ASSISTANCE FOR RURAL SMALL BUSINESS CONCERNS

SEC. 301. SHORT TITLE.

This title may be cited as the "Rural Small Business Enhancement Act of 1990".

SEC. 302. ESTABLISHMENT OF OFFICE OF RURAL AFFAIRS.

The Small Business Act (15 U.S.C. 631 et seq.) is amended by inserting after section 25 the following new section:

"SEC. 26. OFFICE OF RURAL AFFAIRS.

"(a) There is hereby established in the Small Business Administration an Office of Rural Affairs (hereafter in this section referred to as the 'Office').

"(b) The Office shall be headed by a director who shall be appointed by the Administrator not later than 90 days after the date of the enactment of this section.

"(c) The Office shall—

"(1) strive to achieve an equitable distribution of the financial assistance available from the Administration for small business concerns located in rural areas;

"(2) to the extent practicable, compile annual statistics on rural areas, including statistics concerning the population, poverty, job creation and retention, unemployment, business failures, and business startups;

"(3) provide information to industries, organizations, and State and local governments concerning the assistance available to rural small business concerns through the Administration and through other Federal departments and agencies;

"(4) provide information to industries, organizations, educational institutions, and State and local governments concerning programs administered by private organizations, educational institutions, and Federal, State, and local governments which improve the economic opportunities of rural citizens; and

"(5) work with the United States Tourism and Travel Administration to assist small businesses in rural areas with tourism promotion and development.".

SEC. 303. SBDC RURAL ACTIVITIES.

Section 21 of the Small Business Act is further amended—

(1) by striking "and" at the end of subparagraph (L) of subsection (c)(3)

(2) by redesignating subparagraph (M) of subsection (c)(3) as subparagraph (P); and

(3) by inserting after subparagraph (L) the following new subparagraphs:

"(M) in cooperation with the Department of Commerce, the Administration and other relevant Federal agencies, actively assisting rural small businesses in exporting by identifying and developing potential export markets for rural small businesses, facilitating export transactions for rural small business-

es, developing linkages between United States' rural small businesses and prescreened foreign buyers, assisting rural small businesses to participate in international trade shows, assisting rural small businesses in obtaining export financing and developing marketing and production strategies;

"(N) assisting rural small businesses—

"(i) in developing marketing and production strategies that will enable them to better compete in the domestic market—

"(ii) by providing technical assistance needed by rural small businesses;

"(iii) by making available managerial assistance to rural small business concerns; and

"(iv) by providing information and assistance in obtaining financing for business startups and expansion;

"(O) in conjunction with the United States Travel and Tourism Administration, assist rural small business in developing the tourism potential of rural communities by—

"(i) identifying the cultural, historic, recreational, and scenic resources of such communities;

"(ii) providing assistance to small businesses in developing tourism marketing and promotion plans relating to tourism in rural areas; and

"(iii) assisting small business concerns to obtain capital for starting or expanding businesses primarily serving tourists; and".

SEC. 304. CATALOG OF PROGRAMS TO ASSIST RURAL SMALL BUSINESS CONCERNS.

(a) COMPILATION.—Not later than 180 days after the date of the enactment of this title, the Small Business Administration shall compile a catalog of programs administered by Federal and State departments and agencies which offer assistance to small business concerns in rural areas. Such catalog shall include a description of each such program and the name, address, and telephone number of the respective Federal and State officials responsible for administering the program.

(b) DISTRIBUTION.—Copies of the catalog compiled pursuant to subsection (a) shall be transmitted to the Congress and copies shall be made available to small business concerns in rural areas, appropriate trade associations, Federal and State agencies for the assistance of small business concerns, State and local chambers of commerce, other appropriate nonprofit organizations, and the general public.

(c) BIANNUAL UPDATE.—The Small Business Administration shall issue updates of the catalog compiled pursuant to subsection (a) by February 1, 1993, and February 1, 1995.

SEC. 305. AREA STATISTICS IN PRESIDENTIAL REPORT.

Section 303 of the Small Business Economic Policy Act of 1980 (Public Law 96-302) is amended by striking paragraph (2) of subsection (a) and inserting the following:

"(2) present current and historical data on production, employment, investment, population, job creation and retention, annual business failures, annual business startups, and other economic variables for small business in the economy as a whole and for small business in each sector of the economy, with, to the extent practicable, specific statistics divided as to urban, suburban, and rural areas;".

SEC. 306. RURAL SMALL BUSINESS CONFERENCES.

(a) IN GENERAL.—The Chief Counsel for Advocacy of the Small Business Administration shall, as soon as practicable after the catalog (described in section 305 and hereinafter referred to as the "catalog") is issued, but not later than 90 days after the date such catalog is issued, convene regional rural conferences in 5 cities or towns in the United States.

(b) PREPARATIONS.—Prior to the conferences, the Office of Advocacy shall—

(1) select the sites for the conferences in order to encourage the maximum participation of all interested parties including private citizens and representatives of business, government, educational and nonprofit institutions; and

(2) distribute the catalog of programs and such other background materials prepared by the Office of Advocacy as the Chief Counsel deems appropriate.

(c) PURPOSES OF THE CONFERENCES.—The conference shall—

(1) review the effectiveness of current Federal programs to promote rural small business and its needs, with particular reference to the catalog of such programs;

(2) review how current Federal programs could be made more accessible to small businesses located in rural areas;

(3) make recommendations on how current programs can be approved to better address small business needs in rural areas;

(4) review the availability and cost of capital, transportation, and telecommunications in rural areas;

(5) review the availability of technical assistance and training programs for small business needs in rural areas, including marketing, computer training, accounting, financing, and international trade; and

(6) determine any additional needs of small businesses in rural areas.

(d) REPORT.—The Chief Counsel for Advocacy shall prepare a summary of the findings and recommendations of each regional conference. Not later than 60 days after the last of the 5 regional conferences have been held, the Chief Counsel for Advocacy shall transmit such summaries to the Congress and the President, along with conclusions and recommendations, including specific legislative proposals and recommendations for administrative or other actions. The transmittal of the required information shall be deemed a report of the Chief Counsel for Advocacy under the terms and conditions of section 206 of Public Law 94-305. To the extent practicable, the report shall estimate the cost of implementing each recommendation of a regional conference as well as those of the Chief Counsel.

SEC. 307. PILOT RURAL DEVELOPMENT LOAN PROGRAM.

Section 7(a)(19) of the Small Business Act (15 U.S.C. 636(a)(19)) is amended by adding the following new paragraph:

"(C) In order to encourage lending institutions and other entities making loans authorized under this subsection to provide loans to small business loan applicants located in rural areas, such lenders shall be permitted to retain one-half of the fee collected pursuant to paragraph (18) on loans of less than $75,000. A participating lender may not retain any fee pursuant to this subparagraph if the amount committed and outstanding to the applicant would exceed $75,000 unless the amount in excess of $75,000 is an amount not approved under the provisions of this subparagraph. This subparagraph shall cease to be effective on October 1, 1995.".

SEC. 308. RURAL SMALL BUSINESS INCUBATORS.

It is the sense of the Congress that small business incubators can play a constructive role in rural development. Accordingly, the National Association of Development Companies, and any interested, certified development companies licensed by the Small Business Administration under title V of the Small Business Investment Act of 1958, and other interested parties are requested and encouraged to develop proposals under which Development Companies located in rural areas could establish, operate or otherwise cooperate with small business incubators for startup small business. Such proposals, including recommendations regarding needed Federal assistance, both monetary and legislative, should be submitted to the Small Business Administration and to the Committees on Small Business of the Senate and House of Representatives not later than 6 months after the date of enactment of this section.

SEC. 309. EFFECTS OF DEREGULATION ON RURAL AMERICA.

(a) STUDY.—The Office of Technology Assessment shall conduct a study of the effects of deregulation on the economic vitality of rural areas. Such study shall include, but not be limited to, a thorough analysis of the impact of deregulation on—

(1) the number of loans made by financial institutions to small businesses located in rural areas, a change in the level of security interests required for such loans, and the cost of such loans to rural small businesses for creation and expansion;

(2) airline service in cities and towns with populations of 100,000 or less, including airline fare, the number of flights available, number of seats available, scheduling of flights, continuity of service, number of markets being served by large and small airlines, availability of nonstop service, availability of direct service, number of economic cancellations, number of flight delays, the types of airplanes used, and time delays;

(3) the availability and costs of bus, rail and trucking transportation for businesses located in rural areas;

(4) the availability and costs of state-of-the-art telecommunications services to small businesses located in rural areas, including voice telephone service, private (not multiparty) telephone service, reliable facsimile document and data transmission, competitive long distance carriers, cellular (mobile) telephone service, multifrequency tone signaling services such as touchtone services, custom-calling services (including three-way calling, call forwarding, and call waiting), voicemail services, and 911 emergency services with automatic number identification;

(5) the availability and costs to rural schools, hospitals, and other public facilities, of sending and receiving audio and visual signals in cases where such ability will enhance the quality of services provided to rural residents and businesses; and

(6) the availability and costs of services enumerated in paragraphs (1) through (5) in urban areas compared to rural areas.

(b) REPORT.—Not later than 12 months after the date of enactment of this title, the Office of Technology Assessment shall transmit to Congress a report on the results of the study conducted under subsection (a) together with its recommendations on how to address the problems facing small businesses in rural areas.

SEC. 310. TOURISM DEMONSTRATION PROGRAM.

The Small Business Act is amended by inserting after section 26 the following new section:

"SEC. 27. TOURISM DEMONSTRATION PROGRAM.

"(a) IN GENERAL.—The Administration is authorized to make grants to conduct demonstration programs in 5 States in order to

promote tourism activities delivered by small businesses. The purpose of the program shall be to demonstrate ways in which the economy in rural areas may be improved by encouraging tourism and its resulting increase in income and employment in rural areas. The Administration shall require as a condition of any grant under this section that the applicant also contribute to the demonstration program a sum equal to at least 25 percent of the amount of the funding requested from the Federal Government.

"(b) AUTHORIZATION.—There are authorized to be appropriated to carry out the provision of this section, $1,000,000 for fiscal year 1992 and such sums may remain available until expended.

"(c) REPORT.—Not later than February 1, 1993, the Administration shall submit to the President and the Congress a report on activities undertaken pursuant to this section.".

SEC. 311. RURAL TOURISM TRAINING PROGRAM.

The Chief Counsel for Advocacy of the Small Business Administration shall conduct training sessions on the types of Federal assistance available for the development of rural small businesses engaged in tourism and tourism-related activities. Such training sessions shall be conducted in conjunction with the Office of Rural Affairs (established pursuant to section 26 of the Small Business Act) and appropriate personnel designated by each district office of the Administration.

TITLE IV—MISCELLANEOUS AMENDMENTS

SEC. 401. CONTRACT GOALS FOR MINORITIES IN PRINTING RELATED SERVICES.

Section 843 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456; 44 U.S.C. 502 note) is amended—

(1) in subsection (a), by striking "and, during fiscal years 1989 and 1990," and inserting "and"; and

(2) by adding at the end thereof the following new subsection:

"(e) DURATION OF TEST.—The test program established by subsection (a) shall not apply to solicitations issued on or after October 1, 1993.".

SEC. 402. SUSPENSION OF LIQUIDATED DAMAGES UNDER COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLANS.

To facilitate participation in the test program for the negotiation of comprehensive small business subcontracting plans pursuant to section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1510), subsection (d) of such section is hereby suspended for the period of the test program as specified in subsection (e) of such section.

SEC. 403. DEFINITION OF ARCHITECTURAL AND ENGINEERING SERVICES.

Pursuant to section 742 of Public Law 100-656, modifications to Part 36 of the Federal Acquisition Regulation (48 C.F.R. Part 36) shall specify that the definition of architectural and engineering services includes surveying and mapping services to which the selection procedures of Subpart 36.6 of the Federal Acquisition Regulation apply.

INTERNATIONAL PARENTAL CHILD ABDUCTION

DIXON AMENDMENT NO. 3210

Mr. REID (for Mr. DIXON) proposed an amendment to the bill (S. 185) to amend title 18 of the United States Code to punish as a Federal criminal offense the crimes of international parental child abduction, as follows:

On page 2, line 14, strike "possessions" and insert "possession".

On page 4, line 4, strike "30" and insert "7".

On page 4, line 5, strike "30" and insert "7".

On page 5, line 6, after "imprisoned" insert "not less than 1 year and".

On page 5, line 11, after "imprisoned" insert "not less than 1 year and".

On page 7, line 12, after "removal" insert "or wrongful retention".

On page 7, line 13, strike ", and is implementing,".

On page 7, line 15, strike "1990" and insert "1980".

SOLAR, WIND, AND GEOTHERMAL POWER PRODUCTION INCENTIVES ACT

JOHNSTON AMENDMENT NO. 3211

Mr. REID (for Mr. JOHNSTON) proposed an amendment to the bill (H.R. 4808) to encourage solar, wind, and geothermal power production by removing the size limitations contained in the Public Utilities Regulatory Policies Act of 1978, as follows:

Strike the last section of the bill and insert the following in lieu thereof:

"SEC. 6. RIGHT-OF-WAY USE.

"(a) The proposed alignment of the Harold T. (Bizz) Johnson California-Pacific Northwest Intertie line authorized by Public Laws 98-360 and 99-88 within Contra Costa County, California is hereby rejected.

"(b) The Secretary of Energy, acting through the Western Area Power Administration, in consultation with all Intertie project participants, shall, prior to January 30, 1991, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a proposed realignment of the Intertie within Contra Costa County, California.

"(c) To the maximum extent practicable, the proposed realignment shall be consistent with the needs of affected landowners, East Bay Regional Park District, the environment, and system security and reliability.

"(d) No action shall be taken to implement the proposed realignment prior to March 1, 1991.".

INDEPENDENT SAFETY BOARD AUTHORIZATION

HOLLINGS AMENDMENT NO. 3212

Mr. REID (for Mr. HOLLINGS) proposed an amendment to the bill (S. 3012) to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1991, 1992, 1993, and for other purposes, as follows:

At the end, add the following new sections:

TOXICOLOGICAL TESTING OF TRANSPORTATION DEPARTMENT EMPLOYEES

SEC. 5. (a) When the Department of Transportation, including any of its agencies, conducts postaccident or postincident toxicological testing of an employee of the Department, specimen collection shall be accomplished as soon as practicable after the accident or incident, and the Department shall endeavor when feasible to complete such collection within four hours after the accident or incident.

(b) The head of each agency within the Department of Transportation shall send to the Office of the Secretary of Transportation a report on the circumstances concerning the amount of time required to complete specimen collection related to a toxicological test which is conducted on an employee within that agency who is reasonably associated with the circumstances of an accident or incident within the investigative jurisdiction of the National Transportation Safety Board.

(c) Any failure to comply with the requirements of this section may not be asserted, by the subject of such testing, as a claim, cause of action, or defense in any administrative or judicial proceeding.

BOARD ACCESS TO TOXICOLOGICAL TESTING RECORDS

SEC. 6. Section 304(b) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)) is amended by redesignating paragraph (11) as paragraph (12) and by inserting immediately after paragraph (10) the following new paragraph:

"(11)(A) Notwithstanding section 503(e) of the Act entitled 'An Act making supplemental appropriations for the fiscal year ending September 30, 1987, and for other purposes', approved July 11, 1987 (5 U.S.C. 7301 note), the Board is authorized to obtain from the Secretary of Transportation, by written request, and shall be furnished—

"(i) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, which is conducted on an employee of the Department of Transportation, including any of its agencies, pursuant to postaccident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when that employee is reasonably associated with the circumstances of an accident or incident within the investigative jurisdiction of the Board; and

"(ii) any laboratory record providing documentation that such test is confirmed positive.

"(B) Except as provided in subparagraph (C), the Board shall maintain in confidence and exempt from public disclosure in accordance with section 552(b)(3) of title 5, United States Code—

"(i) any laboratory record, made available under subparagraph (A), of a confirmed and verified toxicological test which reveals medical use of a drug permitted under applicable regulations; and

"(ii) any medical information provided by the tested employee in connection with such test or in connection with a review of such test.

"(C) The Board may use such a laboratory record for development of any evidentiary record in an investigation by the Board of an accident or incident if—

"(i) the fitness of the employee who is the subject of the toxicological testing is at issue in the investigation; and

"(ii) the use of that record is necessary in the development of such evidentiary record.".

PRESSLER AMENDMENT NO. 3213

Mr. BURNS (for Mr. PRESSLER) proposed an amendment to the bill, S. 3012, supra, as follows:

At the end, add the following new section:

REPORT ON LOW-LEVEL RADIOACTIVE WASTE TRANSPORTATION

SEC. 9. Within 12 months after the date of enactment of this Act, the Secretary of Transportation shall conduct and complete a thorough study of and prepare a report to Congress on the transportation of low-level radioactive waste, specifically including—

(1) an evaluation of the feasiblity of requiring States that transport waste to a regional disposal facility established and operated under an interstate compact pursuant to section 4 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d) to use, to the maximum extent practicable, routes which are within the geographic borders of the States that are parties to the compact;

(2) factual information on the volume of low-level radioactive waste being shipped currently and estimates of such shipments for the calendar years 1991 through 1995;

(3) a list of the routes proposed to be used for shipment of such waste to the disposal facilities operated under such an interstate compact;

(4) a review of the process for determining and approving such routes;

(5) a review of the processes for resolving any disputes that may arise, between States and between Commissions created by such interstate compacts, regarding such routes; and

(6) identification of the public safety risks associated with possible accidents in transporting such waste and of the response plans to be employed in the event of a transportation accident.

JEFFORDS AMENDMENT NO. 3214

Mr. BURNS (for Mr. JEFFORDS) proposed an amendment to the bill, S. 3012, supra, as follows:

At the end, add the following new section:

INTERCITY RAIL PASSENGER SERVICE

SEC. 8. (a) Section 402(d)(1) of Rail Passenger Service Act (45 U.S.C. 562(d)(1)) is amended by adding at the end the following new sentence: "The Corporation may subsequently convey title or other interest in such property to a third party if such reconveyance is found by the Commission to further the purposes of this Act.".

(b) The amendment made by subsection (a) shall apply to any proceeding instituted before, on or after the date of enactment of this Act (including any such proceeding pending before any Federal court on such date of enactment).

FORD (AND OTHERS) AMENDMENT NO. 3215

Mr. REID (for Mr. FORD, for himself, Mr. EXON, and Mr. HOLLINGS) proposed an amendment to the bill, S. 3012, supra, as follows:

At the appropriate place, insert the following new section:

ODOMETER MILEAGE DISCLOSURE

SEC. . (a) Section 408(d)(2)(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(d)(2)(c) is amended by striking the third sentence and inserting in lieu thereof, the following: "The rule, consistent with the purposes of this Act and the need to facilitate enforcement thereof, shall prescribe that the form be issued by the State to the transferee in accordance with paragraph (2)(A)(i), shall prescribe that the person granted such power of attorney shall retain a copy of such power of attorney and shall submit the original back to the State with a copy of the title showing the restatement of the mileage, and may prescribe that the State retain the power of attorney and the copy of the title for an appropriate period or that the State adopt alternative measures consistent with the purposes of this title, taking into consideration costs to the State. The rule shall not require that a vehicle be titled in the State in which the power of attorney was issued.".

(b) The amendment made by subsection (a) shall be effective on the date of enactment of this Act and the Secretary of Transportation shall implement the amended section by promulgating a revision of existing regulations within 6 months after such effective date. Such rule shall consider the need to facilitate normal commercial transactions in the sale or exchange of motor vehicles.

SIMON AMENDMENT NO. 3216

Mr. REID (for Mr. SIMON) proposed an amendment to the bill, S. 3012, supra, as follows:

At the end, add the following new section:

COMMUTER RAIL SERVICE

SEC. . Notwithstanding any other provision of law, the National Railroad Passenger Corporation shall not discontinue commuter rail service between Valparaiso, Indiana and Chicago, Illinois, before May 6, 1991.

CLARKS FORK RIVER WILD AND SCENIC RIVER DESIGNATION

WALLOP AMENDMENT NO. 3217

Mr. BURNS (for Mr. WALLOP) proposed an amendment to the bill (S. 2343) to amend the Wild and Scenic Rivers Act by designating a segment of the Clarks Fork River in the State of Wyoming as a component of the National Wild and Scenic Rivers System, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—LOWER MERCED WILD AND SCENIC RIVER

SECTION 101. DESIGNATION OF THE LOWER MERCED RIVER FOR INCLUSION IN THE WILD AND SCENIC RIVERS SYSTEM.

Section 3(a)(62) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(62)) is hereby amended—

(1) by striking "The main stem" and inserting in lieu thereof, "(A) The main stem";

(2) by striking "paragraph" wherever it appears and inserting in lieu thereof, "subparagraph"; and

(3) by adding the following new subparagraphs at the end thereof:

"(B)(i) The main stem from a point 300 feet upstream of the confluence with Bear Creek downstream to the point of maximum flood control storage of Lake McClure (evaluation 867 feet mean sea level), consisting of approximately 8 miles, as generally depicted on the map entitled "Merced Wild and Scenic River', dated April 1990. The Secretary of the Interior shall administer the segment as recreational, from a point 300 feet upstream of the confluence with Bear Creek downstream to a point 300 feet west of the boundary of the Mountain King Mine, and as wild, from a point 300 feet west of the boundary of the Mountain King Mine to the point of maximum flood control storage of Lake McClure. The requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the Sierra Management Framework Plan for the Sierra Planning Area of the Folsom Resource Area, Bakersfield District, Bureau of Land Management. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subparagraph.

"(ii) To the extent permitted by, and in a manner consistent with section 7 of this Act (16 U.S.C. 1278), and in accordance with other applicable law, the Secretary of the Interior shall permit the construction and operation of such pumping facilities and associated pipelines as identified in the Bureau of Land Management right-of-way application CACA 26084, filed by the Mariposa County Water Agency on November 7, 1989, and known as the 'Saxon Creek Project', to assure an adequate supply of water from the Merced River to Mariposa County.

"(C) With respect to the segments on the main stem of the Merced River and the South Fork Merced River designated as recreational or scenic pursuant to this paragraph or by the appropriate agency pursuant to subsection (b), the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.".

SEC. 102. STUDY OF THE NORTH FORK OF THE MERCED RIVER.

Section 5(a) of the Wild and Scenic Rivers Act, as amended, (16 U.S.C. 1276(a)), is further amended by adding the following new paragraph at the end thereof:

"( ) NORTH FORK MERCED, CALIFORNIA.—The segment from its headwaters to its confluence with the Merced River, by the Secretary of Agriculture and the Secretary of the Interior.".

"TITLE II—MERCED COUNTY, CALIFORNIA

SEC. 201. AUTHORIZATION OF ADDITIONAL USE.

(a) Subject to the requirements of this title, the county of Merced, California (hereinafter in this title referred to as the 'county') is authorized to permit use of the land described in section 203 (hereinafter in this title referred to as the 'land') for the purposes of an elementary school, notwithstanding the restrictions on use of such land otherwise applicable under the terms of conveyance of such land to the county by the United States.

(b) Except as specified in this title, this title shall not increase or diminish the authority or responsibility of the county with respect to the land.

SEC. 202. USE OF LAND FOR ELEMENTARY SCHOOL.

(a) The authority of the county under this title shall be limited to the authorization of use of the land for an elementary school

serving children without regard to their race, creed, color, national origin, physical cr mental disability, or sex, operated by a nonsectarian organization on a nonprofit basis and in compliance with all applicable requirements of the laws of the United States and the State of California.

(b) If the county permits use of the land as an elementary school, the county shall include information concerning such use in the biennial reports to the Secretary of the Interior required under the terms of conveyance of the land to the county by the United States.

(c) Any violation of the provisions of this title shall be deemed to be breach of the conditions and covenants under which the land was conveyed to the county by the United States, and shall have the same effect, as provided in the deed, whereby the United States conveyed the lands to the county.

SEC. 203. LAND DESCRIPTION.

The land referred to in section 201 is the south 15 acres of the 40 acres located in the northwest quarter of the southwest quarter of section 20, Township 7 South, Range 13 East, M.D.B&M of Merced County, California, declared to be surplus property by the United States in action 9-D-Calif-1028 and conveyed to the county by deed recorded in volume 1941 at page 441 of the official records of Merced County, California.".

TITLE III—CLARKS FORK WILD AND SCENIC RIVER

SECTION 301. SHORT TITLE.

This title may be cited as the "Clarks Fork Wild and Scenic River Designation Act of 1990".

SEC. 302. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)), as amended, is further amended by adding at the end the following:

"( ) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out this paragraph, there is authorized to be appropriated $500,000 for development and $750,000 for the acquisition of land and interests therein.

"(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any other Federal action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designation as a component of the Wild and Scenic Rivers System.

"(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of Wyoming: Provided, That, notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

"(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such measures as may be necessary in the control of fire, insects, and diseases to fully protect the values for which the segment is designated as a wild river.".

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1991

BYRD AMENDMENT NO. 3218

Mr. BYRD proposed an amendment to the amendment of the House to the amendment of the Senate numbered 4 to the bill (H.R. 5229) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1991, and for other purposes, as follows:

SEC. 329. (a) Notwithstanding any other provision of law, for the period January 1, 1992, through December 31, 1992, the Secretary of Transportation shall reduce the aggregate amount which a State may obligate for Federal-aid highways and highway safety construction programs by 25 percent if such State has a public authority which provides mass transportation for an urbanized area of such State with a population of 3,000,000 or more as determined under the 1980 decennial census of the United States, and if by October 1, 1991—

(1) laws of such State do not authorize a general tax-based source of revenues to take effect on or before January 1, 1992, dedicated to paying the non-Federal share of projects for mass transportation eligible for assistance under the Urban Mass Transportation Act of 1964; or

(2) the laws of such State do not authorize the establishment of regional or local tax-based sources of revenues dedicated to pay such non-Federal share or for paying operating expenses of mass transit service so as to satisfy financial capacity standards as may be required by the Secretary of Transportation.

(b) For purposes of this section, the terms "mass transportation," "State," and "urbanized areas" have the meaning such terms have under section 12 of the Urban Mass Transportation Act of 1964.

(c) Any withholding defined under this section shall be waived if the Governor of the State—

(i) submits to the Secretary by October 1, 1991, a written certification stating that he is opposed to the enactment in his State of a law described in subsections (a) (1) and (2) and that funding as described in subsections (a) (1) and (2) would not improve public transportation safety.

(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution by simple majority expressing its opposition to a law described in subsections (a) (1) and (2).

(d) This section shall remain in effect until December 31, 1992.

CHRISTOPHER COLUMBUS FELLOWSHIP FOUNDATION

CRANSTON (AND WALLOP) AMENDMENT NO. 3219

Mr. CRANSTON (for himself and Mr. WALLOP) proposed an amendment to the bill (H.R. 2754) to require the Secretary of the Treasury to mint coins in commemoration of the quincentenary of the discovery of America by Christopher Columbus and to establish the Christopher Columbus Fellowship Foundation, as follows:

At the end of the bill add the following:

SEC. 6. REVERSE OF 1 COIN TO COMMEMORATE THE BICENTENNIAL OF THE BILL OF RIGHTS RATIFICATION.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(3) REVERSE OF COIN TO COMMEMORATE THE BICENTENNIAL OF THE BILL OF RIGHTS RATIFICATION.—

"(A) SELECTION.—The Secretary of the Treasury shall select the half dollar, quarter dollar, dime coin, 5-cent coin, or 1-cent coin for the design change required under subparagraph (B).

"(B) DESIGN.—The reverse side of the coin selected pursuant to subparagraph (A) shall have a design commemorating the 200th anniversary of the Bill of Rights ratification.

"(C) 2-YEAR PERIOD FOR ISSUANCE.—The Secretary of the Treasury—

"(i) shall begin minting and issuing coins bearing the design referred to in subparagraph (B) before the end of June 1991; and

"(ii) may not issue any coin bearing such design after the end of the 2-year period beginning on the date the 1st coin bearing such design is issued.

"(D) SUBSEQUENT DESIGN.—After the end of the 2-year period described in subparagraph (C)(ii), the Secretary of the Treasury shall select, in accordance with paragraph (4), a new design for the reverse side of the coin selected pursuant to subparagraph (A).".

SEC. 7. REDESIGN OF OBVERSE AND REVERSE SIDE OF COINS.

(a) IN GENERAL.—Subsection (d) of section 5112 of title 31, United States Code, is amended by adding after paragraph (3) (as added by section 2 of this Act) the following new paragraphs:

"(4) REDESIGN OF REVERSE SIDES OF COINS REQUIRED.—

"(A) IN GENERAL.—Notwithstanding the penultimate sentence of paragraph (2) and subject to paragraph (3), the Secretary of the Treasury shall select new designs for the reverse sides of the half dollar, quarter dollar, dime coin, 5-cent coin, and 1-cent coin after the date of the enactment of this paragraph.

"(B) THEMATIC REPRESENTATIONS TO BE CONSIDERED.—In selecting any new design pursuant to subparagraph (A), the Secretary of the Treasury shall consider, among other possible designs, thematic representations of the following constitutional concepts:

"(i) Freedom of speech and assembly.
"(ii) Freedom of the press.
"(iii) The right to due process of law.
"(iv) The right to a trial by jury.
"(v) The right to equal protection under the law.
"(vi) The right to vote.
"(vii) Other themes from the Bill of Rights.
"(viii) The constitutional principle of separation of powers, including the independence of the judiciary.

"(5) REDESIGN OF OBVERSE SIDES OF COINS IN CONNECTION WITH REDESIGN OF REVERSE SIDES.—

"(A) IN GENERAL.—In connection with the selection of any new design for the reverse side of any coin pursuant to paragraph (4), the Secretary of the Treasury shall consider the need to select a new design for the obverse side of such coin.

"(B) LIKENESSES.—Any new design selected for the obverse side of any coin (after consideration by the Secretary pursuant to subparagraph (A)) shall contain any likeness which is displayed on such coin before such design change.

"(6) REQUEST FOR LEGISLATION TO IMPLEMENT DESIGN CHANGES.—Notwithstanding paragraph (2), the Secretary of the Treasury may not prepare any model, hub, or die for any coin for which a new design has been selected by the Secretary pursuant to paragraph (4) or (5) unless—

"(A) the Secretary submits a report to the Congress on the proposed design change; and

"(B) the minting and issuing of coins with such design is approved by a law enacted after such report is submitted.

"(7) CONSULTATION WITH COMMISSION OF FINE ARTS.—The selection of any new design for any side of any coin by the Secretary of the Treasury under this subsection shall be made after consultation with the Commission of Fine Arts."

(b) TECHNICAL AMENDMENTS RELATING TO INSCRIPTION REQUIREMENTS.—Section 5112(d)(1) of title 31, United States Code, is amended—

(1) in the 1st sentence, by inserting "shall" before "have"; and

(2) in the 2d and 3d sentences, by striking "has" and inserting "shall have".

SEC. 8. REDUCTION OF THE NATIONAL DEBT.

Subsection (b) of section 5111 of title 31, United States Code, is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, amounts in the coinage profit fund which are attributable to net profits received from the sale of uncirculated and proof sets of coins shall be deposited by the Secretary in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.".

FEDERAL MARITIME COMMISSION AUTHORIZATION ACT

BREAUX AMENDMENT NO. 3220

Mr. BREAUX proposed an amendment to the amendment of the House to the bill (H.R. 4009) to authorize appropriations for fiscal year 1991 for the Federal Maritime Commission, and for other purposes, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Maritime Commission Authorization Act of 1990".

TITLE I—FEDERAL MARITIME COMMISSION AUTHORIZATION FOR FISCAL YEAR 1991

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

In fiscal year 1991, $15,894,000 is authorized to be appropriated for the use of the Federal Maritime Commission; except that for fiscal year 1991, and for each fiscal year thereafter, not to exceed $2,000 may be expended for official reception and representation expenses.

SEC. 102. ADVISORY COMMISSION ON CONFERENCES IN OCEAN SHIPPING.

Subsection (h) of section 18 of the Shipping Act of 1984 (46 App. U.S.C. 1717) is amended by inserting "Advisory" immediately before "Commission shall", and by striking "its establishment" and inserting in lieu thereof "all of its members have been duly appointed".

SEC. 103. POWERS OF COMMISSION.

Section 19 of the Merchant Marine Act, 1920 (46 App. U.S.C. 876) is amended—

(1) in subdivision (b) of paragraph (1) by inserting "including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation systems," immediately after "generally,"; and

(2) by adding at the end the following new paragraphs:

"(5) The Commission may initiate a rule or regulation under paragraph (1)(b) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under paragraph (1)(b) of this section.

"(6) In furtherance of the purposes of paragraph (1)(b) of this section—

"(a) the Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

"(b) the Commission may require a report or answers to questions to be made under oath;

"(c) the Commission may prescribe the form and the time for response to a report and answers to questions; and

"(d) a person who fails to file a report, answer, documentary material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than $5,000 for each day that the information is not provided.

"(7) In proceedings under paragraph (1)(b) of this section—

"(a) the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

"(b) the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence;

"(c) subject to funds being provided by appropriations Act, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States;

"(d) for failure to supply information ordered to be produced or compelled by subpoena in proceedings under paragraph (1)(b)(7) of this section, the Commission may—

"(i) after notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member, or

"(ii) assess a civil penalty of not more than $5,000 for each day that the information is not provided; and

"(e) when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

"(8) Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.

"(9) If the Commission finds that conditions that are unfavorable to shipping under paragraph (1)(b) of this section exist, the Commission may—

"(a) limit sailings to and from United States ports or the amount or type of cargo carried;

(b) suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conference in the United States trades of which it is a member for any period the Commission specifies;

"(c) suspend, in whole or in part, an ocean common carrier's right to operate under an agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

"(d) impose a fee, not to exceed $1,000,000 per voyage; or

"(e) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

"(10) Upon request by the Commission—

"(a) the collector of customs at the port or place of destination in the United States shall refuse the clearance require by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to a vessel of a country that is names in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, and shall collect any fees imposed by the Commission under paragraph (9)(d) of this section; and

"(b) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that vessel at the port or place in the United States from which it is

about to depart for another port or place in the United States.

"(11) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under paragraph (7)(d) or (9)(b) of this section, or after its right to use another tariff had been suspended under those paragraphs, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff.

"(12) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this section.".

TITLE II—DOCUMENTATION OF VESSELS

SEC. 201. WAIVERS FOR CERTAIN VESSELS.

(a) IN GENERAL.—Notwithstanding sections 12106, 12107, and 12108 of title 46, United Stats Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of Transportation may issue a certificate of documentation for the following vessels:

(1) AMERICAN EAGLE (U.S. official number 523873).

(2) ANGELOS (hull identification number HAZ1432C0173 and State of Hawaii registration number HA1432C).

(3) ARCTIC SOUNDER (U.S. Official number 569927).

(4) BIG DEAL (North Carolina registration number 8817BD).

(5) BOUNTY (U.S. official number 950956).

(6) CAMELOT (U.S. official number 923202).

(7) CHEROKEE V (U.S. official number 570746).

(8) CONQUEROR (U.S. official number 552790).

(9) ERNESTINA (U.S. official number 136423).

(10) ESPERANCE (U.S. official number 691732).

(11) FLORA VEE (U.S. official number 526631).

(12) GHOSTRIDER (U.S. official number 906121).

(13) HE'ENALU (State of Hawaii registration number HA842CP).

(14) HELL'S-A-POPPIN (U.S. official number 963543

(15) HIPPOCAMPUS (U.S. official number 560934).

(16) IMPULSE (U.S. official number 693209).

(17) JOB SITE (U.S. official number 595013).

(18) KAINALU (State of Hawaii registration number HA779CP). 0

(19) LADY ROSE ANNE (U.S. official number 603040).

(20) MARINER III (U.S. official number 225459).

(21) OCEAN PROWLER (U.S. official number 632751)

(22) OH BABY AT LAST (U.S. official number 938936).

(23) OPEN RETURN (U.S. official number 658669).

(24) PACIFIC PEARL (hull identification number MRY10161M76H414).

(25) PAULA SUE (State of Maryland registration number MD7449K).

(26) PLAYPEN (U.S. official number 617198).

(27) PUMPKIN (U.S. official number 627259).

(28) RANGGA (U.S. official number 675379).

(29) ROSE (U.S. official number 928811).

(30) ROUGH POINT (917958).

(31) SALISA M (265653).

(32) SEA DEVIL (U.S. official number 569316).

(33) SEAGULL (U.S. official number 958929).

(34) SEA NUGGET (State of Alaska registration number AK2233E).

(35) SEA WIND (U.S. official number 610694).

(36) SINBAD (es-SANGRIA) (State of Alaska registration number AK3650 and hull identification number 15846).

(37) SOLITAIRE (U.S. official number 521894).

(38) SWEE'PEA (State of Alaska registration number AK8550L and hull identification number PBL32012K990).

(39) SYRINGA (hull idenfication number 363412; U.S. Customs number 84-129170-6).

(40) WEATHERBIRD (U.S. official number 527918).

(41) WEATHERBIRD II (ex-AUNT BEE) (U.S. official number 652213).

(42) Eight inflatable vessels identified as follows:

(A) Serial number 3968B, model number J990.

(B) Serial number 4581B, model number J990.

(C) Serial number A501A, model number D989.

(D) Serial number A502A, model number D989.

(E) Serial number 6291C, model number G091.

(F) Serial number 6300C, model number G091.

(G) Serial number 7302C, model number G091.

(H) Serial number 7305C, model number G091.

(43) Submersible vessel PC 1805.

(b) WAIVER FOR CAPT. DARYL.—Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant marine Act, 1920 (46 App. U.S.C. 883), the Secretary of Transportation may issue a certificate of documentation for the vessel CAPT. DARYL (U.S. official number 643920), to acquire, purchase, process, and transport fish and fish products in the fisheries of the United States; except that the vessel shall not be permitted (1) to regularly carry goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources on the outer Continental Shelf of the United States or (2) to engage in the transportation of fishery related products for hire in the Aleutian trade as defined in section 2102(b) of title 46, United States Code (as amended by section 602(a) of title VI of this Act), unless the vessel also complies with all the requirements of section 4502(a), (b), (c), and (f), section 5102(b)(5), section 8104(n), and section 8702(b) of title 46, United States Code (as amended by sections 602(b), (c), (d), and (e) of title VI of this Act).

SEC. 202. TREATMENT OF CERTAIN VESSELS.

Notwithstanding the provisions of paragraph (a)(4) of section 12102 of title 46, United States Code, and the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), a vessel of less than five hundred gross tons that was sold to and operated by a nonprofit corporation organized under United States law, the majority of whose directors are United States citizens, for use by that corporation exclusively as an oceanographic research vessel, shall be deemed to be owned by a citizen of the United States for documentation purposes, and has not been "sold foreign" unless the vessel has been placed under the registry of a nation other than the United States during the period of ownership by that corporation.

SEC. 203. SMALL PASSENGER VESSEL INSPECTION.

(a) CONSTRUCTIVE TONNAGE OF S/V ZODIAC.—The S/V ZODIAC (United States official number 223755) shall be deemed to be less than one hundred gross tons and, in applying the regulations relating to the inspection of passenger vessels, the Secretary of the department in which the Coast Guard is operating shall inspect that vessel under regulations applying to vessels of that weight.

(b) SUBCHAPTER T INSPECTION.—Notwithstanding any other provision of law, the Secretary of the department in which the Coast Guard is operating shall inspect the ZODIAC (United States offical number 223755) under subchapter T of the title 46, Code of Federal Regulations. Any certification issued by the Secretary under subchapter T for the ZODIAC shall permit that vessel to carry not more than forty-nine passengers on lakes, bays, and sounds service.

TITLE III—COAST GUARD OMNIBUS ACT OF 1990

SEC. 301. SHORT TITLE.

This title may be cited as the "Coast Guard Omnibus Act of 1990".

SEC. 302. DESIGNATION OF THE SIDNEY LANIER BRIDGE AS AN OBSTRUCTION TO NAVIGATION.

Notwithstanding another law, the Sidney Lanier Bridge at mile 6.3 on the Brunswick River in Georgia is deemed an unreasonable obstruction to navigation and the Federal Government's share of the cost of altering the Sidney Lanier Bridge shall not exceed 50 percent of such costs.

SEC. 303. EXEMPTION OF CERTAIN VESSELS USED AS MEMORIALS TO MERCHANT MARINERS FROM PASSENGER SHIP INSPECTION REQUIREMENTS.

(a) Section 3302 of title 46, United States Code, is amended by adding the following new subsection:

"(l)(1) The Secretary may issue a permit exempting the following vessels from the requirements of this part for passenger vessels so long as the vessels are owned by nonprofit organizations and operated as nonprofit memorials to merchant mariners:

"(A) The steamship John W. Brown (United States official numbered 242209), owned by Project Liberty Ship Baltimore, Incorporated, located in Baltimore, Maryland.

"(B) The steamship Lane Victory (United States official numbered 248094), owned by the United States Merchant Marine Veterans of World War II, located in San Pedro, California.

"(C) The steamship Jeremiah O'Brien (United States official numbered 243622), owned by the United States Maritime Administration.

"(2) The Secretary may issue a permit for a specific voyage or for not more than one year. The Secretary may impose specific requirements about the number of passengers to be carried, manning, the areas or specific routes over which the vessel may operate, or other similar matters.

"(3) A designated Coast Guard official who has reason to believe that a vessel operating under this subsection is in a condition or is operated in a manner that creates an immediate threat to life or the environment or is operated in a manner that is inconsist-

ent with this section, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.".

SEC. 304. BIENNIAL DESIGNATION OF MEMBERS OF THE COAST GUARD ACADEMY CONGRESSIONAL BOARD OF VISITORS.

Section 194 of title 14, United States Code is amended to read as follows:

"(a) In addition to the Advisory Committee, a Board of Visitors to the Academy is established to visit the Academy annually and to make recommendations on the operation of the Academy.

"(b) The Board shall be composed of—

"(1) two Senators designated by the Chairman of the Committee on Commerce, Science, and Transportation of the Senate;

"(2) three Members of the House of Representatives designated by the Chairman of the Committee on Merchant Marine and Fisheries of the House of Representatives;

"(3) one Senator designated by the President of the Senate;

"(4) two Members of the House of Representatives designated by the Speaker of the House of Representatives; and

"(5) the Chairman of the Committee on Commerce, Science, and Transportation of the Senate and the Chairman of the Committee on Merchant Marine and Fisheries of the House of Representatives, as ex officio members.

"(c) When a member is unable to attend the annual meeting another member may be designated as provided under subsection (b).

"(d) When an ex officio member is unable to attend the annual meeting that member may designate another member.

"(e) Members of the Board shall be designated in the First Session and serve for the duration of the Congress.

"(f) The Board shall visit the Academy annually on the date chosen by the Secretary. Each member of the Board shall be reimbursed, to the extent permitted by law, by the Coast Guard for actual expenses incurred while engaged in duties as a member of the Board.".

SEC. 305. SIMPLIFIED MEASUREMENT OF CERTAIN BARGES.

Section 14301(b) of title 46, United States Code, is amended by adding the following:

"(6) a barge (except a barge engaged on a foreign voyage) unless the owner requests.".

SEC. 306. COAST GUARD BONDING REQUIREMENT.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by adding at the end the following new section:

"§ 667. Vessel construction bonding requirements.

"The Secretary or the Commandant may require bid, payment, performance, payment and performance, or completion bonds or other financial instruments from contractors for construction, alteration, repair, or maintance of Coast Guard vessels if—

"(1) the bond is required by law; or

"(2) the Secretary or Commandant determines after investigation that the amount of the bond in excess of 20 percent of the value of the base contract quantity excluding options, would not prevent a responsible bidder or offeror from competing for award of the contract.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 17 of title 14, United States Code, is amended by inserting after the item relating to section 666 the following:

"667. Vessel construction bonding requirements.".

SEC. 307. EXEMPTION FOR DREDGES FROM FEDERAL PILOTAGE REQUIREMENT.

Section 8502 of title 46, United States Code, is amended—

(1) in subsection (a) by striking "subsection (g)" and inserting in lieu thereof "subsections (g) and (i)";

(2) by adding at the end the following new subsection:

"(i)(1) Except as provided in paragraph (2), a dredge to which this section would otherwise apply is exempt from the requirements of this section.

"(2) If the Secretary determines, after notice and comment, that the exemption under paragraph (1) creates a hazard to navigational safety in a specified area, the Secretary may require that a dredge exempted by paragraph (1) which is operating in that area shall comply with this section.".

SEC. 308. HEMPSTEAD, NEW YORK TRANSFER.

Notwithstanding another law, the Secretary of Transportation shall transfer by quitclaim, without consideration, to the Town of Hempstead, Nassau County, New York, all rights, title, and interest of the United States in Coast Guard property and improvements located at Reynolds Channel, Atlantic Beach, New York. The Secretary shall require the property to be surveyed before it is transferred and the transferee shall pay for that survey and all conveyance costs.

SEC. 309. SOUTH HAVEN, MICHIGAN TRANSFER.

(a) Notwithstanding another law, the Secretary of Transportation shall transfer without consideration to the City of South Haven, Michigan all rights, title, and interest of the United States in Coast Guard property described in subsection (b). The transferee shall pay for all conveyance costs.

(b) The property is part of block 52 in the original Village (now City) of South Haven, Van Buren County, Michigan, described as, beginning at a point found by commencing at the North quarter post of section 10. Town 1 South, range 17 West, Van Buren County, Michigan; thence with bearings referenced to the Corps of Engineers Harbor Line Survey of 1941. South 89 degrees 34 minutes 36 seconds West along the North line of the section, 2386.95 feet; thence South 00 degrees 25 minutes 24 seconds East at right angles to said section line. 450.64 feet to the place of beginning of this description, said place of beginning being 825.50 feet South 81 degrees 52 minutes 10 seconds West of the East terminus of the Black River Channel entrance; thence South 10 degrees 38 minutes 30 seconds East, 147.00 feet; thence South 81 degrees 52 minutes 10 seconds West, 131.47 feet; thence North 07 degrees 43 minutes 50 seconds West 146.85 feet; thence North 81 degrees 52 minutes 10 seconds East, 124.00 feet to the place of beginning of this description, as per a survey made July 11, 1925, by T.A. Smith, Van Buren County Surveyor, subject to existing easements and restrictions of record.

SEC. 310. MUSKEGON, MICHIGAN TRANSFER.

(a) Notwithstanding another law, the Secretary of Transportation shall transfer without consideration to the Secretary of Commerce all rights, title, and interest of the United States in Coast Guard property and improvements described as follows: Part of Block 739 of Revised Plat of City of Muskegon of part of section 28, Town 10 North, Range 17 West, City of Muskegon, Muskegon County, Michigan described as beginning at a point distant South 48 degrees 15 minutes 56 seconds East 414.13 feet from Corps of Engineers Disc Guard 2 and distant North 35 degrees 59 minutes 49 seconds West 225.70 feet from Corps of Engineers Monument MUS 34 and distant South 85 degrees 51 minutes 27 seconds West 727.32 feet from the Northwest corner of Block 757 of the Revised Plat of City of Muskegon and proceeding thence North 28 degrees 38 minutes 52 second West 230.13 feet; thence South 61 degrees 14 minutes 26 seconds West 14.96 feet; thence North 28 degrees 24 minutes West 128.23 feet; thence South 61 degrees 14 minutes 00 seconds West 150 feet, more or less, to the shore of Lake Michigan; thence Southeasterly 358 feet, more or less, along the shore of Lake Michigan to the intersection with the line bearing South 61 degrees 14 minutes 26 seconds West from the point of beginning; thence North 61 degrees 14 minutes 26 seconds East 163 feet, more or less, to the point of beginning.

(b) The Secretary of Commerce shall make the property transferred under this section available to the National Oceanic and Atmospheric Administration.

SEC. 311. STRATEGIC PLAN FOR INFORMATION RESOURCES MANAGEMENT.

(a) None of the funds authorized to be appropriated for use by the Coast Guard in fiscal year 1992 may be expended to acquire additional information resources, including information equipment, until the Commandant of the Coast Guard develops and implements a strategic information resources plan to identify long-term information priorities and link the Coast Guard's missions, priorities, and organizational strategies to Coast Guard information resources.

(b) The Commandant shall submit to the Committee on Commerce, Science, and Transportation in the Senate and to the Committee on Merchant Marine and Fisheries in the House of Representatives quarterly reports during fiscal year 1991 concerning the progress toward completion of the strategic information resources plan, and specifically listing any expenditures or obligations made to acquire information resources.

(c) Section 663 of title 14, United States Code, is amended in the first sentence, by striking "and Shore Facilities Plan." and inserting "Shore Facilities Plan, and Information Resources Management Plan.".

SEC. 312. BOATING SAFETY PROGRAM.

Chapter 131 of title 46, United States Code, is amended—

(a) in section 13101(b)(2) by striking "and with the guidelines developed under that Act; and" and inserting "the Federal Aid in Sport Fish Restoration Act of 1950 (16 U.S.C. 777-777k), and with the guidelines developed under those Acts; and";

(b) in section 13102—

(1) in subsection (a)(3) by inserting "State" after the word "general";

(2) in subsection (c)(4) by inserting "or drugs" after the word "alcohol"; and

(3) in subsection (d) by striking "the proportionate share" and inserting "a proportionate share";

(c) in sections 13103(a)(3) and 13105(a) by striking "or obligated" each time it appears; and

(d) in section 13108(a)(1) to read as follows: "During the second quarter of a fiscal year and on the basis of computations made under section 13105 of this title and submitted by the States for the preceding fiscal year, the Secretary shall determine the percentage of the amounts available to which each eligible State is entitled for the next fiscal year.".

SEC. 313. DARE COUNTY, NORTH CAROLINA TRANSFER.

Notwithstanding another law, the Secretary of Transportation shall transfer without consideration by quitclaim deed to Dare County, North Carolina all rights, title, and interest of the United States in Coast Guard property and improvements located on the northern end of Pea Island east side of State road 1257, 0.3 miles north of North Carolina Highway 12 in Rodanthe, Dare County, North Carolina. The Secretary shall require the property to be surveyed before it is transferred.

SEC. 314. BAYOU LAFOURCHE, LOUISIANA.

Bayou LaFourche, in the State of Louisiana, between the Percy Brown Road (Hwy 648), city of Thibodaux, parish of Lafourche, and the Southern Pacific Railroad bridge crossing the bayou, city of Thibodaux, parish of Lafourche, is declared to be a navigable waterway of the United States under chapter 11 of title 33, United States Code.

SEC. 315. RELEASE OF RESTRICTIONS.

(a) IN GENERAL.—Subject to subsection (b), the United States hereby releases, without monetary consideration, all restrictions, conditions, and limitations on the use, encumbrance, or conveyance of the property described in subsection (c), to the extent such restrictions, conditions, and limitations are enforceable by the United States.

(b) LIMITATION.—Notwithstanding subsection (a), the United States shall have the right of access to, and use of, the property described in subsection (c) for national defense purposes in time of war or national emergency.

(c) PROPERTY DESCRIBED.—The property referred to in subsections (a) and (b) consist of the following parcels of lands and improvements thereto located in Calcasieu Parish, Louisiana:

(1) A parcel commonly known as the Calcasieu Women's Shelter, consisting of 3 contiguous tracts described as follows:

Tract A—Commencing at a point N 45°28'31" E 198.3 feet from point A; thence S 44°29'9" E 169.3 feet; thence S 45°28'31" W 75 feet; thence N 44°29'9" W 169.3 feet; thence N 45°28'31" E 75 feet to the point of commencement.

Tract B—Commencing at a point N 45°28'31" E 198.3 feet from point A; thence S 44°29'9" E 220 feet; thence N 45°28'31" E 50 feet; thence N 44°29'9" W 220 feet; thence S 45°28'31" E 50 feet to the point of commencement.

Tract C—Commencing at a point N45°28'31" E 248.3 feet from point A; thence S 44°29'9" E 220 feet; thence N 45°28'31" E 50 feet; then N 44°29'9" W 220 feet; thence S 45°28'31" E 50 feet to the point of commencement.

(2) A parcel, consisting of a tract of land containing 33.351 acres, more or less, in section 11, township 10 south, range 8 west, and described as follows:

Commencing at a point N 0°22'09" W 88.18 feet from the northeast corner of the southeast quarter of section 10, T 10 S—R 8 W; said point being point D of plat of survey entitled "Boundary Agreement of CAFB" dated August 7, 1973, and recorded in plat book 23, page 20 records of Calcasieu Parish, Louisiana: thence N 0°22'09" W 183.6 feet; thence S 79°45'09" E 226.33 feet to the point of commencement; thence S 79°45'09" E 1843.02; thence N 11°36'26" E 965.89 feet, thence N 80°30'11" W 1196.35 feet, thence S 45°25'51" W 1162.28 feet to the point of commencement.

(d) MINERAL RESOURCES.—Nothing in this section shall affect the disposition or ownership of oil, gas, or other mineral resources associated with property described in subsection (c).

SEC. 316. COLD WATER SURVIVAL TRAINING CENTER.

In addition to any sums authorized to be appropriated for the Coast Guard for fiscal year 1992, $6,000,000 is authorized to be appropriated for fiscal year 1992 and transferred to the University of Alaska to establish a Cold Water Survival Training Center in Kenai, Alaska.

SEC. 317. FISHING VESSELS IN CALIFORNIA.

(a) DEFINITION.—For purposes of the application of sections 8103(a), 12102, 12110, and 12111 of title 46, United States Code, to a fishing vessel operating in waters subject to the jurisdiction of the United States off the coast of the State of California, the term "citizen of the United States" includes an alien lawfully admitted to the United States for permanent residence.

(b) TERMINATION.—This section shall terminate on October 1, 2000.

SEC. 318. NONNAVIGABILITY OF WISCONSIN RIVER.

The portion of the Wisconsin River above the hydroelectric dam at Prairie du Sac, Wisconsin, is hereby declared to be a nonnavigable waterway of the United States for purposes of title 46, United States Code, including but not limited to the provisions of such title relating to vessel inspection and vessel licensure, and the other maritime laws of the United States.

SEC. 319. MEDICAL CARE CONTRACTING AUTHORITY.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by adding at the end the following new section:

"§ 668. Contracts for medical care for retirees, dependents, and survivors alternative delivery of health care

"(a) The Secretary may contract for the delivery of health care to which covered beneficiaries are entitled under chapter 55 of title 10. The Secretary may enter into a contract under this section with any of the following:

"(1) Health maintenance organizations.

"(2) Preferred provider organizations.

"(3) Individual providers, individual medical facilities, or insurers.

"(4) Consortiums of these providers, facilities, or insurers.

"(b) A contract entered into under this section may provide for the delivery of—

"(1) selected health care services;

"(2) total health care services for selected covered beneficiaries; or

"(3) total heatlh care services for all covered beneficiaries who reside in a geographic area designated by the Secretary.

"(c) The Secretary may prescribe a premium, deductible, copayment, or other change for health care provided under this section.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 17 of title 14, United States Code, is amended by adding at the end the following:

"668. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care.".

SEC. 320. PURCHASE OF CERTAIN DATA.

The National Oceanic and Atmospheric Administration is authorized to enter into a contract for the future purchase of atmospheric wind data. Any and all obligations of the Government under such contract shall be contingent upon the following terms:

(1) the data to be purchased must meet technical criteria specified in the contract and must be satisfactory to the National Oceanic and Atmospheric Administration; and

(2) the availability of appropriated funds.

TITLE IV—FALSE DISTRESS REPORTS

SECTION 401. PENALTIES AND LIABILITY FOR MAKING A FALSE DISTRESS REPORT.

Section 88 of title 14, United States Code, is amended by adding at the end the following new subsection:

"(c) An individual who knowingly and willfully communicates a false distress message to the Coast Guard or causes the Coast Guard to attempt to save lives and property when no help is needed is—

"(1) guilty of a class D felony;

"(2) subject to a civil penalty of not more than $5,000; and

"(3) liable for all costs the Coast Guard incurs as a result of the individual's action.".

TITLE V—ADDITIONAL COAST GUARD AUTHORIZATION FOR FISCAL YEAR 1991

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

Section 102 of Public Law 101-225, the Coast Guard Authorization Act of 1989, is amended by adding a new subsection to read as follows:

"(6) ENVIRONMENTAL COMPLIANCE AND RESTORATION.—For environmental compliance and restoration at Coast Guard facilities, $30,000,000.".

TITLE VI—ALEUTIAN TRADE ACT OF 1990

SEC. 601. SHORT TITLE.

This title may be cited as the "Aleutian Trade Act of 1990".

SEC. 602. ALASKA CARGO PROVISIONS.

(a) DEFINITION.—Section 2102 of title 46, United States Code, is amended by—

(1) designating the existing text as subsection (a); and

(2) adding the following new subsection at the end:

"(b) In chapters 33, 45, 51, 81, and 87 of this title, 'Aleutian trade' means the transportation of cargo (including fishery related products) for hire on board a fish tender vessel to or from a place in Alaska west of 153 degrees West longitude and east of 172 degrees East longitude, if that place receives weekly common carrier service by water, to or from a place in the United States (except a place in Alaska).".

(b) INSPECTION PROVISIONS.—Section 3302(c) of title 46, United States Code, is amended by adding at the end the following:

"(3) A fishing, fish processing, or fish tender vessel of not more than 500 gross tons is exempt from section 3301(1), (6), and (7) of this title if—

"(A) when transporting cargo to or from a place in Alaska—

"(i) that place does not receive weekly common carrier service by water from a place in the United States; or

"(ii) the cargo is of a type not accepted by that common carrier service; or

"(B) in the case of a fish tender vessel, the vessel is not engaged in the Aleutian trade.

"(4) A fish tender vessel is exempt from section 3301(1), (6), and (7) of this title when engaged in the Aleutian trade if the vessel—

"(A) is not more than 500 gross tons;

"(B) has an incline test performed by a marine surveyor; and

"(C) has written stability instructions posted on board the vessel.".

(c) SAFETY STANDARDS.—

(1) Section 4502 (b) and (c) of title 46, United States Code, is amended to read as follows:

"(b)(1) In addition to the requirements of subsection (a) of this section, the Secretary shall prescribe regulations requiring the installation, maintenance, and use of the equipment in paragraph (2) of this subsection for documented vessels to which this chapter applies that—

"(A) operate beyond the Boundary Line;

"(B) operate with more than 16 individuals on board; or

"(C) in the case of a fish tender vessel, engage in the Aleutian trade.

"(2) The equipment to be required is as follows:

"(A) alerting and locating equipment, including emergency position indicating radio beacons;

"(B) lifeboats or liferafts sufficient to accommodate all individuals on board;

"(C) at least one readily accessible immersion suit for each individual on board that vessel when operating on the waters described in section 3102 of this title;

"(D) radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities;

"(E) navigation equipment, including compasses, radar reflectors, nautical charts, and anchors;

"(F) first aid equipment, including medicine chests; and

"(G) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by the equipment.

"(c)(1) In addition to the requirements described in subsections (a) and (b) of this section, the Secretary may prescribe regulations establishing the standards in paragraph (2) of this subsection for vessels to which this chapter applies that—

"(A)(i) were built after December 31, 1988, or undergo a major conversion completed after that date; and

"(ii) operate with more than 16 individuals on board; or

"(B) in the case of a fish tender vessel, engage in the Aleutian trade.

"(2) The standards shall be minimum safety standards, including standards relating to—

"(A) navigation equipment, including radars and fathometers;

"(B) life saving equipment, immersion suits, signaling devices, bilge pumps, bilge alarms, life rails, and grab rails;

"(C) fire protection and firefighting equipment, including fire alarms and portable and semiportable fire extinguishing equipment;

"(D) use and installation of insulation material;

"(E) storage methods for flammable or combustible material; and

"(F) fuel, ventilation, and electrical systems.".

(2) Section 4502(f) of title 46, United States Code, is amended to read as follows:

"(f) To ensure compliance with the requirements of this chapter, at least once every 2 years the Secretary shall examine—

"(1) A fish processing vessel; and

"(2) a fish tender vessel engaged in the Aleutian trade.".

(d) LOAD LINES.—Section 5102(b)(5)(B) of title 46, United States Code, is amended to read as follows:

"(B)(i) is not on a foreign voyage; or

"(ii) engaged in the Aleutian trade (except a vessel in that trade assigned a load line at any time before June 1, 1992).".

(e) MANNING.—

(1) Section 8104 of title 46, United States Code, is amended by adding at the end the following:

"(n)(1) Except as provided in paragraph (2) of this subsection, on a fish tender vessel of not more than 500 gross tons engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 3 watches.

"(2) On a fish tender vessel of ot more than 500 gross tons engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 2 watches, if the vessel—

"(A) before September 8, 1990, operated in that trade; or

"(B)(i) before September 8, 1990, was purchased to be used in that trade; and

"(ii) before June 1, 1992, entered into service in that trade.".

(2) Section 8702 of title 46, United States Code, is amended as follows:

(A) in subsection (a)(3) by striking "vessel" and substituting "vessel (except a fish tender vessel engaged in this Aleutian trade)";

(B) in subsection (b)(2) by—

(i) striking "50 percent on a vesssel permitted under section 8104 of this title to maintain a 2-watch system."; and

(ii) substituting the following: "50 percent—

"(i) on a vessel permitted under section 8104 of this title to maintain a 2-watch system; or

"(ii) on a fish tender vessel engaged in the Aleutian trade.".

(3) For the purposes of chapter 73 of title 46, United States Code, the Secretary of Transportation shall accept the service used by an individual to qualify for an endorsement as able seaman—fishing industry as qualifying service toward an endorsement as an able seaman—

(A) under sections 7307 and 7309 of that title; or

(B) if the service is on board a vessel of at least 100 gross tons, under section 7308 of that title.

(f) EFFECTIVE DATES.—This section is effective on the date of enactment of this section except as follows:

(1) The requirements imposed by section 3302(c)(4) (B) and (C) of title 46, United States Code (as enacted by subsection (b) of this section) is effective 6 months after the date of enactment of this Act.

(2) Before January 1, 1993, section 4502(c) (as amended by subsection (c) of this section) does not apply to a fish tender vessel engaged in the Aleutian trade, if the vessel—

(A)(i) before September 8, 1990, operated in that trade; or

(ii) before September 8, 1990, was purchased to be used in that trade and, before June 1, 1992, entered into service in that trade; and

(B) not undergo a major conversion.

(3) Before January 1, 2003, a fish tender vessel is exempt from Chapter 51 of title 46, United States Code (as amended by subsection (d) of this section) when engaged in the Aleutian trade, if the vessel—

(A)(i) before September 8, 1990, operated in that trade; or

(ii) before September 8, 1990, was purchased to be used in this trade and, before June 1, 1992, entered into service in that trade;

(B) does not undergo a major conversion; and

(C) did not have a load line assigned at any time before the date of enactment of this Act.

(4) The requirements imposed by section 8702(b)(2) of title 46, United States Code (as amended by subsection (e)(2)(B) of this section) are effective 1 year after the date of enactment of this Act.

SEC. 603. MISCELLANEOUS TECHNICAL AMENDMENT.

Title 46, United States Code, is amended as follows:

(1) Section 2101(14)(C) is amended by striking "(49 U.S.C. 1803)" and substituting "(49 App. U.S.C. 1803)".

(2) Section 3302(j)(2)(B) is amended by striking "(46 App. U.S.C. 1295(c))" and substituting "(46 App. U.S.C. 1295c)".

(3)(A) Section 4104 is repealed.

(B) The chapter analysis for chapter 41 is amended by striking item 4104.

(4) The catch line of section 5114 is amended by striking "officers employees" and substituting "officers and employees".

(5)(A) Section 5115 is repealed.

(B) The chapter analysis for chapter 51 is amended by striking item 5115.

(6) Section 8103(i)(1)(C) is amended by striking "Naturalization" and substituting "Nationality".

(7)(A) Section 8105 is repealed.

(B) The analysis for chapter 81 is amended by striking item 8105.

(8) The chapter analysis is amended by striking items 12113-12116, 12118, and 12121.

(9) Section 12109(b) is amended by striking "aboard such a pleasure vessel" and substituting "on board that recreational vessel".

(10) Sections 12501(b)(2)(A) and 12503(a)(2)(A) are amended to read as follows:

"(A) the owner's social security number or, if that number is not available, other means of identification acceptable to the Secretary; or".

(11) Section 12505 is amended by—

(A) striking subsection (b), (c), (d), and (f); and

(B) redesignating subsection (e) as subsection (b).

(12)(A) Section 14102 is repealed.

(B) The chapter analysis for chapter 141 is amended by striking item 14102.

(13) Section 31308 is amended by striking "(46 App. U.S.C. 1241 et seq.)" and substituting" (46 App. U.S.C. 1271 et seq.)."

TITLE VII—MARITIME ADMINISTRATION AUTHORIZATION

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

In fiscal year 1991, the following amounts are authorized to be appropriated for the Maritime Administration:

(1) Any amounts necessary to liquidate obligations under operating-differential subsidy contracts for the fiscal year 1991 portion of the total of current contract authority.

(2) $35,690,000 for expenses related to manpower, education, and training, including—

(A) $25,205,000 for maritime training at the Merchant Marine Academy at Kings Point, New York;

(B) $8,872,000 for assistance to the State maritime academies; and

(C) $1,613,000 for manpower and additional training.

(3) $28,095,000 for operating programs.

(4) $7,902,000 for expenses related to national security support capabilities, including—

(A) $6,748,000 for the National Defense Reserve Fleet; and

(B) $1,154,000 for emergency planning operations.

(5) $225,000,000 for the Ready Reserve Force, including—

(A) $49,400,000 for fleet additions, replacements, acquisitions, and upgrading of vessels for the Ready Reserve Force;

(B) $171,600,000 for maintenance and operations programs in support of the Ready Reserve Force; and

(C) $4,000,000 for Ready Reserve Force facilities.

SEC. 702. NATIONAL MARITIME ENHANCEMENT INSTITUTES.

Section 8(e) of the Act of October 13, 1989 (Public Law 101-115; 103 Stat. 695) is amended to read as follows:

"(e) The Secretary may make awards on an equal matching basis to an institute designated under subsection (a) from amounts appropriated. The aggregate annual amount of the Federal share of the awards shall not exceed $100,000.".

SEC. 703. BOARD OF VISITORS.

Section 1303(h)(1) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295(h)(1)), is amended to read as follows:

"(h)(1) A Board of Visitors to the Academy shall be established, for a term of two years commencing at the beginning of each Congress, to visit the Academy annually on a date determined by the Secretary and to make recommendations on the operation of the Academy.".

SEC. 704. SALE OF OBSOLETE VESSELS.

Section 510(i) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1160(i)), is amended to read as follows:

"(i) The Secretary of Transportation is authorized to acquire suitable documented vessels, as defined in section 2101 of title 46, United States Code, with funds in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, the acquired and obsolete vessels shall be valued at their scrap value in domestic or foreign markets as of the date of the acquisition for or sale from the National Defense Reserve Fleet; except that, in a transaction subject to this section, the value assigned to those vessels will be determined on the same basis, with consideration given to the fair value of the cost of positioning the traded-out vessel to the place of scrapping. All costs incident to the lay-up of the vessel acquired under this subsection may be paid from balances in the Fund. Notwithstanding the provisions of sections 9 and 37 of the Shipping Act, 1916, vessels sold from the National Defense Reserve Fleet under this subsection may be scrapped in approved foreign markets.".

SEC. 705. SHIP SHARING.

Section 4 of the Act of October 13, 1989 (Public Law 101-115; 103 Stat. 692) is amended—

(1) by inserting "legislative" immediately after "sixty"; and

(2) by adding at the end the following: "The Secretary shall not take any vessel, currently in service as a State academy training vessel, out of service for the purpose of implementing any alternative program, including ship sharing, until or unless the vessel is incapable of being maintained in good repair as required under section 1304(c)(1)(A) of the Merchant Marine Act, 1936. The Secretary shall not implement any program requiring that any State academy share its training vessel with another State academy without having first received the express consent of Congress to do so.".

SEC. 706. COAST GUARD EXAMINATION REQUIREMENT.

Section 3 of the Act of October 13 1989 (Public Law 101-115; 103 Stat. 692), shall not be effective prior to October 1, 1994.

SEC. 707. COMMITMENT AGREEMENTS.

(a) IN GENERAL.—Section 1303(e)(3) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(e)(3)), is amended—

(1) by inserting "(A)" immediately after "(3)"; and

(2) by adding at the end the following new subparagraph:

"(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), the Secretary of Transportation—

"(i) may recover from the individual the cost of education provided by the Federal Government; and

"(ii) shall request the Attorney General to begin court proceedings to recover the costs of education if the Secretary decides to seek recovery under clause (i)"

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to individuals who sign agreements after the date of enactment of this Act under section 1303(e) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(e)).

SEC. 708. NOMINATION AND APPOINTMENT OF CADETS.

Section 1303(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(b)), is amended—

(1) in paragraph (1)—

(A) by striking "Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office)" and inserting in lieu thereof "Delegate from American Samoa";

(B) by striking "any individual who is" and inserting "any individual who is—"

(C) by inserting "or" immediately after "Commission," the last place it appears; and

(D) by striking ", or a resident of American Samoa if the individual is nominated by the Governor of American Samoa";

(2) in paragraph (3)(A)(vi), by striking "Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office)" and inserting in lieu thereof "Delegate to the House of Representatives from American Samoa"; and

(3) in paragraph (7)—

(A) in subparagraph (A), by striking "annually", "until September 30, 1995,", and "up to six"; and

(B) in subparagraph (B), by striking "the Secretary shall insure that the Republic of Panama reimburse the Secretary" and inserting in lieu thereof "The Secretary shall be reimbursed".

SEC. 709. MERCHANT MARINER MEMORIAL.

(a) SHORT TITLE.—This section may be cited as the "Merchant Mariner Memorial Act of 1990".

(b) VESSEL CONVEYANCE AUTHORITY.—(1) Notwithstanding any other law, the Secretary of Transportation may convey to any group of not less than two and not more than three nonprofit organizations, without consideration, all right, title, and interest of the United States Government in a vessel which—

(A) is in the National Defense Reserve Fleet on the date of enactment of this section;

(B) is of not less than 4,000 displacement tons;

(C) has no usefulness to the Government; and

(D) is scheduled to be scrapped.

(2) As a condition of conveying vessel to a group of nonprofit organizations pursuant to this section, the Secretary shall require that each nonprofit organization in the group—

(A) before the date of that conveyance, enter into an agreement with the other nonprofit organizations in that group which requires—

(i) the sale of the vessel for scrap purposes; and

(ii) the equal division of the proceeds of the sale among the nonprofit organizations in that group;

(B) use its share of those proceeds for the expenses directly related to acquiring land for, designing, berthing, refurbishing, repairing, or constructing a memorial to merchant mariners;

(C) have raised, before the date of enactment of this section, at least $100,000 from non-Federal sources for use for establishing a memorial to merchant mariners; and

(D) agree to any other conditions the Secretary considers appropriate.

(3)(A) A nonprofit organization may apply to the Secretary for a conveyance under this section individually or as a member of a group of nonprofit organizations.

(B) The Secretary shall designate, for purposes of this section, groups of not less than two and not more than three nonprofit organizations which apply individually under this section.

(C) A nonprofit organization may not be a member of more than one group of nonprofit organizations for purposes of this section.

(c) DELIVERY.—The Secretary shall deliver a vessel conveyed under this section to a group of nonprofit organizations—

(1) at a place where the vessel is located on the date of the approval of the conveyance,

(2) in its condition on that date, and

(3) without cost of the Government.

(d) EXPIRATION.—The authority of the Secretary under this section to convey vessels shall expire two years after the date of enactment of this section.

SEC. 710. NON-VESSEL-OPERATING COMMON CARRIERS.

(a) SHORT TITLE.—This section may be cited as the "Non-Vessel-Operating Common Carrier Amendments of 1990.".

(b) BONDING OF NON-VESSEL-OPERATING COMMON CARRIERS.—The Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.) is amended by adding at the end the following new section:

"SEC. 23. BONDING OF NON-VESSEL-OPERATING COMMON CARRIERS.

"(a) BOND.—Each non-vessel-operating common carrier shall furnish to the Commission a bond in a form and an amount determined by the Commission to be satisfactory to insure the financial responsibility of that carrier, but in any event not less than $50,000.

(b) SURETY.—A bond submitted pursuant to this section shall be issued by a surety company found acceptable by the Secretary of the Treasury.

(c) CLAIMS AGAINST BOND.—A bond obtained pursuant to this section shall be available to pay any judgment for damages against a non-vessel-operating common carrier arising from its transportation-related activities or order for reparations issued pursuant to section 11 of this Act or any penalty assessed against a non-vessel-operating common carrier pursuant to section 13 of this Act.

(d) RESIDENT AGENCY.—A non-vessel-operating common carrier not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

(e) TARIFFS.—The Commission may suspend or cancel any or all tariffs of a non-vessel-operating common carrier for failure to maintain the bond required by subsection (a) of this section or to designate an agent as required by subsection (d) of this section or for a violation of section 10(a)(1) of this Act.".

(c) PROHIBITED ACTS.—Section 10(b) of the Shipping Act of 1984 (46 App. U.S.C. 1709(b)) is amended—

(1) by striking "or" at the end of paragraph (13);

(2) by redesignating paragraph (14) and any reference thereto as paragraph (16); and

(3) by inserting immediately after paragraph (13) the following new paragraphs:

"(14) knowingly and willfully accept cargo from or transport cargo for the account of a non-vessel-operating common carrier that does not have a tariff and a bond as required by sections 8 and 23 of this Act;

"(15) knowingly and willfully enter into a service contract with a non-vessel-operating common carrier or in which a non-vessel-operating common carrier is listed as an affiliate that does not have a tariff and a bond as required by sections 8 and 23 of this Act; or".

(d) INTERIM RULES.—The Commission may prescribe interim rules and regulations necessary to carry out the amendments made by this section.

(e) EFFECTIVE DATE.—This section shall become effective 90 days after the date of its enactment.

(f) CONFORMING AMENDMENT.—The table of contents in the first section of the Shipping Act of 1984 is amended by adding at the end the following entry:

"Sec. 23. Bonding on non-vessel-operating common carriers.".

SEC. 711. TECHNICAL CORRECTION.

Section 8103 of title 46, United States Code is amended in subsection (i) by striking "Naturalization" and inserting "Nationality".

SEC. 712. MARITIME OIL POLLUTION PREVENTION, RESPONSE, AND CLEAN-UP TRAINING.

Section 1305 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295d), is amended by adding at the end the following new subsection:

"(c)(1) The Secretary shall assist maritime training institutions approved by the Secretary in establishing a maritime oil pollution prevention, response, and clean-up training program.

"(2) Under the program established under paragraph (1)—

"(A) the Secretary may provide, to maritime training institutions approved by the Secretary, vessels described in paragraph (4), with title free of all liens, subject to the requirements specified under paragraph (3); and

"(B) in return for receipt of such vessels, such institutions shall—

"(i) employ the vessels for the training of students and appropriate maritime industry personnel in oil spill prevention, response, clean-up, and related skills; and

"(ii) make the vessels and qualified students available to appropriate Federal, State, and local oil spill response authorities in the event of a martime oil spill.

"(3) The requirements referred to in paragraph (2)(A) are as follows:

"(i) any vessel provided under paragraph (2)(A) shall be tendered to the approved maritime training institution at a location determined by the Secretary;

"(ii) no such vessel may be sold, traded, chartered, donated, scrapped, or in any way altered or disposed of without the prior approval of the Secretary;

"(iii) no such vessel may be used in competition with any privately-owned vessel documented under the laws of the United States or any State, unless necessary to carry out the purposes of this subsection;

"(iv) any approval maritime training institution in possession of such a vessel which can no longer utilize the vessel for training purposes shall return the vessel to the Secretary, who shall take possession of the vessel at the training institution and thereafter may dispose of the vessel, or provide the vessel to another approved maritime training institution, as the Secretary determines appropriate; and

"(v) such other requirements or conditions as the Secretary determines appropriate.

"(4) The vessels referred to in paragraph (2)(A) are United States-built offshore supply vessels and United States-built tug/supply vessels in the possession of the Maritime Administration as a result of defaults on loans guaranteed under title XI of this Act.".

DISCLAIM OF INTEREST IN LANDS ON SAN JUAN ISLAND, WASHINGTON

BUMPERS AMENDMENT NO. 3221

Mr. CRANSTON (for Mr. BUMPERS) proposed an amendment to the bill (H.R. 2566) to disclaim any interests of the United States in certain lands on San Juan Island, WA, and for other purposes, as follows:

SECTION 1. SHORT TITLE.

This title may be cited as the 'Civil War Sites Study Act of 1990'.

SEC. 2. DEFINITIONS.

For the purposes of this title—

(a) the term 'Commission' means the Civil War Sites Advisory Commission established in section 5 of this title;

(b) the term 'Secretary' means the Secretary of the Interior; and

(c) the term 'Shenandoah Valley Civil War sites' means those sites and structures situated in the Shenandoah Valley in the Commonwealth of Virginia which are thematically tied with the nationally significant events that occurred in the region during the Civil War, including, but not limited to, General Thomas 'Stonewall' Jackson's 1862 'Valley Campaign' and General Philip Sheridan's 1864 campaign culminating in the battle of Cedar Creek on October 19, 1864.

SEC. 3. FINDINGS.

The Congress finds that—

(1) many sites and structures associated with the Civil War are located in regions which are undergoing rapid urban and suburban development;

(2) such sites and structures represent important means by which the Civil War may continue to be understood and interpreted by the public; and

(3) it is important to obtain current information on the significance of such sites, threats to their integrity, and alternatives for their preservation and interpretation for the benefit of the Nation.

SEC. 4. SHENANDOAH VALLEY CIVIL WAR SITES STUDY.

(a) STUDY.—(1) The Secretary is authorized and directed to prepare a study of Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short- and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, and State and local governments, or other public or private entities, as may be appropriate. Such alternatives may include, but shall not be limited to, designation as units of the National Park System or as affiliated areas.

(2) The study shall contain an analysis of the economic effect that protection of Shenandoah Valley Civil War sites would have on the economy in the Shenandoah Valley.

(3) The study shall include the views and recommendations of the National Park System Advisory Board.

(b) TRANSMITTAL TO CONGRESS.—Not later than 1 year after the date that funds are made available for the study referred to in subsection (a), the Secretary shall transmit such study to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

SEC. 5. ESTABLISHMENT OF CIVIL WAR SITES ADVISORY COMMISSION.

(a) IN GENERAL.—There is hereby established the Civil War Sites Advisory Commission. The Commission shall consist of thirteen members appointed as follows:

(1) five citizens who are nationally recognized as experts and authorities in the history of the Civil War, appointed by the Secretary;

(2) the Director of the National Park Service or his or her designee;

(3) the Chairman of the Advisory Council on Historic Preservation, or his or her designee;

(4) three citizens appointed by the President Pro Tempore of the United States Senate in consultation with the Chairman

and Ranking Minority Member of the Committee on Energy and Natural Resources; and

(6) three citizens appointed by the Speaker of the United States House of Representatives in consultation with the Chairman and Ranking Minority Member of the Committee on Interior and Insular Affairs.

(b) CHAIRMAN.—The Commission shall elect a chairman from among its members.

(c) VACANCIES.—Vacancies occurring on the Commission shall not affect the authority of the remaining members of the Commission to carry out the functions of the Commission. Any vacancy in the Commission shall be promptly filled in the same manner in which the original appointment was made.

(d) QUORUM.—A simple majority of Commission members shall constitute a quorum.

(e) MEETINGS.—The Commission shall meet at least quarterly or upon the call of the Chairman or a majority of the members of the Commission.

(f) COMPENSATION.—Members of the Commission shall serve without compensation. Members of the Commission, when engaged in official Commission business, shall be entitled to travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service under section 5703 of title 5, United States Code.

(g) TERMINATION.—The Commission established pursuant to this section shall terminate 180 days after the transmittal of the report to Congress as provided in section (8).

SEC. 6. STAFF OF THE COMMISSION.

(a) EXECUTIVE DIRECTOR.—The Director of the National Park Service, or his or her designee, shall serve as the Executive Director of the Commission.

(b) STAFF.—The Director of the National Park Service shall, on a reimbursable basis, detail such staff as the Commission may require to carry out its duties.

(c) STAFF OF OTHER AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

(d) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

SEC. 7. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission may, for the purpose of carrying out this title hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission may deem advisable.

(b) BYLAWS.—The Commission may make such bylaws, rules and regulations, consistent with this title, as it consideres necessary to carry out its functions under this title.

(c) DELEGATION.—When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(d) DONATIONS.—Notwithstanding any other provision of law, the Commission may seek and accept donation of funds, property, or services from individuals, foundations, corporations, and other private entities, and from public entities, for the purpose of carrying out its duties.

(e) MAILS.—The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

SEC. 8. DUTIES OF THE COMMISSION.

(a) PREPARATION OF STUDY.—The Commission shall prepare a study of historically significant sites and stuctures in the United States associated with military action during the Civil War, other than Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State and local governments, or other public or private entities, as may be appropriate. Such alternatives may include, but shall not be limited to, designation as units of the National Park System or as affiliated areas. The study may include existing units of the National Park System.

(b) CONSULTATION.—During the preparation of the study referred to in subsection (a), the Commission shall consult with the Governors of affected States, affected units of local government, State and local historic preservation organizations, and such other interested parties as the Commission deems advisable.

(c) TRANSMITTAL TO THE SECRETARY AND CONGRESS.—Not later than 2 years after the date that funds are made available for the study referred to in subsection (a), the Commission shall transmit such study to the Secretary and the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(d) NO PRIOR REVIEW.—No officer or agency of the United States shall have any authority to require the Commission to submit the study referred to in subsection (a), or any other recommendations or testimony the Commission may provide, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such study, recommendations, or testimony to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its study, recommendations, or testimony which it transmits to the Congress.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums not to exceed $2,000,000 to carry out the purposes of this title.".

BREAUX AMENDMENT NO. 3222

Mr. CRANSTON (for Mr. BREAUX) proposed an amendment to the bill H.R. 2566, supra, as follows:

At the end of the bill insert the following new title:

"TITLE II—CALCASIEU PARISH, LOUISIANA

SEC. 201. RELEASE OF RESTRICTIONS.

(a) IN GENERAL.—Subject to subsection (b), the United States hereby releases, without monetary consideration, all restrictions, conditions, and limitations on the use, encumbrance, or conveyance of the property described in section 202, to the extent such restrictions, conditions, and limitations are enforceable by the United States.

(b) LIMITATION.—Notwithstanding subsection (a), the United States shall have the right of access to, and use of, the property described in section 202 for national defense purposes in time of war or national emergency.

SEC. 202. PROPERTY DESCRIBED.

The property referred to in section 201 consists of the following parcels of lands and improvement thereto located in Calcasieu Parish, Louisiana:

(1) A parcel commonly known as the Calcasieu Women's Shelter, consisting of 3 contiguous tracts described as follows:

Tract A—Commencing at a point N 45°28'31" E 198.3 feet from point A; thence S 44°29'9" E 169.3 feet; thence S 45°28'31" W 75 feet; thence N 44°29'9" W 169.3 feet; thence N 45°28'31" E 75 feet to the point of commencement.

Tract B—Commencing at a point N 45°28'31" E 198.3 feet from point A; thence S 44°29'9" E 220 feet; thence N 45°28'31" E 50 feet; thence N 44°29'9" W 220 feet; thence S 45°28'31" E 50 feet to the point of commencement.

Tract C—Commencing at a point N 45°28'31" E 248.3 feet from point A; thence S 44°29'9" E 220 feet; thence N 45°28'31" E 50 feet; thence N 44°29'9" W 220 feet; thence S 45°28'31" E 50 feet to the point of commencement.

(2) A parcel, consisting of a tract of land containing 33.351 acres, more or less, in section 11, township 10 south, range 8 west, and described as follows:

Commencing at a point N 0°22'09" W 88.18 feet from the northeast corner of the southeast quarter of section 10. T 10 S—R 8 W; said point being point D of plat of survey entitled "Boundary Agreement of CAFB" dated August 7, 1973, and recorded in plat book 23, page 20 records of Calcasieu Parish, Louisiana: thence N 0°22'09" W 183.6 feet; thence S 79°45'09" E 226.33 feet to the point of commencement: thence S 79°45'09" E 1843.02; thence N 11°36'26" E 965.89 feet, thence N 80°30'11" W 1196.35 feet, thence S 45°25'51" W 1162.28 feet to the point of commencement.

SEC. 203. MINERAL RESOURCES.

Nothing in this Act shall affect the disposition or ownership of oil, gas, or other mineral resources associated with property described in section 202.

DOMENICI AMENDMENT NO. 3223

Mr. HEINZ (for Mr. DOMENICI) proposed an amendment to the bill H.R. 2566, supra, as follows:

At the end of the bill insert the following:

TITLE .—CHACOAN OUTLIERS PROTECTION ACT OF 1990

SEC. . SHORT TITLE.

This title may be cited as the "Chacoan Outliers Protection Act of 1990".

Newcomb	50
Peach Springs	1,046
Pierre's Site	440
Raton Well	23
Salmon Ruin	5
San Mateo	61
Sanostee	1,565
Section 8	10
Skunk Springs/Crumbled House	553
Stand Rock	348
Toh-la-kai	10
Twin Angels	40
Upper Kin Klizhin	60.".

SEC. . MAP.

A map entitled "Chaco Culture Archeological Protection Sites" generally depicting

the 37 outlying sites shall be kept on file and available for public inspection in the office of the Headquarters of the Chaco Culture National Historical Park, the office of the State Director of the Bureau of Land Management in Santa Fe, New Mexico, the Office of the Area Director of the Bureau of Indian Affairs in Window Rock, Arizona, and the offices of the State Historic Preservation Officers of Arizona and New Mexico.

SEC. . AMENDMENT TO THE MASAU TRAIL.

Section 201 of Public Law 100-225 (101 Stat. 1539, 460uu-11) is hereby amended by striking "New Mexico and eastern Arizona" wherever it occurs and inserting in lieu thereof "New Mexico, eastern Arizona, and southwestern Colorado".

SEC. . AMENDMENTS OF PURPOSES.

Subsection (b) of section 501 of the Act of December 19, 1980 (94 Stat. 3228, Public Law 96-550), is hereby amended by striking "San Juan Basin;" and inserting in lieu thereof "San Juan Basin and surrounding areas;".

SEC. . ADDITIONS TO ARCHEOLOGICAL PROTECTION SITES.

Subsection (b) of section 502 of the Act of December 19, 1980 (94 Stat. 3228, Public Law 96-550), is hereby amended by deleting it in its entirety and replacing it with the following new subsection (b):

"(b) Thirty-seven outlying sites are hereby designated as 'Chaco Culture Archeological Protection Sites'. The thirty-seven archeological protection sites totalling approximately 13,767 acres identified as follows:

"Name:	*Acres*
Allentown	380
Andrews Ranch	950
Bee Burrow	480
Bisa'ani	131
Casa del Rio	40
Casamero	160
Chimney Rock	3,160
Coolidge	450
Dalton Pass	135
Great Bend	26
Greenlee Ruin	60
Grey Hill Spring	23
Guadalupe	115
Halfway House	40
Haystack	565
Hogback	453
Indian Creek	100
Jaquez	26
Kin Nizhoni	726
Lake Valley	30
Manuelito-Atsee Nitsaa	60
Manuelito-Kin Hochoi	116
Muddy Water	1,090
Navajo Springs	260

TITLE —LECHUGUILLA CAVE STUDY ACT

SEC. . SHORT TITLE.

This title shall be cited as the "Lechuguilla Cave Study Act of 1990".

SEC. . FINDINGS.

The Congress finds that—

(1) International attention has been focused on the outstanding cave resources of Carlsbad Caverns National Park by recent explorations of Lechuguilla Cave.

(2) The recent explorations of Lechuguilla Cave have exposed spectacular wonders and revealed Lechuguilla Cave to be a world-class cave that is the longest deep cave and the second-deepest cave in the United States, is at least thirty-six miles long, and is filled with unique and awe-inspiring gypsum formations, and have caused organizations such as the National Speleological Society to describe Lechuguilla Cave as possibly the finest cave in America.

(3) Broad public interest has developed over methods to manage Lechuguilla Cave and other resources of Carlsbad Caverns National Park and to facilitate greater public enjoyment of park resources.

SEC. . AUTHORIZATION OF STUDY.

(a) IN GENERAL.—In recognition of the international significance of Lechuguilla Cave and other resources of Carlsbad Caverns National Park and the need for careful consideration of future management options, the secretary of the Interior, acting through the Director of the National Park Service, is authorized and directed to revise the existing general management plan for Carlsbad Caverns National Park to include a study of the most appropriate ways to protect and interpret Lechuguilla Cave. The revision of the plan shall also include an evaluation of methods to facilitate greater enjoyment of other caves within the park by the public.

(b) REVISION.—Not later than two years from the date that funds are made available for the revision referred to in subsection (a), the Secretary shall submit the revision to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

SEC. . APPROPRIATION AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE —BOOTS AND SADDLES TOUR STUDY ACT

SEC. . SHORT TITLE.

This title may be cited as the "Boots and Saddles Tour Study Act of 1990".

SEC. . FINDINGS.

The Congress finds that—

(1) historic cavalry forts occupied during the Civil War and Indian campaigns in New Mexico represent a unique time period of American history, the study and interpretation of which can contribute to an understanding of the American frontier;

(2) these forts are deteriorating due to natural weathering, unsupervised human visitation, and lack of maintenance and repair; and

(3) in light of the precarious state of preservation at most of these significant cultural resources and the urgent need to protect and manage them, it is necessary to determine, through a comprehensive study, appropriate means by which the systematic interpretation, stabilization, and restoration of these valuable sites can be provided for.

SEC. . STUDY AND REPORT BY THE BUREAU OF LAND MANAGEMENT AND THE NATIONAL PARK SERVICE.

(a) STUDY.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management and the Director of the National Park Service, shall conduct a study of the following historic forts in the State of New Mexico occupied during the Civil War and Indian campaigns:

(1) Fort Stanton;
(2) Fort Union;
(3) Fort Sumner;
(4) Fort Craig;
(5) Fort Cummings;
(6) Fort Seldon;
(7) Fort Bayard; and
(8) Fort McRae.

(b) REPORT.—Not later than 1 year from the date that funds are made available for the study referred to in subsection (a), the Secretary shall transmit the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(c) STUDY CONTENT.—The study shall develop alternative means of interpreting and preserving the forts referred to in subsection (a) including the feasibility of establishing tour routes for vehicles and horse-mounted visitors which may encompass common themes and link appropriate sites, and such other information as the Secretary may deem necessary.

SEC. . APPROPRIATION AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

RELIEF OF WILLIAM A. CASSITY

THURMOND AMENDMENT NO. 3224

Mr. HEINZ (for Mr. THURMOND) proposed an amendment to the bill (H.R. 1017) for the relief of William A. Cassity, as follows:

On page 1, line 7, delete "$14,312.01" and insert in lieu thereof "$5,000.00".

INDIANS ARTS AND CRAFTS ACT OF 1990

CRANSTON AMENDMENT NO. 3225

Mr. CRANSTON (for Mr. INOUYE) proposed an amendment to the bill (H.R. 3618), an act to authorize the lease of lands on the Mille Lacs Indian Reservation to the year 1999, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—INDIAN ARTS AND CRAFTS

SEC. 101. SHORT TITLE.

This title may be cited as the "Indian Arts and Crafts Act of 1990".

SEC. 102. POWERS OF INDIAN ARTS AND CRAFTS BOARD.

Section 2 of the Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305a) is amended—

(1) in the first sentence—

(A) by striking "the Board" and inserting "the Secretary of the Interior through the Board"; and

(B) by striking "the Indian wards of the Government" and inserting "Indian individuals";

(2) by amending clause (g) to read as follows: "(g)(1) to create for the Board, or for an individual Indian or Indian tribe or Indian arts and crafts organization, trademarks of genuineness and quality for Indian products and the products of an individual Indian or particular Indian tribe or Indian arts and crafts organization; (2) to establish standards and regulations for the use of Government-owned trademarks by corporations, associations, or individuals, and to charge for such use under such licenses; (3) to register any such trademark owned by the Government in the United States Patent and Trademark Office without charge and assign it and the goodwill associ-

ated with it to an individual Indian or Indian tribe without charge; and (4) to pursue or defend in the courts any appeal or proceeding with respect to any final determination of that office;"; and

(3) by adding at the end the following new sentence: "For the purposes of this section, the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.".

SEC. 103. REFERRAL FOR CRIMINAL AND CIVIL VIOLATIONS.

The Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) is amended by adding at the end of the following:

"SEC. 5. (a) The Board may receive complaints of violations of section 1159 of title 18, United States Code, and refer complaints of such violations to the Federal Bureau of Investigation for appropriate investigation. After reviewing the investigation report, the Board may recommend to the Attorney General of the United States that criminal proceedings be instituted under that section.

"(b) The Board may recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action under section 6.".

SEC. 104. CRIMINAL PENALTY FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

(a) IN GENERAL.—Section 1159 of title 18, United States Code, is amended to read as follows:

"§ 1159. Misrepresentation of Indian produced goods and products

"(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.

"(b) Whoever knowingly violates subsection (a) shall—

"(1) in the case of a first violation, if an individual, be fined not more than $250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than $1,000,000; and

"(2) in the case of subsequent violations, if an individual, be fined not more than $1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than $5,000,000.

"(c) As used in this section—

"(1) the term 'Indian' means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

"(2) the terms 'Indian product' and 'product of a particular Indian tribe or Indian arts and crafts organization' has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

"(3) the term 'Indian tribe' means—

"(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

"(4) the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

"(d) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.".

(b) CONFORMING AMENDMENT.—The item relating to section 1159 in the table of sections for chapter 53 of title 18, United States Code, is amended to read as follows:

"1159. Misrepresentation of Indian produced goods and products.".

SEC. 105. CAUSE OF ACTION FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

The Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) (as amended by section 3) is further amended by adding at the end of the following:

"SEC. 6. (a) A person specified in subsection (c) may, in a civil action in a court of competent jurisdiction, bring an action against a person who offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States, to—

"(1) obtain injunctive or other equitable relief; and

"(2) recover the greater of—

"(A) treble damages; or

"(B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than $1,000 for each day on which the offer or display for sale or sale continues.

"(b) In addition to the relief specified in subsection (a), the court may award punitive damages and the costs of suit and a reasonable attorney's fee.

"(c)(1) A civil action under subsection (a) may be commenced—

"(A) by the Attorney General of the United States upon request of the Secretary of the Interior on behalf of an Indian who is a member of an Indian tribe or on behalf of an Indian tribe or Indian arts and crafts organization; or

"(B) by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of an Indian arts and crafts organization.

"(2) Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe, or Indian arts and crafts organization, except that—

"(A) in the case of paragraph (1)(A), the Attorney General may deduct from the amount recovered the amount for the costs of suit and reasonable attorney's fees awarded pursuant to subsection (b) and deposit the amount of such costs and fees as a reimbursement credited to appropriations currently available to the Attorney General at the time of receipt of the amount recovered; and

"(B) in the case of paragraph (1)(B), the amount recovered for the costs of suit and reasonable attorney's fees pursuant to subsection (b) may be deducted from the total amount awarded under subsection (a)(2).

"(d) As used in this section—

"(1) the term 'Indian' means any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

"(2) the terms 'Indian product' and 'product of a particular Indian tribe or Indian arts and crafts organization' has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

"(3) the term 'Indian tribe' means—

"(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

"(4) the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

"(e) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.".

SEC. 106. PENALTY FOR COUNTERFEITING INDIAN ARTS AND CRAFTS BOARD TRADEMARK.

Section 1158 of title 18, United States Code, is amended by striking "be fined not more than $500 or imprisoned not more than six months, or both; and" and inserting "(1) in the case of a first violation, if an individual, be fined not more than $250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than $1,000,000; and (2) in the case of subsequent violations, if an individual, be fined not more than $1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than $5,000,000; and (3)".

SEC. 107. CERTIFICATION OF INDIAN ARTISANS.

For the purposes of section 1159 of title 18, United States Code, and section 6 of the Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) an Indian tribe may not impose a fee in certifying an individual as an Indian artisan. For the purposes of this section, the term "Indian tribe" has the same meaning given such term in section 1159(c)(3) of title 18, United States Code.

TITLE II—TECHNICAL AND CLARIFYING AMENDMENTS

SEC. 201. SHORT TITLE.

The title may be cited as the "Indian Self-Determination and Education Assistance Act Amendments of 1990".

SEC. 202. AMENDMENTS TO INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.

The Indian Self-Determination and Education Assistance Act is amended as follows:

(1) In section 4(h) of such Act (25 U.S.C. 450b(h)), delete "in existence on the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988".

(2) In section 4(j) of such Act (25 U.S.C. 450b(j)), delete "contract entered" each place it appears and insert in lieu thereof "contract (or grant or cooperative agree-

ment utilized under section 9 of this Act) entered".

(3) In section 5(d) of such Act (25 U.S.C. 450c(d)), delete the word "Any" and insert in lieu thereof "Except as provided in section 8 or 106(a)(3) of this Act," and before the period insert the words "through the respective Secretary".

SEC. 203. AMENDMENTS TO THE INDIAN SELF-DETERMINATION ACT.

(a) Section 106 of the Indian Self-Determination Act (25 U.S.C. 450j-1(e)) is amended by deleting "1988" and inserting in lieu thereof "1992".

(b) In section 102(d) of such Act (25 U.S.C. 450f(d)), immediately after "investigations,", insert "or for purposes of section 2679, title 28, United States Code, with respect to claims by any such person, on or after the date of the enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle,".

(c) Section 105(c)(1)(B) of such Act (25 U.S.C. 450j(c)(1)(B)) is amended to read as follows:

"(B) for a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization), in the case of a mature contract.".

(d) Section 105(d) of such Act (25 U.S.C. 450j(d)) is amended to read as follows:

"(d)(1) Beginning in fiscal year 1990, upon the election of a tribal organization, the Secretary shall use the calendar year as the basis for any contracts or agreements under this Act, unless the Secretary and the Indian tribe or tribal organization agree on a different period.

"(2) The Secretary shall, on or before April 1 of each year beginning in 1992, submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.".

(e) In paragraphs (2) and (3) of section 105(f) of such Act (25 U.S.C. 450j(f) (2) and (3)), insert "or real" immediately after "personal" each place it appears in such paragraphs.

(f) In section 107(c) of such Act (25 U.S.C. 450k(c)), immediately after "authorized", insert the following: ", with the participation of Indian tribes and tribal organizations,".

(g)(1) In section 301(a)(3) of the Indian Self-Determination Act (25 U.S.C. 450h(a)(3)), delete "reservation boundaries" and insert in lieu thereof "Indian country (as defined in chapter 53 of title 18, United States Code)".

(2) The amendment made by paragraph (1) shall not alter or otherwise modify or affect existing prohibitions or limitations on the Secretary's authority to acquire lands in trust.

TITLE III—AMENDMENTS TO OTHER ACTS

SEC. 301. AMENDMENTS TO OTHER ACTS.

(a) AMENDMENT TO INDIAN LAND CONSOLIDATION ACT.—Section 207(a) of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by deleting "No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe" and inserting in lieu thereof the following: "No undivided interest held by a member or nonmember Indian in any tract of trust land or restricted land within a tribe's reservation or outside of a reservation and subject to such tribe's jurisdiction shall descend by intestacy or devise but shall escheat to the reservation's recognized tribal government, or if outside of a reservation, to the recognized tribal government possessing jurisdiction over the land".

(b) AMENDMENT TO ACT OF NOVEMBER 8, 1988.—In section 1 of the Act entitled "An Act to declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes", approved November 8, 1988 (102 Stat. 3327), insert "and attached narrative metes and bounds description" immediately after "map" each time it appears.

(c) AMENDMENT TO THE ACT OF MARCH 29, 1956.—The second sentence of subsection (a) of the Act entitled "An Act to authorize the execution of mortgages and deeds of trust on individual Indian trust or restricted land", approved March 29, 1956 (25 U.S.C. 483a), is amended by inserting immediately before "State" the following: "tribe which has jurisdiction over such land or, in the case where no tribal foreclosure law exists, in accordance with the laws of the".

SEC. 302. AMENDMENT TO THE ACT OF JUNE 24, 1938.

Section 1 of the Act of June 24, 1938 (25 U.S.C. 162a) is amended by designating the existing text thereof as subsection (a), and by adding at the end thereof the following new subsection:

"(b)(1) Notwithstanding subsection (a), the Secretary of the Interior, at the request of any Indian tribe, in the case of trust funds of such tribe, or any individual Indian, in the case of trust funds of such individual, is authorized to invest such funds, or any part thereof, in guaranteed or public debt obligations of the United States or in a mutual fund, otherwise known as an open-ended diversified investment management company if—

"(A) the portfolio of such mutual fund consists entirely of public-debt obligations of the United States, or bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, or a combination thereof;

"(B) the trust funds to be invested exceed $50,000;

"(C) the mutual fund is registered by the Securities and Exchange Commission; and

"(D) the Secretary is satisfied with respect to the security and protection provided by the mutual fund against loss of the principal of such trust funds.

"(2) The Secretary, as a condition to complying with a request pursuant to paragraph (1) of this subsection, is authorized to require such tribe or individual Indian, as the case may be, to enter into an agreement with the Secretary for the purpose of relieving the United States of any liability in connection with the interest, or amount thereof, payable in connection with such trust funds so invested during the period of that investment.

"(3) Investments pursuant to paragraph (1) of this subsection shall be deemed to be the same as cash or a bank deposit for purposes of section 5 of the Act of September 21, 1959 (25 U.S.C. 955).".

SEC. 303. AMENDMENT TO INDIAN FINANCING ACT OF 1974.

(a) Section 101 of the Indian Financing Act of 1974 (25 U.S.C. 1461) is amended—

(1) by deleting "money markets," and inserting in lieu thereof the following: "money markets, or to supplement funds from private lenders, including loans guaranteed by the Secretary pursuant to section 201 of this Act,"; and

(2) by inserting immediately before the period at the end of the third sentence a comma and the following: "or, in the discretion of the Secretary of the Interior, as a contribution to the Indian Loan Guaranty and Insurance Fund authorized by section 217 of this Act, or for the payment of interest subsidies authorized by section 301 of this Act".

(b) Section 204 of the Indian Financing Act of 1974 (25 U.S.C. 1484) is amended—

(1) by deleting in the first sentence the word "prior"; and

(2) by deleting in the second sentence "shall review" and inserting in lieu thereof "may review".

TITLE IV—PUBLIC HEALTH SERVICE ACT

SEC. 401. AMENDMENT TO PUBLIC HEALTH SERVICE ACT.

Section 338J(a) of subpart III of part D of title III of the Public Health Service Act (42 U.S.C. 254s) is amended to read as follows:

"(a) Subject to the availability of funds appropriated under the authority of subsection (d), the Secretary shall provide funds to Kamehameha Schools/Bishop Estate for the purpose of providing scholarship assistance to students who—

"(1) meet the requirements of section 338A(b), and

"(2) are Native Hawaiians.".

TITLE V—BOARD OF INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

SEC. 501. GENERAL POWERS OF BOARD OF INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT.

(a) INTEREST AND INVESTMENT INCOME.—Section 1507 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4414) is amended by adding at the end the following new subsection:

"(c) INTEREST AND INVESTMENTS.—Interest and earnings on amounts received by the Institute pursuant to section 1531 invested under subsection (a)(12) shall be the property of the Institute and may be expended to carry out this title. The Board shall be held to a reasonable and prudent standard of care, given such information and circumstances as existed when the decision is made, in decisions involving investment of funds under subsection (a)(12).".

(b) INSURANCE.—Section 1507(a)(11) of such Act (20 U.S.C. 4414(a)(11)) is amended to read as follows:

"(11) to the extent not already provided by law, to obtain insurance to cover all activities of the Institute, including coverage relating to property and liability, or make other provisions against losses.".

SEC. 502. ESTABLISHMENTS WITHIN THE INSTITUTE.

Section 1510(b) of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4417(b)) is amended—

(1) in paragraph (2), by striking subparagraph (A) and redesignating subparagraphs (B) through (I) as subparagraphs (A) through (H), respectively;

(2) by striking "and" at the end of paragraph (1);

(3) by striking the period at the end of paragraph (2) and inserting "; and"; and

(4) by inserting after paragraph (2) the following:

"(3) a Museum of American Indian and Alaska Native Arts, which shall be under the direction of the President of the Institute.".

SEC. 503. TRANSFER OF FUNCTIONS.

Section 1514 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4421) is amended—

(1) by striking subsections (d), (e), and (f); and

(2) by adding at the end the following new subsection (d):

"(d) FORGIVENESS OF AMOUNTS OWED; HOLD HARMLESS.—(1) Subject to paragraph (2)—

"(A) the Institute shall be responsible for all obligations of the Institute incurred after June 2, 1988, and

"(B) the Secretary shall be responsible for all obligations of the Institute incurred on or before June 2, 1988, including those which accrued by reason of any statutory, contractual, or other reason prior to June 2, 1988, which became payable within two years of June 2, 1988.

"(2) With respect to all programs of the Federal Government, in whatever form or from whatever source derived, the Institute shall only be held responsible for actions and requirements, either administrative, regulatory, or statutory in nature, for events which occurred after July 1, 1988, including the submission of reports, audits, and other required information. The United States may not seek any monetary damage or repayment for the commission of events, or omission to comply with either administrative or regulatory requirements, for any action which occurred prior to June 2, 1988.".

SEC. 504. COMPLIANCE WITH OTHER ACTS.

Section 1517 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4424) is amended by adding at the end the following:

"(c) OTHER FEDERAL ASSISTANCE.—Funds received by the Institute pursuant to this Act shall not be regarded as Federal money for purposes of meeting any matching requirements for any Federal grant, contract or cooperative agreement.".

SEC. 505. ENDOWMENT PROGRAMS.

Section 1518 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4425) is amended to read as follows:

"SEC. 1518. ENDOWMENT PROGRAMS.

"(a) PROGRAM ENHANCEMENT ENDOWMENT.—

"(1)(A) From the total amount appropriated for this subsection pursuant to section 1531(a), funds may be deposited into a trust fund maintained by the Institute at a federally insured banking or savings institution.

"(B) The President of the Institute shall provide—

"(i) for the deposit into the trust fund referred to in subparagraph (A)—

"(I) of a capital contribution by the Institute in an amount equal to the amount of each Federal contribution; and

"(II) any earnings on the funds deposited under this paragraph; or

"(ii) for the reservation for the sole use of the Institute of any noncash, in-kind contributions of real or personal property, which property may at any time be converted to cash, which shall be deposited as a capital contribution into the trust fund referred to in subparagraph (A).

"(C) If at any time the Institute withdraws any capital contribution (as described in subparagraph (B)(i)) made by the Institute to the trust fund referred to in subparagraph (A) or puts any property (as described in subparagraph (B)(ii)) to a use which is not for the sole benefit of the Institute, an amount equal to the value of the Federal contribution shall be withdrawn from such trust fund and returned to the Treasury as miscellaneous receipts.

"(2) Interest deposited into the trust fund pursuant to paragraph (1)(B)(ii) may be periodically withdrawn and used, at the direction of the Board or its designee, to defray any expense associated with the operation of the Institute, including the expense of operations and maintenance, administration, academic and support personnel, community and student services programs, and technical assistance.

"(3) For the purpose of complying with the contribution requirement of paragraph (1)(B), the Institute may use funds or in-kind contributions of real or personal property fairly valued which are made available from any private or tribal source, including interest earned by the funds invested under this subsection. In-kind contributions shall be other than fully depreciable property or property which is designated for addition to the permanent collection of the Museum and shall be valued according to the procedures established for such purpose by the Secretary of the Treasury. For purposes of this paragraph, all contributions, including in-kind and real estate, which are on-hand as of the date of enactment of this Act and which have been received after June 2, 1988, but which have not been included in computations under this provision shall be eligible for matching with Federal funds appropriated in any fiscal year.

"(4) Amounts appropriated under section 1531(a) for use under this subsection shall be paid by the Secretary of the Treasury to the Institute as a Federal capital contribution equal to the amount of funds or the value of the in-kind contributions which the Institute demonstrates have been placed within the control of, or irrevocably committed to the use of, the Institute as a capital contribution of the Institute in accordance with this subsection.

"(b) CAPITAL IMPROVEMENT ENDOWMENT.—

"(1) In addition to the trust fund established under subsection (a), funds may be deposited into a trust fund maintained by the Institute at a federally insured banking or savings institution from the amount reserved for this subsection pursuant to section 1531(a) for the purpose of establishing a separate special endowment for capital improvement (hereafter in this subsection referred to as the 'capital endowment fund') to pay expenses associated with site selection and preparation, site planning and architectural design and planning, new construction, materials and equipment procurement, renovation, alteration, repair, and other building and expansion costs of the Institute.

"(2) The President of the Institute shall provide for the deposit into the capital endowment fund of a capital contribution by the Institute in an amount equal to the amount of each Federal contribution and any earnings on amounts in the capital endowment fund.

"(3) Funds deposited by the Institute as a match for Federal contributions under paragraph (5) shall remain in the capital endowment fund for a period of not less than two years. If at any time the Institute withdraws any capital contribution to the capital endowment fund before the funds have been deposited for this two-year period, an equal amount of the Federal contribution shall be withdrawn from the capital endowment fund and returned to the Treasury as miscellaneous receipts. At the end of the two-year period, the entire principal and interest of the funds deposited for this period, including the Federal matching portion, shall accrue, without reservation, to the Institute and may be withdrawn, in whole or in part, to defray expenses associated with capital acquisition and improvement of the Institute referred to in paragraph (1).

"(4) For the purpose of complying with the contribution requirement of paragraph (2), the Institute may use funds which are available from any private or tribal source.

"(5) Subject to paragraph (3), amounts appropriated under section 1531(a) for use under this subsection shall be paid by the Secretary of the Treasury to the Institute as a Federal capital contribution equal to the amount which the Institute demonstrates has been placed within the control of, or irrevocably committed to the use of, the Institute and is available for deposit as a capital contribution of the Institute in accordance with this subsection.

"(c) GENERAL ADMINISTRATIVE PROVISIONS.—(1) Funds in the trust funds described in subsections (a) and (b) shall be invested at a rate not less than that generally available for similar funds deposited at the same banking institution for the same period or periods of time.

"(2) No part of the net earnings of the trust funds established under this section shall inure to the benefit of any private person.

"(3) The President of the Institute shall provide for such other provisions governing the trust funds established under this section as may be necessary to protect the financial interest of the United States and to promote the purpose of this title as agreed to by the Secretary of the Treasury and the Board or its designee, including recordkeeping procedures for the investment of funds received under the trust fund established under subsection (b) and such other recordkeeping procedures for the expenditure of accumulated interest for the trust fund under subsection (a) as will allow the Secretary of the Treasury to audit and monitor activities under this section.".

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

Section 1531(a) of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4451(a)) is amended by adding at the end the following new paragraphs:

"(4) Funds appropriated under this subsection for the fiscal year 1992 and for each succeeding fiscal year shall be transferred by the Secretary of the Treasury through the most expeditious method available with the Institute being designated as its own certifying agency.

"(5) Funds are authorized to be appropriated for programs for more than one fiscal year. For the purpose of affording adequate notice of funding available under this Act, amounts appropriated in an appropriations Act for any fiscal year to carry out this Act may, subject to the appropriation, become available for obligations on July 1 of that fiscal year.".

"TITLE VI—COCHITI DAM

SEC. 101. Notwithstanding the provisions of any other Federal law, no license shall be issued by the Federal Energy Regulatory Commission for the development of hydroelectric power at the Army Corps of Engineers' Cochiti Dam located on the Pueblo de Cochiti Indian Reservation in the State of New Mexico."

SEC. . DAKOTA WESLEYAN UNIVERSITY.

Notwithstanding the provisions of section 487(c)(2)(B) of the Higher Education Act of 1965, the Secretary of Education shall reassess the amount owed by the Dakota Wesleyan University, located in Mitchell, South Dakota, in the amount of $159,260, plus any accrued interest thereon to $16,113.

INSULAR AREAS RECOVERY ACT OF 1990

CRANSTON AMENDMENT NO. 3226

Mr. CRANSTON (for Mr. JOHNSTON) proposed an amendment to the bill (S. 2362), a bill to enhance the survivability and recovery of the insular areas from severe storms, as follows:

Strike all after section 1 of the House amendment and insert in lieu thereof the following:

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "insular areas" means the United States Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Freely Associated States;

(2) the term "disaster" means that the President has declared a major disaster pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 et seq.) on or after September 1, 1989; and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 3. AUTHORIZATION.

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to construct facilities to protect public health and safety and to enhance the survivability of essential infrastructure in the event of disasters in the insular areas. Such sums shall remain available until expended.

SEC. 4. TECHNICAL ASSISTANCE.

(a) Upon the declaration by the President of a disaster in an insular area, the President shall assess, in cooperation with the Secretary and the Head of Government of such insular area, the capability of the insular area government to respond to the disaster, including the capability to: assess damage; coordinate activities with other agencies, particularly the Federal Emergency Management Agency (FEMA); develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular area government lacks these, or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area government which the President deems necessary for the recovery effort.

(b) One year following the declaration by the President of a disaster in an insular area, the Secretary shall report to Congress on the status of the recovery effort, including: an audit of Federal funds expended in the recovery effort; and recommendations on how to improve public health and safety, survivability of infrastructure, recovery efforts, and effective use of funds, in the event of future disasters.

SEC. 5. WAIVERS.

Hazard Mitigation.—Upon determination by the President, the total of contributions under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 4121 eg seq.) for insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections 403, 406, 407, 408, and 411 of such Act for any disaster: *Provided*, That the President may require a 50-percent local match for assistance in excess of 10 percent of the estimated aggregate amount of grants to be made under section 406 of such Act for any disaster.

SEC. 6. TECHNICAL AMENDMENT.

Section 102(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.) is amended by inserting after the words "American Samoa,", wherever it appears, the following: "Commonwealth of the Northern Mariana Islands".

SEC. 7. GUAM HOSPITAL.

There is authorized to be appropriated $2,500,000 to complete the renovation of the Guam Memorial Hospital.

SEC. 8. TERRITORIAL ENERGY ASSISTANCE PROGRAM.

(a)(1) The Secretary of Energy, pursuant to the Federal Nonnuclear Energy Research and Development Policy Act of 1974 (42 U.S.C. 5901, et seq.), may grant financial assistance to Insular area governments to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy measures which reduce the dependency of the Insular area on imported fuels and improve the quality of life in the Insular area.

(2) Any applicant for financial assistance under this section must evidence coordination and cooperation with, and support from, the affected local energy entities in the area with necessary expertise to successfully effectuate the project, including, but not limited to, the local energy agencies, power authorities, and public works departments.

(3) In determining the amount of financial assistance to be provided for a proposed energy-efficiency or renewable energy measure, the Secretary of Energy shall consider—

(A) whether the measure will reduce the relative dependence of the Insular area on imported fuels;

(B) the ease and costs of operation and maintenance of any facilities contemplated as a part of the project;

(C) whether the project will rely on the use of conservation measures or indigenous, renewable energy resources that were identified in the 1982 Territorial Energy Assessment or are identified by the Secretary of Energy as consistent with the purpose of this section;

(D) whether the measure will contribute significantly to the quality of the environment in the Insular area; and

(E) any other factors which the Secretary of Energy may determine to be relevant to a particular project or measure.

(4) The Secretary of Energy shall require at least 20 per centum of the costs of any project under this section to be provided from non-Federal sources. Such cost sharing may be in the form of in-kind services, donated equipment, or any combination thereof.

(b) For the purpose of this section, the term—

(1) "Insular area government" means the government of American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Republic of Palau, or the United States Virgin Islands.

(2) "1982 Territorial Energy Assessment" means the assessment prepared by the Department of Energy pursuant to the Omnibus Territorial Act. (P.L. 96-597, 94 Stat. 3480; as amended by P.L. 99-213, 97 Stat. 1460)

(c) For each fiscal year, there is hereby authorized to be appropriated for the purposes of this section, $500,000.

All Federal and territorial environmental laws and regulations shall apply to the parcels transferred pursuant to this title during and after the transfer of such parcels.

TITLE II—GUAM EXCESS LANDS ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Guam Excess Lands Act".

SEC. 202. IN GENERAL.

(a) TRANSFER.—The Administrator of General Services shall, subject to section 203, transfer all right, title, and interest of the United States in and to the lands described in subsection (b) (together with any improvements thereon) to the Government of Guam for public benefit, by quitclaim deed and without reimbursement, after the head of the Federal agency which controls such land determines whether any of those parcels are excess to the needs of such agency.

(b) LANDS DESCRIBED.—The lands referred to in subsection (a) consist of—

(1) those parcels in Guam generally described in Tab A of the March 19, 1986 Memorandum for the Secretary of Defense entitled "Retention of Excess Military Lands on Guam" and more particularly described on a map identified as "Appendix B—GLUP Disposal Parcels" of the "Implementation Plan for the Guam Land Use Plan" on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii, which have not already been disposed of on or before the date of enactment of this title;

(2) Talofofo "HH" (homer) facility shown on a map identified as "Drawing No. PC-D-723-8" on file at the Western-Pacific Regional Branch of the Federal Aviation Administration in Honolulu, Hawaii;

(3) Andersen Radio Beacon Annex, AJKG shown on a map entitled "Drawing # Tab C-1, sheet 8 of 12" on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii; and

(4) Parcel 3, NAVSTA Guam shown on a map entitled "NAVFAC Drawing No. 7,053,119 marked as Exhibit 'A'" on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii.

(c) LEGAL DESCRIPTIONS.—The exact acreages and legal descriptions of all lands to be transferred under this title shall be determined by surveys which are satisfactory to the head of the controlling Federal agency referred in subsection (a). The cost of such surveys, together with all direct and indirect costs related to any conveyance under this section, shall be borne by such controlling Federal agency.

SEC. 203. TERMS AND CONDITIONS.

(a) FURTHER FEDERAL UTILIZATION SCREENING.—Lands determined to be excess property pursuant to section 202 shall be screened for further Federal utilization in accordance

with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and such screening will be completed within 45 days after the date on which they are determined to be excess.

(b) APPRAISAL.—The Administrator shall promptly appraise those parcels that are not needed for further Federal utilization to determine their estimated fair market value. The head of the Federal agency which controls such lands shall cooperate with the Administrator in carrying out appraisals under this section. The Administrator shall submit a copy of the appraisals to the Committees of the Congress specified in subsection (d). The cost of such appraisals shall be paid for under section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b)).

(c) LAND USE PLANS.—The lands to be transferred under this title shall be eligible for transfer after the Government of Guam enacts legislation which establishes a detailed plan for the public benefit use of such lands and the Governor of Guam submits such plan to the Committees of the Congress specified in subsection (d), and provides copies of such plan to the Secretary of the Interior and the Secretary of Defense.

(d) SUBMISSIONS.—The appraisals and plans required to be submitted to the committees of the Congress under subsections (b) and (c) shall be submitted to the Committee on Interior and Insular Affairs, the Committee on Armed Services, and the Committee on Government Operations of the House of Representatives and the Committee on Energy and Natural Resources, the Committee on Armed Services, and the Committee on Governmental Affairs of the Senate.

(e) REVIEW BY COMMITTEES.—Lands may not be transferred under this title until 180 days after the submission to the Committees of the Congress specified in subsection (d) of—

(1) the appraisal provided for in subsection (b), and

(2) the land use plan provided for in subsection (c).

SEC. 204. OBJECTS AFFECTING NAVIGABLE AIRSPACE.

The conveyance document for any land transferred under this title located within six nautical miles of an airport shall contain a provision that requires a determination of no hazard to air navigation to be obtained from the Federal Aviation Administration in accordance with applicable regulations governing objects affecting navigable airspace or under the authority of the Federal Aviation Act of 1958, Public Law 85-726, as amended, in order for construction or alteration on the property to be permitted.

SEC. 205. SEVERE CONTAMINATION.

Notwithstanding any other provision of this title, the Administrator of General Services, in his discretion, may choose not to transfer any parcel under this title on which there is severe contamination, the remedy of which would require the United States to incur extraordinary costs.

SEC. 206. APPLICATION OF FEDERAL AND TERRITORIAL LAWS.

TITLE III—U.S. INSULAR AREAS WATER, SEWERAGE, AND POWER NEEDS

SEC. 301. FINDINGS.

The Congress hereby finds and declares that assuring adequate supplies of water, sewerage, and power for the residents of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands has become a problem of such magnitude that the welfare and prosperity of these insular areas require the Federal Government to assist in finding permanent, long-term solutions to their water, sewerage, and power problems

SEC. 302. AUTHORIZATION OF STUDY.

The Secretary of the Interior is authorized and directed to undertake a comprehensive study of how the long-term water, sewerage, and power needs of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands can be resolved. Such study shall be conducted in consultation with the governments of these insular areas.

SEC. 303. REQUIREMENTS OF STUDY.

Such study shall include for each jurisdiction, but not be limited to—

(1) an assessment of the magnitude and extent of current and expected needs;

(2) an assessment of how the needs can be resolved;

(3) the costs and benefits of alternative solutions;

(4) the need for additional legal authority for the President to take actions to meet the needs; and

(5) specific recommendations for the role of the Federal Government and each insular government in solving the needs.

SEC. 304. FREELY ASSOCIATED STATE CARRIER.

(a) In furtherance of the objectives of the Compact of Free Association Act of 1986 (P.L. 99-239) and notwithstanding any other provision of law, a Freely Associated State Air Carrier shall not be precluded from transportation, between a place in the United States and a place in a state in free association with the United States or between two places outside the United States, by air of persons and their personal effects) and property procured, contracted for, or otherwise obtained by any executive department or other agency or instrumentality of the United States for its own account or in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into under which payment is made by the United States or payment is made from funds appropriated, owned, controlled, granted, or conditionally granted or utilized by or otherwise established for the account of the United States, or shall be furnished to or for the account of any foreign nations, or any international agency, or other organization, of whatever nationality, without provisions for reimbursement.

(b) The term "Freely Associated State Air Carrier" shall apply exclusively to a carrier referred to in Article IX (5)(b) of the Federal Programs and Services Agreement Concluded Pursuant to Article II of title Two and Section 232 of the Compact of Free Association.

RESOLUTION TRUST CORPORATION FUNDING ACT OF 1990

RIEGLE (AND GARN) AMENDMENTS NOS. 3227 AND 3228

Mr. RIEGLE (for himself and Mr. GARN) proposed two amendments to the bill (S. 3222), an act to amend the Federal Home Loan Bank Act to enable the Resolution Trust Corporation to meet its obligations to depositors and others by the least expensive means, as follows:

AMENDMENT NO. 3227

Strike all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Resolution Trust Corporation Funding Act".

SEC. 2. THRIFT RESOLUTION FUNDING PROVISIONS.

(a) REQUESTS FOR ADDITIONAL FUNDING REQUIRED TO CONTAIN ADDITIONAL FINANCIAL INFORMATION.—Section 21A(k)(7) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(k)(7)) is amended to read as follows:

"(7) REQUESTS FOR ADDITIONAL FUNDING.—Any request for legislative action to provide new or additional financial resources for the Corporation shall—

"(A) be submitted to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

"(B) contain a complete and detailed 6-month financial plan for spending such resources and any relevant information described in paragraph (5)(B) and (6)(A).".

(b) INTERIM FUNDING.—Section 21A(i) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(i)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and moving the left margin of such subparagraphs (as so redesignated) 2 ems to the right;

(2) in the heading, by striking "BORROWING" and inserting "FUNDING";

(3) by inserting after such heading the following new paragraph designation and heading:

"(1) BORROWING.—"; and

(4) by adding at the end the following new paragraph:

"(2) INTERIM FUNDING.—The Secretary of the Treasury shall provide the Corporation with the sum of $10,000,000,000 for use during fiscal year 1991 for—

"(A) covering any loss incurred by the Corporation in managing and resolving cases involving insured depository institutions described in subsection (b)(3)(A); and

"(B) administrative expenses of the Corporation and Oversight Board under this section.".

(c) SENSE OF THE CONGRESS REGARDING ENFORCEMENT OF $100,000 INSURANCE LIMIT.—

(1) IN GENERAL.—It is the sense of the Congress that no funds appropriated to the Secretary of the Treasury for use by the Resolution Trust Corporation and no amount authorized to be otherwise obtained by the Resolution Trust Corporation from the Secretary, the Federal Financing Bank, or the Resolution Funding Corporation should be used to—

(A) provide any assistance under section 13(c) of the Federal Deposit Insurance Act, as applicable to the Resolution Trust Corporation pursuant to section 21A(b)(4) of the Federal Home Loan Bank Act; or

(B) pay any depositor at any insured depository institution any amount (with respect to deposits of the depositor) in excess of the amount the depositor would have received if the Corporation had liquidated the depository institution,

unless the Resolution Trust Corporation determines, on the basis of written documentation, that the provision of such assistance or the making of such payment results in a lower cost to the Corporation than if the Corporation had liquidated the depository institution.

(2) REPORTS REQUIRED.—If the Resolution Trust Corporation engages in any transac-

tion which has the effect of treating the uninsured deposits of any depositor as insured deposits (as defined in section 3(m) of the Federal Deposit Insurance Act), the Corporation shall provide to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate the written documentation on the basis of which the Corporation determined that the treatment of such uninsured deposits as insured deposits results in a lower cost to the Corporation than if the Corporation had liquidated the depository institution.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 21A(j)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(j)(1)) is amended—

(1) in subparagraph (A)—

(A) by striking "and" at the end of clause (i);

(B) by striking "minus" at the end of clause (ii) and inserting "and"; and

(C) by inserting after clause (ii) the following new clause:

"(iii) the total amount of contributions received from the Secretary of the Treasury under subsection (i)(2) for fiscal years beginning after September 30, 1990; minus"; and

(2) by striking "$50,000,000,000" and inserting "the sum of $50,000,000,000 and the total amount of contributions required to be made by the Secretary of the Treasury under subsection (i)(2) for fiscal years beginning after September 30, 1990".

At the end of the amendment, add the following:

SEC. . RESOLUTION FUNDING CORPORATION BORROWING.

(a) IN GENERAL.—Section 21B(f)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(1)) is amended—

(1) by inserting "(A) OBLIGATIONS.—" after "(1) ISSUANCE—"; and

(2) by adding at the end the following:

"(B) TERMINATION DATE.—The Funding Corporation may not issue any bond, note, debenture, or other obligation under subparagraph (A) after October 31, 1990.".

(b) RTC AUTHORIZATION.—Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)) is amended by adding at the end the following:

"(16) FUNDING TO REPLACE UNUSED REFCORP AUTHORITY.—The Secretary of the Treasury shall make available to the Corporation from monies not otherwise appropriated an amount equal to the difference between $30,000,000,000 and the amount of obligations issued by the Funding Corporation under section 21B(f) prior to October 31, 1990.".

FORT McDOWELL INDIAN COMMUNITY WATER RIGHTS SETTLEMENT ACT OF 1990

SIMPSON (AND WALLOP) AMENDMENT NO. 3229

Mr. SIMPSON (for himself and Mr. WALLOP) proposed an amendment to the bill (H.R. 5063), an act to provide for the settlement of the water rights claims of the Fort McDowell Indian Community in Arizona and for other purposes, as follows:

Strike all after the enacting clause and insert the following:

TITLE I

SEC. 101. SHORT TITLE.

This title may be cited as the "Fort McDowell Indian Community Water Rights Settlement Act of 1990".

SEC. 102. CONGRESSIONAL FINDINGS AND DECLARATIONS.

(a) The Congress finds that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on September 15, 1903, the United States Government established a reservation for the Fort McDowell Indian Community in Arizona north of the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to water and the financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self-sufficiency;

(6) proceedings to determine the full extent and nature of the Community's water rights and damages thereto are currently pending before the United States District Court in Arizona, the United States Claims Court, the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source, and before various federal agencies under the Federal Tort Claims Act;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle disputes over water and reduce the burdens of litigation;

(8) after more than five years of negotiation, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who are all party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, and to provide for the orderly development of the Community's lands;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately twelve thousand acre-feet of surface water to the Community; provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, the Congress declares that the purposes of this Act are: (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary of the Interior to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act.

SEC. 103. DEFINITIONS.

For purposes of this Act—

(a) "Agreement" means that agreement among the Fort McDowell Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District, the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is approved and executed by the Secretary of the Interior pursuant to sections 411(d) and 412(a)(8) of this Act.

(b) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(c) "CAWCD" means the Central Arizona Water Conservation District organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(d) "Community" means the Fort McDowell Indian Community, a community of Yavapai Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476), and duly recognized by the Secretary.

(e) "HVID" means the Harquahala Valley Irrigation District, an irrigation district organized under the laws of the State of Arizona.

(f) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(g) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(h) "Secretary" means the Secretary of the United States Department of the Interior.

(i) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

SEC. 104. KENT DECREE REREGULATION.

(a) To permit the Community to more fully utilize its water rights under the Kent Decree as provided in the Agreement and subsection (b) of this section, the agreement between the United States and the SRP dated June 3, 1935, as amended on November 26, 1935, relating to the Verde River Storage Works, and the agreement among the SRP, Phelps Dodge Corporation, and the Defense Plant Corporation dated March 1, 1944, including, but not limited to, the provisions of such agreements by which SRP saves and holds harmless the United States, and the rights of the United States and SRP to Verde River storage, are hereby ratified, confirmed and declared to be valid: *Provided, however,* That the priority date and quantification of these storage rights, and such other storage rights as may exist, shall be determined in an appropriate state proceeding in the State of Arizona. Nothing in this Act or the Agreement shall affect the validity or invalidity of any permit, right-of-way, license or grant held by Phelps Dodge Corporation for the utilization of land or water within the San Carlos Apache Reservation.

(b) The Secretary is authorized and directed to contract with SRP, for a period of not more than twenty-five years from the date the authorizations contained in section 109(b) of this Act become effective, for the utilization of up to three thousand acre-feet of the existing storage right of the United States and SRP behind Bartlett and Horseshoe Dams on the Verde River for the reregulation of the Community's rights to water under the Kent Decree. This storage space shall be for seasonal regulation only, with no annual carryover past October 1.

SEC. 105. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) The contract between the SRP and RWCD dated October 24, 1924, together with all amendments thereto and any extension thereof entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

(b) The Secretary is authorized and directed to revise the subcontract of the RWCD agricultural water service from the CAP to include an addendum substantially in the form of exhibit "10.3.2" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(c) The lands within the RWCD and the lands within the SRP shall be free from the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(d) Neither SRP nor the RWCD shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either of their participation in the settlement or their execution and performance of the Agreement, including, but not limited to, any exchanges provided for in the Agreement.

SEC. 106. OTHER WATER.

(a) The Secretary is authorized and directed to acquire for the Community thirteen thousand nine hundred thirty-three acre-feet of water from one or a combination of the following sources:

(1) CAP water permanently relinquished by the HVID pursuant to contract with the Secretary.

(2) CAP municipal and industrial water and CAP Indian priority water permanently relinquished by the City of Prescott, the Yavapai-Prescott Tribe, the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company pursuant to contract with the Secretary. Any water acquired by the Secretary pursuant to this section shall be acquired with the consent of the contracting entity and shall be assigned to the Community in partial satisfaction of the Secretary's obligation under this section.

(3) In the event that the Secretary cannot acquire thirteen thousand nine hundred and thirty-three acre-feet of water, solely or in combination, from the sources identified in subsections (a)(1) and (a)(2) of this section, then the Secretary is authorized to acquire, from all water resources within the State of Arizona at the disposal of the United States, water in amounts necessary to meet the requirements of this section.

HARQUAHALA VALLEY IRRIGATION DISTRICT

(b) The Secretary is authorized to contract with the HVID for the permanent relinquishment of any portion of HVID's rights to CAP agricultural water.

(1) The Secretary may use HVID water with its original CAP agricultural priority or may convert it, at the rate of one acre-foot per CAP-eligible acre, to a maximum of thirty-three thousand two hundred and sixty-three acre-feet of CAP Indian priority water. Up to thirteen thousand nine hundred and thirty-three acre-feet of such water shall be made available to the Community by contract with the Secretary.

(2) As consideration for the fair value of water relinquished under subsection (b) of this section, the Secretary is authorized:

(i) to credit the HVID with an appropriate share of its outstanding CAP distribution system debt, with such share reflecting the relationship between the amount of HVID CAP rights acquired by the Secretary and the total CAP allocation of the HVID; and

(ii) to offset the annual repayment requirements of the CAWCD under repayment contract numbered 14-06-W-245 in amounts which total the balance of the fair value of the water acquired and not accounted for under (i) above until such value is exhausted.

(3) In the event that the Secretary acquires all or a part of the CAP water rights of the HVID, the following shall apply:

(i) The Secretary is authorized to transfer title to existing federal facilities within HVID that are no longer needed for CAP purposes to the CAWCD or to other non-Federal entities.

(ii) The Secretary is authorized to approve or execute any agreements that are necessary to accomplish the transfer of HVID's CAP agricultural water rights to the Secretary for Indian water rights settlement purposes. As a condition of the transfer of such entitlement, the lands which are purchased by non-Federal interests within HVID must be excluded from HVID. Except as provided for in Article 8.7 of the December 1, 1988, contract between the United States and CAWCD, the excluded lands shall not be entitled to a supply of CAP water for agricultural purposes and shall not be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(iii) The agreement implementing the transfer of HVID's CAP agricultural water rights to the Secretary shall provide that any lands which remain in HVID or its successor shall continue to be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law as long as HVID, or its successor, has a Federal repayment obligation for the cost of the CAP distribution system. The agreement implementing the transfer shall provide that lands remaining in HVID, or its successor, will not bear costs of operation, maintenance, and replacement for the CAP distribution system greater than that which they would have in the absence of the transfer of HVID's CAP agricultural water rights.

(4) Water acquired by the Secretary for the Fort McDowell Indian Community pursuant to this subsection shall be delivered to the Community as provided for in the Agreement. Any remaining water acquired by the Secretary pursuant to this subsection (b) shall be used only in the settlement of water rights claims of other Indian tribes having claims to the water in the Salt and Verde River system.

VERDE RIVER WATERSHED

(c) Providing that the Secretary first acquires at least seven thousand acre-feet of CAP water from one or more of the entities named in subsection (a)(2), of this section, the Secretary is authorized to acquire, by purchase from willing sellers, land and water rights in the Big Chino Valley of the Verde River watershed, in an amount sufficient to replace all such water so acquired.

(1) The Secretary shall not acquire any land or water rights in the Big Chino Valley of the Verde River watershed until he has completed a study to determine whether, through the construction of water diversion, collection, and conveyance facilities to deliver water to a point near Sullivan Lake in Yavapai County, Arizona (hereinafter referred to as the "Sullivan Lake delivery point"), the exercise of such water rights will not have an adverse affect on the flow or the biota of the Verde River and that such exercise is not likely to jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species. The Secretary shall make the study required by this paragraph available to the public for inspection and comment upon its completion.

(2) The Secretary is authorized to enter into an agreement with the City of Prescott to reimburse the city for not to exceed $800,000 advanced to the Secretary by the city for the purpose of expediting completion of the study required in subsection (c)(1) of this section.

(3) If the Secretary determines, based upon the findings of the study, that the exercise of water rights will not have an adverse effect on the flow or the biota of the Verde River and is not likely to jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species, the Secretary shall be authorized to acquire land in the Big Chino Valley and to construct diversion, collection, and conveyance facilities sufficient to deliver the water to the Sullivan Lake delivery point.

(4) The Secretary shall develop and implement a continuous monitoring program to ensure that groundwater pumping from land acquired pursuant to this subsection

(c) shall not adversely affect the flow or the biota of the Verde River and to ensure that it will not jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species. The program shall be developed prior to and implemented concurrent with the construction of the facilities described in subsection (c)(3) of this section.

(d) If the Secretary acquires the CAP contract or subcontracts of the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to a point downstream on the Verde River. Subject to the study required in subsection (d)(1) of this section and all applicable law, the Secretary is further authorized to place into the Verde River at the point downstream an amount of water sufficient, including all losses, to replace the water assigned by such entity or entities pursuant to this subsection.

(1) The Secretary shall not construct any water conveyance facilities from the Sullivan Lake delivery point to any point downstream on the Verde River to replace water assigned pursuant to subsection (a)(2) of this section, until he has completed a study to determine whether the flow of the Verde River may be augmented without jeopardizing the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species and, if the flow of the Verde may be so augmented, at what point or points downstream from the Sullivan Lake delivery point such augmentation would be most appropriate.

(2) The Secretary shall, in conjunction with arrangements for the delivery of water pursuant to this subsection (d), develop and implement a monitoring program to ensure that the augmentation of the Verde River will not jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species.

(e) If the Secretary acquires the CAP contract or subcontract of the Yavapai-Prescott Tribe or the City of Prescott, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to the City of Prescott's existing pumping facilities in the Little Chino Valley, Yavapai County, Arizona. If the Secretary constructs such water conveyance facilities, the City of Prescott shall repay the Secretary for the costs thereof. Nothing in this subsection shall be construed to prevent the City of Prescott from constructing such conveyance facilities itself.

(1) The Secretary shall deliver water to the City of Prescott's existing pumping facilities or to such other point as the Secretary and the City of Prescott may agree, in an amount sufficient, including all losses, to replace the water acquired from the City of Prescott and the Yavapai-Prescott Tribe.

(2) The Secretary is authorized and directed to enter into such agreements as are necessary to ensure that the Yavapai-Prescott Tribe will receive its share of the water to be developed by the Secretary pursuant to this subsection (e). Such agreement shall set forth the cost and other terms of delivery of such water.

(3) The Secretary is authorized and directed, at the request of the Yavapai-Prescott Indian Tribe, to enter into and renew agreements granting the Yavapai-Prescott Indian Tribe long-term grazing privileges on the land acquired by the Secretary pursuant to subsection (a)(2) of this section: *Provided*, That the exercise of such privileges by the Yavapai-Prescott Indian Tribe shall not interfere with the exercise of water rights upon such land except for water reasonably needed by the Yavapai-Prescott Indian Tribe in connection with grazing.

(f) The Secretary is authorized to contract to deliver replacement water to the entities identified in subsections (d) and (e) of this section which relinquish CAP water to the Secretary for the benefit of the Community. The replacement water shall be delivered by the Secretary at the Sullivan Lake delivery point unless otherwise agreed by the Secretary and the entity to receive the water. No replacement water may be delivered to any entity other than those identified in subsection (a)(2) of their section or their agents, and no replacement water may be used directly or indirectly outside Yavapai County, Arizona.

(g) The entities which relinquish CAP water to the Community pursuant to subsection (a)(2) of this section shall not be required to repay costs incurred by the United States pusuant to subsections (c) and (c)(3) of this section. The entities identified in subsection (d) of this section, except for any entity which is an Indian tribe, shall repay the United States so much of the cost of the undertaking identified in subsection (d) as the entities and the United States shall agree. The costs of any undertaking pursuant to this subsection (g) allocated to an Indian tribe shall be nonreimbursable.

(h) The Secretary is authorized and directed to study the sources and cost of the water supplies, other than those identified in this section, that can be used to satisfy the water rights of the Yavapai-Prescott Indian Tribe and of the Yavapai-Apache Indian Community of the Camp Verde Reservation. A separate study shall be made for each tribe. Each study shall be commenced within one hundred and eighty days after the enactment of this Act and shall be completed within one year after it is commenced. Copies of such studies shall be provided to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate.

(i) If the Secretary acquires water for the Community pursuant to subsection (a)(2) of this section, then the Secretary shall exclude, for the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be non-reimbursable.

(j) The Secretary shall, in the exercise of the authorities provided in subsection (a) of this section, comply with all applicable environmental law.

(k) If the Secretary acquires at least seven thousand acre-feet of CAP water from the entities identified in subsection (a)(2) of this section, there is authorized to be appropriated not to exceed $30,000,000 to pay the costs of acquiring the land and water resources identified in subsection (c) of this section and the costs allocable to the construction of diversion, collection, and conveyance facilities described in subsection (c); costs allocable to the construction or diversion, collection, and conveyance facilities shall be adjusted by such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein.

(l) There is authorized to be appropriated such sums as may be necessary to provide for the studies required in subsections (c)(1), (d)(1), and (h) of this section and for the monitoring programs described in subsections (c)(4) and (d)(2) of this section.

SEC. 107. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE.

(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2099, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the City of Phoenix under the terms and conditions of the Project Water lease set forth in exhibit "20.2.2" to the Agreement for a term commencing January 1, 2001, and ending December 31, 2099.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "20.2.1" to the Agreement and the terms and conditions of the Project Water Lease set forth in exhibit "20.2.2" to the Agreement are hereby authorized, approved, and confirmed.

(c) The United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section "6(b)" of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the City of Phoenix as lessee of the Project Water Lease herein authorized.

(d) The Community and the Secretary shall lease to the City of Phoenix, for a term commencing on January 1, 2001, and ending December 2099, for consideration in an amount agreed to by the Community and the City to be paid by the City to the Community, upon those reflected in the Project Water Lease set forth in exhibit "20.2.2" to the Agreement, the four thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Lease shall specifically provide that—

(1) the City of Phoenix, in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the CAWCD: *Provided*, That such payments shall not be commenced earlier than October 1, 1999;

(2) except as otherwise provided in the Project Water Lease, the City of Phoenix shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 shall be United States of America and the CAWCD dated December 15, 1972, and any amendment or revision

thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Lease referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Notwithstanding any other provision statutory of or common law, the Community may, with the approval of the Secretary, lease water provided to the Community under section 106 of this Act for its fair market value for a term not to exceed 100 years as provided in the Agreement but in no event for use outside Pima, Pinal or Maricopa Counties, State of Arizona. If some or all of the water provided to the Community under section 106 of this Act is CAP water, the provisions of subsections of (a), (b), (c), (d), and (e) of this section 106 shall apply to any lease of such water.

(g) Except as authorized by this section, no water made available to the Community or its members pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

(h) If water is acquired from the Salt and Verde watershed pursuant to section (106)(a)(3), no such water may be sold, leased, transferred, or in any way be used off of the Community's reservation.

SEC. 108. FORT McDOWELL INDIAN COMMUNITY DEVELOPMENT FUND; LOAN.

(a) As soon as practicable, the Community shall establish the Fort McDowell Indian Community Development Fund into which shall be deposited—

(1) by the Secretary, the funds appropriated pursuant to subsection (b) of this section; and

(2) by the State of Arizona, $2,000,000 required by paragraph 21.4 of the Agreement.

(b) There is hereby authorized to be appropriated, together with interest accruing from one year after the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into account the average market yield on outstanding Federal obligations of comparable maturity, $23,000,000 which the Secretary shall deposit into the Community Development Fund for the Community to use in the design and construction of facilities to put to beneficial use the Community's water entitlement and for other economic and community development on the Fort McDowell Indian Reservation.

(c) As of the date the authorizations contained in section 109(b) of this Act become effective, the Community, in its discretion, may use the Development Fund, principal and income, to fulfill the purposes of the Agreement and this Title: *Provided,* That no amount of the Federal or State appropriations deposited into the Development Fund may be used to make per capita payments to members of the Community.

(d) As of the date the authorizations contained in section 109(b) of this Act become effective—

(1) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from, the Development Fund, and

(2) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Development Fund.

(e) The Secretary is authorized and directed to provide to the Community a loan pursuant to the Small Reclamation Projects Act (Ch. 972, 70 Stat. 1044, 43 U.S.C. 422a, as amended), in the amount of $13,000,000, to be repaid over a term of fifty years without interest, for the purpose of constructing facilities for the conveyance and delivery of water on the Fort McDowell Indian Reservation: *Provided,* That any requirements for qualifying for the loan are hereby waived, including, but not limited to, the provisions of section 3, 4(b)(2), 5(a) and 5(c) of the Small Reclamation Projects Act.

(1) The Community shall establish an account into which the Community shall deposit $1,000,000. The principal and all accrued income shall be retained in such fund until such time as the Community's obligation to repay the loan under subsection (e) is fulfilled.

(2) No appropriations for the construction of the CAP made after the date of enactment of this Act shall be used to plan, design, construct, or operate any facilities on the Fort McDowell Indian Reservation.

SEC. 109. SATISFACTION OF CLAIMS.

(a) The benefits realized by the Community's members under this Act shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this Act, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this Act.

(b) The Community and the Secretary on behalf of the United States are authorized, as part of the performance of the obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the effective date of this Act, which the Community and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(c) Except as provided in paragraphs 19.2 and 19.5 of the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona in its own right or on behalf of the Community based upon—

(1) water rights or injuries to water rights of the Community and its members; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community and its members.

(d) In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 112(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

SEC. 110. ENVIRONMENTAL COMPLIANCE.

(a) Execution of the settlement Agreement by the Secretary as provided for in section 111(d) shall not constitute major Federal action under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance, except as specifically directed otherwise herein, during the implementation phase of this settlement.

(b) There is hereby authorized to be appropriated such sums as may be necessary to carry out all necessary environmental compliance associated with this settlement, including mitigation measures adopted by the Secretary.

(c) With respect to this settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable environmental laws.

(d) Except as specifically set forth herein, the Secretary shall comply with all aspects of NEPA and the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), and other applicable environmental acts and regulations in proceeding through the implementation phase of this settlement: *Provided, however,* That in regard to NEPA compliance, the Secretary is precluded from studying or considering alternatives to the Community's on-reservation agriculture development plans which will be facilitated by the settlement, or performed under the Small Reclamation Projects loan made pursuant to section 108(e).

SEC. 111. MISCELLANEOUS PROVISIONS.

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court relating only and directly to the interpretation or enforcement of this Title or the Agreement, naming the United States of America or the Community as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

(b) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this Title or the Agreement against any lands within the Fort McDowell Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) Water received by entities other than the Community pursuant to the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(d) To the extent the Agreement does not conflict with the provisions of this Title, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(e) As of the date the authorizations contained in section 109(b) of this Act become effective, section 302(a) of the Colorado River Basin Project Act (43 U.S.C. 1522(a)) shall no longer apply to the Community.

(f) An easement for the construction, operation and maintenance of the Community's water diversion system on and within the lands identified in the Community's special permit extension application dated July 12, 1990, filed with the United States Forest Service, Department of Agriculture, is hereby granted in perpetuity.

(g) As of the date the authorizations contained in section 109(b) of this Act and in section 110(b) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act (102 Stat. 2549) become effective, subsection 104(a) of this Act shall become effective as to the Salt River Pima-

Maricopa Indian Community and the United States.

(h) Section 7(a) of the Salt River Pima-Maricopa Indian Community Water Rights Act (102 Stat. 2549) is hereby amended by striking the date "1990" and inserting in lieu thereof "1991."

SEC. 112. EFFECTIVE DATE.

(a) The authorizations contained in section 109(b) of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that:

(1) the Secretary has signed a contract with the SRP for the storage and reregulation of the Community's Kent Decree water pursuant to section 104;

(2) the RWCD subcontract for agricultural water service from CAP has been revised and executed as provided in section 105(b);

(3) the Secretary has acquired water pursuant to section 106 and made it available for delivery for the benefit of the Community;

(4) the funds authorized by section 108(b) have been appropriated and deposited into the Community Development Fund;

(5) the loan authorized by section 108(e) has been provided to the Community;

(6) the State of Arizona has appropriated and deposited into the Community Development Fund the $2,000,000 required by paragraph 21.4 of the Agreement;

(7) the stipulation which is attached to the Agreement as exhibit "19.5" has been approved; and

(8) the Agreement has been modified to the extent it is in conflict with this Title and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) of this section have not occurred by December 31, 1993, sections 4, 5(a), and 5(b), if they have not theretofore become effective pursuant to the provisions of the Act of October 20, 1988 (Public Law 100-512), and sections 107, 108(a), 108(b), 108(e), 109(b), 109(c), 111(a), 111(b), 111(c), 111(d), 111(e) and 111(f) of this Act and any contracts entered into pursuant to those provisions shall not thereafter be effective, and any funds appropriated pursuant to section 108(b) of this Act shall revert to the Treasury, and any funds appropriated pursuant to paragraph 21.4 of the Agreement shall revert to the State of Arizona.

SEC. 113. OTHER CLAIMS.

Nothing in the Agreement or this Title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community.

SECTION 201. SHORT TITLE.

This Title may be cited as the "Clarks Fork Wild and Scenic River Designation Act of 1990".

SEC. 202. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) as amended by adding at the end the following:

"( ) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out this Act with respect to the river designated by this paragraph, there is authorized to be appropriated $500,000 for development and $500,000 for the acquisition of land and interests therein.

"(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any other Federal action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designation as a component of the Wild and Scenic Rivers System.

"(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of Wyoming: *Provided*, That, notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

"(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such measures as may be necessary in the control of fire, insects, and diseases to fully protect the values for which the segment is designated as a wild river.".

NOTICES OF HEARINGS—SENATE SELECT COMMITTEE ON ETHICS

Mr. HEFLIN. Mr. President, Senator RUDMAN joins me to ask that, in accordance with the Rules of Procedure of the Select Committee on Ethics, which were adopted February 23, 1978, and amended on December 21, 1989, the following Notice of Hearings be published in the CONGRESSIONAL RECORD for the second session of the 101st Congress, and we ask unanimous consent that the notice of hearings be so published.

The material follows:

The Senate Select Committee on Ethics announced on October 23, 1990, that it will hold public adjudicatory hearings to provide a full exposition of the facts relating to contributions Senators CRANSTON, DECONCINI, GLENN, MCCAIN, and RIEGLE may have received from Charles Keating and his associates and actions they may have taken in relation to Lincoln Savings and Loan Association.

The public adjudicatory hearings respecting this matter will commence, in room 216, Hart Senate Office Building, Washington, D.C., at 9:30 a.m. on November 15, 1990.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. SANFORD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Saturday, October 27, 1990, at 12:10 p.m., for an executive session on pending nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

POPULATION PRESSURES AND ENVIRONMENTAL DEGRADATION IN ASIA

● Mr. BOSCHWITZ. Mr. President, having discussed earlier the linkage between population pressures and the state of the environment in the three other regions of the globe, I would like to conclude today with a brief review of the problems in Asia.

On the surface, Asia as a region may appear to be somewhat better off in this regard than the rest of the developing world. It has had a fair degree of economic growth, in large part due to an abundance of natural resources. And fertility rates have declined, as a rule, faster than in most other parts of the Third World.

Efforts to bring about sustainable and environmentally sound development in Asia involve a variety of complex factors. But it is clear to me that past rapid population growth has been a key underlying cause of unsustainable development in this region of the world, development often accompanied by increasing destruction and degradation of the region's natural resources.

In the name of development and short-term economic gain, forests have been and are still being destroyed without regard to regeneration; wildlife habitats are eliminated and soil degraded; coastal areas are threatened with actions that will destroy the very features that make them economically valuable; cities are increasingly polluted from uncontrolled sewage and industrial waste. In retrospect, many shortsighted efforts to deal with unanticipated surging populations have led to situations, for at least some countries of the region, that today threaten options for those countries' future productive activity and growth.

I should point out, by the way, that some of the most successful family planning efforts in the world have taken place in Asia. Population growth rates in that region have been declining steadily over the last 25 years. Countries like Japan, Korea, and Singapore have some of the lowest rates in the world. The average for Asia is now the lowest among the developing regions.

This reduction in birth rates is, in relative terms, a success story demonstrating what can be accomplished when countries made a high-level national commitment to such reduction, provide appropriate services, and have access to financial and technical resources from outside donors, including, very particularly, the U.S. Agency for International Development.

But Asia's long-term population picture is less rosy. Today, more people live in Asia than in the United States, Canada, Europe, and the Soviet Union combined. Thus, small changes in fertility rates in this large population base, particularly in South Asia, can translate into untold millions more people in future generations.

Consider India. Almost half the people in all of Asia—excluding China—live there. Twenty-six million births—one in every five in the world—occur in India each year. About 52 million people have been added to India's population in the past 3 years—equivalent to the entire population of Egypt or Thailand. If each woman capable of bearing children were to have one less child than the current pattern, India would have 181 million fewer people by the year 2025.

Contraceptive use rates in India are moderately high: 35 percent of women are using contraception. However, India's population program is heavily reliant on a single method—sterilization. Couples who opt for sterilization typically already have three or four children. What is needed is more emphasis on spacing of births, and better access to a wide range of methods and services.

In Pakistan, seven children per woman is the norm, and contraception is practiced by only 8 percent of married women. Nearby Bangladesh is another densely populated and poor country where much remains to be done. The national contraceptive prevalence rate there is 33 percent. But demonstration projects that made available a wide range of contraceptive options and counseling and support from village workers have led not only to fairly dramatic fertility reductions, but also to improved women's status, both in their homes and the larger community.

Many family planning challenges remain in Asia. As elsewhere in the world, reducing population growth is not the only factor in improving the pace of development. But it is, as I hope these talks have demonstrated, a vital component of sustainable and environmentally sound development.

Mr. President, this year's foreign aid appropriations bill incorporated an increase for population sought by Senator WIRTH and myself. I look forward to your continued support and that of my other colleagues here, in the years ahead, for the family planning programs of the Agency for International Development. Unless we allow, and budget adequately for, continuation and expansion of this very valuable work, I have some doubts that viable economic development is ever going to take place in most of the Third World.●

COMMERCE, JUSTICE, STATE APPROPRIATIONS BILL

● Mr. SASSER. Mr. President, the Senate Budget Committee has examined H.R. 5021, the amended conference report on the Commerce, Justice, State appropriations bill and has found that the bill is under its 302(b) allocation in budget authority by $8 million and is under its 302(b) allocation in outlays by $1 million.

I understand that the managers of the bill offered an amendment to the bill which will enable the Securities and Exchange Commission to be funded at an adequate level and I appreciate their quick resolution of this issue.

I compliment the distinguished manager of the bill, Senator HOLLINGS, and the distinguished ranking member of the subcommittee, Senator RUDMAN, for all of their hard work.

Mr. President, I have a table from the Budget Committee showing the official scoring of the Commerce, Justice, State appropriations bill and I ask that it be inserted in the RECORD at the appropriate point.

The table follows:

SENATE BUDGET COMMITTEE SCORING OF H.R. 5021—COMMERCE SUBCOMMITTEE—SPENDING TOTALS (CONFERENCE)

[In billions of dollars]

302(b) bill summary	Fiscal year 1991	
	Budget authority	Outlays
H.R. 5021, Conference (new budget authority and outlays)	18.8	14.3
Enacted to date	0.5	5.3
Adjustment to conform mandatory programs to resolution assumptions		
Scorekeeping adjustments	0	0
Bill total	19.3	19.7
Senate 302(b) allocation	19.3	19.7
Total Difference		
Discretionary:		
Domestic discretionary spending	13.9	14.0
Domestic discretionary allocation	13.9	14.1
Domestic discretionary difference		
International discretionary spending	4.4	4.6
International discretionary allocation	4.4	4.6
International discretionary difference		
Defense spending	.2	.2
Defense allocation	.2	.2
Defense difference	0	0
Total discretionary spending	18.5	18.8
Total discretionary allocation	18.5	18.8
Total discretionary difference		
Mandatory spending	.9	.8
Mandatory allocation	.9	.8
Mandatory difference	0	0
Bill total above (+) or below (−):		
President's request	−.7	−.5
House-passed bill	.1	.6
House 302(b) allocation		
Baseline	−1.8	−.4

EXPORT ADMINISTRATION ACT

● Mr. KERRY. Mr. President, late last night the Senate approved the conference report reauthorizing the Export Administration Act. I would like to thank the conferees in both the House and Senate for working so hard to fashion a compromise that can be passed in both Chambers. I believe that in the process we have built on the legislation originally passed in the Senate and have produced an even stronger bill. The 1990 reauthorization of the Export Administration Act will help this country's businesses to sell more abroad whilst protecting national security at the same time.

As a Senator from a State with a large high tech base, I have seen the pervasive effects of the Nation's export licensing regime. Massachusetts has lost substantial sales and jobs as a result of an export control system that frankly was no longer appropriate. By our estimates, the export licensing system in 1985, the latest year for which we could get available data, cost Massachusetts between $250 million and $1 billion in lost sales and between 6,000 and 24,000 jobs. These estimates do not even include the resulting lost GNP nor the immeasurable impact of lost market position, underdesign of products, and wasted management time.

In today's environment of warming East-West relations, growing commercial competition, and spreading technological capability, an export control regime that continues to impose unilateral controls on a wide array of products just makes no sense. And an export control regime that subjects our firms to inexcusable delays makes even less sense. The average time it takes to process licenses in the United States was 114 days while in West Germany it was 14 days and in Japan it was only 4 days. This fact alone goes far to explain the problems that some of our firms have in exporting.

The conference report that we are debating today will do much to improve the current situation. While we may differ on some of the details, we have come together to produce a strong bipartisan bill that I am hopeful that the President will sign.

I am particularly pleased that several parts of the Export Authorization Act that I introduced in June were incorporated in the conference report. I believe that these provisions go a long way toward creating a more appropriate export control system. In particular:

First, a Cocom license-free zone will be created by no later than December 31, 1991. This zone will exclude reexports of products with 25 percent or less U.S. content. This will eliminate approximately 30,000 licenses per year. And these 30,000 license applications were essentially meaningless

given the fact that less than 10 of them will be rejected.

Second, an automatic indexing procedure will be used by the Secretary of Commerce in determining the level of decontrolled exports.

Third, trade with Eastern Europe will be decontrolled for all products except telecommunications and computers. And for these products, and others, subject to national discretion and favorable consideration, shorter time limits will be set by which the administration must review each license.

Fourth, technical operating data that accompanies a product will not require separate licensing.

Businesses should understand how important this bill is for generating jobs and income for Massachusetts. This is one critical area in which Federal policy can make a difference for the local economy.

I believe that we in Congress should continue to rethink our export control regime. While the current legislation will make a difference for Massachusetts and U.S. businesses, I have always advocated that going even further to reform the system would be appropriate and could produce substantially higher economic benefits for our firms. The legislation that I introduced last June would have done just that. And, so would the original House bill that I fought to use a basis for the Senate bill.

So, Mr. President, I am pleased that this vital legislation for the economic health of the families of my State and the businesses on which their well-being depends will pass before the end of this 101st Congress adjourns. I will look forward to participating in the reauthorization process in future years. As the relations between the superpowers continue to improve and as economic competitiveness continues to be critical for the well-being of our working families, I will be looking for every chance that I get to further reform the export control regime.●

"THE WORK FOR OTHERS" PROGRAM

● Mr. SASSER. Mr. President, I rise today in support of a very successful program in my home State of Tennessee. The Work for Others [WFO] Program is a cooperative effort under which the Department of Energy and its contractor, Marietta Energy Systems, Inc., do work for other Federal agencies. The program saves the Federal Government millions of dollars each year. The program has been carefully scrutinized by Congress and enjoys widespread support. In this time of severe constraints on the Federal budget, WFO is the type of program we should be encouraging.

The customers of the WFO Program at Oak Ridge report that they rely heavily on the assistance of DOE, the Oak Ridge National Laboratory, and Martin Marietta Energy Systems. The two main research areas of the program at Oak Ridge are Data Systems Research and Development [DSRD] and Hazardous Waste Remedial Action Program [HAZWRAP].

For the benefit of my colleagues, I would like to insert in the RECORD a brief report that explains the advantages of this important program.

The report follows:

THE DOE "WORK FOR OTHERS" PROGRAM IS GOOD FOR THE COUNTRY

PRODUCTIVITY AND COMPETITIVENESS: A NATIONAL PROBLEM

The Federal Government faces a monumental challenge, improve productivity and efficiency in competitive markets while reducing the budget deficit. Government operations must achieve significant economies if the challenge is to be met. Federal managers realize this and seek efficiences through automation and information sharing. More than fifty percent of the Federal budget involves the acquisition, analysis, management, and transmission of information.

Achieving expected efficiencies is a historic nemesis for Federal agencies. Most agencies are second generation information technology while the industry is passing the fifth generation. Examples of Federal Government efficiency and productivity problems related to information technology include:

The Federal Government could be costing taxpayers as much as $150 billion by poor management (General Accounting Office (GAO), "Financial Integrity Act: Inadequate Controls Result in Ineffective Federal Programs and Billions in Losses"). The Wall Street Journal reported on November 30, 1989, that out-dated accounting systems are a particular problem. According to Mr. Charles Bowsher, Comptroller General and head of the GAO, every major Government agency has admitted to having poor accounting and management systems. A particularly ironic twist to this problem is that not only do the antiquated systems themselves waste taxpayers dollars, but individual agencies' attempts to upgrade these systems have resulted in even further wasted effort.

The GAO report cites one Navy program which was originally expected to cost $33 million but was scrapped as being too costly with a final estimated price tag of $479 million. This was after the Navy spent $230 million over nine years trying to develop the software via private sector contracting. This is illustrative of the National problem in information systems development.

The IRS abandoned a $1.8 billion expansion project for its Automated Examination System after spending $187 million. The system never worked. As a result, according to the GAO report, the IRS has been unable to effectively identify and collect more than $50 billion in delinquent taxes.

A major reason for problems with information systems modernization efforts is individual Federal Agencies lack the resident capability to analyze information management problems, to develop effective solutions, and to plan for the future. The most significant deficiences are in procurement practices and personnel.

A major finding of the report of the Defense Science Board Task Force on Military Software (September, 1987):

"The most common present method of formulating specifications—issuing a Request for Proposal, accepting bids, and then letting a contract for software delivery—is not in keeping with good, modern practice and accounts for much of the mismatch between the user needs and delivered function cost and schedule."

The Task Force members also did "not believe DOD can solve its skilled personnel shortage [relative to systems design and development] and should plan best how to live with it, and how to ameliorate it." (Recommendation No. 34.)

A NATIONAL SOLUTION TO A NATIONAL PROBLEM

The Government must mobilize the best national resources to meet the challenge of increasing efficiency in the face of level or reduced budgets. There exists within the Federal establishment a dedicated, experienced, technically capable workforce with the ability to provide both focus and support, continuity, and management skill on agency problems. This technical capability is concentrated in the Laboratories and applied research programs of the U.S. Department of Energy (DOE).

THE DOE APPROACH TO SHARING NATIONAL RESOURCES—WORK FOR OTHER FEDERAL AGENCIES PROGRAM

DOE and its predecessor agencies have performed work for other Federal agencies since the late 1940s in various Federal Laboratories and research programs. These activities can combine public, private, and academic capabilities to create a synergy in which the whole is greater than the sum of the parts. Nuclear weapons development specifically for the Department of Defense is one of the most familiar areas of interagency support. DOE Laboratories and research programs also support biological and medical (human genome) research, environmental science (global warming), computing and information technology (information systems), material science (superconductivity) and highly sensitive and classified efforts. These are examples of interagency cooperation and resource sharing under the DOE Work for Other Federal Agencies Program (WFO).

The interagency agreement is the basic vehicle of WFO. It is merely an agreement between a Federal agency and DOE that certain work may be performed at a Federal Laboratory or research facility. Interagency agreements are not contracts. They involve no funds and no firm commitments for effort. When the agency needs support from DOE under the interagency agreement, it is the vehicle for transferring specific funds to support specific tasks.

The legislative basis for WFO is the Economy Act of 1932. This Act permits one Government agency to purchase goods and services from another agency when the best interests of the Government will be served. The Act specifically endorses the concept of using Government personnel and facilities to solve critical Government problems as economically advantageous and strategically necessary to sustain national technological resources.

Interagency agreements can be somewhat broader and more flexible than contracts. They must comply with procurement rules and statutes and may not be used to circumvent the Competition in Contracting Act. Agencies may require agreements to be endorsed by their legal and procurement functions.

DOE uses interagency agreements:

DOE increases its pool of expertise by developing methodologies for other Federal agencies. The results of the research, development, and demonstration (RD&D) are owned by the Government and can be used or further developed by other agencies.

Other Federal agencies can benefit from DOE knowledge and experience without having to invest their resources in continuous commercial start-up costs.

The concentration of expertise and facilities available to DOE is not readily available in the private sector. Further, the budget implications of replicating these capabilities at individual agencies would be prohibitive.

Research, development, and demonstration work performed by interagency agreements at DOE Laboratories and applied research facilities can involve high risk projects that commercial and academic entities would be hesitant to undertake without significant investment and guarantees from the Government.

DOE Laboratories and research programs, when necessary, focus the efforts of several commercial and/or academic entities on single tasks. The subcontracting and teaming arrangements common in this environment are virtually impractical for agencies using multiple contracts.

Through carefully managed subcontracting to the private sector, small and medium sized companies participate in leading-edge science, which results in technology transfer. Since DOE facilities are only involved in RD&D, once technological solutions are achieved, the private sector continues the work as quickly as possible. This transfer of technology with broad application enhances the competitiveness of U.S. industry.

The Government-to-Government nature of interagency agreements permits an uninhibited and most effective sponsor-client communications flow.

UNIQUE CAPABILITIES OF THE DOE WORK FOR OTHERS PROGRAM

A major focus of the DOE WFO program is advanced information systems RD&D and analysis, which addresses problems directly affecting Government efficiency. Specific aspects include:

Objective and unbiased approaches to government systems problems. DOE has no hardware, software, or system operations and maintenance services to sell. Researchers and specialists apply the best solutions to clients' proglems independently and objectively.

Multi-discipline technical capabilities. Computer science, engineering, telecommunications, computer security, artificial intelligence, and physical and social sciences are representative of the areas that can be directed to problem-solving. Multi-discipline project teams and rapid response to clients' needs are common.

The best national technical resources to perform any task. DOE applied research facilities procure subcontract support as necessary. This allows program flexibility and focuses the best technical expertise available on national problems. Ninety-seven (97%) percent of the 1985-1989 subcontract technical support to the DOE/Oak Ridge WFO programs was acquired competitively.

Lessons learned. Many individual agencies confront variations of the same technical problem. For example, both the Departments of Defense and State have secure world-wide computer networks. DOE uses the lessons learned in solving one agency's problems to address similar problems for the other agency. This approach is cost effective and efficient. It is particularly applicable to intra-agency problems for which consistency and future interconnectivity are considerations.

Continuity of expertise over time. Researchers gain expertise and experience in technical areas as they move from one project to another. This serves to build the Government's cumulative experience base to solve critical technological problems. It also builds a cadre of professionals with cross-agency experience.

Control of classified and sensitive information. DOE security standards are among the most stringent in the Federal Government. DOE staff and facilities can accept research projects of the highest sensitivity with special security access.

Noncompetition with the private sector. Stringent operating procedures limit the program to work involving RD&D, applied research, and analysis. A DOE research activity can develop a system through prototype demonstration, testing, and transition planning. System implementation, operation, and maintenance is the responsibility of the sponsor agency.

IMPACT OF DOE WFO ON GOVERNMENT INFORMATION SYSTEMS TECHNOLOGY

The DOE WFO Program has a distinguished record of success solving key information system problems for other government agencies efficiently and economically. Specific examples include:

Solutions to the problems of inordinately high inventories of excess repair parts of the U.S. Army. Procedural changes recommended by the DOE team should result in savings to the Army of hundreds of millions of dollars over a 10-year period.

The DOE WFO program support the Department of the Treasury, identifying vulnerabilities in a multi-billion dollar payment system, and evaluating contingency planning and disaster recovery capabilities for Regional Finance Centers' data systems. Data systems researchers also perform security analyses on components of the Department of State Foreign Affairs Information Systems Network (FAIS).

Using DOE's WFO program to develop the U.S. Navy Civilian Personnel Data System (NCPDS) saved the Navy approximately $40 million.

Data systems research personnel applied advanced information technology to reverse engineering resulting in a 50 percent reduction in the unit costs of certain spare parts. The estimated potential savings cumulative for a number of projects is estimated to be more than $200 million.

The DOE WFO Program is a leading example of successful implementation of recommendations made by the Defense Science Board Task Force on Military Software.

Recommendation 12: "Use evolutionary acquisition, including simulation and prototyping * * * to reduce risk."

Interagency agreements and the tailoring of subsequent task statements of work accommodate the evolutionary acquisition portion of this recommendation by allowing for integration of software produced for government, industry and academia. The Military Airlift Command's (MAC) Airlift Deployment Analysis System (ADANS) is a prototype system that is already making an impact on easing the MAC's command, control, and scheduling workloads.

Recommendation 23: "* * * Mandate the iterative setting of specifications, the rapid prototyping of specified systems, and incremental development."

Interagency agreements with the US Air Force led to the development of the Air Force Command and Control Systems Modernization Methodology. This software and architectural methodology emphasized requirements definition and was adopted by the Air Force Standard Systems Center. It enabled placement of a successful competitive contract for Air Force Standard Systems modernization.

A requirements-based approach was followed in developing a prototype Wing Command and Control System (WCCS) for United States Air Force Europe (USAFE). The success of this effort led to competitive implementation of the program throughout the Air Force.

CONCLUSION

The U.S. Department of Energy's Work for Other Federal Agencies program is a superlative vehicle for economically and efficiently focusing the best technical resources available to address agency needs, and by its success, national issues of productivity and competitiveness.●

THE REVEREND REUBEN E. RUSSELL

● Mr. RIEGLE. Mr. President, I rise to pay tribute to the Reverend Reuben E. Russell of the Vernon Chapel AME Church of Flint, MI, on his retirement after 28 years of distinguished service to his community. Over the past three decades, the Reverend Russell has been the driving force behind the development of the Vernon Chapel to becoming a vibrant part of Flint's spiritual life. I am honored to be among the many thousands whose lives have been touched and bettered by the Reverend Russell's service. He has been a great inspiration to me and my family and I am grateful for his guidance along the way.

The Reverend Russell's career has really been a team effort. He and his wife, Della Rhodes Russell, have given unselfishly to the church and to their community and have much to be proud of for their years of hard work. Both the Reverend and Mrs. Russell were born in Alabama and came to Michigan determined to make their community a better place to live and healthy place to worship. All the while the Russells have served, they are part of a large and loving family of 4 children, 14 grandchildren and 9 great-grandchildren.

The Reverend Russell's service to Flint goes far beyond his role as pastor of the Vernon Chapel. He has worked with countless charitable and community groups, including the American Red Cross, the March of Dimes, the Greater Flint OIC, the Greater Flint Council of Churches, the Concerned Pastors for Social Action, the NAACP, the Department of Corrections, the Metropolitan Chamber of Commerce, and Radio Stations WFBE and WEZZ. Mrs. Russell's commitment to her community is also impressive. A teacher of the year in Alabama, she continued her career in education in the Flint community

schools. In addition, she has been an active member of the Handbell Choir, the Missionary Society, and the Ladies of Vernon, and she is now the president of Vernon's Bowling League, "The Scatter Pins." To use bowling terminology, the Reverend and Mrs. Russell have rolled strikes year after year for the people of Flint.

Although the Reverend Russell is retiring as pastor of Vernon Chapel, I understand he will continue to play an active role in his community. And as I reflect on the Reverend Russell's service, I am reminded that our communities are healthy and vibrant when dedicated individuals devote themselves to helping their neighbors. Today, our Nation faces severe challenges in terms of educating our young people and ensuring that all citizens have equal opportunities. These problems will not go away simply by talking about them, or with the passage of legislation, but are solved when citizens roll up their sleeves and work together to help others. I salute the Reverend Russell's years of distinguished service as a leader in his community and I am encouraged that he will continue to help make life better for so many people.●

THE FLIGHT TECHNOLOGY ENRICHMENT PROGRAM AT CENTRAL WASHINGTON UNIVERSITY IN ELLENSBURG, WA

● Mr. ADAMS. Mr. President, I rise to acknowledge one of the top flight technology schools in the Nation. The Airway Science Program at Central Washington University, located in Ellensburg, WA, offers a 4-year flight technology degree for future employees in the aviation industry.

This is the only flight technology program offered in the five State region of Washington, Oregon, Idaho, Montana, and Wyoming. Corporations like Boeing and Alaska Airline are strongly supportive of this school.

Mr. President, I speak to this program, because I supported a request for additional funding in the 1991 Transportation appropriations bill. Though we failed to obtain additional Federal funding to assist in the CWU flight technology expansion program, I want to make it clear that my support for what they are trying to do has not diminished.

CWU has taken the initiative to expand their current Airway Science Program after carefully reviewing the needs of this market. They are aware that the FAA, FAPA, UAA, and ALPA all profess a critical need for professional aircrews, air traffic controllers, airframe, and powerplant mechanics, as well as other professionals.

The CWU flight technology school is committed to their endeavor with 17 years experience and over 500 graduates employed in aviation careers. I applaud their past and will strive to ensure they will have a bright future.

Mr. President, it is my intent to also make it clear that as a former Secretary of DOT, and current member of the Senate Appropriations Committee, I strongly endorse providing additional grant resources to expand the current school. This is a quality program that deserves the attention of the Federal Government.●

CHILD CARE

● Mr. BOSCHWITZ. Mr. President, I rise today in support of the child care legislation, which is part of the package. I am proud to say that it contains many of the concepts that I had introduced last year in my bill—the Child Care Assistance and Resources Expansion Act.

I am pleased to see that it targets the major portion of the new child care revenues to low-income families by significantly expanding the earned income tax credit. It also increases the the standard deduction for children under age 1. This wee tot provision allows a low-income family to receive up to about $350 for a child under age 1. However, no family can claim both the dependent care tax credit and the wee tot provision. The legislation also establishes a child care block grant program.

Gone are the Federal mandates requiring States to establish standards for group size and the mandates on hours of training. Gone is the Federal authority to interfere with States' decision to modify their standards. Gone is the Federal bureaucracy, which some wanted to establish that would have created commissions and increased paperwork for providers and local officials.

However, Mr. President, the bill does require that all providers who receive funds under the act must comply with applicable State and local requirements. The key words are "applicable State and local requirements." I must tell you that I strongly support standards and training for child care providers. However, such standards should be made at the State and local level, not in Washington.

I support the large expansion of the earned income tax credit [EITC] and I support having it tied to family size. It provides different rates for families with one and two children. While I would have preferred a rate structure for families with up to four children, it's a step in the right direction. Mr. President, I believe an expanded EITC is the best way to provide child care assistance for low-income families.

Under the block grant agreement, each State may use 75 percent of its funds for direct assistance for parents to pay for child care and for programs to increase availability, affordability, and the quality of child care services. The remaining 25 percent will be used to provide funds for early childhood development activities, before- and after-school care, and to improve the quality of child care.

Mr. President, I believe that this is a good child care bill and urge my colleagues to support it.●

LEGISLATIVE BRANCH APPROPRIATIONS

● Mr. SASSER. Mr. President, the Senate Budget Committee has examined, H.R. 5399, the legislative branch appropriations bill and has found that the bill is under its 302(b) budget authority allocation by slightly more than $62 million and under its 302(b) outlay allocation by slightly more than $110 million.

I compliment the distinguished manager of the bill, Senator REID, and the distinguished ranking member of the Legislative Branch Subcommittee, Senator NICKLES on all of their hard work.

Mr. President, I have a table from the Budget Committee showing the official scoring of the legislative branch appropriations bill and I ask that it be inserted in the RECORD at the appropriate point.

The table follows:

SENATE BUDGET COMMITTEE SCORING OF H.R. 5399—LEGISLATIVE BRANCH SUBCOMMITTEE—SPENDING TOTALS (CONFERENCE)

[In billions of dollars]

302(b) bill summary	Fiscal year 1991— Budget authority	Outlays
H.R. 5399, Senate Passed, (new Budget Authority and outlays)	$2.2	$1.9
Enacted to date	0.1	0.3
Adjustment to conform mandatory programs to resolution assumptions		
Scorekeeping adjustments	0	0
Bill total	2.2	2.2
Senate 302(b) allocation	2.3	2.3
Total difference	−.1	−.1]
Discretionary:		
Domestic discretionary spending	2.2	2.1
Domestic discretionary allocation	2.2	2.2
Domestic discretionary difference	−.1	−.1]
Mandatory spending	.1	.1
Mandatory allocation	.1	.1
Mandatory difference	0	0
Bill total above (+) or below (−):		
President's request	.2	.2
Senate-passed bill	.1	.1
House-passed bill	−.1	
House 302(b) allocation	−.1	−.1]
Programmatic baseline	.1	.1●

NEWSLETTER MAILING

● Mr. PRESSLER. Mr. President, I would like to rise to set the factual record straight on a matter that was raised Thursday on the subject of newsletters. During debate on the legislative branch appropriations Thursday, I said I thought I had mailed one or two newsletters this past year. In fact I mailed only one. It was mailed

on April 5, 1990, and 276,518 pieces were mailed.

I simply want that matter clarified for the record. I ask that the Service Department's report on all newsletter activity for last year be made part of the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

SENATOR LARRY PRESSLER'S NEWSLETTER REPORT,[1] FISCAL YEAR 1990

Date: April 5, 1990.
Description: Newsletter.
Order Number: 094108.
Total pieces: 276,518.

[1] From Records of the U.S. Senate Service Department for fiscal year 1990.●

THE PORT OF BELLINGHAM IN BELLINGHAM, WA

● Mr. ADAMS. Mr. President, I rise to congratulate Don Fliming and the Port of Bellingham for the tremendous work they have done to increase international trade for their region. This work recently culminated in a newly signed cooperative agreement between the Port of Bellingham and Team Primorski, composed of the Port of Nakhodka and the Port of Vostochny, in the Soviet Union. I am sure that the port commissioners, Edward Griemsmann, Kenneth McAulay, and Peter Zaunich, along with the mayor of Bellingham, Tim Douglas, are very proud of what they have accomplished.

Mr. President, I am particularly happy with this new agreement since it follows recent initiatives by my office to open Puget Sound ports to the Soviet Union, articulated in new provisions within the United States-Soviet Maritime Agreement. Early this year we successfully convinced the Defense Department that there was no reason to throw a security curtain around the Puget Sound and inhibit trade with the Soviet Union. This new Port of Bellingham agreement represents the first of many new trade relationships that will develop because of this and other actions.

Mr. President, this newly signed cooperative agreement initiated by the Port of Bellingham furthermore supports my longstanding belief that local communities are eager to help their own economy and need only a little assistance on the part of their representtives in Washington, DC. As a member of the Senate Appropriations Committee I recognize and applaud this self-help ethic.

In conclusion Mr. President, Bellingham, WA, is one of the most beautiful port cities in Washington State. This program developed by their port, local government, and local business sector will only enhance the status of that community. I look forward to what will only be a bright, bright future for a great port city.●

CONFERENCE REPORT FOR THE FISCAL YEAR 1991 MILITARY CONSTRUCTION APPROPRIATIONS BILL

● Mr. SASSER. Mr. President, the Senate Budget Committee has examined the conference report for H.R. 5313, the fiscal year 1991 Department of Defense military construction appropriations bill, and has found that the bill is under its 302(b) allocation by $137.8 million in budget authority and $15.1 million in outlays.

Mr. President, I have attached a table prepared by the Budget Committee that shows the official scoring of the conference report on the military construction appropriations bill and I ask that it be inserted in the RECORD at the appropriate point.

The table follows:

SENATE BUDGET COMMITTEE SCORING OF H.R. 5313—MILITARY CONSTRUCTION SUBCOMMITTEE—SPENDING TOTALS (CONFERENCE)

[In billions of dollars]

302(b) bill summary	Fiscal year 1991—	
	Budget authority	Outlays
H.R. 5313, conference, (new budget authority and outlays)	8.4	3.1
Enacted to date	0	5.6
Adjustment to conform mandatory programs to resolution assumptions	0	0
Scorekeeping adjustments	0	0
Bill total	8.4	8.7
Senate 302(b) allocation	8.5	8.7
Total difference	−.1	
Bill total above (+) or below (−):		
President's request	−.8	−.2
Senate-passed bill	.4	.1
House-passed bill	.1	
House 302(b) allocation	−.1	
Baseline	−.2	−.1

MILITARY CONSTRUCTION

[In thousands of dollars]

	President's request		House-passed		Senate-reported		Senate-passed		Conference	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
302(b) bill summary:										
Total enacted to date	0	5,567,429	0	5,567,429	0	5,567,429	0	5,567,429	0	5,567,429
Total new budget authority	8,311,167	3,321,225	8,311,167	3,123,644	7,979,291	3,050,098	7,979,291	3,050,098	8,362,171	3,117,447
Adjustments:										
Discretionary programs	0	0	0	0	0	0	0	0	0	0
Mandatory programs	0	0	0	0	0	0	0	0	0	0
Adjusted bill total	9,125,978	8,888,654	8,311,167	8,691,073	7,979,291	8,617,527	7,979,291	8,617,527	8,362,171	8,684,876
Total 302(b) allocation (point of order)			8,500,000	8,700,000	8,500,000	8,700,000	8,500,000	8,700,000	8,500,000	8,700,000
Domestic discretionary allocation			0	0	0	0	0	0	0	0
International discretionary allocation			0	0	0	0	0	0	0	0
Defense discretionary allocation			8,500,000	8,700,000	8,500,000	8,700,000	8,500,000	8,700,000	8,500,000	8,700,000
Mandatory allocation			0	0	0	0	0	0	0	0
Baseline			8,580,160	8,760,358	8,580,160	8,760,358	8,580,160	8,760,358	8,580,160	8,760,358
Adjusted bill above (+) or below (−):										
Total 302(b) allocation (Point of order)			−188,833	−8,927	−520,709	−82,473	−520,709	−82,473	−137,829	−15,124
Domestic discretionary allocation			0	0	0	0	0	0	0	0
International discretionary allocation			0	0	0	0	0	0	0	0
Defense discretionary allocation			−188,833	−8,927	−520,709	−82,473	−520,709	−82,473	−137,829	−15,124
Mandatory allocation			0	0	0	0	0	0	0	0
Baseline			−268,993	−69,285	−600,869	−142,831	−600,869	−142,831	−217,989	−75,482
President's request			−814,811	−197,581	−1,146,687	−271,127	−1,146,687	−271,127	−763,807	−203,778
House adjusted bill			NA	NA	−331,876	−73,546	−331,876	−73,546	51,004	−6,197
Senate adjusted bill			NA	NA	NA	NA	NA	NA	382,880	67,349
DISCRETIONARY										
Previously enacted:										
Permanent appropriations										
Advance appropriations										
Outlays from prior year appropriations		5,651,939		5,651,939		5,651,939		5,651,939		5,651,939
Other action to date		−84,510		−84,510		−84,510		−84,510		−84,510
Total enacted to date	0	5,567,429	0	5,567,429	0	5,567,429	0	5,567,429	0	5,567,429
New budget Authority H.R. 5313	9,125,978	3,321,225	8,311,167	3,123,644	7,979,291	3,050,098	7,979,291	3,050,098	8,362,171	3,117,447

MILITARY CONSTRUCTION—Continued

[In thousands of dollars]

	President's request		House-passed		Senate-reported		Senate-passed		Conference	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Adjustments:										
Possible later requirements: examples										
Total PLRs										
Scorekeeping adjustments: Adjustment										
Total discretionary adjustments	0	0	0	0	0	0	0	0	0	0
Discretionary total	9,125,978	8,888,654	8,311,167	8,691,073	7,979,291	8,617,527	7,979,291	8,617,527	8,362,171	8,684,876
MANDATORIES										
Previously enacted:										
Permanent appropriations										
Advance appropriations										
Outlays from prior year appropriations										
Other action to date										
Total enacted to date	0	0	0	0	0	0	0	0	0	0
New budget authority: H.R. 5313										
Adjustments for mandatories:										
Mandatories in bill	0									
Resolution assumptions	0									
Mandatory adjustment	0	0	0	0	0	0	0	0	0	0
Adjustment for prior year outlays not assumed in resolution										
Total mandatory adjustment	0	0	0	0	0	0	0	0	0	0
Mandatory total	0	0	0	0	0	0	0	0	0	0

COMMUNITY EDUCATION DAY

● Mr. RIEGLE. Mr. President, I am pleased today to acknowledge November 13, 1990, as Community Education Day. Over 50 years ago, the concept of community education was originated in my hometown of Flint, MI. Today, this philosophy which encourages all members in a community to work together to enhance the education process, is as important and relevant as it was the day it was conceived. Each and every community in America has a wealth of resources enabling individuals to make a difference in the enrichment of the education process.

I believe fervently in this notion, as it places the awesome responsibility of building and maintaining a strong educational system on not just the schools, nor the Government—not even on teachers alone—but on each American citizen. Schools are not islands. Community education mandates that bridges be built, linking each school to its community; making the education process valuable and meaningful for both the students and the communities in which they live. Community education promotes programs for learners of all ages, backgrounds and needs. It encourages the full use of school facilities for recreation and human services as well as formal schooling.

It has helped to improve the performance of students and has helped open up classrooms for adult education programs to fight illiteracy and teach job skills. The program also reaches out to alienated and isolated groups in our society, to strengthen the connection between learning and living.

Community Education Day has been observed in many States for almost a decade. This year's theme is "Community Service—Learning to Care." This day will give educators a chance to reach out to members of the community to invite them to participate in the education process. It will focus on parents as partners in education, and will make an effort to involve nonparents in education as well.

Mr. President, encouraging each individual to fully develop his or her talents and capabilities is the essence of fulfilling our constitutional guarantees, and of life itself. Community education has proven it can help build strong bridges between public schools and their communities. I believe these bridges are essential to improving education so that it can help all citizens meet the challenges of the future. Our strength as a country comes from the strength of our education system.

In closing, Mr. President, I hope that Community Education Day will help strengthen existing community education programs, and also that it will encourage other cities, towns, and communities across the country to develop programs of their own.●

MINNESOTA CORPORATE LEADER MARCIA BYSTRUM

● Mr. DURENBERGER. Mr. President, I want to take a moment to draw attention to a significant event which occurred earlier this month. Marcia Bystrum of Bloomington, MN, was elected as chairman of the Minnesota Chamber of Commerce Board of Directors. The Minnesota chamber could not have made a better, or a more historic choice. Marcia Bystrum is the first woman in America to head a statewide chamber, and we are all proud of her, and that it happened in Minnesota. She succeeds Bob Stenerson, of Stenerson Lumber in Moorhead.

Marcia has been a conspicuous and able leader in the Minnesota business community for many years. She is the product of a small business background, having worked in a family owned machine shop called—somewhat ironically given Marcia's recent election—Bystrum Bros. She chaired the Minnesota delegations to the White House Conferences on Small Business in 1980 and 1986. She is the president of the Minnesota Women's Economic Roundtable. She has served on the Minnesota chamber's board for several years, chairing its small business council.

She has also served the broader community in a number of ways. Currently she is the community outreach coordinator for the International Special Olympics which will be held in Minnesota next summer.

Marcia has established three worthy goals during her time as chair. First, she wants to double the number of women who serve on the board of directors. She wants the chamber to be a model for other organization and corporations that more progress must be made to open up opportunities for women in what is still a male-dominated environment. Second, she wants to increase the focus of the chamber on small business. While large corporations dominate the sky lines of the Twin Cities and news coverage, Minnesota's small businesses continue to be "where the action is" in our State's

economy. Economic changes and business cycles come and go, but the central fact remains that small business is the bedrock of American employment, innovation, and competitiveness. Third, she wants the chamber to provide a constructive influence on the decisions of government at the State, local, and Federal level.

Mr. President, I have had the opportunity to serve with Senator MIKULSKI during the past year and a half, on a task force of the Senate Labor Committee on the subject of Work Force 2000. Many of the conclusions we are beginning to reach about what it will take to get American employers and workers ready for the next century are strikingly similar to the views Marcia Bystrum is expressing. I know that the people of Minnesota will benefit from her leadership, and that others around the country can learn for the standard she sets.●

MIKE PLANT'S TRIP AROUND THE WORLD

● Mr. DURENBERGER. Mr. President, my home State of Minnesota is a center for cultural diversity, environmental treasures, and high technology businesses. But more than that, Mr. President, Minnesota is a spirit; one that binds the founding families with those who arrive each day. It has been said that those who move away always carry a piece of Minnesota in their hearts.

Today, a piece of Minnesota is traveling around the world in the heart of Mike Plant. Mike is now encompassing the world's oceans as the only American in the 27,000-mile BOC challenge yacht race. The single-handed, around the world, nonstop yacht race is regarded by sailors as the ultimate test of courage, stamina, and resourcefulness. Mike is nearing Cape Town, South Africa, in the 6,800-mile first leg of the race.

The trek has not been easy for Mike and his 60-foot yacht, the *Duracell*. After trading places with the top five boats for most of the first leg, Mike suffered a setback; a loss of wind that caused him to drop 600 miles behind the leaders in two days.

But a loss of power is not the only difficulty Mike is experiencing. After 35 days on the open seas, fatigue has become Mike's constant companion. Mike has slept in his bunk only twice during the trip. His daily sleeping routine is to work and sleep in 20-minute intervals. But Mike is no stranger to adversity.

Mike is sailing around the world alone for the third time. He is a former teacher, kayak and ski racer, and adventurer who once hiked 12,000 miles through the jungles of South America. In 1986, Mike circumnavigated his way to victory in the class II, 27,000 mile BOC challenge, finishing 4 days ahead of his closest competitor. Mike completed the odyssey in 157 days, 11 hours, and 45 minutes.

Mr. President, this year's race is his second in the premier class I division of yachts. Last year, he finished seventh after developing the flu and experiencing damage to the *Duracell*. Rather than pulling out of the race, however, Mike finished in 134 days; a new American round-the-world sailing record. Again, this year, Mike faces new challenges.

Hundreds of miles from the nearest shore, Mike is now running low on food. Most of his remaining food supply exists in the form of carbohydrates and starches, namely beans and rice. But Mike and the *Duracell* are likely to overcome their obstacles and regain lost ground during the next two legs of the race. It is in these two legs that the winds above the southern seas are stronger than in any other part of the race. As Mike traverses through the turbulent seas below the equator, the spirit of Minnesota will go with him.

Mike thrives on the inter-relationship with nature that solo, offshore sailboat racing provides. He once said that offshore sailboat racing "strips you to the soul—exposing who we are, what we are * * * why we exist." To Minnesotans and Americans alike, Mike's courage, leadership, and the ability to overcome adversity symbolizes who we are, what we are, and why we exist. His spirit of competition and determination serves as a beacon of goodwill from Minnesota to the world.

Mr. President, the spirit of Minnesota is alive in Mike Plant. For Minnesotans everywhere, I wish him the best as he completes his voyage. In our hearts, he has already won.

Mr. President, I ask that this article from the New York Times on Mike's journey be printed in the RECORD at this point.

The article follows:

[From the New York Times, Oct. 21, 1990]

NOT ENOUGH WIND, TOO MUCH FATIGUE

(By Barbara Lloyd)

Alone in the Atlantic Ocean and 1,100 miles from shore, Mike Plant, the only American sailing in the premier class of the BOC yacht race around the world, has his own version of a living hell. It has noting to do with fire and brimstone, everything to do with water and ill winds.

In a ship-to-shore interview Friday, Plant, the 39-year-old adventurer from Jamestown, R.I., sounded tired and distraught. He was headed toward Cape Town, aboard his 60-foot sailboat, Duracell. Although closing in on the finish of his 6,800-mile voyage from Newport, R.I.—the first leg of the 27,000-mile BOC Challenge—Plant wasn't thinking about the prospect of land ahead. Instead, he could only dwell on the previous week and the stroke of bad luck that came his way.

After several weeks of alternately trading places with the first five yachts in the 23-boat fleet, Plant fell into a hole as dark as any hole on Earth. Among sailors, a hole at sea is a place where the wind doesn't blow. A lack of wind in the BOC yacht race is as devastating as running out of gasoline in an auto race.

"It's not often you get to drop 600 miles in two days," said Plant in summing up his setback. "This is a time I will never forget. It has been a long trip."

FATIGUE MOUNTS

The strain of being so long at sea—it had been 35 days—was showing itself through mind-bending fatigue, the solo sailor's constant companion. Plant said he had not slept in his bunk more than two times during the entire trip.

His usual pattern at sea is to sleep and work in 20-minute spurts. But even that has gone haywire in this voyage. He considers it a feat to get four hours of sleep each day.

"It's been rough as hell out here," said Plant of the upwind sailing conditions he has faced most of the way to Cape Town. "I've been trying just to stay in the saddle. If I don't stay at the helm, I lose speed and fall behind. Every minute counts."

Duracell was often "banging and falling off waves," he said, and "shuddering like you can't believe."

Plant is tough, as a former teacher at an Outward Bound school, a kayak and ski racer, and an adventurer who once hiked 12,000 miles alone through South America, he is hardened by his experiences. Plant, who is not married but has lived with Helen Davis for several years, does not recognize loneliness. His biggest fear at sea is not of sinking, but of having his boat break down so that he cannot win the race.

Plant is sailing for the third time around the world alone. The last week, he said, was as nasty a time as he can remember. In two days, he had dropped hundreds of miles from the front of the pack. Alain Gautier or Philippe Jeantot, both of France, could arrive as early as tomorrow.

"The weather has not done us any favors this leg," said Plant in a telex to his Newport base Friday. "Yesterday was a very foul day, so bad I saw the northern coast of Spain in my dreams." The reference to Spain is painful for Plant, because it took him out of the running in his last round-the-world race, the Globe Challenge. Soon after the start from France last November, Plant developed the flu. He was sick and delirious, and almost unable to continue.

Without his usual attention at the helm, Duracell went off course. Plant woke up one day with the Spanish coast on his horizon. By the time he got his boat on course again, he had lost valuable miles.

He finished the race in seventh place, but as an unofficial entrant. Halfway through the voyage, south of New Zealand, a metal part broke on the mast. Plant fashioned a jurygig and coaxed his fragile boat 200 miles to Campbell Island for repairs. While there, his anchor dragged and he was forced to accept assistance. By taking on help, Plant had violated the Globe rules. Rather than turning back, he continued on to finish the race in 134 days, a new round-the-world sailing record for an American.

The same tenacity is likely to carry Plant through the current crisis. He is low on food and left with "nothing fancy," he said, "a lot of carbohydrates and a lot of starch." Plant took jars of gourmet food made for him by the chef of a Newport restaurant, but he went through those first. Now he is down to beans and rice.

Plan's boat is apt to move ahead in the standings in the next two legs of the race,

both through southern oceans below the Equator. The wind is likely to create reaching and running conditions there; hais boat, designed by Rodger Martin of Newport, is made to perform best in those conditions.

And then there is the albatross, the giant bird that Plant said he saw sweep past his boat on Thursday. The albatross is a good-luck sign for mariners.●

PERSIAN GULF

● Mr. LEVIN. Mr. President, Secretary of Defense Richard Cheney has announced that the United States may deploy up to another 100,000 troops in the Persian Gulf.

I believe that President Bush's strategy thus far in the Persian Gulf has represented a balanced approach of economic pressure and military strength. His efforts to multilateralize the opposition to Saddam Hussein both in terms of economic sanctions and military forces are to be commended, although I do believe that he should push for a greater commitment of non-U.S. allied forces. He should also push for Saudi Arabia to pay a greater share of the monetary cost of this operation out of the extra revenues which it is receiving as a result of the substantial increase in the price of oil.

It is important that we give the economic sanctions which have been imposed against Iraq an opportunity to work. It is clearly preferable to achieve our objectives in the Persian Gulf through the squeeze of economic force, and we should give that policy the time necessary to be effective.

It is also important that there be sufficient military forces in the region to assure that Saddam Hussein is not tempted to attack Saudi Arabia and to assure that we can exert leverage on him to withdraw from Kuwait. There is evidence that Saddam Hussein has increased his military forces in the region, which could justify an additional allied response.

However, it is equally important that the President give the American people a clearer picture of his objectives in the Persian Gulf to go along with any greater commitment of troops he might make. As an editorial from the Detroit News suggests, the commitment of forces to war which is not backed by a consensus of the American people or their elected representatives courts disaster. I ask that a copy of the Detroit News editorial be printed in the RECORD following my remarks. The President would be mistaken to think that such a consensus can be forged out of silence or in a vacuum. The element of surprise is important in military operations, but it can easily be counterproductive in a democracy which is founded on the consent of the governed. I urge the President, as he considers the introduction of additional military forces in the Persian Gulf, to keep in mind the need for consensus and the means for arriving at it.

The editorial follows:

[From the Detroit News, Oct. 26, 1990]

ONLY CONGRESS CAN DECLARE WAR

Congress is nervous that a shooting war might start in the Persian Gulf after it goes into recess (if it ever does). Some congressional leaders have been considering an adjournment resolution that requires regular consultation on the Persian Gulf between them and President Bush. That begs the real question: Should the president be required to obtain a declaration of war in the event of hostilities?

We believe he should. If U.S. troops are attacked, of course, they have a right to defend themselves. But if the White House decides that U.S. goals in the Persian Gulf can only be achieved through the use of force, then America must be united. A declaration of war is a means of clarifying those goals and uniting the nation behind them.

The United States has fought two conflicts since World War II without a declaration of war, in Korea and Vietnam. Both were terribly divisive, and in neither case can it be said that the United States "won." Troops were sent to die or molder in prison camps with no clear idea of what they were fighting for. "Consultations" and "congressional resolutions" are not substitutes for deciding such issues.

There is actually no reason to believe that President Bush wouldn't consult informally with key congressional leaders as the situation changes in the Persian Gulf. There are good reasons, however, not to ensnare the president in some formal consultative relationship. It risks binding the president's hands diplomatically at a time when he needs maximum latitude.

It would also send a powerful signal to Saddam Hussein that Congress is getting sweaty palms at the prospect of fighting. Hussein would interpret that to mean that the American commitment of more than 200,000 soldiers, sailors and airmen to the Persian Gulf is a mere bluff. On just such miscalculations are the bloodiest wars often fought.

The 1973 War Powers Act requires that U.S. troops be withdrawn from an area of "imminent hostilities" after 60 days unless Congress authorizes continued deployment. With expert domestic and foreign observers openly predicting a 50-50 chance of war, this would seem time to invoke the act if Congress is nervous. The problem is that Congress doesn't want to commit itself one way or another. And that's another reason a declaration of war is the proper avenue for resolving the issue. It requires the president to lead and the Congress to decide.

The White House might sidestep the issue by obtaining a U.N. resolution justifying the use of force. That would fit into the Bush administration's effort to present a united world front to Hussein. But it might also bind the administration's flexibility by requiring joint decision-making with other countries whose interests diverge from our own.

The U.S. Constitution is clear: Only Congress has the right to commit U.S. troops to offensive action. If America isn't united behind the president, then American boys shouldn't be committed to battle. And if they are committed to battle, then America should fight to win. Both Congress and the president's feet should be held to the constitutional fire.●

CONGRESS FAILS TO ACT ON HABEAS CORPUS

● Mr. GRAHAM. Mr. President, I want to express my disappointment that Congress has failed to act on habeas corpus reform legislation.

By striking the habeas corpus provisions from the House and Senate crime bills, we have missed an opportunity to stop the endless delay of frivolous appeals of capital sentences.

Mr. President, I have lost track of how many times I have come to the Senate floor to address this issue. The distinguished senior Senator from South Carolina [Mr. THURMOND] may recall how many years Congress has debated habeas corpus reform. Certainly much longer than I have been here.

Finally, we came to the point where final action was at hand.

Studies have been conducted, hearings held all over the country, and numerous recommendations have been forwarded for congressional review.

The most widely publicized recommendations are those of a special commission appointed by Supreme Court Chief Justice William Rehnquist and chaired by former Supreme Court Justice Lewis Powell.

This distinguished Commission, made up of five Federal judges, pooled their practical experience and sought outside input on options for habeas corpus reform.

The Powell Commission reiterated what we know: the current habeas corpus statutes allow unnecessary delay in the delivery of justice.

These statutes are a deterrence to finality in a State courts' determination of guilt and imposition of capital sentences.

The Powell Commission report and recommendations issued in 1989 have become the cornerstone for consensus on how to reform habeas corpus statutes.

The Powell Commission put forth a new idea which has brought the schools of differing thought on this issue to the table.

This idea is the linkage of ensuring inmates accessibility to competent counsel to the imposition of stricter habeas corpus statutes.

Practically every witness that has appeared before the Judiciary Committee in the past year on this issue has talked about the effect of inadequate counsel in slowing down the execution of State criminal law.

Florida realized this factor about 5 years ago and created an office of capital collateral representatives for indigent inmates with Federal habeas corpus claims.

A 1988 study found that 19 of the 37 States with capital punishment statutes have developed some system for appointing counsel to indigent in collateral review.

Provisions that were adopted by both the House and Senate would have gone a long way in speeding up the habeas corpus process while affording fair review and counsel for inmates.

I hope, Mr. President, that all the work that we have done will not be for naught. We have come very close to consensus and I intend to see that habeas corpus reform legislation is passed in the 102d Congress.●

IBM ROCHESTER WINS NATIONAL QUALITY AWARD

● Mr. DURENBERGER. Mr. President, all Minnesotans, and especially the people of Rochester were proud to learn earlier this month that IBM Rochester was the recipient of the 1990 Malcolm Baldrige Award for Quality. This is a prestigious honor which has been rightly earned by the hard-working people of southeast Minnesota.

Mr. President, we talk a lot about competitiveness as a key to our economic future. The people of IBM Rochester are showing the way, by focusing on quality as the "competitive weapon of the 1990s." They have achieved a 30-percent improvement in productivity over the last 3 years. They have tripled the reliability of the products they produce. They have cut development time on the mid-range computer systems they produce in half. And they have committed 5 percent of payroll to education and training, which is five times the national average.

Mr. President, I have had the opportunity to serve with Senator MIKULSKI during the past year and a half on a task force of the Senate Labor Committee on the subject of Work Force 2000. Many of the conclusions we are beginning to reach about what it will take to get American employers and workers ready for the next century are strikingly similar to the course that has been set by the people of IBM Rochester.

I ask that a number of articles appear at this point in the RECORD which outline the exemplary job that has been done by the workers and managers of IBM Rochester. I am hopeful this information will be useful to my colleagues and other readers of the RECORD who want to see for themselves what competitiveness actually looks like, and how it can be accomplished.

The articles follow:

NATIONAL QUALITY AWARD 1990 WINNER: IBM ROCHESTER

The concept of quality at IBM Rochester is linked directly to the customer. Detailed features are crafted from the analysis of the needs and expectations of existing and potential owners of the computer hardware and software manufactured by the Rochester, Minn., site of the International Business Machines Corporation. At every step, customers are directly involved in every aspect of the product from design to delivery—through advisory councils, global information systems, trials of prototypes, and numerous other feedback mechanisms.

And quality has owners: managers and non-managers alike. Trained in quality concepts and methods, supported by advanced technology, and assisted by decision-making tools, employees have clearly defined quality improvement goals. Often working in teams that erase boundaries between departments, they are given the authority to determine how best to accomplish those goals.

The IBM Rochester quality culture has been transformed from reliance on technology-driven processes delivering products to market-driven processes directly involving suppliers, business partners, and customers, delivering solutions. A 30-percent improvement in productivity occurred between 1986 and 1989. Product-development time for new mid-range computer systems has been reduced by more than half, while the manufacturing cycle has been trimmed 60 percent since 1983. Customers have benefited from a threefold increase in product reliability; an increase in the product warranty period, from 3 months to 12; and a cost of ownership that is among the lowest in the industry. IBM's share of the world market for intermediate computers increased one full percentage point in both 1988 and 1989, and revenue growth in 1989 was more than double the rate for the industry.

IBM ROCHESTER AT A GLANCE

IBM Rochester manufactures intermediate computer systems—currently the Application System/400 (AS/400) and AS/Entry Systems. Some 200 firms vie in the $26 billion world market for intermediate computers. More than 400,000 IBM Rochester systems have been installed worldwide—about 60 percent overseas—most by businesses with between 100 and 1,000 employees.

The IBM site also makes hard disk drives, which are electromechanical devices that store and retrieve information on magnetic disks. The global market for these devices is about $23 billion. Sales of hard disk drives accounted for about a fifth of IBM Rochester's revenues in 1989.

The IBM Rochester site provides employment to more than 8,100 people and is responsible for product development and U.S. manufacturing. In addition, its processes are implemented in plants located in Japan, Mexico, United Kingdom, and Italy. The Rochester site is the primary location of Application Business Systems, which is one of seven business units in IBM U.S.

"ROCHESTER EXCELLENCE: CUSTOMER SATISFACTION

IBM Rochester recently strengthened its strategic quality initiatives by formulating improvement plans based on six critical success factors: improved product and service requirements definition, an enhanced product strategy, a six-sigma defect elimination strategy, further cycle time reductions, improved education, and increased employee involvement and ownership. Each senior manager "owns" one of the six factors and assumes responsibility for plans and implementation. Progress toward achieving improvement goals is closely monitored. Support processes are a part of this network.

The continuous improvement of support processes at IBM Rochester rests on an aggressive worldwide benchmarking in all industries. Over 350 teams are in place to work on (internal and external) opportunities. Scores of benchmarking studies have been completed.

Quality goals are established in 5-year business plans and annual operating plans. Strategic targets are derived from a comprehensive benchmarking program, which analyzes products and services to determine the best of the breed inside and outside the computer industry. With the aid of financial planning models and mathematical decision-making tools, quality priorities are set, and the resources—human and capital—necessary to carry out these priorities are determined.

[From the Rochester (MN) Post-Bulletin, Oct. 11, 1990]

IBM PLANT WINS PRIZE FOR QUALITY

(By Bob Freund)

IBM-Rochester won the nation's top award for quality production and competitiveness Wednesday, becoming one of only nine businesses honored to date.

U.S. Secretary of Commerce Robert Mosbacher named the local computer development laboratory and factory as one of four 1990 winners of the Malcolm Baldrige National Quality Award.

IBM-Rochester General Manager Larry Osterwise, who personally has led the campaign for "market-driven quality," said employees were "absolutely delighted" at winning the Baldrige award.

"It reaffirms our belief that quality and total customer satisfaction must be at the heart of everything we do," he said.

The IBM site, which employs close to 8,100 workers, was one of two large manufacturers selected by judges from the U.S. Commerce Department and the private sector for the award. The Cadillac Motor Car Division of General Motors in Detroit also won the trophy, which features a gold medal embossed with the presidential seal and encased in crystal.

Federal Express Corp. of Memphis was the first winner in the service category and Wallace Co. Inc. of Houston, a distributor of pipe fittings, took the prize in the small business category. As many as two winners can be named in each category.

This year, IBM-Rochester was one of 45 companies competing for the manufacturing award and 97 competiting in all categories. The Baldrige award is among the most coveted prizes in the corporate world. Winners are chosen after a rigorous review of quality practices from production processes through after-the-sale customer service.

Named for the late Malcolm Baldrige, secretary of commerce in the Reagan Administration, the award has been given yearly since 1988.

IBM-Rochester has shown a 30 percent improvement in productivity between 1986 and 1989 and cut the development time for AS/400 systems and storage products in half. In the past eight years, manufacturing time for Rochester-made products has been reduced 60 percent.

The commerce department visitors also appeared particularly impressed with a quality process that sounds out customers about product design before they get into production, Osterwise said.

Customers also are consulted during product testing and many test prototypes, Osterwise said.

The program was pioneered by site officials during development of the Application System/400 minicomputers, which premiered in 1988.

After the sale, a special team of customer representatives also contacts customers at least once and orders any future servicing.

Osterwise announced the award on the site's public address system late in the afternoon. The site will celebrate the award today and again before an early November presentation of the award by President Bush at the White House.

"Quality is the competitive weapon of the '90s," Osterwise said in an announcement. "Only by continually reducing our cycle times, eliminating defects and increasing involvement of all our team members, will we be more responsive to the needs and wants of our customers," he said.

In January, the local site also had IBM Corp.'s first internal award for quality performance among U.S. operations.

IBM-Rochester develops the AS/400 midrange computer systems and manufactures them for U.S. customers. It also produces disk storage devices.

[From the Star-Tribune, Oct. 21, 1990]

WORKERS' POWER BUILT QUALITY FOR IBM

(By Susan E. Peterson)

ROCHESTER, MN.—Not long ago Pat Hundermark, a production worker on the late shift at IBM-Rochester, noticed a slight discoloration on an "actuator assembly," a device about the size of a matchbook that goes into IBM's data storage products.

Instead of shrugging her shoulders and installing the piece, she shut down the production line at 3 a.m. until the extent of the problem could be determined. That action saved IBM a passel of money and a lot of disgruntled customers, because it turned out that the devices were contaminated with a corrosive substance that could have ruined the products.

That illustration of the discretion she had in her job was one factor that helped the division win the 1990 Malcolm Baldrige National Quality Award, which has become a much coveted prize among U.S. businesses in the three years since the Commerce Department introduced it. The award is named in honor of former Commerce Secretary Baldrige, who was killed in a rodeo accident in California in July 1987.

Because Hundertmark had the power to stop the production line as soon as she noticed something was wrong, the incident showed visiting Baldrige Award examiners that the company's ongoing quality improvement program is successfully spreading responsibility for quality through the ranks, said Karl Shurson, production manager for storage products.

That's one important requirement the Baldrige examiners checked for during their three-day inspection of IBM, but it certainly wasn't the only one. The Baldrige program, which has been widely praised as setting a national agenda for improving quality standards and international competitiveness, demands that companies show attention to quality throughout their organization, not only in the manufacturing process.

The Baldrige application process involves filing a detailed report, which in 1990 required answering 33 questions in seven categories. If companies score well on the written report, they are visited by a team of examiners consisting of senior industry officials, academic experts or consultants.

The requirements are rigorous. Although up to six awards can be granted each year—two each in the manufacturing, service and small business categories—only nine have been awarded since the program began in 1987.

The Baldrige criteria put the most emphasis on customer satisfaction, which accounts for 300 of the possible 1,000 points on the application form. Judges look for quality in such areas as accounting, strategic planning, training, management and employee and supplier relations as well.

The roots of IBM-Rochester's winning campaign go back to 1981, when the division established a product-reliability program with a goal of zero defects. Those efforts were broadened by subsequent programs to reduce the time it took to develop products and manufacture them and to improve partnerships with customers and suppliers.

The division can point with pride to the results of those programs:

Since 1983, its average manufacturing cycle time has been cut by 60 percent. A circuit card that used to take 25 days to produce is turned out in two days, and the largest computer systems went from a 30-day production cycle to four days for a system that is three to four times larger than older models.

There has been a three-fold increase in product reliability since 1984, allowing warranty periods to be increased to 12 months from the previous three months, an important marketing tool.

The product development time for its newest midrange computer system, the AS400, was reduced by more than 50 percent from the time it took to develop its predecessor, the IBM36.

Those improvements show up in the division's bottom line. Although IBM does not release revenue or profit data for its divisions, industry market shares for the products produced in Rochester have grown by 1 percent annually in 1988 and 1989 and are on track to meet that goal in 1990, according to officals.

But getting there wasn't easy. It involved major changes in the company's culture, such as the adoption of a team-based strategy that gives workers at all levels more "ownership" of their jobs, said Shurson. "That means that my job changes from that of a manager to being more of a coach," he said. He sees his role as making sure that those working for him have the resources they need to get the job done and eliminate barriers.

Applying for the Baldrige Award isn't easy either. IMB-Rochester, a finalist for the award in 1989 before becoming one of four winners this year, devoted about 20 man-years of work time to completing the 75-page report it submitted this year, said Roy Bauer, manager of engineering planning and operations.

But the time and effort were well-spent, he said. The application form "is an excellent document to assess how your business runs, even if you're not going to apply," he said. "It focuses you in areas where industry leaders are focusing their attention."

Indeed, you don't have to be a Baldrige winner to benefit from the program, said Caea Sager, internal communications manager of Thermo King Corp., a Bloomington-based subsidiary of Westinghouse Electric Corp. that was one of six finalists this year in the manufacturing category.

Going through the Baldrige application process "forces you to take look at your strengths, where you can improve, and involving all your employees," she said. "We learned a tremendous amount about ourselves."

One of Thermo King's most valuable lessons came from the "benchmarking" process, where the company measured its quality programs not only against companies in its own industry, but in other fields as well, Sager said. "It's helpful to look beyond our corporation or industry and ask about how other people are approaching customer service, or how they handle warranties and measure customer satisfaction."

Many companies are using the Baldrige criteria as the blueprint for their own quality programs, and the state has initiated a quality award based on similar standards.

3M Co. of Maplewood established its Q-90 program a year ago based on the Baldrige requirements, said Robert Peterson, a 3M quality director. The Baldrige program "is more than a quality system, its a management or business system," he said. "We're setting up not to make the award 'job one,' but to focus on the theme that continued improvement is our No. 1 job, with a focus on customer expectations."

3M or one of its business units plans to apply for the Baldrige "when we think we're ready," Peterson said. The company's business segments have gone through a self-examination using the Baldrige criteria and are in the process of setting priorities for improvements, he said.

Tennant Co., a Golden Valley maker of floor-cleaning equipment, has long been recognized as one of the nation's leading corporations in its quality efforts, starting with defect reduction programs it initiated in the late 1970s. It, too, has adopted the Baldrige program and officials think it will be ready to apply for the award in 1992.

The increasing national focus on quality is illustrated by the growth of Tennant's annual quality conference, which in 11 years has expanded from an informal gathering of a few Tennant and Japanese managers to a gathering that will include about 800 people, many from outside the state, at this year's session Oct. 31 and Nov. 1.

[From the Rochester (MN) Post-Bulletin, Oct. 12, 1990]

TOP AWARD SALUTES IBM, REFLECTS ON ROCHESTER

Garrison Keillor was fond of parodying a dour work ethic which he ascribed to Minnesotans.

Like most parody, it arose from more than a grain of truth.

That truth was recognized this week when IBM-Rochester receives a 1990 Malcolm Baldrige National Quality Award from the U.S. Commerce Department.

The award reflects credit on the plant's 8,100 employees and its managers who set out two years ago to achieve this recognition. It also should be a source of pride for Rochester residents whose friends and neighbors merited this national distinction.

The IBM's case for winning the award was impressive. Productivity at the computer-development laboratory and factory jumped by 30 percent between 1986 and 1989; over the past eight years, manufacturing time was slashed by 60 percent for IBM products made in Rochester.

IBM credited the Minnesota work ethic and the quality of life in Rochester as factors leading to the award, but General Manager Larry Osterwise said the campaign for "market-driven quality" created the motivation.

IBM was one of 45 companies in the running for the highly competitive manufacturing award this year. Last year, however, it did not make the final cut. Company officials then set out to improve operations even more. They visited plants run by

Xerox and Motorola—past winners of the 3-year-old Baldrige award—to learn what they could do better.

Similarly, IBM's recognition this year is likely to bring leaders from other U.S. corporations to Rochester. The judges for the Baldrige award looked at the processes in place at IBM, the quality of the products and how the firm deals with its customers—factors at the very core of the way the business is run.

The Commerce Department, which initiated the award in 1988 in the name of the late Commerce Secretary Malcolm Baldrige, allows for six of the awards each year. But only nine have been awarded to date, including the four announced this week. Two of each year's allotment are for manufacturing, two for service and two for small business.

In addition to the attention from other corporate leaders, IBM expects two other results from the award:

Publicity for the quality of its products—which will reassure current customers and possibly lure new ones.

The obvious morale boost for Rochester employees.

Quality and customer service are keys to success in today's competitive business environment. The IBM-Rochester plant has demonstrated how far a company can go in achieving those goals.●

QUESTIONS ABOUT THE PAKISTANI ELECTIONS ABOUND

● Mr. DECONCINI. Mr. President, on Wednesday, October 24, parliamentary elections were held in Pakistan as a result of the dismissal of the government of Prime Minister Benzair Bhutto by President Ghulam Ishaq Khan. The day before the elections, the Frontier Post predicted a huge victory by the Pakistan People's Party [PPP], despite widespread concerns about rigging of the elections and the unbalanced playing field upon which Mrs. Bhutto was forced to play.

Government troops harassed her party's candidates; charges of corruption were brought against her, her husband and many of her party-faithful by the government; and her husband was arrested and jailed. Trials on these charges were held before tribunals established under the constitution written by former dictator, Zia ul Haq.

Despite these circumstances, thousands of supporters flocked to her campaign rallies. There seemed to be a chance that her party might even improve upon its 1988 election totals. The Washington Post reported Pakistani pundits, both liberal and conservative, as saying that the PPP would win at least 70 seats and perhaps 100 or more.

As it turned out, her party has unofficially won only 45 out of a total of 203 contested seats. This means that the Islamic Democratic Alliance [IJI] has won at least 105 of the total, giving it the ability to form a strong, potentially stable government. The National Democratic Institute, one of the election observer teams, has announced its preliminary conclusion that the elections were, on the whole, fair and basically free.

Yet questions about the elections and the tallying of the votes remain. Many observers noted that the voter turnout was fairly low. The government, however, said it was slightly higher than the 1988 elections. An independent group of election observers and statisticians from the Philippines noted that, from the 14 constituencies it studied, voter turnout was 7 to 9 percent lower than in the same places in 1988. Additionally, the correlation between the actual votes cast versus those who obtained voting slips indicates that votes received by the candidates are 16 to 23 percent higher than statistical estimates. These election observers, from another of the world's fledgling democracies, based on their analysis of the data, compared these election results to those obtained by former Philippine President Marcos.

There are also reports from Pakistan that Jam Sadiq Ali, the chief minister of Sindh Province, publicly admitted that if President Ghulam Ishaq Khan had given him the go ahead, he could have had Mrs. Bhutto defeated in Larkana Province—a seat which she won 93,612 to 713—a 93,000 vote margin. Another headline from a Pakistani paper indicated that "More than 100 percent votes—were—cast" in one precinct. There have been reports that PPP party workers were arrested and there are numerous instances in which poll watchers for the PPP were reportedly harassed and prevented from observing the elections.

Clearly, not all was well with these elections. Pakistan is one of the newest democracies in the world and difficulties are to be expected with elections. We all experienced a surge of hope and expectation with the election of Benzair Bhutto less than 2 years ago and we were disturbed by her dismissal. Independent observers have concluded that they did not see enough evidence of vote fraud to significantly change the outcome of the elections. It remains for the people of Pakistan to make that final determination.

I shall closely watch what steps the new government takes to continue the democracy-building actions initiated by the Bhutto government. I shall also monitor the actions which the new government takes to demonstrate that Pakistan is not developing a nuclear weapon and that it is not attempting to encourage forces which would further destabilize the situation in Kashmir. This is an area which is fraught with danger and which could potentially drag two of the world's largest countries into yet another war with devastating consequences which would be felt far beyond their borders.

I hope that Pakistan will continue to follow a democratic path. I hope that the generals and Prime Minister Zia's former cronies are not the ones who will be pulling strings behind the scenes of the new government. I also hope that the State Department will carefully examine the election results to ensure that all parties were treated fairly and express its concern in the strongest terms possible that election fraud will not be tolerated. Finally, I hope that Secretary Baker and our able Ambassador in Islamabad, Robert Oakley, will express in clear terms this Nation's deep concern about the proliferation of weapons of mass destruction on the Indian subcontinent and around the world. Only time will demonstrate the full impact of the events of the past week on Pakistan and the world.

I ask that articles from the Washington Post and the Washington Times, as well as editorials from the New York Times, be printed in the RECORD at this point.

The articles follow:

[From the Washington Post, Oct. 26, 1990]

PAKISTANI ELECTION FAIRNESS IN DOUBT

(By Steve Coll)

ISLAMABAD, PAKISTAN—One day after former prime minister Benazir Bhutto's unexpected rout in national elections, questions remain about whether Pakistan's military-backed caretaker government conducted the voting fairly.

While a multinational observer team sequested itself to study returns before issuing a public statement Friday, Western election specialists who were stunned by the scale of Bhutto's defeat raised questions about some of the government's published results.

Members of the U.S.-led observer team also have raised questions about the conduct of the voting, according to sources, and the team appeared unlikely to issue an unqualified endorsement of the election. But the sources added that no final statement about the election had been agreed to by the observer team, and that discussions among them were continuing.

The team's verdict is important to the U.S. government because a vocal section of Congress, mainly Democrats, has said it wants to make an estimated $600 million in annual aid to Pakistan contingent on the election having been held freely and fairly. Members of the Bush administration also have expressed concerns about the future of the U.S.-Pakistani alliance if rigging is uncovered.

The U.S. concerns come amid widespread uncertainty within Pakistan about what the election result will mean for the country. Urban liberals fear that the new government, which has a strong Islamic constituency, will reverse the tenative steps toward cultural tolerance taken under the secular-minded Bhutto. Others wonder what foreign-policy agenda Pakistan's army will pursue now that a stable civilian government with hawkish views is set to take power.

The caretaker governments rightist Islamic Democratic Alliance coalition, known as IJI, its Urdu-language initials, won 105 of 207 assembly seats, according to the final results, compared to 45 for Bhutto's Pakistan People's Party (PPP). The result defined a

host of predictions published by both liberal and conservative newspapers here that the PPP would win at least 70 seats and perhaps 100 or more.

At his first news conference since the election, interim Prime Minister Ghulam Mustafa Jatoi sought to assuage Western fears that Pakistan's new administration would seek aggressively to build a nuclear bomb. Jatoi repeated past denials that Pakistan has stepped up its nuclear program and said he though he could solve strains with Washington over the issue through discussions after his government is formed.

Bhutto, with her senior advisers still recovering from the shock of Wednesday's results, pressed her charges that the vote was stolen. She and other PPP officials said that in a number of districts, party representatives who were supposed to monitor the counting had been forcibly removed, and that results tallied by their agents during Wednesday's voting did not accord with numbers later released by the government.

Jatoi dismissed Bhutto's charges. "There was no rigging at all," he said. "I expect Benazir Bhutto to accept the results and prove to the world that she is a democrat."

Many of the questions raised today focused on the reported turnout, which the government said was slightly higher than during the last election, in 1988. Independent observers reported a low turnout, however, and in any event the vote tallies released by the government indicated a considerably higher turnout than even its own estimate, raising questions about whether voter rolls were padded to influence the result.

Western reporters and other independent observers who traversed Pakistan Wednesday to check polling places found little evidence of voter intimidation, ballot-stealing or violence that might have influenced the IJI's overwhelming victory. But as final results were published today, questions focused on whether significant rigging might have occurred away from the polling stations.

The government has not yet published the total number of votes cast in each of the 203 national assembly races that were decided in Wednesday's elections. Instead, it has so far released only the votes won by the winner and runner-up in each district. In nearly every district, at least four or five candidates entered the race, and in some there were as many as 16 contenders.

An analysis of 142 districts in Pakistan's three most populous provinces for which results were available raises some questions about the government's figures. On average, the votes attributed to the winner and runner-up in those districts equaled the total number of votes cast in the 1988 election, meaning that if all the votes in Wednesday's election were tabulated, the turnout would be considerably higher than last time, not roughly the same, as the government has said.

Election specialists said the anomaly might be explained by a large surge in voter registration between 1988 and 1990. But Pakistanis and diplomats said they had received no reports of such a surge.

In districts where IJI leaders such as Jatoi and Nawaz Sharif won strong and in some cases unexpected victories over PPP rivals, the discrepancy in turnout figures was even larger. In one district, where Jatoi's son defeated Bhutto's jailed husband, the winner and runner-up garned 35 percent more votes Wednesday than all of the ballots cast in the district two years ago.

Election specialists said that while the discrepancies raised questions about the voting, they did not necessarily indicate fraud. The discrepancies might be explained by such local factors as weather or voting attitudes that contributed to a sharp change in turnout figures. And some analysis speculated that widespread dissatisfaction in Pakistan over the conduct of Bhutto and her husband during her 20 months in power might have attracted unexpectedly large numbers to the polls in the districts of IJI leaders.

[From the Washington Times, Oct. 26, 1990]

VOTE FRAUD SUSPICIONS MOUNTING IN PAKISTAN

(By Steve le Vine)

LAHORE, PAKISTAN.—Many Western and Pakistani analysts yesterday said they suspected possible rigging in Benazir Bhutto's crushing election defeat, and there was a widespread feeling on the streets that massive cheating took place.

The government and some local analysts maintained that Wednesday's National Assembly elections were fair, and foreign correspondents and diplomats said they observed almost no blatant rigging.

No one was able to go far beyond suspicion in examining how the nation's premier political party, Mrs. Bhutto's Pakistan People's Party (PPP), was marginalized. But analysts cited an improbably high official voter turnout and the anti-Bhutto coalition's capture of 95 of 115 seats in Punjab province as indications something was amiss. Mrs. Bhutto previously held 54 of the seats.

"These figures don't add up," one Western envoy said, perusing voting results yesterday morning. "The problem is if there was a murder the only verdict you could return right now is the Scottish one—'not proven.'"

"Everyone is surprised," said a senior Pakistani career political officer. "Whatever has happened has happened in a very sophisticated manner."

Final election figures more than halved the PPP's National Assembly representation, from 93 seats to just 45. Meanwhile Mrs. Bhutto's bitter opponent, the Islamic Democratic Alliance, known by its Urdu initials IJI, almost doubled its previous total of 55, winning 106 seats in the 217-seat assembly.

The result catapulted the military-created IJI amalgam of 18 rightist and religious parties into a wholly unexpected towering position.

On Saturday, Pakistanis will go to the polls to fill provincial assemblies, which proved important in the last election as the staging ground from which the anti-Bhutto forces mounted their 20-month campaign against her.

On Wednesday night, Mrs. Bhutto predicted that the new government would now try to destroy her. "They will go for the jugular—me, my husband, my party," she said at her ancestral home in Larkana.

The president has filed seven corruption cases against Mrs. Bhutto, and some analysts predicted that, considering her weakened position he would move to invoke a law that could disqualify her from elective office for seven years.

Meanwhile, the defeat put Mrs. Bhutto in the position of sitting in the Assembly as leader of a relatively tiny opposition.

The reversal of the fortunes of Pakistan's political antagonists has caused widespread incredulity. It went against surveys by every respected Pakistani media organization, as well as government intelligence agencies.

Pakistan's premier intelligence agency, the army's Interservices Intelligence Directorate, forecast in its final report to senior generals Oct. 10 that Mrs. Bhutto would win 72 seats, according to two sources close to the military.

Even when Mrs. Bhutto appeared most unpopular, after her dismissal in August, the intelligence service projected that she would win 60 seats, the sources said.

The election results also appeared to contradict the common wisdom of ordinary Pakistanis.

"The People's Party was cheated," a Lahore taxi driver blurted out unprompted in a refrain heard all day on the city's streets. "This was not a straight election."

The vote came against the back-drop of an aggressive campaign backed by the military leadership and the country's landed establishment to defeat Mrs. Bhutto in the polls.

The campaign started with Mrs. Bhutto's Aug. 6 dismissal as prime minister by President Ghulam Ishaq Khan, Pakistan's most senior civil servant and one of her chief critics. He then appointed her opponents to the corruption tribunals and caretaker national and provincial governments that enjoyed the powers of incumbency in the campaign.

The announced voter turnout of around 50 percent drew the most suspicion because, the Western envoy said, in the absence of blatant cheating a padded turnout could have been used to swing some races once rough precinct results reached Islamabad.

Election turnouts had progressively fallen, in 1988 dropping to just 43 percent. Virtually all analysts, perceiving even lower voter interest this time, predicted a smaller turnout Wednesday. Indeed Western and Pakistani observers throughout the country routinely reported turnouts between 30 and 40 percent in the election.

"I think that in the tabulation phase somebody put the monkey wrench in," the Western envoy said.

[From the New York Times, Oct. 26, 1990]

PAKISTAN'S CHOICES, AMERICA'S INTERESTS

Even in a fair election, Prime Minister Benazir Bhutto might have failed to win vindication in Pakistan. But her decisive defeat in Wednesday's vote also owed a good deal to her opponents' desperate tactics. A caretaker Government tried to disqualify her and poured money into swing voting districts. And she was unfairly assailed as favoring American meddling when a group of U.S. senators signed a letter urging that she be given a chance to run in a free election.

The victorious Islamic Democratic Alliance has the votes to form a government. But the unbridled nationalism of its campaign spells more trouble in Islamabad's relations with Washington—especially on the touchy issue of Pakistan's nuclear ambitions, which have already caused a suspension of U.S. aid.

When Ms. Bhutto was dismissed in August by President Ghulam Shaq Khan, she and her party were accused of massive corruption. Convincing proof was never produced, though her right to run was challenged and her husband charged with kidnapping and extortion. With reason, she and her supporters fear that a newly elected government, with military encouragement, will press for convictions by special corruption courts to settle scores and drive them from politics.

It is not America's business to take sides in this internal quarrel. But Washington has a legitimate concern about democracy in a country receiving a half-billion dollars in U.S. aid. It has an equally legitimate interest in discouraging Pakistan from developing nuclear weapons—a matter about which Pakistan has been evasive. Under law, Islamabad cannot qualify for American aid unless the President certifies that it has no nuclear arms and that continued aid will discourage their acquisition.

Pakistan's drive to match India's nuclear-weapons capability has been amply advertised. Yet successive Administrations have persuaded Congress to look the other way, first because Pakistan was aiding the Afghan resistance, then because withholding aid would have undercut Ms. Bhutto. But Soviet occupiers have left Afghanistan, and a new, nationalist-minded leadership is about to assume power in Pakistan.

Hence the recent decision by Congress to suspend aid—which Pakistan can earn back by halting its weapons program and opening its nuclear facilities to inspection. Pakistan anxiously seeks American understanding and sympathy in its ongoing troubles with India over Kashmir. It would begin powerfully to concentrate Pakistani minds if the country's new leaders learned that they cannot take American aid or sympathy for granted.

If that is deemed unwarranted meddling in Pakistan's affairs, so be it.

[From the New York Times, Oct. 26, 1990]

IN PAKISTAN, A CANDIDATE FLEES

(By Kiren A. Chaudhry)

BERKELEY, CA.—Most news reports have interpreted the widespread presence of police and army units during the campaign and voting in Pakistan as evidence of generally impartial elections. According to one article, "reporters visiting a variety of polling sites in the hotly contested Punjab found few complaints of abuses or irregularities." Unfortunately, they missed Shakargarh.

The reportedly neutral police and army actually behaved in a highly partisan—and violent—fashion, as the case of my father, Chaudhry Anwar Aziz, illustrates all too well. He and my brother, Bilaal, who happens to be an American citizen, are now in hiding, pursued by Punjab police loyal to the Islamic Democratic Alliance and by heavily armed private militia.

My father was a candidate of the Pakistan People's Party, the party of Benazir Bhutto, for the National Assembly in District 91 in the province of Punjab; he was widely favored to win. During the campaign, the president of the Islamic Democratic Alliance, Nawaz Sharif, publicly targeted my father as part of his "holy war" against secular forces in Pakistan.

On Monday, a few days before the election, forces loyal to Indris Taj, the Islamic Democratic Alliance candidate who was contesting the seat that my father held until the Government was dissolved this fall, opened fire on my father's campaign rally in Shakargarh. Six campaign workers and one bystander were killed. The next morning, Punjab police loyal to Nawaz Sharif came to my father's home and tried to arrest him for the bystander's death. They left, however, when my father told them that he would challenge their action in court as an attempt to prevent him from running in the election.

My father then telephoned Scott DeLisi, the political officer at the U.S. Embassy in Islamabad. He told Mr. DeLisi about the slayings of the campaign workers and asked him to send American election observers, then located in Lahore, to Shakargarh to thwart further election violence. Mr. DeLisi said that he had no authority to direct the observers, who were sent by the independent National Democratic Institute in Washington.

About an hour after my father hung up, approximately 40 of Nawaz Sharif's supporters, including the provincial assembly candidate for the Islamic Democratic Alliance, arrived at his home and stormed it with automatic weapons. My father and brother fled after an exchange of gunfire. The attackers had tied shrouds to the jeeps they drove, a Muslim symbol of the willingness to die in a "holy war."

Later that same day, spokespersons for the Alliance announced that Indris Taj had been murdered by gunfire. Yet the doctor who pronounced him dead at the local clinic reported that the candidate had died of a heart attack. The Provincial Government of Punjab refused to allow an independent medical examination of the body and buried it. Muslim custom forbids its exhumation.

In response to Indris Taj's death, election officials postponed elections in my father's district. On Wednesday, Nawaz Sharif's supporters persuaded Punjab criminal authorities to file murder charges against my father and brother for the death of Indris Taj. Punjab police have refused to open an investigation into the deaths of my father's party workers.

While my father and brother are now in hiding, my father's lawyer has filed a countersuit to the murder charges against them, stating that the charges and the armed attacks are intimidation tactics ordered by the Islamic Democratic Alliance.

The lower courts, however, staffed by bureaucrats loyal to the Alliance, have refused to accept the filing of my father's complaint. Instead, they claim that the six party workers were murdered by their own party as a campaign tactic. I have appealed to the U.S. Embassy in Islamabad and human rights monitors to assure that my brother receives safe passage to the United States and that my father has full access to higher courts and fair legal proceedings.

Before the media once again lose interest in Pakistan, they must dig deeply to find the truth about conflicting reports of voter turnout, the result of the elections and the murder of campaign workers by what is now the ruling party.●

THE TRAGEDY OF LEBANON

● Mr. LEVIN. Mr. President, Lebanon has been brutally conquered, and Syria now reigns. The world continues to abandon Lebanon, and it is becoming an appendage of Syria. As the Washington Post stated last weekend, after Syria finished its successful military assault, the future of Lebanon will be "less democratic; its capital a satellite of Damascus."

A democratic and truly sovereign Lebanon will not be possible as long as it is dominated by Syria. It is important that the world know what is happening. The brutality of the Syrian troops and the massacres of the Lebanese should not escape our notice and condemnation.

There has been a disconcerting lack of outrage and condemnation from our Government and from the world. There has been no United Nations resolution and no called-for investigations of the widely reported brutal slaughter of Lebanese—some after they had surrendered. The inconsistency and hypocrisy of developments in the region is stark. Justice demands that the civilized and law respecting governments and peoples of the world decry the brutality, as well as the double standard applied in the region.

President Hafez Assad of Syria is a brutal tyrant, and he is consolidating his control of Lebanon. His intention is to expand and dominate a "Greater Syria." It is important that the United States recognize Hafez Assad for what he is. I am concerned by Secretary of State Baker's visit to Damascus a few weeks ago, when discussions were held about Iraq's invasion of Kuwait.

Mr. President, let us understand one thing very clearly about the current alignment of forces confronting Iraq—Syria and Assad are not involved to help us confront aggression in the Persian Gulf region. Assad is there for one reason and one reason only—to help himself. Assad is not on our side, and he is not a friend of the United States or the Western world. He is acting for his own selfish, ruthless reasons, and his calculations concerning his desire for regional conquest place him in opposition to Saddam Hussein. Assad is not joining an alliance against aggression, he is simply taking advantage of the situation for his own reasons and his own gain.

Mr. President, it would be appalling if the United States failed to recognize the reality of the current situation. Assad's regime is a ruthless violator of the internationally accepted norms of civilized behavior. His human rights record is appalling. Over the years he has repeatedly demonstrated that his regime is running an anti-democratic, anti-Western, terrorist-promoting, drug-trafficking, totalitarian police state. He is not a friend or ally of the United States, and this administration should not forget that.

The sovereignty of long-suffering Lebanon is contingent on the complete and total withdrawal of foreign troops. For Lebanese sovereignty to be restored, there needs to be internationally recognized and respected guarantees throughout the region—recognized and adhered to by all the nations of the region.●

SYNDICATED EXCLUSIVITY AND THE CABLE BILL

● Mr. KOHL. Mr. President, I rise today, in the closing hours of the 101st Congress, to express my dismay that we have not passed a cable television consumer bill and to inform the Senate of a serious problem facing some of my constituents who live near

the Minnesota border which I had planned to address in that legislation.

Recently, we received the news that opposition by the administration and several Republican Senators had killed the Cable Television Consumer Protection Act. That is most unfortunate. I hope we will correct it early next session, because cable subscribers need relief. They have seen their rates skyrocket, and they have nowhere to turn but the Congress.

Mr. President, I have heard from constituents, mayors, city councils, and State legislators from Wisconsin who know how important this bill is. I have heard from satellite dish owners, like Mr. Bertram Behrens and Mr. Delvin Orth, who consistently remind me of the negative impact of cable's monopoly. American consumers have had enough of the rising rates of cable, and they wanted this Congress to act.

I felt the bill was an honest attempt at a compromise on a difficult and complex issue. I had some concerns about certain parts of the bill, and I am sure others did, too. We should have had the opportunity to debate and address them on the floor. As we did not have that chance, I would like to take a few moments to explain one matter of particular importance to me.

I had an amendment prepared which would have corrected a minor problem with the Federal Communications Commission's syndicated exclusivity regulations which is of major importance to a number of Wisconsin residents on the Minnesota border.

Because of the syndex rules, the residents of three border communities, Prescott, Hudson, and River Falls, have been unintentionally disenfranchised from Wisconsin television media. There are similar situations of which I am aware in several States. My amendment would have provided a specific remedy, without seriously deteriorating the rights of broadcasters who have exclusive contracts for programming.

Prescott, Hudson, and River Falls are small communities on and near the Mississippi River. They are a part of Wisconsin, and their citizens consider themselves Wisconsinites. However, they are too distant from our television stations to receive broadcast signals. It was not until the introduction of cable television that they were able to watch Wisconsin TV. Television is the most powerful information source of the age, and Wisconsin television was important to their Wisconsin identity.

But that Wisconsin identity was stripped from them when the syndex rules took effect at the beginning of this year. There was no malice in this action. It was simply an unfortunate byproduct. The cable company would have had to block out each individual program these stations carried for which one of the dominant broadcasters in their area also held rights. It found it much more practical to simply drop these stations entirely.

These communities represent less than one percent of the viewing audience of the area of dominant influence of the Minnesota broadcasters. Less than one percent. What the syndex rules now say is that the rights of those broadcasters to have exclusive control over that small audience is more important than the rights of those communities to be a part of their own State. I disagree, Mr. President.

The FCC does have the authority to grant waivers in such cases. One of the Wisconsin communities has a waiver petition pending. But based on the first FCC ruling in such a case, Chambers Cable of Oregon, I do not think the FCC has given sufficient weight to the interests of local citizens in having access to television news and information from their home State. I urge them to do so in the pending waiver petitions.

Mr. President, locally originated broadcasting and other programs of local interest are essential to keeping citizens informed of important events in their States. If the cable bill had come to the floor, the amendment I had prepared would have given the Senate the chance to recognize the importance of local citizens interest in this matter.

The citizens of Prescott, Hudson, and River Falls care deeply about the unfortunate byproducts of syndex. Many have written to me about this subject. One of them put it quite succinctly: "Dear Senator," he wrote, "please give us Wisconsin TV again—we'd like to see Wisconsin campaign ads. Who is Rudy Perpich anyhow?"

Now I have nothing against the honorable Governor of Minnesota, but my constituent raises an important point. The actions taken in Madison have a larger impact on him than what happens in St. Paul. I believe that he has a right to participate in Wisconsin political and cultural affairs.

Mr. President, residents of border communities have an important interest in having access to the television stations of their own State. I will not have the opportunity to address this subject through legislation this year and, while I will be ready to offer this measure next year, my hope is that it will not be required. Some progress has been made to address this issue in Wisconsin. It appears that the various broadcasters and the cable company have made progress in returning to these communities some of the Wisconsin programming that would have been available to them without syndex. I want to thank the people who have worked on this agreement. I will be watching this matter closely, and I hope it will be sufficient to satisfy the legitimate interests of Wisconsin viewers.●

THE DEMISE OF CAMPAIGN AND ELECTION REFORM

● Mr. DURENBERGER. Mr. President, last December I promised the people of Minnesota that I would work to reform the congressional process to make it more responsive and receptive to the people. To fulfill this promise I voted on August 1, 1990, for the Senate's campaign finance reform bill. I also voted in favor of a ban on honoraria and cosponsored legislation on term limitations and voter registration.

Yet, despite my and the Senate's best efforts, the process has not been reformed. At every turn, the entrenched House of Representatives balked. The result is business as usual for Congress. Mr. President, I sincerely regret this failure and believe it is a grave mistake that we will all pay for at the polls on November 6.

How many times have we told industry representatives that visit us that if they do not clean up their act themselves, Congress will have to do it for them. I think the American people have been saying the same thing to those of us in the Congress this past year. They have told us to clean up our act; they have told us that the Government is not working the way it should or the way they want it to.

But, like most industries, we have not listened. We have ignored their messages and carried on business as usual. Therefore, Mr. President, I have the ominous feeling, that the people will do what we could not: clean up our act for us at the polls. The budget and savings and loan debacles, uncertainty over the Nation's economy, failed leadership, a frustrating, blameless system, and special interested domination have led to a disenchanted electorate; an electorate that will take their frustration out on when they vote November 6.

The rise of term limitation referenda at the State level shows the depth of America's frustration.

I am disturbed that efforts to reform the system and process have failed. And it failed for selfish reasons. The biggest and most important effort, campaign finance reform, failed because the House of Representatives refused to reform themselves. They would not eliminate political action committee contributions upon which they rely.

As the recent David Broder article indicates only 25 of the 405 House Members seeking reelection face opponents who raised even half what the incumbents raised. That is only 1 out of every 16 had any kind of challenge. They have locked in their positions and refuse to take any reforming steps

that may threaten their Democrat majority.

I share Broder's opposition to this kind of cynical, take-care-of-myself-and-the-hell-with-everyone else attitude.

Mr. President, I voted for the Senate campaign finance reform bill. While it was not perfect, it would have eliminated PAC's, made elections more competitive by controlling costly and abused incumbent advantages, and made campaigns more substantive. The people want four things: First, their elected representatives to respond to their needs, not the needs of special interests; second, election costs controlled; third, more competitive elections; and fourth, more responsible, substantive campaigns.

Mr. President, money per se is not bad. What is bad is where it comes from and why it is given and what is expected in return. Accordingly, as one looks to reform the process one must consider the contribution source and reasons for the contributions, both real and perceived. It must be the goal of reform legislation to encourage contribution sources that keep the candidate close to their constituents and discourage sources that separate the candidate from the constituents.

There are five major sources of political money: Political action committees, undisclosed independent expenditures, large out-of-State contributions, political parties, and constituent contributors. Money from PAC's, large out-of-State contributors, and the independent expenditures can separate the politician from the people he/she represents. Contributions from these sources, therefore, should be limited. In turn, the candidate should become more reliant on the constituent contributor, the more the better, and the political party. This will make the candidate more responsive to the constituent concerns.

Campaign costs, obviously, are soaring. There has been a sixfold increase in average campaign contributions since 1972. The rise of PAC's have assumed a dominating role, overwhelming both party expenditures and individual contributions. In the decade from 1978 to 1988, campaign costs have risen 135 percent. Such costs alienate the citizens, force the candidate to spend all his/her time raising money, put challengers at a competitive disadvantage, and the candidate at the mercy of large, special interest contributors.

Thus, reform legislation must take steps to limit campaign costs. This can be done in many ways. The first is take steps to make the cost of getting a candidate's message out less expensive through tax incentives, low-cost media, and granting major party candidates reduced mail costs. A second way is to set limits on total campaign costs.

Mr. President, as I have indicated, recent elections show that incumbents are nearly invulnerable. They rarely face viable challengers. Thus, the electorate is not given a real choice as to who represents them. Accordingly, reform legislation should include provisions that enable challengers to run viable campaigns. This includes getting their message out to the electorate through various media.

A very disturbing factor in elections has been the increase in negative, nonissue campaigning. This has led the electorate to tune out campaigns. Campaigns are oriented toward emotional, hot-button issues. Issues are neglected. Plus, the mode of campaigning often separates the candidate from the negative charges, thereby avoiding direct responsibility for the attacks.

Reform legislation should promote substantive discussion of the issue through elimination of media-burst advertising and advertising where the candidate does not personally appear. This can be done by promoting lengthy, that is, 2- to 3-minute, TV advertisements and require the candidate to appear and use his/her voice in the advertisements.

To conclude, Mr. President, the Senate bill I voted for on August 1 addressed these areas, as would the term limitation bill I cosponsored. Yet, because of the House desire to protect itself, the people did not get what they wanted. I hope they receive a clear message a little more than a week from now, and we return next year and get back to work to immediately reform our election process.

Mr. President, I ask that the David Broder article be printed in the RECORD.

The article follows:

EVEN IN VERMONT

(By David S. Broder)

BURLINGTON, VT.—Vermont always has struck me as the closest embodiment of idealized democracy one can find: a small, well-informed electorate in close touch with its officials. Every election campaign I've ever covered here has included dozens of face-to-face forums where politicians—from governors and senators on down—show up and answer questions until their constituents give them leave to depart.

The 1990 campaign still has all the earmarks of healthy democracy, but even in Vermont, the underlying attitude has turned corrosively negative. Voters interviewed at a shopping mall here gave voice to the national impulse to punish the people in power. Paul Martin of Richford spoke for many when he said, "What burns me the most is that these congressmen felt so sorry for themselves they voted themselves a big raise—but they won't do their jobs."

Vermont voters are luckier than most, however, because they have a real contest on the ballot, an opportunity to choose who should represent them in Congress. While the Democrats have defaulted by giving their nomination to an unfunded college professor advocating legislation of drugs, freshman Rep. Peter Smith (R), Vermont's lone congressman, is getting a spirited challenge from an independent, Burlington's socialist former mayor Bernie Sanders. He has matched Smith dollar-for-dollar in fundraising.

Most places, the public's impatience with the incumbents will have to be bottled up again, because the challengers simply haven't raised enough money to let the voters know alternatives exist. Early this month, Common Cause, the political-reform advocacy group, reported that only 23 of the 405 House members seeking reelection face opponents who had raised even half what the incumbents could spend.

As for the rest, 78 have no major party opposition, 218 others have opponents who raised less than $25,000 (as of Sept. 30) and another 86 have challengers with more than that but less than half what the incumbent has collected.

"Whatever public anger and anti-incumbent sentiment may exist among citizens around the country," Common Cause president Fred Wertheimer said, "House members are shielded by a wall of political money that makes them nearly invincible."

What is worse, a few days after this report was issued, the incumbents in Congress quietly moved to lock in the same advantage for 1992 by killing the last hope that campaign-finance laws might be rewritten this year.

While everyone's attention was focused on the budget battle, word was passed that it was too late to try to reconcile the separate and very different campaign-finance "reform" bills the House and Senate had passed in August.

What a surprise! This deal had been concocted months ago, as a cynical subterfuge that allowed Democrats to say they had voted to clean up the system, when the House and Senate passed "reform" measures on party-line votes, yet come away with all the advantages incumbents now enjoy.

It's not all the Democrats' fault, of course. President Bush submitted some obviously partisan proposals of his own early in the process, then stiffened the spines of already recalcitrant Senate Republicans against a promising bipartisan move to put "flexible ceilings" on runaway Senate campaign spending. His threat to veto any bill with spending limits was no help.

But the heart of the problem lies, not in the spendthrift Senate contests, but in the hundreds of virtually uncontested House races. And the blame for House inaction lies with the Democrats.

At the start of this Congress almost two years ago, Minority Leader Bob Michel (R-Ill.) broke with his party's past obstinacy and signaled he was ready to work seriously for reform of campaign financing. He waited . . . and waited . . . and waited. In the end, his effort at bipartisanship was scorned, as Democrats passed their own bill. But that was not until Aug. 3 of this year. The House did not appoint conferees to meet with the Senate for another six weeks, and then—guess what?—it was too late in the session to forge an agreement.

The reason for the delay was essentially that House Speaker Tom Foley, only one year in the job, knew that he faced a full-scale rebellion in the House Democratic caucus if he really tried to work out a compromise that might become law.

Powerful committee chairmen and dozens of rank-and-file members, accustomed to enjoying huge financial advantages over their challengers, were telling him to bury reform. Their argument was that 1992 poses enough problems for them—an unknown

and possibly weak Democratic presidential candidate at the head of the ticket in a year when redistricting will make many of them run in unfamilar territory. Whatever happens, they told the Speaker and his emissaries, you've got to let us have the money advantage once again.

By killing reform this year, they lock in the ability to raise their money from their friends in the political-action committees again in 1991 and 1992, before any new "reform" bill can take effect.

It's that kind of cynical, take-care-of-myself-and-the-hell-with-everyone-else attitude that is fueling public rebellion—even in the decent, small-scale democracy of Vermont.●

HELSINKI COMMISSION CODEL TO ALBANIA, CZECHOSLOVAKIA, AND BERLIN

● Mr. DECONCINI. Mr. President, I ask that the report of the United States congressional delegation visit to Albania, Czechoslovakia, and Berlin in August 1990 be printed in the RECORD.

The report follows:

REPORT OF THE U.S. CONGRESSIONAL DELEGATION VISIT TO ALBANIA, CZECHOSLOVAKIA, AND BERLIN, AUGUST 18-24, 1990

MEMBERS OF DELEGATION

Chairman: Senator Dennis DeConcini (D-AZ), Chairman of the Helsinki Commission.

Members: Senator Paul Sarbanes (D-MD), Mrs. Christine Sarbanes, Representative Jim Moody (D-WI), William Fritts (U.S. Department of Commerce).

Helsinki Commission Staff: Samuel Wise, Staff Director; David Evans, Senior Advisor; Robert Hand, Staff Assistant; Erika Schlager, Staff Assistant.

Air Force Escorts: Lieutenant Colonel David Hayes, Major Donald Alston, Major John Cox, Staff Sergeant Mark Seelbaugh, Staff Sergeant Bobby Sanders.

INTRODUCTION

The Commission on Security and Cooperation in Europe—also known as the Helsinki Commission—was created in 1976 by Public Law 94-304 with a mandate to monitor and encourage compliance with the Final Act of the Conference on Security and Cooperation in Europe (CSCE), which was signed in Helsinki, Finland, on August 1, 1975, by the leaders of 33 European countries, the United States and Canada.

The Helsinki Final Act and subsequent CSCE documents encompass nearly every aspect of relations between States, including: military-security; economic, scientific and environmental cooperation; cultural and education exchanges; and human rights and other humanitarian concerns. The goal has been to lower the barriers which have artifically divided Europe into East and West for more than four decades. Periodic review meetings have been held to continue this process: Belgrade (1977-78), Madrid (1980-83), and Vienna (1986-89), with the next scheduled for Helsinki in March 1992. Experts meetings on specific issues and lasting only a few weeks are held in between these main meetings.

The Commission consists of nine members from the U.S. Senate, nine members from the U.S. House of Representatives, and one member each the Departments of State, Commerce and Defense. The positions of Chairman and Co-Chairman are shared by the House and the Senate and rotate every two years, when a new Congress convenes. The Commission is currently chaired by Senator Dennis DeConcini (D-AZ) and Co-Chaired by Representative Steny H. Hoyer (D-MD). A professional staff of approximately 15 persons assists the Commission in their work.

The Commission carries out its mandate in a variety of ways. First, it gathers and disseminates information on Helsinki-related topics both to the U.S. Congress and the public. It frequently holds public hearings with expert witnesses focusing on these topics. Similarly, the Commission issues reports on the implementation of the Helsinki Final Act and subsequent CSCE documents. The Commission plays a unique role in assisting and planning the execution of U.S. policy at CSCE meetings and participates as full members of the U.S. delegations to these meetings.

Finally members of the Commission maintain regular contacts with parliamentarians, government officials and private individuals from other Helsinki-signatory States. Such contacts often take the form of Commission delegations to other countries, usually with the participation of other Members of Congress, such as the August 1990 visit to Albania, Bulgaria, Czechoslovakia and Berlin.

VISIT TO ALBANIA, AUGUST 19-21, 1990

I. Objectives

The Commission delegation visit to Albania had two basic purposes. The first was to initiate a dialogue with Albanian officials on CSCE-related issues. In 1990, the Albanian Government for the first time expresssed a desire to participate in the CSCE, or Helsinki, process. In fact, Albania was granted the status of an observer at recent CSCE meetings, beginning with the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, which took place in June 1990. In light of this development and the Commission mandate to follow the Helsinki process, the Commission viewed the establishment of a discussion of the CSCE with Albanian officials similar to that already established with CSCE signatories.

The second goal of the delegation was to obtain a firsthand view of the situation in Albania, particularly as it related to human rights. Since official relations were broken in 1939, there have been virtually no contacts between the United States and Albania, and little is therefore known about Albanian society or how the political and economic systems function. In addition to seeing Tirane, the capital of the country, the Commission expressed an interest in travelling to Durres, a city on the Adriatic coast, as well as to the historic town of Kruje.

Overall, the delegation was able to accomplish these limited objectives. During the visit, the Commission was able to initiate what is hoped to be an on-going dialogue. All of the Commission's requests for meetings or activities were basically met, with one critical exception. The delegation had requested to visit the prison labor camp known to exist at Spac, north of Tirane. This request, made in light of numerous reports about the harsh treatment accorded prisoners—especially political prisoners—in Spac, was similar to those made by the Commission when it visited other countries, but Albanian officials denied the request.

II. The context

The Commission delegation visit to Albania came at a time of great change in Europe and, for the first time since World War II, potentially far-reaching change in Albania itself.

Albania, situated between Greece and Yugoslavia on the Adriatic coast, is a relatively small country with a population of about 3 million people. According to official figures, 98 percent of the population is ethnically Albanian, linguistically divided into the northern Ghegs and the southern Tosks. Reflecting Ottoman Turk, Greek, and Italian influences, Albanians can also be divided according to religious background, with around 70 percent coming from Muslim, 20 percent from Orthodox and 10 percent from Roman Catholic families, although Albania today claims to be the world's first atheist state. The remainder of the population consists mostly of a Greek minority, although there are also Macedonians, Montenegrins, Serbs, Jews, Gypsies and a few other ethnic groups as well. The number of Greeks is unknown but is believed to be somewhere between the official estimate of about 60,000 and the figure of 400,000 claimed by some Greek organizations.

Albania has a long history of foreign rulers and was the last Balkan state to achieve independence, freeing itself from the Ottomans only in 1912. Being a mountainous, relatively inaccessible region, however, the country was able to retain not only its linguistic uniqueness but the old, clan-oriented customs of the Albanian people as well. Albania was ruled before the war by King Zog. After Italy's invasion in 1939, the country was ruled by a puppet regime until liberated by the Communists, led by Enver Hoxha and closely aligned with the Tito's Partisans in Yugoslavia.

Enver Hoxha ruled Albania until his death in 1985. A devout Stalinist, Hoxha sided with the Soviet Union when Tito broke from the Communist block in 1948, only to break from the Soviets himself in the early 1960's following Khrushchev's rapprochement with Yugoslavia. Albania then enhanced its relationship with the People's Republic of China until that country initiated post-Mao reforms and expanded ties with the United States in the late 1970's. Since that time, Albania has maintained the hard Stalinist course on its own, although since Hoxha's death in 1985 there have been efforts to lessen the degree to which the country is isolated internationally, such as establishing bilateral relations with an increasing number of countries and participating in joint meetings of Balkan countries. A member of the United Nations, Albania's participation has been low-key and only in some U.N. bodies.

Formal diplomatic relations between Albania and the United States ended with the Italian invasion of Albania in 1939. Immediately after the war an informal U.S. mission established itself in Tirane, but it was withdrawn in 1946 due to harassment by the authorities. Subsequently, Albanian official statements attacked U.S. policies and leaders, later giving the Soviet Union and then China similar treatment. Moreover, Albania declined participation in the CSCE process, calling the original Conference a Soviet-American attempt to maintain the division and control of Europe.

On the domestic scene, Albania is economically the poorest country in Europe, although it has considerable mineral resources. Albania's record regarding respect for human rights is also very poor. It has strictly controlled the movement of its people, both abroad and in Albania itself. The secret police (Sigurimi) is a powerful organization that has pervaded society, and an extensive system of prisons and labor

camps is maintained for those who express even mildly dissenting views. As a result, there is no known organized dissident activity in Albania. The actual number of political prisoners is unknown. In 1990 the Albanian government acknowledged the existence of political prisoners for the first time, giving a figure of 83 in contrast to the 900–1,000 estimated by a recent refugee who was himself a political prisoner or the more than 20,000 claimed by some foreign sources. Religion was prohibited by law in 1967. No churches are open for public worship. While the recognized Greek and Macedonian minorities have some educational opportunities in their native language, there have been attempts to suppress their cohesiveness and cultural identity.

In 1990, there have been signs that Albania is beginning to move away from its isolationist policies. The Albanian government now is seeking to become a participant in the CSCE process and was given observer status both at the Copenhagen Human Dimension Meeting in June as well as the ongoing CSCE military-security negotiations and summit preparations in Vienna. In May 1990, U.N. Secretary General Perez de Cuellar visited Albanian.

Albania has also indicated a desire to develop relations with the United States and the Soviet Union. While this announcement was made simultaneously for both countries, it had only reestablished relations with the Soviet Union by the time of the Commission's visit. Meetings on the establishment of U.S.-Albanian relations have taken place and are expected to continue. In May 1990, the Albanian government expressed its willingness to receive a delegation from the U.S. Helsinki Commission.

The domestic front has seen signs of change as well. In January 1990 and on several occasions since, there were reports of large demonstrations for reform in several Alabanian cities and towns, which in some cases the Albanian authorities are believed to have brutally repressed. They have played down the extent of the protest or denied they even took place.

Several reforms have been announced which, if implemented, would lead to major changes in Albania, especially in the context of the country's strict adherence to the Stalinist economic and political system. Among the reforms is the abolition of criminal penalties for religious propaganda, liberalization of passport issuance, establishment of a Ministry of Justice, and permission for individuals to sell produce privately and to form small family businesses.

In early July, apparently responding to the lack of implementation of the announced reforms, more than 5,000 Albanian citizens stormed the West German and other embassies in Tirane, seeking to leave the country. A number were known to have been shot by Albanian authorities while running toward the embassies, and the diplomatic area of the city was closed off. As world attention focused on the country and the situation in the embassies became increasingly difficult, however, Albanian authorities eventually decided to permit those in the embassies to leave for Italy, Czechoslovakia, France and elsewhere. Many want to come to the United States, and in August 1990 some went on a hunger strike near the U.S. Embassy in Paris to protest delays in processing. The episode seems to have strengthened reformist trends within the Albanian leadership, as several known hardliners were replaced by individuals believed to espouse more moderate positions.

There are several possible causes for the recent changes in Albania. From the top, President Alia is believed to be leading a reformist group within the leadership that is gradually gaining strength vis-a-vis the remaining hard-liners, which apparently include Nexhmije Hoxha, the wife of Enver Hoxha and head of the Democratic Front organization. Reformist positions apparently are being strengthened by a steep decline in the country's already poor economic performance. From the bottom, Albanians who have television sets or radios are able to receive local Greek, Yugoslav and Italian broadcasts, in addition to those of Voice of America, the BBC and other worldwide stations. As a result, Albanians are well aware of the wave of political liberalization which swept through the rest of Eastern Europe in 1989 and 1990. Pressure for change also comes from the fact that, as a result of a high birth rate, the population of Albania is young, with half of the country's citizens under 30 years of age. Combined with the poor economic conditions, this population is believed to be growing increasingly restless in its current state of isolation.

III. The visit

When the Commission delegation arrived in Tirane on August 19, it was greeted by a group of Albanian officials led by Rolanda Dhimitri, Vice-Chair of the Permanent Commission on Foreign Affairs of the Albanian People's Assembly and Petraq Pojani, Director of the Department for Multilateral Cooperation of the Albanian Foreign Ministry.

The first item of business was a review of the itinerary for the visit. Earlier, the Commission had proposed a schedule of meetings in which it was interested, adding that it would welcome any additional activities proposed by the Albanian government. Albanian officials said that they would do their best to meet the Commission's requests and would present an itinerary for the delegation's approval upon its arrival, although they indicated earlier that the visit to the Spac labor camp listed on the Commission's schedule would not be allowed. With that main exception, the Commission's requests for meetings and activities were met, with a few additional meetings added, and the delegation therefore agreed to the itinerary.

The delegation was then formally received by Foto Cami, Chair of the Permanent Commission on Foreign Affairs of the People's Assemply as well as a member of the Politburo of the Albanian Party of Labor. Mr. Cami held a private meeting with the delegation and then hosted a dinner in its honor.

During the next 2 days, the delegation met with numerous other senior Albanian officials, including Ramiz Alia, who as President of the Presidium of the Albanian People's Assembly is the titular head of state. Alia also heads the Party of Labor, serving as First Secretary. Private meetings were also held with Kleanthi Koci, President of the Supreme Court of Albania, and Reis Malile, Minister of Foreign Affairs.

In addition to meetings with high-level officials, the delegation wanted to meet with other individuals and groups who were involved in activities of interest or concern to the Commission, particularly human rights. This proved to be a significantly more difficult exercise than was the case during Commission visits to other Communist countries, because even in those countries where the most basic human rights were being denied, individuals, either alone or organized in groups, were known to engage in dissenting activities. Control of society in Albania, on the other hand, has been so pervasive that there were no known human rights activists with whom the delegation could meet. The absence of a United States Embassy in Tirane contributed to this problem, as U.S. embassies in other East European countries have played an important role in seeking and maintaining contacts with independent groups and individual dissidents.

Among those with whom the Commission delegation did meet were three representatives of the Democratic Front for the Greek Minority, which is a member organization of the Democratic Front which serves to transmit official policies and positions to the population. The delegation also met with Nikolla Knonmi, rector of the University of Tirane, and a group of about 20 English-speaking university students. The delegation also arranged, separate from the itinerary prepared by the Albanian government, private meetings with representatives of the Italian and Greek embassies, including a visit to the Greek consulate to examine the difficult situation facing foreign embassies. Representatives from all embassies of the CSCE countries in Tirane, along with a long list of Albanian government officials, journalists, economists, writers and other prominent figures attended a Commission-hosted reception, which also permitted a widening of contacts in a less formal setting.

The delegation requested and received some free time in Tirane during which its members could tour Tirane, examine what everyday life there was like, and perhaps talk with some people. Unfortunately, the Albanian government reacted negatively to a Commission request that it bring its own interpreter, and the presence of an intepreter provided by the Albanian government itself likely hindered the openness of the very few contacts that were made with the public. The delegation was able to initiate a conversation with some individuals on Skenderbeg Square in the center of Tirane, which included not only Albanian citizens but also several Albanian-Americans visiting the country. For the most part, however, passers-by seemed to want to avoid being seen talking to the delegation. Members of the delegation, with the helpful escort of officials from the Foreign Ministry and the People's Assembly, took a driving tour of Tirane, including a stop at the monument to Albanian martyrs which overlooks the city, and visited the National Historical Museum of Albania and to Enver Hoxha Museum.

Finally, in order to examine the situation in the countryside and other cities, the Commission asked to visit the city of Durres on the Adriatic coast, as well as the historic town of Kruje, in the mountains north of Tirane, where the Albanian national hero Skenderbeg had his castle. In Durres, members of the delegation attended a luncheon hosted by Luan Babameto, Chairman of the Executive Committee of Durres District, the equivalent of a city major. In Kruje, the delegation toured a museum built over the ruins of Skenderbeg's castle. The Commission then departed Albania for its next destination.

IV. Observations

During the entire course of the delegation's 3-day stay, the Albanian government was very hospitable. Vehicles were provided for transportation, and officials who escorted the delegation were extremely helpful in answering questions and describing the situation in Albania as they saw it. Despite a

strained relationships between the Albanian government and foreign embassies, the delegation was not hindered in making contact with foreign diplomats in Tirane and visiting the diplomatic district of the city.

There was little if any variance in the views presented by Albanian officials, or, for that matter, by Albanians who were not representatives of the government. Most issues were explained in the context of Albania's troubled history, with the centuries of foreign occupation and numerous wars in the Balkans responsible for most of the country's social and economic problems and necessitating a unique course of action. A related point repeatedly raised was the need for efforts to maintain the unity of Albanian, which, it was argued, was an especially difficult task given the fact that its relatively small population was previously divided among three major and very different religions. This was most strongly stated by Foto Cami who, in response to a question about the lack of places of worship in Albania, said that the religion of Albania was "being Albanian."

When the CSCE process was discussed, Albanian officials expressed a strong desire to advance from the status of observer it had been granted at recent meetings to that of a full member. Full members are permitted to speak in the meetings, introduce proposals, and participate in decisions based on the rule of consensus. The officials added that the Albanian government had reviewed all CSCE documents thoroughly and is willing to commit itself to all of them, from the Helsinki Final Act of August 1975 to the document of the Copenhagen Human Dimension Meeting which was adopted in June 1990.

On this point, Chairman DeConcini, Senator Sarbanes and Representative Moody expressed support granting Albania observer status at CSCE meetings. Noting that CSCE made human rights a subject for international scrutiny, however, they also said that the Albanian government bring its performance—i.e., policies and practices—significantly closer to what would be considered compliance with CSCE provisions being granted full membership in the process. The Albanian reaction was that "preconditions" such as this were unfair, since many governments had signed the Final Act and then for years isolated its provisions. The delegation explained that there was a fundamental difference between the two situations. Albania, on the one hand, is now trying to attain full membership in the CSCE, since it was not a participant in the original CSCE negotiations by its own choice, while, on the other hand, there is no requirement to maintain membership once that status was attained. Mention was also made of the extent to which past non-implementation had restrained progress in the CSCE over the years. When asked why Albania declined to participate in the Helsinki process from the beginning, President Alia describe the original Soviet objectives for the Conference, which was to legitimize its hold on Eastern Europe. He said that the end of the Cold War has made it possible for Albania to become a more active player in European affairs.

On human rights in Albania, the Commission delegation questioned Albanian officials about political prisoners, denial of religious and minority rights, the lack of political pluralism and the shooting of individuals attempting to flee across the border. Albanian officials argued that reports in the West of human rights violations in Albania were either the result of misunderstanding the specific situation in Albania or foreign propaganda. The delegation suggested that Albania permit objective human rights organizations, such as the International Helsinki Federation and Amnesty International, to visit Albania and examine the situation first hand.

The Albanian officials with whom the delegation met expressed agreement with the steps toward democratization that are now taking place. The detailed recent reforms, especially those eliminating religious propaganda as a criminal offense and granting Albania citizens permission to obtain a passport for travel abroad. Mention was made as well of electoral reforms which will allow more seats to be contested by multiple candidates, although it was argued that democratic decision-making within the Party made tolerance of alternative parties unnecessary and possibly counter-productive. This last point was repeated by university students, who maintained that the large number of parties in Romania and elsewhere only spawned confusion. Kleanthi Koci, President of the Supreme Court, also noted how the number of criminal offenses for which the death penalty could be used as a sentence has been lowered from more than 40 in the 1950's to 11 today. The delegation noted that the Commission had welcomed the announcement of reforms and expressed hope that they and other needed reforms would be implemented. Upon the delegation's departure, the members were given English-language translations of recently adopted legislative changes in Albania.

The absence of places of worship was repeatedly raised with the Albanians, especially since some members of the delegation wanted to go to church on Sunday, the day it arrived. The response was consistently that the people don't want places of worship, and that members of the clergy are known in Albania for their collaboration with foreign powers. It was acknowledged, however, that there are believers in Albania, although in most cases these are said to be older people. While the delegation indeed did not speak to anybody who said that they did wish to establish a place of worship, it expressed extreme skepticism about the assertion that nobody exists who does, especially during discussions with the members of the Democratic Front for the Greek Minority, where Senator DeConcini pointed out that everywhere else in the world there are Greeks, there are also Greek churches. If places of worship were opened he predicted people would come.

On minority issues, the delegation raised concerns over allegations that members of minority groups were discriminated against and, at times, were forcibly dispersed from their native regions to other parts of the country. There were also reports that, in the past, parents could not give their children some Christian names common to their ethinic group. Albanian officials and the members of the Democratic Front for the Greek Minority denied these allegations. The members of Democratic Front, the delegation concluded, represented the Albanian government more than the Greek minority. The delegation was informed that the Greek-language newspaper did not cover issues of special concern to the Greek minority but simply translated the Albanian press into Greek. The only acknowledgement by the Democratic Front that there have been problems for Greeks in Albania was when they reported that things have improved for the minority in recent years.

On foreign policy, Albanian officials said that the apparent ending of the Cold War was the primary motive for Albania's increased international activity, which included their desire to join CSCE process and to establish relations with both the United States and the Soviet Union. Both President Alia and Foreign Minister Malile described past Soviet policies, especially the 1968 invasion of Czechoslovakia, as justification of Albania's previous course, both internationally and domestically. They also noted their increased participation in cooperative efforts among Balkan nations, including their decision to host a meeting of Balkan foreign ministers in October 1990. Alia and Malile both were highly critical of Yugoslavia in light of current developments taking place in Kosovo, the overwhelming majority of the population of which is ethnically Albanian. They emphasized, however, that Albania is not and will not make any territorial claims regarding Kosovo.

The most visible and immediate diplomatic problem in Albania is the relationship between the foreign embassies in Tirane and the Albanian government. Especially since the storming of the embassies in early July, which diplomats viewed as essentially a spontaneous event, this relationship has clearly worsened. The delegation heard reports about violations of diplomatic norms, such as Albanian authorities entering diplomatic premises and even the physical harassment of diplomats, including an Ambassador. The delegation was told that, after initially shooting at Albanian citizens trying to gain entry to embassies in July, the authorities began to encourage and assist entry in an apparent attempt to "suffocate" the embassies. The Albanian authorities also refused permission for foreign air carriers to land in Albania to deliver additional supplies necessary to take care of the thousands of people who did enter and then stayed on embassy grounds.

Since that time, the diplomatic area—essentially a street on which most embassies are located—has been closed off on either end with gates to control entry, and large concrete walls have been erected around the entire area and between some embassies without consultation, with jagged pieces of broken glass attached to tops of the walls to prevent people from climbing over them. Hundreds of Albanians, after receiving passports wait outside the walled area awaiting permission to enter a consulate to obtain a visa. At the time of the delegation visit, only Greece and Italy were known to be processing visas, since other embassies were closed for repairs in light of the large number of people who had occupied their premises for several days. The sudden decision to grant passports has led to a large backlog of applications for visas, requiring only a select number of people to be permitted in the consulate offices each day. The delegation was told that those waiting for visa processing are being encouraged by Albanian officials to blame the foreign embassies for the problems they are facing as a result.

The Commission delegation raised the problems facing foreign embassies in Tirane with Albanian officials, especially in light of the talks underway to resume diplomatic relations between the United States and Albania. Chairman DeConcini compared the wall going up in Tirane to the one coming down in Berlin. He also told President Alia that he hoped U.S.-Albanian relations will soon be reestablished but was concerned about how American diplomats might be treated in the future. Alia's response, as well as that

of other Albanian officials, was that the embassies were the cause of the problems they have faced since July, especially to the extent they encourage Albanian citizens to leave the country. They attributed all complaints and negative comments about the situation in Albania made by the foreign embassies to reflect a prejudice against the country.

V. Conclusion

On August 22, 1990, the day after the Commission visit to Albania had concluded, the three congressional members of the delegation—Chairman DeConcini, Senator Sarbanes and Representative Moody, made the following joint statement:

"Our congressional delegation went to Albania in the context of that country's desire to end its relative isolation in the world by developing relations with the United States of America as well as joining the 35-member Conference on Security and Cooperation in Europe, known as the CSCE or Helsinki process. The purpose of this 3-day visit was to move beyond simply welcoming this positive development by initiating a dialogue on CSCE-related issues, including human rights. We also wanted to obtain for ourselves a better picture of how the Albanian Government's policies and practices reflect the commitments it would undertake if it were to become a full member of the CSCE.

"The Albanian Government extended warm hospitality to us during the entire course of our stay. While not all of our requests, such as a visit to a prison labor camp, were granted, the program prepared for us provided a good first look at the situation in Albania, and we were able to learn a great deal. Among many other officials, we met with President Ramiz Alia, Foreign Minister Reis Malile, Supreme Court chairman Kleanthi Koci, and Foto Cami, Chairman of the Foreign Affairs Permanent Commission of the Albanian Peoples' Assembly. We also met with members of the popular front organization, university students and a number of cultural figures, economists, journalists, foreign diplomats and other prominent individuals, many of whom attended a Commission-hosted reception.

"We did not agree on many issues, particularly those relating to human rights, but our discussions were nevertheless very frank and open. We believe the dialogue we initiated needs to be broadened and strengthened. Albanian officials indicated a desire to end the decades of isolation and to develop better relations with the United States.

"Albania has enjoyed observer status at the most recent meeting of the Helsinki process, beginning with the Human Dimension Meeting which took place in Copenhagen in June. The congressional delegation stated its continued support for Albanian observer status at future meetings. Albanian officials indicated their interest in attaining full membership in the CSCE in the near future.

"We expressed our agreement with that objective after Albania formally registers its intention to honor all existing CSCE commitments and demonstrates the seriousness of its intentions by compliance with these provisions than is now the case. The Albanians said that they would not accept any conditions on membership beyond what had been accepted by the 35 member states.

"In this context, the delegation supported recent and positive reform efforts, including greater freedom for Albanian citizens to travel abroad and the removal of religious propaganda as an offense punishable under the criminal code. We expressed our continued concerns, however, over reports of major human rights violations, including a sizable number of political prisoners, severe restrictions on religious practices made evident by the absence of a single functioning place of worship in the country, the total control imposed on the Albanian press, radio and television, and certain restrictions imposed on minority rights for members of the Greek and other minorities in Albania. Finally, while there may soon be increased possibilities for some government seats to be contested by more than one candidate, the Workers' Party of Albania which now rules the country shows no sign of being willing to share its current monopoly on political power with alternative or opposition parties. Indeed, it seems as if no independent organizations or groups of individuals with dissenting views are even permitted in Albania today.

"Given Albania's current level of performance in these and other areas, we are of the opinion that, as a full CSCE member, Albania would be glaringly out of step with the rapidly developing process of democratization, political pluralism, the rule of law and free market economies that is taking place throughout Europe. We suggested that, in order to speed up the process of democratization and to have a clearer, more accurate picture of what human rights problems exist in Albania, the Albanian Government translate into Albanian and make available to the public full texts of existing CSCE documents, permit existing human rights organizations from abroad to visit Albania and investigate alleged human rights abuses, and tolerate the formation of independent Helsinki monitoring groups within Albania itself. Albanian officials expressed a willingness to consider these suggestions.

"In the meantime, we hope the dialogue we have initiated during our visit can be broadened, expanded and intensified. This, we feel, would be an important step in promoting mutual understanding between the Albanian and American peoples."

VISIT TO CZECHOSLOVAKIA, AUGUST 22–23, 1990

I. Overview and objectives

Chairman DeConcini's visit to Czechoslovakia focused on two concerns. First, the Commission wanted to discuss Czechoslovak initiatives within the Helsinki process; second, Chairman DeConcini wanted to follow-up on environment questions which Czech Premier Pithart had raised during his visit to Washington earlier this year.

With respect to the Helsinki process, the new Czechoslovakia government has been particularly active in this area for two reasons. Firstly, many of Prague's new leaders come out of the human right community, and they believe that the Helsinki process directly contributed to the democratic "velvet revolution" which took place in Czechoslovakia last November and December. Secondly, these new leaders see the Helsinki process as a route of integration into Europe and a possible source of security guarantees outside of the Warsaw Pact.

The Commission also focused on environmental issues during its visit to Czechoslovakia. Environmental issues, part of Basket II in the Helsinki process, have taken on a new prominence now that many traditional human rights issues are being resolved. Moreover, it has become increasingly clear that environmental problems do not recognize national borders. This is an area where multilateral efforts must be undertaken if the participating States are to meet with success.

II. Context of the Visit

Prelude to Revolution

a. Czechoslovakia's human rights record was a relatively poor one. The communist authorities paid lip service to the concepts of *perestroike* and *glosnost* without implementing them.

b. Nevertheless, in 1988–89, independent opposition activities (e.g., demonstrations, publishing, religious activism) grew, in spite of increasing repression.

c. On 17 November, students attempted to hold an independent demonstration in Prague; the authorities' response was particularly brutal, fueling rumors that a student had been clubbed to death. Although the rumor turned out to be untrue, the ruthless police actions on the 17th triggered massive protest demonstrations; the demonstrations grew each day, and each day spread to more cities.

d. On 19 November, a new group calling itself *Civic* Forum emerged, claiming to represent virtually every opposition group in Czechoslovakia. The Czechoslovak government responded to the demonstrations and to the new group by stalling, offering half-measure reforms. Finally, on 27 November *Civil Forum* organized a 2-hour work stoppage which paralyzed the country, proving it was a force with which to be reckoned. The work stoppage is estimated to have involved upwards of six million people and 75% of the work force.

The First Wave of Political Changes

The Communist leadership in Prague continued to make promises without delivering during the first half of December; but by the second half of December, after Civil Forum threatened additional work stops, opposition demands began to be met. The following wave of reform was subsequently implemented in the first few months after the "Velvet Revolution":

The Federal Assembly voted on 29 November to remove the "leading role of the Communist Party" language from the Constitution;

All known political prisoners were released;

Marxism-Leninism was removed as a required course from school curricula;

Travel restrictions have been ended (open borders);

Control over the People's Militia was transferred from the Party to the Government;

Communist President Gustav Husak stepped down on 10 December and Vaclav Havel was voted to replace him on 29 December;

The Federal Assembly on 12 December voted to hold former General Secretary Jakes responsible for police brutality on 17 November;

On 12 December the Federal Assembly passed resolution condemning the 1968 Soviet-led invasion of Czechoslovakia;

Alexander Dubcek, leader of the 1968 Prague Spring, was elected Chairman of the Federal Assembly on 28 December;

Newly appointed Foreign Minister Jiri Dienstbier announced that the "temporary" 1968 agreement allowing Soviet troops to remain in Czechoslovakia was invalid because agreed to under duress;

Approximately 40 Czechoslovak ambassadors were recalled;

The Politburo announced it would end the *nomenklatura* system of reserving certain jobs for party functionaries;

A Foreign Minister spokesperson announced on 9 January that Soviet troops

should withdraw from Czechoslovakia by the end of the year (subsequently extended to by mid-1991);

The Secret police was abolished on 1 February.

The New Government's Five-Point Program, announced by Prime Minister Calfa on 3 July

Improve the state administrative system, including measures to improve relations between the central government and local districts and between the Czech and Slovak Republics;

Effect a transition from a centrally planned economy to a market economy, while stabilizing the economy and keeping inflation and unemployment under control;

Create a healthy environment and reduce fuel and energy consumption;

Defend human rights;

Draw Czechoslovakia back into the community of European nations.

Key Domestic Political Problems Which Remain

Who will *really* control the secret police, and how?

How can you maintain accountability of the former leadership (necessary to establish the credibility for the new leadership), without degenerating into a cycle of revenge?

How can people who have been forcibly kept out of politics for four decades learn how to establish political parties and, ultimately, govern a country?

Can relations between the country's various ethnic groups, particularly the Czechs and the Slovaks, be reflected in a constitutional framework that is acceptable to all parties?

Helsinki Process

The new Czechoslovak government has made the CSCE process one of its foreign policy priorities, seeing in it a route of integration into Europe and a possible source of security guarantees outside the Warsaw Pact. At the Copenhagen Meeting in June, Czechoslovak Foreign Minister proposed Prague as a site for a future CSCE secretariat; Secretary Baker has expressed some support for this. In Vienna, the Czechoslovaks have sought to play a mediating role in facilitating preparations for the Paris summit (tentatively set for November) and the CSBMs, as well as to remind the conference of the importance of the larger process.

From a security standpoint, Czechoslovakia sees the Helsinki process as capable of filling the growing void left by the virtual dissolution of the Warsaw Pact and the retreat of the Soviet Union. Foreign Minister Dienstbier has quipped that, "there's nothing wrong with NATO—except that we're not in it." Czechoslovak leaders have indicated that they're not adverse to remaining in the Warsaw Pct, but at the same time it is clear that their vision for the Warsaw Pact is so different that the Pact would remain the same in name only. Their primary concern is that East European countries, including the Soviet Union, not be isolated outside of a NATO security structure.

From a human rights standpoint, it must be remembered that President Havel comes to his new political prominence as a former dissident and member of the (formerly outlawed) Czechoslovak Helsinki Committee and the Charter 77 human rights movement, as does his Foreign Minister, Jiri Dienstbier; his Ambassador to the United States, Rita Klimova; and host of other now high-ranking government and parliamentary officials. In the human rights sphere, Czechoslovakia's new leaders have personally seen a direct cause-and-effect relationship between the reforms which have been achieved in Eastern Europe and the Helsinki process.

At the Copenhagen Meeting of the Conference on the Human Dimension, Czechoslovakia named Dr. Jiri Hajek—Foreign Minister during the Prague Spring and a man of impeccable human rights credentials—as head of their delegation. it was at this meeting that a new negotiating group emerged called the "Pentagonal." Consisting of Czechoslovakia, Hungary, Yugoslavia, Italy, and Austria, these neutral and nonaligned, NATO, and Warsaw Pact countries share a set of borders and many common interests. So far, their coordination has been limited to specific areas of interest: in Copenhagen, it was minority rights; elsewhere, they are coordinating road management and other transportation concerns. It remains to be seen how this relationship will evolve; so far, these five have not coordinated their efforts in the military talks in Vienna.

The new Czechoslovak leadership has decided to take on an active role in all areas of CSCE and has proposed several new initiatives. For example, while visiting the Council of Europe in Strasbourg in May, President Havel called for a "Helsinki zone" from Vladivostok to Vancouver that would overcome the division of Europe and promote disarmament. At the Vienna Meeting on Confidence- and Security-Building Measures (CSBMs), Czechoslovakia put forward an ambitious initiative for a European Security Council leading eventually to European federation. When most Western countries rejected the idea as overly ambitious, the Czechoslovaks dropped the more long-range provisions and enlisted the support of the GDR and Poland; they then twice convened all the ambassadors from CSCE countries in Prague to lobby for the initiative prior to the preparatory conference began in July.

The Economic Front

Prior to WWII, Czechoslovakia had one of the strongest industrial economies in the world. Although, like elsewhere in Eastern Europe, Communist mismanagement has taken its toll, the economy in Czechoslovakia is relatively better off than in most of its neighboring socialist states.

At the end of February, the Czechoslovak government passed the first package of legislation aimed at laying the foundation for a transition to a free market economy. But shortly after the revolution, 2 schools of competing thought emerged regarding the degree and pace of economic reform: a group of radical reformers led by Vaclav Klaus advocating shock therapy on the one hand, and another group led by Valtr Komarek advocating gradual reform on the other hand. After the June elections, Komarek left the government and the signs indicate a more rapid pace of reform will be pursued.

At a recent meeting of the Eastern trading organization "CMEA," Czechoslovak Finance Minister Klaus stated that he saw no reason for the continuation of the organization. At that meeting, it was decided the countries would begin trading among themselves on a dollar basis.

Czechoslovakia's economic priorities now include raising prices to bring them closer to production costs and relieving the state of huge subsidies; breaking up over-sized enterprises, offering some of them for sale; moving towards a convertible Czechoslovak *koruna* (crown) in 1991; and decentralizing economic decision-making to the republic and local level. At the same time, the government wants to keep unemployment and inflation under control.

In implementing its reforms, Czechoslovakia must grapple with the same problems of transition that exist elsewhere in the region: how to privatize the state-owned industry, and what to do with the nomenklatura (communist party-appointed bureaucracy).

III. Meetings

Meeting With Deputy Foreign Minister Zdenek Matejka

Deputy Foreign Minister and current Warsaw Pact Secretary General Zdenek Matejka briefed the delegation on efforts to dismantle the military structures of the Warsaw Pact. He described the task of the Warsaw Pact is to dismantle its structures, but noted that differences exist on the scale and timetable for this process. Minister Matejka believes that the Pact will be successfully transformed, but added that Czechoslovakia would support the continued existence of the Warsaw Pact if transformation was not possible.

Minister Matejka described the Helsinki process as "the most important thing in Europe." This view is reflected in the Czechoslovak proposals for a new European security structure and for placing a CSCE secretariat in Prague. Matejka reassured the delegation that NATO will continue to have a role in a restructured Europe, and conceded that problems could arise in a crisis if any new European security system required consensus. He also admitted that he did not know what might be done should aggression arise within the nations which were part of any new security system. Czechoslovakia's primary concern is that the bloc-to-bloc system which characterized former East-West relations be replaced. In the current climate, things which Czechoslovakia had formerly rejected, such as a conflict resolution mechanism with "obligatory jurisdiction," might be possible.

The Minister stated that the pending disappearance of the GDR had created problems within the Pact, as those weapons which had been assigned to the GDR according to previous agreements now had to be redistributed. While Czechoslovakia is not interested in a higher quota, Bulgaria wants an additional 1,500 tanks to protect itself against what is seen as a Turkish threat, and the Hungarians feel that the limits previously set for them had generally been too low. Matejka was unsure of the Soviet position on reallocation of the limits, and concluded that issues unresolved by the time of the Paris summit would simply have to wait for Helsinki II.

With respect to Albanian participation in the CSCE process, Matejka affirmed that Czechoslovakia has included Albania in discussions concerning a new European security system. Although full membership for Albania in the CSCE process is not warranted, the Minister argued that observer status is most appropriate.

Meeting with Josef Vavrousek, Minister of the Federal Commission for the Environment

Josef Vavrousek, Minister, Federal Commission for the Environment, presented the delegation with a parade of horribles as he recounted the state of the Czechoslovak environment. He indicated that a high priority of the new government was to identify possible sources of assistance to fix existing

damage, as well as to gain the know-how to avoid similar problems from reoccurring.

Vavrousek freely admitted that Czechoslovakia created pollution which affected its neighbors. He specifically indicated that Czechoslovakia exports water pollution via the Elbe river and to the Baltic and to air pollution throughout Europe, including acid rain in Finland and Sweden. He also referred to Hungarian concerns about potential environmental problems which completion of the Gabcikova-Nagymoros dam project would cause, and Austrian allegations that Czechoslovak nuclear power stations were not safe. These examples underscored Minister Vavrousek's assertion that environmental problems cannot be solved by one country alone, but require trans-border efforts.

Vavrousek described ground water pollution and other damage caused by practices of Soviet troops stationed in his country, but indicated Soviet-caused pollution constituted perhaps only five percent of the total environmental problem, and that Czechoslovaks were responsible for the remainder. Vavrousek stated that the Soviets in principle agree they should pay for the damage they had caused, but generally claim environmental damage existed prior to Soviet occupation of various sites.

Vavrousek stated that the federal government was attempting to find a new division of powers for decision making concerning the environment. The federal government now will have three primary responsibilities: 1) the drafting of environmental laws and regulations (which are equally applicable to both republics and compatible with EC standards), 2) the formulation of an overall environmental policy for the entire country compatible with social and economic policies, and 3) international cooperation. Issues not falling in these three areas would be the responsibility of the individual republics.

The Minister voiced his hopes that American firms and Czechoslovak enterprises would cooperate in clean up efforts. However, lack of specific legislation concerning joint ventures and a lack of hard currency were inhibiting such cooperation.

Meeting With Jaroslav Sabata, Czech Minister Without Portfolio

The delegation met with Jaroslav Sabata, Minister without Portfolio of the Czech Republic, who spoke primarily in his capacity as chairman of the Preparatory Committee of the Helsinki Citizen's Assembly (HCA), a private organization which will be formally founded at an international meeting in October.

Minister Sabata admitted that he was in a bit of a paradoxical position, serving as a high government official, while at the same time working for a "private organization" concerned with the Helsinki process. Nevertheless, he indicated that such paradoxes are consistent with the times. Sabata indicated that he will not serve in a HCA leadership position after the October meeting.

Sabata described the HCA as a place for private citizens to meet and participate in political life. The HCA will have close contact with other Helsinki-oriented groups, including the Czechoslovak Helsinki Committee. However, unlike the Czechoslovak Helsinki Committee, the HCA will not limit its focus to human rights questions, but will address all aspects of the Helsinki process. The HCA is particularly interested in developing regional cooperation with other like-minded groups from other countries.

Sabata also addressed the issue of Slovak-Czech relations, which he described as having the potential to be a crisis. Both the Czech and Slovak governments agreed that most authority should be vested in the republic governments, but Sabata believes that the Slovak government had moved too quickly on the issue. Sabata estimated that at most only 20% of Slovaks favored independence and called Federal Prime Minister Calfa and Federal Assembly Chairman Alexander Dubcek (both Slovaks) committed federalists. Sabata also noted that other groups in and with connections to Czechoslovakia, such as various ethnic Germans, now have agendas.

Meeting With Sasa Vondra, Senior Foreign Policy Advisor to President Havel

Presidential Foreign Policy advisor Sasa Vondra opened the discussion with consideration of domestic political issues. Vondra speculated that small groups leaving the Forum for their own political organizations, leaving Civic Forum more like an American-style political party, with a broad base and relatively weak party discipline, a development that Vondra would personally favor.

Vondra expects that local elections conducted in November will be by majoritarian system, and that as a consequence party influence will be lessened. He did not believe that the 96% voter turn-out witnessed in the June elections would be repeated. Vondra hopes that the Civic Forum structure will be changed before the local elections, to give the political movement more direction from the center and a central staff capable of supporting local Civic Forum organizations.

Questioned about the so-called "Pentagonale" group (Austria, Hungary, Czechoslovakia, Yugoslavia, and Italy), Vondra assured the delegation that this new negotiating alignment is not an attempt to create a later-day Hapsburg Empire, but rather a reflection of a vacuum on the map of Europe. The real goal of the group is to facilitate regional cooperation within the context of eventual European integration. Vondra expects that in the near future the group will focus primarily on mutual cooperation (e.g., transportation questions) and not security issues.

Vondra also addressed the Czechoslovak proposal for a new European security system. He characterized the concept of two blocs as anachronistic but also stated that he did not like the idea of a neutral Eastern Europe under the protection of NATO, recalling what happened with previous "guarantees" to Czechoslovakia's security in the past. He encouraged those who oppose Czechoslovakia's proposals to improve and refine them. Echoing Matejka's assurances regarding NATO, Vondra went on to say that he favored the creation of a CSCE dispute resolution center to deal with, *inter alia*, ethnic conflicts. NATO and such new mechanisms could complement each other.

Other Activities

The delegation paid a brief call on Frantisek Cardinal Tomasek, Archbishop of Prague to pay their respects and commend His Eminence on his strong support of the democratic movement in Czechoslovakia. Cardinal Tomasek reassured the delegation that reforms providing for religious freedom had been or are being implemented.

DCM Theodore Russell hosted a reception for the delegation on the evening of their arrival. The invitees included many of the traditional human rights activists whom the Commission has supported over the years, including many who are now in public office. Others have remained in the private sector as publishers, academics, and representatives of non-governmental organizations.

The delegation hosted a lunch for Czech Prime Minister Petr Pithart, whom Chairman DeConcini had previously met in Washington. Among those attending the lunch were cabinet officials from the Czech Republic responsible for economic and environmental matters. After the lunch, the delegation proceeded, at the invitation of the Prime Minister, to the site of a former Soviet military base at Janska, near Decin in northern Bohemia. In fact, the base had just been returned to Czechoslovak control a few hours earlier. The purpose of the visit was to examine environmental damage caused by the occupying forces. The delegation was accompanied by environmental officials as well as Czechoslovak army officers.

VISIT TO BERLIN, AUGUST 24, 1990

I. Objectives

The main purpose of the Commission delegation visit to Berlin was to learn the views of senior members of the democratically elected East German government regarding the imminent unification of their country with West Germany. At the time of the visit, the government was in the midst of a crisis as it sought to make decisions on the scheduling and terms of unification in light of a rapidly worsening economic situation. Several senior members of the coalition government, including the Foreign Minister, had resigned after a major rift developed between the leading Christian Democrats (CDU) and their Social Democrat (SPD) partners. Given the major impact German unification is expected to have on European diplomacy, a better understanding of the differences underlying the crisis was considered important.

Other issues which the Commission hoped to discuss with East German officials included efforts to dismantle the East German State Security Service (the "Stasi") and the future of the CSCE process.

II. The context

The Commission delegation visit to Berlin came in the midst of intense debate in East Germany over the timing of unification of the two German states, exacerbated by a growing eocnomic crisis in the country.

Beginning with the opening of the Berlin Wall on November 9, 1989, continual efforts were underway to move toward a rapid unification of East and West Germany. Elections in the German Democratic Republic on March 18, 1990—the first and last freely held elections in the GDR—resulted in a victory for the Christian Democrats, who, led by Lothar de Maiziere, had advocated quicker movement toward unification. On July 1, 1990, an economic and monetary union was established between the two Germanies, which, in merging their respective economic systems, made the West German Deutsche Mark the official currency in both East and West.

As the "Two-plus-Four" negotiations between the two Germanies and the four post-War powers (the United States, United Kingdom, France and the Soviet Union) progressed and the time-table for unification advanced, the East German government moved into a crucial period in the late summer of 1990.

Three developments made this time period difficult. First, the East German leaders were, in effect, forced to consider the best way to achieve their own disappearance from the political scene, obviously a

problematic and rather unprecedented task. Second, the unification process became increasingly subjected to the internal, electoral politics, as the leading parties in both East and West set forth their own strategies designed to win upcoming, all-German elections. Both West German Chancellor Kohl and de Maiziere had sought to move the elections forward, to coincide with actual unification, but had to back down and agree that December 2, weeks after unification, would be the date of the elections. In the meantime, the SPD in West Germany, headed by Oskar LaFontaine, increasingly focused on the cost of unification, hoping to play on the concerns of some parts of the West German population. The third development was the worsening economic situation in East Germany, a result of the initial introduction of competition from Western firms. On August 15, for example, as many as 250,000 East German farmers demonstrated in Berlin and other cities protesting Western agricultural wholesalers with whom they could not compete, forcing East German-grown produce to be dumped.

These developments precipitated a political crisis within the East German government, as several ministers either resigned or were dismissed. By mid-August, the East German Volkskammer was forced to go into extended sessions to work out a final agreement on the date for unification which would bring the crisis to a close. Just prior to the Commission's arrival, it had agreed that October 3 would be the date. It was a compromise between dates proposed by the CDU and the SPD and it immediately followed the CSCE Meeting of Foreign Ministers scheduled for New York on October 1 and 2, permitting other European countries along with the United States and Canada to give their endorsement to unification.

III. The visit

Arriving the night before the delegation visit began the morning of Friday, August 24, with a briefing by the U.S. Ambassador to the German Democratic Republic, Richard C. Barkley, and other U.S. Embassy staff. The remainder of the day consisted of several meetings with east German officials, including Dr. Helmut Domke, State Secretary at the GDR Foreign Ministry, Interior Minister Peter-Michael Diestel and Sabine Bergmann-Pohl, President of the Volkskammer. The delegation also had time to tour the area which divided Berlin into East and West, where the remainder of the once formidable Berlin Wall continued to be chiseled and sold as souvenirs. The Commission had also requested meetings with Prime Minister de Maiziere, Foreign Minister Markus Meckel and West Berlin Mayor Walter Momper, but the crisis in the East German government forced Prime Minister de Maiziere to cancel a meeting, and caused Foreign Minister Meckel to resign just prior to the Commission delegation's arrival. Mayor Momper was unavailable at the time of the visit.

IV. Observations

In the meetings with East German officials, the main topic was the process of German unification and the effects of unification in what was East Germany. Most all East German officials expressed an obvious relief that, after weeks of heated polemics and negotiation, agreement had been reached to have unification take place on October 3. Volkskammer President Bergmann-Pohl described how difficult it is "to dissolve oneself," and Chairman DeConcini complemented the East Germans for making what must be some very difficult decisions.

On foreign policy issues, the unification of Germany was presented as a major step in the longer-term goal of the unification of Europe. East German officials said that they attached great importance to the CSCE process and described a proposal the GDR introduced jointly with Poland and Czechoslovakia at the Vienna Preparatory Committee for CSCE Summit regarding the establishment of a CSCE institute on Conflict Resolution-Peaceful Settlement of Disputes and another to monitor military issues, such as implementation of Confidence- and Security-Building Measures (CSBMs). They added, however, that West German views on the institutionalization of the CSCE process differed somewhat from East German views and that West German views would dominate in the post-unification period. When asked about Basket II issues, the East Germans said that, without economic progress, there will be no stable democracy in Eastern Europe. Dr. Wolfgang Schwarz, a foreign policy advisor to Prime Minister de Maiziere, noted with some concern that Basket II was not dealt with in the recent London declaration of NATO leaders on CSCE issues.

On domestic issues, most of the discussion, especially in the meeting with Interior Minister Diestel, focused on efforts to dismantle the State Security Service (Stasi). Diestel said that 86,000 people worked full-time for the Stasi, with an additional one million serving as informants. He called it the best security service in the world. As far as the more than two million files maintained by the Stasi, Diestel noted the argument that they should be made public so that those who associated themselves with the Stasi and its more criminal activities could be brought to justice. He maintained, on the other hand, that it would probably be better to destroy the files, since the information they revealed could not be verified and may very easily have been fabricated, destroying the future of many innocent people. He doubted the ability of the government to store the files securely to prevent their eventual misuse, but added that he would follow the wishes of the Parliament. President Bergmann-Pohl questioned whether the Volskammer would approve the destruction of the files but argued that efforts to prosecute Stasi members be done with great discretion.

Other domestic issues discussed included East Germany's discussions with Israel regarding the Holocaust, the severity of environmental problems in East Germany and predictions on the outcome of elections later in the year.●

THE OAKWOOD CHILD CARE CENTER

● Mr. HUMPHREY. Mr. President, in this city of ever competing interests it's hard to focus attention on a case of injustice. So let me start off by stating that 250 innocent children have been adversely affected by an injustice perpetrated by the Department of Health and Human Services. The purpose of my remarks today is to document the charge I have just raised.

On February 25, 1987, HHS granted $1.5 million in funding to the Oakwood Child Development Center in Los Angeles, CA, to purchase a building for a nonsectarian child care center. An additional grant of $300,000 was also provided for the costs of renovating the building.

On June 22, 1987, Oakwood asked HHS to rule on a request to build a second story addition to the building which might be dedicated to sectarian uses. HHS approved the request in a letter of June 29, 1987. Oakwood then hired architects to draw up the plans. One month later, on July 29, 1987, HHS reversed itself, but left the possibility open that something might be worked out. Finally, in January of 1988, an HHS general counsel opinion disapproved this request.

Since for engineering reasons Oakwood could not continue renovations of the first floor until the question of a second floor addition was settled, the project fell behind schedule and inevitably failed to meet the 1-year deadline specified in the grant agreement. Notwithstanding the documented fact that it was HHS that caused the delays, the Department asked Oakwood to return the $1.8 million in grant funding.

Oakwood then asked for an extension of time to complete the renovation. While HHS has routinely given 12-month extensions under circumstances such as this, Oakwood's request for an extension was denied. In fact, this is the first time in history that HHS has ever denied such an extension.

Upon detailed review of the case, this Senator was persuaded HHS had acted in an arbitrary, unreasonable, and unfair manner toward Oakwood. On May 11, 1989, I wrote Constance Horner, the Under Secretary of HHS, asking that Oakwood be given a 12-month extension of the grant. In the event that such an extension was not possible, I also asked her for a detailed explanation about why HHS would not give Oakwood a routine extension. As the correspondence accompanying these remarks will show, HHS refused to provide either the extension or a detailed explanation of the denial. I sent another letter asking for a specific, documented explanation of why Oakwood was denied an extension. Again, HHS refused to document a case against Oakwood. In both written and telephonic exchanges with HHS, I have repeatedly asked the Department to present a documented case against Oakwood. The Department has either refused to do so or has raised flimsy charges easily refuted by Oakwood's documentation.

When it was clear that I would be unable to receive an adequate answer from HHS, I contacted the White House Chief of Staff, Gov. John Sununu, on July 13, 1989, asking that he investigate this matter.

In October of 1989, I met with Mr. Richard P. Kusserow, the inspector

general of HHS who had audited the Oakwood case. At that time, Mr. Kusserow volunteered that he had conducted only an audit, that had the audit uncovered anything suspicious he would have conducted a full-fledged investigation. He found no reason to conduct an investigation, he said.

Over the last 17 months, every person I have spoken to, incuding the inspector general and the general counsel of HHS, acknowledged that Oakwood was not guilty of any improper or unlawful conduct in relation to this grant. Indeed, I made a point of informing the Department in phone conversations that if there were any impropriety or unlawful activity, I wanted to know about it, and I would immediately remove myself from further involvement in the case.

Earlier, not wishing to incur further legal costs, Oakwood—which, let us remember, is a charity and, as such must rely on contributions, which are not easily raised in a time of economic recession—chose not to pursue its case in court. Instead it agreed to repay the grant to HHS over a period of 18 months. That repayment schedule has proven to be to burdensome, and Oakwood has been seeking to reopen the agreement and to negotiate for a longer payback.

On September 25, 1990, I wrote C. Boyden Gray, the counsel to President Bush asking that he intercede in this matter. In particular, I requested that Oakwood either be allowed to keep the grant or that it be given an extension of time to repay the grant. Such an extension, which is fully consistent with the law, would allow Oakwood continue operations and ensure continued service to the children in the day care center, which is now operating in temporary quarters awaiting completion of renovations in the building purchased with the grant. Ultimately, 250 children will be served.

By telephone response, my request was denied. In conversations with other White House officials, I learned that HHS was claiming the agreement to repay the grant was between Oakwood and the Department of Justice. Such a claim is utterly false, and represents another instance of dishonesty and stonewalling on the part of HHS.

At my request, the White House scheduled a meeting for 4 p.m., October 25, 1990, in the office of Assistant Attorney General Stuart M. Gerson, who heads the Civil Division of the Department of Justice. HHS was to be represented by Under Secretary Constance Horner and her staff. Additionally, representatives of Oakwood would be present as well as myself. The purpose of the meeting was to deal with the assertion by HHS that only the Department of Justice could reopen the agreement.

At 3:55 p.m., while I and representatives of Oakwood were reviewing the matter with Mr. Gerson, a message came from Secretary Horner's office that no one would attend the meeting. Bear in mind, this was a meeting set up by the White House. In my view, it was another example of stonewalling by HHS, not only of this Senator but of the White House as well. It should be noted the Oakwood's representative had cancelled his business appointments on one day's notice and had flown from Los Angeles during the night in order to make the meeting.

Nonetheless, the meeting was of substantial value. Mr. Gerson made it clear that Justice could neither recommend for or against reopening the agreement, but made it equally clear that HHS has the authority to reopen the case, since the agreement is between HHS and Oakwood—not, as alleged by HHS, between the Department of Justice and Oakwood.

That is where the matter lies, Mr. President. I hope yet to succeed in securing justice for Oakwood. But since I am leaving the Senate at the end of this year, and since we are adjourning very shortly, I am putting this narative in the RECORD, accompanied by detailed documentation. I remain convinced that Oakwood has suffered an outrageous injustice at the hands of HHS, that HHS has acted wrongly and has consistently sought to cover up its conduct through falsehoods, innuendo, intimidation of a witness friendly to Oakwood—see transcript of HHS hearing board, dated April 18, 1989, in which David Kirker is examined—and outright stonewalling. Had HHS at any point documented wrongdoing on the part of Oakwood, I would have withdrawn from the matter. Instead, HHS consistently refused my reasonable requests.

The tragedy is that a charity seeking to serve innocent children has become the victim of a cruel, bureaucratic injustice. Notwithstanding all of the financial and logistical problems created by HHS, the Oakwood Childcare Center opened in September of this year, using temporary quarters until the renovations on the primary building are completed early next year.

I take this opportunity to publicly urge the White House to examine this case in detail. I believe such a detailed review would prove my assertions correct. At that point, the White House should insist on justice for Oakwood.

Mr. President, I ask that documents related to this matter be printed in the RECORD.

The material follows:

THE CASE OF THE OAKWOOD CHILD CARE CENTER

CHRONOLOGY

Febraury 25, 1987, HHS granted $1.5 million in funding to the Oakwood Child Development Center in Los Angeles, California, to purchase a building for a nonsectarian child care center. A grant of $300,000 was also provided for the costs of renovating the building.

June 22, 1987, Oakwood asked HHS to rule on a request to build an addition to the building which would be dedicated to sectarian uses.

June 29, 1987, HHS notified Oakwood that it had no objection to the proposed expansion.

July 29, 1987, HHS notified Oakwood that upon further review, the uses of additional space for sectarian uses may violate the terms of the act. Oakwood was also informed that it could submit alternative proposals which would be considered by HHS.

September 1, 1987, Oakwood submitted an alternative proposal to HHS for the use of the air space above the building.

November 18, 1987, Oakwood letter to HHS asking for an answer to the letter of September 1, 1987.

January 28, 1988, Oakwood letter to HHS asking for an exchange of properties to continue the original terms of the grant.

March 10, 1988, letter from HHS to Oakwood asking for a clarification of the terms of the grant.

March 31, 1988, letter from HHS to Oakwood answering the letter of January 28, 1988.

April 11, 1988, letter from Oakwood outlining its desire to continue with the original terms of the grant.

April 27, 1988, letter from HHS to Oakwood requesting further details about the terms of the grant.

May 6, 1988, letter from Oakwood answering the issues raised in the HHS letter of April 27th.

Since Oakwood Child Development could not continue construction until they were able to clarify their status with HHS (which did not come until January of 1988), they were not able to complete construction within the 1-year deadline of the grant.

April-May 1988, HHS and Oakwood exchanged correspondence outlining the terms and conditions of the grant.

June 30, 1988, Oakwood submitted, by request of HHS, a formal petition for a no-cost, 1-year, extension of the grant.

August 6, 1988, HHS notified Oakwood that its request for a no-cost extension was denied. This letter also directed Oakwood to sell the property acquired with grant funds, and to return the $300,000 in renovation monies. This is the first instance of a no-cost extension ever having been denied. (Attachment E)

August 18, 1988, letter from Oakwood Responding to the HHS denial of a no-cost extension. (Attachment F)

October 1988, the HHS Audit Office of the Inspector General issues a decision upholding the repeal of the grant by the HHS Family Support Administration.

June 28, 1989, letter from Oakwood to HHS outlining reasons for a 7½ year settlement. This includes excerpts from the transcript.

August 1, 1989, letter from HHS (Jason Turner) to Oakwood Agreeing on a 7½ year settlement.

May 11, 1989, letter from Senator HUMPHREY to Constance Horner, the Undersecretary of HHS, asking that Oakwood be given a 12-month extension of the grant. In the event that such an extension was not possible, Senator HUMPHREY also requested a detailed explanation about why Oakwood was prohibited from receiving a routine extension. (Attachment A)

June 19, 1989, letter from Constance Horner to Senator HUMPHREY answering the May 11th letter. (Attachment B)

June 19, 1989, letter from Senator HUMPHREY to Constance Horner further requesting a 12-month extension or a detailed explanation of the grant denial. (Attachment C)

June 28, 1989, letter from Constance Horner to Senator HUMPHREY answering the June 19th letter. (Attachment D)

July 12, 1989, letter from Senator HUMPHREY to Constance Horner further asking for a documented explanation of why Oakwood's grant extension was denied. (Attachment G).

July 13, 1989, letter from Senator HUMPHREY to Chief of Staff John Sununu enclosing a copy of the July 12th letter to Constance Horner. (Attachment H)

July 17, 1989, letter from Constance Horner to Senator HUMPHREY stating that she would await the decision of the Department Appeals Board before making any further comment. (Attachment I)

August 2, 1989, letter from Senator HUMPHREY to Constance Horner. (Attachment J)

August 2, 1989, letter from Senator HUMPHREY to John Sununu asking for an investigation of the Oakwood issue. (Attachment K)

September 5, 1989, letter from Constance Horner to Senator HUMPHREY responding to the August 2nd letter. (Attachment L)

November 8, 1989, letter from Senator HUMPHREY to John Sununu asking for his review of the Oakwood issue. (Attachment M)

September 25, 1990, letter from Senator HUMPHREY to the counsel to the President, C. Boyden Gray, asking that either a no-cost extension or extended repayment schedule be given for the Oakwood grant. (Attachment N)

October 9, 1989, letter from Senator HUMPHREY to C. Boyden Gray responding to questions which Mr. Gray had raised in a teleconference on September 25th, and further requesting a no-cost extension or extended repayment schedule for Oakwood. (Attachment O)

October 26, 1990, letter from Assistant Attorney General Stuart M. Gerson to Constance Horner stating that HHS has the authority to negotiate a new agreement with Oakwood. (Attachment P)

ATTACHMENT A

U.S. SENATE,
Washington, DC, May 11, 1989.

MS. CONSTANCE HORNER,
Undersecretary, Department of Health and Human Services, Washington, DC.

DEAR UNDERSECRETARY HORNER: I am writing to request that you grant a 12 month building extension to the Oakwood Child Center in Los Angeles, California.

As you know, in February of 1987, the Department of Health and Human Services granted $1.5 million in funding to Oakwood Child Development to purchase a building for a child center. Subsequently, a grant of $300,000 was made in June of 1987 for the costs of renovating the building. At that time, Oakwood asked HHS to rule on a request to build an addition to the building which would be dedicated to sectarian uses. HHS did not act upon this request for 8 months, and although an initial approval was given for this use, a revocation was made 3 months thereafter.

Due to the fact that Oakwood Child Development could not continue construction pending the HHS decision, they were not able to complete construction within the one-year deadline of the grant. Consequently, HHS asked Oakwood to return the $1.8 million in grant funding. While HHS has routinely given 13 months extensions under circumstances such as this, Oakwood's request for an extension was denied.

On April 18, 1989, during the appeal of this denial, Administrative Judge Teitz instruced the parties to meet to work out a mutually acceptable resolution to this problem. Judge Teitz also directed Madeline Ness, the HHS counsel, to settle this matter with Oakwood.

Due to the extenuating circumstances of this revocation, I urge you strongly to allow an extension of this grant.

With warmest regards, I am.

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senator.

ATTACHMENT B

THE UNDER SECRETARY OF
HEALTH AND HUMAN SERVICES,
Washington, DC, June 19, 1989.

Hon. GORDON J. HUMPHREY,
U.S. Senate,
Washington, DC.

DEAR SENATOR HUMPHREY: This is to respond to your recent letter concerning the request by the Oakwood Child Development Center in Los Angeles for a no-cost extension for a grant made to it by the Department's Family Support Administration, Office of Community Services.

Oakwood received a one-year, $1.8 million grant on an "urgent" basis. The purpose of the grant was to acquire and renovate a building for the purpose of opening an early childhood center within six months. The funds provided under that grant had been appropriated under Section 681(a)(2)(A) of the Community Services Block Grant Act which authorizes the Secretary to make grants to provide employment and business development opportunities for low-income residents of communities.

When the grant expired, Oakwood had not achieved its proposed goals nor provided any benefits to the proposed low-income beneficiaries of the project. The grantee also had failed to comply with numerous other grant conditions. For these and other reasons, the responsible DHHS official exercised her discretion to deny a no-cost extension.

Oakwood has been provided with an opportunity to appeal that decision to the Departmental Appeals Board where its appeal is currently being heard. The Appeals Board procedures have entailed extensive briefings and presentations of evidence. I have been informed that the Presiding Board Member did not "direct" either of the parties to settle the case. Rather, he suggested to the attorneys for both parties that they explore the possibility of settlement and settlement discussions have taken place.

I hope that this letter clarifies the facts of this matter.

Sincerely,

CONSTANCE HORNER,
Under Secretary.

ATTACHMENT C

U.S. SENATE,
Washington, DC, June 19, 1989.

MS. CONSTANCE HORNER,
Under Secretary, Department of Health and Human Services, Washington, DC.

DEAR CONNIE: You were right about the attached letter when, in our phone conversation last week, you acknowledged it does not contain details. Nonetheless, thanks for sending it along at my request.

The frustrating thing about the Oakwood case, from my point of view, is that I can't find out precisely why HHS finds Oakwood unworthy of an extension. I understand that Mary Everts, former Director of the Office of Community Services, at a hearing on Oakwood last Thursday, stated under examination by Oakwood's attorney that she recommended against Oakwood in order to protect her bosses politically. I am paraphrasing this information, and I would suggest that you obtain the precise statement from the transcript. When you obtain the transcript I ask that the Department provide an explanation of Ms. Evertts statement. I also ask to be informed specifically and in detail why Oakwood's application for extension cannot be granted. Frankly, I don't think that HHS has a case. If the department has one, please tell me explicitly what it is. I have urged John Sununu to make the same request of the Department.

Has Oakwood been denied on the basis of politics? If so, this is scandalous.

Having thought about our conversation, having been informed through you that the Department does not allege an impropriety or unlawful conduct on the part of the grantee, having read the attached letter (which is the same kind of boilerplate response we have been getting from HHS for months), and especially in light of the Evertt statement, I request that the Department grant an extension to this project, or explain to me in detail what material problem exists.

With warm regards, I am

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senator.

TRANSCRIPT OF HHS APPEAL BOARD HEARING, JUNE 15, 1989, EXAMINATION OF MARY EVERT

A. And I'm trying to think if—I guess it would be too difficult for me to get other specific names. I remember general conversations.

But I must say, Mr. Fishman, that I'm a person that doesn't form an opinion very easily that's a negative one. I give people the benefit of the doubt.

And I guess my motives here were to do the best for the Department and to do the best to protect the interests of my offices, who were political bosses. And I think that's why we're here as politicals.

I just—I'm amazed that my integrity has been questioned about some of these decisions. It's embarrassment to me.

Q. Have we questioned your integrity?

A. There have been those innuendos, yes, sir, by the grantee.

Mr. FISHMAN. No further questions.

ATTACHMENT D

THE UNDER SECRETARY OF
HEALTH AND HUMAN SERVICES,
Washington, DC, June 28, 1989.

Hon. GORDON J. HUMPHREY,
U.S. Senate,
Washington, DC.

DEAR SENATOR HUMPHREY: I want to respond to your letter of June 19 regarding the Department's decision to deny a grant extension to the Oakwood Child Development Center in Los Angeles.

As you know, Wayne Stanton denied the extension for the reasons set forth in his letter of August 6, 1988, a copy of which is enclosed. His denial was based on the recommendation of Mary M. Evert, then Director

of the Office of Community Services. The reasoning for Ms. Evert's recommendation is contained in her declaration of the Departmental Appeals Board which I have also enclosed.

In her declaration at paragraph 19, Ms. Evert stated as follows:

"I was convinced that Oakwood had not made a genuine effort to carry out the grant purposes but rather, had subjugated that goal to the interests of the Yeshiva. I also took into account several additional factors which underscored Oakwood's lack of reliability, i.e.: its violation of the drawdown condition, its failure to request a no-cost extension in timely fashion and after repeated reminders, its untimely and uniformative progress reports and the evident lack of continuity in staff responsibility. . . . There is no question, however, that the overriding consideration in my mind was Oakwood's abandonment of the grant purpose. . . ."

Ms. Evert's declaration also lists at paragraph 20 reasons which, in her opinion, constituted "bad faith" on Oakwood's part, as follows: "(1) the many false and misleading statements made by its representatives; (2) its knowing violation of the drawdown condition in the grant; (3) its attempt to trade 555 North LaBrea for inferior and unsuitable property owned by the Yeshiva; (4) its continual efforts to use the property for religious activities; and (5) the overwhelming evidence of its disinterest in the grant purpose."

In your letter to me of June 16, 1989, you characterized my remarks to you as indicating that the Department has alleged "no impropriety or unlawful conduct" in the Oakwood case. This does not mean, however, that the Department believes that Oakwood acted properly in carrying out the terms and conditions of the grant.

Finally, as per your request, I am also enclosing a copy of the transcript of the June 15, 1989 hearing before the Departmental Appeals Board.

I hope that these documents will provide you the information you need for your review, but if not, we will be glad to fill in where necessary. I would also be happy to have a member of our staff meet with you or your staff to clarify the facts further, if you would like.

Sincerely,

CONSTANCE HORNER,
Under Secretary.

ATTACHMENT E

DEPARTMENT OF HEALTH
HUMAN SERVICES,
Washington, DC, August 6, 1988.

Re 87-1-UR-CA-006 Economic Development.

Mr. IRA FRANKEL, CPA,
Oakwood Child Development Center, Inc.,
Los Angeles, CA.

DEAR MR. FRANKEL: This is in response to the letter dated June 30 from Mr. Barry J. Weiss requesting a one year no cost extension of the above-referenced grant.

We have reviewed the relevant information relating to your grant and based upon this review it has been decided that your request for a no cost extension cannot be approved. This decision is based upon the following: (1) Even though Oakwood received emergency funding on February 26, 1987 it failed to implement its proposed renovation project in the one year project period; (2) at the time the grant expired, your organization had not achieved any of its proposed goals or provided any other benefits to the proposed low-income beneficiaries of this project; (3) your grant expired on February 25, 1988 and you failed to request an extension until your letter dated June 30, 1988 even though you had been advised by phone and by letter to do this promptly; (4) Oakwood failed to submit any of the required quarterly progress reports on time and those which were submitted were unacceptably brief and uninformative; (5) your organization drew down the $300,000 for renovations of your building in May 1987 and you had not begun any renovations as of July 6, 1988, the dated of your most recent report; and, (6) there appears to be no continuity in staff responsibility since every few months we are asked to direct correspondence to a new person at a new address.

If you wish to appeal this decision, you must do so within thirty (30) days after you receive it. Address your notice of appeal to: Departmental Grant Appeals Board, Department of Health and Human Services, Humphrey Building, Room 451 F, 200 Independence Avenue, S.W., Washington, D.C. 20201.

In order that we may close out this grant, you are directed to return the unobligated balance of $300,000 plus any interest earned (less $100). In addition, all program income, including rental fees on the property located at 555 North La Brea Avenue, not validly expended for program activities as documented in an acceptable audit report, must be returned to the Federal Government. A check in this amount should be made payable to the U.S. Treasury and sent to the following address within 30 days of the date of this letter: Division of Financial Management, Office of Community Services, Family Support Administration, Department of Health and Human Services, 330 "C" Street, S.W., Room 2054, Washington, D.C. 20201.

After August 26, 1988, the mailing address will be 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

The following identifying information should be inscribed on the check: Federal Fiscal Year the funds were granted, grantee name, grantee number and a notation that the amount returned represents a disallowance.

We have furthermore noted that the real property acquired with grant funds is not being used for the purposes authorized by the grant, as is required by 45 CFR 74.134. You are therefore directed to dispose of that property in accordance with the provision of 45 CFR 74.134(c)(1) which reads as follows:

"(1) The property shall be sold and the Federal Government shall be paid in an amount computed by multiplying the Federal share of the property (see § 74.142) times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return."

Enclosed is a complete copy of Part 74 Subpart 0 for your information in connection with these disposition instructions.

If you have any questions concerning the issues addressed above, please contact Mr. Spencer Lott of my staff at (202) 475-0418.

Very truly yours,

WAYNE A. STANTON,
Administrator.

ATTACHMENT F

OAKWOOD CHILD
DEVELOPMENT CENTER, INC.,
Downey, CA, August 18, 1988.

Re Grant No. 87-1-UR-CA-006. Appeal No. 88-151.

Mr. WAYNE A. STANTON,
Administrator, Department of Health and Human Services, Family Support Administration, Washington, DC.

DEAR MR. STANTON: I am surprised and extremely shocked by your letter dated August 6, 1988 that contains not only inaccuracies, but unfounded and unreasonable accusations. It seems a shame that you did not have the courtesy to call or communicate your concerns with us before you issued a letter that can cause irreparable harm to the community. It appears that you are totally unfamiliar with the background to this Grant and have misinterpreted several key events that occurred prior to your involvement.

This letter shall serve as official notice that Oakwood Child Development Center, Inc. is appealing your decision immediately and will use every means available through either the appeal and/or legal system to protect the Department of Health and Human Services (DHHS) Grant (copy of Appeal Notice is attached). This letter was sent on August 12, 1988 by Certified Mail, return receipt requested.

Specifically, you should be aware of the following items:

ITEMS 1 AND 2

You refer to Oakwoods failure to "implement its proposed renovation project" and that Oakwood had not "achieved any of its proposed goals in the one year project period". The *main* reason why the project was not completed in the one year period was because DHHS never replied to any of our requests for clarification, etc., in a timely fashion. Oakwood would make a request, and then DHHS would not respond. Our letters were always followed up with dozens of phone calls in an attempt to expedite matters. In fact, even after Oakwood received *written* responses from DHHS, these were then subsequently reversed unilaterally by your Department, causing not only loss of time but considerable financial losses. To give you just one specific example: The escrow closed at the beginning of April, 1987, with 84% of the Grant money being spent as per the terms and conditions of the Grant (see closing statement attached). Oakwood then made several verbal requests to clarify whether certain additional space could be built with private funds for secretarian purposes. Oakwood was advised by DHHS to put the request in writing. DHHS's advice was followed and led to the letter from Oakwood dated June 22, 1987 (see copy attached).

On June 29, 1987 Oakwood received a reply from your Department that the request outlined in our June 22, 1987 letter was granted. I quote specifically from that letter. . . . "I am pleased to inform you that the Office of Community Services has no objection to this expansion as outlined in your letter" (see copy attached). Oakwood then moved full speed ahead with plans, working drawings, structural engineering reports (including auxiliary studies relating to the air conditioning, etc.).

The architects and engineers worked around the clock at an expense to Oakwood in excess of $40,000 to pay for fees, costs, application fees, etc. Not to mention all the time that was spent with meetings with the

City of Los Angeles officials at the Planning, Building, Health Departments, etc. All this flurry and activity was a *direct* result of the approval sent to Oakwood in your June 29, 1988 letter.

Oakwood raised, from *private* charitable sources, a commitment for an additional $500,000 to match the $300,000 that the Grant provided for. The $500,000 was to be used for the sectarian portion of the development, while the $300,000 Grant money was to be spent within the restrictions of the Grant. All of the working drawings and plans were designed specifically to accommodate Oakwood's request in the June 22, 1987 letter and DHHS's subsequent approval in the June 29, 1987 response.

However, to our absolute dismay and shock, Oakwood received a letter from DHHS without any forewarning on July 29, 1987 rescinding their previous approval letter of June 29, 1987. The timing of the July 29th letter was absolutely disastrous because Oakwood had spent time and money based on the DHHS June 29th letter. From July 29th until September 1st, there was a series of telephone communications to try to resolve the differences. During these conversations Oakwood was repeatedly assured that there would be a method worked out that would be mutually acceptable. On September 1, 1987 Oakwood at the request of DHHS, put a proposal in writing (see copy attached).

In the meantime, Oakwood could not withdraw the applications that had been filed with the City of Los Angeles nor could Oakwood circumvent the contractural agreements with the architects, engineers, etc. Oakwood followed up on its September 1, 1987 letter with many phone calls, with no clear or satisfactory response from DHHS.

On November 18, 1987 Oakwood sent another letter (see copy attached) asking for an answer to the September 1st letter. Again, there was no definite reply from DHHS. The November 18th letter was critical because Oakwood architects were meeting with the City of Los Angeles officials on November 24th and we needed to know where DHHS stood on our request. In addition, that November 18th letter notified DHHS that vacant possession would probably occur sometime in February 1988.

By the end of December, Oakwood suggested that perhaps a swap of properties might be able to resolve the issue. Again DHHS asked that Oakwood "put it in writing". This led to the January 28, 1988 letter (see copy attached).

At DHHS's request, Oakwood sent a reimbursement check of the interest on the $300,000 (which was placed into a Time Certificate Deposit pending the resolution of the differences). That check was sent on January 29, 1988 ($7,890.49) which represented interest from July 13, to December 10, 1987. Oakwood was also asked to substantiate its proposal of an exchange with certain appraisals. At considerable expense, Oakwood had appraisals ordered and they were forwarded to DHHS in January 1988. During all of these months, while the DHHS kept requesting more information and assuring Oakwood that there would be a satisfactory resolution, Oakwood continued getting its permits to start the construction. None of the money that was used to pay for all of the architects and engineers, city application fees, appraisals, etc. came from the $300,000 Grant (being reserved to pay constructions costs).

By February 1988 Oakwood still had not received any written replies to our September 1, 1987, November 18, 1987 and January 28, 1988 letters. By May 1988, Oakwood had 'given up' and reverted to the original terms of the Grant having suffered 11 months of frustration from DHHS's indecisions.

ITEM 3

This objection is, frankly, absurd. There were numerous telephone conversations discussing the extension. It was verbally understood by everybody involved that more time was needed. In fact, the April 11, 1988 Oakwood letter was an implied request for a no-cost extension.

In fact, the only amount that had not been spent (as of February 1988) in accordance with the Grant is the $300,000 for remodeling. This only represents 16% of the total Grant. The reason it has not been spent is because of the responsible and careful approach that Oakwood and its officers have taken in order to comply fully with DHHS's terms and conditions. The tone of your letter suggests that Oakwood would have been better to act in a careless and reckless manner and spend the money regardless of the unforeseeable circumstances that existed at that time.

ITEM 4

It is true that the quarterly reports were "brief". However, I take exception to the reference of the reports being "uninformative".

The first report adequately explained the disbursement of 84% of the Grant, specifically, the closing of the escrow with the $1.5 M.

As outlined in this letter, the only activity in Oakwood after the closing has been the negotiations with the tenant for vacant possession and the on-going planning meetings with the architects, etc. As a result of the DHHS letter (July 29, 1987) nothing else happened outside of these two events. Oakwood fails to see what else should have been reported.

ITEM 5

(See Item 1 and 2 above.) At the time the Grant expired (February 1988) Oakwood had not taken possession of the property since the tenant's lease only expired in February. The tenant (Azteca) is a branch of the Mexican Government and unfortunately, they move at a snail's pace of governmental bureaucracy and inefficiency. Because they are a branch of a foreign Government, Oakwood has been very careful not to be overly aggressive and to try to work with them.

Finally, Oakwood (in frustration and desperation) filed a Notice of Unlawful Detainer Action in the Superior Court of Los Angeles on July 8, 1988 (see copy attached) in order to get vacant possession so that renovations could begin.

In addition, at the time the Grant expired, (February 1988), the attempts to resolve the differences created by your July 29, 1987 letter were not finally resolved. Oakwood "gave up" in May 1988 and decided not to spend any more time negotiating and then resorted to the original conditions of the Grant. This involved *scrapping 11 months* of architectural and engineering work (a loss of considerable money) and starting over again.

All rental income was spent exclusively on architectural and engineering fees and costs associated with filing the plans with the City. However, as a direct result of DHHS's July 29, 1987 letter and actions, all of these monies have now been lost. Oakwood may possible look towards DHHS for reimbursement of these monies.

All the plans were redesigned, redrawn and resubmitted to the City of Los Angeles. The tenant has finally vacated 80% of the space. Contracts have been signed with a General Contractor to start immediately. Oakwood is legally obligated to fulfill its contractural agreements with the builders, the City (bonds, etc.), staff appointments, etc.

Considerable and incalculable damage will occur to Oakwood, private members of the community who have given so generously of their time and money, and to the hopes of the beneficiaries of the program if Oakwood is forced to close.

The delay you refer to in your letter was indeed inexcusable. However, it was caused as a *direct* result of the inconsistency of DHHS. The confusion was created at your end and Oakwood tried repeatedly from July 29, 1987 to May, 1988 (with the encouragement of DHHS) to "work things out" amicably.

ITEM 6

In this aspect, your letter is ominous and threatening and out of proportion to any minor technicalities that may have occurred. If anything, there always has been continuity. In my meetings with Mr. Bernie Urabe of the Office of the Inspector General of the DHHS and Mr. John Daems, Auditor, from the DHHS Education and Welfare Audit Agency (in November of 1987), it was pointed out that my office would be handling everything in connection with coordinating architects, engineers, renovations and the eviction of the tenant. Mr. Barry Weiss's office was always handling all corporate paperwork regarding minutes, officers, accounts, private fund-raising, etc.

The May 6, 1988 and December 7, 1987 letters that directed future correspondence to Barry Weiss were as a direct result of DHHS complaining that our quarterly reports were prepared "in an unprofessional manner". Mr. Weiss immediately handed out the responsibility to an outside accounting firm in order to comply with your request. Therefore, I fail to see the lack of continuity that you accuse Oakwood of.

If anything, the appointment of an outside accountant to prepare Oakwood's reports on a more professional basis shows that Oakwood not only tried to be responsive to your suggestions, but that Oakwood always responded promptly.

In regard to continuity of officers, etc., please keep in mind that Oakwood has had to deal with Mr. Kirker, Ms. Stone, Mr. Urabe, Mr. Daemes, Ms. Evert, Mr. Reid, Mr. Sparrow and now, yourself.

You should take into consideration that this is Oakwoods first Grant and that Mr. Weiss and the undersigned (both acting in a totally voluntary capacity) may not be as experienced as DHHS is accustomed to. That is why there has been a steady line of communication between Oakwood and DHHS since the inception of this program, in order to clarify and direct this program for the maximum benefit of the community.

In summary, Oakwood has always acted promptly and in a responsible manner. Time was lost due to the confusion and inconsistency that followed DHHS's letter of July 29, 1987. There has always been a continuity of staff responsibility. The appointment of an outside accountant is proof that Oakwood takes its accounting and quarterly reports seriously. It should be viewed in a positive light, rather than as evidence for "no continuity in staff responsibility".

Oakwood will not hesitate to resort to the courts for legal protection if that becomes necessary. Too much time and effort by concerned members of the community has gone into this project for it to be taken away from community on the ill-informed position of the DHHS.

If you have any questions, please do not hesitate to call me at (213) 858-1825.

Sincerely,

JOE BOBKER,
Project Manager.

ATTACHMENT G

U.S. SENATE,
Washington, DC, July 12, 1989.

MS. CONSTANCE HORNER,
Under Secretary, Department of Health and Human Services, Washington, DC.

DEAR CONNIE: I want to respond to your letter of June 28 regarding the Department's decision to deny a grant extension to the Oakwood Child Development Center in Los Angeles.

After having reviewed the materials which you sent to me regarding Oakwood, I continue to believe that the facts impel me to conclude that this grant should be allowed to continue, and that service to these 250 children should begin immediately.

Before I address the particular issues which you raise in your letter, I believe that a number of points need to be made clear: (1) HHS has repeatedly failed to demonstrate any improper or unlawful conduct on the part of Oakwood; (2) HHS has failed to demonstrate actions which objectively demonstrate "bad faith" on the part of Oakwood; (3) Oakwood represents the first time in HHS history that a no cost extension has been denied; (4) the monies returned from this project will go to the Treasury Department, not to HHS for reallocation; (5) the revocation of this grant will seriously jeopardize the community's pledge of $1 million to pay for the operation of this facility.

In your letter you quoted Ms. Evert as stating that "Oakwood had not made a genuine effort to carry out the grant purposes but rather, had subjugated that goal to the interests of the Yeshiva." According to my understanding of the matter, this is clearly not the case. After Oakwood had purchased the building, HHS took two months to respond that it would be appropriate to use the airspace above the community center for sectarian purposes. Having received this reply, Oakwood, per HHS instructions, then requested drawdown funding to proceed on renovation efforts. Five months after the building was purchased, HHS reversed itself, stating that no construction could occur above first floor of the child care center. Are these the facts, or not?

At no time was Oakwood less than fully committed to building the child care center. Instead, the delays in construction were caused by the delinquent and contradictory instructions which were issued by HHS personnel. Further, Ms. Evert's suggestion that Oakwood had "violated the drawdown condition" simply is not true. These drawdown monies were requested only after approval had been given for construction above the child care center. Are these the facts, or not? And, having received this approval, Oakwood would understandably have concluded that it could begin construction in the 30-60 days as required by HHS.

After HHS reversed its decision to allow construction above the first floor, Oakwood promptly requested a no-cost extension from Mr. Kirker, who felt that such an extension would be granted. Thus, Ms. Evert has improperly concluded that Oakwood failed "to request a no-cost extension in a timely fashion." On the contrary, it appears to me Oakwood has repeatedly demonstrated that despite HHS delays, it was committed to a prompt completion of the child care center.

On a number of occasions in your letter you refer to Ms. Evert's assertions of "bad faith" as well as "false and misleading statements" on the part of Oakwood and its representatives. *To date neither I, nor Senator Hatch, nor anyone else who has inquired about the Oakwood case, has been told of one false statement on the part of Oakwood—even though we have repeatedly asked for specific documentation of such allegations.*

In her testimony, Ms. Evert asserted the attempt to trade 555 North LaBrea for an alternative site, and the "continual efforts to use the property for religious activities," constituted "bad faith." These are the facts as I understand them: first of all, the suggestion of the alternative site was meant as an effort to speed the completion of the project, and in fact, an independent appraiser determined that the alternative site was of an almost equal value. Second, at no point did Oakwood attempt to use the child care center for sectarian activities. Instead, Oakwood simply asked HHS if it would be proper to use the *airspace* for sectarian activities. Considering the lack of building space, and the high land values in this area, this would seem to be a reasonable request on the part of Oakwood.

Last of all, your counsel stated that while there was no impropriety or unlawful conduct in the Oakwood case, that "this does not mean, however, that the Department believes that Oakwood acted properly in carrying out the terms of the grant." What does this mean? On the one hand your counsel advised Oakwood was guilty of no impropriety, on the other hand you are now saying that Oakwood acted improperly. Which is it? It appears to me Oakwood has offered effective rebuttal to the Department's criticisms. Again, I urge the Department either to grant the extension, or document a specific, material case against Oakwood.

With warm regards, I am

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senator.

ATTACHMENT H

U.S. SENATE,
Washington, DC, July 13, 1989.

HON. JOHN H. SUNUNU,
Chief of Staff to the President, The White House, Washington, DC.

DEAR JOHN: This is about the Oakwood case at HHS we discussed at our meeting in your office on June 15.

HHS still refuses either to grant an extension or to make a detailed, material case to justify the denial. Attached is my latest letter to the Department. I am sure you will agree it is reasonable to insist HHS document its case against the grantee, or, if it cannot do that, to grant the extension requested. Frankly, I feel we're being stonewalled.

I would very much like to meet with you upon your return from Europe, along with other Senators interested in the case.

With warm regards, I am

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senator.

ATTACHMENT I

THE UNDER SECRETARY OF
HEALTH AND HUMAN SERVICES,
Washington, DC, July 17, 1989.

HON. GORDON J. HUMPHREY,
U.S. Senate,
Washington, DC.

DEAR GORDON: This is to respond to your letter of July 12 regarding the Department's decision not to allow an extension of the grant to the Oakwood Child Development Center in Los Angeles.

As you may know, both the facts in the case, and the reasoning of the Department, are now before the Departmental Appeals Board for review. We expect an answer before the end of this month.

It would be advisable, I believe, for us to await the imminent decision of the Board. Should the Board conclude that the Department was incorrect in denying the extension, Oakwood would be given an additional opportunity to carry out the project as originally proposed.

Sincerely

CONSTANCE HORNER,
Under Secretary.

ATTACHMENT J

U.S. SENATE,
Washington, DC, August 2, 1989.

MS. CONSTANCE HORNER,
Undersecretary, Department of Health and Human Services, Washington, DC.

DEAR CONNIE: Because the Department has stonwalled for months my repeated, reasonable and legitimate requests to document a material case for its denial of the application for extension by the Oakwood Child Development Center, I have decided to ask for a GAO investigation.

The Department's most recent letter, that of July 17, refused again to provide the information, this time claiming to do so would somehow compromise the proceedings of the Appeal Board. This is ridiculous. On the one hand, the Department claims the Board is independent, on the other it claims that providing information to a Senator would compromise the Board's proceedings.

My concern over the Department's conduct is further heigthened by the revelation that a Department official attempted to intimidate a witness who testified in favor of Oakwood. According to the transcript of the April 18, 1989 hearing of the Departmental Appeals Board, David Kirker, former Deputy Assistant Secretary, testified he was advised by an HHS official that if he testified in favor of Oakwood his pending application for a position at HHS would be jeopardized. An attempt such as this to influcence by initimidation a quasi-judicial proceeding is appalling and scandalous.

The tragedy of all this is that 250 innocent children are being denied day care, apparently, for no good reason.

With warmest regards, I am

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senator.

ATTACHMENT K

U.S. SENATE,
Washington, DC, August 2, 1989.

HON. JOHN H. SUNUNU,
Chief of Staff to the President, The White House, Washington, DC.

DEAR JOHN: I have enclosed a copy of a letter which I sent to Constance Horner which outlines my intent to seek a GAO investigation of the matter of the Oakwood Center.

Despite my repeated requests of HHS to provide material reasons for its denial of Oakwood's application for extension of its grant, the Department continues to stonewall and has refused to provide me such information. I must conclude, therefore, that HHS has acted improperly in its dealings with Oakwood. The tragedy is, the welfare of 250 children who would be served by the child care center is jeopardized.

My suspicions of impropriety on the part of the HHS are heightened further by the revelation that a Department official sought to intimidate a witness who testified in favor of Oakwood at a recent hearing. According to the transcript of the April 18, 1989 hearing of the HHS Department Appeals Board, David Kirker, Deputy Assistant Secretary for the Family Support at HHS during the last Administration, was advised by an HHS official that if he testified in favor of Oakwood, his pending application for a position at the Department would be jeopardized. An attempt such as this to influence through intimidation a quasi-judicial proceeding is appalling and scandalous.

John, something is very wrong in the Department's dealings with Oakwood. Its stonewalling of my reasonable and legitimate requests that the Department state its material case against the Center, if it has one, and the attempt to intimidate Mr. Kirker smell to high heavens.

With warmest regards, I am

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senator.

[Before the Department of Health and Human Services, April 18, 1989, Docket No. 88-11]

IN THE MATTER OF OAKWOOD CHILD DEVELOPMENT CENTER

The above-entitled matter came on for hearing, pursuant to notice, before Alexander G. Teitz, Presiding Board Member, at 451 7th Street NW., Room Number 2155, Washington, DC.

APPEARANCES

On Behalf of Oakwood Child Development Center: Leo Fishman, Esq., Neal L. Thomas, Esq., 1990 M Street, NW., Washington, DC 20036.

On Behalf of Family Support Administration (FSA): Madeline Neese, Esq., Department of Health and Human Services, 200 Independence Ave, SW., Washington, DC 20201.

EXCERPT OF EXAMINATION OF DAVID KIRKER

A. This particular section on the timely submission of reports?

Q. Uh huh.

A. Yes.

Q. Does it have a future implication?

A. It does for future funding, yes.

Q. Thank you. Now, let me ask you another question. Has anybody from the Department of Health and Human Services cast negative aspersions on the fact that you are a witness in this proceeding?

Ms. NESSE. Objection. I don't know what "cast negative aspersions" is. If somebody had a conversation, let's hear about it.

Q. Has anyone talked to you about your testimony before the Departmental Appeals Board?

A. Yes, they have.

Q. Could you relate the circumstances and the nature of that conversation?

A. Yes. I inquired as to the availability of a position in the Department and that I was considering applying for it and wanted to establish the environment under which my application would be considered. And one of the reasons I was given that it would not be looked on favorably was my alleged testimony against the Department in this case.

Q. Who, with whom did you discuss this issue? Who told you this?

A. Do I have to answer?

Mr. TEITZ. Well, your counsel has asked you the question. I——

Mr. FISHMAN. I'm not his counsel. He's——

Mr. TEITZ. Well,——

Mr. FISHMAN. A witness.

Mr. TEITZ. For this purpose, you're his counsel. You're—you've been asked a question and there's been no objection to it. I would say unless it's privileged in some way, you have to answer.

A. All right. Catherine Bertini.

Q. Who is Catherine Bertini?

A. She's the Acting Assistant Secretary for Family Support.

Q. An acting assistant secretary for Family Support, how does that relate to your role or the former role in OCS? Is this a supervisory or a higher position or——

A. This is the authority for this particular program and this particular grant.

Q. And when did this conversation take place?

A. About a week ago.

Q. Let me ask you a frank question. Are you comfortable testifying?

Ms. NESSE. Objection.

Mr. TEITZ. Well, I think that's, I think that's an objectionable question the way it's phrased. I'll sustain your objection.

Q. What did Ms. Bertini, Assistant Secretary——

Mr. TEITZ. How do you spell it so we get it for the record; we don't have the name. Do you know how she spells her name?

A. B-E-R-T-I-N-I.

Q. What did she tell you?

A. I expressed an interest in applying for a position and one of the limitations that was brought to my attention could be the fact that I am testifying allegedly against the Department in this case.

Q. That could be brought?

A. That could be viewed as a negative factor.

Q. What is your specific reaction to this?

A. I withdrew my application.

Mr. TEITZ. Do you have any other questions?

Ms. NESSE. Just one or two.

ATTACHMENT L

THE UNDER SECRETARY OF
HEALTH AND HUMAN SERVICES,
Washington, DC, September 5, 1989.

Hon. GORDON J. HUMPHREY,
U.S. Senate, Washington, DC.

DEAR SENATOR HUMPHREY: I am most distressed to receive your August 2, 1989 letter in which you suggest that the Department has not been sufficiently helpful or forthcoming in your requests for information about the Oakwood decision.

As you know, we have sent documents and briefs which explains the Department's decision not to extend Oakwood's grant after it expired. In addition, on two or three occasions, in writing and by phone, I have offered to provide HHS staff to brief you or your staff on Oakwood in as much detail as you like. To day, we have not received any response to these offers.

I have not, as you suggest, refused any information asked for nor have I suggested that providing information would compromise the Departmental Appeals Board's decision. Rather, my recent letter to you indicated that I think that it is wise for all concerned to await the Board's upcoming opinion as to whether the Department acted correctly in denying the extension.

With regard to your reference to the April 18 testimony before the Department Appeals Board, let me simply say that knowledgeable Departmental staff disagree with the way you have characterized what was said. The family Support Administration, the Office of the Inspector General, and the Office of the General Counsel are all fully aware of the testimony. It is my understanding that that testimony is viewed as not only irrelevant to the merits of the Department's decision, but is also inaccurate.

I trust that a GAO report on the Oakwood matter will help clarify the circumstances surrounding the Department's decision. Meanwhile and as before, we would be happy to provide staff to give you a detailed, in-person briefing. Please let me know if this would be useful.

Sincerely,

CONSTANCE HORNER,
Under Secretary.

ATTACHMENT M

U.S. SENATE,
Washington, DC, November 8, 1989.

Hon. JOHN H. SUNUNU,
Chief of Staff to the President, The White House, Washington, DC.

DEAR JOHN: I am writing to update you once more on the matter of the Oakwood Child Center.

One month ago, Rabbi Balkany and I met with Richard P. Kusserow, the Inspector General of HHS to review his audit of the Oakwood matter. At that time, Mr. Kusserow admitted that Oakwood had done nothing wrong or improper in regards to the grant from HHS, but instead, that HHS was attempting to cover itself from the fact that this grant had been made in an accelerated fashion. To quote Mr. Kusserow, "how could I ask the Secretary to continue this grant in the atmosphere of HUD."

Further, Mr. Kusserow went on to state that if the Inspector General's office had found anything wrong, "they would have had a full investigation." Instead, his office merely conducted a routine audit.

Clearly, Oakwood has become a victim of circumstances beyond its control.

Currently, Oakwood has two potential steps that it could take. It could take HHS to court, which would entail years of litigation, or, it could refund the entire $1.8 million grant. While Rabbi Balkany has recommended that Oakwood take the latter option. I believe that in fairness, it is incumbent on HHS to negotiate an extended repayment of this grant. If Oakwood were required to return the entire grant at this time, this would require the sale of the building, and ultimately would prevent over 250 children from having adequate day care.

John, having been involved with the Oakwood matter for over 11 months, I believe that justice and fair play requires that the HHS counsel work out an extended repayment plan of eight to ten years, so that the day care center may go forward. Requiring immediate repayment will make it impossible for the center to serve the children. Frankly, I believe it will take your personal involvement to secure a decent settlement of the problem HHS had created for Oakwood.

With warmest regards, I am

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senator.

ATTACHMENT N

U.S. SENATE,
Washington, DC, September 25, 1990.

Hon. C. BOYDEN GRAY,
Counsel to the President, The White House, Washington, DC.

DEAR BOYDEN: I am writing as a follow-up to our conversation earlier today.

Three years ago, Oakwood Child Care Center received a total of $1.8 million to purchase and renovate a building for child care use. Since the center did not open on time (mostly because of HHS bungling), HHS took the unusual step of refusing any extension for the completion of this renovation. Instead, HHS demanded that the grant be returned immediately. As the correspondence which I sent to Fred McClure indicates, this decision was not only unjustified and unfair, but frankly, it is an outrage that Oakwood has been treated in such a fashion.

Every person I have spoken to, including the Inspector General and the General Counsel of HHS, emphatically agreed that beyond any question of doubt, Oakwood was not guilty of any improper, illegal or irregular activity. Therefore, I would like a letter from HHS to Oakwood stating that they are allowing them to continue with the grant. This, obviously, is no additional cost to HHS.

If HHS is unable to make this change, and if they refuse to compromise on this issue, they should at least agree to a much less burdensome repayment schedule. Presently, the money is due in 18 months. Ten years would be more reasonable, in terms of permitting Oakwood to go forward and begin serving children as soon as possible. The repayment schedule is discretionary with the Department and would be fully consistent with the law and regulations.

If HHS is unable to agree to either of the options I outlined, I will take this issue to the floor of the Senate, and I will explain to my colleagues how HHS has outlandishly acted towards these children. I will also insert in the Congressional Record all of the correspondence between me and HHS and vice-versa and between me and the White House. Since Oakwood did no wrong, I want everyone to understand why I am seeking justice for that organization and the children it seeks to serve.

Boyden, I appreciate your assistance on this matter, and I hope that you can bring this matter to an immediate and satisfactory conclusion.

With warmest regards, I am

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senator.

ATTACHMENT O

U.S. SENATE,
Washington, DC, October 9, 1990.

Hon. C. BOYDEN GRAY,
Counsel to the President, The White House, Washington, DC.

DEAR BOYDEN: I appreciate your getting back to me regarding the issue of the Oakwood Child Care Center, however, I have to admit that I was disappointed by your response.

In addition to the information which I outlined in my letter of September 25th, there are two additional facts about the Oakwood grant which makes the HHS actions particularly egregious. Number one, the Oakwood case is the first and only example of an HHS grant recipient ever having been denied an initial request for additional time.

I could understand such an action being taken by HHS if there was evidence of impropriety on the part of Oakwood. However, during the last seventeen months I have been involved with this issue, every person I have spoken to, including the Inspector General and General Counsel of HHS, emphatically agreed that beyond any question of doubt, Oakwood was not guilty of any improper, illegal or irregular activity in relation to the grant.

Under these circumstances, and in light Oakwood's good faith efforts to comply with the terms of the grant, HHS's rushed demands to revoke the grant are outlandish.

Number two, I would disagree with any characterization that Oakwood received a "fair and balanced" appeals review. Not only was the HHS review board hand picked and paid for by HHS, but in the history of this body, over 90 percent of its decisions have been rendered in favor of the HHS action. If this is not a "stacked deck," I do not know what is.

Boyden, the most important issue related to this grant is not a challenge to HHS's political power, nor is it an issue of saving the treasury $1.8 million. The most important issue is the welfare of these 250 children.

At the very best, HHS should continue this grant. Such a decision would entail no additional cost to HHS or the United States Government. At the very least, HHS should create an extended repayment schedule of a minimum of 10 years, and allow these children to continue receiving child care services.

Clearly, Oakwood has been the victim of events beyond its control. I do not request that they be given a special favor. I do, however, request that they be given a fair chance to meet the original criterion of their grant.

With warmest regards, I am

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senator.

ATTACHMENT P

U.S. DEPARTMENT OF JUSTICE,
CIVIL DIVISION,
Washington, DC, October 26, 1990.

Re Oakwood Child Deverlopment Center.

Hon. CONSTANCE J. HORNER,
Under Secretary of Health and Human Services, Department of Health and Human Services, Washington, DC.

DEAR UNDER SECRETARY HORNER: As we briefly discussed on the telephone, I met yesterday in my office with U.S. Senator Gordon J. Humphrey, Mr. Joe Bobker of the Oakwood Child Development Center ("Oakwood"), and Rabbi Milton Balkany to discuss the status of the Department of Health and Human Services' ("HHS") settlement of the matter related to its grant to Oakwood.

At yesterday's meeting, Mr. Bobker stated that Oakwood wished to renegotiate the terms of the settlement with HHS, in order to lengthen the payment period, because Oakwood's inability to raise sufficient private donations rendered it unable to comply with the payment schedule contained in the settlement.

As I had on previous occasions regarding this matter, I stressed that the role of the Department of Justice was as attorney, that the principal in this matter was our client, HHS, and that Justice would not and could not initiate any substantive alteration of the settlement. Justice, therefore, has nothing before it upon which to take action. Any such action—and I took no position at all as to whether it would be substantively or legally merited—would have to be initiated through the Department of Health and Human Services as HHS has the authority to enter in to such negotiation at its discretion. Only if we were presented with such proposed action would we review it or otherwise opine or act upon it.

Having made it clear that the Department of Justice could not unilaterally reopen the matter, I agreed to convey a statement of Oakwood's position to you (which I have done, supra) and to transmit certain documents that Mr. Bobker and Senator Humphrey's office provided. Copies of these documents are enclosed herewith.

With Kindest regards.

Very truly yours,

STUART M. GERSON,
Assistant Attorney General.●

TURMOIL IN EL SALVADOR

● Mr. McCAIN. Mr. President, the prospects for peace in El Salvador have grown dimmer lately. Every day we hear new reports of rebel activity in preparation for another offensive. Last November's offensive cost 2,000 lives. There is every indication that the FMLN's next attempt to achieve by force of arms what they cannot achieve by force of reason will have consequences just as deadly as last year's bloodbath.

On the day before the Senate placed restrictions on military assistance to the freely elected Government of El Salvador, the FMLN signaled the approach of a new offensive with a fierce mortar barrage on the headquarters of the Salvadoran Air Force. There was one casualty—a civilian. Last Tuesday, an FMLN attack on the Defense Ministry managed to kill two children sleeping in one of the many private homes that surround the Ministry.

Mr. President, the FMLN has the inclination and the means to again throw El Salvador into the chaos of war. They are adequately armed to undertake a formidable offensive.

Reliable reports conclude that the FMLN is better armed than it was before the last offensive, having added surface-to-air missiles to its arsenals. Guerrillas are now traveling in larger, combat-ready groups. The Salvadoran Armed Forces have been on their highest state of alert twice this month. They are certain that an FMLN offensive is imminent.

Last Friday, the Senate contributed to the breakdown in peace negotiations and the escalation of hostilities in El Salvador by declining to balance restrictions on our assistance to the Government of El Salvador with our clear support for a cessation of hostilities. I fear that Congress' rejection of a cease-fire condition on the FMLN while we cut aid to the government will encourage the FMLN to pursue a strategy aimed not at the peaceful resolution of the war, but at further undermining Salvadoran military strength. I fear that they will persist

in delaying the negotiation process while they wait for the military to feel the pinch of the 50 percent cut in U.S. assistance.

Of course, an offensive is the most rapid way to deplete military arsenals. It is also the FMLN's preferred method of provoking El Salvador's right wing terrorists into commiting human rights atrocities. The despicable murder of the Jesuits in the midst of last year's offensive resulted in the military's loss of one-half of their assistance from the United States. I hope those responsible for that atrocity have learned the lesson that Congress has attempted to teach them, because I am convinced that the FMLN have.

The FMLN have learned that any further involvement in human rights violations by elements of the Salvador military will cost the constitutional Government of El Salvador all of its military assistance. I am quite certain that the FMLN will do whatever necessary to achieve their long sought goal of ending American support for Salvadoran democracy. I urge the Government and Armed Forces of El Salvador to do all in their power to protect Salvadoran noncombatants from attacks by the killers who inhabit both extremes of Salvadoran politics.

Mr. President, for the reasons I have just stated, I am certain that Salvadoran democracy is in imminent danger today. I and other Senators sought to defend Salvadoran democracy by supporting a ceasefire provision in the Foreign Operations bill passed last Friday. We did not succeed. The opponents of our amendment rejected our reasonable appeals, the appeals of the Government of El Salvador, and the appeals of the administration. They rejected all attempts to compromise our differences. They rejected all requests to compel the FMLN to negotiate in earnest. United States policy toward El Salvador is now clearly their responsibility. I pray that they will exercise their responsibility with courage and wisdom.

We will need more than luck and the good wishes of the FMLN's American lobby to save Salvador's democratic experiment. When the FMLN drop all pretense of good faith negotiations and fully resume their violent opposition to democracy, Congress will need to stand united with the President to provide the necessary support to the legitimate Government of El Salvador. Together, we must thwart the FMLN's determination to deprive the Salvadoran people of their right to self-government.

The moment when our commitment to freedom in El Salvador will again be tested is fast approaching. I believe Congress' recent actions have hastened that moment's arrival. I believe that a majority in both Houses of Congress acted with the best of intentions, but I believe Congress has made serious mistakes in designing our new policy toward El Salvador. As I have stated, the authors and supporters of our new relationship with El Salvador will be expected to bear the lion's share of responding to the FMLN's unyielding opposition to Salvadoran democracy.

I am sure that the architects of that policy will remember that their stated goals were peace and freedom for Salvadorans. I believe those noble goals will compel their support for the Government of El Salvador when the FMLN again attempts to force on the people of El Salvador the kind of totalitarian rule that the rest of the world is so busy discarding. I promise them my support, when they rise on the floor of the Senate to call on the President to restore full military assistance to the institutions that a majority of Salvadorans have chosen to govern their country.●

A TRIBUTE TO A. FOSTER McKISSICK

● Mr. THURMOND. Mr. President, I rise today to honor the memory of Mr. A. Foster McKissick, of Greenville, SC, who died tragically in a plane crash October 25, 1990. Mr. McKissick was a man of capacity, character, and compassion, who contributed much to South Carolina. He will be sorely missed by his many friends and admirers.

Mr. McKissick was a son of Ellison Smyth McKissick and Jean R. McKissick, of Greenville. He earned a bachelor's degree in economics from Presbyterian College, graduating in 1950. He served our Nation in the Marine Corps for 3 years, including a tour of duty in Korea during the Korean war.

Mr. McKissick was known throughout our State as an outstanding business leader. He began his career in the 1950's and eventually created one of South Carolina's prominent businesses, the Litchfield Co. His combination of native ability, common sense and boldness enabled him to negotiate the sometimes treacherous terrain of the business world with great success.

Mr. McKissick began his commercial endeavors at Alice Manufacturing Co. in Easley. He eventually became the owner of several automobile dealerships and later expanded his interests by beginning a chain of movie theaters which proved very successful. He invested in real estate for many years, and later developed much of his land into the well-known Litchfield Resort complex.

Mr. McKissick was extremely generous with both his time and his money, and contributed to many charitable and civic efforts. He was active in the United Way of Pickens County and was a devoted member of St. Paul's United Methodist Church. In addition, he served a term on the South Carolina Development Board and contributed his talents to the Citadel College Development Board.

Mr. McKissick was a fine man, a loving and conscientious husband and father, a loyal friend, and a leader in the South Carolina business community. He was an outstanding individual, and we shall miss him. My wife Nancy and I would like to extend our deepest sympathy to his wife, Sophie Fisher McKissick, and the rest of his family at this difficult time.●

THE DEPARTURE OF U.S. SENATOR JAMES A. McCLURE

● Mr. INOUYE. Mr. President, I rise today to bid farewell to my colleague, JIM MCCLURE, of Idaho. He has served in the Senate since 1973 and previously served in the U.S. House of Representatives, when first elected in 1966.

Mr. President, many of my colleagues have spoken of JIM MCCLURE's knowledge and guidance of Federal lands issues. However, I want to speak about another matter that many may not be aware of, that is JIM MCCLURE's assistance to the people of the Pacific Basin U.S.-flag territories, commonwealths, and federated states.

As the ranking member of the Senate Energy and Natural Resources Committee, and the ranking member of the Senate Appropriations Subcommittee on the Interior and Related Agencies, I have worked very closely with Senator MCCLURE to formulate and shape policies directly affecting the people of the Pacific Basin islands. The people of the Pacific Basin appreciate the guidance and assistance that JIM has given them over the years, especially in resolving many difficult issues affecting their governments.

To JIM and his family, my best wishes in all their future endeavors.

HONORING BRIG. GEN. CHARLES E. KRUSE

● Mr. BOND. Mr. President, I would like to take this opportunity to recognize Charles E. Kruse on his confirmation by the Senate as brigadier general in the Missouri Army National Guard.

Charlie has served in the Guard for more than two decades. He has advanced steadily through the ranks beginning with his graduation from Officer Candidate School in 1969. He then completed the Army transportation officer basic course at Fort Eustis, VA; the Army engineer officer advanced course at Fort Belvoir, VA; and graduated from the U.S. Army Command and General Staff College at Fort Leavenworth, KS. Throughout this time he held a number of command positions, most recently serving as a battalion commander in the 35th In-

fantry Division of the Missouri Army National Guard. In January of this year, Charlie's experience and dedication to the Guard were recognized when he was appointed assistant adjutant general of the Missouri Army National Guard.

Charlie's activities in the Guard are impressive on their own. However, his other accomplishments are just as outstanding. He currently serves as the director of the Missouri State Department of Agriculture—a position he has held for nearly 6 years. In that position he does an excellent job of representing the interests of Missouri's farmers and agribusinessmen.

Mr. President, I join Charlie's wife Pam, his family and his friends in congratulating him as he assumes the rank of brigadier general. Both the Army National Guard and the people of the State of Missouri have benefitted from his long service, and we look forward to many more years of his continued hard work.●

WESTERN NORTH CAROLINA WILDERNESS ACT OF 1990

● Mr. SANFORD. I rise to express my disappointment that we were unable to pass H.R. 5388, the Western North Carolina Wilderness Act, in the 101st Congress. The matter will come before us again next year.

I must note the hard work of Congressman CASS BALLENGER as he authored and steered this bill through the House. Congressman JAMIE CLARKE has also contributed greatly to the success and scope of the measure. And, of course, I am grateful to my distinguished Senate colleague, Mr. FOWLER, for his essential support for H.R. 5388. Mr. FOWLER continues to demonstrate his sincere concern for the protection of our forests.

The areas of my State that would have been protected by H.R. 5388 are of great importance to my constituents and the many thousands of visitors that enjoy the wonderful mountains of North Carolina each year. Roughly 24 million people live within a 250-mile radius of the areas in question, including a 7,140-acre tract known as the Harper Creek area, and the 5,710 acres of Lost Cove. I strongly support the designation of these tracts as part of the wilderness system. They lie within North Carolina's 10th Congressional District, represented by Congressman BALLENGER. As I have mentioned, Representative BALLENGER, as the original sponsor of H.R. 5388, showed great foresight and initiative in developing the bill.

Craggy Mountain, a magnificent natural area in the 11th District, was added to the original version of H.R. 5388 by Congressman CLARKE during the House Interior Committee markup.

Both of the areas mentioned in H.R. 5388 are accessible from the Blue Ridge Parkway and would provide the public with much-needed wilderness recreation benefits as this region becomes more popular. Trails through the forests make these treasures even more accessible by foot.

Mr. President, this is no new issue. The 1984 North Carolina Wilderness Act designated five properties as Wilderness Study Areas. Then, in 1987, after a thorough multiyear analysis by the Service under their forest planning process, Lost Cove, Harper Creek, and Craggy Mountain were all recommended for inclusion as wilderness. Two other tracts studied, the 3,200-acre Overflow area and the 8,490 acre Snowbird area, were suggested for release from wilderness status.

Lost Cove is a clearly defined basin surrounded by ridges, which is an uncommon combination in our State. A mostly steep and rugged tract with excellent scenic qualities, it includes the thousand-foot Big Lost Cove Cliffs that can be clearly seen from the parkway. The 80-foot falls of Lost Cove Creek, and Hunt Fish Falls are among the great waterfalls located here. The area is also a black bear sanctuary and provides high-quality trout habitat, trophy status and native trout.

Lost Cove was logged around the turn of the century but has not been logged since that time, except for 75 acres around 1970. The area does contain a single low-standard road capable of access by four-wheel drive vehicle. And, the Cove also contains pockets of virgin forest, and comprises part of the Grandfather Mountain Window. The elevation varies from 1,700 to 3,900 feet.

Separated from Lost Cove only by a dirt road, the Harper Creek acreage also affords beautiful views of Grandfather Mountain and the surrounding mountains. More high falls and imposing rock formations characterize this area; Harper falls, North and South Harper falls, and the Little Lost Cove Cliffs all add to this place of natural wonders. The exposed rocks are among the oldest in the Appalachian Mountains—over 1 billion years old. Like Lost Cove, this tract is a black bear sanctuary and contains excellent trout water.

Much of the Harper Creek area was also logged in the early 1900's and no subsequent logging has occurred, with the exception of about 488 acres in 1970. Pockets of old-growth forest remain on the steepest ground. The area contains no roads, and covers about half of the Harper Creek watershed. Elevations here vary from 1,600 to 3,400 feet at Little Lost Cove Cliffs.

According to the Forest Service, both Lost Cove and Harper Creek "provide a high sense of remoteness" and will help meet demand for additional wilderness recreation. In addition to supporting several high-quality trout streams, the area is popular for hunting and fishing; these uses would certainly continue upon wilderness designation.

Finally, Congressman CLARKE has provided an opportunity to preserve, through wilderness status, the 2,380 acre Craggy Mountain as well. The mountain is currently a very popular area for hiking, hunting, and fishing and is expected to remain so upon wilderness designation. The area contains large pockets of virgin forest, and the land varies in elevation from 3,000 to 5,600 feet. In addition, several endangered plant species are present in the lush forests of Craggy Mountain, including Gray's lily, spreading avens, and the one-flowered rush.

Mr. President, as I noted in the beginning of my remarks, strong local support exists in North Carolina for the designation of all three areas as wilderness. My congressional colleagues and I have received hundreds of letters in support, and only a few in opposition. Such local agreement about wilderness values is rare and should send a clear message to the Senate about the merits of this bill.

Again, I wish to commend Congressmen BALLENGER and CLARKE, and Senator FOWLER, for their efforts on behalf of the Western North Carolina Wilderness Act. We will be back next year to try again with this measure.●

THE LEGISLATIVE HISTORY OF SECTION 177 IN THE CLEAN AIR ACT AMENDMENTS OF 1990

● Mr. SYMMS. Mr. President, as I stated during the debate on the Clean Air Act Amendments of 1990, I think that my colleagues who supported this bill deserve a great deal of credit for their tireless efforts to bring the bill to the floor. I continue to hope that the Senate's action last Saturday will not be as negative for the American economy as I fear it will.

I have the utmost respect for my colleagues who voted for the bill, even though I disagree with their judgment. I am quite troubled, however, by some efforts to fill the CONGRESSIONAL RECORD with extraneous material interpreting, but really rewriting, the plain language of the bill and the current law. The pages of the daily edition of the CONGRESSIONAL RECORD for October 27 contain numerous extraneous opinions that purport to be detailed "explanations" of what is in the bill. I want to comment briefly on those explanations in one important area of the law that, as I understand matters, was not changed in this bill. On this one issue, so that no one is confused about what the current law requires, I want to set the record straight.

THE AMENDMENTS TO SECTION 177

The issue I want to address is section 177 of the Clean Air Act, which governs decisions by individual States to adopt California motor vehicle emissions standards. Because of the significant changes that the bill made in other parts of the motor vehicle control program, it is this Senator's understanding that the conferees thought it proper to reaffirm and clarify the provisions of the current act with respect to State election of California vehicle emissions standards under section 177. Even though I did not vote for the bill, I certainly support the conferees' approach to this particular issue.

The amendment to section 177 continues to allow the States to adopt the California program under section 177. It also makes it plain that a State exercising this adoption must enforce the California rules exactly as California does. The inevitable effect of nonidentical enforcement would be unacceptable differences in what the two States—California and the adopting State—would require of vehicles sold in their jurisdictions. Those differences would be unacceptable because the current law, which the new act has affirmed, only allows an adopting State to use standards identical to those of California. The standards are not identical if they are being enforced differently in each jurisdiction that has adopted them.

Under the new act, as under current law, States with nonattainment areas may adopt California vehicle emissions performance standards if a waiver has been granted under section 209 for those standards, and the State has an approved State implementation plan that covers the California rules. The relevant California rules must be final rules in California, and have received the necessary waiver under section 209.

The lead-time requirements of current section 177 have been left unchanged. If a State follows the necessary procedures, California standards can take effect in the first model year commencing 2 model years after the State has adopted the California standards. Thus, a State that adopted fully-waived California standards in November 1992 could, for example, have those standards take effect beginning in model year 1996. This is important to the stability of State programs adopting California standards under this act.

Contrary to the explanation offered in the October 27 daily RECORD, section 177 does not permit discretion with respect to the so-called third car problem. In point of fact, the plain language of the new text for section 177 expressly forbids any action that would have the effect of creating a third car scenario. Thus, the view that States may enforce section 177 in inconsistent ways, so long as no undue burden is created for vehicle manufacturers and the public is in direct conflict with the plain language of section 177.

The same holds true for the claims in the RECORD that adopting States can require each and every vehicle coming off the assembly line and intended for their jurisdiction to be tested for compliance with California emissions standards, and that section 177 does not require that vehicles sold in an adopting State be "physical[ly identical]" to vehicles sold in California. Section 177 requires "identical" standards and identical standards means, for emission regulatory purposes, identical cars. This is what the 1990 amendment to section 177 recognizes. There is no discretion left for the States with respect to a third car.

Similarly, the requirement that each and every vehicle be tested for and pass all emissions standards was a provision of the Senate bill to which the House objected and that the conference rejected. Neither California nor other States can require that each vehicle coming off the assembly line be tested.

Finally, with respect to enforcement of the California standards in other States, several points should be noted.

First, the legislative history from 1977 clearly states that section 177 "is not intended to allow States, other than California, to require additional new vehicle certification testing or enforcement testing since such testing will be conducted under Federal and California law." (H. Rept. No. 294, 95th Cong., 1st Sess. 311.) "California law" is not, for example, New York law. There is simply no authority in the 1977 legislative history of section 177 to justify any separate State test program outside California, much less recall testing under color of an adopting State's law that creates a "burden" of any kind on manufacturers.

Second, the text of the 1977 House report reads as follows:

> This new state authority [in section 177] should not place an undue burden on vehicle manufacturers who will be required, in any event, to produce vehicles meeting the California standards for sale in California. The provision is not intended to allow states, other than California, to require additional new vehicle certification testing or enforcement procedures since such testing and enforcement will be conducted under Federal and California laws.

Id. The "undue burden" language relates only to the production process: all the 1977 report says is that there is no "undue burden" in turning out additional vehicles for other States under section 177, because the factories would be building vehicles to the California standards "in any event."

In sum, I support the approach taken by the conference to the third car questions and the other enforcement issues that exist under section 177, and expect that EPA and the States will respect their limits.

CIVIL PENALTIES

The pages of the CONGRESSIONAL RECORD for October 27 contain extensive remarks on the Clean Air Act Amendments of 1990. One point in particular, regarding civil penalties for violation of the clean-fuel vehicle program requirements under title II, bears comment. In a document labelled only "Exhibit 1," the distinguished majority leader included a paragraph on civil penalties that opines:

> [A] mere $25,000 penalty [under amended sections 203 and 205] for failure to produce even one vehicle in the alternative fuels and fleets program would be inadequate. (S16903, col 3.)

In the drafting process, however, the conference specifically rejected language that would have added a new subsection 203(a)(5) to the bill to create $25,000 per vehicle penalties. The new subsection was unnecessary, because current sections 205 and 207 provide ample enforcement authority and public remedies for violations of the clean-fuel vehicle provisions of the new law.

THE "SECOND TIER" TAILPIPE STANDARDS

The Clean Air Act Amendments of 1990 make significant changes in some part of the Motor Vehicle Emissions Control Program, while leaving other parts largely unchanged. It is important to accurately understand the effect of the amendments on specific EPA and California vehicle emissions rulemakings. The October 27 RECORD contains the following observation:

> California is contemplating the use of other emission control technologies that promise yet further reductions. The California Air Resources Board recently adopted a Low Emission Vehicle (LEV) program . . . which takes effect in model year 1994. For these standards to take effect the Administrator must grant California a waiver under Section 209(b) of the Act, the criteria for which are found under Section 202(a). The Administrator must conclude that the LEV standards are technologically feasible and that the cost of compliance with such standards is reasonable within the time frame required by California. Since California's LEV standards and timetable are both more stringent than the Tier II requirements, the Administrator's approval of California would represent a conclusive determination regarding the technical feasibility of the Tier II standards.

S 16977 (col. 3). As I understand matters, however, that statement does not accurately reflect the technical basis for the LEV proposal. The LEV proposal is expressly premised on a high level of technical uncertainty, and CARB has acknowledged that the LEV standards may need to be revised later in the decade. As CARB Chairwoman Sharpless stated in a letter to the House Committee on Energy & Commerce in July:

> The use of technology forcing requirements in achieving improvements in California's air quality has been successful over the

years, causing us to once more rely on this approach to achieve mandated air quality improvements. . . . (T)he proposed standards can be revisited should the expected progress of technology not take place as anticipated.

Letter from Jananne Sharpless, July 26, 1990 (emphasis added). That CARB reconsideration may come long after EPA acts on the section 209 waiver. If EPA does approve a LEV waiver, it can hardly be taken as a "conclusive determination" that LEVs are feasible; that is obviously not even CARB's position. Indeed, if such a "conclusive determination" is required under section 209(b), then it would seem impossible to grant the waiver, in light of CARB's July 26 letter. The statement in the October 27 RECORD is counseling either a prejudgment of the Federal "Tier II" issue, or the use of a section 209 waiver standard that CARB cannot meet. It is neither good public policy nor helpful to anyone to create such a Hobson's choice. The section 209 wavier application from CARB, like the Tier II standards, will stand or fall on its own merits.●

THE PERSIAN GULF CRISIS AND THE ARAB-ISRAELI CONFLICT

● Mr. CRANSTON. Mr. President, as this session of Congress draws to a close, we can only marvel at the sea of change in East-West relations we have had the good fortune to witness. Yet, as we embark on this new era of freedom and democracy, Saddam Hussein has given us a sharp reminder of how a mercurial leader backed by a chemical and biological-tipped military can dampen our optimism and cloud our future. Even if the gulf crisis were to be resolved tomorrow, as we all hope and pray, there are irrevocable changes we will be facing in the Middle East and in the world as a result of Saddem's invasion of Kuwait.

I recently came across an article in the ADL Bulletin of October 1990 which offers an analysis of how the invasion of Saddam Hussein has changed the dynamic of the Arab-Israeli conflict. I commend the article to my colleagues and ask that it be printed in the RECORD following my remarks.

The article follows:

HOW THE PERSIAN GULF CRISIS REDEFINES ISRAELI-ARAB PEACE PROCESS

(By Bluma Zuckerbrot)

As events continue to unfold in the Middle East, the full import of Iraqi leader Saddam Hussein's brutal aggression against Kuwait remains to be seen. But one thing is certain: Iraq's action and the changing alliances which it has spurred will shape the attitudes of the key players in the Arab-Israeli peace process.

Two major events in the Middle East shifted the focus of the Arab-Israeli conflict to an Israel-Palestinian dimension: the outbreak of the Intifada in December 1987 and the end of the Iran-Iraq War in August 1988.

Concurrent with their uprising, the Palestinians made a convincing argument that the Arab states were ready to accept Israel's existence. It was only resolution of the Israeli-Palestinian conflict, they argued, which blocked a comprehensive Arab-Israeli peace.

Iraq's unbridled aggression has returned the Arab-Israeli conflict to its origins; the refusal of the Arab states to concede Israel's existence and to conclude peace treaties with the Jewish state. Saddam's actions in the face of verbal pledges that he would not invade Kuwait underscore that words can be meaningless in the volatile Middle East. When the peace process is revived, Israel's need for real security guarantees from the Arab states must top the agenda. Instead of Arab-Israeli peace flowing from the Israeli-Palestinian element, it is all too clear now that it is the other way around.

This redefinition of the conflict should be reflected in American efforts to push the peace process forward. Prior to the Iraqi invasion, U.S. attempts to revitalize the concept of an Israeli-Palestinian dialogue in Cairo were interrupted by the fall of the Israeli government in the spring. While the U.S. always recognized the need for a broader Arab-Israeli settlement, its focus was the Israeli-Palestinian factor. Recognizing the real issue, a U.S. State Department spokesman said on August 6: "Obviously there cannot be peace in the Middle East without peace between Israel and her Arab neighbors."

Also shaping American attitudes should be the PLO's alliance with Iraq which firmly dispels the notion that the PLO has become moderate. Its uninhibited support for Saddam underscores the PLO's refusal to extricate itself from violence and radicalism. This partnership will have an impact on U.S. policymakers who had refused to acknowledge continued PLO terrorism and hostility toward Israel. Even in the wake of last May's attempted PLO massacre on Israel's beaches, many in the Bush Administration argued that Arafat was not personally responsible. Nearly a month passed before dialogue with the PLO was suspended in the vain hope that Arafat would unequivocally disassociate himself from this act of terrorism.

In fact, many policymakers overlooked a year and a half of violent PLO activities—during the dialogue with the U.S.—on the grounds that Arafat himself was not actually involved. In this regard especially, the photograph of Arafat embracing Saddam Hussein after his invasion of Kuwait should linger long in their minds. With his unequivocal support for Saddam, Arafat has broadcast loud and clear that he prefers violence to diplomacy. The first indication of American recognition of this came following the PLO vote against the Arab League resolution condemning the Iraqi invasion, when Under Secretary of State for Political Affairs Robert Kimmit said that Arafat is "clearly on the wrong side of this issue."

Also affected by the PLO's partnership with Iraq are the moderate Arab states, particularly Egypt. Prior to Saddam's invasion, President Hosni Mubarak had played interlocutor between Israel, the U.S. and the PLO. Mubarak toiled long to secure tacit PLO acquiescence to a Palestinian-Israeli meeting in Cairo.

Further efforts to include the PLO in the Egyptian peace endeavors are not likely. A profound change in attitudes has already taken root. Virulent attacks against Arafat and the PLO have regularly appeared in the Egyptian press and Mubarak declared publicly that Arafat has lost his credibility. As America's leading Arab ally in the peace process abandons the PLO, the latter's ability to influence the terms of the debate is likely to wane.

Also in jeopardy in the PLO's financial base. The Gulf states, particularly Saudi Arabia, which have poured more than $10 billion into PLO coffers, are likely to reduce or cut off their largesse. Arafat was snubbed by King Fahd during his August visit to Saudi Arabia. The semi-official Arabic press in the Gulf has nothing nice to say about Arafat.

Jordan's role in the peace process is likely to be impacted by the current crisis. King Hussein's equivocation in condemning Iraq's seizure and annexation of Kuwait weakens the possibility of Jordan as a partner in peace negotiations. Even before Saddam's action, Jordan had taken a number of steps which showed an increasing radicalism and alliance with Iraq. Its agreement to expand its military cooperation with Iraq by joint ground maneuvers and reconnaissance missions near the Israeli border were prime indicators. Jordan has strongly opposed Soviet Jewish immigration to Israel and joined Saddam at the Baghdad Arab Summit in May which harshly condemned the immigration.

In the territories and in Jordan, Palestinians of all walks of life have fervently rallied around Saddam Hussein. Public opinion polls in the territories indicate that 80 percent of Palestinians support the Iraqi tyrant. During one particularly virulent pro-Iraqi march on the West Bank, demonstrators reportedly carried posters urging Saddam to "Gas the Zionists."

This further underscores the dangers of an independent Palestinian state in the territories and discredits its advocates. The prospect that such a state would become a launching pad for further aggression against Israel was illustrated in a congratulatory telegram sent to Saddam Hussein by the intifada leadership describing the Iraqi invasion as the "first step toward the liberation of Palestine."

This reaction to Saddam's brutality has deeply affected attitudes in the Israeli peace camp. Leading spokesmen for Israeli dialogue with the PLO and for considering land concessions—including parliamentarians, academics and intellectuals—are disgusted and disillusioned with the Palestinian response.

This crisis of confidence in pro-PLO Palestinians in the territories is likely to lessen divisions in the Israeli polity regarding the peace process. A more unified Israeli approach in the search for an overall settlement of the Arab-Israeli conflict and for Palestinians genuinely interested in peace should develop.

Two other parties have yet to demonstrate the impact of the Gulf crisis on their attitudes toward the peace process—Syria and the Soviet Union. Syria has consistently led efforts over the years—with Soviet support—to thwart Arab-Israeli negotiations.

Seeds of change, however, have recently sprouted in both countries. After years of bitter enmity over Egypt's 1979 peace treaty with Israel, Syria finally reestablished diplomatic relations with Egypt in December 1989, the last Arab country to do so. And in its effort to court Western favor, the Soviet Union has reduced its support for Syria and the radical Arab states and has expanded its relations with Israel.

In the current crisis, Syria has openly sided with the moderate Arab camp to the extent of sending troops to Saudi Arabia and consulting with Secretary of State Baker in Damascus. The Soviet Union has quietly backed the international effort to isolate Saddam.

The impact of these developments on the peace process has yet to unfold. At the recent Soviet-American Summit in Helsinki, President Bush indicated a willingness to expand the Soviet rule in the Middle East peace process. Israel dos not oppose Soviet participation provided that the Soviets restablish diplomatic relations with Israel and cease arming radical Arab states. The visit of an Israeli Foreign Ministry delegation to the Soviet Union in September is a positive step in this direction. Potentially, the Soviet Union could urge Syria to come to the negotiating table with Israel. During his historic visit to Egypt in July 1990, Syria's President Assad said: "We are ready to join the peace process, but this depends on other circumstances related to other parts inside and outside the region."

Against this background, progress in the peace process rests on two developments: the cultivation in the territories of a moderate Palestinian leadership genuinely ready to peacefully coexist with Israel; and a willingness on the part of the Arab states, particularly Syria, to finally make peace with the Jewish state. In both these arenas, Egypt has a positive role. It should encourage Palestinians in the territories to negotiate with Israel and President Mubarak should urge Assad to begin forging a comprehensive Arab-Israeli peace.●

CONFERENCE REPORT TO S. 1630, THE CLEAN AIR ACT REGARDING ONBOARD VAPOR RECOVERY CANISTERS

● Mr. COATS. Mr. President, I rise to discuss and clarify a provision of the Clean Air Act amendments. Section 202 of this bill would require new light-duty vehicles to be equipped with devices to capture the vapors associated with refueling a car, after the EPA Administrator and the Secretary of Transportation have consulted and concluded that the systems are safe.

Many safety experts have warned that these devices will increase the risk of fires, including the National Highway Traffic Safety Administration, the National Transportation Safety Board, the Insurance Institute for Highway Safety, and the American Automobile Association, calling attention to the safety problem associated with these systems. Their concerns are supported by the conclusions of two independent analysis organizations, Arthur D. Little, Inc., which completed an assessment of the safety issues at the request of DOT, and Failure Analysis Associates, Inc., which studied the safety issues at the request of the General Motors Corp. These experts agree that the installation of onboard vapor recovery systems will increase the risk of motor vehicle fires.

It is important to remember why we have passed these amendments to the Clean Air Act: to protect the health and safety of Americans. While I support this goal, it makes no sense to adopt a strategy to achieve this goal at the expense of increasing the risk of motor vehicle fire.

The ADL report to the Secretary of Transportation, which I cited above, reached several conclusions:

That "there are indeed potential safety risks associated with onboard systems." These risks include the potential for a saturated charcoal canister suffering "breakthrough," in which the vapors vent through the bottom of the canister, causing a fire or explosion hazard.

That there are about 1,600 fatalities from vehicle crash fires per year; only a small increase in the risk of vehicle fire can translate into more fire fatalities than the number of illnesses that may eventually be prevented by the ozone reduction potentially achieved by the rule.

There has been no comprehensive risk assessment performed by anyone because the system designs are at too early a stage of development. When such an assessment can be performed, it must take into account likely disigns (rather than experimental models) and extreme operating conditions (such as hot weather), not merely the normal or average operating circumstances.

Complexity alone does not create safety problems; indeed, some complexity may have to be added to so-called "simple" systems in order to address some safety risks. However, complexity will increase costs and perhaps adversely affect vehicle driveability.

If the system produces driveability problems, such as stalling or hesitation, (every full vehicle test has demonstrated such problems,) then consumers will be tempted to tamper with the system—leading to increased safety risks.

Each new vehicle model presents opportunities for design or manufacturing complications. History proves that a certain number of manufacturing defects will always occur.

Comparing the proposed new systems with the existing evaporative emissions control devices on autos does not prove that the new systems can be safe. There are signficant safety problems with existing systems, which have been involved in numerous safety recall campaigns. For example, NHTSA has noted a relatively new problem involving fires started by leaking antifreeze or oil ignited by high temperatures in the exhaust system. These high temperatures did not exist in older model cars and likely related to the presence of the newer emissions control systems on cars. Therefore, the older systems do not form an appropriate baseline for comparing the safety of the new systems.

There is no effective means to assure that the systems will continue working as the vehicles grow older. Problems can arise either through tempering or deterioration. Further, there is no practical way to check the onboard system during vehicle inspections—so there will be no reasonable way to know if the system is still operating effectively.

Mr. President, at present there are about 1,600 fatalities per year in auto crash fires. A small increase in the risk of vehicle fires could result in more fire fatalities per year. Shouldn't we ask ourselves whether requiring these services actually contributes to the health and safety of Americans?

Failure Analysis Associates, Inc., an engineering and scientific consulting organization which conducted an analysis of the potential safety implications of these systems, concluded:

Onboard vapor recovery systems pose incremental vehicle fire risks that cannot be eliminated by design or by compliance with NHTSA's regulations.

Based on a statistical evaluation of federal and state data on fatal and non-fatal motor vehicle accidents, cars with existing emissions control devices have a significantly higher post-crash fire rate than cars without controls.

Thus, it is no answer to the safety issue to say that new onboard systems would be only slightly more complex than existing systems, which themselves raise safety concerns.

The incremental fire risk for new onboard refueling systems could be several hundred or more additional crash-related fires each yearfires each year.

Driveability problems, such as stalling, observed by government engineers test driving a car with an onboard system, will encourage owners to tamper with the system.

There is no credible research to contest the evidence of increased safety risk. While some testing of onboard systems has been performed, it has been devoted primarily to the feasibility rather than the safety, of these systems. Yet, when the NHTSA engineers field-tested a car equipped with an onboard system, they found significant driveability and refueling problems, including the following:

Stalling in city traffic: In a three mile stretch of city traffic, the car stalled 4 times and hesitated continuously.

Hesitation on the highway: Within the first ten minutes following refueling the car continuously "bucked and cut out". One of NHTSA's engineers said, "There was doubt in my mind as to whether the car would continue to run."

Difficulty in refueling: Every driver reported that the car was difficult to refuel. At the first refueling the nozzle cut off 109 times, and took 11 minutes to refuel. The problem got no better in subsequent refuelings, and the car "spit back" fuel out of the fillpipe.

In sum, government engineers found that the car was difficult to refuel and performed poorly, particularly in the first 15 to 20 minutes of driving after refueling.

The safety experts point to the rising number of motor vehicle safety recalls involving existing emissions equipment as support for their position that there is a safety risk with onboard vapor recovery systems. On this subject, the ADL study cited above stated, "Even if functioning properly, the fact that any onboard system will increase the capture, purging, and induction of flammable vapors in quantities capable of causing driveability problems and of increasing vehicle underbody temperatures is of considerable concern given past experience."

I am gratified that the conferees added some lead time to the provision. This additional lead time may be sufficient to enable DOT to conclude that the systems are safe, given the addi-

tional time for development and testing. I hope that may be the case. However, we are not telling DOT how they must come out on the safety determination. I want to ensure that the record is clear that this Congress does not want these systems on cars unless and until DOT can conclude that they are safe.

I am pleased, also, that conferees have exempted recreational vehicles from the onboard requirement. The concern in this instance, expressed earlier in my amendment passed by the Senate, was for the safety of RV owners who might cook, eat, and sleep in a vehicle containing stored gas vapors.

As Brian O'Neill, president of the Insurance Institute for Highway Safety, told EPA, "A regulation requiring automobile fuel systems to become more complex doesn't make sense. Why choose an alternative that would have the horrible consequence of burning people in crashes?" The conferes addressed the safety concerns by ensuring that the safety determination will be part of the record of any rulemaking to require these devices, and by adding some additional time for development and testing. However, if the conclusion of the experts is that the devices are still not safe, them EPA must not ignore that conclusion.

Mr. President, for the benefit of my colleagues I ask that two letters on this subject be printed in the RECORD at this point one from the National Safety Council and one from the American Medical Association, warning us of the dangers of these devices. I fully expect EPA to take into account these and other similar warnings during its consideration of this issue.

The letters follow:

NATIONAL SAFETY COUNCIL,
Washington, DC, January 16, 1990.

Hon. DANIEL P. MOYNIHAN,
Senate Committee on Environment and Public Works, 458 Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR MOYNIHAN: The National Safety Council, a not-for-profit, nongovernmental organization committed to advancing the public's health and safety, urges you to forward both the nation's environmental goals *and* its public safety and health goals as you consider amendments to the Clean Air Act.

The Safety Council understands that the Senate soon will vote on a proposal requiring that automobiles and light-duty trucks carry on-board controls to capture evaporative emission vapors released during refueling. The Safety Council fully supports additional efforts to reduce hydrocarbon and oxides of nitrogen levels in the atmosphere. We are determined to see those goals advanced in a way consistent with ensuring public, and in this case passenger, safety and health.

The Council's Board of Directors in October 1987 adopted a policy aimed at ensuring that such on-board vapor emission controls be demonstrated to protect against increased incidences of death, illness, or injuries that could be associated with operation of those controls. Findings by the National Transportation Safety Board, the National Highway Traffic Safety Administration, and representatives of the insurance and product liability communities underscore our concerns. As a result, our position remains the same today: Environmental health and public safety go hand-in-hand, and advances in one field should not undermine important goals in the other.

We cannot expect an agency with the jurisdictional concerns of the Environmental Protection Agency to adequately address the concerns of the highway and motor vehicle safety agencies. Nothing would greater undermine our citizens' strong commitment to improved environmental quality than concern that new control technologies actually could increase health risks. That possibility must be avoided. Accordingly, the National Safety Council urges you to support language requiring that EPA, in promulgating "on-board" control regulations, do so in consultation with the Secretary of Transportation concerning the safety of those controls. In that way, both our environmental and our motor vehicle safety goals can be achieved.

Please have your staff contact Mr. Bud Ward in the Safety Council's Washington office with any questions on this matter. He can be reached at 202/293-2270. Thank you.

Sincerely,

T.C. GILCHREST,
President.

AMERICAN MEDICAL ASSOCIATION,
Chicago, IL., March 5, 1990.

Hon. JAMIE L. WHITTEN,
U.S. House of Representatives, Washington, DC.

DEAR MR. WHITTEN: I am writing to provide our opinion regarding onboard gasoline vapor recovery systems for automobiles. Staff members of the AMA's Science and Technology Group recently reviewed this matter and offer the following comments.

The part of this issue that the AMA can most authoritatively comment on concerns the measure of health risk due to individual and/or community exposures to gasoline vapors (most notably benzene and other aromatic hydrocarbons) and the likely impact of such fugitive vapors during refueling on atmospheric levels of ozone.

The degree of human risk of leukemia from gasoline-associated benzene appears to be overstated by the EPA. The amount of benzene in gasoline is roughly of the order of 5%; it is the sole aromatic of those in gasoline that is associated with leukemia in humans, and then only with long-term occupational exposures. The extent of the public's exposure to benzene in an outdoor environment during refueling is expected to be inconsequential; there is, therefore, no reason to believe that such minor, short-term exposures will be harmful to one's health. Station and tanker employees' exposures are of concern, which is all the more reason to control emissions prior to or at the pump.

There is still no general agreement on the long-term human health effects of low levels of ozone. A review article on this subject is enclosed. The EPA's efforts to reduce the causes of episodic levels of ozone in the nonattainment areas of the country should continue to be pursued; however, little is apt to be gained by the onboard control systems for those areas that are in compliance with the air standard

The "on-vehicle" system seems to be an unnecessarily complicated way to control gasoline vapors that are emitted during the refueling process. One need not be an engineering genius to see the numerous points of system failure; e.g., line rupture from both accidental and non-accidental occurrences, not to mention the results of neglected or incompetent maintenance. Auto emission controls are already too hopelessly complicated for simple maintenance, and this additional device begs for trouble.

In summary, we feel that vapor recovery systems placed in cars probably will increase the risk of fires if crashes occur. In accordance with good medical practice, such systems must be tested in laboratories and then in real life before they are mandated, and the safety of such systems should be a basic determinant of what eventually is mandated. The health benefits of having these systems in automobiles would be inconsequential, considering that the biomedical literature is not at all clear on the effects of greater exposures to benzene and ozone for longer periods of time. And finally, it is more logical to apply control systems to service stations than to tens of millions of vehicles on highways.

We appreciate having this opportunity to express our opinion to you and trust it will be helpful and informative.

Sincerely yours,

JAMES S. TODD, M.D.,
Acting Executive Vice President.●

WATER RESOURCES DEVELOPMENT ACT, SECTION 413

● Mr. SANFORD. Mr. President, I rise for the purpose of briefly reflecting on section 413 of the conference report on S. 2740, the Water Resources Development Act. This is a matter that has caused some controversy, and is very important to North Carolina. A change in existing law was sought and carefully negotiated, due primarily to concerns regarding the Roanoke River in North Carolina, and the striped bass relying on that river for habitat.

As my colleagues know, there is great concern in North Carolina and in parts of Virginia about the environmental effects of a water diversion project referenced in section 413 of the water resources bill. A particularly acute concern has to do with the potential impacts of changed water flows resulting from the diversion on striped bass in the Roanoke River. The striped bass is already under considerable stress, and numerous scientists, conservation groups, and agencies such as the Fish and Wildlife Service and the National Marine Fisheries Service have expressed concern about the impacts of changed water flows on the striped bass.

There is currently a striped bass study in progress with respect to the Roanoke River as authorized by section 5 of Public Law 100-589. A panel of distinguished scientists is examining factors affecting the striped bass, including the impacts of changed water flows. The study is expected to be completed late in 1991.

Section 413 provides that the Secretary of the Army shall review the report of the scientific panel, and make a determination of the impacts of the specified diversion project in light of that report. The Secretary is then, not later than January 1, 1992, to take appropriate action in light of the report, including permit modification and without regard to any construction that may have occurred. The Secretary's careful consideration of the report is of great importance with respect to the striped bass. Since Senator HELMS and I were the primary Senate proponents of legislative action on this matter, I want to stress the importance of the Secretary's very careful attention of that report, and would like to state my understanding of the obligations of the Secretary with respect to section 413. Congressman WALTER JONES, who was a conferee on the matter, has also described the provisions in question in the other body, and I would like to associate myself with his statement.

It is my understanding that section 413 was intended to ensure that the Secretary should fully take into account the findings of the report. It is expected that the Secretary will take appropriate action in light of such findings. The study will be produced under the auspices of agencies with particular expertise regarding the striped bass and is expected to provide the most comprehensive conclusions available regarding factors important to the health of the species in the Roanoke River. Accordingly, its findings should be reflected in the Secretary's determination and the Secretary's actions must be consistent with appropriate environmental regulations and law. Should construction have already occurred with respect to the specified diversion project, the Secretary is not to consider that construction in determing the appropirate nature of any necessary environmental review or permit modification.●

SOLID WASTE: A GROWING NATIONAL PROBLEM

● Mr. KASTEN. Mr. President, one of the jobs the 101st Congress left unfinished is the enactment of legislation to reduce the amount of solid waste generated in this Nation.

We made several efforts to cut solid waste this year, but none of them bore fruit. We had extensive debate on the interstate regulation of solid waste on the floor, and in the Commerce Committee we had extensive debate on recycling and waste minimization.

But the growing crisis in solid waste looms larger today than ever before.

Clearly, the existing laws are not adequately promoting the use of recovered materials and waste minimization.

Let me give one example. In 1985, when we last updated the Resource Conservation and Recovery Act [RCRA], we believed that we should target post consumer waste with special incentives to encourage recycling. That was the best judgment of Congress at that time.

But our thinking has evolved since then. Now we know that we need to focus on waste minimization, as well as the efficient use of our resources.

In fact, the post-consumer standard has hamstrung innovation in waste reduction and recycling.

There have been tremendous technical advances in the management of solid waste that were not envisioned in 1985. For example, a Wisconsin company has developed a new technology to help solve one of our Nation's biggest solid waste problems—paper mill sludge.

Wisconsin is the largest producer of paper in the Nation. One of the by-products of paper production is a sludge of solids that are either disposed of in our sewers or landfills. Last year, about 21 million tons of this sludge were generated in 43 States.

This Wisconsin company has developed and demonstrated a new technology that can reduce the amount of sludge going to a landfill by two-thirds. This technology can recover a high-quality marketable pulp from paper mill sludge.

In addition, this innovative company has now proven that this new technology can be employed to mine and recover waste already in municipal landfills.

This technology has the strong support of the Wisconsin Department of Natural Resources, the National Science Foundation, as well as the business community.

There seems to be complete agreement, that this new technology will reduce waste, make better use of natural resources, reduce pollution, and significantly benefit the environment. In fact, this appears to be precisely the type of innovation that we want to encourage to face our solid waste problem.

Unfortunately, the postconsumer standards included in RCRA do not recognize this process as one we want to encourage.

This is a clear case of where our regulatory structure has gotten in the way of protecting the environment. Industry, and State government are ready to act—but they cannot.

For this reason, I believe we need to modify our existing regulatory structure. We should encourage processes that divert waste from the municipal waste stream. We should encourage the recovery of valuable materials that are currently discarded.

The Federal paper procurement guidelines should be amended to promote the use of recycled sludge, and discourage the landfilling of sludge.

One method of addressing this would be to modify RCRA or other appropriate legislation. That amendment might look like this:

Establish a different new category of preconsumer recovered materials, called:

(2) fibers recovered from pulp and paper mill sludges.

Modify the same subsections of RCRA that are modified above, giving preference to the new subsection (h)(2) which would now include fibers recovered from pulp paper mill sludges.

Additionally, subsection 6002(h)(3)(E) would have to be modified to read as follows:

(E) fibers recovered from waste water which otherwise would enter the waste stream, except those fibers recovered from paper mill sludge generated through primary or secondary treatment of pulp and paper mill effluents.

It is my hope that this issue can be solved administratively. I believe Congress' intent was to encourage recycling and waste minimization.

If it proves impossible to afford the benefits granted to postconsumer waste to sludge from paper production as well, we may have to enact a legislative solution next year.

I am optimistic that EPA will resolve this issue. I believe that would be the best course of action. Clearly it is the right thing to do to protect our environment and implement a rational policy for waste reduction and resource utilization.●

OMNIBUS BUDGET RECONCILIATION

RAIL SAFETY AND TRAVEL AND TOURISM USER FEES

● Mr. SASSER. Mr. President, I rise on behalf of the Commerce, Science, and Transportation Committee to submit report language with regard to rail safety and U.S. travel and tourism user fees. This language should be included in the conference report on H.R. 5835, the Omnibus Budget Reconciliation Act of 1990. I ask that it be printed in the RECORD.

The material follows:

AMENDMENTS TO FEDERAL RAILROAD SAFETY ACT OF 1970

House Provision: The House bill contained provisions directing the establishment of a rail safety user fee program.

Senate Provision: The Senate amendment contained a similar rail safety user fee program.

Conference Agreement: The conferees have adopted the House language with minor modifications.

PURPOSE AND SUMMARY

The Bipartisan Budget Summit Deficit Reduction Plan reached between Administration and Congressional officials assumed the inclusion of a railroad safety user fee

which will generate revenues of $170 million between fiscal year 1991 through fiscal year 1995. In accordance with the agreement, the Conference Committee has adopted a rail user fee provision. The user fee provision is analogous to the pipeline safety user fees adopted as part of the Consoliated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), see, 49 App. U.S.C. 1682a, et seq.

This provision directs the Secretary of Transportation (the Secretary) to assess fees to railroads subject to the Federal Railroad Safety Act of 1970 (FRSA) for the purpose of funding certain rail safety functions administered by the Secretary.

Pursuant to section 202(a) of FRSA, the Secretary has the responsibility of promulgating and enforcing rules, regulations, orders, and standards for all areas of railroad safety. In accordance with this statutory directive, the Secretary, through the Federal Railroad Administration (FRA), has established a railroad safety inspection program. Currently, FRA employs 361 rail safety inspectors to carry out this program.

The user fees created under the provision adopted in conference will be sufficient to cover the costs of FRA's railroad safety inspection program. The Secretary is required to establish a schedule of fees, to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteia set forth in the provision. The provision requires the Secretary to assess the impact of such fees on the rail industry at the end of each fiscal year and to report its findings to the Congress. The user fees will expire at the end of fiscal year 1995.

The provision also sets forth an authorization of appropriations for all rail safety programs administered by the Secretary under FRSA for fiscal year 1992.

SECTION-BY-SECTION ANALYSIS

Subsection (a) of the Committee's provision amends FRSA by adding a new section 216. The following subsection and paragraph references refer to provisions of section 216.

Subsection (a)(1) directs the Secretary to establish a schedule of fees to be equitably assessed to railroads in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors. The only limitation on the Secretary's discretion in this regard is that the Secretary may not base the schedule of fees on the proportion of industry revenues attributable to a railroad or class of railroads. The conferees emphasize the Secretary's responsibility of establishing an equitable schedule of fees based on the criteria set forth in this subsection.

Subsection (a)(2) requires the Secretary to establish procedures for the collection of such fees. This provision specifically authorizes the Secretary to use the services of any Federal, State, or local agency or instrumentality to collect such fees and to reimburse such agencies or instrumentalities a reasonable amount for such services. The Conferees intend to minimize the costs and burdens associated with collection of the user fees by allowing the Secretary to utilize a full range of governmental resources.

Subsection (a)(3) provides that the fees will be assessed to railroads that are subject to FRSA. Additionally, the provision states that the fees will cover the costs of administering the Secretary's responsibilities under FRSA, except for the research, development, testing, evaluation, and training activities set forth in section 202(a)(2) of FRSA.

Subsection (b) requires the Secretary to collect the user fees for each fiscal year before the end of each such fiscal year.

Subsection (c) provides that the amounts collected under subsection (b) shall only be used to carry out the activities under FRSA, to the extent such activities are funded in advance by appropriations.

Subsection (d) provides that the user fees will be assessed in an amount sufficient to cover activities (as described in subsection (c)) beginning on March 1, 1991. The Conferees believe this will give the Secretary ample time to study, develop, and implement the user fee program for the remainder of fiscal year 1991 and future years. Ths subsection also provides that the aggregate of fees received in any fiscal year will not exceed 105 percent of the aggregate appropriations for such fiscal year for covered activities.

Subsection (e) requires the Secretary, within 90 days after each fiscal year in which fees are imposed, to submit a report to Congress detailing: (1) the amount of fees collected during that fiscal year; (2) the impact of such fees on the financial health of the railroad industry and its competitive position relative to each competing mode of transportation; and (3) the total cost of Federal safety activities for each such other mode of transportation, including costs defrayed by Federal user fees. Paragraph (2) requires the Secretary, within 90 days after submission of each such annual report, for any fiscal year in which the Secretary's report under paragraph (1) finds either: (i) an impact from the user fees on the financial health of the railroad industry or on its competitive position relative to competing modes of transportation, or (ii) any significant difference in the burden of Federal user fees borne by the railroad industry and those applicable to competing modes of transportation, to submit to Congress specific legislative recommendations to correct such impact or difference. The Conferees believe these provisions are essential to the proper conduct of oversight responsibilities with respect to railroads. The required reports should provide Congress appropriate data for evaluating the impact of the user fees on the rail industry and the propriety of imposing the fees in future years.

Subsection (f) provides that section 216 will expire at the end of fiscal year 1995.

Subsection (b) of the Committee's provision authorizes appropriations to carry out FRSA for fiscal year 1991 in an amount not to exceed $46,884,000.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 22, 1990.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As requested by the Committee staff, the Congressional Budget Office has reviewed the conference agreement with respect to section 4511 of H.R. 5835, the Omnibus Reconciliation Act for fiscal year 1991, relating to railroad user fees. This language is similar to the railroad user fee provision in the reconciliation recommendations ordered reported by the Senate Committee on Commerce, Science, and Transportation on October 10, 1990. We estimate that the savings for this version, as shown in the table below, would be the $3 million greater than for the reported version.

	1991	1992	1993	1994	1995
Direct spending effects:					
Railroad user fees (offsetting receipts):					
Estimated budget authority	−20	−35	−36	−38	−40
Estimates outlays	−20	−35	−56	−38	−40

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marjorie Miller, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER.

U.S. TRAVEL AND TOURISM FACILITATION FEE

House Provision: No comparable provision.

Senate Provision: The Senate amended the Internaional Travel Act of 1961 to have the Secretary of Commerce ("the Secretary") charge a United States Travel and Tourism Administration Facilitation Fee ("the fee") to each commercial airline and passenger ship line. Beginning 30 days after enactment, the fee would be an amount equal to one dollar multiplied by the number of nonexcluded passengers arriving in the United States aboard each commercial aircraft or commercial passenger ship. The Secretary would exclude passengers whose journey originated in Canada, Mexico, or the Caribbean islands and passengers whose trip originated in the United States and was limited to Canada, Mexico, and the Caribbean islands.

The commercial airline and passenger ship line would remit the fee to the Secretary no later than 31 days after the close of the calendar quarter of the arrival of the passengers, and the Secretary would deposit the fees in the general fund of the Treasury as offsetting receipts and ascribed to the travel and tourism activities of the Secretary.

Beginning in fiscal year 1992, the aggregate amounts collected for the fee should at least equal the appropriations to the travel and tourism activities of the Secretary, and at no time shall the amount collected for any fiscal year exceed 105 percent of the appropriations made for that fiscal year for travel and tourism activities. The Secretary could modify the formula for determining the amount of the fee to be collected so as to comply with these requirements.

Conference Agreement: The House recedes to the Senate position with an amendment.

A new section 306 is added to the International Travel Act of 1961 to have the Secretary, to the extent not inconsistent with treaties or international agreements entered into by the United States, charge the fee, beginning January 1, 1991, to each commercial airline and passenger cruise ship line transporting passengers to the United States.

For the calendar year 1991 the fee charged to each commercial airline and passenger cruise ship line shall be an amount equal to the one dollar multiplied by the number of persons who arrive in the United States aboard a commercial aircraft or cruise ship from outside the United States and who are an alien described in section 101(a)(15)(B) of the Immigration and Nationality Act ("an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) have a residence in a foreign country which he has no inten-

tion of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure"). The conferees have been informed that in fiscal year 1989 about 19 million people entered the United States by aircraft or passenger cruise ship as this type of alien. The conferees intend that aliens to whom a waiver of a tourist visa has been granted shall be included when calculating the fee the Secretary shall charge to each commercial airline and passenger cruise ship line.

Beginning in 1991, each year the Secretary shall publish in the Federal Register the fee applicable for the succeeding calendar year, which the Secretary shall set by dividing the amount appropriated to the United States Travel and Tourism Administration ("USTTA") for the fiscal year by the number of aliens estimated by the Secretary to arrive aboard a commercial aircraft or cruise ship during the succeeding calendar year and shall round the result up to the nearest quarter-dollar. For example, if $19 million is appropriated to USTTA in fiscal year 1992 and if the Secretary decides that 19 million foreign tourists will enter the United States by airplane or cruise ship in 1992, then the fee charged to each airline or cruise ship line in 1992 will be an amount equal to one dollar multiplied by the number of foreign tourists carried by that airline or ship line. The Secretary's determination is not subject to judicial review.

The airline or cruise ship line shall remit the fees to the Secretary no later than 31 days after the close of the calendar quarter in which the foreign tourists arrived, and the Secretary shall deposit the fees received in the general fund of the Treasury as offsetting receipts and ascribed to the travel and tourism activities of the Secretary.

Beginning in fiscal year 1992, the aggregate amounts collected for the fee should at least equal the appropriations to the travel and tourism activities of the Secretary, and at no time shall the amount collected for any fiscal year exceed 105 percent of the appropriations made for that fiscal year for such travel and tourism activities.

A new section 307 is added to the International Travel Act of 1961 to establish procedures and penalties to enforce the collection of the fee. The Secretary would be authorized to assess a civil penalty of up to $5,000 for each day a fee required to be remitted to the Secretary is not paid.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 25, 1990.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the conference agreement with respect to Section 3003 of H.R. 5835, the Omnibus Budget Reconciliation Act of 1990, related to a U.S. Travel and Tourism Administration (USTTA) facilitation fee. CBO estimates that the enactment of this section would result in net savings of $10 million in fiscal year 1991 and of $78 million over the 1991-1995 period.

The conference agreement would require the Secretary of Commerce to charge each commercial airline and passenger ship line a fee for certain passengers who arrive in the United States beginning on January 1, 1991. In fiscal year 1991, the fees remitted to the Secretary would equal $1 for each affected passenger. In subsequent years, the aggregate amount of the fees would equal at least the amount appropriated for the Secretary's travel and tourism activities and up to 105 percent of that amount. The legislation would provide for these fees to be credited as offsetting receipts to an account within the Treasury.

The following table shows CBO's estimate of the budget impact of the legislation in fiscal years 1991 through 1995.

ESTIMATED BUGET IMPACT OF SEC. 3003 OF H.R. 5835—THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995	Total
Direct spending effects:						
Estimated budget authority	−10	−16	−16	−18	−18	−78
Estimated outlays	−10	−16	−16	−18	−18	−78

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Laura Carter, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.●

STATE, JUSTICE, COMMERCE, AND THE JUDICIARY APPROPRIATIONS

● Mr. HEINZ. Mr. President, on Wednesday, October 24, I objected to a provision in the conference report on H.R. 5021, the State, Justice, Commerce, and Judiciary appropriations bill and offered a motion to concur with an amendment that struck the offending language. That motion was tabled by a vote of 52 to 47.

The language I objected to required the Secretary of Commerce to create a foreign trade zone in Cedar Rapids, IA, by February 1, 1991, notwithstanding any other provision of law. I opposed this requirement on both procedural and substantive grounds.

Procedurally, this provision short circuited a longstanding administrative process for the consideration of foreign trade zones that insures careful consideration and provides ample opportunity for public comment. The provision in the bill, which was legislation in an appropriations bill, circumvented all opportunities for public comment provided for either in the administrative process or in the normal legislative process. There were no hearings in Congress on this matter and no consideration by the committees of jurisdiction, Ways and Means and Finance. Until I raised the matter on Wednesday, there was not even any floor debate on the issue.

Substantively, this provision is even more egregious. It appears to be on behalf of a Korean company, Poongsan, which wants to locate a stainless steel and brass mill in the zone. This is a company which has already been found guilty of dumping brass mill products in this country in 1986. If Poongsan is permitted to erect a manufacturing facility in a zone, it might be able thereby to avoid either dumping duties or limits on steel imports pursuant to the voluntary restraint agreement Korea has signed with the United States. That would not be an inevitable consequence of approving this zone, but, given the company's history, it is a likely one, and one which certainly merits further investigation before a decision is made.

During the debate on my motion, a number of assertions were made about foreign trade zones and the process by which they are created that deserve clarification. First, let me provide some data on foreign trade zones in the United States.

According to a report issued by the House Government Operations Committee last November, there are 301 zones authorized, 156 general purpose zones, as the one in Cedar Rapids apparently would be, and 145 subzones. However, not all of those authorized zones are currently active. The Commerce Department's 49th annual report of the Foreign Trade Zones Board, covering fiscal year 1987, the latest year available, indicated that there were 69 general purpose zones and 58 subzones that were in operation. Those numbers are probably somewhat larger currently.

During the debate on my motion, the Senator from Iowa, Mr. HARKIN, indicated that Cedar Rapids had been told it was too small to have a zone. In fact, it is apparent from the list of authorized zones that a community's size has nothing to do with the decision. Such cities as Great Falls, MT, Granite City, IL, St. Charles, LA, Sparks, NV, Portsmouth, NH, Morehead City, NC, Grand Forks, ND, Muskogee, OK, and Newport, VT, have all been authorized to have general-purpose zones. In my own State, Pittston, PA—a wonderful town, but hardly the State's largest—has been authorized for a zone. In addition, two airports—BWI and Dulles—are also foreign trade zones, a decision which could not possibly have been based on population. I would also observe, Mr. President, that there are also two currently authorized zones in Iowa—Davenport and Polk County. Pennsylvania, a State with more than three times as many people, has four authorized zones.

In fact, the relevant requirement in this case is the provision of law that specifies that general purpose zones must be located in or adjacent to a customs port of entry, an obvious requirement since the purpose of zones is to receive articles being imported. It is for that reason that border and coastal States tend to have more zones—they have more ports of entry as well, a geographic reality that is hard to ignore. Current regulations interpret "in or adjacent to" as being within 35 miles of the port of entry. Cedar Rapids is approximately 55

miles from the nearest port, Davenport.

In the Cedar Rapids case, I am advised by the Department of Commerce that, while there has never been any application of any kind from Cedar Rapids, there has been informal discussion with the city leaders. Indeed, I understand the executive director of the Foreign Trade Zones Board participated in the discussion. At that time I am told the city was advised it does not qualify for general purpose zone status because of its distance from the nearest port of entry.

Cedar Rapids was, however, explicitly told it qualifies to apply for a subzone. Indeed, elsewhere in Iowa there is a subzone in Forest City located approximately 100 miles from the closest port of entry in Des Moines. Commerce Department officials, in addition to indicating that eligibility, also discussed the issue with operators of the general purpose zone in Davenport and urged them to cooperate with Cedar Rapids officials in developing a subzone proposal. The Davenport officials agreed to do so, but Cedar Rapids apparently decided to circumvent the entire process and seek a legislative remedy instead.

One reason why it might have done so is the desire of Poongsan to locate a manufacturing facility in the zone. While such activity is appropriate for a subzone—indeed it is more suitable for a subzone than a general purpose zone—the particular kind of manufacturing proposed in this case involving import sensitive products would likely be controversial if the public were allowed to comment. Having spoken to representatives of the domestic steel and brass industries on this question, I can go a bit further than that and guarantee such a proposal would be highly controversial. The Foreign Trade Zones Board has not in the past approved proposals for steel manufacturing in zones where it would lead to the products' entry into the United States.

Another comment made by the Senator from Iowa related to the high costs of obtaining zone status through the administrative process. I must say, Mr. President, that I am at a loss to understand this argument. First, of all, it does not seem to have deterred anyone else. We had 17 authorized general purpose zones in 1975. Fourteen years later there were 156. During the same period the number of subzones increased from 2 to 145. If this is an expensive process, I certainly hope the Federal Government is getting some of the money. With increases like those, we could be helping to reduce the budget deficit. Unfortunately, the Government has missed the boat in this area and does not charge a fee.

Second, I fail to see where the costs lie beyond those that accrue to the Government. A community applies for a zone by writing a letter to the Commerce Department explaining why it wants a zone, why it deserves it, and what it plans to do with it. The Commerce Department then issues a public notice of the application, provides time for public comment—usually 30 to 45 days but possibly as much as 90 to 120 days—and conducts an investigation and economic analysis of the proposal. All those activities are done by the Government. The community must write the initial application laying out the community need for a zone based on the level of foreign trade activity already there and should provide evidence of business community support for the zone. If the application is for a subzone, it would also need to provide details of the proposed manufacturing, what it would mean to the community and who might be adversely affected by the activity. The applicant would also presumably attend a hearing if one were held. Of course, the community may choose to employe expensive consultants to prepare and provide additional documentation, particularly if the case is a weak one, but that is hardly a requirement of the process. Moreover, the Department is prepared to provide technical assistance in developing an application if it is asked to do so.

The troubling thing about this application, Mr. President, is that Cedar Rapids did none of these things. It did not ask for help in preparing an application. Indeed, it made no application at all, despite the possibility of Government assistance, despite the Government telling it it was eligible for subzone status—a level that would meet the city's needs as they were articulated—and despite the offer of assistance from the nearby zone in Davenport.

Instead, the city chose to bypass the normal process and shut off any opportunity for public comment by going directly to Congress and seeking legislation, an action that is unprecedented in the years I have been following this issue. Unfortunately, the fact that the city has chosen this inappropriate path and apparently gotten away with it will be a dangerous precedent we will have to deal with in the future. My office has already begun receiving calls from local lawyers with clients wanting to set up a zone seeking advice about the same legislative ploy. Needless to say they were discouraged, and I can assure Senators I intend to watch for such proposals carefully in the future and to object to them. We have created a careful, balanced process for considering these proposals. It appears to work. I would like it to continue to work, and I will oppose future efforts like those of Cedar Rapids to circumvent that process.●

SEED: A MANDATE FOR ACTION IN EASTERN EUROPE

● Mr. BIDEN. Mr. President, the subject before us today is SEED II [Support for East European Democracy]. No subject could be more appropriate for us to debate than this. For the revolutions of 1989 in Poland, Hungary, Czechoslovakia, East Germany, Romania, and Bulgaria have changed the world.

Just think about the crisis in the Persian Gulf. Instead of the cold war being played out in a regional conflict, Washington and Moscow are now partners in the effort to reverse Iraqi aggression.

For 40 years, we have built our military forces to defend against a Soviet-inspired invasion of Western Europe. But today Soviet troops are not moving West; they are moving East; they are going home.

These momentous events have occurred for one simple reason: People Power in Eastern Europe overcame Communist tyranny. The peoples of Eastern Europe chose the free market over Marxist economics; and they chose democracy over communism.

Now we have the opportunity to secure these changes; to help those people who stood up for the principles upon which our country is based; to help guarantee that free market democracy succeeds in Eastern Europe; and to prevent retrogression and chaos as the difficult transition to free market democracy proceeds.

Mr. President, what we are trying to do here is drive a stake through the heart of communism in Eastern Europe.

Normally, I am skeptical about foreign aid. But this case is very different. If we can succeed in preventing the return of communism to Eastern Europe, we can avoid spending tens or hundreds of billions of dollars on the defense budget. I cannot imagine a more cost-effective way to spend our money. Millions spent today will mean billions saved tomorrow.

What we are debating is, in some ways, a very small program. We are authorizing some $400 million. But in other ways, it is a very big program. For if, after spending trillions of dollars in the last four decades to prevent the spread of communism, we cannot muster the will to help those who we have been seeking to defend all these years—those who we have long called upon to throw off the yoke of communism—then who are we?

I believe SEED II should receive bipartisan support. What we do in this bill is simple. We formalize America's commitment to a major foreign policy undertaking of a new kind. We create a framework for United States Government action not just in Poland and Hungary but throughout Eastern Europe. Through this legislation, Con-

gress will be doing its job—working together with the administration to fashion a comprehensive program that will not only improve American security but also promote our most cherished of principles—democracy.

This bill gives the President broad flexibility and authority to use a range of SEED actions in any country where he determines that free market democracy can be promoted. And, yes, we include the authority to provide technical assistance to the Soviet Union. I know some in this body might be wary of this provision. But I believe it is wise—and as several letters attest—it is consistent with administration policy.

Who can really argue that when we and the Soviets are working together as partners in the gulf that the President should be prohibited from sending Americans to the Soviet Union to teach Soviet citizens about the building blocks of free market democracies?

I hope my colleagues will not be diverted by those who will claim that this legislation authorizes the United States to provide financial aid to the Soviet Government. For it does not. I repeat: It does not.

In our original language, we stated "None of these or any other funds allocated in this subsection shall be available for loans or grants to the Government of the Soviet Union or any instrumentality thereof." To make this doubly clear, in the committee amendment we add the following: "all assistance provided in territory governed by the Soviet Union shall be in the nature of technical assistance determined by the President to be cost-effective in promoting economic privatization and the development of democratic institutions."

I would note parenthetically that just lask week Secretary of State Baker announced the administration's intention to send American volunteers to the Soviet Union for precisely the kinds of activities contained in this legislation. I know many of my colleagues have been urging the administration to promote these types of people to people exchanges and I am glad they may finally begin.

Those who oppose technical assistance to the Soviet Union would be saying they are against the following types of programs:

Assisting small businesses in the Soviet Union with advice;

Aid in creating agricultural extension services to support free family farms;

Consulting with Soviet officials on how to conduct legislative oversight in a democratic system; and

Helping the Soviets create an independent press.

With all due respect to my conservative colleagues who might oppose this activity, I do not understand why these programs are not considered motherhood.

It is certainly ironic that the people who seem to have had the most trouble with this legislation from the beginning are the same people who have been calling on us to do more to force the Soviet Union and their former satellites in Eastern Europe to open up their economies and their political systems. That is precisely what this bill—this SEED Program—secures.

By and large, we do not require action; we merely give the President broad authority and flexibility to decide where SEED programs could prove most useful.

Three programs are mandated. But in my discussions with Deputy Secretary Eagleburger, he made clear that he regarded these programs as sound and intended to implement them.

The first program is to provide books for Eastern Europe—to help these countries to translate, publish, and print a whole new literature based on the value of the market and the promise of democracy.

The second program is to assist the emerging democracies in creating functioning parliamentary systems. And the third is to create two American business centers in Eastern Europe to facilitate the entry of American businesses into these new markets.

Mr. President, let me address for a moment the question of funding levels. In this bill, we are authorizing the same amount of money as the Congress has now agreed to appropriate in the conference report on the foreign operations appropriations bill. So we are not providing additional money.

Indeed, I would like to bring to the attention of my colleagues a document that was prepared by the Foreign Policy Institute at Johns Hopkins. This document reflects the views of, among others, the following individuals: David Abshire, John Brademas, Harold Brown, Alexander Haig, Melvin Laird, Edmund Muskie, Elliot Richardson, James Schlesinger, Cyrus Vance, and Paul Volcker. This group of former Republican and Democratic Secretaries of Defense, Secretaries of State, and other respected members of the foreign policy community has this to say about American assistance to Eastern Europe:

> The United States is now very popular in Eastern Europe. In part this is the reverse side of the coin of Soviet unpopularity. But it also reflects a general recognition of U.S. leadership in the alliance whose containment policy, pursued steadily over 40 years, was largely responsible for the fundamental reassessments by the Gorbachev regime and for the democratization of the former Soviet satellites. Our popularity also results from the many U.S. ethnic connections with the countries of Eastern Europe. Yet the U.S. aid packages so far suggested for reconstruction are incommensurate with Eastern Europe's needs, and they are also deficient in the important requirements for technology transfer, private investment, and management advice. The continuation of U.S. influence and leadership, as well as the human needs of Eastern Europe, demand much more.

Their statement goes on:

> Without a substantially larger and better structured U.S. program, the attitudes of the East Europeans toward the United States will predictably become less favorable, and these nations will turn elsewhere for assistance and leadership. Countries other than the United States that are either closer or have available more funds, or both, can and inevitably will play a larger role in any event. In the absence of a U.S. economic and political presence, however, East European countries are more likely to align themselves in ways that exacerbate potential political conflicts—either among themselves or with respect to the largest national players on the European continent. A repetition of the interwar experience is very unlikely in detail, especially given the inhibiting effect of the existence of nuclear weapons, but the future may hold other unpleasant scenarios if the United States absents itself from the scene, claiming poverty or disinterest.

This group of wise Americans go on to suggest that assistance to Eastern Europe is in America's interest because it will create an expansion of economic activity that will prove a boon to the world economy and therefore the United States. They then suggest that the United States should be considering aid packages five times as high as this one and some ten times as high as the Bush administration initially suggested.

In other words, Mr. President, a very senior group of Republicans and Democrats who helped develop and implement the policy of containment—the policy that has led to the point where Eastern Europe has become free—are telling the Congress and the President that we may be about to make a tragic error unless we recognize that it is in America's self-interest to greatly expand our assistance to Eastern Europe.

I am not suggesting that we expand the program now. But next year we must think long and hard about whether our assistance program merits a fundamental reexamination and a significant expansion.

It strikes me as incredible that some of my colleagues have had trouble supporting a program so small when so many wise Americans are telling us that the program should be much bigger.

Mr. President, I would like to discuss the process by which this bill was created and the support it has new received. We in the Foreign Relations Committee have conducted countless hours of negotiations with the administration and with Members and their staff from both sides of the aisle. As far as I can tell, there are no reasonable objections left from the adminis-

39-059 O—92-23 (Pt. 25)

tration. Their position is one of nonopposition.

Working with the Treasury Department we provided the authority for U.S. participation in the European Bank for Reconstruction and Development;

Working with the Commerce Department we have carefully constructed numerous provisions to promote American business in Eastern Europe and help provide these countries with the know-how of market economics;

Working with the Department of State, we have labored to ensure that these programs will promote American foreign policy goals in Eastern Europe and provide the kind of assistance these countries desperately need;

Working with representatives of the Overseas Private Investment Corporation we have provided authorities that will promote American business opportunities in Eastern Europe;

And working with the Environmental Protection Agency we have authorized programs to promote technologies and practices in Eastern Europe that will be environmentally sound.

Mr. President, I would like to make as part of the record a series of letters that make clear that this bill enjoys widespread support. The following business organizations have endorsed this bill: the National Association of Manufacturers; the National Foreign Trade Council; the relevant chapters of the U.S. Chamber of Commerce; the International Executive Service Corps; and the Association of American Collegiate Business Schools.

And the following groups representing interested ethnic communities have endorsed this bill: the Polish-American Congress; the Baltic-American organizations; the National Polish American-Jewish American Council; and the Armenian General Benevolent Union.

Even the World Wildlife Fund and the Natural Resources Defense Council have endorsed this bill because of its environmental provisions.

And there are others.

At this point, I can only say that it would be a travesty if the opposition of a very small number of Senators to this bill were to prevent us from acting.

The administration does not oppose this bill.

The Foreign Relations Committee democrats unanimously supported this bill.

Many of my other colleagues have expressed their support.

Mr. President, we must act. We must provide a mandate for administration action in Eastern Europe—and a framework for congressional oversight of this new endeavor in American foreign policy.●

CLEAN AIR ACT AMENDMENTS OF 1990

● Mr. NICKLES. Mr. President, I voted to adopt the conference report for the Clean Air Act Amendments of 1990. Before the vote on October 27, I outlined my reasons for voting for the conference report. Significant among those reasons was my clear understanding of the changes to the Senate bill made by the conferees in the mobile sources title. The changes to the mobile sources title where among the positive changes the conferees made to the Senate version of the Clean Air Act amendments, which I opposed.

I am therefore very concerned at the inclusion in the RECORD of October 27 of explanations that cloud critical agreements in the mobile sources title. The RECORD as published contains assertions by some Senators that the clear reading of the conference report bill language and the carefully negotiated agreements between the House and Senate conferees should be disregarded and that their subsequent explanations should instead govern as law and as direction to the EPA. This blatant attempt by some to change the conference agreements after the House and Senate have voted should not have force or effect.

Specifically, I want to set the record straight on several critical issues within the mobile sources title to reaffirm the agreements of the conferees and the clear understanding of those agreements by Senators such as myself who, based on the changes made in conference, cast a supporting vote for this conference report.

THE REFORMULATED GASOLINE PROGRAM

It is clear that the conference agreement allows fuel suppliers to meet the standards established for benzene and oxygen levels in the reformulated gasoline program on the basis of a pool average, not on a per gallon basis. Similarly, for aromatics, the standard could be met by pool average or by achieving equivalent reductions with a different reformulation of gasoline, regardless of aromatic content, under the agreed upon principle of full equivalency. The only way in which fuel supplies are permitted under the bill to average the benzene, aromatics, and oxygen constituent levels is by using the credit program. Accordingly, any unreasonable limitations on the credit program would undermine the agreement to permit pool averaging.

Some of the remarks included in the October 27 RECORD attempt to change this agreement to, in effect, require a per gallon test. The comments state that there is no time period over which the average is determined. It is my understanding that the conferees expressly deferred to EPA the issue of establishing an appropriate time period over which benzene, aromatics, and oxygen levels could be averaged by granting the EPA authority to develop and implement the credit program. To imply that the EPA cannot allow averaging over a time period of its choosing places an unreasonable limitation on the concept of pool averaging.

Moreover, these October 27 RECORD comments also suggest that marketable credits cannot be used until credits have already been created by the fuel suppler and in hand. This comment would have the effect of changing the agreement by prohibiting the sale of those fuels for which the credits are necessary until after the fuels generating the credits have been sold. There was certainly no census on any such in hand prerequisite in the conference, and these comments, too, place unreasonable restrictions on pool averaging as developed in the House-Senate conference.

An additional problem created by the comments included in the October 27 RECORD relate to the agreement that the EPA has the authority to grant waivers to delay the effective date of the winter oxygen requirements in carbon monoxide nonattainment areas. The conferees were very aware that it is almost a certainty that there is an inadequate capacity to supply sufficient oxygenate to meet the winter 1992 requirements imposed in this bill. Since even small shortages in the marketplace translate into major price increases and consumer inconvenience, it is critical that EPA have the full discretion it was granted in the conference to grant waivers as necessary. To modify the conference agreement by implying limiting conditions to the waivers by stating the waivers must be the exception rather than the rule is inappropriate given the overwhelming evidence that the waivers will be essential if EPA is to ensure consumers adequate supplies of fuel and thus help to moderate the heavy financial burdens already imposed by this bill on motor fuel consumers.

THE AMENDMENTS TO SECTION 177

There were many significant changes that the conference agreement made to the motor vehicle control program in the Senate bill. It is this Senator's understanding that the conferees thought it proper to reaffirm and clarify the provisions of the current act with respect of State election of California vehicle emissions standards under section 177. We who have voted for the bill agree with the Conferees' approach.

The amendment to section 177 continues to allow the States to adopt the California program under section 177. It also makes it plain that a State exercising this adoption must enforce the California rules exactly as California does. The inevitable effect of non-

identical enforcement would be unacceptable differences in what the two States—California and the adopting State—would require of vehicles sold in their jurisdictions. Those differences would be unacceptable because the current law, which the new act has affirmed, only allows an adopting State to use standards identical to those of California. The standards are not identical if they are being enforced differently in each jurisdiction that has adopted them.

Under the new act, as under current law, States with nonattainment areas may adopt California vehicle emissions performance standards if a waiver has been granted under section 209 for those standards, and the State has an approved State implementation plan that covers the California rules. The relevant California rules must be final rules in California, and have received the necessary waiver under section 209.

The leadtime requirements of current section 177 have been left unchanged. If a State follows the necessary procedures, California standards can take effect in the first model year commencing 2 model years after the State has adopted the California standards. Thus, a State that adopted fully waived California standards in November 1992 could, for example, have those standards take effect beginning in model year 1996. This is important to the stability of State programs adopting California standards under this act.

Contrary to the explanation offered in the October 27 daily RECORD, section 177 does not permit discretion with respect to the so-called third car problem. In point of fact, the plain language of the new text for section 177 expressly forbids any action that would have the effect of creating a third car scenario. Thus, the view that States may enforce section 177 in inconsistent ways, so long as no undue burden is created for vehicle manufacturers and the public, is in direct conflict with the plain language of section 177.

The same holds true for the claims in the RECORD that adopting States can require each and every vehicle coming off the assembly line and intended for their jurisdiction to be tested for compliance with California emissions standards, and that section 177 does not require that vehicles sold in an adopting State be "physical[ly] identical[]" to vehicles sold in California. Section 177 requires identical standards and identical standards mean, for emission regulatory purposes, identical cars. This is what the 1990 amendment to section 177 recognizes. There is no discretion left for the States with respect to a third car.

Similarly, the requirement that each and every vehicle be tested for and pass all emissions standards was a provision of the Senate bill to which the House objected and that the conference rejected. Neither California nor other States can require that each vehicle coming off the assembly line be tested.

Finally, with respect to enforcement of the California standards in other States, several points should be noted.

First, the legislative history from 1977 clearly states that section 177 "is not intended to allow States, other than California, to require additional new vehicle certification testing or enforcement testing since such testing will be conducted under Federal and California law." (H. Rept. No. 294, 95th Cong., 1st Sess. 311.) California law is not, for example, New York law. There is simply no authority in the 1977 legislative history of section 177 to justify any separate State test program outside California, much less recall testing under color of an adopting State's law that creates a burden of any kind on manufacturers.

Second, the text of the 1977 House report reads as follows:

> This new state authority [in section 177] should not place an undue burden on vehicle manufacturers who will be required, in any event, to produce vehicles meeting the California standards for sale in California. The provision is not intended to allow states, other than California, to require additional new vehicle certification testing or enforcement procedures since such testing and enforcement will be conducted under Federal and California laws.

Id. The "undue burden" language relates only to the production process: all the 1977 report says is that there is no "undue burden" in turning out additional vehicles for other States under section 177, because the factories would be building vehicles to the California standards "in any event."●

BIRTHDAY OF MR. SIDNEY SCHRETER

● Mr. SARBANES. Mr. President, on November 18 the Abraham Schreter Unit of B'nai B'rith will hold a special celebration for the 88th birthday of Sidney Schreter. This event is not only in honor of Sidney's birthday, but also in appreciation of his outstanding contributions to the community.

How like Sidney to dedicate his birthday to the B'nai B'rith Foundation Youth Services Fund. Nothing better reflects his lifelong and devoted service to Jewish youth, in our Nation and throughout the world, than his tireless work in this organization. As an active community member he has expanded and enriched B'nai B'rith's role in providing cultural, social, education, and religious services to Jewish teenagers and students at home and on college campuses around the world. His commitment and concern for young people are exemplified by the fact that the proceeds from his birthday celebration will benefit the B'nai B'rith youth organization and B'nai B'rith Hillel Houses.

Sidney Schreter gives to B'nai B'rith not only his wisdom and experience as a member of the organization since 1925, but also personal qualities that set him apart as a warm and caring member of the community. He is a man of talent, honor, good humor, and integrity who continuously demonstrates his concern for others and his devotion to the Baltimore Jewish community and indeed the international Jewish community. In 1938 Sidney was a cofounder of the Beth Jacob Congregation and served as president for 5 years and currently serves as honorary president. He is active in choir and was the Beth Jacob Committee chairman for Israel Bonds for 30 years.

Sidney has been a member of B'nai B'rith for 65 years and is President Emeritus of the Schreter Unit, founded by Sidney in honor of his late father.

Among Sidney's many significant achievements and contributions to our community are his service on the board of directors of the Safety First Club of Maryland, Association for the Prevention of Accidents on the Israeli Highways, and the Jewish National Fund. One of Sidney's most worthy causes is the recreational programs at nursing homes and organizations throughout the city with "Sing-a-Long Sid."

Mr. President, I am privileged to count Sidney as a friend and to join all those gathered on November 18 in wishing him a happy birthday and acknowledging the dedication and perseverance of a public servant who has contributed so greatly to the welfare of our community.●

HAZARDOUS MATERIALS EMERGENCY RESPONSE AND TRAINING GRANTS

● Mr. LAUTENBERG. Mr. President, on October 23, 1990, the Senate passed S. 2936, the Hazardous Materials Transportation Act of 1990. This legislation added a new section 116 to the act, providing for emergency response and training grants.

Section 116 requires the Secretary of Transportation to make grants to States and Indian tribes to enhance planning for responding to emergencies involving transportation of hazardous materials and for training public sector personnel used for such response.

I believe the section 116 program can provide a supplement to the emergency planning effort and grants programs already being implemented under the Emergency Planning and Community Right to Know Act of 1986, which I authored as title III to the Superfund Amendments and Reauthorization Act [SARA].

The goal of SARA title III was to create a national chemical emergency planning infrastructure made of State and local units of government. Title III authorized some emergency training State grant programs under section 305. I have worked since the enactment of title III to appropriate funds for the section 305 program as well as for other grant activities through the EPA appropriations accounts.

In fiscal year 1988, I authored a provision in the Senate amendments to the appropriations bill for HUD and independent agencies, H.R. 2783, that would have authorized and appropriated $10 million for additional State and local title III implementation. A requirement of that grants program was that 75 percent of all awarded grant moneys had to be passed through from the State to units of general purpose local government, including municipalities and the local emergency planning committees established under title III. My goal was to get Federal funds down to the local level to assist the frontline personnel in the title III effort. Although the House unwisely insisted on dropping the new program during conference with the Senate, I have continued to work in the Appropriations Committee to provide grants for State and local implementation of title III through authorized mechanisms.

Assisting this effort will be the newly created section 116 of the Hazardous Materials Transportation Act. Like the provisions I authored in H.R. 2783, section 116 requires that at least 75 percent of amounts appropriated for making grants to States be allocated by States to political subdivisions. Like the provisions I originally offered, section 116 specifically requires that grant projects be administered by the State Emergency Response Commissions created by SARA title III. Section 116 also gives the SARA title III Local Emergency Planning Committee authority to administer the projects. In addition, section 116 further dovetails with SARA title III by requiring that: First, training carried out with such grant moneys be carried out in accordance with section 305(a) of SARA title III; and second, that grants can only be made to States or Indian tribes complying with sections 301, requirements to establish emergency planning State and local structure; and 303, actual emergency planning requirements of SARA title III.

Mr. President, the new section 116 grant program closely parallels the appropriations provisions I authored on H.R. 2783, and, like those provisions, is aimed at assisting the vital State and local emergency planning effort across the country.●

FORT RALEIGH NATIONAL HISTORIC SITE

● Mr. SANFORD. Mr. President, I rise with great pleasure to briefly note that in the waning hours of the 101st Congress, the Senate has passed H.R. 5497, to authorize the acquisition of historically significant lands at Fort Raleigh, NC. The legislation now awaits the President's signature.

I want to commend Chairman WALTER JONES, who sponsored this legislation in the other body and did yeoman's work in steering the measure to expeditious passage. As the sponsor of the Senate companion bill, S. 3198, I am delighted that we have been able to pass the legislation in this Chamber as well.

I would also like to express my gratitude to the distinguished Senator from Arkansas [Mr. BUMPERS] for his assistance in ensuring that the Senate would have the opportunity to consider this legislation. Senators WALLOP, JOHNSTON, and MCCLURE are also to be commended for their help in allowing the Fort Raleigh bill to move so quickly.

Mr. President, H.R. 5497 will simply authorize the expansion of the boundaries at Fort Raleigh so that eight tracts with known historic significance may be added to the site. These tracts, which total some 365 acres, are located at the northern end of Roanoke Island, adjacent to the current historic site. Appropriations for future acquisition are authorized to the extent that such appropriations are needed.

As my colleagues know, Fort Raleigh was the site of the first English colony in North America in the late 1500's. This is the famous Lost Colony, whose fate remains a mystery to this day. Virginia Dare, the first English child born on this continent, was born in the "Cittie of Raleigh," in what is now the county bearing her name.

The lands in question are known to have been utilized by the original colonists, and certain artifacts associated with those colonists have been found on the lands which may be added to the historic site. However, these lands have never been thoroughly surveyed in accordance with modern archaeological principals. The exact location of the "Cittie of Raleigh" remains unknown, and these lands hold exciting potential for new clues that might help solve the mystery of the Lost Colony. The lands also contain artifacts associated with the native Americans who lived on Roanoke Island during the first European colonization of the island.

Further, Mr. President, these lands were associated with the Battle of Roanoke Island during the war between the States. While there is currently a resurgence of interest in this tragic chapter in American history, many of my colleagues may not think of North Carolina when the great battles of the Civil War are discussed. North Carolina suffered more battle casualties than any other Southern State during the war. While many of these casualties were suffered in the great battles north of the "Old North State," much fighting also occurred in North Carolina, a fact that is often forgotten.

The lands covered by this legislation include the site of the Confederate Fort Huger and a large garrison of Confederate troops, as well as the site where many Confederate soldiers were forced to surrender at the conclusion of the Roanoke Island conflict. This Union victory resulted in the control of the Albermarle and Pamlico Sounds for the North, and led to the immediate conquest of nearly a quarter of the State. The battle also resulted in a new Union threat to Confederate-held Norfolk, and was a consideration in the timing of the April 1862 Confederate retreat from the Virginia Peninsula and the loss of the C.S.S. *Virginia (Merrimack)*.

While we have a number of National Park Service units which interpret the Civil War, we do not have a unit which interprets the history of those Americans who gained their freedom during this bloody conflict. A remarkable aspect of the lands affected by H.R. 5497 is their association with the Freedman's village established there in 1863 by General Foster and Rev. Horace James. The Freedman's village represents an important political and social experiment in the institution of self-government and the integration into the economy as full citizens of over 3,000 freed slaves.

This was the first experiment of its kind, and represents a fascinating if little-known chapter in American history. The legislation, in fact, requests the Park Service to interpret the lives and contributions of the freedmen, and the significance of the African-American community who found a new beginning on Roanoke Island. This is an aspect of the Civil War that clearly deserves more attention and interpretation.

Finally, Mr. President, the lands in question were also the site of the Fessenden radio experiments at the beginning of this century. These experiments led to the first intelligible transmission of human speech by radio.

So, Mr. President, it should be readily apparent to my colleagues that these lands contain an amazing diversity of history. Unfortunately, some of the properties in question are currently threatened by development which puts this historic value in jeopardy, so it is critical for us to take this action now. I might also point out that the northern end of Roanoke Island represents one of the few remaining undeveloped areas in the vicinity and also includes valuable maritime forest and excellent wildlife habitat.

I thank my colleagues for their support of this much-needed bill.●

LABOR RIGHTS

● Mr. LAUTENBERG. Mr. President, when the Congress reconvenes next year, one item high on the agenda should be legislation to prohibit the hiring of permanent replacements of striking workers. Unfortunately, the Congress has been unable this session to take up S. 2112, introduced by my colleague from Ohio, the distinguished chairman of the Labor Subcommittee, Mr. METZENBAUM, to bar the hiring of permanent replacements. I was pleased to be a cosponsor of this important legislation, which would restore balance to the relationship between organized workers and management.

The legislation would overturn the permanent strike replacement doctrine first stated in the MacKay Radio Co. case in 1938. The MacKay doctrine has been interpreted to grant employers authority to hire permanent replacements while workers are on strike. Especially since President Reagan permanently replaced striking air traffic controllers, more and more private sector employers consider it acceptable to permanently replace workers who exercise their right to strike. I disagree.

At risk is a basic goal of the National Labor Relations Act—to protect employees' right to pursue their interests collectively, including the right to strike. The Act clearly states that employees do not lose their status as employees when their "work has ceased as a consequence of, or in connection with, any current labor dispute."

Mr. President, an employer who cannot fire a striking worker, should not be able to permanently replace a striking worker. The result is the same—the employee loses his or her job because of exercising the right to strike.

Legislation in this area is long overdue—not just for the sake of striking workers, but for the sake of America's economic competitiveness. America's best workers are those who feel good about their job, who know they're appreciated, and are part of a team. America's best managers recognize that.

Those managers who would throw away the skills, the know-how and the experience of a veteran work force jeopardize not only the future of their firm, but the ability of America to compete armed with the smarts and the muscle of its best workers.

When the Congress reconvenes, I will work for prompt passage of legislation to ban the hiring of permanent strike replacement workers.●

PROTECTING WORKER SAFETY

● Mr. LAUTENBERG. Mr. President, the budget reconciliation bill recently passed by the Congress includes provisions that will strengthen civil penalties for violators of worker safety standards. Specifically, penalties for violations of OSHA will be increased by 7 times.

I have been deeply interested in worker safety. I introduced free-standing legislation that would have tripled the maximum amount of these sanctions. So I would like to briefly discuss the need to strengthen these penalties.

Mr. President, for me, worker safety is a personal issue. When I was still a teenager, my father died. He was 43 years old. He died of cancer.

We never knew exactly what caused the cancer, Mr. President. But we thought about it a lot. He had been a healthy, active man. He did not smoke. He exercised. He was still young.

But my father also worked in a silk mill.

Now I cannot say that he died because of that silk mill. But the was not the first textile worker to die of cancer. Nor, unfortunately, was he the last.

Mr. President, the reality of occupational disease involves real pain. And real hardship for those left behind.

OSHA was enacted in 1970 to avoid that kind of hardship, by assuring safe and healthful working conditions for all working Americans. Yet since OSHA was enacted, more than 100,000 workers have lost their lives because of unsafe working conditions. Each year, an estimated 7,000 to 11,000 more are killed on the job.

Mr. President, civil penalties can provide a significant deterrent to those who would violate worker safety and health standards. They hit law-breaking businesses where it hurts—on the bottom line. And unlike criminal sanctions, which can be imposed only with the cooperation of a reluctant and overburdened Justice Department, civil penalties can be imposed directly by the Labor Department.

However, as inflation erodes the real value of civil penalties, it erodes deterrent effect as well.

Since 1970, when OSHA was established, the Consumer Price Index has increased by over 230 percent. Yet maximum penalty levels remain unchanged. As a result, their real impact on violators—and prospective violators—deteriorated to less than one-third of what Congress originally intended.

Mr. President, maintaining the deterrent effect of OSHA penalties is important to protect worker safety. But it is also important for honest, law-abiding businesses. The fact is, meeting OSHA's requirements for a safe workplace often involves a substantial investment. And honest businesses make those investments. Sometimes, though, their competitors do not. And with weak sanctions, they get away with it.

Mr. President, as a society, we have an obligation to the honest business, to make sure that its competitors cannot exploit weakened sanctions to gain an unfair competitive advantage. And that requires an effort to ensure that penalties are not eroded substantially by inflation.

So, Mr. President, it is time to bring OSHA penalties up to date. Doing so will strengthen protections for our Nation's workers, ensure fairness for honest businesses, and reduce the budget deficit.●

CLEAN AIR ACT AMENDMENTS

● Mr. MOYNIHAN. Mr. President, I note that both the House and Senate versions of S. 1630, the Clean Air Act Amendments of 1990 rejected proposals to expand the EPA's authority to allow for emissions averaging for motor vehicles.

In our version of the bill, the Senate specifically prohibited averaging, but provided an exemption from this prohibition for averaging programs relating to heavy duty engines and vehicles. In the conference on S. 1630, the Senate agreed to adopt most of the House bill's legislative language in title II, regarding emissions from mobile sources. In agreeing to adopt House provisions relating to emissions averaging—that is, to be silent on the subject altogether—the conferees were mindful of the decision in the case *NRDC* v. *Thomas*, 805 F.2d 410 (D.C. Cir. 1986) regarding proposed or promulgated EPA programs for emissions averaging for heavy duty engines.

In choosing to be silent on the issue of averaging, there was no intent by the conferees to affect the disposition of this subject at EPA or in the courts. A lack of legislative language in the conference report on S. 1630 regarding emissions averaging should only be viewed as allowing previously existing law to remain in effect.●

CONFERENCE REPORT ON THE NATIONAL AFFORDABLE HOUSING ACT, S. 566

● Mr. LIEBERMAN. Mr. President, I am pleased to support the conference report on the 1990 omnibus housing legislation. We must address the myriad of housing problems—homelessness, lack of affordable housing, the inability of working Americans to purchase homes—currently facing this country. This comprehensive legislation is an important step toward confronting these problems. I applaud the work done by the Senate conferees.

I am particularly pleased that an amendment I sponsored was retained

in the conference report. My amendment establishing the Advanced Building Technology Council, based on S. 1479, was supported and accepted by both the distinguished chairman of the Housing Subcommittee, Senator CRANSTON, and the distinguished ranking member, Senator D'AMATO, during the Senate debate on the National Affordable Housing Act. With some minor changes it has been included in the conference report. As its principal author and sponsor, I am making this statement to clarify the legislative intent of the provision.

The Advanced Building Technology Council, which will be nonprofit and nongovernmental, is directed to evaluate and review new low-cost housing technologies. If the Council finds that the proposed new technology offers significant cost savings and meets quality requirements, it will recommend to participating Federal agencies that the technology be included in federally funded construction projects and will then work with the Federal agencies responsible for the construction to implement the new technologies. In collaboration with the participating Federal agencies the Council will monitor and evaluate the performance of the new technology and prepare reports on the technologies for dissemination of Federal agencies and the private sector. The widespread distribution of these reports to the building industry is an important aspect of the program because it will enable builders around the country to make use of these innovative technologies. The National Institute of Building Sciences should cooperate with the Council so that the Council can ensure the widest possible distribution of the information on these tested cost-saving technologies.

The Council will analyze and evaluate innovative building technologies applicable to building systems, components and materials, design and construction processes, civil construction technologies, and other relevant areas. The Council should examine the cost, usefulness, security, conservation, and environmental impacts of the new technologies. Before recommending a technology the Council should determine whether it complies with or is equivalent to the relevant health, safety, and welfare standards or regulations.

The goal of this proposal is to significantly reduce the 15 to 20 years it now takes to gain acceptance for and begin production of new construction technologies and products. The highly diversified nature of the building industry makes it difficult for any individual participant to assume the risks associated with the development and implementation of new building products or technologies. The use of new technologies, approved and recommended by the expert Council, in Federal construction projects will facilitate the acceptance of these new products and technologies by State and local agencies and the private sector.

This provision will enable the Federal Government to put into place new cost-savings technologies that both the expert Council and the involved agency consider worthwhile. The development of less expensive ways to construct homes is a critical component of any Federal effort to enable more Americans to purchase homes. Unless we can improve our ability to put lower cost products and technologies into place in the construction industry, housing affordability will become more and more elusive. Only by making housing less expensive to build and to live in can we effectively make housing in America more affordable.

In order for this program to be effective, it is very important that those Federal agencies which construct, rehabilitate, and operate buildings are able and willing to participate in the implementation of the new technologies. Although we dropped from the original proposal a requirement that agency participation be mandatory in order to enable the Council to select those agencies best suited to participate, it is intended that upon a decision by the Council regarding which agencies are most appropriate, the agencies so chosen should participate. We will follow this process closely to ensure that Federal agencies participate in implementing new technologies. At a minimum, it is intended that those Federal agencies most involved in construction, including the Department of Housing and Urban Development, the Department of Defense, the Department of Agriculture, the Department of Energy, and the General Services Administration, participate in the program. All Federal agencies selected for participation should place a priority on the inclusion of new technologies.

While the original proposal adopted by the Senate contained a procurement waiver to enable new technologies certified by the Council to be speedily implemented in Federal construction projects, upon advice of Government attorneys expert in procurement, we concluded that this provision was unnecessary because the existing sole source and related procurement regulations will enable agencies to use these new technologies many of which will be available from only one manufacturer. Accordingly, it is the intent of this legislation that in order to encourage the utilization of the new technologies in Federal projects, existing procurement regulation waivers, exemptions, and sole source provisions should be applied by participating agencies.

The Council is being established within the National Institute of Building Sciences so that the support and assistance of the Institute will be available to the Council to enable it to operate most effectively. It is important to note, however, that the Council has a distinct mission, its members are to be appointed separately and cannot overlap with membership on the National Institute of Building Sciences Advisory Council, and its recommendations and program cannot be reviewed or altered by the National Institute of Building Sciences. The Council's focus, which distinguishes it from other Government projects which have conducted research on building technology without implementing the technologies in actual construction, will be on approving new technologies for use and assisting Federal agencies in including them in construction projects so that they can be evaluated by the Council and then implemented on a more widespread basis.

The members of the Council shall be named by the Secretary of Housing and Urban Development and shall be representatives of the nationwide building community with extensive experience in the building industry. The Council membership should include but not be limited to product manufacturers, health, safety, and fire hazard experts, architects, professional engineers, and representatives of consumer groups. The Secretary shall ensure that they are persons of exceptional talent, who are commited to the development and implementation of new technologies.

The cooperation between the Council and those Federal agencies involved in building construction and rehabilitation is the key to the success of this program. The results of this cooperation can be significant cost savings for the Federal Government and a substantial improvement in our ability to construct affordable housing. I believe the Advanced Building Technology Council will make a significant contribution to our national search for a way to make housing more affordable. I look forward to seeing the work of the Council implemented by the participating Federal agencies.

In addition to developing more affordable housing for the future, we must confront the homelessness problem which exists in this country today. Too many Americans do not have a safe, clean, affordable place to live, too many Americans are living in overcrowded shelters, in cars, and on the streets. The amendments to the McKinney Act included in this bill are vitally important to our war against homelessness. I am particularly pleased with emphasis in this bill on assisting homeless persons and families to make the transition from shelters to permanent housing.

Last year I introduced the Homelessness Prevention and Housing Rehabili-

tation Act, S. 772. I am pleased that key concepts behind that legislation have been included in the homelessness provisions of this bill. One of the new available transition programs, which I am particularly pleased was included in this 1990 Housing legislation, is a Security Deposit Grant Assistance Program which pays the security deposit and first month's rent for those homeless people who can pay a monthly rent but do not have the savings necessary to make the required downpayment on a permanent place to live. This Security Deposit Assistance Program is modeled on a program which has been very successful in Connecticut. In its first 2 years, the Connecticut program has enabled more than 2,000 homeless persons and families to move into permanent housing. Using only a small amount of money, security deposit assistance grants can make a critical difference in enabling many homeless families to leave shelters forever and find permanent homes.

I am pleased also that this bill recognizes the importance of rehabilitation and the opportunity it provides to develop permanent affordable housing, in many cases more quickly and at less cost than new construction. Rehabilitation is not only an effective way to create affordable housing, it is very important to the revitalization of neighborhoods now filled with abandoned buildings.

I commend my colleagues Senators CRANSTON and D'AMATO for their dedication to enacting this legislation this year. It is a great stride forward in American housing policy.●

U.N. TREATY AGAINST TORTURE

● Mr. SARBANES. Mr. President, I want to express my strong support for Senate ratification of the U.S. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to thank Chairman PELL for his strong efforts to ensure that the Convention was ratified at the close of the 101st Congress. As a member of the Senate Foreign Relations Committee, I supported reporting the Convention to the full Senate. In light of the U.S. involvement in the early stages of developing the Torture Convention, it was time for this body to act placing the United States among the ranks of the more than 50 nations that have ratified the Convention.

At the outset I want to commend the chairman of the Senate Foreign Relations Committee, Senator CLAIBORNE PELL, for his leadership, not only this year, but even before the convention was adopted by the United Nations, in focusing attention on the need for his international agreement. I recall his strong support back in 1984 when he coauthored the joint resolution, which passed the Congress reaffirming the oposition of the United States to torture and restating its commitment to combating the practice of torture.

On December 10, 1984, the U.S. General Assembly adopted the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by unanimous agreement. By the beginning of this year, 50 countries had ratified the Convention and 22 others had signed it. Adoption of the Convention by the United Nations as a significant event following more than a decade of international effort to eliminate the heinous practice of torture. The United States played a creative role in developing the Convention and insisted that it include provisions making torture a punishable offense.

The history of the ratification process of the Torture Convention is instructive. The Reagan administration submitted the Convention to the Senate in May of 1988 for its advice and consent and included 19 separate conditions with its submission. After careful review by a number of human rights organizations as well as the American Bar Association, these groups decided to oppose the Reagan conditions based on their concern that they limited U.S. participation in the implementing process and reduced its effectiveness.

Again Senator PELL played a key role by urging the newly elected Bush administration to review the conditions and to expedite consideration of the Convention. This was done, and the Convention was resubmitted to the Senate with 12 conditions.

The Senate Foreign Relations Committee held a detailed hearing on the Torture Convention in January of this year soon after the revised conditions were submitted to the Senate. This Convention was the product of 7 years of intensive international negotiations. It codifies international law as it has evolved in the post World War II era with regard to torture and inhuman treatment and punishment and is comprehensive in its treatment of the problem of preventing and combating the practice of torture.

Mr. President, our Nation has rightly claimed to be a leader among nations in the struggle for human rights. Ratification of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment places us in the company of all other permanent members of the U.N. Security Council and gives further impetus and credence to our role as a defender of human rights throughout the world.●

AGENT ORANGE UPDATE

● Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I take this opportunity to update my colleagues and the public on the status of current scientific research concerning agent orange. This update includes reviews of the Centers for Disease Control's [CDC] study entitled "The Association of Selected Cancers With Service in the U.S. Military in Vietnam"; a recent scientific review commissioned by the American Legion, the Vietnam Veterans of America, and the National Veterans Legal Services Project entitled "Human Health Effects Associated With Exposure to Herbicides and/or Their Associated Contaminants—Chlorinated Dioxins"; the "Report to the Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange" by Adm. Elmo R. Zumwalt, Jr.; and the recommendations made by VA's advisory committee on environmental hazards to the Secretary of Veterans Affairs concerning possible associations between exposure to agent orange and either non-Hodgkins lymphoma [NHL] or soft-tissue sarcoma [STS].

Since agent orange first came to public attention in the late 1970's, I have been working to resolve the concerns raised about possible adverse health effects arising from veterans' exposure to this herbicide in Vietnam. These are very emotional and controversial issues, and the inability to resolve them completely undoubtedly has contributerd to a feeling on the part of some Vietnam veterans that they have not been treated fairly by the Nation for which they fought.

Mr. President, I am proud to have authored legislation that provided VA health care eligibility for Vietnam veterans exposed to agent orange and mandated comprehensive epidemiological studies of the health of Vietnam veterans. But I feel that we must continue to work to ensure that all appropriate efforts are made to try to find answers to the questions that have been raised regarding the long-term health effects of agent orange exposure, and to ensure that veterans exposed to that herbicide are treated fairly and compassionately.

To that end, I coauthored, with Senators DASCHLE and KERRY, a bill to compensate these veterans for NHL, STS, or chloracne and to create a mechanism to consider the basis for establishing presumptions of service connection for diseases determined to have positive association with exposure to agent orange or other herbicides in Vietnam and to provide for further independent study of this issue. The Senate has passed this legislation twice. First, on August 3, 1989, the Senate passed S. 1153 after a motion to table the measure failed by a vote of 92-8 and second, on October 3, 1989, as title VIII of S. 13 as incorporated into H.R. 901. Very similar

provisions were reported by our committee this session as title I-C of S. 2100. Unfortunately, due to objections raised by two Senators, the Senate was unable to consider S. 2100. As I noted in a statement on the Senate floor on October 17, 1990, I intend to introduce this legislation in the 102d Congress and will do all I can to move it through committee and to the Senate as quickly as possible. The House passed similar legislation, in H.R. 5326, on October 15, 1990.

SELECTED CANCERS STUDY

Mr. President, the third element of the efforts of the Centers for Disease Control to carry out the agent orange and Vietnam-experience studies, mandated by Public Law 96-151 as amended by Public Law 97-72, was the selected cancers study. This study was designed to determine whether there is an increase among Vietnam veterans in the incidence of several serious, but relatively rare cancers that some studies have suggested might be linked to dioxin exposure. The report of the selected cancer study was released in March 1990.

In letters dated May 22, 1990, the chairman and ranking minority members of the House and Senate Committees on Veterans' Affairs requested a review of this study, with particular emphasis on the scientific methods and criteria used by the authors in the study as well as the validity of their analyses and conclusions, from the Office of Technology Assessment [OTA], the National Acadmey of Sciences [NAS], the White House Domestic Policy Council's Agent Orange Task Force [AOTF] and VA's Advisory Committee on Environmental Hazards.

Mr. President, I ask that the responses received be printed in the RECORD at this point.

The material follows:

CONGRESS OF THE UNITED STATES,
OFFICE OF TECHNOLOGY ASSESSMENT,
Washington, DC, September 27, 1990.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR ALAN: Enclosed is a review of the Center for Disease Control's study on "The Association of Selected Cancers With Service in the U.S. Military in Vietnam," which you and your colleagues requested in your letter of May 22.

OTA approved the protocol for this study in February 1984, in accordance with the mandate of Public Laws 96-151 and 97-72. We find the "Selected Cancers Study"(SCS) to be will designed, conducted, and analyzed. We note that a modest increase in the risk of contracting one of the six cancers studied, non-Hodgkin's lymphoma, was found. There is no obvious explanation for the cause of this excess, but the pattern of risk among the services suggests strongly that it is not related to Agent Orange exposure (see attachment).

You asked specifically about whether any follow-up studies were warranted based on the results of the SCS. We do not see the need for new studies, but it would be valuable for the Department of Veterans Affairs to continue following the pattern of causes of death among Vietnam veterans, as they have been doing in their proportionate mortality study. In addition, while CDC has analyzed the SCS data for all appropriate military related variables, it is a rich source for analysis for many other factors, e.g., occupational and other exposures reported in the interviews. The data should be further analyzed by CDC, or some provision made to ensure that it is adequately accessible to independent researchers. Much of the value of the data will be lost if this is not done.

I hope this review is useful to you and your Committee. If you have any questions about it, please do not hesitate to contact me, or call Hellen Gelband or Clyde Beheny in the OTA Health Program (at 8-6590).

Sincerely,

JOHN H. GIBBONS.

OTA REVIEW OF: THE ASSOCIATION OF SELECTED CANCERS WITH SERVICE IN THE U.S. MILITARY IN VIETNAM

(By the Centers for Disease Control Selected Cancers Cooperative Study Group)

(Background paper prepared by Hellen Gelband, Health Program, Office of Technology Assessment, U.S. Congress, September 1990.)

(The views expressed in this background paper do not necessarily represent the views of the Technology Assessment Board or its individual members.)

INTRODUCTION

The "Selected Cancers Study" (SCS) was one of three studies proposed by CDC to respond to the mandates of Public Laws 96-151 and 97-72, after responsibility for the studies had been shifted by interagency agreement from the Veterans Administration to the Department of Health and Human Services. The Vietnam Experience Study was completed in 1988, and the Agent Orange Cohort Study was canceled after extensive military records research and the laboratory-based "validation study" provided convincing evidence that the majority of ground troops had relatively little direct exposure to Agent Orange in Vietnam. By mandate of the two laws, OTA reviewed the study protocols for scientific validity and responsiveness to the laws. The SCS protocol was approved by the OTA Director in February 1984.

DESCRIPTION OF STUDY

The SCS is actually six separate case-control studies of the following cancers: non-Hodgkins's lymphoma (NHL), soft tissue and other sarcomas (STS), Hodgkin's disease, nasal cancer, nasopharyngeal cancer, and primary liver cancer. These cancers were chosen, on the basis of literature available when the study was planned, to include cancers that might plausibly be associated with exposure to phenoxy herbicides and their contaminants (mainly 2,3,7,8-tetrachlorodibenzo-p-dioxin, 2,3,7,8-TCDD, or dioxin). From the outset, the primary purpose of the study was to determine whether serving in Vietnam placed men at a higher risk of developing these cancers than if they had not gone. It was also planned, however, to include an analysis using some Agent Orange exposure rating to see whether there might be a correlation between level of exposure and cancer risk. As it turned out, the procedure envisioned to accomplish this was not acceptably reliable (this was not the same tracking procedure that was used in the "validation study," which examined the relationship between exposure estimates based on military records and blood dioxin levels of veterans), and there was no reasonable alternative. According to CDC, they asked the cancer registries participating in the study whether blood dioxin analyses could be added to the study. This was rejected by physicians treating the cancer patients, many of whom understandably felt it not in their patients' best interests to remove blood from them unnecessarily.

In a case-control study, a group of individuals with cancer ("cases") is identified, and another group is identified ("controls"), who are as similar as possible to the cases, expect that they do not have cancer. For the SCS, cases and controls were identified, contracted, and interviewed by eight population-based cancer registries around the country, according to a protocol drawn up by CDC and approved by OTA. The study included males born between the years 1929 and 1953, and first diagnosed with cancer between December 1, 1984 and November 30, 1988. Controls were identified by random digit dialing, and frequency matched to the lymphoma cases according to 5-year date of birth interval. Deceased controls were identified for cases who died before they could be interviewed.

In analyzing a case-control study, a determination is made for all individuals in the study concerning the "risk factor(s)" of interest. In the SCS, the main risk factor was whether the men served in Vietnam. Using appropriate statistical analysis, an "odds ratio" is arrived at, in this case signifying the odds of getting the particular cancer after serving in Vietnam versus the odds of getting the disease without service in Vietnam. (For relatively rare diseases, such as the cancers in this study, the odds ratio is nearly equivalent to another measure, the "relative risk.") An odds ratio of one (or a number near one, allowing for chance departures) connotes no excess risk.

In practice, a great deal of information, not just on particular risk factors, is gathered on each participant, much of it from personal interview (or from interviewing a surrogate, for those who have died). In addition to using this information directly in the analyses, it is used to adjust for differences (e.g., in demographic characteristics) that may exist between the cases and controls. The analyses and the ways in which the information was used in the SCS were appropriate and in accordance with good scientific practice.

In addition to interview information, CDC also collected information from military records and verified the diagnoses of cases by having pathologists review tissue specimens.

RESULTS

In all, there were 1,157 men with NHL, 342 with STs, 310 with Hodgkin's disease, 48 with nasal carcinoma, 80 with nasopharyngeal carcinoma, and 130 with primary liver cancer. A pool of 1,776 controls was for each cancer-specific analysis. These numbers make for a relatively powerful (in a statistical sense) study. The power to detect a relative risk as low as 2 (a relatively modest risk) for an association of service in Vietnam with non-Hodgkin's lymphoma, soft tissue sarcomas, or Hodgkin's Disease was well over 90%. For the rarer Cancers (nasal carcinoma, nasopharyngeal carcinoma, and primary liver cancers), the power was lower, but still adequate to detect relative risks of 5 or more. It is worth noting that for rare diseases, even a doubling of risk may

amount to a very small number of extra cases.

The study found a modest excess risk of NHL among Vietnam veterans, about 1.5 times the risk for men who were not in Vietnam, and this finding was statistically significant at the conventionally-accepted 5 percent level. For the other cancers, no excess risk was seen for Vietnam veterans.

One of the puzzling aspects of this elevated risk for NHL is that it appears to be greatest among "blue water Navy" veterans, who were not actually stationed in Vietnam but were on ships off the coast. for men who actually were stationed in Vietnam, there is no statistically significant excess risk. CDC points out that this pattern of risk is not consistent with the hypothesis that the cancers were associated with exposure to Agent Orange. No obvious explanation has been put forth to explain these results. It is possible that the observed excess risk is an anomaly due to some unknown "confounding variable," something associated independently both with getting the cancer and with having served in Vietnam. It could be a chance finding. It could also represent a real risk arising from some common feature of serving "in Vietnam," which would have to encompass serving in the blue water Navy, as well as on land.

NEED FOR FOLLOW-UP

The results of the SCS do not suggest the need for more studies. However, it would be valuable for the Department of Veterans Affairs to continue following the pattern of causes of death among Vietnam veterans, as they have been doing in their proportionate mortality study. In addition, while CDC has analyzed the SCS data for all appropriate military-related variables, it is a rich source for analysis of many other factors, e.g., occupational and other exposures reported in the interviews. The data should be further analyzed by CDC, or some provision made to ensure that it is adequately accessible independent researchers. Much of the value of the data will be lost if this is not done.

NATIONAL ACADEMY OF SCIENCES,
Washington, DC, June 14, 1990.

Hon. ALAN CRANSTON,
Chairman, Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to your request for comments on the Centers for Disease Control (CDC) study of selected cancers in Vietnam Veterans, I enclose the summary report of our advisory committee to the Public Health Service (PHS.) An earlier version was presented to the House Committee in testimony in April.

The Institute of Medicine of the National Academy of Sciences convened our committee at PHS request to review the conduct of the CDC study and the interpretation of the data. The committee met with agency representatives on five occasions and reviewed the final reports.

Based on its discussions with the CDC staff and the material it has reviewed, the committee believes that the Selected Cancers Study makes a useful and important contribution to understanding the relationship between Vietnam experience and the cancers under study. In the committee's judgment, the CDC's work meets the highest professional standards.

The committee also believes that the data collected in the Selected Cancers Study are a valuable resource for other than studying the health effects of Vietnam service. Thus the committee recommends that, after the completion of the current study, resources be made available for further analysis of the Selected Cancers Study data by CDC staff and their collaborators and eventually by others.

If the Institute of Medicine and the Academy can be of further assistance, please don't hestitate to call on us.

Yours sincerely,

FRANK PRESS,
President.

SELECTED CANCERS STUDY: ADVISORY COMMITTEE ON THE CENTERS FOR DISEASE CONTROL STUDY OF THE HEALTH OF VIETNAM VETERANS

(Review of CDC Draft Reports, SUMMARY REPORT, Institute of Medicine, National Academy of Sciences, April 25, 1990)

NOTICE.—The project that is the subject of this report was approved by the Governing Board of the National Research Council, whose members are drawn from the councils of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine. The members of the committee responsible for the report were chosen for their special competencies and with regard for appropriate balance.

This report has been reviewed by a group other than the authors according to procedures approved by the Report Review Committee consisting of members of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine.

The Institute of Medicine was chartered in 1970 by the National Academy of Sciences to enlist distinguished members of appropriate professions in the examination of policy matters pertaining to the health of the public. In this, the Institute acts under both the Academy's 1863 congressional charter responsibility to be an adviser to the federal government and its own initiative in identifying issues of medical care, research, and education.

This study is supported by the Centers for Disease Control under contract number 200-86-0951. 2101 Constitution Avenue, N.W., Washington, DC. 20418. (202) 334-3300.

ADVISORY COMMITTEE ON THE CDC STUDY OF THE HEALTH OF VIETNAM VETERANS

Board of Health Promotion and Disease Prevention

Leon Gordis, Professor and Chairman, Department of Epidemiology, The Johns Hopkins University School of Hygiene and Public Health, Baltimore, Maryland.

Earl Philip Benditt, Professor, Department of Pathology, School of Medicine, University of Washington, Seattle.

Norman E. Breslow, Professor and Chairman, Department of Biostatistics, University of Washington, Seattle.

Paul Stolley, Herbert C. Rorer Professor of Medical Sciences, University of Pennsylvania, School of Medicine, Philadelphia.

M. Donald Whorton, Executive Vice President and Chief Medical Scientist, ENSR Health Sciences, Alameda, California.

Institute of Medicine

Gary B. Ellis, Director, Division of Health Promotion and Disease Prevention; Michael A. Stoto, Study Director; Donna Thompson, Secretary.

INTRODUCTION

In May 1985, James Mason, then Acting Assistant Secretary of Health, requested that the Institute of Medicine (IOM) establish a committee to assist the Centers for Disease Control (CDC) in its conduct of epidemiologic studies on the health of Vietnam veterans. These studies are mandated by public laws 96-151 and 97-22, and represent a large and complex effort to determine the possible long-term health effects of Vietnam veterans exposure to herbicides, including Agent Orange (the Agent Orange Study, AOS), the possible long-term effects of military service in Vietnam (the Vietnam Experience Study, VES), and the risk of selected cancers (the Selected Cancers Study, SCS). In September 1985, the CDC contracted with the IOM (1) to advise on the conduct of these three studies, (2) to advise on the interpretation of the data collected, and (3) to provide prepublication review of the CDC reports presenting analyses of these data. Extensive work to obtain reliable exposure data demonstrated that the AOS study was not scientifically feasible. The IOM oversight has therefore been primarily directed to consideration of the VES and SCS studies.

To fulfill the CDC contract, the IOM appointed a broadly expert committee to review the VES cohort study. Eleven reports were prepared and submitted to the CDC to complete the three tasks identified above. On completion of the study by the CDC, VES results were published in three articles in the Journal of the American Medical Association [1] and the original IOM committee was disbanded.

In 1988 the IOM appointed the Selected Cancers Study committee to advise the CDC on its study of the association between certain cancers and Vietnam service. A list of the committee members is attached. The primary objective of the SCS is to determine whether there is an association between service in Vietnam and the risk of developing any of six types of cancer—Hodgkin's disease, non-Hodgkin's lymphoma (NHL), soft tissue and other sarcomas, nasal cancer, nasopharyngeal cancer, and primary liver cancer. The IOM committee has examined the study protocols, methods, and techniques used in obtaining and analyzing the data in this population-based case-control study. The first report of the committee, a review of the study design and analysis plan, was completed in October 1988. The committee also reviewed and discussed preliminary analyses of the data. The committee's second report reviewing the preliminary analyses of the NHL data was completed in April 1989, its third report on the preliminary analysis of the Hodgkin's disease and sarcoma data was completed in July 1989, and its fourth report on the other cancers and plans for presentation of the final results was completed in January 1990. On March 13, 1990 the committee met with the CDC staff to review a draft of the CDC's final reports on the SCS. Draft reports on (1) non-Hodgkin's lymphoma, (2) soft tissue and other sarcomas, and (3) the other cancers along with draft executive summary were distributed to the committee in advance. At the meeting, members of the IOM committee and the CDC staff reviewed the findings and their presentation in the draft reports. The committee's conclusions are based on these materials, materials provided at earlier meetings, and its discussions with the CDC staff. The committee has not seen the ultimate CDC reports on the CDC study.

CONCLUSIONS

Based on its discussions with the CDC staff and the material it has reviewed, the committee believes that the Selected Can-

[1] Health Status of Vietnam Veterans (3 papers). Vol. 259(18):2701-2719, May 13, 1988.

cers Study makes a useful and important contribution to understanding the relationship between Vietnam experience and the cancers under study. It has been a difficult undertaking, and the IOM committee commends the CDC staff on their efforts and progress. The staff have carefully gathered a very large amount of data under difficult circumstances and performed statistical analyses with diligence and resourcefulness.

The committee's recommendations are summarized below. Based on its discussions with the CDC staff at the fifth committee meeting and a review of the final CDC reports, the committee feels that the CDC has been responsive to the committee's concerns, and had made changes as appropriate.

Study plan

In its earlier reports, the committee found the study plan to be a good one. The number of cases in the study gives it good power to study the relationship between Vietnam service and the development of non-Hodgkin's lymphomas and soft tissue sarcomas and adequate power for primary liver cancers. The committee notes that the original power calculations were performed assuming that nasal and nasopharyngeal cancers would be analyzed together, and the sample was projected to have adequate power under that assumption. Because these cancers were appropriately separated in the final analysis, the power is not as high as originally planned, but is sufficient to detect four-fold increases in risk (similar to those that have been reported in other studies.

The committee is satisfied with the rationale for selection of the six cancers chosen for study, and feels that the geographical distribution of the tumor registries and the method of selecting them was satisfactory. The committee accepts the appropriateness of using random digit dialing for the selection of controls in the various geographical regions of the study. The committee also feels that the requirement for submission of histological specimens of each tumor for confirmation of pathological diagnosis is very valuable and adds to the validity of the study's results. The committee reviewed the data showing that dioxin in the serum of Vietnam-era veterans is generally at background levels and is not correlated with reported exposures. For this reason, and because it was not feasible to gather the necessary serum from the cases and controls in the SCS study, the committee concurred with CDC that serum dioxin measures should not be used.

Because of potential gaps and errors in the data gathered by the U.S. Army and Joint Services Environmental Support Group (ESG) on Vietnam-era military service, the committee recommended that CDC develop an *a priori* plan for handling discrepancies between the self-reported and the ESG data, taking into account the expected strengths and weaknesses of each data source.

The committee also recommended that the CDC continue to refine its measures of potential sources of exposure to dioxin outside of Vietnam, in addition to potential exposures through herbicides and pesticides.

Analysis

At its first meeting, the committee urged a rigorous, detailed analysis of the confounding factors and variables other than the Vietnam experience that might show an association with the individual cancers selected for study in order to answer key questions about service in Vietnam and at the same time yield information concerning the risk factors for the development of these cancers.

The committee discussed the rationale for the approaches to data analysis, such as the use of conditional vs. unconditional logistic regression models and their strengths and weaknesses. It suggested that the CDC use conditional logistic regression models where appropriate for studying confounded potential risk factors, but also present basic descriptive data in simple graphical and tabular form. The committee concurs with CDC's plan to calculate exact confidence intervals for odds ratios when possible and use approximate confidence intervals only when exact results are not available, such as for conditional multivariate logistic regression analyses.

The committee feels that decisions about which covariates to include in multiple logistic regression analyses to adjust odds ratios should employ prior knowledge and scientific judgment, and should not rely solely on a statistical procedure such as step-wise regression. Given the nature of the study and the lack of definitive information on all of the potential causes of soft-tissue cancers, the committee felt that the CDC efforts to identify "data-based" confounding variables are appropriate as long as they are limited to those variables for which, *a priori*, there is some information to indicate a potential causal relationship with the selected cancers or some other definite reason for consideration.

The committee recommended that a consistent policy be developed for presenting odds ratios in conjunction with cross tabulations of cases and controls by study variables and that a consistent wording be used for reporting statistical results that are suggestive of an association but not statistically significant. Odds ratios should generally be accompanied by an appropriate confidence interval, except in reporting the result of a sensitivity analysis.

The presentation of contingency tables or odds ratios as measures of association for multiple subsets of the data can sometimes be informative. However, because there are a large number of variables under investigation, many of the odds ratios in such small subgroups can take on very large or very small values solely because of chance fluctuations. Thus, in journal articles and in CDC's report to Congress, the committee recommended that the CDC develop a systematic approach to the presentation of subset analyses that gives as much information as possible but tends to avoid the presentation of large effects that are probably due to chance.

After reviewing a number of alternative data presentation formats for journal articles and its report to Congress, the committee recommended that CDC present the results of its comprehensive analyses of the main effects of Vietnam exposures on cancer risk and of possible interactions with age and other potential modifiers. When in its judgment there is some evidence that the effects of exposure may differ in different subgroups, subgroup data in the form of 2x2 tables should be presented also so that the reader can see the basic data. This approach has the advantage of taking into account the multivariate complexity in the data as well as avoiding the problems of presenting many small tables.

The committee could not identify a general preferred solution to potential problems of misclassification, selection bias, and so on. Rather, the committee recommended that sensitivity analyses be performed, that is, statistical analyses should be carried out under a number of different assumptions related to the possible biases. If the final results of the analyses are similar despite the different assumptions, the problems can be regarded as minor; if the results differ markedly, the problem needs further analysis and discussion.

Despite the need for these sensitivity analyses, the committee feels that for the final presentation it is important to have a set of decision rules for handling these matters that is as consistent as possible across all of the studies and analyses. Therefore, the committee recommended that the CDC make every effort to develop consistent rules, including, for each disease under study, a common rule regarding the subjects that should be used for all statistical analyses. These rules would form the basis for the sensitivity analyses.

In this light, the committee reviewed the inclusion criteria for the nasal, nasopharyngeal, and primary liver cancers. In the preliminary analyses of both the nasal and nasopharyngeal cancers, the CDC had included a small number of cases of cancer of the nose and the nasopharynx that are not of epidermal origin, including a few cases of lymphoma. Because most of the information on risk factors on which the hypotheses were developed and the covariates were selected relate to epidermoid cancers per se, not the broader group, the committee recommended that the basic statistical analyses use the epidermoid cancer data alone.

In the case of primary liver cancer, however, the available epidemiological evidence does not suggest any difference between the known and suspected risk factors for the two major kinds of primary liver cancer: hepatocellular carcinoma and cholangiocarcinoma. Because there is no evidence of any epidemiological difference, and because pooling the data would increase the power of the statistical tests, in this instance the committee recommended that both kinds of primary liver cancer cases be included in the statistical analyses.

The committee agreed with the CDC that it is preferable to exclude from the statistical analysis those men not eligible to serve in Vietnam by virtue of having resided outside the United States just as non-eligible subjects are excluded from a randomized trial. However, to test the sensitivity of the results to this decision, the committee suggested that, in addition to the primary analysis, the CDC perform multivariate statistical analyses on the full data set (that is, including those not eligible to serve) appropriately controlling for eligibility variables.

Similarly, because the etiology of AIDS and non-AIDS lymphomas are likely to be very different, the committee feels that it is best to exclude subjects reported to have AIDS from the primary analysis. However, to test the sensitivity of the results to this decision, the committee suggested that the CDC perform multivariate statistical analyses on the full data set (that is, including both the AIDS and non-AIDS subjects) appropriately controlling for AIDS status. The committee further recommended that the CDC carefully examine the "never married" and "intravenous drug use" variables because they might be associated with unidentified AIDS cases.

The committee reviewed the statistics on the self-reported use of malaria prophylaxis by veterans stationed in or off the coast of Vietnam, and agree that the *data were ques-*

tionable, given what is known about military policies during the Vietnam era. As part of a sensitivity analysis, the committee recommended that the CDC carry out two sets of statistical calculations: one assuming that all men stationed in or off the coast of Vietnam were taking malaria prophylatics and another accepting the data at face value.

The committee also reviewed the CDC's plans for detailed analyses of the non-Hodgkin's lymphoma data, taking into account the branch of military service in which the men served, and addressed the issue of what would be an appropriate reference group. The committee feels that CDC has to go back to the original hypotheses to answer such a question. The primary hypothesis is that Vietnam service is associated with each of the cancers under study, so therefore the appropriate primary reference group should be men who did not serve in Vietnam, regardless of other military service.

For this and other purposes, however, the committee feels that there is value in having multiple reference groups and thus the committee recommended that the CDC further explore the effect of branch of military service and other factors using two other reference groups: (1) men with military but not Vietnam service, and (2) men with no military service.

Presentation of results

Based on its review of the draft final reports and its discussions with the CDC staff, the committee developed the following recommendations about the presentaton and interpretation of the results.

First, the committee recommends that CDC should more fully note the history of the SCS study in the introduction and discussion sections of the reports. This would include an acknowledgement of the study's original focus on Agent Orange and a discussion of the reasons for not using physical measures of dioxin exposure or more detailed exposure measures based on self-report or military records.

Second, the committee recommends that the CDC explicitly acknowledge and discuss alternative explanations for the elevated relative risk associated with Vietnam service found in the NHL study. Specifically, the committee suggests that final CDC reports address the problem of multiple comparisons and possible misclassification of Vietnam service, as discussed below:

Third, the committee recommends that the CDC review the use of terms relating to statistical significance, definition of Vietnam service, and sensitivity analysis in the text, and make them as clear and consistent as possible.

General comments

The committee commends the CDC staff for their efforts in the design of the study and the analysis of its results. The staff have been extremely responsive to the committee's recommendations. Epidemiologic studies always require difficult judgments and face many constraints. The committee feels that the CDC staff have carried out the best study possible under the circumstances. In the committee's judgment, their work meets the highest professional standards.

The data collected in the Selected Cancer Study are a valuable resource for other than studying the health effects of Vietnam service. As a large-sample case-control study with careful pathological confirmation and extensive reported exposure data, the data constitute an extremely valuable resource for exploring the full range of occupational and environmental exposures that might be related to the six cancers under study. Furthermore, a comparison of the distribution of cell types for AIDS-related and other NHL's might reveal important new information about the pathology of AIDS. Thus the committee recommends that, after the completion of the current study, resources be made available for further analysis of the SCS data by CDC staff and their collaborators and eventually by others.

PUBLIC HEALTH SERVICE,
Washington, DC, May 24, 1990.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: When Dr. William Roper transmitted the Selected Cancers Study to the Ranking Majority and Minority Members of the Senate and House Veterans' Affairs Committees, he indicated that a Science Panel review of the study would follow within approximately 6 weeks. That review has been completed and is enclosed.

Identical letters are being sent to Senator Frank H. Murkowski; Congressman G.V (Sonny) Montgomery, Chairman of the House of Representatives Veterans' Affairs Committee; and Congressman Bob Stump, Ranking Minority Member of that committee.

Sincerely yours,
JAMES O. MASON, M.D., Dr.P.H.,
Assistant Secretary for Health.

PUBLIC HEALTH SERVICE,
CENTERS FOR DISEASE CONTROL,
Washington, DC, May 16, 1990.

MEMORANDUM

From: Assistant Director for Science, Center for Environmental Health and Injury Control.

Subject: Agent Orange Task Force/Science Panel Review of Selected Cancers Study.

To: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control.

In this memorandum, I will summarize the comments of the members of the Science Panel of the Agent Orange Task Force on the Selected Cancers Study.

The consensus of the Science Panel is that this was a very thorough and carefully conducted set of case-control studies of cancers which had been associated in the literature with exposure to phenoxyherbicides and chlorophenol. Although the study looked at exposure to Agent Orange, it emphasized the point that this was not a study of Agent Orange exposure but of service in Vietnam as a possible risk factor for these particular malignancies. Great care was taken in the design of the study, in confirmation of all cases of cancer included in the study by blinded pathological review of slides and tissues, and in validation of reported military service through the records of the Environmental Studies Group, Department of Defense. The papers were clearly written and the conclusions supported by the appropriate tables.

The Science Panel concurs with the conclusions of the Selected Cancers Study.

DANIEL A. HOFFMAN, Ph.D., M.P.H.

DEPARTMENT OF VETERANS AFFAIRS,
OFFICE OF THE GENERAL COUNSEL,
Washington, DC, September 11, 1990.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR MR. CRANSTON: You had previously requested the views of the Veterans' Advisory Committee on Environmental Hazards on two reports: a study by the Centers for Disease Control, "The Association of Selected Cancers with Service in the U.S. Military in Vietnam" and a report by the Agent Orange Scientific Task Force entitled, "A review of the Scientific Literature on Human Health Effects Associated with Exposure to Herbicides and/or Their Associated Contaminants—Chlorinated Dioxins." The Committee considered those reports at its May, 1990, meeting. A copy of the minutes of that meeting is enclosed. (These topics are discussed at pp. 4 and 5 of the May 17, 1990, minutes.) I am also enclosing a copy of the transmittal memorandum to Secretary Derwinski which also discusses the report of the Agent Orange Task Force.

If I may be of further assistance, please let me know.

Sincerely,
FREDERIC L. CONWAY,
Executive Secretary,
Veterans' Advisory Committee on Environmental Hazards.

DEPARTMENT OF
VETERANS AFFAIRS,
September 10, 1990.

MEMORANDUM

From: Executive Secretary, Veterans' Advisory Committee on Environmental Hazards.

Subject: Minutes of May 16–17, 1990, Meeting.

1. The Veterans Advisory Committee on Environmental Hazards met on May 16 and 17, 1990. (The minutes of that meeting are attached.) It reviewed the scientific literature relating to whether there is a significant statistical association between exposure to a herbicide containing dioxin and the subsequent development of a soft tissue sarcoma. After considering over 80 articles, the Committee concluded that the weight of the evidence was such that it was at least as likely as not that such an association existed. Committee members noted that work done in Sweden was strongly compelling for an association while studies done elsewhere not showing an association were also very strong. It was noted by Committee members that the positive studies tended to be confined to one geographic area of the world and that studies involving Vietnam veterans did not find such an association. Nevertheless, in keeping with the requirement that reasonable doubt be exercised in favor of an association when the evidence is in approxiate balance, the Committee recommended that, in their opinion, there was a significant statistical association between exposure to a herbicide containing dioxin and soft tissue sarcomas. Several Committee members noted, however, that they did not believe that the evidence demonstrated a causal association.

2. In the course of their review of the literature, the Committee considered the report of the Agent Orange Scientific Task Force. The Committee agreed with a review prepared by Dr. Whitlock. In his review, he noted that the studies cited by the Agent Orange Scientific Task Force contained one or more of the following shortcomings: (1)

In most of the reports, exposure to phenoxyacetic acid and/or chlorinated dioxins was inferred, and not documented. (2) In some cases, the populations studied were also exposed to other chemicals. (3) In almost none of the studies was there an attempt to demonstrate a dose-response relationship between (presumed) exposure and an adverse health effect(s). The lack of adequate exposure data, in the Committee's opinion, made it difficult (if not impossible) to draw firm conclusions from these epidemiologic studies.

3. The Committee commented that while the Agent Orange Scientific Task Force also recognized this limitation on the inferences one could draw from the literature, it provided no new data or novel analyses that addressed the problem. The Committee also stated that the Task Force failed to document its approach to "synthesizing all of the available data to determine their overall or aggregate meaning." In the Committee's opinion, the absence of such documentation makes the Task Force's conclusions scientifically indefensible.

4. The Committee also noted that the Task Force implied that the possible adverse health effects of phenoxyacetic acids and/or chlorinated dioxins depended not only upon exposure to the compund of interest but also upon the genetic makeup of the individual and his/her exposure to other chemical substances. The Task Force provided no new data or information that addressed these issues.

5. The Task Force noted correctly that, for regulatory purposes, a chemical that causes cancer in animals should be considered a potential human carcinogen. However, the Committee commented, its classification as a potential carcinogen does not constitute evidence that 2,3,7,8-TCDD does, in fact, produce cancer in man. There is even evidence from animal studies (not cited by the Task Force) that 2,3,7,8-TCDD produces a protective (i.e., anti-carcinogenic) effect in animals subsequently exposed to carcinogenic polycyclic aromatic hydrocarbons [See Cohen, G.M., et al., *Cancer Res.* 39: 4027-4033 (1979); DiGiovanni, J., et al., *Cancer Res.* 40: 1580-1587 (1980)] By analogy, these observations raise the possibility that 2,3,7,8-TCDD may, under certain circumstances, produce a similar protective effect in humans. The Committee noted that this concept is not discussed by the Task Force in its report.

6. From a scientific standpoint, in the opinion of the Committee, the conclusions of the Task Force represent an over-interpretation of the inconclusive data and an oversimplification of a complex biological process. The Task Force presented only a selective review of the literature and its review appeared to be generally uncritical and lacking of any discussion of the strengths and weaknesses of a particular study.

FREDERIC L. CONWAY,
Executive Secretary.

MINUTES OF VETERANS' ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS, MAY 17, 1990

When the Council resumed, it reviewed a paper by Milham, Samuel, "Herbicides, Occupation, and Cancer, "*Lancet,* June 26, 1982, p. 1464, Dr. Kurland, the primary reviewer, commented that the exposure assessment made by the author was indirect and somewhat uncertain. This was the same observation made by Dr. Whitlock in his written comment. Both reviewers characterized the paper as valid and inconclusive.

Next, the Council reviewed a paper by Bond, et al., "Medical and Morbidity surveillance findings among employees potentially exposed to TCDD," *Br. J. Industrial Med.* 40: 318-324 (1983). Dr. Kurland, the primary reviewer, though that the exposure assessment in this study was also somewhat uncertain. He commented to that while the study was negative for soft tissue sarcoma, it had inadequate power. Therefore, he characterized the study as valid but inconclusive. Dr. Whitlock, the secondary reviewer, made the same observations in his written comments.

Dr. Kurland served as primary reviewer for Smith, et al., "Soft Tissue Sarcoma and Exposure to Phenoxyherbicides and Chlorophenols in New Zealand," *JNCI* 73: 1111-1117 (1984). (See note 60.) It was noted that this paper had been previously reviewed in conjunction with a later paper by Smith (see note 61). It was agreed that taken together the papers should be described as valid and negative.

The next paper considered was Hoar, et al. "Herbicides and Colon Cancer," *Lancet,* June 1, 1985, pp. 1277-1278. Dr. Kurland, the primary reviewer, observed that the paper was valid with respect to colon cancer but that it was not pertinent with regards to soft tissue sarcomas.

The Council next took up a paper by Coggon, et al., "Mortality of workers exposed to 2 methyl-4 chlorophenoxyacetic acid," *Scan. J. Work Environ. Health* 12: 448-454 (1986). Dr. Kurland again served as primary reviewer. He noted that there was one death from soft tissue sarcoma in the exposed cohort compared with 1 death expected. He thought the study to be valid but inconclusive. Dr. Melvin, the secondary reviewer, agreed also commenting on the study's low power and observing that misclassification of tumor type could result in very different outcomes.

The next paper reviewed was by Bond, et al., "Evaluation of Mortality Patterns Among Chemical Workers with Chloracne," *Chemosphere* 16: 2117-2121 (1987). Dr. Kurland noted that while there was no significant difference between the observed and expected cases of soft tissue sarcoma (0 observed, 0.1 expected) the study lacked adequate power due to its small size. Consequently, he called the study valid but inconclusive. Dr. Melvin, the second reviewer, agreed.

A paper by Forcier, et al., "Mortality of Australian Veterans of the Vietnam Conflict and the Period and Location of Their Vietnam Service," *Military Medicine* 152: 117-123 (1987) was reviewed next. Dr. Kurland, the primary reviewer, observed that there was nothing in this paper with respect to soft tissue sarcoma. He called the study valid but inconclusive for soft tissue sarcoma.

The Council then considered two papers by Stellman, et al., "Combat and Herbicide Exposures in Vietnam among a Sample of American Legionnaires," *Environ. Res.* 47: 112-128 (1988) and "Health and Reproductive Outcomes among American Legionnaires in Relation to Combat and Herbicide Exposure in Vietnam," *Environ. Res.* 47: 150-174 (1988). The first paper was not considered to be pertinent to the issue of soft tissue sarcoma. Concerning the second paper, Dr. Colton referred to the observations of the authors that "(b)ecause of the low background rates of all types of cancer in a group with this age distribution, the present study does not have the statistical power to detect such effects. Also for the majority of the cohort, insufficient time has elapsed for the natural latency of the disease process to have passed." Dr. Kurland, the primary reviewer, agreed with this characterization. Dr. Melvin, the second reviewer, commented on the low response rate in this study to the questionnaire. Dr. Lathrop agreed that a low response rate could cause considerable problems particularly if there was a differential with respect to the cases and the control groups. Dr. Kurland noted he would generally dismiss a study as inconclusive if it had a response rate of less than 90% and the response rate in this study was of the order of 60 to 65%. Dr. Melvin commented that he thought that the benchmark response rate should be of the order of 75% or better.

Dr. Yanders observed that the first paper did not purport to produce evidence on soft tissue sarcomas and the second paper, in view of the authors' comments, also did not provide any pertinent information concerning soft tissue sarcomas. Council members agreed with this characterization.

The next paper reviewed was Hardell, et al., "Exposure to Hair Dyes and Polychlorinated Dibenzo-p-dioxins in AIDS Patients With Kaposi Sarcoma: An Epidemiological Investigation," *Cancer Detection and Prevention Supplement* 1:567-570 (1987). Dr. Kurland, the primary reviewer, commented on the fact that the cases in this study were interviewed in the outpatient department or in the hospital whereas the controls were interviewed over the telephone. He also noted that the study focused on Kaposi's sarcoma and asked whether that could properly be classified as a soft tissue sarcoma. There was a general consensus among Council members that it was not a soft tissue sarcoma. The paper was then thought not to be pertinent to the Council's consideration. Dr. Whitlock in his written comments said that the study design, the exposure assessment and the choice of the control were each inadequately described. For that reason, he thought the study to be invalid.

The Council then reviewed a paper by Tong, et al., "Elevated Levels of 2,3,7,8-TCDD in the Tissue of an Agricultural Sprayer of Herbicides: A Single Case Study," *Chemosphere* 18:469-476 (1989). Dr. Kurland noted that this was a single case report and did not think it to be pertinent. The Council also felt that the next paper was not pertinent: Centen, et al., "Coproporphyrinuria and Chronic Hepatic Porphyria Type A Found in People From Seveso (Italy) Exposed to 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)," *Chemical Porphyria in Man,* Strik and Koeman, eds., Elsevier/North-Holland Biomedical Press, 1979, pp. 75-81.

The Council next considered a paper by Pazderova-Vejlupková, et al., "The Development and Prognosis of Chronic Intoxication by Tetrachlorodibenzo-p-dioxin in Men," *Arch. Environ. Health* 36:5-11 (1981). Members commented on study's findings relative to prophyria cutanea tarda and the apparent high levels of exposure the workers experienced. Dr. Kurland noted that among the reported findings was the relatively good reproduction experience which suggested that exposure would not be expected to give rise to a genetic mutation. With regards to soft tissue sarcoma, it was believed that the study population was too small thereby giving the study low power and the latency period of 10 years was thought to be very short. Dr. Bender said he characterized it as a series of case reports and that while

the study was valid, it was not pertinent to soft tissue sarcomas.

The Council then reviewed a paper by Anderson, et al., "Wisconsin Vietnam Veteran Mortality Study: Proportionate Mortality Ratio Results; Standardized Mortality Ratio Results. Final Report," (1986).[85] Dr. Lathrop served as the primary reviewer. He noted that Vietnam veterans had the same risk for soft tissue sarcoma when compared to non-veterans and non-Vietnam-Vietnam era veterans but an increased risk when compared to all other veterans. He thought this to be essentially a negative result. He commented, however, that this was a RMR type study. Dr. Colton, the secondary reviewer, said that the study, being a PMR study, lacked the analytic capability to detect an increased risk for either mortality or morbidity. It was noted that the Council had considered other PMR studies as either valid positive or negative so this study should be considered to be valid negative. Dr. Melvin observed that the study did not address the issue of exposure to dioxin contained in 2,4,5-T.

Dr. Yanders then reported that he had asked Dr. Bender and Dr. Melvin to serve as reviewers of one of the papers identified by Admiral Zumwalt as deserving of consideration, Bond et al., "Update of Mortality among Chemical Workers with Potential Exposure to the Higher Chlorinated Dioxins," *J. Occupational Med.* 31: 121-123 (1989). Dr. Bender observed that he would consider this as weak evidence of an association. Dr. Lathrop questioned this commenting that with one case observed versus an expected tenth of a case, that is virtually an equivalency of one. Dr. Bender thought it was suggestive because the case occurred among the group who had chloracne and that, therefore, the exposure assessment was very good. Dr. Lathrop agreed that this was an extremely exposed cohort but nonetheless very small. He thought that the small numbers involved, one observed, less than one expected, made it very difficult to subject it to appropriate statistical anaylsis. He said that he would characterize the study as valid but inconclusive. Admiral Zumwalt noted that it was a chemical company sponsored study and if the true facts were known it would be a positive study. He went on to contend that Dow had known for a number of years and failed to disclose that 2,4-D had a dioxin contaminant in it. He stated his opinion that a company which failed to make this disclosure should not be treated with respect with regards to a study it sponsored. Dr. Lathrop rejected this comment.

Dr. Melvin asked whether it has been indicated how 2,4-D had come to be contaminated; for example, has a vessel containing 2,4-D been previously used to produce 2,4,5-T? Admiral Zumwalt said he did not know. He offered to provide the document to the Committee.

Dr. Colton, in commenting on the Bond paper, agreed with Dr. Bender that it was a suggestive study and that it should be characterized as valid and inconclusive. He went on to note that this study, along with a number of other papers reviewed by the Council, had a common format of being a follow up mortality study of a group of people who were either clearly exposed or quite possibly exposed to dioxin. He raised the question of whether these studies were poolable so as to give them sufficient power to say something meaningful about mortality due to soft issue sarcoma.

Dr. Bender made the additional comment about the Bond paper that with 12 to 13 years of follow up it may be just on the inside edge of a reasonable latency period and that with time, the observed findings may become more clearly significant.

Admiral Zumwalt then proferred the document to which he referred earlier which he contended evidenced Dow Chemical Company's less than forthright position concerning phenoxy herbicides. The document was headed "R&D Report, Dow Chemical U.S.A." and was dated October 1978. Admiral Zumwalt directed the Council's attention to the statement that shortly after the start-up of the 2,4-D process, "a new and unexpected class of nonacidic impurities were isolated in which two of the major components were tetrachloroxanthone and octochlorospiobixanthene." He stated that he has been advised that these two impurities were dioxin-like substances and as lethal as TCDD. He made the observation that the fact that Dow Chemical had not made known this information for over 17 years should be taken into account in considering the value of their studies.

Referring back to the Bond paper, Dr. Kurland thought that given the findings as reported, the page should be considered to be valid and inconclusive. Council members agreed.

The Council then reviewed a paper by Eriksson, et al., "Exposure to Dioxins as a Risk Factor for Soft Tissue Sarcoma: A Population-Based Case-Control Study," *JNCI* 82: 486-490 (1990). Dr. Yanders commented on the inclusion in the exposed group of individuals who had exposure of only one day. While he questioned whether they should be considered to have been exposed, he did think that the study showed a valid positive association. Dr. Colton thought that the study was fairly strong with regard to case control methodology. He agreed with Dr. Yanders that it was a valid positive study. Dr. Lathrop commented that the authors had attempted to correct many of the deficiencies of their earlier work but he expressed surprise that they relied on self-administered questionnaires instead of utilizing trained interviewers. He agreed, however, that the study was valid and positive. Dr. Bender found it interesting that the trend analysis conducted by the authors was not significant for total duration of exposure to phenoxyacetic acids.

Dr. Lathrop asked whether the paper suggested that 2,4-D was contaminated with dioxin. Dr. Bender noted a statement appearing in the report that "2,4-D and dichlorprop are contaminated by dioxins other than 2,3,7,8-TCDD." Dr. Lathrop commented that his question was directed to Admiral Zumwalt's comments concerning the contamination of 2,4-D and noted that the compounds of interest were contaminated with a whole variety of chemicals that may or may not be related to the exact structure of 2,3,7,8-TCDD. Admiral Zumwalt stated that his comments were pointed toward the integrity of the company. Dr. Kurland observed that the concentration of the contaminants may have a bearing on whether their existence was known and that extremely small amounts, parts per trillion, may have no meaning in terms of exposure. Dr. Melvin noted that the compounds in the paper distributed by Admiral Zumwalt, Krumel and Arnold, "A Study of the Formation and Removal of Impurities in the Process of 2,4-D," Dow Chemical U.S.A., 1978, discussed compounds that were not polychlorinated dibenzodioxins (a dioxide) or polychlorinated dibenzofurans (a monoxide). He stated that while he recognized that they had been identified chemically and structurally, he was not aware of any studies in toxicology for these two compounds. He also noted that they were detected in an old building after the process had been moved to another building and that it was not known if they were looking at process-induced contamination or contamination from some other source.

Dr. Yanders suggested that further discussion of this paper be deferred until after the members had a chance to consider it in more detail.

The Council then reviewed a study by the Centers for Disease Control, "The Association of Selected Cancers with Service in the U.S. Military in Vietnam," 1990. Dr. Yanders served as the primary reviewer. He stated that the study was a carefully conducted case control study and that the authors clearly set forth their findings, the most important of which was the significant increase in risk for non-Hodgkin's lymphoma among Vietnam veterans. With respect to soft tissue sarcoma, he noted that it was negative. Because of the nature and manner of the study, he thought it should be characterized as valid and negative for soft tissue sarcoma. Dr. Colton, the secondary reviewer, agreed. He thought one of the strengths of the study was the confirmation of diagnosis. He felt that the study was very strong methodologically and that it was a valid negative study. With respect to Agent Orange exposure, however, the study was uninformative.

Dr. Colton observed that the Council had characterized case control studies conducted in Sweden as valid and positive and, he noted, they have been replicated in Sweden. On the other hand, case control studies conducted elsewhere tended to be negative.

Admiral Zumwalt criticized the Selected Cancers Study because it analyzed service in Vietnam and did not attempt to focus on those individuals who were truly exposed. He was also critical of the very narrow period of time in which diagnoses were made and commented that that may well have been before the period of maximum latency. He was also critical of the authors' assertion that blue water Navy personnel were not exposed to Agent Orange. He argued many in the blue water Navy served multiple tours in Vietnam, some also serving in the brown water Navy and therefore had significant opportunity for exposure. If these were removed from the unexposed category, he thought it would have the result of showing an increase among the land based personnel.

Dr. Colton noted that this effort was not the result of a sole effort on the part of the Centers for Disease Control. He observed that this study had undergone extensive peer review, including reviews by the Congressional Office of Technology Assessment and the Science Panel of the Agent Orange Working Group. Admiral Zumwalt stated that the fact that the study may have undergone extensive peer review had no bearing on whether the study properly classified people in terms of their exposures. He commented that he spoke with a person who served on a review panel and that he had not known about potential exposure of blue water Navy personnel. Dr. Colton stated that the study could not deal directly with Agent Orange exposure, a deficiency shared by many of the studies reviewed by the Committee. Admiral Zumwalt thought that a realistic exposed group could have and should have been obtained through the use of blood dioxin levels. Dr. Lathrop com-

mented that that was not possible at the time the study was designed and conducted. He further noted that the Centers for Disease Control made no pretense that this was an Agent Orange study; it was a Vietnam experience study and on that basis showed significant results.

Dr. Lathrop questioned how Admiral Zumwalt could accept the non-Hodgkin's lymphoma findings and refute the other findings of the study. Admiral Zumwalt stated that in the case of non-Hodgkins's lymphoma, even though there was significant dilution due to misclassification, if an exposed group had been looked at the results would have been even more significant. Dr. Lathrop suggested that Admiral Zumwalt might want to encourage research involving highly exposed persons. Admiral Zumwalt stated that Dr. Lathrop came at the problem from the viewpoint that there was no correlation whereas he came at it from the perspective that he thought there was. He thought that the Committee was finally getting a balancing of views. Dr. Colton took issue with Admiral Zumwalt's comments saying that Committee members came to the issue with an open mind and without any preconceived notions. Admiral Zumwalt stated that in reviewing the transcripts, it was his judgment that Dr. Lathrop often sought to characterize inconclusive studies as negative and positive studies as inconclusive. He thought that evidenced bias in the other direction from his own after having gone though all of the evidence. Dr. Lathrop stated he did not regard his opinions as bias but rather as based on where the data took him.

Mr. Meadows then commented that he had neglected to make it clear to Admiral Zumwalt the stucture of the Committee and the manner in which it operated. He pointed out that there was the full 15 member Committee and an 11 member Scientific Council. The Council was charged to look at the scientific literature and give its advice. When the Council met, the lay Committee members were permitted to observe and, when asked by the Council, to express an opinion. He noted that the lay members were not members of the Scientific Council. Admiral Zumwalt asked how many lay members made their views known. Mr. Meadows stated that the Council, from time to time, would permit lay members to ask questions or make comments. After the Council completed its review of the literature, every member of the Committee would be permitted to express his or her opinion and participate in the discussion of what recommendations to the Secretary were appropriate.

Dr. Yanders then asked if members wished to express any views on the Agent Orange Scientific Task Force Report. Dr. Colton suggested that Dr. Whitlock's comments be referred to as they were prepared prior to the meeting and would not have been tainted by any discussions occurring during the meeting. Dr. Yanders summarized Dr. Whitlock's comments, a copy of which had been provided to every member (see Attachment II). Dr. Whitlock had stated that the possible health effects, as delineated in the report, were complicated by: inadequate exposure data; the likelihood that environmental and genetic factors may influence susceptibility to the compounds; and the possibility that some of the compounds may exert a beneficial effect. He concluded that from a scientific standpoint, the conclusion of the Task Force was untenable. It represented, in Dr. Whitlock's opinion, over-interpretation of inconclusive data and an over-simplification of a complex biological process.

Dr. Yanders expressed the view that the Task Force presented a selective review of the literature and did not present any new material. Dr. Colton said the Task Force had apparently not understood what the Council had done in assessing the literature. He said that it appeared to him the Task Force had made an uncritical review of the literature whereas the Council had attempted to discuss the strengths and weaknesses of a study. Dr. Lathrop took exception to the Task Force's listing of subclinical findings and subjective conditions as being among those deserving of compensation. Dr. Bender also commented on the Task Force's lack of knowledge as to how the Council operated. He noted that while the Task Force was critical of the Council's procedures, it presented its own conclusions without stating how they were arrived at. He agreed with Dr. Lathrop's comments concerning the use of subjective symptoms and subclinical laboratory findings as the basis for any actions relating to compensation. He further stated that he thought that that issue was not an issue for consideration by the Committee. Dr. Neel observed that the Task Force report underlines the intensive scrutiny the Council's activities received and noted that it served to make more important the need to develop creative principles to aid the Council in its assessment of the literature.

Dr. Yanders invited lay members to comment. Admiral Zumwalt again commented on the use of chemical company studies which should be downgraded and the failure of the Council to look to animal studies as the Task Force did in issuing its report. He thought the Council to be very vulnerable and urged it to consider the approach he suggested earlier of referring studies to experts for their review and of establishing a series of criteria for analyzing and assessing the studies. Colonel Bonner commented that the Council was set up to look at the scientific evidence and she thought the Council had done that, noting that much time was required of Council members in preparing for a meeting which may not be reflected in the minutes. Mr. Conroy noted the wide spectrum of opinion expressed by the scientific community, ranging from dioxin as an innocuous substance, to dioxin as the most toxic chemical ever known. He did not think that the opinions expressed were necessarily the result of people operating with personal agendas but that they were sincerely arrived at and held. He did not think it served any purpose to question motivations of individuals for the opinions they held. He expressed the opinion that after 9 years of dealing with this issue he thought that political rather than a scientific resolution would be achieved. Mr. Meadows said that it would be well to remember that the Committee had been doing the best it could and that while it did not operate in the best of all worlds, it did try to provide the best advice it could to the Secretary.

Following a short break, Dr. Yanders reminded Council members of the standard to be applied in assessing the literature and asked whether it could make a recommendation as to whether there was a significant statistical association between exposure to a herbicide containing dioxin and soft tissue sarcoma. Dr. Kurland asked that the Council's assessment of the studies be provided. Dr. Yanders asked Mr. Conway to present the Council's findings. (These may be found in Attachment IV).

At the conclusion of the listing, Dr. Yanders stated the Council had three options: (1) find that an association was at least as likely as not; (2) find no such association; or (3) advise that there was not an association but such an association could not be ruled out.

Dr. Colton pointed out the difficulty he had in assessing the literature. He noted that the valid positive and valid negative studies had different study designs which would affect the weight to be given them. Also, there were differences in the certainty of exposure and the method and duration of exposure among the studies. He also queried how to bring to bear the results of the many inconclusive studies reviewed by the Council.

Dr. Lathrop noted that among the positive studies, most came out of Scandinavian countries. He wondered if that was suggestive of an environmental causative agent unique to a particular region of the world.

Mr. Conroy raised the question of latency, observing that many of the inconclusives were considered to be such because of short latency periods. Dr. Colton agreed that was a good point with respect to cohort studies. Dr. Yanders thought it applicable to case control studies also because, as the population ages, the more cases there would be to strengthen or weaken the association over time.

Dr. Neel suggested the Council tally the inconclusive studies to see in which direction they were going. Dr. Colton objected, saying that the Council would be doing what it had wrongly been accused of in the past. He did think that contemporary techniques of pooling ought to be looked at and see if they could be applied to this situation.

Dr. Lathrop proposed looking at the valid positive and valid negative studies in terms of the quality of their exposure data. If the negative studies tended to have poor exposure quality as compared to the positive studies, then far more credence should be given to the positive studies.

Dr. Colton suggested that the Council had made a first pass through the literature. What was required now was a more analytic approach to assess the relative strengths and weaknesses of each of the valid studies. Such an approach would take into account factors such as the quality of the exposure data, latency, and geographic location of the study. Dr. Lathrop, Dr. Neel, Dr. Bender and Dr. Yanders agreed. It was suggested that several members could work with a consultant to develop criteria for pooling studies and for assessing the quality of studies the Council reviewed. (It was subsequently decided to have a subcommittee of the Council meet and attempt to address this issue. A meeting was scheduled for July.)

The Committee then broke for lunch.

Upon returning, Mr. Conway again reminded Committee members of the standard to be employed in assessing the literature. Dr. Yanders then suggested it may be helpful to see how Council members generally felt about the issue and see whether there was a general consensus developing.

Dr. Lathrop began the discussion by stating it was his opinion, after reading and assessing the various valid positive and valid negative studies, that there was a significant statistical association. He stated that he thought there were now a series of articles that pointed towards a statistical association. He emphasized, however, that it was a statistical association that had been estab-

lished and not a cause and effect association.

He also offered several additional comments. First, he noted that the majority of positive studies had come from one region of the world. He said he did not know if that was meaningful in terms of study methodology or of the population groups studied. Second, he noted that the disease being assessed was difficult to diagnose and encompassed over 100 separate cancers. He suggested that consideration be given towards not including mesothelioma associated with asbestos exposure and Kaposi's sarcoma associated with AIDS (Acquired Immune Deficiency Syndrome) among the soft tissue sarcomas being associated with exposure to a herbicide containing dioxin. He indicated that while it did not seem reasonable to him that all of these tumors could arise out of a single environmental exposure, he thought that the evidence was strong enough to meet the at least as likely as not criteria to be applied by the Committee.

Dr. Bender agreed. He said that recent evidence demonstrated an association with phenoxy herbicides and, presumably, TCDD but he commented that the linkage was weak for any particular component. He also did not know what to make of the apparent geographic distribution of the positive versus the negative studies.

Dr. Kurland said he would prefer to get a better sense of the histologic types that could be regarded as associated in a positive way. He also would like to have had more information about the studies characterized as inconclusive as it was his sense that they tended to be more negative than positive. However, he said that the evidence was close and that applying reasonable doubt he would go in the direction of an association.

Dr. Colton said that he thought the Hardell studies were very strong and had no obvious flaws in them and that they were reinforced by the most recent study released in 1990. While he found the Swedish studies to be compelling for an association, he also found other negative studies equally compelling, referring for example to the CDC studies and the studies done in New Zealand. He would give the benefit of the doubt for finding an association.

Dr. Melvin agreed that there was a significant statistical association. He questioned whether Dr. Kurland's suggestion of considering the histological types would be helpful noting that when the biopsy was performed, where it was performed and who performed it could introduce a lot of variation in results. He would be hesitant to say that soft tissue sarcomas could be further subclassified with respect to their association with phenoxy herbicide exposure.

Dr. Neel said that while he shared the opinions expressed he was reluctant to make a final decision in the absence of a stronger statistical analysis. He referred particularly to the number of papers included in the inconclusive category; he did not think that they had not been looked at in a way designed to extract useful information from them.

Dr. Bender agreed with Dr. Neel about the need for a better way to articulate the analysis that he thought each member had gone through in an informal way. He again suggested that a more formal system was needed to document how the Council arrived at its conclusion.

Dr. Yanders cited reasons why he was initially uncomfortable with finding an association: first, there were a number of strong negative studies including some that involved Vietnam veterans; and second, the geographical distribution of the positive studies suggested that there may be some other factor involved such as a genetic component. Nevertheless, he would have to agree that it was at least as likely as not that soft tissue sarcomas were connected with exposure to a herbicide containing dioxin.

Dr. Neel thought the analysis to be too superficial and Dr. Colton agreed that a much more analytic assessment should be done. Dr. Lathrop also agreed but he commented that he was surprised that there was a consensus after the first pass for an association. Dr. Yanders said that he too was surprised that Council members independently arrived at essentially the same conclusion. He further noted that the members appeared to be uneasy about making a recommendation in the absence of a more detailed analysis. He indicated that he did not know how to develop this and not delay inappropriately any action the Secretary may wish to take. Dr. Lathrop suggested that he thought it sufficient that the Council had reached a consensus that could stand alone and not require a more rigorous analysis. He returned again to the earlier suggestion that several members of the Council be tasked with recommending appropriate matrix analyses the Council could employ for assessing the literature. Dr. Yanders agreed.

Dr. Bender suggested that the recommendation to the Secretary be qualified somewhat. He noted that studies of Vietnam veterans did not suggest an association with Vietnam service (unlike the situation with non-Hodgkin's lymphoma where the association was found with service in Vietnam). He thought it important to make it clear that the association was with exposure to a phenoxy herbicide containing dioxin. He thought that this would allay concerns that Vietnam veterans generally were at increased risk by virtue of their having served in Vietnam.

Dr. Lathrop asked whether there should be additional caveats. First, should there be a 5 year latency period in light of studies which begin to show an association after 10 years? Dr. Lathrop thought that it would be properly conservative to recommend a 5 year latency period. Second, he suggested that pleural or diaphragmatic mesothelioma associated with asbestos exposure not be included for compensation. And, third, he questioned whether it would not be appropriate to exclude Kaposi's sarcoma in the presence of an HIV positive antibody.

Dr. Kurland asked whether it would be practical to require a showing of an elevated dioxin serum level. Dr. Yanders suggested it would not be appropriate because all the Council was asked to address was whether there was an association with a herbicide containing dioxin and not whether dioxin was the particular causative agent. Dr. melvin noted that the question then would be at what level would a veteran be eligible for compensation. Dr. Bender asked how deceased veterans would be handled.

Dr. Colton noted that the Committee had not been asked to detail the requirements for compensation. It was his judgment that a 5 year latency period was rather arbitrary. He also did not think there was sufficient basis for adopting the exclusions suggested by Dr. Lathrop. After further discussion, it was the consensus that the Secretary should be advised of these concerns but the Committee had no recommendations with respect to them.

Dr. Yanders asked the lay members of the Committee if they had any comments. Admiral Zumwalt thought that the consensus that had been achieved was a fair one based upon the literature that the Committee had reviewed. Mr. Meadows thought that a statistical association had been demonstrated. He thought that was all the Secretary had to be advised of and that it should be left up to him what limitations he may wish to impose for determining service connection. Mr. Conway related Mr. Conroy's conclusion that there was a significant statistical association. (Mr. Conroy had to leave prior to this discussion.)

Dr. Neel said that he was very uncomfortable that the Council had not done a better job. He urged that the Council adopt a procedure for conducting a more rigorous analysis. Mr. Meadows asked whether that was really needed. Dr. Bender noted that in the radiation area such a scheme would be helpful. It was also noted that in the area of reproductive effects an approach as had been suggested could assist the Council in its review of the literature. Admiral Zumwalt agreed with the suggestion that the Committee adopt a more rigorous review process.

Dr. Yanders then took a formal poll of the Scientific Council members as to whether there was a significant statistical association between exposure to a herbicide containing dioxin and soft tissue sarcomas. The opinion expressed was unanimous for an association.

The Committee then addressed the issue of whether it had been provided with adequate administrative support. Mr. Meadows agreed to discuss this matter with the Secretary.

Dr. Colton asked whether it would be appropriate to restrict the Council's review to only those papers appearing in the peer review literature. It was thought by Council members to be important that it be perceived as willing to look at everything. Council members were reminded that a mechanism for looking at non-peer reviewed papers had been established: use of single reviewers who would bring to the attention of the Council those papers thought to be important and deserving of the Council's consideration.

Admiral Zumwalt asked what health effects the Committee would be taking up next. Among the effects identified were porphyria cutanea tarda, chloracne (whether the maximum period of 6 months following exposure was appropriate), birth defects, immunological disorders, and cancers other than those already considered by the Committee. Mr. Meadows said that the Committee would have to prioritize these issues to address those of most concern to the Secretary and to Vietnam veterans. Mr. Conway reminded the members that the radiation issue had to be addressed also, referring to the need for the Committee to review the BEIR V report.

After discussion, it was agreed that the next meeting of the Committee would be in the latter part of August. Among the issues to be addressed at that time would be the proposed regulation implementing the Committee's recommendation concerning soft tissue sarcomas; porphyria cutanea tarda; chloracne; and the BEIR V report.

Dr. Lathrop asked me to make a comment. He said that while he had the deepest respect for the distinguished military accomplishments of Admiral Zumwalt he took extreme exception to his statements of bias arising from industrial or governmental studies. He thought it most inappropriate to downgrade studies simply because they were

performed by industry or government scientists. He noted that he intended to express his views very strongly to the Secretary and invited those members who shared his opinions to join him in his letter.

Admiral Zumwalt responded by stating he expressed his strongly felt views based on his reading of the research over a 7 month period. He felt his observations about governmental bias and misconduct were valid and justifiable. He further suggested that a Congressional investigation would show policy decisions had been made to change data derived from the CDC and the Ranch Hand studies.

Dr. Lathrop stated that these allegations were erroneous with respect to the Ranch Hand study. He noted that he could not speak to the CDC study but commented that if any study reviewed by the Committee were demonstrated to be tainted it would clearly be withdrawn from consideration. With respect to Admiral Zumwalt's allegations, Dr. Lathrop thought them not to be substantiated.

Dr. Colton agreed with Dr. Lathrop. He also went on to note that from his experience as a member of the Committee, he thought the VA had been totally supportive and exemplary. He said that there had been no attempt to influence him nor any other member. Dr. Bender seconded that as did Dr. Kurland.

Dr. Bender thought it important to note that the Committee, in changing its assessment, should not be considered as having been wrong in the past when it found the evidence wanting. Rather, additional evidence was forthcoming and the standard being applied changed. Second, he thought it inappropriate for the Committee to consider allegations and depositions arising out of court cases as they were not science.

Mr. Meadows again noted that the role of the Scientific Council within the Committee and he expressed appreciation for the Council's willingness to permit the lay members to participate.

He then asked for the full Committee to adopt the recommendation of the Council whereupon a unanimous vote was obtained.

The Committee then adjourned until August.

Approved:

OLIVER MEADOWS,
Chairman.

STANFORD UNIVERSITY
MEDICAL CENTER,
Stanford, CA, May 14, 1990.

MR. FREDERIK L. CONWAY,
Department of Veterans Affairs, Washington, DC.

DEAR MR. CONWAY: Enclosed are some general comments on the report entitled "Human Health Effects Associated with Exposure to Herbicides and/or Their Associated Contaminants—Chlorinated Dioxins", authored by the Agent Orange Scientific Task Force.

Please feel free to share these thoughts with the other members of the VA Advisory Committee on Environmental Hazards.

Sincerely,

JAMES P. WHITLOCK, JR.,
Professor.

STANFORD UNIVERSITY
MEDICAL CENTER,
Stanford, CA, May 14, 1990.

MEMORANDUM

To: Mr. Frederick L. Conway, Executive Secretary, Veterans' Advisory Committee on Environmental Hazards.

From: James P. Whitlock, Jr., M.D., Professor of Pharmacology, Stanford University School of Medicine.

Subject: Comments on the Report Submitted by the Agent Orange Scientific Task Force, Dated April, 1990.

The literature review entitled "Human Health Effects Associated with Exposure to Herbicides and/or their Associated Contaminants—Chlorinated Dioxins", compiled in April, 1990 by the Agent Orange Scientific Task Force (AOSTF) raises several scientific issues that illustrate the complexity of the Agent Orange problem and the difficulties involved in determining whether exposure to phenoxyacetic acids and/or chlorinated dioxins is associated with adverse health effects in humans.

HUMAN EXPOSURE DATA

In my opinion, the authors of the review have correctly identified the crux of the matter: "A major problem with the various epidemiologic studies of people exposed to phenoxyacetic acid herbicides is that there have not been many large populations with known exposures available for study and follow-up over long periods or, where such populations exist, like Vietnam veterans and the Vietnamese, these have not been adequately studied" (page 2, lines 6-11 of the review). Thereafter, the review cites reports of populations with "potential for exposure" (page 8, line 17), workers who were "potentially exposed" (page 9, line 2) or who had "potential exposure" (page 9, line 11), and veterans who had "higher opportunities for exposure" (page 14, line 18). In these and other reports cited by the AOSTF, the extent of exposure to herbicides and/or dioxins was not directly measured. Thus, the studies cited by the AOSTF contain one or more of the following shortcomings. (1) In most of the reports, exposure to phenoxyacetic acids and/or chlorinated dioxins was inferred, and not documented. (2) In some cases, the populations studied were also exposed to other chemicals. (3) In almost none of the studies was there an attempt to demonstrate a dose-response relationship between (presumed) exposure and an adverse health effect(s). The lack of adequate exposure data makes it difficult (if not impossible) to draw firm conclusions from these epidemiologic studies. Furthermore, as the AOSTF recognizes (pages 33-37), humans are also exposed to 2,3,7,8-TCDD from "background" sources. Thus, even when exposure to 2,3,7,8-TCDD is reasonably well-documented, the actual source of the chlorinated dioxin is not always certain. This fact further complicates the interpretation of epidemiologic studies. Therefore, by several important criteria, the epidemiologic data on exposure of humans to phenoxyacetic acids and/or chlorinated dioxins are inadequate. From a scientific standpoint, the inadequacy of the exposure data, which the AOSTF concedes (page 2, lines 6-11) weakens the inferences that one can draw from these epidemiologic studies. Although the AOSTF recognizes this issue in their review, they provide no new data or novel analyses that address the problem. In particular, the AOSTF fails to document its approach to "synthesizing all of the available data to determine their overall or aggregate meaning" (page 4, lines 1-3). In the absence of such documentation, the AOSTF's conclusions are scientifically indefensible.

GENETIC AND ENVIRONMENTAL FACTORS

The AOSTF notes correctly that, in humans, "there is great variability in individual responses in TCDD exposure" (page 18, line 20). The implication of this observation is that some individuals are more susceptible than others to the possible adverse health effects associated with exposure to phenoxyacetic acids and/or chlorinated dioxins. The factors that determine susceptibility are unknown; however, there are at least two possibilities. (1) One possibility is that an environmental factor(s) influences the human response to herbicides and/or dioxins. The AOSTF correctly points out that "dioxin . . . may well interact with other coexposures" (page 17, line 23); thus, additional environmental factors may influence the response to phenoxyacetic acids and/or chlorinated dioxins. For example, given the multi-step nature of carcinogenesis, if 2,3,7,8-TCDD were to act as a tumor promoter in humans, the affected individual would also require exposure to a second substance that acts as a tumor initiator. (2) A second possibility is that a genetic factor(s) influences the human response to herbicides and/or dioxins. For example, the AOSTF notes that phenoxyacetic acids and/or chlorinated dioxins may produce porphyria cutanea tarda (PCT) "most likely only in individuals with inherited uroporphyrinogen decarboxylase deficiency" (page 20, lines 3-5). The implication of this observation is that only a particular subpopulation is at risk for induction of PCT by herbicides and/or dioxins. In principle, the same situation may obtain for other effects that might be associated with exposure to these compounds.

Taken together, the above observations imply that the possible adverse health effects of phenoxyacetic acids and/or chlorinated dioxins depend not only upon exposure to the compound of interest but also upon the genetic makeup of the individual and his/her exposure to other chemical substances. Unfortunately, we do not know what these genetic and environmental factors are, and we are currently unable to identify human subpopulations who are particularly susceptible (or resistant) to the biological effects of phenoxyacetic acids and/or chlorinated dioxins. The AOSTF review provides no new data or information that addresses these issues.

ANIMAL DATA

In Appendix A, the AOSTF review notes correctly that, for regulatory purposes, a chemical that causes cancer in animals should be considered a *potential* (my emphasis) human carcinogen. In fact, 2,3,7,8-TCDD is regulated as a potential human carcinogen (and appropriately so). However, its classification as a potential carcinogen does not constitute evidence that 2,3,7,8-TCDD does, in fact, produce cancer in man.

Animal studies not cited by the AOSTF reveal that, in the skin of inbred mice, 2,3,7,8-TCDD produces (1) hyperkeratinization and other epidermal changes resembling human chloracne and (2) tumor promotion, and that it does so only in animals that have a homozygous recessive mutation at the hr (hairless) locus [see Knutson, J.C. and Poland, A. *Cell* 30:225-234, 1982; Poland, A., Palen, D., and Glover, E. *Nature* 300:271-273, 1982]. These observations support the concept, discussed above, that a genetic factor(s) influences the susceptibility of in-

dividuals to 2,3,7,8-TCDD and related compounds.

In other studies not cited by the AOSTF, 2,3,7,8-TCDD produces a protective (i.e., anti-carcinogenic) effect in animals subsequently exposed to carcinogenic polycyclic aromatic hydrocarbons, substances to which most humans are exposed [see Cohen, G.M. et al. *Cancer Res.* 39:4027-4033, 1979; DiGiovanni, J., et al. *Cancer Res.* 40:1580-1587, 1980]. By analogy, these observations raise the possibility that 2,3,7,8-TCDD may, under appropriate circumstances, produce a similar protective effect in humans. The concept that exposure to 2,3,7,8-TCDD could, in principle, be beneficial in some situations is raised infrequently in discussing the human health effects of phenoxyacetic acids and/or chlorinated dioxins. It is not mentioned in the AOSTF review.

SUMMARY

As outlined above, analysis of the possible health effects of human exposure to phenoxyacetic acids and/or chlorinated dioxins is complicated by

(a) inadequate exposure data,

(b) the likelihood that environmental and genetic factors influence susceptibility to these compounds, and

(c) the possibility that the compounds may exert a beneficial effect under some conditions.

Therefore, from a scientific standpoint, the "inescapable" (page 4, line 19) conclusion reached by the AOSTF is untenable. It represents over-interpretation of inconclusive data and oversimplification of a complex biological problem.

REVIEW OF SCIENTIFIC LITERATURE

Mr. President, a study sponsored by The American Legion, the Vietnam Veterans of America, and the National Veterans Legal Services Project, entitled "A Review of the Scientific Literature on Human Health Effects Associated with Exposure to Herbicides and/or their Associated Contaminants—Chlorinated Dioxins" was released in April 1990. In letters dated May 21, 1990, the chairmen and ranking minority members of the Veterans' Affairs Committees, as well as the chairman and ranking minority member of the House Subcommittee on Compensation, Pension, and Insurance, requested a review of this report from OTA, the AOTF, and VA's Advisory Committee, with particular reference to the scientific methods used and the validity of the statistical analysis, as well as identification of any specific findings discussed in the report that warrant followup investigation or analysis.

Mr. President, I ask that the responses received from OTA and the AOTF be printed in the RECORD at this point. I note that the views of VA's Advisory Committee on this study appear in the material reprinted earlier.

The material follows:

CONGRESS OF THE UNITED STATES,
OFFICE OF TECHNOLOGY ASSESSMENT,
Washington, DC, September 21, 1990.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR ALAN: Enclosed is OTA's review of the report "Human Health Effects Associated With Exposure to Herbicides and/or Their Associated Contaminants—Chlorinated Dioxins," which you and your colleagues requested in your letter of May 21. The report was written by the "Agent Orange Scientific Task Force," a group of seven scientists working with the American Legion, the Vietnam Veterans of America, and the National Veterans Legal Services Project. You asked specifically about the "scientific methods, criteria used by the authors . . . as well as the validity of their analyses and conclusions."

The authors of the report give no information about the methods they used to draw their conclusions. They state that the standard used was that of a "statistically significant association," the same used by the Department of Veterans Affairs Advisory Committee on Enviornmental Hazards, as specified by regulation. Neither group has stated an operational definition of the term, however. In judging any one study, a determination of statistical significance (at some prespecified level, most often, five percent) could be made, but there is no standard method for doing so for a body of literature. Since the Task Force described no such method, it cannot be critiqued.

It would not be appropriate to use the report as a guide to compensating veterans. It might be useful, however, for the Veterans Advisory Committee on Enviornmental Hazards to review the medical conditions (at least those of clinical significance) covered by the Task Force, including all pertinent studies, not only those showing a positive association with exposure to herbicides, as the Task Force did.

I hope you find this review useful to your Committee. Please do not hesitate to call on me if OTA can be of further assistance, or have your staff call Hellen Gelband in the Health Program (at 8-6590), who prepared the enclosed review.

Sincerely,

JOHN H. GIBBONS.

[A Review of the Scientific Literature prepared by the Agent Orange Scientific Task Force, April 1990]

OTA REVIEW OF HUMAN HEALTH EFFECTS ASSOCIATED WITH EXPOSURE TO HERBICIDES AND/OR THEIR ASSOCIATED CONTAMINANTS—CHLORINATED DIOXINS

(Background paper prepared by Hellen Gelband, health program, Office of Technology Assessment, U.S. Congress, September 1990.)

(The views expressed in this background paper do not necessarily represent the views of the Technology Assessment Board or its individual members.)

The Agent Orange Scientific Task Force consists of seven scientists working with The American Legion, the Vietnam Veterans of America, and the National Veterans Legal Services Project. The report, "Human Health Effects Associated With Exposure to Herbicides and/or Their Associated Contaminants—Chlorinated Dioxins," was prepared because the sponsoring groups "have been dissatisfied with the efforts of the VA and its Advisory Committee on Environmental Hazards" in their review of scientific literature concerning possible links between exposure to phenoxy herbicides and their contaminants and adverse health effects.

STANDARDS AND METHODOLOGY USED BY THE TASK FORCE

The report states that the standard used by the Task Force was one of "significant statistical association," with no further clarification on how they defined this term operationally. In judging any one study, a determination of statistical significance (presumably at the level of 5 percent) could be made, but the means for doing so for a body of literature is not standard. On this point, the section on "Methodology" states only that they did not follow what they report to be the methodology of the VA Advisory Committee. In referring to the VA Advisory Committee, the report states:

* * * the Advisory Committee simply classified studies as positive or negative and then tallied them, apparently under the theory that all studies are equal and can be viewed independently from all other knowledge on the subject.

This is not an accurate representation of what the Advisory Committee did, according to detailed minutes of the Advisory Committee's meetings. (Although the Advisory Committee did not develop a specific plan for synthesizing the evidence from all the studies, they informally gave varying weights to studies based on their overall reliability, potential biases, source of exposure information, etc.) There is no discussion of the method used by the Task Force to synthesize the information and come to a decision about whether a "significant statistical association" existed, so it cannot be critiqued.

The report states that the Task Force reviewed epidemiologic studies, because that is what the Advisory Committee had done, but it also criticizes the Advisory Committee for excluding animal studies from consideration, stating:

* * * there is an overwhelming scientific consensus that carcinogenicity data derived from well-designed animal studies can be extrapolated with confidence to predict human cancer risk.

This is a misinterpretation of the consensus on the value of animal studies. For *regulatory* purposes, evidence of carcinogenicity in animals is accepted as evidence of *potential* carcinogenicity in humans. The regulation of 2,3,7,8-TCDD is based on animal test data. However, only epidemiologic studies can determine whether phenoxy herbicides and dioxin are actually causing cancer in human beings. There is certainly no consensus that quantitative predictions can be drawn from animal data to cancer risks in humans.

REVIEWS OF EVIDENCE FOR POSSIBLE ADVERSE HEALTH EFFECTS

Most of the report consists of discussions of specific diseases and the studies that support an association of phenoxy herbicides and dioxin with each of them. Studies that do not support associations are rarely mentioned. As discussed above, no indication is given of how overall determinations of an association were made.

The report contains considerable criticism of certain indivudual studies, e.g., CDC's Selected Cancers Study and the Ranch Hand Study, and of the Government's decision to cancel the Agent Orange study. Many specifics of these discussions are incorrect. Examples are cited below:

1. Concerning the Selected Cancers Study, the report challenges CDC's interpretation that the study provides no evidence that the

observed excess of non-Hodgkins lymphoma (NHL) is related to Agent Orange. The report states: "If the CDC data on veterans in I Corps and III Corps are taken together, they show an increased risk of both non-Hodgkin's lymphoma and soft tissue sarcoma." According to CDC, this is not true. In any case, since the Task Force did not have the raw data from CDC, they could not have made this calculation.

2. The report erroneously reports that the Agent Orange study was cancelled because CDC claimed that "it was not possible to determine exposure to Agent Orange from military records." They state further that CDC "concluded there was no correlation between exposure, as predicted by certain military records, and dioxin levels in tissue and serum samples of certain veterans." TCDD serum levels in the background range in veterans were not unexpected based on the military records, which had suggested strongly that even veterans who served in areas of heavy spraying were not directly exposed to a significant degree.

Some of the studies included in the report, e.g., the Columbia University-American Legion study, are of doubtful validity because of serious flaws in methodology or execution. The validity of other studies, particularly industry-sponsored studies, are called into question.

CONCLUSION

The report of the Task Force presents no new information. Their conclusion—that many adverse health effects, both clinically apparent and subclinical, are associated with exposure to phenoxy herbicides—are given with no explanation of how they were derived. It would not be appropriate to use this report as a guide to compensating veterns. It might be useful, however, for the Veterans Advisory Committee on Environmental Hazards to review the medical conditions (at least those of clinical significance) covered by the Task Force, including all pertinent studies, not only those showing a positive association with exposure to herbicides.

PUBLIC HEALTH SERVICE,
Washington, DC, July 17, 1990.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of May 21 to Secretary Sullivan requesting that the Domestic Policy Council's (DPC) Agent Orange Task Force review "Human Health Effects Associated with Exposure to Herbicides, and/or Their Associated Contaminants—Chlorinated Dioxins, A Review of the Scientific Literature," prepared by the Agent Orange Scientific Task Force (AOSTF) commissioned by the American Legion, the Vietnam Veterans of America, and the National Veterans Legal Service Project.

Earlier I had requested that the Science Panel of the DPC Agent Orange Task Force assess this document. That has been completed and is enclosed.

The veterans groups' AOSTF concluded that the aggregate of the weight of evidence from available epidemiologic studies establishes a causal relationship between Agent Orange exposure and a range of cancers and other health outcomes among Vietnam veterans.

The members of the DPC's Science Panel concluded that the AOSTF review did not use generally accepted criteria for causality. The review cited an extensive list of elevated risks without acknowledging the limitations of the studies from which they were taken. The review gave undue weight to studies where exposure to Agent Orange was either unknown or poorly defined in order to draw a causal relationship between health outcomes and Agent Orange.

In summary, the Science Panel concluded that an objective, critical review of the literature would not support the conclusions of the AOSTF's evaluation.

Identical letters are being sent to Senator Frank H. Murkowski, Congressman G.V. (Sonny) Montgomery, Congressman Bob Stump, Congressman Douglas Applegate, and Congressman Bob McEwen.

Sincerely yours,

JAMES O. MASON, M.D., Dr. P.H.,
Assistant Secretary for Health.

PUBLIC HEALTH SERVICE,
CENTERS FOR DISEASE CONTROL,
Washington, DC, May 16, 1990.

MEMORANDUM

From: Assistant Director for Science, Center for Environmental Health and Injury Control.

Subject: Review of "Human Health Effects Associated with Exposure to Herbicide and/or Their Associated Contaminants-Chlorinated Dioxins, Agent Orange, and the Vietnam Veteran".

To: Vernon N. Houk, M.D., Chairman, Science Panel, Director, Center for Environmental Health and Injury Control.

I have reviewed and will summarize in this memorandum the comments of ten of the Science Panel members of the Agent Orange Task Force and three ad hoc reviewers (reviewers identified in Attachment A) on a document produced by the Agent Orange Scientific Task Force entitled "Human Health Effects Associated with Exposure to Herbicides and/or Their Associated Contaminants- Chlorinated Dioxins, Agent Orange and the Vietnam Veteran, A Review of the Scientific Literature". This paper was commissioned by the American Legion, the Vietnam Veterans of America, and The National Veterans Legal Services Project. The specific comments of the Science Panel members and ad hoc reviewers, minus their names and Agency affiliation, are provided as Attachments B through N.

BACKGROUND

The objective of the Agent Orange Scientific Task Force (AOSTF) was "—to review the scientific literature related to potential human health effects associated with phenoxyacetic acid herbicides and/or their associated contaminants (chlorinated dioxins)—." The review was specifically directed at assessing purported adverse health effects among Vietnam veterans which may be associated with exposure to Agent Orange. The literature review focused on epidemiologic studies of exposed humans and used as their measure of effect the "—significant statistical association—" to be consistent with the standard of causality used by the Veterans Administration Advisory Committee. The AOSTF emphasized the point that this may be an inappropriate standard because epidemiologic studies must have sufficient statistical power and sensitivity to detect the adverse effects of low levels of exposure. This requires large exposed populations followed for long periods of time. The AOSTF also made the point that, while they did not review the experimental animal literature, "—there is an overwhelming scientific consensus that carcinogenicity data derived from well-designed animal studies can be extrapolated with confidence (emphasis added) to predict human cancer risk."

ORANGE SCIENTIFIC TASK FORCE AOSTF

The AOSTF distinguished their review of the literature from that of the VA's Advisory Committee by stating that the latter "—simply classified studies as positive or negative and then tallied them, apparently under the theory that all studies are equal—." "This procedure was not followed by the Task Force (AOSTF)." One surmises from this statement that the AOSTF conducted a critical review of the literature in which all available data were examined on their merits and whether or not the studies followed generally accepted epidemiologic principles. This was not to be the case as will be discussed later in this review.

The AOSTF concluded from their review that "—the aggregate of all the evidence derived from available relevant epidemiologic studies establishes a causal (emphasis added) relationship between Agent Orange exposure and a range of cancers and chronic diseases." The cancers that the AOSTF linked to phenoxyacetic acid herbicides and/or their associated contaminants included non-Hodgkin's lymphoma and soft tissue sarcoma. The AOSTF also concluded that there is "—sound scientific evidence of an association with exposure to Agent Orange, but the evidence does not reach the level of formal statistical significance, for the following effects: leukemia, and cancers of the kidney, testis, stomach, prostate, colon, hepatobiliary tract and brain." Other medical conditions for which the AOSTF concluded that there was a significant statistical evidence for an association with exposure to Agent Orange were skin disorders/chloracne, subclinical hepatotoxic effects, and porphyria cutanea tarda.

GENERAL COMMENTS OF SCIENCE PANEL MEMBERS

The AOSTF presented a narrative review of selected literature which lacks the rigor or advantages of a systematic meta-analysis of the data. There is no systematic review of the data and the reader has no idea as to the completeness of the literature search. Although there is repeated reference to criteria for statistical significance, this is nowhere defined for the reader. No effort is made to systematically evaluate the various studies presented in terms of study quality. Studies, both rigorous and anecdotal, are treated with essentially equal weight. Although the AOSTF cites the need for studies to have adequate size and statistical power, they do not use these criteria in selecting the data cited in their report to support their opinions on the health effects of exposure to Agent Orange. Although the AOSTF states the important principles for evaluating scientific data, they don't always adhere to these principles in their review. The AOSTF review ignores the "negative" studies and instead concentrates on those studies which show an effect that supports their preconceived opinions on the health effects of Agent Orange exposure. There is no attempt at a balanced, critical evaluation of the literature.

In summary, the AOSTF review did not use generally accepted criteria for evaluating causality. The review cited an extensive list of elevated risks without acknowledging the limitations of the studies from which they were taken. Finally, the review gave undue weight to studies where exposure to Agent Orange was either unknown or poorly defined in order to draw a causal relation-

ship between health outcomes and Agent Orange.

It should be mentioned that much of the data reviewed by the AOSTF has been extensively reviewed and published by other scientists (Fingerhut, 1986; Johnson, 1990; Lilienfeld and Gallo, 1989; and Harvard Study, 1990). These reviewers evaluated these studies and have generally concluded that definitive conclusions could not be drawn from the studies because of limitations such as exposure characterization, latency, and study size.

SPECIFIC COMMENTS—ASSESSMENT OF EXPOSURE

The AOSTF presented an innacurate picture of the Agent Orange exposure issue. They confuse opportunity for exposure with exposure itself, even though they were aware of the CDC feasibility study which demonstrated the inadequacy of that assumption. The results of the CDC study of serum 2,3,7,8-TCDD measurements on 646 veterans considered to be among the highest exposed of the Army ground troops on the basis of five exposure indices including self-perceived exposure showed a distribution of 2,3,7,8-TCDD levels which was almost identical to that in the 97 comparison veterans. It was concluded that the ground troops in Vietnam have body burdens of 2,3,7,8-TCDD similar to body burdens of the general population of the United States. Only the Operation Ranch Hand veterans had higher body burdens. The studies the AOSTF cited as showing an association between Agent Orange exposure and health effects relied on self-reported and unverified exposure data.

The AOSTF is inconsistent in their comments on the use of serum 2,3,7,8-TCDD levels as a measure of exposure. They criticize the CDC Selected Cancers Study for failing to use the assay (page 12) but refute its use as a measure of exposure in other places in the report. On page 38, they either confuse the 16% coefficient of variation (CV) for serum 2,3,7,8-TCDD assay with an error rate of 16%, or are purposely trying to mislead their audience. In fact, the CV reflects the degree of variability in the assay and not that 16% of the assays were unreliable, as implied by the authors.

The AOSTF does not address the issue of other possibly confounding exposures to potential carcinogens. They loosely refer to studies with strikingly different exposures in such a way that the reader could infer that the exposures are directly comparable; e.g., studies on Agent Orange, studies of industrial mishaps involving 2,3,7,8-TCDD, studies of contaminated areas in Missouri, and studies of occupational exposures.

CANCER

The AOSTF comments regarding non-Hodgkin's lymphoma (NHL) suggest a much clearer picture than actually exists. While a number of studies have found statistically significant associations between exposure to herbicides, farming, agricultural occupations, manufacture of herbicides, and NHL, two recently published independent reviews reached substantially different conclusions, Johnson (1990) concluded that additional study was required before conclusions regarding this association could be reached. Bond et al. (1989) concluded that the evidence did not support a carcinogenic risk to humans. These reviewers cited methodologic problems in published studies. They noted that, in many studies, associations were found in occupations where exposure to herbicides might occur, but not with the compounds themselves. The AOSTF ignores these key points in their reveiw. They also cite studies in a misleading way. For example, they cite a 1989 report by Wiklund as showing an elevated risk of NHL. While technically true, the relative risk was 1.01 or a one percent increase in risk. Citing this estimate as being "increased" is misleading.

The AOSTF's review concerning soft tissue sarcoma, Hodgkin's disease, and other cancers suffers from similar problems. Again, other independent published reviews have reached opposite conclusions. Moreover, the AOSTF review apparently ignored important negative studies, for example the study of Hoar et al. (1986), which did not show an association between herbicide exposure and soft tissue sarcoma. For some cancers, like pancreatic cancer, significantly negative reports have been completely ignored. This again illustrates the lack of an even-handed approach in the AOSTF review.

On page 10, contrary to the implication of the AOSTF, the Environmental Protection Agency has not "* * * called for a reassessment of the Monsanto data with a goal of correcting the erroneous estimate of the risk of cancer * * *"

REPRODUCTIVE EFFECTS

The conclusions of the AOSTF on the reproductive effects occurring among Vietnam veterans is misleading. Although there were differences in several of the sperm parameters, the mean number of pregnancies and the mean number of livebirths fathered by Vietnam and non-Vietnam veterans was the same.

Studies of the assoication between Vietnam service and the risk of miscarriage or early fetal loss are based on the veteran's report of his wife or partner's reproductive experience. Medical confirmation of the reproductive outcome was not done. Studies have shown that a man's recall of his wife's reproductive experience is poor and subject to selective biases. Thus, studies that are based solely on self-reported data should be interpreted with caution, something that the AOSTF review did not do.

OTHER CLINICAL EFFECTS

Although the AOSTF review cites the finding of anergy in the Quail Run Study, it did not cite the follow-up study by the same investigators which acknowledged the fact that the anergy disappeared on a second follow-up.

For the finding of porphyria cutanea tarda (PCT), this condition has been reported only twice among persons occupationally exposed to 2,3,7,8-TCDD in doses large enough to cause chloracne. PCT occurred in a Czechoslovakian chemical plant when hexachlorobenzene was also present. This chemical is recognized as a potent cause of PCT. Careful study of the occurrence of chloracne and PCT in the Diamond Shamrock chemical plant in New Jersey even more clearly related PCT to contact with hexachlorobenzene.

SUMMARY

In summary, the Science Panel felt that the AOSTF review was a biased, non-critical review of the literature on the effects of 2,3,7,8-TCDD on human health. The conclusions of the report were not supported by their evaluation of the research.

Daniel A. Hoffman, Ph.D., M.P.H.

REPORT TO THE SECRETARY

Mr. President, on May 5, 1990, Adm. Elmo R. Zumwalt, Jr., Special Assistant to Secretary of Veterans Affairs Ed Derwinski, submitted a report entitled "Report to the Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange."

In letters dated July 13, 1990, the chairmen and ranking minority members of the Committees on Veterans' Affairs requested a review of this report from OTA and the AOTF, with particular reference to the report's methods and criteria in the context of generally accepted scientific practices and the validity of its analyses and conclusions.

Mr. President, I ask that the responses I have received thus far be printed in the RECORD at this point.

The material follows:

CONGRESS OF THE UNITED STATES,
OFFICE OF TECHNOLOGY ASSESSMENT,
Washington, DC, July 23, 1990.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR ALAN: Enclosed is OTA's review of Special Assistant Admiral E.R. Zumwalt, Jr.'s "Report to the Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange." This OTA review was requested by you and your colleagues in your letter to me of July 13, 1990.

Admiral Zumwalt's report gives a brief history of Agent Orange use in Vietnam; mentions early health studies related to phenoxy herbicides; reviews the history of compensation for Agent Orange-related health effects; discusses the work of the Department of Veterans Affairs (VA) Advisory Committee on Environmental Hazards; discusses various aspects of the Centers for Disease Control (CDC) validation study, and gives brief mention to some conclusions of the Selected Cancer Study; discusses some findings of the Air Force Ranch Hand Study; mentions some other studies of phenoxy herbicides exposure; and makes recommendations to the Secretary of Veterans Affairs for compensating Vietnam veterans for health conditions he believes are related to Agent Orange.

The report seems to take the form more of a legal brief than of a scientific review of evidence; it makes an argument for finding that Agent Orange is responsible for a wide range of health problems among Vietnam veterans. The argument depends in large part on Admiral Zumwalt's attempting to discredit the VA Advisory Committee on Environmental Hazards and various Government researchers.

Our review is limited to questions of substance, particularly in those areas in which OTA has been involved. Most prominently, this includes the CDC validation study and the military records research leading up to it. OTA's considerable involvement in these issues stems from its statutory responsibility (stated in Public Laws 96-151 and 97-72) for reviewing study protocols and monitoring the conduct of studies of Agent Orange and the Vietnam Experience. OTA has also followed the progress of the Ranch Hand Study and reviewed the major reports from that study, as well as a large number of other Government and private sector studies relating to the Agent Orange question, for the Veterans' Affairs Committees of

Congress. However, OTA staff have not been involved in some of the areas covered by Admiral Zumwalt, e.g., the workings of the VA Environmental Hazards Committee, and no comments on those areas are offered.

Based on a review of the areas in which OTA has been involved, we conclude that many of the assertions made in the report supporting a conclusion that Agent Orange is responsible for a wide range of health problems among Vietnam veterans, are incorrect. These are not mainly matters of differing opinion, but matters of fact—what did or did not happen. For those aspects about which OTA staff have detailed knowledge, it appears that Admiral Zumwalt's arguments are based, in many instances, on faulty information or incorrect interpretation of data.

Please do not hesitate to contact me if you have any questions, or contact Hellen Gelband in the OTA Health Program (8-6590), who was responsible for the review. I hope you find this material helpful in sorting out these difficult issues.

Sincerely,

JOHN H. GIBBONS.

OTA REVIEW OF REPORT TO THE SECRETARY OF THE DEPARTMENT OF VETERANS AFFAIRS ON THE ASSOCIATION BETWEEN ADVERSE HEALTH EFFECTS AND EXPOSURE TO AGENT ORANGE, SUBMITTED BY SPECIAL ASSISTANT ADM. E.R. ZUMWALT, JR., MAY 5, 1990

(Background paper prepared by Hellen Gelband, Health Program, Office of Technology Assessment, U.S. Congress, July 1990.)

(The views expressed in this Background Paper do not necessarily represent the views of the Technology Assessment Board or its individual members.)

INTRODUCTION

On July 13, 1990 the Chairman and Ranking Minority Members of the House and Senate Committees on Veterans' Affairs asked OTA to review the "Report to the Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange," submitted by Special Assistant Admiral E.R. Zumwalt, Jr. The report is reviewed in this OTA Background Paper.

Admiral Zumwalt's report gives a brief history of Agent Orange use in Vietnam; mentions early health studies related to phenoxy herbicides; reviews the history of compensation for Agent Orange-related health effects; discusses the work of the compensation for Agent Orange-related health effects; discusses the work of the Department of Veterans Affairs (VA) Advisory Committee on Environmental Hazards; discusses various aspects of the Centers for Disease Control (CDC) validation study, and gives brief mention to some conclusions of the Selected Cancers Study; discusses some findings of the Air Force Ranch Hand Study; mentions some other studies of phenoxy herbicide exposure; and makes recommendations to the Secretary of Veterans Affairs for compensating Vietnam veterans for health conditions he believes are related to Agent Orange.

The report takes more the form of a legal brief than of a scientific review of evidence; it makes an argument for finding that Agent Orange is responsible for a wide range of health problems among Vietnam veterans. The argument depends in large part on Admiral Zumwalt's attempting to discredit the VA Advisory Committee on Environmental Hazards and various Government researchers.

This Background Paper concentrates on questions of substance, particularly those areas in which OTA has been involved. Most prominently, this includes the CDC validation study and the military records research leading up to it. OTA's involvement stems from its mandated responsibility (in Public Laws 96-151 and 97-72) for reviewing study protocols and monitoring the conduct of studies of Agent Orange and the Vietnam Experience. OTA has also followed the progress of the Ranch Hand Study and reviewed the major reports from that study, as well as a large number of other Government and private sector studies relating to the Agent Orange question, for the Veterans' Affairs Committees of Congress. OTA staff have been less involved with some of the topics covered by Admiral Zumwalt, e.g., the workings of the VA Environmental Hazards Committee, and no comments on those areas are offered.

CDC STUDIES

Admiral Zumwalt's characterization of the CDC studies contains many misstatements of fact. His analysis of the overall picture, suggesting serious wrongdoing by CDC, is built on much of this incorrect information. OTA was part of the process that led to canceling the Agent Orange study, and had reviewed progress along the way toward that decision. CDC provided OTA with interim reports at various points during the process, particularly when CDC proposed significant changes in study design; OTA commented on and approved or disapproved those changes, consistent with its statutory mandate. Most of Admiral Zumwalt's discussion concerns the "validation study," followed by a short discussion of the Selected Cancers Study.

Admiral Zumwalt states that, based on Congressional testimony, "the design, implementation and conclusions of the CDC [validation] study were so ill conceived as to suggest that political pressures once again interfered with the kind of professional, unbiased review Congress had sought to obtain."

The study is described by Admiral Zumwalt as "a study of the long-term health effects of exposures to herbicides in Vietnam * * * supposedly conducted to determine if exposure could, in fact, be estimated." The study was not a study of health effects; its purpose was to determine whether exposure estimates based on military records could be validated by a biological marker of exposure, dioxin levels in blood serum.

Admiral Zumwalt's report states:

"After four years and approximately $63 million in federal funds, the CDC concluded that an Agent Orange exposure study could not be done based on military records. This conclusion was based on the results of blood tests of 646 Vietnam veterans which ostensibly demonstrated that no association existed between serum dioxin levels and military-based estimates of the likelihood of exposure to Agent Orange."

It is true that CDC concluded that a study could not be done based on military records; OTA concurred in this. It is incorrect to suggest that $63 million was spent finding this out. Most of the money spent by CDC went to the successfully completed Vietnam Experience Study (a cohort study of about 17,000 men) and to the successfully completed Selected Cancers Study, a large case-control study. The more serious problem with this statement is the characterization of the validation study results. In fact, the blood tests *did* validate the exposure estimates from the military records, which suggested that few ground troops had significant exposure to Agent Orange. That initial finding, based on military records ably provided by the U.S. Army and Joint Services Environmental Support Group (ESG), that ground troops generally were not in or around areas during spraying or shortly afterward, was the reason OTA and others questioned the wisdom of going ahead with an Agent Orange study on the basis of exposure based on military records. The validation study was an attempt to see if, in fact, these men would have dioxin in their bodies suggestive of higher exposures than were suggested by the military records. They did not.

Admiral Zumwalt's report goes on to say that the validation study itself suffered from "a purposeful effort to sabotage any chance of a meaningful Agent Orange analysis." This is based on his erroneous contention that men in the study were tracked on the basis of the positions of their battalions, not on their company positions. Although at one point during the process, CDC considered using battalion locations, in the final study, the men were tracked by company locations, something OTA insisted on. This is stated clearly in the Journal of the American Medical Association paper (which is not cited in Admiral Zumwalt's report) in which CDC reported the results of the validation study:

"* * * the Environmental Support Group had abstracted company locations for 50 of the 65 identified battalions. For each day of the study and for each company in these 50 battalions, five exposure scores were computed from the dates and map coordinates of herbicide sprays and from military unit locations. Scores were then assigned to each Vietnam veteran by using the dates he served in various companies."

The report by Admiral Zumwalt next presents an interpretation of information from an interim report submitted by CDC to OTA, stating:

"* * * in a February 1985 report to the Congressional Office of Technology Assessment, the CDC reported that in analyzing 21 of 50 detailed computer HERBs tapes developed by the ESG on company movements that it was possible to correlate the exposure data to areas sprayed with Agent Orange with consistent results. Indeed, a peer reviewed study sponsored by the American Legion conclusively demonstrated that such computerized data could be used to establish a reliable exposure classification system essential to any valid epidemiologic study of Vietnam Veterans."

First, the CDC report discusses location data for 21 battalions, the only reference to "21" that is in the report. The "Herbs tape" is a computer tape prepared by the National Academy of Sciences giving the coordinates of Air Force Operation Ranch Hand spray missions; it contains no information on troop movements. A second tape with similar spray information for other types of herbicide application, e.g., ground-based, helicopter spraying, and others, called the "Services Herbs tape," was prepared by ESG; it also contains no troop movement data. The statement concerning correlations of exposure data to areas sprayed may be referring to the following statement in the CDC interim report:

"* * * there have been several attempts to validate the information on the [Herbs] tape. The latest validation studies were done in Australia and included a computer

imaging of satellite photographs to analyze vegetation stress and its relationship to the data on the tape. These studies conclude that while the data appear to be consistent with the information available for validation, these sources are not sufficient to allow a definitive study."

The validation referred to in the CDC reports concerns only whether the data on the Herbs tape itself, documenting spray missions, are accurate; they do not refer to any troop movement data.

The American Legion study referred to by Admiral Zumwalt used a method of classification that appears to be even less valid than methods rejected by OTA as being unacceptable for use in an epidemiologic study. A copy of OTA's review of the American Legion study, which contains a detailed critique of the study methods, is attached.

The next issue taken up in Admiral Zumwalt's report is that of the eligibility criteria for veterans to be included in the validation study. He notes that the original protocol required nine months of service in Vietnam, subsequently reduced to six months; that the study was restricted to veterans with one tour of duty in Vietnam; and that the time period of eligibility was extended three months backward and three months forward from the period originally chosen. Admiral Zumwalt characterizes the effect of these criteria as "dilut[ing] the possibility that study subjects would have been exposed to Agent Orange, which in turn would impair any epidemiological study's ability to detect increases in disease rates."

In fact, the two changes (in length of service and calendar period of service) were made in an attempt to include more people who had been present during periods of heavy spraying in 1967 and 1968. As it turned out, some battalions that had been in or near areas that had received heavy spraying during 1967 had arrived in Vietnam in late 1966. Had the original criterion been retained, all the men in these battalions would have been excluded. The reduction in total amount of time spent in Vietnam was also an attempt to include men who had been in closest proximity to spraying on a large number of days, but who might not have spent nine months in Vietnam. The approximately 10,000 eligible men formed the pool from which men with the highest probability of exposure, based on the military records, were selected for the exposed group in the validation study. A dilution effect, as suggested by Admiral Zumwalt, would only operate if *all* the men were included, which was not the case. The restriction to men who had served one tour of duty was the original criterion proposed by CDC (not a change, as Admiral Zumwalt states) in an attempt to study men most representative of the majority of men who served.

Admiral Zumwalt states that CDC:

"determine[d] unilaterally that blood tests taken more than 20 years after a veteran's service in Vietnam were the only valid means of determining a veteran's exposure to Agent Orange."

The long-lived persistence of dioxin in the body had been known for many years, based on biopsies of fatty tissue of people heavily exposed. The development of the blood test by Swedish researchers and by CDC made measurement of body burden of dioxin a feasible approach to studying somewhat larger numbers of men than was feasible using fatty tissue. At the time CDC's validation study was planned, they had already conducted a study comparing blood serum dioxin levels with dioxin levels in fat in a population in Missouri exposed years earlier, and found a very good correlation between the two measures. The same laboratory tests, performed by the Swedish researchers, were used in a similar validation study of Vietnam veterans carried out by researchers at the New Jersey Agent Orange Commission. More than 20 years after exposure, the Ranch Hands, as a group, still have significantly elevated levels of dioxin in their blood, so it was not unreasonable to expect ground troops with significant exposure would also have elevated levels.

The report goes on to state that:

"* * * Dr. Houk further "assumed" that the half-life for dioxin in the blood was seven years. [ref] When the underlying data for Houk's assumptions were recently reviewed, however, 11 percent of the blood tests were invalid * * * and the half lives of dioxin in the remaining study subjects ranged from a low of 2 to a high of 740 years!"

First, it should be noted that Dr. Houk was not the principal investigator for the study, so conclusions from the study cannot be attributed to him directly. The estimate of a seven-year half life came from measurements made on the blood (collected in 1972 and 1987) of 30 Ranch Hand participants. In the case of four Ranch Hands, the measurements were, as Admiral Zumwalt notes, higher in the larger measurement than in the former. Overall, however, among the entire group, there was a decline, and a half-life of about seven years was estimated from those data. As reported in the *JAMA* paper, CDC states, "Recent results suggest a TCDD half-life in humans of about seven years," consistent with the data that existed at that time. The four apparently anomalous measurements could have resulted from physiological changes in the participants, measurement error, or a combination of both. Admiral Zumwalt does not provide a reference for the range of 2 to 740 years he cites as half-life calculations for the remaining Ranch Hands. In its July 1987 provisional report to OTA on the results of the validation study, CDC provided the data for the half-life estimate; among the 26 remaining subjects (excluding the four with anomalous reading, half-life ranged from 2.9 to 26.9 years. Most of the results fell between 4 and 10 years. It has not been claimed by CDC that this test is infallible, or that measurements on individuals are definitive, but that, as an epidemiologic tool, highly exposed populations can be distinguished from populations exposed to a lesser degree, and this is true even after many years. Since the blood test was being suggested for use in an epidemiologic study, this seems to be appropriate.

Admiral Zumwalt goes on, concerning the blood test, to say:

"Such conclusions are especially suspect given the fact that scientists have consistently cautioned against the use of blood tests as the sole basis for exposure classification."

I am unaware of the particular cautions referred to here, and no references are provided. However, CDC was attempting to correlate blood test results with a variety of classification schemes based on military records, not to use them as a sole basis of classification. The premise was that, as a group some separation could be made of higher versus lower exposure, if that range existed among the ground troops in the study. Later in Admiral Zumwalt's report (page 43-4, footnote 84), he cites a paper discussion exposure assessment, noting that "a serum market for 2,3,7,8-TCDD [developed] by Kahn may provide the means of identifying persons who have been exposed." This appears to be an endorsement of a technique that is similar to CDC's for exposure assessment, with which he has found fault.

The details of the Selected Cancers Study are not discussed by Admiral Zumwalt, but he does comment on the way in which the findings were reported by CDC:

"Even though the CDC has previously stated that it believes exposure to Agent Orange is impossible to assess, it found no difficulty in reporting to the press upon the release of the Selected Cancers Study that exposure to Agent Orange does not cause cancer. This conclusion was reached despite the fact that the CDC made no effort to determine . . . if study subjects were, indeed, exposed to dioxins . . . In fact, according to scientists who have made preliminary reviews of the CDC's findings, the statistical power of any one cancer grouping, with the exception of non-Hodgkin's lymphoma, was so low as to make any conclusion virtually impossible."

The Department of Health and Human Services' press release on the Selected Cancers Study quotes Dr. Roper as saying, "The study did not find any evidence that the increased risk [of non-Hodgkin's lymphoma] might be due to Agent Orange exposure." It goes on to explain:

"The pattern of risk among subgroups of Vietnam veterans seemed to be the opposite of the pattern of use of Agent Orange in Vietnam: Navy veterans who served on ocean-going vessels off the coast of Vietnam tended to be at higher risk than Vietnam veterans based on land, and Vietnam veterans who served in III Corps, the region of heaviest Agent Orange use, tended to be at somewhat lower risk than Vietnam veterans who served in other regions."

We do not agree with Admiral Zumwalt's claims about the statistical power of the study as regards the ability to detect associations with service in Vietnam, which was the primary purpose of the study. This is discussed in the testimony attached, which was presented at the April 4, 1990 hearing before the House Committee on Veteran's Affairs.

THE AIR FORCE RANCH HAND STUDY

Admiral Zumwalt also discusses the Ranch Hand study. OTA has not had direct involvement with this study, but we have reviewed most of the major Ranch Hand reports for the House and Senate Veterans' Affairs Committees, and have kept up to date on its progress through the Agent Orange Task Force (formerly the Agent Orange Working Group) and through independent contacts with the Ranch Hand researchers. We comment here on particular errors of fact noted in the Ranch Hand section of Admiral Zumwalt's report.

Admiral Zumwalt notes that the report on the 1987 Ranch Hand examinations, dated February 23, 1990:

"described statistically significant increases in health problems among Ranch Handers including: all cancers—skin and systemic combined, both verified and suspected: skin cancers alone; hereditary and degenerative neurological diseases and other problems."

What the Air Force researchers reported was a statistically significant excess for the category "verified skin and systemic cancers combined" only in the analysis *unadjusted*

for potentially important variables (e.g., demographic factors); the adjusted analysis showed no significant excess. The category "verified and suspected skin and systemic cancers combined" shows *no* significant excess, either in the adjusted or unadjusted analyses. The category of hereditary and degenerative neurological diseases was dominated by hereditary diseases, which, by definition, cannot be cause by exposures in adulthood, either to Agent Orange or to anything else.

Admiral Zumwalt states further that:

"* * * The Ranch Hand study is not, at this date, an Agent Orange study at all since dioxin exposure could not be determined reliably in the first place. In other words, the Air Force could just as easily have concluded that the health problems associated with the Ranch Handers were not necessarily related to eating beer nuts."

The Ranch Hands, as a group, were known to have been exposed to Agent Orange. The residual levels of dioxin in their bodies, as found by current blood tests, verifies this group exposure. The comparison group in the study did not have such exposure. In the best of all worlds, a more specific measure would be used. In fact, the Air Force researchers have been reanalyzing the data from the study using the newly available dioxin blood levels as more specific means of categorizing exposure. In an earlier portion of Admiral Zumwalt's report on health studies relating to phenoxy herbicides, he states:

"In 1974, for example, Dr. Lennart Hardell began a study which eventually demonstrated a statistically significant correlation between exposure to pesticides containing dioxin and the development of soft tissue sarcomas.

"In 1974, Axelson and Sundell reported a two-fold increase of cancer in a cohort study of Swedish railway workers exposed to a variety of herbicides containing dioxin.

"In 1980, another provocative mortality study of workers involved in an accident at an industrial plant which manufactured dioxin compounds suggested that exposure to these compounds resulted in excessive deaths from neoplasms of the lymphatic and hematopoietic tissues."

In none of these studies, or many others cited by Admiral Zumwalt was there any direct measure of dioxin exposure. Just as with the Ranch Hands, these were people *presumed* exposed because of their occupations. In many cases, exposures were not as well documented as they were for the Ranch Hands, even before dioxin blood levels were measured. If the Ranch Hand study is to be considered invalid because of this, so must these others.

SUMMARY

A major theme of Admiral Zumwalt's report is captured in the following quote:

"Unfortunately, political interference in government sponsored studies associated with Agent Orange has been the norm, not the exception. In fact, there appears to have been a systematic effort to suppress critical data or alter results to meet preconceived notions of what alleged scientific studies were meant to find."

Based on a review of the areas of Admiral Zumwalt's report in which OTA has been involved, it appears that many of the assertions leading to his conclusions are incorrect. These are not mainly matters of differing opinion, but matters of fact—what did or did not happen. For those aspects about which OTA staff have detailed knowledge, it appears that Admiral Zumwalt's arguments are based, in many instances, on faulty information or incorrect interpretation of data.

PUBLIC HEALTH SERVICE,
Washington DC, October 26, 1990.

Hon. ALAN CRANSTON,
Chariman, Committee of Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in further respose to your letter of July 13 for an Agent Orange Task Force review of the "Report to the Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange," by Admiral E.R. Zumwalt, Jr., dated May 5, 1990.

I asked the Science Panel of the Agent Orange Task Force to conduct such a review. A copy of each Panel reviewer's findings and a list of the names of the reviewers are enclosed, along with a summary cover sheet prepared by the Panel. In general, the Science Panel found that the report "is not based on fact and is without scientific merit."

Identical letters are being sent to Congressmen Bob Stump and G.V. (Sonny) Montgomery, and Senator Frank Murkowski.

Sincerely yours,
JAMES O. MASON, M.D., Dr. P.H.,
Assistant Secretary for Health.

[Review by the Agency Orange Task Force Science Panel]

"REPORT TO THE SECRETARY OF THE DEPARTMENT OF VETERANS AFFAIRS ON THE ASSOCIATION BETWEEN ADVERSE HEALTH EFFECTS AND EXPOSURE TO AGENCY ORANGE"

(By Admiral E.R. Zumwalt, Jr.)

Admiral Zumwalt's report takes more the form of a legal brief than a scientific review. The report cites unverifiable references. These include uncontested charges in a congressional hearing (pages 24 to 32), an anonymous review (page 22), extracts from personal letters (pages 5, 20-22, 36, 40), a "selection of papers" not otherwise characterized (page 22), citations from a veterans service organization (page 27, 29), unsupported statements by a legislator (pages 24, 32, 34, 35), charges presented in a legal brief (page 37), newspaper articles (pages 47, 48), and other sources not generally accessible for critical review (pages 12, 23, 34, 39).

Much of the "scientific" information contained in Admiral Zumwalt's report is a restatement of the Report of the Agent Orange Scientific Task Force commissioned by the American Legion, The Vietnam Veterans of America, and the National Veterans Legal Service Project. The problems contained in the American Legion report have been commented on before.

Admiral Zumwalt's report restates previously discussed issues with a very selective interpretation of historical information to support a particular point of view. Many of the inaccuracies are not matters of differing opinion, but of fact—what did or did not happen.

The Science Panel concludes that Admiral Zumwalt's report is not based on fact and is without scientific merit.

Copies of the individual members' review without identifying information are contained in Appendices A through M.

AGENT ORANGE TASK FORCE SCIENCE PANEL

CHAIRMAN

Vernon N. Houk, M.D., Director, Center for Environmental Health & Injury Control, Centers for Disease Control, 1600 Clifton Road, N.E. (F-29), Atlanta, GA 30333, Phone: 236-4111 OR (404) 488-4111, Fax: 236-4581.

MEMBERS

Dr. Donald Barnes (A101), Senior Science Advisor to the Assistant Administrator for Pesticides & Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Phone: 382-4126 OR (202) 382-4126, Fax: 755-9232.

Charles E. Brodine, M.D., Assistant Medical Director for Environmental Health & Preventive Medicine, Office of Medical Services, N-EH, Department of State, Room 3245, 2201 C Street, N.W., Washington, D.C. 20520, Phone: 647-5337 OR (202) 647-5337, Fax: (202) 647-0029.

Dr. Miriam R. Davis, Health Scientist (Policy Analysis), National Institute of Environmental Health Sciences, NIH, Building 31, Room 2B55, Bethesda, Maryland 20891, Phone: 496-3511, Fax: 496-0563 OR (301) 496-0563.

Dr. Marilyn Fingerhut, Chief, Industry-wide Studies Branch, National Institute for Occupational Safety & Health, CDC, Mail Stop R-13, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Phone: 684-4203 OR (513) 841-4203, Fax: 684-4540.

Ms. Hellen Gelband, Analyst, Office of Technology Assessment, U.S. Congress, 600 Pennsylvania Avenue, S.E., 4th Floor, Washington, D.C. 20003, Phone: (202) 228-6590, Fax: (202) 228-6098.

Dr. Lawrence B. Hobson, Director, Environmental Medicine Office, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Room 637, Washington, D.C. 20420, Phone: 373-4117 OR (202) 233-3604, Fax: 373-2807.

Dr. Han K. Kang, Director, Department of Veterans Affairs, Office of Environmental Epidemiology (10B/A02), 1825 K Street, N.W., Room 322, Washington, D.C. 20006, Phone: 634-4600, Fax: 634-4609.

Dr. Jeffrey Lybarger, Office of Health Assessment, Agency for Toxic Substances & Disease Registry, 1600 Clifton Road, N.E. (E-31), Atlanta, GA 30333, Phone: 236-0550 OR (404) 639-0550, Fax: 236-0569.

Dr. Robert W. Miller, Clinical Epidemiology Branch, National Cancer Institute, NIH, EPN-400, Bethesda, Maryland 20892, Phone: 496-5785 OR (301) 496-5785, Fax: (301) 496-1854.

Stephen B. Thacker, M.D., Director, Epidemiology Program Office, Centers for Disease Control, 1600 Clifton Road, N.E. (C-08), Atlanta, GA 30333, Phone: 236-3661 OR (404) 639-3661, Fax: 236-3950.

Dr. David E. Uddin, M.D., USN, Senior Policy Analyst for Medical Research, OASD Health Affairs, Room 3D366, The Pentagon, Washington, D.C. 20301-1200, Phone: 695-7116 OR (202) 695-7116, Fax: 694-3537.

Colonel William H. Wolfe, MC, USAF, Chief, Epidemiology Division, USAF School of Aerospace Medicine (AFSC), Brooks Air Force Base, Texas 78235-5301, Phone: (512) 536-2604, Fax: (512) 536-3219.

Dr. John F. Young, Director, Division of Reproductive & Developmental Toxicology, National Center for Toxicological Research, Food and Drug Administration, County Road #3, Jefferson, Arkansas 72709, Phone: 790-4304 OR (501) 541-4304, Fax: 790-4136.

STAFF

Anthony S. Fowler, Deputy Chief, Agent Orange Projects, Centers for Disease Control, 1600 Clifton Road, N.E. (F-16), Atlanta, Georgia 30333, Phone: 236-4460 OR (404) 488-4460, Fax: 236-4141.

APPENDIX A

MEMORANDUM

Date: August 7, 1990.

Subject: Report to the Secretary of the Department of Veterans Affairs on the Association between Adverse Health Effects and Exposure to Agent Orange.

To: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control (F29).

In general, this report rehashes previously discussed issues with a very selective use of historical information to support a particular point of view. I am particularly concerned that Admiral Zumwalt has taken a clearly anti-Government stance to the point that he does not cite Government sources when they support his position (e.g., the Selected Cancer Study conclusions on non-Hodgkin's lymphoma), cites preliminary proposals from the Centers for Disease Control (CDC) as final protocols (e.g., the 1985 interim report to the Institute of Medicine which was used for discussion in subsequent revision of protocols), and recommends the use of the serum dioxin test for all veterans after summarily dismissing the test's utility. In addition, the Admiral's lack of qualification as either an epidemiologist or a laboratory scientist is frequently evident by the nature of his presentation of data, notwithstanding his use of consultants who are either anonymous or known to be biased with regards to this topic. To draw the conclusions that he does, the Admiral should have done the carefully constructed meta analysis of the scientific information to quantitatively and critically assess the studies that address each of the issues that concern him. This simply was not done.

I will present specific comments below to issues as they appear in the report.

Page 17. The meaning of the phrase "at least as likely as not in a scientific study show a significant statistical association between a particular exposure to herbicides containing dioxins and a specific adverse health effect" has no practical meaning. Critically important is the fact that conclusions are often not based on statistical criteria, but rather a vagary about "at least as likely as not."

Page 19. It is not accurate to characterize Jeanne and Steven Stellman, as well as an anonymous reviewer, as impartial scientists.

Page 21. It is accurate to characterize the Stellman's report as representing a point of view rather than a careful assessment of the evidence. The Working Group has provided a critical review of the Stellman report previously.

Page 24. In response to allegations about the propriety and quality of the CDC study, it should be clearly reiterated that not only did CDC gather together an excellent group of scientists from both inside and outside the Government to conduct the Vietnam Veterans studies, but that the protocols for each of the studies were carefully reviewed both by the science panel of the Agent Orange Working Group and by an exceptionally talented and impartial group selected by the Institute of Medicine. Comments from these reviewers were sometimes critical and subsequently their suggestions were incorporated into both the study design and analyses conducted by the CDC staff. In short, it should be made clear that CDC did not act alone or in a vacuum, and that nongovernmental experts were asked from the beginning to provide input and critique of CDC activities.

Page 25. Allegations which appear throughout such as "a purposeful effort to sabotage" are unfortunate and detracts from other elements of the report.

Page 27. Discussing Richard Christian's testimony is quite misleading. The 1985 report to OTA Expert Panel was preliminary and only dealt with the correlation amongst different exposure measures in predicting troop movements. That these might be correlated with each other has nothing to do with whether or not they may accurately predict exposure to Agent Orange.

In the second paragraph on page 27, CDC is criticized for various alterations in the CDC protocol. These alterations are, in fact, a series of efforts to increase the power of the study to draw significant statistical conclusions. The investigators examined the effect on study power of each of the changes described (e.g., minimum length of service.) The effect of these possible changes in design were then reviewed by the science panel and the IOM to ascertain what would be the optimal study size. It should be recognized that the basic critical parameters for retaining comparability of exposed and unexposed groups were never compromised. In addition, it should be recalled that only in the validation study were any of these alternative methods employed since the actual Agent Orange Study was never conducted. It is quite common for scientists to look at alternative ways to design a study in order to balance things such as precision of estimates with power considerations.

Page 29. The decision to rely on a blood test was hardly unilateral. CDC had received frequent criticisms by the review groups for dependence upon Army records and, at the insistence of the external reviewers, had turned to the laboratory for more precise measures of exposure. As a result, the validation study was conducted, the design of which was reviewed by the science panel of the Agent Orange Working Group, the OTA Expert Panel, and an outside group of experts in laboratory science to assure the excellence of the laboratory procedures. The report of this study was reviewed by the science panel of the Agent Orange Working Group and OTA expert Panel (as well as reviewers for the Journal of the American Medical Association) before publication.

A footnote on page 29 reads, "that the senior statistician of the Agent Orange Project believed that the dioxin blood analysis was so flawed that there was a substantial likelihood that there was no correlation between exposure scores and blood levels." Based on a reading of a memorandum from the senior statistician to the Project Director (who, incidentally, was the most senior statistician in the Agent Orange Project) that summarize comments from a pair of outside experts. The reference was, in fact, to a comment by an outside consultant (not the CDC statistician) who was concerned that the exposure scores based on army records would not be correlated with adipose (not blood) measurements of dioxin. This consultant was in fact, most concerned about the precision of the exposure scores, not the blood tests. One could read that same memorandum and compliment the Agent Orange Study Group for their ability to seek out and utilize critiques from experts outside the Government.

Page 31. The report fails to note that Dr. Landrigan has subsequently stated that his comments were misconstrued and has apologized for any misunderstanding to Dr. Houk and others at CDC.

Page 32. The allegation that the CDC studies lack sufficient statistical power to detect increased risk is simply untrue. The studies were designed with particular statistical power to detect differences between cases and controls and that was the reason why this study took five years to complete. The Selected Cancer Study did not specifically look at exposure to Agent Orange, rather at Vietnam experience and did conclude there was an increased risk of non-Hodgkin's lymphoma based on this analysis. This, of course, led to the Veterans' Administration allowing compensation for this cancer. In the Discussion the CDC authors did note they could not specifically look at Agent Orange exposure because of limitations of available data. The various indicators of potential exposure which were delineated were not consistent with increased risk related to Agent Orange exposure. This is a common epidemiologic procedure when direct evidence is not available.

Page 34. The CDC birth defects study of the children of Vietnam veterans is criticized in the report on the grounds that it was limited to data available in the Atlanta area, that data were obtained only from birth certificates and not physician or hospital records, and that the study did not include a direct measure of Agent Orange exposure. the well recognized strengths of this large population-based study which offers the only feasible dataset upon which a study looking at veterans experience could be conducted in a reasonable number of years were not mentioned. The report also fails to mention the findings of the Vietnam Experience Study which did delineate specific effects on sperm of veterans of Vietnam not found in veterans from the United States or Germany. The Vietnam Experience Study, however, also showed the lack of difference in the occurrence of birth defects among Vietnam and non-Vietnam veterans.

Page 35. The last sentence of the page contains a gratuitous remark on the Ranch Hand Study which tries to minimize the efforts of the Air Force investigators with a comment about "beer nuts." Such comments detract from the authors' effort to present a reasoned argument.

Page 48. The immunological argument about the possibility of one molecule of a carcinogen could cause cancer presents a problem that has no solution. Obviously, in the day-to-day environment of any U.S. citizen, each of us is exposed to many more molecules of carcinogens. Given the "immunological argument," everyone could contact cancer within the next 5 to 10 years. Indeed, the presence of carcinogens in sidestream smoke of cigarettes would more than fulfill this prophecy.

Page 50. The CDC decision not to use the HERBS tapes is explicable and is based on sound scientific judgment, not only by CDC investigators, but by the Agent Orange Science Working Group Panel and the IOM Expert Panel.

Also, the first sentence in the last paragraph on page 50 states that, "science is now able to include with as great a likelihood as not that dioxins are carcinogenic . . ." is simply not based on the evidence.

The report suggests that all children with birth defects whose father served in Vietnam should be compensated. This may or may not be true as a compensation policy, but there is no basis upon which to derive this in relation to exposure to Agent Orange. Again, the causes of birth defects are such that you would not expect all types

of birth defects to result from exposure to a particular mutagen or teratogen. It is also interesting to note that in both of the report's alternative proposals, blood tests for dioxin are recommended despite the criticism of these very tests in this report.

Page 52. The decision to compensate veterans with non-Hodgkin's lymphoma was based on the CDC Selected Cancers Study and this should be acknowledged.

APPENDIX B

AUGUST 8, 1990.

Subject: Review of Document.

To: Vernon N. Houk, MD, Director, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta GA.

1. As you requested, I have reviewed the "Report to the Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposures to Agent Orange" prepared by Admiral E. R. Zumwalt, Jr. I found the document to be very one-sided in its presentation of data. The Admiral uses a double set of criteria in his evaluation of scientific data; he is very uncritical of work that supports his strongly held opinions and is very critical of work that counters his position. He also makes extremely derogatory statements and personal attacks on the authors and scientists who disagree with him. The Admiral selectively cites results from scientific studies, often ignoring study design flaws and the lack of statistical significance of the data he presents. He also cites studies such as the Alsea Oregon miscarriage study while ignoring other work that renders their conclusions invalid. At other times, he takes quotes out of context (pages 30 and 39), distorting the actual intent of the author.

2. One of the most frustrating aspects of this report is the Admiral's unwavering position that mere presence in Vietnam equates to significant exposure to Agent Orange and that all Vietnam veterans are at risk of a wide range of diseases and health conditions caused by that exposure. This basic assumption is not based on fact. This assumption is based on outdated and erroneous estimations of the likelihood of exposure of most military personnel while serving in Vietnam. Policy decisions made in the late 1970's and early 1980's concerning the likelihood of exposure to combat troops in Vietnam have been superseded by new data on the actual body burden of dioxin in Vietnam veterans. Studies conducted in Massachusetts and New Jersey and at the Centers for Disease Control on both Army and Air Force personnel clearly demonstrate that significant exposure of military personnel only occurred for those men directly involved in the handling and application of the herbicides. None of these studies have found any other identifiable group of military personnel with elevated body burdens of dioxin. While this does not prove that other veterans were not exposed, it does indicate that significant exposure did not occur for the vast majority of troops in Vietnam.

3. The Admiral alleges that government scientists knew that Agent Orange was a hazardous mixture and that it was still used. This allegation is based largely on a letter from an "Air Force scientist" (Dr James R. Clary) and is not true. The use of herbicides in Vietnam was based on a 20-year history of use in forestry and agriculture. Problems were recognized in industrial populations but not among agricultural workers and other users of the end products. The Admiral repeatedly makes allegations of collusion and fraud by government and nongovernment scientists. He clearly feels that anyone who disagrees with his position on this issue is unethical. These allegations are unfounded, unjustified and inappropriate in a document that purports to be scientific. Admiral Zumwalt clearly does not understand the basic facts of laboratory science. On page 29, he cites what he feels are serious flaws in the laboratory determination of dioxin. These variations are normal and expected in the laboratory and are understandable to anyone knowledgeable in the management of laboratory work. Again, the Admiral appears to use any excuse to denigrate results he disagrees with. Contrary to the Admiral's statements, most scientists feel that serum or adipose tissue dioxin levels are the "Gold Standard" of exposure. It is also becoming increasingly clear that in studies of short duration exposure to potentially toxic substances, the determination of actual body burdens of the chemical of interest is vital to the validity and success of the study. Without such measurements, a valid study is virtually impossible to accomplish.

4. The Admiral's comments on the Ranch Hand study are distorted and in error. His allegation (page 32) that ". . . there has been a systematic effort to suppress critical data or alter results" is unfounded. The data from the Ranch Hand studies were never altered and the conclusions were not "substantially" changed. Air Force scientists did modify the text of the report as it went through the editing process to improve the clarity of the report and consistency of the conclusions with the data. The authors did not want to either overinterpret or underinterpret the data. Allegations that there was ". . . perpetration of fraudulent conclusions" are wrong.

5. The Admiral alleges that there has been management interference in the science of the Ranch Hand study by Air Force and White House staff. These allegations are untrue. There has been no interference. The Air Force scientists have informed the Air Force and White Houe management staff of study progress and results just prior to public release, but those managers have not influenced the scientific direction of the study, the scientific data or the study results.

6. Admiral Zumwalt criticizes the Air Force for the use of a calculated index of exposure based on the number of gallons of herbicide sprayed and the number of men assigned to each type of job each month. This approach was in accord with procedures used in occupational epidemiology studies at the time the protocol was prepared. Those approaches are still used today in most epidemiologic studies of occupational exposures. Even though the Air Force exposure index does not accurately assess exposure for the individual veteran, it is more accurate than the exposure metric suggested by the Admiral and others for studies of ground troops. The method suggested cannot be applied below the level of the combat company, thus it has little relevance to the individual soldier and does not permit the determination of actual contact with herbicides or dioxin.

7. The Admiral selectivity cites the findings of the Air Force study results, mentioning the increased risk of overall cancer and skin cancer but failing to cite the nonsignificant risk of systemic cancer and failing to mention that the increased risk for overall cancer was due to the increase in skin cancer. He also cites an increase in birth defects. This increase was in "reported" defects and was based on a preliminary and incomplete analysis. Only 60% of the positive reports of birth defects and none of the births reported to be normal had been verified at the time the draft report was prepared. Fully verified data on all of the children fathered by the study participants have been obtained and the report on those data is nearing completion and should be available by Spring 1991.

8. The Admiral's conclusions are greatly overstated. There is an association between service in Vietnam and non-Hodgkin's lymphoma (NHL), but there is no evidence that this disease in veterans is related to Agent Orange exposure. Similarly, skin disorders were common in Vietnam and persist in many veterans, but there is little evidence that they are related to Agent Orange. Porphyria and chloracne are related to dioxin exposure in industrial populations, but there is little evidence that these diseases among veterans are related to their exposure to Agent Orange. The Admiral lists 31 diseases or groups of conditions he feels are caused by exposure to Agent Orange, but there is little scientific support for an Agent Orange causation for most of these. Most of the valid scientific data presented in this report concerns NHL which is already a compensible disease.

9. Summary: Admiral Zumwalt's opinions are obvious in this report, but he presents little valid evidence from studies of humans to support his allegations of a link between disease and Agent Orange. He repeatedly denigrates all studies that reach conclusions counter to his personal beliefs and makes personal attacks on the integrity of the scientists concurring those studies. At the same time he blindly accepts the results of studies that agree with his opinions. On balance, this report contributes little to the Agent Orange issue. The Admiral clearly has a personal stake in the Agent Orange issue and it is unreasonable to expect him to provide the neutral and unbiased approach necesssary to evaluate the scientific material concerning the effects of Agent Orange on the health of Vietnam veterans.

MEMO FOR RECORD

AUGUST 8, 1990.

To: Vernon N. Houk, MD, Director, Center for Environmental Health and Injury Control, Centers for Disease Control 1600 Clifton Road, NE (F29) Atlanta, GA.

This material contains my comments on Adm. Zumwalt's document. I am sorry it is not on letterhead stationary, but I have been on leave and TDY for most of the past 3 weeks. I will express mail a clean copy of the letter on official stationery on Friday. I hope this material will be helpful in preparing your response to the committees.

I have also found some background material on Dr. Clary, the Air Force "scientist" cited by the Admiral. He was an active duty captain working at Eglin AFB from 1969 to 1971. Al Young knew him at that time and says he (Clary) knew little about the herbicides and knew nothing about dioxin until 1971 when Al told him about it. He went on an extended TDY to Vietnam in 1970, most likely as part of the team that closed out the spraying operations and moved the remaining herbicides to Johnston Island.

The unnamed reviewer mentioned by the Admiral is Dick Albanese. At least he confined his criticism to the VA hazards committee and left us pretty much untouched.

APPENDIX C

AUGUST 15, 1990

VERNON N. HOUK, M.D.,
Assistant Surgeon General, Director, Center for Environmental Health and Injury Control, Centers for Disease Control Atlanta, GA.

DEAR VERNON: I regret that I did not respond sooner to your request for a review of Admiral E.R. Zumwalt's "Report to the Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange." The Agent Orange Task Force was asked to review this report by the Senate and House Veterans Affairs Committees.

The Zumwalt Report is designed to establish a link between a list of health outcomes and exposure to Agent Orange. The standard he uses to establish this link—"that it is least as likely as not that there is a statistical association"—is a legally based standard, not an epidemiological or toxicological standard. Several recent reviews in the biomedical literature are much more circumspect about the relationship between Agent Orange (specifically 2,3,7,8-TCDD) and human disease (Lilienfeld and Gallo, 1989; Johnson, 1990). Given the high quality of these reviews—in fact, Lilienfeld and Gallo is even cited in the Zumwalt Report—I do not see the need to respond to the allegations made in the Zumwalt piece.

Sincerely,

——— ———.

REFERENCES

Johnson, E. (1990) Association between soft tissue sarcomas, malignant lymphomas, and phenoxy herbicides/chlorophenols: evidence from occupational cohort studies. Fundamental and Applied Toxicology, 14, 219-234.

Lilienfeld, D. and Gallo, M. (1989) 2,4-D, 2,4,5-T, and 2,3,7,8-TCDD: an overview. Epidemiologic Reviews, 11, 28-58.

APPENDIX D

JULY 28, 1990.

Re review of the "Report to the Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange" prepared by Admiral E.R. Zumwalt, Jr.

Dr. VERNON HOUK,
Chairperson, AOTF Science Panel, Director, CEHIC, Centers for Disease Control (F-29), 1600 Clifton Road, N.E., Chamblee, Building 27, Atlanta, GA.

DEAR DR. HOUK: What has happened to "scientific" evaluation of the literature? Is it vogue to present only one side of the issue? This is the second document that the Science Panel has reviewed lately that does a very thorough job of presenting the case of potential harm to the Vietnam Veteran from dioxin and/or Agent Orange. Has anyone taken the time to pull together only the negative data so that we can have separate documents for both sides of this issue?

I'm at a loss as to even how to approach critiquing this document. Admiral Zumwalt's list of health hazards to dioxin exposure on page 3 was amazing, to say the least! This must comprise every health issue that has ever been even mentioned in a dioxin article. Did he leave out any type of cancer? Admiral Zumwalt also concluded on page 3 that ". . . the Veterans' Advisory Committee on Environmental Hazards has not acted with impartiality in its review and assessment of the scientific evidence . . ."; it would seem that Admiral Zumwalt could be accused of a similar failure to exercise impartiality!

Quite a few of Admiral Zumwalt's references to documenting the health hazard of dioxin are from the 1970s when the knowledge base was mainly animal data. There is little disagreement, if any, that dioxin is very toxic in our laboratory animals in a variety of ways; it was this toxicity that initiated the extensive research effort in the 1980s, both in animals and humans. However, the subsequent human epidemiological published reports have not proven, when taken in total, that dioxin is as potent to humans as would be implied by the animal toxicity. Perhaps, as pointed out by Admiral Zumwalt, just enough time has not elapsed since the Vietnam conflict for the dioxin health effect to be properly assessed; but this lack of time-lapse does not justify inclusion of every effect mentioned in the '70s.

Admiral Zumwalt stated on page 12 that ". . . it can fairly be said that the general attitude both within and outside the scientific community was, and continues to be increasing concern over the mounting evidence of a connection between certain cancer illnesses and exposure to dioxins."; I'm just the opposite! With all the money and effort that has been expended on dioxin research and the proven animal toxicity at fairly low levels, I am amazed that more substantial findings have not been linked with human health hazards.

Admiral Zumwalt stated on pages 19-20 that he asked several "impartial scientists" to review the Advisory Committee transcripts. I am not familiar with the credentials and impartiality of Drs. Day and Hartzman; however, Drs. Jeanne and Steven Stellman have proven that they are anything but impartial with this issue. In fact their 1988 articles in Environmental Research read very much like this document in their one sided approach to the literature.

Admiral Zumwalt recommends that the Vietnam Veteran be compensated for a variety of illnesses that he has concluded are connected with Agent Orange and their Vietnam service. I have no problem with compensating the Vietnam Veteran for any illness. I have no problems with decisions based on political considerations as they are beyond my sphere of influence or expertise. However, I do have problems with justifying that compensation based on the scientific evidence for and against dioxin or Agent Orange as the weight of the data is presently just not there.

Just once before I got off of the Science Panel, I would like to see a scientifically sound and unbiased review of the dioxin literature that the scientific community, the Vietnam Veterans organizations, and the politicians would embrace. However, I know that I am just being optimistic!

Sincerely,

——— ———.

AUGUST 7, 1990.

Dr. VERNON N. HOUK,
Chairman, Science Panel, AOWG, Center for Environmental Health and Injury Control, Building 27, Room 1213, Centers for Disease Control, 4770 Buford Highway, Chamblee, GA.

DEAR DR. HOUK: I am responding to your request that the Science Panel members review the "Report to the Secretary of the Department of Veteran Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange," by Admiral E. R. Zumwalt, Jr., dated May 5, 1990.

I was saddened by reading the document. It is not an impartial assessment of scientific studies. The document makes numerous charges of misconduct and fraud, citing comments from various individuals as evidence for the charges. Although the document expresses the author's reasons for recommending compensation for Vietnam veterans, the reasons are not based upon a critical evaluation of scientific studies relevant to the questions of exposure and health effects.

I have previously reviewed many of the relevant studies ("Epidemiology of Populations Exposed to Dioxins", M. Fingerhut et al, in Solving Hazardous Waste Problems: Learning From Dioxins, A.C.S. Symposium Series 338, American Chemical Society, Washington, D.C., 1987). I have also commented many times on the studies as a member of the Science Panel. Consequently, I have no additional comments to offer on the scientific issues.

Sincerely yours,

——— ———.

APPENDIX F

MEMORANDUM

Date: July 27, 1990.
Subject: The Zumwalt Report on Agent Orange.
To: Vernon Houk, M.D.

The best, most comprehensive review of the effects of dioxin on the human is the book by Michael Gough, *Dioxin, Agent Orange: The Facts* (Plenum Press, 1986). Dr. Gough was the Director of Special Projects at the Congressional Office of Technology and Assessment, and oversaw its report on dioxin by an expert panel of university-based experts. He knows the subject as well as, if not better than anyone. His book is dispassionately scientific and in marked contrast to the report by Admiral Zumwalt, which does not cite the book.

It is difficult for someone who has not been deeply involved in a scientific subject, especially a non-scientist, to separate real from spurious findings on dioxin.

For example, the report states a preference for estimates of exposures to Agent Orange based on difficult-to-confirm military locations in Vietnam, instead of an objective laboratory measurement. There is no way to confirm exposure indices except by laboratory tests. If there was no exposure, there can be no effect. Until proven otherwise, the serum levels show no exceptional exposure of ground troops in Vietnam. The same tests clearly show elevations in levels of dioxin in Ranch Hand personnel. The report attempts to discredit the blood test, but it is Christian's exposure indices that cannot be substantiated.

The question of birth defects among the children of Ranch Hand personnel: the report prefers subjective information from parents to objective reports from medical records. It is well known that medical histories are more fully reported when the respondents are concerned about a particular exposure than when they have not been exposed. The Air Force will soon complete its study of birth defects recorded in the medical records of the children of Ranch Hand personnel. Until then, no statement can be made about the reality of an effect.

Page 3 of the report lists 30 health problems said to be related to Agent Orange exposure. The report fails to consider that a poorly documented claim of an effect must be distinguished from one in which causality is supported by a dose-response effect, ex-

clusion of other possible explanations, biological plausibility, and/or replication of the finding by other investigators. Were these standard criteria applied, the list would evaporate, except for chloracne, porphyria and a few findings which are equivocal and still under study.

APPENDIX G

AUGUST 4, 1990.

Dr. VERNON HOUK,
Chairman, Science Panel, Agent Orange Work Group, Centers for Disease Control, Atlanta, GA.

DEAR DR. HOUK: Attached is my review of "Report to the Secretary of the Department of Veteran Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange", as requested in your letter of July 24, 1990.

As you are no doubt aware, the paper in question is not a scientific document, per se; rather, it is a policy recommendation that is supported by a technical discussion of the issue. The document is more akin to a legal brief than to a scientific paper. Consequently, the document is not amenable to a standard scientific review in the traditional sense.

As an advocacy piece, the document does a good job in mounting an argument for a particular point of view. However, as is often the case in such advocacy pieces, the paper is not a balanced, objective treatment of the scientific literature on the toxic effects of Agent Orange and/or 2,3,7,8-TCDD. Only selected facts are presented and often in a one-sided way. Interpretations of motives of individuals are intermixed with interpretation of data from experiments. In many instances there are alternative, competing interpretations—for both the motives and the data—which should be also considered by decisionmakers.

Sincerely,

———— ————.

APPENDIX H

Memorandum for: Dr. Vernon N. Houk, Director, Center for Environmental Health and Injury Control, Centers for Disease Control.

Subject: Review of "Report to the Secretary of the Department of Veterans Affairs on the Association between Adverse Health Effects and Exposure to Agent Orange", prepared by Admiral E.R. Zumwalt, Jr.

I reviewed the subject document in my capacity as a member of the Science Panel of the Agent Orange Task Force. The following comments are provided:

Admiral Zumwalt concluded that the work of the Veterans' Advisory Committee on Environmental Hazards is "not sensible" and "rather unsatisfactory", has "little or no scientific merit", and contains "faulty conclusions, flawed methodology, and noticeable bias"; the CDC study "design, implementation and conclusions were so ill conceived as to suggest that political pressures once again interfered with the kind of professional, unbiased review Congress had sought to obtain"; conclusions of the Air Force Health Study were "altered"; studies conducted by independent reviewers are characterized by the same "deception, fraud and political interference that has characterized government sponsored studies".

There is no evidence presented to support these accusations other than the opinions of the "experts" drawn upon by Admiral Zumwalt. The paper is not an impartial review of the literature.

APPENDIX I

A REVIEW OF "REPORT TO THE SECRETARY OF THE DEPARTMENT OF VETERAN AFFAIRS ON THE ASSOCIATION BETWEEN ADVERSE HEALTH EFFECTS AND EXPOSURE TO AGENT ORANGE"

GENERAL COMMENTS

1. The paper in question is not a scientific document, per se; rather, it is a policy recommendation that is supported by a technical discussion of the issue. The document is more akin to a legal brief than to a scientific paper. There are many references made to testimony presented in court proceedings, at Congressional hearings (often citing the words of the legislators, rather than the technical experts), and in correspondence to the author, that are hardly the type of peer-reviewed sources to which scientists are comfortable in ascribing unalloyed scientific credibility.

Consequently, the document is not amenable to a standard scientific review in the traditional sense.

2. The criterion of "as likely as not" is generally unfamiliar for scientific inquiry and, consequently, is open to considerable interpretation. In any event, any assessment should rest on an integrated assessment of all of the data that are available on a topic, not simply a single study.

3. The document presents a strong advocacy position. However, there are alternative views of the same—and more extensive—information which should be considered by decisionmakers.

4. While the toxicity data are not definitive, EPA continues to take steps to reduce the exposure to chlorinated dibenzo-p-dioxins (CDDs) to the extent feasible.

SPECIFIC COMMENTS

1. The author is undoubtedly a man of considerable talent, who has contributed greatly to our country. His particular credentials for undertaking this scientific assessment, however, are unclear.

It is commendable that he consulted other workers in the area. However, the credentials and backgrounds of some of those experts are similarly unclear; e.g.,

a. The Stellmans have certainly published on this subject, but most often from an advocacy position on behalf of some of the parties in this dispute.

b. The comments (allegations) of the unnamed fourth expert are difficult to assess in the absence of a legitimate analysis.

2. P. 3:

a. ". . . at least as likely as not . . ." is an unfamiliar criterion for judgment in the scientific realm. At a minimum it implies the need to assess the *entire weight of the evidence,* rather than any particular study.

b. The conclusion that ". . . the Veterans' Advisory Committee on Environmental Hazards has not acted with impartiality . . ." is a serious one. However, without access to more information on the Committee's deliberative process, it is not possible to assess the merit of this serious charge.

3. P. 5 and elsewhere: James Clary is quoted as a former government scientist from Eglin Air Force Base. His letters and statements are given prominence in this report, while the more complete, peer reviewed studies of the Eglin Air Force experience and Ranch Hand studies are given limited exposure. It is such imbalances throughout the paper that limits its usefulness as a comprehensive, analytical document.

4 P. 6: The contention is made that, despite acknowledging that "the bulk of Agency Orange herbicides . . . were reportedly sprayed from 'Operation Ranch Hand' . . . aircraft" . . . (,) (a) significant, if not major, source of exposure for ground forces was from non-recorded, non-Ranch Hand operations." The only basis given for this allegation is the author's awareness the AO "was frequently used on unrecorded missions". As stated, this is slim support, indeed.

5. P. 7, footnote 10: The Huong studies have been the subject of considerable interest for some time. However, the studies are limited by access to the original data, diagnostic techniques, etc. As I understand it, there have been only limited contacts between Federal scientists and the Vietnam workers. Perhaps this situation will change in the future.

6. PP. 10–11, Footnote 18: As both IARC and EPA noted in their assessments of the literature, human exposures to 2,3,7,8-TCDD (and related CDDs) are almost always often confounded by concurrent exposures to several other chemicals which might be of toxicological concern. Therefore, human data have been judged to be inadequate for assessing the carcinogenic potential of 2,3,7,8-TCDD in humans.

7. P. 11: There is no mention of the objections which have been raised about the interpretation of Alsea data. A balanced treatment would discuss these points.

8. P. 12: As a long time participant in the CDD issue, it is not at all clear to me that ". . . the general attitude both within and outside the scientific community was, and continues to be increasing concern over the mounting evidence of a connection between certain cancer illnesses and exposure to dioxins". Compared to the public and scientific prominence given to the "dioxin" in the days of the 2,4,5-T hearings, the "Swedish studies", Love Canal, Times Beach, etc. around 1980, both scientific and public concerns have generally become more informed and studied.

In my experience the "certain cancer illnesses" most often mentioned in connection with CDD have been soft tissue sarcomas and non-Hodgkin's lymphoma. Therefore, it is difficult for me to understand the basis of the author's statement on p. 53 that ". . . with a very high degree of confidence . . ." the list should include lip cancer, bone cancer, and lung cancer, as well as skin cancer (which might derive from an interpretation of the Ranch Hand data).

8. P. 16, footnote 31: The cause-and-effect criterion is reached through a variety of considerations, including dose-response consistency, consistency between multiple studies, biological plausibility, and over all weight-of-the-evidence (i.e., including consideration of negative, as well as positive, studies.)

9. P. 21: The statement about "valid negative" studies is a good one that could be pursued.

10. P. 24: a. As someone who has served on the Science Panel for more than a decade, it would hardly be for me to characterize the relationship between the agencies as being in "collaboration", in its most derogatory connotation. In the early '80s there was almost more combat, than collaboration, between some of them; e.g., VA vs. CDC and VA vs. EPA vs. CDC.

b. The VA's problem was not "footdragging" as much as it was a problem of developing a study design that would past muster in front of various review boards, such as the National Academy of Sciences and the Science Panel.

11. P. 25 and following: This discussion suggests that the author is confused about the hypothesis of the CDC validation study and the implications of its results. As I recall, the study was first conceived by a subcommittee of the Science Panel and somewhat thrust upon the CDC by the Panel and by the Office of Technology Assessment. The study was peer reviewed by a number of different professional groups. The bottom line is that the distribution of blood levels amongst those with a "high opportunity for exposure" is indistinguishable from the distribution found amongst those with a "low opportunity for exposure". Therefore, to proceed with the study as designed would most likely lead to the null hypothesis, perhaps for the reason suggested by the author (dilution of any exposed personnel with those who were not exposed or highly exposure), perhaps for the reason that the "highly exposed" were not. The "dilution hypothesis", however, is called into the question by the similarities in the tails of the two distributions; i.e., those people with high blood levels.

In any event the results (and the exposure of individual analyses) argue for conducting a study amongst a cohort of more likely exposed personnel, each of whose levels can be directly assessed. This has been the rationale for studying the Ranch Hand cohort so closely. Future reports from this study should be particularly revealing.

In addition, the about-to-be-released NIOSH study should shed additional light on the matter. Here is a large cohort (more than 5000 people), the exposure index for which has been validated (to some degree) by individual blood level analyses.

12. P. 29: a. The "assumption" by CDC of a half life of 7 years is supported by data from several labs around the world. While individual studies (including a self-administered study in Europe) have suggested a range of values (generally from 5 to 10 years, as I recall), the value of 7 years is generally agreed upon in the scientific community.

b. Footnote 34: This statement appears to point to further confused understanding of the CDC study. The whole point of the validation study was to investigate a possible correlation between blood levels and exposure (opportunity) scores. The study found none. This conclusion certainly raises questions about the premise for conducting the ground troops study, in addition to whatever questions it might raise about problems in the blood analysis. The latter problems were addressed in a variety of peer reviews and found to have been generally well-addressed.

13. PP. 31-32: The Selected Cancer Study was always conceived of as a "Vietnam experience" study, not an Agent Orange study. Where elevated cancers were found; e.g., the blue-water Navy, the authors simply investigated whether an Agent Orange hypothesis seemed plausible. In their judgment, which is shared by many peer reviewers, this seems highly unlikely.

14. P. 33: It is not clear why or on what basis the Ranch Hand Advisory Committee is being denigrated here. The purpose of the Committee was to be a highly qualified, highly respected group of scientific experts who could provide advice and a rigorous peer review. It appears that this is what they did. The only question to ask—which is not raised here—is "What was the basis for changes they recommended?" I understand that this information is fully available in the proceedings of the committee.

15. P. 34: The critical paragraph and footnote 64 (and the earlier cited notes 10 and 18) provide only weak substantive support for the strong assertion that ". . . it is very likely that the CDC's negative findings on birth defects were also vastly understated."

16. P. 35: The whimsical reference to beer nuts vis a vis exposure to "dioxin" suggests further confusion by the author. The Ranch Hand cohort was selected because of an assumed, but plausible, high likelihood of exposure to "dioxin", not beer nuts. Anecdotal evidence, visual records, personal testimonies, and some published blood levels support this assumption. As noted above, blood samples from the entire cohort are being analyzed.

17. P. 37: The author cites plaintiff's brief as the source of the ". . . conclusive evidence that the studies . . . were fraudulent." This is another instance of strong statement with weak support. In our system of jurisprudence such advocacy sources are not expected to be scientific and objective. It is only an error when they are regarded as such; cf., this document.

As I understand it, the basis for these allegations is being investigated at a variety of levels. However, and more to the point, the same cohorts are being restudied on an independent basis in the NIOSH study. Therefore, the information from these cohorts is being reassessed as a part of an even more powerful study.

18. P. 38 and following: The EPA has judged the cancer epidemiology evidence for 2,3,7,8-TCDD to be "inadequate". This judgment stems, in part, from an inability to distinguish the effects of 2,3,7,8-TCDD from the effects of other chemicals which are a part of many exposure situations. This judgment is similar to that reached by IARC.

Of course, this judgment and all other scientific judgments are subject to additional, new information which may become available in the future; hence, our continued interest in the NIOSH study, subsequent Ranch Hand reports, etc.

19. P. 40: Dr. Teitelbaum alleges contaminants in 2,4-D which have not been revealed to EPA. It is not clear what contaminants are referred to here. The basis for his information about the content of 2,4-D and his information about what the EPA does not know is similarly unclear.

EPA conducted an extensive exercise in the mid-1980s relative to the presence of 1,3,6,8- and 1,3,7,9-TCDD in certain formulations of 2,4-D. The Agency continues to pursue actively a variety of issues associated with 2,4-D.

20. P. 41: The interesting Breslin proportionate mortality study has been commented on in the past by members of the Science Panel.

21. P. 42: The pulp and paper industry is associated with many different chemicals, among them CDDs. The risks posed by the CDDs are more directed at consumers of fish downstream from the plant than they are to workers in the plants. It is not clear what in-part exposures to workers would present high risks from the CDDs.

22. P. 43, footnote 84: The development of such a validated proxy for exposure was the goal behind the CDC validation study. For just the reasons cited here, the CDC study indicated the inadvisability of proceeding with the ground troops study.

It is unclear why the author cites the serum marker work of Kahn to the exclusion of the comparable, more extensive work of CDC.

Again, there seems to be some confusion with regard to the 10 year latency period. The exposures of interest in Vietnam took place around 1970. Studies on that cohort published in the last decade (1980-90) would have a latency of at least 10-20 years.

23. P. 44: The citation and quotation from a 10-year old anonymous memo detracts from whatever strength and quality exists elsewhere in the document.

24. P. 45: As noted above, EPA's judgment that 2,3,7,8-TCDD is classified (in the Agency's scheme) as a "probable human carcinogen" is based upon sufficient evidence of carcinogenicity in laboratory animals and inadequate evidence in humans. The IARC determination is made on a comparable basis.

25. Pp. 46-47: The advocacy position of the sponsors of the "scientific task force" is noted. The identity of the participants in the task force is not. It is also not clear whether—and to what extent—the work of the task force received the benefit of any scientific peer review and whether it has—or will—be published as a part of the technical, peer-reviewed literature.

26. P. 48: The emphasis on immunotoxicity late in the paper is curious. Certainly, this is an effect elicited by 2,3,7,8-TCDD and has been the subject of considerable study for the past 1 years or so. However, this discussion is neither a complete, balanced, nor adequate treatment of a complex subject.

It is even more curious that the only citation to support the "one-hit" model of immunotoxicity (for which the author acknowledges less than unanimous agreement in the scientific community) is a court document.

27. P. 50: The author's suggestion to use blood testing as a means of assessing prior exposure is consistent with a wide range of scientific opinion. Questions of cost, logistics, and "human testing" also need to be addressed.

28. P. 51: a. The propriety of and the choice between policy alternatives are basically risk management decisions which are beyond the mandate of the Science Panel. However, it should be noted that "20 kilometers/30 days" criterion far exceeds the criterion used in the Exposure Opportunity Index, which itself has been criticized as possibly including too many unexposed individuals.

b. The document provides little scientific basis for concern about male-transmitted reproductive problems associated with 2,3,7,8-TCDD of the type that are being recommended for compensation here.

APPENDIX J

MEMORANDUM

Date: August 13, 1990.

Subject: The Zumwalt Report, May 5, 1990—Remarks on CDC's Study: Vietnam Veterans' Risks for Fathering Babies with Birth Defects (Birth Defects Study).

To: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, CDC (F29).

The purpose of this memorandum is to set the record straight regarding two comments made in the Zumwalt Report about CDC's Birth Defects Study.

1. The Zumwalt Report states (page 34) that ". . . the original CDC birth defects study . . . merely examined birth defects as reported on birth certificates, rather than as reported by the child's parent or physician." In fact, the source of cases for the Birth Defects Study was CDC's Metropoli-

tan Atlanta birth defects registry which uses multiple sources (of which birth certificates are only one) to ascertain babies born with birth defects. For a baby to be included in the registry, his/her defect must have been *diagnosed by a physician* and recorded in a hospital chart. Moreover, during the course of the Birth Defects Study interviews, parents were questioned about the presence of defects in their babies.

2. The Zumwalt Report states (page 34) that "The CDC never recorded hidden birth defects, such as internal organ malformations and other disabilities that only became apparent as the child developed." In fact, the CDC Birth Defects Study included all types of major structural and chromosomal defects, including many types that could be termed "hidden;" not included were babies with disabilities such as mental retardation without an accompanying structural or chromosomal defect. Examples of "hidden" defects included in the study are many types of cardiovascular defects, lung defects, intestional tract defects, and urinary tract defects. Babies are included in the Atlanta registry if their defects are diagnosed any time during the first year of life.

APPENDIX E

JULY 30, 1990.

DR. VERNON N. HOUK,
Director, Center for Environmental Health and Injury Control, Building 27, Room 1213, Centers for Disease Control, 4770 Burford Highway, Chamblee, GA.

DEAR DR. HOUK: I received the request to review "Report to the Secretary of the Department of Veterans Affairs on the Association between Adverse Health Effects and Exposure to Agent Orange" by Admiral Zumwalt on July 27, 1990. My comments follow below.

This report reads more like an editorial, not a report; and as such diminishes its usefulness. The extraordinary amount of emotion which has entered into this contentious debate over Agent Orange will ensure that the only solution to the situtation will be political and not scientific. Admiral Zumwalt has spent a great deal of time discussing studies which support his conclusions. Much less time was spent in presenting information on those which ran counter to his view, or how the conflicting findings could be resolved, or discounted.

The current state of knowledge regarding the adverse health effects associated with Agent Orange exposure will likely remain fiercely debated for some time to come and is unlikely to change in the near future. The Secretary (of Veterans Affairs) has the authority to make the determination on the issue of compensation now. Rather than to continue the debate, and spend millions of more dollars in evaluating the situation, the time for an equitable compromise may be the most prudent course.

The list of compensable health effects which were suggested by Zumwalt are broad, without qualifications, and ignore the significant (and known) contributions from other environmental, genetic, and personal risk factors for the development of these diseases or conditions. Any proposal (for compensation) will no doubt serve to be another focus for debate as individuals will argue over whom should be compensated and how much. On the other hand, the continuation of the debate will consume tremendous amounts of time, energy, and money, and yet may not allow us to come to any consensus agreement over this divisive issue.

Sincerely,

——— ———.

APPENDIX L

COMMENTS ON REPORT TO THE SECRETARY OF THE DEPARTMENT OF VETERANS AFFAIRS ON THE ASSOCIATION BETWEEN ADVERSE HEALTH EFFECTS AND EXPOSURE TO AGENT ORANGE

(By Adm. E.R. Zumwalt, Jr.)

It is difficult to evaluate Admiral Zumwalt's Report as a scientific review and critique of the "numerous data relevant to the statistical association between exposure to Agent Orange and the specific adverse health effects manifested by veterans who saw active duty in Vietnam." Although the Report superficially resembles a scientific review, it lacks the balanced presentation of data, objective evaluation of the relative merits of various research efforts, and careful documentation of any conclusions drawn from them, features which characterize medical and scientific reviews. The Report appears to be an attempt to validate foregone conclusions through acceptance of any evidence whether scientific data, personal letters, undocumented opinions or legal charges that support these conclusions. Well accepted research that does not support them is ignored or presented only to attempt to rebut it. The use of prejudicial words and phrases is generally avoided in scientific papers. The Report, however, uses them repeatedly.

The Report presents attacks on work that tends to refute the occurrence of detrimental effects of Agent Orange at three times the space devoted to support for adverse effects. An attempt to disprove the research results of the Centers for Disease Control (CDC) occupies more space than is given to all citations accepted as supporting the herbicide's toxic effects. Such a distribution of effort is unusual in reviews of science in any field.

The Report cites unverifiable references both for and against adverse effects. These include contested charges in a Congressional hearing (pages 24 to 32), an anonymous review (page 22), extracts from personal letters (pages 5, 20 to 22, 36, 40), "a selection of papers" not otherwise characterized (page 22), citations from a veterans' service organization (pages 27, 29), unsupported statements by a legislator (pages 24, 32, 34, 35), charges presented in a legal brief (page 37), newspaper articles (pages 47, 48), and other sources not generally accessible for critical review (pages 12, 23, 34, 39). The citations may be valid and the data and opinions accurate. It remains impossible, however, for a reviewer to arrive at an independent opinion about the sources.

When citations are complete, a reviewer can check the accuracy of data and of conclusions in the original references. Errors in information from references are present throughout the Report where they can be checked. For example, the VA's mortality study is said to indicate "a 110 percent higher rate of non-Hodgkins lymphoma in Marines—." The study, however, reported a proportional mortality study which can only determine a ratio and not a rate. The Report also says L.B. Hobson "claims that TCDD 'presents no threat from the exposures experienced by the veterans and the public at large' and virtually accuses scientists who find that such health effects do exist to be nothing more than witch doctors". The text, used in 1985, was "Witch hunts have been stopped in individual episodes when tempers cooled, discontented groups found peace, and the excesses of belief in the attendant black magic were seen for what they are. This seems to be happening now with the TCDD episode, largely as scientific evidence mounts that the compound really presents no threats from the exposures experienced by veterans and the public at large." No-one was "virtually accused" of being a witch doctor.

Over the years, VA's evaluations of research on Agent Orange, dioxin, and related subjects have paralleled the opinions expressed by independent, non-federal medical and scientific organizations such as the American Medical Association, the Universities Associated for Research and Education in Pathology, and the National Council of Safety and Health. The Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam conducted a wide-spread, two year review of the scientific issues and other aspects, of Agent Orange. Their conclusions agreed with the VA's evaluations. Independent reviews by the Office of Technology Assessment of the U.S. Congress have not disagreed with the VA's evaluations of research results. The critical evaluations of the VA Advisory Committee on Environmental Hazards likewise have not been criticized by scientific organizations.

The Report, however, criticizes the Advisory Committee's actions, particularly at its November 1989 meeting when it discussed non-Hodgkin's lymphoma in association with Vietnam service. The discussion resulted from the judgement in *Nehmer vs. U.S. Veterans Administration*, 712 F. Supp. 1404 (N.D. Cal. 1989). The court directed the VA, in effect, to standardize the procedure by which the Advisory Committee arrived at decisions as to a "significant statistical association" between herbicide exposure and adverse health effects. Such a standardized procedure is a new concept in arriving at scientific decisions in so large and complex an area. The Advisory Committee, acting in public, attempted to develop the required methodology.

As with any pioneering effort, it is easy to find critics of the process and product. This appears to be true of some individuals whose criticism is cited, in part from private letters which do not reflect knowledge of the problems facing the Advisory Committee (pages 20 to 22). No detail is given as to why the criticism should be accepted nor how future difficulties can be avoided.

The most difficult to disprove of the Report's charges is the supposed political pressure to alter research results. Scientific papers undergo critical review by one or more scientists prior to submission for publication. The Ranch Hand Advisory Committee is an independent group of scientists, not as Senator Daschle has said operating under the White House Agent Orange Working Group (page 32). It reviewed the Ranch Hand documents and recommended changes to Ranch Hand reports on scientific, not political, grounds. There has been no credible evidence that CDC studies were altered, either in execution or reporting, by political influence as charged in the *Oversight Review of CDC's Agent Orange Study: Hearing Before the Human Resources and Intergovernment Relations Subcommittee* on March 9, 1990.

The Report's conjectures about the immune system and immunotoxity cannot be sustained and no data are offered to do so (pages 47 to 50). Insofar as immunologi-

cal effects of phenoxy herbicides or dioxins are used as basis for concluding that the chemicals produce health effects, that basis is weakened scientifically rather than strengthened.

Scientific support for the Report's sections on "Compensation" and "Recommendations" is almost entirely lacking. Non-scientists bringing other training and experience to a review may come to conclusions different from those of scientists. Admiral Zumwalt has prepared a Report from an unscientific background and presented his opinions to other ends.

APPENDIX M

MEMORANDUM

Date: August 21, 1990.

Subject: Review of "Report to the Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange".

To: Chairman, Agent Orange Working Group Science Panel F-29.

I reviewed the report entitled "Report to the Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange" by Admiral E.R. Zumwalt, Jr. The author describes this report as a review of the scientific, political, and legal aspects of the health impact of agent orange and dioxin upon personnel serving in Vietnam.

Although the author describes the report as a review of scientific literature, he expresses his review and summarization in a biased manner. This report is more a reflection of his expression of concern for veterans compensation—providing multiple allegations of governmental conspiracy to misrepresent the scientific investigation or interpretation of the toxicity of dioxin.

My review of the Zumwalt report did not include a review of all references disclosed in the report, and therefore, I cannot comment on the validity of his interpretation of these references. I would, however, concur that dioxin constitutes an important health concern for persons who have served in Vietnam. Unfortunately, no definitively exposed population has been defined for evaluation other than the Ranch Hand Cohort. Although no definitive evidence for a causal association between dioxin exposure in Vietnam and adverse health effects has been demonstrated (with the exception of the Ranch Hand Studies) some indirect evidence of concern is described in his report. I find his report to be more of an argument attempting to impact public policy.

VA ADVISORY COMMITTEE RECOMMENDATIONS

Mr. President, on November 3, 1989, VA's Advisory Committee made recommendations to the Secretary of Veterans Affairs concerning a possible association between NHL and exposure to agent orange. On May 17, 1990, the Advisory Committee made recommendations to the Secretary concerning STS.

As chairman of the Veterans' Affairs Committee, in letters dated July 6, 1990, I requested that OTA and the Domestic Policy Council's Agent Orange Task Force evaluate the analyses and conclusions concerning these recommendations to the Secretary.

Mr. President, I ask that the responses I have received thus far be printed in the RECORD at this point.

The material follows:

CONGRESS OF THE UNITED STATES,
OFFICE OF TECHNOLOGY ASSESSMENT,
Washington, DC, September 24, 1990.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR ALAN: As you requested in your letter of July 6, we have reviewed the recommendations made by the VA Advisory Committee on Environmental Hazards to the Secretary of Veterans Affairs concerning possible associations of non-Hodgkins lymphoma (NHL) and soft tissue sarcoma (STS) with exposure to Agent Orange. The attached memorandum to me from Hellen Gelband, who carried out the review, summarizes our findings.

As you know, at a meeting in November 1989, the Advisory Committee found no "statistical association," as defined by regulation, of NHL with exposure to dioxin-containing herbicides. At a meeting in May 1990, the Committee did find a "statistical association" of STS with exposure. In contrast, OTA's review of the detailed minutes of the meetings, supported by our prior review of many of the relevant studies, does not reveal a substantial difference in the quality of the evidence for an association with NHL and with STS, or any specific pieces of information that would explain the Committee's differing decisions on NHL and STS. Of course, all of these judgments are, to some extent, subjective, since there is no specific procedure, particularly not a quantitative one, that can be used to weigh the evidence.

I hope this analysis is helpful. Please do not hesitate to contact me if I may be of further assistance, or have your staff contact Hellen Gelband in the OTA Health Program (at 8-6590).

Sincerely,

JOHN H. GIBBONS.

OTA HEALTH PROGRAM, STAFF MEMORANDUM

SEPTEMBER 18, 1990.

To: Jack Gibbons.

From: Hellen Gelband, Health Program.

Re: Review of VA Advisory Committee recommendations.

As you requested, I have reviewed the recommendations made by the VA Advisory Committee on Environmental Hazards to the Secretary of Veterans Affairs concerning possible associations of non-Hodgkins lymphona (NHL) and soft tissue sarcoma (STS) with exposure to Agent Orange. My review is based on reading the detailed minutes of the meetings at which the VA Advisory Committee formulated these recommendations, and my previous knowledge of the epidemiologic studies on which the recommendations are based.

THE NHL MEETINGS

NHL was discussed at the November 2-3, 1989 meeting. At the beginning of the meeting, the Committee was instructed on the regulation that was to govern their assessment of the scientific literature. Mr. White from the Veterans Benefits Administration's Compensation and Pension Service explained that the Committee was to determine whether a "significant statistical association" existed between exposure to a herbicide containing dioxin and a given medical condition. According to the regulation, a significant statistical association exists when the relative weight of valid positive and valid negative studies permits the conclusion that it is "at least as likely as not" that the purported relationship between a particular type of exposure and a specific adverse health effect exists. The regulation also discusses criteria for judging whether a study is "valid."

The issue of validity, having to do with basic study design, the ways in which data are collected, potential biases, etc., is familiar to all experts in evaluating medical evidence. The Committee handled this professionally and competently, discussing each study put before them. They also had no problems in determining which studies were relevant to the question at hand. However, there is no specific procedure for considering the results of many different studies together and arriving at a conclusion as to where the weight of the evidence lies. The task becomes even more difficult when the endpoint is whether the association is "at least as likely as not" to exist, a term that does not lend itself to an objective definition. Any determination is bound to be somewhat subjective. The Committee discussed the issue of methods of arriving at a decision several times during both meetings, and considered various alternatives to assist in coming up with a final judgment, but did not adopt any formal procedure.

At the NHL meeting, the Committee reviewed 30 individual papers of relevance to the NHL question, characterizing 4 as valid and positive for an association of NHL; 12 as valid and negative; 10 as valid and inconclusive (mainly due to small sample sizes and consequent low power); and 4 as not valid because of severe defects in methodology or execution. Several others were dismissed as not germane to the subject. After the review of individual papers and the tally, the Committee further discussed the types of exposure in the studies, and how they might be differentiated, e.g., giving less weight to studies in which there was only the *opportunity* for exposure, and more to studies in which exposure was documented. They also discussed the "inconclusive" studies further to see if, as a group, they were more informative than they were separately.

In the end, the Committee members stated their own conclusions about the existence of a "statistical association," as they understood it to be defined by the regulation. They concluded that, while they could not rule out such an association, the evidence they reviewed did not support a conclusion that such an association existed.

THE STS MEETING

The meeting to review studies relating to STS, held on May 16 and 17, was conducted similarly to the NHL meeting. Before the review of individual studies began, however, Admiral Zumwalt, attending his first meeting as a Committee member, made a statement criticizing the previous work of the Committee and praising the work of the "Agent Orange Scientific Task Force," a group supported by the American Legion, the Vietnam Veterans of America, and the National Veterans Legal Services Project. Once again, after discussion of the individual papers, the idea of formalizing the process for coming to a conclusion was discussed. Some strong sentiments were expressed in favor of exploring such a process, but in the end, that was not done.

The tally of studies was: 8 considered valid and positive; 10 considered valid and negative; 27 considered valid and inconclusive; and 5 considered not valid. There was considerable discussion concerning the fact that most of the positive evidence came from studies in Scandinavia, and that similar studies elsewhere showed no such asso-

ciation. Eventually, the members of the Committee were polled, and the consensus was that a "statistical association" existed.

Throughout the meeting, Admiral Zumwalt injected skepticism about studies done by researchers in industry and in the Federal Government. He cited testimony in court cases challenging some of the industrial studies, and claimed that the Federal Government exerted influence over the results of Government studies. This was contested by several members of the Committee. It is not clear to what extent Admiral Zumwalt's accusations influenced the deliberations of the Committee.

CONSISTENCY OF THE RECOMMENDATIONS

From reading the meeting minutes and from my knowledge of the studies discussed, I do not find a substantial difference in the quality of the evidence for an association with NHL and with STS. I cannot identify any specific pieces of information that would explain the Committee's differing decisions on NHL and STS, though the Scandinavian studies, which provide most of the positive findings, seemed to be influential. In my own subjective judgment, the evidence is quite similar, taking into account the levels of risk detected in the positive studies, the potential biases in the studies, the sources of exposure information, the types of exposure involved, and other factors.

The Committee has been given very difficult questions to answer. There may be no single right answer, because the standard of evidence required to decide that a "statistical association" exists as defined by the regulation, cannot be defined precisely.●

MESSAGES FROM THE HOUSE RECEIVED SUBSEQUENT TO SINE DIE ADJOURNMENT

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on October 29, 1990, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolutions:

H.R. 3791. An act for the relief of Buelah C. Shifflett;

H.R. 4090. An act to authorize the establishment of the Glorietta National Battlefield in the State of New Mexico, and for other purposes;

H.R. 4299. An act to authorize a study of the fishery resources of the Great Lakes, and for other purposes;

H.R. 5872. An act to amend title I of the Employee Retirement Income Security Act of 1974 to require qualifying employer securities to include interest in publicy traded partnerships;

S.J. Res. 375. Joint resolution to designate October 30, 1990, as "Refugee Day"; and

S.J. Res. 388. Joint resolution waiving cerain enrollment requirements with respect to S. 2830, the Food, Agriculture, Conservation and Trade Act of 1990.

Under the authority of the order of the Senate of January 3, 1989, the enrolled joint resolution (S.J. Res. 388) was signed on October 29, 1990, subsequent to the sine die adjournment of the Congress by the President pro tempore [Mr. BYRD].

Under the authority of the order of the Senate of January 3, 1989, the remaining enrolled bills and joint resolution were signed on October 31, 1990, subsequent to the sine die adjournment of the Congress by the President pro tempore [Mr. BYRD].

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on October 30, 1990, subsequent to the since die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has singed the following enrolled bills:

H.R. 3911. An act to amend title 5 of the United States Code to increase the allowance for services of attendants;

H.R. 5004. An act to amend the Wild and Scenic Rivers Act to designate certain segments of the Mills River in the State of North Carolina for potential addition to the wild and scenic rivers system;

H.R. 5433. An act to direct the Secretary of Agriculture to release on behalf of the United States a condition in a deed conveying certain lands to the Conservation Commission of West Virginia, and for other purposes; and

H.R. 5933. An act to provide for the temporary extension of the certain laws relating to housing and community development.

Under the authority of the order of the Senate of January 3, 1989, the enrolled bills, except the bill H.R. 5933, were signed on October 31, 1990, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. BYRD.].

Under the authority of the order of the Senate of January 3, 1989, the enrolled bill, H.R. 5933 was signed on October 31, 1990, subsequent to the sine die adjournment of the Congress, by the Vice President.

Under the authority of the order of the Senate of January 3, 1990, the Secretary of the Senate, on November 1, 1990, subsequent to the sine die adjournment of the Senate, received a message from the House of Representatives announcing that the House has passed the bill (S. 2343) to amend the Wild and Scenic Rivers Act by designating a segment of the Clarks Fork River in the State of Wyoming as a component of the National Wild and Scenic Rivers System.

The message also announced that the House has passed the following bill, without amendment:

S. 3084. An act to provide for the settlement of water rights claims of the Fallon Pauite-Shoshone Indian Tribes, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 4009) to authorize appropriations for fiscal year 1991 for the Federal Maritime Commission, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 4793) to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 4008) to encourage solar, wind, waste, and geothermal power production by removing the size limitation contained in the Public Utility Regulatory Policies Act of 1978.

The message also announced that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 4 to the bill (H.R. 5229) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1991, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 5687) to amend title 31, United States Code, to improve the general and financial management of the Federal Government.

Under the authority of the order of the Senate of January 3, 1990, the Secretary of the Senate, on November 2, 1990, subsequent to the sine die adjournment of the Senate, received a message from the House of Representatives announcing that the House has passed the joint resolution (S.J. Res. 388) waiving certain enrollment requirements with respect to S. 2830, the Food, Agriculture, Conservation and Trade Act of 1990.

The message also announced that the House disagreed to the amendment of the Senate to the bill (H.R. 3209) entitled "An Act to modify the boundaries of the Indiana Dunes National Lakeshore."

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on October 30, 1990, he had presented to the President of the United States the following enrolled bills and joint resolution.

S. 580. An act to require institutions of higher education receiving Federal financial assistance to provide certain information with respect to the graduation rates of student-athletes at such institutions;

S. 1756. An act to provide for the preservation and interpretation of sites associated with Acadian culture in the State of Maine;

S. 1890. An act to amend title 5, United States Code, to provide relief from certain inequities remaining in the crediting of National Guard technician service in connection with civil service retirement;

S. 2516. An act to augment and improve the quality of international data compiled by the Bureau of Economic Analysis under the International Investment and Trade in Services Survey Act by allowing that agency

to share statistical establishment list information compiled by the Bureau of the Census, and for other purposes;

S. 3062: An act to transfer the responsibility for operation and maintenance of Highway 82 Bridge at Greenville, Mississippi, to the States of Mississippi and Arkansas; and

S.J. Res. 388. Joint resolution waiving certain enrollment requirement with respect to S. 2830, the Food, Agriculture, Conservation and Trade Act of 1990.

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of January 3, 1989, the following bill was signed on October 31, 1990, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. BYRD]:

S. 1430. An act to enhance national and community service.

Under the authority of the order of the Senate of October 25, 1990, the following bill was signed on October 31, 1990, subsequent to the sine die adjournment of the Congress, by Mr. LEAHY:

S. 2830. An act to extend and revise agricultural price support and related programs, to provide for agricultural export, resource conservation, farm credit, and agricultural and related research programs, to ensure consumers and abundance of food and fiber at reasonable prices, and for other purposes.

CRIME CONTROL ACT OF 1990

The text of the bill (S. 3266) to control crime, as passed by the Senate on October 27, 1990, is as follows:

S. 3266

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Crime Control Act of 1990".

TITLE I—INTERNATIONAL MONEY LAUNDERING

SEC. 101. REPORTS ON USES MADE OF CURRENCY TRANSACTION REPORTS.

Not later than 180 days after the effective date of this section, and every 2 years for 4 years, the Secretary of the Treasury shall report to the Congress the following:

(1) the number of each type of report filed pursuant to subchapter II of chapter 53 of title 31, United States Code (or regulations promulgated thereunder) in the previous fiscal year;

(2) the number of reports filed pursuant to section 6050I of the Internal Revenue Code of 1986 (regarding transactions involving currency) in the previous fiscal year;

(3) an estimate of the rate of compliance with the reporting requirements by persons required to file the reports referred to in paragraphs (1) and (2);

(4) the manner in which the Department of the Treasury and other agencies of the United States collect, organize, analyze and use the reports referred to in paragraphs (1) and (2) to support investigations and prosecutions of (A) violations of the criminal laws of the United States, (B) violations of the laws of foreign countries, and (C) civil enforcement of the laws of the United States including the provisions regarding asset forfeiture;

(5) a summary of sanctions imposed in the previous fiscal year against persons who failed to comply with the reporting requirements referred to in paragraphs (1) and (2), and other steps taken to ensure maximum compliance;

(6) a summary of criminal indictments filed in the previous fiscal year which resulted, in large part, from investigations initiated by analysis of the reports referred to in paragraphs (1) and (2); and

(7) a summary of criminal indictments filed in the previous fiscal year which resulted, in large part, from investigations initiated by information regarding suspicious financial transactions provided voluntarily by financial institutions

SEC. 102. ELECTRONIC SCANNING OF CERTAIN UNITED STATES CURRENCY NOTES.

(a) ELECTRONIC SCANNING TASK FORCE.—(1) Not more than thirty days after the date of enactment of this section, the Secretary of the Treasury (hereafter in this section referred to as the "Secretary") shall appoint an Electronic Scanning Task Force (hereafter in this section referred to as the "Task Force") to—

(A) study methods of printing on United States currency notes issued under section 51115 of title 31, United States Code, in denominations of $10 or more a serial number on each such United States currency note that may be read by electronic scanning;

(B) make an assessment of the cost of implementing such electronic scanning of such United States currency notes; and

(C) make recommendations about the amount of time needed to implement such electronic scanning.

(2) In appointing members to the Task Force described in subsection (a), the Secretary shall appoint such number of members as the Secretary determines to be appropriate. The Secretary, shall, at a minimum appoint to the Task Force—

(A) the Assistant Secretary for Enforcement in the Department of the Treasury (who shall serve as a nonvoting, ex officio member);

(B) at least one recognized expert from each of the following fields relating to electronic scanning technology:

(i) coding,

(ii) symbology,

(iii) scanning systems,

(iv) computer data compilation, and

(v) printing technology; and

(C) Representatives from each of the following:

(i) the Bureau of Engraving and Printing,

(ii) the Federal Reserve Board, and

(iii) the United States Secret Service.

(3) Except as provided in paragraph (2)(A), no individual who is a full-time employee of the Federal Government may serve as a member of the Task Force.

(4) The provisions of the Federal Advisory Committee Act shall not apply with respect to the Task Force.

(5) Members of the Task Force shall, while attending meetings and conferences of the Task Force or otherwise engaging in the business of the Task Force (including travel time), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS-18 of the General Schedule established under section 5332 of title 5, United States Code.

(6) While away from their homes or regular places of business on the business of the Task Force, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(7) Upon the issuance of the report by the Secretary under subsection (b), the Task Force shall cease to exist.

(b) REPORT TO THE CONGRESS.—Not later than one hundred and eighty days after the date of enactment of this section, the Secretary shall issue a report to the appropriate committees of the Congress that summarizes the findings and recommendations of the Task Force under subsection (a)(1), and includes any additional recommendations by the Secretary.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 103. CONFORMING AMENDMENT RELATING TO THE EQUITABLE TRANSFER OF FORFEITED PROPERTY TO A PARTICIPATING FOREIGN NATION.

Section 981(i) of title 18, United States Code, is amended—

(1) by striking out the matter before paragraph (1);

(2) by realigning paragraphs (1) through (5) 2 ems to the left, so that the left margins of such paragraphs are flush;

(3) by striking out "(1) Notwithstanding" in paragraph (1) and all that follows through the end of the second sentence of that paragraph and inserting in lieu thereof the following:

"(i)(1) Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

"(A) has been agreed to by the Secretary of State;

"(B) is authorized in an international agreement between the United States and the foreign country; and

"(C) is made to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961.";

(4) by inserting after "Attorney General" in the third and fifth sentences of paragraph (1) the following: "or the Secretary of the Treasury"; and

(5) by striking out the last sentence of paragraph (1).

SEC. 104. ADDITION OF CONFORMING PREDICATE MONEY LAUNDERING REFERENCES TO "INSIDER" EXEMPTION FROM THE RIGHT TO FINANCIAL PRIVACY ACT.

Section 1113(l)(2) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(l)(2)) is amended by inserting "or of section 1956 or 1957 of title 18, United States Code" after "any provision of subchapter II of chapter 53 of title 31, United States Code".

SEC. 105. CLARIFICATION OF DEFINITION OF "MONETARY INSTRUMENTS".

Section 1956(c)(5) of title 18, United States Code, is amended to read as follows:

"(5) the term 'monetary instruments' means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;".

SEC. 106. MONEY LAUNDERING AMENDMENTS.

Section 1956(c)(1) is amended by striking "State or Federal" and inserting "State, Federal, or foreign".

SEC. 107. CORRECTION OF ERRONEOUS PREDICATE OFFENSE REFERENCE UNDER 18 U.S.C. 1956.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking out "section 310 of the Controlled Substances Act (21 U.S.C. 830) (relating to precursor and essential chemicals)" and inserting in lieu thereof "a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals)".

SEC. 108. KNOWLEDGE REQUIREMENT FOR INTERNATIONAL MONEY LAUNDERING.

Section 1956(a) of title 18, United States Code, is amended—

(1) in paragraph (2) by inserting at the end the following: "For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true."; and

(2) in paragraph (3) by striking "For purposes of this paragraph" and inserting "For purposes of this paragraph and paragraph (2)".

TITLE II—VICTIMS OF CHILD ABUSE ACT OF 1990

SEC. 201. SHORT TITLE.

This title may be cited as the "Victims of Child Abuse Act of 1990".

Subtitle A—Improving Investigation and Prosecution of Child Abuse Cases

SEC. 211. FINDINGS.

The Congress finds that—

(1) over 2,000,000 reports of suspected child abuse and neglect are made each year, and drug abuse is associated with a significant portion of these;

(2) the investigation and prosecution of child abuse cases is extremely complex, involving numerous agencies and dozens of personnel;

(3) in such cases, too often the system does not pay sufficient attention to the needs and welfare of the child victim, aggravating the trauma that the child victim has already experienced;

(4) multidisciplinary child abuse investigation and prosecution programs have been developed that increase the reporting of child abuse cases, reduce the trauma to the child victim, and increase the successful prosecution of child abuse offenders; and

(5) such programs have proven effective, and with targeted Federal assistance, could be duplicated in many jurisdictions throughout the country.

SEC. 212. AUTHORITY OF THE DIRECTOR TO MAKE GRANTS.

(a) IN GENERAL.—The Director of the Office of Victims of Crime (hereinafter in this subtitle referred to as the "Director"), in consultation with officials of the Department of Health and Human Services, shall make grants to develop and implement multidisciplinary child abuse investigation and prosecution programs.

(b) GRANT CRITERIA.—(1) The Director shall establish the criteria to be used in evaluating applications for grants under this section consistent with sections 262, 293, and 296 of subpart II of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665 et seq.).

(2) In general, the grant criteria established pursuant to paragraph (1) may require that a program include any of the following elements:

(A) A written agreement between local law enforcement, social service, health, and other related agencies to coordinate child abuse investigation, prosecution, treatment, and counseling services.

(B) An appropriate site for referring, interviewing, treating, and counseling child victims of sexual and serious physical abuse and neglect (referred to as the "counseling center").

(C) Referral of all sexual and serious physical abuse and neglect cases to the counseling center not later than 24 hours after notification of an incident of abuse.

(D) Joint initial investigative interviews of child victims by personnel from law enforcement, health, and social service agencies.

(E) A requirement that, to the extent practicable, the same agency representative who conducts an initial interview conduct all subsequent interviews.

(F) A requirement that, to the extent practicable, all interviews and meetings with a child victim occur at the counseling center.

(G) Coordination of each step of the investigation process to minimize the number of interviews that a child victim must attend.

(H) Designation of a director for the multidisciplinary program.

(I) Assignment of a volunteer or staff advocate to each child in order to assist the child and, when appropriate, the child's family, throughout each step of judicial proceedings.

(J) Such other criteria as the Director shall establish by regulation.

(c) DISTRIBUTION OF GRANTS.—In awarding grants under this section, the Director shall ensure that grants are distributed to both large and small States and to rural, suburban, and urban jurisdictions.

SEC. 213. GRANTS FOR SPECIALIZED TECHNICAL ASSISTANCE AND TRAINING PROGRAMS.

(a) IN GENERAL.—The Director shall make grants to national organizations to provide technical assistance and training to attorneys and others instrumental to the criminal prosecution of child abuse cases in State or Federal courts, for the purpose of improving the quality of criminal prosecution of such cases.

(b) GRANTEE ORGANIZATIONS.—An organization to which a grant is made pursuant to subsection (a) shall be one that has, or is affiliated with one that has, broad membership among attorneys who prosecute criminal cases in State courts and has demonstrated experience in providing training and technical assistance for prosecutors.

(c) GRANT CRITERIA.—

(1) The Director shall establish the criteria to be used for evaluating applications for grants under this section, consistent with sections 262, 293, and 296 of subpart II of title II of the Juvenile Justice and Delinquency Act of 1974 (42 U.S.C. 5665 et seq.).

(2) The grant criteria established pursuant to paragraph (1) shall require that a program provide training and technical assistance that includes information regarding improved child interview techniques, thorough investigative methods, interagency coordination and effective presentation of evidence in court, including the use of alternative courtroom procedures described in this title.

SEC. 214. AUTHORIZATIONS OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this chapter—

(1) $20,000,000 in fiscal year 1991; and

(2) such sums as may be necessary to carry out this chapter in each of fiscal years 1992 and 1993.

(b) USE OF FUNDS.—Of the amounts appropriated under subsection (a), not less than 90 percent shall be used for grants under section 662.

Subtitle B—Court-Appointed Special Advocate Program

SEC. 215. FINDINGS.

The Congress finds that—

(1) the National Court-Appointed Special Advocate provides training and technical assistance to a network of 13,000 volunteers in 377 programs operating in 47 States; and

(2) in 1988, these volunteers represented 40,000 children, representing approximately 15 percent of the estimated 270,000 cases of child abuse and neglect in juvenile and family courts.

SEC. 216. PURPOSE.

The purpose of this chapter is to ensure that by January 1, 1995, a court-appointed special advocate shall be available to every victim of child abuse or neglect in the United States that needs such an advocate.

SEC. 217. STRENGTHENING OF THE COURT-APPOINTED SPECIAL ADVOCATE PROGRAM.

(a) IN GENERAL.—The Administrator of the Office of Juvenile Justice and Delinquency Prevention shall make grants to expand the court-appointed special advocate program.

(b) GRANTEE ORGANIZATIONS.—

(1) An organization to which a grant is made pursuant to subsection (a) shall be a national organization that has broad membership among court-appointed special advocates and has demonstrated experience in grant administration of court-appointed special advocate programs and in providing training and technical assistance to court-appointed special advocate program; or (2) may be a local public or not-for-profit agency that has demonstrated the willingness to initiate or expand a court-appointed special advocate program.

(2) An organization described in paragraph (1)(a) that receives a grant may be authorized to make subgrants and enter into contracts with public and not-for-profit agencies to initiate and to expand the court-appointed special advocate program. Should a grant be made to a national organization for this purpose, the Administrator shall specify an amount not exceeding 5 percent that can be used for administrative purposes by the national organization.

(c) GRANT CRITERIA.—(1) The Administrator shall establish criteria to be used in evaluating applications for grants under this section, consistent with sections 262, 293, and 296 of subpart II of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665 et seq.).

(2) In general, the grant criteria established pursuant to paragraph (1) shall require that a court-appointed special advocate program provide screening, training, and supervision of court-appointed special advocates in accordance with standards developed by the National Court-Appointed Special Advocate Association. Such criteria may include the requirements that—

(A) a court-appointed special advocate association program have a mission and purpose in keeping with the mission and purpose of the National Court-Appointed Spe-

cial Advocate Association and that it abide by the National Court-Appointed Special Advocate Association Code of Ethics;

(B) a court-appointed special advocate association program operate with access to legal counsel;

(C) the management and operation of a court-appointed special advocate program assure adequate supervision of court-appointed special advocate volunteers;

(D) a court-appointed special advocate program keep written records on the operation of the program in general and on each applicant, volunteer, and case;

(E) a court-appointed special advocate program have written management and personnel policies and procedures, screening requirements, and training curriculum;

(F) a court-appointed special advocate program not accept volunteers who have been convicted of, have charges pending for, or have in the past been charged with, a felony or misdemeanor involving a sex offense, violent act, child abuse or neglect, or related acts that would pose risks to children or to the court-appointed special advocate program's credibility;

(G) a court-appointed special advocate program have an established procedure to allow the immediate reporting to a court or appropriate agency of a situation in which a court-appointed special advocate volunteer has reason to believe that a child is in imminent danger;

(H) a court-appointed special advocate volunteer be an individual who has been screened and trained by a recognized court-appointed special advocate program and appointed by the court to advocate for children who come into the court system primarily as a result of abuse or neglect; and

(I) a court-appointed special advocate volunteer serve the function of reviewing records, facilitating prompt, thorough review of cases, and interviewing appropriate parties in order to make recommendations on what would be in the best interests of the child.

(3) In awarding grants under this section, the Administrator shall ensure that grants are distributed to localities that have no existing court-appointed special advocate program and to programs in need of expansion.

SEC. 218. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—There are authorized to be appropriated to carry out this chapter—

(1) $5,000,000 in fiscal year 1991; and

(2) such sums as may be necessary to carry out this subtitle in each of fiscal years 1992, 1993, and 1994.

(b) LIMITATION.—No funds are authorized to be appropriated for a fiscal year to carry out this subtitle unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

Subtitle C—Child Abuse Training Programs for Judicial Personnel and Practitioners

SEC. 221. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) a large number of juvenile and family courts are inundated with increasing numbers of cases due to increased reports of abuse and neglect, increasing drug-related maltreatment, and insufficient court resources;

(2) the amendments made to the Social Security Act by the Adoption Assistance and Child Welfare Act of 1980 make substantial demands on the courts handling abuse and neglect cases, but provide no assistance to the courts to meet those demands;

(3) the Adoption and Child Welfare Act of 1980 requires courts to—

(A) determine whether the agency made reasonable efforts to prevent foster care placement;

(B) approve voluntary nonjudicial placement; and

(C) provide procedural safeguards for parents when their parent-child relationship is affected;

(4) social welfare agencies press the courts to meet such requirements, yet scarce resources often dictate that courts comply pro forma without undertaking the meaningful judicial inquiry contemplated by Congress in the Adoption and Child Welfare Act of 1980;

(5) compliance with the Adoption and Child Welfare Act of 1980 and overall improvements in the judicial response to abuse and neglect cases can best come about through action by top level court administrators and judges with administrative functions who understand the unique aspects of decisions required in child abuse and neglect cases; and

(6) the Adoption and Child Welfare Act of 1980 provides financial incentives to train welfare agency staff to meet the requirements, but provides no resources to train judges.

(b) PURPOSE.—The purpose of this chapter is to provide expanded technical assistance and training to judicial personnel and attorneys, particularly personnel and practitioners in juvenile and family courts, to improve the judicial system's handling of child abuse and neglect cases with specific emphasis on the role of the courts in addressing reasonable efforts that can safely avoid unnecessary and unnecessarily prolonged foster care placement.

SEC. 222. GRANTS FOR JUVENILE AND FAMILY COURT PERSONNEL.

In order to improve the judicial system's handling of child abuse and neglect cases, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall make grants for the purpose of providing—

(1) technical assistance and training to judicial personnel and attorneys, particularly personnel and practitioners in juvenile and family courts; and

(2) administrative reform in juvenile and family courts.

SEC. 223. SPECIALIZED TECHNICAL ASSISTANCE AND TRAINING PROGRAMS.

(a) GRANTS TO DEVELOP MODEL PROGRAMS.—(1) The Administrator shall make grants to national organizations to develop 1 or more model technical assistance and training programs to improve the judicial system's handling of child abuse and neglect cases.

(2) An organization to which a grant is made pursuant to paragraph (1) shall be one that has broad membership among juvenile and family court judges and has demonstrated experience in providing training and technical assistance for judges, attorneys, child welfare personnel, and lay child advocates.

(b) GRANTS TO JUVENILE AND FAMILY COURTS.—(1) In order to improve the judicial system's handling of child abuse and neglect cases, the Administrator shall make grants to State courts or judicial administrators for programs that provide or contract for, the implementation of—

(A) training and technical assistance to judicial personnel and attorneys in juvenile and family courts; and

(B) administrative reform in juvenile and family courts.

(2) The criteria established for the making of grants pursuant to paragraph (1) shall give priority to programs that improve—

(A) procedures for determining whether child service agencies have made reasonable efforts to prevent placement of children in foster care;

(B) procedures for determining whether child service agencies have, after placement of children in foster care, made reasonable efforts to reunite the family; and

(C) procedures for coordinating information and services among health professionals, social workers, law enforcement professionals, prosecutors, defense attorneys, and juvenile and family court personnel, consistent with chapter 2.

(c) GRANT CRITERIA.—The Administrator shall make grants under subsections (a) and (b) consistent with section 262, 293, and 296 of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665 et seq.).

SEC. 224. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this chapter—

(1) $10,000,000 in fiscal year 1991; and

(2) such sums as may be necessary to carry out this chapter in each of fiscal years 1992, 1993, and 1994.

(b) USE OF FUNDS.—Of the amounts appropriated in subsection (a), not less than 80 percent shall be used for grants under section 673(b).

(c) LIMITATION.—No funds are authorized to be appropriated for a fiscal year to carry out this subtitle unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

Subtitle D—Federal Victims' Protections and Rights

SEC. 225. CHILD VICTIMS' RIGHTS.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following new rule:

"§ 3509. Child victims' and child witnesses' rights

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'adult attendant' means an adult described in subsection (i) who accompanies a child throughout the judicial process for the purpose of providing emotional support;

"(2) the term 'child' means a person who is under the age of 18, who is or is alleged to be—

"(A) a victim of a crime of physical abuse, sexual abuse, or exploitation; or

"(B) a witness to a crime committed against another person;

"(3) the term 'child abuse' means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

"(4) the term 'physical injury' includes lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

"(5) the term 'mental injury' means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combina-

tion of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

"(4) the term 'exploitation' means child pornography or child prostitution;

"(5) the term 'multidisciplinary child abuse team' means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse;

"(6) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

"(7) the term 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

"(B) bestiality;

"(C) masturbation;

"(D) lascivious exhibition of the genitals or pubic area of a person or animal; or

"(E) sadistic or masochistic abuse;

"(8) the term 'sex crime' means an act of sexual abuse that is a criminal act;

"(9) the term 'exploitation' means child pornography or child prostitution;

"(10) the term 'negligent treatment' means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

"(11) the term 'child abuse' does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

"(b) ALTERNATIVES TO LIVE IN-COURT TESTIMONY.—

"(1) CHILD'S LIVE TESTIMONY BY 2-WAY CLOSED CIRCUIT TELEVISION.—

"(A) In a proceeding involving an alleged offense against a child, the attorney for the government, the child's attorney, or a guardian ad litem appointed under subdivision (h) may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed circuit television. The person seeking such an order shall apply for such an order at least 5 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

"(B) The court may order that the testimony of the child be taken by closed-circuit television as provided in subparagraph (A) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

"(i) The child is unable to testify because of fear.

"(ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.

"(iii) The child suffers a mental or other infirmity.

"(iv) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

"(C) The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child of one or more of the factors described in subparagraph (B) is so substantial as to justify an order under subparagraph (A), the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

"(D) If the court orders the taking of testimony by television, the attorney for the government and the attorney for the defendant not including an attorney pro se for a party shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are—

"(i) the child's attorney or guardian ad litem appointed under subdivision (h);

"(ii) persons necessary to operate the closed-circuit television equipment;

"(iii) a judicial officer, appointed by the court; and

"(iv) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

"(2) VIDEOTAPED DEPOSITION OF CHILD.—(A) In a proceeding involving an alleged offense against a child, the attorney for the government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under subdivision (h) may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.

"(B)(i) Upon timely receipt of an application described in subparagraph (A), the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

"(I) The child will be unable to testify because of fear.

"(II) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

"(III) The child suffers a mental or other infirmity.

"(IV) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

"(ii) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the court shall order that the child's deposition be taken and preserved by videotape.

"(iii) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are—

"(I) the attorney for the Government;

"(II) the attorney for the defendant;

"(III) the child's attorney or guardian ad litem appointed under subdivision (h);

"(IV) persons necessary to operate the videotape equipment;

"(V) subject to clause (iv), the defendant; and

"(VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

"(iv) If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

"(v) HANDLING OF VIDEOTAPE.—The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

"(C) If at the time of trial the court finds that the child is unable to testify as for a reason described in subparagraph (B)(i), the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

"(D) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

"(E) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

"(F) The videotape of a deposition taken under this paragraph shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

"(c) COMPETENCY EXAMINATIONS.—

"(1) EFFECT OF FEDERAL RULES OF EVIDENCE.—Nothing in this subdivision shall be

construed to abrogate rule 601 of the Federal Rules of Evidence.

"(2) PRESUMPTION.—A child is presumed to be competent.

"(3) REQUIREMENT OF WRITTEN MOTION.—A competency examination regarding a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.

"(4) REQUIREMENT OF COMPELLING REASONS.—A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason.

"(5) PERSONS PERMITTED TO BE PRESENT.—The only persons who may be permitted to be present at a competency examination are—

"(A) the judge;

"(B) the attorney for the government;

"(C) the attorney for the defendant;

"(D) a court reporter; and

"(E) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

"(6) NOT BEFORE JURY.—A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.

"(7) DIRECT EXAMINATION OF CHILD.—Examination of a child related to competency shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant including a party acting as an attorney pro se. The court may permit an attorney but not a party acting as an attorney pro se to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

"(8) APPROPRIATE QUESTIONS.—The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

"(9) PSYCHOLOGICAL AND PSYCHIATRIC EXAMINATIONS.—Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

"(d) PRIVACY PROTECTION.—

"(1) CONFIDENTIALITY OF INFORMATION.—(A) A person acting in a capacity described in subparagraph (B) in connection with a criminal proceeding shall—

"(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

"(ii) disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

"(B) Subparagraph (A) applies to—

"(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the government to provide assistance in the proceeding;

"(ii) employees of the court;

"(iii) the defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

"(iv) members of the jury.

"(2) FILING UNDER SEAL.—All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court—

"(A) the complete paper to be kept under seal; and

"(B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

"(3) PROTECTIVE ORDERS.—(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

"(B) A protective order issued under subparagraph (A) may—

"(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

"(ii) provide for any other measures that may be necessary to protect the privacy of the child.

"(4) DISCLOSURE OF INFORMATION.—This subdivision does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

"(e) CLOSING THE COURTROOM.—When a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate. Such an order shall be narrowly tailored to serve the government's specific compelling interest.

"(f) VICTIM IMPACT STATEMENT.—In preparing the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. A guardian ad litem appointed under subdivision (h) shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. A guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

"(g) USE OF MULTIDISCIPLINARY CHILD ABUSE TEAMS.—

"(1) IN GENERAL.—A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the government shall consult with the multidisciplinary child abuse team as appropriate.

"(2) ROLE OF MULTIDISCIPLINARY CHILD ABUSE TEAMS.—The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including—

"(A) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

"(B) telephone consultation services in emergencies and in other situations;

"(C) medical evaluations related to abuse or neglect;

"(D) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;

"(E) expert medical, psychological, and related professional testimony;

"(F) case service coordination and assistance, including the location of services available from public and private agencies in the community; and

"(G) training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

"(h) GUARDIAN AD LITEM.—

"(1) IN GENERAL.—The court may appoint a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the court shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

"(2) DUTIES OF GUARDIAN AD LITEM.—A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. (The extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives.) A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

"(3) IMMUNITIES.—A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties described in subpart (2).

"(i) ADULT ATTENDANT.—A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the

child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

"(j) SPEEDY TRIAL.—In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

"(k) EXTENSION OF CHILD STATUTE OF LIMITATIONS.—No statute of limitation that would otherwise preclude prosecution for an offense involving the sexual or physical abuse of a child under the age of 18 years shall preclude such prosecution before the child reaches the age of 25 years. If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

"(l) TESTIMONIAL AIDS.—The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.".

(b) VIOLATION OF RULE REGARDING DISCLOSURE.—

(1) PUNISHMENT AS CONTEMPT.—Chapter 21 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 403. Protection of the privacy of child victims and child witnesses

"A knowing or intentional violation of the privacy protection accorded by section 3509 of this title is a criminal contempt punishable by not more than one year's imprisonment, or a fine under this title, or both.".

(2) TECHNICAL AMENDMENT.—The table of sections at the beginning of chapter 21 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"403. Protection of the privacy of child victims and child witnesses.".

SEC. 226. CHILD ABUSE REPORTING.

(a) IN GENERAL.—A person who, while engaged in a professional capacity or activity described in subsection (b) on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the agency designated under subsection (d).

(b) COVERED PROFESSIONALS.—Persons engaged in the following professions and activities are subject to the requirements of subsection (a):

(1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.

(2) Psychologists, psychiatrists, and mental health professionals.

(3) Social workers, licensed or unlicensed marriage, family, and individual counselors.

(4) Teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, and school administrators.

(5) Child care workers and administrators.

(6) Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.

(7) Foster parents.

(8) Commercial film and photo processors.

(c) DEFINITIONS.—For the purposes of this section—

(1) the term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(2) the term "physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(3) the term "mental injury" means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;

(4) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(5) the term "sexually explicit conduct" means actual or simulated—

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the international touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals or pubic area of a person or animal; or

(E) sadistic or masochistic abuse;

(6) the term "exploitation" means child pornography or child prostitution;

(7) the term "negligent treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(8) the term "child abuse" shall not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(d) AGENCY DESIGNATED TO RECEIVE REPORT AND ACTION TO BE TAKEN.—For all Federal lands and all federally operated (or contracted) facilities in which children are cared for or reside, the Attorney General shall designate an agency to receive and investigate the reports described in subsection (a). By formal written agreement, the designated agency may be a non-Federal agency. When such reports are received by social services or health care agencies, and involve allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, there shall be an immediate referral of the report to a law enforcement agency with authority to take emergency action to protect the child. All reports received shall be promptly investigated, and whenever appropriate, investigations shall be conducted jointly by social services and law enforcement personnel, with a view toward avoiding unnecessary multiple interviews with the child.

(e) REPORTING FORM.—In every federally operated (or contracted) facility, and on all Federal lands, a standard written reporting form, with instructions, shall be disseminated to all mandated reporter groups. Use of the form shall be encouraged, but its use shall not take the place of the immediate making of oral reports, telephonically or otherwise, when circumstances dictate.

(f) IMMUNITY FOR GOOD FAITH REPORTING AND ASSOCIATED ACTIONS.—All persons who, acting in good faith, make a report by subsection (a), or otherwise provide information or assistance in connection with a report, investigation, or legal intervention pursuant to a report, shall be immune from civil and criminal liability arising out of such actions. There shall be a presumption that any such persons acted in good faith. If a person is sued because of the person's performance of one of the above functions, and the defendant prevails in the litigation, the court may order that the plaintiff pay the defendant's legal expenses. Immunity shall not be accorded to persons acting in bad faith.

(g) CRIMINAL PENALTY FOR FAILURE TO REPORT.—(1) Chapter 110 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 2258. Failure to report child abuse

"A person who, while engaged in a professional capacity or activity described in subsection (b) of section 502 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be guilty of a Class B misdemeanor.".

(2) The chapter analysis for chapter 110, United States Code, is amended—

(A) by amending the catchline to read as follows:

"CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN";

and

(B) by adding at the end thereof the following new item:

"2258. Failure to report child abuse.".

(3) The item relating to chapter 110 in the part analysis for part 1 of title 18, United States Code, is amended to read as follows:

"110. Sexual exploitation and other abuses of children ..... 2251".

(h) TRAINING OF PROSPECTIVE REPORTERS.—All individuals in the occupations listed in subsection (b)(1) who work on Federal lands, or are employed in federally operated (or contracted) facilities, shall receive periodic training in the obligation to report, as well as in the identification of abused and neglected children.

Subtitle E—Child Care Worker Employee Background Checks

SEC. 231. REQUIREMENT FOR BACKGROUND CHECKS.

(a) IN GENERAL.—(1) Each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision to children under the age of 18 of child care services shall assure that all existing and newly-hired employees undergo a criminal history background check. All existing staff shall receive such checks not later than 6 months after the date of enactment of this chapter, and no additional staff shall be hired without a check having been completed.

(2) For the purposes of this section, the term "child care services" means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

(b) CRIMINAL HISTORY CHECK.—(1) A background check required by subsection (a) shall be—

(A) based on a set of the employee's fingerprints obtained by a law enforcement officer and on other identifying information;

(B) conducted through the Identification Division of the Federal Bureau of Investigation and through the State criminal history repositories of all States that an employee or prospective employee lists as current and former residences in an employment application; and

(C) initiated through the personnel programs of the applicable Federal agencies.

(2) The results of the background check shall be communicated to the employing agency.

(c) APPLICABLE CRIMINAL HISTORIES.—Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be ground for denying employment or for dismissal of an employee in any of the positions listed in subsection (a)(2). In the case of an incident in which an individual has been charged with one of those offenses, when the charge has not yet been disposed of, an employer may suspend an employee from having any contact with children while on the job until the case is resolved. Conviction of a crime other than a sex crime may be considered if it bears on an individual's fitness to have responsibility for the safety and well-being of children.

(d) EMPLOYMENT APPLICATIONS.—(1) Employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in any of the positions listed in subsection (a)(1), shall contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description of the disposition of the arrest or charge. An application shall state that it is being signed under penalty of perjury, with the applicable Federal punishment for perjury stated on the application.

(2) A Federal agency seeking a criminal history record check shall first obtain the signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer's obligation to require a record check as a condition of employment and the employee's right to obtain a copy of the criminal history report made available to the employing Federal agency and the right to challenge the accuracy and completeness of any information contained in the report.

(e) ENCOURAGEMENT OF VOLUNTARY CRIMINAL HISTORY CHECKS FOR OTHERS WHO MAY HAVE CONTACT WITH CHILDREN.—Federal agencies and facilities are encouraged to submit identifying information for criminal history checks on volunteers working in any of the positions listed in subsection (a) and on adult household members in places where child care or foster care services are being provided in a home.

Subtitle F—Grants for Televised Testimony

SEC. 241. GRANTS FOR CLOSED-CIRCUIT TELEVISING OF TESTIMONY OF CHILDREN WHO ARE VICTIMS OF ABUSE.

(a) ESTABLISHMENT OF GRANT PROGRAM.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) in part N—

(A) in the heading by striking "PART N" and inserting "PART O", and

(B) by redesignating section 1401 as 1501, and

(2) by inserting after part M the following:

"PART O—GRANTS FOR CLOSED-CIRCUIT TELEVISING OF TESTIMONY OF CHILDREN WHO ARE VICTIMS OF ABUSE

"FUNCTION OF THE DIRECTOR

"SEC. 1401. The Director shall provide funds to eligible States and units of local government pursuant to this part.

"DESCRIPTION OF GRANT PROGRAM

"SEC. 1402. The Director is authorized to make grants to States, for the use of States and units of local government in the States to provide equipment and personnel training for the closed-circuit televising and video taping of the testimony of children in criminal proceedings for the violation of laws relating to the abuse of children.

"APPLICATIONS TO RECEIVE GRANTS

"SEC. 1403. To request a grant under section 1402, the chief executive officer of a State shall submit to the Director an application at such time and in such form as the Director may require. Such application shall include—

"(1) a certification that Federal funds made available under section 1402 of this title will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of such funds, be made available for criminal proceedings for the violation of laws relating to the abuse of children;

"(2) a certification that funds required to pay the non-Federal portion of the cost of equipment and personnel training for which such grant is made shall be in addition to funds that would otherwise be made available by the recipients of grant funds for criminal proceedings for the violation of laws relating to the abuse of children;

"(3) an assurance that the State application described in this section, and any amendment to such application, has been submitted for review to the State legislature or its designated body (for purposes of this section, such application or amendment shall be deemed to be reviewed if the State legislature or such body does not review such application or amendment within the 60-day period beginning on the date such application or amendment is so submitted); and

"(4) an assurance that the State application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under State law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.

"REVIEW OF APPLICATIONS

"SEC. 1404. (a) The Bureau shall provide financial assistance to each State applicant under section 1402 of this title to provide equipment and personnel training for the closed-circuit televising and video taping of the testimony of children in criminal proceedings for the violation of laws relating to the abuse of children, upon determining that—

"(1) there is in effect in such State a law that permits the closed-circuit televising and video taping of testimony of children in criminal proceedings for the violation of laws relating to the abuse of children;

"(2) such State law shall meet the following criteria:

"(A) the judges determination that a child witness will be traumatized by the presence of the defendant must be made on a case-by-case basis;

"(B) the trauma suffered must be more than de minimis;

"(C) the child witness must give his/her statements under oath;

"(D) the child witness must submit to cross-examination; and

"(D) the finder of fact must be permitted to observe the demeanor of the child witness in making his or her statement and the defendant must be able to contemporaneously communicate with his defense attorney;

"(3) the application submitted under section 1402 or amendment to such application is consistent with the requirements of this title; and

"(4) before the approval of such application and any amendment thereto the Bureau has made an affirmative finding in writing that such equipment and personnel training has been reviewed in accordance with section 1403 of this title.

Each application or amendment made and submitted for approval to the Bureau pursuant to section 1403 shall be deemed approved, in whole or in part, by the Bureau not later than 60 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

"(b) The Bureau shall not finally disapprove any application, or any amendment thereto, submitted to the Director under this section without first affording the applicant reasonable notice and opportunity for reconsideration.

"ALLOCATION AND DISTRIBUTION OF FUNDS UNDER FORMULA GRANTS

"SEC. 1405. (a) The total amount appropriated for this part in any fiscal year shall be set aside for section 1402 and allocated to States as follows:

"(1) $50,000 shall be allocated to each of the participating States.

"(2) Of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each participating State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

"(b)(1) Each State which receives funds under subsection (a) in a fiscal year shall distribute among units of local government, in such State for the purpose specified in section 1402 of this title that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government in the preceding fiscal year for prosecution of child abuse offenses bears to the aggregate amount of funds expended by the State and all units of local government in such State in such preceding fiscal year for prosecution of child abuse offenses.

"(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by the State involved.

"(3) For purposes of determining the distribution of funds under paragraph (1), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

"(c) No funds allocated to a State under subsection (a) or received by a State for distribution under subsection (b) may be distributed by the Director or by the State involved for any use other than a use specified in an approved application.

"(d) If the Director determines, on the basis information available to the Director during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State will be unable to qualify or receive funds under section 1402 of this title, or that a State chooses not to participate in the program established under such section, then such portion shall be awarded by the Director to units of local government or combinations thereof within such State giving priority to those jurisdictions with greatest need.

"REPORTS

"SEC. 1406. (a) Each State which receives a grant under this title shall submit to the Director, for each year in which any part of such grant is expended by a State or unit of local government, a report which contains—

"(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the State application submitted under section 1403 of this title; and

"(2) such other information as the Director may require by rule.

Such report shall be submitted in such form and by such time as the Director may require by rule.

"(b) Not later than 90 days after the end of each fiscal year for which grants are made under this part, the Director shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

"(1) the aggregate amount of grants made under this title to such State for such fiscal year; and

"(2) a summary of the information provided in compliance with subsection (a)(1).

"EXPENDITURE OF GRANTS; RECORDS

"SEC. 1407. (a) A grant made under this part may not be expended for more than 75 percent of the cost of the identified uses, in the aggregate, for which such grant is received to carry out section 1402, except that in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any such program or project, the amount of such grant shall be equal to 100 percent of such cost. The non-Federal portion of the expenditures for such uses shall be paid in cash.

"(b) Not more than 10 percent of a grant made under this part may be used for costs incurred to administer such grant.

"(c)(1) Each State which receives a grant under this title shall keep, and shall require units of local government which receive any part of such grant to keep, such records as the Director may require by rule to facilitate an effective audit.

"(2) The Director and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of States which receive grants, and of units of local government which receive any part of a grant made under this part if, in the opinion of the Director or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

"STATE OFFICE

"SEC. 1408. (a) The chief executive of each participating State shall designate a State office for purposes of—

"(1) preparing an application to obtain funds under section 1402 of this title; and

"(2) administering funds received under this part from the Director, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).

"DEFINITIONS

"SEC. 1409. For purposes of this part—

"(1) the term 'child' means an individual under the age of 18 years; and

"(2) the term 'abuse' means physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.".

(b) TECHNICAL AMENDMENTS.—(1) Section 402(1) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking "part E" and inserting "parts E and N".

(2) Section 801(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782(b)) is amended by striking "and M" and inserting "M, and N".

(3) Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by striking "or M" and inserting ", M, or N".

(4) Section 808 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789) is amended by striking "or 1308" and inserting ", 1308, or 1408".

(5) The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(A) by striking the items relating to part M and sections 1301 through 1312, as added by section 1552(b)(5) of the State and Local Law Enforcement Assistance Act of 1986 (Public Law 99-570; 100 Stat. 3207-46), and

(B) by striking the items relating to part N and section 1401, and inserting the following new items:

"PART N—GRANTS FOR CLOSED-CIRCUIT TELEVISING OF TESTIMONY OF CHILDREN WHO ARE VICTIMS OF ABUSE

"Sec. 1401. Function of Director.
"Sec. 1402. Description of program.
"Sec. 1403. Application to receive grants.
"Sec. 1404. Review of applications.
"Sec. 1405. Allocation and distribution of funds under formula grants.
"Sec. 1406. Reports.
"Sec. 1407. Expenditure of grants; records.
"Sec. 1408. State office.

"PART O—TRANSITION—EFFECTIVE DATE—REPEALER

"Sec. 1501. Continuation of rules, authorities, and proceedings.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in subsection (a)—

(A) in paragraph (3) by striking "and M" and inserting "M, and N";

(B) by redesignating paragraph (6) as paragraph (7); and

(C) by inserting after paragraph (5) the following:

"(6) There is authorized to be appropriated $25,000,000 for each of the fiscal years 1991, 1992, and 1993 to carry out the programs under part N of this title."; and

(2) in subsection (b) by striking "and M" and inserting "M, and N".

Subtitle G—Treatment for Juvenile Offenders Who Are Victims of Child Abuse Or Neglect

AUTHORITY TO MAKE GRANTS

SEC. 251. The Administrator, in consultation with the Secretary of Health and Human Services, shall make grants to public and nonprofit private organizations to develop, establish, and support projects which—

(1) provide treatment to juvenile offenders who are victims of child abuse or neglect, and to their families so as to reduce the likelihood that such juvenile offenders will commit subsequent violations of law;

(2) based upon the best interests of juvenile offenders who receive treatment for abuse or neglect, provide transitional services (including individual, group, and family counseling) to such juvenile offenders—

(A) to strengthen the relationships of such juvenile offenders with their families and to encourage the resolution of intrafamily problems related to the abuse or neglect;

(B) to facilitate their alternative placement; or

(C) to prepare juveniles aged 16 years of age and older to live independently; or

(3) carry out research, including surveys of existing transitional services, identification of exemplary treatment modalities, and evaluation of treatment and transitional services provided with grants made under this section.

ADMINISTRATIVE REQUIREMENTS

SEC. 252. The Administrator shall administer this subtitle subject to the requirements of sections 262, 293, and 296 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665a, 5673, 5676).

PRIORITY

SEC. 253. In making grants under section 690, the Administrator—

(1) shall give priority to applicants that have experience in treating juveniles who are the victims of abuse or neglect; and

(2) may not disapprove an application solely because the applicant proposes to provide treatment or transitional services to juveniles who are adjudicated delinquent for having committed offenses which are not serious crimes.

AUTHORIZATION OF APPROPRIATIONS

SEC. 254. (a) Subject to subsection (b), there are authorized to be appropriated to carry out this subtitle—

(1) $15,000,000 for fiscal year 1991; and

(2) such sums as may be necessary for fiscal years 1992 and 1993.

(b) No amount is authorized to be appropriated for a fiscal year to carry out this subtitle unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611-5676) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

(c) From the amount appropriated to carry out this subtitle in any fiscal year, the Administrator shall use—

(1) not less than 85 percent to make grants under section 731 for treatment and transitional services;

(2) not to exceed 10 percent for grants under section 731 for research; and

(3) not to exceed 5 percent for salaries and expenses of the Office of Juvenile Justice and Delinquency Prevention related to administering this subtitle.

DEFINITIONS

SEC. 255. For the purpose of this subtitle—

(1) the term "Administrator" means the Administrator of the Office of Juvenile Justice and Delinquency Prevention; and

(2) the term "juvenile" means an individual who is less than 18 years of age.

TITLE III—CHILD PROTECTION RESTORATION AND PENALTIES ENHANCEMENT ACT OF 1990

SEC. 301. SHORT TITLE.

(a) SHORT TITLE.—This title may be cited as the "Child Protection Restoration and Penalties Enhancement Act of 1990".

(b) EFFECTIVE DATE.—Section 2257(a)(1) of title 18, United States Code, is amended by striking "February 6, 1978" and inserting "November 1, 1990".

Subtitle A—Restoration of Recordkeeping Requirement

SEC. 311. RECORDKEEPING REQUIREMENTS.

Section 2257 of title 18, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

"(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used as evidence against any person with respect to any violation of law.

"(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this section or for a violation of any applicable provision of law with respect to the furnishing of false information.

"(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located.

"(2) If the person to whom subsection (a) of this section applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

"(f) It shall be unlawful—

"(1) for any person to whom subsection (a) applies to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

"(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make an appropriate entry in, any record required by subsection (b) of this section or any regulation promulgated under this section;

"(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection; and

"(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produce in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, which—

"(A) contains one or more visual depictions made after the effective date of this subsection of actual sexually explicit conduct; and

"(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept.

"(g) The Attorney General shall issue appropriate regulations to carry out this section.

"(h) As used in this section—

"(1) the term 'actual sexually explicit conduct' means actual but not simulated conduct as defined in subparagraphs (A) through (D) of paragraph (2) of section 2256 of this title;

"(2) 'identification document' has the meaning given that term in section 1028(d) of this title;

"(3) the term 'produces' means to produce, manufacture, or publish any book, magazine, periodical, film, video tape or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity which does not involve hiring, contracting for managing, or otherwise arranging for the participation of the performers depicted; and

"(4) the term 'performer' includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, actual sexually explicit conduct.

"(i) Whoever violates this section shall be imprisoned for not more than 2 years, and fined in accordance with the provisions of this title, or both. Whoever violates this section after having been convicted of a violation punishable under this section shall be imprisoned for any period of years not more than 5 years but not less than 2 years, and fined in accordance with the provisions of this title, or both.".

SEC. 312. EFFECTIVE DATE.

Subsections (d), (f), (g), (h), and (i) of section 2257 of title 18, United States Code, as added by this title shall take effect 90 days after the date of the enactment of this Act except—

(1) the Attorney General shall prepare the initial set of regulations required or authorized by subsections (d), (f), (g), (h), and (i) of section 2257 within 60 days of the date of the enactment of this Act; and

(2) subsection (e) of section 2257 and of any regulation issued pursuant thereto shall take effect 90 days after the date of the enactment of this Act.

Subtitle B—Sexual Abuse Penalties

SEC. 321. SENTENCING COMMISSION GUIDELINES.

The United States Sentencing Commission shall amend existing guidelines for sentences involving sexual crimes against children, including offenses contained in chapter 109A of title 18, so that more substantial penalties may be imposed if the Commission determines current penalties are inadequate.

SEC. 322. SEXUAL ABUSE OF A MINOR.

Section 2243(a) of title 18, United States Code, is amended by striking "five years" and inserting "15 years".

SEC. 323. CERTAIN ACTIVITIES RELATING TO VISUAL DEPICTIONS.

(a) Section 2252 of title 18, United States Code, is amended—

(1) by striking out "or" at the end of paragraph (a)(1); and

(2) by striking out "shall be punished as provided in subsection (b) of this section" in subsection (a)(2) and all that follows through the end of subsection (b) and inserting the following:

"(3) either—

"(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell any visual depiction; or

"(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materails which have been mailed or so shipped or transported, by any means, including by computer, if—

"(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

"(ii) such visual depiction is of such conduct; or

"(4) either—

"(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses 3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

"(B) knowingly possesses 3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced

using materials which have been mailed or so shipped or transported, by any means including by computer, if—

"(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

"(ii) such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

"(b)(1) Whoever violates paragraph (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not more than ten years, or both, but, if such person has a prior conviction under this section, such person shall be fined under this title and imprisoned for not less than five years nor more than fifteen years.

"(2) Whoever violates paragraph (4) of subsection (a) shall be fined under this title or imprisoned for not more than five years, or both.".

(b) Paragraph (2) of subsection 2252(a) of title 18, United States Code, is amended by striking "that has been transported or shipped in interstate or foreign commerce by any means including by computer or mailed" and inserting "that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer,".

(c) Section 1460 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "or a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct," and

(2) so that subsection (b) reads as follows:

"(b) For the purposes of this section, the term 'visual depiction' includes undeveloped film and videotape but does not include mere words.".

TITLE IV—OFFENSES INVOLVING CHILDREN

SEC. 401. SPECIAL RULE FOR CERTAIN OFFENSES INVOLVING CHILDREN.

Section 1201 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(g) SPECIAL RULE FOR CERTAIN OFFENSES INVOLVING CHILDREN.—

"(1) TO WHOM APPLICABLE.—If—

"(A) the victim of an offense under this section has not attained the age of eighteen years; and

"(B) the offender—

"(i) has attained such age; and

"(ii) is not—

"(I) a parent;

"(II) a grandparent;

"(III) a brother;

"(IV) a sister;

"(V) an aunt;

"(VI) an uncle; or

"(VII) an individual having legal custody of the victim;

the sentence under this section for such offense shall be subject to paragraph (2) of this subsection.

"(2) GUIDELINES.—The United States Sentencing Commission is directed to amend the existing guidelines for the offense of 'kidnapping, abduction, or unlawful restraint,' by including the following additional specific offense characteristics: If the victim was intentionally maltreated (i.e., denied either food or medical care) to a life-threatening degree, increase by 4 levels; if the victim was sexually exploited (i.e., abused, used involuntarily for pornographic purposes) increase by 3 levels; if the victim was placed in the care of custody of another person who does not have a legal right to such care or custody of the child either in exchange for money or other consideration, increase by 3 levels; if the defendant allowed the child to be subjected to any of the conduct specified in this section by another person, then increase by 2 levels.

TITLE V—PROTECTION OF CRIME VICTIMS

SEC. 501. SHORT TITLE.

This title may be cited as the "Victims' Rights and Restitution Act of 1990".

SEC. 502. VICTIMS' RIGHTS.

(a) BEST EFFORTS TO ACCORD RIGHTS.—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b).

(b) RIGHTS OF CRIME VICTIMS.—A crime victim has the following rights:

(1) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.

(5) The right to confer with attorney for the Government in the case.

(6) The right to restitution.

(7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

(c) NO CAUSE OF ACTION OR DEFENSE.—This section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b).

SEC. 503. SERVICES TO VICTIMS.

(a) DESIGNATION OF RESPONSIBLE OFFICIALS.—The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) at each stage of a criminal case.

(b) IDENTIFICATION OF VICTIMS.—At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

(1) identify the victim or victims of a crime;

(2) inform the victims of their right to receive, on request, the services described in subsection (c); and

(3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c).

(c) DESCRIPTION OF SERVICES.—(1) A responsible official shall—

(A) inform a victim of the place where the victim may receive emergency medical and social services;

(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained;

(C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

(D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) the arrest of a suspected offender;

(C) the filing of charges against a suspected offender;

(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 1102(b)(4), is entitled to attend;

(E) the release or detention status of an offender or suspected offender;

(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and

(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of—

(A) the scheduling of a parole hearing for the offender;

(B) the escape, work release, furlough, or any other form of release from custody of the offender; and

(C) the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) NO CAUSE OF ACTION OR DEFENSE.—This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c).

(e) DEFINITIONS.—For the purposes of this section—

(1) the term "responsible official" means a person designated pursuant to subsection (a) to perform the functions of a responsible official under that section; and

(2) the term "victim" means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

(i) a spouse;

(ii) a legal guardian;

(iii) a parent;

(iv) a child;

(v) a sibling;

(vi) another family member; or

(vii) another person designated by the court.

SEC. 504. VICTIMS OF CRIME.

Section 1402(c)(1)(B)(i) of the Victims of Crime Act of 1984 is amended by striking "1991" and inserting "1990".

SEC. 505. EXTENSION OF DEADLINE FOR CERTAIN PROVISIONS IN VICTIMS OF CRIME ACT.

Section 7129 of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 10601 note) is amended by striking "1990" and inserting "1991".

SEC. 506. SENSE OF CONGRESS WITH RESPECT TO VICTIMS OF CRIME.

It is the sense of Congress that the States should make every effort to adopt the following goals of the Victims of Crime Bill of Rights:

(1) Victims of crime should be treated with compassion, respect and dignity throughout the criminal justice process.

(2) Victims of crime should be reasonably protected from the accused throughout the criminal justice process.

(3) Victims of crime should have a statutorily designated advisory role in decisions involving prosecutorial discretion, such as the decision to plea-bargain.

(4) Victims of crime should have the right to a reasonable assurance that the accused will be tried in an expeditious manner.

(5) A victim of crime should have the right to be present at all proceedings related to the offense against him, unless the victim is to testify and the court determines that the victim's testimony would be materially prejudiced by hearing other testimony at the trial.

(6) Victims of crime should have the right to information about the conviction, sentencing and imprisonment of the person who committed the crime against them.

(7) Victims of crime should be compensated for the damage resulting from the crime to the fullest extent possible by the person convicted of the crime.

(8) Victims of crime should have a statutorily designated advisory role in deciding the early release status of the person convicted of the crime against them.

(9) A victim of crime should never be forced to endure again the emotional and physical consequences of the original crime.

TITLE VI—LAW ENFORCEMENT AGENCIES

Subtitle A—Maintaining Funding for State and Local Law Enforcement Agencies

SEC. 601. MAINTAINING FUNDING FOR STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) Section 504(a)(1) of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, section 211 of the Department of Justice Appropriations Act, 1990 (Public Law 101-162), is amended by striking "1990" and inserting in lieu thereof "1991".

(b) IMPROVING THE EFFECTIVENESS OF COURT PROCESS.—Paragraph (10) of section 501 of part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(10) improving the operational effectiveness of the court process, by expanding prosecutorial, defender and judicial resources, and implementing court delay reduction programs;".

Subtitle B—National Crime Information Center Project 2000

SEC. 611. SHORT TITLE.

This section may be cited as the "National Law Enforcement Cooperation Act of 1990".

SEC. 612. FINDINGS.

The Congress finds that—

(1) cooperation among Federal, State and local law enforcement agencies is critical to an effective national response to the problems of violent crime and drug trafficking in the United States;

(2) the National Crime Information Center, which links more than 16,000 Federal, State and local law enforcement agencies, is the single most important avenue of cooperation among law enforcement agencies;

(3) major improvements to the National Crime Information Center are needed because the current system is more than twenty years old; carries much greater volumes of enforcement information; and at this time is unable to incorporate technological advances that would significantly improve its performance; and

(4) the Federal Bureau of Investigation, working with State and local law enforcement agencies and private organizations, has developed a promising plan, "NCIC 2000", to make the necessary upgrades to the National Crime Information Center that should meet the needs of United States law enforcement agencies into the next century.

SEC. 613. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated the following sums to implement the "NCIC 2000" project:

(1) $17,000,000 for fiscal year 1991;

(2) $25,000,000 for fiscal year 1992;

(3) $22,000,000 for fiscal year 1993;

(4) $9,000,000 for fiscal year 1994; and

(5) such sums as may be necessary for fiscal year 1995.

SEC. 614. REPORT.

By February 1 of each fiscal year for which funds for NCIC 2000 are requested, the Director of the Federal Bureau of Investigation shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives that details the progress that has been made in implementing NCIC 2000 and a complete justification for the funds requested in the following fiscal year for NCIC 2000.

TITLE VII—FEDERAL LAW ENFORCEMENT AND JUDICIAL ASSISTANCE

SEC. 701. ADDITIONAL AUTHORIZATIONS.

There are authorized to be appropriated for the fiscal year ending September 30, 1991, the following sums (which shall be in addition to any other appropriations):

(1) For the Federal Bureau of Investigation, $98,000,000 for the hiring of additional agents and support personnel to be dedicated to the investigation of drug trafficking organizations;

(2) For the Drug Enforcement Administration, $100,500,000 which shall include—

(A) not to exceed $10,000,000 for enforcing provisions of Federal law regarding precursor and essential chemicals;

(B) not to exceed $37,500,000 for assigning not fewer than 250 agents and necessary support personnel to rural areas where State and local law enforcement agencies have identified the distribution of "crack" cocaine and/or the manufacture and distribution of methamphetamine to be a serious law enforcement problem that exceeds the resources of local law enforcement, and involves trafficking across State or national boundaries; and

(C) not to exceed $15,000,000 to expand DEA State and local task forces, including payment of State and local overtime equipment and personnel costs;

(3) For the United States courts, $9,000,000 for additional probation officers, judges, magistrates and other personnel including not to exceed $2,000,000 for training, document production, and other expenses related to the implementation of the Federal sentencing guidelines;

(4) For the United States attorneys, $24,000,000 for additional prosecutors and staff to implement a program of prosecuting in Federal court drug offenses arising out of arrests and investigations conducted by State and local law enforcement agencies;

(5) For defender services, $8,000,000 for the defense of persons prosecuted in Federal court for drug offenses arising out of arrests and investigations conducted by State and local law enforcement agencies;

(6) For the United States marshals, $9,000,000; and

(7) For the Immigration and Naturalization Service United States Border Patrol, $45,000,000 to be allocated as follows:

(A) $15,000,000 for the hiring, training, and equipping of no fewer than 500 full-time equivalent Border Patrol officer positions;

(B) $25,000,000 for INS criminal investigations and the expeditious deportation of criminal aliens from detention; and

(C) $5,000,000 for the procurement of low-level light television systems, portable and permanent sensor systems, and 4-wheel drive law enforcement vehicles for the United States Border Patrol.

TITLE VIII—RURAL DRUG ENFORCEMENT

SEC. 801. RURAL DRUG ENFORCEMENT ASSISTANCE.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) by redesignating part N as part O;

(2) by redesignating section 1401 as section 1501; and

(3) by inserting after part M the following:

"Part N—Rural Drug Enforcement Assistance

"RURAL DRUG ENFORCEMENT ASSISTANCE

"SEC. 1401. (a) Of the total amount appropriated for this section in any fiscal year:

"(1) 50 percent shall be allocated to and shared equally among rural States as described in subsection (b); and

"(2) 50 percent shall be allocated to the remaining States for use in nonmetropolitan areas within those States, as follows:

"(A) $100,000 to each nonrural State; and

"(B) of the total funds remaining after the allocation in subparagraph (A), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described as the population of such State bears to the population of all States.

"(b) For the purpose of this section, the term 'rural State' means a State that has a population density of fifty-two or fewer persons per square mile or a State in which the largest county has fewer than one hundred and fifty thousand people.

"OTHER REQUIREMENTS

"SEC. 1402. Subparts 1 and 3 of part E of this title shall apply with respect to funds appropriated to carry out this part, in the same manner as such subparts apply to funds appropriated to carry out part E, except that—

"(1) section 506(a) of this title shall not apply with respect to this part; and

"(2) in addition to satisfying the requirements of section 503(a), each application for a grant under this part shall include in its application a statement specifying how such grant will be coordinated with a grant received under section 506 of this title for the same fiscal year.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by adding at the end the following:

"(7) There are authorized to be appropriated $20,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992 and 1993, to carry out part N.".

(c) TECHNICAL AMENDMENTS.—(1) Section 801(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782(b)) is amended by striking "and M" and inserting "M, and N".

(2) Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by striking "or M" and inserting ", M, or N".

(3) The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(A) by striking the items relating to part M and sections 1301 through 1312, as added by section 1552(b)(5) of the State and Local Law Enforcement Assistance Act of 1986 (Public Law 99-570; 100 Stat. 3207-46); and

(B) by striking the matter relating to part N and inserting the following:

"PART N—RURAL DRUG ENFORCEMENT ASSISTANCE

"Sec. 1401. Rural drug enforcement assistance.

"Sec. 1402. Other Requirements.

"PART O—TRANSITION; EFFECTIVE DATE; REPEALER

"Sec. 1501. Continuation of rules, authorities, and proceedings.".

TITLE IX—MANDATORY DETENTION

SEC. 901. SHORT TITLE.

This title may be cited as the "Mandatory Detention for Offenders Convicted of Serious Crimes Act".

SEC. 902. MANDATORY DETENTION.

(a) PENDING SENTENCE.—Subsection (a) of section 3143 of title 18, United States Code, is amended by—

(1) striking "The judicial officer" and inserting:

"(1) Except as provided in paragraph (2), the judicial officer"; and

(2) inserting at the end thereof the following:

"(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless—

"(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

"(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

"(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.".

(b) PENDING APPEAL.—Subsection (b) of section 3143 of title 18, United States Code, is amended by—

(1) striking "The judicial officer" and inserting:

"(1) Except as provided in paragraph (2), the judicial officer";

(2) redesignating subparagraphs (A), (B), (C), and (D) of paragraph (2) as clauses (i), (ii), (iii), and (iv), respectively;

(3) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B); and

(4) adding at the end thereof the following:

"(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained.".

(c) EXCEPTIONAL CASES.—Subsection (c) of section 3145 of title 18, United States Code, is amended by adding at the end the following: "A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.".

TITLE X—JUVENILE JUSTICE

SEC. 1001. TECHNICAL AMENDMENTS.

(a) CORRECTION OF MISSPELLED WORD.—Subsection (a)(1) of section 3143 of title 18, United States Code, is amended by striking "waiting" and inserting "awaiting".

(b) CORRECTION OF REFERENCE TO REPEALED PROVISION.—Subsections (e) and (f) of section 3142 of title 18, United States Code, are each amended by striking "section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)" and inserting "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

SEC. 1002. REDESIGNATION OF CONFUSING SECTIONS IN THE CONTROLLED SUBSTANCES ACT PERTAINING TO CHILDREN.

(a) SECTION 405—NEW SECTION 418.—(1) Section 405 of the Controlled Substances Act is redesignated as section 418.

(2) Section 418 of such Act (as redesignated by paragraph (1)) is amended—

(A) in subsection (a), by striking "section 405A" and inserting "section 419"; and

(B) in subsection (b) by striking "section 405A" and inserting "section 419".

(b) SECTION 405A—NEW SECTION 419.—Section 405A of the Controlled Substances Act is redesignated as section 419.

(c) SECTION 405B—NEW SECTION 420.—Section 405B of the Controlled Substances Act is redesignated as section 420.

(d) TRANSFER OF SECTION 5301 OF THE ANTI-DRUG ABUSE ACT OF 1988—NEW SECTION 421.—(1) Section 5301 of the Anti-Drug Abuse Act of 1988 is—

(A) transferred to the Controlled Substances Act; and

(B) redesignated as section 421 of the Controlled Substances Act.

(2) Section 421(a)(1) of the Controlled Substances Act, as amended by paragraph (1) of this subsection, is amended by striking "(as such terms are defined for purposes of the Controlled Substances Act)".

(e) CONFORMING AMENDMENTS TO OTHER SECTIONS.—(1) Section 401(b) of the Controlled Substances Act is amended by striking "section 405, 405A, or 405B" and inserting "section 418, 419, or 420".

(2) Section 401(c) of the Controlled Substances Act is amended by striking "section 405, 405A, or 405B" and inserting "section 418, 419, or 420".

(f) AMENDMENT TO TABLE OF CONTENTS.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended in part D of title II by striking the items for sections 405, 405A and 405B and inserting at the end thereof the following:

"418. Distribution to persons under age twenty-one.

"419. Distribution or manufacturing in or near schools and colleges.

"420. Employment of persons under 18 years of age.

"421. Denial of Federal benefits to drug traffickers and possessors.".

(g) TRANSFER OF SECTION 6486 OF THE ANTI-DRUG ABUSE ACT OF 1988—NEW SECTION 405.—(1) Section 6486 of the Anti-Drug Abuse Act of 1988 is—

(A) transferred to the Controlled Substances Act; and

(B) redesignated as section 405 of the Controlled Substances Act.

(2) Section 405 of the Controlled Substances Act, as amended by paragraph (1) of this subsection, is amended—

(A) in subsection (a), by—

(i) striking "of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A))"; and

(ii) striking "of that Act (21 U.S.C. 841(b)(1)(A))";

(B) in subsection (c), by striking "as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)";

(C) in subsection (j)(4), by striking "as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)".

(3) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (as amended by subsection (c) of this section) is amended in part D of title II by inserting after the item for section 404 the following:

"405. Civil penalty for possession of small amounts of certain controlled substances.".

(h) PART E OF THE CONTROLLED SUBSTANCES ACT.—

(1) SECTION 511A—NEW SECTION 518.—Section 511A of the Controlled Substances Act is redesignated as section 518.

(2) TRANSFER OF SECTION 1764 OF THE FOOD SECURITY ACT OF 1985.—Section 1764 of the Food Security Act of 1985 is—

(A) transferred to the Controlled Substances Act; and

(B) redesignated as section 519 of the Controlled Substances Act.

(3) AMENDMENT TO TABLE OF CONTENTS.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended in part E of title II by striking the items for section 511A and inserting at the end thereof the following:

"518. Expedited procedures for seized conveyances.

"519. Production control of controlled substances.".

SEC. 1003. CLARIFICATION OF ENHANCED PENALTIES UNDER CONTROLLED SUBSTANCES ACT.

(a) SECTION 418 (OLD SECTION 405).—Section 418 of the Controlled Substances Act (as redesignated by section 2203 of this Act) is amended—

(1) in subsection (a), by striking "punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by

section 401(b)" and inserting "subject to (1) twice the maximum punishment authorized by section 401(b)"; and

(2) in subsection (b), by striking "punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b)" and inserting "subject to (1) three times the maximum punishment authorized by section 401(b)".

(b) SECTION 419 (OLD SECTION 405A).—Section 419 of the Controlled Substances Act (as redesignated by section 2203 of this Act) is amended—

(1) in subsection (a), by striking "punishable (1) by a term of imprisonment, or a fine, or both, up to twice that authorized by section 401(b)" and inserting "subject to (1) twice the maximum punishment authorized by section 401(b)"; and

(2) in subsection (b)(1), by striking subparagraph (B) and inserting "(B) three times the maximum punishment authorized by section 401(b) for a first offense".

(c) SECTION 420 (OLD SECTION 405B).—Section 420 of the Controlled Substances Act (as redesignated by section 2203 of this Act) is amended—

(1) in subsection (b), by striking "is punishable by a term of imprisonment up to twice that authorized, or up to twice the fine authorized, or both," and inserting "is subject to twice the maximum punishment otherwise authorized"; and

(2) in subsection (c), by striking "is punishable by a term of imprisonment up to three times that authorized, or up to three times the fine authorized, or both," and inserting "is subject to three times the maximum punishment otherwise authorized".

TITLE XI—SHORT-BARRELED SHOTGUNS

SEC. 1101. MINIMUM PENALTY RELATING TO SHORT-BARRELED SHOTGUNS AND OTHER FIREARMS.

Section 924(c)(1) of title 18, United States Code, is amended in the first sentence by—

(1) inserting "and if the firearm is a short-barreled rifle, short-barreled shotgun to imprisonment for ten years," after "sentenced to imprisonment for five years,"; and

(2) by inserting "or a destructive device," after "a machinegun,", wherever the term "machine gun" appears in section 924(c)(1).

TITLE XII—MISCELLANEOUS CRIMINAL LAW IMPROVEMENTS

SEC. 1201. CLARIFICATION OF MANDATORY MINIMUM PENALTY FOR SERIOUS CRACK POSSESSION.

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended in the third sentence by striking out "shall be fined under title 18, United States Code, or imprisoned not less than 5 years and not more than 20 years, or both," and inserting in lieu thereof "shall be imprisoned not less than 5 years and not more than 20 years, and fined a minimum of $1,000,".

SEC. 1202. CORRECTION OF AN ERROR RELATING TO THE QUANTITY OF METHAMPHETAMINE NECESSARY TO TRIGGER A MANDATORY MINIMUM PENALTY.

Section 401(b)(1)(A)(viii) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)(viii)) is amended by striking out "or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting in lieu thereof "or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine".

SEC. 1203. CONFORMING AMENDMENT TO CONSPIRACY AND ATTEMPT PENALTY UNDER THE MARITIME DRUG LAW ENFORCEMENT ACT.

Section 3(j) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(j)) is amended by striking out "is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment" and inserting in lieu thereof "shall be subject to the same penalties as those".

SEC. 1204. CONFORMING AMENDMENTS TO CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT RELATING TO METHAMPHETAMINE.

(a) LARGE AMOUNTS.—Section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) is amended by—

(1) striking out "or" at the end of subparagraph (F);

(2) inserting "or" at the end of subparagraph (G); and

(3) adding a new subparagraph (H), as follows:

"(H) 100 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.".

(b) SMALL AMOUNTS.—Section 1010(b)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(2)) is amended by—

(1) striking out "or" at the end of subparagraph (F);

(2) inserting "or" at the end of subparagraph (G); and

(3) adding a new subparagraph (H), as follows:

"(H) 10 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.".

SEC. 1205. APPLICATION OF VARIOUS OFFENSES TO POSSESSIONS AND TERRITORIES.

(a) Section 232 of title 18, United States Code, is amended by adding a new subsection, as follows:

"(8) The term 'State' includes a State of the United States, and any commonwealth, territory, or possession of the United States.".

(b) Section 245 of title 18, United States Code, is amended by adding a new subsection, as follows:

"(d) For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(c) Section 402 of title 18, United States Code, is amended by adding a new undesignated paragraph, as follows:

"For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(d) Section 666(d) of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding a new paragraph, as follows:

"(4) the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(e) Sections 1028(d)(5) and 1030(e)(3) of title 18, United States Code, are each amended by inserting "commonwealth," before "possession or territory of the United States".

(f) Section 1029(f) of title 18, United States Code, is amended by adding at the end the following: "For purposes of this subsection, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(g) Section 1084(e) of title 18, United States Code, is amended by inserting "commonwealth," before "territory or possession of the United States".

(h) Section 1114 of title 18, United States Code, is amended by inserting "or any other commonwealth, territory, or possession" after "the Virgin Islands".

(i) Section 1952(b) of title 18, United States Code, is amended—

(1) by inserting "(i)" after "As used in this section"; and

(2) by inserting "and (ii) the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States" before the period.

(j) Section 1956(c) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(8) the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(k) Section 1958(b) of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding a new paragraph (3), as follows:

"(3) 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(l) Section 2313 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "Whoever"; and

(2) by adding a new subsection, as follows:

"(b) For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(m) Section 2315 of title 18, United States Code, is amended by adding at the end the following undesignated paragraph:

"For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

(n) Section 5032 of title 18, United States Code, is amended—

(1) in the second undesignated paragraph, by adding at the end the following: "For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."; and

(2) in the third undesignated paragraph, by striking out "to the authorities of a State or the District of Columbia" and inserting in lieu thereof "to the authorities of a State".

SEC. 1206. REPEAL OF ANTIQUATED OFFENSE AND DELETION OF TABLE REFERENCES TO REPEALED OFFENSES.

(a) Section 45 of title 18, United States Code, is repealed.

(b) The table of sections for chapter 3 of title 18, United States Code, is amended by striking out the items relating to sections 43, 44, and 45.

SEC. 1207. REPEAL OF OTHER OUTMODED OFFENSES AND RELATED PROVISIONS.

(a) Section 969 of title 18, United States Code, is repealed and the table of sections for chapter 45 of title 18, United States Code, is amended by striking out the items relating to sections 968 and 969.

(b) Sections 2198 and 3286 of title 18, United States Code, are repealed and the respective tables of sections in chapter 107 and 213 are amended by striking out the items relating to sections 2198 and 3286.

SEC. 1208. CONFORMING JURISDICTIONAL AMENDMENT FOR SECTION 2314 TO COVER FRAUDULENT SCHEMES INVOLVING FOREIGN AS WELL AS INTERSTATE TRAVEL.

The second paragraph of section 2314 of title 18, United States Code, is amended by inserting "or foreign" after "interstate".

SEC. 1209. CLARIFICATION OF ONE-YEAR PERIOD.

Section 666(d) of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding a new paragraph, as follows:

"(4) the term 'in any one-year period' means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.".

SEC. 1210. REPEAL OF PROVISIONS JUDICIALLY DETERMINED TO BE INVALID.

(a) Section 1730 of title 18, United States Code, is amended by striking out ", if the portrayal does not tend to discredit that service".

(b) Section 1714 of title 18, United States Code, is repealed and the item for such section in the table of sections at the beginning of chapter 83 of title 18 is repealed.

(c) Section 1718 of title 18, United States Code, is repealed and the item for such section in the table of sections at the beginning of chapter 83 of title 18 is likewise repealed.

SEC. 1211. DELETION OF REQUIREMENT OF PERSONAL APPROVAL OF ATTORNEY GENERAL FOR PROSECUTIONS UNDER THE ATOMIC ENERGY ACT.

Section 221(c) of the Atomic Energy Act of 1954 (42 U.S.C. 2271(c)) is amended by striking out "That no action shall be brought under section 222, 223, 224, 225, or 226 except by the express direction of the Attorney General: *And provided further,*".

SEC. 1212. TECHNICAL CORRECTION TO PROVISION FOR COMPUTING MARSHAL'S COMMISSION.

Section 1921(c)(1) of title 28, United States Code, is amended in the second sentence by striking out "If the property is to be disposed of by marshal's sale" and inserting in lieu thereof "if the property is not disposed of by marshal's sale".

SEC. 1213. CORRECTION OF MISPLACED PHRASE IN 18 U.S.C. 3289.

Section 3289 of title 18, United States Code, is amended by striking out "or, in the event of an appeal, within sixty days of the date the dismissal of the indictment or information becomes final," and inserting that same stricken language after "within six months of the expiration of the statute of limitations,".

SEC. 1214. MANDATORY MINIMUM SENTENCES FOR DRUG OFFENSES INVOLVING MINORS.

DISTRIBUTION OR MANUFACTURING IN OR NEAR SCHOOLS AND COLLEGES.—(1) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) as redesignated by this Act, is amended—

(A) in paragraph (1) of the first sentence by striking ", or a fine, or both,";

(B) by adding after the first sentence the following: "A fine up to twice that authorized by section 401(b) may be imposed in addition to any term of imprisonment authorized by this subsection."; and

(C) in the second sentence by striking beginning with "a term of" through the end of the sentence and inserting "a person shall be sentenced under this subsection to a term of imprisonment of not less than one year.".

(2) Section 405A(b) of the Controlled Substances Act (21 U.S.C. 845a(b)) as redesignated by this Act, is amended—

(A) in paragraph (1)(B) by striking ", or a fine up to three times that" through "or both"; and

(B) by inserting after the first sentence the following: "A fine up to three times that authorized by section 401(b) may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a person shall be sentenced under this subsection to a term of imprisonment of not less than three years".

(3) Section 405A(c) of the Controlled Substances Act (21 U.S.C. 845a(c)) as redesignated by this Act, is amended—

(A) in the first sentence by inserting "mandatory minimum" after "any";

(B) in the first sentence by striking "subsection (b) of"; and

(C) by striking the second sentence and inserting "An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section.".

TITLE XIII—PUBLIC SAFETY OFFICERS' DISABILITY BENEFITS

SEC. 1301. PUBLIC SAFETY OFFICERS' DISABILITY BENEFITS.

(a) PAYMENT.—Section 1201 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended—

(1) in subsections (c) and (d) by striking "(b)" each place it appears and inserting "(c)",

(2) by redesignating subsections (b), (c), (d), (e), (f), (g), and (h) as subsections (c), (d), (e), (f), (g), (h), and (i), respectively,

(3) by inserting after subsection (a) the following:

"(b) In accordance with regulations issued pursuant to this part, in any case in which the Bureau determines that a public safety officer has become permanently and totally disabled as the direct result of a catastrophic personal injury sustained in the line of duty, the Bureau shall pay, to the extent that appropriations are provided, a benefit of up to $100,000, adjusted in accordance with subsection (g), to such officer: *Provided,* That the total annual benefits paid under this section may not exceed $5,000,000. For the purposes of making these benefit payments, there are authorized to be appropriated for each fiscal year such sums as may be necessary: *Provided further,* That these benefit payments are subject to the availability of appropriations and that each beneficiary's payment shall be reduced by a proportionate share to the extent that sufficient funds are not appropriated.", and

(4) by adding at the end thereof the following:

"(j)(1) No benefit is payable under this part with respect to the death of a public safety officer if a benefit is paid under this part with respect to the disability of such officer.

"(2) No benefit is payable under this part with respect to the disability of a public safety officer if a benefit is payable under this part with respect to the death of such public safety officer.".

(b) LIMITATIONS.—Paragraphs (1), (2), (3), and (4) of section 1202 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796a) are each amended by inserting "or catastrophic injury" after "death".

(c) DEFINITION.—Section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796c) is amended—

(1) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively, and

(2) by inserting before paragraph (2), as so redesignated, the following:

"(1) 'catastrophic injury' means consequences of an injury that permanently prevent an individual from performing any gainful work;".

SEC. 1302. RESCUE SQUAD AND AMBULANCE PERSONNEL.

Section 1203 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b) is amended in subsection (2) (relating to the definition of firefighter) by—

(a) by adding "." after "ambulance crew"; and

(2) by striking "who was responding to a fire, rescue or police emergency.".

SEC. 1303. EFFECTIVE DATE.

EFFECTIVE DATE.—The amendments made by this title shall take effect upon enactment and shall not apply with respect to injuries occurring before the effective date of such amendments.

TITLE XIV—MONEY LAUNDERING

SEC. 1401. CRIMINAL FORFEITURE IN CASES INVOLVING CMIR VIOLATIONS.

Section 982(a) of title 18, United States Code, is amended by inserting ", 5316" after "5313(a)".

SEC. 1402. DEFINITION OF "FINANCIAL TRANSACTION".

Section 1956(c)(4) of title 18, United States Code, is amended by—

(1) inserting "A" before "a transaction" the first place it appears and inserting "(B)" before "a transaction" the second place it appears; and

(2) inserting "(i)" before "involving" the first place it appears and inserting "(ii)" before "involving" the second place it appears.

SEC. 1403. MONEY LAUNDERING FORFEITURES.

Section 982(b)(2) of title 18, United States Code, is amended by inserting the following before the period: "unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of $100,000 or more in any twelve month period".

SEC. 1404. ENVIRONMENTAL CRIMES AS MONEY LAUNDERING PREDICATES.

(a) Section 1956(c)(7) of title 18, United States Code, is amended by—

(1) striking "or" before "(D)"; and

(2) inserting "; or" and the following before the period:

"ENVIRONMENTAL CRIMES

"(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.)".

(b) Section 1956(e) of title 18, United States Code, is amended by adding at the end the following sentence: "Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

TITLE XV—DRUG-FREE SCHOOL ZONES

SEC. 1501. DEVELOPMENT OF MODEL PROGRAM OF STRATEGIES AND TACTICS.

(a) IN GENERAL.—The Attorney General shall develop a model program of strategies and tactics for establishing and maintaining drug-free school zones.

(b) ASSISTANCE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—The program required by subsection (a) shall be designed to provide State and local law enforcement agencies with materials, training, and other assistance to establish, enforce, and evaluate the effectiveness of drug-free school zone enforcement efforts.

(c) PROGRAM CRITERIA.—The program required by subsection (a) shall—

(1) define the criminal justice community's role in creating and maintaining drug-free school zones;

(2) develop a framework for law enforcement collaboration with the school system and community resource network;

(3) identify a core law enforcement drug demand reduction program plan;

(4) provide materials and technical assistance for demarcating and establishing drug-free school zones;

(5) create a coordinated publicity plan with the school system and community resource network;

(6) identify and develop model drug-free school zone law enforcement strategies and tactics;

(7) develop a model coordinated strategy for prosecuting violations within the zones;

(8) create a uniform framework for monitoring and evaluating the effectiveness of drug-free school zones to determine which strategies and tactics succeed under various conditions and constraints; and

(9) provide support materials and exemplary program overviews.

(d) PREFERRED APPROACHES.—In establishing the program required by subsection (a), the Attorney General shall prefer approaches to drug-free school zone enforcement that unite the criminal justice community, the education community, and the network of community resources in meaningful collaboration to reduce the availability of and demand for drugs in a drug-free school zone.

(e) REPORT.—At the conclusion of the program required by subsection (a), the Attorney General shall submit a report to Congress describing the strategies and tactics that are found to be successful in establishing, enforcing, and maintaining drug-free school zones.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,500,000 for fiscal year 1991.

SEC. 1502. AMENDMENT TO THE CONTROLLED SUBSTANCES ACT.

Section 405A of the Controlled Substances Act (21 U.S.C. 845a) as redesignated by this Act, is amended—

(1) in subsection (a) by—

(A) striking "playground"; and

(B) inserting "or a playground" after "university,"; and

(2) in subsection (b) by—

(A) striking "playground,"; and

(B) inserting "or a playground," after "university,".

SEC. 1503. STRENGTHENING OF DRUG-FREE SCHOOL ZONES.

(a) GENERAL AUTHORITY.—Paragraph (8) of section 5122(a) of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3192(a)) is amended by striking the period and inserting the following: ", which shall include—

"(A) the determination, with the assistance of municipal authorities and local law enforcement agencies, as appropriate, of the geographical boundaries of schools within the State and the posting of signs identifying school properties as drug-free school zones;

"(B) drug-abuse education and prevention programs and enforcement policies designed to eliminate the illicit use of alcohol and drugs in such zones;

"(C) assisting teachers, administrators, athletic directors, and other school personnel in cooperating fully with law enforcement officials to punish violations of laws relating to illegal drugs;

"(D) informing the community—

"(i) of the content and intent of laws relating to school safety and laws relating to illegal drugs as they affect schoolchildren; and

"(ii) of the perimeters of the drug-free school zones;

"(E) employing the services of the local or substate regional advisory council on drug abuse education and prevention established or designated by the local application submitted under section 5126(a) as a resource for advice and support with respect to implementation of such zones; and

"(F) communication to students, teachers, athletic directors, and other school personnel by administrators that activities that are illicit and harmful to the health and well-being of the students will not be tolerated within schools and their surrounding environments.".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 5137 of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3217) is amended by inserting before the period at the end of the first sentence the following: "as described in section 5122(a)(8)".

SEC. 1504. DRUG ABUSE RESISTANCE EDUCATION AND REPLICATION OF SUCCESSFUL DRUG EDUCATION PROGRAMS.

Section 5122 of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3192) is amended—

(1) in subsection (a), by striking "50 percent" and inserting "42.5 percent";

(2) in paragraph (1) of subsection (b), by striking "50 percent" and inserting "42.5 percent"; and

(3) by adding at the end the following:

"(c) DRUG ABUSE RESISTANCE EDUCATION PROGRAMS.—(1) Not less than 10 percent of the funds available for each fiscal year under section 5121(a) to the chief executive officer of a State shall be used for grants to local educational agencies in consortium with entities which have experience in assisting school districts to provide instruction to students grades kindergarten through 6 to recognize and resist pressures that influence such students to use controlled substances, as defined in Schedules I and II of section 202 of the Controlled Substances Act the possession or distribution of which is unlawful under such Act, or beverage alcohol, such as Project Drug Abuse Resistance Education, that meet the requirements of paragraph (2).

"(2) A local educational agency in consortium with an entity shall not be eligible for a grant under paragraph (1) unless such local educational agency in consortium with an entity will use assistance provided under such grant to provide or arrange for the provisions of services that shall include—

"(A) drug abuse resistance education instruction for students grades kindergarten through 6 that is designed to teach students to recognize and resist pressures to experiment that influence such children to use controlled substances, as defined under paragraph (1), or beverage alcohol, including instruction in the following areas—

"(i) drug use and misuse;

"(ii) understanding the consequences of drug abuse;

"(iii) resistance techniques;

"(iv) assertive response styles;

"(v) managing stress without taking drugs;

"(vi) decisionmaking and risk taking;

"(vii) media influences on drug use;

"(viii) positive alternatives to drug abuse behavior;

"(ix) interpersonal and communication skills;

"(x) self-esteem building activities; and

"(xi) resistance to peer pressure and gang pressure;

"(B) provisions for parental involvement;

"(C) classroom instruction by uniformed law enforcement officials;

"(D) the use of positive student leaders to influence younger students not to use drugs;

"(E) an emphasis on activity-oriented techniques designed to encourage student-generated responses to problem-solving situations; and

"(F) the awarding of a certificate of achievement to each student who participates in a drug abuse resistance education program.

"(3) Amounts received under paragraph (1) by any local educational agency or entity shall be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the support of projects of the type described in paragraph (2).

"(d) REPLICATION OF SUCCESSFUL DRUG EDUCATION PROGRAMS.—Not less than 5 percent of the funds available for each fiscal year under section 5121(a) to the chief executive officer of a State shall be used for grants to local educational agencies or consortia of local educational agencies and private nonprofit entities to provide drug abuse education, prevention, or counseling services to students in kindergarten through grade 12.

"(b) ELIGIBILITY.—A local educational agency or consortium described in subsection (a) shall not be eligible for a grant under this section unless such agency or consortium agrees—

"(1) to use assistance provided under such grant to provide or arrange for the provision of programs offering drug abuse education, prevention, or counseling to students of compulsory school age, including—

"(A) programs to provide drug abuse counseling in the schools by trained personnel;

"(B) programs that stress the use of peers to combat student abuse of drugs and alcohol;

"(C) programs that stress parental and community involvement in combating student abuse of drugs and alcohol; and

"(D) other appropriate programs;

"(2) that programs provided with assistance under the grant shall be designed to prevent or eliminate student abuse of drugs or alcohol;

"(3) to use assistance provided under the grant to expand or replicate a program that has a demonstrated record of success at either the State or local level in preventing or eliminating student abuse of drugs or alcohol; and

"(4) to ensure that the program to be expanded or replicated is appropriate for the students to be served, based on an assessment of their most important needs.

"(c) APPLICATION.—A local educational agency or consortium described in subsection (a) that desires to receive a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information and assurances as the Secretary may reasonably require. Each such application shall contain—

"(1) a discussion of why the particular program to be assisted under the grant is appropriate for and responds to the particular needs of the students to be served;

"(2) a complete description of the success of the program to be assisted under the grant in reducing or eliminating drug or alcohol abuse among students of compulsory school age;

"(3) an assurance that the consortium concerned will provide assistance, in cash or in kind, for the program assisted under the grant in an amount equal to not less than 10 percent of the amount provided under the grant; and

"(4) an assurance that funds received under the grant shall be used to supplement, not supplant, the amount of other Federal, State, and local funds expended for support of programs of the type described in subsection (b).".

SEC. 1505. SUPPORT OF SCHOOL-BASED RECREATIONAL ACTIVITIES.

Section 5125(a) of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3195(a)) is amended—

(1) by redesignating paragraph (14) as paragraph (16);

(2) by redesignating paragraph (13) the second place it appears as paragraph (14);

(3) by striking "and" at the end of paragraph (14) (as redesignated by paragraph (2) of this section); and

(4) by inserting after paragraph (14) the following:

"(15) in the case of a local educational agency that determines that it provides sufficient drug and alcohol abuse education during regular school hours, after-school programs that provide drug and alcohol abuse education for school-aged children, including children who are unsupervised after school, and that may include school-sponsored sports, recreational, educational, or instructional activities (local educational agency may make grants or contracts with nonprofit community-based organizations that offer sports, recreation, education, or child care programs); and".

SEC. 1506. SUPPORT OF SCHOOL-BASED DRUG ABUSE COUNSELING PROGRAMS.

(a) GENERAL AUTHORITY.—Part C of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3201) is amended to read as follows:

"PART C—TRAINING OF TEACHERS, COUNSELORS, AND SCHOOL PERSONNEL

"SEC. 5128. GRANTS FOR TRAINING OF TEACHERS.

"(a) IN GENERAL.—From amounts appropriated pursuant to the authorization contained in section 5111(a)(2), the Secretary shall make grants to State educational agencies, local educational agencies, and institutions of higher education for teachers training programs in accordance with this section.

"(b) USE OF FUNDS.—Amounts made available under grants under this section shall be used to establish, expand, or enhance programs and activities for the training of elementary and secondary school teachers and administrators, and other elementary and secondary school personnel concerning drug and alcohol abuse education and prevention.

"SEC. 5129. GRANTS FOR TRAINING OF COUNSELORS.

"(a) IN GENERAL.—

"(1) From amounts appropriated pursuant to the authorization contained in section 5111(a)(2), the Secretary shall give priority to making a substantial number of grants to qualified State educational agencies, local educational agencies, and institutions of higher education for programs to train counselors, social workers, psychologists, or nurses in accordance with this section.

"(2) The Secretary may also make a grant under this part to any private nonprofit agency that has an agreement with a local educational agency to provide training in drug abuse counseling for individuals who will provide such counseling in the schools of such local educational agency.

"(b) USE OF FUNDS.—Amounts made available under grants under this section shall be used to establish, expand, or enhance programs and activities for the training of counselors, social workers, psychologists, or nurses who are providing or will provide drug abuse prevention, counseling, or referral services in elementary and secondary schools.

"SEC. 5130. APPLICATIONS.

"(a) IN GENERAL.—Any State or local educational agency, institution of higher education, or consortium of such agencies or institutions that desires to receive a grant under this part in any fiscal year submit an application to the Secretary at such time and in such manner as the Secretary may prescribe.

"(b) CONTENTS.—Each application submitted under this section shall—

"(1) set forth the activities and programs to be carried out with funds paid under this part;

"(2) contain an estimate of the cost for the establishment and operation to such activities and programs;

"(3) provide assurances that the Federal funds made available under this section shall be used to supplement, and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purpose described in this part, and in no case to supplant such funds;

"(4) provide assurances of compliance with this part;

"(5) in the case of a grant under section 5129, contain a discussion of how the training to be assisted under the grant will assist the applicant to—

"(A) increase the number of school personnel who are trained to provide drug abuse counseling services; and

"(B) improve the quality of drug abuse counseling services offered by the applicant or the local educational agency concerned; and

"(6) include such other information and assurances as the Secretary reasonably determines to be necessary.".

"(b) AUTHORIZATION OF APPROPRIATIONS.—Subparagraph (A) of section 5111(a)(2) of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3181(a)(2)) is amended by striking "$35,000,000" and inserting "$50,000,000".

SEC. 1507. ADDITIONAL REQUIREMENTS FOR LOCAL APPLICATIONS.

Section 5126(a)(2) of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3196(a)(2)) is amended—

(1) by redesignating subparagraphs (N) and (O) as subparagraphs (P) and (Q), respectively; and

(2) by inserting after subparagraph (M) the following:

"(N) describe how, to the extent practicable, assistance provided under the grant will be used to provide drug abuse counseling services to children of all ages, including students in the elementary schools;

"(O) describe how, to the extent practicable, activities assisted under the grant will be coordinated with local law enforcement agencies in order to improve security on school grounds and in the surrounding community and to educate students about—

"(i) the dangers of drug use and drug-related violence;

"(ii) the penalties for possession of or trafficking in illegal drugs;

"(iii) techniques for resisting drug abuse; and

"(iv) the importance of cooperating with law enforcement officials in eliminating drug abuse and identifying individuals who supply drugs to students;".

SEC. 1508. IDENTIFICATION OF FEDERALLY ASSISTED PROGRAMS.

Part G of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3231 et seq.) is amended by adding at the end the following:

"SEC. 5193. IDENTIFICATION OF FEDERALLY ASSISTED PROGRAMS.

"Every local recipient of funds under this title shall, in any publication or public announcement, clearly identify any program assisted under this title as a Federal program funded under the Drug-Free Schools and Communities Act of 1986.".

SEC. 1509. TECHNICAL AMENDMENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsecton (a) of section 2 of the Drug-Free Schools and Communities Act Amendments of 1989 is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by striking paragraph (1) and inserting the following:

"(1) in paragraph (1), by inserting after "part C" the following: "and section 5136"; and

"(2) in paragraph (2)—

"(A) in subparagraph (A), by striking 'and $20,000,000' and all that follows and inserting the following: '$20,000,000 for the fiscal year 1990, and $35,000,000 for each of the fiscal years 1991, 1992, and 1993."; and

"(B) in subparagraph (B), by striking '$230,000,000' and inserting '$215,000,000'; and".

(b) RESERVATIONS AND STATE ALLOTMENTS.—Subsection (a) of section 5112 of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3182) is amended in the matter preceding paragraph (1) by inserting ", from" after "subsection (c)".

(c) RESPONSIBILITIES OF STATE EDUCATIONAL AGENCIES.—

(1) CORRECTION OF PUNCTUATION.—Section 5124(a)(4)(B) of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3194(a)(4)(B)) is amended by striking the comma at the end of clause (ii) and inserting a period.

(2) CORRECTION OF REFERENCE.—Section 7(2) of the Drug-Free Schools and Communities Act Amendments of 1989 is amended in subparagraph (A) by inserting "the first place it appears" before "the following".

(d) FEDERAL ACTIVITIES.—Section 5132(b) of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3212) is amended by striking "and" at the end of paragraph (5).

(e) EMERGENCY GRANTS.—The heading for section 5136 of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3216) is amended to read as follows:

"SEC. 5136. EMERGENCY GRANTS.".

(f) CERTIFICATION OF DRUG AND ALCOHOL ABUSE PREVENTION PROGRAMS.—Section 22(b) of the Drug-Free Schools and Communities Act Amendments of 1989 is amended—

(1) in paragraph (1), by striking "Part D" and inserting "Part E"; and

(2) in paragraph (2), by striking "5126(e)" and inserting "5126(a)".

(g) DISSEMINATION OF INFORMATION AND TECHNICAL ASSISTANCE.—Section 18 of the Drug-Free Schools and Communities Act Amendments of 198 is amended by striking "Part D" and inserting "Part E".

TITLE XVI—MISCELLANEOUS

SEC. 1601. ENLARGEMENT OF FORFEITURE AWARD AUTHORITY.

Section 524(c)(1)(C) of title 28, United States Code, is amended by striking out "the payment of awards for information or assistance leading to civil or criminal forfeiture under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 et seq.) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1961 et seq.)" and inserting in lieu thereof "the payment of awards for information or assistance leading to a civil or criminal forfeiture under any law enforced or administered by the Department of Justice.".

SEC. 1602. AMENDMENT TO CLARIFY APPLICATION OF SENTENCING REFORM ACT TO ASSIMILATIVE CRIMES.

Section 3551(a) of title 18, United States Code, is amended by inserting "including sections 13 and 1153 of this title," after "any Federal statute,".

SEC. 1603. CONFORMING AMENDMENTS TO SUBSTITUTE A REFERENCE TO THE FDIC FOR THE NOW ABOLISHED FSLIC IN TWO BANKING OFFENSES.

Sections 657 and 1006 of title 18, United States Code, are each amended by striking out "the Federal Savings and Loan Insurance Corporation" and inserting in lieu thereof "the Federal Deposit Insurance Corporation".

SEC. 1604. CLARIFICATION OF APPLICABILITY OF 18 U.S.C. 1952 TO ALL MAILINGS IN FURTHERANCE OF UNLAWFUL ACTIVITY.

Section 1952(a) of title 18, United States Code, is amended—

(1) by inserting "the mail or" after "uses"; and

(2) by striking out "including the mail,".

SEC. 1605. ARREST OF FUGITIVE ABOUT TO ENTER UNITED STATES.

Section 3184 of title 18, United States Code, is amended by inserting "or, if there is reason to believe the person will shortly enter the United States" after "if the whereabouts within the United States of the person charged are not known".

SEC. 1606. CORRECTION TO REFERENCE TO NONEXISTENT AGENCIES IN 18 U.S.C. 1114.

Section 1114 of title 18, United States Code, is amended—

(1) by striking "secret service" and inserting "Secret Service";

(2) by striking "any officer or employee of the Department of Health, Education, and Welfare," and inserting "any officer or employee of the Department of Education, the Department of Health and Human Services,"; and

(3) by striking "the Federal Savings and Loan Insurance Corporation,".

TITLE XVII—GENERAL PROVISIONS

SEC. 1701. SUPPORT OF FEDERAL PRISONERS IN NON-FEDERAL INSTITUTIONS.

Section 4013 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(b)(1) The United States Marshals Service may designate districts that need additional support from private detention entities under subsection (a)(3) based on—

"(A) the number of Federal detainees in the district; and

"(B) the availability of appropriate Federal, State, and local government detention facilities.

"(2) In order to be eligible for a contract for the housing, care, and security of persons held in custody of the United States Marshals pursuant to Federal law and funding under subsection (a)(3), a private entity shall—

"(A) be located in a district that has been designated as needing additional Federal detention facilities pursuant to paragraph (1);

"(B) meet the standards of the American Correctional Association;

"(C) comply with all applicable State and local laws and regulations;

"(D) have approved fire, security, escape, and riot plans; and

"(E) comply with any other regulations that the Marshals Service deems appropriate.

"(3) The United States Marshals Service shall provide an opportunity for public comment on a contract under subsection (a)(3).".

SEC. 1702. GUN-FREE SCHOOL ZONES ACT OF 1990.

(a) SHORT TITLE.—This section may be cited as the "Gun-Free School Zones Act of 1990".

(b) PROHIBITIONS AGAINST POSSESSION OR DISCHARGE OF A FIREARM IN A SCHOOL ZONE.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(q)(1)(A) It shall be unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.

"(B) Subparagraph (A) shall not apply to the possession of a firearm—

"(i) on private property not part of school grounds;

"(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtain such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

"(iii) which is—

"(I) not loaded; and

"(II) in a locked container, or a locked firearms rack which is on a motor vehicle;

"(iv) by an individual for use in a program approved by a school in the school zone;

"(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

"(vi) by a law enforcement officer acting in his or her official capacity; or

"(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

"(2)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm at a place that the person knows is a school zone.

"(B) Subparagraph (A) shall not apply to the discharge of a firearm—

"(i) on private property not part of school grounds;

"(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

"(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

"(iv) by a law enforcement officer acting in his or her official capacity.

"(3) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun-free school zones as provided in this subsection.".

(2) DEFINITIONS.—Section 921(a) of such title is amended by adding at the end thereof the following new paragraphs:

"(25) The term 'school zone' means—

"(A) in, or on the grounds of, a public, parochial or private school; or

"(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

"(26) The term 'school' means a school which provides elementary or secondary education, as determined under State law.

"(27) The term 'motor vehicle' has the meaning given such term in section 10102 of title 49, United States Code.".

(3) PENALTY.—Section 924(a) of such title is amended by adding at the end thereof the following new paragraph:

"(4) Whoever violates section 922(q) shall be fined not more than $5,000, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.".

(4) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in after the end of the 60-day

period beginning on the date of the enactment of this Act.

(5) GUN-FREE ZONE SIGNS.—Federal, State, and local authorities are encouraged to cause signs to be posted around school zones giving warning of prohibition of the possession of firearms in a school zone.

SEC. 1703. REPORT ON MANDATORY MINIMUM SENTENCING PROVISIONS.

(a) REPORT.—Not less than six months after the date of enactment of this Act, the United States Sentencing Commission shall transmit to the respective Judiciary Committees of the Senate and House of Representatives a report on mandatory minimum sentencing provisions in Federal law.

(b) COMPONENTS OF REPORT.—The report mandated by subsection (a) shall include:

(1) a compilation of all mandatory minimum sentencing provisions in Federal law;

(2) an assessment of the effect of mandatory minimum sentencing provisions on the goal of eliminating unwarranted sentencing disparity;

(3) a projection of the impact of mandatory minimum sentencing provisions on the Federal prison population;

(4) an assessment of the compatibility of mandatory minimum sentencing provisions and the sentencing guidelines system established by the Sentencing Reform Act of 1984;

(5) a description of the interaction between mandatory minimum sentencing provisions and plea agreements;

(6) a detailed empirical research study of the effect of mandatory minimum penalties in the Federal system;

(7) a discussion of mechanisms other than mandatory minimum sentencing laws by which Congress can express itself with respect to sentencing policy, such as:

(A) specific statutory instructions to the Sentencing Commission;

(B) general statutory instructions to the Sentencing Commission;

(C) increasing or decreasing the maximum sentence authorized for particular crimes;

(D) Sense of Congress resolutions; and

(8) any other information that the Commission would contribute to a thorough assessment of mandatory minimum sentencing provisions.

(c) AMENDMENT OF REPORT.—The Commission may amend or update the report mandated by subsection (a) at any time after its transmittal.

SEC. 1704. RAILROAD POLICE OFFICERS.

A railroad police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of any State shall, in accordance with regulations issued by the Secretary of Transportation, be authorized to enforce the laws of any jurisdiction in which the rail carrier owns property, for the purpose of protecting—

(1) the employees, passengers, or patrons of the rail carrier;

(2) the property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier;

(3) property moving in interstate or foreign commerce in the possession of the rail carrier; and

(4) personnel, equipment, and materials moving via railroad that are vital to the national defense, to the extent of the authority of a police officer properly certified or commissioned under the laws of that jurisdiction.

TITLE XVIII—CORRECTIONAL OPTIONS INCENTIVES AMENDMENTS

SEC. 1801. CORRECTIONAL OPTIONS GRANTS.

(a) AUTHORITY TO MAKE GRANTS.—Subpart 2 of part E of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3760 et seq.) is amended—

(1) by inserting after the heading relating to subpart 2 the following:

"CHAPTER A—GRANTS TO PUBLIC AND PRIVATE ENTITIES."

(2) in section 510 by striking "subpart" each place it appears and inserting "chapter",

(3) in section 511—

(A) in the heading by striking "DISCRETIONARY", and

(B) by inserting "(other than chapter B of this subpart)" after "this part",

(4) in section 513—

(A) in subsection (a)(1) by inserting "or 515" after "511", and

(B) in subsection (b) by inserting "applicable" after "all the" each place it appears,

(5) in section 514(2) by striking "public agency or private nonprofit organization within which the program or project has been conducted" and inserting "applicant that conducts such program or project",

(6) by redesignating sections 513 and 514 as sections 517 and 518, respectively, and

(7) by inserting after section 514 the following:

"CHAPTER B—GRANTS TO PUBLIC AGENCIES

"CORRECTIONAL OPTIONS GRANTS

"SEC. 515. (a) The Director, in consultation with the Director of the National Institute of Corrections, may make—

"(1) 4 grants in each fiscal year, in various geographical areas throughout the United States, to public agencies for correctional options (including the cost of construction) that provide alternatives to traditional modes of incarceration and offender release programs—

"(A) to provide more appropriate intervention for youthful offenders who are not career criminals, but who, without such intervention, are likely to become career criminals or more serious offenders;

"(B) to provide a degree of security and discipline appropriate for the offender involved;

"(C) to provide diagnosis, and treatment and services (including counseling, substance abuse treatment, education, job training and placement assistance while under correctional supervision, and linkage to similar outside services), to increase the success rate of offenders who decide to pursue a course of lawful and productive conduct after release from legal restraint;

"(D) to reduce criminal recidivism by offenders who receive punishment through such alternatives;

"(E) to reduce the cost of correctional services and facilities by reducing criminal recidivism; and

"(F) to provide work that promotes development of industrial and service skills in connection with a correctional option;

"(2) grants to private nonprofit organizations—

"(A) for any of the purposes specified in subparagraphs (A) through (F) of paragraph (1);

"(B) to undertake educational and training programs for criminal justice personnel;

"(C) to provide technical assistance to States and local units of government; and

"(D) to carry out demonstration projects which, in view of previous research or experience, are likely to be a success in more than one jurisdiction;

in connection with a correctional option (excluding the cost of construction); and

"(3) grants to public agencies to establish, operate, and support boot camp prisons.

"(b) The selection of applicants to receive grants under subsection (a)(1) and (2) shall be based on their potential for developing or testing various innovative alternatives to traditional modes of incarceration and offender release programs. In selecting the applicants to receive grants under subsection (a)(3), the Director shall—

"(1) consider the overall quality of an applicant's shock incarceration program, including the existence of substance abuse treatment, drug testing, counseling literacy education, vocational education, and job training programs during incarceration or after release; and

(2) give priority to States that clearly demonstrate that the capacity of their correctional facilities ins inadequate to accommodate the number of individuals who are convicted of offenses punishable by a term of imprisonment exceeding 1 year.

"(c) The Direor shall consult with the Commission on Alternative Utilization of Military Facilities created by Public Law 100-456 in order to identify military facilities that may be used as sites for correctional programs receiving assistance under this chapter.

"ALLOCATION OF FUNDS; ADMINISTRATIVE PROVISIONS

"SEC. 516. (a) Of the total amount appropriated for this chapter in any fiscal year, 80 percent shall be used to make grants under section 515(a)(1), 10 percent for section 515(a)(2), and 10 percent for section 515(a)(3).

"(b) A grant made under section 515(a)(1) or (a)(3) may be made for an amount up to 75 percent of the cost of the correctional option contained in the approved application.

"(c) The Director shall—

"(1) not later than 90 days after funds are first appropriated to carry out this chapter, issue rules to carry out this chapter; and

"(2) not later than 180 days after funds are first appropriated to carry out this chapter—

"(A) submit to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report describing such rules; and

"(B) request applications for grants under this chapter.

"CHAPTER C—GENERAL REQUIREMENTS".

(b) EVALUATION.—Section 520(a)(2) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3766(a)(2)) is amended by striking "section 511" and inserting "sections 511 and 515".

(c) DEFINITION.—Section 901(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791(a)) is amended—

(1) in paragraph (20) by striking "and" at the end,

(2) in paragraph (21) by striking the period at the end, and

(3) by adding at the end the following:

"(22) 'correctional option' includes community-based incarceration, weekend incarceration, boot camp prison, electronic monitoring of offenders, intensive probation, and any other innovative punishment designed to have the greatest impact on offenders who can be punished more effec-

tively in an environment other than a traditional correctional facility; and

"(23) 'boot camp prison' includes a correctional facility in which inmates are required to participate in a highly regimented program that provides strict discipline, physical training, and hard labor, together with extensive rehabilitative activities and with educational, job training, and drug treatment support.".

(d) TECHNICAL AMENDMENTS.—The table of contents of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) by inserting after the heading relating to subpart 2 of part E the following:

"Chapter A—Grants to Public and Private Entities",

(2) in the item relating to section 511 by striking "discretionary", and

(3) by striking the items relating to sections 513 and 514, and inserting the following:

"CHAPTER B—GRANTS TO PUBLIC AGENCIES

"Sec. 515. Correctional options grants.

"Sec. 516. Allocation of funds; administrative provisions.

"CHAPTER C—GENERAL REQUIREMENTS

"Sec. 517. Application requirements.

"Sec. 518. Period of award.".

(e) CONFORMING AMENDMENTS.—Section 1001(a) of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by inserting after paragraph (5) the following:

"(6) There are authorized to be appropriated $220,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal year 1992 to carry out chapter B of subpart 2 of part E of this title.".

SEC. 1802. CONVEYANCE OF PROPERTY AND FACILITIES AT MILITARY INSTALLATIONS.

(a) IN GENERAL.—Chapter 159 of title 10, United States Code, is amended by adding at the end the following:

"§ 2693. Conveyance of certain property

"(a) Except as provided in subsection (b), before any real property or facility of the United States that is under the jurisdiction of any department, agency, or instrumentality of the Department of Defense is determined to be excess to the needs of such department, agency, or instrumentality, the Secretary shall—

"(1) provide adequate notification of the availability of such real property or facility within the Department of Defense;

"(2) if the real property or facility remains available after such notification, notify the Attorney General of its availability; and

"(3) if the Attorney General certifies that a determination has been made by the Director of the Bureau of Justice Assistance within the Department of Justice to utilize the real property or facility under the correctional options program carried out under section 515 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, convey the real property or facility, without reimbursement, to the public agencies referred to in section 515(a)(1) or 515(a)(3) of title I of such Act for such utilization.

"(b) The provisions of this section shall not apply—

"(1) to real property and facilities to which title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526) is applicable; and

"(2) during any portion of a fiscal year after four conveyances have been made under this section in such fiscal year.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

"2693. Conveyance of certain property.".

SEC. 1803. IMPROVEMENT OF CRIMINAL JUSTICE RECORDS.

(a) AMENDMENT.—Subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

"IMPROVEMENT OF CRIMINAL JUSTICE RECORDS

"SEC. 509. (a) Subject to subsection (d), each State which receives funds under section 506 in a fiscal year shall allocate not less than 5 percent of such funds to the improvement of criminal justice records.

"(b) The improvement referred to in subsection (a) shall include—

"(1) the completion of criminal histories to include the final dispositions of all arrests for felony offenses;

"(2) the full automation of all criminal justice histories and fingerprint records; and

"(3) the frequency and quality of criminal history reports to the Federal Bureau of Investigation.

"(c) The Director, in consultation with the Director of the Bureau of Justice Statistics, shall establish guidelines for the fulfillment of the requirements specified in subsections (a) and (b) of this section.

"(d) In accordance with such guidelines as the Director shall issue and on the request of a State, the Director may—

"(1) waive compliance with subsection (a) by such State; or

"(2) authorize such State to reduce the minimum amount such State is required to allocate under subsection (a);

if the Director, in the discretion of the Director, finds that the quality of the State's criminal justice records does not warrant expending the amount allocated under subsection (a).".

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the item relating to section 508 the following:

"Sec. 509. Improvement of criminal justice records.".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to any fiscal year beginning before the date of the enactment of this Act.

SEC. 1804. TESTING CERTAIN SEX OFFENDERS FOR HUMAN IMMUNODEFICIENCY VIRUS.

Section 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756), as amended by sections 107(c) and 108, is amended—

(1) in subsection (a)(1) by striking "subsection (e)" and inserting "subsections (e) and (f)",

(2) by redesignating subsection (f) as subsection (g), and

(3) by inserting after subsection (e) the following:

"(f)(1) For any fiscal year beginning more than 2 years after the effective date of this subsection—

"(A) 90 percent of the funds allocated under subsection (a), taking into consideration subsection (e) but without regard to this subsection, to a State described in paragraph (2) shall be distributed by the Director to such State; and

"(B) 10 percent of such amount shall be allocated equally among States that are not affected by the operation of subparagraph (A).

"(2) Paragraph (1)(A) refers to a State that does not have in effect, and does not enforce, in such fiscal year, a law that requires the State at the request of the victim of a sexual act—

"(A) to administer, to the defendant convicted under State law of such sexual act, a test to detect in such defendant the presence of the etiologic agent for acquired immune deficiency syndrome;

"(B) to disclose the results of such test to such defendant and to the victim of such sexual act; and

"(C) to provide to the victim of such sexual act counseling regarding HIV disease, HIV testing, in accordance with applicable law, and referral for appropriate health care and support services.

"(3) For purposes of this subsection—

"(A) the term 'convicted' includes adjudicated under juvenile proceedings; and

"(B) the term 'sexual act' has the meaning given such term in subparagraph (A) or (B) of section 2245(1) of title 18, United States Code.".

TITLE XIX—ANABOLIC STEROIDS CONTROL ACT OF 1990

SEC. 1901. SHORT TITLE.

This Act may be cited as the "Anabolic Steroids Control Act of 1990".

SEC. 1902. ANABOLIC STEROID PENALTIES.

(a) ADDITION OF ANABOLIC STEROIDS TO SCHEDULE III.—Schedule III of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended by adding at the end the following:

"(e) Anabolic steroids.".

(b) DEFINITION OF ANABOLIC STEROID.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end the following:

"(41)(A) The term 'anabolic steroid' means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes—

"(i) boldenone,

"(ii) chlorotestosterone,

"(iii) clostebol,

"(iv) dehydrochlormethyltestosterone,

"(v) dihydrotestosterone,

"(vi) drostanolone,

"(vii) ethylestrenol,

"(viii) fluoxymesterone,

"(ix) formobulone,

"(x) mesterolone,

"(xi) methandienone,

"(xii) methandranone,

"(xiii) methandriol,

"(xiv) methandrostenolone,

"(xv) methenolone,

"(xvi) methyltestosterone,

"(xvii) mibolerone,

"(xviii) nandrolone,

"(xix) norethandrolone,

"(xx) oxandrolone,

"(xxi) oxymesterone,

"(xxii) oxymetholone,

"(xxiii) stanolone,

"(xxiv) stanozolol,

"(xxv) testolactone,

"(xxvi) testosterone,

"(xxvii) trenbolone, and

"(xxviii) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

"(B)(i) Except as provided in clause (ii), such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration.

"(ii) If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of subparagraph (A).".

(c) EFFECT OF SCHEDULING ON PRESCRIPTIONS.—Any prescription for anabolic steroids subject to refill on or after the date of enactment of the amendments made by this section may be refilled without restriction under section 309(a) of the Controlled Substances Act (21 U.S.C. 829(a)).

(d) EFFECTIVE DATE.—This section and the amendment made by this section shall take effect 90 days after the date of enactment of this Act.

SEC. 1903. REGULATIONS BY ATTORNEY GENERAL.

(a) ABUSE POTENTIAL.—The Attorney General, upon the recommendation of the Secretary of Health and Human Services, may, by regulation, exempt any compound, mixture, or preparation containing a substance in paragraph (41) of section 102 of the Controlled Substances Act (as added by section 2 of this Act) from the application of all or any part of the Controlled Substances Act if, because of its concentration, preparation, mixture or delivery system, it has no significant potential for abuse.

(b) DRUGS FOR TREATMENT OF RARE DISEASES.—If the Attorney General finds that a drug listed in paragraph (41) of section 102 of the Controlled Substances Act (as added by section 2 of this Act) is—

(1) approved by the Food and Drug Administration as an accepted treatment for a rare disease or condition, as defined in section 526 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb); and

(2) does not have a significant potential for abuse, the Attorney General may exempt such drug from any production regulations otherwise issued under the Controlled Substances Act as may be necessary to ensure adequate supplies of such drug for medical purposes.

(c) DATE OF ISSUANCE OF REGULATIONS.—The Attorney General shall issue regulations implementing this section not later than 45 days after the date of enactment of this Act, except that the regulations required under section 3(a) shall be issued not later than 180 days after the date of enactment of this Act.

SEC. 1904. AMENDMENT TO THE FOOD, DRUG, AND COSMETIC ACT.

Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended by inserting a new subsection (e) as follows:

"(e)(1) Except as provided in paragraph (2), whoever knowingly distributes, or possesses with intent to distribute, human growth hormone for any use in humans other than the treatment of a disease or other recognized medical condition, where such use has been authorized by the Secretary of Health and Human Services under section 505 and pursuant to the order of a physician, is guilty of an offense punishable by not more than 5 years in prison, such fines as are authorized by title 18, United States Code, or both.

"(2) Whoever commits any offense set forth in paragraph (1) and such offense involves an individual under 18 years of age is punishable by not more than 10 years imprisonment, such fines as are authorized by title 18, United States Code, or both.

"(3) Any conviction for a violation of paragraphs (1) and (2) of this subsection shall be considered a felony violation of the Controlled Substances Act for the purposes of forfeiture under section 413 of such Act.

"(4) As used in this subsection the term 'human growth hormone' means somatrem, somatropin, or an analogue of either of them.

"(5) The Drug Enforcement Administration is authorized to investigate offenses punishable by this subsection.".

SEC. 1905. CONVICTION FOR VIOLATION OF SECTION 303(e) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

Section 2401 of the Anti-Drug Abuse Act of 1988 (Public Law 100-690; 102 Stat. 4181) is repealed.

SEC. 1906. DEMONSTRATION PROGRAMS REGARDING ANABOLIC STEROIDS.

Section 508(b) of the Public Health Service Act (42 U.S.C. 290aa-6(b)) is amended—

(1) in paragraph (10)(B), by striking "and" after the semicolon at the end;

(2) in paragraph (11)(B), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(12) develop and support innovative demonstration programs designed to identify and deter the improper use or abuse of anabolic steroids by students, especially students in secondary schools.".

SEC. 1907. CLERICAL CORRECTION.

Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended by inserting "(a)" before "It shall be unlawful" in the first undesignated paragraph.

TITLE XX—ASSET FORFEITURE

SEC. 2001. AMENDMENTS RELATING TO THE SPECIAL FORFEITURE FUND.

(a) ASSETS FORFEITURE FUND AMENDMENT.—Section 524(c)(9) of title 28, United States Code, is amended—

(1) in the first sentence, by striking out "(9) There" and inserting in lieu thereof "(9)(A) There"; and

(2) by striking out the second sentence and inserting in lieu thereof the following:

"(B) Subject to subparagraph (C), in each of fiscal years 1990, 1991, 1992, and 1993, the Attorney General may transfer from the Fund not more than $150,000,000 to the Special Forfeiture Fund established by section 6073 of the Anti-Drug Abuse Act of 1988. Such transfers shall be made at the end of each quarter of the fiscal year involved and on a quarterly pro rata basis.

"(C) Transfers under subparagraph (B) may be made only from excess unobligated amounts and only to the extent that, as determined by the Attorney General, such transfers will not impair the future availability of amounts for the purposes under paragraph (1).

"(D) At the end of each of fiscal years 1990, 1991, 1992, and 1993, the Attorney General may retain in the Fund not more than $15,000,000, or, if determined by the Attorney General to be necessary for asset-specific expenses, a greater amount equal to not more than one-tenth of the total of obligations from the Fund in preceding fiscal year.".

(b) SPECIAL FORFEITURE FUND AMENDMENT.—Section 6073(b) of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 1509(b)) is amended to read as follows:

"(b) DEPOSITS.—Deposits in the Fund shall be made by transfer from the Department of Justice Assets Forfeiture Fund in the manner provided in section 524(c)(9) of title 28, United States Code.".

SEC. 2002. CLARIFICATION OF ATTORNEY GENERAL'S AUTHORITY TO WARRANT CLEAR TITLE UPON TRANSFER OF FORFEITED PROPERTY.

Section 524(c) of title 28, United States Code, is amended—

(1) by redesignating paragraph (10) as paragraph (11); and

(2) by inserting after paragraph (9) the following new paragraph:

"(10) Following the completion of procedures for the forfeiture of property pursuant to any law enforced or administered by the Department, the Attorney General is authorized, at his discretion, to warrant clear title to any subsequent purchaser or transferee of such forfeited property.".

SEC. 2003. CLARIFICATION OF ATTORNEY GENERAL'S FORFEITURE SALE AUTHORITY.

Section 511(e)(1)(B) of the Controlled Substances Act (21 U.S.C. 881(e)(1)(B)) and section 2254(f)(2) of title 18, United States Code, are each amended by inserting after "sell" the following: ", by public sale or any other commercially feasible means,".

SEC. 2004. FORFEITURE AND DESTRUCTION OF DANGEROUS, TOXIC, AND HAZARDOUS MATERIALS.

Section 511(f) of the Controlled Substances Act (21 U.S.C. 881(f)) is amended by inserting after "this title" each place it appears the following: "; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (a)(2) of this section; and any equipment or container subject to forfeiture under subsection (a)(2) or (3) which cannot be separated safely from such raw materials or products".

SEC. 2005. ADDITIONAL FORFEITURE AWARD AUTHORITY.

Section 524(c)(1)(C) of title 28, United States Code, is amended to read as follows:

"(C) at the discretion of the Attorney General, the payment of awards for information or assistance leading to—

"(i) a civil or criminal forfeiture under the Controlled Substances Act or the Controlled Substances Import and Export Act;

"(ii) a criminal forfeiture under chapter 96 of title 18;

"(iii) a civil forfeiture under section 981 of title 18; or

"(iv) a criminal forfeiture under section 982 of title 18.".

SEC. 2006. REPORT TO CONGRESS.

Section 524(c)(6) of title 28, United States Code, is amended—

(1) in the matter before subparagraph (A), by striking out "two";

(2) by striking out "and" at the end of subparagraph (A);

(3) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; and"; and

(4) by adding at the end the following new subparagraph:

"(C) a report for such fiscal year, containing audited financial statements, in the form prescribed by the Attorney General, in consultation with the Comptroller General, including profit and loss information with respect to forfeited property (by category), and financial information on forfeited property transactions (by type of disposition).".

SEC. 2007. FORFEITURE OF DRUG PARAPHERNALIA.

Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended by adding at the end the following new paragraph:

"(10) Any drug paraphernalia (as defined in section 1822 of the Mail Order Drug Paraphernalia Control Act).".

SEC. 2008. FORFEITURE OF A FIREARM USED TO FACILITATE A DRUG OFFENSE.

Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended by adding at the end the following new paragraph:

"(11) Any firearm (as defined in section 921 of title 18, United States Code) used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) and any proceeds traceable to such property.".

TITLE XXI—PERKINS GRANT EXPANSION

SEC. 2101. POLICE RECRUITMENT EDUCATION PROGRAM.

(a) AMENDMENT.—Section 465(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1087ee(a)(2)) is amended—

(1) by striking "or" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(F) as a full-time law enforcement officer or corrections officer for service to local, State, or Federal law enforcement or corrections agencies.".

(b) CONFORMING AMENDMENT.—Section 465(a)(3)(i) of such Act (20 U.S.C. 1087ee(a)(3)(i)) is amended by striking "(A) or (C)" and inserting "(A), (C), or (F)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply only to loans made on or after the date of enactment of this Act under part E of title IV of Higher Education Act of 1965.

TITLE XXII—FIREARMS PROVISIONS

SEC. 2201. PROHIBITION AGAINST TRANSFERRING FIREARMS TO NONRESIDENTS.

Section 922(a)(5) of title 18, United States Code, is amended by striking "resides" the first place such term appears and all that follows through "(or other than that in which its place of business is located if the transferor is a corporation or other business entity);" and inserting "does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides;".

SEC. 2202. COMMERCE NEXUS FOR TRAFFICKING IN STOLEN FIREARMS.

(a) IN GENERAL.—Section 922(j) of title 18, United States Code, is amended by striking "or which constitutes," and inserting "which constitutes, or which has been shipped or transported in,".

(b) ALTERATION OF SERIAL NUMBER OF FIREARM.—Section 922(k) of title 18, United States Code, is amended by inserting "or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce" after "altered".

SEC. 2203. TECHNICAL AMENDMENTS.

(a) AMENDMENT TO SECTION 923(d)(1)(B).—Section 923(d)(1)(B) of title 18, United States Code, is amended by striking "(h)" and inserting "(n)".

(b) AMENDMENT TO SECTION 925(a)(1).—Section 925(a)(1) of title 18, United States Code, is amended by inserting "possession," before "or importation".

(c) AMENDMENTS TO SECTION 925(c).—Section 925(c) of title 18, United States Code, is amended—

(1) by striking "conviction" the first and third places such term appears and inserting "disability"; and

(2) by striking "by reason of such a conviction".

(d) AMENDMENTS TO SECTION 924(a).—Section 924(a) of title 18, United States Code, is amended by striking ", and shall become eligible for parole as the Parole Commission shall determine" each place such term appears. This amendment shall be effective with respect to any offense committed after November 1, 1987.

SEC. 2204. AMENDMENTS RELATING TO THE DOMESTIC ASSEMBLY OF NONIMPORTABLE FIREARMS.

(a) SEMIAUTOMATIC RIFLE DEFINED.—Section 921(a) of title 18, United States Code is amended by adding at the end the following:

"(25) The term 'semiautomatic rifle' means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.".

(b) PROHIBITIONS.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(q) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

"(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

"(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Secretary.".

(c) PENALTY.—Section 924(a)(1)(B) of title 18, United States Code is amended by striking "or (k)" and inserting "(k), or (q)".

SEC. 2205. PROHIBITION AGAINST POSSESSION OF FIREARMS IN FEDERAL COURT FACILITIES.

(a) PROHIBITION.—Section 930 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "(other than a Federal court facility)" before the second comma;

(2) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(3) by inserting after subsection (c) the following:

"(d)(1) Except as provided in paragraph (2), whoever knowingly possesses or causes to be present a firearm in a Federal court facility, or attempts to do so, shall be fined under this title, imprisoned not more than 2 years, or both.

"(2) Paragraph (1) shall not apply to conduct which is described in paragraph (1) or (2) of subsection (c).";

(4) in subsection (f) (as so redesignated by paragraph (2) of this subsection), by adding at the end the following:

"(3) The term 'Federal court facility' means the courtroom, judges' chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States."; and

(5) in subsection (g) (as so redesignated by paragraph (2) of this subsection)—

(A) by inserting "and notice of subsection (d) shall be posted conspicuously at each public entrance to each Federal court facility," after the first comma;

(B) by inserting "or (d)" before "with respect to"; and

(C) by inserting "or (d), as the case may be" before the period.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to conduct engaged in after the date of the enactment of this Act.

TITLE XXIII—CHEMICAL DIVERSION AND TRAFFICKING

SEC. 2301. CHEMICAL DIVERSION AND TRAFFICKING.

(a) NEW LISTED PRECURSOR CHEMICALS.—Section 102(34) of the Controlled Substances Act (21 U.S.C. 802(34)) is amended by adding at the end the following:

"(M) Methylamine.
"(N) Ethylamine.
"(O) D-lysergic acid.
"(P) Propionic anhydride.
"(Q) Insosafrole.
"(R) Safrole.
"(S) Piperonal.
"(T) N-Methylepherdrine.
"(U) N-ethylephedrine.
"(V) N-methylpseudoephedrine.
"(W) N-ethylpseudoephedrine.
"(X) Hydriotic acid.
"(Y) Any salt, optical isomer, or salt of an optical isomer of the chemicals listed in subparagraphs (M) through (X) of this paragraph.".

(b) CONFORMING REPEAL.—Section 102(35) of the Controlled Substances Act (21 U.S.C. 802(35)) is amended by striking subparagraph (E).

TITLE XXIV—DRUG PARAPHERNALIA

SEC. 2401. DRUG PARAPHERNALIA.

(a) IN GENERAL.—The Controlled Substances Act is amended by adding at the end of part D the following:

"DRUG PARAPHERNALIA

"SEC. 418. (a) It is unlawful for any person—

"(1) to sell or offer for sale drug paraphernalia;

"(2) to use the mails or any other facility of interstate commerce to transport drug paraphernalia; or

"(3) to import or export drug paraphernalia.".

(b) TRANSFER OF REMAINING EXISTING PROVISIONS RELATING TO DRUG PARAPHERNALIA.—Subsections (b) through (f) of section 1822 of the Anti-Drug Abuse Act of 1986 (21 U.S.C. 857) are transferred to appear as subsections (b) through (f) of the section 418 added to the Controlled Substances Act by this section.

(c) TECHNICAL CORRECTIONS TO TRANSFERRED PROVISIONS.—The provisions of law transferred by subsection (b) are amended—

(1) in subsection (b), by striking "not more than $100,000" and inserting "under title 18, United States Code"; and

(2) in subsection (f), by striking "this subtitle" and inserting "this section".

(d) CONFORMING REPEAL.—Subtitle O of title I of the Anti-Drug Abuse Act of 1986 is repealed.

TITLE XXV—LICIT OPIUM IMPORTS

SEC. 2501. UNITED STATES POLICY REGARDING IMPORTATION OF NARCOTIC RAW MATERIAL.

(a) REVIEW REQUIRED.—The President shall conduct a review of United States narcotics raw material policy to determine the advisability of continued reliance on the "80-20 rule" (21 C.F.R. sec. 1312.13) by which at least 80 percent of United States imports of narcotics raw material must come from India and Turkey.

(b) AGENCIES TO BE INVOLVED.—This review shall include information and views from the Department of State, the Administrator of the Drug Enforcement Administration, and the Secretary of the Department of Health and Human Services, the Secretary of Commerce and any other agencies the President determines appropriate.

(c) NATURE AND CONTENTS.—This review shall include—

(1) a report on the extent of the diversion taking place from the licit to the illicit market in India from the farm gate through the stockpile;

(2) an evaluation of the efforts being made by the Government of India to stop diversion from the licit to the illicit market, to limit its stockpile of opium gum, and to limit and regulate the amount of land and number of farmers devoted to poppy cultivation, and the success or failure of these efforts;

(3) a description of the steps the President has taken to encourage these actions on the part of the Indian government, what further steps are contemplated and what action will be taken if Indian action proves ineffective;

(4) an assessment of whether continued reliance on the 80-20 rule serves to encourage these actions, an assessment of what circumstances would make continued reliance on the rule unacceptable to the President, and proposals for executive or legislative modification of the rule under those circumstances;

(5) an assessment of the feasibility of India converting from the opium gum to the concentrated poppy straw method of opium production;

(6) an assessment of the effects on United States supplies of narcotic raw material in the absence of 80-20; and

(7) an evaluation of the potential for market manipulation under the 80-20 rule.

(d) REPORT TO CONGRESS.—The President shall report the results of this review to Congress not later than April 1, 1991.

TITLE XXVI—SENTENCING FOR METHAMPHETAMINE OFFENSES

SEC. 2601. SENTENCING COMMISSION GUIDELINES.

The United States Sentencing Commission is instructed to amend the existing guidelines for offenses involving smokable crystal methamphetamine under section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) so that convictions for offenses involving smokable crystal methamphetamine will be assigned an offense level under the guidelines which is two levels above that which would have been assigned to the same offense involving other forms of methamphetamine.

TITLE XXVII—BANKING LAW ENFORCEMENT

SEC. 2700. SHORT TITLE.

This title may be cited as the "Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990".

Subtitle A—Enhanced Criminal Penalties

SEC. 2701. CONCEALMENT OF ASSETS FROM FDIC, RTC, OR NCUA ESTABLISHED AS CRIMINAL OFFENSE.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1032. Concealment of assets from conservator, receiver, or liquidating agent of financial institution

"Whoever—

"(1) knowingly conceals or endeavors to conceal an asset or property from the Federal Deposit Insurance Corporation, acting as conservator or receiver or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13, the Resolution Trust Corporation, any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, or the National Credit Union Administration Board, acting as conservator or liquidating agent;

"(2) corruptly impedes or endeavors to impede the functions of such Corporation, Board, or conservator; or

"(3) corruptly places or endeavors to place an asset or property beyond the reach of such Corporation, Board, or conservator,

shall be fined under this title or imprisoned not more than 5 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1031 the following new item:

"1032. Concealment of assets from conservator, receiver, or liquidating agent of financial institution.".

SEC. 2702. PROHIBITION ON CONTROL OF OR PARTICIPATION IN DEPOSITORY INSTITUTION BY CERTAIN CONVICTED PERSONS.

(a) FDIC INSURED DEPOSITORY INSTITUTIONS.—Section 19(a) of the Federal Deposit Insurance Act (12 U.S.C. 1829(a)) is amended to read as follows:

"(a) PROHIBITION.—

"(1) IN GENERAL.—Except with the prior written consent of the Corporation—

"(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

"(i) become, or continue as, an institution-affiliated party with respect to any insured depository institution;

"(ii) own or control, directly or indirectly, any insured depository institution; or

"(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution; and

"(B) any insured depository institution may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

"(2) MINIMUM 10-YEAR PROHIBITION PERIOD FOR CERTAIN OFFENSES.—

"(A) IN GENERAL.—If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

"(i) an offense under—

"(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, or 1956 of title 18, United States Code; or

"(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

"(ii) the offense of conspiring to commit any such offense,

the Corporation may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

"(B) EXCEPTION BY ORDER OF SENTENCING COURT.—

"(i) IN GENERAL.—On motion of the Corporation, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

"(ii) PERIOD FOR FILING.—A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.".

SEC. 2703. CRIME OF OBSTRUCTING AN EXAMINER.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code (relating to obstruction of justice) is amended by inserting after section 1516 the following new section:

"§1517. Obstructing examination of financial institution

"Whoever corruptly obstructs or attempts to obstruct any examination of a financial institution by an agency of the United States with jurisdiction to conduct an examination of such financial institution shall be fined under this title, imprisoned not more than 5 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1516 the following new item:

"1517. Obstructing examination of financial institution.".

SEC. 2704. INCREASING BANK FRAUD AND EMBEZZLEMENT PENALTIES.

(a) RECEIPT OF COMMISSIONS OR GIFTS FOR PROCURING LOANS.—Section 215(a) of title 18, United States Code, is amended by striking "20" and inserting "30".

(b) THEFT, EMBEZZLEMENT, OR MISAPPLICATION BY BANK OFFICER OR EMPLOYEE.—Section 656 of title 18, United States Code, is amended by striking "20" and inserting "30".

(c) LENDING, CREDIT, AND INSURANCE INSTITUTIONS.—Section 657 of title 18, United States Code, is amended by striking "20" and inserting "30".

(d) BANK ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1005 of title 18, United States Code, is amended by striking "20" and inserting "30".

(e) FEDERAL CREDIT INSTITUTION ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1006 of title 18, United States Code, is amended by striking "20" and inserting "30".

(f) FEDERAL DEPOSIT INSURANCE CORPORATION TRANSACTIONS.—Section 1007 of title 18, United States Code, is amended by striking "20" and inserting "30".

(g) FALSE STATEMENTS IN LOAN, CREDIT, AND CROP INSURANCE APPLICATIONS.—Section 1014 of title 18, United States Code, is amended by striking "20" and inserting "30".

(h) FRAUDS AND SWINDLES AFFECTING FINANCIAL INSTITUTIONS.—The last sentence of section 1341 of title 18, United States Code, is amended by striking "20" and inserting "30".

(i) WIRE FRAUDS AFFECTING FINANCIAL INSTITUTIONS.—The last sentence of section 1343 of title 18, United States Code, is

amended by striking "20" and inserting "30".

(j) BANK FRAUD.—Section 1344 of title 18, United States Code, is amended by striking "20" and inserting "30".

SEC. 2705. STATUTE OF LIMITATIONS FOR RICO OFFENSES INVOLVING FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Section 3293 of title 18, United States Code, is amended—

(1) by striking "or" at the end of paragraph (1);

(2) by inserting "or" at the end of paragraph (2); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) section 1963, to the extent that the racketeering activity involves a violation of section 1344;".

(b) SCOPE OF APPLICATION.—The amendments made by subsection (a) shall apply to any offense committed before the date of the enactment of this section, if the statute of limitations applicable to that offense had not run as of such date.

SEC. 2706. MONEY LAUNDERING INVOLVING BANK CRIMES.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting "section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), " after "section 875 (relating to interstate communications),"; and

(2) by inserting "section 1341 (relating to mail fraud) or section 1343 (relating to wire fraud) affecting a financial institution," after "section 1203 (relating to hostage taking),".

SEC. 2707. INCREASED PENALTIES IN MAJOR BANK CRIME CASES.

(a) INCREASED PENALTIES.—Pursuant to section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide that a defendant convicted of violating, or conspiring to violate, section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18, United States Code, or section 1341 or 1343 affecting a financial institution (as defined in section 20 of title 18, United States Code), shall be assigned not less than offense level 24 under chapter 2 of the sentencing guidelines if the defendant derives more than $1,000,000 in gross receipts from the offense.

(b) AMENDMENTS TO SENTENCING GUIDELINES.—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.

SEC. 2708. RESTORATION OF PROPERTY FOR VICTIMS OF BANK CRIMES.

Section 981(e) of title 18, United States Code, is amended—

(1) by striking out "or" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting a semicolon; and

(3) by adding after paragraph (5) the following new paragraph:

"(6) in the case of property referred to in subsection (a)(1)(C), restore forfeited property to any victim of an offense described in subsection (a)(1)(C); or".

SEC. 2709. ENHANCEMENT OF ABILITY TO ORDER RESTITUTION IN CERTAIN FRAUD CASES.

Section 3663(a) of title 18, United States Code, is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) For the purposes of restitution, a victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity means any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

"(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.".

SEC. 2710. FINANCIAL CRIME KINGPIN STATUTE.

(a) CONTINUING FINANCIAL CRIME ENTERPRISES.—Chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 225. Continuing financial crimes enterprise

"(a) Whoever—

"(1) organizes, manages, or supervises a continuing financial crimes enterprise; and

"(2) receives $5,000,000 or more in gross receipts from such enterprise during any 24-month period,

shall be fined not more than $10,000,000 if an individual, or $20,000,000 if an organization, and imprisoned for a term of not less than 10 years and which may be life.

"(b) For purposes of subsection (a), the term 'continuing financial crimes enterprise' means a series of violations under section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of this title, or section 1341 or 1343 affecting a financial institution, committed by at least 4 persons acting in concert.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end the following new item:

"225. Continuing financial crimes enterprise.".

SEC. 2711. FRAUDULENT CONVEYANCES AVOIDABLE BY CONSERVATORS AND RECEIVERS.

(a) INSURED DEPOSITORY INSTITUTIONS OTHER THAN INSURED CREDIT UNIONS.—Section 11(d) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)) is amended by adding at the end the following new paragraph:

"(17) FRAUDULENT TRANSFERS.—

"(A) IN GENERAL.—The Corporation, as conservator or receiver for any insured depository institution, and any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured depository institution, the Corporation or other conservator, or any other appropriate Federal banking agency.

"(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Corporation or any conservator described in such subparagraph may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

"(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

"(ii) any immediate or mediate transferee of any such initial transferee.

"(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation or any conservator described in subparagraph (A) may not recover under subparagraph (B) from—

"(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

"(ii) any immediate or mediate good faith transferee of such transferee.

"(D) RIGHTS UNDER THIS PARAGRAPH.—The rights under this paragraph of the Corporation and any conservator described in subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.".

(b) INSURED CREDIT UNIONS.—Section 207(b) of the Federal Credit Union Act (12 U.S.C. 1787(b)) is amended by adding at the end the following new paragraph:

"(16) FRAUDULENT TRANSFERS.—

"(A) IN GENERAL.—The Board, as conservator or liquidating agent for any insured credit union, may avoid a transfer of any interest of an institution-affiliated party, or any person who the Board determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Board becomes conservator or liquidating agent if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured credit union or the Board.

"(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Board may recover, for the benefit of the insured credit union, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

"(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

"(ii) any immediate or mediate transferee of any such initial transferee.

"(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Board may not recover under subparagraph (B) from—

"(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

"(ii) any immediate or mediate good faith transferee of such transferee.

"(D) RIGHTS UNDER THIS PARAGRAPH.—The rights of the Board under this paragraph shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.".

Subtitle B—Protecting Assets From Wrongful Disposition

SEC. 2721. INJUNCTIVE RELIEF; PREJUDGMENT ATTACHMENTS.

(a) INJUNCTIVE RELIEF.—

(1) APPLICATION BY CONSERVATOR OR RECEIVER FOR INSURED DEPOSITORY INSTITUTIONS.—Section 11(d) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)) is amended by inserting after paragraph (17) (as added by section 2711 of this title) the following new paragraphs:

"(18) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (19),

any court of competent jurisdiction may, at the request of—

"(A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13); or

"(B) any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision,

issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

"(19) STANDARDS.—

"(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (18) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

"(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation or a conservator pursuant to paragraph (18) may be requested under the laws of such State.".

(2) APPLICATION BY CONSERVATOR OR LIQUIDATING AGENT FOR INSURED CREDIT UNION.—Section 207(b)(2) of the Federal Credit Union Act (12 U.S.C. 1787(b)(2)) is amended by redesignating subparagraph (G) as subparagraph (I) and by inserting after subparagraph (F) the following new subparagraphs:

"(G) ATTACHMENT OF ASSETS AND INJUNCTIVE RELIEF.—Subject to subparagraph (H), any court of competent jurisdiction may, at the request of the Board (in the Board's capacity as conservator or liquidating agent for any insured credit union or in the Board's corporate capacity in the exercise of any authority under section 207), issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Board under the control of the court and appointing a trustee to hold such assets.

"(H) STANDARDS.—

"(i) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (G) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

"(ii) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought by the Board pursuant to subparagraph (G) may be requested under the laws of such State.".

(b) PREJUDGMENT ATTACHMENTS.—

(1) APPROPRIATE FEDERAL BANKING AGENCIES.—Section 8(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)) is amended by adding at the end the following new paragraph:

"(4) PREJUDGMENT ATTACHMENT.—

"(A) IN GENERAL.—In any action brought by an appropriate Federal banking agency (excluding the Corporation when acting in a manner described in section 11(d)(18)) pursuant to this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by such agency, the court may, upon application of the agency, issue a restraining order that—

"(i) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

"(ii) appoints a temporary receiver to administer the restraining order.

"(B) STANDARD.—A permanent or temporary injunction or restraining order shall be granted without bond upon a prima facie showing that money damages, restitution, or civil money penalties, as sought by such agency, is appropriate.".

(2) ATTORNEY GENERAL.—Section 1345 of title 18, United States Code, is amended—

(1) by striking the 1st sentence and inserting the following:

"(a)(1) If a person is—

"(A) violating or about to violate this chapter or section 287, 371 (insofar as such violation involves a conspiracy to defraud the United States or any agency thereof), or 1001 of this title; or

"(B) committing or about to commit a banking law violation (as defined in section 3322(d) of this title),

the Attorney General may commence a civil action in any Federal court to enjoin such violation.

"(2) If a person is alienating or disposing of property, or intends to alienate or dispose of property, obtained as a result of a banking law violation (as defined in section 3322(d) of this title) or property which is traceable to such violation, the Attorney General may commence a civil action in any Federal court—

"(A) to enjoin such alienation or disposition of property; or

"(B) for a restraining order to—

"(i) prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any such property or property of equivalent value; and

"(ii) appoint a temporary receiver to administer such restraining order.

(3) A permanent or temporary injunction or restraining order shall be granted without bond."; and

(2) by redesignating the material remaining in such section as subsection (b).

SEC. 2722. NONDISCHARGE OF DEBTS IN FEDERAL BANKRUPTCY INVOLVING OBLIGATIONS ARISING FROM A BREACH OF FIDUCIARY DUTY; DISALLOWING USE OF BANKRUPTCY TO EVADE COMMITMENTS TO MAINTAIN THE CAPITAL OF A FEDERALLY INSURED DEPOSITORY INSTITUTION OR TO EVADE CIVIL OR CRIMINAL LIABILITY.

(a) EXCEPTION TO DISCHARGE IN GENERAL.—Section 523 of title 11, United States Code, is amended—

(1) in subsection (a) by—

(A) striking "or" at the end of paragraph (9);

(B) striking the period at the end of paragraph (10) and inserting instead a semicolon; and

(C) adding at the end thereof the following new paragraphs:

"(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union, or

"(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;"; and

(2) by adding at the end thereof the following new subsections:

"(e) Any institution-affiliated party of a depository institution or insured credit union shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a) (4) or (11).".; and

(2) in subsection (c)—

(A) by inserting "(1)" after "(c)"; and

(B) by adding at the end the following:

"(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.".

(b) EXCEPTION TO EXEMPTIONS.—

(1) AMENDMENTS.—Section 522(c) of title 11, United States Code, is amended—

(A) in paragraph (1) by striking "or" at the end;

(B) in paragraph (2) by striking the period and inserting "; or"; and

(C) by adding at the end the following:

"(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution.".

(c) ASSUMPTION OF COMMITMENTS AS EXECUTORY CONTRACTS.—Section 365 of title 11, United States Code, is amended by adding at the end thereof the following:

"(o) In a case under chapter 11 of this title, the trustee shall be deemed to have assumed (consistent with the debtor's other obligations under section 507), and shall immediately cure any deficit under, any commitment by the debtor to the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Director of the Office of Thrift Supervision, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System, or its predecessors or successors, to maintain the capital of an insured depository institution, and any claim for a subsequent breach of the obligations thereunder shall be entitled to priority under section 507. This subsection shall not extend any commitment that would otherwise be terminated by any act of such an agency.".

(d) COMMITMENTS TO MAINTAIN THE CAPITAL OF FEDERALLY INSURED DEPOSITORY INSTITUTIONS.—Section 507(a) of title 11,

United States Code, is amended by adding at the end the following new paragraph:

"(8) Eighth, allowed unsecured claims based upon any commitment by the debtor to the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Director of the Office of Thrift Supervision, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution.".

(e) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by redesignating paragraphs (32) through (53) as paragraph (36) through (57), respectively;

(2) by inserting before paragraph (36), as so redesignated, the following:

"(33) 'institution-affiliated party'—

"(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)); and

"(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act (12 U.S.C. 1786(r));

"(34) 'insured credit union' has the meaning given it in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7));

"(35) 'insured depository institution'—

"(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)); and

"(B) includes an insured credit union (except in the case of paragraphs (3) and (33)(A) of this subsection);";

(3) by redesignating paragraphs (3) through (31) as paragraphs (4) through (32), respectively; and

(4) by inserting after paragraph (2) the following:

"(3) 'Federal depository institutions regulatory agency' means—

"(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);

"(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;

"(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and

"(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation;".

SEC. 2723. REGULATION OF GOLDEN PARACHUTES AND OTHER BENEFITS WHICH ARE SUBJECT TO MISUSE.

(a) FDIC INSURED DEPOSITORY INSTITUTIONS.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by inserting after subsection (j) the following new subsection:

"(k) AUTHORITY TO REGULATE OR PROHIBIT CERTAIN FORMS OF BENEFITS TO INSTITUTION-AFFILIATED PARTIES.—

"(1) GOLDEN PARACHUTES AND INDEMNIFICATION PAYMENTS.—The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

"(2) FACTORS TO BE TAKEN INTO ACCOUNT.—The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:

"(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or depository institution holding company that has had a material affect on the financial condition of the institution.

"(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the depository institution or depository institution holding company, the appointment of a conservator or receiver for the depository institution, or the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 32(f)).

"(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the institution.

"(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

"(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18, United States Code; or

"(ii) section 1341 or 1343 of such title affecting a federally insured financial institution.

"(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

"(F) The length of time the party was affiliated with the insured depository institution or depository institution holding company and the degree to which—

"(i) the payment reasonably reflects compensation earned over the period of employment; and

"(ii) the compensation involved represents a reasonable payment for services rendered.

"(3) CERTAIN PAYMENTS PROHIBITED.—No insured depository institution or depository institution holding company may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

"(A) in contemplation of the insolvency of such institution or holding company or after the commission of an act of insolvency; and

"(B) with a view to, or has the result of—

"(i) preventing the proper application of the assets of the institution to creditors; or

"(ii) preferring one creditor over another.

"(4) GOLDEN PARACHUTE PAYMENT DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'golden parachute payment' means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or depository institution holding company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or holding company that—

"(i) is contingent on the termination of such party's affiliation with the institution or holding company; and

"(ii) is received on or after the date on which—

"(I) the insured depository institution or depository institution holding company, or any insured depository institution subsidiary of such holding company, is insolvent;

"(II) any conservator or receiver is appointed for such institution; or

"(III) the institution's appropriate Federal banking agency determines that the insured depository institution is in a troubled condition (as defined in the regulations prescribed pursuant to section 32(f));

"(IV) the insured depository institution has been assigned a composite rating by the appropriate Federal banking agency or the Corporation of 4 or 5 under the Uniform Financial Institutions Rating System; or

"(V) the insured depository institution is subject to a proceeding initiated by the Corporation to terminate or suspend deposit insurance for such institution.

"(B) CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT.—Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

"(C) CERTAIN PAYMENTS NOT INCLUDED.—The term 'golden parachute payment' shall not include—

"(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of the Internal Revenue Code of 1986 or other nondiscriminatory benefit plan;

"(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

"(iii) any payment made by reason of the death or disability of an institution-affiliated party.

"(5) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) INDEMNIFICATION PAYMENT.—Subject to paragraph (6), the term 'indemnification payment' means any payment (or any agreement to make any payment) by any insured depository institution or depository institution holding company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person—

"(i) is assessed a civil money penalty;

"(ii) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or

"(iii) is required to take any affirmative action described in section 8(b)(6) with respect to such institution.

"(B) LIABILITY OR LEGAL EXPENSE.—The term 'liability or legal expense' means—

"(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

"(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

"(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

"(C) PAYMENT.—The term 'payment' includes—

"(i) any direct or indirect transfer of any funds or any asset; and

"(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment

after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

"(I) the determination, after such date, of the liability for the payment of such amount; or

"(II) the liquidation, after such date, of the amount of such payment.

"(6) CERTAIN COMMERCIAL INSURANCE COVERAGE NOT TREATED AS COVERED BENEFIT PAYMENT.—No provision of this subsection shall be construed as prohibiting any insured depository institution or depository institution holding company from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the institution or holding company which is described in paragraph (5)(A).".

(b) NCUA INSURED CREDIT UNIONS DEPOSITORY INSTITUTIONS.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end the following new subsection:

"(t) REGULATION OF CERTAIN FORMS OF BENEFITS TO INSTITUTION-AFFILIATED PARTIES.—

"(1) GOLDEN PARACHUTES AND INDEMNIFICATION PAYMENTS.—The Board may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

"(2) FACTORS TO BE TAKEN INTO ACCOUNT.—The Board shall prescribe, by regulation, the factors to be considered by the Board in taking any action pursuant to paragraph (1) which may include such factors as the following:

"(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the credit union that has had a material affect on the financial condition of the credit union.

"(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the credit union, the appointment of a conservator or liquidating agent for the credit union, or the credit union's troubled condition (as defined in prescribed by the Board pursuant to paragraph (4)(A)(ii)(III)).

"(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the credit union.

"(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

"(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18, United States Code; or

"(ii) section 1341 or 1343 of such title affecting a financial institution.

"(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

"(F) The length of time the party was affiliated with the credit union and the degree to which—

"(i) the payment reasonably reflects compensation earned over the period of employment; and

"(ii) the compensation involved represents a reasonable payment for services rendered.

"(3) CERTAIN PAYMENTS PROHIBITED.—No credit union may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

"(A) in contemplation of the insolvency of such credit union or after the commission of an act of insolvency; and

"(B) with a view to, or has the result of—

"(i) preventing the proper application of the assets of the credit union; or

"(ii) preferring one creditor over another.

"(4) GOLDEN PARACHUTE PAYMENT DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'golden parachute payment' means any payment (or any agreement to make any payment) in the nature of compensation by any credit union for the benefit of any institution-affiliated party pursuant to an obligation of such credit union that—

"(i) is contingent on the termination of such party's affiliation with the credit union; and

"(ii) is received on or after the date on which—

"(I) the credit union is insolvent;

"(II) any conservator or liquidating agent is appointed for such credit union; or

"(III) the Board determines that the credit union is in a troubled condition (as defined in regulations which the Board shall prescribe);

"(IV) the credit union has been assigned a composite rating by the Board of 4 or 5 under the Uniform Financial Institutions Rating System (as applicable with respect to credit unions); or

"(V) the credit union is subject to a proceeding initiated by the Board to terminate or suspend deposit insurance for such credit union.

"(B) CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT.—Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

"(C) CERTAIN PAYMENTS NOT INCLUDED.—The term 'golden parachute payment' shall not include—

"(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of the Internal Revenue Code of 1986 or other nondiscriminatory retirement or severance benefit plan;

"(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

"(iii) any payment made by reason of the death or disability of an institution-affiliated party.

"(5) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) INDEMNIFICATION PAYMENT.—Subject to paragraph (6), the term 'indemnification payment' means any payment (or any agreement to make any payment) by any credit union for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Board which results in a final order under which such person—

"(i) is assessed a civil money penalty;

"(ii) is removed or prohibited from participating in conduct of the affairs of the credit union; or

"(iii) is required to take any affirmative action described in section 206(e)(3) with respect to such credit union.

"(B) LIABILITY OR LEGAL EXPENSE.—The term 'liability or legal expense' means—

"(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

"(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

"(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

"(C) PAYMENT.—The term 'payment' includes—

"(i) any direct or indirect transfer of any funds or any asset; and

"(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

"(I) the determination, after such date, of the liability for the payment of such amount; or

"(II) the liquidation, after such date, of the amount of such payment.

"(6) CERTAIN COMMERCIAL INSURANCE COVERAGE NOT TREATED AS COVERED BENEFIT PAYMENT.—No provision of this subsection shall be construed as prohibiting any credit union from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the credit union which is described in paragraph (5)(A).".

SEC. 2524. AMENDMENTS RELATING TO CIVIL FORFEITURE.

Section 981 of title 18, United States Code, is amended—

(1) in subsection (a)(1)(C)—

(A) by inserting "1032," after "1014,"; and

(B) by inserting "or a violation of section 1341 or 1343 of such title affecting a financial institution" before the period;

(2) in subsection (b)—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(B) by striking all that appears before subparagraph (A) (as so redesignated by subparagraph (A) of this paragraph) and inserting the following:

"(b)(1) Any property—

"(A) subject to forfeiture to the United States under subparagraph (A) or (B) of subsection (a)(1) of this section—

"(i) may be seized by the Attorney General; or

"(ii) in the case of property involved in a violation of section 5313(a) or 5324 of title 31, United States Code, or section 1956 or 1957 of this title investigated by the Secretary of the Treasury or the United States Postal Service, may be seized by the Secretary of the Treasury or the Postal Service; and

"(B) subject to forfeiture to the United States under subparagraph (C) of subsection (a)(1) of this section may be seized by the Attorney General, the Secretary of the Treasury, or the Postal Service.

"(2) Property shall be seized under paragraph (1) of this subsection upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—";

(3) in subsection (e)(3), by striking "(if the affected financial institution is in receivership or liquidation)"; and

(4) in subsection (e)(4), by striking "(if the affected financial institution is not in receivership or liquidation)".

SEC. 2725. CIVIL AND CRIMINAL FORFEITURE FOR FRAUD IN THE SALE OF ASSETS BY THE RESOLUTION TRUST CORPORATION, FDIC, OR NCUA.

(a) CIVIL FORFEITURE.—

(1) IN GENERAL.—Section 981(a)(1) of title 18, United States Code, is amended by adding the following new subparagraphs:

"(D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, from a violation of—

"(i) section 666(a)(1) (relating to Federal program fraud);

"(ii) section 1001 (relating to fraud and false statements;

"(iii) section 1031 (relating to major fraud against the United States);

"(iv) section 1032 (relating to concealment of assets from conservator or receiver of insured financial institution);

"(v) section 1341 (relating to mail fraud); or

"(vi) section 1343 (relating to wire fraud),

if such violation relates to the sale of assets acquired or held by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution, or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.

"(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 981(e) of title 18, United States Code, is amended by inserting after paragraph (6) (as added by section 108(3) of this Act) the following new paragraph:

"(7) In the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act).".

(b) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended by adding the following new paragraphs:

"(3) The court, in imposing a sentence on a person convicted of an offense under—

"(A) section 666(a)(1) (relating to Federal program fraud);

"(B) section 1001 (relating to fraud and false statements);

"(C) section 1031 (relating to major fraud against the United States);

"(D) section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of insured financial institution);

"(E) section 1341 (relating to mail fraud); or

"(F) section 1343 (relating to wire fraud),

involving the sale of assets acquired or held by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision, or the National Credit Union Administration, as conservator or liquidating agent for a financial institution, shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violation.

"(4) With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations, or promises, the gross receipts of such an offense shall include any property, real or personal, tangible or intangible, which is obtained, directly or indirectly, as a result of such offense.".

SEC. 2726. PROHIBITION ON ACQUISITIONS FROM CONSERVATORS AND RECEIVERS OF DEPOSITORY INSTITUTIONS BY CONVICTED FELONS.

(a) FDIC INSURED DEPOSITORY INSTITUTIONS.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following new subsection:

"(p) CERTAIN CONVICTED DEBTORS PROHIBITED FROM PURCHASING ASSETS.—

"(1) CONVICTED DEBTORS.—Except as provided in paragraph (2), any individual who—

"(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit such an offense, affecting any insured depository institution for which any conservator or receiver has been appointed; and

"(B) is in default on any loan or other extension of credit from such insured depository institution which, if not paid, will cause substantial loss to the institution, any deposit insurance fund, the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation,

may not purchase any asset of such institution from the conservator or receiver.

"(2) SETTLEMENT OF CLAIMS.—Paragraph (1) shall not apply to the sale or transfer by the Corporation of any asset of any insured depository institution to any individual if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

"(A) 1 or more claims that have been, or could have been, asserted by the Corporation against the individual; or

"(B) obligations owed by the individual to any insured depository institution, the FSLIC Resolution Fund, the Resolution Trust Corporation, or the Corporation.".

(b) INSURED CREDIT UNIONS.—Section 207 of the Federal Credit Union Act (12 U.S.C. 1787) is amended by adding at the end the following new subsection:

"(q) PROHIBITION ON CERTAIN ACQUISITIONS OF ASSETS.—

"(1) CONVICTED DEBTORS.—Except as provided in paragraph (2), any individual who—

"(A) has been convicted of an offense under section 215, 657, 1006, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit any such offense, affecting any insured credit union for which the Board is appointed conservator or liquidating agent; and

"(B) is in default on any loan or other extension of credit from such insured credit union which, if not paid, will cause substantial loss to the credit union, the National Credit Union Share Insurance Fund, or the Board,

may not purchase any asset of such credit union from the conservator or liquidating agent.

"(2) SETTLEMENT OF CLAIMS.—Paragraph (1) shall not apply to the sale or transfer by the Board of any asset of any insured credit union to any individual if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

"(A) 1 or more claims that have been, or could have been, asserted by the Board against the individual; or

"(B) obligations owed by the individual to the insured credit union or the Board.".

(c) LIMITATION ON RTC ASSET SALES.—Section 21A(f) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(f)) is amended to read as follows:

"(f) LIMITATION ON CERTAIN CORPORATION ACTIVITIES.—

"(1) CERTAIN SALES PROHIBITED.—The Corporation shall prescribe regulations to prohibit the sale of assets of a failed institution by the Corporation to any person who—

"(A)(i) has defaulted, or was a member of a partnership or an officer or director of a corporation which has defaulted, on 1 or more obligations the aggregate amount of which exceed $1,000,000 to such failed institution;

"(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

"(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution subject to the jurisdiction of the Corporation pursuant to paragraph (3)(A);

"(B) participated, as an officer or director of such failed institution or of any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

"(C) has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

"(D) has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution.

"(2) SETTLEMENT OF CLAIMS; DEFINITIONS.—

"(A) SETTLEMENT OF CLAIMS.—Nothing in this subsection shall prohibit the Corporation from selling or otherwise transferring any asset to any person if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of obligations owed by the person to the failed institution or the Corporation.

"(B) DEFINITIONS.—For purposes of paragraph (1)—

"(i) DEFAULT.—The term 'default' means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

"(ii) AFFILIATE.—The term 'affiliate' has the meaning given to such term in section 2(k) of the Bank Holding Company Act of 1956.".

SEC. 2727. EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.

(a) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by inserting after subsection (p) (as added by section 2726 of this title) the following new subsection:

"(q) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

"(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be decided not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

"(2) SCHEDULING.—Consistent with section 1657 of title 28, United States Code, a court of the United States shall expedite the consideration of any case brought by the Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution. As far as practicable the court shall give such case priority on its docket.

"(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.".

(b) CONFORMING AMENDMENT.—Section 1657 of title 18, United States Code, is amended by inserting "section 11, 12, or 13 of the Federal Deposit Insurance Act" after "consideration of any action brought under".

Subtitle C—Improved Procedures for Handling Banking-Related Cases

SEC. 2731. WIRETAP AUTHORITY FOR BANK FRAUD AND RELATED OFFENSES; TECHNICAL AMENDMENTS TO WIRETAP LAW.

Section 2516 of title 18, United States Code, is amended—

(1) in paragraph (1)(c)—

(A) by inserting "section 215 (relating to bribery of bank officials)," before "section 224";

(B) by inserting "section 1014 (relating to loans and credit applications generally; renewals and discounts)," before "sections 1503,";

(C) by inserting "section 1032 (relating to concealment of assets)," before "section 1084";

(D) by inserting "section 1344 (relating to bank fraud)," before "sections 2251 and 2252"; and

(E) by striking "the section in chapter 65 relating to destruction of an energy facility,"; and

(2) in paragraph (1)—

(A) by striking the 1st subparagraph which is designated as "(m)";

(B) by striking "and" at the end of the 2d subparagraph designated as "(m)" (as determined before the amendment made by subparagraph (A) of this paragraph);

(C) by striking the period at the end of subparagraph (n) and inserting "; and"; and

(D) by adding at the end the following new subparagraph:

"(o) any conspiracy to commit any offense described in any subparagraph of this paragraph."; and

(3) in paragraph (1)(j), by striking "any violation of section 1679(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code" and inserting "any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 902 of the Federal Aviation Act of 1958 (relating to aircraft piracy)".

SEC. 2732. FOREIGN INVESTIGATIONS BY FEDERAL BANKING AGENCIES AND INVESTIGATIONS ON BEHALF OF FOREIGN BANKING AUTHORITIES.

(a) APPROPRIATE FEDERAL BANKING AGENCIES, GENERALLY.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following new subsection:

"(v) FOREIGN INVESTIGATIONS.—

"(1) REQUESTING ASSISTANCE FROM FOREIGN BANKING AUTHORITIES.—In conducting any investigation, examination, or enforcement action under this Act, the appropriate Federal banking agency may—

"(A) request the assistance of any foreign banking authority; and

"(B) maintain an office outside the United States.

"(2) PROVIDING ASSISTANCE TO FOREIGN BANKING AUTHORITIES.—

"(A) IN GENERAL.—Any appropriate Federal banking agency may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

"(B) INVESTIGATION BY FEDERAL BANKING AGENCY.—Any appropriate Federal banking agency may, in such agency's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the appropriate Federal banking agency.

"(C) FACTORS TO CONSIDER.—In deciding whether to provide assistance under this paragraph, the appropriate Federal banking agency shall consider—

"(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency; and

"(ii) whether compliance with the request would prejudice the public interest of the United States.

"(D) TREATMENT OF FOREIGN BANKING AUTHORITY.—For purposes of any Federal law or appropriate Federal banking agency regulation relating to the collection or transfer of information by any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

"(3) RULE OF CONSTRUCTION.—Paragraphs (1) and (2) shall not be construed to limit the authority of an appropriate Federal banking agency or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.".

(b) FOREIGN INVESTIGATIONS BY FDIC AND RTC AS CONSERVATOR OR RECEIVER.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by inserting after subsection (q) (as added by section 2727 of this Act) the following new subsection:

"(r) FOREIGN INVESTIGATIONS.—The Corporation and the Resolution Trust Corporation, as conservator or receiver of any insured depository institution and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution—

"(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 8(v); and

"(2) may each maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.".

(c) NATIONAL CREDIT UNION ADMINISTRATION, GENERALLY.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by inserting after subsection (t) (as added by section 2703(b) of this Act) the following new subsection:

"(u) FOREIGN INVESTIGATIONS.—

"(1) REQUESTING ASSISTANCE FROM FOREIGN BANKING AUTHORITIES.—In conducting any investigation, examination, or enforcement action under this Act, the Board may—

"(A) request the assistance of any foreign banking authority; and

"(B) maintain an office outside the United States.

"(2) PROVIDING ASSISTANCE TO FOREIGN BANKING AUTHORITIES.—

"(A) IN GENERAL.—The Board may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

"(B) INVESTIGATION BY FEDERAL BANKING AGENCY.—The Board may, in the Board's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the Board.

"(C) FACTORS TO CONSIDER.—In deciding whether to provide assistance under this paragraph, the Board shall consider—

"(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of the Board or any appropriate Federal banking agency; and

"(ii) whether compliance with the request would prejudice the public interest of the United States.

"(D) TREATMENT OF FOREIGN BANKING AUTHORITY.—For purposes of any Federal law or Board regulation relating to the collection or transfer of information by the Board or any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

"(3) RULE OF CONSTRUCTION.—Paragraphs (1) and (2) shall not be construed to limit the authority of the Board or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.".

(d) FOREIGN INVESTIGATIONS BY BOARD AS CONSERVATOR OR LIQUIDATING AGENT.—Section 207 of the Federal Credit Union Act (12 U.S.C. 1787) is amended by inserting after subsection (q) (as added by section 2726(b) of this Act) the following new subsection:

"(r) FOREIGN INVESTIGATIONS.—The Board, as conservator or liquidating agent of any insured credit union and for purposes of carrying out any power, authority, or duty with respect to an insured credit union—

"(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 206(u); and

"(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.".

SEC. 2733. EXTENSION OF STATUTE OF LIMITATIONS FOR CIVIL PENALTIES.

Section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833a) is amended by adding at the end the following:

"(g) STATUTE OF LIMITATIONS.—A civil action under this section may not be commenced later than 10 years after the cause of action accrues.".

SEC. 2734. CLARIFICATION OF SUBPOENA AUTHORITY FOR FDIC, RTC, AND NCUA ACTING AS CONSERVATOR, RECEIVER, OR LIQUIDATING AGENT.

(a) FDIC AND RTC AUTHORITY.—Section 11(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(2)) is amended by redesignating subparagraph (I) as subparagraph (J) and by inserting after subparagraph (H) the following new subparagraph:

"(I) SUBPOENA AUTHORITY.—

"(i) IN GENERAL.—The Corporation may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution (including determining any claim against the institution and determining and realizing upon any asset of any person in the course of collecting money due the institution), exercise any power established under section 8(n), and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

"(ii) AUTHORITY OF BOARD OF DIRECTORS.—A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board of Directors or their designees (or, in the case of a subpoena or subpoena duces tecum issued by the Resolution Trust Corporation under this subparagraph and section 21A(b)(4), only by, or with the written approval of, the Board of Directors of such Corporation or their designees).

"(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have under section 10(c) of this Act.".

(b) NCUA AUTHORITY.—Section 207(b)(2) of the Federal Credit Union Act (12 U.S.C. 1787(b)(2)) is amended by redesignating subparagraph (I) (as so redesignated by section 202(b) of this Act) as subparagraph (J) and by inserting after subparagraph (H) (as added by such section) the following new subparagraph:

"(I) SUBPOENA AUTHORITY.—

"(i) IN GENERAL.—The Board may, as conservator or liquidating agent and for purposes of carrying out any power, authority, or duty with respect to an insured credit union (including determining any claim against the credit union and determining and realizing upon any asset of any person in the course of collecting money due the credit union), exercise any power established under section 206(p), and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

"(ii) AUTHORITY OF BOARD.—A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board or their designees.

"(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed as limiting any rights that the Board, in any capacity, might otherwise have under section 206(p).".

Subtitle D—Structural Reforms to Improve the Federal Response to Crimes Affecting Financial Institutions

SEC. 2736. ESTABLISHMENT OF FINANCIAL INSTITUTIONS CRIME UNIT AND OFFICE OF SPECIAL COUNSEL FOR FINANCIAL INSTITUTIONS CRIME UNIT.

(a) ESTABLISHMENT.—There is established within the Office of the Deputy Attorney General in the Department of Justice a Financial Institutions Fraud Unit to be headed by a special counsel (hereafter in this title referred to as the "Special Counsel").

(b) RESPONSIBILITY.—The Financial Institutions Fraud Unit and the Special Counsel shall be responsible to and shall report directly to the Deputy Attorney General.

(c) SUNSET.—The provisions of this section shall cease to apply at the end of the 5-year period beginning on the date of the enactment of this Act.

SEC. 2737. APPOINTMENT RESPONSIBILITIES AND COMPENSATION OF THE SPECIAL COUNSEL.

(a) APPOINTMENT.—The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Special Counsel shall—

(1) supervise and coordinate investigations and prosecutions within the Department of Justice of fraud and other criminal activity in and against the financial services industry, including, to the extent consistent with the independent counsel provision of chapter 40 of title 28, United States Code, any such activity by any current or former elected official or high-level executive branch official or any member of the immediate family of any such official;

(2) ensure that Federal law relating to civil enforcement, asset seizure and forfeiture, money laundering, and racketeering are used to the fullest extent authorized to recover the proceeds of unlawful activities from persons who have committed crimes in and against the financial services industry; and

(3) ensure that adequate resources are made available for the investigation and prosecution of fraud and other criminal activity in and against the financial services industry.

(c) COMPENSATION.—The Special Counsel shall be paid at the basic pay payable for level V of the Executive Schedule.

SEC. 2738. ASSIGNMENT OF PERSONNEL.

There shall be assigned to the Financial Institutions Fraud Unit such personnel as the Attorney General deems necessary to provide an appropriate level of enforcement activity in the area of fraud and other criminal activity in and against the financial services industry.

SEC. 2739. FINANCIAL INSTITUTIONS FRAUD TASK FORCES.

(a) ESTABLISHMENT.—The Attorney General shall establish such financial institutions fraud task forces as the Attorney General deems appropriate to ensure that adequate resources are made available to investigate and prosecute crimes in or against financial institutions and to recover the proceeds of unlawful activities from persons who have committed fraud or have engaged in other criminal activity in or against the financial services industry.

(b) SUPERVISION.—The Attorney General shall determine how each task force shall be supervised and may provide for the supervision of any task force by the Special Counsel.

(c) SENIOR INTERAGENCY GROUP.—

(1) ESTABLISHMENT.—The Attorney General shall establish a senior interagency group to assist in identifying the most significant financial institution fraud cases and in allocating investigative and prosecutorial resources where they are most needed.

(2) MEMBERSHIP.—The senior interagency group shall be chaired by the Special Counsel and shall include senior officials from—

(A) the Department of Justice, including representatives of the Federal Bureau of Investigation, the Advisory Committee of United States Attorneys, and other relevant entities;

(B) the Department of the Treasury;

(C) the Office of Thrift Supervision;

(D) the Resolution Trust Corporation;

(E) the Federal Deposit Insurance Corporation;

(F) the Office of the Comptroller of the Currency;

(G) the Board of Governors of the Federal Reserve System; and

(H) the National Credit Union Administration.

(3) DUTIES.—This senior interagency group shall enhance interagency coordination and assist in accelerating the investigations and prosecution of financial institutions fraud.

SEC. 2741. RTC ENFORCEMENT DIVISION.

Section 21A(b)(12) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(12)) is amended by adding at the end thereof the following new subparagraph:

"(G) The Corporation shall maintain an executive-level position and dedicated staff to assist and advise the Corporation and other agencies in pursuing cases, civil claims, and administrative enforcement actions against institution-affiliated parties of insured depository institutions under the jurisdiction of the Corporation. These personnel shall have such duties as the Corporation establishes, including the duty to compile and publish a report to the Congress on the coordinated pursuit of claims by all Federal financial institution regulatory agencies, including the Department of Justice and the Securities and Exchange Commission. The report shall be published before December 31, 1990 and updated semiannually after such date.".

Subtitle E—Reporting Requirements

SEC. 2746. REPORTING REQUIREMENTS.

(a) IN GENERAL.—

(1) DATA COLLECTION.—The Attorney General shall compile and collect data concerning—

(A) the nature and number of civil and criminal investigations, prosecutions, and related proceedings, and civil enforcement and recovery proceedings, in progress with respect to banking law offenses under sections 981, 1008, 1032, and 3322(d) of title 18, United States Code, and section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and conspiracies to commit any such offense, including inactive investigations of such offenses;

(B) the number of—

(i) investigations, prosecutions, and related proceedings described in subparagraph (A) which are inactive as of the close of the

reporting period but have not been closed or declined; and

(ii) unaddressed referrals which allege criminal misconduct involving offenses described in subparagraph (A),

and the reasons such matters are inactive and the referrals unaddressed;

(C) the nature and number of such matters closed, settled, or litigated to conclusion; and

(D) the results achieved, including convictions and pretrial diversions, fines and penalties levied, restitution assessed and collected, and damages recovered, in such matters.

(2) ANALYSIS AND REPORT.—The Attorney General shall analyze and report to the Congress on the data described in paragraph (1) and its coordination and other related activities named in section 2739(c)(2) and shall provide such report on the data monthly through December 31, 1991, and quarterly after such date.

(b) SPECIFICS OF REPORT.—The report required by subsection (a) shall—

(1) categorize data as to various types of financial institutions and appropriate dollar loss categories;

(2) disclose data for each Federal judicial district;

(3) describe the activities of the Financial Institution Fraud Unit; and

(4) list—

(A) the number of institutions, categorized by failed and open institutions, in which evidence of significant fraud, unlawful activity, inside abuse or serious misconduct has been alleged or detected;

(B) civil, criminal, and administrative enforcement actions, including those of the Federal financial institutions regulatory agencies, brought against offenders;

(C) any settlements or judgments obtained against offenders;

(D) indictments, guilty pleas, or verdicts obtained against offenders; and

(E) the resources allocated in pursuit of investigations, prosecutions, and sentencings (including indictments, guilty pleas, or verdicts obtained against offenders) and related proceedings.

SEC. 2747. CIVIL DISCLOSURE.

(a) PROVISIONS APPLICABLE TO FEDERAL BANKING AGENCIES.—

(1) IN GENERAL.—Section 8(u) of the Federal Deposit Insurance Act (12 U.S.C. 1818(u) is amended to read as follows:

"(u) PUBLIC DISCLOSURES OF FINAL ORDERS AND AGREEMENTS.—

"(1) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public on a monthly basis—

"(A) any written agreement or other written statement for which a violation may be enforced by the appropriate Federal banking agency, unless the appropriate Federal banking agency, in its discretion, determines that publication would be contrary to the public interest;

"(B) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other law; and

"(C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

"(2) HEARINGS.—All hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

"(3) REPORTS TO CONGRESS.—A written report shall be made part of a determination not to hold a public hearing pursuant to paragraph (2) or not to publish a document pursuant to paragraph (1)(A). At the end of each calendar quarter, all such reports shall be transmitted to the Congress.

"(4) TRANSCRIPT OF HEARING.—A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (i). A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5, United States Code.

"(5) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the appropriate Federal banking agency makes a determination in writing that the publication of a final order pursuant to paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

"(6) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The appropriate Federal banking agency may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

"(7) RETENTION OF DOCUMENTS.—Each Federal banking agency shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

"(8) DISCLOSURES TO CONGRESS.—No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.".

(2) PUBLIC HEARINGS.—Section 8(h)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)(1)) is amended by striking "Such hearing shall be private, unless the appropriate Federal banking agency, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.".

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to all written agreements which are entered into and all written statements which become effective after the date of the enactment of this Act.

(b) AMENDMENT OF FEDERAL CREDIT UNION ACT.—

(1) IN GENERAL.—Section 206(s) of the Federal Credit Union Act (12 U.S.C. 1786(s)) is amended to read as follows:

"(s) PUBLIC DISCLOSURE OF AGENCY ACTION.—

"(1) IN GENERAL.—The Board shall publish and make available to the public on a monthly basis—

"(A) any written agreement or other written statement for which a violation may be enforced by the Board, unless the Board, in its discretion, determines that publication would be contrary to the public interest;

"(B) any final order issued with respect to any administrative enforcement proceeding initiated by the Board under this section or any other law; and

"(C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

"(2) HEARINGS.—All hearings on the record with respect to any notice of charges issued by the Board shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

"(3) REPORTS TO CONGRESS.—A written report shall be made part of a determination not to hold a public hearing pursuant to paragraph (2) or not to publish a document pursuant to paragraph (1)(A). At the end of each calendar quarter, all such reports shall be transmitted to the Congress.

"(4) TRANSCRIPT OF HEARING.—A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (k). A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5, United States Code.

"(5) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Board makes a determination in writing that the publication of a final order pursuant to paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

"(6) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The Board may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

"(7) RETENTION OF DOCUMENTS.—The Board shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

"(8) DISCLOSURES TO CONGRESS.—No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.".

(2) PUBLIC HEARING.—Section 206(j)(1) of the Federal Credit Union Act (12 U.S.C. 1786(j)(1)) is amended by striking "Such hearing shall be private, unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.".

SEC. 2748. REPORT ON COURT BUSINESS IMPACT OF SAVINGS AND LOAN CRISIS.

Section 604(a) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(24) Lay before Congress, annually, statistical tables that will accurately reflect the business imposed on the Federal courts by the savings and loan crisis.".

Subtitle F—National Commission on Financial Institution Reform, Recovery, and Enforcement

SEC. 2751. ESTABLISHMENT.

There is hereby established a commission to be known as the National Commission on Financial Institution Reform, Recovery, and Enforcement (hereafter in this title referred to as the "Commission").

SEC. 2752. DUTIES OF THE COMMISSION.

The Commission shall—

(1) examine and identify the origin and causes of the problems in the savings and loan industry that led to the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, including consideration of the role of—

(A) State and Federal regulation of savings and loan associations, including capital and accounting standards;

(B) supervision of, and supervisory resources allocated to, savings and loan associations by, or under the authority of, State and Federal Governments;

(C) State and Federal statutes concerning savings and loan associations, including asset powers legislation;

(D) macroeconomic changes and regional recessions;

(E) competitive factors;

(F) unprecedented fraud and abuse by persons in or connected with savings and loan associations; and

(G) deposit insurance, including changes in the amount insured and in technology;

(2) recommend, on the basis of the Commission's examination and investigations under this section, further legislative, regulatory, supervisory, and other administrative changes that will—

(A) improve the safety and soundness of depository associations, the Federal deposit insurance funds, and other Federal insurance programs;

(B) facilitate civil and criminal enforcement actions concerning financial institutions; and

(C) prevent the recurrence of the problems identified in the savings and loan industry; and

(3) recommend any other reforms which the Commission determines to be appropriate.

SEC. 2753. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 8 members appointed as follows:

(1) 2 individuals appointed by the President.

(2) 3 individuals appointed by the Speaker of the House of Representatives, 1 of whom shall be appointed upon the recommendation of the minority leader of the House of Representatives.

(3) 3 individuals appointed by the President pro tempore of the Senate, 2 of whom shall be appointed upon the recommendation of the majority leader of the Senate and 1 of whom shall be appointed upon the recommendation of the minority leader of the Senate.

(b) ELIGIBILITY.—No member, officer, or employee of the executive, legislative, or judicial branch of the Federal Government or of any State or local government may be a member of the Commission.

(c) TERMS.—

(1) IN GENERAL.—Each member shall be appointed for the life of the Commission.

(2) VACANCY.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(d) PROHIBITION ON COMPENSATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(e) QUORUM.—5 members of the Commission shall constitute a quorum but 3 members may hold hearings.

(f) CHAIRPERSON.—The Chairperson of the Commission shall be elected by the Commission from among its members.

(g) MEETINGS.—The Commission shall meet at the call of the Chairperson or of 5 members of the Commission.

(h) PROXY VOTING.—Members of the Commission may vote by proxy.

SEC. 2754. POWERS OF COMMISSION; HEARINGS AND SESSIONS.

(a) IN GENERAL.—The Commission may, for the purposes of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

(b) WITNESSES; ADMINISTRATION OF OATHS.—

(1) IN GENERAL.—Subject to paragraph (2) and, in the case of a subpoena, to subsection (c), the Commission may call witnesses and administer oaths or affirmations to witnesses appearing before the Commission.

(2) COORDINATION OF CERTAIN TESTIMONY AND EVIDENCE.—(A) In any case where the Commission intends to call a witness or receive evidence (including a witness or evidence to be subpoened in accordance with subsection (c)) to provide testimony concerning a specific savings and loan association or the role of any person in connection therewith, the Commission shall, in writing not less than 21 days prior to the taking of such testimony or receiving such evidence, provide the Attorney General, the Director of the Office of Thrift Supervision, and the Chairperson of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation with—

(i) the name of the savings and loan association involved;

(ii) the date and location of the testimony or the receipt of evidence; and

(iii) as appropriate, the name of the witness and a specific identification of the subject matter about which such witness is to testify or provide evidence, or the specific nature of the evidence to be received.

(B) If the Attorney General, the Director of the Office of Thrift Supervision, or the Chairperson of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation determines that taking such testimony or receiving such evidence (including witnesses or evidence to be subpoened in accordance with subsection (c)) would impair, impede, or compromise the investigation, prosecution, or adjudication of a criminal, civil, or administrative matter or proceeding, the Attorney General, the Director, or the Chairperson shall promptly notify the Commission of that determination.

(C) The Commission shall decide whether to proceed to call a witness or to receive evidence after considering any determination under subparagraph (B)—

(i) on the basis of the Commission's determination that taking such testimony or receiving such evidence is specifically necessary to carry out the duties of the Commission; and

(ii) upon an affirmative vote of not fewer than 5 members of the Commission (or not fewer than 6 members of the Commission in the case of a witness or evidence to be subpoened).

(D) The Commission shall notify the official who made the determination under subparagraph (B) of the Commission's determination under subparagraph (C).

(c) SUBPOENA POWER.—

(1) ADMINISTRATIVE ASPECTS OF SUBPOENA.—

(A) ATTENDANCE OR PRODUCTION AT DESIGNATED SITE.—The attendance of witnesses and the production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(B) FEES AND TRAVEL EXPENSES.—Persons served with a subpoena under this subsection shall be paid the same fees and mileage for travel within the United States that are paid witnesses in Federal courts.

(C) NO LIABILITY FOR OTHER EXPENSES.—The Commission and the United States shall not be liable for any expense, other than an expense described in subparagraph (B), incurred in connection with the production of any evidence under this subsection.

(2) FAILURE TO OBEY A SUBPOENA.—

(A) APPLICATION TO COURT.—If a person refuses to obey a subpoena issued under this subsection, the Commission may apply to a district court of the United States for an order requiring that person to appear before the Commission to give testimony or produce evidence, as the case may be, relating to the matter under investigation.

(B) JURISDICTION OF COURT.—The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business.

(C) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as civil contempt.

(3) SERVICE OF SUBPOENAS.—The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(4) SERVICE OF PROCESS.—All process of any court to which application is to be made under paragraph (3) may be served in the judicial district in which the person required to be served resides or may be found.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) INTERIM REPORT.—Not later than 60 days after the date of the enactment of this Act, the Commission may submit a report to the Congress concerning the ability of the Commission to obtain information and evidence necessary to carry out its duties under this subtitle and including such recommendations concerning additional authority as the Commission deems appropriate.

(f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission administrative support services on a reimbursable basis.

(g) POWERS OF MEMBERS AND AGENTS.—Except for actions that require a vote of the Commission, any member or agent authorized by the Commission may take any action the Commission may take.

SEC. 2755. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—Subject to such regulations as the Commission may prescribe, the Chairperson may appoint and fix the pay of such personnel as the Chairperson considers appropriate.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed

may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(c) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the annual rate of basic pay payable for GS-18 of the General Schedule.

(d) STAFF OF FEDERAL AGENCIES.—Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

SEC. 2756. REPORT.

(a) REPORT REQUIRED.—The Commission shall submit a final report to the President and the Congress not later than 9 months after the election of the Chairperson under section 3(f).

(b) CONTENTS.—The final report shall, consistent with the duties of the Commission set forth in section 2762 of this title, contain a detailed statement of the findings, conclusions, and recommendations of the Commission.

SEC. 2757. TERMINATION.

The Commission shall terminate 30 days after submitting the report required by section 2566(a) of this Act.

SEC. 2758. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not to exceed $1,000,000 to carry out the purposes of this Act.

Subtitle G—Authorizations

SEC. 2759. ADDITIONAL FUNDING FOR INVESTIGATORS AND PROSECUTORS FOR BANK CRIME CASES.

(a) ADDITION APPROPRIATION FOR DEPARTMENT OF JUSTICE.—Section 966(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (103 Stat. 506) is amended to read as follows:

"(a) IN GENERAL.—

"(1) AUTHORIZATION.—There is authorized to be appropriated to the Attorney General, without fiscal year limitation, $162,500,000 for each of fiscal years 1991 through 1993, for purposes of investigations, prosecutions, and civil proceedings involving financial institutions to which the Act and amendments made by this Act apply.

"(2) ALLOCATIONS.—With respect to fiscal years 1991 and 1992, the amount authorized to be appropriated under paragraph (1) shall be allocated as follows:

"(A) Federal Bureau of Investigation: $78,300,000.

"(B) The offices of the United States attorneys: $65,000,000.

"(C) The criminal division of the Department of Justice: $8,800,000.

"(D) The civil division of the Department of Justice: $7,000,000.

"(E) The tax division of the Department of Justice: $3,400,000.".

(b) ADDITIONAL APPROPRIATIONS FOR THE INTERNAL REVENUE SERVICE.—There is authorized to be appropriated to the Internal Revenue Service, Department of the Treasury, $16,000,000 for fiscal year 1991 for investigation of violations of the Internal Revenue Code of 1986, and related statutes, involving insured depository institutions.

(c) ADDITIONAL FUNDS FOR THE FEDERAL JUDICIARY.—Section 967 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (103 Stat. 506) is amended to read as follows:

"SEC. 967. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE FEDERAL JUDICIARY.

"(a) IN GENERAL.—There are authorized to be appropriated to the Federal court system $25,000,000 for fiscal year 1991 and $28,000,000 for each of fiscal years 1992 and 1993 to carry out such system's duties under this Act.".

Subtitle H—Actions Against Persons Committing Bank Fraud Crimes

SEC. 2760. SHORT TITLE.

This subtitle may be cited as the "Financial Institutions Anti-Fraud Enforcement Act of 1990".

CHAPTER 1—DECLARATIONS PROVIDING NEW CLAIMS TO THE UNITED STATES

SEC. 2761. FILING OF CONFIDENTIAL DECLARATIONS BY PRIVATE PERSONS.

(a) IN GENERAL.—Any person may file a declaration of a violation giving rise to an action for civil penalties under section 951 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States.

(b) PLACE OF FILING.—A declaration under subsection (a) shall be filed with the Attorney General of the United States or with an agent designated by the Attorney General for receiving declarations under this section.

SEC. 2762. CONTENTS OF DECLARATIONS.

A declaration filed pursuant to section 2761 shall—

(1) set forth the name and address of the declarant and the basis for the declarant's knowledge of the facts alleged;

(2) allege under oath or affirmation specific facts, relating to a particular transaction or transactions, which constitute a prima facie case of a violation giving rise to an action for civil penalties under section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States;

(3) contain at least 1 new factual element necessary to establish a prima facie case that was unknown to the Government at the time of filing; and

(4) set forth all facts supporting the allegation of a violation described in paragraph (2) known to the declarant, along with the names of material witnesses and the nature and location of documentary evidence known to the declarant.

SEC. 2763. CONFIDENTIALITY OF DECLARATIONS.

(a) PERIOD OF CONFIDENTIALITY.—A declarant and the declarant's agents shall not disclose the existence or filing of a declaration filed pursuant to section 2761 until—

(1) the declarant receives notice that the Attorney General has concluded that an action should not be pursued under section 2766(b);

(2) the declarant receives notice of an award pursuant to section 2766(c); or

(3) the declarant is granted a contract to pursue an action under section 2765(b) or 2767.

(b) MAINTENANCE OF CONFIDENTIALITY TO PREVENT PREJUDICE.—(1) Notwithstanding any other law, the contents of a declaration shall not be disclosed by the declarant if the disclosure would prejudice or compromise in any way the completion of any government investigation or any criminal or civil case that may arise out of, or make use of, information contained in a declaration, but information contained in a declaration may be disclosed as required by duly issued and authorized legal process.

(2) The Attorney General may in a circumstance described in paragraph (1) notify a declarant that continued confidentiality is required under this subsection notwithstanding paragraph (1) or (2) of subsection (a).

(c) LOSS OF RIGHTS.—A declarant who discloses, except as provided by this title, the existence or filing of a declaration or the contents thereof to anyone other than a duly authorized Federal or State investigator or the declarant's attorney shall immediately lose all rights under this chapter.

SEC. 2764. INELIGIBILITY TO FILE VALID DECLARATIONS.

(a) IN GENERAL.—A declaration filed pursuant to section 811 and in accordance with sections 2762 and 2763 is valid unless—

(1) the declaration is filed by a current or former officer or employee of a Federal or State government agency or instrumentality who discovered or gathered the information in the declaration, in whole or in part, while acting within the course of the declarant's government employment;

(2) the declaration is filed by a person who knowingly participated in the violation of section 1517 of title 18, United States Code, or any of the sections of title 18, United States Code, referred to in section 951(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or any other fraudulent conduct with respect to which the declaration is made;

(3) the declaration is filed by an institution-affiliated party (as defined in section 3(u) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(u)) which withheld information during the course of any bank examination or investigation authorized pursuant to section 10 of such Act (12 U.S.C. 1820) which such party owed a fiduciary duty to disclose;

(4) the declaration is filed by a member of the immediate family of the individual whose activities are the subject of the declaration or where, in the discretion of the Attorney General, it appears the individual could benefit from the award; or

(5) the declaration consists of allegations or transactions that have been disclosed to a member of the public in a criminal, civil, or administrative proceeding, in a congressional, administrative, or General Accounting Office report, hearing, audit or investigation, by any other government source, or by the news media, unless the person providing the declaration is the original source of the information.

(b) DEFINITION.—For the purposes of subsection (a)(5), the term "original source" means a person who has direct and independent knowledge of the information contained in the declaration and who voluntarily provided the information to the government prior to the disclosure.

(c) NOTICE OF INVALIDITY.—If the Attorney General determines at any time that a declaration is invalid under this section, that a declaration fails to meet the requirements of section 2762, or that a declaration has been disclosed in violation of section 2763, the Attorney General shall notify the person who filed the declaration in writing that the declaration is invalid, and the declarant shall not enjoy any of the rights of the declarant listed in section 2765 or 2766.

SEC. 2765. RIGHTS OF DECLARANTS; PARTICIPATION IN ACTIONS, AWARDS.

(a) IN GENERAL.—A person who has filed a declaration that meets the requirements of sections 2761 through 2764 shall have the rights stated in this section.

(b) CIVIL ACTION.—If the Attorney General determines that a cause of action referred to in section 2761 based on the declaration should be referred to private counsel pursuant to chapter 4, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute the action, and the declarant and the declarant's counsel shall act in accordance with chapter 4.

(c) CRIMINAL CONVICTION.—(1) When the United States obtains a criminal conviction and the Attorney General determines that the conviction was based in whole or in part on the information contained in a valid declaration filed under section 2761, the declarant shall have the right to receive not less than $5,000 and not more than $100,000, any such award to be paid from the Financial Institution Information Award Fund established under section 2769.

(2) In determining the size of any award under paragraph (1), the Attorney General may, in the Attorney General's discretion, consider any appropriate factor, including—

(A) the seriousness of the offense for which the conviction was obtained;

(B) the extent to which the facts alleged in the declaration contributed to the conviction;

(C) the number of offenders apprehended pursuant to information provided by the declarant;

(D) whether or not the offender was previously under investigation by any law enforcement agency when the declaration was filed;

(E) the extent to which the declarant cooperated in the development of the Government's case and its presentation at trial;

(F) the sentences and fines imposed on the offender and other offenders in related cases;

(G) the extent to which other sources of private information were relied upon; and

(H) the hardship to the declarant and any expenses the declarant incurred in preparing the declaration.

(d) SHARE OF FUNDS AND ASSETS.—(1) When the United States acquires funds or assets pursuant to the execution of a judgment, order, or settlement and the Attorney General determines that the judgment, order, or settlement was based in whole or in part on the information contained in a valid declaration filed under section 2761, the declarant shall have the right to share in the recovery as follows:

(A)(i) The declarant shall be entitled to 20 percent to 30 percent of any recovery up to the first $1,000,000 recovered, 10 percent to 20 percent of the next $4,000,000 recovered, and 5 percent to 10 percent of the next $5,000,000 recovered.

(ii) In calculating an award under clause (i), the Attorney General may consider the size of the overall recovery and the usefulness of the information provided by the declarant.

(B) When a declarant has received an award under subsection (c), the Attorney General may subtract the amount of that reward from any recovery under this subsection.

(2)(A) When more than 1 declarant has provided information leading to a recovery under this subsection, the Attorney General shall first calculate the size of the total award under paragraph (1)(A) and then distribute that amount according to the contribution made by each declarant.

(B) In distributing any such award between 2 or more declarants, the Attorney General may, in the Attorney General's discretion, consider any appropriate factor.

(e) PROHIBITION OF DOUBLE AWARDS.—(1) No person shall receive both an award under this section and a reward under either section 34 of the Federal Deposit Insurance Act or section 3509A of title 18, United States Code, for providing the same or substantially similar information.

(2) When a person qualifies for both an award under this section and a reward under either section 34 of the Federal Deposit Insurance Act or section 3509A of title 18, United States Code, for providing the same or substantially similar information, the person may notify the Attorney General in writing of the person's election to seek an award under this section or a reward under such other section.

(f) APPROPRIATE FEDERAL BANKING AGENCY EXCEPTION.—For purposes of this section, funds or assets acquired by the United States shall not include any funds or assets acquired by any appropriate Federal banking agency acting in any capacity or the Resolution Trust Corporation acting in any capacity, except for any civil money penalties recovered by a Federal banking agency through a final judgment, order or settlement.

SEC. 2766. RIGHTS OF DECLARANTS; NOTIFICATIONS; GOVERNMENT ACCOUNTABILITY.

(a) IN GENERAL.—A person who has filed a declaration that meets the requirements of sections 2761 through 2764 shall have the rights stated in this section.

(b) NOTICE OF DECISION NOT TO PURSUE.—If, after review, the Attorney General concludes that the information contained in a declaration should not be pursued in a civil or criminal proceeding, the Attorney General shall so notify the declarant in writing and shall provide a brief statement of the reasons that the declaration will not be pursued.

(c) JUDGMENT, ORDER, OR SETTLEMENT.—(1) When the United States obtains a judgment, order, or settlement based in whole or in part on a valid declaration filed under section 2761, the Attorney General shall notify the declarant in writing of such fact.

(2) A notice described in paragraph (1) shall contain—

(A) the Attorney General's determination of the amount of the award due the declarant under subsection (c) or (d) of section 2765 upon recovery by the United States; and

(B) a short statement of reasons for the amount of the award.

(d) NOTICE OF PENDENCY OF INVESTIGATION OR PROCEEDING.—If the Attorney General has not provided the declarant with notice under subsection (b) or a notice of invalidity pursuant to section 2764 within the time period set forth in subsection (e), the Attorney General shall notify the declarant in writing that—

(1) there is a pending investigation or proceeding in the course of which the declarant's allegations are being addressed; or

(2) the declarant's allegations have not yet been addressed.

(e) TIME FOR NOTICES.—(1) In the case of a valid declaration filed not more than 3 years after the date of enactment of this Act, the Attorney General shall send notification to a declarant pursuant to subsection (d) not later than 3 years after the date of filing of the declaration.

(2)(A) Subject to subparagraph (B), in the case of a declaration filed more than 3 years after the date of enactment of this Act, the Attorney General shall send notification not later than 1 year after the date of filing of the declaration.

(B) If the Attorney General certifies that it is in the interest of the United States to give further consideration to the information provided in the declaration for an additional 90-day period, the Attorney General shall so notify the declarant in writing.

(f) CONFIDENTIALITY OF NOTICES.—All notices provided to a declarant under this section shall be kept confidential by the declarant in the same manner, and subject to the same penalties, as the declaration under section 2763.

SEC. 2767. UNREVIEWED DECLARATIONS; PETITION TO PURSUE ACTION AS PRIVATE CONTRACTOR.

(a) NOTIFICATION.—(1) If, pursuant to section 2766(d)(2), the Attorney General notifies a declarant that the declarant's allegations have not yet been addressed, the declarant may notify the Attorney General to award a contract pursuant to chapter 4 to pursue the case.

(2) A declarant's notification under paragraph (1) shall be filed with the Attorney General not later than 30 days after the date of service of notice under section 2766(d)(2), and the Attorney General shall respond to the notification not later than 30 days after receipt.

(b) CONTENTS OF RESPONSE.—In response to a notification under subsection (a)(1), the Attorney General shall—

(1) grant a contract pursuant to chapter 4; or

(2) proceed with an action.

(c) GRANT OF CONTRACT.—If the Attorney General decides to grant a contract, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute an action, and the declarant and the declarant's counsel shall act in accordance with chapter 4.

SEC. 2768. NONREVIEWABILITY OF ACTION BY THE ATTORNEY GENERAL.

Notwithstanding any other law, no court shall have jurisdiction over any claim based on any action taken by the Attorney General or any refusal to take action under this chapter, except for failure to provide notification under section 2766.

SEC. 2769. FINANCIAL INSTITUTION INFORMATION AWARD FUND.

(a) ESTABLISHMENT.—There is established in the United States Treasury a special fund to be known as the Financial Institution Information Award Fund (referred to as the "Fund") which shall be available to the Attorney General without fiscal year limitation to pay awards to declarants pursuant to section 2765(c) and to pay special rewards pursuant to section 3059A of title 18, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such funds as are necessary to maintain the Fund at a level not to exceed $5,000,000.

SEC. 2770. SOURCES OF PAYMENTS TO DECLARANTS.

Notwithstanding any other law, an award under this title may be paid to a declarant, or to an individual providing information, from the amounts recovered through civil actions based in whole or in part on the information provided in a valid declaration under this title.

SEC. 2771. GOVERNMENT ACCOUNTABILITY; PUBLIC REPORTS ON PROCESSING OF DECLARATIONS.

(a) IN GENERAL.—In addition to the written statements of reasons provided individual declarants under section 2766, on the date that is 6 months after the date of enactment of this Act, and at the end of each 6-month period thereafter during which this chapter is in effect, the Attorney General shall compile a public report on the processing of declarations under this chapter.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall state—

(1) the number of declarations filed within the relevant period;

(2) the number of declarations found invalid under sections 2762, 2763, and 2764;

(3) the number of valid declarations processed and their present status, including whether or not they have been reviewed and if they have been reviewed what determination was reached;

(4) the number and amounts of all rewards paid to declarants under this chapter; and

(5) the number of convictions attributable in whole or in part to valid declarations filed under this chapter and the number and dollar amounts of all monetary recoveries, criminal or civil, attributable in whole or in part to valid declarations filed under this chapter.

(c) CONFIDENTIALITY.—Notwithstanding any other law, in compiling the report required by subsection (a), the Attorney General may take all steps necessary to guard against the disclosure of any information that could in any way prejudice a current criminal or civil investigation or proceeding.

SEC. 2772. PROTECTION FOR DECLARANTS.

A declarant under this chapter shall enjoy the protections of section 3059A(e) of title 18, United States Code.

SEC. 2773. PROMULGATION OF REGULATIONS.

The Attorney General may promulgate any rules, regulations, or guidelines that, in the Attorney General's judgment, are necessary and appropriate to the effective administration of this chapter.

CHAPTER 2—DECLARATIONS PROVIDING THE UNITED STATES WITH NEW INFORMATION CONCERNING THE RECOVERY OF ASSETS

SEC. 2776. FILING OF CONFIDENTIAL DECLARATIONS BY PRIVATE PERSONS IDENTIFYING SPECIFIC ASSETS.

(a) IN GENERAL.—After the United States obtains a final judgment or settlement in any action referred to in section 2761, any person may file a declaration identifying specific assets which might be recovered by the United States in satisfaction of that judgment or settlement.

(b) PLACE OF FILING.—A declaration under subsection (a) shall be filed with the Attorney General of the United States or with an agent designated by him for receiving declarations under this section.

SEC. 2777. CONTENTS OF DECLARATIONS.

A declaration filed pursuant to section 2776 shall—

(1) set forth the name and address of the declarant and the basis for the declarant's knowledge of the facts alleged;

(2) allege under oath or affirmation specific facts indicating the nature, location, and approximate dollar value of the asset or assets and the names of all persons known to the declarant to have possession, custody, or control of the asset or assets; and

(3) allege under oath or affirmation specific facts that establish a prima facie case showing that the asset is legally subject to attachment, garnishment, sequestration, or other proceeding in satisfaction of the judgment referred to in section 2776.

SEC. 2778. CONFIDENTIALITY OF DECLARATIONS.

(a) PERIOD OF CONFIDENTIALITY.—A declarant and the declarant's agents shall not disclose the existence or filing of a declaration filed pursuant to section 2776 until:

(1) the declarant receives notice that the Attorney General has concluded that an action should not be pursued under section 2781(b);

(2) the declarant receives notice of an award pursuant to section 2781(c); or

(3) the declarant is granted a contract to pursue an action under section 2780(b) or 2782.

(b) MAINTENANCE OF CONFIDENTIALITY TO PREVENT PREJUDICE.—(1) Notwithstanding any other law, the contents of a declaration shall not be disclosed by the declarant if the disclosure would prejudice or compromise in any way the completion of any government investigation or any criminal or civil case that may arise out of, or make use of, information contained in a declaration, but information contained in a declaration may be disclosed as required by duly issued and authorized legal process.

(2) The Attorney General may in a circumstance described in paragraph (1) notify a declarant that continued confidentiality is required under this subsection notwithstanding paragraph (1) or (2) of subsection (a).

(c) LOSS OF RIGHTS.—A declarant who discloses, except as provided by this chapter, the existence or filing of a declaration or the contents thereof to anyone other than a duly authorized Federal or State investigator or the declarant's attorney shall immediately lose all rights under this chapter.

SEC. 2779. INELIGIBILITY TO FILE VALID DECLARATIONS.

(a) IN GENERAL.—A declaration filed pursuant to section 2776 and in accordance with sections 2777 and 2778 is valid unless—

(1) the declaration is filed by a current or former officer or employee of a Federal or State government agency or instrumentality who discovered or gathered the information in the declaration, in whole or in part, while acting within the course of the declarant's government employment;

(2) the declaration is filed by a person who knowingly participated in the violation of section 1517 of title 18, United States Code, or any of the sections of title 18, United States Code, referred to in section 2761, or any other fraudulent conduct with respect to which the declaration is made;

(3) the declaration is filed by an institution-affiliated party (as defined in section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)) which withheld information during the course of any bank examination or investigation authorized pursuant to section 10 of such Act (12 U.S.C. 1820) which such party owed a fiduciary duty to disclose;

(4) the declaration is filed by a member of the immediate family of the individual whose activities are the subject of the declaration or where, in the discretion of the Attorney General, it appears the individual could benefit from the award; or

(5) the declaration identifies an asset or assets the nature, location, or possible recovery of which has been disclosed to a member of the public in a criminal, civil, or administrative proceeding, in a congressional, administrative, or General Accounting Office report, hearing, audit or investigation, by any other government source, or by the news media, unless the person providing the declaration is the original source of the information.

(b) DEFINITION.—For the purposes of subsection (a)(5), the term "original source" means a person who has direct and independent knowledge of the information contained in the declaration and who voluntarily provided the information to the government prior to the disclosure.

(c) NOTICE OF INVALIDITY.—If the Attorney General determines at any time that a declaration is invalid under this section, that a declaration fails to meet the requirements of section 2777, or that a declaration has been disclosed in violation of section 2778, the Attorney General shall notify the person who filed the declaration in writing that the declaration is invalid, and the declarant shall not enjoy any of the rights of the declarant listed in section 2780 or 2781.

SEC. 2780. RIGHTS OF DECLARANTS; PARTICIPATION IN ACTIONS, AWARDS.

(a) IN GENERAL.—A person who has filed a declaration that meets the requirements of sections 2776 through 2779 shall have the rights stated in this section.

(b) CIVIL ACTION.—If the Attorney General determines that a proceeding to recover the asset or assets identified in the declaration should be referred to private counsel pursuant to chapter 4, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute the action, and the declarant and the declarant's counsel shall act in accordance with chapter 4.

(c) SHARE OF ASSETS.—When the United States recovers any asset or assets specifically identified in a valid declaration filed under section 2776 and the Attorney General determines that the asset or assets would not have been recovered if the declaration had not been filed, the declarant shall have the right to share in the recovery in the amount of 20 percent to 30 percent of any recovery up to the first $1,000,000 recovered, 10 percent to 20 percent of the next $4,000,000 recovered, and 5 percent to 10 percent of the next $5,000,000 recovered.

(d) PROHIBITION OF DOUBLE AWARDS.—(1) No person shall receive both an award under this section and a reward under either section 34 of the Federal Deposit Insurance Act or section 3509A of title 18, United States Code, for providing the same or substantially similar information.

(2) When a person qualifies for both an award under this section and a reward under either section 34 of the Federal Deposit Insurance Act or section 3509A of title 18, United States Code, for providing the same or substantially similar information, the person may notify the Attorney General in writing of the person's election to seek an award under this section or a reward under such other section.

(e) APPROPRIATE FEDERAL BANKING AGENCY EXCEPTION.—For purposes of this section, funds or assets acquired by the United States shall not include any funds or assets acquired by any appropriate Federal banking agency acting in any capacity or the Resolution Trust Corporation acting in any capacity, except for any civil money penalties recovered by a Federal banking agency through a final judgment, order, or settlement.

SEC. 2781. RIGHTS OF DECLARANTS; NOTIFICATIONS; GOVERNMENT ACCOUNTABILITY.

(a) IN GENERAL.—A person who has filed a declaration that meets the requirements of sections 2776 through 2779 shall have the rights stated in this section.

(b) NOTICE OF DECISION NOT TO PURSUE.—If, after review, the Attorney General concludes that the information contained in a declaration should not be pursued in a proceeding to recover the asset or assets, the Attorney General shall so notify the declarant in writing and shall provide a brief statement of the reasons that the declaration will not be pursued.

(c) JUDGMENT, ORDER, OR SETTLEMENT.—(1) When the United States obtains a final judgment, order, or settlement transferring to the United States title to an asset or assets identified in a valid declaration filed under section 831, the Attorney General shall notify the declarant in writing of the entry of the judgment, order, or settlement.

(2) A notice described in paragraph (1) shall contain—

(A) the Attorney General's determination of the amount of the award due the declarant under section 2780(c) upon recovery by the United States; and

(B) a short statement of reasons for the amount of the award.

(d) NOTICE OF PENDENCY OF INVESTIGATION OR PROCEEDING.—(1) Subject to paragraph (2), if the Attorney General has not provided the declarant with notice under subsection (b) or a notice of invalidity pursuant to section 2779 within 1 year after the date of filing of the declaration, the Attorney General shall notify the declarant in writing that—

(A) there is a pending investigation or proceeding in the course of which the declarant's allegations are being addressed; or

(B) the declarant's allegations have not yet been addressed.

(2) If the Attorney General certifies that it is in the interest of the United States to give further consideration to the information provided in the declaration for an additional 90-day period, the Attorney General shall so notify the declarant in writing.

(e) CONFIDENTIALITY OF NOTICES.—All notices provided to a declarant under this section shall be kept confidential by the declarant in the same manner, and subject to the same penalties, as the declaration under section 2778.

SEC. 2782. UNREVIEWED DECLARATIONS; PETITION TO PURSUE ACTION AS PRIVATE CONTRACTOR.

(a) NOTIFICATION.—(1) If, pursuant to section 2781(d)(1)(B), the Attorney General notifies a declarant that the declarant's allegations have not yet been addressed, the declarant may notify the Attorney General to award a contract pursuant to chapter 4 to pursue the case.

(2) A declarant's notification under paragraph (1) shall be filed with the Attorney General not later than 30 days after the date of service of notice under section 2781(d)(1)(B), and the Attorney General shall respond to the notification not later than 30 days after receipt.

(b) CONTENTS OF RESPONSE.—In response to a notification under subsection (a)(1), the Attorney General shall—

(1) grant a contract pursuant to chapter 4; or

(2) proceed with an action.

(c) GRANT OF CONTRACT.—If the Attorney General decides to grant a contract, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute an action, and the declarant and the declarant's counsel shall act in accordance with chapter 4.

SEC. 2783. NONREVIEWABILITY OF ACTION BY THE ATTORNEY GENERAL.

Notwithstanding any other law, no court shall have jurisdiction over any claim based on any action taken by the Attorney General or any refusal to take action under this chapter, except for failure to provide notification under section 2781.

SEC. 2784. PROTECTION FOR DECLARANTS.

A declarant under this chapter shall enjoy the protections of section 3059A(e) of title 18, United States Code.

SEC. 2785. PROMULGATION OF REGULATIONS.

The Attorney General may promulgate any rules, regulations, or guidelines that, in the Attorney General's judgment, are necessary and appropriate to the effective administration of this chapter.

CHAPTER 3—REWARDS FOR INFORMATION LEADING TO RECOVERIES, CIVIL PENALTIES, OR PROSECUTIONS

SEC. 2786. REWARD FOR INFORMATION LEADING TO RECOVERIES OR CIVIL PENALTIES.

Section 34(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831k(a)) is amended—

(1) in paragraph (1) by striking ", in an amount that exceeds $50,000,"; and

(2) by amending paragraph (2) to read as follows:

"(2) a forfeiture under section 981 or 982 of title 18, United States Code, that arises in connection with a depository institution insured by the Federal Deposit Insurance Corporation".

SEC. 2787. REWARD FOR INFORMATION LEADING TO POSSIBLE PROSECUTION.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—Chapter 203 of title 18, United States Code, is amended by inserting after section 3059 the following new section:

"§ 3059A. Special rewards for information relating to certain financial institution offenses

"(a)(1) In special circumstances and in the Attorney General's sole discretion, the Attorney General may make payments to persons who furnish information unknown to the Government relating to a possible prosecution under section 215, 287, 656, 657, 1001, 1005, 1006, 1007, 1014, 1032, 1341, 1343, or 1344 of this title affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States, or to a possible prosecution for conspiracy to commit such an offense.

"(2) The amount of a payment under paragraph (1) shall not exceed $50,000 and shall be paid from the Financial Institution Information Award Fund established under section 2769 of the Financial Institutions Anti-Fraud Enforcement Act of 1990.

"(b) A person is not eligible for a payment under this subsection (a) if—

"(1) the person is a current or former officer or employee of a Federal or State government agency or instrumentality who furnishes information discovered or gathered in the course of his government employment;

"(2) the furnished information consists of allegations or transactions that have been disclosed to a member of the public in a criminal, civil, or administrative proceeding, in a congressional, administrative, or General Accounting Office report, hearing, audit or investigation, from any other government source, or from the news media unless the person is the original source of the information;

"(3) the person is an institution-affiliated party (as defined in section 3(u) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(u)) which withheld information during the course of any bank examination or investigation authorized pursuant to section 10 of such Act (12 U.S.C. 1820) which such party owed a fiduciary duty to disclose;

"(4) the person is a member of the immediate family of the individual whose activities are the subject of the declaration or where, in the discretion of the Attorney General, it appears the individual could benefit from the award; or

"(5) the person knowingly participated in the violation of the section with respect to which the payment would be made.

"(c) For the purposes of this subsection (b)(2), the term 'original source' means a person who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government prior to the disclosure.

"(d) Neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review.

"(e)(1) A person who—

"(A) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the person on behalf of the person or others in furtherance of a prosecution under any of the sections referred to in subsection (a) (including provision of information relating to, investigation for, initiation of, testimony for, or assistance in such a prosecution); and

"(B) was not a knowing participant in the unlawful activity that is the subject of such a prosecution,

may, in a civil action, obtain all relief necessary to make the person whole.

"(2) Relief under paragraph (1) shall include—

"(A)(i) reinstatement with the same seniority status;

"(ii) 2 times the amount of back pay plus interest; and

"(iii) interest on the backpay,

that the plaintiff would have had but for the discrimination; and

"(B) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.".

(b) TECHNICAL AMENDMENT.—The chapter heading for chapter 203 of title 18, United States Code, is amended by inserting after the item relating to section 3059 the following new item:

"3059A. Special rewards for information relating to certain financial institution offenses".

CHAPTER 4—USE OF PRIVATE LEGAL RESOURCES

SEC. 2788. AUTHORITY TO ENTER INTO CONTRACTS FOR PRIVATE COUNSEL.

(a) IN GENERAL.—The Attorney General may enter into contracts retaining private counsel to furnish legal services, including representation in investigation, negotiation, compromise, settlement, litigation, and execution of judgments in the case of any civil action referred to in section 2761 or section 2780.

(b) TERMS AND CONDITIONS.—Each contract under subsection (a) shall include the provisions described in section 2791 and such other terms and conditions as the Attorney General considers necessary and ap-

propriate to protect the interests of the United States.

(c) LIMITATION OF FEE.—The amount of the contingency fee payable for legal services furnished under a contract described in subsection (a) shall not exceed the contingency fee that counsel engaged in the private practice of law in the jurisdiction wherein the legal services are furnished typically charge clients for furnishing the same or comparable legal services.

(d) CONTINGENT FEES.—Notwithstanding section 3302(b) of title 31, United States Code, a contract under this section shall provide that a fee that the United States pays private counsel for services is payable from the amount recovered and shall be based on a percentage of the civil penalties or assets recovered.

SEC. 2789. CONTRACT DECISIONS NONREVIEWABLE.

Notwithstanding any other law, no court shall have jurisdiction over any claim based on the Attorney General's decision to refuse to enter into a contract for legal services referred to in section 2788.

SEC. 2790. REPRESENTATION.

Notwithstanding sections 516, 518(b), 519, and 547(2) of title 28, United States Code, private counsel retained under section 2788 may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel, subject to the requirements specified in section 2791.

SEC. 2791. CONTRACT PROVISIONS.

A contract made with a private counsel under section 2788 shall include—

(1) a provision permitting the Attorney General to terminate either the contract or the private counsel's representation of the United States in particular cases if the Attorney General finds that such action is in the best interests of the United States;

(2) a provision requiring private counsel to transmit monthly to the Attorney General a report on the services relating to matters handled pursuant to the contract during the preceding month and the progress made during that period; and

(3) a provision requiring that the initiation, settlement, dismissal, or compromise of a claim be approved by a duly appointed officer of the United States.

SEC. 2792. COUNTERCLAIMS.

Any counterclaim filed in any action brought on behalf of the United States by private counsel retained under section 2788 may not be asserted unless the counterclaim has been served directly on the Attorney General and the United States Attorney for the judicial district in which, or embracing the place in which, the action is pending. Such service shall be made in accordance with the rules of procedure of the court in which the action on behalf of the United States is pending.

SEC. 2793. AWARDS OF COSTS AND FEES TO PREVAILING PLAINTIFF.

When the United States, through private counsel retained under this chapter, prevails in any civil action, the court, in its discretion, may allow the United States reasonable attorney's fees and other expenses of litigation as part of the costs.

SEC. 2794. PROMULGATION OF REGULATIONS.

The Attorney General may promulgate any rules, regulations, or guidelines that, in the Attorney General's judgment, are necessary and appropriate to the effective administration of this chapter.

Subtitle I—Technical and Miscellaneous Amendments

SEC. 2795. TECHNICAL AMENDMENTS TO TITLE 18, UNITED STATES CODE, RELATING TO REFERENCES TO BANKING INSTITUTIONS AND AGENCIES.

(a) IN GENERAL.—

(1) THEFT, EMBEZZLEMENT, OR MISAPPLICATION BY BANK OFFICER OR EMPLOYEE.—Section 656 of title 18, United States Code, is amended—

(A) by inserting "depository institution holding company," before "national bank" the 1st place such term appears in the 1st sentence;

(B) by inserting "or holding company" after "such bank" each place such term appears in the 1st paragraph; and

(C) by adding at the end of the 2d paragraph the following new sentence: "For purposes of this section, the term 'depository institution holding company' has the meaning given such term in section 3 of the Federal Deposit Insurance Act.".

(2) LENDING, CREDIT, AND INSURANCE INSTITUTIONS.—Section 657 of title 18, United States Code, is amended—

(A) by striking "Home Owners' Loan Corporation," and inserting "Office of Thrift Supervision, the Resolution Trust Corporation, any Federal home loan bank, the Federal Housing Finance Board,"; and

(B) by striking "institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation" and inserting "institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation".

(3) BANK ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1005 of title 18, United States Code, is amended—

(A) by inserting "or company" after "such bank" each place such term appears in the 1st paragraph;

(B) by striking "bank or savings and loan" and inserting "depository institution"; and

(C) by adding at the end of the 6th undesignated paragraph the following new sentence: "For purposes of this section, the term 'depository institution holding company' has the meaning given such term in section 3(w)(1) of the Federal Deposit Insurance Act.".

(4) FEDERAL CREDIT INSTITUTION ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1006 of title 18, United States Code, is amended—

(A) by striking "Home Owners' Loan Corporation," and inserting "Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board, the Resolution Trust Corporation,"; and

(B) by striking "institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation" and inserting "institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation".

(5) LOANS AND CREDIT APPLICATIONS GENERALLY; RENEWALS AND DISCOUNTS.—Section 1014 of title 18, United States Code, is amended—

(A) by striking "the Federal Home Loan Bank System," and inserting "the Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board,"; and

(B) by inserting a comma after "Resolution Trust Corporation".

(b) INDICTMENTS AND INFORMATION DISMISSED BEFORE PERIOD OF LIMITATIONS.—Section 3289 of title 18, United States Code, is amended by striking "or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final," where such term appears and inserting such term after "expiration of the applicable statute of limitations,".

SEC. 2796. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) CEASE AND DESIST AUTHORITY.—Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended—

(1) in paragraph (6), by inserting "or remedy" after "to take affirmative action to correct"; and

(2) in paragraph (4), by striking "subsections (c), (d), (h), (i), (k), (l), (m), and (n)" and inserting "subsections (c) through (s) and subsection (u)".

(b) TEMPORARY ORDERS.—Section 8(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(c)(1)) is amended—

(1) by inserting "or remedy" after "to take affirmative action to prevent"; and

(2) by striking "(b)(6)(B)" and inserting "(b)(6)".

(c) RIGHT TO FINANCIAL PRIVACY.—Section 1101(6)(B) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6)(B)) by striking 3(f)(1)" and inserting "4(f)(1)".

(d) VIOLATIONS TO WHICH CIVIL MONEY PENALTIES APPLIES.—Section 951(c)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended—

(1) by inserting "287, 1001, 1032," before "1341;"; and

(2) by adding at the end thereof the following new flush sentence:

"This section shall apply to violations occurring on or after August 10, 1984."

SEC. 2797. AMENDMENTS TO INCLUDE VARIOUS ENTITIES WHICH ENGAGE IN INTERNATIONAL BANKING BUSINESS WITHIN THE UNITED STATES WITHIN THE SCOPE OF FINANCIAL CRIME PROVISIONS.

(a) DEFINITION OF FINANCIAL INSTITUTION.—Section 20 of title 18, United States Code, is amended—

(1) by striking the period at the end of paragraph (6) and inserting a semicolon; and

(2) by adding at the end the following new paragraphs:

"(7) a Federal Reserve bank or a member bank of the Federal Reserve System;

"(8) an organization operating under section 25 or section 25(a) of the Federal Reserve Act; or

"(9) a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978).".

(b) OFFER OF LOAN OR GRATUITY TO BANK EXAMINER.—Section 212 of title 18, United States Code, is amended—

(1) in the 1st undesignated paragraph—

(A) by striking "System or the deposits of which" and inserting "System, or the deposits of which";

(B) by inserting "or which is a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or which is an organization operating under section 25 or section 25(a) of the Federal Reserve Act," after "deposits of which are insured by the Federal Deposit Insurance Corporation,"; and

(C) by inserting "branch, agency, organization," after "who examines or has authority to examine such bank,"; and

(2) in the 2d undesignated paragraph—

(A) by striking "System or insured" and inserting "System, insured"; and

(B) by inserting "branches or agencies of foreign banks (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), organizations operating under section 25 or section 25(a) of the Federal Reserve Act," after "financial institutions,".

(c) ACCEPTANCE OF LOAN OR GRATUITY BY BANK EXAMINER.—Section 213 of title 18, United States Code, is amended—

(1) by striking "System or financial institutions the deposits of which" and inserting "System, financial institutions the deposits of which";

(2) by inserting "which are branches or agencies of foreign banks (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or which are organizations operating under section 25 or section 25(a) of the Federal Reserve Act," after "deposits of which are insured by the Federal Deposit Insurance Corporation,";

(3) by inserting "branch, agency," after "accepts a loan or gratuity from any bank,".

(d) CUSTODIANS, GENERALLY, MISUSING PUBLIC FUNDS.—Section 648 of title 18, United States Code, is amended by inserting ", including any branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978)," after "or deposits in any bank".

(e) THEFT BY EXAMINER.—Section 655 of title 18, United States Code, is amended—

(1) in the 1st undesignated paragraph—

(A) by striking "System or which is insured" and inserting "System, which is insured";

(B) by inserting "which is a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or which is an organization operating under section 25 or section 25(a) of the Federal Reserve Act," after "by the Federal Deposit Insurance Corporation,"; and

(C) by inserting "branch, agency, or organization," after "premises of such bank,"; and

(2) in the 2d undesignated paragraph—

(A) by striking "System or banks the deposits of which" and inserting "System, banks the deposits of which"; and

(B) by inserting "branches or agencies of foreign banks (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or organizations operating under section 25 or section 25(a) of the Federal Reserve Act," after "are insured by the Federal Deposit Insurance Corporation,".

(f) THEFT, EMBEZZLEMENT, OR MISAPPLICATION BY BANK OFFICER OR EMPLOYEE.—Section 656 of title 18, United States Code (as amended by section 2104(b) of this subtitle) is amended—

(1) in the 1st undesignated paragraph—

(A) by striking "national bank, or insured bank" and inserting "national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act,";

(B) by inserting "insured bank, branch, agency, or organization" after "receiver of a national bank,";

(C) by inserting ", branch, agency, or organization" after "misapplies any of the moneys, funds or credits of such bank";

(D) by inserting "branch, agency, or organization," after "custody or care of such bank,"; and

(2) in the 2d undesignated paragraph—

(A) by striking "and" after "one of the Federal Reserve banks;"; and

(B) by inserting before the period the following: "; and the term 'branch or agency of a foreign bank' means a branch or agency described in section 20(9) of this title".

(g) CERTIFICATION OF CHECKS.—Section 1004 of title 18, United States Code, is amended—

(1) by striking "or" after "Federal Reserve bank" and inserting a comma;

(2) by inserting "insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act), branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or organization operating under section 25 or section 25(a) of the Federal Reserve Act," after "member bank of the Federal Reserve System,"; and

(3) by inserting ", branch, agency, or organization," after "has been regularly deposited in the bank".

(h) BANK ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1005 of title 18, United States Code (as amended by section 2104(d) of this subtitle) is amended—

(1) in the 1st undesignated paragraph—

(A) by striking "national bank or insured bank" and inserting "national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act,"; and

(B) by inserting ", branch, agency, or organization" after "of such bank" each place such term appears;

(2) in the 3d undesignated paragraph, by striking "bank or company" each place such term appears and inserting "bank, company, branch, agency, or organization"; and

(3) in the last undesignated paragraph—

(A) by striking "and" after "one of the Federal Reserve banks;"; and

(B) by inserting before the period the following: "; and the term 'branch or agency of a foreign bank' means a branch or agency described in section 20(9) of this title".

(i) FALSE STATEMENTS IN LOAN, CREDIT, AND CROP INSURANCE APPLICATIONS.—Section 1014 of title 18, United States Code (as amended by section 2104(g) of this subtitle) is amended by inserting "a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or an organization operating under section 25 or section 25(a) of the Federal Reserve Act," after "or the National Credit Union Administration Board".

(j) FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COMPUTERS.—Section 1030(e)(4) of title 18, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by striking the period at the end of subparagraph (G) and inserting a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(H) a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978); and

"(I) an organization operating under section 25 or section 25(a) of the Federal Reserve Act.".

(k) DISCLOSURE OF INFORMATION FROM A BANK EXAMINATION REPORT.—Section 1906 of title 18, United States Code, is amended—

(1) by striking "System, or bank insured" and inserting "System, any bank insured";

(2) by inserting ", any branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or any organization operating under section 25 or section 25(a) of the Federal Reserve Act," after "by the Federal Deposit Insurance Corporation";

(3) by inserting "branch, agency, or organization," after "proper officers of such bank,";

(4) by inserting "or a Federal branch or Federal agency (as such terms are defined in paragraphs (5) and (6) of section 1(b) of the International Banking Act of 1978)" after "national bank";

(5) by inserting ", an uninsured State branch or State agency (as such terms are defined in paragraphs (11) and (12) of section 1(b) of the International Banking Act of 1978), or an organization operating under section 25 or section 25(a) of the Federal Reserve Act" after "as to a State member bank";

(6) by inserting ", including any insured branch (as defined in section 3(s) of the Federal Deposit Insurance Act)," after "any other insured bank"; and

(7) by inserting "or organization" after "board of directors of such bank".

(l) BANK ROBBERY AND INCIDENTAL CRIMES.—Section 2113(f) of title 18, United States Code, is amended by inserting "including a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978)," after "operating under the laws of the United States,".

TITLE XXIX—PRISONS

SEC. 2901. REPORT WITH RESPECT TO FEDERAL PRISON INDUSTRIES.

Section 4124 of title 18, United States Code, is amended—

(1) in the first paragraph by inserting "(a)" before "The";

(2) in the second paragraph by inserting "(b)" before "Disputes"; and

(3) by adding at the end the following:

"(c) Each Federal department, agency, and institution subject to the requirements of subsection (a) shall separately report to the General Services Administration all of its acquisitions of products and services from Federal Prison Industries, and that reported information shall be entered in the Federal Procurement Data System referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act. Each report published by the Federal Procurement Data System that contains the information collected by the System shall include a statement to accompany the information reported by the department, agency, or institution under the preceding sentence as follows: 'Under current law, sales by Federal Prison Industries are considered intragovernmental transfers. The purpose of reporting sales by Federal Prison Industries is to provide a complete overview of acquisitions by the Federal Government during the reporting period.'.

"(d) Within 90 days after the date of the enactment of this subsection, Federal Prison Industries shall publish a catalog of all products and services which it offers for sale. This catalog shall be updated periodically to the extent necessary to ensure that the information in the catalog is complete and accurate.".

SEC. 2902. PRERELEASE CUSTODY.

(a) IN GENERAL.—Section 3624(c) of title 18, United States Code, is amended by inserting after the first sentence the following: "The authority provided by this subsec-

tion may be used to place a prisoner in home confinement.".

(b) EFFECTIVE DATE.—Section 3624(c) of title 18, United States Code, as amended by this section, shall apply with respect to all inmates, regardless of the date of their offense.

SEC. 2903. DRUG TREATMENT FOR PRISONERS.

Section 3621(b) of title 18, United States Code, is amended by adding at the end the following: "The Bureau shall, to the extent practicable, make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse.".

SEC. 2904. FUNCTIONAL LITERACY REQUIREMENT FOR ALL INDIVIDUALS IN FEDERAL CORRECTIONAL INSTITUTIONS.

Section 3624 of title 18, United States Code, is amended by adding at the end the following:

"(f) MANDATORY FUNCTIONAL LITERACY REQUIREMENT.—

"(1) The Attorney General shall direct the Bureau of Prisons to have in effect a mandatory functional literacy program for all mentally capable inmates who are not functionally literate in each Federal correctional institution within 6 months from the date of the enactment of this Act.

"(2) Each mandatory functional literacy program shall include a requirement that each inmate participate in such program for a mandatory period sufficient to provide the inmate with an adequate opportunity to achieve functional literacy, and appropriate incentives which lead to successful completion of such programs shall be developed and implemented.

"(3) As used in this section, the term 'functional literacy' means—

"(A) an eighth grade equivalence in reading and mathematics on a nationally recognized standardized test;

"(B) functional competency or literacy on a nationally recognized criterion-referenced test; or

"(C) a combination of subparagraphs (A) and (B).

'(4) Non-English speaking inmates shall be required to participate in an English-As-A-Second-Language program until they function at the equivalence of the eighth grade on a nationally recognized educational achievement test.

"(5) The Chief Executive Officer of each institution shall have authority to grant waivers for good cause as determined and documented on an individual basis.

"(6) A report shall be provided to Congress on an annual basis summarizing the results of this program, including the number of inmate participants, the number successfully completing the program, the number who do not successfully complete the program, and the reasons for failure to successfully complete the program.".

SEC. 2905. MANDATORY WORK REQUIREMENT FOR ALL PRISONERS.

(a) IN GENERAL.—(1) It is the policy of the Federal Government that convicted inmates confined in Federal prisons, jails, and other detention facilities shall work. The type of work in which they will be involved shall be dictated by appropriate security considerations and by the health of the prisoner involved.

(2) A Federal prisoner may be excused from the requirement to work only as necessitated by—

(A) security considerations;

(B) disciplinary action;

(C) medical certification of disability such as would make it impracticable for prison officials to arrange useful work for the prisoner to perform; or

(D) a need for the prisoner to work less than a full work schedule in order to participate in literacy training, drug rehabilitation, or similar programs in addition to the work program.

SEC. 2906. EXPANSION OF THE PRIVATE SECTOR/PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM.

Section 1761(c) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively;

(2) by striking the matter preceding paragraph (2), as redesignated by paragraph (1) of this section, and inserting the following:

"(c) In addition to the exceptions set forth in subsection (b) of this section, this chapter shall not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who—

"(1) are participating in—

"(A) one of not more than 50 non-Federal prison work pilot projects designated by the Director of the Bureau of Justice Assistance; and"; and

(3) in paragraph (2), as redesignated by paragraph (1) of this section, by amending subparagraph (B) to read as follows:

"(B) reasonable charges for room and board, as determined by regulations issued by the chief State correctional officer, in the case of a State prisoner.".

SEC. 2907. COST SAVING MEASURES.

The Director of the Federal Bureau of Prisons (referred to as the "Director") shall, to the extent practicable, take such measures as are appropriate to cut costs of construction. Such measures may include reducing expenditures for amenities including, for example, color television or pool tables.

SEC. 2908. REPORT BY SECRETARY OF LABOR.

The Secretary of Labor shall submit to the Congress not later than March 1, 1991, and not less often than annually thereafter, reports which describe in detail the extent and manner of compliance by State Prison Industry Enhancement Certification programs with the requirements set forth in 18 U.S.C. 1761(c).

TITLE XXX—SHOCK INCARCERATION

SEC. 3001. SHOCK INCARCERATION PROGRAM.

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

"§ 4046. Shock incarceration program

"(a) The Bureau of Prisons may place in a shock incarceration program any person who is sentenced to a term of imprisonment of more than 12, but not more than 30, months, if such person consents to that placement.

"(b) For such initial portion of the term of imprisonment as the Bureau of Prisons may determine, not to exceed 6 months, an inmate in the shock incarceration program shall be required to—

"(1) adhere to a highly regimented schedule that provides the strict discipline, physical training, hard labor, drill, and ceremony characteristic of military basic training; and

"(2) participate in appropriate job training and educational programs (including literacy programs) and drug, alcohol, and other counseling programs.

"(c) An inmate who in the judgment of the Director of the Bureau of Prisons has successfully completed the required period of shock incarceration shall remain in the custody of the Bureau for such period (not to exceed the remainder of the prison term otherwise required by law to be served by that inmate), and under such conditions, as the Bureau deems appropriate.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 303 of title 18, United States Code, is amended by adding at the end the following:

"4046. Shock incarceration program.".

SEC. 3002. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 1990 and each fiscal year thereafter such sums as may be necessary to carry out the shock incarceration program established under the amendments made by this Act.

TITLE XXXI—BANKRUPTCY AND RESTITUTION

SEC. 3101. SHORT TITLE.

This Act may be cited as the "Criminal Victims Protection Act of 1990".

SEC. 3102. NONDISCHARGEABILITY OF CERTAIN DEBTS ARISING FROM UNLAWFUL DRIVING WHILE INTOXICATED OR IMPAIRED.

(a) AMENDMENT TO CHAPTER 5.—Section 523(a)(9) of title 11, United States Code, is amended to read as follows:

"(9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance; or".

(b) AMENDMENT TO CHAPTER 13.—Section 1328(a)(2) of title 11, United States Code, is amended by inserting "or 523(a)(9)" after "523(a)(5)".

SEC. 3103. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR RESTITUTION IMPOSED FOR COMMITTING CRIMES.

Section 1328(a) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "or" at the end,

(2) in paragraph (2) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(3) for restitution included in a sentence on the debtor's conviction of a crime.".

SEC. 3104. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

TITLE XXII—MISCELLANEOUS

SEC. 2201. AUTHORIZATION OF APPROPRIATIONS FOR HUMANITARIAN EXPENSES.

(a) FEDERAL BUREAU OF INVESTIGATION.—For each fiscal year beginning after September 30, 1990, there is authorized to be appropriated for the Federal Bureau of Investigation $25,000, to be expended in the discretion of the Director of the Federal Bureau of Investigation to pay humanitarian expenses incurred—

(1) by an employee of the Bureau as a result of serious illness, serious injury, or death occurring while on official business; or

(2) by any member of the immediate family of such employee, incident to the serious illness, serious injury, or death of such employee occurring while on official business.

(b) DRUG ENFORCEMENT ADMINISTRATION.—For each fiscal year beginning after Septem-

ber 30, 1990, there is authorized to be appropriated for the Drug Enforcement Administration $25,000, to be expended at the discretion of the Administrator of the Drug Enforcement Administration to pay humanitarian expenses incurred—

(1) by an employee of the Administration as a result of serious illness, serious injury, or death occurring while on official business; or

(2) by any member of the immediate family of such employee, incident to the serious illness, serious injury, or death of such employee occurring while on official business.

SEC. 2214. BANNING OF ISOPROPAL NITRITE AND OTHER NITRITES.

(a) IN GENERAL.—Except as provided in subsection (b), volatile alkyl nitrite shall be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).

(b) LAWFUL PURPOSES.—For the purposes of section 8 of the Consumer Product Safety Act, it shall not be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States volatile alkyl nitrites for any commercial purpose or any other purpose approved under the Federal Food, Drug, and Cosmetic Act.

(c) DEFINITIONS.—For purposes of this section, the term "commercial purpose" means any commercial purpose other than for the production of consumer products containing volatile alkyl nitrites that may be used for inhaling or otherwise introducing volatile alkyl nitrites into the human body for euphoric or physical effects.

(d) EFFECTIVE DATE.—This section shall take effect 90 days after the date of the enactment of this Act.

TITLE XXIII—MISCELLANEOUS PROVISIONS

SEC. 2301. UNDERCOVER OPERATIONS OF INTERNAL REVENUE SERVICE.

(a) EXTENSION OF PROGRAM.—Paragraph (3) of section 7601(c) of the Anti-Drug Abuse Act of 1988 (relating to effective date) is amended by striking "1989" and "1990" and inserting "1991" and "1992", respectively.

(b) GAO STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of undercover investigative operations of the Internal Revenue Service which were conducted using any authority provided in subsection (c) of section 7608 of the Internal Revenue Code of 1986. The study shall include an evaluation of—

(A) the use of the proceeds of such operations,

(B) the results of such operations, and

(C) the financial audits conducted by the Internal Revenue Service under such subsection.

(2) REPORT.—Not later than July 1, 1991, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study required in paragraph (1).

SEC. 2302. DISCLOSURE OF RETURNS ON CERTAIN CASH TRANSACTIONS.

(a) EXTENSION OF PROGRAM.—Paragraph (3) of section 7601(b) of the Anti-Drug Abuse Act of 1988 (relating to effective date) is amended by striking "2-year period" inserting "4-year period".

(b) GAO STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the disclosure of returns to Federal agencies under paragraph (8) of section 6103(i) of the Internal Revenue Code of 1986. The study shall include an evaluation of—

(A) the Federal agencies requesting disclosure under such paragraph,

(B) the use of the information so disclosed, and

(C) the effect of the use of such information on the administration of Federal criminal statutes.

(2) REPORT.—Not later than July 1, 1991, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study required in paragraph (1).

SEC. 2303. FELONY CLASSIFICATION FOR FAILURE TO FILE RETURN ON CERTAIN CASH TRANSACTIONS.

(a) IN GENERAL.—The last sentence of section 7203 of the Internal Revenue Code of 1986 (relating to willful failure to file return, etc.) is amended by striking "by substituting" and inserting "by substituting 'felony' for 'misdemeanor' and".

(b) GAO STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the criminal penalties established under section 7203 of the Internal Revenue Code of 1986 for violations of section 6050I of such Code. The study shall include an evaluation of—

(A) the number of cases in which such penalties have been sought for such violations, and

(B) any change in the effectiveness of such penalties by reason of the amendment made by subsection (a).

(2) REPORT.—Not later than July 1, 1991, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study required in paragraph (1).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to actions, and failures to act, occurring after the date of the enactment of this Act.

SEC. 2304. CONFIDENTIALITY OF TAX RETURN INFORMATION.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, no commission established by this Act shall have access to any return or return information, except to the extent authorized by section 6103 of the Internal Revenue Code of 1986.

(b) DEFINITIONS.—For purposes of this section, the terms "return" and "return information" have the respective meanings given such terms by section 6103(b) of the Internal Revenue Code of 1986.

TITLE XXV—NATIONAL COMMISSION TO SUPPORT LAW ENFORCEMENT

SEC. 2501. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) law enforcement officers risk their lives daily to protect citizens, for modest rewards and too little recognition;

(2) a significant shift has occurred in the problems that law enforcement officers face without a corresponding change in the support from the Federal Government;

(3) law enforcement officers are on the front line in the war against drugs and crime;

(4) the rate of violent crime continues to increase along with the increase in drug use;

(5) a large percentage of individuals arrested test positive for drug usage;

(6) the Presidential Commission on Law Enforcement and the Administration of Justice of 1965 focused attention on many issues affecting law enforcement, and a review 25 years later would help to evaluate current problems, including drug-related crime, violence, racial conflict, and decreased funding; and

(7) a comprehensive study of law enforcement issues, including the role of the Federal Government in supporting law enforcement officers, working conditions, and responsibility for crime control would assist in redefining the relationships between the Federal Government, the public, and law enforcement officials.

SEC. 2502. ESTABLISHMENT.

There is hereby established the National Commission to Support Law Enforcement (hereafter in this title referred to as the "Commission").

SEC. 2503. DUTIES.

(a) IN GENERAL.—The Commission shall study and include in the report made under section 2307 recommendations for changes regarding law enforcement agencies and law enforcement issues on the Federal, State, and local levels, including the following:

(1) FUNDING.—The sufficiency of funding, including a review of grant programs at the Federal level.

(2) EMPLOYMENT.—The conditions of law enforcement employment.

(3) INFORMATION.—The effectiveness of information-sharing systems, intelligence, infrastructure, and procedures among law enforcement agencies of Federal, State, and local governments.

(4) RESEARCH AND TRAINING.—The status of law enforcement research and education and training.

(5) EQUIPMENT AND RESOURCES.—The adequacy of equipment, physical resources, and human resources.

(6) COOPERATION.—The cooperation among Federal, State, and local law enforcement agencies.

(7) RESPONSIBILITY.—The responsibility of governments and law enforcement agencies in solving the crime problem.

(8) IMPACT.—The impact of the criminal justice system, including court schedules and prison overcrowding, on law enforcement.

(b) CONSULTATION.—The Commission shall conduct surveys and consult with focus groups of law enforcement officers, local officials, and community leaders across the Nation to obtain information and seek advice on important law enforcement issues.

SEC. 2504. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 19 members as follows:

(1) 5 individuals from national law enforcement organizations representing law enforcement officers, appointed jointly by the Speaker of the House of Representatives and the majority leader of the Senate.

(2) 5 individuals from national law enforcement organizations representing law enforcement management, appointed jointly by the Speaker of the House of Representatives and the majority leader of the Senate.

(3) 2 individuals with academic expertise regarding law enforcement issues, appointed jointly by the Speaker of the House of Representatives and the majority leader of the Senate.

(4) 2 Members of the House of Representatives, appointed jointly by the Speaker and the minority leader of the House of Representatives.

(5) 2 Members of the Senate, appointed jointly by the majority leader and the minority leader of the Senate.

(6) 1 individual involved in Federal law enforcement from the Department of the Treasury, appointed by the President.

(7) 1 individual from the Department of Justice, appointed by the President.

(8) The Comptroller General of the United States, who shall serve as the chairperson of the Commission.

(b) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall receive no additional pay, allowances, or benefits by reason of service on the Commission.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

SEC. 2505. EXPERTS AND CONSULTANTS.

(a) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(b) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of that agency to the Commission to assist the Commission in carrying out its duties under this title.

(c) ADMINISTRATIVE SUPPORT.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, administrative support services as the Commission may request.

SEC. 2506. POWERS OF COMMISSION.

(a) HEARINGS.—The Commission may, for purposes of this title, hold hearings, sit and act at the times and places, take testimony, and receive evidence, as the Commission considers appropriate.

(b) DELEGATION OF AUTHORITY.—Any member or agent of the Commission may, if authorized by the Commission, take any action the Commission is authorized to take by this section.

(c) INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title. Upon request of the chairperson of the Commission, the head of an agency shall furnish the information to the Commission to the extent permitted by law.

(d) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

SEC. 2507. REPORT.

Not later than the expiration of the 18-month period beginning on the date of the enactment of this title, the Commission shall submit to the Congress a report containing the findings of the Commission and specific proposals for legislation and administrative actions that the Commission has determined to be appropriate.

SEC. 2508. TERMINATION.

The Commission shall cease to exist upon the expiration of the 60-day period beginning on the date on which the Commission submits its report under section 2507.

TITLE XXIX—TECHNICAL AND MINOR SUBSTANTIVE AMENDMENTS

Subtitle A—Penalties and Sentencing Amendments

SEC. 2902. MODIFICATION OF APPROVAL REQUIREMENTS FOR GOVERNMENT SENTENCE APPEALS.

Section 3742(b) of title 18, United States Code, is amended—

(1) by striking ", with the personal approval of the Attorney General or the Solicitor General"; and

(2) by adding at the end the following: "The Government may not further prosecute such appeal without the personal approval of the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General.".

SEC. 2903. PENALTY FOR CERTAIN ACCESSORY AFTER THE FACT OFFENSES.

Section 3 of title 18, United States Code, is amended by striking "10 years" and inserting in lieu thereof "15 years".

SEC. 2904. DELETION OF REQUIREMENT FOR SOLICITOR GENERAL APPROVAL OF APPEAL TO A DISTRICT COURT FROM A SENTENCE IMPOSED BY A MAGISTRATE.

Section 3742(g) of title 18, United States Code, is amended by inserting "(except for the requirement of approval by the Attorney General or the Solicitor General in the case of a Government appeal)" after "and this section shall apply".

SEC. 2934. CORRECTION OF TABLE OF SECTIONS FOR CHAPTER 1.

The item relating to section 17 in the table of sections at the beginning of chapter 1 of title 18, United States Code, is amended by striking "Defense" and inserting "defense".

SEC. 2935. CORRECTION TO SECTION 12.

Section 12 of title 18, United States Code, is amended by striking "every officer and employee of that Service, whether he has taken the oath of office" and inserting "every officer and employee of that Service, whether or not such officer or employee has taken the oath of office".

SEC. 2936. CORRECTION OF TABLE OF SECTIONS FOR CHAPTER 3.

The table of sections at the beginning of chapter 3 of title 18, United States Code, is amended—

(1) in the item relating to section 47, by inserting "; pollution of watering holes" after "burros"; and

(2) by striking the items related to sections 42 through 44 and inserting the following:

"42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations.".

SEC. 2937. CORRECTION TO SECTION 114.

Section 114 of title 18, United States Code, is amended by striking "and imprisoned" and inserting "or imprisoned".

SEC. 2938. CORRECTION TO SECTION 115.

Section 115 of title 18, United States Code, is amended by striking "The Central" and inserting "the Central".

SEC. 2939. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 11.

The table of sections at the beginning of chapter 11 of title 18, United States Code, is amended—

(1) in the item relating to section 203, by striking "of Members" and inserting "to Members"; and

(2) in the item relating to section 204, by striking "Court of Claims" and inserting "United States Claims Court or United States Court of Appeals for the Federal Circuit".

SEC. 2940. CROSS REFERENCE UPDATE FOR SECTION 209.

Subsection (d) of section 209 of title 18, United States Code, is amended by striking "Government Employees Training Act" and all that follows through the end of such subsection and inserting "chapter 41 of title 5.".

SEC. 2941. CORRECTION TO SECTION 219.

Section 219(c) of title 18, United States Code, is amended by striking "Governments" and inserting "Government".

SEC. 2942. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 23.

The table of sections at the beginning of chapter 23 of title 18, United States Code, is amended—

(1) by striking the item relating to section 434; and

(2) in the item relating to section 437, by striking "Indian" and all that follows through "supplies" and inserting "Federal employees contracting or trading with Indians.".

SEC. 2943. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 25.

The table of sections at the beginning of chapter 25 of title 18, United States Code, is amended—

(1) in the item relating to section 491, by striking "used" and all that follows through "coins" and inserting "or paper used as money.";

(2) in the item relating to section 496, by striking "entry certificates" and inserting "matters"; and

(3) in the item relating to section 501, by inserting ", postage meter stamps," after "stamps".

SEC. 2944. MARGIN CORRECTION IN SECTION 510.

Subsection (a) of section 510 of title 18, United States Code, is amended—

(1) by inserting a semicolon after "or signature" in paragraph (2); and

(2) so that the matter beginning with "shall be fined" and all that follows through the end of such subsection is flush against the left margin.

SEC. 2945. CORRECTIONS TO SECTION 513.

Section 513(c)(3) of title 18, United States Code, is amended—

(1) by striking "(15 U.S.C. 1693(c))"; and

(2) by inserting a comma after "profit-sharing agreement".

SEC. 2946. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 29.

The table of sections at the beginning of chapter 29 of title 18, United States Code, is amended—

(1) in the item relating to section 603, by striking "Place of solicitation" and inserting "Making political contributions"; and

(2) in the item relating to section 607, by striking "Making political contributions" and inserting "Place of solicitation".

SEC. 2947. CORRECTION OF HEADING OF SECTION 665.

(a) The heading of section 665 of title 18, United States Code, is amended by striking the colons and inserting semicolons.

(b) Section 665(c) of title 18, United States Code, is amended by striking "Any person whoever" and inserting "Whoever".

SEC. 2948. PUNCTUATION CORRECTION TO HEADING FOR CHAPTER 33.

The heading at the beginning of chapter 33 of title 18, United States Code, is amended by inserting a comma after "insignia".

SEC. 2949. REDESIGNATION OF SECOND SECTION 798.

(a) GENERALLY.—The second section 798 of title 18, United States Code, is redesignated as section 798A.

(b) TABLE OF SECTIONS.—The item relating to the second section 798 in the table of sections at the beginning of chapter 37 of title

18, United States Code, is amended by striking "798" and inserting "798A".

(c) CROSS REFERENCE CONFORMING AMENDMENT.—Section 14 of title 18, United States Code, is amended by striking "798" the first place it appears and all that follows through "799" and inserting "798, 798A, 799".

SEC. 2950. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 40.

The item relating to section 843 in the table of sections at the beginning of chapter 40 of title 18, United States Code, is amended by striking "Licensing" and inserting "Licenses".

SEC. 2951. CORRECTION TO SECTION 842.

Section 842 of title 18, United States Code, is amended—

(1) in subsection (d)(5), by striking the period and inserting "; or"; and

(2) in subsection (i)(3), by striking the period and inserting "; or".

SEC. 2952. CORRECTION TO SECTION 844.

Section 844 of title 18, United States Code, is amended by striking the comma that immediately follows a comma.

SEC. 2953. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 44.

The item relating to section 928 in the table of sections at the beginning of chapter 44 of title 18, United States Code, is amended by striking "clause".

SEC. 2954. CORRECTION TO SECTION 922.

Section 922(b)(1) is amended by striking the period at the end and inserting a semicolon.

SEC. 2955. CORRECTION TO SECTION 923.

Section 923(a)(3)(B) is amended by inserting a comma after "devices".

SEC. 2956. AMENDMENTS RELATING TO THE UNDETECTABLE FIREARMS ACT OF 1988.

(a) REDESIGNATION IN TITLE 18.—Section 924 of title 18, United States Code, is amended by redesignating the second subsection (f) and subsection (g) as subsections (g) and (h), respectively.

(b) REDESIGNATION IN ORIGINAL ACT.—Section 2(f)(2)(B) of the Undetectable Firearms Act of 1988 is amended by inserting "and subsections (g) and (h) of such section are hereby redesignated as subsections (f) and (g), respectively" before the semicolon.

SEC. 2957. ELIMINATION OF REDUNDANT WORDS.

Section 924(c)(1) of title 18, United States Code, is amended by striking "imprisonment for" the 4th place it appears.

SEC. 2958. INSERTION OF MISSING PARENTHESES.

Section 924(a)(1) is amended by striking "3" and inserting "(3)".

SEC. 2959. ADDITIONAL CORRECTIONS TO SECTION 924.

Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(2)—

(A) by striking "subsections" and inserting "subsection"; and

(B) by inserting a comma after "years".

(2) in subsection (e)(2)(A)(ii), by striking "and"; and

(3) in subsection (e)(2)(B)(ii), by striking the period and inserting "; and".

SEC. 2960. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 45.

The table of sections at the beginning of chapter 45 of title 18, United States Code, is amended by striking the item relating to section 968.

SEC. 2961. CORRECTION TO SECTION 981.

Section 981(d) of title 18, United States Code, is amended by adding a period at the end.

SEC. 2962. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 47.

The item relating to section 1031 in the table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by inserting a period after "1031".

SEC. 2963. CORRECTION OF CROSS REFERENCE IN SECTION 1030.

Section 1030 of title 18, United States Code, is amended by striking "paragraph r" and inserting "paragraph y".

SEC. 2964. ELIMINATION OF SUPERFLUOUS PUNCTUATION IN SECTION 1113.

Section 1113 of title 18, United States Code, is amended by striking the final period.

SEC. 2965. CAPITALIZATION AND AGENCY REFERENCE CORRECTIONS IN SECTION 1114.

Section 1114 of title 18, United States Code, is amended—

(1) by striking "secret service" and inserting "Secret Service";

(2) by striking "any officer or employee of the Department of Health, Education, and Welfare," and inserting "any officer or employee of the Department of Education, the Department of Health and Human Services,"; and

(3) by striking "the Federal Savings and Loan Insurance Corporation,".

SEC. 2966. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 53.

The table of sections at the beginning of chapter 53 of title 18, United States Code, is amended by striking the item relating to section 1157.

SEC. 2967. CORRECTION TO SECTION 1168.

Section 1168(a) of title 18, United States Code, is amended by striking "and be imprisoned for" and inserting "or imprisoned".

SEC. 2968. CROSS REFERENCE CORRECTION IN SECTION 1201.

Section 1201(a)(3) of title 18, United States Code, is amended—

(1) by striking "101(36)" and inserting "101(38)"; and

(2) by striking ", as amended (49 U.S.C. 1301(36))".

SEC. 2969. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 57.

The table of sections at the beginning of chapter 57 of title 18, United States Code, is amended by striking the item relating to section 1232.

SEC. 2970. CORRECTION OF HEADING OF SECTION 1262.

The heading of section 1262 of title 18, United States Code, is amended by striking "state" and inserting "State".

SEC. 2971. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 63.

The item relating to section 1342 in the table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by striking "and" and inserting "or".

SEC. 2972. CORRECTION TO SECTION 1345.

Section 1345 of title 18, United States Code, is amended by inserting a comma after "of this title".

SEC. 2973. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 65.

The item relating to section 1366 in the table of sections at the beginning of chapter 65 of title 18, United States Code, is amended by inserting a period after "1366".

SEC. 2974. CORRECTION OF QUOTATION MARK.

Section 1365(g)(1)(A) of title 18, United States Code, is amended by inserting an open quotation mark before "device".

SEC. 2975. CORRECTION OF CROSS REFERENCE.

Section 1366(c) of title 18, United States Code, is amended by striking "49 U.S.C. 1671" and inserting "section 2 of the Natural Gas Pipeline Safety Act of 1968".

SEC. 2976. ELIMINATION OF EXECUTED CLERICAL AMENDMENT.

Section 1366 of title 18, United States Code, is amended by striking subsection (d).

SEC. 2977. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 67.

The table of sections at the beginning of chapter 67 of title 18, United States Code, is amended by striking the item relating to section 1383.

SEC. 2978. CORRECTION TO SECTION 1466.

Section 1466(b) of title 18, United States Code, is amended—

(1) by striking "this subsection" and inserting "this section"; and

(2) by striking "subsection (b)" and inserting "this subsection".

SEC. 2979. CROSS REFERENCE CORRECTION TO SECTION 1467.

Section 1467(h)(4) of title 18, United States Code, is amended by striking "in accordance" and all that follows through "United States Code" and inserting "under section 616 of the Tariff Act of 1930".

SEC. 2980. CORRECTION TO SECTION 1546.

Section 1546(a) of title 18, United States Code, is amended by striking "Shall be fined not more than in accordance with this title" and inserting "Shall be fined under this title".

SEC. 2981. CORRECTION TO SECTION 1716A.

Section 1716A(a) of title 18, United States Code is amended by striking "shall be under this title" and inserting "shall be fined under this title or".

SEC. 2982. CORRECTION TO HEADING OF SECTION 1717.

(a) GENERALLY.—The heading of section 1717 of title 18, United States Code, is amended by striking "; opening letters".

(b) CONFORMING AMENDMENT.—The item relating to section 1717 in the table of sections at the beginning of chapter 83 of title 18, United States Code, is amended by striking "; opening letters".

SEC. 2983. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 84.

The table of sections at the beginning of chapter 84 of title 18, United States Code, is amended by adding at the end the following:

"1752. Temporary residences and offices of the President and others.".

SEC. 2984. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 91.

The table of sections at the beginning of chapter 91 of title 18, United States Code, is amended by striking the item relating to section 1862.

SEC. 2985. CORRECTION TO SECTION 1864.

Section 1864 of title 18, United States Code, is amended—

(1) by striking "and" at the end of subsection (d)(1)(D); and

(2) in subsection (d)(2)(E), by striking the period at the end and inserting "; and".

SEC. 2986. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 93.

The table of sections at the beginning of chapter 93 of title 18, United States Code, is amended—

(1) in the item relating to section 1906, by striking "by bank examiner" and inserting "from a bank examination report"; and

(2) by striking the item relating to section 1914.

SEC. 2987. CORRECTIONS TO SECTION 1956.

Section 1956 of title 18, United States Code, is amended—

(1) in subsection (c)(7)(A), by striking "the Currency and Foreign Transactions Reporting Act" and inserting "subchapter II of chapter 53 of title 31";

(2) in subsection (c)(7)(D)—

(A) by striking "or section 2113" and inserting "section 2113";

(B) by striking "theft) of this title," and inserting "theft), or"; and

(C) by inserting "of this title" after "2319" (relating to copyright infringement);

(D) by striking "paraphenalia" and inserting "paraphernalia"; and

(E) by striking the final period.

SEC. 2988. CORRECTION TO SECTION 1958.

Section 1958(b) of title 18, United States Code, is amended by striking "1952B" and inserting "1959".

SEC. 2989. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 96.

The item relating to section 1962 in the table of sections at the beginning of chapter 96 of title 18, United States Code, is amended by striking "racketeering".

SEC. 2990. CORRECTION TO SECTION 1961.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "section 1029 (relative" and inserting "section 1029 (relating"; and

(2) by striking "sections 2251 through 2252 (relating to sexual exploitation of children),".

SEC. 2991. CORRECTION TO SECTION 1963.

Section 1963(a) of title 18, United States Code, is amended by striking "or both." and inserting "or both".

SEC. 2992. CORRECTION OF HEADING OF SECTION 2114.

The heading of section 2114 of title 18, United States Code, is amended by inserting a comma after "money".

SEC. 2993. PUNCTUATION CORRECTION TO SECTION 2251(a).

Section 2251(a) of title 18, United States Code, is amended by striking "in,," and inserting "in,".

SEC. 2994. CORRECTIONS TO SECTION 2253.

Section 2253(a) of title 18, United States Code, is amended—

(1) by striking "sections 2251" and inserting "section 2251"; and

(2) in subsection (h)(4), by striking "in accordance" and all that follows through "United States Code" and inserting "under section 616 of the Tariff Act of 1930".

SEC. 2995. CORRECTIONS TO SECTION 2254.

Section 2254 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "sections 2251" each place it appears and inserting "section 2251";

(2) in subsection (e), by inserting "INAPPLICABILITY OF CERTAIN SECTIONS.—" after "(e)"; and

(3) in subsection (f)—

(A) by striking "subchapter" and inserting "section"; and

(B) in paragraph (1), by striking "pursuant to section 1616 of title 19" and inserting "under section 616 of the Tariff Act of 1930".

SEC. 2996. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 111.

The item relating to section 2271 in the table of sections at the beginning of chapter 111 of title 18, United States Code, is amended by striking "vessel" and inserting "vessels".

SEC. 2997. CORRECTION OF HEADING OF SECTION 2318.

The heading of section 2318 of title 18, United States Code, is amended by striking the comma.

SEC. 2998. CROSS REFERENCE CORRECTIONS IN SECTION 2516.

Section 2516(j) of title 18, United States Code, is amended by striking "any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code" and inserting "any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or section 902(i) or (n) of the Federal Aviation Act of 1958 (relating to aircraft piracy)".

SEC. 2999A. CORRECTIONS TO SECTION 3013.

Section 3013 of title 18, United States Code, is amended—

(1) in subsection (a)(1)(B)(i), by striking "a infraction" and inserting "an infraction"; and

(2) in subsection (a)(1)(B)(iii), by striking the period at the end and inserting a semicolon.

SEC. 2999B. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 203.

The table of sections at the beginning of chapter 203 of title 18, United States Code, is amended by striking the item relating to section 3054.

SEC. 2999C. CORRECTION TO SECTION 3058.

Section 3058 of title 18, United States Code, is amended by striking "beligerent" and inserting "belligerent".

SEC. 2999D. CORRECTION TO SECTION 3077.

Section 3077 of title 18, United States Code, is amended—

(1) in paragraph (4), by striking the comma before the close quotation mark and inserting a comma after that mark;

(2) in each of paragraphs (1), (2), (3), and (5), by striking the period at the end and inserting a semicolon; and

(3) in paragraph (6), by striking the period at the end and inserting "; and".

SEC. 2999E. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 205.

The table of sections at the beginning of chapter 205 of title 18, United States Code, is amended—

(1) by striking the item relating to section 3112; and

(2) by striking "3117" the last place it appears and inserting "3118".

SEC. 2999F. REDESIGNATION OF DUPLICATE SECTION 3117.

The section 3117 of title 18, United States Code, that relates to implied consent for certain tests, is redesignated as section 3118.

SEC. 2999G. CORRECTION TO SECTION 3124.

Section 3124(b) of title 18, United States Code, is amended by striking "subsection 3123(b)" and inserting "section 3123(b)".

SEC. 2999I. CLARIFYING REENACTMENT OF PORTION OF SECTION 3154.

Paragraph (1) of section 3154 of title 18, United States Code, is amended by striking "community" and all that follows through the end of such paragraph and inserting "community, and, where appropriate, include a recommendation as to whether such individual should be released or detained and, if release is recommended, recommend appropriate conditions of release.".

SEC. 2999J. PUNCTUATION CORRECTION TO SECTION 3165.

Section 3165(e)(2) of title 18, United States Code, is amended by striking "twelve-calendar month" and inserting "twelve-calendar-month".

SEC. 2999K. SPELLING CORRECTION TO SECTION 3166.

Section 3166(b)(8) of title 18, United States Code, is amended by striking "extention" and inserting "extension".

SEC. 2999L. STYLE CORRECTION TO SECTION 3170.

Subsections (a) and (b) of section 3170 of title 18, United States Code, are each amended by striking "(c)" and inserting "3166(c)" in lieu thereof.

SEC. 2999M. CORRECTION TO SECTION 3289.

Section 3289 of title 18, United States Code, is amended by inserting a comma after "information" the second place it appears.

SEC. 2999N. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 224.

The item relating to section 3526 in the table of sections at the beginning of chapter 224 of title 18, United States Code, is amended by inserting "; reimbursement of expenses" after "governments".

SEC. 2999O. CORRECTION TO SECTION 3521.

Section 3521 of title 18, United States Code, is amended—

(1) in the final sentence of subsection (b)(1), by inserting "(G)" after "subparagraph"; and

(2) in subsection (d)(3), by inserting "the" before "Civil Rights Division".

SEC. 2999P. CORRECTION TO SECTION 3562.

Section 3562(b)(2) of title 18, United States Code, is amended by inserting "of the Federal Rules of Criminal Procedure" after "rule 35".

SEC. 2999Q. CORRECTION TO SECTION 3563.

Section 3563 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "defendent" and inserting "defendant"; and

(2) in subsection (b)(3)—

(A) by striking "pursuant to the provisions of section 3663 and 3664" and inserting "under sections 3663 and 3664"; and

(B) by inserting "section" before "3663(a)".

SEC. 2999R. CORRECTION TO SECTION 3565.

Section 3565(a)(1) of title 18, United States Code, is amended by striking "of modifying" and inserting "or modifying".

SEC. 2999S. CORRECTION OF TABLE OF SECTIONS FOR SUBCHAPTER C OF CHAPTER 227.

The table of sections at the beginning of subchapter C of chapter 227 of title 18, United States Code, is amended—

(1) in the item relating to section 3572, by inserting "and related matters" after "fines"; and

(2) in the item relating to section 3573, by striking "revision" and inserting "remission".

SEC. 2999T. CORRECTION TO SECTION 3572.

Section 3572(c)(2) of title 18, United States Code, is amended by inserting "of the Federal Rules of Criminal Procedure" after "rule 35".

SEC. 2999U. CORRECTION TO SECTION 3582.

Section 3582(b)(2) of title 18, United States Code, is amended by inserting "of the Federal Rules of Criminal Procedure" after "rule 35".

SEC. 2999V. CORRECTION TO SECTION 3583.

Section 3583 of title 18, United States Code, is amended—

(1) in subsection (d)(2), by inserting a comma after "3553(a)(2)(B)";

(2) in subsection (e)—

(A) by striking "or" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; or"; and

(C) by redesignating paragraph (5) as paragraph (4).

SEC. 2999W. CORRECTION OF TABLE OF SECTIONS FOR SUBCHAPTER A OF CHAPTER 229.

The item relating to section 3607 in the table of sections at the beginning of subchapter A of chapter 229 of title 18, United States Code, is amended by striking "possessor" and inserting "possessors".

SEC. 2999X. CORRECTION TO SECTION 3611.

Section 3611 of title 18, United States Code, is amended by striking "604(a)(17)" and inserting "604(a)(18)".

SEC. 2999Y. CORRECTION TO SECTION 3612.

Section 3612(a) of title 18, United States Code, is amended by striking "604(a)(17)" each place it appears and inserting "604(a)(18)".

SEC. 2999Z. CORRECTION TO SECTION 3613.

Section 3613(c) is amended by striking the period before the final quotation mark and inserting a period after such mark.

SEC. 2999AA. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 232.

The item relating to section 3669 in the table of sections at the beginning of chapter 232 of title 18, United States Code, is amended by striking "Conveyance" and inserting "Conveyances".

SEC. 2999BB. CROSS REFERENCE UPDATE FOR SECTION 3663.

Section 3663(f)(4) of title 18, United States Code, is amended by striking "604(a)(17)" and inserting "604(a)(18)".

SEC. 2999CC. CROSS REFERENCE UPDATE FOR SECTION 3664.

Section 3664(a) of title 18, United States Code, is amended by striking "3579" and inserting "3663".

SEC. 2999DD. CORRECTION TO TABLE OF CHAPTERS FOR PART III.

The table of chapters for part III of title 18, United States Code, is amended—

(1) by inserting after the item relating to chapter 305 the following:

"306. Transfer to or from foreign countries ..... 4100";

and

(2) by inserting after the item relating to chapter 317 the following:

"319. National Institute of Corrections ..... 4351".

SEC. 2999EE. CROSS REFERENCE CORRECTION TO SECTION 4109.

Section 4109(a) of title 18, United States Code, is amended—

(1) by striking "the Criminal Justice Act (18 U.S.C. 3006A)" and inserting "section 3006A of this title"; and

(2) by striking "the Criminal Justice Act (18 U.S.C. 3006(a))" and inserting "section 3006A of this title".

SEC. 2999FF. CORRECTION TO SECTION 4013.

Section 413 of title 18, United States Code, is amended by striking "(a)".

SEC. 2999GG. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 307.

The item relating to section 4126 in the table of sections at the beginning of chapter 307 of title 18, United States Code, is amended by striking "fund" and inserting "Fund".

SEC. 2999HH. CORRECTION TO HEADING OF SECTION 4106A.

The heading at the beginning of section 4106A of title 18, United States Code, is amended by inserting "of" before "offenders".

SEC. 2999II. CORRECTION TO SECTION 4106A.

Section 4106A(b)(1)(C) of title 18, United States Code, is amended by adding a period at the end.

SEC. 2999JJ. CORRECTION TO SECTION 4246.

Section 4246(g) of title 18, United States Code, is amended by striking "subchapter" and inserting "chapter".

SEC. 2999KK. CORRECTION TO SECTION 4285.

Section 4285 of title 18, United States Code, is amended by striking "exced" and inserting "exceed".

SEC. 2999LL. CORRECTION TO SECTION 4352.

Section 4352(c) of title 18, United States Code, is amended by striking "this shall" and inserting "this chapter shall".

SEC. 2999MM. CORRECTION TO SECTION 5032.

The 4th paragraph of section 5032 of title 18, United States Code, is amended by striking "offenses set forth in this subsection" and inserting "offenses set forth in this paragraph".

SEC. 2999NN. CORRECTION TO TABLE OF SECTIONS FOR CHAPTER 403.

The item relating to section 5042 in the table of sections at the beginning of chapter 403 of title 18, United States Code, is amended by striking "Probation" and inserting "probation".

SEC. 2999OO. DEFINITIONS FOR CONTROLLED SUBSTANCES ACT.

Section 102(32)(A) of the Controlled Substances Act (21 U.S.C. 802(32)(A)) is amended by striking "stimulent" each place it appears and inserting "stimulant".

SEC. 2999PP. SECTION 1010 OF THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.

Section 1010(b)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(2)) is amended by striking "supervised" each place it appears and inserting "supervised".

SEC. 2999QQ. SECTION 401 OF THE CONTROLLED SUBSTANCES ACT.

Sections 401(b)(1)(A)(ii)(IV) and 401(b)(1)(B)(ii)(IV) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)(ii)(IV) and 841(b)(1)(B)(ii)(IV)) are each amended by striking "any of the substance" and inserting "any of the substances".

SEC. 2999RR. SECTIONS 405, 405A, and 405B OF THE CONTROLLED SUBSTANCES ACT.

Sections 405(b), 405A(b), and 405B(c) of the Controlled Substances Act (21 U.S.C. 845(b), 845a(b), and 845b(c)) are each amended by striking "have become final" and inserting "has become final".

SEC. 2999SS. SECTION 510 OF THE CONTROLLED SUBSTANCES ACT.

Section 510(b)(3) of the Controlled Substances Act (21 U.S.C. 880(b)(3)) is amended by striking "paragraph (5)" and inserting "paragraph (4)".

TITLE XXXIII—FEDERAL DEBT COLLECTION

SEC. 3300. 1. This title may be cited as the "Federal Debt Collection Procedures Act of 1990".

Subtitle A—Debt Collection Procedures

SEC. 3301. Title 28 of the United States Code is amended by inserting after chapter 175 the following:

"CHAPTER 176—FEDERAL DEBT COLLECTION PROCEDURE

"Subchapter
"A. Definitions and general provisions 3001
"B. Prejudgment remedies 3101
"C. Postjudgments remedies 3201
"D. Fraudulent transfers 3301

"SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

"Sec.
"3001. Applicability of chapter.
"3002. Definitions.
"3003. Rules of construction.
"3004. Service of process; enforcement; notice.
"3005. Application of chapter to judgments.
"3006. Affidavit requirements.
"3007. Perishable personal property.
"3008. Proceedings before United States magistrates.
"3009. United States marshals' authority to designate keeper.
"3010. Co-owned property.
"3011. Assessment of surcharge on a debt.
"3012. Joinder of additional defendant.
"3013. Modification or protective order; supervision of enforcement.
"3014. Exempt property.
"3015. Discovery as to debtor's financial condition.

"§ 3001. Applicability of chapter

"(a) IN GENERAL.—Except as provided in subsection (b), the chapter provides the exclusive civil procedures for the United States—

"(1) to recover a judgment on a debt; or

"(2) to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.

"(b) LIMITATION.—To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter.

"(c) AMOUNTS OWING OTHER THAN DEBTS.—This chapter shall not apply with respect to an amount owing that is not a debt or to a claim for an amount owing that is not a debt.

"§ 3002. Definitions

"As used in this chapter:

"(1) 'Counsel for the United States' means—

"(A) a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, or an attorney with the United States Department of Justice or with a Federal agency who has litigation authority; and

"(B) any private attorney authorized by contract made in accordance with section 3718 of title 31 to conduct litigation for collection of debts on behalf of the United States.

"(2) 'Court' means any court created by the Congress of the United States, excluding the United States Tax Court.

"(3) 'Debt' means—

"(A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or

"(B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States;

and includes any amount owing to the United States for the benefit of an Indian tribe or individual Indian, but excludes any amount to which the United States is entitled under section 3011(a).

"(4) 'Debtor' means a person who is liable for a debt or against whom there is a claim for a debt.

"(5) 'Disposable earnings' means that part of earnings remaining after all deductions required by law have been withheld.

"(6) 'Earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

"(7) 'Garnishee' means a person (other than the debtor) who has, or is reasonably thought to have, possession, custody, or control of any property in which the debtor has a substantial nonexempt interest, including any obligation due the debtor or to become due the debtor, and against whom a garnishment under section 3104 or 3205 is issued by a court.

"(8) 'Judgment' means a judgment, order, or decree entered in favor of the United States in a court and arising from a civil or criminal proceeding regarding a debt.

"(9) 'Nonexempt disposable earnings' means 25 percent of disposable earnings, subject to section 303 of the Consumer Credit Protection Act.

"(10) 'Person' includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe.

"(11) 'Prejudgment remedy' means the remedy of attachment, receivership, garnishment, or sequestration authorized by this chapter to be granted before judgment on the merits of a claim for a debt.

"(12) 'Property' includes any present or future interest, whether legal or equitable, in real, personal (including choses in action), or mixed property, tangible or intangible, vested or contingent, wherever located and however held (including community property and property held in trust (including spendthrift and pension trusts)), but excludes—

"(A) property held in trust by the United States for the benefit of an Indian tribe or individual Indian; and

"(B) Indian lands subject to restrictions against alienation imposed by the United States.

"(13) 'Security agreement' means an agreement that creates or provides for a lien.

"(14) 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States.

"(15) 'United States' means—

"(A) a Federal corporation;

"(B) an agency, department, commission, board, or other entity of the United States; or

"(C) an instrumentality of the United States.

"(16) 'United States marshal' means a United States marshal, a deputy marshal, or an official of the United States Marshals Service designated under section 564.

"§ 3003. Rules of construction

"(a) TERMS.—For purposes of this chapter—

"(1) the terms 'includes' and 'including' are not limiting;

"(2) the term 'or' is not exclusive; and

"(3) the singular includes the plural.

"(b) EFFECT ON RIGHTS OF THE UNITED STATES.—This chapter shall not be construed to curtail or limit the right of the United States under any other Federal law or any State law—

"(1) to collect taxes or to collect any other amount collectible in the same manner as a tax;

"(2) to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case;

"(3) to appoint or seek the appointment of a receiver; or

"(4) to enforce a security agreement.

"(c) EFFECT ON OTHER LAWS.—This chapter shall not be construed to supersede or modify the operation of—

"(1) title 11;

"(2) admiralty law;

"(3) section 3713 of title 31;

"(4) section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673);

"(5) a statute of limitation applicable to a criminal proceeding;

"(6) the common law or statutory rights to set-off or recoupment;

"(7) any Federal law authorizing, or any inherent authority of a court to provide, injunctive relief;

"(8) the authority of a court—

"(A) to impose a sanction under the Federal Rules of Civil Procedure;

"(B) to appoint a receiver to effectuate its order; or

"(C) to exercise the power of contempt under any Federal law;

"(9) any law authorizing the United States to obtain partition, or to recover possession, of property in which the United States holds title; or

"(10) any provision of any other chapter of this title, except to the extent such provision is inconsistent with this chapter.

"(d) PREEMPTION.—This chapter shall preempt State law to the extent such law is inconsistent with a provision of this chapter.

"(e) EFFECT ON RIGHTS OF THE UNITED STATES UNDER FOREIGN AND INTERNATIONAL LAW.—This chapter shall not be construed to curtail or limit the rights of the United States under foreign law, under a treaty or an international agreement, or otherwise under international law.

"(f) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—Except as provided otherwise in this chapter, the Federal Rules of Civil Procedure shall apply with respect to actions and proceedings under this chapter.

"§ 3004. Service of process; enforcement; notice

"(a) MANNER OF SERVICE.—A complaint, notice, writ, or other process required to be served in an action or proceeding under this chapter shall be served in accordance with the Federal Rules of Civil Procedure unless otherwise provided in this chapter.

"(b) NATIONWIDE ENFORCEMENT.—(1) Except as provided in paragraph (2)—

"(A) any writ, order, judgment, or other process, including a summons and complaint, filed under this chapter may be served in any State; and

"(B) such writ, order, or judgment may be enforced by the court issuing the writ, order, or process, regardless of where the person is served with the writ, order, or process.

"(2) If the debtor so requests, within 20 days after receiving the notice described in section 3101(d) or 3202(b), the action or proceeding in which the writ, order, or judgment was issued shall be transferred to the district court for the district in which the debtor resides.

"(c) NOTICE AND OTHER PROCESS.—At such time as counsel for the United States considers appropriate, but not later than the time a prejudgment or postjudgment remedy is put into effect under this chapter, counsel for the United States shall exercise reasonable diligence to serve on the debtor and any person who the United States believes, after exercising due diligence, has possession, custody, or control of the property, a copy of the application for such remedy, the order granting such remedy, and the notice required by section 3101(d) or 3202(b).

"§ 3005. Application of chapter to judgments

"This chapter shall not apply with respect to a judgment on a debt if such judgment is entered more than 10 years before the effective date of this chapter.

"§ 3006. Affidavit requirements

"Any affidavit required of the United States by this chapter may be made on information and belief, if reliable and reasonably necessary, establishing with particularity, to the court's satisfaction, facts supporting the claim of the United States.

"§ 3007. Perishable personal property

"(a) AUTHORITY TO SELL.—If at any time during any action or proceeding under this chapter the court determines on its own initiative or upon motion of any party, that any seized or detained personal property is likely to perish, waste, or be destroyed, or otherwise substantially depreciate in value during the pendency of the proceeding, the court shall order a commercially reasonable sale of such property.

"(b) DEPOSIT OF SALE PROCEEDS.—Within 5 days after such sale, the proceeds shall be deposited with the clerk of the court, accompanied by a statement in writing and signed by the United States marshal, to be filed in the action or proceeding, stating the time and place of sale, the name of the purchaser, the amount received, and an itemized account of expenses.

"(c) PRESUMPTION.—For purposes of liability on the part of the United States, there shall be a presumption that the price paid at a sale under subsection (a) is the fair market value of the property or portion.

"§ 3008. Proceedings before United States magistrates

"A district court of the United States may assign its duties in proceedings under this chapter to a United States magistrate to the extent not inconsistent with the Constitution and laws of the United States.

"§ 3009. United States marshals' authority to designate keeper

"Whenever a United States marshal is authorized to seize property pursuant to this chapter, the United States marshal may designate another person or Federal agency to hold for safekeeping such property seized.

"§ 3010. Co-owned property

"(a) LIMITATION.—The remedies available to the United States under this chapter may be enforced against property which is co-owned by a debtor and any other person only to the extent allowed by the law of the State where the property is located. This section shall not be construed to limit any right or interest of a debtor or co-owner in a retirement system for Federal military or civilian personnel established by the United States or any agency thereof or in a qualified retirement arrangement.

"(b) DEFINITIONS.—For purposes of subsection (a)—

"(1) the term 'retirement system for Federal military or civilian personnel' means a pension or annuity system for Federal military or civilian personnel of more than one

agency, or for some or all of such personnel of a single agency, established by statute or by regulation pursuant to statutory authority; and

"(2) the term 'qualified retirement arrangement' means a plan qualified under section 401(a), 403(a), or 409 of the Internal Revenue Code of 1986 or a plan that is subject to the requirements of section 205 of the Employee Retirement Income Security Act of 1974.

"§ 3011. Assessment of surcharge on a debt

"(a) SURCHARGE AUTHORIZED.—In an action or proceeding under subchapter B or C, and subject to subsection (b), the United States is entitled to recover a surcharge of 10 percent of the amount of the debt in connection with the recovery of the debt, to cover the cost of processing and handling the litigation and enforcement under this chapter of the claim for such debt.

"(b) LIMITATION.—Subsection (a) shall not apply if—

"(1) the United States receives an attorney's fee in connection with the enforcement of the claim; or

"(2) the law pursuant to which the action on the claim is based provides any other amount to cover such costs.

"§ 3012. Joinder of additional defendant

"The United States or the debtor may join as an additional defendant in an action or proceeding under this chapter any person reasonably believed to owe money (including money owed on account of a requirement to provide goods or services pursuant to a loan or loan guarantee extended under Federal law) to the debtor arising out of the transaction or occurrence giving rise to a debt.

"§ 3013. Modification or protective order; supervision of enforcement

"The court may at any time on its own initiative or the motion of any interested person, and after such notice as it may require, make an order denying, limiting, conditioning, regulating, extending, or modifying the use of any enforcement procedure under this chapter.

"§ 3014. Exempt property

"(a) ELECTION TO EXEMPT PROPERTY.—An individual debtor may, in an action or proceeding under this chapter, elect to exempt property listed in either paragraph (1) or, in the alternative, paragraph (2). If such action or proceeding is against debtors who are husband and wife, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2). If the debtors cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1). Such property is either—

"(1) property that is specified in section 522(d) of title 11, as amended from time to time; or

"(2)(A) any property that is exempt under Federal law, other than paragraph (1), or State or local law that is applicable on the date of the filing of the application for a remedy under this chapter at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of such application, or for a longer portion of such 180-day period than in any other place; and

"(B) any interest in property in which the debtor had, immediately before the filing of such application, an interest as a tenant by the entirety or joint tenant, or an interest in a community estate, to the extent that such interest is exempt from process under applicable nonbankruptcy law.

"(b) EFFECT ON ASSERTION AND MANNER OF DETERMINATION.—

"(1) STATEMENT.—A court may order the debtor to file a statement with regard to any claimed exemption. A copy of such statement shall be served on counsel for the United States. Such statement shall be under oath and shall describe each item of property for which exemption is claimed, the value and the basis for such valuation, and the nature of the debtor's ownership interest.

"(2) HEARING.—The United States or the debtor, by application to the court in which an action or proceeding under this chapter is pending, may request a hearing on the applicability of any exemption claimed by the debtor. The court shall determine the extent (if any) to which the exemption applies. Unless it is reasonably evident that the exemption applies, the debtor shall bear the burden of persuasion.

"(3) STAY OF DISPOSITION.—Assertion of an exemption shall prevent the United States from selling or otherwise disposing of the property for which such exemption is claimed until the court determines whether the debtor has a substantial nonexempt interest in such property. The United States may not take possession of, dispose of, sell, or otherwise interfere with the debtor's normal use and enjoyment of an interest in property the United States knows or has reason to know is exempt.

"(c) DEBTORS IN JOINT CASES.—Subject to the limitation in subsection (a), this section shall apply separately with respect to each debtor in a joint case.

"§ 3015. Discovery as to debtor's financial condition

"(a) IN GENERAL.—Except as provided in subsection (b), in an action or proceeding under subchapter B or C, the United States may have discovered, regarding the financial condition of the debtor in the manner in which discovery is authorized by the Federal Rules of Civil Procedure in an action on a claim for a debt.

"(b) LIMITATION.—Subsection (a) shall not apply with respect to an action or proceeding under subchapter B unless there is a reasonable likelihood that the debt involved exceeds $50,000.

"SUBCHAPTER B—PREJUDGMENT REMEDIES

"Sec.
"3101. Prejudgment remedies.
"3102. Attachment.
"3103. Receivership.
"3104. Garnishment.
"3105. Sequestration.

"§ 3101. Prejudgment remedies

"(a) APPLICATION.—(1) The United States may, in a proceeding in conjunction with the complaint or at any time after the filing of a civil action on a claim for a debt, make application under oath to a court to issue any prejudgment remedy.

"(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

"(3) Such application shall—

"(A) state that the debtor against whom the prejudgment remedy is sought shall be afforded an opportunity for a hearing; and

"(B) set forth with particularity that all statutory requirements under this chapter for the issuance of the prejudgment remedy sought have been satisfied.

"(b) GROUNDS.—Subject to section 3102, 3103, 3104, or 3105, a prejudgment remedy may be granted by any court if the United States shows reasonable cause to believe that—

"(1) the debtor—

"(A) is about to leave the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States in its effort to recover a debt;

"(B) has or is about to assign, dispose, remove, conceal, ill treat, waste, or destroy property with the effect of hindering, delaying, or defrauding the United States;

"(C) has or is about to convert the debtor's property into money, securities, or evidence of debt in a manner prejudicial to the United States with the effect of hindering, delaying, or defrauding the United States; or

"(D) has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States; or

"(2) a prejudgment remedy is required to obtain jurisdiction within the United States and the prejudgment remedy sought will result in obtaining such jurisdiction.

"(c) AFFIDAVIT.—(1) The application under subsection (a) shall include an affidavit establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim for a debt and the right of the United States to recover what is demanded in the application.

"(2) The affidavit shall state—

"(A) specifically the amount of the debt claimed by the United States and any interest or costs attributable to such debt;

"(B) one or more of the grounds specified in subsection (b); and

"(C) the requirements of section 3102(b), 3103(a), 3104(a), or 3105(b), as the case may be.

"(3) No bond is required of the United States.

"(d) NOTICE AND HEARING.—(1) On filing an application by the United States as provided in this section, the counsel for the United States shall prepare, and the clerk shall issue, a notice for service on the debtor against whom the prejudgment remedy is sought and on any other person whom the United States reasonably believes, after exercising due diligence, has possession, custody, or control of property affected by such remedy. Three copies of the notice shall be served on each such person. The form and content of such notice shall be approved jointly by a majority of the chief judges of the Federal districts in the State in which the court is located and shall be in substantially the following form:

" 'NOTICE

" 'You are hereby notified that this [property] is being taken by the United States Government ("the Government"), which says that [name of debtor] owes it a debt of $ [amount] for [reason for debt] and has filed a lawsuit to collect this debt. The Government says it must take this property at this time because [recite the pertinent ground or grounds from section 3101(b)]. The Government wants to make sure [name of debtor] will pay if the court determines that this money is owed.

" 'In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the Government if [name of debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

" '[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a), and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

" 'If you are [name of debtor] and you disagree with the reason the Government gives for taking your property now, or if you think you do not owe the money to the Government that it says you do, or if you think the property the Government is taking qualifies under one of the above exemptions, you have a right to ask the court to return your property to you.

" 'If you want a hearing, you must promptly notify the court. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

" 'At the hearing you may explain to the judge why you think you do not owe the money to the Government, why you disagree with the reason the Government says it must take your property at this time, or why you believe the property the Government has taken is exempt or belongs to someone else. You may make any or all of these explanations as you see fit.

" 'If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

" 'Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.'.

"(2) By requesting, at any time before judgment on the claim for a debt, the court to hold a hearing, the debtor may move to quash the order granting such remedy. The court shall hold a hearing on such motion as soon as practicable, or, if requested by the debtor, within 5 days after receiving the request for a hearing or as soon thereafter as possible. The issues at such hearing shall be limited to—

"(A) the probable validity of the claim for the debt for which such remedy was granted and of any defense or claim of exemption asserted by such person;

"(B) compliance with any statutory requirement for the issuance of the prejudgment remedy granted;

"(C) the existence of any ground set forth in subsection (b); and

"(D) the inadequacy of alternative remedies (if any) to protect the interests of the United States.

"(e) ISSUANCE OF WRIT.—On the court's determination that the requirements of subsections (a), (b), and (c) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

"§ 3102. Attachment

"(a) PROPERTY SUBJECT TO ATTACHMENT.—(1) Any property in the possession, custody, or control of the debtor and in which the debtor has a substantial nonexempt interest, except earnings, may be attached pursuant to a writ of attachment in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

"(2) The value of property attached shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

"(A) property securing the debt; and

"(B) property garnished or in receivership, or income sequestered, under this subchapter.

"(b) AVAILABILITY OF ATTACHMENT.—If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States to attach property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States may recover on a claim for a debt—

"(1) in an action on a contract, express or implied, against the debtor for payment of money, only if the United States shows reasonable cause to believe that—

"(A) the contract is not fully secured by real or personal property; or

"(B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;

"(2) in an action against the debtor for damages in tort;

"(3) if the debtor resides outside the jurisdiction of the United States; or

"(4) in an action to recover a fine, penalty, or tax.

"(c) ISSUANCE OF WRIT; CONTENTS.—(1) Subject to subsections (a) and (b), a writ of attachment shall be issued by the court directing the United States marshal of the district where property described in subsection (a) is located to attach the property.

"(2) Several writs of attachment may be issued at the same time, or in succession, and sent to different judicial districts until sufficient property is attached.

"(3) The writ of attachment shall contain—

"(A) the date of the issuance of the writ;

"(B) the identity of the court, the docket number of the action, and the identity of the cause of action;

"(C) the name and last known address of the debtor;

"(D) the amount to be secured by the attachment; and

"(E) a reasonable description of the property to be attached.

"(d) LEVY OF ATTACHMENT.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property specified for attachment if found within the district. The marshal may not sell property unless ordered by the court.

"(2) In performing the levy, the United States marshal may enter any property owned, occupied, or controlled by the debtor, except that the marshal may not enter a residence or other building unless the writ expressly authorizes the marshal to do so or upon specific order of the court.

"(3) Levy on real property is made by entering the property and posting the writ and notice of levy in a conspicuous place upon the property.

"(4) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

"(5) The United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3201(a)(1). The United States marshal shall serve a copy of the writ and notice of levy on—

"(A) the debtor against whom the writ is issued; and

"(B) the person who has possession of the property subject to the writ;

in the same manner that a summons is served in a civil action and make the return thereof.

"(e) RETURN OF WRIT; DUTIES OF MARSHAL; FURTHER RETURN.—(1) A United States marshal executing a writ of attachment shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from which it was issued, within 5 days after the date of the levy.

"(2) The return shall describe the property attached with sufficient certainty to identify it and shall state the location where it was attached, the date and time it was attached, and the disposition made of the property. If no property was attached, the return shall so state.

"(3) If the property levied on is claimed, replevied under subsection (j)(2), or sold under section 3007 after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the property.

"(4) If personal property is replevied, the United States marshal shall deliver the replevin bond to the clerk of the court to be filed in the action.

"(f) LEVY OF ATTACHMENT AS LIEN ON PROPERTY; SATISFACTION OF LIEN.—(1) A levy on property under a writ of attachment under this section creates a lien in favor of the United States on the property or, in the case of perishable property sold under section 3007, on the proceeds of the sale.

"(2) Such lien shall be ranked ahead of any other security interests perfected after the later of the time of levy and the time a copy of the notice of levy is filed under subsection (d)(5).

"(3) Such lien shall arise from the time of levy and shall continue until a judgment in the action is obtained or denied, or the action is otherwise dismissed. The death of the debtor whose property is attached does not terminate the attachment lien. Upon issuance of a judgment in the action and registration under this chapter, the judgment lien so created relates back to the time of levy.

"(g) REDUCTION OR DISSOLUTION OF ATTACHMENT.—(1) If an excessive or unreasonable attachment is made, the debtor may

submit a motion to the court for a reduction of the amount of the attachment or its dissolution. Notice of such motion shall be served on the United States.

"(2) The court shall order a part of the property to be released, if after a hearing the court finds that the amount of the attachment is excessive or unreasonable or if the attachment is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

"(3) The court shall dissolve the attachment if the amount of the debt is unliquidated and unascertainable by calculation.

"(4) If any property claimed to be exempt is levied on, the debtor may, at any time after such levy, request that the court vacate such levy. If it appears to the court that the property so levied upon is exempt, the court shall order the levy vacated and the property returned to the debtor.

"(h) REPLEVIN OF ATTACHED PROPERTY BY DEBTOR; BOND.—If attached property is not sold before judgment, the debtor may replevy such property or any part thereof by giving a bond approved by counsel for the United States or the court and payable to the United States in double the reasonable value of the property to be replevied or double the value of the claim, whichever is less.

"(i) PRESERVATION OF PERSONAL PROPERTY UNDER ATTACHMENT.—If personal property in custody of the United States marshal under a writ of attachment is not replevied, claimed, or sold, the court may make such order for its preservation or use as appears to be in the interest of the parties.

"(j) JUDGMENT AND DISPOSITION OF ATTACHED PROPERTY.—

"(1) JUDGMENT FOR THE UNITED STATES.—On entry of judgment for the United States, the court shall order the proceeds of personal property sold pursuant to section 3007 to be applied to the satisfaction of the judgment, and shall order the sale of any remaining personal property and any real property levied on to the extent necessary to satisfy the judgment.

"(2) JUDGMENT FOR THE UNITED STATES WHEN PERSONAL PROPERTY REPLEVIED.—With respect to personal property under attachment that is replevied, the judgment which may be entered shall be against the debtor against whom the writ of attachment is issued and also against the sureties on the debtor's replevin bond for the value of the property.

"(3) RESTORATION OF PROPERTY AND EXONERATION OF REPLEVIN BOND.—If the attachment is vacated or if the judgment on the claim for the debt is for the person against whom the writ attachment is issued, the court shall order the property, or proceeds of perishable property sold under section 3007, restored to the debtor and shall exonerate any replevin bond.

"§ 3103. Receivership

"(a) APPOINTMENT OF A RECEIVER.—If the requirements of section 3101 are satisfied, a court may appoint a receiver for property in which the debtor has a substantial nonexempt interest if the United States shows reasonable cause to believe that there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, concealed, materially injured or damaged, or mismanaged.

"(b) POWERS OF RECEIVER.—(1) The appointing court may authorize a receiver—

"(A) to take possession of real and personal property and sue for, collect, and sell obligations upon such conditions and for such purposes as the court shall direct; and

"(B) to administer, collect, improve, lease, repair or sell pursuant to section 3007 such real and personal property as the court shall direct.

A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property.

"(2) Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers, or other professional persons.

"(c) DURATION OF RECEIVERSHIP.—A receivership shall not continue past the entry of judgment, or the conclusion of an appeal of such judgment, unless the court orders it continued under section 3203(e) or unless the court otherwise directs its continuation.

"(d) ACCOUNTS; REQUIREMENT TO REPORT.—A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds. The receiver's accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the debtor and the United States with a copy thereof.

"(e) MODIFICATION OF POWERS; REMOVAL.—On motion of the receiver or on its own initiative, the court which appointed the receiver may remove the receiver or modify the receiver's powers at any time.

"(f) PRIORITY.—If more than one court appoints a receiver for particular property, the receiver first qualifying under law shall be entitled to take possession, control, or custody of the property.

"(g) COMPENSATION OF RECEIVERS.—(1) A receiver is entitled to such commissions, not exceeding 5 percent of the sums received and disbursed by him, as the court allows unless the court otherwise directs.

"(2) If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remain unpaid.

"(3) At the termination of a receivership, the receiver shall file a final accounting of the receipts and disbursements and apply for compensation setting forth the amount sought and the services rendered by the receiver.

"§ 3104. Garnishment

"(a) IN GENERAL.—If the requirements of section 3101 are satisfied, a court may issue a writ of garnishment against property (excluding earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor in order to satisfy a claim for a debt. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be continuing and shall terminate only as provided in section 3205(c)(10).

"(b) WRIT.—(1) Subsections (b)(2) and (c) of section 3205 shall apply with respect to garnishment under this section, except that for purposes of this section—

"(A) earnings of the debtor shall not be subject to garnishment; and

"(B) a reference in such subsections to a judgment debtor shall be deemed to be a reference to a debtor.

"(2) The United States shall include in its application for a writ of garnishment—

"(A) the amount of the claim asserted by the United States for a debt; and

"(B) the date the writ is issued.

"(c) LIMITATION.—The value of property garnished shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

"(1) property securing the debt; and

"(2) property attached or in receivership, or income sequestered, under this subchapter.

"§ 3105. Sequestration

"(a) PROPERTY SUBJECT TO SEQUESTRATION.—(1) Any income from property in which the debtor has a substantial nonexempt interest may be sequestered pursuant to a writ of sequestration in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

"(2) The amount of income sequestered shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

"(A) property securing the debt; and

"(B) property attached, garnished, or in receivership under this subchapter.

"(b) AVAILABILITY OF SEQUESTRATION.—If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States to sequester income from property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States may recover on a claim for a debt—

"(1) in an action on a contract, express or implied, against the debtor for payment of money, only if the United States shows reasonable cause to believe that—

"(A) the contract is not fully secured by real or personal property; or

"(B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;

"(2) in an action against the debtor for damages in tort;

"(3) if the debtor resides outside the jurisdiction of the United States; or

"(4) in an action to recover a fine, penalty, or tax.

"(c) ISSUANCE OF WRIT; CONTENTS.—(1) Subject to subsections (a) and (b), a writ of sequestration shall be issued by the court directing the United States marshal of the district where income described in subsection (a) is located to sequester the income.

"(2) Several writs of sequestration may be issued at the same time, or in succession, and sent to different judicial districts until sufficient income is sequestered.

"(3) The writ of sequestration shall contain—

"(A) the date of the issuance of the writ;

"(B) the identity of the court, the docket number of the action, and the identity of the cause of action;

"(C) the name and last known address of the debtor;

"(D) the amount to be secured by the sequestration; and

"(E) a reasonable description of the income to be sequestered.

"(d) EXECUTION OF WRIT.—(1) The United States marshal receiving the writ shall proceed without delay to execute the writ.

"(2) The United States marshal shall file a copy of the notice of sequestration in the same manner as provided for judgments in section 3201(a)(1). The United States marshal shall serve a copy of the writ and notice of sequestration on—

"(A) the debtor against whom the writ is issued; and

"(B) the person who has possession of the income subject to the writ;

in the same manner that a summons is served in a civil action and make the return thereof.

"(e) DEPOSIT OF SEQUESTERED INCOME.—A person who has possession of the income subject to a writ of sequestration shall deposit such income with the clerk of the court, accompanied by a statement in writing stating the person's name, the name of the debtor, the amount of such income, the property from which such income is produced, and the period during which such income is produced.

"(f) RETURN OF WRIT; DUTIES OF MARSHAL; FURTHER RETURN.—(1) A United States marshal executing a writ of sequestration shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from which it was issued, within 5 days after the date of the execution.

"(2) The return shall describe the income sequestered with sufficient certainty to identify it and shall state the location where it was sequestered, and the date and time it was sequestered. If no income was sequestered, the return shall so state.

"(3) If sequestered income is claimed after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the income.

"(g) REDUCTION OR DISSOLUTION OF SEQUESTRATION.—(1) If an excessive or unreasonable sequestration is made, the debtor may submit a motion to the court for a reduction of the amount of the sequestration or its dissolution. Notice of such motion shall be served on the United States.

"(2) The court shall order a part of the income to be released, if after a hearing the court finds that the amount of the sequestration is excessive or unreasonable or if the sequestration is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

"(3) The court shall dissolve the sequestration if the amount of the debt is unliquidated and unascertainable by calculation.

"(h) PRESERVATION OF INCOME UNDER SEQUESTER.—If personal property in custody of the United States marshal under a writ of sequestration is not claimed, the court may make such order for its preservation or use as appears to be in the interest of the parties.

"(i) JUDGMENT AND DISPOSITION OF SEQUESTERED INCOME.—

"(1) JUDGMENT FOR THE UNITED STATES.—On entry of judgment for the United States, the court shall order the sequestered income to be applied to the satisfaction of the judgment.

"(2) RESTORATION OF INCOME.—If the sequestration is vacated or if the judgment on the claim for the debt is for the person against whom the writ of sequestration is issued, the court shall order the income restored to the debtor.

"SUBCHAPTER C—POSTJUDGMENT REMEDIES

"Sec.
"3201. Judgment liens.
"3202. Enforcement of judgments.
"3203. Execution.
"3204. Installment payment order.
"3205. Garnishment.
"3206. Discharge.

"§ 3201. Judgment liens

"(a) CREATION.—A judgment in a civil action shall create a lien on all real property of a judgment debtor on filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of section 6323(f) of the Internal Revenue Code of 1986. A lien created under this paragraph is for the amount necessary to satisfy the judgment, including costs and interest.

"(b) PRIORITY OF LIEN.—A lien created under subsection (a) shall have priority over any other lien or encumbrance which is perfected later in time.

"(c) DURATION OF LIEN; RENEWAL.—(1) Except as provided in paragraph (2), a lien created under subsection (a) is effective, unless satisfied, for a period of 20 years.

"(2) Such lien may be renewed for one additional period of 20 years upon filing a notice of renewal in the same manner as the judgment is filed and shall relate back to the date the judgment is filed if—

"(A) the notice of renewal is filed before the expiration of the 20-year period to prevent the expiration of the lien; and

"(B) the court approves the renewal of such lien under this paragraph.

"(d) RELEASE OF JUDGMENT LIEN.—A judgment lien shall be released on the filing of a satisfaction of judgment or release of lien in the same manner as the judgment is filed to obtain the lien.

"(e) EFFECT OF LIEN ON ELIGIBILITY FOR FEDERAL GRANTS, LOANS OR PROGRAMS.—A debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The agency of the United States that is responsible for such grants and loans may promulgate regulations to allow for waiver of this restriction on eligibility for such grants, loans, and funds.

"(f) SALE OF PROPERTY SUBJECT TO JUDGMENT LIEN.—(1) On proper application to a court, the court may order the United States to sell, in accordance with sections 2001 and 2002, any real property subject to a judgment lien in effect under this section.

"(2) This subsection shall not preclude the United States from using an execution sale pursuant to section 3203(g) to sell real property subject to a judgment lien.

"§ 3202. Enforcement of judgments

"(a) ENFORCEMENT REMEDIES.—A judgment may be enforced by any of the remedies set forth in this subchapter. A court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to support such remedies, subject to rule 81(b) of the Federal Rules of Civil Procedure.

"(b) NOTICE.—On the commencement by the United States of an action or proceeding under this subchapter to obtain a remedy, the counsel for the United States shall prepare, and clerk of the court shall issue, a notice in substantially the following form:

" 'NOTICE

" 'You are hereby notified that this [property] is being taken by the United States Government, which has a court judgment in [case docket number and jurisdiction of court] of $[amount] for [reason of debt].

" 'In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the United States Government if [name of judgment debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

" '[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a) and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

" 'If you are [name of judgment debtor], you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above exemptions [For a default judgment:] or if you think you do not owe the money to the United States Government that it says you do.

" 'If you want a hearing, you must notify the court within 20 days after you receive this notice. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

" 'At the hearing you may explain to the judge why you believe the property the Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:] If you do not request a hearing within 20 days of receiving this notice, your [property] may be sold at public auction and the payment used toward the money you owe the Government.

" 'If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

" 'Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure,

you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.'.

"(c) SERVICE.—A copy of the notice and a copy of the application for granting a remedy under this subchapter shall be served by counsel for the United States on the judgment debtor against whom such remedy is sought and on each person whom the United States, after diligent inquiry, has reasonable cause to believe has an interest in property to which the remedy is directed.

"(d) HEARING.—By requesting, within 20 days after receiving the notice described in section 3202(b), the court to hold a hearing, the judgment debtor may move to quash the order granting such remedy. The court that issued such order shall hold a hearing on such motion as soon as practicable, or, if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible. The issues at such hearing shall be limited—

"(1) to the probable validity of any claim of exemption by the judgment debtor;

"(2) to compliance with any statutory requirement for the issuance of the postjudgment remedy granted; and

"(3) if the judgment is by default and only to the extent that the Constitution or another law of the United States provides a right to a hearing on the issue, to—

"(A) the probable validity of the claim for the debt which is merged in the judgment; and

"(B) the existence of good cause for setting aside such judgment.

This subparagraph shall not be construed to afford the judgment debtor the right to more than one such hearing except to the extent that the Constitution or another law of the United States provides a right to more than one such hearing.

"(e) SALE OF PROPERTY.—The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 or by execution sale pursuant to section 3203(g). If a hearing is requested pursuant to subsection (d), property with respect to which the request relates shall not be sold before such hearing.

"§ 3203. Execution

"(a) PROPERTY SUBJECT TO EXECUTION.—All property in which the judgment debtor has a substantial nonexempt interest shall be subject to levy pursuant to a writ of execution. The debtor's earnings shall not be subject to execution while in the possession, custody, or control of the debtor's employer. Co-owned property shall be subject to execution to the extent such property is subject to execution under the law of the State in which it is located.

"(b) CREATION OF EXECUTION LIEN.—A lien shall be created in favor of the United States on all property levied on under a writ of execution and shall date from the time of the levy. Such lien shall have priority over all subsequent liens and shall be for the aggregate amount of the judgment, costs, and interest. The execution lien on any real property as to which the United States has a judgment lien shall relate back to the judgment lien date.

"(c) WRIT OF EXECUTION.—

"(1) ISSUANCE.—On written application of counsel for the United States, the court may issue a writ of execution. Multiple writs may issue simultaneously, and successive writs may issue before the return date of a writ previously issued.

"(2) FORM OF WRIT.—

"(A) GENERAL CONTENTS.—A writ of execution shall specify the date that the judgment is entered, the court in which it is entered, the amount of the judgment if for money, the amount of the costs, the amount of interest due, the sum due as of the date the writ is issued, the rate of postjudgment interest, the name of the judgment debtor, and the judgment debtor's last known address.

"(B) ADDITIONAL CONTENTS.—(i) Except as provided in clauses (ii) and (iii), the writ shall direct the United States marshal to satisfy the judgment by levying on and selling property in which the judgment debtor has a substantial nonexempt interest, but not to exceed property reasonably equivalent in value to the aggregate amount of the judgment, costs, and interest.

"(ii) A writ of execution issued on a judgment for the delivery to the United States of the possession of personal property, or for the delivery of the possession of real property, shall particularly describe the property, and shall require the marshal to deliver the possession of the property to the United States.

"(iii) A writ of execution on a judgment for the recovery of personal property or its value shall direct the marshal, in case a delivery of the specific property cannot be had, to levy and collect such value out of any property in which the judgment debtor has a substantial nonexempt interest.

"(d) LEVY OF EXECUTION.—

"(1) IN GENERAL.—Levy on property pursuant to a writ of execution issued under this section shall be made in the same manner as levy on property is made pursuant to a writ of attachment issued under section 3102(d).

"(2) DEATH OF JUDGMENT DEBTOR.—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ shall be recognized and enforced by the court for the district in which the estate of the deceased is located. The execution lien may be enforced—

"(A) against the executor, administrator, or personal representative of the estate of the deceased; or

"(B) if there be none, against the deceased's property coming to the heirs or devisees or at their option against cash in their possession, but only to the extent of the value of the property coming to them.

"(3) RECORDS OF UNITED STATES MARSHAL.—(A) A United States marshal receiving a writ of execution shall endorse thereon the exact hour and date of receipt.

"(B) The United States marshal shall make a written record of every levy, specify the property on which levy is made, the date on which levy is made, and the marshal's costs, expenses, and fees.

"(C) The United States marshal shall make a written return to the court on each writ of execution stating concisely what is done pursuant to the writ and shall deliver a copy to counsel for the United States who requests the writ. The writ shall be returned not more than—

"(i) 90 days after the date of issuance if levy is not made; or

"(ii) 10 days after the date of sale of property on which levy is made.

"(e) APPOINTMENT OF RECEIVER.—Pending the levy of execution, the court may appoint a receiver to manage property described in such writ if there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, or mismanaged.

"(f) REPLEVY; REDEMPTION.—

"(1) BEFORE EXECUTION SALE.—(A) Before execution sale, the United States marshal may return property to the judgment debtor any personal property taken in execution, on—

"(i) satisfaction of the judgment, interest, and costs, and any costs incurred in connection with scheduling the sale; or

"(ii) receipt from the judgment debtor of a bond—

"(I) payable to the United States, with 2 or more good and sufficient sureties to be approved by the marshal, conditioned on the delivery of the property to the marshal at the time and place named in the bond to be sold under subsection (g); or

"(II) for the payment to the marshal of a fair value thereof which shall be stated in the bond.

"(B) A judgment debtor who sells or disposes of property replevied under subparagraph (A) shall pay the United States marshal the stipulated value of such property.

"(C) If the judgment debtor fails to deliver such property to the United States marshal pursuant to the terms of the delivery described in subparagraph (A)(ii)(I) and fails to pay the United States marshal the stipulated value of such property, the United States marshal shall endorse the bond 'forfeited' and return it to the court from which the writ of execution was issued. If the judgment is not fully satisfied, the court shall issue a writ of execution against the judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, on which execution no delivery bond shall be taken, which instruction shall be endorsed on the writ.

"(2) AFTER EXECUTION SALE.—The judgment debtor shall not be entitled to redeem the property after the execution sale.

"(g) EXECUTION SALE.—

"(1) GENERAL PROCEDURES.—An execution sale under this section shall be conducted in a commercially reasonable manner.

"(A) SALE OF REAL PROPERTY.—

"(i) IN GENERAL.—(I) Except as provided in clause (ii), real property, or any interest therein, shall be sold, after the expiration of the 90-day period beginning on the date of levy under subsection (d), for cash at public auction at the courthouse of the county, parish, or city in which the greater part of the property is located or on the premises or some parcel thereof.

"(II) The court may order the sale of any real property after the expiration of the 30-day period beginning on the date of levy under subsection (d) if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during the 90-day period beginning on the date of levy.

"(III) The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United States marshal, by publication of notice, once a week for at least 3 weeks prior to the sale, in at least one newspaper of general circulation in the county or parish where the property is located. The first publication shall appear not less than 25 days preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, the time and place of sale, and a brief description of the property to be sold, sufficient to identify the property (such as a street address for urban property and the survey identification and location for rural property), but it shall not be necessary for the

notice to contain field notes. Such property shall be open for inspection and appraisal, subject to the judgment debtor's reasonable objections, for a reasonable period before the day of sale.

"(IV) The United States marshal shall serve written notice of public sale by personal delivery, or certified or registered mail, to each person whom the marshal has reasonable cause to believe, after a title search is conducted by the United States, has an interest in property under execution, including lienholders, co-owners, and tenants, at least 25 days before the day of sale, to the last known address of each such person.

"(ii) SALE OF CITY LOTS.—If the real property consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel shall be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

"(iii) SALE OF RURAL PROPERTY.—If the real property is not located in a city or town, the judgment debtor may—

"(I) divide the property into lots of not less than 50 acres or in such greater or lesser amounts as ordered by the court;

"(II) furnish a survey of such prepared by a registered surveyor; and

"(III) designate the order in which those lots shall be sold.

When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

"(B) SALE OF PERSONAL PROPERTY.—(i) Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, at the courthouse of the county, parish or city wherein it is located, or at another location if ordered by the court. Personal property susceptible of being exhibited shall not be sold unless it is present and subject to the view of those attending the sale unless—

"(I) the property consists of shares of stock in corporations;

"(II) by reason of the nature of the property, it is impractical to exhibit it; or

"(III) the debtor's interest in the property does not include the right to the exclusive possession.

"(ii)(I) Except as provided in subclause (II), personal property, or any interest therein, shall be sold after the expiration of the 30-day period beginning on the date of levy under subsection (d).

"(II) The court may order the sale of any personal property before the expiration of such 30-day period if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during such 30-day period.

"(iii) Notice of the time and place of the sale of personal property shall be given by the United States marshal by posting notice thereof for not less than 10 days successively immediately before the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made.

"(iv) The United States marshal shall serve written notice of public sale by personal delivery, or registered or certified mail at their last known addresses, on the judgment debtor and other persons who the marshal has reasonable cause to believe, after diligent inquiry, have a substantial interest in the property.

"(2) POSTPONEMENT OF SALE.—The United States marshal may postpone an execution sale from time to time by continuing the required posting or publication of notice until the date to which the sale is postponed, and appending, at the foot of each such notice of a current copy of the following:

"'The above sale is postponed until the day of , 19XX, at XXXX o'clock XX .M., , United States Marshal for the District of , by , Deputy, dated .'.

"(3) SALE PROCEDURES.—

"(A) BIDDING REQUIREMENTS.—A bidder at an execution sale of property, may be required by the United States marshal to make a cash deposit of as much as 20 percent of the sale price proposed before the bid is accepted.

"(B) RESALE OF PROPERTY.—If the terms of the sale are not complied with by the successful bidder, the United States marshal shall proceed to sell the property again on the same day if there is sufficient time. If there is insufficient time, the marshal shall schedule and notice a subsequent sale of the property as provided in paragraphs (1) and (2).

(4) RIGHTS AND LIABILITIES OF PURCHASERS.—

"(A) TRANSFER OF TITLE AFTER SALE.—

"(i) If property is sold under this subsection and the successful bidder complies with the terms of the sale, the United States marshal shall execute and deliver all documents necessary to transfer to the successful bidder, without warranty, all the rights, titles, interests, and claims of the judgment debtor in the property.

"(ii) If the successful bidder dies before execution and delivery of the documents needed to transfer ownership, the United States marshal shall execute and deliver them to the successful bidder's estate. Such delivery to the estate shall have the same effect as if accomplished during the lifetime of the purchaser.

"(B) PURCHASER CONSIDERED INNOCENT PURCHASER WITHOUT NOTICE.—The purchaser of property sold under execution shall be deemed to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the judgment debtor.

"(C) LIABILITY OF SUCCESSFUL BIDDER WHO FAILS TO COMPLY.—A successful bidder at an execution sale who fails to comply with the terms of the sale shall forfeit to the United States the cash deposit or, at the election of the United States, shall be liable to the United States, on a subsequent sale of the property, for all net losses incurred by the United States as a result of such failure.

"(h) DISPOSITION OF PROCEEDS; FURTHER LEVY.—

"(1) DISTRIBUTION OF SALE PROCEEDS.—(A) The United States marshal shall first deliver to the judgment debtor such amounts to which the judgment debtor is entitled from the sale of partially exempt property.

"(B) The United States marshal shall next deduct from the proceeds of an execution sale of property an amount equal to the reasonable expenses incurred in making the levy of execution and in keeping and maintaining the property.

"(C) Except as provided in subparagraph (D), the United States marshal shall deliver the balance of the proceeds to the counsel for the United States as soon as practicable.

"(D) If more proceeds are received from the execution sale than is necessary to satisfy the executions held by the United States marshal, the marshal shall pay the surplus to the judgment debtor.

"(2) FURTHER LEVY IF EXECUTION NOT SATISFIED.—If the proceeds of the execution sale of the property levied on are insufficient to satisfy the execution, the United States marshal shall proceed on the same writ of execution to levy other property of the judgment debtor.

"§ 3204. Installment payment order

"(a) AUTHORITY TO ISSUE ORDER.—Subject to subsection (c), if it is shown that the judgment debtor—

"(1) is receiving or will receive substantial nonexempt disposable earnings from self employment that are not subject to garnishment; or

"(2) is diverting or concealing substantial earnings from any source, or property received in lieu of earnings;

then upon motion of the United States and notice to the judgment debtor, the court may, if appropriate, order that the judgment debtor make specified installment payments to the United States. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration after a hearing, the income, resources, and reasonable requirements of the judgment debtor and the judgment debtor's dependents, any other payments to be made in satisfaction of judgments against the judgment debtor, and the amount due on the judgment in favor of the United States.

"(b) MODIFICATION OF ORDER.—On motion of the United States or the judgment debtor, and upon a showing that the judgment debtor's financial circumstances have changed or that assets not previously disclosed by the judgment debtor have been discovered, the court may modify the amount of payments, alter their frequency, or require full payment.

"(c) LIMITATION.—(1) An order may not be issued under subsection (a), and if so issued shall have no force or effect, against a judgment debtor with respect to whom there is in effect a writ of garnishment of earnings issued under this chapter and based on the same debt.

"(2) An order may not be issued under subsection (a) with respect to any earnings of the debtor except nonexempt disposable earnings.

"§ 3205. Garnishment

"(a) IN GENERAL.—A court may issue a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be continuing and shall terminate only as provided in subsection (c)(10).

"(b) WRIT.—

"(1) GENERAL REQUIREMENTS.—The United States shall include in its application for a writ of garnishment—

"(A) the judgment debtor's name, social security number (if known), and last known address;

"(B) the nature and amount of the debt owed and the facts that not less than 30 days has elapsed since demand on the debtor for payment of the debt was made and the judgment debtor has not paid the amount due; and

"(C) that the garnishee is believed to have possession of property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest.

"(2) PROPER GARNISHEE FOR PARTICULAR PROPERTY.—

"(A) If the property consists of a right to or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association shall be the garnishee.

"(B) If the property consists of an interest in a partnership interest, any partner other than the debtor shall be the garnishee on behalf of the partnership.

"(C) If the property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document, or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee, except that—

"(i) subject to clause (ii), in the case of a security which is transferable in the manner set forth in State law, the entity that carries on its books an account in the name of the debtor in which is reflected such security shall be the garnishee; and

"(ii) notwithstanding clause (i), the pledgee shall be the garnishee if such security is pledged.

"(c) PROCEDURES APPLICABLE TO WRIT.—

"(1) COURT DETERMINATION.—If the court determines that the requirements of this section are satisfied, the court shall issue an appropriate writ of garnishment.

"(2) FORM OF WRIT.—The writ shall state—

"(A) The nature and amount of the debt, and any cost and interest owed with respect to the debt.

"(B) The name and address of the garnishee.

"(C) The name and address of counsel for the United States.

"(D) The last known address of the judgment debtor.

"(E) That the garnishee shall answer the writ within 10 days of service of the writ.

"(F) That the garnishee shall withhold and retain any property in which the debtor has a substantial nonexempt interest and for which the garnishee is or may become indebted to the judgment debtor pending further order of the court.

"(3) SERVICE OF WRIT.—The United States shall serve the garnishee and the judgment debtor with a copy of the writ of garnishment and shall certify to the court that this service was made. The writ shall be accompanied by—

"(A) an instruction explaining the requirement that the garnishee submit a written answer to the writ; and

"(B) instructions to the judgment debtor for objecting to the answer of the garnishee and for obtaining a hearing on the objections.

"(4) ANSWER OF THE GARNISHEE.—In its written answer to the writ of garnishment, the garnishee shall state under oath—

"(A) whether the garnishee has custody, control or possession of such property;

"(B) a description of such property and the value of such interest;

"(C) a description of any previous garnishments to which such property is subject and the extent to which any remaining property is not exempt; and

"(D) the amount of the debt the garnishee anticipates owing to the judgment debtor in the future and whether the period for payment will be weekly or another specified period.

The garnishee shall file the original answer with the court issuing the writ and serve a copy on the debtor and counsel for the United States.

"(5) OBJECTIONS TO ANSWER.—Within 20 days after receipt of the answer, the judgment debtor or the United States may file a written objection to the answer and request a hearing. The party objecting shall state the grounds for the objection and bear the burden of proving such grounds. A copy of the objection and request for a hearing shall be served on the garnishee and all other parties. The court shall hold a hearing within 10 days after the date the request is received by the court, or as soon thereafter as is practicable, and give notice of the hearing date to all the parties.

"(6) GARNISHEE'S FAILURE TO ANSWER OR PAY.—If a garnishee fails to answer the writ of garnishment or to withhold property in accordance with the writ, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ and to so withhold property before the appearance date. If the garnishee fails to appear, or appears and fails to show good cause why the garnishee failed to comply with the writ, the court shall enter judgment against the garnishee for the value of the judgment debtor's nonexempt interest in such property (including nonexempt disposable earnings). The court may award a reasonable attorney's fee to the United States and against the garnishee if the writ is not answered within the time specified therein and a petition requiring the garnishee to appear is filed as provided in this section.

"(7) DISPOSITION ORDER.—After the garnishee files an answer and if no hearing is requested within the required time period, the court shall promptly enter an order directing the garnishee as to the disposition of the judgment debtor's nonexempt interest in such property. If a hearing is timely requested, the order shall be entered within 5 days after the hearing, or as soon thereafter as is practicable.

"(8) PRIORITIES.—Judicial orders and garnishments for the support of a person shall have priority over a writ of garnishment issued under this section. As to any other writ of garnishment or levy, a garnishment issued under this section shall have priority over writs which are issued later in time.

"(9) ACCOUNTING.—(A) While a writ of garnishment is in effect under this section, the United States shall give an annual accounting on the garnishment to the judgment debtor and the garnishee.

"(B) Within 10 days after the garnishment terminates, the United States shall give a cumulative written accounting to the judgment debtor and garnishee of all property it receives under a writ of garnishment. Within 10 days after such accounting is received, the judgment debtor or garnishee may file a written objection to the accounting and a request for hearing. The party objecting shall state grounds for the objection. The court shall hold a hearing on the objection within 10 days after the court receives the request for a hearing, or as soon thereafter as is practicable.

"(10) TERMINATION OF GARNISHMENT.—A garnishment under this chapter is terminated only by—

"(A) a court order quashing the writ of garnishment;

"(B) exhaustion of property in the possession, custody, or control of the garnishee in which the debtor has a substantial nonexempt interest (including nonexempt disposable earnings), unless the garnishee reinstates or reemploys the judgment debtor within 90 days after the judgment debtor's dismissal or resignation; or

"(C) satisfaction of the debt with respect to which the writ is issued.

"§ 3206. Discharge

"A person who pursuant to an execution or order issued under this chapter by a court pays or delivers to the United States, a United States marshal, or a receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt such person owes the judgment debtor, is discharged from such debt to the judgment debtor to the extent of the payment or delivery.

"SUBCHAPTER D—FRAUDULENT TRANSFERS INVOLVING DEBTS

"Sec.
"3301. Definitions.
"3302. Insolvency.
"3303. Value for a transfer or obligation.
"3304. Transfer fraudulent as to a debt to the United States.
"3305. When transfer is made or obligation is incurred.
"3306. Remedies of the United States.
"3307. Defenses, liability and protection of transferee.
"3308. Supplementary provision.

"§ 3301. Definitions

"As used in this subchapter:

"(1) 'Affiliate' means—

"(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities—

"(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

"(ii) solely to secure a debt, if the person has not exercised the power to vote;

"(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than the person who holds securities—

"(i) as a fiduciary or agent without sole power to vote the securities; or

"(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

"(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

"(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

"(2) 'Asset' means property of a debtor, but does not include—

"(A) property to the extent it is encumbered by a valid lien;

"(B) property to the extent it is generally exempt under nonbankruptcy law; or

"(C) an interest in real property held in tenancy by the entirety, or as part of a community estate, to extent such interest is not subject to process by the United States holding a claim against only one tenant or co-owner.

"(3) 'Claim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, natured, unmatured, disputed, un-

disputed, legal, equitable, secured, or unsecured.

"(4) 'Creditor' means a person who has a claim.

"(5) 'Insider' includes—

"(A) if the debtor is an individual—

"(i) a relative of the debtor or of a general partner of the debtor;

"(ii) a partnership in which the debtor is a general partner;

"(iii) a general partner in a partnership described in clause (ii); or

"(iv) a corporation of which the debtor is a director, officer, or person in control;

"(B) if the debtor is a corporation—

"(i) a director of the debtor;

"(ii) an officer of the debtor;

"(iii) a person in control of the debtor;

"(iv) a partnership in which the debtor is a general partner;

"(v) a general partner in a partnership described in clause (iv); or

"(vi) a relative of a general partner, director, officer, or person in control of the debtor;

"(C) if the debtor is a partnership—

"(i) a general partner in the debtor;

"(ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;

"(iii) another partnership in which the debtor is a general partner;

"(iv) a general partner in a partnership described in clause (iii); or

"(v) a person in control of the debtor.

"(D) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

"(E) a managing agent of the debtor.

"(4) 'Lien' means a charge against or an interest in property to secure payment of a debt and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien, or a statutory lien.

"(5) 'Relative' means an individual related, by consanguinity or adoption, within the third degree as determined by the common law, a spouse, or an individual so related to a spouse within the third degree as so determined;

"(6) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

"(7) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained in legal or equitable proceeding.

"§ 3302. Insolvency

"(a) IN GENERAL.—Except as provided in subsection (c), a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

"(b) PRESUMPTION.—A debtor who is generally not paying debts as they become due is presumed to be insolvent.

"(c) CALCULATION.—A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of—

"(1) all of the partnership's assets; and

"(2) the sum of the excess of the value of each general partner's non-partnership assets over the partner's non-partnership debts.

"(d) ASSETS.—For purposes of this section, assets do not include property that is transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

"(e) DEBTS.—For purposes of this section, debts do not include an obligation to the extent such obligation is secured by a valid lien on property of the debtor not included as an asset.

"§ 3303. Value for transfer or obligation

"(a) TRANSACTION.—Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

"(b) REASONABLY EQUIVALENT VALUE.—For the purposes of sections 3304 and 3307, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of such interest upon default under a mortgage, deed of trust, or security agreement.

"(c) PRESENT VALUE.—A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"§ 3304. Transfer fraudulent as to a debt to the United States

"(a) DEBT ARISING BEFORE TRANSFER.—Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States which arises before the transfer is made or the obligation is incurred if—

"(1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

"(B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or

"(2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and

"(B) the insider had reasonable cause to believe that the debtor was insolvent.

"(b) TRANSFERS WITHOUT REGARD TO DATE OF JUDGMENT.—(1) Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

"(A) with actual intent to hinder, delay, or defraud a creditor; or

"(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—

"(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

"(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

"(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether—

"(A) the transfer or obligation was to an insider;

"(B) the debtor retained possession or control of the property transferred after the transfer;

"(C) the transfer or obligation was disclosed or concealed;

"(D) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

"(E) the transfer was of substantially all the debtor's assets;

"(F) the debtor absconded;

"(G) the debtor removed or concealed assets;

"(H) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

"(I) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

"(J) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

"(K) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

"§ 3305. When transfer is made or obligation is incurred

"For the purposes of this subchapter:

"(1) A transfer is made—

"(A) with respect to an asset that is real property (other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset), when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

"(B) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire, otherwise than under this subchapter, a judicial lien that is superior to the interest of the transferee.

"(2) If applicable law permits the transfer to be perfected as approved in paragraph (1) and the transfer is not so perfected before the commencement of an action or proceeding for relief under this subchapter, the transfer is deemed made immediately before the commencement of the action or proceeding.

"(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee.

"(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

"(5) An obligation is incurred—

"(A) if oral, when it becomes effective between the parties; or

"(B) if evidenced by a writing executed by the obligor, when such writing is delivered to or for the benefit of the obligee.

"§ 3306. Remedies of the United States

"(a) IN GENERAL.—In an action or proceeding under this subchapter for relief against a transfer or obligation, the United States, subject to section 3307 and to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure, may obtain—

"(1) avoidance of the transfer or obligation to the extent necessary to satisfy the debt to the United States;

"(2) a remedy under this chapter against the asset transferred or other property of the transferee; or

"(3) any other relief the circumstances may require.

"(b) LIMITATION.—A claim for relief with respect to a fraudulent transfer or obliga-

tion under this subchapter is extinguished unless action is brought—

"(1) under section 3304(b)(1)(A) within 6 years after the transfer was made or the obligation was incurred or, if later, within 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant;

"(2) under subsection (a)(1) or (b)(1)(B) of section 3304 within 6 years after the transfer was made or the obligation was incurred; or

"(3) under section 3304(a)(2) within 2 years after the transfer was made or the obligation was incurred.

"§ 3307. Defenses, liability, and protection of transferee

"(a) GOOD FAITH TRANSFER.—A transfer or obligation is not voidable under section 3304(b) with respect to a person who took in good faith and for a reasonably equivalent value or against any transferee or obligee subsequent to such person.

"(b) LIMITATION.—Except as provided in subsection (d), to the extent a transfer is voidable in an action or proceeding by the United States under section 3306(a)(1), the United States may recover judgment for the value of the asset transferred, but not to exceed the judgment on a debt. The judgment may be entered against—

"(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

"(2) any subsequent transferee, other than a good faith transferee who took for value or any subsequent transferee of such good-faith transferee.

"(c) VALUE OF ASSET.—For purposes of subsection (b), the value of the asset is the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

"(d) RIGHTS OF GOOD FAITH TRANSFEREES AND OBLIGEES.—Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

"(1) a lien on or a right to retain any interest in the asset transferred;

"(2) enforcement of any obligation incurred; or

"(3) a reduction in the amount of the liability on the judgment.

"(e) EXCEPTIONS.—A transfer is not voidable under section 3304(a) or section 3304(b)(2) if the transfer results from—

"(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

"(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the State where the property is located.

"(f) LIMITATION OF VOIDABILITY.—A transfer is not voidable under section 3304(a)(2)—

"(1) to the extent the insider gives new value to or for the benefit of the debtor after the transfer is made unless the new value is secured by a valid lien;

"(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

"(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured both present value given for that purpose and an antecedent debt of the debtor.

"§ 3308. Supplementary provision

"Except as provided in this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause shall apply to actions and proceedings under this subchapter.".

SEC. 3302. The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

"176. Federal Debt Collection Procedures".

Subtitle B—Amendments to Other Provisions of Law

SEC. 3321. Section 523(a)(8) of title 11, United States Code, is amended—

(1) by striking "for an educational" and all that follows through "unless", and inserting the following: "for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless"; and

(2) by amending subparagraph (A) to read as follows:

"(A) such loan, benefit, scholarship, or stipend overpayment first became due more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or".

SEC. 3322. Section 3142(c)(1)(B)(xi) of title 18, United States Code, is amended to read as follows:

"(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;".

SEC. 3323. Section 3142(c)(1)(B)(xii) of title 18, United States Code, is amended to read as follows:

"(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;".

SEC. 3324. Section 3142(g)(4) of title 18, United States Code, is amended by—

(1) striking out "(c)(2)(K)" and inserting in lieu thererof "(c)(1)(B)(xi)"; and

(2) striking out "(c)(2)(L)" and inserting in lieu thereof "(c)(1)(B)(xii)".

SEC. 3325. Section 3552(d) of title 18, United States Code, is amended by adding at the end the following: "The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.".

SEC. 3326. (a) Section 550 of title 28, United States Code, is amended—

(1) in the heading by striking "and messengers" and inserting ", messengers, and private process servers"; and

(2) by striking "and messengers on" and inserting ", messengers, and private process servers on".

(b) The table of sections of chapter 35 of title 28, United States Code, is amended by striking the item relating to section 550 and inserting the following:

"550. Clerical assistants, messengers, and private process servers.".

SEC. 3327. Section 1962 of title 28, United States Code, is amended by inserting after the first sentence the following: "This section does not apply to judgments entered in favor of the United States.".

SEC. 3328. Section 1963 of title 28, United States Code, is amended by inserting after the first sentence the following: "Such a judgment entered in favor of the United States may be so registered any time after judgment is entered.".

SEC. 3329. (a) Chapter 129 of title 28, United States Code, is amended by adding at the end thereof the following:

"§ 2044. Payment of fine with bond money

"On motion of the United States attorney, the court shall order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This section shall not apply to any third party surety.".

(b) The table of sections for chapter 29 of title 28, United States Code, is amended by adding at the end thereof the following:

"2044. Payment of fine with bond money.".

SEC. 3330. Section 2410(c) of title 28, United States Code, is amended by adding at the end the following: "In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.".

Subtitle C—Miscellaneous

SEC. 3341. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

(b)(1) The amendments made by title I of this Act shall apply with respect to actions pending on the effective date of this Act in any court on—

(A) a claim for a debt; or

(B) a judgment for a debt.

(2) All notices, writs, orders, and judgments in effect in such actions shall continue in effect until superseded or modified in an action under chapter 176 of title 28 of the United States Code, as added by title I of this Act.

(3) For purposes of this subsection—

(A) the term "court" means a Federal, State, or local court, and

(B) the term "debt" has the meaning given such term in section and 3002(3) of such chapter.

TITLE XXXV—EMERGENCY DRUG ABUSE TREATMENT EXPANSION

Subtitle A—Certain Programs Regarding Prevention of Substance Abuse

SEC. 3501. ESTABLISHMENT, GENERAL AUTHORITIES, AND CERTAIN PROGRAMS.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following new parts:

TITLE XXXVII—NATIONAL CHILD SEARCH ASSISTANCE ACT OF 1990

SEC. 3701. REPORTING REQUIREMENT.

(a) IN GENERAL.—Each Federal, State, and local law enforcement agency shall report each case of a missing child under the age of 18 reported to such agency to the National Crime Information Center of the Department of Justice.

(b) GUIDELINES.—The Attorney General may establish guidelines for the collection of such reports including procedures for carrying out the purposes of this Act.

(c) ANNUAL SUMMARY.—The Attorney General shall publish an annual statistical summary of the reports received under this Act.

SEC. 3702. STATE REQUIREMENTS.

Each State reporting under the provisions of this Act shall—

(1) ensure that no law enforcement agency within the State establishes or maintains any policy that requires the observance of any waiting period before accepting a missing child or unidentified person report;

(2) provide that each such report and all necessary and available information, which, with respect to each missing child report, shall include—

(A) the name, date of birth, sex, race, height, weight, and eye and hair color of the child;

(B) the date and location of the last known contact with the child; and

(C) the category under which the child is reported missing;

is entered immediately into the State law enforcement system and the National Crime Information Center computer networks and made available to the Missing Children Information Clearinghouse within the State or other agency designated within the State to receive such reports; and

(3) provide that after receiving reports as provided in paragraph (2), the law enforcement agency that entered the report into the National Crime Information Center shall—

(A) no later than 60 days after the original entry of the record into the State law enforcement system and National Crime Information Center computer networks, verify and update such record with any additional information, including, where available, medical and dental records;

(B) institute or assist with appropriate search and investigative procedures; and

(C) maintain close liaison with the National Center for Missing and Exploited Children for the exchange of information and technical assistance in the missing children cases.

TITLE XXVIII—DRUG ENFORCEMENT GRANTS

SEC. 3801. BASE ALLOCATION FOR DRUG ENFORCEMENT GRANTS AND IMPROVING THE EFFECTIVENESS OF COURT PROCESS.

BASE ALLOCATION FOR DRUG ENFORCEMENT GRANT.—Paragraph (5) of section 1001(a) of part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(5) There are authorized to be appropriated $900,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal year 1992 to carry out the programs under parts D and E of this title.".

ADJOURNMENT SINE DIE

Mr. MITCHELL. Mr. President, I move in accordance with the provisions of House concurrent Resolution 399 that the Senate stand adjourned sine die.

The motion was agreed to, and at 2:17 a.m., the Senate adjourned sine die.

NOMINATIONS

Executive nominations received by the Senate October 27, 1990:

DEPARTMENT OF STATE

JOHN A. BUSHNELL, OF CONNECTICUT, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF COSTA RICA.

IN THE COAST GUARD

THE FOLLOWING OFFICERS OF THE U.S. COAST GUARD FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL:

ARTHUR E. HENN
JOHN N. FAIGLE
PETER A. BUNCH
DAVID E. CIANCAGLINI
WILLIAM J. ECKER

THE FOLLOWING OFFICERS OF THE U.S. COAST GUARD FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (LOWER HALF):

JOHN L. LINNON, JR.
RUDY K. PESCHEL
GERALD F. WOOLEVER
RICHARD D. HERR

THE FOLLOWING REGULAR OFFICERS OF THE U.S. COAST GUARD ARE NOMINATED FOR PROMOTION TO THE GRADE OF LIEUTENANT COMMANDER:

RICHARD E. WELLS
LLOYD M. MCKINNEY
BRIAN J. FORD
ROBERT C. THOMSON
RICHARD L. BOOTH
JOSEPH V. PANCOTTI
CHARLES E. MCMAHON
CHRISTOPHER T. BOEGEL
JACK V. RUTZ
DOUGLAS B. LANE
JEFFREY D. STIEB
WILLIAM J. BELMONDO
BRUCE E. VIEKMAN
PATRICK T. KELLY
KENNETH L. KING, JR.
CURTIS L. DUBAY
BRUCE M. ROSS
MICHAEL L. BLAIR
CHARLES S. JOHNSON, JR.
RICHARD L. BOY, JR.
DONALD R. WRIGHT
RONALD A. GAN
NAIL E. VANDEVOORDE
DAVID C. AURAND
GLEN A. ROBBINS
MARK J. FIEBRANDT
WILLIAM R. GRAWE
ROBERT F. CORBIN
STEPHEN L. SIELBECK
JON M. WATSON
DANA E. WARE
RICHARD J. PRESTON, JR.
FRANCIS A. DUTCH
DANIEL K. OLIVER
KEVIN A. REDIG
JOHN D. MCCANN, JR.
KENNETH L. SAVOIE
EMIL SIKORSKY III
STEPHEN J. DARMODY
PETER J. BOYNTON
HERBERT A. BLACK III
DONALD L. STURDIVANT, JR.
NEIL O. BUSCHMAN
DAVID H. SUMP
DAVID R. KING
ALEXANDER O. SIMONKA, JR.
MICHAEL J. SCANLON, JR.
DAVID G. HOLMAN
THOMAS L. KOONTZ
PHILIP T. DANIELS
DANIEL R. MAY
WILLIAM J. SEMRAU
ERIC M. JEWESS
JAMES K. LOUTTIT
JOHN T. COSTELLO, JR.
CRAIG H. ALLEN
SUSAN D. BIBEAU
KEITH B. LETOURNEAU
DAVID A. CONKLIN
DAVID B. HILL
CHARLES W. HOLMAN
STEVEN L. HEIN
JEFFREY R. PETTITT
PAUL K. LARSON
RICHARD W. HATTON
ROY A. NASH
JOHN E. LONG
BRUCE D. BRANHAM
PATRICK J. NEMETH
JOHN E. FROST
JEFFREY D. HOLMGREN
RODRICK M. ANSLEY
SCOTT H. EVANS
MARK P. BLACE
STEVEN W. ELLIS
VINCENT M. CAMPOS
CHARLES D. PRATT
DAVID A. MASIERO
GERALD R. GIRARD
JOHN H. KORN
EDWIN H. DANIELS, JR.
DENNIS M. HOLLAND
SHANE C. ISHIKI
KEVIN D. KRUMDIECK
BENNETT T. BONOMI
RANDELL B. SHARPE
EVERETT F. ROLLINS III
STEPHEN J. DANSCUK
PATRICK H. STADT
KENNETH B. PARRIS
MARK P. WATSON
GLENN G. MILLER
SCOTT D. GENOVESE
MARC D. CRUDER
ROBERT E. MOBLEY
TIMOTHY J. LEAHY
DANNY ELLIS
JEFFREY S. GORDEN
RODNEY D. RAINES III
MARK A. FELDMAN
MICHAEL M. MILLAR
MICHAEL A. JETT
WALLACE T. WILLIAMSON
CLAUDIA P. WELLS
DANIEL J. MCCANN
WILLIAM D. OSBORN
DAVID L. MAXSON
JAMES L. DURRETT
JOSEPH W. BODENSTEDT
ERIC A. ROSENBERG
BRUCE K. HUERTAS
EDWARD O. COATES
GARY E. DAHMEN
CARSTEN L. HENNINGSEN III
MICHAEL S. BLACK
CHRISTOPHER J. SMITH
SAMUEL B. BROMLEY, JR.
ROY W. JAMISON
JACK G. ALBERT, JR.
MICHAEL S. RHODES
RONALD K. KOCHAN
AL J. BERNARD
WILLIAM C. GLIDDEN
MICHAEL E. MAES
JEFFERY FAY
MARK D. BOBAL
JAMES F. MCMANUS
RICHARD J. BLOUNT, JR.
LEWIS S. BLANKENSHIP
STEPHEN A. STOTT
DAVID L. SCOTT
PHILLIP M. LITHERLAND
FRANCES L. PROPST
RICHARD A. MCCULLOUGH
DANIEL A. MUSSATTI
JOHN D. BOGLE
DANIEL A. CUTRER
DAVID N. GRIFFITH
SCOTT A. NEWSHAM
GLENN A. GORTON
GERALD M. SWANSON
GLEN R. ZEAMER
PAUL T. BUTLER
ROBERT G. LAMBOURNE
WALTER J. REGER
HAROLD W. FINCH, JR.
LARRY R. HAMMOND
DAVID J. TALLON
EDWARD G. LEBLANC
ROGER B. GAYMAN
TIMOTHY J. CUNNINGHAM
ERIC J. SHAW
MARY E. LANDRY
WILLIAM D. BAUMGARTNER
RICHARD B. BURT
MARK J. YOST
WILLIAM L. ZACK
DALE G. STREYLE
CURTIS A. STOCK
LARRY R. WHITE
MICHELE FITZPATRICK
TRACY S. ALLEN
JOHN G. CLINE
STEPHEN E. MEHLING
MICHAEL C. GHIZZONI
DANIEL N. RIEHM
WILLIAM R. MARHOFFER
BRANDT R. WEAVER
DAVID S. HILL
KAREN T. HAYS
JAMES D. MAES
CRAIG M. JUCKNIESS
MICHAEL A. NEUSSL
WILLIAM H. REYNOLDS
BRIAN F. BINNEY
GEORGE H. HEINTZ
JOSEPH W. BRUBAKER
GEORGE J. REZENDES, JR.
JOHN M. FIDALEO
JEFFREY H. BARKER
MICHAEL D. HUDSON
RAYMOND H. CARLSON, JR.
GREGORY A. MITCHELL III
PAUL J. REID
GREGORY L. SHELTON
RALPH A. PETEREIT
MARK R. STEINHILBER
ROBERT J. WILSON, IV
KEVIN J. CAVANAUGH
GEORGE A. ASSENG, JR.
DANIEL L. WRIGHT
MICHAEL J. BROWN
KATHY A. HAMBLETT
MICHAEL R. LINZEY
CHRISTINE J. QUEDENS
JEFF R. BROWN
LEROY A. JACOBS, JR.
JOSEPH C. LICHAMER
BRET K. MCGOUGH
ROBERT W. DANAHY
CHRISTOPHER D. EDWARDS

THE FOLLOWING REGULAR OFFICERS OF THE U.S. COAST GUARD OF THE PERMANENT COMMISSIONED TEACHING STAFF OF THE COAST GUARD ACADEMY ARE NOMINATED FOR PROMOTION TO THE GRADES INDICATED:

To be captain

EARL H. POTTER III

To be lieutenant commander

MARK B. CASE
ROBERT C. AYER

CONFIRMATIONS

Executive nomination confirmed by the Senate October 27, 1990:

DEPARTMENT OF THE TREASURY

BERT W. CORNEBY, OF NEW YORK, TO BE SUPERINTENDENT OF THE MINT OF THE UNITED STATES AT WEST POINT, NY

NATIONAL SCIENCE FOUNDATION

W. GLENN CAMPBELL, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL SCIENCE BOARD, NATIONAL SCIENCE FOUNDATION FOR THE REMAINDER OF THE TERM EXPIRING MAY 10, 1994.

DEPARTMENT OF AGRICULTURE

KEITH D. BJERKE, OF NORTH DAKOTA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMODITY CREDIT CORPORATION.

FARM CREDIT ADMINISTRATION

BILLY ROSS BROWN, OF MISSISSIPPI, TO BE A MEMBER OF THE FARM CREDIT ADMINISTRATION BOARD, FARM CREDIT ADMINISTRATION, FOR THE TERM EXPIRING OCTOBER 13, 1994.

DEPARTMENT OF TRANSPORTATION

MARY STERLING, OF VIRGINIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION.

FEDERAL EMERGENCY MANAGEMENT AGENCY

THOMAS F. KRANZ, OF CALIFORNIA, TO BE AN ASSOCIATE DIRECTOR OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

MERIT SYSTEMS PROTECTION BOARD

ANTONIO C. AMADOR, OF CALIFORNIA, TO BE A MEMBER OF THE MERIT SYSTEMS PROTECTION BOARD FOR THE TERM OF 7 YEARS EXPIRING MARCH 1, 1997.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TODD W. DILLARD, OF MARYLAND, TO BE U.S. MARSHAL FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF 4 YEARS VICE A NEW POSITION CREATED BY PUBLIC LAW 100-690, DATED NOVEMBER 18, 1988.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MARY SHANNON BRUNETTE, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY, OF HOUSING AND URBAN DEVELOPMENT.

NATIONAL SCIENCE FOUNDATION

HOWARD E. SIMMONS, OF DELAWARE, TO BE A MEMBER OF THE NATIONAL SCIENCE BOARD, NA-

TIONAL SCIENCE FOUNDATION, FOR A TERM EXPIRING MAY 10, 1996.

PHILLIP A. GRIFFITHS, OF NORTH CAROLINA, TO BE A MEMBER OF THE NATIONAL SCIENCE BOARD, NATIONAL SCIENCE FOUNDATION, FOR A TERM EXPIRING MAY 10, 1996.

JAIME OAXACA, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL SCIENCE BOARD, NATIONAL SCIENCE FOUNDATION, FOR A TERM EXPIRING MAY 10, 1996.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

JON N. MOLINE, OF MINNESOTA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR THE TERM EXPIRING JANUARY 26, 1996.

U.S. INSTITUTE OF PEACE

MARY LOUISE SMITH, OF IOWA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 19, 1991.

MARY LOUISE SMITH, OF IOWA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1995.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ARLENE HOLEN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM OF 6 YEARS EXPIRING AUGUST 30, 1996.

DEPARTMENT OF LABOR

ELISE V. VARTANIAN, OF NEW HAMPSHIRE, TO BE DIRECTOR OF THE WOMEN'S BUREAU, DEPARTMENT OF LABOR.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DAVID A. KESSLER, OF NEW YORK, TO BE COMMISSIONER OF FOOD AND DRUGS, DEPARTMENT OF HEALTH AND HUMAN SERVICES.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF COMMERCE

SYLVIA ALICE EARLE, OF CALIFORNIA, TO BE CHIEF SCIENTIST OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

MARINE MAMMAL COMMISSION

PAUL K. DAYTON, OF CALIFORNIA, TO BE A MEMBER OF THE MARINE MAMMAL COMMISSION FOR THE TERM EXPIRING MAY 13, 1992.

DEPARTMENT OF TRANSPORTATION

MARION CLIFTON BLAKEY, OF MISSISSIPPI, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION.

THE JUDICIARY

DENNIS W. SHEDD, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA.

DEPARTMENT OF JUSTICE

JAMES L. WEBB, OF OKLAHOMA, TO BE U.S. MARSHAL FOR THE EASTERN DISTRICT OF OKLAHOMA FOR THE TERM OF 4 YEARS.

IN THE AIR FORCE

THE FOLLOWING OFFICER UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 8038, FOR APPOINTMENT AS CHIEF OF AIR FORCE RESERVE AND APPOINTMENT TO THE GRADE OF MAJOR GENERAL IN THE RESERVE OF THE AIR FORCE:

TO BE CHIEF OF AIR FORCE RESERVE

To be major general

BRIG. GEN. JOHN J. CLOSNER, III, [redacted] AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. HARRY A. GOODALL, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. CRAVEN C. ROGERS, JR., [redacted] UNITED STATES AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. CARL R. SMITH, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. JAMES T. CALLAGHAN, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEN. ROBERT D. RUSS, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. ROBERT P. MCCOY, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. TREVOR A. HAMMOND, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. ROBERT H. LUDWIG, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. MICHAEL A. NELSON, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be general

LT. GEN. GEORGE L. BUTLER, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, AND APPOINTMENT AS SENIOR AIR FORCE MEMBER, MILITARY STAFF COMMITTEE OF THE UNITED NATIONS, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 711:

To be lieutenant general

To be senior Air Force member, Military Staff Committee of the United Nations

MAJ. GEN. CHARLES A. MAY, JR., [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, AND TO BE APPOINTED AS CHIEF OF STAFF, U.S. AIR FORCE UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 8033:

To be general

To be Chief of Staff, U.S. Air Force

GEN. MERRILL A. MCPEAK, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEN. JOHN T. CHAIN, JR., [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEN. MICHAEL J. DUGAN, [redacted] U.S. AIR FORCE.

IN THE ARMY

BRIG. GEN. JOHN L. FUGH, [redacted] U.S. ARMY, FOR APPOINTMENT AS THE ASSISTANT JUDGE ADVOCATE GENERAL, U.S. ARMY, IN THE GRADE OF MAJOR GENERAL, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 3037.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 611(A) AND 624:

To be permanent brigadier general

COL. DONALD W. SHEA, [redacted] U.S. ARMY.

THE ARMY NATIONAL GUARD OF THE U.S. OFFICER NAMED HEREIN FOR APPOINTMENT AS A RESERVE OFFICER OF THE ARMY IN THE GRADE INDICATED BELOW, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 593(A) AND 3385:

To be major general

BRIG. GEN. WILLIAM A. NAVAS, JR., [redacted]

THE U.S. ARMY NATIONAL GUARD OFFICERS NAMED HEREIN FOR APPOINTMENT IN THE GRADES INDICATED BELOW, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 593(A), 3385 AND 3392:

To be major general

BRIG. GEN. JOHN H. MCDONALD, [redacted]
BRIG. GEN. RAYMOND F. REES, [redacted]
BRIG. GEN. DANIEL J. O'NEILL, [redacted]

To be brigadier general

COL. MARK C. BOWEN, [redacted]
COL. ECHOL E. COOK, [redacted]
COL. THOMAS R. ICE, [redacted]
COL. ROBERT J. MITCHELL, [redacted]
COL. ELON M. PEARSON, [redacted]
COL. GARY R. STONE, [redacted]
COL. DAVID P. SZCZYGIEL, [redacted]
COL. WILLIAM A. HOLLAND, [redacted]
COL. WESLEY J. JACOBS, [redacted]
COL. JOHN A. LIETHEN, [redacted]
COL. JAMES W. MACVAY, [redacted]
COL. THOMAS J. GALLAGHER, [redacted]
COL. FRANK N. SEFTON, III, [redacted]
COL. WILLIAM S. GREENBERG, [redacted]
COL. GEORGE K. HASTINGS, [redacted]
COL. CHARLES E. KRUSE, [redacted]
COL. WILLIAM J. YEAGER, [redacted]

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES AS ASSISTANT SURGEON GENERAL OF THE ARMY/CHIEF DENTAL CORPS AND APPOINTED TO THE GRADE OF MAJOR GENERAL UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 3036 AND 3039:

To be permanent major general

To be assistant surgeon general/Chief, dental corps

BRIG. GEN. THOMAS R. TEMPEL, [redacted] U.S. ARMY.

THE FOLLOWING-NAMED ARMY MEDICAL CORPS OFFICERS FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES TO THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 611(A) AND 624(C):

To be permanent major genral

BRIG. GEN. MICHAEL J. SCOTTI, [redacted], U.S. ARMY.

To be permanent brigadier general

COL. RONALD R. BLANCK, [redacted] U.S. ARMY.

THE U.S. ARMY RESERVE OFFICERS NAMED HEREIN FOR APPOINTMENT IN THE RESERVE OF THE ARMY OF THE UNITED STATES IN THE GRADES INDICATED BELOW, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 593(A), 3371 AND 3384:

To be major general

BRIG. GEN. MICHAEL M. BERZOWSKI, [redacted]
BRIG. GEN. RAYMOND C. BONNABEAU, JR., [redacted]
BRIG. GEN. KENNETH A. BOULDIN, [redacted]
BRIG. GEN. MICHAEL A. BOYD, [redacted]
BRIG. GEN. JAMES A. BROOKE, [redacted]
BRIG. GEN. JOHN S. GUTHRIE, JR., [redacted]
BRIG. GEN. TERRENCE D. MULCAHY, [redacted]

To be brigadier general

COL. JOHN T. CROWE, [redacted]
COL. JOE M. ERNST, [redacted]
COL. ALAN J. KUNSCHNER, [redacted]
COL. PATRICK E. REA, [redacted]
COL. JOSEPH A. SCHEINKOENIG, [redacted]
COL. JAMES W. WARR, [redacted]

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be general

LT. GEN. GEORGE A. JOULWAN, xxx-xx-xxxx, U.S. ARMY.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEN. MAXWELL R. THURMAN, xxx-xx-xxxx, U.S. ARMY.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. THOMAS W. KELLY, xxx-xx-xxxx, U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

LT. GEN. EDWIN S. LELAND, JR., xxx-xx-xxxx, U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. DAVID M. MADDOX, xxx-xx-xxxx, U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. ROBERT D. CHELBERG, xxx-xx-xxxx, U.S. ARMY.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF BRIGADIER GENERAL WHILE SERVING AS THE STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 5046:

To be brigadier general

COL. GERALD L. MILLER, xxx-xx-xxxx, USMC.

THE FOLLOWING NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, FOR ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY AS FOLLOWS:

To be lieutenant general

MAJ. GEN. MARTIN L. BRANDTNER, xxx-xx-xxxx, USMC.

IN THE NAVY

THE FOLLOWING-NAMED CAPTAINS IN THE LINE OF THE U.S. NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL (LOWER HALF), PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICER

To be rear admiral (lower half)

CAPT. LLOYD EDWARD ALLEN, JR., xxx-xx-xxxx/1320, U.S. NAVY.
CAPT. DENNIS CUTLER BLAIR, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. ARCHIE RAY CLEMINS, xxx-xx-xxxx/1120, U.S. NAVY.
CAPT. DENNIS RONALD CONLEY, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. JOSEPH JOHN DANTONE, JR., xxx-xx-xxxx/1310, U.S. NAVY.
CAPT. DONALD ALVIN DYER, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. JAMES HARDIN FINNEY, xxx-xx-xxxx/1310, U.S. NAVY.
CAPT. MACK CHARLES GASTON, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. HAROLD WEBSTER GEHMAN, JR., xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. WILLIAM JOHN HANCOCK, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. ROBERT PHILIP HICKEY, xxx-xx-xxxx/1310, U.S. NAVY.
CAPT. JAU LYNN JOHNSON, xxx-xx-xxxx/1310, U.S. NAVY.
CAPT. DENNIS ALAN JONES, xxx-xx-xxxx/1120, U.S. NAVY.
CAPT. JOHN ALLEN LOCKARD, xxx-xx-xxxx/1230, U.S. NAVY.
CAPT. MICHAEL ALLEN MCDEVITT, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. DANIEL TRANTHAM OLIVER, xxx-xx-xxxx/1310, U.S. NAVY.
CAPT. JAMES BLENN PERKINS III, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. LEONARD FRANCIS PICOTTE, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. DONALD LEE PILLING, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. NORMAN WILSON RAY, xxx-xx-xxxx/1310, U.S. NAVY.
CAPT. WILLIAM ANDREW RETZ, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. RICHARD ANDERSON RIDDELL, xxx-xx-xxxx/1120, U.S. NAVY.
CAPT. THOMAS JAMES ROBERTSON, xxx-xx-xxxx/1120, U.S. NAVY.
CAPT. JOHN FRANCIS SHIPWAY, xxx-xx-xxxx/1220, U.S. NAVY.
CAPT. ROBERT SUTTON, xxx-xx-xxxx/1110, U.S. NAVY.
CAPT. WILLIAM EDWIN TERRY, xxx-xx-xxxx/1310, U.S. NAVY.
CAPT. FRANK LEE TILLOTSON, xxx-xx-xxxx/1310, U.S. NAVY.
CAPT. GEORGE FRANCIS ADOLF WAGNER, xxx-xx-xxxx/1210, U.S. NAVY.
CAPT. JOSEPH SCOTT WALKER, xxx-xx-xxxx/1310, U.S. NAVY.
CAPT. HUGH DENNIS WISELY, xxx-xx-xxxx/1310, U.S. NAVY.

ENGINEERING DUTY OFFICER

To be rear admiral (lower half)

CAPT. ARTHUR CLARK, xxx-xx-xxxx/1444, U.S. NAVY.
CAPT. JOHN JOSEPH DONEGAN, JR., xxx-xx-xxxx/1444, U.S. NAVY.

AERONAUTICAL ENGINEERING DUTY OFFICER

To be rear admiral (lower half)

CAPT. LAWRENCE GEORGE ELBERFELD, xxx-xx-xxxx/1504, U.S. NAVY.

SPECIAL DUTY OFFICER (INTELLIGENCE)

To be rear admiral (lower half)

CAPT. JOHN MICHAEL MCCONNELL, xxx-xx-xxxx/1630, U.S. NAVY.

THE FOLLOWING-NAMED CAPTAINS IN THE STAFF CORPS OF THE UNITED STATES NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL (LOWER HALF), PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

MEDICAL CORPS

To be rear admiral (lower half)

CAPT. WILLIAM J. MCDANIEL, xxx-xx-xxxx/2100, U.S. NAVY.
CAPT. HUGH P. SCOTT, xxx-xx-xxxx/2100, U.S. NAVY.

SUPPLY CORPS

To be rear admiral (lower half)

CAPT. EUGENE B. HARSHBARGER, xxx-xx-xxxx/3104, U.S. NAVY.
CAPT. DONALD E. HICKMAN, xxx-xx-xxxx/3104, U.S. NAVY.
CAPT. JOHN T. KAVANAUGH, xxx-xx-xxxx/3104, U.S. NAVY.

THE FOLLOWING-NAMED REAR ADMIRALS (LOWER HALF) IN THE LINE OF THE UNITED STATES NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

ENGINEERING DUTY OFFICER

To be rear admiral

REAR ADM. (1H) JOHN SYDNEY CLAMAN, xxx-xx-xxxx, U.S. NAVY.
REAR ADM. (1H) ROBERT EDWIN TRAISTER, xxx-x..., U.S. NAVY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral:

REAR ADM. (SELECTEE) DAVID M. BENNETT, U.S. NAVY, xxx-xx-xxxx.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

VICE ADM. ROBERT K.U. KIHUNE, U.S. NAVY, xxx-x...

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. EDWIN R. KOHN, JR., U.S. NAVY, xxx-x...

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. JOSEPH P. REASON, U.S. NAVY, xxx-xx-xxxx.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS JUDGE ADVOCATE GENERAL OF THE NAVY AND REAPPOINTMENT TO THE GRADE OF REAR ADMIRAL UNDER TITLE 10, UNITED STATES CODE, SECTION 5148(B):

To be judge advocate general of the Navy

To be rear admiral

REAR ADM. JOHN E. GORDON, JUDGE ADVOCATE GENERAL'S CORPS, U.S. NAVY, xxx-xx-xxxx.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS DEPUTY JUDGE ADVOCATE GENERAL OF THE NAVY AND APPOINTMENT TO THE GRADE OF REAR ADMIRAL UNDER TITLE 10, UNITED STATES CODE, SECTION 5149(A):

To be deputy judge advocate general of the Navy

To be rear admiral

REAR ADM. (1H) WILLIAM L. SCHACHTE, JR., JUDGE ADVOCATE GENERAL'S CORPS, U.S. NAVY, xxx-x...

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (LOWER HALF) WHILE SERVING AS THE ASSISTANT JUDGE ADVOCATE GENERAL OF THE NAVY UNDER TITLE 10, UNITED STATES CODE, SECTION 5149(B):

To be rear admiral (lower half)

CAPT. DUVALL M. WILLIAMS, JR., JUDGE ADVOCATE GENERAL'S CORPS, U.S. NAVY, xxx-xx-xxxx.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. JOSEPH S. DONNELL, III, U.S. NAVY, xxx-x...

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. JOHN S. DISHER, U.S. NAVY, xxx-xx-xxxx.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. DIEGO E. HERNANDEZ, U.S. NAVY, xxx-x...

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. JOHN W. NYQUIST, U.S. NAVY, xxx-xx-xxxx.

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

VICE ADM. JOHN H. FETTERMAN, JR., U.S. NAVY, xxx-x...

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

VICE ADM. HENRY H. MAUZ, JR., U.S. NAVY, xxx-xx-xxxx.

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

VICE ADM. JAMES D. WILLIAMS, U.S. NAVY, xxx-xx-xxxx.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be admiral

ADM. POWELL F. CARTER, JR., U.S. NAVY, xxx-xx-xxxx.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBIL-

ITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be admiral

VICE ADM. PAUL D. MILLER, U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

VICE ADM. ROGER F. BACON, U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. HENRY G. CHILES, JR., U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. WILLIAM A. DOUGHERTY, JR., U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601(A), AND TO BE APPOINTED AS SENIOR NAVY MEMBER OF THE MILITARY STAFF COMMITTEE OF THE UNITED NATIONS UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 711:

To be vice admiral

To be senior Navy member of the Military Staff Committee of the United Nations

REAR ADM. LEIGHTON W. SMITH, JR., U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be admiral

VICE ADM. ROBERT J. KELLY, U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be admiral

ADM. CHARLES R. LARSON, U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be admiral

VICE ADM. WILLIAM S. SMITH, U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be admiral

ADM. JAMES R. HOGG, U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. (SELECTEE) JERRY L. UNRUH, U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be admiral

ADM. HUNTINGTON HARDISTY, U.S. NAVY, [redacted].

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. DANIEL L. COOPER, U.S. NAVY, [redacted].

IN THE COAST GUARD

COAST GUARD NOMINATIONS BEGINNING RODNEY E. SMITH, AND ENDING JEFFREY L. KLINGENSMITH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 3, 1990.

COAST GUARD NOMINATIONS BEGINNING PETER A. TEBEAU, AND ENDING CASSIUS L. LISK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 3, 1990.

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING MAJ. CHARLES O. BARRY, III [redacted], AND ENDING MAJ. CHARLES E. WEST JR. [redacted], WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 17, 1990.

AIR FORCE NOMINATIONS BEGINNING MOIRA J. BURKE, AND ENDING CHOOKIERT EMKO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 28, 1990.

AIR FORCE NOMINATIONS BEGINNING JAMES G. CLARK, AND ENDING STEPHEN E. SPINGATH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 12, 1990.

AIR FORCE NOMINATIONS BEGINNING DENNIS G. CARALIS, AND ENDING JAMES P. BAGIAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 12, 1990.

IN THE ARMY

ARMY NOMINATIONS BEGINNING JOHN E. BUTLER, AND ENDING KENNETH S. WOODMAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 10, 1990.

ARMY NOMINATIONS BEGINNING CLAUDIUS M. BONNER, AND ENDING RAFAEL NUNMARIN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 10, 1990.

ARMY NOMINATIONS BEGINNING NANCY L. ADAMS, AND ENDING JOHN L. WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 10, 1990.

ARMY NOMINATIONS BEGINNING ROSE J. * ANDERSON, AND ENDING MATTHEW E. WINTER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 24, 1990.

ARMY NOMINATIONS BEGINNING ** DOMINICK A. CREA, AND ENDING * DONNA M. CALACE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 28, 1990.

ARMY NOMINATIONS BEGINNING TONY G. ARNOLD, AND ENDING SUSAN J. * WOOD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 28, 1990.

ARMY NOMINATIONS BEGINNING MICHAEL J. DUGAN, AND ENDING DAVID J. KLAES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 1990.

ARMY NOMINATIONS BEGINNING REID AARON, AND ENDING DANIEL A. ZINN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16, 1990.

ARMY NOMINATIONS BEGINNING DENNIS E. BROWER, AND ENDING * KARL E. FRIEDL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 25, 1990.

ARMY NOMINATIONS BEGINNING PATRICK J. FARACE, JR., AND ENDING PAUL E. VIOLETTE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 25, 1990.

ARMY NOMINATIONS BEGINNING LARRY J. GODFREY, AND ENDING LEO D. TUCKER, II, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 25, 1990.

ARMY NOMINATIONS BEGINNING JIMMIE W. RIGGINS, AND ENDING JEFFREY S. CAIRNS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 25, 1990.

IN THE MARINE CORPS

MARINE CORPS NOMINATIONS BEGINNING CHARLES H. ALLEN, AND ENDING THOMAS R. YEOMAN, II, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 10, 1990.

MARINE CORPS NOMINATIONS BEGINNING MICHAEL W. GASTON, AND ENDING DAVID K. WINNETT, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 12, 1990.

MARINE NOMINATIONS BEGINNING GARY S. BARTHEL, AND ENDING KENNETH E. WYNN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 12, 1990.

IN THE NAVY

THE FOLLOWING-NAMED OFFICER IN THE STAFF CORPS OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF LIEUTENANT COMMANDER AS INDICATED, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 628, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

MEDICAL CORPS

To be lieutenant commander

DONALD J. CENTNER

NAVY NOMINATIONS BEGINNING MAX R. DAWKINS, AND ENDING THOMAS D. YANCOSKIE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 10, 1990.

NAVY NOMINATIONS BEGINNING EDWARD E. SIMPSON, AND ENDING KONG T. TURK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 10, 1990.

NAVY NOMINATIONS BEGINNING JAMES ARLING HAZLETT, AND ENDING RICHARD ALLEN ROBERTS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 10, 1990.

Executive Nominations Confirmed by the Senate October 28, 1990:

DEPARTMENT OF STATE

ROBERT E. LAMB, OF GEORGIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CYPRUS.

RYAN CLARK CROCKER, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF LEBANON.

JULIETTE CLAGETT MCLENNAN, OF THE DISTRICT OF COLUMBIA, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS THE U.S. REPRESENTATIVE ON THE COMMISSION ON THE STATUS OF WOMEN OF THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED STATES.

UNITED STATES INFORMATION AGENCY

PAULA J. DOBRIANSKY, OF VIRGINIA, TO BE AN ASSOCIATE DIRECTOR OF THE UNITED STATES INFORMATION AGENCY.

PEACE CORPS NATIONAL ADVISORY COUNCIL

RUTH GARDNER COX, OF TEXAS, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM EXPIRING OCTOBER 6, 1991.

TAHLMAN KRUMM, JR., OF OHIO, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM EXPIRING OCTOBER 6, 1991.

MEREDITH MORGAN DALE, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM EXPIRING OCTOBER 6, 1992.

DEPARTMENT OF STATE

LINTON F. BROOKS, OF VIRGINIA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS DEPUTY HEAD OF DELEGATION TO THE NUCLEAR AND SPACE TALKS.

G. PHILIP HUGHES, OF VIRGINIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BARBADOS, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRADORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE COMMONWEALTH OF DOMINICA, AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SAINT LUCIA, AND AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SAINT VINCENT AND THE GRENADINES.

BOARD FOR INTERNATIONAL BROADCASTING

BARRY ZORTHIAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF INTERNATIONAL BROADCASTING FOR A TERM EXPIRING MAY 20, 1992.

DEPARTMENT OF STATE

JOHN P. LEONARD, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SURINAME.

ROBERT A. FLATEN, OF MINNESOTA, A CARRER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARTY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF RWANDA.

ALASKA NATURAL GAS TRANSPORTATION SYSTEM

MICHAEL JOSEPH BAYER, OF OHIO, TO BE FEDERAL INSPECTOR OF THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM.

DEPARTMENT OF STATE

CONNIE MACK, OF FLORIDA, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-FIFTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

JOSEPH R. BIDEN, OF DELAWARE, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 45TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

WILLIAM W. TREAT, OF NEW HAMPSHIRE, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 45TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

AFRICAN DEVELOPMENT FOUNDATION

SCOTT M. SPANGLER, AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT, TO BE A MEMBER OF THE BOARD OF DIRECTOR OF THE AFRICAN DEVELOPMENT FOUNDATION FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 22, 1991.

HOUSE OF REPRESENTATIVES—*Saturday, October 27, 1990*

The House met at 3 p.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Our hearts are grateful, O God, for those whose service in this place of responsibility has been marked with the desire for justice and an attitude toward peace. With thankfulness and praise we honor their devotion to duty, their integrity of spirit, and their fidelity to principle. May Your benediction be with them and each of us all the day long and may Your loving kindness never depart from me.

The Lord bless us and keep us:

The Lord make His face shine upon us, and be gracious to us:

The Lord lift up his countenance upon us, and give us peace. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Texas [Mr. SMITH] come forward and lead the House in the Pledge of Allegiance.

Mr. SMITH of Texas led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible with liberty and justice for all.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Chirdon, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate has passed without amendment bills of the House of the following titles:

H.R. 4567. An act to authorize an exchange of lands in South Dakota and Colorado;

H.R. 5507. An act regarding the Early Winters Resort;

H.R. 5796. An act to conduct certain studies in the State of New Mexico; and

H.R. 5871. An act to amend the farm poundage quota provisions of section 319 (g), (h) and (i) of the Agricultural Adjustment Act of 1938, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2431. An act to redesignate the Midland General Mail Facility in Midland, Texas, as the "Carl O. Hyde General Mail Facility";

H.R. 4660. An act to authorize the establishment of a memorial at Custer Battlefield National Monument to honor the Indians who fought in the Battle of the Little Big-horn, and for other purposes;

H.R. 5237. An act to provide for the protection of Native American graves, and for other purposes; and

H.R. 5687. An act to amend title 31, United States Code, to improve the financial management of the Federal Government.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3789) "An act to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4487) "An act to amend the Public Health Service Act to revise and extend the program for the National Health Service Corps, and to establish certain programs of grants to the States for improving health services in the States."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4653) "An act to reauthorize the Export Administration Act of 1979, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5311) "An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1991, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 566) "An act to authorize a new Housing Opportunities Partnerships Program to support State and local strategies for achieving more affordable housing; to increase homeownership; and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1630) "An act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2740) "An act to provide for the conservation and development of water and related resources, to authorize the United States Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes."

The message also announced that the Senate had passed bills and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 1888. An act to designate the United States Post Office located in Monterey, Tennessee, as the "J.E. 'Eddie' Russell Post Office";

S. 1933. An act to provide for the minting of coins in commemoration of the bicentennial of the death of Benjamin Franklin and to enact a fire service bill of rights and programs to fulfill those rights;

S. 3262. An act to modify the authorities for a flood control project on the Kissimmee River, Florida, and for other purposes; and

S. Con. Res. 155. Concurrent resolution recognizing the sesquicentennial of the Treaty of Waitangi, New Zealand's principal founding document, and the 151st anniversary of United States-New Zealand Relations.

ANOTHER IRA ATROCITY

(Mr. FOLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FOLEY. Mr. Speaker, I rise in both anguish and outrage. Two days ago, on Wednesday, October 24, 1990, the Irish Republican Army [IRA] exceeded even its gory record of infamy when it took hostage at gunpoint three separate Catholic families in

Northern Ireland and forced a family member from each to become human car bombs. Using terror tactics no doubt learned from their Middle Eastern counterparts, the IRA threatened death for the remaining family members to force those they had kidnapped to drive explosive-laden vehicles to military checkpoints where they were then detonated.

The tragic toll of these attacks was 7 dead and 37 wounded. One of the dead and 21 of the wounded were simple bystanders, as is so often the case with IRA attacks. These innocents were added to a long and shameful list of others who recently fell victim to IRA slaughter—among them a nun, 2 tourists, an infant, a soldier's wife. The IRA kills many more innocent passers-by than it ever has members of the British army or security forces.

A truly frightening aspect of these murders was that, although prominently reported, they have excited so little public condemnation in this country. I fear that the IRA has succeeded, as have other terrorist groups, in perpetrating so many grisly atrocities that their egregious brutality seems to many Americans the commonplace and expected in Northern Ireland. Such numbness must, for humanity's sake, be overcome. As defenders of the rule of law and of human dignity, we must voice abhorrence for terrorist acts. We must dwell on their cruelty and on their ultimate futility.

Mr. Speaker, I believe I speak today for myself and for the bipartisan Friends of Ireland. The Friends of Ireland include 168 Members of the House dedicated to promoting peace and reconciliation in Ireland. I serve as the honorary chairman of the Friends along with the Republican Leader, Mr. MICHEL. The executive committee of the Friends is chaired by Mr. DONNELLY, and includes Mr. MCDADE, Mr. DWYER, Mr. MADIGAN, Mr. WILLIAMS and Mr. LOWERY.

All of the Friends of Ireland, Democrats and Republicans alike, have an interest in Irish affairs. Many of us share Irish ancestry. But none of us share any illusions about the nature of the conflict in Ireland. We see no romance in the tactics of the IRA, no glory in its policy of assassination and massacre. IRA atrocities do not support sectarian dialogue. IRA destruction cannot bring unification. That is why this latest, most cold blooded group of murders must be condemned unequivocally.

Mr. Speaker, the IRA identified those it forced to transport its bombs as "collaborators." Their connection to British forces seems to have been either nonexistent or remote. The point to be taken from the IRA's appalling rationalization is that any person, Protestant or Catholic, is a potential victim of its wide-ranging, indiscriminate violence. That violence, and the obscene indifference to life it embodies, must be constantly exposed, decried and renounced. And always, such barbarism must be remembered for what it is—savagery that can only destroy, never rebuild, the Ireland the IRA says it wants to see.

PERSONAL EXPLANATION

Mr. VANDER JAGT. Mr. Speaker, last night when the Senate adjourned, I was misinformed that the House had adjourned and would reconvene this morning. I immediately went home and went to bed. When my administrative assistant arrived at 6:30 this morning and discovered the House was in session and my car was not there, he called. I rushed to the Chamber and missed the vote on final passage of the budget reconciliation by 5 minutes.

Mr. Speaker, had I arrived 5 minutes sooner, I would have voted no on rollcall 528.

Mr. Speaker, I ask unanimous consent that this statement be printed in the permanent RECORD immediately following the rollcall.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Michigan?

There was no objection.

□ 1510

WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF CONFERENCE REPORT ON S. 358, IMMIGRATION ACT OF 1990

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 538 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 538

Resolved, That upon adoption of this resolution the House shall be considered to have adopted House Concurrent Resolution 394.

SEC. 2. Upon receipt of a message from the Senate informing the House of the adoption of House Concurrent Resolution 394, it shall be in order to consider the conference report on the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore (Mr. MURTHA). The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. PASHAYAN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 538 provides for a correcting mechanism that would delete a provision from the conference report on S. 358 The Immigration Act of 1989 that some members objected to when the rule was last considered. The rule provides upon adoption, the House is deemed to have passed House Concurrent Resolution 394.

In addition, Mr. Speaker the rule provides that upon the receipt of a message from the Senate informing the House of the adoption of the concurrent resolution, it shall be in order to consider the conference report on the bill S. 358, the Immigration Act of 1989.

Mr. Speaker, the rule waives all points of order against the conference report and against its consideration. The rule further provides that the conference report shall be considered as having been read with called up consideration.

Mr. Speaker, this rule allows the House a second opportunity to pass important and much needed immigration legislation before we adjourn the 101st Congress.

I am sure that Members are aware of the circumstances concerning this legislation so I will not spend too much time going over the provisions in the conference report. However, I would like to briefly explain to my colleagues the procedures that this rule would make in order.

Mr. Speaker, if this rule is adopted the House shall be considered to have adopted House Concurrent Resolution 394. It will then be sent to the Senate, if they adopt the concurrent resolution without amendment, the House will then bring up and hopefully pass, the conference report on S. 358, the Immigration Act of 1989.

Mr. Speaker, I want to stress to my colleagues that this will be the last opportunity to pass this landmark immigration bill during the last hours of the Congress.

Last night I warned my colleagues that a vote against the rule would kill this important immigration bill. And, believe me, it almost did.

But, thanks to the generous cooperation and understanding of the distinguished Senator from Wyoming, ALAN SIMPSON and the senior Senator from Massachusetts, TED KENNEDY—and thanks to the persistence of BRUCE MORRISON, JACK BROOKS, BARNEY FRANK, CHUCK SCHUMER, HAMILTON FISH, and HOWARD BERMAN, we were able to work out this compromise.

And it is a compromise that is supported by everyone from the White House to the ACLU.

Mr. Speaker, this immigration bill helps literally thousands upon thousands of people. It helps the Irish; it

helps the Polish; it eliminates discriminatory statutes and it helps thousands of refugees fleeing war whose lives are literally in the balance.

This is a good bill. It is the best we can get.

So, I do not want to sound like the boy who cried wolf, but this is really it. There will be no other opportunities to consider this measure.

I urge my colleagues to support the rule and support the bill. Let us do the right thing.

Mr. PASHAYAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I should first like to thank the chairman of my committee, the gentleman from Massachusetts [Mr. MOAKLEY]. I know he himself has worked very hard on not only the procedural aspects of this bill, which of course come within the jurisdiction of our committee, but also on the substantive aspects.

I know he has taken a very keen interest in it for reasons of his own and for the reasons of the region from which he comes.

I know, Mr. Speaker, that where I come from, with this bill we look forward to settling a lot of the problems about families being split up.

In my part of California, the agricultural worker provides a vital portion of the agricultural system we have there, and for too long many of the people have been placed in a situation where they simply come into the United States wanting to work, and willing to work hard may I add, and yet being in the situation where they sometimes for long, long periods have got to be separated from their families.

So it is my hope, Mr. Speaker, that this bill will bring some stabilization to the agricultural process. It will not only be fairer to the families involved, but it will also provide some economic stability to the farmers who are sorely dependent on the kind of labor that the people provide.

So I think it is good not only from the point of view of families and the home, but it is also very good from the point of view of the economics, not only for the farmers but of course for the agricultural workers themselves.

Mr. Speaker, this rule does waive all points of order. The conference report is to be considered as having been read.

Both sides have worked together. This is not a controversial rule.

We on this side certainly support this rule.

Mr. Speaker, I yield 4 minutes to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. I thank the gentleman for yielding.

Mr. Speaker, I would like to encourage my colleagues to support this rule. This rule does contain a concurrent resolution which eliminates the provision that was of so much concern to so many colleagues last night, that being the pilot program involving drivers licenses. That controversial item has been eliminated.

Also, Mr. Speaker, I would like to point out, if we are going to have a legal-immigration bill this year, we are going to have to support this rule and then support the conference report as well.

Early this morning we received a letter from the administration addressed to the Republican leader, Mr. MICHEL, from Roger B. Porter, assistant to the President for economic and domestic policy.

I would like to read that letter now for the benefit of my colleagues:

THE WHITE HOUSE,
Washington, DC, October 27, 1990.

Hon. ROBERT H. MICHEL,
Minority Leader, House of Representatives, Washington, DC.

DEAR MR. MICHEL: The Administration strongly supports passage of the Immigration Act of 1990. This bill represents a careful balancing of pro-growth and pro-family immigration goals. Its enactment not only will benefit the American economy but also will help preserve the bonds so vital to ensuring a successful family. This bill would:

Increase employment-based immigration from 54,000 to 140,000. New criteria will ensure most of these immigrants are highly skilled. These additional workers will help relieve labor shortages in key technical areas, allow more professional services in rural areas, and improve the competitiveness of our workforce.

Raise levels of family-based immigration for all major categories. This increase will help reunite many families.

The legislation cleared the Senate last night by an overwhelming bipartisan vote of 89–8. After weeks of discussion and compromise, this legislation represents a significant and welcome reform of our legal immigration system.

It is my understanding that the pilot drivers' license program, included as part of the Senate-passed bill, is the primary concern of House members who voted against the rule on this bill. It is also my understanding that the Senate will remove this provision before the House vote today.

We urge the House to support this important legislation.

Sincerely,

ROGER B. PORTER,
Assistant to the President for Economic and Domestic Policy.

Mr. Speaker, I thank the gentleman for yielding.

Mr. PASHAYAN. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. GREEN].

Mr. GREEN of New York. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of this rule, and I also rise to thank the distinguished chairman of the Committee on Rules, his colleagues on the Committee on Rules, the members of the Committee on the Judiciary, and their counterparts in the Senate, who have labored so hard to give us a second crack at this legislation.

Mr. Speaker, I understand the concerns of those who voted against the rule last night, although I supported it. But I do want to emphasize the importance of this legislation to so many people.

In my district, for example, there are provisions in the bill of tremendous importance to those of Chinese origin, those of Irish origin, and others in my constituency.

□ 1520

So, Mr. Speaker, I think it is very important that we have this second shot. I appreciate all those who took the extra effort in order to give it to us, and I urge my colleagues to vote yes on the rule.

Mr. PASHAYAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. MURTHA). Pursuant to House Resolution 538, House Concurrent Resolution 394 is considered as having been adopted.

The text of House Concurrent Resolution 394 is as follows:

H. CON. RES. 394

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) Strike section 522 and strike the item relating to that section in the table of contents in section 1(c).

(2) At the end of section 212(a)(3)(B)(i) of the Immigration and Nationality Act, as amended by section 601(a) of the bill, add the following: "An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.".

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken today after debate has been concluded on all motions to suspend the rules.

GREAT LAKES CRITICAL PROGRAMS ACT OF 1990

Mr. NOWAK. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 4323) to amend the Federal Water Pollution Control Act relating to water quality in the Great Lakes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SHORT TITLE

SEC. 1. This act may be cited as the "Great Lakes Critical Programs Act of 1990".

TITLE I—GREAT LAKES

GREAT LAKES ACTION SCHEDULES

SEC. 101. Section 118 of the Federal Water Pollution Control Act (33 U.S.C. 1268) is amended by inserting immediately after subsection (c)(1) the following new paragraphs, and by renumbering the existing paragraphs accordingly:

"(2) GREAT LAKES WATER QUALITY GUIDANCE.—

"(A) By June 30, 1991, the Administrator, after consultation with the Program Office, shall publish in the Federal Register for public notice and comment proposed water quality guidance for the Great Lakes System. Such guidance shall conform with the objectives and provisions of the Great Lakes Water Quality Agreement, shall be no less restrictive than the provisions of this Act and national water quality criteria and guidance, shall specify numerical limits on pollutants in ambient Great Lakes waters to protect human health, aquatic life, and wildlife, and shall provide guidance to the Great Lakes States on minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System.

"(B) By June 30, 1992, the Administrator, in consultation with the Program Office, shall publish in the Federal Register, pursuant to this section and the Administrator's authority under this chapter, final water quality guidance for the Great Lakes System.

"(C) Within two years after such Great Lakes guidance is published, the Great Lakes States shall adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System which are consistent with such guidance. If a Great Lakes State fails to adopt such standards, policies, and procedures, the Administrator shall promulgate them not later than the end of such two-year period. When reviewing any Great Lakes State's water quality plan, the agency shall consider the extent to which the State has complied with the Great Lakes guidance issued pursuant to this section.

"(3) REMEDIAL ACTION PLANS.—

"(A) For each area of concern for which the United States has agreed to draft a Remedial Action Plan, the Program Office shall ensure that the Great Lakes State in which such area of concern is located—

"(i) submits a Remedial Action Plan to the Program Office by June 30, 1991;

"(ii) submits such Remedial Action Plan to the International Joint Commission by January 1, 1992; and

"(iii) includes such Remedial Action Plans within the State's water quality plan by January 1, 1993.

"(B) For each area of concern for which Canada has agreed to draft a Remedial Action Plan, the Program Office shall, pursuant to subparagraph (c)(1)(C) of this section, work with Canada to assure the submission of such Remedial Action Plans to the International Joint Commission by June 30, 1991, and to finalize such Remedial Action Plans by January 1, 1993.

"(C) For any area of concern designated as such subsequent to the enactment of this Act, the Program Office shall (i) if the United States has agreed to draft the Remedial Action Plan, ensure that the Great Lakes State in which such area of concern is located submits such Plan to the Program Office within two years of the area's designation, submits it to the International Joint Commission no later than six months after submitting it to the Program Office, and includes such Plan in the State's water quality plan no later than one year after submitting it to the Commission; and (ii) if Canada has agreed to draft the Remedial Action Plan, work with Canada, pursuant to subparagraph (c)(1)(C) of this section, to ensure the submission of such Plan to the International Joint Commission within two years of the area's designation and the finalization of such Plan no later than eighteen months after submitting it to such Commission.

"(D) The Program Office shall compile formal comments on individual Remedial Action Plans made by the International Joint Commission pursuant to section 4(d) of Annex 2 of the Great Lakes Water Quality Agreement and, upon request by a member of the public, shall make such comments available for inspection and copying. The Program Office shall also make available, upon request, formal comments made by the Environmental Protection Agency on individual Remedial Action Plans.

"(4) LAKEWIDE MANAGEMENT PLANS.—The Administrator, in consultation with the Program Office shall—

"(A) by January 1, 1992, publish in the Federal Register a proposed Lakewide Management Plan for Lake Michigan and solicit public comments;

"(B) by January 1, 1993, submit a proposed Lakewide Management Plan for Lake Michigan to the International Joint Commission for review; and

"(C) by January 1, 1994, publish in the Federal Register a final Lakewide Management Plan for Lake Michigan and begin implementation.

Nothing in this subparagraph shall preclude the simultaneous development of Lakewide Management Plan for the other Great Lakes.

"(5) SPILLS OF OIL AND HAZARDOUS MATERIALS.—The Program Office, in consultation with the Coast Guard, shall identify areas within the Great Lakes which are likely to experience numerous or voluminous spills of oil or other hazardous materials from land based facilities, vessels, or other sources and, in consultation with the Great Lakes States, shall identify weaknesses in Federal and State programs and systems to prevent and respond to such spills. This information shall be included on at least a biennial basis in the report required by this section.".

CONTAMINATED SEDIMENTS

SEC. 102. Section 118(c)(7) of the Federal Water Pollution Control Act (33 U.S.C. 1268(c)(3)), as renumbered by section 101 of this Title, is amended by—

(1) inserting "(A)" following the title; and

(2) by adding the following new subsections:

"(B) The Program Office shall—

"(i) by December 31, 1990, complete chemical, physical, and biological assessments of the contaminated sediments at the locations selected for the study and demonstration projects;

"(ii) by December 31, 1990, announce the technologies that will be demonstrated at each location and the numerical standard of protection intended to be achieved at each location;

"(iii) by December 31, 1992, complete full or pilot scale demonstration projects on site at each location of promising technologies to remedy contaminated sediments; and

"(iv) by December 31, 1993, issue a final report to Congress on its findings.

"(C) The Administrator, after providing for public review and comment, shall publish information concerning the public health and environmental consequences of contaminants in Great Lakes sediment. Information published pursuant to this subparagraph shall include specific numerical limits to protect health, aquatic life, and wildlife from the bioaccumulation of toxins. The Administrator shall, at a minimum, publish information pursuant to this subparagraph within 2 years of the date of the enactment of this Title.".

DEFINITIONS

SEC. 103. Section 118(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1268(a)(3)) is amended by deleting "and" at the end of clause (D), by deleting the period at the end of clause (E), and inserting in lieu thereof a semicolon; and by adding at the end thereof the following:

"(F) 'area of concern' means a geographic area located within the Great Lakes, in which beneficial uses are impaired and which has been officially designated as such under Annex 2 of the Great Lakes Water Quality Agreement;

"(G) 'Great Lakes States' means the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin;

"(H) 'Great Lakes Water Quality Agreement' means the bilateral agreement, between the United States and Canada which was signed in 1978 and amended by the Protocol of 1987;

"(I) 'Lakewide Management Plan' means a written document which embodies a systematic and comprehensive ecosystem approach to restoring and protecting the beneficial uses of the open waters of each of the Great Lakes, in accordance with article VI and Annex 2 of the Great Lakes Water Quality Agreement; and

"(J) 'Remedial Action Plan' means a written document which embodies a systematic and comprehensive ecosystem approach to restoring and protecting the beneficial uses of areas of concern, in accordance with article VI and Annex 2 of the Great Lakes Water Quality Agreement.".

GREAT LAKES CONFINED DISPOSAL FACILITIES

SEC. 104. At the end of section 118(c) of the Federal Water Pollution Control Act (33 U.S.C. 1268(c)) add the following new paragraph:

"(11) CONFINED DISPOSAL FACILITIES.—(A) The Administrator, in consultation with the Assistant Secretary of the Army for Civil Works, shall develop and implement, within one year of the date of enactment of this paragraph, management plans for every Great Lakes confined disposal facility.

"(B) The plan shall provide for monitoring of such facilities, including—

"(i) water quality at the site and in the area of the site;

"(ii) sediment quality at the site and in the area of the site;

"(iii) the diversity, productivity, and stability of aquatic organisms at the site and in the area of the site; and

"(iv) such other conditions as the Administrator deems appropriate.

"(C) The plan shall identify the anticipated use and management of the site over the following twenty-year period including the expected termination of dumping at the site, the anticipated need for site management, including pollution control, following the termination of the use of the site.

"(D) The plan shall identify a schedule for review and revision of the plan which shall not be less frequent than five years after adoption of the plan and every five years thereafter.".

GREAT LAKES NATIONAL PROGRAM AUTHORIZATION

SEC. 105. (A) AUTHORIZATION.—Section 118(h) of the Federal Water Pollution Control Act (33 U.S.C. 1268(h)) is amended by deleting "1990, and 1991" and inserting in lieu thereof "and 1990, and $25,000,000 for fiscal year 1991".

(b) ALLOCATION.—Section 118(h) of the Federal Water Pollution Control Act (33 U.S.C. 1268(h)) is amended by adding after "30 percent" the following: "or $3,300,000, whichever is the lesser,".

HEALTH RESEARCH REPORT

SEC. 106. Subsection 118(e) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph—

"(3) HEALTH RESEARCH REPORT.—(A) Not later than September 30, 1994, the Program Office, in consultation with the Research Office, the Agency for Toxic Substances and Disease Registry, and Great Lakes States shall submit to the Congress a report assessing the adverse effects of water pollutants in the Great Lakes System on the health of persons in Great Lakes States and the health of fish, shellfish, and wildlife in the Great Lakes System. In conducting research in support of this report, the Administrator may, where appropriate, provide for research to be conducted under cooperative agreements with Great Lakes States.

"(B) There is authorized to be appropriated to the Administrator to carry out this section not to exceed $3,000,000 for each of fiscal years 1992, 1993, and 1994.".

TITLE II—LONG ISLAND SOUND

SHORT TITLE

SEC. 201. This part may be cited as the "Long Island Sound Improvement Act of 1990".

AMENDMENT TO THE FEDERAL WATER POLLUTION CONTROL ACT

SEC. 202. Title I of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) is amended by adding at the end the following new section:

"SEC. 119. LONG ISLAND SOUND.—(a) The Administrator shall continue the Management Conference of the Long Island Sound Study (hereinafter referred to as the "Conference") as established pursuant to section 320 of this Act, and shall establish an office (hereinafter referred to as the "Office") to be located on or near Long Island Sound.

"(b) ADMINISTRATION AND STAFFING OF OFFICE.—The Office shall be headed by a Director, who shall be detailed by the Administrator, following consultation with the Administrators of EPA regions I and II, from among the employees of the Agency who are in civil service. The Administrator shall delegate to the Director such authority and detail such additional staff as may be necessary to carry out the duties of the Director under this section.

"(c) DUTIES OF THE OFFICE.—The Office shall assist the Management Conference of the Long Island Sound Study in carrying out its goals. Specifically, the Office shall—

"(1) assist and support the implementation of the Comprehensive Conservation and Management Plan for Long Island Sound developed pursuant to section 320 of this Act;

"(2) conduct or commission studies deemed necessary for strengthened implementation of the Comprehensive Conservation and Management Plan including, but not limited to—

"(A) population growth and the adequacy of wastewater treatment facilities,

"(B) the use of biological methods for nutrient removal in sewage treatment plants,

"(C) contaminated sediments, and dredging activities,

"(D) nonpoint source pollution abatement and land use activities in the Long Island Sound watershed,

"(E) wetland protection and restoration,

"(F) atmospheric deposition of acidic and other pollutants into Long Island Sound,

"(G) water quality requirements to sustain fish, shellfish, and wildlife populations, and the use of indicator species to assess environmental quality,

"(H) State water quality programs, for their adequacy pursuant to implementation of the Comprehensive Conservation and Management Plan, and

"(I) options for long-term financing of wastewater treatment projects and water pollution control programs.

"(3) coordinate the grant, research and planning programs authorized under this section;

"(4) coordinate activites and implementation responsibilities with other Federal agencies which have jurisdiction over Long Island Sound and with national and regional marine monitoring and research programs established pursuant to the Marine Protection, Research, and Sanctuaries Act;

"(5) provide administrative and technical support to the conference;

"(6) collect and make available to the public publications, and other forms of information the conference determines to be appropriate, relating to the environmental quality of Long Island Sound;

"(7) not more than two years after the date of the issuance of the final Comprehensive Conservation and Management Plan for Long Island Sound under section 320 of this Act, and biennially thereafter, issue a report to the Congress which—

"(A) summarizes the progress made by the States in implementing the Comprehensive Conservation and Management Plan;

"(B) summarizes any modifications to the Comprehensive Conservation and Management Plan in the twelve-month period immediately preceding such report; and

"(C) incorporates specific recommendations concerning the implementation of the Comprehensive Conservation and Management Plan; and

"(8) convene conferences and meetings for legislators from State governments and political subdivisions thereof for the purpose of making recommendations for coordinating legislative efforts to facilitate the environmental restoration of Long Island Sound and the implementation of the Comprehensive Conservation and Management Plan.

"(d) GRANTS.—(1) The Administrator is authorized to make grants for projects and studies which will help implement the Long Island Sound Comprehensive Conservation and Management Plan. Special emphasis shall be given to implementation, research and planning, enforcement, and citizen involvement and education.

"(2) State, interstate, and regional water pollution control agencies, and other public or nonprofit private agencies, institutions, and organizations held be eligible for grants pursuant to this subsection.

"(3) Citizen involvement and citizen education grants under this subsection shall not exceed 95 per centum of the costs of such work. All other grants under this subsection shall not exceed 50 per centum of the research, studies, or work. All grants shall be made on the condition that the non-Federal share of such costs are provided from non-Federal sources.

"(e) AUTHORIZATIONS.—(1) There is authorized to be appropriated to the Administrator for the implementation of this section, other than subsection (d), such sums as may be necessary for each of the fiscal years 1991 through 1996.

"(2) There is authorized to be appropriated to the Administrator for the implementation of subsection (d) not to exceed $3,000,000 for each of the fiscal years 1991 through 1996.".

RELATIONSHIP TO OTHER LAWS

SEC. 203. Amend subsection 116(g) of the Marine Protection Research and Sanctuaries Act (33 U.S.C. 1416(g)) by striking all after "shall comply with" and inserting in lieu thereof the following "the requirements of this title."

TITLE II—LAKE CHAMPLAIN

SHORT TITLE

SEC. 301. This title may be cited as the "Luke Champlain Special Designation Act of 1990".

DEMONSTRATION PROGRAM

SEC. 302. Paragraph (2) of section 314(d) of the Federal Water Pollution Control Act (33 U.S.C. 1324(d) is amended by inserting "Lake Champlain, New York and Vermont;" before "Lake Houston, Texas".

LAKE CHAMPLAIN MANAGEMENT CONFERENCE

SEC. 303. Title I of the Federal Water Polution Control Act (33 U.S.C. 1251 et seq.) is amended by adding at the end thereof the following new section—

LAKE CHAMPLAIN MANAGEMENT CONFERENCE

SEC. 120. (a) ESTABLISHMENT.There is established a Lake Champlain Management Conference to develop a comprehensive pollution prevention, control, and restoration plan for Lake Champlain. The Administrator shall convene the management conference with in ninety days of the date of enactment of this section.

"(b) MEMBERSHIP.—The Members of the Management Conference shall be comprised of—

"(1) the Governors of the States of Vermont and New York:

"(2) each interested Federal agency, not to exceed a total of five members;

"(3) the Vermont and New York Chairpersons of the Vermont, New York, Quebec Citizens Advisory Committee for the Environmental Management of Lake Champlain;

"(4) four representatives of the State legislature of Vermont;

"(5) four representatives of the State legislature of New York;

"(6) six persons representing local governments having jurisdiction over any land or water within the Lake Champlain basin, as

determined appropriate by the Governors; and

"(7) eight persons representing affected industries, nongovernmental organizations, public and private educational institutions, and the general public, as determined appropriate by the trigovernmental Citizens Advisory Committee for the Environmental Management of Lake Champlain, but not to be current members of the Citizens Advisory Committee.

"(c) TECHNICAL ADVISORY COMMITTEE.—(1) The Management Conference shall not later than one hundred and twenty days after the date of enactment of this section, appoint a Technical Advisory Committee.

"(2) Such Technical Advisory Committee shall consist of officials of: appropriate departments and agencies of the Federal Government; the State governments of New York and Vermont; and governments of political subdivisions of such States; and public and private research institutions.

"(d) RESEARCH PROGRAM.—(1) The Management Conference shall establish a multi-disciplinary environmental research program for Lake Champlain. Such research program shall be planned and conducted jointly with the Lake Champlain Research Consortium.

"(e) POLLUTION PREVENTION, CONTROL, AND RESTORATION PLAN.—(1) Not later than three years after the date of the enactment of this section, the Management Conference shall publish a pollution prevention, control, and restoration plan (hereafter in this section referred to as the 'Plan') for Lake Champlain.

"(2) The Plan developed pursuant to this section shall—

"(A) identify corrective actions and compliance schedules addressing point and nonpoint sources of pollution necessary to restore and maintain the chemical, physical, and biological integrity of water quality, a balanced, indigenous population of shellfish, fish and wildlife, recreation, and economic activities in and on the lake;

"(B) incorporate environmental management concepts and programs established in State and Federal plans and programs in effect at the time of the development of such plan;

"(C) clarify the duties of Federal and State agencies in pollution prevention and control activities, and to the extent allowable by law, suggest a timetable for adoption by the appropriate Federal and State agencies to accomplish such duties within a reasonable period of time;

"(D) describe the methods and schedules for funding of programs, activities, and projects identified in the Plan, including the use of Federal funds and other sources of funds; and

"(E) include a strategy for pollution prevention and control that includes the promotion of pollution prevention and management practices to reduce the amount of pollution generated in the Lake Champlain basin.

"(3) The Administrator, in cooperation with the Management Conference, shall provide for public review and comment on the draft Plan. At a minimum, the Management Conference shall conduct one public meeting to hear comments on the draft plan in the State of New York and one such meeting in the State of Vermont.

"(4) Not less than one hundred and twenty days after the publication of the Plan required pursuant to this section, the Administrator shall approve such plan if the plan meets the requirements of this section and the Governors of the States of New York and Vermont concur.

"(5) Upon approval of the plan, such plan shall be deemed to be an approved management program for the purposes of section 319(h) of this Act and such plan shall be deemed to be an approved comprehensive conservation and management plan pursuant to section 320 of this Act.

"(f) GRANT ASSISTANCE.—(1) The Administrator may, in consultation with the Management Conference, make grants to State, interstate, and regional water pollution control agencies, and public or nonprofit agencies, institutions, and organizations.

"(2) Grants under this subsection shall be made for assisting research surveys, studies, and modeling and technical and supporting work necessary for the development of the Plan and for retaining expert consultants in support of litigation undertaken by the State of New York and the State of Vermont to compel cleanup or obtain cleanup damage costs from persons responsible for pollution of Lake Champlain.

"(3) The amount of grants to any person under this subsection for a fiscal year shall not exceed 75 per centum of the costs of such research, survey, study and work and shall be made available on the condition that non-Federal share of such costs are provided from non-Federal sources.

"(4) The Administrator may establish such requirements for the administration of grants as he determines to be appropriate.

"(g) DEFINITION.—For the purposes of this section, the term 'Lake Champlain drainage basin' means all or part of Clinton, Franklin, Warren, Essex, and Washington counties in the State of New York and all or part of Franklin, Grand Isle, Chittenden, Addison, Rutland, Lamoille, Orange, Washington, Orleans, and Caledonia counties in Vermont, that contain all of the streams, rivers, lakes, and other bodies of water, including wetlands, that drain into Lake Champlain.

"(h) STATUTORY INTERPRETATION.—Nothing in this section shall be construed so as to affect the jurisdiction or powers of—

"(1) any department or agency of the Federal Government or any State government; or

"(2) any international organization or entity related to Lake Champlain created by treaty or memorandum to which the United States is a signatory.

"(i) AUTHORIZATION.—There are authorized to be appropriated to the Environmental Protection Agency to carry out this section $2,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995.".

FEDERAL PROGRAM COORDINATION

SEC. 304. (a) DESIGNATION OF LAKE CHAMPLAIN AS A SPECIAL PROJECT AREA UNDER THE AGRICULTURAL CONSERVATION PROGRAM.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Lake Champlain basin, as defined under section 120(h) of the Federal Water Pollution Control Act, shall be designated by the Secretary of Agriculture as a special project area under the Agricultural Conservation Program established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

(2) TECHNICAL ASSISTANCE REMIBURSEMENT.—To carry out the purposes of this subsection, the technical assistance reimbursement from the Agricultural Stabilization and Conservation Service authorized under the Soil Conservation and Domestic Allotment Act, shall be increased from 5 per centum to 10 per centum.

(3) COMPREHENSIVE AGRICULTURAL MONITORING.—The Secretary, in consultation with the Management Conference and appropriate State and Federal agencies, shall develop a comprehensive agricultural monitoring and evaluation network for all major drainages within the Lake Champlain basin.

(4) ALLOCATION OF FUNDS.—In allocating funds under this subsection, the Secretary of Agriculture shall consult with the Management Conference established under section 120 of the Federal Water Pollution Control Act and to the extent allowable by law, allocate funds to those agricultural enterprise located at sites that the Management Conference determines to be priority sites, on the basis of a concern for ensuring implementation of nonpoint source pollution controls throughout the Lake Champlain basin.

(b) COOPERATION OF THE UNITED STATES GEOLOGICAL SURVEY OF THE DEPARTMENT OF THE INTERIOR.—For the purpose of enhancing and expanding basic data collection and monitoring in operation in the Lake Champlain basin, as defined under section 120 of the Federal Water Pollution Control Act, the Secretary of the Interior, acting through the heads of water resources divisions of the New York and New England districts of the United States Geological Survey, shall—

(1) in cooperation with appropriate universities and private research institutions, and the appropriate officials of the appropriate departments and agencies of the States of New York and Vermont, develop an integrated geographic information system of the Lake Champlain basin;

(2) convert all partial recording sites in the Lake Champlain basin to continuous monitoring stations with full gauging capabilities and status; and

(3) establish such additional continuous monitoring station sites in the Lake Champlain basin as are necessary to carry out basic data collection and monitoring, as defined by the Secretary of the Interior, including groundwater mapping, and water quality and sediment data collection.

(c) COOPERATION OF THE UNITED STATES FISH AND WILDLIFE SERVICE OF THE DEPARTMENT OF THE INTERIOR.—

(1) RESOURCE CONSERVATION PROGRAM—The Secretary of the Interior, acting through the United States Fish and Wildlife Service, in cooperation with the Lake Champlain Fish and Wildlife Management Cooperative and the Management Conference established pursuant to this subsection shall—

(a) establish and implement a fisheries resources restoration, development and conservation program, including dedicating a level of hatchery production within the Lake Champlain basin at or above the level that existed immediately preceding the date of enactment of this Act; and

(B) conduct a wildlife species and habitat assessment survey in the Lake Champlain basin, including—

(i) a survey of Federal threatened and endangered species, listed or proposed for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), New York State and State of Vermont threatened and endangered species and other species of special concern, migratory nongame species of management concern, and national resources plan species;

(ii) a survey of wildlife habitats such as islands, wetlands, and riparian areas; and

(iii) a survey of migratory bird populations breeding, migrating and wintering within the Lake Champlain basin.

(2) To accomplish the purposes of paragraph (1), the Director of the United States Fish and Wildlife Service is authorized to carry out activities related to—

(A) controlling sea lampreys and other non-indigenous aquatic animal nuisances;

(B) improving the health of fishery resources;

(C) conducting investigations about and assessing the status of fishery resources, and disseminating that information to all interested parties; and

(D) conducting and periodically updating a survey of the fishery resources and their habitats and food chains in the Lake Champlain basin.

(d) AUTHORIZATIONS.—(1) There is authorized to be appropriated to the Department of Agriculture $2,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995 to carry out subsection (a) of this section.

(2) There is authorized to be appropriated to the Department of Interior $1,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995 to carry out subsections (b) and (c) of this section.

TITLE IV—ONONDAGA LAKE

SEC. 401. Onondaga Lake. (a) The Assistant Secretary of the Army for Civil Works, the Administrator of the Environmental Protection Agency, and the Governor of the State of New York, acting jointly, shall convene a management conference for the restoration, conservation, and management of Onondaga Lake. The purpose of this management conference shall include but not be limited to—

(1) the development, within a two year period following the date of the enactment of this Act, of a comprehensive restoration, conservation, and management plan for Onondaga Lake that recommends priority corrective actions and compliance schedules for the cleanup of such Lake; and

(2) the coordination of the implementation of such plan by the State of New York, the United States Army Corps of Engineers, the Environmental Protection Agency and all local agencies, governments, and other groups participating in such management conference.

(b)(1) The members of the management conference convened pursuant to subsection (a) shall include, at a minimum the Assistant Secretary of the Army for Civil Works, the Administrator of the Environmental Protection Agency, the Governor of the State of New York, and representatives of—

(A) the Attorney General of the State of New York;

(B) Onondaga County, New York; and

(C) The City of Syracuse, New York.

(2) Any member of the management conference may designate a representative to attend meetings of the management conference and otherwise represents such member on the management conference.

(3) The management conference shall have ex officio members which shall include, at a minimum—

(A) the United States Senators from the State of New York; and

(B) the member(s) of the United States House of Representatives within whose congressional district(s) lies Onondaga Lake.

(4) The management conference shall have standing committees which shall include, at a minimum—

(A) a Citizens Advisory Committee; and

(B) a Technical Review Committee.

(c)(1) Not later than 120 days after the completion of the plan developed pursuant to subsection (a), and after providing for public review and comment, the Assistant Secretary of the Army for Civil Works and the Administrator of the Environmental Protection Agency shall approve such plan if such plan meets the requirements of this section, and if the Governor of the State of New York concurs in such approval.

(2) Upon approval of the plan under this subsection, such plan shall be implemented.

(d)(1) The Assistant Secretary of the Army for Civil Works and the Administrator of the Environmental Protection Agency are authorized to make grants to the State of New York to perform activities authorized under this section or to contract for such performance, provided that such grant shall not exceed 70 percent of the costs of such activities and that the non-federal share of such costs are provided from non-federal sources. Administrative services for the development and implementation of the plan approved pursuant to subsection (a) shall be provided by a not-for-profit corporation established for the purpose of assisting with the planning and coordination of the clean up of Onondaga Lake.

(2) To carry out this section, the Govenror of the State of New York may, using funds provided pursuant to paragraph (1), make grants for—

(A) research, surveys, administrative services and studies approved by the management conference as necessary for the development of the plan under this section;

(B) other activities including administrative services that are approved by the management conference and are necessary to implement the plan approved by the management conference pursuant to subsection (a); and

(C) gathering data and retaining expert consultants in support of litigation undertaken by the State of New York to compel clean up or obtain clean up and damage costs from parties responsible for the pollution of Onondaga Lake, including administrative services.

(3) In-kind payment shall qualify for the purpose of meeting the total non-federal matching requirements of this subsection.

(e) There are authorized to be appropriated to the Assistant Secretary of the Army for Civil Works and the Administrator of the Environmental Protection Agency such sums as may be necessary to carry out this section.

(f) Grants made under this section are not intended to relieve any person who would otherwise be liable under federal or State law for damages, response costs, natural resource damages, restitution, equitable relief or any other relief, from liability for such relief.

The SPEAKER pro tempore. Is a second demanded?

Mr. STANGELAND. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. NOWAK] will be recognized for 20 minutes, and the gentleman from Minnesota [Mr. STANGELAND] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. NOWAK].

Mr. NOWAK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4323, as amended by the Senate, addresses matters which have been of longstanding interest and concern to me. As it did when it first passed the House, the intent of the bill is to accelerate restoration of the waters of the Great Lakes. In addition, it contains provisions designed to improve water quality in three other high priority water bodies: Lake Champlain; Long Island Sound; and Onondaga Lake.

As you may recall, the bill as it originally passed the House contained several amendments to the Federal Water Pollution Control Act, designed to accelerate Great Lakes water quality restoration. The legislation also was intended to better implement the Great Lakes water quality agreement with Canada. This agreement provides a comprehensive framework for Great Lakes water quality protection efforts.

The bill, as amended by the Senate contains similar strengthening amendments. Like the House bill, this bill includes guidance and deadlines for preparation of remedial action plans and lakewide management plans, and requirements for States to develop water quality standards which are consistent with the Great Lakes water quality agreement. The legislation before us also would provide funds and guidance for badly needed human health effects studies in the Great Lakes region. Initial data now available indicates that toxins, at current levels are threatening human health.

The provision establishing the Onondaga Lake program is identical in substance to the provision passed by the House a few weeks ago as part of the Water Resources Development Act.

Establishment of programs for Lake Champlain and Long Island Sound will help smooth interregional and interstate coordination problems for restoring these water bodies. Like the Great Lakes and the Chesapeake, these water bodies cross Federal agency and States boundaries. Centralization of restoration efforts will accelerate cleanup efforts for these water bodies.

Mr. Speaker, this legislation is needed to strengthen our efforts to restore and protect these valuable water resources. I strongly urge its passage and I reserve the balance of my time.

Mr. Speaker, I reserve the balance of my time.

Mr. STANGELAND. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4323, the Great Lakes Critical Programs Act of 1990. I had concerns about the earlier, House-passed version and have new concerns about the Senate amendments. Even so, the bill before us today offers some important protections for the Great Lakes and other water bodies.

First, let me commend the gentleman from New York and the chairman of the Water Resources Subcommittee [Mr. NOWAK] for his strong interest in this legislation. Perhaps more than anyone else, he has been responsible for developing and winning broad support for Great Lakes water quality legislation in the House. I also wish to thank and congratulate Chairman GLENN ANDERSON and ranking minority member JOHN PAUL HAMMERSCHMIDT of the House Public Works and Transportation Committee for their leadership and cooperation. A note of thanks should also be extended to the leadership of the House Merchant Marine and Fisheries Committee and the Senate Environment and Public Works Committee, Senator CARL LEVIN, and other members for their assistance.

Mr. Speaker, the bill before us today is significantly different from H.R. 4323, the Great Lakes Water Quality Improvement Act of 1990, which passed the House on September 24, 1990. The other body modified the House-passed bill by scaling back various provisions on Great Lakes water quality and including provisions on Lake Champlain, Vermont and New York; Lake Onondaga, NY; and Long Island Sound.

Regarding the Great Lakes provisions, let me say unequivocally that I support efforts to strengthen the implementation of the Great Lakes water quality agreement. H.R. 4323, as amended by the Senate, should help to meet the agreement's goals and improve water quality throughout the vast Great Lakes region.

Generally, Mr. Speaker, H.R. 4323 would amend section 118 of the Clean Water Act to improve implementation of the Great Lakes Water quality agreement and accelerate Great Lakes cleanup. It includes:

Deadlines and guidelines for developing remedial action plans and lakewide management plans;

A requirement for States to develop, with EPA guidance, Great Lakes water quality standards—for certain pollutants—which are consistent with the agreement;

Increased emphasis on contaminated sediments demonstration projects authorized in the Clean Water Act;

A requirement for monitoring and implementation plans for Great Lakes confined disposal facilities [CDF's];

A requirement for EPA and others to report on potential adverse impacts of Great Lakes pollutants on public health, fish and wildlife; and

Twenty-five million dollars authorization for fiscal year 1991 for EPA's Great Lakes program office and activities to be carried out under section 118.

The Public Works and Transportation Committee has listened to and analyzed extensive testimony on water quality problems and needs for the Great Lakes. Clearly, both the United States and Canada must tackle toxics and other pollution problems in a more aggressive and coordinated manner. Just as important, Great Lakes States must strengthen their efforts and work toward a comprehensive ecosystem, multimedia approach to pollution control in the region.

H.R. 4323 not only recognizes but strives to achieve these goals, giving EPA and States specific guidelines and deadlines to improve water quality. Despite its worthy purposes, however, I do have some concerns about the Great Lakes provisions and particularly its mandates and overall flexibility.

The committee intends to give States as much flexibility as possible in meeting the goals and requirements of this legislation, the Clean Water Act, and the international agreement. Each State must have the latitude to establish its own water quality standards and designated uses as long as those actions are consistent with legal requirements and will help to achieve a uniform, basin-wide approach to improve water quality.

I also have some concerns about the bill's requirements imposed on EPA regarding guidance on numerical limitations and standards for the Great Lakes. To improve water quality in the Great Lakes, we must be able to produce a consensus document containing realistic requirements and incentives and adequate funding levels.

As I understand it, Mr. Speaker, the term "numerical standard of protection" for assessing contaminated sediments relates to criteria and standards done for purposes of attaining State-designated uses.

I should also note that the Public Works and Transportation Committee continues to pursue legislative options regarding contaminated sediments. Current versions of our corps authorization bill and our coastal protection legislation address this important issue.

H.R. 4323 also amends the Clean Water Act to develop and implement management plans from CDF's. Mr. Speaker, this has the potential to become a very costly mandate. Recognizing this, EPA should prioritize its efforts to develop and implement plans on a worst-first basis. In other words, EPA should focus on CDF's that present significant risks to human health or the environment.

EPA should also coordinate its efforts closely with the corps. Just 2 years ago in section 24 of the Water Resources Development Act of 1988, Public Law 100-676, we established a study and monitoring program within the corps specifically on this issue. EPA and the corps should combine their efforts.

In another provision, Mr. Speaker, the bill directs EPA, in consultation with the Coast Guard, to identify Great Lakes areas subject to significant risks of spills of oil and other hazardous materials and weaknesses in planning and response systems. This effort should be coordinated closely with newly enacted provisions in title IV of the Oil Pollution Act of 1990 (Public Law 101-380).

Title 2 includes provision, on Long Island Sound. As a member of the Public Works and Transportation Committee, the committee with jurisdiction over the Clean Water Act, I, like EPA, have concerns about the proposed changes and their impacts on the National Estuaries Program established in section 320 of the Clean Water Act. By moving this legislation we do not intend to set any precedent for establishing local EPA offices at each estuary designated under section 320 or prescribing in Federal legislation the details and duration of comprehensive consideration and management plans.

Title 3 contains several provisions on Lake Champlain in Vermont and New York. First, let me say, I recognize the lake has serious pollution problems and acknowledge the tireless efforts of the New York and Vermont delegation. From my observations, the gentleman from Vermont [Mr. SMITH] has been a particularly strong and forceful advocate in the House of Representatives.

While not opposing these provisions, I do want to express several concerns. Every year Congress must fight to secure a limit amount of funding for various Clean Water Act programs. The section 314 Clean Lakes Program is a prime example; already funds are scarce and competition among eligible lakes is fierce. Today's action will add to the competition. Efforts already under way at other lakes, however, should not be unduly disrupted by the provisions enacted in this legislation.

The bill also establishes a management conference on Onondaga Lake in New York. I commend the New York delegation, particularly the senior Senator [Mr. MOYNIHAN] and his colleague in the House [Mr. WALSH] for their tireless efforts. They have brought this serious matter to the attention of the Water Resources Subcommittee and pressed forcefully for the resulting legislation. The conference report on S. 2740, the Water Resources Development Act of 1990, also contains comparable provisions.

In summary, Mr. Speaker, H.R. 4323 may still need further revision. I expect that, if we need to, we will revisit the issue in the context of comprehensive Clean Water Act reauthorization next Congress. With that understanding, Mr. Speaker, I urge my colleagues to support the legislation before us today. It's not perfect but it should help address some of the Na-

tion's water quality problems—particularly in the Great Lakes.

Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. MARTIN].

Mr. MARTIN of New York. Mr. Speaker, I will not take the entire 5 minutes in the interest of time, but I think it is only appropriate that I do take the occasion to thank the gentleman from New York [Mr. NOWAK], and the gentleman from Massachusetts [Mr. STUDDS], and the gentleman from Minnesota [Mr. STANGELAND] and others who worked so hard in a difficult situation to make sure that those provisions that relate to Lake Champlain, but were sponsored by myself and the gentleman from Vermont [Mr. SMITH], my dear friend and colleague, would come to fruition. It is a very important body of water.

Very few people know that this also involves our neighbors to the North in Canada, and while it has been a long involved process, I want to again thank the gentleman.

Mr. STANGELAND. Mr. Speaker, I reserve the balance of my time.

Mr. NOWAK. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. ANDERSON], and in doing so, let me thank him for all his help on this measure.

Mr. ANDERSON. Mr. Speaker, I thank the gentleman for yielding time to me.

H.R. 4323, as amended by the Senate, targets water quality restoration programs in several high priority water bodies: the Great Lakes; Lake Champlain, which straddles the New York-Vermont border; Long Island Sound, which straddles the Connecticut-New York border; and Onondaga Lake, NY.

The Great Lakes title of this bill would incorporate several provisions of the United States-Canadian Great Lakes water quality agreement into domestic law. I am pleased to say that the provisions are very similar to those that were in the original House-passed version of this bill. Recent scientific studies indicate that the toxins in the lakes impair both human and wildlife health. As a result of these findings, a number of prominent organizations have published reports in the last year recommending dramatic reductions in the amount of pollutants entering the lakes and accelerated efforts at removing those that are already there. H.R. 4323 takes the necessary steps to ensure the restoration and preservation of this resource.

The titles relating to Onondaga Lake, Lake Champlain, and Long Island Sound will improve Federal, State, and local coordination of planning and cleanup efforts which are badly needed to accelerate restoration of these bodies of water.

Mr. Speaker, this legislation will provide a major impetus to our efforts to restore the water quality of these water resources.

I want to pay special recognition to the gentleman from New York, the chairman of our Water Resources Subcommittee, HENRY J. NOWAK, for his leadership and hard work on this legislation, and I strongly urge its passage.

Mr. NOWAK. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York [Mrs. LOWEY].

Mrs. LOWEY of New York. Mr. Speaker, I rise in support of the Senate amendment to H.R. 4323, the Great Lakes Water Quality Improvement Act. I want to congratulate the chairman of the Water Resources Subcommittee, Mr. NOWAK, for his efforts in working with our colleagues in the Senate to bring this bill up for final consideration.

The Senate amendment to H.R. 4323 contains a provision, which I helped author, to establish a Long Island Sound office within the Environmental Protection Agency [EPA] to coordinate efforts to clean up and protect Long Island Sound. The House also approved a similar version of this measure as an amendment, which I introduced, to H.R. 4450, legislation reauthorizing the Coastal Management Act. Passage of this legislation has been one of the most important goals I set for my first term in office.

Mr. Speaker, I joined the Merchant Marine and Fisheries Committee, because membership on this panel would enable me to actively work in support of legislation needed to restore and protect our vital coastal resources, particularly Long Island Sound and the Hudson River.

The Long Island Sound conservancy will provide vital coordination and support to cleanup efforts in Long Island Sound. The office will serve as a full-time advocate to oversee and move forward the implementation of the Long Island Sound study's conservation and management plan.

Saving the Sound will require a comprehensive effort from New York and Connecticut as well as hundreds of communities. The office will focus those efforts and provide vital accountability to the public. The Long Island Sound conservancy will provide a single point of communication for the large number of people and organizations engaged in carrying out the recommendations of the Long Island Sound study.

In addition to establishing a Long Island Sound conservancy office, the legislation before us extends the management conference for the Sound an additional 5 years so that it can continue fostering cooperation between Federal, State, and local agencies concerned with the Sound. Their continued cooperation, as well as the active participation of the public, will be vital to the success of restoration efforts.

One of the most important and exciting aspects of the conservancy will be the role it will play in raising the awareness of Long Island Sound residents about the problems facing this precious resource. The Long Island Sound study has identified public education as a vital component of its upcoming comprehensive management plan. The conservancy will serve as a hub for conservation activities in the Sound that people can visit to obtain educational materials on how they can join the effort to save the Sound.

The conservancy will also serve as a center of accountability. In 1991, the Long Island Sound study is scheduled to complete 6 years of work on a comprehensive conservation and management plan [CCMP] for the Sound. The people who live in the vicinity of the Sound, who rely on it for commerce and recreation, deserve to get their money's worth from that work. They deserve to see the management plan translated into action, not gather dust on a shelf. With the passage of this legislation, we are giving Long Island Sound the advocate it deserves. Today is a proud day for Long Island Sound. I urge the passage of this vital legislation.

□ 1530

Mr. STANGELAND. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to commend the gentlewoman from New York [Mrs. LOWEY] for her interest in Long Island Sound. I would like to also acknowledge the very strong enforceful efforts of the gentleman from Vermont [Mr. SMITH], on the concerns of Lake Champlain. He brought to our attention the serious pollution problems, and we have a solution there.

I would also like to recognize the interest and concern and great efforts of the gentleman from New York [Mr. WALSH] as it concerns Lake Onondaga in New York.

Mr. NOWAK. Mr. Speaker, I yield 1 minute to the gentleman from Connecticut [Mr. MORRISON].

Mr. MORRISON of Connecticut. I thank the gentleman for yielding.

Mr. Speaker, I thank the gentleman from New York [Mr. NOWAK] very much for his diligent cooperation in allowing this legislation to include the very important provisions that the gentlewoman from New York [Mrs. LOWEY] just discussed. Long Island Sound is a critical body of water to the people of Connecticut and the people of New York. The work that has been done through the Long Island Sound study has identified many steps that will have to be taken. This legislation focuses the Federal coordinating effort that will carry forward the results of that study and clean up Long Island Sound in the decade to come.

By allowing this legislation to move forward, the gentleman does the people of my State of Connecticut a tremendous favor and a tremendous assist, and I thank him for his help and generosity in allowing this legislation to pass today.

Mr. NOWAK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, if I may, I would like to take 1 minute to acknowledge the very hard work that has been done not only by the staff, but by other Members who contributed greatly to this. The gentleman from Massachusetts [Mr. STUDDS] in his position on the Committee on Merchant Marine and Fisheries had reviewed this legislation for many months with us, and I think the product we bring is the best that was available in this term.

I want certainly to thank the gentleman from California [Mr. ANDERSON] and the gentleman from Arkansas [Mr. HAMMERSCHMIDT] for their input as the process moved along.

I especially want to commend the gentleman from Minnesota [Mr. STANGELAND], who has worked hard and shown great interest in bringing this forward, well knowing that this is not going to be the end of our work on the Great Lakes. I look forward to working with the gentleman in the next Congress as we review this legislation and review the studies that are now ongoing. I want to thank him for his input.

Mr. STANGELAND. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. NOWAK. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from New York [Mr. NOWAK] that the House suspend the rules and concur in the Senate amendment to H.R. 4323.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. NOWAK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on the Senate amendment to H.R. 4323.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

BACA LOCATION NO. 1 LAND ACQUISITION AND STUDY ACT OF 1990

Mr. VENTO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4630) to acquire and study certain lands in the State of New Mexico, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Senate amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Baca Location No. 1 Land Acquisition and Study Act of 1990".

SEC. 2. PURPOSES AND DEFINITIONS.

(a) PURPOSES.—The purposes of this Act are to—

(1) authorize the Secretary to acquire by purchase certain lands in the State of New Mexico to be added to the Santa Fe national Forest;

(2) compensate Dunigan Enterprises for costs incurred as a result of certain Federal actions; and

(3) provide for a study to determine possible Federal protection of certain lands in New Mexico known as "Baca Location No. 1".

(b) As used in this Act, the term—

(1) "Baca Location No. 1" means the land owned by Dunigan Enterprises located in the Jemez Mountains west of Los Alamos, New Mexico, in Sandoval and Rio Arriba counties and consisting of approximately 100,000 acres, as generally depicted on the map entitled "1510—Santa Fe NF—S. 2521 Cochiti Land Exchange Act" and dated October, 1990;

(2) "Dunigan Enterprises" means Dunigan Enterprises, Inc., a Texas corporation, and BL&C Co. and BL&C Co. No. 2, Texas Partnerships; and

(3) "Secretary" means the Secretary of Agriculture.

SEC. 3. ACQUISITION.

(a) IN GENERAL.—The Secretary is authorized to acquire by purchase with donated or appropriated funds the lands described in subsection (b). Upon acquiring the lands, the Secretary shall include them with the Santa Fe National Forest and shall administer them accordingly.

(b) DESCRIPTION OF LANDS TO BE ACQUIRED.—The lands to be acquired pursuant to subsection (a) consist of two parcels totaling approximately 36 acres, and are more specifically described as follows:

(1) PARCEL 1.—Beginning at Mile Point No. 11 on the south boundary of Baca Location No. 1; thence westerly along the south boundary of Baca Location No. 1 to its intersection with the constructed centerline of Forest Development Road 133; thence on a continuation of the south boundary of Baca Location No. 1, 33 feet; thence on an approximate bearing of N. 26° E., about 720 feet as scaled from the Forest Service's topographic map of the area, to the south boundary of the eastment for New Mexico State Highway No. 4; thence in an easterly direction along the State Highway easement to its intersection with the south boundary of Baca Location No. 1; thence westerly along the south boundary of Baca Location No. 1 to the point of beginning, being Mile Point No. 11, containing approximately 27 acres, and subject to confirmation by formal survey and acceptable legal description and record acreage.

(2) PARCEL 2.—Beginning at Mile Point No. 10 on the south boundary of Baca Location No. 1; thence in a westerly direction along the south boundary of Baca Location No. 1, 423 feet to a point on the west side of the East Fork of the Rio Jemez; thence N. 38° E., 660 feet; thence N. 86° E., 170 feet; thence S. 70° E., 364 feet to the south boundary of Baca Location No. 1 to the point of beginning, being Mile Point No. 10, containing approximately 9 acres, and subject to confirmation by formal survey and acceptable legal description and record acreage.

SEC. 4. COMPENSATION.

(a) IN GENERAL.—The Secretary of the Treasury is authorized and directed, subject to the provisions of subsection (b), to pay a direct payment to Dunigan Enterprises not to exceed $1,633,527 out of any money in the Treasury not otherwise appropriated to compensate Dunigan Enterprises for costs incurred as a result of certain Federal actions involving a land exchange between the United States and Dunigan Enterprises in 1966.

(b) CERTIFICATION.—(1) The Secretary of the Treasury may make the payment described in subsection (a), only after the Secretary, acting through the Inspector General of the United States Department of Agriculture certifies that—

(A) the sum accurately reflects the damages incurred by Dunigan Enterprises resulting from the 1966 land exchange in New Mexico between the United States and Dunigan Enterprises;

(B) Dunigan Enterprises has executed a release of all claims relating to the real property known as the "Cochiti Properties", approximately 2,456.14 acres as described in the quitclaim deed to the Baca Land and Cattle Company, et al., on September 25, 1966, as recorded in Volume 21, pages 361-363 of the Sandoval County, New Mexico records; and

(C) Dunigan Enterprises has executed with the Department of Justice an appropriate joint stipulation for entry of an order of dismissal, with prejudice, of the pending litigation between Dunigan Enterprises and the United States, entitled Dunigan Enterprises, Inc. et al. v. United States, No. 506-88L, United States Claim Court.

(2)(A) In making the verification pursuant to paragraph (1), the Secretary shall consider costs incurred by Dunigan Enterprises as a result of the 1966 land exchange between the United States and Dunigan Enterprises, including but not limited to foregone proceeds on sales contract, and reasonable expenses for travel, telephone calls, legal services and other miscellaneous costs.

(B) If the Secretary determines pursuant to the certification requirement required in paragraph (1) that Dunigan Enterprises has incurred damages of less than $1,633,527, then Dunigan Enterprises shall be paid such lesser amount pursuant to subsection (a).

SEC. 5. LAND OWNERSHIP ADJUSTMENT STUDY.

(a) IN GENERAL.—(1) The Secretary is authorized and directed to conduct a study of Baca Location No. 1 to address—

(A) the scenic, geologic, recreational, timber, mineral, grazing, and other multiple use attributes of Baca Location No. 1; and

(B) options for Federal acquisition of Baca Location No. 1, in whole or part, by pur-

chase, donation, exchange, or otherwise, including the estimated cost of each option.

(2) The Secretary shall complete the study within 2 full fiscal years after the date funds are made available for the study.

(b) COOPERATION.—(1) The Secretary shall prepare the study required by subsection (a) in cooperation with the owner of Baca Location No. 1, interested Indian tribes, the National Park Service, the United States Fish and Wildlife Service, and other interested parties.

(2) This Act shall not be construed to authorize entry upon Baca Location No. 1 by any person without the express permission of the landowner, and the Secretary shall make prior arrangements with the landowner for satisfactory access to Baca Location No. 1 for the purposes of the study.

(c) TRANSMITTAL OF STUDY.—Upon the completion of the study referred to in subsection (a), the Secretary shall transmit the results of such study, along with any legislative recommendations to the Committee on Energy and Natural Resources of the United States Senate and the Committees on Interior and Insular Affairs and Agriculture of the United States House of Representatives.

SEC. 6. TECHNICAL CORRECTION.

Section 110(a)(2) of the San Juan Basin Wilderness Protection Act of 1984, Public Law 98-603 (98 Stat. 3159) is hereby amended to read as follows:

"(2) The real property referred to in paragraph (1) is located in Lake Sumner State Park, in the State of New Mexico, and is more particularly described as follows: "all portions of sections 28 and 33 in Township 5 North, Range 24 East, with an elevation of more than 4,208 feet above sea level. The acreage and legal description of such real property shall be determined by the Secretary, after consultation with Sumner Lake Corporation.

SEC. 7. AUTHORIZATION OF APPROPRIATONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Amend the title so as to read: "An Act to authorize the Secretary of Agriculture to acquire and study certain lands in the State of New Mexico, and for other purposes.".

Mr. VENTO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments, be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Ohio?

Mr. THOMAS of Wyoming. Mr. Speaker, reserving the right to object, I yield to the gentleman from Minnesota [Mr. VENTO] to explain the bill.

Mr. VENTO. Mr. Speaker, the Baca Location No. 1 Act, which has now passed the Senate, was introduced by our colleague from New Mexico, [Mr. RICHARDSON]. This bill would compensate Dunigan Enterprises for losses it incurred by actions taken by the Federal Government which were not the result of any fault of the company. It would also mandate a land acquisition study of the highly scenic 100,000 acre Baca location in New Mexico which has a high potential as an addition to the Santa Fe National Forest which surounds it. This area contains outstanding wildlife, recreation, geologic and cultural resources and is also adjacent to the Bandelier National Monument. Furthermore, the bill authorizes the Forest Service to acquire through purchase, donation or exchange, 36 acres in the Baca location which are needed for recreational access to the national forest lands.

The Senate has amended the bill. The amendment makes technical changes and we recommend that the House concur with the Senate amendment. These changes clarify where the Baca location is located and ensures that Dunigan Enterprises makes no further claims for compensation from the Federal Government.

Mr. RICHARDSON. Mr. Speaker, I ask unanimous consent that H.R. 4630 as amended by the Senate be considered for final passage.

Mr. Chairman, H.R. 4630 would rectify a situation dating back to 1966 in which Dunigan Enterprises exchanged a portion of their land with the Federal Government and received no compensation.

The bill consists of three major provisions. First, the bill authorizes the Forest Service to acquire 36 acres of Baca Location No. 1. Second, the bill provides for a cash payment to Dunigan Enterprises—$1.6 million—to compensate them for losses incurred as a result of Federal actions. A direct payment by the Secretary of the Treasury will be paid to Dunigan Enterprises only if the Secretary, through the inspector general of the U.S. Department of Agriculture, has certified that the compensation figures accurately reflect the damages incurred by Dunigan Enterprises. While I do not question the figures compiled by Dunigan Enterprises, the amendment provides independent oversight and sets good policy. Third, the bill calls for a study of the lands of the Baca Location No. 1 for possible Federal acquisition.

The House suspended the rules and passed this bill by voice vote October 10. The Senate passed the bill October 25 with technical amendments requiring Dunigan Enterprises to dismiss pending litigation in the U.S. Claims Court between Dunigan Enterprises and the United States. I have worked with both sides of the aisle and all support the Senate amendments to H.R. 4630. I urge final passage of this legislation.

Mr. THOMAS of Wyoming. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Minnesota?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on the Senate amendment to H.R. 4630.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

CONFERENCE REPORT ON S. 2740, WATER RESOURCES DEVELOPMENT ACT OF 1990

Mr. ANDERSON. Mr. Speaker, I move to suspend the rules and agree to the conference report on the Senate bill (S. 2740) to provide for the conservation and development of water and related resources, to authorize the U.S. Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes.

(For conference report and statement, see prior proceedings of the House of Friday, October 26, 1990.)

The SPEAKER pro tempore. Is a second demanded?

Mr. STANGELAND. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. ANDERSON] will be recognized for 20 minutes, and the gentleman from Minnesota [Mr. STANGELAND] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. ANDERSON].

Mr. ANDERSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 2740, the Water Resources Development Act of 1990, is important legislation to upgrade the Nation's infrastructure. It provides funding for port development, inland waterway construction, flood control, shore protection, and other similar measures.

HENRY NOWAK of New York, the chairman of our Subcommittee on Water Resources, deserves congratulations for his efforts on this bill, as do ARLAN STANGELAND of Minnesota, the ranking Republican of the subcommittee, and JOHN PAUL HAMMERSCHMIDT of Arkansas, the ranking Republican on the Committee on Public Works and Transportation.

I want to express my thanks to the staff who worked especially hard on this bill: Errol Tyler and Ken Kopocis on the majority side, Gabe Rosza and Ben Grumbles on the minority.

In 1986, after 10 years of delays, we passed major water resources development legislation. At that time, we committed ourselves to water resources legislation every 2 years. The Water

Resources Development Act of 1988 was passed 2 years ago, and this year we have developed this bill.

This 2-year cycle is important to maintain the Nation's Water Resources Development Program. We must now allow another 10-year lapse in authorizing legislation, as we did in the late 1970's and early 1980's. The regular cycle of authorizing legislation is necessary for the maintenance of our infrastructure.

The Nation must continue to invest in the rebuilding and maintenance of the infrastructure. The infrastructure is vital to continued growth in economic productivity. The Nation's capital investment when compared to gross national product has declined significantly over the last three decades and we must reverse that trend.

This bill helps in that effort by authorizing funds for important development projects. Working with the Army Corps of Engineers, we have authorized almost 30 projects estimated at more than $2.3 billion in Federal funds. With the required local cost-sharing, we expect this bill to result in more than $3 billion in important infrastructure projects.

This conference report provides the authorization for a program that has helped to build America. I urge its passage and reserve the balance of my time.

□ 1540

Mr. STANGELAND. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on S. 2740, the Water Resources Development Act of 1990. This omnibus water resources bill provides needed projects for flood control, navigation, environmental protection, and other purposes. It will also help keep us on track with a regular, 2-year authorization process for the Corps of Engineers Civil Works Program.

The House passed H.R. 5314, its version of the omnibus corp's bill, on September 26, 1990. We could not have done this without the leadership and bipartisan cooperation of Public Works and Transportation Committee Chairman GLENN ANDERSON, ranking minority member JOHN PAUL HAMMERSCHMIDT, and subcommittee chairman, HENRY NOWAK. The final package is a clear reflection of their hard work and concern for our Nation's water resources infrastructure.

Nor could we have completed the conference report without the leadership of the Senate Environment and Public Works Committee and the administration. As usual, Chairman QUENTIN BURDICK, ranking minority Member JOHN CHAFEE, Subcommittee Chairman, DANIEL P. MOYNIHAN, and Subcommittee ranking Member, STEVE SYMMS have worked with us closely and in a spirit of bipartisanship to finish this critical legislation.

I would also like to commend former Assistant Secretary of the Army, on Civil Works, Robert W. Page, who recently stepped down from his post but served ably in his position for several years, acting assistant Secretary G. Edward Dickey, and Office of Management and Budget Associate Director for Natural Resources, Energy and Science, Robert Grady, and have also worked tirelessly to help improve our final package.

The resulting legislation is very important to the corps of engineers' Water Resources Program. Therefore, it is critical to pass the conference report and get the legislation to the President as soon as possible. We, indeed our Nation's entire water resources infrastructure, cannot afford to lose this bill in the remaining days of the 101st Congress.

S. 2740 authorizes corps' projects for flood control, navigation, beach erosion, environmental protection, recreation, and related purposes. It also reaffirms reforms enacted in 1986 and 1988 involving cost-shaping, price increases, and project study and authorization procedures.

The most important point is that it signals an effort to maintain a 2-year cycle for project authorizations. Up until the last decade or so, Congress enacted corps' bills on a regular cycle. A return to an continuation of this process benefits everyone.

Mr. Speaker, allow me to highlight some of the bill's provisions. S. 2740 addresses, among other things, commercial, recreational and environmental concerns in the Great Lakes and Upper Mississippi regions. I am pleased to have supported provisions, retained in the conference report, authorizing improvements to Great Lakes connecting channels and harbors and ensuring removal and containment of contaminated material. In addition, S. 2740 extends the Environmental Management Program for Fish and Wildlife Enhancement in the upper Mississippi river region. I commend Congressman STEVE GUNDERSON and others for their continued input and support for the environmental management program and for water quality. Our bill should help keep the ball rolling.

Various provisions address specific issues throughout Minnesota and the Red River of the north basin. Section 109 directs the Secretary to complete the Sauk Lake cleanup project authorized by section 602 of the Water Resources Development Act of 1986. This includes not only acquisition of weed harvesting equipment using previously appropriated funds but also other measures to remove and prevent the accumulation of silt, aquatic growth and other pollution problems. The conferees have retained a provision in the House-passed bill providing further clarification so that the corps and others continue to proceed with development of a comprehensive approach to pollution prevention throughout the watershed.

With this guidance in the conference report and the recently-passed funding in the conference report on H.R. 5019, the Energy and Water Development Appropriations Act for fiscal year 1991, the corps should move forward as soon as possible with project review and funding. I would also direct the corps to the floor colloquy during House debate of H.R. 5019 on June 19, 1990. Our intent in 1986 was not to subject section 602 studies to the same cost-sharing requirements and procedural reviews that other projects undergo. I am not aware of any change in our intent today, either.

The conferees have retained the House's provisions authorizing additional dredging and retaining wall repair work at Warroad Harbor, MN. The one change is that we've placed the project under the corps' Special Continuing Authorities Program for Navigation (section 107 of the 1960 River and Harbor Act). The conferees' intent is to direct the corps to dredge beyond the existing authorized navigation channel and basin; therefore the term "adjacent basin" encompasses the entire channel and the revetment wall. The conferees also direct the corps to maintain and repair the existing retaining wall and take any other necessary measures so as to fulfill the United States' obligations under the 1925 treaty between the U.S. and Great Britian, relating to Canada. Finally, the conferees believe the corps should take measures to address concerns about navigation hazards created by disposal of dredged material.

It is also important to note, Mr. Speaker, that while they implement this legislative directive, the corps should place increased emphasis on funding the retaining wall repair work. They have not only the authority but also the obligation (under the 1925 treaty) to repair the retaining wall. A higher priority on funding the repair work is entirely appropriate.

The conference report also retains language I included regarding lake levels and shoreline erosion along Lake of the Woods, MI. The corps must investigate whether lands and improvements in the area currently meet requirements of the 1925 treaty between the U.S. and Great Britian, on behalf of Canada. The corps should report back to the Public Works Committees on progress in resolving any outstanding claims for shoreline damages caused by lake level operations.

The conference report includes study provisions from both House- and Senate-passed bills related to Minnesota's and North Dakota's water supply

and drought planning needs. The study is to include methods to supplement flows on the Red River of the north for municipal, industrial, agricultural, and other purposes. The corps should focus on efforts being undertaken by the Bureau of Reclamation with respect to the Garrison diversion project. It makes sense to explore these and other avenues in meeting current and future water supply needs of Moorhead, MN and other towns along the Red River of the north.

Sections 306 through 310 are all based on provisions in my bill, H.R. 5370, the Corps of Engineers Environmental Protection Act of 1990. The corps has the expertise and opportunity to become the Federal Government's premier environmental engineers. This legislation will help to realize that goal by elevating environmental protection as one of the agency's missions. We have revised the provisions since their passage on the House floor to address concerns raised by Members, the administration, the others. Nonetheless, the resulting package still makes a significant step forward in environmental protection.

The new environmental protection mission required in section 306 is more than mere rhetoric. The conferees believe the corps has the capability to expand its role significantly, none of us, however, intends that the corps should compete in any way with the private sector in carrying out its new mission. There is plenty of work to go around for everyone without creating unnecessary competition.

Section 307, relating to wetlands, also deserves special mention. Subsection (a) establishes within the Corps' Water Resources Development Program the important goal of no overall net loss of wetlands and the long-term goal of net gain of wetlands. My intent in drafting and including these provisions has been—and continues to be—that we incorporate a reasonable degree of flexibility into the goals. Obviously, local and regional conditions must play a role in the process. Certain areas simply cannot be expected to meet the goals in every instance. Matters in the public interest, such as Public Works and Transportation projects, should also play a role in meeting the goals.

I should also note that the goals specifically apply to the Corps' Water Resources Development Program. Our committee will continue to consider comprehensive reforms to the corps' regulatory program next year. In the meantime, we will be taking an important step forward in wetlands protection by enacting today's conference report.

Subsection (b) is based on the wetlands restoration and creation provisions I included in the house-passed bill and that the distinguished gentleman from Arkansas [Mr. HAMMERSCHMIDT] included during our committee markup. I want to commend the gentleman from Arkansas for his leadership, particularly regarding constructed wetlands. We both recognize the great potential for such technologies in meeting rural America's wastewater treatment needs.

Subsection (d) establishes a Wetlands restoration, enhancement, and creation demonstration program. This effort will prove to be critical in meeting compensatory mitigation requirements, the President's goal of no net loss of wetlands, and the wetlands goals established in subsection (a). I also believe such demonstrations are essential to our efforts of making wetlands regulatory programs more effective.

Mr. Speaker, we have made some revisions during the conference to the wetlands provisions I included in the House-passed bill. One change was to delete the Wetlands Restoration and Creation Program authorized in subsection (b). In doing this, we do not intend in any way to prejudice existing or proposed efforts by the corps or EPA to carry out similar work. Instead, we envision next Congress as a more appropriate time to consider comprehensive legislative proposals regarding wetlands protection.

Another change was to modify the mitigation bank demonstration program in subsection (d). The new subsection (d), focuses more generally on wetlands restoration, enhancement, and creation and does not contain any specific reference to mitigation banking. The agencies, however, should continue to explore this important concept as a possible means of meeting mitigation requirements. Mitigation banking, with appropriate environmental safeguards, may hold the key to meeting the President's no overall net loss goal.

Subsection (e) establishes a training and certification program for wetlands delineators. This should help stem the tide in the rising controversy over defining and delineating jurisdictional wetlands. The regulated community needs to know what is and is not a wetland. This is one of several promising ways to address the problem.

Section 308, relating to flood plain management, is based on provisions in my earlier bill and floor amendment by the distinguished gentleman from Missouri [Mr. EMERSON]. The final version continues to send a strong signal: For environmental, economic, and other reasons we must avoid unnecessary development in the flood plain. At the same time, though, the provision provides the Secretary with flexibility to modify the rules under appropriate circumstances. Given that certain communities have literally nowhere else to build in but the flood plain, we intend that the Secretary construe the exemptions liberally in those instances where undue hardship would otherwise result.

Section 309, relating to shoreline protection, sends another strong signal to the corps, States, and others. We, as a nation, need to prevent costly, hazardous, and environmentally-damaging shoreline development.

Section 310, relating to reservoir management, establishes a technical advisory committee for monitoring and research at major reservoirs. The provision also requires increased opportunities for public participation. Although this section has undergone significant revision since it first appeared in my bill, H.R. 5370, I still believe it will help solve some of the current problems. Taken together with section 311, relating to reservoir project operations, this section will also help our committee as we hold further hearings on this critical issue next Congress.

Mr. Speaker, S. 2740 is a dramatic improvement over the two separately-passed House and Senate bills. We have interjected more fiscal responsibility without weakening the overall benefits of the bill. And while some Members, including me, have had to sacrifice various provisions, the final compromise generally strikes a fair and reasonable balance that will keep us on track with a regular 2-year authorization process.

I urge each Member to vote for the conference report. In negotiating with the other body and the administration, we have produced a bill that Members can support, that the president can sign, and that will ensure the continued success of the Nation's largest water resources program.

At this point, Mr. Speaker, let me acknowledge the efforts of some of the legislative staff who have contributed significantly to our conference report. This certainly includes House Public Works staff Gabe Rozsa, Ben Grumbles, Janet Minkler, Shana Dale, Dottie Chepp, Errol Tyler, Ken Lopocis, Cathy Evans, Cate Leger, Scott Slesinger, and Karen Rose and House Legislative Counsel staff, David Mendelsohn, and Curt Haensel. Senate Environment and Public Works Committee staff are also to be commended, including Mike Weiss, Tom Skirbunt, John Grzebien, Andrew Samet, Dan French, Taylor Bowlden, and others. Finally, let me extend my thanks to Army Corps staff, such as Mike Strachn and Dave Brouwer and Office of Management and Budget Staff, such as Bruce Long, for their tireless efforts.

Mr. Speaker, I reserve the balance of my time.

Mr. ANDERSON. Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey [Mr. ROE].

Mr. ROE. Mr. Speaker, I thank the distinguished chairman for yielding me the time.

Mr. Speaker, I rise in strong support of the conference report on S. 2740, the Water Resources Development Act. I want to commend the fine work of my colleagues on the Public Works and Transportation Committee, especially the chairman, Republican GLENN M. ANDERSON and the committee's ranking Republican member, a great member, Republican JOHN PAUL HAMMERSCHMIDT.

Also high regards to Congressman HENRY J. NOWAK, chairman of the Water Resources Subcommittee, and the subcommittee's ranking Republican member, Congressman ARLAN STANGELAND are to be recognized for their efforts, two of the great leaders in the water resources movement in our country.

In the other body, I want to extend compliments to the members of the Environment and Public Works Committee, especially its chairman, Senator QUENTIN N. BURDICK and the committee's ranking Republican member, Senator JOHN H. CHAFEE (R-RI). The chairman of the committee's Water Resources Subcommittee, Senator DANIEL PATRICK MOYNIHAN (D-NY), and the subcommittee's ranking Republican member, Senator STEVE SYMMS should also be recognized for their contributions.

Mr. Speaker, I want to take a minute because we are getting at the final part of this particular conference and the end of this Congress. We never really spend enough time extending our high regards to the outstanding work of the professional staff people. I know that the chairman mentioned this, and my good friend, ARLAN STANGELAND, brought that to our attention, but I wanted to spell out some names of individuals who have worked so hard, on basically a bipartisan basis. If the staff did not do their work, the job could not get done, and certainly I want to mention specifically Dave Smallen, Sante Esposito, chief counsel; Jack Schenendorf, minority chief counsel; Errol Tyler, my good freind, who along with Gabe Rozsa, Ken Kopocis, Ben Grumbles, and Bob Bergman, all worked very hard on this program over the years. Also Paul Schlesinger and Shana Dale.

I believe it would be appropriate, Mr. Speaker, Mr. Chairman, and Mr. Ranking Member, to give these fine folks a hand. That has not happened yet on the floor.

Mr. Speaker, protection of our Nation's wetlands will be one of the major environmental challenges in the next decade. As part of the Corps of Engineers water resources development program, the bill sets a goal of no overall net loss of the Nation's remaining wetlands. To this end, the bill directs the Secretary of the Army, in consultation with the Environmental Protection Agency [EPA] and the Fish and Wildlife Service, to develop an action plan to protect wetlands. Provision is also made for a pilot project to evaluate the use of constructed wetlands as wastewater treatment facilities.

As the distinguished subcommittee chairman, the gentleman from New York mentioned, Mr. NOWAK, in referring to ARLAN STANGELAND, who is the ranking member, he has done outstanding basically environmental work, and I think it is good to point out that sometimes the environmentalists in this country do not understand who is getting the environmental work done, that is the true environmental work, particularly where the Nation's wetlands are involved, and I certainly want to pay my high regards to ARLAN STANGELAND, the gentleman who really wrote that section of the bill as I recall the issue.

We also need to improve our scientific understanding of wetlands restoration and creation in order to help us meet the goal of no net loss of wetlands. Under the bill, the Secretary of the Army, in consultation with the EPA Administrator, will carry out a wetlands restoration and enhancement demonstration program to develop a body of information on which to base future decisions concerning wetlands.

I particularly want to applaud the inclusion of a provision relating to the research on magnetic levitation technology. The Science, Space, and Technology Committee has had a longstanding interest in this Technology. As you know, Mag-Lev was invented in this country, more than 20 years ago. Unfortunately, America abandoned its efforts to develop the technology for commercialization in 1975.

In the meantime, Japan and West Germany have invested more than $2 billion to bring Mag-Lev to the marketplace. As a result, they are now poised to introduce our technology into our marketplace with projects in such places as Florida, California, Texas, Louisiana, and Pennsylvania.

Once again, we are standing at an all too familiar crossroads. We must either make a real commitment to restart Mag-Lev or leave the market to our foreign competitors.

I strongly support the authorization for Mag-Lev contained in this conference report. It represents a good start, and it brings to bear the civil works expertise of the Army's Corps of Engineers to the Mag-Lev field. The corps' knowledge and experience, along with the $10 million appropriated to the Department of Transportation for fiscal year 1991, comprise a practical first step to show that we are serious about having a U.S.-produced Mag-Lev system.

Again, my high compliments to the chairman, GLENN ANDERSON, the ranking member, JOHN PAUL HAMMERSCHMIDT, for their outstanding leadership on this legislation. I urge all of our people in the House to support this conference report overwhelmingly.

Mr. ANDERSON. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. MICHEL].

(By unanimous consent Mr. MICHEL was allowed to speak out of order.)

LEGISLATIVE PROGRAMS

Mr. MICHEL. Mr. Speaker, I take this time for the purpose of an exchange or colloquy with the distinguished gentleman from Maryland [Mr. HOYER] so that we might inform the membership on what the program will be for the balance of the day, as best we can conclude.

I am happy to yield to the gentleman from Maryland.

Mr. HOYER. I thank the minority leader for yielding.

As the minority leader knows, we have done the rule on immigration. We now have papers going to the Senate on a concurrent resolution. We are going to have that concurrent resolution when that gets back, and then do the conference report on immigration. We will be doing conference reports as they come back to us and doing suspensions to fill the time as we wait for conference reports.

□ 1550

We have three appropriation bills which have yet to be completed, the Legislative Appropriations, the Foreign Operations, and the Interior.

In terms of the House, there are also two appropriation bills, the transportation bill and the military construction bill, which are having problems in the Senate. We hope that they will be resolved in the very near future.

Eight of the appropriation bills are to the President, so they are behind us, and they are done, and so that leaves the five that I have mentioned as still pending.

There is also the possibility of the crime bill being considered, and there is also a possibility, Mr. Leader, of what the staff refers to as a technical CR. That is simply the fact that the appropriation bills will not be to the President perhaps in full form and give them an opportunity to review all of them. We hope they will all be passed by tonight, but there may be a necessity for a short-term technical CR so the Government will continue in operation while the White House reviews the last of the 13 appropriation bills.

We hope to, I might say to the gentleman, we are very hopeful that we will adjourn sine die tonight. We cannot obviously say that with any degree of assurance because of the fact that there are so many bills still

pending and going back and forth between the Senate and ourselves.

Mr. MICHEL. If I might inquire, did the gentleman mention when we might consider the adjournment resolution itself?

Mr. HOYER. We hope to do it relatively soon, early in the day.

Mr. MICHEL. I appreciate it, because generally speaking, Members, of course, are hard-pressed for time now and making plane reservations, getting home, and sometimes in the wrapup we can get by without rollcall votes, but if we get at least the adjournment resolution adopted, then we know for sure that there will be a sine die adjournment, and even with having that passed, with some other cleanup of business yet, I would certainly be amenable to doing that just as soon as the majority leader would like to schedule it for this afternoon.

Mr. HOYER. The majority leader is aware of that and appreciates that, and we are hopeful that that will be done relatively soon.

Mr. MICHEL. I thank the distinguished gentleman.

Mr. STANGELAND. Mr. Speaker, I yield such time as he may consume to the gentleman from Arkansas [Mr. HAMMERSCHMIDT], the distinguished ranking Republican on the Committee on Public Works and Transportation.

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in support of the conference report for S. 2740, the Water Resources Development Act of 1990. I support the bill because it continues the biennial authorization process for the Corps of Engineers Civil Works Program which I believe is essential to an orderly review of the corps' program.

The Corps Civil Works Program provides invaluable service to communities around the country and to the Nation as a whole. It has contributed to the Nation's economic development through the construction and maintenance of a nationwide system of navigation, including inland and coastal ports and waterways. Nearly a billion tons of commercial cargo is transported annually on these waterways, generating billions of dollars of revenues in import duties and by contributing to our Nation's economic well being in general.

Flood control projects built by the Corps provide additional benefits to the economy through the reduction of flood damages. These projects prevented an estimated $122 billion in damages during the 10-year period from 1978 to 1987. Corps projects also generate positive benefits for recreation, water supply, fish and wildlife conservation, hydroelectric power generation, and water quality enhancement.

The corps has been instrumental in building the Nation's infrastructure. Nevertheless, the infrastructure needs constant attention to repair existing facilities and to construct new facilities which further domestic and foreign commerce and improve our quality of life.

Despite the value of these projects, from 1976 to 1986, no corps authorization bills were enacted into law. During this 10-year period, the corps program fell into serious decline. Many needed projects were delayed and investment decisions were postponed. The Civil Works Program shifted from one focused on capital improvements to one focused on maintenance.

The delay was not caused by congressional inattention or by an absence of needed projects. Rather, the 10-year impasse was caused by a dispute over the appropriate division of costs between the Federal Government and project sponsors.

Enactment of the 1986 water resources bill settled the dispute over cost sharing and allowed desperately needed projects to go forward. Enactment of the 1988 water resources development bill reestablished the 2-year authorization process. This bill reconfirms that 2-year process.

Mr. Speaker, I admit that I had initial reservations about the bill as it was passed by the House. The scope and size of the bill caused me great concern. However, the modifications that were made in conference have scaled down the bill within, what I consider to be, reasonable limits.

We have also tried to adhere to the process of authorizing only those projects that have completed reports by the Chief of Engineers. We have also adhered to the principles of cost sharing promulgated in the 1986 Water Resources Development Act to ensure that only those projects that have local financial backing are allowed to proceed. The administration is strongly committed to these cost-sharing principles. In the spirit of cooperation which permeated the conference, we made every effort to comply and I believe we were successful in our attempts.

This legislation contains authorizations for a number of water projects or initiatives which are important to the nation as a whole. It not only contains new projects fully studied by the Corps of Engineers but it also contains provisions to help address environmental concerns through the Civil Works Program. Included among these are programs to address contaminated sediment problems around the country and to assist in protecting and restoring our declining wetlands.

The new environmental dredging program is intended to allow the corps to use its considerable expertise with respect to dredging and containment of contaminated sediment. The program is not intended to supplement other Federal programs, such as the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act. Rather it provides another tool, to be used in concert with these existing programs.

Section 306 calls upon the corps to give careful consideration to environmental protection in the planning, designing, constructing, operating, and maintaining of water projects. Furthermore, section 307 establishes the interim goal of no overall net loss and the long-term goal of overall net gain of wetlands in carrying out the Corps Water Resources Development Program.

This is an important provision added at the request of the ranking Republican member of our Water Resources Subcommittee [ARLAN STANGELAND]. It is, however, to be distinguished from proposals to establish similar goals for the corps' regulatory program under section 404 of the Water Pollution Control Act.

Section 305 of the conference report includes important language to address the very contentious issue of adjusting cost sharing to reflect the ability of local interest to pay. The provision was included because of concern that the corps' existing procedures were far more restrictive than Congress intended when we authorized cost-sharing waivers for poor communities. Under the new language in the conference report, reductions in the required cash contributions are to be made on the basis of local, not statewide, economic data. This will insure that local capabilities are what the corps looks at in evaluating ability to pay. We have also included separate language authorizing the sale of water supply storage to small poor communities.

I would like to also highlight a few other provisions in the conference report which are of particular interest to my region of the country.

In response to this year's severe flooding in Arkansas, Oklahoma, and Texas, the conference report authorizes the corps to conduct a study to evaluate current flood control measures in the Arkansas, Red, and Ouachita River Basins. The study will also examine the effectiveness of Federal emergency response capabilities to prevent or minimize loss of life and damage to property due to flooding. Furthermore, the study will look at the compensation process for flood victims which is administered by the Federal disaster aid programs. It will be conducted in cooperation with the Federal Emergency Management Agency and the Secretary of Agriculture.

The conference report also contains a provision for a small but badly needed flood control project along the Dry Jordan and Crooked Creeks in my hometown of Harrison, AR. The local

interests and the corps have worked together to develop an acceptable plan of improvement. The project will provide significant relief to a long-standing flood problem and would also include specific direction to incorporate features to enhance recreational opportunities.

Another provision of the report authorizes projects to rehabilitate and reconstruct Federal flood control levees on the Arkansas River and on the Red River below Denison Dam. The provision requires compliance with Federal design standards, repairs of design deficiencies, and replacement of deteriorated drainage structures. The projects are subject to a cap of $5 million per year for the next 5 years. This work will help prevent potentially larger Federal costs in disaster aid if the levees were to fail.

The report also contains an important project whose purpose is to demonstrate the use of constructed wetlands for wastewater treatment. This project will improve the quality of effluent discharged from publicly owned treatment works operated by the city of Fayetteville, AR. It will demonstrate how constructed wetlands used for this purpose can restore and maintain the physical, chemical, and biological integrity of the Nation's waters.

I want to thank the leadership of both the Senate and the House for their willingness to work together in a spirit of cooperation with the administration. Both bodies showed a willingness to work together and with the administration in order to develop a package acceptable to the Congress and to the White House.

Let me specifically thank the chairman of the Committee on Public Works and Transportation [Mr. ANDERSON], as well as the chairman of our Water Resources Subcommittee [Mr. NOWAK] and its ranking member [Mr. STANGELAND], for their hard work and their willingness to find compromise where necessary. I also want to thank the leadership of the Senate Committee on Environment and Public Works, Chairman BURDICK, and Senators CHAFEE, MOYNIHAN, and SYMMS for their efforts at forging an acceptable bill. Finally, let me just say that we could not have completed this bill without the long hours of hard work on the part of our talented staffs.

I would like to reemphasize that the crucial element here is continuing the 2-year authorization process. The House committee leadership has worked hard to preserve as many provisions for its Members as possible while still ensuring that we stay on a biennial authorization cycle. Mr. Speaker, I urge support of this important piece of legislation.

Mr. ANDERSON. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. NOWAK].

Mr. NOWAK. Mr. Speaker, I am pleased to rise in support of the conference report on S. 2740, the Water Resources Development Act of 1990, and urge my colleagues to give their overwhelming support.

The Water Resources Development Act of 1990 demonstrates the continuing commitment of the Committee on Public Works and Transportation to a regular biennial authorization schedule, for the Water Resources Development Program of the Department of the Army. The conference report represents many long hours of discussion between representatives of the House, Senate, and administration. While compromises were necessary, I believe this bill is a strong bill, responsive to many, varied needs. S. 2740 represents a balance between the water resources needs of our Nation and need to make the program of the Corps of Engineers more responsible for and responsible to environmental concerns.

While S. 2740 includes many authorizations related to the traditional civil works program of the Corps of Engineers, such as flood control, navigation, shoreline protection and other related projects, I am particularly proud of the bill's provisions related to environmental enhancement.

For the first time, the bill provides that the Secretary of the Army is to include environmental protection as one of the primary missions of the Corps of Engineers in planning, designing, constructing, operating, and maintaining resources projects. In addition, preservation and enhancement of the environment are specified as factors to be addressed in planning of water resources projects to assure that the Corps of Engineers program enhances the quality of the total environment.

I am particularly pleased with the authority given to the Secretary in the area of environmental dredging. The bill authorizes the Secretary of the Army, in consultation with the Administrator of the Environmental Protection Agency, to remove as part of operation and maintenance of a navigation project, contaminated sediments outside the boundaries of and adjacent to the navigation channel whenever necessary to meet the requirements of the Federal Water Pollution Control Act. This sediment removal will be cost shared the same as other maintenance dredging. In other instances, where necessary for environmental enhancement and water quality improvement, the Secretary is authorized to remove contaminated sediments from navigable waters. In such instances a non-Federal sponsor must agree to pay 50 percent of the cost of such removal. As in any other dredging, a dredged material disposal site must be furnished by a non-Federal interest.

This environmental dredging authority is necessary to respond to the great need to clean up polluted sediments throughout our rivers, harbors, and bays. This pollution problem is particularly acute in the Great Lakes area where years of industrial and domestic waste discharges have resulted in a buildup of pollution in the sediments. I encourage the Corps of Engineers to use this new authority and to work with State and local governments in developing an effective plan for sediment cleanup. In addition, the Secretary is authorized to provide technical, planning, and engineering assistance to States and local governments in the development and implementation of remedial action plans for areas of concern in the Great Lakes which have been identified under the Great Lakes Water Quality Agreement. The Corps of Engineers special expertise in dredging should prove invaluable to these sediment cleanup efforts.

The bill also modifies section 1135 of the Water Resources Development Act of 1986, which authorized project modifications to existing corps projects for improvement of the environment by changing the program from a 5-year demonstration program to a permanent program. Enthusiasm for this program by non-Federal interests is the reason for this change. Often, even minor modifications to the operation of a Corps of Engineers project can have tremendous environmental benefits. Funds expended by the Federal Government to make such modifications are a sound investment and should be encouraged.

Two sections of the bill are designed to improve protection of our fragile flood plains and shorelines. One section prohibits the Secretary from including in the benefit base for justifying a Federal flood damage reduction project any new or substantially reconstructed structure built in the 100-year flood plain after July 1, 1991. The other section requires the Secretary to prepare a report on the advisability of not participating in the planning, implementation, or maintenance of beach stabilization or renourishment projects unless the State has established or has committed to establish a beach front management program. The Congress can then determine whether Federal investment into environmentally sensitive areas should be reduced or curtailed.

Finally, I would like to speak about one of the provisions that will establish, as part of the Corps of Engineers Water Resources Development Program, an interim goal of no overall net loss of the Nation's remaining wetlands base, and a long-term goal to increase the quality and quantity of the

Nation's wetlands. The Secretary of the Army is required to develop a wetlands action plan to achieve these goals and the plan would be developed in consultation with the Environmental Protection Agency, the Fish and Wildlife Service, and other appropriate Federal agencies. I believe very strongly that the Nation must preserve and enhance its invaluable wetlands resources. The Subcommittee on Water Resources conducted numerous hearings in the 101st Congress concerning wetlands issues, and the committee believes that the Corps of Engineers can play a major role in preserving, protecting, and enhancing our wetlands resources. We must act now if we are to stop the dramatic wetlands losses that our Nation is incurring. In 1 hour alone which has been allotted to general debate on this bill, our Nation has lost 35 acres of wetlands. This must not be allowed to continue.

Mr. Speaker, S. 2740 is a sound balance between the traditional water resources needs and the environmental needs of our Nation. I urge my colleagues to give it their overwhelming support so that legislation may be enacted in the 101st Congress.

Mr. STANGELAND. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I want to reaffirm what our very good colleague and friend, the gentleman from New Jersey [Mr. ROE] had to say about staff.

You know, I have served on this committee now for 14 years. I have watched the staff work together in an extremely bipartisan fashion. The minority can go to the majority staff for advice and counsel. The majority can come to the minority staff for advice and counsel, and without that hard staff work, that good staff cooperation, bills like this would not come to fruition.

I also would like to say that probably in no area of Federal Government spending is a program more maligned than the Corps of Engineers Water Resources bill, and yet no more benefits can accrue to the constituency who pay the taxes to support these programs that comes from the flood control protection that this legislation provides, the navigation protection, the navigation availability that this legislation provides, and I am proud to be part of this committee, proud to be a part of this Water Resources Subcommittee, proud to be on a team with the gentleman from New York [Mr. NOWAK].

Mr. ANDERSON. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia [Mr. OLIN].

Mr. OLIN. Mr. Speaker, I thank the gentleman for yielding this time to me. I rise in strong support of the bill.

Mr. ANDERSON. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Speaker, I rise in support of the conference report on the water resources bill. This is a very important piece of legislation for the State of New Jersey and for the Jersey shore.

I really want to thank the chairman, the gentleman from California [Mr. ANDERSON], the gentleman from New York [Mr. NOWAK], the gentleman from New Jersey [Mr. ROE], and also the gentleman from New York [Mr. MANTON], and the rest of the New York delegation that worked very hard with us to forge a compromise on some of these important provisions.

Specifically, the bill includes a ban and an end to wood burning at sea off the coast of New Jersey. The compromise worked out provides that 50 percent of wood burning cease by the end of 1991, and the remainder by the end of 1993.

The bill also includes a provision that seeks to phase out the mud dump site, the dredge spoil site for toxic dredge materials off the coast of New Jersey by prohibiting the designation of a new dredge spoils site and setting in place plans for the phasing out of the existing site, including a demonstration project for 10 percent of the most toxic dredge material.

Finally, the conference report also includes a provision in the original House bill that would extend the floatable study that apparently occurs in New York Harbor. Right now during the summer months there is a plan in place to remove floatables from New York Harbor, the floatables that come down and pollute the Jersey shore. Under the conference report, that plan, that feasibility study, as well as the ongoing removal of floatables, continues throughout the year, not just in the summer months.

Mr. Speaker, I think the legislation is a great compromise between New York and New Jersey, something that works to the benefit of the Jersey shore and I want to thank both the staff, as well as the chairman and the ranking member of the committee who worked on it with me, and I thank them again.

Mr. ANDERSON. Mr. Speaker, I yield 2 minutes to the gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Speaker, I thank the chairman for yielding me this time.

Mr. Speaker, the Corps of Engineers operates a unique canal that connects the Chesapeake and the Delaware Bays. The canal literally cuts a State in half, the State of Delaware.

The canal serves the Port of Baltimore. Ships that are trying to find a shortcut from the Atlantic Ocean to Baltimore can transit through that canal and get to the Port of Baltimore.

The canal is an enormous headache for the people of our State. We have to try to figure out how to get over it, how to get around it. Delaware is not all that big, anyway. The canal is quite broad and uses up a lot of land in our State. Frankly, we would like to use that space for other purposes, but that is not a realistic option.

Every now and then, we need to build a bridge to move people and goods across the canal from one end of our State to the other. We are at one of those junctures again.

Our major north-south highway, Route 13, is turning into a parking lot due to ever-increasing traffic volume, and the State has begun the process of building a six-lane relief road alongside U.S. Route 13.

The problem is how do we get over this canal as it lies in the path of the relief route?

I just want to say to the gentleman from New York [Mr. NOWAK], to the gentleman from Minnesota [Mr. STANGELAND], and to the members of this committee, on behalf of the people of Delaware how much we appreciate the authorization language that is incorporated into this bill that acknowledges that the Federal Government does have an obligation, as it has had for many years to the people of Delaware. From time to time, the Corps of Engineers will build a bridge when needed, across that canal and maintain that bridge.

We are grateful to you for keeping the promise that was first made to the people of our State some 200 years ago. With the adoption of this bill today, that promise is being renewed.

Again, a special thank you to the gentleman from New York [Mr. NOWAK] and his staff members on behalf of all of us in the State of Delaware. And, in closing, I want to gratefully acknowledge the invaluable assistance of Jeff Bullock of my staff whose tireness efforts on this project contributed greatly to its inclusion in this bill.

Mr. ANDERSON. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. BENNETT].

□ 1610

Mr. BENNETT. Mr. Speaker, like my predecessor in the well, I come here to say thank you.

I am deeply thankful to the gentleman from New York [Mr. NOWAK] and the gentleman from California [Mr. ANDERSON] and the committee as a whole as well as the staff on each side, for making this one of the happiest days of my life, because I see now in this legislation the fruition of something that I have worked on for a long time, which was originally called the Cross-Florida Barge Canal. We are now going to have a State park running through that beautiful land from

the St. John's River to the Gulf of Mexico, this as a result of this legislation.

This will be one of the most outstanding parks, I think, in the country. I think it will be a crowning achievement for this committee in thinking out what should be done with this property, which was originally set-aside for a canal; but the backing for that canal has ceased. I envision something comparable to the beautiful Skyline Drive in Virginia.

Mr. Speaker, I introduced legislation a year or so ago to make either a national or a State park out of this land. It is now going to be a State park carefully provided for. I think it is going to be one of the most beautiful parks of our country.

I have to thank Chairman ANDERSON, Chairman NOWAK, and all those who made it possible. It is indeed one of the happiest days of my life to see this accomplished.

Mr. DAVIS. Mr. Speaker, I rise in strong support of the conference report to the Water Resources Development Act of 1990.

I would like to take this opportunity to thank my colleagues, Chairman GLENN ANDERSON, ranking Republican JOHN PAUL HAMMERSCHMIDT, subcommittee Chairman HENRY NOWAK, ranking Republican on the subcommittee, ARLAN STANGELAND, and their staffs for their help in getting these projects included in this legislation.

Mr. Speaker, this legislation includes several projects of great importance to my district. One provision in this legislation will be a major boost to the shipping interests in the Great Lakes and more specifically is very important to my district. The reauthorization of a second large lock at Sault Ste. Marie, MI, is important to the continued ability of Great Lakes shippers to remain competitive. With the increase in the number of large vessels in the Great Lakes shipping industry in the last decade, it is important that projects of this nature be kept up to date. This reauthorization would create a second large lock to accommodate these larger vessels.

One of the stumbling blocks to the realization of this project has been the unreasonable local cost-sharing arrangement. The legislation before us allows the Secretary of the Army to revise this arrangement to spread the cost more equitably among those States which will benefit from this new large lock.

A second item of great interest is the provision included in this legislation to allow the State of Michigan to assume the operations of a Federal lock and flood control project on the Crooked River, known as Alanson Lock also. The Army Corps of Engineers has drafted an arrangement with the State and local interests to keep this lock open and functioning. However, this arrangement needed several legislative "fixes" before the agreement could be finalized. This legislation will accomplish this and keep the project operational.

There are a number of other provisions in this legislation which I am pleased the conference committee has retained from the House legislation, and I appreciate the hard work of the conferees and their staffs to bring this bill to the floor.

Mr. LEWIS of Florida. Mr. Speaker, I rise in support of the conference report on the Water Resources Development Act of 1990. I want to address one section, on which I was a conferee, MAG-LEV.

High-speed magnetic levitation, or mag-lev is a new technology for high speed ground transportation. It has the potential to provide an efficient, economical mode of intercity transportation for the 21st century. Mag-lev trains traveling at 300 miles per hour could substitute for 100-to-600 mile airplane flights, substantially reducing growing air traffic congestion.

My own State of Florida, has been very involved in mag-lev technology. In the mid-1970's, Florida began to examine the possibility of a high speed rail corridor linking Tampa/St. Petersburg, Orlando, and Daytona Beach. Today, a route is under consideration from Miami through West Palm Beach to Orlando.

The Subcommittee of the Science Committee held a hearing on high speed railroad technology in West Palm Beach in April 1987. At that time I stated that a high-speed railroad system could play a vital role in satisfying our future transportation needs, but that other countries had a stronger commitment to high-speed technology than did the Federal Government. Expert witnesses representing the French high-speed TGV system, and the Japanese mag-lev system confirmed this. However, there was no mag-lev development in the United States.

Mag-lev vehicles use only one-third the total energy consumed by aircraft over short distances. Electrically powered mag-lev systems could reduce our Nation's need for imported petroleum, a major factor in the balance of trade deficit. At the same time, the environment would benefit from electrically powered mag-lev vehicles by reducing aircraft emissions, noise and vibrations. Moreover, new high temperature superconductors could lead to improved reliability and performance of mag-lev systems.

The question then is not whether or not to invest in mag-lev systems, but rather how to go about it. While the technology was patented in 1968 by two American scientists, Federal research and development efforts were terminated in 1975. Meanwhile, Japan and West Germany have each invested approximately $1 billion and developed and built their own versions of mag-lev systems. As early as 1979, Japan had a test vehicle that reached a speed of 321 miles per hour. West Germany has achieved a speed of 270 miles per hour with its vehicle.

The administration has proposed $9.7 million for a national mag-lev initiative, to be conducted by the Departments of Transportation and Energy and the Army Corps of Engineers. The purpose of this effort is to determine the role of mag-lev in the U.S. transportation system. The team will report to the President and Congress by mid-1992 on whether to pursue future mag-lev development, as well as the potential of the United States to leapfrog existing technologies with an advanced U.S. system. Certainly, this effort is warranted.

The mag-lev provision in this compromise will establish a viable research program. At the same time this will be compatible with the administration's mag-lev initiative. Many areas in the United States, including Florida will benefit from the results of the research program mandated by this legislation.

I look forward to following the progress of this research effort through oversight hearings, once it becomes law. I urge my colleagues to support this legislation.

Mr. ANDERSON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from California [Mr. ANDERSON] that the House suspend the rules and agree to the conference report on the Senate bill, S. 2740.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ANDERSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on S. 2740, just considered and agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PROVIDING FOR PROTECTION OF NATIVE AMERICAN GRAVES

Mr. RICHARDSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5237) to provide for the protection of native American graves, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments as follows:

Senate amendments:

Page 3, line 8, strike out all after "States" down to and including "Institution" in line 10, and insert ". Such term does not include the Smithsonian Institution".

Page 3, line 12, after "States" insert ", including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971".

Page 3, strike out lines 19 to 21, and insert:

(7) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Page 3, line 25, strike out all after "items" down to and including "agency" in line 26 and insert ". Such term does not include the

Smithsonian Institution or any other Federal agency".

Page 5, strike out lines 15 to 17.

Page 5, line 18, strike out "(D)" and insert "(C)".

Page 5, line 19, strike out "judgement" and insert "judgment".

Page 8, line 16, after "ascertainable" insert ", and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group".

Page 8, line 22, strike out all after "subsection." down to and including "subsection." in line 24, and insert "Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.".

Page 19, strike out lines 20 and 21, and insert:

(3) upon the request of any affected party, reviewing and making findings related to—

Page 20, after line 17, insert:

(d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act.

Page 20, line 18, strike out "(d)" and insert "(e)".

Page 20, line 22, strike out "(e)" and insert "(f)".

Page 20, line 26, strike out "(f)" and insert "(g)".

Page 21, line 5, strike out "(g)" and insert "(h)".

Page 21, line 9, strike out "(h)" and insert "(i)".

Page 25, after line 8, insert:

SEC. 15. ENFORCEMENT.

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

Mr. RICHARDSON (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from New Mexico?

Mr. THOMAS of Wyoming. Mr. Speaker, reserving the right to object, I do so in order to yield to the gentleman to explain this proposition.

Mr. RICHARDSON. I thank the gentleman for yielding.

Mr. Speaker, on Monday of this week the House passed H.R. 5237, the Native American Grave Protection and Repatriation Act. This bill will protect Indian gravesites on Federal and tribal lands from looting and establish guidelines by which museums can return culturally identifiable human remains and cultural items back to the tribe of origin. The Senate has amended this legislation and I'd like to take a moment to explain those amendments.

One amendment deletes land owned by any Alaska Native Corporation from being considered as "tribal land."

The ownership section of the bill as passed by the House refers to cultural items inadvertently found while performing an activity such as mining or logging. It requires that the land manager responsible for the land be notified and allows for the activity to resume "after a reasonable amount of time." The Senate amendment replaces "reasonable amount of time" with a 30-day limit.

The section of the bill dealing with the review committee has been amended to allow the committee to "make findings" and to allow that such findings may be admissible in court.

A section has been added to the bill to provide that the U.S. district courts have jurisdiction over any action brought as a result of this legislation.

The definition of the term "museum" has been amended to delete the Smithsonian Institution from inclusion in this legislation. As evidenced by its inclusion in the House version, it is clearly the intent of the House that the Smithsonian be held to the same provisions as all other Federal agencies and museums in the country regarding repatriation. However, in the spirit of compromise I agree with the Senate to exclude the Smithsonian Institution from this bill in favor of similar legislation dealing specifically with the Smithsonian in the next Congress.

I concur with the Senate amendments and urge my colleagues to join me in passing this legislation.

Mr. THOMAS of Wyoming. Mr. Speaker, I thank the gentleman from New Mexico for his explanation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from New Mexico?

There was no objection.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 5399 LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1991, AND AGAINST ITS CONSIDERATION

Mr. FROST, from the Committee on Rules, submitted a privileged report (Rept. No. 101-969) on the resolution (H. Res. 540) waiving certain points of order against consideration of the conference report on the bill (H.R. 5399) making appropriations for the legislative branch for the fiscal year ending September 30, 1991, and for other purposes, and against its consideration, which was referred to the House Calendar and order to be printed.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF CONFERENCE REPORT ON H.R. 5399, LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1991

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 540 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 540

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 5399) making appropriations for the Legislative Branch for the fiscal year ending September 30, 1991, and for other purposes, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore. The gentleman from Texas [Mr. FROST] is recognized for 1 hour.

Mr. FROST. Mr. Speaker, I yield the customary 30 minutes, for purposes of debate only, to the gentleman from New York [Mr. SOLOMON] pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 540 provides for the consideration of the conference report on H.R. 5399, the bill making appropriations for the legislative branch for the fiscal year ending September 30, 1991.

This resolution waives all points of order against the conference report and against its consideration. The rule also provides that the conference report shall be considered as having been read when called up for consideration.

These waivers are necessary so that the House can consider the package which the conferees have worked out over the past few days.

Mr. Speaker, H.R. 5399 provides funding for the legislative branch of our Government, which includes the congressional operations, and related agencies such as the Library of Congress, the General Accounting Office, and the Government Printing Office.

The conference report appropriates $2.161 billion for these purposes in fiscal 1991, $250.5 million less than the amount requested by the administration. The conference agreement also reflects the House position on franking privileges with a few minor modifications.

Mr. Speaker, passage of the rule will allow the House to consider this important conference report expeditiously. I ask my colleagues to support the rule so that we may proceed to consider the merits of this legislation.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this rule is the same as those we have been seeing for the past week or 10 days. All points of order are waived against consideration of the conference report and against the conference report itself.

Mr. Speaker, now, that the reconciliation bill is behind us, we must complete action on these general appropriation bills as quickly as possible.

So I urge approval of the rule so that the process can go forward. I urge support of the rule.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FROST. Mr. Speaker, I have no requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REPORT ON NATIONAL EMERGENCY WITH RESPECT TO PANAMA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 101-254)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and referred to the Committee on Foreign Affairs and ordered to be printed.

(For message, see proceedings of the Senate of today, Saturday, October 27, 1990.)

INTERNATIONAL NARCOTICS CONTROL ACT OF 1990

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 5567) to authorize international narcotics control activities for fiscal year 1991, and for other purposes.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Senate amendments:

Page 14, line 17, strike out "(a)".

Page 14, strike out all after line 22 and over to and including line 13 on page 15.

Page 20, line 5, strike out "strongly".

□ 1620

The SPEAKER pro tempore (Mr. MCNULTY). Is a second demanded?

Mr. BROOMFIELD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. FASCELL] will be recognized for 20 minutes, and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5567 has already passed the House twice in slightly different forms, once as an amendment to H.R. 5269, the Comprehensive Crime Control bill, and as a free-standing bill earlier this week. For a legislative history of this bill, I would refer interested parties to the CONGRESSIONAL RECORD of October 22. The Senate returned H.R. 5567 to the House with two amendments. One strikes the word "strongly" from a phrase in the legislation which stated that the Congress strongly urges the President to use authority already available in existing law to provide debt relief to the Andean countries if certain conditions have been met.

The second amendment struck what was section 8(b) of H.R. 5567. That subsection was intended to address an anomaly in current law regarding ceilings on the number of U.S. military advisers in foreign countries. Section 515(c) of the Foreign Assistance Act of 1961 sets a 6-person ceiling on the number of U.S. military advisers in any one country. That ceiling can be waived either by the President, or by legislative action; however, once the 6-person ceiling is waived, there is no further limit to the number of U.S. military personnel who can be assigned to that country. There was concern on both sides of the aisle that in the Andean countries the absence of any ceiling, which, in the case of Colombia was legislatively waived, and in the case of Bolivia and Peru was waived by the President, might encourage excessive deployment of U.S. military personnel. The committee therefore adopted language in H.R. 5567 which would have established a new ceiling of 12 personnel if the 6 person ceiling were waived. As in current law, the 12-person ceiling could have been waived by the President. This modest provision unfortunately disappeared in the Senate. I would like to put the executive branch on notice that I take this matter very seriously. The issue of appropriate ceilings on U.S. military personnel in the Andes has already been the subject of correspondence between myself and the Honorable WILLIAM S. BROOMFIELD, ranking minority member, and Secretaries Baker and Cheney. That correspondence had encouraged me to believe that the executive branch was prepared to address this issue. The deletion of section 8(b) from this bill leads me to question that belief, and to state my commitment to giving this issue my personal, detailed attention in the coming year.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join with the gentleman from Florida [Mr. FASCELL] in his request, and he has explained the purpose of it.

Mr. SOLOMON. Mr. Speaker, I yield back the balance of my time.

Mr. FASCELL. Mr. Speaker, I have no requests for time and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 5567.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

NATIONAL WEEK TO COMMEMORATE THE VICTIMS OF THE FAMINE IN THE UKRAINE, 1932-1933

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service and Foreign Affairs be discharged from further consideration of the Senate Joint Resolution (S.J. Res. 329) to designate the week of November 3, 1990, through November 10, 1990, as "National Week to Commemorate the Victims of the Famine in the Ukraine, 1932-1933", and to commemorate the Ukrainian famine of 1932-1933 and the policies of Russification to suppress Ukrainian identity, and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

Mr. BROOMFIELD. Mr. Speaker, reserving the right to object, I do so to give the gentleman from Florida [Mr. FASCELL] an opportunity to explain the purpose of this joint resolution.

Mr. FASCELL. Mr. Speaker, will the gentleman yield?

Mr. BROOMFIELD. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Speaker, I rise today in support of Senate Joint Resolution 329. This joint resolution establishes a national week to commemorate and to mourn the many victims of the 1932-33 famine in the Ukraine. It also asks that the American people, through ceremonies, activities, and programs, remember and acknowledge this tragedy.

The great famine in the Ukraine, induced by the policies of Stalin, is one of the great tragedies of our time. It stands as an everlasting indictment of the horrors inflicted on the people of the Ukraine, and others in the Soviet Union by Stalin and his henchmen.

For years, the authorities in the Soviet Union have attempted to deny that such a famine ever took place. Today, the Soviet Union is beginning to confront its brutal and bloody past and to admit the heinous crimes of the Stalinist era. For this we can only be thankful.

This resolution, establishing the week of November 3 to 10, 1990 to commemorate the victims of the horrible Ukrainian famine, is intended to honor those who perished during that time and to ensure that their memory and suffering will never be forgotten and hopefully, never repeated.

I urge my colleagues to support this joint resolution.

Mr. BROOMFIELD. Mr. Speaker, further reserving the right to object. For the past 4 years, I have been privileged to serve on the Commission on the Ukraine Famine of 1932-33.

The Commission has completed its work and disbanded. Its findings are detailed in an excellent report that has been submitted to Congress. Along with the report, there are volumes of hearing records and oral histories that provide a graphic picture of the horror that occurred in Ukraine over a half-century ago.

The Commission learned that in 1932 and 1933, the Soviet Government engaged in genocide against the Ukrainian people by orchestrating a manmade famine in Ukraine that took the lives of more than 7 million people.

We also learned that this was not an aberration in Soviet policy. Instead, it was part of a decades-long effort to destroy the political identity, culture, and will of the Ukrainian people in order to bring them under total subjugation. Judging from recent developments in Ukraine, it is clear how completely the Soviet Union failed in its efforts.

This resolution designates the week of November 3-10, 1990 as the "National Week to Commemorate the Victims of the Famine in Ukraine, 1932-33," It also condemns those policies of the Soviet Government that led to the famine, and expresses the Congress's sympathy for the millions of victims.

The resolution further urges the President to call attention to the policies of the Soviet Union that sought to subjugate the Ukrainian people and were manifested by the Ukrainian Famine of 1932-33.

Finally, the resolution recognizes the changes in policy under President Gorbachev and the Soviet Government to continue to move forward toward democratization and restructuring that will provide a framework for the realization of the legitimate rights and aspirations of the people of Ukraine.

Mr. Speaker, in memory of those who died and in tribute to those who survived the Ukrainian Famine of 1932-33, I urge the passage of Senate Joint Resolution 329.

Mr. GILMAN. Mr. Speaker, nearly 60 years ago 7 million Ukrainians died as a result of a deliberate policy of genocide by the Soviet Union. The Soviet Government, in an attempt to subjugate the people of Ukraine, created a famine in the "Bread Basket" of the Soviet Union by shipping grains out of the area and not allowing any food to come into the Ukraine. Soviet soldiers went house to house and confiscated food, and sealed the borders so no one could leave.

This was the Ukraine Famine of 1932-33, and the subject of a congressionally established Commission on which I was privileged to serve with Congressman BROOMFIELD. During the work of this Commission, we took extensive testimony, and developed a massive record through interviews and oral histories, that documented the tragedy that had occurred in the Ukraine during those 2 years. We also learned that the famine was not an aberration, but part of a Soviet policy that had spanned decades seeking to destroy the political identity, culture, and will of the Ukrainian people.

As a result of the work of the Commission, last year the Soviet Union finally admitted that such a man-made famine had occurred in Ukraine, and we are starting to see independent work done in the Soviet Union on this sad period of their history.

Mr. Speaker, Senate Joint Resolution 329, designating the week of November 3, 1990, as the "National Week to Commemorate the Victims of the Famine in Ukraine, 1932-33," is an important resolution that should be passed. It seeks remembrance of the victims of the famine, and condemnation of the inhuman policies that brought the famine about. However, it also urges the Government of the Soviet Union to continue to move forward toward democratization and restructuring that will provide a framework that recognizes the legitimate rights and aspirations of the Ukrainian people today.

As one of the original cosponsors of the House version of this resolution, and as a member of the Congressional Commission on the Ukraine Famine of 1932-33, I urge our colleagues to pass Senate Joint Resolution 329.

Mr. BROOMFIELD. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 329

Whereas more than 7 million Ukrainians in the Ukrainian Soviet Socialist Republic, one of the member republics of the Union of Soviet Socialist Republics, died of starvation during the years 1932-1933;

Whereas the famine of 1932-1933 was the consequence of deliberate policies of the Government of the Union of Soviet Socialist Republics aiming to destroy the political, cultural, and human rights of the Ukrainian people;

Whereas the economic, social, and political consequences of the famine of 1932-33 are still manifest among the Ukrainian population;

Whereas the Government of the Union of Soviet Socialist Republics, although aware of the famine in Ukraine and having complete control of the entire food supplies within the borders of the Union of Soviet Socialist Republics, nevertheless failed to take relief measures to check the famine of 1932-33 or to alleviate the catastrophic conditions resulting from it;

Whereas the Government of the Union of Soviet Socialist Republics ignored the appeals of international organizations and other nations;

Whereas the United States Commission on the Ukraine Famine, legislated to study and expand world knowledge of the famine, has substantiated, through hearings, eyewitness testimony, and documentation, that the Ukrainian famine of 1932-1933 was the result of a deliberate policy by the Government of the Union of Soviet Socialist Republics, and has published those findings;

Whereas on February 7, 1990, the Central Committee of the Communist Party of Ukraine acknowledged that the Ukrainian famine of 1932-1933 was artificially created by the policies of Stalin and his closest associates;

Whereas the Government of the Union of Soviet Socialist Republics has a long history of suppression of Ukrainian aspirations for the exercise of legitimate human rights and the expression of the cultural and social heritage of Ukrainians; and

Whereas the United States has made intercessions at various times during the course of its history on behalf of citizens of other countries who are oppressed or persecuted by their governments, reflecting the traditional policy of the United States to take cognizance of such abuses of human rights and liberties: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the week of November 3, 1990, through November 10, 1990, is designated as "National Week to Commemorate the Victims of the Famine in Ukraine, 1932-1933"; and

(2) the President is requested to issue a proclamation calling on the people of the United States, State and local government agencies, and interested organizations to observe the week with appropriate ceremonies, activities, and programs.

SEC. 2. Congress condemns the systematic disregard for human life, human rights, and liberties that characterized the policies of the Government of the Union of Soviet Socialist Republics during the Ukrainian famine of 1932-1933 and expresses sympathy for the millions of victims of the famine.

SEC. 3. The President is requested to use public and diplomatic channels to call the attention of the world to the policies of the Union of Soviet Socialist Republics that—

(1) caused the slow death by famine of 7 million Ukrainians during 1932 and 1933; and

(2) for much of the modern history of Ukraine, have suppressed Ukrainian aspirations for the exercise of human rights and the expression of the cultural and social heritage of Ukrainians.

SEC. 4. Congress recognizes the reforms underway in Ukraine and strongly urges the Government of the Union of Soviet Socialist Republics to—

(1) continue to move forward toward democratization and restructuring; and

(2) provide a framework for the realization of the legitimate rights and aspirations of the people of Ukraine.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. COLEMAN of Texas. Mr. Speaker, on rollcall No. 528 I was recorded as not voting because I was home ill.

I ask unanimous consent that the permanent RECORD include my statement of explanation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

CONVEYING U.S. INTERESTS IN A FISH HATCHERY TO THE STATE OF SOUTH CAROLINA

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 3338) to direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes.

The Clerk read as follows:

Senate amendments:

Page 1, after line 2, insert:

TITLE I—FISHERIES AND WILDLIFE PROVISIONS

Page 1 line 3, strike out "1" and insert "101".

Page 2 line 7, strike out "2" and insert "102".

Page 2 line 15, strike out "3" and insert "103".

Page 2 line 20, strike out "4" and insert "104".

Page 3 line 6, strike out "section 3(a)" and insert "subsection (a) of this section".

Page 3 line 11, strike out "5" and insert "105".

Page 4, strike out lines 1 and 7 and insert:

SEC. 106. REAUTHORIZATION OF FISH AND WILDLIFE CONSERVATION ACT OF 1980.

Section 11 of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2910) is amended by striking "and 1990" and inserting "1990, 1991, and 1992".

SEC. 107. ESTABLISHMENT OF WALLKILL RIVER NATIONAL WILDLIFE REFUGE.

(a) SHORT TITLE.—This section may be cited as the "Wallkill River National Wildlife Refuge Act".

(b) FINDINGS.—The Congress finds that—

(1) the Wallkill River and associated riverine wetland habitat dividing the townships of Hardyston, Wantage, and Vernon, New Jersey, has been identified as one of the few high-quality waterfowl concentration areas remaining in the northwestern portion of the State and a valuable wildlife habitat used by a variety of migratory birds including waterfowl, raptors, passerines, and marsh and water birds;

(2) the Wallkill River area—

(A) provides a migratory and nesting habitat for Atlantic Flyway migratory black duck populations;

(B) has been identified by the United States Fish and Wildlife Service as an important black duck habitat; and

(C) is a high priority of the North American Waterfowl Management Plan;

(3) the Wallkill River area is home to several New Jersey State-listed rare and endangered plant and animal species; and

(4) designation of the Wallkill River area as a national wildlife refuge would significantly aid to the conservation of wildlife and other natural resources.

(c) DEFINITIONS.—For the purposes of this Act—

(1) the term "refuge" means the Wallkill River National Wildlife Refuge;

(2) the term "Secretary" means the Secretary of the Interior; and

(3) the term "selection area" means the lands, wetlands, and waters of the Wallkill River in the State of New Jersey.

(d) ESTABLISHMENT OF REFUGE.—(1) The Secretary is authorized to acquire approximately 7,500 acres of lands and waters, as depicted upon a map entitled "Wallkill River National Wildlife Refuge", dated March 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service in the State of New Jersey and elsewhere.

(2) The Secretary may make such minor revisions in the boundaries designated under subsection (a) as may be appropriate to carry out this Act or to facilitate the acquisition of property within the refuge.

(3) The Secretary shall establish the refuge by publication of a notice in the Federal Register and publications of local circulation when sufficient property has been acquired within the boundary of the refuge to constitute an area that can be effectively managed as a national widlife refuge.

(e) PURPOSES.—The primary purposes for which the refuge is established are—

(1) to preserve and enhance the refuge's lands and waters in a manner that will conserve the natural diversity of fish, wildlife, plants, and their habitats for present and future generations;

(2) to conserve and enhance populations of fish, wildlife, and plants within the refuge, including populations of black ducks and other waterfowl, raptors, passerines, and marsh and water birds;

(3) to protect and enhance the water quality of aquatic habitats within the refuge;

(4) to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats; and

(5) to provide opportunities for compatible scientific research, environmental education, and fish and wildlife-oriented recreation.

(f) ADMINISTRATION.—(1) The Secretary shall administer all lands, waters, and interests therein acquired under this Act in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

(2) The Secretary may utilize such other statutory authority as is available to the Secretary for the conservation and development of wildlife and natural resources, the development of recreational opportunities, and interpretive education, as the Secretary considers appropriate to carry out this Act.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Interior—

(1) such sums as are necessary for the acquisition of lands and waters designated pursuant to section 4(a); and

(2) such sums as are necessary for the development, operation, and maintenance of the refuge.

SEC. 108. ESTABLISHMENT OF BAYOU COCODRIE NATIONAL WILDLIFE REFUGE.

(a) FINDINGS.—The Congress finds that—

(1) thousands of acres of bottomland hardwoods are being cleared each year in the Mississippi River Delta;

(2) these forested wetlands represent one of the most valuable and productive wildlife habitat types in the United States, and have extremely high recreational value for hunters, fishermen, birdwatchers, nature photographers, and others;

(3) the Bayou Cocodrie area is a bottomland hardwood swamp which borders over one hundred and fifty species of birds and many other types of wildlife, including several species threatened with extinction, such as the Louisiana population of black bears;

(4) the Bayou Cocodrie area includes some of the least disturbed bottomland hardwood forest in the Southeast and significantly contributes to the biodiversity in the region;

(5) similar habitat located elsewhere is threatened by disruptive practices and/or conversion to other uses; and

(6) this area is deserving of inclusion in the National Wildlife Refuge System.

(b) DEFINITIONS.—For the purposes of this Act—

(1) the term "refuge" means the Bayou Cocodrie National Wildlife Refuge; and

(2) the term "Secretary" means the Secretary of the Interior, acting through the United States Fish and Wildlife Service.

(c) ESTABLISHMENT OF THE REFUGE.—(1) The Secretary is authorized and directed to acquire approximately eighteen thousand acres of lands and waters, as depicted upon a map entitled "Bayou Cocodrie National Wildlife Refuge", dated February 1990 and available for inspection in appropriate offices of the United States Fish and Wildlife Service.

(2) The Secretary may make such minor adjustments in the boundaries designated under subsection (a) as may be appropriate to facilitate acquisition of property within the refuge or to otherwise carry out the purposes of this Act.

(3) When sufficient property within the boundaries has been acquired to constitute an area that can be effectively managed as a refuge, the Secretary shall establish the refuge by publishing a notice to that effect in the Federal Register.

(d) REFUGE PURPOSE.—The Bayou Cocodrie National Wildlife Refuge is established and shall be managed for the purposes of—

(1) conservation and enhancement of wetlands;

(2) general wildlife management as a unit of the National Wildlife Refuge System, including management for migratory birds; and

(3) fish and wildlife-oriented recreational activities.

(e) ADMINISTRATION.—(1) The Secretary shall adminster all lands, waters, and interests therein acquired under this Act in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S. 668dd-668ee).

(2) The Secretary may utilize such additional statutory authority as may be available to him for conservation and development of wildlife and natural resources, water supplies and water control structures, outdoor recreational activities, including hunting and fishing, and interpretive education as he deems appropriate to carry out this Act.

(3) In managing the refuge, the Secretary shall manage an amount of refuge wood-

lands as a contiguous mature forest sufficient to benefit the species of passerine birds that occupy this type of habitat. The Secretary shall give special consideration to accomplishing this objective through use of his current authority, including his authority to establish Research Natural Areas within the refuge.

(4) The Secretary shall permit access to, and the development of, reserved non-Federal mineral interests within the refuge. Any such access and development shall be carried out only in accordance with a special use permit issued by the Secretary which contains such economically reasonable terms and conditions as deemed necessary—

(A) to protect the fish and wildlife resources of, and their habitat in, the affected refuge from any significant adverse effects; and

(B) to minimize, to the maximum extent possible, any adverse effects upon such resources and their habitat. Any term or condition imposed by the Secretary under this subsection is in addition to any other requirement that is imposed under other applicable Federal or Sate law.

The special use permit is not intended to unreasonably restrain established or future oil and gas exploration, development and production activities or to result in the taking of property interests of the non-Federal owner.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

SEC. 109. TRANSFER OF LANDS.

(a) REMOVAL FROM NATIONAL WILDLIFE REFUGE.—Pursuant to the requirements of section 4(a)(3) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)(3)), the approximately 44,550 acres of land designated the Carolina Sandhills Wildlife Management Area and known as the Sand Hills State Forest, as described in Executive Order Numbered 8510, dated August 8, 1940, are hereby removed from the National Wildlife Refuge System.

(b) TRANSFER OF LANDS.—Subject to the terms and conditions set forth in subsection (f), the Secretary of the Interior is authorized and directed to transfer the title, rights, and interest to the lands identified in subsection (a) of this section to the South Carolina Commission of Forestry, an agency of the State of South Carolina, for use of public purposes as a multiple use State forest providing sustained yield production of forest products, public recreation, wildlife benefits, and demonstration and education projects by the South Carolina Commission of Forestry.

(c) RIGHT OF REVERSION.—If—

(1) the Secretary determines that the South Carolina Commission of Forestry is not in compliance with any of such terms and conditions of transfer;

(2) at any time the land ceases to be used for public purposes (except as provided in subsection (d) of this section); or

(3) the South Carolina Commission of Forestry no longer desires to own or operate the Sand Hills State Forest, the land transferred pursuant to subsection (b) of this section shall revert to the United States, to be managed as part of the National Wildlife Refuge System.

(d) ACQUISITION OF ADDITIONAL LANDS.—(1) Subject to the provisions of paragraph (2) of this subsection, the South Carolina Commission of Forestry may acquire tracts of land within or adjacent to the boundaries of the transferred land by exchange or sale of parcels of transferred land, with the proceeds of any such sale being designated for such acquisition.

(2) The acquisition authorized by paragraph (1) of this subsection shall be subject to the following conditions:

(A) The South Carolina Commission of Forestry shall provide notification to the United States Fish and Wildlife Service prior to any such acquisition.

(B) The South Carolina Commission of Forestry has determined prior to such acquisition that such acquisition is in the best interest of the public purposes of the State of South Carolina and is necessary in order to facilitate efficient management and administration of the Sand Hills State Forest area.

(e) REPEAL OF EXECUTIVE ORDER.—Executive Order Numbered 8510, dated August 8, 1940, is repealed as of the date the lands identified in subsection (a) of this section are transferred to the South Carolina Commission of Forestry.

(f) TERMS AND CONDITIONS.—The transfer of lands authorized in subsection (b) of this section shall be conditioned upon the South Carolina Commission of Forestry—

(1) managing the transferred lands for the benefit of such endangered and threatened species of plants or animals which may be present there, and particularly in accordance with the objectives of the Recovery Plan for the Red Cockaded Woodpecker, and any amendments to such plan;

(2) consulting with the United States Fish and Wildlife Service regarding the impacts of its management practices upon endangered and threatened species in the transferred lands under provisions of section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 et seq.), as if the South Carolina Commission of Forestry were a Federal agency;

(3) entering into and abiding by an agreement with the United States Fish and Wildlife Service to provide to the Carolina Sand Hills National Wildlife Refuge at no cost—

(A) basic forest fire protection services (including presuppression, detection, and initial attack of wildfires) for a period of 50 years from the date of transfer subject to the condition that the United States shall pay the South Carolina Commission of Forestry the actual costs of any wildfire suppression activities after a 12-hour period from the initial attack on the fire;

(B) prescribed burning services as requested, up to a maximum of 5,000 acres annually, for a period of 5 years from the date of transfer, subject to smoke management and other related regulations in effect at the time of the request, and contingent upon the South Carolina Commission of Forestry retaining the legal and physical capabiity to perform the service; and

(C) reforestation services for converting approximately 2,300 acres of slash pine population to more desirable species, as determined by the Refuge, in approximately equal intallments over a period not to exceed 10 years from the date of transfer.

SEC. 110. NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT AMENDMENTS OF 1990.

(a) SHORT TITLE.—This section may be cited as the "National Fish and Wildlife Foundation Establishment Act Amendments of 1990".

(b) ELIMINATION OF CAP ON SALARIES.—Section 3(g)(2)(A) of the National Establishment Act (16 U.S.C. 3702(g)(2)(A)) is amended by striking "rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.", and inserting "rates.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 10 of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3709) is amended to read as follows:

"SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

"(a) AUTHORIZATION.—There are authorized to be appropriated to the Department of the Interior not to exceed $15,000,000 for fiscal year 1991, not to exceed $20,000,000 for fiscal year 1992, and not to exceed $25,000,000 for fiscal year 1993.

"(b) USE OF AMOUNTS APPROPRIATED.—(1) Subject to paragraphs (2) and (3), amounts appropriated under this section shall be made available to the Foundation for use for matching, in whole or in part, contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local government agencies.

"(2) No Federal funds authorized under this section shall be used by the Foundation for Administrative expenses of the Foundation, including for salaries, travel and transportation expenses, and other overhead expenses.".

SEC. 111. NEW ENGLAND FISHERY RESOURCES RESTORATION ACT OF 1990.

(a) SHORT TITLE.—This section may be cited as the "New England Fishery Resources Restoration Act of 1990".

(b) PURPOSES.—The purposes of this Act are to—

(1) ensure timely and effective implementation of restoration plans and programs for Atlantic salmon and other fishery resources of selected river systems in New England;

(2) complete a study of fish passage impediments and requirements on small streams and rivers in New England; and

(3) develop an inventory of important fish and wildlife habitat and other natural areas of river basins in New England.

(c) IMPLEMENTATION OF FISHERY RESOURCE RESTORATION PLANS.—The Director of the United States Fish and Wildlife Service, hereinafter referred to as the Director, in consultation with the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration shall formulate, establish and implement programs to restore and maintain nationally significant, interjurisdictional fishery resources originating in New England river systems, including the Connecticut, Thames, Pawcatuck, Merrimack, Saco, Androscoggin, Kennebec, Sheepscot, Duck Trap, St. George, Penobscot, Union, Narraguagus, Pleasant, Machias, Dennys, St. Croix, Meduxnekeag and Aroostock and their tributaries. These programs shall be in accordance with the schedule and responsibilities established in comprehensive basin-wide restoration plans prepared by the Director in cooperation with State, local, and other entities involved and interested in the conservation and management of the affected fishery resources. Preparation and periodic revision of restoration plans, and their implementation, shall be based on a Memorandum of Agreement for each restoration program which shall be entered into by the Director and cooperating entities. The Director shall prepare and submit to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Environment and Public Works an annual report documenting activities undertaken and accomplishment achieved in fulfillment of this section, including an assessment of the prognosis for

restoration of each of the stocks and species involved.

(d) FISH PASSAGE STUDY.—The Director shall conduct a study to identify impediments to upstream and downstream passage of fish in rivers and streams in the New England States due to dams that are not licensed by the Federal Energy Regulatory Commission or other human-caused obstructions. In addition, the study shall identify actions needed to alleviate those impediments where desirable and feasible. The study shall include, but not be limited to, identifying—

(1) all dams not licensed by the Federal Energy Regulatory Commission and other human-caused obstructions on New England rivers and streams where construction of upstream or downstream fish passage facilities or their removal would benefit fishery resources, including an estimate of the degree of benefits expected; and

(2) the proposed nature and size and estimated cost of appropriate fish passage facilities or other actions determined to be necessary and feasible or each dam or other obstruction identified in response to paragraph (1).

The Director shall provide notice to the public of the extent and nature of the study by publication of such information in major newspapers in the region and by other appropriate means. Within three years of the date of enactment of this Act, the Director shall submit a report containing the findings, conclusions and recommendations of the study to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Environment and Public Works.

(e) NEW ENGLAND RIVERS FISH AND WILDLIFE INVENTORY.—The Director shall inventory the natural values of river basins in New England, including the Connecticut, Pawcatuck, Acushnet, North and South (in Plymouth County, Masachusetts), Charles, Merrimack, Saco, Androscoggin, Kennebec, Penobscot, Union, St. Croix, and Aroostock Rivers and their tributaries, and identify fish and wildlife habitat in most need of protection or where public access to the rivers should be provided. In addition, the Director shall, in cooperation with appropriate State agencies and local governments and after providing notice and opportunity for public comment, identify appropriate public or private measures for providing the necessary protection or access for each area included in the inventory. Within two years of the date of enactment of this Act, the Director shall submit a report containing the findings, conclusions, and recommendations of the inventory and assessment to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Environment and Public Works.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director—

(1) $5,000,000 per year for fiscal years 1991, 1992, 1993, 1994, and 1995 to implement fishery resource restoration plans and programs, except for activities related to the design and construction of fish passage facilities, as directed by subsection (c);

(2) $500,000 per year for fiscal years 1991, 1992, and 1993 to conduct the study required under subsection (d); and

(3) $500,000 to conduct the inventory and assessment required under section (e).

SEC. 112. NORTH AMERICAN WETLANDS CONSERVATION ACT AMENDMENTS.

The North American Wetlands Conservation Act (P.L. 101-233) is amended—

(1) in section 4(a)(1)(A) by inserting after "Service" and before the period ", who shall be the responsible Federal official for ensuring Council compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.)";

(2) in section 4(a)(1) by adding at the end thereof the following sentence: "The provisions of P.L. 92-463, as amended, shall not apply to the Council.";

(3) in section 4(f) by inserting after "public" and before the period ", and the Chairman shall take appropriate steps to provide adequate notice to the public of the time and place of such meetings"; and

(4) in section 5(b) by adding at the end thereof the following new sentence:

"Solely for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.), recommendations by the Council for carrying out wetlands conservation projects under section 6(a) of this Act shall be considered Federal actions requiring the preparation of environmental assessments or, where appropriate, environmental impact statement.".

SEC. 113. TENSAS RIVER NATIONAL WILDLIFE REFUGE.

"The final paragraph of the portion of Chapter IV providing supplement appropriation for the Corps of Engineers, Department of the Army, of Public Law 98-63, (97 Stat. 314) is amended by inserting at the end thereof: ", or acquired by any person since June 28, 1980.".

TITLE II—ENVIRONMENTAL ENFORCEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the "Pollution Prosecution Act of 1990".

SEC. 202. EPA OFFICE OF CRIMINAL INVESTIGATION.

(a) The Administrator of the Environmental Protection Agency (hereafter referred to as the "Administrator") shall increase the number of criminal investigators assigned to the Office of Criminal Investigations by such numbers as may be necessary to assure that the number of criminal investigators assigned to the Office—

(1) for the period October 1, 1991, through September 30, 1992, is not less 72;

(2) for the period October 1, 1992, September 30, 1993, is not less than 110;

(3) for the period October 1, 1993, through September 30, 1994, is not less than 123;

(4) for the period October 1, 1994, through September 30, 1995, is not less that 160;

(5) beginning October 1, 1995, is not less than 200.

(b) For fiscal year 1991 and in each of the following 4 fiscal years, the Administrator shall, during each such fiscal year, provide increasing numbers of additional support staff to the Office of Criminal Investigations.

(c) The head of the Office of Criminal Investigations shall be a position in the competitive service as defined in 2102 of title 5 U.S.C or a career reserve position as defined in 3132(A) of title 5 U.S.C and the head of such office shall report directly, without intervening review or approval, to the Assistant Administrator for Enforcement.

SEC. 203. CIVIL INVESTIGATORS.

The Administrator, as soon as practicable following the date of the enactment of this Act, but no later than September 30, 1991, shall increase by fifty the number of civil investigators assigned to assit the Office of Enforcement in developing and prosecuting civil and administrative actions and carrying out its other functions.

SEC. 204. NATIONAL TRAINING INSTITUTE.

The Administrator shall, as soon as practicable but no later than September 30, 1991 establish within the Office of Enforcement the National Enforcement Training Institute. It shall be the function of the Institute, among others, to train Federal, State, and local lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental laws.

(3) by striking sections 205 and 206 and inserting in lieu thereof the following:

"SEC. 205. AUTHORIZATION.

"For the purposes of carrying out the provisions of this Act, there is authorized to be appropriated to the Environmental Protection Agency $13,000,000 for fiscal year 1991, $18,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, $26,000,000 for fiscal year 1994, and $33,000,000 for fiscal year 1995.".

(4) by adding the following new title at the appropriate place in the bill:

"TITLE III—REGIONAL MARINE RESEARCH PROGRAMS

"SEC. 301. REGIONAL MARINE RESEARCH PROGRAMS.

"The Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 et seq.) is amended by adding at the end thereof the following new title:

"TITLE IV—REGIONAL MARINE RESEARCH PROGRAMS

"PURPOSES

"SEC. 401. The purpose of this title is to establish regional research programs, under effective Federal oversight, to—

"(1) set priorities for regional marine and coastal research in support of efforts to safeguard the water quality and ecosystem health of each region; and

"(2) carry out such research through grants and improved coordination.

"DEFINITIONS

"SEC. 402. As used in this title, the term—

"(1) 'Board' means any Regional Marine Research board established pursuant to section 403(a);

"(2) 'Federal agency' means any department, agency, or other instrumentality of the Federal Government, including any independent agency or establishment of the Federal Government and any government corporation;

"(3) 'local government' means any city, town, borough, county, parish, district, or other public body which is a political subdivision of a State and which is created pursuant to State law;

"(4) 'marine coastal waters' means estuaries, waters of the estuarine zone, including wetlands, any other waters seaward of the historic height of tidal influence, the territorial seas, the contigous zone, and the ocean.

"(5) 'nonprofit organization' means any organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation pursuant to section 501(a) of such Code;

"(6) 'region' means 1 of the 9 regions described in section 403(a); and

"(7) 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"REGIONAL MARINE RESEARCH BOARDS

"SEC. 403. (a) Establishment.—A Regional Marine Research board shall be established for each of the following regions:

"(1) the Gulf of Maine region, comprised of the marine and coastal waters off the States of Maine, New Hampshire, and Massachusetts (north of Cape Cod);

"(2) the greater New York bight region, comprised of the marine and coastal waters off the States of Massachusetts (south of Cape Code), Rhode Island, Connecticut, New York, and New Jersey, from Cape Cod to Cape May;

"(3) the mid-Atlantic region, comprised of the marine and coastal waters off the States of New Jersey, Delaware, Maryland, Virginia, and North Carolina, from Cape May to Cape Fear;

"(4) the South Atlantic region, comprised of the marine and coastal waters off the States of North Carolina, South Carolina, Georgia, and Florida, from Cape Fear to the Florida Keys, including the marine and coastal waters off Puerto Rico and the United States Virgin Islands;

"(5) the Gulf of Mexico region, comprised of the marine and coastal waters off the States of Florida, Alabama, Mississippi, Louisiana, and Texas, along the Gulf coast from the Florida Keys to the Mexican border;

"(6) the California region, comprised of the marine and coastal waters off the State of California, from Point Reyes to the Mexican border;

"(7) the North Pacific region, comprised of the marine and coastal waters off the States of California, Oregon, and Washington, from Point Reyes to the Canadian border;

"(8) the Alaska region, comprised of the marine and coastal waters off the State of Alaska; and

"(9) insular Pacific region, comprised of the marine and coastal waters off the State of Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

The Great Lakes Research Office authorized under section 118(d) of the Federal Water Pollution Control Act (33 U.S.C. 1268(d)) shall be responsible for research in the Great Lakes region and shall be considered the Great Lakes counterpart to the research program established pursuant to this title:

"(b) MEMBERSHIP.—

"(1) Composition.—Each Board shall be comprised of members of which—

"(A) 3 members shall be appointed by the Administrator of the National Oceanic and Atmospheric Administration, including 1 member who shall be a Sea Grant Program Director from a State within such region, who shall serve as chairman of the board;

"(B) 2 members shall be appointed by the Administrator of the Environmental Protection Agency; and

"(C) 6 members shall be appointed by Governors of State located within the region.

"(2) QUALIFICATIONS.—Each individual appointed as a member of a Board shall possess expertise, pertinent to the region concerned, in scientific research, coastal zone management, fishery management, water quality management, State or local government, or any other area which is directly relevant to the functions of the Board. A majority of the members of each Board shall be trained in a field of marine or aquatic science and shall be currently engaged in research or research administration.

"(3) TERMS.—Each appointed member of a Board shall serve for a term of 4 years.

"(4) VACANCIES.—In the event of a vacancy, a replacement member shall be appointed in the same manner and in accordance with the same requirements as the member being replaced and shall serve the remainder of the term of the replaced member.

"(5) REIMBURSEMENT OF EXPENSES.—Each appointed member of a Board may be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the member's usual place of residence, in accordance with section 5703 of title 5, United States Code, when engaged in the actual performance of Board duties.

"(c) FUNCTIONS.—Each Board shall, in accordance with the provisions of this title—

"(1) develop and submit to the Administrators of the National Oceanic and Atmospheric Administration and the Environmental Protection Agency a marine research plan, including periodic amendments thereto, that meets the requirements of section 404;

"(2) provide a forum for coordinating research among research institutions and agencies;

"(3) provide for review and comment on research plans by affected users and interests, such as the commercial and recreational fishing industries, other marine industries, State and local government entities, and environmental organizations;

"(4) ensure that the highest quality of research projects will be conducted to carry out the comprehensive plan; and

"(5) prepare, for submission to Congress, a periodic report on the marine environmental research issues and activities within the region in accordance with section 406 of this title.

"(d) POWERS.—Each Board shall be authorized to—

"(1) cooperate with Federal agencies, with States and with local government entities, interstate and regional agencies, other public agencies and authorities, nonprofit institutions, laboratories, and organizations, or other appropriate persons, in the preparation and support of marine research in the region;

"(2) enter into contracts, cooperative agreements or grants to State and local governmental entities, other public agencies or institutions, and nonprofit institutions and organizations for purposes of carrying out the provisions of this title;

"(3) collect and make available through publications and other appropriate means, the results of, and other information pertaining to, the research conducted in the region;

"(4) call conferences on regional marine research and assessment issues, giving opportunity for interested persons to be heard and present papers at such conferences;

"(5) develop and stimulate, in consultation with the Department of State, joint marine research projects with foreign nations;

"(6) utilize facilities and personnel of existing Federal agencies, including scientific laboratories and research facilities;

"(7) accept, and for all general purposes of this Act, utilize funds from other sources, including but not limited to State and local funds, university funds, and donations; and

"(8) acquire secret processes, inventions, patent applications, patents, licenses, and property rights, by purchase, license, lease, or donation.

"(e) ADMINISTRATION.—

"(1) PRACTICES AND PROCEDURES.—Each Board shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this title. Each Board should use existing research administrative capability to the extent practicable.

"(2) COMMITTEES AND SUBCOMMITTEES.—Each Board shall establish such committees and subcommittees as are appropriate in the performance of its functions.

"(3) STAFF AND SUPPORT.—Each Board is authorized to hire such staff as are necessary to carry out the functions of the Board.

"(f) TERMINATION.—Each Board shall cease to exist on October 1, 1999, unless extended by Congress.

"REGIONAL RESEARCH PLANS

"SEC. 404. (a) DEVELOPMENT AND AMENDMENT OF REGIONAL PLANS.—

"(1) IN GENERAL.—Each Board shall develop a comprehensive 4-year marine research plan for the region for which the Board is responsible, and shall amend the plan at such times as the Board considers necessary to reflect changing conditions, but no less frequently than once every 4 years.

"(2) REVIEW AND CONSIDERATION OF NATIONAL PLAN.—In the development and amendment of its research plan, the Board shall consider findings and recommendations of the national plan developed pursuant to the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.).

"(b) CONTENTS OF PLAN.—Such marine research plan shall include—

"(1) an overview of the environmental quality conditions in the coastal and marine waters of the region and expected trends in these conditions;

"(2) a comprehensive inventory and description of all marine research related to water quality and ecosystem health expected to be conducted in the region during the 4-year term of the research plan;

"(3) a statement and explanation of the marine research needs and priorities applicable to the marine and coastal waters of the region over the upcoming 10-year period with emphasis on the upcoming 3-to-5 year period;

"(4) an assessment of how the plan will incorporate existing marine, coastal, and estuarine research and management in the region, including activities pursuant to section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330) and section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461); and

"(5) a general description of marine research and monitoring objectives and timetables for achievement through the funding of projects under this title during the 4-year period covered by the plan so as to meet the priorities specified in the plan in accordance with paragraph (3).

"(c) PLAN REVIEW AND APPROVAL.—

"(1) IN GENERAL.—When a Board has developed a marine research plan, including amendments thereto, the Board shall submit the plan to the Administrator of the National Oceanic and Amospheric Administration and the Administration of the Environmental Protection Agency, who shall jointly determine whether the plan meets the requirements of subsection (b).

"(2) TIME FOR APPROVAL OR DISAPPROVAL.—The Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency, shall jointly approve or disapprove such research plan within 120 days after receiving the plan.

"(3) ACTION AFTER DISAPPROVAL.—In the case of disapproval of such research plan,

the Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency shall jointly notify the appropriate Board in writing, stating in detail the revisions necessary to obtain approval of the plan. Such Administrators shall approve or disapprove the revised plan within 90 days after receiving the revised plan from the Board.

"RESEARCH GRANT PROGRAM

"SEC. 405. (a) PROGRAM ADMINISTRATION.—The Administrator of the National Oceanic and Atmospheric Administration shall administer a grant program to support the administrative functions of each Board.

"(b) RESEARCH GRANTS.—(1) Each Board may annually submit a grant application to the Administrator of the National Oceanic and Atmospheric Administration to fund projects aimed at achieving the research priorities set forth in each research plan, including amendments thereto, developed and approved pursuant to section 404.

"(2) Project eligible for funding under this section shall include research, investigations, studies, surveys, or demonstrations with respect to—

"(A) baseline assessment of marine environmental quality, including chemical, physical, and biological indicators of environmental quality;

"(B) effects or potential effects of contaminants, including nutrients, toxic chemicals and heavy metals, on the environment, including marine and aquatic organisms;

"(C) effects of modification of habitats, including coastal wetlands, seagrass beds and reefs, on the environment, including marine organisms;

"(D) assessment of impacts of pollutant sources and pollutant discharges into the coastal environment;

"(E) transport, dispersion, transformation, and fate and effect of contaminants in the marine environment;

"(F) marine and estuarine habitat assessment and restoration;

"(G) methods and techniques for modeling environmental quality conditions and trends;

"(H) methods and techniques for sampling of water, sediment, marine and aquatic organisms, and demonstration of such methods and techniques;

"(I) the effects on human health and the environment of contaminants or combinations of contaminants at various levels, whether natural or anthropogenic, that are found in the marine environment;

"(J) environmental assessment of potential effects of major coastal and offshore development projects in the region;

"(K) assessment of the effects of climate change on marine resources in the region; and

"(L) analysis and interpretation of research data for the benefit of State and local environmental protection and resource management agencies in the region.

"(3) Grant applications submitted pursuant to this subsection shall include—

"(A) a description of the specific research projects to be conducted;

"(B) identification of the organization responsible for each project and the principal investigator directing the project;

"(C) a budget statement for each project;

"(D) a schedule of milestones and interim products for each research project;

"(E) a description of the relationship of the proposed project to the goals, objectives, and priorities of the research plan for the region and to other research projects; and

"(F) any other information which may be required by the Administrator.

"(c) REVIEW AND APPROVAL OF PROJECT PROPOSALS.—(1) The Administrator of the National Oceanic and Atmospheric Administration shall review the annual grant application and, with the concurrence of the Administrator of the Environmental Protection Agency, approve such grant application with such conditions as are determined to be appropriate based on peer reviews conducted pursuant to paragraph (2).

"(2) The Administrator of the National Oceanic and Atmospheric Administration shall develop a system of peer review of grant applications which shall ensure that only the highest quality research is approved for funding and that each project is reviewed by research scientists outside the region concerned.

"(d) REPORTING.—Any recipient of a grant under this section shall report to the appropriate Board, not later than 18 months after award of the grant, on the activities of such recipient conducted pursuant to this subsection. Such report shall include narrative summaries and technical data in such form as the Administrator of the National Oceanic and Atmospheric Administration may require.

"REPORT ON RESEARCH PROGRAM

"SEC. 406 (a) PREPARATION AND SUBMISSION OF REPORT.—Each Board receiving a grant under section 405 shall, not later than 2 years after the approval of its comprehensive plan under section 405 and at 2-year intervals thereafter, prepare and submit to the Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency a report describing—

"(1) the findings and conclusions of research projects conducted in the region;

"(2) recommendations for improvements in the design or implementation of programs for the protection of the marine environment; and

"(3) available data and information concerning ecosystem health within the region.

"(b) TRANSMITTAL TO CONGRESS.—Upon receipt of a report prepared by a Board under subsection (a), the Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency shall transmit a copy of such report to the Committees on Commerce, Science, and Transportation and on Environment and Public Works of the Senate and to the Committee on Merchant Marine and Fisheries of the House of Representatives.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 407. (a) IN GENERAL.—For purposes of carrying out the provisions of this title, there are authorized to be appropriated $18,000,000 for each of the fiscal years 1992 through 1996.

"(b) ALLOCATION.—(1) Of funds appropriated in any fiscal year, not more than $500,000 shall be reserved for administration of this title by the National Oceanic and Atmospheric Administration and the Environmental Protection Agency.

"(2) Funds appropriated in a fiscal year which are available after allocation pursuant to paragraph (1), shall be used to support the administrative costs of Boards established pursuant to subsection 403(a), provided that such funding does not exceed $300,000 for each research Board in each fiscal year.

"(3) Seventy-five percent of funds appropriated in a fiscal year available after allocation pursuant to paragraphs (1) and (2), shall be allocated equally among Boards located in regions submitting research project grant applications pursuant to section 405(b).

"(4) Twenty-five percent of funds appropriated in a fiscal year available after allocation pursuant to paragraphs (1) and (2), shall be allocated among Boards located in regions submitting research project grant applications pursuant to section 405(b) which, in the judgment of the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Administrator of the Environmental Protection Agency, propose the most needed and highest quality research.".

TITLE IV—FOREST FOUNDATION

SECTION 401. SHORT TITLE.

This title may be cited as the "National Forest Foundation Act"

SEC. 402. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Forest Foundation (hereinafter referred to as the "Foundation") as a charitable and nonprofit corporation domiciled in the District of Columbia.

(b) PURPOSES.—The purposes of the Foundation are to—

(1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service of the Department of Agriculture;

(2) undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and

(3) undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry and other programs administered by the Forest Service.

(c) LIMITATION AND CONFLICTS OF INTERESTS.—(1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

(2) No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation, partnership, enity, or organization in which such director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

SEC. 403. BOARD OF DIRECTORS OF THE FOUNDATION

(a) ESTABLISHMENT AND MEMBERSHIP.—The Foundation shall have a governing Board of Directors (hereinafter referred to as the "Board"), which shall consist of fifteen Directors, each of whom shall be a United States citizen. At all times, a majority of members of the Board shall be educated or have actual experience in natural or cultural resource management, law, or research. To the extent practicable, members of the Board shall represent diverse points of view relating to natural and cultural resource issues. The Chief of the Forest Service shall be an ex officio nonvoting member of the Board.

(b) APPOINTMENT AND TERMS.—Within one year from the date of enactment of this title, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall appoint the Directors of the Board. Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint one-third each of the Directors to terms of two, four, and six years respectively. A vacancy on the Board shall be filled within sixty days of such vacancy in the manner in which the original appointment was made. No individual may serve more than twelve consecutive years as a Director.

(c) CHAIRMAN.—The chairman shall be elected by the Board from its members. A chairman shall serve for a two-year term, and may be re-elected to the post during his tenure as a Director.

(d) QUORUM.—A majority of the current voting membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board by majority vote of the Board of Directors and that vacancy filled in accordance with subsection (b) of this section.

(f) REIMBURSEMENT OF EXPENSES.—Voting members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties for the Foundation. Such reimbursement may not exceed such amount as would be authorized under section 5703 of title 5, United States Code, for the payment of expenses and allowances for individuals employed intermittently in the Federal Government service.

(g) GENERAL POWERS.—The Board may complete the organization of the Foundation by appointing employees, adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this subtitle, and undertaking other such acts as may be necessary to function and to carry out the provisions of this subtitle.

(h) OFFICERS AND EMPLOYEES.—Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

SEC. 404. CORPORATE POWERS AND OBLIGATIONS.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States and in foreign countries;

(3) shall have its principal offices in the Washington, D.C. metropolitan area; and

(4) shall at all times maintain a designated agent in the District of Columbia authorized to accept service of process for the Foundation.

(b) NOTICE AND SERVICE OF PROCESS.—The serving of notice to, or service of process upon, the agent required under this paragraph, or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(c) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(d) POWERS.—To carry out its purposes, the Foundation shall have, in addition to powers otherwise authorized under this title, the usual powers of a corporation in the District of Columbia, including the power to—

(1) accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income therefrom or other interest therein;

(2) acquire by donation, gift, devise, purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(4) borrow money and issue bonds, debentures, or other debt instruments;

(5) sue and be sued, and complain and defend itself in any court of competent jurisdiction (except that the Directors of the Board shall not be personally liable, except for gross negligence);

(6) enter into contracts or other arrangements with public agencies, private organizations, and persons and to make such payments as may be necessary to carry out the purposes thereof; and

(7) do any and all acts necessary and proper to carry out the purposes of the Foundation.

(e) PROPERTY.—(1) the Foundation may acquire, hold and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase or exhange. For the purposes of this title, an interest in real property shall include, but not be limited to, mineral and water rights, rights of way, and easements appurtenant or in gross. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(2) No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Chief of the United States Forest Service to be valuable for purposes established in this title shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

(3) The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto.

(4) Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gift, or transfers to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

SEC. 405. ADMINISTRATIVE SERVICES AND SUPPORT.

(a) STARTUP FUNDS.—For purposes of assisting the Foundation in establishing an office and meeting initial administrative and other startup expenses, the Secretary is authorized to provide to the Foundation $500,000, from funds appropriated pursuant to section 410(a), per year for the two years following the date of enactment of this title. Such funds shall remain available to the Foundation until they are expended for authorized purposes.

(b) MATCHING FUNDS.—In addition to the startup funds provided under subsection (a) of this section, for a period of five years from the date of enactment of this title, the Secretary is authorized to provide matching funds for administrative expenses incurred by the Foundation as authorized by section 410 of this title including reimbursement of expenses under section 403, not to exceed then current Federal Government per diem rates.

(c) ADMINISTRATIVE EXPENSES.—At any time, the Secretary may provide the Foundation use of Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement, with such limitations and on such terms and conditions as the Secretary shall establish.

SEC. 406. VOLUNTEERS.

The Secretary may accept, without regard to the civil service classification laws, rules and regulations, any director, officer, employee or agent of the Foundation as a volunteer for purposes of the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a through 558d; 86 Stat. 147).

SEC. 407. AUDITS AND REPORT REQUIREMENTS.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (36 U.S.C. 1101 through 1103; Public Law 88-504) the Foundation shall be treated as a private corporation established under Federal law.

(b) ANNUAL REPORTS.—The Foundation shall, transmit each year to Congress a report of its proceedings and activities of the previous year, including a full and complete statement of its receipts, expenditures, and investments.

SEC. 408. UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, acts or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligations of the Foundation.

SEC. 409. ACTIVITIES OF THE FOUNDATION AND UNITED STATES FOREST SERVICE.

The activities of the Foundation authorized under the provisions of this Act shall be supplemental to and shall not preempt any authority or responsibility of the United States Forest Service under any other provision of law.

SEC. 410. AUTHORIZATION OF APPROPRIATIONS.

(a) START-UP FUNDS.—For the purposes of section 405 of this title, there are authorized to be appropriated $1,000,000.

(b) MATCHING FUNDS.—For the purposes of section 405 of this title, during the five-year period following the date of the enactment of this title, there are authorized to be appropriated $1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation.

The SPEAKER pro tempore. Is a second demanded?

Mr. FIELDS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. STUDDS] will be recognized for 20 minutes, and the gentleman from Texas

[Mr. FIELDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. STUDDS].

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3338, as introduced by Mr. SPRATT, would have transferred a Federal fish hatchery to the State of South Carolina. As passed by the House last July it also included provisions to rename a fish research lab after SILVIO CONTE, to study the feasibility of establishing a Federal fish hatchery in West Virginia, and to name a Fish and Wildlife forensics lab after the former chief of law enforcement at the Fish and Wildlife Service.

As passed by the other body, the bill contains several additional environmental and wildlife-related provisions.

It would establish two new national wildlife refuges—one in New Jersey and one in Louisiana, and transfer a unit of the refuge system in South Carolina to that State. Under that transfer, the state of South Carolina will be treated as a Federal agency under the Endangered Species Act for purposes of protecting endangered species present on the transferred lands.

It includes the text of the House-passed bill to reauthorize the Fish and Wildlife Conservation Act for an additional 2 years.

The bill also requires an increase in the number of EPA law enforcement officers, and establishes an environmental law enforcement training institute.

In addition, the bill increases the authorization for the U.S. Fish and Wildlife Foundation from $5 million annually to $25 million annually over the next 3 years, as would H.R. 5255, which was passed by the House last month. However, as passed by the House, H.R. 5255 would have changed the ratio of matching funds from 1:1 to a more ambitious 2:1, reflecting the impressive success of the Foundation in raising contributions and stretching Federal dollars further.

The Foundation testified before the Subcommittee on Fisheries and Wildlife on its record of raising more than $2 for each Federal dollar received. The committee believes that the Foundation should strive to maintain that record, and while I would have preferred to change the statutory requirement to reflect a 2-to-1 match, I am satisfied with the commitment from the Foundation to maintain its impressive pace.

The bill also contains the text of title II of H.R. 5255 which directs the Fish and Wildlife Service to move ahead more rapidly in restoring fisheries to the river system in New England.

Finally, the bill amends the Marine Protection, Research and Sanctuaries Act to add a new title IV to establish a network of marine research boards around the country. The principal purpose of each board is to organize and focus the marine research and monitoring efforts within each of the nine regions established by the bill.

Several points deserve emphasis. First, these regional boards and the plans and projects authorized by the bill are not intended to authorize new bricks and mortar. Existing administrative mechanisms within each region are to be utilized wherever possible and as much as possible. The dollars and cents under this program are to finance the development and implementation of a more cohesive research and assessment program within each region.

Second, the appointments vest significant control over the character of each board with NOAA, EPA and the Governors of participating States. The committee does not expect that these appointments will necessarily be filled with NOAA, EPA or State employees, but rather that an effort will be made to maximize the participation of those with expertise within the region—including representatives of scientific institutions and private organizations as well.

Third, the committee expects that the plans developed by each regional board will encompass research, assessment, and monitoring needs within the region, and that projects funded under the grants program will reflect a similar balance. Hence, the appointments themselves ought to include expertise that reflects the broad mandate of each board and plan.

Fourth, some have expressed the reservation that the National Oceanic and Atmospheric Administration (NOAA) will seek to channel the grants either to in-house work or solely to the traditional recipients of the Sea Grant Program. Neither should be the case. The committee intends that NOAA and the regional boards will use existing institutions wherever possible, but only for administrative purposes.

Fifth, every effort should be made by the regional boards and by NOAA in its oversight and approval of the regional plans to make sure that any new undertakings financed through the program mesh well with existing research, assessment, and monitoring efforts.

In closing, Mr. Speaker, I would like to commend Mr. SPRATT and Mr. TALLON for their leadership in bringing this bill to the point where final action is possible. The provisions in this legislation are worthwhile, good for the environment, good for wildlife, and I urge Members to support the bill.

Mr. Speaker, I reserve the balance of my time.

□ 1630

Mr. FIELDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3338, legislation which we recently received back from the Senate.

Embodied in this legislation are a number of titles which address fish and wildlife issues the House of Representatives has already acted on and adopted. H.R. 3338 transfers a fish hatchery and a wildlife management area from the Federal Government to the State of South Carolina. Both transfers are supported by the administration. The bill also creates new wildlife refuges in the States of New Jersey and Louisiana. These are also supported by the administration.

In addition, the bill reauthorizes the Fish and Wildlife Conservation Act of 1980 and amends the Fish and Wildlife Foundation Establishment Act. The House earlier this month supported the adoption of both of these measures.

Mr. Speaker, this package of fish and wildlife legislation has been worked out by the Members and staff of the Merchant Marine and Fisheries Committee and the Senate Environment and Public Works Committee, and I commend them for their work.

Mr. Speaker, since this is a package of various pieces of legislation pulled together, there are sections that cause me some concerns though. The title that deals with a marine research program could have been strengthened and the title that addressees EPA enforcement could have been broadened, but with the last hours of Congress passing before us, I would say that overall, this is a good package, and I urge my colleagues to join me in supporting the adoption of H.R. 3338.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. STUDDS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the motion offered by the gentleman from Massachusetts [Mr. STUDDS] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 3338.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

TRIBUTE TO MAJORITY AND MINORITY LEADERSHIP OF HOUSE

(Mr. MURTHA asked and was given permission to address the House for 1 minute.)

Mr. MURTHA. Mr. Speaker, I want to commend the leadership in the House, the role of the Speaker and the minority leader, on the bill that passed last night. Whether one agrees or not with the legislation, it certainly was impressive to me the way they worked together to pass a bipartisan bill. I think the House can be proud of those results.

We might have disagreements about what the final result was, but certainly there is not disagreement about the way the debate was conducted, the way the meetings were conducted, and the results.

I predicted earlier this year it would be practically impossible to pass a bill of that magnitude this close to an election. It reflects on the courage of the Members of the House to be able to pass legislation this close to an election.

Mr. Speaker, I have to compliment the gentleman from Washington [Mr. FOLEY] and the gentleman from Illinois [Mr. MICHEL] for the tremendous job they did in trying to fashion this legislation. I know everyone agreed earlier that we should have a summit agreement, and then there was a lot of criticism later on. Finally, the results show that the whole thing worked out fine.

Mr. Speaker, I give my compliments to the Speaker and minority leader for the outstanding job they did in this legislation that passed last night.

AUTHORIZING REINSTATEMENT OF A CERTAIN OIL AND GAS LEASE

Mr. RAHALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1805) to authorize the Secretary of the Interior to reinstate oil and gas lease LA 033164, with House amendments thereto, and recede from the House amendments to the Senate bill.

The Clerk read the title of the Senate bill.

The text of the House amendments to the Senate bill is as follows:

House amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Oil and Gas Leasing Amendments Act of 1990".

SEC. 2. TREATMENT OF SECTION 14 LEASES.

Section 14 of the Mineral Leasing Act (30 U.S.C. 223) is amended by inserting "(a)" before the first sentence and by adding the following new subsection at the end thereof:

"(b) Notwithstanding any other provision of law, any lease issued pursuant to subsection (a), shall, upon renewal on or after the date of enactment of the Federal Oil and Gas Leasing Amendments Act of 1990, include the terms and conditions of noncompetitive leases issued under section 17, and all requirements applicable to such noncompetitive leases shall apply in the same manner and to the same extent to any lease issued under subsection (a).".

SEC. 3. REINSTATEMENT; IN GENERAL.

Section 31(g) of the Mineral Leasing Act (30 U.S.C. 188(g)) is amended by adding the following new paragraph:

"(3) Notwithstanding any other provision of law, any lease issued under section 14 shall be eligible for reinstatement under provisions of this section applicable to noncompetitive leases issued under section 17, except that upon reinstatement such lease shall include the terms and conditions of noncompetitive leases issued under section 17, and all requirements applicable to such noncompetitive leases shall apply in the same manner and to the same extent to any lease issued under section 14.".

SEC. 4. REINSTATEMENT OF CERTAIN LEASES.

(a) Notwithstanding any other provision of law, United States oil and gas leases CALA 033164, CAS 019746C, and CAS 021009B shall be eligible for reinstatement pursuant to section 31(g)(3) of the Mineral Leasing Act (30 U.S.C. 188(g)(3)).

(b) Within 30 days after the enactment of this Act, the Secretary of the Interior shall give written notice by registered mail to the last lessee of record for each of the leases listed in subsection (a) that said lessees may petition for reinstatement of such leases in accordance with this subsection and the provisions of section 31 applicable to noncompetitive leases issued under section 17 of the Mineral Leasing Act (30 U.S.C. 188). The lessee shall have 60 days from the date of the Secretary's notice to file such petition. No lease may be reinstated if the lessee fails to file such a petition within 60 days from the date of the Secretary's notice. If a lessee files such a petition within 60 days from the date of the Secretary's notice, and upon determination by the Secretary that any lease listed in subsection (a) qualifies for reinstatement in all respects except for compliance with the deadlines imposed by section 31(d) of the Mineral Leasing Act (30 U.S.C. 188(d)), the Secretary shall reinstate the lease.

SEC. 5. MINING PROJECTS.

(a) The Director of the Bureau of Mines is authorized and directed to enter into such arrangements as may be necessary with the Idaho Geological Survey to conduct a joint mining experimental project in the State of Idaho to demonstrate the efficacy of extracting and processing black sands from alluvial placer deposits for yttrium and rare earth elements. The project shall be completed prior to September 30, 1993. There is authorized to be appropriated $1,000,000 to carry out this subsection.

(b) The Director of the Bureau of Mines is authorized and directed to enter into such arrangements as may be necessary with the Mackay School of Mines' Center for Strategic Materials Research and Policy Study to conduct a joint mining experimental project in the State of Nevada to determine the genesis of platinum-group metals associated with hydrothermal ore deposits and their distribution in Nevada. The project shall be completed prior to September 30, 1993. There is authorized to be appropriated $1,200,000 to carry out this subsection.

(c) In furtherance of the goals and objectives of the Mining and Minerals Policy Act of 1970, the Secretary of Agriculture, acting through the Chief, National Forest Service, is authorized and directed to enter into such arrangements as may be necessary to undertake a titanium mining demonstration project in the Angeles National Forest, California, pursuant to the unsolicited proposal "Soledad Canyon Demonstration Project" dated March 5, 1988.

(d) Notwithstanding any other provision of law, in order to demonstrate the efficacy of utilizing effluents from abandoned coal mines for the purpose of establishing fishery resources the State of West Virginia may allocate up to $2,500,000 of the annual grants available to the State under section 402(g)(2) of the Surface Mining Control and Reclamation Act of 1977 for the purpose of establishing a fish hatchery in McDowell County, West Virginia.

Amend the title so as to read: "An Act to amend sections 14 and 31 of the Mineral Leasing Act, and for other purposes.".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

Mr. CRAIG. Mr. Speaker, reserving the right to object, I do so to state S. 1805 will allow the reinstatement of oil and gas leases issued under section 14 of the Mineral Leasing Act. It also makes eligible for reinstatement 3 leases in California that inadvertently lapsed. It sets a 20-year term on the renewal of future section 14 leases.

The administration supports the Senate revision.

Mr. Speaker, I yield to the gentleman from West Virginia to explain his request.

Mr. RAHALL. Mr. Speaker, this legislation was first passed by the Senate on September 11. On October 10, the House amended and passed the bill. On Tuesday, the Senate disagreed to our amendments.

We are accepting the Senate version of this legislation.

S. 1805 deals with a class of Federal onshore oil and gas leases issued prior to 1935 under section 14 of the original 1920 version of the Mineral Leasing Act.

There is no diligence requirement on these leases. Under the amendment, these Federal leases would become subject to a 20-year diligent development requirement.

That concludes my explanation. But I would also note that this appears to be the last time the gentleman from Idaho and myself will be working in this fashion on a bill. Since 1985, LARRY has been the ranking Republican on the Mining Subcommittee and I have served as chairman. While I believe I will continue in that capacity next year, LARRY is moving on. It has been an honor and a distinction, LARRY, to have worked with you.

Mr. CRAIG. Mr. Speaker, continuing my reservation of objection, let me thank the gentleman from West Virginia [Mr. RAHALL] for those kind words, and also the appreciation I have had in working with him in a very cooperative manner in the Subcommittee on Mining and Natural Resources, which the gentleman chairs. I truly appreciated his willingness to gain interest and knowledge of the hard rock mining industry of the West, which, of course, in many instances is unique to Western States, one like Idaho that I represent. I do

appreciate that working relationship that we have had.

Mr. Speaker, I look forward to continuing that possibly from the other body with him.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. RAHALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on the House amendments to the Senate bill, S. 1805.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

MODIFYING EMPLOYMENT TAX TREATMENT OF CERTAIN CREWMEMBERS ON FISHING VESSELS

Mr. DONNELLY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4468) to amend the Internal Revenue Code of 1986 to modify the employment tax treatment of certain crewmembers on fishing vessels.

The Clerk read as follows:

H.R. 4468

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATION OF EMPLOYMENT TAX TREATMENT OF CERTAIN CREW MEMBERS ON FISHING VESSELS.

(a) 10-MEMBER CREWS PERMITTED.—

(1) AMENDMENT OF 1986 CODE.—Paragraph (20) of section 3121(b) of the Internal Revenue Code of 1986 (defining employment) is amended by striking "fewer than 10" and inserting "10 or fewer'.

(2) AMENDMENT OF SOCIAL SECURITY ACT.—Paragraph (20) of section 210(a) of the Social Security Act is amended by striking "fewer than 10" and inserting "10 or fewer".

(b) CERTAIN CASH REMUNERATION PERMITTED.—

(1) AMENDMENT OF 1986 CODE.—Subparagraph (A) section 3121(b)(20) of such Code is amended to read as follows:

"(A) such individual does not receive any cash remuneration other than as provided in subparagraph (B) and other than cash remuneration—

"(i) which does not exceed $50 per trip,

"(ii) which is contingent on a minimum catch, and

"(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,".

(2) AMENDMENT OF SOCIAL SECURITY ACT.—Subparagraph (A) of section 210(a)(20) of the Social Security Act is amended to read as follows:

"(A) such individual does not receive any cash remuneration other than as provided in subparagraph (B) and other than cash remuneration—

"(i) which does not exceed $50 per trip,

"(ii) which is contingent on a minimum catch, and

"(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to remuneration paid after December 31, 1990.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall also apply to remuneration paid after December 31, 1984, and before January 1, 1991, unless the payor treated such remuneration (when paid) as being subject to tax under chapter 21 of the Internal Revenue Code of 1986.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Massachusetts [Mr. DONNELLY] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. SCHULZE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. DONNELLY].

Mr. DONNELLY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4468. I introduced this bill in April of this year, and it has been acted on favorably by the Committee on Ways and Means.

H.R. 4468 addresses the tax status of fishermen on small fishing vessels. It clarifies the treatment of individuals who work on small fishing vessels, and has been addressed specifically by Congress in the past.

H.R. 4668 clarifies the current law that the vessel have "fewer than 10" individuals, and specifies that this test is to be applied on average, quarterly basis.

In general, individuals who work on small boats are generally not subject to employment tax withholding on their income. Rules achieving this result were added to the Internal Revenue Code in 1976. Since then, fishermen in this category have complied with the law and have paid their taxes. They thought—and rightly so—that Congress had clarified the rules.

These family fishermen were right—until now. After more than a decade of trouble-free experience with the law, a bureaucratic policy change at the IRS has resulted in, without warning, a change in the rules.

The IRS is challenging the relationship which these family fishermen have with those who work on their boats—a relationship which dates back to the whaling days of New England in the 1600's. I think that this is unfair. And is made even more outrageous by the fact that the fishermen at issue have fully complied with the law.

The IRS policy could have a chilling effect on family fishermen all over America. If the IRS is allowed to prevail, the future of the family fishing industry in America is in jeopardy. I realize that this procedure today is somewhat unorthodox, but it is imperative that Congress act before we adjourn.

As I said at the beginning of my statement, Mr. Speaker, the Committee on Ways and Means approved this legislation. Unfortunately, there was not an opportunity to add this legislation to the budget bill which Congress passed this morning.

Let me say in closing, Mr. Speaker, that the Treasury Department has testified in support of this legislation; the administration does not object to it. I urge that the bill be passed.

I attach a clarification for the RECORD.

CLARIFICATION OF EMPLOYMENT TAX STATUS OF CERTAIN FISHERMEN

PRESENT LAW

Service as a crew member on a fishing vessel is excluded under certain conditions from the definition of employment for purposes of determining wages subject to employment taxes (Internal Revenue Code sec. 3121(b)(20) and 3401(a)(17)). In general, among the conditions that must be satisfied under present law are requirements that the individual receive as compensation for such service only a share of the boat's catch (or a share of the proceeds from the sale of the catch), and that the operating crew of the boat normally be made up of fewer than 10 individuals.

EXPLANATION OF PROPOSAL

The proposal generally would require that the operating crew of the boat normally consist of 10 or fewer individuals. This would be a statutory change; report language would provide that this determination would be made at the beginning of each quarter by looking back over the immediately preceding four quarters to see whether the boat's operating crew consisted of 10 or fewer individuals on at least 50 percent of the trips during that period. The report would also note that no inference is intended from the addition of this language with respect to the proper interpretation of present law.

Second, under the proposal, service as a crew member on a fishing vessel would be treated as meeting the exclusion from the definition of employment even if, in addition to a share of the boat's catch, the individual received an additional amount of compensation (such as the additional payment described in Situation 1 of Revenue Ruling 77-102, 1977-1 C.B. 299, or any similar payment designed to have substantially the same effect). This rule would apply provided that (1) the additional amount does not exceed $50 per trip, (2) payment of the amount is contingent on the attainment of some minimum level of catch, and (3) the amount is paid solely in recognition of the individual's performance of additional duties, such as those of mate, engineer, or cook, for which it is traditional in the industry to receive such additional compensation.

EFFECTIVE DATE

The proposal is generally effective for taxable years beginning after December 31, 1990.

The provisions relating to additional compensation would be effective for taxable years beginning after December 31, 1984 unless the payor treated such remuneration as being subject to employment taxes when paid.

The change from "fewer than 10" to "10 or fewer" is a change in statutory language. No inference is intended with respect to the correct interpretation of present law. For example, no inference is intended with respect to the permissible method under present law of determining whether the requirement that the crew normally be made up of fewer than 10 individuals is satisfied.

Mr. SCHULZE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill was taken up and passed in the Committee on Ways and Means. It is a relatively unique situation having to do with family fishermen on small fishing boats. Mr. Speaker, we have no objection, and I urge the adoption of the bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DONNELLY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. DONNELLY] that the House suspend the rules and pass the bill, H.R. 4468.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following titles:

H. Con. Res. 394. Concurrent resolution directing the Secretary of the Senate to make corrections in the enrollment of the bill S. 358.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2567. An act entitled: Reclamation Projects Authorization and Adjustment Act of 1990, and

H.R. 2570. An act to provide for the designation of certain public lands as wilderness in the State of Arizona.

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate to the bill (H.R. 2061) "An act to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1993, and for other purposes" do pass with an amendment.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 3049. An act to amend the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act, and

S. 3069. An act to provide a method of locating private and Government research on environmental issues by geographic location.

GENERAL LEAVE

Mr. FAZIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on the conference report on H.R. 5399, Legislative Branch Appropriations Act, 1990.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

CONFERENCE REPORT ON H.R. 5399, LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1991

Mr. FAZIO. Mr. Speaker, pursuant to House Resolution 540, I call up the conference report on the bill (H.R. 5399) making appropriations for the legislative branch for the fiscal year ending September 30, 1991, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 540, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of today, Saturday, October 27, 1990.)

The SPEAKER pro tempore. The gentleman from California [Mr. FAZIO] will be recognized for 30 minutes, and the gentleman from California [Mr. LEWIS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. FAZIO].

Mr. FAZIO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have concluded the conference on the legislative appropriations bill, I believe successfully. There were some 63 amendments that we were required to resolve, and we have done so, I believe, satisfactorily, all of them included within the report.

We have met our budget targets for both outlays and budget authority. We have made the overall reductions that I think were part and parcel of the Penny amendment which passed this House. The mail reforms which the gentleman from Minnesota [Mr. FRENZEL] and I were so pleased to present to Members had been retained in the act. An issue that divided the Senate and the House regarding the arrest powers of the Capitol police who may have to pursue suspects into the District of Columbia has been compromised appropriately and given essentially to the authorizing committees to resolve.

Capitol security has been advanced by moving forward on the planning and design of a plan that could be readjusted with the support of the authorizing committees, but which will, I think, move us in the direction of both accommodating the many tourists who come to the Capitol, and at the same time providing a less intrusive but more secure sort of arrangement to protect those who work and visit here.

We have resolved the very difficult issue related to the reports of the General Accounting Office under the good offices of the gentleman from Michigan [Mr. CONYERS], chairman of the Committee on Government Operations. Hearings will be held on that issue.

The conference agreement is for a $2.16 billion bill, $63 million under our 302(b) targets for budget authority, and $109 million under the 302(b) targets for outlays.

When you remove the $33.2 million for mail for the supplemental requirement of 1990, this bill is 7.75 percent over the last year's figure.

□ 1645

We are, I think, pleased to say that there are seven appropriation bills that have higher percentage increases than this one.

The House Penny amendment provided for an overall reduction in the House bills. We agreed to the Penny reduction of some $34 million in the conference with the Senate. The Senate overall reduction required funds to be withheld from obligation to reach the budget authority figure of $34 million, and under this conference agreement we have worked to reconcile the Penny and the Nichols amendments, which I think improve this bill.

I have a number of other comments which I will place in the RECORD, unless I am required to resort to them in response to questions.

We have compiled the effects of the overall reduction necessary to meet the Penny amendment. The overall reduction in House expenses will be $4.5 million. There will be a reduction in Senate office buildings of $4.7 million. Also, we removed the funds for repairs to the House monumental stairs. We also delayed purchase of shuttle vans capable of handling handicapped staff, and delayed purchase of a day care and training facility for the Library of Congress. There were, however, funds provided for a fiscal year 1991 lease arrangement. Then there will be a delay in the study of expanding power plant steam generating capacity which will be needed because of the new judiciary building, City Post Office occupan-

cy, and other needs. Finally, we have had to defer some of the funding for continuing the asbestos removal and renovation at the GAO building.

There are several pluses in the bill. We have increased the clerk hire authorization by $50,000, a much needed and justified increase. Also, we have funded a desperately needed start on the arrearage problem at the Library of Congress where 40 percent of collections are not fully cataloged as a result of sequestrations, across-the-board reductions, and overall budget restraint. We have funded a study of using optical disk for document storage and retrieval, which we hope can be used to reduce the flow of paper and massive space needs in the Capitol and office buildings. Other examples of what we accomplished include funding for an employees assistance office for House employees, and we can begin the needed electrical improvements at the Cannon Building.

There are, of course, several legislative items in the bill. The cornerstone of the bill is franking reform. The conferees left these virtually unchanged from the reforms adopted by the House in the legislative bill (H.R. 5399) last Sunday. We did delay the effect of a few provisions on the other body at their insistence. But, the other body will now have to tighten up on using nonofficial sources of funds for office and mail expenses.

I have already mentioned the temporary revision of Capitol police arrest powers. We had to adjust these powers to provide adequate protection to our staff and Members. They will be in effect for 1 year only, in the meantime the authorizing committees must deal with this issue.

I also include a tabulation of the legislative bill in the RECORD.

H. R. 5399 - LEGISLATIVE BRANCH APPROPRIATIONS BILL, 1991

	FY 1990 Enacted	FY 1991 Estimate	House	Senate	Conference	Conference compared with enacted
TITLE I - CONGRESSIONAL OPERATIONS						
SENATE						
Payments to Widows and Heirs of Deceased Members of Congress						
Gratuities, deceased Members	98,400					-98,400
Mileage and Expense Allowances						
Mileage of the Vice President and Senators	60,000	60,000		60,000	60,000	
Expense allowances:						
Vice President	10,000	10,000		10,000	10,000	
President Pro Tempore of the Senate	10,000	10,000		10,000	10,000	
Majority Leader of the Senate	10,000	10,000		10,000	10,000	
Minority Leader of the Senate	10,000	10,000		10,000	10,000	
Majority Whip of the Senate	5,000	5,000		5,000	5,000	
Minority Whip of the Senate	5,000	5,000		5,000	5,000	
Chairmen of the Majority Conference Committee	3,000	3,000		3,000	3,000	
Chairmen of the Minority Conference Committee	3,000	3,000		3,000	3,000	
Subtotal, expense allowances	56,000	56,000		56,000	56,000	
Representation allowances for the Majority and Minority Leaders	30,000	30,000		30,000	30,000	
Total, Vice President and Senators	146,000	146,000		146,000	146,000	
Salaries, Officers and Employees						
Office of the Vice President	1,216,000	1,290,000		1,290,000	1,290,000	+74,000
Office of the President Pro Tempore	296,000	311,000		311,000	311,000	+15,000
Offices of the Majority and Minority Leaders	1,474,000	1,746,000		1,746,000	1,746,000	+272,000
Offices of the Majority and Minority Whips	458,000	608,000		608,000	608,000	+150,000
Conference committees	1,323,000	1,388,000		1,388,000	1,388,000	+65,000
Offices of the Secretaries of the Conference of the Majority and the Conference of the Minority	290,000	340,000		340,000	340,000	+50,000
Office of the Chaplain	147,000	154,000		154,000	154,000	+7,000
Office of the Secretary	8,852,000	9,476,000		9,476,000	9,476,000	+624,000
Office of the Sergeant at Arms and Doorkeeper	28,000,000	31,632,000		29,932,000	29,932,000	+1,932,000
Offices of the Secretaries for the Majority and Minority	983,000	1,031,000		1,031,000	1,031,000	+48,000
Agency contributions	11,980,000	14,393,000		14,000,000	14,000,000	+2,020,000
Undistributed	-2,012,000					+2,012,000
Total, salaries, officers and employees	53,007,000	62,369,000		60,276,000	60,276,000	+7,269,000
Office of the Legislative Counsel of the Senate						
Salaries and expenses	2,179,000	2,601,000		2,601,000	2,601,000	+422,000
Office of Senate Legal Counsel						
Salaries and expenses	676,000	768,000		768,000	768,000	+92,000
Expense Allowances of the Secretary of the Senate, Sergeant at Arms and Doorkeeper of the Senate, and Secretaries for the Majority and Minority of the Senate	12,000	12,000		12,000	12,000	
Contingent Expenses of the Senate						
Senate policy committees	2,203,000	2,284,000		2,284,000	2,284,000	+81,000
Inquiries and investigations	67,942,000	72,773,000		70,773,000	70,773,000	+2,831,000
Expenses of United States Senate Caucus on International Narcotics Control	325,000	325,000		325,000	325,000	
Secretary of the Senate	727,200	803,000		803,000	803,000	+75,800
Sergeant at Arms and Doorkeeper of the Senate	73,089,000	90,756,000		89,756,000	89,756,000	+16,667,000
Reappropriation	1,500,000					-1,500,000
Miscellaneous items	6,999,000	8,288,000		8,325,500	8,325,500	+1,326,500
Senators' Official Personnel and Office Expense Account	159,824,000	173,028,000		171,000,000	171,000,000	+11,176,000
Stationery (revolving fund)	13,000	13,000		13,000	13,000	
Official Mail Costs 1/						
Expenses	23,688,000	35,500,000		30,000,000	30,000,000	+6,312,000
Total, contingent expenses of the Senate	336,310,200	383,770,000		373,279,500	373,279,500	+36,969,300
Total, Senate	392,428,600	449,666,000		437,082,500	437,082,500	+44,653,900
HOUSE OF REPRESENTATIVES						
Payments to Widows and Heirs of Deceased Members of Congress						
Gratuities, deceased Members	268,500					-268,500
Mileage of Members						
Mileage of Members	209,000	210,000	210,000	210,000	210,000	+1,000

H. R. 5399 - LEGISLATIVE BRANCH APPROPRIATIONS BILL, 1991—Continued

	FY 1990 Enacted	FY 1991 Estimate	House	Senate	Conference	Conference compared with enacted
Salaries and Expenses						
House Leadership Offices						
Office of the Speaker	1,005,000	1,132,000	1,132,000	1,132,000	1,132,000	+127,000
Office of the Majority Floor Leader	927,000	1,071,000	1,071,000	1,071,000	1,071,000	+144,000
Office of the Minority Floor Leader	1,026,000	1,316,000	1,316,000	1,316,000	1,316,000	+290,000
Office of the Majority Whip	744,000	973,000	973,000	973,000	973,000	+229,000
Office of the Minority Whip	645,000	728,000	728,000	728,000	728,000	+83,000
Total, House leadership offices	4,347,000	5,220,000	5,220,000	5,220,000	5,220,000	+873,000
Members' Clerk Hire						
Clerk hire	185,441,000	210,514,000	198,533,000	198,533,000	198,533,000	+13,092,000
Committee Employees						
Professional and clerical employees of standing committees	54,230,000	89,874,000	66,832,000	66,832,000	66,832,000	+12,602,000
Committee on the Budget (Studies)						
Salaries and expenses	349,000	379,000	379,000	379,000	379,000	+30,000
Contingent Expenses of the House						
Standing Committees, Special and Select						
Salaries and expenses	56,908,000	83,168,000	61,100,000	61,100,000	61,100,000	+4,192,000
Allowances and Expenses						
Official Expenses of Members	75,272,000	78,698,000	75,272,000	75,272,000	75,272,000	.....
Supplies, materials, administrative costs and Federal tort claims	17,152,000	19,926,000	19,950,000	19,950,000	19,950,000	+2,798,000
Office equipment	9,146,000	10,770,000	10,770,000	10,770,000	10,770,000	+1,624,000
Furniture and furnishings	1,114,000	2,410,000	1,910,000	1,910,000	1,910,000	+796,000
Stenographic reporting of committee hearings	789,000	950,000	950,000	950,000	950,000	+161,000
Reemployed annuitants reimbursements	1,361,000	1,398,000	1,000,000	1,000,000	1,000,000	-361,000
Government contributions	76,881,000	111,926,000	98,570,000	98,570,000	98,570,000	+21,689,000
Miscellaneous items	613,000	622,000	622,000	622,000	622,000	+9,000
Undistributed reduction	.....	.....	-500,000	-500,000	-500,000	-500,000
Total, allowances and expenses	182,328,000	226,700,000	208,544,000	208,544,000	208,544,000	+26,216,000
Total, contingent expenses of the House	239,236,000	309,868,000	269,644,000	269,644,000	269,644,000	+30,408,000
Committee on Appropriations (Studies and Investigations)						
Salaries and expenses	4,595,000	6,120,000	6,120,000	6,120,000	6,120,000	+1,525,000
Official Mail Costs 1/						
Expenses	43,992,000	58,984,000	58,984,000	58,984,000	58,984,000	+14,992,000
Salaries, Officers and Employees						
Office of the Clerk	17,269,000	22,326,000	19,300,000	19,300,000	19,300,000	+2,031,000
Office of the Sergeant at Arms	987,000	1,455,000	1,200,000	1,200,000	1,200,000	+213,000
Office of the Doorkeeper	8,625,000	10,114,000	9,200,000	9,200,000	9,200,000	+575,000
Office of the Postmaster	2,986,000	4,105,000	3,275,000	3,275,000	3,275,000	+289,000
Office of the Chaplain	80,000	105,000	105,000	105,000	105,000	+25,000
Office of the Parliamentarian	761,000	890,000	890,000	890,000	890,000	+129,000
Office of the Parliamentarian	(544,000)	(610,000)	(610,000)	(610,000)	(610,000)	(+66,000)
Compilation of precedents of the House of Representatives	(217,000)	(280,000)	(280,000)	(280,000)	(280,000)	(+63,000)
Office of the Historian	275,000	.....	300,000	300,000	300,000	+25,000
Office of the Law Revision Counsel	1,018,000	1,302,000	1,302,000	1,302,000	1,302,000	+284,000
Office of the Legislative Counsel	3,352,000	4,161,000	4,161,000	4,161,000	4,161,000	+809,000
Six minority employees	535,000	677,000	677,000	677,000	677,000	+142,000
House Democratic Steering Committee and Caucus	953,000	1,215,000	1,305,000	1,305,000	1,305,000	+352,000
House Democratic Steering Committee	(672,000)	(797,000)	(797,000)	(797,000)	(797,000)	(+125,000)
House Democratic Caucus	(281,000)	(418,000)	(508,000)	(508,000)	(508,000)	(+227,000)
House Republican Conference	953,000	1,215,000	1,305,000	1,305,000	1,305,000	+352,000
Other Authorized Employees	1,246,000	1,608,000	1,608,000	1,608,000	1,608,000	+362,000
Technical assistant, Office of the Attending Physician	(113,000)	(125,000)	(125,000)	(125,000)	(125,000)	(+12,000)
L.B.J. Interns and Former Speakers' staff	(1,031,000)	(1,378,000)	(1,378,000)	(1,378,000)	(1,378,000)	(+347,000)
Miscellaneous items	(102,000)	(105,000)	(105,000)	(105,000)	(105,000)	(+3,000)
Total, salaries, officers and employees	39,040,000	49,173,000	44,628,000	44,628,000	44,628,000	+5,588,000
Undistributed reduction	.....	.....	-3,500,000	-3,500,000	-3,500,000	-3,500,000
Adjustment	.....	.....	500,000	500,000	500,000	+500,000
Total, salaries and expenses	571,230,000	730,132,000	647,340,000	647,340,000	647,340,000	+76,110,000
Total, House of Representatives	571,707,500	730,342,000	647,550,000	647,550,000	647,550,000	+75,842,500

H. R. 5399 - LEGISLATIVE BRANCH APPROPRIATIONS BILL, 1991—Continued

	FY 1990 Enacted	FY 1991 Estimate	House	Senate	Conference	Conference compared with enacted
JOINT ITEMS						
Contingent Expenses of the Senate						
Joint Economic Committee	3,454,000	3,675,000	3,675,000	3,675,000	3,675,000	+221,000
Joint Committee on Printing	1,173,000	1,269,000	1,269,000	1,269,000	1,269,000	+96,000
Total, contingent expenses of the Senate	4,627,000	4,944,000	4,944,000	4,944,000	4,944,000	+317,000
Contingent Expenses of the House						
Joint Committee on Taxation	4,353,000	5,450,000	5,203,000	5,203,000	5,203,000	+850,000
Office of the Attending Physician						
Medical supplies, equipment, expenses, and allowances	1,399,000	1,450,000	1,436,000	1,436,000	1,436,000	+37,000
Capitol Police Board						
Capitol Police						
Salaries:						
Sergeant at Arms of the House of Representatives	27,039,000	30,737,000	28,914,000	29,114,000	28,914,000	+1,875,000
Sergeant at Arms and Doorkeeper of the Senate	27,597,000	31,075,000	29,434,000	29,434,000	29,434,000	+1,837,000
Contingency	20,000	.....	.....	.....	.....	-20,000
Total, salaries	54,656,000	61,812,000	58,348,000	58,548,000	58,348,000	+3,692,000
General expenses	1,876,000	2,072,000	1,951,000	1,951,000	1,951,000	+75,000
Total, Capitol Police Board	56,532,000	63,884,000	60,299,000	60,499,000	60,299,000	+3,767,000
Official Mail Costs						
Expenses	31,336,000	38,135,000	33,220,000	33,220,000	33,220,000	+1,884,000
Capitol Guide Service						
Salaries and expenses	1,321,000	1,490,000	1,490,000	1,490,000	1,490,000	+169,000
Special Services Office						
Salaries and expenses	236,000	255,000	255,000	255,000	255,000	+19,000
Statements of Appropriations						
Preparation	20,000	20,000	20,000	20,000	20,000	.....
Total, joint items	99,824,000	115,628,000	106,867,000	107,067,000	106,867,000	+7,043,000
OFFICE OF TECHNOLOGY ASSESSMENT						
Salaries and expenses	18,376,000	20,710,000	19,557,000	19,557,000	19,557,000	+1,181,000
BIOMEDICAL ETHICS BOARD AND BIOMEDICAL ETHICS ADVISORY COMMITTEE						
Salaries and expenses	590,000	.....	.....	.....	.....	-590,000
CONGRESSIONAL BUDGET OFFICE						
Salaries and expenses	19,229,000	21,723,000	19,229,000	21,183,000	21,183,000	+1,954,000
ARCHITECT OF THE CAPITOL						
Office of the Architect of the Capitol						
Salaries	6,736,000	7,958,000	7,308,000	7,022,000	7,308,000	+572,000
Travel (limitation on official travel expenses)	(20,000)	(20,000)	(20,000)	(50,000)	(50,000)	(+30,000)
Contingent expenses	100,000	100,000	100,000	50,000	100,000	.....
Total, Office of the Architect of the Capitol	6,836,000	8,058,000	7,408,000	7,072,000	7,408,000	+572,000
Capitol Buildings and Grounds						
Capitol buildings	15,848,000	35,776,000	22,721,000	26,680,000	26,680,000	+10,832,000
Capitol grounds	4,257,000	5,414,000	4,659,000	3,818,000	4,659,000	+402,000
Senate Office Buildings	34,817,000	63,320,000	.....	38,432,000	38,432,000	+3,615,000
House Office Buildings	27,755,000	52,110,000	30,800,000	30,800,000	30,800,000	+3,045,000
Capitol Power Plant	27,830,000	35,077,000	34,227,000	33,024,000	34,227,000	+6,397,000
Offsetting collections	-2,296,000	-2,400,000	-2,400,000	-2,400,000	-2,400,000	-104,000
Net, Capitol Power Plant	25,334,000	32,677,000	31,827,000	30,624,000	31,827,000	+6,493,000
Total, Capitol buildings and grounds	108,011,000	189,297,000	90,007,000	130,354,000	132,398,000	+24,387,000
Library buildings and grounds	.....	17,608,000	.....	.....	.....	.....
Botanic Garden	.....	7,369,000	.....	.....	.....	.....
Total, Architect of the Capitol	114,847,000	222,332,000	97,415,000	137,426,000	139,806,000	+24,959,000

H. R. 5399 - LEGISLATIVE BRANCH APPROPRIATIONS BILL, 1991—Continued

	FY 1990 Enacted	FY 1991 Estimate	House	Senate	Conference	Conference compared with enacted
LIBRARY OF CONGRESS						
Congressional Research Service						
Salaries and expenses	45,820,000	53,706,000	51,885,000	52,743,000	52,743,000	+6,923,000
GOVERNMENT PRINTING OFFICE						
Congressional printing and binding	74,149,000	84,900,000	77,365,000	79,615,000	79,615,000	+5,466,000
Total, title I - Congressional Operations	1,336,971,100	1,699,007,000	1,019,868,000	1,502,223,500	1,504,403,500	+167,432,400
TITLE II - OTHER AGENCIES						
BOTANIC GARDEN						
Salaries and expenses	2,590,000	.....	3,519,000	3,519,000	3,519,000	+929,000
LIBRARY OF CONGRESS						
Salaries and expenses	161,177,000	198,166,000	180,393,000	183,000,000	183,000,000	+21,823,000
Authority to spend receipts	-5,629,000	-7,025,000	-7,025,000	-7,025,000	-7,025,000	-1,396,000
Net, Salaries and expenses	155,548,000	191,141,000	173,368,000	175,975,000	175,975,000	+20,427,000
Copyright Office, salaries and expenses	20,043,000	26,323,000	22,901,000	23,118,000	23,118,000	+3,075,000
Authority to spend receipts	-8,031,000	-15,077,000	-12,860,000	-12,860,000	-12,860,000	-4,829,000
Net, Copyright Office, salaries and expenses	12,012,000	11,246,000	10,041,000	10,258,000	10,258,000	-1,754,000
Books for the blind and physically handicapped, salaries and expenses	37,112,000	42,211,000	41,136,000	40,131,000	41,136,000	+4,024,000
Furniture and furnishings	2,568,000	7,086,000	3,034,000	5,000,000	5,000,000	+2,432,000
Total, Library of Congress (except CRS)	207,240,000	251,684,000	227,579,000	231,364,000	232,369,000	+25,129,000
ARCHITECT OF THE CAPITOL						
Library Buildings and Grounds						
Structural and mechanical care	7,136,000	.....	14,868,000	10,268,000	15,268,000	+8,132,000
COPYRIGHT ROYALTY TRIBUNAL						
Salaries and expenses	674,000	845,000	845,000	845,000	845,000	+171,000
Authority to spend receipts	-573,000	-718,000	-718,000	-718,000	-718,000	-145,000
Net total, Copyright Royalty Tribunal	101,000	127,000	127,000	127,000	127,000	+26,000
GOVERNMENT PRINTING OFFICE						
Office of Superintendent of Documents						
Salaries and expenses	16,324,000	27,900,000	25,745,000	26,500,000	26,500,000	+10,176,000
Revolving fund transfer	7,890,000	.....	.....	.....	.....	-7,890,000
Total, Office of Superintendent of Documents	24,214,000	27,900,000	25,745,000	26,500,000	26,500,000	+2,286,000
GENERAL ACCOUNTING OFFICE						
Salaries and expenses	358,097,000	427,248,000	419,130,000	413,415,000	419,130,000	+61,033,000
Special fund	5,564,000	5,915,000	.....	.....	.....	-5,564,000
Offsetting collections	.....	.....	-5,915,000	-5,915,000	-5,915,000	-5,915,000
Total, General Accounting Office	363,661,000	433,163,000	413,215,000	407,500,000	413,215,000	+49,554,000
Total, title II - other agencies	604,942,000	712,874,000	685,053,000	679,278,000	690,998,000	+86,056,000
Total, title I and II	1,941,913,100	2,411,881,000	1,704,921,000	2,181,501,500	2,195,401,500	+253,488,400
TITLE III						
GENERAL PROVISIONS						
General reduction 2% (sec. 313)	.....	.....	-34,098,000	.....	.....	.....
General reduction 5% (sec. 311)	.....	.....	.....	-109,075,075	.....	.....
General reduction - withheld from obligation	.....	.....	.....	.....	-34,035,000	-34,035,000
Grand total, new budget (obligational) authority	1,941,913,100	2,411,881,000	1,670,823,000	2,072,426,425	2,161,366,500	+219,453,400
RECAPITULATION						
TITLE I - CONGRESSIONAL OPERATIONS						
Senate	392,428,600	449,666,000	.....	437,082,500	437,082,500	+44,653,900
House of Representatives	571,707,500	730,342,000	647,550,000	647,550,000	647,550,000	+75,842,500
Joint Items	99,824,000	115,628,000	106,867,000	107,067,000	106,867,000	+7,043,000
Office of Technology Assessment	18,376,000	20,710,000	19,557,000	19,557,000	19,557,000	+1,181,000
Biomedical Ethics Board	590,000	.....	.....	.....	.....	-590,000
Congressional Budget Office	19,229,000	21,723,000	19,229,000	21,183,000	21,183,000	+1,954,000
Architect of the Capitol	114,847,000	222,332,000	97,415,000	137,426,000	139,806,000	+24,959,000

H. R. 5399 - LEGISLATIVE BRANCH APPROPRIATIONS BILL, 1991—Continued

	FY 1990 Enacted	FY 1991 Estimate	House	Senate	Conference	Conference compared with enacted
Library of Congress: Congressional Research Service	45,820,000	53,706,000	51,885,000	52,743,000	52,743,000	+6,923,000
Congressional printing and binding, Government Printing Office	74,149,000	84,900,000	77,365,000	79,615,000	79,615,000	+5,466,000
Total, title I - congressional operations	1,336,971,100	1,699,007,000	1,019,868,000	1,502,223,500	1,504,403,500	+167,432,400
TITLE II - OTHER AGENCIES						
Botanic Garden	2,590,000	.....	3,519,000	3,519,000	3,519,000	+929,000
Library of Congress (except CRS)	207,240,000	251,684,000	227,579,000	231,364,000	232,369,000	+25,129,000
Architect of the Capitol (Library buildings and grounds)	7,136,000	.....	14,868,000	10,268,000	15,268,000	+8,132,000
Copyright Royalty Tribunal	101,000	127,000	127,000	127,000	127,000	+26,000
Government Printing Office (except congressional printing and binding)	24,214,000	27,900,000	25,745,000	26,500,000	26,500,000	+2,286,000
General Accounting Office	363,661,000	433,163,000	413,215,000	407,500,000	413,215,000	+49,554,000
Total, title II - other agencies	604,942,000	712,874,000	685,053,000	679,278,000	690,998,000	+86,056,000
General reduction	.....	.....	-34,098,000	-109,075,075	-34,035,000	-34,035,000
Grand total, new budget (obligational) authority	1,941,913,100	2,411,881,000	1,670,823,000	2,072,426,425	2,161,366,500	+219,453,400

1/ Previously carried under joint items.

Mr. Speaker, I reserve the balance of my time.

Mr. LEWIS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first let me express one more time my appreciation for the fine professional relationship I have with both my chairman and his fine staff as we work on the legislation that has been designated by most as one of the most difficult appropriation bills in the House. Its difficulty is not because of its size, but because, especially in this environment, there is a tendency to want to demonstrate that one is voting against ones own office expenses and therefore is getting tough on the budget.

While there was a very excellent discussion during the debate on the bill in the House, the conference has gone forward following the direction of the House passed amendments. As the gentleman from California [Mr. FAZIO] indicated that we implemented with a 2 percent across-the-board cut. At the same time, we maintained the most significant elements of change in the bill—the banking reforms.

I would point with a good deal of pride to that negotiations which took place to bring about real franking reform and begin to have franking disclosure. The gentleman from Minnesota [Mr. FRENZEL], our colleague who is retiring this year, has spent almost a decade whittling away at the problem of excessive use of the frank. I must say this year's legislative branch reflects completion of his efforts in the highest of professional standards.

The bill does, as the chairman indicated, meet the lowered targets of the new budget passed last evening. It is the means whereby we fund the activities of the House as well as the Senate.

I would ask the Members to give support for this conference report, and I ask them also to be reminded that generally we try to operate with some basis of comity between the houses. We, the Members of the House, do the work relative to our side of the capitol, if you will, and to a very large extent the leeway to define the needs as they see them for the members of their side of the capitol.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. LEWIS of California. I am happy to yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I would appreciate if the gentleman would answer a few questions here that I have come across as I have examined the conference report. Maybe the gentleman from California [Mr. FAZIO], chairman of this subcommittee, would help too.

In the amendment numbered 53 it appears to me that we are now going to permit the Members of the House of Representatives to utilize mass mailings into their new districts after redistricting has taken place. Is that correct?

Mr. LEWIS of California. Responding to the gentleman, first, I think you will recall that we had on our side, the Republican side of the House, regarding this whole issue of franking, we were working within the limits or recommendations of the leader's task force. As we addressed the question of trying to reduce or get some reasonable control over the frank, the question of Members' individual district boundaries came under a good deal of scrutiny. The difficulty is that within an individual county, like my own, there is more than one Member of Congress, and yet where the lines actually are is very difficult to control in a mailing sense. We frankly decided from our perspective of our task force that the best means of such control was to put specific limits on volume of franks mailed, recognizing that each of us are elected to represent our State.

The chairman, on the other hand, has gone further than that in language.

Mr. FAZIO. Mr. Speaker, will the gentleman yield.

Mr. LEWIS of California. I yield to the gentleman from California.

Mr. FAZIO. Mr. Speaker, first of all, the franking statute has always had language that allowed Members to mail to the districts where they are reapportioned and that has always been a part of the rule. When the lines become official, Members can mail to the districts in which they will be seeking reelection. We have not changed that at all as it relates to mass mailings or postal patrons. We were only allowed under the law in the past and continue today to only be allowed to mail postal patrons to our districts.

Mass mailings are defined by any number of pieces over 500. Under this rule, which was adopted at the request of the Senate, will only mail their mass mailings to the counties they represent or contiguous counties, which means that, for example, if you have part of a county in your district and part in a neighbor's district, you are able to mail across the line. The

amendment was included because Members of the Senate were very troubled by what they concluded was a practice that some Members of the House had engaged in, as they sought the Senate, to mail outside their district, to, in effect, a statewide political base. We have accepted this in order to, I think, meet the Senate halfway.

Mr. WALKER. If the gentleman will yield further, in amendment number 8, I notice we are increasing the amount of travel that the Architect of the Capitol is going to be permitted to do by 2½ times what the House had originally agreed to. We are now, instead of a $20,000 travel budget, we are going to give the Architect of the Capitol a $50,000 travel budget. Can someone explain to me why this fairly significant increase is in the bill?

Mr. FAZIO. If the gentleman will yield, I can explain that this is temporary authority for some additional travel funds for the Architect because he is utilizing a computer center in New Orleans, LA, which has been established by the Department of Agriculture. This is a very cost-efficient effort that we are making to unify the accounting systems of a number of legislative branch agencies in a Federal computer center. So this is simply to allow the Architect to engage, in effect, in a data entry process, bringing his system up to par, and we expect that the travel limitation will revert to its historical level after this particular computer update effort is completed.

Mr. WALKER. If the gentleman will yield further, I also noticed that the Senate thought that $50,000 was enough for the contingent expenses of the Office of the Architect, and yet the conference adopted a $100,000 figure, which is twice the level of what the Senate agreed to. Can someone tell me why the big disparity between the two Houses on that item?

Mr. FAZIO. If the gentleman will yield, we believe the Architect needs this sort of flexibility to handle emergencies.

We have, however, and I think the gentleman will find this an improvement, put a requirement that he come before the Appropriations Committee in writing at least 7 days prior to any expenditure of over $2,000, so we are in a position to know whether or not he is freelancing or exceeding his appropriated authority.

Mr. LEWIS of California. If I may comment further, the gentleman, nonetheless, is focusing on a very important element of the bill. There have been questions raised relative to not so much the question of the use of transportation funds because of some of those activities, but especially the use of his contingency funds, and some of the extra activities that are not normally associated automatically with the Architect. For example, the Document Room movement from the Capitol was handled expense-wise by way of this account.

While the minority does not have direct control over that, we raised questions about the use of the contingent amount.

Mr. WALKER. I thank the gentleman.

I realize the next item that I have, amendment No. 16, is one of those that is dealt with between the House and the Senate, and we allow the Senate to kind of have their way. But I do think that at the time that we are in a period of fiscal austerity, $38.4 million for Senate office buildings might be a little excessive, and $10 million of which is going to remain available until extended, which I understand is for a new subway system.

First of all, is my information correct; and second, do we have any idea what they are going to spend nearly $40 million on for office buildings? They just built a brand new office building a few years ago, and now this appears to be another big expansion of those accounts.

Mr. FAZIO. As the gentleman knows, we are bound by tradition to treat the Senate with a degree of comity on these requests. We did take some $5 million back from this item, and it is not funded at the level that the Senate requested. But we do leave the Senate responsible for its own activities in this area, and so while I think the gentleman may be right, I have had the same sort of information transmitted to me that he has had. It is not, at least in my way of thinking, our responsibility to determine how the Senate would set its own priorities in regard to this item.

Mr. WALKER. If the gentleman will yield further on that point, am I correct that the $10 million is going to be used for a new subway system?

Mr. LEWIS of California. I am not sure about the specific $10 million the gentleman is pointing to, but approximately that amount, will be used to improve the subway system connecting the new building with the Capitol.

Mr. WALKER. The new building already has a subway running to it. The Hart Building already has a system, a subway.

Mr. LEWIS of California. We did not, I must tell the gentleman, we did not get into the design of their subway system or whether they are renovating tracks. But that is what the other body requested the funds for.

Mr. FAZIO. Also, a certain amount of money here is required for renovation of the elevators in the older Senate office buildings, and this also may be related to that.

□ 1655

Mr. WALKER. What is the other $28 million? Is that for elevators then?

Mr. FAZIO. If both of these projects are considered to be in the process, it may be that they would add up to something close to $20 million, but, again, I am not privy to the details, because that is not our responsibility.

Mr. WALKER. The problem that many of us have is that regardless of whether there is comity between the two, we have to vote on it and justify what our vote is, at some point on some of these spending items, and this one looks to me to be a little loose given the nature of the funds involved, again, at a time of fiscal austerity.

Just one other question, there are three provisions in amendments 52, 55, and No. 60 that disturb me since the Senate some months ago decided not to participate in the pay increase that was included in the ethics reform bill. When I look at these, they just raise a little bit of suspicion.

In amendment 52, we are giving the authority to the President pro tempore of the Senate to issue pay orders as proposed by the Senate. In amendment No. 55, it provides that the pay raise funds shall be absorbed within the levels appropriated in the act as proposed by the Senate, and then I go over to No. 60 and I find that there is a cost-of-living increase for Federal judges as proposed. I just wanted to be assured that none of these funds are a back-door attempt by the Senate to attach itself a pay raise in this bill.

Mr. FAZIO. The gentleman can be assured that we have looked very closely at these matters. The section 52 is simply authority to the President pro tempore to issue pay orders just as the Speaker's authority exists in the House. It is for staff, not the Members of the other body. It is simply a mechanism by which he may increase their pay whenever their salaries go up proportionately.

The item No. 55 is really standard language in appropriation bills. We simply are requiring absorption with the levels appropriated in the act, so that any increases in Senate staff compensation are resolved that way, and No. 60 I can speak to specifically, because it does give the judges the same treatment that the executive and legislative branches have.

Senator DOLE a number of years ago enacted legislation that prevented the judges from getting automatic pay raises, requiring that it would be legislated each year, and it was decided that since the cost-of-living adjustment was already automatic for the other two branches, we should legislate for the judges at this time, and so this does not provide them with any more or less than anyone else in the same pay category.

Mr. LEWIS of California. Mr. Speaker, I appreciate the gentleman's questions regarding this conference report.

He can be assured that this gentleman expressed similar concerns.

Mr. WALKER. I thank the gentleman very much for his time.

Mr. LEWIS of California. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. THOMAS].

Mr. THOMAS of California. Mr. Speaker, I have some additional questions on amendment 53.

Before I ask the question, I, too, want to commend the two gentlemen from California for moving forward in a very, very difficult and contentions area which probably would never have been able to be addressed in the area of campaign finance, that is, the frank, in a very responsible way.

The gentleman from California [Mr. FAZIO] began his comments by indicating that the Fazio-Frenzel amendment was carried through the conference intact. My assumption is that that meant not literally but figuratively in terms of the fundamentals that were outlined.

Mr. FAZIO. Mr. Speaker, if the gentleman will yield, yes.

Mr. THOMAS of California. Then in regard to amendment 53, when the gentleman indicates in the amendment that was accepted to change the provision that was voted on in this House to allow mass mailings. Does that term refer to a distinct and definitive category, or does the term indicate that it is postal patrons that are denied, and individual letters or something less than mass mailings could be sent, or is it, again, literal, and that the only thing that could be sent within this geographic structure are mass mailings?

Mr. FAZIO. Mass mailings, those items that are defined as 500 items or more including postal patrons would be limited under this language. You could not make mass mailings outside of those counties contiguous to your district.

Mr. THOMAS of California. Does that mean that less than mass mailings could be sent anywhere in the State?

Mr. FAZIO. Yes, the gentleman is correct; yes. Less than 500, yes.

Mr. THOMAS of California. A second clarification, when you say in a county, if any part of the county adjoins or is inside the congressional district of the Member, for example, I represent most of San Luis Obispo County, most of Kern, a portion of Los Angeles and all of Inyo County. Does that mean, then, that with the San Luis Obispo County portion, I could mail to Monterey County or Santa Barbara County and/or Ventura County, and that with Los Angeles, I could mail to Orange and San Bernardino Counties?

Mr. FAZIO. Obviously the gentleman would be limited by the amount of money he had, but, yes, he could mail to all of the counties that adjoined his district.

Mr. THOMAS of California. Mr. Speaker, was there any discussion about what percentage of the county someone held, because obviously I have just about 125,000 in Los Angeles County, but it means, by virtue of that piece, I could make mass mailings clear into Orange County, which is 150 miles and 7 million people away?

Mr. FAZIO. We assume that the gentleman would be utilizing his limited resources in a manner that would be most wise for him in meeting the needs of his constituents, but we would not want to limit the ability to mail to adjoining counties, and while it is a long way from Bakersfield in your district in the adjoining county, it is certainly close in many other respects.

Mr. THOMAS of California. In some ways it is not, I would tell the gentleman.

Mr. FAZIO. I understand how close they are in other ways, but I think in many other parts of the country adjoining counties could mean very, very close boundaries and very, very short distances.

Mr. THOMAS of California. And then finally in terms of the specifics that we had in our own amendment which pertained particularly to the Senate about the use of funds paying for the frank that were not part of the official allowance, what have we done with that since it is not literally intact, I assume, that there has been a change in the way in which our language limited the Senate?

Mr. FAZIO. We have continued the language that restricts their ability to use PAC money.

Mr. THOMAS of California. That section was retained intact?

Mr. FAZIO. Personal money is not counted, but political action money, campaign money would not be included, or would be prohibited from being intermingled with their official expenses.

Mr. THOMAS of California. Personal money could still be utilized to pay for mailings?

Mr. FAZIO. Yes.

Mr. THOMAS of California. Is there any timeframe on phasing that out?

Mr. FAZIO. Or any office expense is the way it really reads.

Mr. THOMAS of California. Is that open ended?

Mr. FAZIO. The Senate and House have agreed to spend the next year working together to try with the good offices of the Committee on House Administration and the Senate Rules Committee to try to work out the differences that exist between us, to try to level the playing field, but at the moment the Senate continues to have the ability for at least the next year to utilize their personal funds if they wish to in that context. For example, if someone wishes to hang a picture on a wall that they have purchased in their official office, they are allowed to do it. Whether or not anyone has ever used their own personal funds for a mailing is another question. I am not aware it has ever happened, but technically it may still be allowed.

Mr. THOMAS of California. Mr. Speaker, I want to thank the gentleman from California [Mr. FAZIO] and the gentleman from California [Mr. LEWIS] once again for moving a giant step forward in this area which all too often has been used for less than worthy purposes amid accusations which were less than honest, and now that we will have an accurate record, of franking expenses attributed to each Member, we have taken an enormous step forward.

Mr. LEWIS of California. Mr. Speaker, I yield myself such time as I may consume.

I would conclude my remarks simply by saying that franking is a very controversial part of our bill. We have implemented very significant reforms in this legislative year, and I would urge the Members to focus upon that progress as they consider this conference report and give it their support.

Mr. Speaker, I reserve the balance of my time.

Mr. FAZIO. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Louisiana [Mrs. BOGGS], a member of our committee who is perhaps the most sensitive to the antiquities of this building, the history that we are all part of here in this House of Representatives. She is my dear friend and a long-time member of the subcommittee.

Mrs. BOGGS. Mr. Speaker, I thank the chairman for yielding.

Mr. Speaker and Members of this wonderful body, I rise to give my thanks and my congratulations to the two gentlemen from California, to all of the members of the committee and to the hard working and excellent members of the staff.

This bill so often is concerned with the kinds of intimate details that we feel about the running of our own office, our own buildings, and about the moneys that are involved in staffing our offices, our franking privileges and all this sort of thing that we fail to realize the enormity of the responsibility of this committee in some of the most sensitive areas of our national life. The committee has the responsibility for funding the Library of Congress, which is a national resource of expanded glory to this country, and in addition to which, of course, the library has as one of its services the Congressional Research Service.

The Architect of the Capitol, always is carefully examined about his funds. However, we fail to realize that we have at least 15 buildings that are under the jurisdiction of the Archi-

tect. In addition there are two powerplants under his jurisdiction, as are the Botanical Gardens and all of the vast acres of lands that surround these buildings.

The committee bill covers also the Government Printing Office, the Government Accounting Office, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Office, and the Copyright Royalty Tribunal, and among other legislative agencies. It is an enormous responsibility, Mr. Speaker, and these undertakings are markably performed by the staff members and by the two gentlemen from California to the benefit of all of the Members of this body and of the other body and to the benefit of the people of this country. And to the literally millions of visitors who tour the Buildings and Grounds and visit our offices.

I congratulate the committee members and the members of the staff and wish them well in their future endeavors, because much of the history of this country, so much of the ongoing service to the constituents of each of us depends upon the successful operation of this committee that we should give them all of the help that we possibly can and to give them all of the congratulations that they richly deserve.

Mr. LEWIS of California. Mr. Speaker, I would like to express my appreciation to the members of the committee who have worked so hard, the gentleman from Massachusetts [Mr. CONTE], the gentleman from Indiana [Mr. MEYERS], the gentleman from Illinois [Mr. PORTER], and in closing express my deep appreciation and make sure that the gentlewoman from Louisiana [Mrs. BOGGS] knows we will miss her.

Mr. FAZIO. Mr. Speaker, in closing, I would like to particularly thank my colleague, the gentleman from California [Mr. LEWIS] for the tremendous support and leadership he provides on this bill.

All the members of this subcommittee have been particularly influential in our deliberations and the product that we produce and bring to the Members today.

We will be particularly hard pressed to find a replacement for the gentlewoman from Louisiana [Mrs. BOGGS]. She has played a unique role in our committee, and I appreciate her comments very much.

Before I yield back, I would like to thank my top staff on this committee, Mr. Ed Lombard, and Kathy Rowan, who is not with us today because of the fatigue that has developed over the last several weeks. They are particularly instrumental in the work of this committee.

I would also like to thank all the associate staff people, particularly those who work for the gentleman from California [Mr. LEWIS] and other members of the committee staff who have been so significant in their roles.

Mr. CONTE. Mr. Speaker, this bill isn't a show stopper. I guess some around here would say it makes a better doorstopper. But, the conferees worked hard. And they brought back a bill which retains the essential elements of the package this body approved.

And, today, we can't ask for more than that.

We're finally putting some teeth in the franking law. At last we'll have a mechanism to hold down runaway congressional mail costs.

We're cutting $34 million in congressional spending.

Not perhaps as much as some of us would have liked.

Not perhaps in all the accounts we would have liked—but this agreement holds the line much better than previous drafts.

The conference report retains my amendments to hold down costs for Capitol Police, and garage attendants.

It even retains the gentleman from Wisconsin's "Buy-American" amendment for police motorcycles.

It deserves our support.

Mr. LEWIS of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FAZIO. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were yeas 259, nays 129, not voting 44, as follows:

[Roll No. 529]

YEAS—259

Ackerman	Boucher	Conyers
Alexander	Brooks	Cooper
Anderson	Browder	Costello
Andrews	Brown (CA)	Coughlin
Annunzio	Bruce	Coyne
Anthony	Bryant	Darden
Applegate	Bustamante	Davis
Atkins	Byron	de la Garza
AuCoin	Campbell (CO)	DeFazio
Baker	Cardin	Dellums
Barnard	Carper	Dicks
Bateman	Carr	Dixon
Beilenson	Chandler	Donnelly
Bentley	Chapman	Dorgan (ND)
Berman	Clarke	Downey
Bevill	Clay	Durbin
Bilbray	Clement	Dwyer
Boehlert	Clinger	Dymally
Boggs	Coleman (MO)	Early
Bonior	Coleman (TX)	Eckart
Borski	Collins	Edwards (CA)
Bosco	Conte	Engel
English	Lipinski	Rangel
Espy	Livingston	Ray
Evans	Long	Richardson
Fascell	Lowery (CA)	Rinaldo
Fazio	Lowey (NY)	Roberts
Feighan	Machtley	Roe
Fish	Madigan	Rose
Flake	Manton	Roukema
Flippo	Markey	Rowland (GA)
Foglietta	Marlenee	Roybal
Frank	Martinez	Sabo
Frenzel	Matsui	Savage
Frost	Mavroules	Sawyer
Gallo	Mazzoli	Saxton
Gaydos	McCandless	Scheuer
Gejdenson	McCloskey	Schiff
Gephardt	McCollum	Schumer
Geren	McCrery	Serrano
Gibbons	McCurdy	Sisisky
Gillmor	McDade	Skaggs
Gilman	McDermott	Skeen
Gonzalez	McHugh	Slaughter (NY)
Gordon	McMillan (NC)	Smith (FL)
Green	McMillen (MD)	Smith (IA)
Guarini	McNulty	Smith (NJ)
Hall (OH)	Mfume	Solarz
Hall (TX)	Michel	Spratt
Hamilton	Miller (CA)	Stallings
Harris	Mineta	Stark
Hatcher	Mink	Stearns
Hayes (IL)	Moakley	Stenholm
Hayes (LA)	Molinari	Stokes
Hefner	Mollohan	Studds
Hertel	Montgomery	Swift
Hoagland	Moody	Synar
Hochbrueckner	Morella	Tallon
Horton	Morrison (CT)	Tanner
Houghton	Morrison (WA)	Tauzin
Hoyer	Mrazek	Thomas (CA)
Hubbard	Murtha	Thomas (GA)
Huckaby	Myers	Torres
Hughes	Nagle	Torricelli
Hyde	Natcher	Towns
Johnson (SD)	Neal (MA)	Unsoeld
Jones (GA)	Neal (NC)	Valentine
Jones (NC)	Nowak	Vento
Jontz	Oakar	Visclosky
Kanjorski	Oberstar	Volkmer
Kaptur	Obey	Washington
Kastenmeier	Ortiz	Waxman
Kennedy	Owens (NY)	Weiss
Kennelly	Owens (UT)	Wheat
Kildee	Panetta	Whittaker
Kleczka	Pashayan	Whitten
Kolter	Patterson	Williams
Kostmayer	Payne (NJ)	Wilson
Lancaster	Payne (VA)	Wise
Lantos	Pease	Wolpe
Lehman (CA)	Pelosi	Wyden
Lehman (FL)	Perkins	Yates
Lent	Pickett	Yatron
Levin (MI)	Pickle	Young (AK)
Levine (CA)	Porter	Young (FL)
Lewis (CA)	Poshard	
Lewis (GA)	Price	

NAYS—129

Archer	Duncan	Jacobs
Armey	Edwards (OK)	James
Ballenger	Emerson	Johnson (CT)
Bartlett	Erdreich	Kasich
Barton	Fawell	Kolbe
Bennett	Fields	Kyl
Bereuter	Gallegly	Lagomarsino
Bilirakis	Gekas	Laughlin
Bliley	Goodling	Leach (IA)
Broomfield	Goss	Lewis (FL)
Brown (CO)	Gradison	Lightfoot
Buechner	Grandy	Lloyd
Bunning	Grant	Martin (NY)
Callahan	Gunderson	McEwen
Campbell (CA)	Hammerschmidt	Meyers
Coble	Hancock	Miller (OH)
Combest	Hansen	Miller (WA)
Courter	Hastert	Moorhead
Cox	Hefley	Nielson
Craig	Henry	Olin
Crane	Herger	Oxley
Dannemeyer	Hiler	Packard
DeLay	Holloway	Pallone
DeWine	Hopkins	Parker
Dickinson	Hunter	Parris
Dornan (CA)	Hutto	Paxon
Douglas	Inhofe	Penny
Dreier	Ireland	Petri

Rahall	Sensenbrenner	Staggers
Ravenel	Shaw	Stangeland
Regula	Shays	Stump
Rhodes	Shumway	Sundquist
Ridge	Shuster	Tauke
Ritter	Slattery	Taylor
Robinson	Slaughter (VA)	Thomas (WY)
Rogers	Smith (NE)	Traficant
Rohrabacher	Smith (TX)	Upton
Ros-Lehtinen	Smith, Robert (NH)	Vander Jagt
Roth	Smith, Robert (OR)	Vucanovich
Sangmeister	Snowe	Walker
Sarpalius	Solomon	Weldon
Schaefer	Spence	Wolf
Schroeder		Wylie
Schulze		

NOT VOTING—44

Aspin	Hawkins	Saiki
Bates	Jenkins	Schneider
Boxer	Johnston	Schuette
Brennan	LaFalce	Sharp
Burton	Leath (TX)	Sikorski
Condit	Luken, Thomas	Skelton
Crockett	Martin (IL)	Smith (VT)
Derrick	McGrath	Smith, Denny (OR)
Dingell	Murphy	
Dyson	Nelson	Traxler
Ford (MI)	Pursell	Udall
Ford (TN)	Quillen	Walgren
Gingrich	Rostenkowski	Walsh
Glickman	Rowland (CT)	Watkins
Gray	Russo	Weber

□ 1733

The Clerk announced the following pairs:

On this vote:

Mrs. Boxer for, with Mr. Glickman against.

Mr. McGrath, with Mr. Quillen against.

Ms. Schneider for, with Mr. Denny Smith against.

Mr. GRANDY, Mr. PARRIS, and Mrs. LLOYD changed their vote from "yea" to "nay."

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 5114, FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, IN 1991, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 101-972) on the resolution (H. Res. 101-541) waiving certain points of order against consideration of the conference report on the bill (H.R. 5114) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes, and against its consideration, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 5769, DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1991, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 101-973) on the resolution (H. Res. 542) waiving certain points of order against consideration of the conference report on the bill (H.R. 5769) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes, and against its consideration, which was referred to the House Calendar and ordered to be printed.

CONFERENCE REPORT ON S. 358, IMMIGRATION ACT OF 1990

Mr. BROOKS. Mr. Speaker, pursuant to House Resolution 538, I call up the conference report on the Senate bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States and to provide for administrative naturalization and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Pursuant to House Resolution 538, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of yesterday, Friday, October 26, 1990.)

The SPEAKER pro tempore. The gentleman from Texas [Mr. BROOKS] will be recognized for 30 minutes, and the gentleman from Texas [Mr. SMITH] will be recognized for 30 minutes.

PARLIAMENTARY INQUIRY

Mr. BRYANT. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. MURTHA). The gentleman will state it.

Mr. BRYANT. Mr. Speaker, I would like to inquire if the gentleman from Texas has been granted the other half hour as opposed to the bill.

The SPEAKER pro tempore. Is the gentleman from Texas [Mr. SMITH] opposed to the conference report?

Mr. SMITH of Texas. Mr. Speaker, to answer the gentleman from Texas [Mr. BRYANT], I am not opposed to the bill.

Mr. BRYANT. In that case, Mr. Speaker, being opposed, I would seek 20 minutes of the time that has been allocated under the rule.

The SPEAKER pro tempore. The time will be allocated as follows: 20 minutes to the gentleman from Texas [Mr. SMITH], 20 minutes to the gentleman from Texas [Mr. BROOKS], and 20 minutes to the gentleman from Texas [Mr. BRYANT].

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on S. 358, the legal immigration bill. The bill, which was the subject of several days of meetings among members of both the Senate and House Judiciary Committee and others, reforms America's legal immigration quota system. It expands the annual immigration numbers from the current level of 530,000 to roughly 700,000 per year.

I believe that the current proposal on these major issues is a good resolution of the differences between the two Houses and should be approved because it represents a reasonable compromise. Those supporting family reunification should applaud our efforts because we have proposed additional visas over the current allotment. We have also proposed to increase visas for those immigrants who can contribute to improving American competitiveness in world market by attracting highly skilled individuals to our country. Last but not least, additional visas are to be granted to citizens of those countries that traditionally were sources of immigration in the past. These citizens were foreclosed from immigrating due to the vagaries of the 1965 law.

The legislation also provides for temporary safe haven to Salvadorans, as proposed by Chairman Moakley.

Mr. Speaker, I ask that the Members approved this conference report.

□ 1740

Mr. SMITH of Texas. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH], the ranking minority member on the Committee on the Judiciary.

Mr. FISH. Mr. Speaker, I rise in strong support of the conference report on immigration. I appreciate the work of the ranking minority member of the Immigration Subcommittee who has diligently addressed the issue of rules and laws how many should come to the United States.

This country thrives on the new blood and vitality brought by immigrants. I believe that the conference report continues America's longstanding commitment to immigration.

Ten years ago I served on the Select Commission on Immigration and Refugee Policy. Which in 1980 made recommendations for changes in both legal and illegal immigration law and policy. Based upon the findings of the Commission, we tried in several Congresses to pass a bill on illegal migration. Fi-

nally, in 1986, we were successful and passed the Immigration Reform and Control Act.

We then turned to the issue of legal migration, also studied by the Select Commission. As Father Hesburgh, the chairman of the Commission, said, "Once we closed the back door to illegal immigration, we can open the front door a little wider."

The Senate has passed a legal migration bill in these Congresses, only to have it die in the House. It is now time to complete that process by passing the legal immigration conference report.

The conference committee worked hard to come to agreement on legal immigration. The House and Senate bills were very different. There are many compromises. The result in my judgement is a very good bill which enjoys broad bipartisan support.

The conference report addresses three areas of legal migration: family unification, diversity and employment-based immigration.

The conference report enhances the unification of families who have been separated by their own unfortunate circumstances and by our immigration laws. We have been faithful in returning family unification as the cornerstone of American immigration law and policy.

The conference agreement also addresses America's business needs in order to compete in a global economy. At a time when the United States needs highly skilled workers—scientists, engineers, computer experts, and other professionals—the conference agreement responds to that need. By increasing the number of employment-based visas from current law, the conference agreement allows business to obtain the necessary skills to help it remain competitive in the international economy.

The conference report also creates opportunities to immigrate for natives of countries who are virtually shut out of the immigration system. The diversity program will allow these people to find their way back into the immigration flow which they have been excluded from for 25 or more years.

This conference report is a true compromise and upholds the basic principles upon which U.S. Immigration laws rest.

I urge my colleagues to join me in supporting the legal immigration conference report.

Chairman MORRISON and all members of the subcommittee should take pride in forming one of the truly first rate legislative efforts of this Congress.

Mr. BRYANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to begin in my opposition to this conference report by first singling out the gentleman from Connecticut [Mr. MORRISON] and the gentleman from California [Mr. BERMAN] for well-deserved praise for a lengthy battle in favor of this bill and for acting very much in what their view is of the public interest and the interest of people that need many of the protections that have been brought forward by this bill, including the family unity provision. I simply want to say though I disagree with them, I have enormous admiration for the job they have done, and would like to make that plain prior to the beginning of this debate.

Mr. Speaker, my opposition to this conference report is rooted in the simple fact that today in the United States of America we admit 530,000 legal immigrants into this country every year, more than all the other nations of the world combined admit to their countries, at a time in which we are unable to meet the basic needs of our own citizens and unable to even pay the bills of our country.

Today a bill is on the floor that would increase by one-third the number of legal immigrants that will be able to enter this country on an annual basis beginning next year, and the figure would not include those that enter the country as refugees or legal aliens.

Mr. Speaker, American immigration law should be based upon a desire for pursuing the time-honored American tradition of encouraging family unity, as well as the admission of refugees into this country, as well as the willingness to assist persons fleeing from persecution who are in need of asylum.

There is another legitimate purpose of immigration law, and that is to pursue any policy that pursues our national interest. But the bill before us today does not meet that criteria. The bill goes far beyond these purposes. The bill cuts back dramatically on the level of family unity provisions which were in the bill when it passed the House and drew the attention of many Members and their support of it.

Instead, it begins to launch us into a new era in which suddenly we see dramatic increases in the number of persons who come into this country for purposes which in the past have not, I think, met with public approval.

What am I talking about? I am talking about a provision of the bill now that provides for employment-based immigration. This bill will allow 140,000 permanent workers to enter the country every year based on the allegation that somehow we have a labor shortage in the United States, an allegation which I believe we could easily show to be totally frivolous.

Mr. Speaker, we do not have a labor shortage in America today. What we have in America today is a job shortage and a training shortage. Indeed, we have a 6 percent unemployment rate.

The fact of the matter is that while this bill would admit 140,000 new permanent workers every year, we today have people in our country who cannot work, who are able to work, and are willing to work, but cannot find jobs.

The effect of this bill is simply going to be to drive down the value of their labor, which they are going to have a difficult time marketing even under the present circumstances.

We have Americans today who work at a wage rate low enough, that even those that have jobs are not able to get by. We have millions of untrained Americans. Basically what this bill is saying to them is, "Goodbye, there is not going to be training for you. We are not going to pay any attention to your situation. We are going to address the problems of this country by inviting an extra 140,000 permanent workers into the country, along with their families, to take the places that we might have trained you to take, had we been willing to follow that path."

Mr. Speaker, I submit to Members this is not the direction the American people want to take. This is not in the interest of the American people. This bill has lost its purpose.

Mr. Speaker, for those reasons I oppose this bill, and will expand further on my reasons for opposition in the subsequent comments.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the gentlewoman from Washington [Mrs. UNSOELD].

Mrs. UNSOELD. Mr. Speaker, I wish to enter into a colloquy with the gentleman from Texas [Mr. BROOKS].

Mr. Speaker, I understand that section 203 of this bill would not authorize the Attorney General or the Secretary of State to take any action in the name of international reciprocity which would abrogate a U.S. collective bargaining agreement covering U.S. workers. That is, if, a U.S. union has a collective bargaining agreement with a stevedore employer, providing that specified longshore work will be done by the union's longshore workers, who will be American citizens, that collective bargaining agreement would continue to prevent alien crewmen from doing the work the contract protects for those U.S. longshoremen. This would be true even if under this legislation the Secretary of State finds that another country allows U.S. crewmen to perform particular longshore work in its ports and is entitled to reciprocity here for the purposes of this immigration law. Is this the case?

Mr. BROOKS. Mr. Speaker, if the gentlewoman will yield the gentlewoman is correct. This section only has the effect of defining what immigration law, by itself, permits and pro-

hibits. It does not extend into the area of labor law, and it would not disturb any U.S. longshore collective bargaining agreements that reserve work for U.S. workers.

Mrs. UNSOELD. Mr. Speaker, I thank the committee chairman, and with this clarification, this immigration reform package goes one step further in providing protection for American workers.

While other workers who are qualified and available have been given priority over aliens in other professions, the longshoremen have not been given the same protection. Current law has deprived U.S. longshoremen of desperately needed work. The ports, stevedore companies and coastal communities of the Pacific Northwest need our help. By adopting this conference report, they will get it.

With this, longshoremen can trust that their hard-won contracts will be honored. They can trust that immigration policy will not interfere with or abrogate labor and transportation policy. They can trust that the Attorney General and the Secretary of State will be on the side of the American worker.

I am hopeful that they can also trust that the limited exceptions, which define the longshore work aliens are allowed to perform, will continue to stay limited. The three exceptions are for tanker vessels, for cases in which the use of alien crewmen to perform particular longshore functions has been established and generally accepted in individual ports, and for reciprocal treatment between the U.S. and maritime countries that do not prohibit U.S. crewmen from performing longshore activities in their respective ports. These exceptions should remain the only exceptions.

Mr. Speaker, I urge my colleagues to support this conference report on immigration reform.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington [Mr. SWIFT]

Mr. SWIFT. Mr. Speaker, I rise in support of the legislation.

I am pleased that the conferees have agreed to include language in section 311 of this conference report which will clarify the statutory definition of the "normal operation and service aboard a vessel" by alien crewmen.

The reason we have had to more clearly define what constitutes "normal operation" is that the Immigration and Naturalization Service has given a very open-ended interpretation to this definition so that they have allowed alien crewmembers on ships to perform loading and unloading functions that have traditionally been performed by longshoremen. What we have done here is clarify the original intent of the Immigration Reform and Control Act of 1986.

I want to commend the chairman of the Judiciary Committee, Mr. BROOKS for addressing this problem, and I am pleased to support the conference report.

Mr. BROOKS. Mr. Speaker, I yield 3 minutes to the gentleman from Connecticut [Mr. MORRISON], the distinguished chairman of the subcommittee, who has done outstanding work on this immigration bill. If it were not for Mr. BRUCE MORRISON, we would have no immigration bill before us on the floor, and when he leaves this Congress to be Governor of Connecticut, we will probably not have any more immigration bills on the floor.

Mr. MORRISON of Connecticut. Mr. Speaker, I thank the chairman for his gracious comments, and even more, thank the chairman for his diligent support and leadership in the process that brought this House to this point.

This legislation is historic legislation. It reforms our legal immigration system in ways more extensive and more broad than any legislation this Congress has ever considered before.

There are a number of important aspects of this legislation we should emphasize. First, it is strong on the improvement of family unification. This is pro-family legislation. It brings families together. In particular, it emphasizes the minor children and spouses of families, and the more immediate unification of such families.

Second, this legislation protects American jobs. Those who suggest that the admission of skilled workers for positions which go unfilled is contrary to the interests of American economy and American workers are mistaken, because we provide for filling jobs that otherwise would not be filled. Americans retain their jobs. American businesses expand in order to hire more Americans.

This legislation takes a balanced approach, a careful approach, and sees to it that those who are admitted to work in the United States are needed, and would not be here unless they were needed because of the lack of American workers.

Third, this legislation reopens the door of immigration to countries which have had that door closed since 1965, countries such as Ireland, Italy, Poland, countries that have been part of the basic source of immigration to this Nation.

Beyond those changes in legal immigration, this law perfects the rules regarding the temporary admission of workers to this country, an area that is subject to abuse, and the rules and standards are tightened for the benefit of American workers.

We also in this legislation, streamline the process by which people become citizens, implementing a long recommended provision regarding administrative naturalization, so there will not be the long waits there are today for those who seek to become citizens.

In addition, thanks to the work of the chairman of the Rules Committee, the gentleman from Massachusetts, [Mr. MOAKLEY], a battle that he has fought since the early 1980's has been won. Those who fled the violence and death in El Salvador will not be sent home because of temporary protected status that they are given, and beyond that the rules are put in place for temporary protected status for other nationals such as the Chinese and the Liberians and the Kuwaitis and the Lebanese who might need this protection now, and other nationalities who might need that protection in the future.

This is broad, comprehensive reform. It deserves the support of this House, and the signature of the President, which I believe has been committed to us by the support of the administration.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, John F. Kennedy spoke of a nation of immigrants. Walt Whitman wrote of a teeming nation of nations, and Neil Diamond sings of coming to America.

America is known as a melting pot, but fortunately its contents are anything but bland. It contains variety, color and spice.

America continues to be blessed by those who come from foreign countries and who are attracted to the opportunities that only a free society can offer. I met one such person last week in the House Members' dining room. He is from Argentina and has been in this country about 3 years, and he is working as a waiter so that he can earn enough money to complete his college education. His obvious enthusiasm for the future can only make for a better America.

Mr. Speaker, individuals like the waiter in the House dining room will appreciate the legal immigration bill we consider today. It rightly further's America's reputation for generosity. In fact, we are a country that will continue to accept as many newcomers as the rest of the world combined.

Although not without flaws, this bill is far superior to the bill considered earlier by the House. The bill the House considered rewarded those who broke our immigration laws by granting amnesty to illegal aliens from certain adversely affected countries, while others who abided by the law waited for visas. The conference had the good sense to remove that provision.

Although many proponents of immigration reform wanted to help U.S. competitiveness, the bill the House considered contained provisions strongly opposed by such groups as the Chamber of Commerce. The bill would have imposed confusing and in-

efficient new labor certification procedures on companies who applied for employment-based immigrant visas.

It would have placed an unreasonably low limit of 25,000 on an annual basis as the number of temporary visas for highly skilled workers. Both of these provisions were improved by the conference committee.

The labor attestation changes are now a pilot program that will be studied after 3 years, and the limit on temporary visas for skilled workers is now 65,000.

The conference committee bill, while maintaining family reunification as the cornerstone of U.S. immigration policy, places a greater emphasis on skilled immigrants. This improvement puts America's interests first by recognizing the talents skilled immigrants have to offer.

The House bill, although it dealt with many issues, failed to address a few key problems in immigration policy. The deportation system in the United States has been full of loopholes and inefficient procedures that have allowed criminal aliens to circumvent the law and remain in this country.

The Immigration and Naturalization Service estimates that at least 30,000 aliens are arrested for deportable offenses every year, yet in 1989 only 7,000 such aliens were deported.

The General Accounting Office reported that of aliens who were convicted of felonies, 77 percent were arrested on felony charges at least one more time. This bill makes much needed reforms in the deportation process. Criminal aliens will no longer be able to stay in this country while immigration judges are operating with few rules and waiting for trial transcipts.

The reforms in this conference report, which include reforms from my criminal aliens legislation, H.R. 5284, will make deportations more closely conform to the Federal Rules of Civil Procedure. They will establish deadlines for filing appeals and help immigration judges hold in absentia hearings when aliens fail to appear.

Another provision to help expedite deportation of criminal aliens now included in the bill is a provision introduced in the House as an amendment to the crime bill that authorizes 20 additional immigration judges to hear deportation cases of aggravated felonies. After a few years of declining arrests through the borders, apprehension of illegal aliens topped 1 million once again in fiscal year 1990. This discouraging news was largely unaddressed by the House bill, but the conference committee added a vital provision to help reverse this trend.

There are increased penalties for the Coyotes along the border who prey on scared aliens and reduce people to cargo.

□ 1800

There is improved border maintenance, to reduce the flow of illegal aliens.

Since last year, I have worked to give Immigration and Naturalization Service officers the statutory authority to perform the job we have asked them to do. These INS officers often have had to perform citizen's arrests to detain criminals smuggling drugs across the border. Granting INS officers general arrest authority will protect them from civil liability for performing their job, and it will prove to drug smugglers that Congress is serious about combating crime along the border.

Another indication of our resolve to combat illegal immigration is the authorization in the bill for an additional 1,000 Border Patrol personnel. I hope this additional authorization will result in the actual hiring of more Border Patrol officers.

I urge my colleagues to approve additional appropriations to ensure we can enforce our immigation laws.

The gentleman who deserves much of the credit for these improvements is the junior Senator from Wyoming, AL SIMPSON, whose persistence, expertise, and good humor enabled him in conference committee discussions to turn a special-interest bill into one that will largely serve America's interests.

I join with our colleagues in the Senate and my colleagues in the House in recommending this bill to the Members.

Mr. Speaker, I reserve the balance of my time.

Mr. BRYANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, many Members of the House last night voted against the rule on this bill because they learned late in the proceedings that this bill included not only the I.D. provision, which was later dropped, but also included a curious provision for the first time to allow 10,000 people to enter this country every year for one reason and one reason only: because they are millionaires. They have a million dollars. They are not qualified in any particular way, but they have a million dollars, and they are willing to come into the country and invest it here and create 10 jobs for the first couple of years they are here, or in a rural area invest $500,000 and be qualified to become American citizens.

It is the sale of American citizenship. It is still in the conference report, Mr. Speaker, and I will talk about it more in a moment, but I want to make it very clear to Members who are paying attention to the consideration of this conference report that the problem has not been cured.

A vote for this conference report is a vote for the sale of American citizenship to anyone with $1 million.

Mr. BROOKS. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New York [Mr. SCHUMER], chairman of the Subcommittee on Criminal Justice.

Mr. SCHUMER. Mr. Speaker, I thank the distinguished chairman of the full Committee on the Judiciary for yielding to this subcommittee chairman.

Mr. Speaker, let me say to my colleagues that this bill is, indeed, a turning point. It says that our immigration policy is in need of revision, given the new world we are in and that we have stepped up to the plate and met the challenge.

The bill says that immigrants are good for America as they have been for 200 years, adding their vitality, their skills, their energy, and their plain ordinary desire to be Americans and be free and participate in our system to our wealth and to our strength.

Every study has shown that immigrants give far more to America than they take. Every study has shown that areas of our country that have many immigrants are vital and strong and important.

This bill adds immigrants in three ways. First, it increases the number. We are a growing country, and we need more immigrants in general. Second, it says for the first time that immigrants should be admitted in large numbers because we need their skills. There are many companies in this country which, try as they might, who are stymied and stifled because they cannot find aeronautical engineers, hospitals that cannot find nurses, companies that cannot find specific kinds of skills whether they be low, medium, or high, and they need them.

Third, what this says is that there are parts of the world that should be able to contribute to American immigration, places like Ireland and Italy and Poland and Nigeria who have been denied simply because the people from those areas came to America not 30 years ago but 50 and 100 and 200 years ago.

This bill, under the diversity provision that I have authored, allows those people to come into this country.

Overall, Mr. Speaker, this is a bill that meets the needs of this country in the 21st century. We are not doing this for the immigrants. We are doing this for America.

The Immigration Nursing Relief Act of 1989 amended the INA section 101(a)(15)(H)(i) by establishing a new nonimmigrant classification for registered nurses who meet certain qualifications. To obtain a nurse pursuant to the new (H)(i)(a) program, a facility for which the alien nurse will perform services must file an attestation. The purpose of the attestation is, in part, to assure that the employment of the

foreign nurse is critical to the facility's delivery of health services, that it would not adversely affect the employment of U.S. citizen and permanent resident alien nurses, and that steps would be taken by the facility to reduce its reliance on foreign nurses.

Since the passage of the Immigration Nursing Relief Act, questions have arisen about the meaning of the term "facility." Specifically, the 1989 act did not clearly address the attestation responsibilities of firms or agencies in the business of hiring nurses and contracting out their services, as well as the hospitals or nursing homes that contract for these nurses. This legislation specifically places the responsibility for filing an attestation both on the employer; namely, the employing agency, and its customer, the independent hospital or nursing home worksite.

The clarification of the responsibilities does not compel the filing for each worksite where the employer is the worksite or controls the worksite, such as in the case of a municipal hospital system that employs the nurses in its constituent hospital worksites that are under the control of the system. In such cases, the filing of a single attestation by the organization or municipal agency is sufficient.

In appropriate cases where multiple filings would otherwise be required, flexibility is afforded by giving the Secretary of Labor the authority to waive certain provisions otherwise required for the attestation.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, I would like to respond to the remarks by my friend, the gentleman from Texas, in regard to the investor visas mentioned just a minute ago.

I would like for my colleagues to know that this particular provision of the immigration bill is actually the only provision of the immigration bill that is absolutely guaranteed to create jobs and produce revenue for the U.S. Government. In fact, if these 10,000 investor visas are taken advantage of, it will create a minimum of 100,000 jobs in the United States, and it will generate a revenue of up to $10 billion for the Government.

Mr. BRYANT. Mr. Speaker, will the gentleman yield?

Mr. SMITH of Texas. I am happy to yield to the gentleman from Texas.

Mr. BRYANT. The gentleman observed it would create 100,000 jobs. In fact, this bill admits 140,000 new employees, does it not?

Mr. SMITH of Texas. Reclaiming my time, let me point out where I get the figures that I am talking about, which I gather the gentleman does not dispute.

This provision, of course, says that 10,000 investors may come into the country if they are going to start a business that will employ at least a minimum of 10 employees. That is where the figure comes from of 100,000 guaranteed jobs.

In addition to that, I would like to say that this immigration bill gives preference to any number of individuals. It gives preference to individuals with skills. It gives preference to individuals with education. It also gives preference to individuals simply because of their right of birth, that they happened to be immediate family members.

So if we are going to give preference to individuals on the basis of those various qualifications, why not give preference to individuals on the basis of the skill and the talent and the business expertise that they are going to bring to America?

Lastly, Mr. Speaker, let me point out that our chief rivals for skilled immigrants—that is, the countries of Canada and Australia—have programs of this type, investor visas, that are far in excess of the kind of program that is a part of this bill today.

I think by any standard that this is a good provision. We need to continue the investor visa provision.

Mr. Speaker, I yield 3 minutes to my colleague, the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I opposed this bill when it left the House. I did not think it was a good bill.

But I am very, very pleased with the product that came out of the conference committee, and I support this bill today, this conference report. I think it is a major advance in the reform of legal immigration, and I urge my colleagues to vote for it.

I have been one of the leading proponents of legal immigration reform for a long time. I was very much opposed to some of the illegal immigration provisions that were in the 1986 law which were amnesty- and legislation-oriented, but when we came to this bill and got to the conference committee, those provisions that were true amnesty were reduced to only those who are the children, minor children, and spouses of those who were legalized in 1986 and who were here on or before May 5, 1988, so that does not concern me in the scope of things nearly as much as the good things that are in this bill.

The good things, and the really good things, center on two or three areas. One of them is we now have a provision under this new law that will provide for a whole lot of new seed immigrants, people who do not have those family connections.

We still protect the family unification principles, but for a long time that family unification squeezed out all of the possibility of seed immigrants.

Under what is being adopted here tonight, we will be able to have 55,000 seed immigrants in the diversity category who have not been able to come here before who will have educational skills, and so forth, that do not have family connections, and we will be able to have 140,000 new skilled workers able to come here who do not have the family connections. I think it is very important that we have these skilled immigrants.

In addition, this bill does reform the areas of laws that have been long overdue to allow the Justice Department to deport those who are here illegally and who are criminals and who have been in our jails for years in many cases. I think the improvement of the deportation provisions alone might well justify the passage of this law.

Then, in addition to all of that, we have in this bill major reforms that go to the heart of the visa system and the way that that is conducted for the ordinary events of bringing people here on a temporary basis that I approve of.

So all in all, I must say this is an extraordinary accomplishment. I disagree with the temporary stay provisions that are incorporated here under the title of extended voluntary departure, but that was reduced and minimized in the conference considerably from what left the floor, and overall the positive things about this bill far outweigh the negatives considering what we are doing to have a major reform in legal immigration that will pass with this conference report tonight.

I urge my colleagues to vote "aye" on the conference report, vote "aye" for some very positive reform of immigration laws and be thankful that we have a conference ability here that puts two opposites together and can come out with a very fine product like we did in this case.

□ 1810

The SPEAKER pro tempore (Mr. MCNULTY). The Chair wishes to state that the gentleman from Texas [Mr. BRYANT] has 13 minutes remaining.

Mr. BRYANT. Mr. Speaker, I am pleased to yield 3 minutes to my colleague, the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL of California. Mr. Speaker, I cannot vote for the immigration bill because of a provision that was added in the final minutes of the final day of this Congress. The provision that was added had been deleted from the bill in the House Judiciary Committee where I serve. That provision allowed individuals with sufficient wealth to invest that wealth in the United States and thereby obtain a visa and eventually citizenship.

Some argue that this is good for America's economy because we would invite the kind of investment that stimulates jobs. Other countries, we are told, have similar programs. But this is intolerable for me. However beneficial the investment may be, the

fact remains that the investment is possible only by those capable of investing. It remains inescapable that America would, for the first time in its history, be granting a statutory preference for citizenship based on wealth.

I have fought hard for this legislation. I voted in favor of it in committee. I debated opponents of this measure in the Republican conference, authored numerous letters to all the other Members of Congress urging their support for it, tried to persuade my colleagues in countless personal meetings to support it.

I have done everything in my power to pass an immigration bill because of the importance of its provisions for reuniting families, and for keeping in America those skilled individuals whose abilities are particularly in need.

But a truly offensive provision was forced into this bill, at time of great crisis as we were striving to finish the bill relative to the budget.

Many have urged me to vote for the bill and try to remove the provision next year. But it is highly unlikely that the Congress will revisit the immigration question next year. If, however, we defeat this bill, we can report an identical bill save for the offensive provision as soon as January.

The President has already indicated he would sign such a bill; his approval was not contingent upon including this offensive provision.The provision was added at the request of three Senators who, by reason of the desperately late hour of this Congress, were in a position to insist on their way. They will lack that power at the start of a new 2-year congressional session.

There is a sense of urgency in our present deliberations that is conducive to error. The wiser course is to bring this matter up again in January. Standing alone, a provision in immigration law that favors those with wealth would fail because the overwhelming majority of the people's representatives would oppose such a stark departure from what we think of America. We must not let shortness of time stampede us into a fundamental breach of faith.

Mr. BROOKS. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. BERMAN], a very active and resourceful member of the subcommittee who did much to formulate this legislation.

Mr. BERMAN. Mr. Speaker, I thank the chairman of committee for yielding me this time, and, more importantly, I thank the gentleman from showing such tremendous skill and patience in helping us to move this measure in our first and final opportunity to pass a major comprehensive reform of legal immigration.

In that vein, I turn to my friend, the gentleman from California [Mr. CAMPBELL], a member who is sincerely concerned about the investor provisions, and say that if he thinks defeating this bill will cause the Committee on the Judiciary and the chairman of the Committee on the Judiciary to turn their attention to this legislation next year, I suggest a personal conversation with our distinguished chairman, the gentleman from Texas, on that subject, and the gentleman might reevaluate his position.

This bill, which came within a last gasp of disappearing from the scene last night, does very many things that I do not think anyone might have imagined we could have accomplished when the 101st Congress started. We have increased the visas for the second preference spouses and children from 70,000 to 148,200. We have provided that 75 percent of those second preference visas for spouses and minor children are not subject to country limits. This is an issue my colleague, the gentleman from Los Angeles, California [Mr. ROYBAL], has been working on for years. He has been working to remove the country limit on Mexico and some of the other over-subscribed countries. We have now accomplished that in this legislation.

We have permanently increased family-based immigration in the face of an initial effort on the other side to replace family-based immigration with skilled immigration. We have managed to find a way to deal with both.

Mr. Speaker, we have increased country ceilings effectively from 20,000 to approximately 25,000. We have included a provision in this bill which we were neglectful of including when we passed the Immigration Reform and Control Act, which finally provides codified stays of deportation and work authorization for spouses and minor children of newly legalized aliens, not to mention the 8-year effort of the chairman of the Rules Committee to provide EVD status, temporary protected status for the Salvadorans, and a massive reform of the horrible McCarran-Walter immigration legislation many years ago. This is something that the gentleman from Massachussetts [Mr. FRANK] organized.

Mr. Speaker, this is a good bill. I only want to pay in closing my tremendous respects to the chairman of the full committee and the subcommittee, as well as my colleagues on the subcommittee, for their work, and to the ranking Republican member of the subcommittee, the gentleman from Texas [Mr. SMITH], who had strong feelings about this legislation and who has seen from his point of view the kind of compromises that have caused him to support the legislation.

This means, I believe, that our effort will be successful, and I think I can say that we are on the verge of doing something very historic here.

The SPEAKER pro tempore. The Chair will state that the gentleman from Texas [Mr. SMITH] has 6½ minutes remaining.

Mr. SMITH of Texas. Mr. Speaker, I yield 3 minutes to my colleague, the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Mr. Speaker, I thank the gentleman from Texas [Mr. SMITH] for yielding this time to me.

Mr. Speaker, I want to commend the gentleman from Texas [Mr. BROOKS] and the gentleman from New York [Mr. FISH] for their leadership in bringing this important legislation to the floor, and I commend also the gentleman from Connecticut [Mr. MORRISON] and the gentleman from Texas [Mr. SMITH] for their hard work in making it come about.

The legislation contains many important provisions, and three of them are on immigration from the Crown Colony of Hong Kong. Hong Kong, as the Members are well aware, is one of the world's great economic miracles, representing, perhaps, the most vibrant economy in the world, which will come under the control of Communist China in 1997. With Tiananmen Square and the ongoing abuses of human rights by the People's Republic of China, understandably the people of Hong Kong are extremely nervous about their future, and, Mr. Speaker, they are voting with their feet and leaving Hong Kong in record numbers. This year alone 62,000 are immigrating. They are going to Singapore and to Canada, they are going to Australia, they are going to many other places in the world. These are entrepreneurs who know how to create jobs and make another economy equally vibrant.

U.S. business has great interests in Hong Kong, as well with $16 billion invested and with many thousands of Hong Kong citizens as their employees. These businesses are also suffering because of this tremendous emigration.

The bill contains three provisions that are of great help. First, it raises the quota from 5,000 to 10,000. Second, it creates a special quota for Hong Kong employees of U.S. businesses of 12,000 a year. Third, it creates an unprecedented type of visa, one that is exercisable at the holder's discretion over a long period of time, 5 years past the 1997 date, and it will provide the kind of insurance to Hong Kong people that will allow them to stay in Hong Kong and continue to work and make Hong Kong an ongoing example of successful free enterprise that can influence the future economic policies of Beijing post-1997.

This special visa is the work of our colleague, the gentleman from Massachusetts (Mr. FRANK), who ought to be commended for his great creativity and his vision in seeing that this

safety net is provided for the people of Hong Kong which will encourage them to stay and work and, at the same time, allow them to leave, if they must, in the face of possible future abuses of Hong Kong citizens by the People's Republic of China.

□ 1820

So I commend all these gentlemen for their good work. Hong Kong will be the better for it. The United States will be the better for it. Their economy, our economy, and ultimately, all the people of China will be the beneficiaries.

Mr. BRYANT. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. LEWIS].

Mr. LEWIS of Florida. Mr. Speaker, I thank the gentleman for yielding this time to me.

Well, Mr. Speaker, here we are again, increasing the numbers. I would like my colleagues who live in the States who are not affected by this type of immigration in southern California and Texas, on the Rio Grande and in southern Florida, to go back and explain to their people that we did you a favor, that we let the people of southern California, we let the people of southern Texas, and we let the people in southern Florida foot the bill for this particular amendment to the Immigration Act. I think this is wrong.

The people of Florida have not been compensated all the way back from the Mariel boatlift, and we continue and continue and continue to open the quotas and let the people come in, and open the floodgates.

Now, I do not think anyone in this body is opposed to letting these people come into this country, but we certainly, some of us, are in objection to continually having to pay and pay and pay. The Florida taxpayers are sick and tired of the irresponsible actions of this body in the Immigration Act that continues to allow amnesty and continues to open up the floodgates.

Search your souls. We want to help these people, but we certainly do not want to continue to open up the roads and allow these people to come into south Florida or southern California or southern Texas.

Mr. BROOKS. Mr. Speaker, I yield 2 minutes to the distinguished chairman of the Committee on Rules [Mr. MOAKLEY].

Mr. MOAKLEY. Mr. Speaker, I think this bill should be known as the Reincarnation Act of 1990. If anything was deader than this bill last night around midnight, I do not know what it was. If it was not for the outstanding action of the chairman, the gentleman from Texas [Mr. BROOKS], the gentleman from Connecticut [Mr. MORRISON], and the gentleman from Massachusetts [Mr. FRANK], so many people scurrying back and forth between the House and the Senate trying to work out some kind of last-minute arrangement so that this bill could come to the floor and be enacted into law. I think it really says something about the desire to have a bill such as this before the House today.

Mr. Speaker, this bill creates greater opportunity for all people. It reunites families. It contributes to the overall economic growth of our country. It provides fairer immigration standards for nationals from countries like Ireland and Poland. It provides a mechanism to offer safe haven to refugees who flee war. It is a good bill that deserves bipartisan support.

Mr. Speaker, as many of my colleagues know, I have a special interest in the bill. Specifically, I am very delighted that the conferees saw fit to maintain my position to offer temporary protection to the refugees from El Salvador.

It is no secret, Mr. Speaker, that El Salvador is currently engulfed in a very brutal civil war that has claimed over 70,000 lives. The violence perpetrated by both the left and the right continues to take a very high toll. And like it or not, we in the United States must bear some of the responsibility for what happens in that very small country.

Mr. Speaker, the modest protections in this bill to help these refugees is the right thing to do. It maintains the high traditions and standards that have become a hallmark for U.S. immigration policy.

Mr. Speaker, this bill is long overdue, and let me again thank my colleagues, the chairman of the committee, the gentleman from Texas [Mr. BROOKS] and the gentleman from Connecticut [Mr. MORRISON] for doing outstanding work, and I hope we can pass this and send it forward so that it can be enacted into law so we can settle a lot of problems that have happened over a number of years that need correcting at this time.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I would like to express my support for the conference report on S. 358, the Family Unity and Employment Opportunity Immigration Act of 1990.

S. 358 represents the most significant effort since 1965 to reform our Nation's current legal immigration laws. I believe that the existence of huge backlogs in family reunification visa cases, a continued shortage of workers with highly specialized skills, and systemic problems that have disadvantaged 19th century sending countries demonstrate the need for revision of our immigration system. S. 358 addresses these problems—reuniting divided families, improving economic competitiveness by facilitating the immigration of those with scarce skills, and addressing the anti-European bias in the 1965 law.

Like most immigration bills, S. 358 is not perfect. I am particularly concerned about the limitation of the numbers for low-skilled workers to 10,000 per year; this is far below the demonstrated need for these visas. This limit on employer-sponsored immigration of low-skilled workers will prevent many American workers, especially women, from pursuing careers while also caring adequately for their families. Thus, children, the elderly, and the disabled will be seriously and adversely affected.

The most recent publication of the Committee for Economic Development, a panel of leading business figures, presents a comprehensive summary of our future work force needs. The report, which I recommend to Members, demonstrates that this category of low-skilled immigrant workers needs at least 19,000 visas, plus family members. The conference report provides for a review of immigration policy, and I hope that this issue will be reconsidered as soon as the facts demonstrate that this legislation has exacerbated already existing shortages of child care, home care, elder care, and other basic skilled workers.

Mr. BROOKS. Mr. Speaker, I yield 30 seconds to the gentleman from California [Mr. EDWARDS], the chairman of the Committee on Public Works and Transportation.

Mr. EDWARDS of California. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I was one of the Members last night who spoke and voted against the rule, but I would like to make it very clear that the odious provision that caused a number of us to vote against the rule last night has been removed. It is not a part of this bill. What is left is a remarkably creative decent piece of legislation that I support with great enthusiasm.

I compliment all those who have been involved in the creation of this bill, and especially the subcommittee chairman, the gentleman from Connecticut [Mr. MORRISON] who did a remarkable job, as well as the gentleman from Texas [Mr. SMITH] and my colleague, the gentleman from California [Mr. BERMAN].

Mr. Speaker, I urge enactment of the bill.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I want to join our colleagues in thanking the chairman, the gentleman from Texas [Mr. BROOKS],

the gentleman from New York [Mr. FISH], and the other members of the committee for their hard work in bringing this bill to the floor.

I particularly want to commend the gentleman from Connecticut [Mr. MORRISON] for his leadership on issues of concern to my community.

It is with a degree of State pride in California that I commend the gentleman from California [Mr. BERMAN] for representing our interests on the committee and giving us a bill that is good for our State, good for the community, and most of all, good for our country.

Mr. Speaker, as one who believes that immigration is good for our country because it is a source of invigoration and refreshment to us, I am particularly pleased with the provisions of this bill which streamlined operations for people coming here, especially in terms of family reunification.

People bringing the academic and work ethic, people bringing family and religious values to our communities to enrich us in that way.

I am particularly pleased that the bill include the initiative that the gentleman from New York [Mr. FISH] took about extending registration in stage 2 of the legalization process, according to the IRCA bill and, of course, I want to commend the gentleman from Massachusetts [Mr. MOAKLEY] for the legislation that was included in the bill as well, which will go a long way to help not only the Salvadorans, but those in our country who minister to their needs.

Mr. Speaker, I commend the leadership of the committee again, and urge an aye vote.

□ 1830

Mr. BRYANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to point out that the gentleman from California [Mr. EDWARDS], a moment ago made the comment that the problem which caused many Members to vote against the rule last night was solved. I think that is not completely accurate.

One problem which caused a few Members to vote against it, the ID card problem, was solved. One other which caused, I think, more Members to vote against it, was not solved and that is the fact that the bill continues to contain a provision as aptly described by the gentleman from California [Mr. CAMPBELL] just a moment ago that was forced upon us due to the late hour of the session by Members of the Senate, which would provide that 10,000 persons can come into this country because they are millionaires and for no other reason. That problem remains in this conference report.

Mr. Speaker, a moment ago one of the speakers made reference to the fact that this bill serves well the needs of Ireland, Italy, Poland, Nigeria, and mentioned a number of other countries as well. All are fine parts of the world. In fact, all of us are from those parts of the world at some point in our background, there is no question about that.

But I think it is fair for us to ask, in view of the state of affairs in our country today: What about the United States of America? Who is asking us to increase legal immigration in 1990 from the world high of 530,000 a year, which is more than all the rest of the countries of the world allow into their countries, who is asking us to allow the importation of 140,000 workers a year into a country that has a 6 percent unemployment rate? Who is asking us to allow 10,000 people to come into the country just because they are millionaries?

The American people are not asking for it, my constituents are not asking for it, your constituents are not asking for it. If this bill was only a family unity bill, I would be asking for it as I have asked for it in the past, and I think it would be warmly embraced. But it goes much farther, much farther than that, and that is the root of the objections raised by me and by others.

We are a Nation that cannot adequately educate our people. We do not adequately train our unemployed. We cannot protect our population from crime. We cannot even find homes for the homeless.

Yet, Members come to the floor and ask us to vote for a bill that increases legal immigration by one-third beginning next year.

I submit to you that the average American would be aghast if he thought that his Congress was busy in the waning hours of this prolonged session dealing with a matter which is so contrary to the viewpoint of the American people at this stage in our history.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Speaker, section 601 of the conference bill reforms our outmoded system of immigration exclusions.

It would modernize the health grounds of exclusion which have at times led to embarrassing incidents at U.S. ports of entry. The health exclusions language has been provided by the Department of Health and Human Services, and approval of it has been received by the Department of Justice.

The bill removes some of the antiquated and unused exclusions that have been in our law since the early 1900's, such as the exclusions based on illiteracy, and the exclusions for aliens who are "paupers, professional beggars, or vagrants." These relics have been replaced by one generic standard which exclude aliens who are "likely to become a public charge."

There is also a new exclusion based on foreign policy grounds which is modeled after the current section 901 statute.

It would allow the Secretary of State to exclude persons who would have a "serious adverse foreign policy effect" on the United States, but it contains some important first amendment exceptions.

The first exception would not allow the exclusion of a foreign government official "solely because of the person's beliefs, statements, or associations * * *"

The second exception would not allow the exclusion of any other alien because of that alien's beliefs, statements, or associations "unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest."

The bill would also expand the current waiver available to permanent immigrants who are members of the Communist Party. This new waiver for Communist Party members will become increasingly important as Eastern Europeans begin to immigrate to the United States.

However, we would retain the authority to exclude former Eastern European Communists if they continue to pose a security threat to the United States. We are simply diluting the current presumption that former Communist Party membership in a country that is no longer Communist dominated implies that a person is a security threat.

Finally, there are many other important changes that the entire exclusions package would bring about—including the elimination of the homosexual exclusion, and the opportunity for the administration to change its policy on the exclusion of HIV-postitive aliens.

Let me emphasize, however, that these changes do not disturb the basic reasons for which we have always, and will always, exclude aliens: For cases where aliens have criminal records, when they are public health risks, when they violate drug laws, when they are likely to become economic burdens on the country, or when they have previously violated U.S. immigration laws.

This is a comprehensive reform of exclusions laws which is a rational accommodation of the concerns of everyone—from those of the administration to those of civil libertarians. I strongly support it.

Mr. SMITH of Texas. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I would like to express my personal appreciation to the ranking minority member of the Committee on the Judiciary, the gentleman

from New York [Mr. FISH], for his leadership.

Mr. Speaker, I join the gentleman from New York in urging our colleagues to support this piece of legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. MANTON].

Mr. MANTON. Mr. Speaker, I rise in strong support of the conference report. At this point I would like to engage in a brief colloquy with my colleague Mr. MORRISON, the author of this legislation, for the purposes of clarifying the language in section 515(b) of the conference report.

It is my understanding that an alien who has filed an application for political asylum or withholding of deportation at any time prior to the effective date of this legislation, even when that application has been withdrawn and a motion to reopen the request has been granted, will not be subject to the provisions in section 515(a) of this measure. Is this correct?

Mr. MORRISON of Connecticut. Mr. Speaker, will the gentleman yield?

Mr. MANTON. I yield to the gentleman from Connecticut.

Mr. MORRISON of Connecticut. I thank the gentleman for yielding.

Mr. Speaker, the gentleman's interpretation of that provision is correct.

Mr. MANTON. Mr. Speaker, I thank my colleague and congratulate him on his fine work in shepherding this important legislation through the Congress.

The SPEAKER pro tempore (Mr. MCNULTY). The Chair would advise: The gentleman from Texas [Mr. BRYANT] has 6 minutes remaining; the gentleman from Texas [Mr. BROOKS] has 4½ minutes remaining; and the gentleman from Texas [Mr. BROOKS] has the right to close debate.

AUTHORIZING THE SPEAKER TO REDUCE TIME FOR VOTE ON S. 845 FOLLOWING VOTE ON S. 358

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that the Speaker be authorized to reduce to not less than 5 minutes the period of time within which a recorded vote, if ordered, may be taken on the motion to suspend the rules and pass the bill S. 845 immediately following to vote on this conference report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. DE LA GARZA], the distinguished chairman of the Committee on Agriculture, a longtime defender of better immigration policies.

Mr. DE LA GARZA. I thank the chairman for yielding.

Mr. Speaker, I rise in support of this legislation. There was one particular point that we were concerned with. That was very graphically demonstrated last night.

I now think we have positive legislation, not that those of us who have and are sensitive to immigration and what it can do and not do, but the fact is that those who have worked in good faith and in good conscience have now given us something that we can support.

I now ask them in the kindness that they have shown us, to continue working with us, and that the enforcement of this legislation be in the spirit in which we have passed it and that we continue working in that endeavor so that the enforcers have the sensitivity and the humanity necessary to see that immigration law is not a vindictive law, is not a law that prejudices anyone, but rather have an orderly ingression of people into our country.

Mr. BRYANT. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I will close my role in this debate with these remarks.

I would again like to pay a great compliment to the gentleman from Connecticut [Mr. MORRISON] for his leadership in this area, and to the gentleman from California [Mr. BERMAN].

Though we disagree on this bill today, they have been dogged in their pursuit of the matter that I think is extremely important and extremely worthy and that is, family unity.

I do not agree that this bill addresses that in a proportionate fashion, but I do want to say that they have done an excellent job and I will miss working with Mr. MORRISON, though I will be happy to see him as Governor of Connecticut in the upcoming year.

Mr. Speaker, I begin speaking on this matter by pointing out that I think the American people would welcome a bill that would address the problem of family unity. I know that I would, and I have spoken in this very spot for that kind of legislation, and for legislation that would address the problem of the El Salvadorans, which Mr. MOAKLEY has pursued with such vigor. I think they would agree with all of us that those are part of our heritage of an immigration policy which is focused on family unity, on refugees, on persons fleeing persecution and on policies that pursue the national interest.

But this bill goes far, far beyond that. In fact, in this bill, which was crafted in the waning hours of the session, the conference committee has imposed upon us the burden of considering legislation today that takes up matters that I think are offensive to the American people and should be offensive to us if we analyze the bill in light of the needs of our country today.

The bill increases employment-based immigration to 140,000 people, people who are going to come into this country for the purpose of taking skilled jobs. That is based on the premise that somehow we have a labor shortage in a country with a 6-percent unemployment rate that we know does not really count all the unemployed, and in a country that does not do an adequate job of training its unemployed.

In fact, what we are doing today, if this bill passes, is saying the unemployment policy is going to be—the job shortage policy is going to be—to import people to take the jobs, not to train the Americans who are here already who are well able to do this work if we could simply give them access to that kind of training.

Second, the bill now includes a provision which this House rejected in committee and which I think the vote on the rule last night also rejected; and that is, the highly offensive provision which says that we are now going to say that we will set aside 10,000 visas for people who come into this country who qualify for those visas on the sole basis that they are millionaires. The bill now says if you have a million dollars to invest in this country and create 10 jobs, come on in. Or, if you have $500,000 that you will invest in a rural area to create 10 jobs, come on in. No other qualifications are necessary.

□ 1840

Mr. Speaker, if you're a teacher, if you're a preacher, or a minister, or a rabbi, if you're a nurse or social worker, if you're somebody who has spent your life in public service, you can't get in under this provision. But if you have dedicated your life to the accumulation of wealth, come on in, buy your citizenship in the United States of America.

Mr. Speaker, I think the other side will say, "Well, there's an obscure provision in the immigration law now called the seventh preference that at one time a long time ago allowed a few people to get in as investors." They will say there is precedent for this.

But what this bill does is unprecedented. Never before have we set aside 10,000 visas specifically for those who have money in their pocket so that they can come into the country ahead of those who do not.

I think, Mr. Speaker, that this bill is a culmination of the excesses of the 1980's, a period in which we tripled our national debt, a period in which we became the biggest debter nation in the world, a period in which we became a country that no longer pays its bills anymore without borrowing staggering sums of money, a period in which we sold off our most precious assets to the point that foreign owner-

ship in our country has tripled in the last 7 years, and now we are selling our last and most precious possession, citizenship. For $500,000 one can have it if they live in the country; for $1 million they can have it if they live in the city.

I ask my colleagues, "Have we lost all of our self-respect? Are we willing to sell our most prized possession just to get money? What kind of a precedent is this that we are going to set if we adopt this conference report today?"

I submit to my colleagues that it is fatally flawed. I submit to my colleagues that, if we can knock it down today, we can come back next year and take up another immigration bill, and then we can focus on the legitimate purposes of immigration legislation: family unity. This bill goes far, far beyond family unity and takes us into an area and sets precedents which I believe are not in the interest of the United States of America.

Mr. Speaker, we cannot educate our own people. We cannot train our own unemployed. We cannot protect our own population from crime. We cannot find homes for the homeless. And yet the Congress is busy changing the immigration law to allow an additional 170,000 people to come into the country over and above the 530,000 that already come in every year under the current law, more than all the rest of the nations of the world combined.

Mr. Speaker, I urge our membership to vote no on the conference report.

Mr. Speaker, I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. WEISS].

Mr. WEISS. Mr. Speaker, I rise in support of the conference report.

Mr. Speaker, I want to salute the distinguished chairman from Texas, Mr. BROOKS, the gentleman from Connecticut Mr. [MORRISON], and members of the Rules Committee for their diligent efforts late last night to return this measures to the floor today. Thanks to your work and commitment, major immigration reform will become a reality in the 101st Congress.

I rise in strong support of the conference report on S. 358, an agreement which marks the most comprehensive revision of immigration law in 66 years. Under the new law, the number of visas granted each year will increase to 700,000 between 1992 and 1994, before dropping to 675,000 annually beginning in 1995.

The measure's most significant increase comes in the number of visas for family reunification, the cornerstone of immigration to the United States. The present policy runs contrary to our most deeply held values by prolonging the separation of spouses from each other and from their children. Under the agreement, more than half the visas, 465,000 for the first 3 years and 480,000 thereafter, would be set aside for the close relatives of U.S. citizens and permanent residents. This is sound public policy that provides for the swift reunification of close family members.

The bill also increases, from 54,000 to 140,000, the number of immigrants allowed entry on the basis of their occupational skills, a provision designed to supplement the threatening labor shortage and provide a needed shot in the arm to our national economy.

The measure breaks new ground by setting aside 40,000 visas for persons from over 30 countries that have been virtually shut out by current law. In 1995, the figure will rise to 55,000 and the list will extend to more nations.

The agreement also eliminates onerous and discriminatory aspects of the McCarren-Walter Act of 1954 which banned entry to the United States on the basis of homosexuality and ideology. In response to the dispute over AIDS and immigration, the measure gives the Department of Health and Human Services the power to remove AIDS from the list of diseases for which a visitor maybe excluded. The Bush administration now must act expeditiously on this newly granted power.

The agreement includes some very important provisions affecting illegal aliens. Under the measure, immigrants from El Salvador would have deportation and detention orders suspended for 18 months. The agreement also provides for a temporary stay of deportation and provides for a work authorization for spouses and children of individuals who were legalized under IRCA in 1986.

The measure addresses the employer sanctions imposed under IRCA by repealing these provisions for recruiters and job referral agencies. This is a step in the right direction, but the only way to truly eliminate the pernicious discrimination caused by these sanctions is to repeal them completely.

Mr. Speaker, let's spread democracy and freedom the best way this nation can: By opening our shores and allowing others to experience the American dream. I urge my colleagues to join me in supporting the Immigration Act before us.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. ROYBAL].

Mr. ROYBAL. Mr. Speaker, I rise in support of the conference report. I wish to take this opportunity to thank the Black Caucus, the Hispanic Caucus, and Members of the House on both sides of the aisle who made possible the deletion from the immigration bill of a pilot project leading to a repugnant national identification system. When I presented my arguments against the biometric national identification system, I said that I would support the bill if it was taken out. The Senate has agreed to delete that section from the bill, and we now have before us a clean immigration bill. I must admit, however, that it is not as good as the original bill passed by this House, but it is much better, and I believe a great improvement over existing law.

Mr. Speaker, in its present version it is supported by some of the most important organizations in the country, and I join with them in favor of the conference report before us.

Mr. Speaker, I urge those who voted against the rule to vote in favor of final passage of this very much improved piece of legislation.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. ORTIZ].

Mr. ORTIZ. Mr. Speaker, I strongly support this piece of legislation and commend those who worked so hard to get this legislation.

Mr. Speaker, I rise in support of the conference report on S. 358, the Immigration Act, and ask unanimous consent to revise and extend my remarks.

I would like to thank the distinguished members of the Judiciary Committee, and my dear Chairman BROOKS, Chairman MORRISON, Representative BERMAN, and Representative FRANK for their outstanding work on this bill.

I would also like to thank Chairman ROYBAL for his many years of leadership on this issue and for his work on defeating the inclusion of the national identification provision formerly in the bill.

I am in favor of provisions in this agreement that increase the number of visas for family reunification and would like to urge my colleagues to join me in supporting this conference report and final passage of this important legislation.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. TORRES].

Mr. TORRES. Mr. Speaker, I stand in support of the conference report.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Speaker, I rise in support of the conference report.

Mr. Speaker, the new rule in House Concurrent Resolution 394 which deletes the Drivers License Pilot Program from the conference report.

The conference report preserves and expands the opportunities for families to be reunited.

Immigration based on occupational skills is more than doubled.

New visa categories are created to enhance the diversity of countries whose nationals can immigrate to the United States.

For these reasons, the new rule and the conference report are strongly supported by:

National Council of La Raza. Mexican American Legal Defense and Education Fund.

Organization of Chinese Americans.

Japanese American Citizens League.

Irish Immigration Reform Movement.

American Civil Liberties Union.

American Jewish Committee.

U.S. Catholic Conference.

Lutheran Immigration and Refugee Service.

American Bar Association.
American Immigration Lawyers Association.
U.S. Chamber of Commerce.
National Association of Manufacturers.
National Foreign Trade Council.
Industrial Biotechnology Association.
Semiconductoir Industry Association.
American Council for International Personnel.
AFL-CIO.
International Ladies Garment Workers Union.

Mr. Speaker, Mr. BROOKS could have killed this bill after the rule went down last night, but he did not because he was a statesman—and knew that this bill was important. We are grateful to him.

The message in the rule defeat last night is that congressional Hispanic caucus members need to be consulted on vital issues affecting immigration. When that doesn't happen, problems like those that surfaced last night happen.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. COLEMAN].

Mr. COLEMAN of Texas. Mr. Speaker, I rise in strong support of this conference report.

Mr. SYNAR. Mr. Speaker, today I voted to approve the conference report on the first major reform of legal immigration in this country in 25 years. Our country was based on immigration and continues to benefit from the admission of immigrants who choose to come to the United States. This bill represents an attempt to strike a balance between the need to reunite families separated by unfair admission policies and the needs of our business and economic communities.

While I support the majority of the provisions contained in this measure, I believe that one particular provision is contrary to our immigration tradition. We have had many questionable exclusion policies applied over the years, our country has never permitted visas to a special class of immigrants based on wealth. One section of this bill calls for permitting the admission of 10,000 individuals on the basis of their ability to create jobs. This creates a separate category of visas that decreases the number available for skilled workers and those with exceptional or extraordinary abilities or advanced degrees. The individual simply has to have money to invest.

I support efforts to create and keep jobs in the United States, however, this section is so contrary to our immigration tradition that it is perilously close to a "selling" of our citizenship. I am hopeful this policy will be reconsidered and not made a permanent part of immigration policy.

Mr. MATSUI. Mr. Speaker, I would like to offer my reluctant support for the rule to the immigration conference report.

In watching the progress of the immigration reform in the House I have seen a mountain turn into a molehill. The conference report we have here before us which we must either approve or disapprove is a mere shadow of its former self. We have seen a bill which began as an ambitious attempt to expand immigration to the benefit of America and Americans chipped away bit by bit at every stage of the legislative process.

H.R. 4300 was sponsored by my good friend from Connecticut, the chairman of the Judiciary Committee, Mr. MORRISON, was fought for valiantly by my colleague from California, Mr. BERMAN, and received positive input and support from a range of minority organizations and immigration advocates. That bill, as passed by the House earlier this month, sought to reunite families, promote employment opportunities, and relieve the enormous backlogs currently being experienced by prospective immigrants from certain countries. The bill that has come out of the conference committee not only weakens the House's will for family reunification, but has been amended to encroach upon the civil liberties of all Americans.

The sudden appearance of a pilot program for national identification cards is reason for great concern, particularly when that program that could result in the sharing of Federal data banks. Also disturbing to me is the way in which this provision was thrown into the legislation by the conference committee. It was not in the House bill, nor was it in the Senate legislation, yet somehow it found its way into the conference report.

As much as I resent the establishment of a pilot program to explore the idea of national identification cards, however, I feel even stronger that we must not let this session of Congress expire without making some improvement to our immigration laws. If this proposed identification pilot program does become law, the Congress must be diligent in its oversight of the program and unrelenting in exposing it as dangerous and unjust.

In the final analysis, however, there is simply too much to be lost by fumbling the opportunity to effect some positive change in the immigration laws. Make no mistake about it: the conference report before us is not the improvement to immigration law that I had hoped the Congress would pass this year. It is an improvement, however, one which we should accept and build upon.

I urge my colleagues to approve the rule as a means of striking an initial blow toward the eventual goal of meaningful immigration reform.

Mr. MINETA. Mr. Speaker, I rise today in support of the conference report on S. 358, the Immigration Act of 1990.

Immigration is an important part of our national heritage. Immigrants have played a key role in the expansion and development of this Nation and our economy.

I would like to take this opportunity to commend the chairman of the Judiciary Committee, Mr. BROOKS, the ranking minority member, Mr. FISH, and the Immigration Subcommittee chairman, Mr. MORRISON. I would also like to commend my colleague from California, Mr. BERMAN. He has been an outstanding advocate for fair immigation policy.

I support this legislation because it provides critically needed family reunification measures which continue to be the cornerstone of our immigration law and policy. This conference report continues the process of reforming our immigration laws by attempting to reduce some of the serious immigration backlogs U.S. citizens and permanent residents face when trying to unite their families.

This reform legislation emphasizes the importance that immigration and diversity play in the Nation's culture and economy. As the United States tries to increase our competitiveness by training and building within our borders, we can find an excellent resource in potential immigrants.

The conference report includes several important provisions including one I authored to increase the immigration quota for Hong Kong.

I am also very supportive of the deletion of the pilot program for a national identification card system. As American of Japanese ancestry who was interned during World War II, I have serious reservations about the sharing of confidential information between Federal agencies.

Mr. Speaker, it is essential that we implement immigration laws which are fair and equitable for all of us.

Mrs. ROUKEMA. Mr. Speaker, I want to draw my colleagues attention to an amendment to the conference report on S. 358/H.R. 4300, the immigration reform bill considered by the House today, which at long last curtails the ability of U.S. airline and shipping industries to hire foreign nationals to take the place of striking American crewmembers during labor disputes. Finally, with the addition of this compromise language, these industries will be encouraged to hire American replacement workers.

After considerable study and attention by the Congress, this legislation, which I originally introduced as H.R. 285, was modified to meet the concerns of affected industries. This amendment has a long history of support by the Congress. In the 99th Congress, I offered an amendment to the Immigration and Nationality Act to close this glaring loophole in our immigration laws, which permits our domestic airlines and shipping companies to hire foreign workers to take the jobs of striking Americans on international routes. In no other domestic industry is this permitted to occur. If these industries want to hire replacement workers, I certainly have no argument with their doing do. However, I believe these replacement workers should be Americans.

My amendment to IRCA which created an outright prohibition on admitting aliens who took the places of striking American crewmembers was passed with a 1-year sunset to allow Congress time to study and investigate the issue before permanent enactment. Indeed, the issue has been studied by the Education and Labor Committee through hearings, and the full House passed the measure in the 100th Congress on March 22, 1988 by a vote of 302 to 114.

Thereafter, I have worked to reach an accommodation with the Senate to ensure its acceptance by that body. The compromise language included in this conference report provides that aliens will not be permitted entry to the United States to take the place of striking American workers unless the alien has been an employee of such carrier for a period of not less than 1 year preceding the date that a lawful strike or lockout commenced, has served as a qualified crewman for the same employer at least once in each of 3 months during the year preceding that date,

and will continue to provide the same services the alien provided as such a crewman. The alien's employer must provide documentation that satisfies the Attorney General that the circumstances governing the employment of the alien seeking entry to the United States meet these criteria.

In essence, this amendment prevents U.S. airlines and shipping companies from hiring a contingent of foreign workers in anticipation of a strike. As a matter of fundamental Federal neutrality in the free exercise of the legitimate labor rights of American workers in these industries, the Federal Government must not permit foreign workers to take the place of striking Americans. This amendment allows domestic industries to put in place those foreign workers who are suitably trained and experienced to take the place of pilots and flight attendants, and discourages the practice of hiring unqualified foreign workers during strikes, as was experienced during the TWA strike in 1986.

As I have often stated in the fight to pass this legislation, if these industries want to hire replacement workers during strikes, they are free to do so. However, they should hire Americans. At long last, this loophole in our immigration laws will be closed in a manner that leaves affected industries some flexibility. It is a balanced approach that will work for all concerned.

Thank you, Mr. Speaker.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BRYANT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 264, nays 118, not voting 50, as follows:

[Roll No. 530]

YEAS—264

Ackerman	Brooks	Coughlin
Alexander	Broomfield	Courter
Anderson	Brown (CA)	Coyne
Annunzio	Bruce	Darden
Anthony	Buechner	de la Garza
Armey	Bustamante	DeFazio
Atkins	Campbell (CO)	DeLay
AuCoin	Cardin	Dellums
Baker	Carper	DeWine
Ballenger	Carr	Dickinson
Bartlett	Chandler	Dicks
Barton	Clarke	Dixon
Bateman	Clay	Donnelly
Bereuter	Clinger	Dorgan (ND)
Berman	Coble	Douglas
Bilbray	Coleman (MO)	Downey
Bliley	Coleman (TX)	Durbin
Boehlert	Collins	Dwyer
Boggs	Condit	Dymally
Bonior	Conte	Early
Borski	Conyers	Edwards (CA)
Bosco	Costello	Engel
Espy	Lent	Ravenel
Evans	Levin (MI)	Rhodes
Fascell	Levine (CA)	Richardson
Fawell	Lewis (GA)	Rinaldo
Fazio	Lightfoot	Ritter
Feighan	Livingston	Roe
Fish	Lowey (NY)	Rohrabacher
Flake	Machtley	Ros-Lehtinen
Foglietta	Madigan	Roybal
Ford (MI)	Manton	Sabo
Ford (TN)	Markey	Sawyer
Frank	Martin (NY)	Saxton
Frenzel	Martinez	Scheuer
Frost	Matsui	Schiff
Gallo	Mavroules	Schroeder
Gaydos	Mazzoli	Schulze
Gejdenson	McCloskey	Schumer
Gekas	McCollum	Serrano
Gephardt	McCrery	Shays
Gibbons	McDade	Shumway
Gillmor	McDermott	Sisisky
Gilman	McEwen	Skaggs
Gonzalez	McHugh	Skeen
Gradison	McMillan (NC)	Slattery
Grandy	McMillen (MD)	Slaughter (NY)
Grant	McNulty	Smith (FL)
Gray	Mfume	Smith (IA)
Green	Michel	Smith (NJ)
Guarini	Miller (CA)	Smith (TX)
Gunderson	Miller (WA)	Snowe
Hall (OH)	Mineta	Solarz
Hamilton	Mink	Solomon
Hatcher	Moakley	Spratt
Hayes (IL)	Molinari	Stangeland
Hefner	Mollohan	Stark
Henry	Moody	Stokes
Hiler	Morella	Studds
Hochbrueckner	Morrison (CT)	Swift
Horton	Morrison (WA)	Synar
Houghton	Mrazek	Tallon
Hoyer	Murtha	Tauke
Hughes	Nagle	Thomas (WY)
Hunter	Neal (MA)	Torres
Hyde	Nielson	Torricelli
Ireland	Oakar	Towns
Jacobs	Oberstar	Udall
Johnson (CT)	Obey	Unsoeld
Johnson (SD)	Ortiz	Upton
Jones (GA)	Owens (NY)	Vento
Jones (NC)	Owens (UT)	Visclosky
Jontz	Oxley	Vucanovich
Kanjorski	Pallone	Walker
Kaptur	Panetta	Washington
Kasich	Pashayan	Waxman
Kastenmeier	Paxon	Weiss
Kennedy	Payne (NJ)	Weldon
Kennelly	Pease	Wheat
Kildee	Pelosi	Whittaker
Kolbe	Penny	Whitten
Kolter	Pickett	Williams
Kostmayer	Pickle	Wilson
Kyl	Porter	Wolf
Lantos	Poshard	Wolpe
Leach (IA)	Price	Wyden
Lehman (CA)	Rahall	Wylie
Lehman (FL)	Rangel	Yates

NAYS—118

Andrews	Dyson	Inhofe
Applegate	Eckart	James
Archer	Edwards (OK)	Lagomarsino
Barnard	Emerson	Lancaster
Beilenson	English	Laughlin
Bennett	Erdreich	Lewis (CA)
Bentley	Fields	Lewis (FL)
Bevill	Gallegly	Lloyd
Bilirakis	Geren	Long
Browder	Goodling	Lowery (CA)
Brown (CO)	Gordon	Marlenee
Bryant	Goss	McCandless
Bunning	Hall (TX)	McCurdy
Byron	Hammerschmidt	Meyers
Campbell (CA)	Hancock	Miller (OH)
Chapman	Hansen	Montgomery
Clement	Harris	Moorhead
Combest	Hastert	Myers
Cooper	Hayes (LA)	Natcher
Cox	Hefley	Neal (NC)
Craig	Herger	Olin
Crane	Hertel	Packard
Dannemeyer	Hoagland	Parker
Davis	Hopkins	Parris
Dornan (CA)	Hubbard	Patterson
Dreier	Huckaby	Payne (VA)
Duncan	Hutto	Perkins
Petri	Shuster	Sundquist
Ray	Slaughter (VA)	Tanner
Regula	Smith (NE)	Tauzin
Ridge	Smith, Robert (NH)	Taylor
Roberts		Thomas (CA)
Rogers	Smith, Robert (OR)	Traficant
Roth		Valentine
Rowland (GA)	Spence	Vander Jagt
Sarpalius	Staggers	Volkmer
Savage	Stallings	Wise
Schaefer	Stearns	Yatron
Sensenbrenner	Stenholm	Young (AK)
Shaw	Stump	Young (FL)

NOT VOTING—50

Aspin	Kleczka	Russo
Bates	LaFalce	Saiki
Boucher	Leath (TX)	Sangmeister
Boxer	Lipinski	Schneider
Brennan	Luken, Thomas	Schuette
Burton	Martin (IL)	Sharp
Callahan	McGrath	Sikorski
Crockett	Murphy	Skelton
Derrick	Nelson	Smith (VT)
Dingell	Nowak	Smith, Denny (OR)
Flippo	Pursell	
Gingrich	Quillen	Thomas (GA)
Glickman	Robinson	Traxler
Hawkins	Rose	Walgren
Holloway	Rostenkowski	Walsh
Jenkins	Roukema	Watkins
Johnston	Rowland (CT)	Weber

□ 1904

The Clerk announced the following pair:

On this vote:

Mrs. Saiki for, with Mrs. Roukema against.

Messrs. BEVILL, VOLKMER, and NATCHER changed their vote from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FOOD AND DRUG ADMINISTRATION REVITALIZATION ACT

The SPEAKER pro tempore (Mr. MCNULTY). The unfinished business is the question de novo of suspending the rules and passing the Senate bill, S. 845.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana [Mr. SHARP] that the House suspend the rules and pass the Senate bill, S. 845.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report to the Senate bill, S. 358, just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

REQUEST FOR CONSIDERATION OF H.R. 5962, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1990

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that the Committee on Veterans' Affairs be discharged from further consideration of the bill (H.R. 5962) to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to extend certain expiring authorities and requirements under programs administered by the Secretary of Veterans Affairs; to make certain technical corrections; and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. STUMP. Mr. Speaker, reserving the right to object, I yield to the gentleman from Mississippi [Mr. MONTGOMERY] for the purposes of explaining the legislation.

Mr. MONTGOMERY. Mr. Speaker, this is a very important piece of legislation and I hope Members will be able to hear. Let me explain what we are trying to do here.

Mr. Speaker, this is a clean compensation COLA bill which the gentleman from Ohio [Mr. APPLEGATE], the gentleman from Arizona [Mr. STUMP], the gentleman from Ohio [Mr. MCEWEN], and myself have introduced today. It is an attempt to get a cost-of-living increase adopted for our service-connected disabled veterans. I will explain where the problem lies.

During this session of the Congress, the House passed 11 bills relating to veterans' benefits and services. The Senate failed to act on any of these bills except for two, and they were certain VA medical centers for individuals and a bill to provide special pay for nurses. In other words, the Senate has not acted on our veterans' bills.

It is unfortunate that we find ourselves in this last-minute situation. But unless we do something, service-connected veterans or their survivors will not receive a cost-of-living increase for next year. This would really be a shame, a shame on the Members of this Congress.

□ 1910

Mr. Speaker, let me repeat that service-connected-disabled veterans or their survivors or their children will not receive a cost-of-living increase next year, which would really be a shame, especially in light of the fact that other Federal beneficiaries will receive an increase. It would be very hard to explain.

House Resolution 5962 would provide a 5.4-percent increase in the rates of compensation for service-connected disability. This is for a fellow who is paralyzed from the waist down, both legs shot off, and the rates of dependency and indemnity compensation paid to surviving spouses and children of veterans who die of service-connected causes.

This is the same increase automatically provided for non-service-connected pensions and for social security recipients in this next fiscal year.

Unfortunately, this figure was not released until after the House passed H.R. 5326 on October 15 with a 4.5-percent COLA. However, as we have indicated in the past, it has always been our intent that the COLA for service-connected benefits at least match those provided for social security.

The bill would also extend certain authorities that have expired such as authority to make grants to the Veterans' Memorial Center in the Philippines.

I want to thank the gentleman from Arizona [Mr. STUMP], the ranking minority member, for his cooperation in bringing this vital legislation to the floor. I want to thank the gentleman from Ohio [Mr. APPLEGATE], the chairman of the Subcommittee on Compensation and Pensions, and the gentleman also from Ohio [Mr. MCEWEN], the ranking minority member on the subcommittee for their total support. I want to thank the members of the committee for their patience and hard work, and I certainly urge unanimous consent and adoption of H.R. 5962 to give a COLA to our service-connected veterans.

Mr. WEISS. Mr. Speaker, reserving the right to object——

Mr. STUMP. Mr. Speaker, I believe I have the time.

Further reserving the right to object, Mr. Speaker, I yield to the gentleman from Ohio [Mr. MCEWEN].

The SPEAKER pro tempore. The gentleman from Arizona [Mr. STUMP] still has the time.

Mr. MCEWEN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I commend the chairman of the Committee on Veterans' Affairs for doing what is absolutely essential for those who bear on their bodies the burdens of our freedom, and their widows and orphans. It is absolutely essential that we not adjourn this 101st Congress without doing our work.

I commend the chairman of the Committee on Veterans' Affairs for doing what is necessary and has to be done, and I thank the gentleman for yielding.

Mr. STUMP. Mr. Speaker, further reserving the right to object, I am happy to yield to the gentleman from New York [Mr. WEISS].

Mr. WEISS. Mr. Speaker, it is my understanding, I reserve the right, and I am going to reserve the right to object.

The SPEAKER pro tempore. The gentleman from Arizona has the time.

Mr. STUMP. Mr. Speaker, under my reservation, I commend the gentleman from Mississippi.

Is he asking me to yield? Is the gentleman asking me to yield?

Mr. WEISS. No; no. I would like to reserve my own time.

Mr. STUMP. Mr. Speaker, I believe I still have the time.

Under my reservation, I would like to commend the gentleman from Mississippi, the chairman of the committee, for offering this bill to make sure that our veterans have a COLA for this year.

Mr. Speaker, I withdraw my reservation of objection.

Mr. WEISS. Mr. Speaker, reserving the right to object, sometime in the course of the last 10 days or 2 weeks, the House adopted a Veterans' Compensation Act. The matter appeared on the Suspension Calendar. It was adopted unanimously. That piece of legislation, in addition to including the compensation that the gentleman, the distinguished gentleman from Mississippi [Mr. MONTGOMERY] spoke of, also included compensation for those of our veterans who were injured and damaged because of agent orange connection during the Vietnam war. If this legislation goes without that provision over to the Senate, then those veterans who have been waiting for years and years and years to get just compensation will be denied.

It is for that reason that I object to consideration of this legislation.

Mr. MONTGOMERY. Mr. Speaker, will the gentleman yield?

Mr. WEISS. I am pleased to yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Speaker, what the gentleman is doing is actually hurting those service-connected individuals——

Mr. WEISS. Mr. Speaker, reserving the right to object, I am not hurting anybody. The Senate has a piece of legislation over there. It is up to them, in fact, to take care of all the veterans who deserve to be taken care of at this time.

Mr. MONTGOMERY. Well, that is what we are trying to do.

Mr. WEISS. I object, Mr. Speaker.

Mr. MONTGOMERY. That is what we are trying to do. Let me explain it, would you? Let me explain the bill, please.

The SPEAKER pro tempore. Objection is heard.

PROVIDING FOR ADJOURNMENT OF THE HOUSE FROM SATURDAY, OCTOBER 27, 1990, SINE DIE, AND ADJOURNMENT OF THE SENATE FROM SATURDAY, OCTOBER 27, SUNDAY, OCTOBER 28, OR MONDAY, OCTOBER 29, 1990, SINE DIE

Mr. GEPHARDT. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 399) and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 399

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of October 27, 1990, and the Senate adjourns on Saturday, October 27, Sunday, October 28 or Monday, October 29, 1990, they stand adjourned sine die or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

The SPEAKER pro tempore. Is there objection to agreeing to the resolution?

Mr. WALKER. Mr. Speaker, reserving the right to object, I shall not object, but I just want to inquire of the majority leader: there was some question on our side about the recall provision of this that I have been asked about. The minority leader is here now.

Mr. Leader, reserving the right to object, have we cleared that language?

Mr. MICHEL. Mr. Speaker, will the gentleman yield?

Mr. WALKER. Mr. Speaker, reserving the right to object, I yield to the gentleman from Illinois.

Mr. MICHEL. Mr. Speaker, to respond to the gentleman, of course, the administration would prefer that there be no reference whatsoever, but, quite frankly, it is not a joint resolution. It is a concurrent resolution and does not require the President's signature.

There is ample precedent for it, I think, in 1974 when President Ford, during one of those sessions, and also in 1943, and, quite frankly, it says, in effect, that if the Speaker and the majority leader of the Senate after consultation with the minority leader of both the House and the Senate feel that there ought to be a reconvening of the Members for whatever purpose that, from my point of view, I think it is well in order, and that we ought to approve it as it is written.

Mr. WALKER. Further reserving the right to object, under that provision, since we adjourn sine die, would that be a reconstitution then of the 101st Congress at that point, or would we have a new session if this Congress was adjourned sine die?

Mr. GEPHARDT. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from Missouri.

Mr. GEPHARDT. Mr. Speaker, I believe such recall would be a reassembling of this session of the 101st Congress.

Mr. WALKER. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the adoption of the concurrent resolution?

Mr. McEWEN. Mr. Speaker, reserving the right to object, I shall not object except to emphasize once again what was requested here again by the chairman of the Committee on Veterans' Affairs, that if we do adjourn withut including all of the provisions that were requested in the Veterans' Affairs bill for our disabled veterans, if we do not pass that COLA tonight as the chairman requested moments ago, then all of the veterans in America and their widows and their dependents will suffer because of one provision of that bill that was not included in the language from the other body.

Let me say that as vice-chairman of the committee who supported the provision that my good friend from New York is defending, as one who supported that provision, as one who wanted to see it passed, let me say that I think it is unwise for us to be so married to one provison that we would make every veteran in America pay the price.

Mr. WEISS. Mr. Speaker, will the gentleman yield?

Mr. McEWEN. Further reserving the right to object, I yield to the gentleman from New York.

Mr. WEISS. Mr. Speaker, would the gentleman explain to me as to why the Senate has not acted on the legislation that the House sent over to them?

Mr. McEWEN. Further reserving the right to object, I think it is fair to say that there are many pieces of legislation which——

Mr. WEISS. Does the gentleman know? Does the gentleman know? Has the gentleman inquired?

Mr. McEWEN. I am seeking to respond to the gentleman.

Mr. WEISS. I am asking the gentleman if he knows why the Senate has not acted. Has he inquired?

Mr. McEWEN. Mr. Speaker, further reserving the right to object, I yield to the chairman of the committee.

Mr. MONTGOMERY. The gentleman does show me more courtesy than this gentleman over here did. He would not let me even explain the bill.

Mr. WEISS. Mr. Speaker, a point of personal privilege.

Mr. McEWEN. Mr. Speaker, I believe I have the time, and I am pleased to yield to the chairman of the committee.

□ 1920

Mr. MONTGOMERY. Mr. Speaker, we have sent the gentleman from New York and others in the Chamber who are concerned about a provision we had pertaining to agent orange. It was passed on the House floor. It was sent to the Senate with the compensation COLA in it. For some reason, the Senate is not acting on it. I do not know why the gentleman wants to blame the Members.

We will take whatever the Senate did, and if the Senate sends it back over here, whatever it contained in the bill, agent orange, doctors, professional increase pay, the COLA's, but it is the Senate, not the House. We have sent the bill over there. They can act on agent orange.

It is just not fair that we penalize these service-connected veterans just because the Senate did not act on the agent orange.

Mr. McEWEN. Mr. Speaker, I completely agree with the gentleman. I thank him for the statement. I ask my colleagues to reconsider that we put the veterans of America ahead of our own personal interest in these final moments.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. MCNULTY). Is there objection to agreeing to the resolution?

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

VIETNAM VETERANS

(Mr. WEISS asked and was given permission to address the House for 1 minute.)

Mr. WEISS. Mr. Speaker, the Subcommittee which I chair on Government Operations has had numerous hearings on how these veterans who served in Vietnam, who were subjected to agent orange spraying, have been injured. Their families have been injured. They have been denied any compensation.

Finally, a piece of legislation is passed in committee by a vote of 16 to 14. Now, all of a sudden we want a separate clean bill without the provision for Vietnam veterans. Do not tell me I am not concerned about Vietnam veterans. I am concerned about all the veterans, not just the ones other Members choose to be concerned about.

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, if I might inquire of the distinguished majority leader of the program for the balance of the evening, and hopefully leading to adjournment.

Mr. GEPHARDT. Will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Missouri.

Mr. GEPHARDT. I thank the gentleman for yielding. First, I would say that the budget reconciliation bill has passed the Senate. Therefore, it is finished in both Houses and will not have to be reconsidered.

For the remainder of the evening we have these matters that will come up: first, H.R. 5114, the foreign operations appropriations conference report; H.R. 5769, the Interior appropriations conference report. We will first consider rules on both matters. Probably there will be votes on the rules. I am not sure of that. Then we will consider the conference report.

Then, further on in the evening, we will have two matters relating to crime. One, the more general crime bill; then, a bill on crime relating to savings and loans officials. Finally, we will have a bill tonight to provide an additional 10 or so billion dollars for the RTC, to get it through the rest of the year.

There are probably unanimous consent requests, and then an attempt to deal with that legislation. Beyond that, there will simply be unanimous consent requests, suspensions may be brought up, in times when there are not matters before the body that I have mentioned, and then of course, when we have completion on the other side, we can then move to adjournment.

Mr. MICHEL. If I might make the observation, particularly on my side of the aisle, on the Calendar there are a number of unanimous consent requests. However, for those that affect committees for which there are ranking members, or members of that committee here, we are at a loss to know for sure whether or not it is acceptable for unanimous consent unless you are defending your case, or folding to the other side, whatever the case may be. I would alert Members that we would like to have their expression, if they obviously have any objection to the unanimous consent requests for bills that fall within your purview of jurisdiction.

It has just been asked how about tomorrow, and my response would be, hopefully, the same as the distinguished majority leader, that we do not have to think about tomorrow. I will pose the question, anyway.

Mr. GEPHARDT. If the gentleman will yield, our great hope is that we will not be here tomorrow, even after midnight.

Obviously, if the other side sends appropriation bills for some reason, or if a continuing resolution has to be done at some point, we may be here into the morning hours.

Mr. FRENZEL. Will the distinguished leader yield?

Mr. MICHEL. I yield to the gentleman from Minnesota.

Mr. FRENZEL. What is the likelihood of a CR, and when might that occur?

Mr. GEPHARDT. If the gentleman will yield, it depends on how the bills pass, and if there had to be technical CR. It would be simply to the end of the week.

Mr. MICHEL. If I might further inquire, are there any suspensions in the group that would be taken up?

Mr. GEPHARDT. If the gentleman will yield, there is a list of further suspensions that may be considered. We will post them in the Cloakroom.

Mr. MICHEL. Would those be interspersed between the must bills?

Mr. GEPHARDT. They will be filled in the spaces.

Mr. MICHEL. I thank the distinguished gentleman.

PROVIDING FOR ENROLLMENT CHANGES IN H.R. 5932, EDUCATION EQUITY AND EXCELLENCE ACT OF 1990

Mr. WILLIAMS. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 398) directing the Clerk of the House of Representatives to change the enrollment of H.R. 5932, and ask for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 398

Resolved by the House of Representatives (the Senate concurring), That, in enrolling the bill (H.R. 5932) to promote excellence in American education by recognizing and rewarding schools, teachers, and students for their outstanding achievements, enhancing parental choice, encouraging the study of science, mathematics, and engineering, and for other purposes, the Clerk of the House of Representatives shall make the following changes:

(1) In section 467(f)(2) of the bill, strike subparagraph (H) and redesignate subparagraphs (I) and (J) as subparagraphs (H) and (I), respectively.

(2) In section 651(b)(3) of the bill—

(A) strike "curricula to attain"; and

(B) strike "schools and programs" and insert "school programs".

(3) In section 662(b)(1)(B) of the bill—

(A) insert "or" at the end of clause (ii);

(B) strike the semicolon and "or" at the end of clause (iii) and insert a period; and

(C) strike clause (iv).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

Mr. GOODLING. Mr. Speaker, reserving the right to object, I will not object. I am in concurrence with the gentleman from Montana [Mr. WILLIAMS].

I yield to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for yielding.

I would note that these are helpful amendments to the bill. They involve two of the amendments of sections that I was personally involved with, and I do approve of these amendments. They ought to be passed. I thank the gentleman for yielding.

Mr. GOODLING. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

INSULAR AREAS RECOVERY ACT OF 1990

Mr. DE LUGO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2362) to enhance the survivability and recovery of the insular areas from severe storms, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

Is there objection to the request of the gentleman from the Virgin Islands?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I do so to yield to the gentleman from the Virgin Islands [Mr. DE LUGO], the chairman of the subcommittee, to explain the legislation.

Mr. DE LUGO. Mr. Speaker, several provisions would authorize technical, already appropriated, and additional assistance to the insular areas to survive and recover from natural disasters. The need for these measures became apparent after Hurricane Hugo.

The bill also includes an authorization requested by the administration to complete the Guam Hospital, a special process for the disposal of excess lands on Guam, and expansion of the existing authority related to projects to decrease insular dependence upon imported fuels. The amendment would:

Delete provisions that would have authorized insular areas to use funds appropriated for other purposes for disaster relief;

Make technical amendments;

Substitute authority to transfer some 3,146.2 acres of land on Guam for the disposal process in the Senate bill;

Broaden the authorization for medical facilities on Guam to be consistent with the Interior appropriations bill;

Make the authority for insular purchases through the General Services Administration that has been granted annually since 1950 permanent;

Authorize implementation of an option for the future use of Water Island in the Virgin Islands proposed by the Interior Department pursuant to the 1986 omnibus insular areas act;

Authorize a study of insular water, sewer, and power needs; and

Enable airlines in the Federated States of Micronesia and the Marshall Islands to be contracted by Federal agencies.

This legislation is a composite of several bills on which the Insular and International Affairs Subcommittee has been working this Congress.

Let me explain the background and need for the legislation, as it would be amended, as well as what it would do in greater detail.

TITLE I—THE INSULAR AREAS DISASTER RECOVERY AND SURVIVABILITY ACT

BACKGROUND AND NEED

Title I, the Insular Areas Disaster Recovery and Survivability Act of 1990, is the product of work that we began after Hurricane Hugo devastated the Virgin Islands and Puerto Rico over 1 year ago.

It, however, not only responds to needs that become apparent after that tragedy; but also to problems that had surfaced after disasters in Pacific insular areas both before and after the devastation of Hugo.

These problems related to the lack of capability and resources in insular areas for responding to serious natural disasters as well as to deficiencies in Federal policies for responding to disasters in insular areas.

Some of the deficiencies relate to the distance of the insular areas from the rest of the Nation; others relate to their small size and population base and relatively large needs and costs; and still others relate to the particular vulnerability of the insular areas to severe storms and the especially difficult job their peoples have in withstanding the forces of nature.

A letter that several other Members and I sent to the President after Hurricane Hugo pointed to the need for a more effective Federal response to the extraordinary problems disasters as serious as Hugo pose in insular areas. I will include it at this point.

CONGRESS OF THE UNITED STATES,
CONGRESS OF THE UNITED STATES,
Washington DC, October 17, 1989.

THE PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: A few days after Hurricane Hugo, we inspected areas of eastern Puerto Rico and the Virgin Islands devastated by it with the Secretary of the Interior.

It is not exaggerating to say that the destruction was catastrophic in proportion; Federal disaster officials said it caused the most devastation they have ever seen. The economies and social services of some communities have been virtually destroyed and the homes of tens of thousands of people have been lost or seriously damaged. More people still lack power or water service a month after the storm hit. Staggering percentages of the population of some islands can expect to continue to be without basic necessities for some time to come. Tragically, in many cases, the poorest were the hardest hit.

Vital public facilities, like hospitals and schools, were so severely damaged that they, too, will be unusable for the foreseeable future or will simply have to be replaced. A number of manufacturing plants and stores have been destroyed and many jobs have been lost. Precious natural resources, such as trees and beaches, were harmed and crops were ruined. In some areas there was nothing green left standing. Local capabilities are being drained to the limit.

Federal agencies are providing emergency and reconstruction relief. Normal disaster efforts, though, will be inadequate.

The devastation these islands face is so extensive that some will only be able to recover if extraordinary measures are taken. These are among the neediest American communities. They lack resources and basic infrastructure and are distant from the supplies and technology needed for recovery. Their unique circumstances will make recovery especially costly and difficult.

The situation requires a special, comprehensive approach to rebuild communities and economies in addition to structures. The federal government should provide the necessary help because of the relative magnitude of the need and because of special constitutional responsibility it has for the 3.5 million Americans of Puerto Rico and the Virgin Islands.

We were encouraged that Secretary Lujan recognized this by announcing upon our return to Washington that he would propose a major economic recovery program for St. Croix and Administration initiatives beyond normal disaster aid to meet the tremendous housing and other recovery needs of the Virgin Islands and Puerto Rico. We also agreed with his intention to order an environmental assessment of Hugo's sad legacy in the islands.

We urge the Administration to act in these areas without delay so that the suffering and losses of thousands of Americans can be alleviated as soon as possible. At the same time, we are exploring the need for legislative action.

To facilitate a unified Federal response to the tremendous needs in the Virgin Islands and Puerto Rico created by this disaster, we request that you designate appropriate officials to work with our staffs to identify measures which should be taken.

We also urge you to visit Puerto Rico and the Virgin Islands for your own first-hand look at the situation. The destruction is far worse than reports had led us to believe. Words alone cannot convey how deeply and broadly the storm's destruction affected some island communities.

Finally, the assistance you provided the Virgin Islands to preserve law and order in St. Croix should not be withdrawn so long as it is needed.

We pledge our cooperation for a unified Federal effort to meet the overwhelming needs of our Nation's Caribbean insular areas caused by Hugo.

Respectfully,

RON DE LUGO,
BEVERLY BYRON,
FRANK J. GUARINI,
JAIME B. FUSTER,
ENI F.H. FALEOMAVAEGA,
GEORGE MILLER,
CHARLES B. RANGEL.

As terrible as Hugo's legacy was in the Virgin Islands, the sad fact is that disasters of great magnitude are an all-too-common occurrence in insular areas. And as inadequate as some of the relief measures were in the Virgin Islands (in spite of the best efforts of those involved), it is, unfortunately, not unique for there to be gaps in relief measures in the response to disasters in insular areas.

I flew immediately to the Virgin Islands after Hugo to help rally the local and Federal disaster efforts. One of the first things that I did was to ask that some of my colleagues come down to assess the catastrophe.

A delegation led by the Ranking Democrat of the Interior and Insular Affairs Committee, our distinguished colleague George Miller, visited Puerto Rico and the Virgin Islands to survey the damage. The team included our former colleague, the Secretary of the Interior, my friend, Manuel Lujan.

Other Members of the delegation were our colleagues Beverly Byron, Jaime B. Fuster, Eni F.H. Faleomavaega, Charles B. Rangel, and Frank Guarini.

They concluded that a major recovery program was needed, one that went beyond normal disaster relief to rebuild not only structures but an entire community. Their recommendations were indicated in the letter to the President that I included in the RECORD.

Our experiences with Hugo and other insular disasters suggested several bills that I introduced last year. Those bills led to the legislation before us today. It is a companion bill to one that several Members joined me in introducing earlier this year, H.R. 4423.

The provisions of Title I are essentially those contained in the Senate-passed bill with the exception of one provision that we deleted because of objections from the minority and a few technical amendments.

Before I describe this title, I would like to note the unrelenting efforts of the Lieutenant Governor of the Virgin Islands, Derek Hodge, and the territory's Washington counsel, Peter Hiebert, who have worked with me under the direction of Governor Alexander Farrelly to obtain the assistance these provisions would authorize and other vitally-needed Federal aid for the recovery from Hurricane Hugo.

SECTION 101

Section 101 would designate this title to be the "Insular Areas Disaster Survival and Recovery Act of 1990.

SECTION 102

Section 102 would define the terms used in this title.

SECTION 103

Section 103 would authorize the appropriation of any funds necessary to build health and safety facilities in American Samoa, the Federated States of Micronesia, Guam, the

Marshall Islands, the Northern Mariana Islands, Palau, and the Virgin Islands. It would also authorize any necessary funds to improve the ability of the infrastructure in those areas to survive natural disasters which qualify for Presidential disaster designation. Funds would be provided to the Secretary of the Interior and remain available until expended.

SECTION 104

Section 104(a) would require the President, upon designating a disaster in one of the insular areas identified in Section 103, to assess whether the insular government has the capability and resources to respond to the disaster. The assessment would include the area's capability to: assess damage; work with Federal agencies; and plan and conduct recovery in a fiscally-responsible manner. This assessment would be made in cooperation with the Secretary of the Interior and the chief executive of the insular area.

This section would also require the President to provide any necessary technical assistance to the insular government. Among other things, this provision is intended to effectively broaden the scope of technical assistance available under Section 403(a)(H) of the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 4121 et seq.). The additional assistance would include, but not be limited to, providing administrative assistance such as assistance in assessing damages and contracting for repair work. The combination of the authority which this bill would provide and that which already exists would authorize the President to provide any necessary technical assistance for disaster recovery to the insular areas.

Section 104(b) would require the Secretary of the Interior to submit a report to the Congress 1 year after the President declares a disaster in one of the insular areas identified in Section 103. The report would be required to include the results of an audit of Federal disaster assistance and recommendations on measures needed to improve public health and safety, survivability of infrastructure, recovery efforts, and fiscal management in disaster situations.

SECTION 105

Section 105 would authorize the President to provide funds for future hazard mitigation after a disaster in an insular area identified in Section 103. It would establish the minimum and maximum levels of Federal assistance to be provided for hazard mitigation projects in the insular areas that have been struck by disasters.

Up to 10 percent of the total amount of grants provided for essential assistance, repair or replacement of damaged facilities, debris removal, temporary housing, and individual and family programs for that disaster in the insular area or any other area could be provided under this authorization.

This section would also authorize the President to require insular areas to match these grants for amounts which exceed 10 percent of the total amount of funds provided for repair or replacement of public and non-profit facilities in relation to that disaster in any area.

The maximum insular share would be 50 percent of the excess. Federal assistance provided to the insular areas under this section would not be subject to the requirement in current law that the Federal share be no more than 50 percent of the costs of the projects.

SECTION 106

Section 106 would amend Section 102(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.) to clarify that the provision applies to the Northern Mariana Islands. The current language of the law refers to the Trust Territory of the Pacific Islands, of which the Northern Mariana Islands has been a part.

TITLE II—THE GUAM EXCESS LANDS ACT

BACKGROUND AND NEED

Title II would respond to a problem on which the Interior and Insular Affairs Committee has been working for many years. The problem dates to the years immediately after the liberation of Guam from enemy occupation during World War II.

During these years, the United States military acquired a substantial amount of land in the territory, often unfairly. The Federal Government now owns some 30 percent of the island of Guam.

A law enacted in 1976 sponsored by our late colleague, Tony Won Pat, authorized individuals whose land had been unfairly acquired to sue the Federal Government for fair compensation. A 1980 amendment that Guam's first Delegate also sponsored provided that awards would be paid with interest.

A $39.5 million settlement of a number of cases brought under this law has been reached. Some claimants are unhappy with the settlement, however, which is much less than even Federal estimates of what it would cost.

The military continues to have an important mission on Guam (particularly in light of the uncertain future of our Nation's bases in the Philippines); but some of the land that the armed services control in the territory is no longer needed for national defense. In 1986, the Defense Department found that almost 3,500 acres could be disposed of, thanks to the efforts of our colleague, Ben Blaz.

The gentleman from Guam made a persuasive case that these properties, which are scattered at various places on the island, should be transferred to Guam without some of the normal restrictions which apply to conveyances of Federal land to local governments.

We then began work on the best means of transferring this land to the territory. The initial efforts involved a proposal of the General Services Administration. We later began consideration of legislation that Delegate Blaz proposed to provide for transfer of the land and conducted a hearing on it in 1988.

Of the original 3,500 acres, some 3,080.4 acres are still considered releasable. Several additional parcels totalling some 65.8 acres have been identified as releasable in recent months, bringing the total which could be transferred to 3,146.2 acres.

Some of these parcels might best be used for economic development or other purposes which would benefit the people of Guam but are not usual for Federal land provided to local governments. The provisions of Title II are intended to provide for the transfer of lands which Federal agencies now say are releasable with the flexibility in their future use that is necessitated by this unique situation.

I want to stress that our purpose in proposing this transfer is to further public purposes in the use of the land; that is, purposes that benefit the community of Guam as a whole. We hope that the land will be put to the best possible use by the territory.

Federal interests should be protected by the terms and procedures for the transfer contained in this title. Federal agencies will have a role in this regard in a number of areas and the Congress will have an opportunity to review the proposed use of the land before it is actually transferred under these provisions.

The gentleman from Guam, Ben Blaz, has exerted great effort to have these provisions enacted. Our colleagues, John Conyers, the distinguished Chairman of the Committee on Government Operations, and Cardiss Collins, the distinguished Chairwoman of the Government Activities and Transportation Subcommittee, have cooperated to make them possible.

They have worked with me to revise provisions of the Senate bill on this matter. The Senate language was apparently intended to provide for the transfer of all Federal land in Guam to a commission that would have presumably passed the lands into private hands.

Those provisions were objectionable for a number of reasons, and, ultimately, had little chance of becoming law. They required us to develop a wholly new and justifiable alternative to transfer unneeded Federal land in Guam to territorial ownership.

I particularly want to note the contributions to the framing of this alternative of the Counsel of the Government Activities and Transportation Subcommittee, Miles Q. Romney, as well as the work on it of several members of the Interior and Insular Affairs Committee staff, who I will mention later. I also want to note the work done on this issue by Ben Bibb of Delegate Blaz's staff.

At this point, let me describe Title II of the amendment in greater detail. Although its provisions will be new to the other body, I hope that they will see the merit in it.

SECTION 201

Section 201 would designate this title to be the "Guam Excess Lands Act".

SECTION 202

Section 202(a) would require the Administrator of the General Services Administration to transfer parcels of land on Guam identified in subsection (b) to the insular government if they are determined excess to the needs of the Federal agency which controls those lands and subject to the conditions contained in Section 203.

Section 202(b) would identify the land which would become eligible for transfer under this legislation. These lands consist of some 3,146.2 acres in some 18 parcels which are specified in this subsection.

Section 202(c) would require all land to be transferred to be surveyed by the Federal agency which controls the land.

SECTION 203

Section 203(a) would provide other Federal agencies (other than the one that controls the land) 45 days to consider whether they need any of the land identified in Section 202.

Section 203(b) would require the General Services Administration to appraise the fair market value of any land not needed by other Federal agencies.

Section 203(c) would condition the eligibility of land for transfer on enactment by the Government of Guam of a law establishing a detailed plan for the use of the land and submission of the plan to the congressional committees specified in subsection (d) and the Departments of Interior and Defense. The plans would be required to explain the public benefit to be obtained from the proposed use of the land.

Section 203(d) would provide that the appraisals and plans required by this section are to be submitted to the Committees on Interior and Insular Affairs, Government Operations, and Armed Services of the House of Representatives and Committees on Energy and Natural Resources, Government Operations, and Armed Services of the Senate.

Section 203(e) would require the appraisals and plans to be submitted to congressional committees for 180 days before the lands to be transferred under this title are transferred.

SECTION 204

Section 204 would prohibit uses of the land that would pose a hazard to air navigation in the case of land that is within 6 nautical miles of an airport.

SECTION 205

Section 205 would authorize the withholding from transfer any parcel if it is so contaminated that the cost of clean-up would be exorbitant.

SECTION 206

Section 206 would provide that all Federal and territorial environmental laws and regulations will apply to any parcels transferred under this title. This applicability would be in force both during and after the transfer. It is intended that such laws will include, but not be limited to, the Endangered Species Act and the National Environmental Policy Act.

TITLE III—MISCELLANEOUS PROVISIONS

Title III of the bill consists of several disparate provisions. Let me just briefly explain their background and purpose.

SECTION 301

Section 301 would authorize the appropriation of $2.5 million to complete the renovation of the Guam Memorial Hospital or to complete the adjacent mental health facility if all of these funds are not needed for the hospital.

The authority to expend any funds that were not needed for the hospital for the mental health facility is a change from the Senate-passed bill. It conforms to legislation to appropriate these funds which has already passed the House and Senate.

I have inspected the need at Guam's only civilian hospital and it is serious. The facility was in such bad shape in 1983 that it lost its accreditation, imperiling continued eligibility for receipt of Federal funds.

The Interior and Insular Affairs Committee proposed a Federal contribution to the repair project to match insular funds which would underwrite most of the cost. $5.8 million was provided five years ago; but we found last year that some additional funds were needed beyond those that Guam could provide.

After some effort, the Administration finally agreed that additional funds should be provided this year. By the time that it did, however, not all of the $2.5 million it proposed was still needed to complete the hospital renovation.

Funds were still needed, though, to complete the adjacent mental health facility. Some $2.2 million was appropriated for this project after the Committee's recommendation a few years ago.

Earlier this year, the Interior and Insular Affairs Committee recommended that any portion of the $2.5 million proposed by the Administration that was not needed for the hospital should be provided for the mental health facility. The Interior appropriations bill would provide the flexibility we recommended, as would this amendment.

SECTION 302

Section 302 would amend an authorization contained in a 1980 omnibus insular areas act to provide for appropriations of $500,000 annually for grants to all insular area governments for projects that would reduce dependence on imported fuels. This provision would expand the current authorization (which relates to projects identified in a 1982 Territorial Energy Department report issued pursuant to a mandate in the 1980 law) to cover any projects deemed to be worthwhile by the Secretary of Energy.

This provision is similar in intent to the Senate-passed provision, although it has been necessarily rewritten. One change is that we would not require insular matching of the grants, as would the Senate provision.

Almost all fuel used in the insular areas must be imported, imposing costs that are a particularly great burden to insular economies. Like many small societies, the insular areas were especially hard hit by the energy crisis of the 1970s and remain especially vulnerable to the fluctuating price of oil.

At the same time, the insular areas have an abundance of their own potential renewable energy sources. They make little use of potential energy sources such as those created by the wind, the sun, and the ocean because they lack the technology to tap them.

The Interior and Insular Affairs Committee has proposed funding to improve insular energy efficiency and use of alternative fuels in past years. This provision would help regularize a program which could produce significant benefits for the economies of the insular areas at relatively minor costs to the Federal Government.

SECTION 303

Every year since 1950, the Congress has authorized certain insular areas to make purchases through the General Services Administration. The intent has been to lessen costs to areas for which the Nation has a special responsibility and to enable these relatively small areas to obtain needed goods.

As welcome as this authority is, it is authority which should be granted through authorization—and not appropriations—legislation. And after 40 years, it is time to grant this authority on a permanent basis.

We began work on legislation for this purpose two years ago; but did not act then because of a controversy about whether the authority should apply to all of the insular areas or just those to which it applies at present.

Section 303 would authorize American Samoa, Guam, the Northern Mariana Islands, Palau, and the Virgin Islands to make purchases through the General Services Administration. These are areas for which GSA purchasing has been authorized on an annual basis since 1950 in Interior appropriations bills. This legislation would make what is now temporary authority permanent.

SECTION 304

Section 304 would permit airlines in the Federated States of Micronesia and the Marshall Islands to be contracted by Federal agencies to transport passengers and cargo within those freely associated states and between them and the United States.

The United States has a unique free association relationship with these two western Pacific insular areas under the Compact of Free Association Act of 1986. Although they are sovereign states and self-governing in all matters (other than those affecting United States security), they are treated as domestic under many Federal programs.

The Marshall Islands has used some of the development funds that our Nation is providing it under the Compact Act to develop an airline to connect its distant atolls with one another as well as to link it with the outside world. This is an important service, as anyone who has lived on a small island, cut-off from supplies, markets, essential services, etc., knows.

It is also, though, an expensive proposition. It is difficult for a small insular air carrier of this sort to be financially viable.

The Marshall Islands thinks that its airline may be able to be self-supporting if it can be contracted by United States military and other agencies to carry some of the significant amount of passengers and cargo that travels between Honolulu to Kwajalein Atoll, the site of a major Star Wars facility. The airline is currently ineligible for this business because it is not U.S.-owned.

Serving as a military carrier on this route would mean significant revenue for the airline. It would also enable the airline to carry Marshallese fish to the Hawaiian market, making Marshallese commercial fishing much more viable.

The Ranking Republican of the Interior and Insular Affairs Committee, our colleague Don Young, recognized the airline's potential contribution to the economy and development of the Marshall Islands as well as the unique relationship between that insular area and the United States, a relationship that is closer than that which our Nation has with any independent country. He proposed this provision to effectively enable freely associated state air carriers to be considered as domestic for purposes of Federal contracting.

TITLE IV—THE VIRGIN ISLANDS REUNIFICATION ACT

BACKGROUND AND NEED

Nearly four decades ago, Congress assigned Water Islands, a 490 acre island in the harbor of St. Thomas in the Virgin Islands, to the Interior Department. The purpose was to develop the island as a tourism center, so that it would help develop the territory's economy.

Shortly after gaining control, the Interior Department, which ran the territory's government at this time, turned around and leased Water Island to a developer. The 40 year lease—for an amount that now seems like a pittance—was entered into in 1952, ostensibly for the same economic development purpose that the island was given to the Interior Department in the first place.

Two years later, when a more autonomous and locally-controlled territorial government was being established, the Interior Secretary was granted general authority to transfer unneeded Interior Department property in the Virgin Islands to the insular government. Most departmental property was conveyed to the reorganized insular government at that time; but ownership of Water Island was not transferred because of the lease which Interior had entered into just two years before.

Since then, tourism development on Water Island has failed to meet expectations and potential. It has, for example, been minimal in comparison to that on nearby St. Thomas, which is now a major tourist mecca.

Instead, Water Island has been used as an exclusive, private residential preserve. Most of the construction has been for homes built on property subleased from the lessee (although a relatively small hotel has been operated on the property).

The sublessees pay negligible rent for their homesites. And the total lease payments to the Interior Department for what is now a very valuable island are insubstantial.

The lease, negotiated when the land was though to have little value, has generated little revenue for the Federal Government. It has also contributed relatively little to the territory's economy.

At the same time, the lease has created a potential liability for the Federal Government of what may be several tens of millions of dollars. These funds may be owed to the lessee for improvements made to the property by the lessee (and sublessees). The Federal Government may be required to pay the lessee for these improvements when the lease expires at the end of 1992 *unless* the lessee is permitted continued use of the island.

The impeding end of the lease has also created other problems. A major one is that the lessee and sublessees have been unable to obtain financing for improvements to the properties that they are using for several years now because of the relatively short time remaining under the lease.

They cannot assure potential lenders that they will be able to remain on the property past 1992 or, in some cases, that they will be paid fair value for their improvements if they have to leave it. This situation has delayed recovery from Hurricane Hugo, which damaged homes and the hotel on the island.

The Department of the Interior has stated it has no need for the property and is concerned about its potential liability to the lessee as 1993 nears. Secretary Lujan worked with us to develop the legislation contained in the amendment as Title IV.

The Interior and Insular Affairs Committee has done a substantial amount of work on the Water Island situation over several years now. Our counterpart Senate committee, the Energy and Natural Resources Committee, has also been aware of the situation; its staff identified this matter as one of the insular issues for priority attention during this Congress.

I chaired a hearing on the Interior Department's management of Water Island 5 years ago. What we learned at that hearing helped lead to the enactment of a law that directed the Secretary of the Interior to develop options for the future use or disposition of the island. It was enacted 4 years ago.

The Inter Department sent the Congress the report required by that law in 1987. The Insular and International Affairs Subcommittee, which I am privileged to chair, conducted four hearings on the report in 1987 as well as an on-site inspection of the island.

I introduced the legislation, H.R. 1345, that became Title IV early last year and the Administration generally endorsed it late last year. It was approved by the Insular and International Affairs Subcommittee earlier this year with an amendment that I sponsored.

The Administration proposed a further amendment a few weeks ago. Their amendment is, as I have indicated, included in Title IV.

SECTION 401

Section 401 would designate this title to be the "Virgin Islands Reunification Act."

SECTION 402

Section 402 would require the Secretary of the Interior to transfer Water Island to the insular government subject to the conditions contained in section 403. The transfer would be made pursuant to one of the options for the future of the island identified in a 1987 Interior Department report. As I have explained, this report was submitted to the Congress under a requirement of the Omnibus Insular Areas Act of 1986.

SECTION 403

Section 403 would authorize the Secretary to transfer Water Island to the Virgin Islands 90 days after:

The value of the island has been appraised;

The Governor of the Virgin Islands submits a detailed plan approved by the insular legislature for the use of the island to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate; and

The governor grants conservation easements on seven properties totalling some 22 acres which the insular government owns within the boundaries of the Virgin Islands National Park.

The plan would be required to hold the Federal Government harmless from any liability under the Interior Department's 1952 lease of the island. The plan would also be expected to provide that post-transfer uses of Water Island:

Make it an integral part of the Virgin Islands;

Enable residents to obtain land they are using on fair terms;

Create housing opportunities for Virgin Islanders;

Provide for the island's development as part of the entire Virgin Islands community; and

Preserve precious natural areas.

The conservation easement which the insular government would have to provide the Federal Government to make the island eligible for transfer are intended to preserve the properties in essentially their present form. These easements would be a significant addition to the integrity of the Virgin Islands National Park. They have been urgently sought by the National Park Service and are specified in this Section.

TITLE V—U.S. INSULAR AREAS WATER, SEWER, AND POWER NEEDS

BACKGROUND

Basic infrastructure is the foundation of economic and social development. The sad fact is, though, that the U.S. insular areas lack some of the basic infrastructure needed to enable the people of these insular areas, who are Americans, to enjoy a decent quality of life.

The Interior and Insular Affairs Committee has been addressing many of the needs of U.S. insular areas for basic infrastructure on a piecemeal basis. We have succeeded in assisting them with substantial amounts of water, sewer, and power facilities developments; but there is much more to be done.

The current deficiencies:

Pose immediate health hazards;

Impede economic development; and

Create budgetary burdens especially heavy in relatively poor insular communities.

We developed what has become Title V of this legislation to direct the Interior Department to undertake a comprehensive study of these needs so that we—and other policymakers—could decide what action to take. I want to note, in particular, the efforts on this matter of our colleague, the Delegate from American Samoa, Eni Faleomavaega, and the Ranking Democrat on the Interior and Insular Affairs Committee, George Miller

They have been assisted by a number of Members of the staff of the Interior and Insular Affairs Committee. I will mention some later; but I will now recognize the work on this matter of the Staff Director of the Water, Power and Offshore Energy Resources Subcommittee, Dan Beard, and Marty Yerick of Delegate Faleomavaega's staff.

Provisions similar to those contained in this title—but relating only to water needs—were introduced as H.R. 3596 last fall. The bill was approved by the Insular and International Affairs Subcommittee with an amendment that I sponsored that broadened the scope of the study that would be required to include sewerage and power needs this past spring. That bill was also incorporated into H.R. 2567 as well as into H.R. 3960. Both of these bills have passed the House.

SECTION 501

Section 501 would find that American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands lack adequate water, sewerage, and power systems and that the Federal Government should assist these insular areas in finding permanent solutions to these problems.

SECTION 502

Section 502 would require the Secretary of the Interior to study how the problems identified in Section 501 can be resolved in consultation with the governments of these areas.

SECTION 503

Section 503 would require the study to assess current and expected needs, how these needs can be met, the costs and benefits of alternative solutions, and specific recommendations on what should be done by both the Federal and insular governments to address these needs.

Mr. Speaker, I cannot conclude until I express my heartfelt appreciation to the gentleman from California who is the Ranking Republican Member of the Subcommittee on Insular and International Affairs, Bob Lagomarsino, for his efforts and cooperation regarding the several different pieces of legislation which make up this amendment.

I am from one of the insular areas, so my interest in these matters is natural. The gentleman, however, has no such incentive for spending so much of his time and effort in improving Federal insular policy.

He has, though, been extraordinarily dedicated to this task. He has been especially perceptive in understanding how it relates to the interests of the United States. But he has been equally willing to work on an insular problem when it is only important to the people of an individual insular community.

So, I want to recognize how much responsibility he bears for this legislation. And, since this will be the last bill that we will bring before the House this Congress, I also want to thank him for all that he has done during this Congress for the eight insular areas and the close to 4 million people who live in them.

I also want to acknowledge the help that I have consistently received from several other Members of the Committee on Interior and Insular Affairs. Chief among these are three distinguished Members of the House: the Chairman, Mo Udall, the Ranking Republican, Don Young; and the Ranking Democrat, George Miller.

They have all supported my efforts on the legislation before us today. They have equally been willing to address other insular needs that I have raised with them.

Our colleagues from the other insular areas also deserve mention. The gentleman from Puerto Rico, Jaime Fuster; the gentleman from American Samoa, Eni Faleomavaega; and the gentleman from Guam, Ben Blaz have not only helped make this legislation possible; but they have also done a fine job of representing their constituents on other matters.

There are several members of the staff of the Committee on Interior and Insular Affairs who are due much of the credit for all of the provisions of this legislation. Their dedication to seeing to it that the needs of the insular areas—and Federal responsibilities regarding them—are met should be recognized and appreciated.

They are led by Staff Director of the Subcommittee on Insular and International Affairs, Jeffrey Farrow. They include the other members of the Subcommittee staff: Manase Mansur; Gail Mukaihata; Virginia Sablan; Patricia Krause; Daisy Minter; and Cherie Girard.

They comprise one of the finest staffs on the Hill and certainly have no peer when it comes to insular matters anywhere in this town. Exhausted as they all were from helping us develop the landmark legislation to enable the people of Puerto Rico to exercise self-determination that passed the House earlier this month, they kept going at full speed to make it possible for us to pass the several bills that this amendment contains.

In addition to the individuals I have just mentioned, there are several other members of the Committee staff who worked on various portions of this legislation who I wish to thank. The first among these is an ex-officio member of the Subcommittee staff, Roy Jones. Others include Lee McElvain, Rick Agnew, Dan Kish, Charlene Dougherty, and Linda Stevens.

And our staff has been augmented by staff of other Congressional offices, including Wade Ballou of the Legislative Counsel's office; and Dan Zafren, Keith Bea, and Bette Albert of the Congressional Research Service.

I would also like to thank Jeff Roth and Ann Schoen of the Commander Naval Facilities Engineering Command and Dennis Pacht of the Pacific Division for their assistance in identifying releasable lands for transfer on Guam.

Last, but not least, I want to pay tribute to the work and ability of my administrative assistant, Sheila Ross, and other members of my congressional office staff. Sheila has played a key role in several aspects of this legislation. Other members of the staff have played important supporting roles. They share equal responsibility for help making it possible for us to consider this legislation today.

I ask the House's approval of this Omnibus Insular Areas Act of 1990.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, the Omnibus Insular Areas Act, S. 2362, contains a number of important provisions affecting the territories of the United States, the freely associated states in Micronesia, and the Trust Territory of the Pacific Islands (Palau).

My colleague from Guam, Gen. BEN GARRIDO BLAZ, has worked diligently in the Congress for the benefit of the people of Guam. The Guam Excess Lands Act is representative of the many provisions which he has successfully brought before the Congress for consideration. It has been a pleasure to work with General BLAZ on both the Committee on Interior and Insular Affairs and the Committee on Foreign Affairs. He has brought the committees his insight of the unique circumstances confronting the people of Guam, who are United States citizens living on United States flag islands which are significantly closer to the Asian Continent than the North American Continent. I feel fortunate in having had his input on the numerous issues affecting the United States in the Pacific and Asia before the committees on which we serve.

General BLAZ has raised the awareness of this Congress to the importance of Guam's quest for greater self-government and a closer relationship with the United States. He has introduced H.R. 98, the Guam Commonwealth Act, to accomplish this objective. I have cosponsored H.R. 98 because I, too, believe a closer relationship between Guam and the United States to be in our mutual interest. Over 200 of our colleagues have cosponsored H.R. 98, the Guam Commonwealth bill, which is a testament to BEN BLAZ' leadership.

I believe the United States is, indeed, fortunate to have Guam as part of the American family. The people of Guam have been extremely loyal to the United States for nearly a century including the years of World War II when Guam was occupied by enemy forces. The United States Armed Forces liberated Guam in 1944 and then used Guam and nearby islands as a base of operations to eventually end World War II. Today, nearly five decades later, the military still has control of approximately one-third of the island of Guam.

Title II of the legislation would transfer to the Government of Guam certain parcels of land in Guam totaling approximately 3,000 acres which have been identified by the Department of Defense to be subject to disposal. The lands, determined to be excess property will be screened for further Federal utilization in a timely manner.

These excess lands should further advance the economic development of Guam through increased private enterprise. I believe the increased economic development should reduce Guam's reliance on Federal funds and enhance local self-government. It is my hope that in the near future the rise in the per capita income and standard of living in Guam would be equivalent to that found in the 50 States. As United States citizens, the people of Guam deserve to enjoy the same quality of life found elsewhere in the United States. This transfer of excess lands is a significant action to assist Guam toward that end.

The miscellaneous title of the legislation contains a number of important provisions to a number of the insular areas. Funding is authorized for the Guam Memorial Hospital, which the administration has proposed with the intent of improving the health care facilities for the United States citizens of Guam. Funding for alternative energy projects is authorized for the insular areas, whose remoteness necessitates reducing their dependence on imported fuels. Another miscellaneous provision permits the Governments of American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands are authorized to make purchases through the General Services Administration.

I again commend my colleague from Guam for his tenacious and tireless efforts with the three House committees with jurisdiction, the Senate, and the

various departments and agencies of the executive branch to develop and bring this initiative to fruition. It took the expertise and leadership of BEN BLAZ, with his exceptional warm powers of persuasion to make this transfer of Federal lands to Guam a reality.

One other miscellaneous provision would allow an air carrier of the Republic of the Marshall Islands, a freely associated state, to carry military cargo and personnel. This is particularly important to our military facilities at the Kwajalein Atoll in the Marshall Islands. Air transportation between that remote atoll and Hawaii is limited.

Thousands of United States citizens, civilian and military, reside in Kwajalein. They rely on air carriers to provide for adequate movement of cargo and personnel. This provision would permit Marshall Islands air carriers to facilitate the flow of cargo and personnel between the Marshall Islands and the United States.

President Amata Kabua of the Marshall Islands has requested this change pursuant to the Compact of Free Association. President Kabua has shown extraordinary leadership in guiding the Marshall Islands to greater economic development through democratic processes during the first few years of the United States-Marshall Islands, free association relationship.

□ 1930

Mr. LAGOMARSINO. Mr. Speaker, I withdraw my objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from the Virgin Islands.

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2362

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Insular Areas Recovery Act of 1990".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "insular areas" means the United States Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Freely Associated states;

(2) the term "disaster" means that the President has declared a major disaster pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to the Secretary (42 U.S.C. 5170 et seq.) on or after September 1, 1989; and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 3. AUTHORIZATION.

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to construct facilities to protect public health and safety and to enhance the survivability of essential infrastructure in the event of disasters in the insular areas. Such sums shall remain available until expended.

SEC. 4. USE OF CERTAIN FUNDS.

(a) For a period of two years from the date on which a disaster is declared by the President, the Governor of the affected insular area may transfer up to 100 percent of that insular area's respective allotment under section 2604(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8623(b)) for the fiscal year in which the disaster occurred, for use in disaster recovery or in enhancing the survivability of essential infrastructure in the event of future disasters. Such funds shall be transferred to a State Energy. Conservation Program established pursuant to section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322), and such use of these transferred funds shall be deemed to be consistent with the purposes for which such program was established. The Governor of the insular area shall inform the Secretary of any such transfer of funds. Puerto Rico shall be considered to be an insular area for the purposes of this subsection.

(b) During the two-year period following a disaster in Puerto Rico, it shall be deemed to be an insular area for the purposes of section 501 of the Act entitled "an Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes", approved October 18, 1977 (48 U.S.C. 149a), when in the judgment of the appropriate agency head the consolidation of grants would facilitate recovery from disaster damage.

SEC. 5. TECHNICAL ASSISTANCE.

(a) Upon the declaration by the President of a disaster in an insular area, the President shall assess, in cooperation with the Secretary and the Head of Government of such insular area, the capability of the insular area government to respond to the disaster, including the capability to: assess damage; coordinate activities with other agencies, particularly the Federal Emergency Management Agency (FEMA); develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular area government lacks these, or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area government which the President deems necessary for the recovery effort.

(b) One year following the declaration by the President of a disaster in an insular area, the Secretary shall report to Congress on the status of the recovery effort, including: an audit of Federal funds expended in the recovery effort; and recommendations on how to improve public health and safety, survivability of infrastructure, recovery efforts, and effective use of funds, in the event of future disasters.

SEC. 6. WAIVERS.

HAZARD MITIGATION.—Upon determination by the President, the total of contributions under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 4121 et seq.) for insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections: 403, 406, 407, 408, and 411 of such Act for any disaster: *Provided,* That the President may require a 50 percent local match for assistance in excess of 10 percent of the estimated aggregate amount of grants to be made under Section 406 of such Act for any disaster:

SEC. 7. TECHNICAL AMENDMENT.

Section 102(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) is amended by inserting after the words "American Samoa," wherever it appears, the following: "Commonwealth of the Northern Mariana Islands".

SEC. 8. GUAM HOSPITAL.

There is authorized to be appropriated $2,500,000 to complete the renovation of the Guam Memorial Hospital.

SEC. 9. DISPOSAL OF EXCESS FEDERAL LANDS ON GUAM.

(a) ESTABLISHMENT OF COMMISSION.—As a prerequisite for the transfer of excess lands under section 11, the Government of Guam must enact legislation which—

(1) establishes an excess lands commission the purpose of which shall be to dispose of lands received pursuant to this title to promote economic self-sufficiency and private sector development in Guam;

(2) provides that the Commission shall have the power—

(A) to hold all right, title, and interest in and to all real property transferred under section 11;

(B) to dispose of real properties or interests therein transferred under section 11 in accordance with the laws of Guam and the priorities set forth in the enabling legislation as required pursuant to paragraph 4 of this subsection;

(C) to resolve conclusively all issues related to lands transferred under section 11 and without appeal to any other agency or court of law except as otherwise expressly provided by the laws of Guam; and

(3) provides that the Commission shall make annual reports to the Senate Committee on Energy and Natural Resources and the Committee on Interior and Insular Affairs of the United States House of Representatives, on or before February 15 of each year, on the disposition of lands transferred pursuant to this title and on the activities and actions of the Commission during the reporting period; and

(4) establishes priorities for the distribution and disposal of the excess lands.

(b) UNITED STATES PERSON.—(1) As used in this title, the term "United States person" means—

(A) any citizen, national, or permanent resident alien of the United States,

(B) any partnership, corporation, or other entity organized under the laws of the United States, any of the several States, the District of Columbia, or any Commonwealth, territory, or possession of the United States, in which citizens, nationals, or permanent resident aliens of the United States beneficially own or control (directly or indirectly) more than 50 per centum of the outstanding voting securities or other voting interest of the partnership, corporation, and other entity, or

(C) the government of any of the several States, the District of Columbia, or any Commonwealth, territory, or possession of the United States.

(2) A partnership, corporation, or other entity described in paragraph (1)(B) shall be presumed to be controlled by individuals who are citizens, nationals, or permanent resident aliens of the United States if—

(A) such individuals are a majority of the partners of the partnership or a majority of the members of the board of directors of the corporation or other entity; or

(B) such individuals have the authority to appoint a majority of the members of the board of directors of the corporation or other entity.

(c) OWNERSHIP OF UNITED STATES PERSONS OF LAND HELD IN TRUST.—For the purposes of this section, the term "ownership of United States persons" means, in the case of a portion of land held in trust, the legal and the beneficial interests of such trust must be held by United States persons.

SEC. 10. TRANSFER OF EXCESS FEDERAL LAND LOCATED ON GUAM.

Except for lands within the boundaries of the War in the Pacific National Historic Park, the Administrator of General Services shall transfer, without consideration and without encumbrances, all right, title and interest of the United States (together with any improvements thereon) in and to any real property on Guam which is determined to be excess under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) to the Commission to be established by the law of Guam for disposition in accordance with section 10. Any property subject to this title shall not be subject to Public Law 100-77 (101 Stat. 482). Title to any real property conveyed pursuant to this title shall revert to the United States if the Commission attempts to convey or otherwise transfer ownership of such property other than to a United States person.

SEC. 11. REPEAL OF CERTAIN CONDITIONS ON LAND TRANSFERRED TO GUAM.

Section 818(b)(2) of Public Law 96-418 (94 Stat. 1782), as amended, is hereby repealed.

SEC. 12. TERRITORIAL ENERGY ASSISTANCE PROGRAM.

(a)(1) The Secretary of Energy, pursuant to the Federal Nonnuclear Energy Research and Development Policy Act of 1974 (42 U.S.C. 5901, et seq.), may grant financial assistance to Insular area governments to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy measures which reduce the dependency of the Insular area on imported fuels and improve the quality of life in the insular area.

(2) Any applicant for financial assistance under this section must evidence coordination and cooperation with, and support from, the affected local energy entities in the area with necessary expertise to successfully effectuate the project, including, but not limited to, the local energy agencies, power authorities, and public works departments.

(3) In determining the amount of financial assistance to be provided for a proposed energy-efficiency or renewable energy measure, the Secretary shall consider—

(A) whether the measure will reduce the relative dependence of the Insular area on imported fuels;

(B) the ease and costs of operation and maintenance of any facilities contemplated as a part of the project;

(C) whether the project will rely on the use of conservation measures or indigenous, renewable energy resources that were identified in the 1982 Territorial Energy Assessment or are identified by the Secretary as consistent with the purpose of this section;

(D) whether the measure will contribute significantly to the quality of the environment in the Insular area; and

(E) any other factors which the Secretary may determine to be relevant to a particular project or measure.

(4) The Secretary shall require at least 20 per centum of the costs of any project under this section to be provided from non-Federal sources. Such cost sharing may be in the form of inkind services, donated equipment, or any combination thereof.

(b) for the purpose of this section, the term—

(1) "Insular area government" means the government of American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Republic of Palau, or the United States Virgin Islands.

(2) "1982 Territorial Energy Assessment" means the assessment prepared by the Department of Energy pursuant to the Omnibus Territorial Act. (P.L. 96-597, 94 Stat. 3480; as amended by P.L. 99-213, 97 Stat. 1460)

(c) For each fiscal year, there is hereby authorized to be appropriated for the purposes of this section, $500,000.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DE LUGO

Mr. DE LUGO. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. DE LUGO: Strike all after the enacting clause and insert the following:

This Act may be cited as the "Omnibus Insular Areas Act of 1990".

TITLE I—INSULAR AREAS DISASTER SURVIVAL AND RECOVERY ACT OF 1990

SECTION 101. SHORT TITLE.

This title may be cited as the "Insular Areas Disaster Survival and Recovery Act of 1990".

SEC. 102. DEFINITIONS.

As used in this title—

(1) the term "insular area" means any of the following: American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(2) the term "disaster" means that the President has declared a major disaster pursuant to section 401 of the Disaster Relief and Emergency Assistance Amendments of 1988 (42 U.S.C. 5170 et seq.) after September 1, 1989; and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 103. AUTHORIZATION.

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to construct facilities to protect public health and safety and to enhance the survivability of essential infrastructure in the event of disasters in the insular areas. Such sums shall remain available until expended.

SEC. 104. TECHNICAL ASSISTANCE.

(a) Upon the declaration by the President of a disaster in an insular area, the President shall assess, in cooperation with the Secretary and chief executive of such insular area, the capability of the insular government to respond to the disaster, including the capability to: assess damage; coordinate activities with federal agencies, particularly the Federal Emergency Management Agency; develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular government lacks these or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area which the President deems necessary for the recovery effort.

(b) One year following the declaration by the President of a disaster in an insular area, the Secretary shall report to Congress on the status of the recovery effort, including an audit of Federal funds expended in the recovery effort and recommendations on how to improve public health and safety, survivability of infrastructure, recovery efforts, and effective use of funds in the event of future disasters.

SEC. 105. HAZARD MITIGATION.

Upon determination by the President, the total of contributions under section 404 of the Disaster Relief and Emergency Assistance Amendments of 1988 (42 U.S.C. 4121 et seq.) for insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections 403, 406, 407, 408, and 411 of such Act for any disaster: *Provided*, That the President may require a 50 percent local match for assistance in excess of 10 percent of the estimated aggregate amount of grants to be made under section 406 of such Act for any disaster.

SEC. 106. TECHNICAL AMENDMENT.

Section 102(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) is amended by inserting after the words "American Samoa," wherever it appears, the following: "the Northern Mariana Islands,".

TITLE II—GUAM EXCESS LANDS ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Guam Excess Lands Act".

SEC. 202. IN GENERAL.

(a) TRANSFER. The Administrator of General Services shall, subject to section 203, transfer all right, title, and interest of the United States in and to the lands described in subsection (b) (together with any impovements thereon) to the Government of Guam for public benefit, by quitclaim deed and without reimbursement, after the head of the Federal agency which controls such lands determines whether any of those parcels are excess to the needs of such agency.

(b) LANDS DESCRIBED. The lands referred to in subsection (a) consist of—

(1) those parcels in Guam generally described in Tab A of the March 19, 1986 Memorandum for the Secretary of Defense entitled "Retention of Excess Military Lands on Guam" and more particularly described on a map identified as "Appendix B—GLUP Disposal Parcels" of the "Implementation Plan for the Guam Land Use Plan" on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii, which have not already been disposed of on or before the date of enactment of this title;

(2) Talofofo "HH" (homer) facility shown on a map identified as "Drawing No. PC-D-723-8" on file at the Western-Pacific Regional Branch of the Federal Aviation Administration in Honolulu, Hawaii;

(3) Anderson Radio Beacon Annex, AJKG shown on a map entitled "Drawing # Tab C-1, sheet 8 of 12" on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii; and

(4) Parcel 3, NAVSTA Guam shown on a map entitled "NAVFAC Drawing No. 7,053,119 marked as Exhibit 'A'" on file at

the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii.

(c) LEGAL DESCRIPTIONS. The exact acreages and legal descriptions of all lands to be transferred under this title shall be determined by surveys which are satisfactory to the head of the controlling Federal agency referred in subsection (a). The cost of such surveys, together with all direct and indirect costs related to any conveyance under this section, shall be borne by such controlling Federal agency.

SEC. 203. TERMS AND CONDITIONS.

(a) FURTHER FEDERAL UTILIZATION SCREENING. Lands determined to be excess property pursuant to section 202 shall be screened for further Federal utilization in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and such screening will be completed within 45 days after the date on which they are determined to be excess.

(b) APPRAISAL. The Administrator shall promptly appraise those parcels that are not needed for further Federal utilization to determine their estimated fair market value. The head of the Federal agency which controls such lands shall cooperate with the Administrator in carrying out appraisals under this section. The Administrator shall submit a copy of the appraisals to the committees of the Congress specified in subsection (d). The cost of such appraisals shall be paid for under section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b)).

(c) LAND USE PLANS. The lands to be transferred under this title shall be eligible for transfer after the Government of Guam enacts legislation which establishes a detailed plan for the public benefit use of such lands and the Governor of Guam submits such plan to the committees of the Congress specified in subsection (d), and provides copies of such plan to the Secretary of the Interior and the Secretary of Defense.

(d) SUBMISSIONS. The appraisals and plans required to be submitted to the committees of the Congress under subsections (b) and (c) shall be submitted to the Committee on Interior and Insular Affairs, the Committee on Armed Services, and the Committee on Government Operations of the House of Representatives and the Committee on Energy and Natural Resources, the Committee on Armed Services, and the Committee on Governmental Affairs of the Senate.

(e) REVIEW BY COMMITTEES. Lands may not be transferred under this title until 180 days after the submission to the committees of the Congress specified in subsection (d) of—

(1) the appraisal provided for in subsection (b), and

(2) the land use plan provided for in subsection (c).

SEC. 204. OBJECTS AFFECTING NAVIGABLE AIRSPACE.

The conveyance document for any land transferred under this title located within six nautical miles of an airport shall contain a provision that requires a determination of no hazard to air navigation to be obtained from the Federal Aviation Administration in accordance with applicable regulations governing objects affecting navigable airspace or under the authority of the Federal Aviation Act of 1958, Public Law 85-726, as amended, in order for construction or alteration on the property to be permitted.

SEC. 205. SEVERE CONTAMINATION.

Notwithstanding any other provision of this title, the Administrator of General Services, in his discretion, may choose not to transfer any parcel under this title on which there is severe contamination, the remedy of which would require the United States to incur extraordinary costs.

SEC. 206. APPLICATION OF FEDERAL AND TERRITORIAL LAWS.

All Federal and territorial environmental laws and regulations shall apply to the parcels transferred pursuant to this title during and after the transfer of such parcels.

TITLE III.—MISCELLANEOUS PROVISIONS

SEC. 301. GUAM HOSPITAL.

There is hereby authorized to be appropriated $2,500,000 to the Secretary of the Interior for a grant to the Government of Guam to complete medical facilities in Guam.

SEC. 302. THE INSULAR AREAS ENERGY ASSISTANCE AMENDMENT OF 1990.

Section 604 of the Act entitled "An Act to authorize appropriations for certain insular areas of the United States, and for other purposes", Public Law 96-597, as amended by Public Law 98-213 (48 U.S.C. 1492), is amended by adding the following subsection—

"(g)(1) There are hereby authorized to be appropriated $500,000 to the Secretary of Energy for each fiscal year for grants to insular area governments to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy measures which reduce the dependence of the insular area on imported fuels and improve the quality of life in the insular area.

"(2) Factors which shall be considered in determining the amount of financial assistance to be provided for a proposed energy-efficiency or renewable energy grant under this subsection shall include, but not be limited to, the following—

"(A) Whether the measure will reduce the relative dependence of the insular area on imported fuels;

"(B) The ease and costs of operation and maintenance of any facility contemplated as part of the project;

"(C) Whether the project will rely on the use of conservation measures or indigenous, renewable energy resources that were identified in the report by the Secretary of Energy pursuant to this section or identified by the Secretary as consistent with the purposes of this section; and

"(D) Whether the measure will contribute significantly to the quality of the environment in the insular area.".

SEC. 303. INSULAR GOVERNMENT PURCHASES.

The governments of American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands are authorized to make purchases through the General Services Administration.

SEC. 304. FREELY ASSOCIATED STATE CARRIER

(a) In furtherance of the objectives of the Compact of Free Association Act of 1986 (P.L. 99-239) and notwithstanding any other provision of law, a Freely Associated State Air Carrier shall not be precluded from transportation, between a place in the United States and a place in a state in free association with the United States by air of persons (and their personal effects) and property procured, contracted for, or otherwise obtained by any executive department or other agency or instrumentality of the United States for its own account or in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into under which payment is made by the United States or payment is made from funds appropriated, owned, controlled, granted, or conditionally granted or utilized by or otherwise established for the account of the United States, or shall be furnished to or for the account of any foreign nation, or any international agency, or other organization, of whatever nationality, without provisions for reimbursement.

(b) The term "Freely Associated State Air Carrier" shall apply exclusively to a carrier referred to in Article IX (5)(b) of the Federal Programs and Services Agreement Concluded Pursuant to Article II of Title Two and Section 232 of the Compact of Free Association.

TITLE IV—VIRGIN ISLANDS REUNIFICATION ACT

SEC. 401. SHORT TITLE.

This title may be cited as the "Virgin Islands Reunification Act".

SEC. 402. TRANSFER.

Subject to the provisions of section 403 of this Act, the Secretary of the Interior is authorized and directed to transfer Water Island to the Government of the Virgin Islands pursuant to option numbered 7 of the report of the Department of Interior submitted pursuant to section 6 of the Omnibus Insular Areas Act of 1986 (P.L. 99-396, 100 Stat. 839).

SEC. 403. EFFECTIVE DATE.

The Secretary may convey title to Water Island by quitclaim deed 90 days after—

(1) an appraisal has been completed determining the land value of Water Island and the value of the improvements made by the holders of the Master Lease and/or Subleases;

(2) the Governor of the Virgin Islands submits a detailed plan for its use which has been approved by the Legislature of the Virgin Islands to the committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and which will hold the Government of the United States harmless with regard to any obligations under provisions of the 1952 lease between the Department of the Interior and Water Island Incorporated (assigned to Water Isle Hotel and Beach Club Ltd.); and

(3) after the Governor of the Virgin Islands grants conservation easements acceptable to the Secretary of the Interior on the following tracts of land owned by the Government of the Virgin Islands within the boundaries of the Virgin Islands National Park—

Tract No.	Acreage	Description
01-115	1.00	Perkins Cay.
01-118	2.15	North Shore at Hawksnest Bay.
02-101	18.00	Whistling Cay (Island).
07-108	0.06	Booby Cay (Island).
15-108	0.41	Hassel Island.
15-109	0.20	Hassel Island (shoreline).
15-110	0.29	Hassel Island (shoreline).

The conservation easements shall have the effect of prohibiting all new construction, protecting the lands in their natural state in perpetuity, providing for maintenance and protection of historic structures in accordance with the Secretary's standards on archaeology and historic preservation, and permitting such recreational use as will leave the natural and historic resources unimpaired.

TITLE V—U.S. INSULAR AREAS WATER, SEWERAGE, AND POWER NEEDS

SEC. 501. FINDINGS.

The Congress hereby finds and declares that assuring adequate supplies of water, sewerage, and power for the residents of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands has become a problem of such magnitude that the welfare and prosperity of these insular areas require the Federal Government to assist in finding permanent, long-term solutions to their water, sewerage, and power problems.

SEC. 502. AUTHORIZATION OF STUDY.

The Secretary of Interior is authorized and directed to undertake a comprehensive study of how the long-term water, sewerage, and power needs of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands can be resolved. Such study shall be conducted in consultation with the governments of these insular areas.

SEC. 503. REQUIREMENTS OF STUDY.

Such study shall include for each jurisdiction, but not be limited to—

(1) an assessment of the magnitude and extent of current and expected needs;

(2) an assessment of how the needs can be resolved;

(3) the costs and benefits of alternative solutions;

(4) the need for additional legal authority for the President to take actions to meet the needs; and

(5) specific recommendations for the role of the Federal Government and each insular government in solving the needs.

Mr. DE LUGO (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from the Virgin Islands?

There was no objection.

Mr. DE LUGO. Mr. Speaker, the amendment would delete provisions that would have authorized insular areas to use funds appropriated for other purposes for disaster relief; make technical amendments; substitute authority to transfer some 3,073 acres of land on Guam for the disposal process in the Senate bill; broaden the authorization for medical facilities on Guam to be consistent with the Interior appropriations bill; make the authority for insular purchases through the General Services Administration that has been granted annually since 1950 permanent; authorize implementation of an option for the future use of water island in the Virgin Islands proposed by the Interior Department pursuant to the 1986 omnibus insular areas act; and authorize a study of insular water, sewer, and power needs, enable airlines in the Federated States of Micronesia and the Marshall Islands to be contracted by Federal agencies.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from the Virgin Islands [Mr. DE LUGO].

The amendment in the nature of a substitute was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. CONYERS. Mr. Speaker, title II of S. 2362, called the Guam Excess Lands Act, is related to section 201 of the bill S. 2841. That bill was jointly referred in the House to the Committees on Government Operations, Interior and Insular Affairs, and Armed Services. Section 201 of S. 2841 would have resulted in the no-cost transfer of all present and future Federal excess real property on Guam to a locally established excess lands commission, which would have handled the disposition of the land.

The amendment offered by the gentleman from the Virgin Islands is a substantial change from the complex and open-ended proposal in S. 2841. The present amendment would deal with only those federally controlled lands on Guam that are currently ready to be determined excess by the controlling agencies, primarily the Departments of the Navy and the Air Force. The total acreage affected is approximately 3,070. These lands would be transferred to the Government of Guam without reimbursement.

However, there are certain conditions. Transfer would be for public benefit use. Further, the lands would first have to be appraised by GSA. Then a detailed plan must be developed by the Government of Guam for the public use of the land. Finally, the appraisals and the use plan must be submitted to three House and three Senate committees and must lie there for 180 days before any transfer can occur. Thus the Congress would have time to alter the situation, should serious difficulty arise in that time. The language was worked out through extensive and careful cooperation between my committee and that of the gentleman from the Virgin Islands.

Mr. Speaker, the land ownership issue on Guam has a very special character because of history and tradition. In the light of these circumstances and the protections in the amendment which I just referred to, I am willing to support the amendment.

Mrs. COLLINS. Mr. Speaker, I am pleased to support the amendment of the gentleman from the Virgin Islands to S. 2362. The amendment, which is called the Guam Excess Lands Act, is the result of lengthy efforts to restructure a bill, S. 2841, which was pending before the Government Activities and Transportation Subcommittee, which I chair. S. 2841 was jointly referred to the Government Operations Committee, the Interior Committee, and the Armed Services Committee.

My subcommittee and the Interior Subcommittee of the gentleman from the Virgin Islands worked closely to achieve the present language. And I thank the gentleman and the Interior Committee staff for their courtesy, cooperation, and patience in putting it together.

S. 2841 was a complex bill that would have given to a special Guam Excess Lands Commission all present and future excess lands of the United States on Guam for disposal.

The present amendment is simpler and limited. It would lead to nonreimbursable transfer to the Government of Guam of only the lands now ready to be determined excess by the agencies controlling them, chiefly the Navy and the Air Force. Those lands total not much more than 3,000 acres.

The present amendment also imposes a number of conditions: First, the transferred lands must be used by the Government of Guam for public benefit. Second, the lands must be appraised by GSA. Third, the Government of Guam must prepare a detailed land use plan for the public benefit use of the lands. Third, the appraisal reports and the land use plan must be submitted to the concerned committees of the House and Senate. In the House they are Government Operations, Interior, and Armed Services. Then the appraisal reports and the plan must lie before the committees for 180 days before lands may be transferred.

Obviously, the transfer of this large amount of land to the Government of Guam without reimbursement is an unusual step. But we recognize that the public benefit the lands will service is not inconsistent with general congressional policy for the use of surplus lands under the Federal Property Act. Also, there is on Guam an unusual combination of history and tradition, history that has passed through Spanish, United States, Japanese control into the current territorial status of the island. Landownership there has special characteristics that have to be taken into consideration.

On balance, then, it appears that the present amendment is a fair and workable alternative to the more difficult and complex arrangement originally proposed in S. 2841. Therefore, it has my support and I urge my colleagues to join me in that support.

GENERAL LEAVE

Mr. DE LUGO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the Senate bill just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from the Virgin Islands.

There was no objection.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF CONFERENCE REPORT ON H.R. 5144, FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1991

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 541 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 541

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 5114) making appropriations for foreign operations, export financing, and related pro-

grams for the fiscal year ending September 30, 1991, and for other purposes, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes, for the purposes of debate only, to the gentleman from New York [Mr. SOLOMON], and pending that I yield myself such time as I may consume.

Mr. Speaker, House Resolution 541 provides for the consideration of the conference report on H.R. 5114, a bill making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991.

This resolution waives all points of order against the conference report and against its consideration. The rule also provides that the conference report shall be considered as having been read when called up for consideration.

Mr. Speaker, H.R. 5114 appropriates $15.4 billion for U.S. foreign aid programs for fiscal year 1991. This is $129.5 million less than the amount requested by the administration.

The bill includes important funding for emerging democracies in Eastern Europe, for increased development assistance for Africa, for the Peace Corps, and for export assistance. It also provides funding for a series of programs to fight the infusion of drugs into the United States and to attack worldwide environmental and climate problems.

In addition, Mr. Speaker, it includes the Moakley-Murtha language on El Salvador previously approved by the House.

For the past 11 months, I have chaired the Speaker's special task force on El Salvador, charged with monitoring that Government's investigation into the savage murder of six Jesuit priests, their housekeeper and her young daughter. These murders forced this Congress to once again look at the tragic conditions facing that small Central American nation.

We have been forced to see both the brutality and savagery of some members of the Salvadoran Armed Forces, and also the brutality of the far left.

Mr. Speaker, this conference report contains provisions which would cut military aid to El Salvador by 50 percent, and places conditions on both the FMLN and the Salvadoran Government which would encourage an end to the decade-long struggle.

It would also continue the pressure on the Salvadoran authorities to bring to justice those responsible for the murder of the six Jesuits. I believe these are good provisions that will contribute to ending the violence that has already claimed over 70,000 lives.

Mr. Speaker, I want to especially commend my colleague from Pennsylvania, JOHN MURTHA, who coauthored these provisions with me in the House. I would also like to recognize the work of Senators LEAHY and DODD, who have been true leaders on this issue. I would also thank my colleague from Wisconsin, DAVE OBEY, who has served with me on the task force, who has long worked for peace in El Salvador and who has so brilliantly managed the entire conference report.

Mr. Speaker, this is a good bill that deserves bipartisan support. I urge my colleagues to support the rule and support the bill.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, let me just say that this rule is the same as those we have been seeking for the past week or 10 days. Members ought to vote for the rule, whether they are for or against the conference report, and I am against this conference report.

Mr. Speaker, now that the reconciliation bill is behind us, we must complete action on the last of these general appropriation bills as quickly as possible, so I urge approval of the rule so that we can get on with the conference report.

Mr. MOAKLEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. FROST].

Mr. FROST. Mr. Speaker, I rise in strong support of this rule and in strong support of H.R. 5114, the foreign operations appropriation for fiscal year 1991. I am particularly pleased that the conference report provides $19 million for democratic initiatives in Eastern Europe.

Mr. Speaker, in the past 14 months, we have literally seen the face of the world change: The countries behind the "Iron Curtain have turned their backs on communism and in the coming months, the United States will have an unique opportunity to help foster democratic pluralism in Eastern Europe. This conference report assures that the United States will be an active participant in the development of strong democracies in Eastern Europe and I commend the conferees for their support.

The bipartisan House Special Task Force on the Development of Parliamentary Institutions in Eastern Europe, which I have the privilege to chair, is part of that effort. In April of this year, Speaker FOLEY appointed the U.S. House of Representatives Special Task Force so they might provide to the new parliaments of Poland, Hungary, and the Czech and Slovak Federal Republic special recommendations. The task force visited these three countries in late May and early June and following that trip made some very specific recommendations to the Speaker. The task force recommendations, which have been approved by the Speaker, center around three areas of assistance: First, development of parliamentary libraries; second, development of research assistance services for members, staff, and committees; and third, development of comprehensive plans to computerize these parliaments.

The task force recommended that the Congressional Research Service coordinate these efforts, and in September, a team of staff experts from CRS traveled to Hungary and Czechoslovakia for an in-depth examination of the current state of these parliaments. Based on their findings, the task force intends, in cooperation with the Department of State, to begin implementing a program of direct assistance to these two parliaments in the next few months. We intend to send a team of experts to Poland after the first of the year to initiate a similar program in Warsaw building upon the work of the United States Senate in the Gift of Democracy Program created last year.

Mr. Speaker, the task force believes the U.S. House of Representatives can make a difference in the development of these new democracies. We believe the provision of basic infrastructure assistance to these new parliaments will give them the foundation so necessary to the creation of modern legislative bodies. Without that foundation, these new parliamentarians will be unable to address the critical questions facing their nations as they make the transition from communism to democracy. We are grateful to the conferees for providing adequate funding for democratic initiatives in Eastern Europe and intend to do our part to ensure that democracy has a chance to take root and grow in nations which have for so long been denied the opportunity to make the kinds of choices we take so much for granted.

Mr. SOLOMON. Mr. Speaker, I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

NONDEVELOPMENTAL ITEMS ACQUISITION ACT OF 1990

Mr. CONYERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1957) to provide for the efficient and cost effective acquisition of nondevelopmental items for Federal agencies, and for other purposes and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

Mr. HORTON. Reserving the right to object, Mr. Speaker, I yield to the gentleman from Michigan [Mr. CONYERS], the chairman of the committee for an explanation of the bill.

Mr. CONYERS. Mr. Speaker, I thank my colleague, the gentleman from New York, for yielding to me.

Mr. Speaker, S. 1957 was sponsored by Mr. LEVIN, the distinguished Sena-

tor from Michigan, and is intended to encourage Federal agencies to save money by purchasing products that are commercially available or have already been developed for other agencies instead of specially designed and developed products.

This legislation is intended to put an end to the all-too-common practice in Federal contracting of buying expensive, specially designed products when off-the-shelf, commercial products would do the job just as well.

The bill establishes in law a preference for nondevelopmental items, and requires that the Federal acquisition regulations be amended to provide simplified contracting procedures for commercial items.

Mr. Speaker, Senator LEVIN has done a fine job with this bill and it represents a good start in reforming the Federal procurement procedures that in recent years have brought us $100 hammers and $1,000 toilet seats. The Government Operations Committee intends to continue its oversight of this issue, with an eye to further legislative action next Congress to enhance or reform these procedures.

In December 1988, the Federal Government, through the General Services Administration [GSA] competitively awarded two contracts for the procurement of telecommunications services to replace the existing intercity—long distance—switched voice Federal Telecommunications System [FTS], and to provide additional enhanced telecommunications services to the agencies of the Federal Government. The prior FTS system had become obsolete, extremely costly to operate, and incapable of meeting the increasing demands of Federal agencies.

Under the FTS 2000 contracts, GSA obtained for Federal agencies a comprehensive set of telecommunications services through contracts designed to ensure continuous enhancements and competition throughout the 10-year period of the contracts. The contracts provide a wide array of features within six service groups: First, switched voice service; second, switched data service; third, packet switched service; fourth, video transmission service; fifth, dedicated transmission service; and sixth, switched digital integrated service. These services and features include, as examples, electronic mail, recorded agency announcements, audio and video teleconferencing, call screening, continuity of service under national emergency conditions, and security for classified and unclassified traffic.

The Congress continues to strongly endorse the policy of GSA providing governmentwide telecommunications services through the competitively awarded FTS 2000 contracts. Significant savings can be and have been achieved by aggregating the Government's requirements for these services. In addition, we firmly believe that having two prime contractors will ensure that the future telecommunications needs of the Government will continue to be met economically and efficiently. This is particularly true since recompetitions based on quality of performance and price will be conducted between the two vendors at years four and seven of the contract, in addition to continual price adjustments and service enhancements pursuant to the terms of the contracts.

Section 5 of S. 1957 mandates use by Federal agencies of the FTS 2000 basic services and a wide-array of features available under them. This section makes permanent in law requirements imposed by the fiscal year 1989 and 1990 Treasury, Postal Service, and General Government Appropriations Acts. By making these requirements permanent, the Congress reaffirms its view that mandatory use of FTS 2000 is fundamental to the economy and efficiency of these centrally procured telecommunications contracts. Reducing costs, while at the same time providing modern, state-of-the-art telecommunications capabilities for the Federal Government will be ensured by this mandatory use provision.

With respect to the services available under the contract, and consistent with the authority established under Public Law 89-306, the Brooks Act, the Administrator of General Services is responsible for implementing the FTS 2000 contracts in order to achieve economies of scale and to ensure that all long-distance telecommunications services among Federal agencies are compatible.

The Administrator is also responsible for reviewing agency requests to procure telecommunications products and services, and approving such requests only if the Administrator concludes that they meet the conditions set forth in this provision. In particular, the Congress expects that when GSA receives a request from a Federal agency to procure telecommunications products, GSA must determine whether the services to be performed by these products are services covered under this provision.

Additionally, we acknowledge the Administrator's responsibility for ensuring that the use of FTS 2000 services remain an economical and efficient source for telecommunications services available on a governmentwide basis. We urge the Administrator to use every available, pursuant to the terms of the contracts, to ensure this result.

Mr. HORTON. Further reserving the right to object, Mr. Speaker, I rise in support of S. 1957, the Nondevelopmental Items Acquisition Act of 1990, as amended. This bill, Mr. Speaker, represents a legislative beginning to an effort to ensure that the Federal Government acquires the best product in the most cost-effective manner.

As the ranking minority member of the Government Operations Committee, I plan to continue an effort that I have been working on this past year. The legislation which I will propose will build upon S. 1957. In addition to a standard form commercial contract, my legislation will also clarify the circumstances under which commercial manufacturers must submit cost and pricing data and it will limit the paperwork associated with determining price reasonableness of commercial products and services. These changes, Mr. Speaker, will relieve commercial product manufacturers from burdensome and costly Government requirements which have little or nothing to do with the manner in which they normally do business and the products which they manufacture.

We are aware of the many problems which plague the Federal procurement system. S. 1957 addresses two important impediments to an efficient and fair process by which to acquire nondevelopmental and commercial items. First, it will mandate that when purchasing commercial or off-the-shelf products from commercial manufacturers, the Government make greater use of commercial terms, conditions, and practices that are commonly used in the commercial marketplace.

Mr. Speaker, it is almost a daily occurrence that some vendor complains to me about the red tape and Government unique clauses and conditions that he or she must endure in order to do business with the Government. These extra conditions are both time consuming and costly to the vendor as well as to the Government. This bill will bring us a step closer to doing business as it is done in the commercial marketplace which has demonstrated itself as being efficient and effective.

Second, this bill requires the Government to make greater use of nondevelopmental and commercial items. This provision will end the Government's wasteful buying of expensive specially designed products when commercially available products will do the job.

Finally, Mr. Speaker, this bill, as amended, would require mandatory use by Federal agencies of the General Service Administration's [GSA] FTS 2000 contracts. This provision will result in dramatic improvements in economy of Federal long distance telecommunication services by requiring all agencies to meet their needs for such services using FTS 2000.

Mr. Speaker, I support the bill as amended and I urge its adoption.

□ 1940

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. NCNULTY). Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the Senate bill as follows:

S. 1957

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nondevelopmental Items Acquisition Act of 1990".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the acquisition of nondevelopmental items can lower Federal agency procurement costs by—

(A) reducing or eliminating the need for research and development;

(B) reducing acquisition lead time by making use of existing production lines and facilities;

(C) opening competition for Federal agency contracts to thousands of manufacturers who sell products in the commercial market; and

(D) increasing Federal agency access to the market-driven innovation and efficiencies available in the commercial market;

(2) the efficient acquisition of nondevelopmental items is impeded when Federal agencies impose complicated specifications and unnecessarily burdensome contract requirements on simple commercial and off-the-shelf products; and

(3) legislation is needed to reduce impediments to the acquisition of nondevelopmental items and encourage increased acquisition of such items.

(b) PURPOSE.—The purpose of this Act is to—

(1) establish a preference for the use of performance specifications and the acquisition of nondevelopmental items by Federal agencies;

(2) require training of appropriate personnel in the acquisition of nondevelopmental items;

(3) require Federal agencies to designate personnel responsible for promoting the acquisition of nondevelopmental items and challenging barriers to the acquisition of nondevelopmental items; and

(4) reduce impediments to the acquisition of nondevelopmental items by Federal agencies.

SEC. 3. COMMERCIAL AND NONDEVELOPMENTAL ITEMS.

(a) AMENDMENT TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 303G the following new section:

"PROCUREMENT OF COMMERCIAL AND NONDEVELOPMENTAL ITEMS

"SEC. 303H. (a)(1) The Federal Acquisition Regulation issued under section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)) shall ensure that, to the maximum extent practicable—

"(A) requirements of executive agencies with respect to a procurement of supplies are stated in terms of—

"(i) functions to be performed;

"(ii) performance required; or

"(iii) essential physical characteristics;

"(B) such requirements are defined so that nondevelopmental items may be procured to fulfill such requirements;

"(C) such requirements are fulfilled through the procurement of nondevelopmental items; and

"(D) prior to developing new specifications, executive agencies conduct market research to determine whether nondevelopmental items are available or could be modified to meet agency needs.

"(2) As used in this section, the term 'nondevelopmental item' means—

"(A) any item of supply that is available in the commercial marketplace;

"(B) any previously developed item of supply that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

"(C) any item of supply described in subparagraph (A) or (B) that requires only minor modification in order to meet the requirements of the procuring agency; or

"(D) any item of supply that is being produced that does not meet the requirements of subparagraph (A), (B), or (C) solely because the item—

"(i) is not yet in use; or

"(ii) is not yet available in the commercial marketplace.

"(b)(1)(A) The Federal Acquisition Regulation issued under section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)) shall include a simplified uniform contract for the acquisition of commercial items by Federal agencies and shall require that such simplified uniform contract be used for the acquisition of commercial items to the maximum extent practicable. The uniform contract shall include only—

"(i) those contract clauses that are required to implement provisions of law applicable to such an acquisition;

"(ii) those contract clauses that are essential for the protection of the Federal Government's interest in such an acquisition; and

"(iii) those contract clauses that are determined to be consistent with standard commercial practice and appropriate for inclusion in such contracts.

"(B) In addition to the clauses described under subparagraph (A) (i) and (ii), a contract for the acquisition of commercial items may include only such clauses as are essential for the protection of the Federal Government's interest in the particular contract, as determined in writing by the contracting officer for such contract, or in a class of contracts, as determined by the agency head with the approval of the Administrator of the Office of Federal Procurement Policy.

"(2)(A) The Federal Acquisition Regulation shall require that a prime contractor under a Federal agency contract for the acquisition of commercial items be required to include in subcontracts under such contract only—

"(i) those contract clauses that are required to implement provisions of law applicable to such subcontracts; and

"(ii) those contract clauses that are essential for the protection of the Federal Government's interest in such subcontracts.

"(B) In addition to the clauses described under subparagraph (A) (i) and (ii), a contractor under a Federal agency contract for the acquisition of commercial items may be required to include in a subcontract under such contract only such clauses as are essential for the protection of the Federal Government's interest in the particular subcontract, as determined in writing by the contracting officer for such contract, or in a class of subcontracts, as determined by the agency head with the approval of the Administrator of the Federal Procurement Policy.

"(3) Notwithstanding paragraphs (1) and (2) of this subsection, the Department of Defense may use uniform contract and subcontract clauses developed under section 824 of the National Defense Authorization Act for fiscal years 1990 and 1991 in lieu of the uniform contract and subcontract clauses developed under this subsection.

"(c) The Federal Acquisition Regulation shall ensure, to the maximum extent practicable, that—

"(1) the inspection clause included in each agency contract for the acquisition of commercial items takes into account the contractor's past performance and any warranties the contractor may offer to the Government; and

"(2) Federal agencies take advantage of warranties offered by commercial contractors and use such warranties for the repair and replacement of commercial items.

"(d) The Federal Acquisition Regulation shall direct agencies to require, where appropriate and in accordance with criteria prescribed in the regulations, offerors to demonstrate in their offers that products being offered have—

"(1)(A) achieved a level of commercial market acceptance necessary to indicate that the products are suitable for the agency's use or that the processes used to manufacture the products meet established commercial or other specified standards; or

"(B) been satisfactorily supplied under current or recent contracts for the same requirements; and

"(2) otherwise meet the product description, specifications, or other criteria prescribed by the public notice and solicitation.

"(e) The Federal Acquisition Regulation shall provide guidance to agencies on the use of past performance of products and sources as a factor in award decisions.".

"(b) TECHNICAL AMENDMENT.—The table of contents for the Federal Property and Administrative Services Act of 1949 is amended by inserting after the item relating to section 303G the following:

"Sec. 303H. Procurement of commercial and nondevelopmental items.".

SEC. 4. IMPLEMENTATION.

"(a) TRAINING.—The Administrator of the Office of Federal Procurement Policy shall issue guidelines for the training by executive agencies of contracting officers, program managers, and other appropriate acquisition personnel in the acquisition of nondevelopmental items. The guidelines shall provide, at a minimum, for training in the requirements of this section and the implementing regulations. In addition, the program shall provide for training of—

"(1) contracting officers in the fundamental principles of price analysis and other means of determining price reasonableness which do not require access to commercial cost data; and

(a) appropriate personnel in market research techniques and the drafting of functional and performance specifications.

(b) NONDEVELOPMENTAL ITEMS ADVOCATES.—Section 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(c)) is amended to read as follows:

"(c) The advocate for competition for each procuring activity shall be responsible for promoting full and open competition, promoting the acquisition of nondevelop-

mental items, and challenging barriers to such acquisition, including unnecessarily detailed specifications, unnecessarily restrictive statements of need, and unnecessarily burdensome contract clauses.".

(c) REGULATIONS REQUIRED.—Within 270 days after the date of the enactment of this act, Government-wide regulations to carry out the requirements in this section and rescind any regulations that are inconsistent with such requirements shall be published for public comment. Within one year after the date of enactment of this Act, final regulations shall be promulgated in the Federal Acquisition Regulation, and as necessary in the Federal Information Resources Management Regulation.

(d) IMPROVED MARKET RESEARCH.—Within 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives a report and recommendations on the use of market research in support of procurement of nondevelopmental items. Such report shall include—

(1) a review of existing Government market research efforts to gather data concerning nondevelopmental items;

(2) a review of the feasibility of creating a government-wide database for storing, retrieving, and analyzing market data, including use of existing Government resources; and

(3) such recommendations for changes in law or regulation as the Comptroller General may consider appropriate.

AMENDMENTS OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. CONYERS: In section 3(a) of the bill, in the matter proposed to be inserted in the Federal Property and Administrative Services Act of 1949 as a section 303H(a)(2)(B), strike ", or a foreign government with which the United States has a mutual defense cooperation agreement".

In section 3(a) of the bill, at the end of the matter proposed to be inserted in the Federal Property and Administrative Services Act of 1949 as a section 303H(a), add the following:

"(3) As used in this section, the term 'commercial item' means any item of supply that—

"(A) requires no modification or only minor modifications to meet the needs of the procuring agency;

"(B) regularly is used for other than Government purposes; and

"(C) is sold or traded to the general public in significant quantities in the course of normal business operations.".

In section 3(a) of the bill, at the end of the matter proposed to be inserted in the Federal Property and Administrative Services Act of 1949 as a section 303H, strike the close quotation marks and the second period and insert the following:

"(f) Nothing in this section shall be construed to impair or affect the authorities or responsibilities conferred by section 111 of this Act with respect to the procurement of automatic data processing equipment and services.".

Add at the end of the bill the following new section:

SEC. 5. MANDATORY USE OF FTS2000 BY FEDERAL AGENCIES.

Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759), as amended by this Act, is amended by adding at the end the following:

"(h)(1) No Federal agency may procure or authorize the procurement of any covered service other than under an FTS2000 contract, unless the head of the agency establishes to the satisfaction of the Administrator that—

"(A) the agency's requirement for the procurement is unique and cannot be satisfied by procurement of a covered service under an FTS2000 contract; and

"(B) the procurement is cost-effective and will not adversely affect the cost-effectiveness of the procurement of covered services under an FTS2000 contract.

"(2) In this subsection, the term—

"(A) 'FTS2000 contract' means either of the 2 contracts—

"(i) awarded by the Administrator in December 1988 for the procurement of intercity telecommunications services; and

"(ii) which are commonly referred to collectively by that term; and

"(B) 'covered service' means a service that—

"(i) is subject to this section; and

"(ii) is or will be available under an FTS2000 contract.".

Mr. CONYERS (during the reading). Mr. Speaker, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I am proposing four amendments to S. 1957. The first would amend the definition of "non-developmental item" in the bill, to eliminate the possibility that foreign-produced items could receive preference under the law. In view of recent work by the Government Operations Committee on this issue, I think that any preference for foreign-manufactured goods in Federal procurement is inappropriate.

The second amendment would add a definition of "commercial item" to the bill. Because Congress is permitting the use of expedited and simplified procedures for the procurement of "commercial items," I think it important that we make clear exactly what we mean. The definition is very straightforward: commerical products must be those items "sold or traded to the general public in significant quantities in the course of normal business operations." This definition also would cover incidental services normally provided in connection with the sale of the item, such as maintenance or repair.

The third amendment will clarify that nothing in the bill is intended to affect the authorities and responsibilities over automated data processing [ADP] and telecommunications procurement that the Brooks Act confers on the Administrator of General Services.

The fourth amendment would add to the end of the bill a provision requiring mandatory use by Federal agencies of the General Services Administration's [GSA] FTS 2000 contracts. This amendment would result in significant improvements in the economy and efficiency of Federal long distance telecommunication services by requiring all agencies to meet their needs for such services using FTS 2000. These changes will save considerable sums of money at a time when we desperately need to find new resources.

Mr. HORTON. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from New York.

Mr. HORTON. I thank the gentleman for yielding.

Mr. Speaker, I do so, so that I may indicate my support for the amendments and urge passage of the bill as amended.

The SPEAKER pro tempore. The question is on the amendments offered by the gentleman from Michigan [Mr. CONYERS].

The amendments were agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1957, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

PERMISSION FOR COMMITTEE ON GOVERNMENT OPERATIONS TO HAVE UNTIL 6 p.m. ON FRIDAY, NOVEMBER 30, 1990, TO FILE SUNDRY REPORTS

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that the Committee on Government Operations may have until 6 p.m. on Friday, November 30, 1990, to file sundry reports.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF CONFERENCE REPORT ON H.R. 5769, DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT 1991

Ms. SLAUGHTER of New York. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolu-

tion 542 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 542

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 5769) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore. The gentlewoman from New York [Ms. SLAUGHTER] is recognized for 1 hour.

Ms. SLAUGHTER of New York. Mr. Speaker, I yield the customary 30 minutes, for the purpose of debate only, to the gentleman from California [Mr. PASHAYAN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 542 provides for the consideration of the conference report on H.R. 5769, the bill making appropriations for the Department of the Interior and related agencies for fiscal year ending September 30, 1991.

This resolution waives all points of order against the conference report and against its consideration. The rule also provides that the conference report shall be considered as having been read when called up for consideration.

Mr. Speaker, H.R. 5769 provides funding for the protection of natural resources on public lands, the development of new energy sources, the preservation and advancement of the arts and the protection of native Americans interests. Also included in this legislation is funding for the National Endowment for the Arts.

Passage of the rule will allow the House to consider this important conference report expeditiously. I ask my colleagues to support the rule so that we may proceed to consider the merits of this legislation.

Mr. PASHAYAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this rule is the same kind of a rule as those rules that we have been considering for the last week or 10 days. The rule waives all points of order against consideration of the conference report and against the conference report itself.

Mr. Speaker, now that the reconciliation bill is at long last behind us, we must complete action on the general appropriations bills as quickly as possible. Therefore, I would urge approval of this rule so that the process can go forward.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. SLAUGHTER of New York. Mr. Speaker, I have no further requests for time, and I move the previous question.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 29. An act to amend the Clayton Act regarding interlocking director and officers;

H.R. 3656. An act to amend the Securities Exchange Act of 1934 to improve the clearance and settlement of transactions in securities and related instruments, and for other purposes; and

H.R. 5316. An act to provide for the appointment of additional Federal circuit and district judges, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1602) "An act to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3095) "An act to amend the Federal Food, Drug, and Cosmetic Act to make improvements in the regulation of medical devices, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5835) "An act to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991."

CONFERENCE REPORT ON H.R. 5114, FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1991

Mr. OBEY. Mr. Speaker, pursuant to the rule previously adopted, I call up the conference report on the bill (H.R. 5114) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes, and ask for its immediate consideration.

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to House Resolution 541, the conference report is considered as having been read.

(For conference report, see proceedings of the House of Saturday, October 27, 1990.)

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. OBEY] will be recognized for 30 minutes and the gentleman from Oklahoma [Mr. EDWARDS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. OBEY].

GENERAL LEAVE

Mr. OBEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PARLIAMENTARY INQUIRY

Mr. TRAFICANT. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. TRAFICANT. Mr. Speaker, I am against the bill in its current form and ask for a division of time so that those of the opponents of the measure may have time to debate.

The SPEAKER pro tempore. Is the gentleman from Oklahoma [Mr. EDWARDS] in favor of the conference report?

Mr. EDWARDS of Oklahoma. Mr. Speaker, I am very strongly opposed to the bill, as the gentleman from Ohio would know if he had asked.

Mr. TRAFICANT. There are Democrats on this side of the aisle who are opposed, and we would appreciate an allotment of time.

Mr. OBEY. Mr. Speaker, regular order.

The SPEAKER pro tempore. The gentleman from Oklahoma [Mr. EDWARDS] is opposing the conference report and has 30 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Mr. Speaker, the bill the committee brings to the House this evening contains $14.7 billion. It is in full compliance with the budget. It is $250 million in budget authority below the House bill, and it is $190 million below the original House bill in outlays. It is $130 million below the President's; it is below last year's appropriation by $17 million. It cuts the President's military budget request by $350 million.

I would simply observe that I think there is an incredible amount of misinformation available with respect to foreign assistance. People believe, I think many people believe, that it represents a very large portion of the Federal budget. In fact, the foreign assistance bill represents 1.5 percent of

the Federal budget. It costs the individual taxpayer about $1.20 per week, less than the cost of a six-pack.

That is, I would submit, a rather limited cost for participating in the world, as the leader of the free world, with international responsibilities and with responsibilities to preserve our own national interests.

I would also point out that over the last 5 years, Mr. Speaker, this committee has reduced the President's request for foreign assistance by $6 billion.

Mr. Speaker, I believe we are unique in congressional annals; we are the only subcommittee that I know of that has received not one, not two, but three veto threats from the White House and the Office of Management and Budget in previous years because, in the White House's view, we did not spend enough money.

□ 1950

So, Mr. Speaker, I think no Member of this House need apologize and no member of this committee need apologize to anyone in terms of our diligence in protecting taxpayers' money. This bill is $820 million below the budget authority which was appropriated in 1981. In real dollar terms it is 40 percent below the amount appropriated in 1981. It provides shifted priorities from the administration's request.

I think it is the best bill we have been able to produce in more than 8 years in providing support for American jobs by expanding export supports. We have the Export-Import Bank item, which is up $250 million from the administration's request. We have the I-MATCH proposal contained in this bill which will generate $200 million more in export support. And we have $300 million in tied credits so that the United States will be able to assure that an even larger percentage of goods being purchased by foreign aid recipients are, in fact, American-made goods.

Mr. Speaker, the bill is supported by the administration. It is supported by the committee on a bipartisan basis. I would urge its passage.

I would also like to express my thanks to a number of congressional staff people who did an absolutely phenomenal job in assisting us to complete our work, especially Terry Peel, Mark Murray, Bill Schlurch, Lori Maes, Mike Mark, Chris Walker, and Priscilla Knight.

I would also like to thank congressional associate staff, especially Gary Bornbardier, and Susan Kabasaka and Todd Buchwald of the State Department, with a special thanks for Bob Lester of AID and numerous other dedicated people.

Mr. Speaker, I reserve the balance of my time.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, I have to start by saying there are some things in this bill that are good. The chairman of the subcommittee, the gentleman from Wisconsin [Mr. OBEY], has enumerated several of them. I would add to that only the fact that this bill is $130 million below last year's spending level, which is something that we have tried to achieve in a number of appropriations bills, often without success. That commends this bill to me.

In addition to that, I have to say to those who care to know it, and certainly the Members on my side of the aisle do care, that the administration not only supports this bill, but very strongly supports it and hopes that it will be passed.

Having said that, let me also point out that I did not, as the ranking member of the subcommittee, sign the conference report, nor am I going to vote for the bill. There are essentially two main reasons why I am not going to support this piece of legislation.

Mr. Speaker, the first of them is because I believe that the language that we have adopted in this bill in regard to El Salvador increases the possibility of renewed hostilities in El Salvador, reduces the possibility of finding a peaceful solution to that conflict. Under the bill that was passed by the House there was a provision to withhold 50 percent of the money that was appropriated for the Government of El Salvador. But it was also possible, when that Government took steps that were commensurate with our concerns about human rights abuses in that country, for the money to then be released and to go forward so the Government could continue to build its economy and to maintain the peace in that country. The language that we have adopted in the conference report is based on the Senate Language on El Salvador. There were a number of provisions in the Senate language which were objectionable, and some of them were removed, but one which was not removed, which concerns the administration and which concerns me, is that, when we withhold now under this bill under the conference report, when we withhold 50 percent of the money that is to go to El Salvador, we withhold the money because of their human rights abuses. There is no way to release that money after the Government of El Salvador does anything positive toward resolving those human rights abuses. It is a carrot and a stick without a carrot. Therefore, once the money is withheld, there is no progress that can be reported, no conditions met that will enable us to release the money. I think that encourages the FMLA and its intransigence to be militarily aggressive, and I think it is a mistake.

The other reason, quite frankly, why I cannot support this bill is that it is now 8 o'clock in the evening. At 7 o'clock this morning, just 13 hours ago, we passed a reconciliation bill in this House which increased the taxes on the American people by approximately $160 billion. It seems very difficult to reconcile a substantial increase in taxes on the American people with legislation now to fund a foreign aid bill which includes a forgiveness of the debt that is owed to the American taxpayers by the Government of Egypt. This bill writes off in several steps, incrementally, 600—well, it provides a writedown of that debt to approximately $670 million, but that debt is currently scored at $6.7 billion, and this bill writes it off. So, I find it very difficult, in addition to the El Salvador concerns, to justify voting for a foreign aid bill, writing off nearly $7 billion owed to us by another Government at a time when we have just made a substantial increase in the taxes on the American people because of the deficit that we have.

Having said that, I can again repeat that there are very positive things in this bill, and I want my colleagues to know, especially my Republican colleagues, because I do not want to mislead anybody, that while I oppose the bill, I am going to vote against it, and I hope it fails, the administration does support it and does want it, and my colleagues may want to take that into account.

Mr. Speaker, I reserve the balance of my time.

Mr. OBEY. Mr. Speaker, I yield 6 minutes to the gentleman from New York [Mr. MCHUGH].

Mr. MCHUGH. Mr. Speaker, I thank the gentleman from Wisconsin [Mr. OBEY], the chairman of our subcommittee, for yielding this time to me, and I want to begin by expressing my admiration and congratulations to him, to the ranking Republican member [Mr. EDWARDS], and indeed to all the members of the subcommittee who have worked to put this bill together.

Mr. Speaker, it is not fun working for foreign assistance, particularly at a time when the budget of our country is under strain, and when we are in the unpopular, albeit necessary, process of cutting some of the programs for people here at home and of raising some additional revenue to deal with our budget deficits.

Foreign aid is never popular, but the United States and the people of our country continue to have important and vital interests throughout the world. Those interests need to be defended and pursued, and foreign assistance, if used wisely, is a significant and vital tool of American foreign policy. This conference report should

be judged in that context, and I urge my colleagues to support it.

In doing so, however, it is important to stress, as the gentleman from Wisconsin [Mr. OBEY] has already done, that spending for foreign assistance is being limited by this measure. Under its terms, foreign aid will represent only 1½ percent of our total budget, something which most Americans might be surprised to learn. I think most Americans believe we spend considerably more of our budget on foreign assistance than in fact we do.

However, Mr. Speaker, we should not spend one dime of those limited resources if the foreign assistance does not serve American interests abroad. But we think that for the most part it does serve our interests.

This foreign assistance bill is significantly less than total foreign assistance just a few years ago. In 1985, for example, we spent about $20.9 billion of our budget on foreign aid. This bill is about $14.7 billion, substantially less than what we were spending approximately 5 years ago. We passed a bill in this House just a few months ago which was $250 million higher than the measure we bring to the House today. We passed that earlier bill 305 to 117, a significant majority. Therefore, in terms of total spending, I think it is reasonable to support this conference report.

□ 2000

In terms of policy, there are a number of important issues dealt with in the conference report. I would like to touch on just one of them, an issue which my friend, the gentleman from Oklahoma [Mr. EDWARDS], mentioned earlier. We are undertaking a significant change in policy direction, or at least in policy emphasis, with respect to El Salvador in this measure. We begin by withholding from the Government of El Salvador 50 percent of the $85 million of military assistance that is authorized. Our purpose is not to punish the Government of El Salvador, although there are continuing abuses of human rights by elements of the military in that country about which we are very concerned. We are doing it because we want to send a signal to both the Government and the insurgents that we are serious about their both committing to negotiations leading to an end of the war in that country.

Over 10 years more than 70,000 people have been killed in that war. We want both sides to negotiate seriously. We have established in this legislation a set of conditions which gives solid incentives to both the Government and to the insurgents to terminate aggressive military action, to engage in negotiations, to agree to a ceasefire and a permanent settlement of their differences, and to promote the rule of law and basic human rights.

I think the conditions imposed on both sides are very real and very constructive. For example, if the insurgents engage in aggressive military activity while the Government is trying to negotiate in good faith, the Government's military aid will rise to 100 percent of the $85 million authorized. That is an incentive for the insurgents to engage in good faith negotiations, and not to engage in aggressive military action.

Correspondingly, if the Government refuses to negotiate in good faith, or continues to engage in violations of basic human rights, or does not make a serious effort to gain control of human rights violations, while at the same time the insurgents are making a good faith effort to do those things, then military assistance to the Government will be totally cut to zero.

Accordingly, in the conference report we are providing serious incentives to promote a peaceful settlement of the war. We want the killing to stop. We want the human rights violations to stop. We want a reformed judicial system that brings to justice violators of human rights, particularly those who have been immune from the judicial process, primarily those in the military who have engaged in gross human rights violations.

Mr. Speaker, I think this is a new, tough, constructive approach to our policy in El Salvador, and I urge Members to vote for this conference report.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey [Mr. GALLO], a member of the subcommittee.

Mr. GALLO. Mr. Speaker, I rise in support of the conference report on foreign operations.

Mr. Speaker, this is not a perfect bill.

It is not a popular bill, to say the least.

And yet, for less than 2 percent of our Federal budget, it meets some very real needs and addresses some of the most serious concerns facing our National as a whole.

This bill continues our longstanding commitments to Israel and Egypt and we have taken some additional steps to respond to their increased security risks as a result of the Persian Gulf crisis.

Israel has been and will continue to be our strongest democratic ally in the Middle East.

And, with Egyptian President Mubarak's leadership, the majority of Arab States stand side by side with us against Iraq.

In fact, it is Egyptian troops that separate our young men and women in the Saudi desert from an estimated 350,000 Iraqi troops.

Our alliances with other countries, such as Greece and Turkey, have also paid big dividends in this crisis and we continue our support for them.

At the same time, we have not forgotten the dramatic changes in Eastern Europe and we do our best in this bill to respond with American resources and expertise.

For the many people, like me, who also believe we can do more to promote American exports through our foreign aid program, we have provided $750 million for the Export-Import Bank.

Through programs like this, the American taxpayer does get a return on their foreign aid dollar. We recognize that the new world order will be a new economic order and Americans can't afford to sit on the sidelines.

So, for less than 2 percent of our resources, we maintain strong support for our allies, we respond to the Persian Gulf crisis, we continue our humanitarian assistance to the poorest peoples of the world, and we move toward a greater American presence in the international marketplace.

As I stated before, this is very important legislation and I ask my colleagues to join me in support of this conference report.

Mr. OBEY. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, I rise in support of this piece of legislation. I would like to engage the gentleman from Wisconsin [Mr. OBEY] in a colloquy.

Mr. Speaker, when this measure left the House, there was language in the committee report which read:

> The committee recommends that up to $5 million in refugee assistance be made available to address the needs of the African-American-Hebrew community in Israel in accordance with an agreement among representatives of that community, the Government of Israel, and the Government of the United States.

Is that language still in the committee report?

Mr. OBEY. There has been no change.

Mr. DYMALLY. Mr. Speaker, I would ask the gentleman, during the course of the debate in the committee and on the floor and the conference committee, did anyone oppose that language?

Mr. OBEY. Not to my recollection.

Mr. DYMALLY. Mr. Speaker, I thank the gentleman. I want again to emphasize the importance of this piece of legislation. I want to thank the gentleman from Wisconsin [Mr. OBEY], the chairman of the Subcommittee on Foreign Operations, for including this language in this committee report, because I believe this language has begun a dialog in Israel which is going to end up in resolving what has been a very difficult problem.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. MILLER].

Mr. MILLER of Ohio. Mr. Speaker, I have great respect for my colleagues on the Foreign Operations Appropriations Subcommittee; however, I must oppose this conference report.

We are on the eve of concluding one of the most strained sessions I have witnessed in 12 terms as a Member of this body. We have struggled for months over the budget and have just approved one of the largest tax increases in our Nation's history. Yet we have before us a bill that will continue foreign aid programs at essentially the same level as last year.

While I have never been an advocate of foreign aid, my constituents have made it clear to me that they are angered by the prospect of paying higher taxes while billions of dollars are sent overseas. I have to question whether this legislation reflects the need to reorder our priorities given the present budget situation. The $15 billion that the conference report makes available is essentially a no-growth budget compared to last year, however, in the context of our fiscal problems, I feel it is a far too modest effort at spending restraint. How can we justify this level of funding for foreign aid and at the same time increase the tax burden of all Americans by $137 billion over the next 5 years. Foreign aid may have a proper place in our Nation's foreign policy and America has always been generous in helping others, but we simply do not have the resources to devote to other nations to the extent we have in the past.

□ 2010

Mr. OBEY. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Speaker, I supported the House version of this controversial bill, but I am opposed to this conference report because of the Senate language empowering the President to write off up to $6 billion owed by Egypt to the United States. Consider the reasons given by the President.

The administration argues that Egypt has been a trusted ally of our country. They argue that the courage of Mr. Mubarak and Anwar Sadat merits our recognition, and I agree, but I also must remind this body that since the Camp David accords, Egypt has enjoyed a privileged status in terms of U.S. foreign aid and the people of this country have extended almost $20 billion to Egypt in economic and military assistance.

It is also argued that Egypt's commitment of troops to assist us in the Persian Gulf creates a special case entitling Egypt to extraordinary treatment. I am very troubled by this argument. If our mission in the Persian Gulf is indeed a joint, U.N.-endorsed effort by civilized nations around the world to resist the aggression of Saddam Hussein, then the United States shoulders no special burden in cashiering our allies. In fact, we have argued exactly the oposite in urging Japan and our European allies to contribute to the cost of Operation Desert Shield.

Finally, I need not remind this Chamber that we cast a very painful vote about 12 hours ago asking our constituents and neighbors to join us in sacrificing to solve our Nation's deficit. That sacrifice will touch the lives of every person in this Nation.

How can we then turn to them a few hours later and empower the President to walk away from an Egyptian debt of over $6 billion?

Friends should not be required to prove their friendship on a daily basis. The timing and logic of this Egyptian debt forgiveness is seriously flawed, and I urge my colleagues to oppose this conference report.

Mr. OBEY. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. TRAFICIANT].

Mr. TRAFICANT. Mr. Speaker, I oppose the bill.

Egypt sent 2,000 troops to Saudi Arabia. This bill would forgive at least $6 billion in loans. Mr. Speaker, that is $3 million per soldier. This must be the first time we have ever allowed bionic soldiers to get a break in this budget.

Do you know what else bothers me? There are all kinds of quirks and addons on this bill for Israel. We just raised taxes on mom and dad. It is no wonder why the American people are taxed off. I am taxed off. I do not like the last minute with this bill. It has become a sacred cow.

There are quirks in it, and I am tired of being called an anti-Semitic because I oppose this madness of money going overseas, taking care of all of these foreign countries and raising taxes in our own country.

In my opinion, this is the saddest thing this Congress does. And everybody keeps saying, "Oh, it is just a small percentage of the budget."

What was revenue-sharing, damn it? You drew out $3 billion to cities like Youngstown and Cleveland because that was breaking the bank. Then you put money in here for Israel. I am against this.

I think the American people should consider this vote as much as they considered that vote last night, because that budget was un-American, and this bill is more than just un-American, it is worthless.

Mr. OBEY. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. Mr. Speaker, I thank the gentleman for yielding the time, and I will not use my 2 minutes.

But I would like to say I think that the sentiments expressed by the previous speakers in opposition to this bill are worth listening to in this particular year in which we continue to spend $182 billion a year subsidizing the defense of Europe and Japan. That is Defense Department figures. Now we have before us a bill today that spends about $14.5 billion on foreign aid.

I wonder how we can continue to justify this? A moment ago the chairman of the committee made reference to the cost of it, but the cost of it has to be considered as well in light of the interest we are going to pay on it, because this is not money we have in the bank, this is money we are going to borrow, and at some point we have to begin to recognize this country needs to begin putting the needs of America first.

We cannot educate our children, we do not protect our people from crime, we face enormous problems with the homeless that we are unable to solve, and yet we come up here year after year after year and pass defense bills, both authorization and appropriation bills, that authorize expenditures of billions of dollars to defend other parts of the world, and today we have a foreign aid bill before us.

I think that clearly there are things in this bill that are worthwhile, and have merit, and I commend the gentleman from Wisconsin [Mr. OBEY] for his leadership in this area. But at some point we are going to have to finally recognize a need in this country to begin to put America first, and I stand up today in opposition to this bill.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I yield 4 minutes to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Speaker, I thank my colleague for yielding time to me.

Mr. Speaker, I would like to express my deep appreciation to the chairman and ranking member of this subcommittee, who have worked endlessly in a very, very difficult subject area, attempting to put together a package that promotes America's responsibilities in the field of foreign assistance.

This package does not involve just simply foreign aid. It is a combination of foreign assistance, export assistance as well as foreign military sales, and reflects a broad array of American interests and responsibilities in the world.

It seems to me that we ought to be very cautious when we lightly suggest that America should not be involved in any kind of spending money overseas. The reality is that there are just a few fundamental reasons for having a national government in the first place. One of them, mentioned in the Constitution, is our national defense. Clearly the role of responsibility and leader-

ship we have to play in the world, does involve assistance for developing countries and friends who need to feed their children and stimulation of their economy. But the bulk of it provides for our interest in providing security for ourselves and for other democratic nations throughout the world.

One of the things that constantly amazes me at home is that my people often in the community forum setting presume that somehow foreign aid involves a third of our budget, or that it is the biggest portion of national spending and we should not be wasting the money. The reality is that we have over a $1 trillion national budget. The foreign budget represents and consistently has represented much less than 2 percent of our Federal budget. Indeed, America does have a role in terms of responsibility and leadership in the world, and this is the vehicle that funds that responsibility.

We have celebrated Eastern Europe, almost the end of communism in the world. Those kinds of developments in Poland, in Czechoslovakia and elsewhere would not be feasible if America was not able and willing to lead. The changes that are taking place in Latin America are indeed revolutionary. Mexico is almost an entirely different country than it was just a few years ago, and today it is a land of economic opportunity, hope and expansion. If it were not for our working together, assisting our allies in several ways, then indeed much of that change might not have been feasible.

The role of this bill is to recognize that America is a leader for the world. It represents a small, small piece of our national budget, but a very, very significant contribution to our capacity to lead and to preserve peace and freedom for all mankind.

□ 2020

I urge my colleagues to recognize the critical role that we have here. I urge my friends to support and vote for the conference report and let us go home.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I yield 4 minutes to the gentleman from Arizona [Mr. KYL].

Mr. KYL. Mr. Speaker, I voted for this bill originally when it was before us. It had very important provisions in it, not the least of which was the military aid for Israel and other key United States allies, but I did so on the promise that the so-called Moakley-Murtha language which restricted aid to El Salvador would be improved.

Instead, it has been made worse by the replacement of the so-called Leahy-Dodd language in the Senate.

I would like to quote from a couple of letters that were sent by representatives of the administration to make my point. One is a letter from Lawrence Eagleburger and Brent Scowcroft to the gentleman from Oklahoma [Mr. EDWARDS], and they point out that they have agreed to several changes in the bill, that these changes make the bill better, and they support moving the bill forward at this stage of the process and ask Republicans to vote for it. "We recognize that the bill still contains a number of objectionable provisions, and we will seek to improve them as the bill moves through the Senate and conference." In addition they say, "We want to assure you that the President's senior advisers will recommend to the President that he veto the bill if, at the end of the process, it contains the Moakley-Murtha language on El Salvador or any other restrictions on El Salvador not agreed to in the bipartisan discussions" that were to begin that day.

This is a letter making the same point by Secretaries Baker, Cheney, and Brent Scowcroft also to the gentleman from Oklahoma [Mr. EDWARDS]. I refer to these letters and quote them and I make them a part of the RECORD to make the point that there are some of us who wanted to support this bill very badly but, frankly, have been misled.

Because, as I said, the language which was inserted in the bill takes it in the wrong direction, not the right direction. Specifically, this language provides that the $85 million in military aid that the administration wants to provide to El Salvador will be cut in half unless the following conditions are satisfied: No. 1, that the United Nations develop a plan for peace in El Salvador; No. 2, that the FMLN reject that plan specifically; No. 3, that the Government of El Salvador accept it; and, No. 4, that it include a cease-fire.

I do not have any concern that the last two elements would be satisfied, but it is already clear that the United Nations is not about to develop any kind of a plan for a cease-fire in El Salvador, and certainly that the FMLN would not be so foolish as to formally reject it in the sense that would be required in the language that we have provided here.

As a result, it is unrealistic to think that anything other than half of the $85 million request for aid would be approved. This is both a sham and a shame, because the people of El Salvador need our help. Instead, we tilt to the FMLN, which has been guilty of the grossest kind of human rights abuses and has been totally unwilling to participate in the free electoral process which, I might add, a bipartisan commission of this Congress headed by former Representative Tony Coelho certified to be free and totally fair the last time the elections were held in El Salvador.

So I submit that it is unconscionable that we consign the good, kind, poor people of El Salvador to another year of violence, because we are not willing to provide the kind of assistance to the military that would prevent that kind of violence.

As the gentleman from Oklahoma [Mr. EDWARDS] has already pointed out, last night this body passed a tax increase on the American people. Tonight we find out one of the reasons why, in order to make up for $6.7 billion in debt owed by Egypt that this bill would permit the President to forgive. That is wrong.

Forgiving Egypt's debt ought not to be plugged into this bill at the last minute. It is questionable if it should be done at all, but certainly not without a lot more consideration of the issue than has occurred so far.

Mr. Speaker, in conclusion, I wanted to support this bill. I did support this bill the first time it came to us. I would like to support this bill, but I cannot support the bill because of the provisions regarding the aid to El Salvador and the provisions regarding debt forgiveness to Egypt.

I urge my colleagues to vote "no."

DEPARTMENT OF STATE,
OFFICE OF THE SECRETARY OF STATE,
Washington, DC, June 27, 1990.

Hon. MICKEY R. EDWARDS,
House of Representatives, Rayburn House Office Building.

DEAR MICKEY: Over the past several days, we have worked with the Appropriations Committee to make many changes to the proposed foreign aid bill you will consider in the House today. These changes make the bill more satisfactory to the Administration in a number of critical areas. As a result, we ask you and other Republicans to support this bill.

We also want to make clear, however, that we will recommend to the President that he veto the bill if, at the end of the process, it contains the Moakley/Murtha language on El Salvador. Bipartisan discussions on El Salvador are currently proceeding in an encouraging manner and a negative vote on this bill over this issue at this time would be counterproductive to these discussions.

Additionally, the President's senior advisors will recommend that he veto the bill if any provisions are added that would weaken or circumvent the current Kemp/Kasten provision on forced abortion or the Mexico City poli[illegible].

Despite all our best efforts, the bill still contains a number of other objectionable provisions. You can be assured we will continue to seek changes as the bill moves through the Senate and Conference.

Sincerely,

JAMES A. BAKER III.
RICHARD B. CHENEY.
BRENT SCOWCROFT.

DEPARTMENT OF STATE,
Washington, June 21, 1990.

Hon. MICKEY EDWARDS,
Committee on Appropriations, House of Representatives, the Capitol.

DEAR MICKEY: Last evening we agreed, on behalf of the Administration, to several changes in the House Foreign Operations proposed Foreign aid bill. These changes make the bill much more satisfactory to the Administration in a number of critical areas. We support moving the bill forward at this stage of the process and we ask you and other Republicans to vote for it.

We recognize that the bill still contains a number of objectionable provisions and we will seek to improve them as the bill moves through the Senate and Conference. In addition, we want to assure you that the President's senior advisors will recommend to the President that he veto the bill if, at the end of the process, it contains the Moakley/Murtha language on El Salvador (or any other restrictions on El Salvador not agreed to in the bipartisan discussions that are to begin today). The same holds true for any other provision which might be added to the bill that would weaken or circumvent the current Kemp/Kasten provision or the Mexico City policy.

Sincerely,

LAWRENCE EAGLEBURGER.
BRENT SCOWCROFT.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH of Iowa. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I would just rise to comment on one issue in this bill.

First, I would like to say that there are many profound and controversial provisions, but thanks to the distinguished chairman of the subcommittee of jurisdiction, the gentleman from Wisconsin [Mr. OBEY], and the gentleman from Oklahoma [Mr. EDWARDS] on my side, included in this bill is a small provision relating to urging of the establishment of an international criminal court.

Senator SPECTER in the other body as well as the gentleman from Wisconsin [Mr. KASTENMEIER] and I have been pushing this idea for a decade in this legislative body. This is the first significant legislative call for the administration to advocate the establishment of such a court.

As this body understands, the International Court of Justice of The Hague adjudicates only disputes between states, and one of the great voids in international law is what happens when you have violations of international law by individuals. How do you hold them accountable?

One of the problems in today's circumstance is that if a country like the United States attempts to bring someone to justice, the perpetrator of the crime as well as his countrymen might consider him a freedom fighter, while we might consider him a criminal.

If an international court for adjudication of such disputes is established with the sanction of a community of nations, reprobation is more compelling and retroaction less likely.

My personal view is that Saddam Hussein would be a good candidate for trial as would Pol Pot, but there are a whole spectrum of drug traffickers as well as international terrorists that drive a stake into civil society as well as criminal law that should be held accountable.

This is a small but powerful addition to this statute. I would urge its consideration in this body as Members review the full scope of the measure. It is another good reason to support a good bill.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, this foreign aid request and this foreign aid bill represents more than just the spending of money. It represents hope, hope for a better life and hope for peace throughout the world.

Many of us who believe in a strong national defense understand that the military strength of the United States plays a great role in preserving peace and actually promoting liberty throughout the world. Indeed, freedom would not have much of a chance anywhere and would not have had much of a chance anywhere in this last decade if it was not for the United States with a strong military.

However, foreign aid and foreign assistance also plays an important role. In this bill we know about the large recipients. We know about Israel and Pakistan and Egypt, but there are also small provisions.

For example, in this bill there is a very small earmark for humanitarian assistance to those people who are on the Thai-Burma border who are struggling now for democracy in Burma. I would like to point out to the American people that it is just this type of commitment that makes the United States the admirable country that it is. It is just this type of commitment of a small amount of money that offers hope to the people of the world that, indeed, they should stand firm for freedom in these different places in the world and that they are not alone.

As we take a look at this legislation, let us not just place our faith in weapons, because that is an expensive way to keep the peace, but let us also realize that America can play a role in the world through this type of influence by committing ourselves and our resources to those people who are struggling for freedom and those people who are longing for peace throughout the different parts of the world, and especially in Burma. Let the message go out tonight to those people who believe in freedom and are struggling that we are with you.

□ 2030

Mr. EDWARDS of Oklahoma. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Speaker, the members of the Foreign Operations Subcommittee have an extremely difficult job. Their subjects are very controversial, and most members like to view themselves as an expert on some or many of the geographic or subject areas in which they work.

I have some significant differences with several of the decisions of the conferees, but I think it is important to recognize how well they do with the limited funds that are available for them.

This Member wishes to particularly compliment the Members for some additions or earmarks that they have made. I think that, for example, the Export-Import Bank's tied-aid funds are extraordinarily important to helping our businessmen be competitive. It is necessary to have these funds to fight fire with fire. As long as we face tied-aid fund competition with foreign competitors for export markets.

I am also pleased to see that the United States is delivering, within the foreign assistance funds available on the United States commitment to fund the so-called European Development Bank, or the EBRD, and to provide funds for the various Eastern European Assistance Programs, which are directed especially to nations like Hungary, Poland, and now Czechoslovakia.

The IFAD appropriation is particularly important for work in sub-Saharan Africa, but also elsewhere. I am pleased to see that $30 million has been earmarked for that purpose. This and other members of the Select Committee on Hunger have been quite concerned that AID has moved away from an educational emphasis on improvements of basic elementary and secondary education improvements. I notice an earmark in the conference report for at least three additional projects—basic education projects—two of which should be, as a minimum, located in sub-Saharan Africa.

For the International Student Exchange Program, there is an earmark, this Member is pleased to note, to continue that program and, most encouragingly, specifying that $3 million of it would be spent to assist students from Czechoslovakia, Poland, and Hungary. This is particularly important at this time.

Finally, a small item, but particularly important, in light of the resolution passed in the Congress during the past 2 or 3 weeks. With respect to the continent of Antarctica, a small amount is earmarked for purposes of financing our role in working with other nations in protecting the sensitive environment of Antarctica.

I did have one question for the ranking member or for the chairman of the subcommittee, just to confirm that I am right on the matter. My understanding in the limitations in this conference report placed upon any direct foreign aid to Yugoslavia is that this limitation will not affect the use of our Eximbank funds in Yugoslavia. Is that right, since the use of such funds would not be deemed to be direct aid to the Government of Yugoslavia?

I am asking either or both of the gentlemen for a confirmation that the limitations on direct aid to the Government of Yugoslavia would not affect our Exim Program? That would not be deemed to be direct assistance, but aimed at helping us be competitive in their markets?

Mr. OBEY. If the gentleman will yield, all I can say, having opposed the language because of its lack of clarity, and that I am not frankly certain about the effect of that language. It would not affect it for the first 6 months. I am not certain about the fact afterward.

Mr. EDWARDS of Oklahoma. If the gentleman will yield, my understanding is that only direct aid is affected. So Exim would not be, and either case, the language allows a waiver by the Secretary. I do not think it would have any affect.

Mr. BEREUTER. My understanding is certainly that it would not either, but I am a little concerned about that.

Again, I want to thank and commend the members of the committee for the excellent work they have done in giving some attention to some very small but vital programs in addition to the big foreign assistance items.

Mr. OBEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I simply want to make a point to correct a number of misimpressions left by comments on Egyptian debt.

First of all, I am certainly not comfortable with the provisions here at all, but very frankly, the Congress at this point has no choice. The White House, in my view unfortunately, leaked the information to the press that they were providing this action, before they talked to the Congress about that. As a result, the world press and the Egyptian public thinks that it has already taken place. If the Congress were to reverse that action, I think we would be in a position of risking chaos in Egypt. We have seen the assassination of the Egyptian Speaker just 2 weeks ago. We have roughly 200,000 American troops at risk in that area right now in Operation Desert Shield, and while we might like to second-guess what the President did, I do not think we can afford to take any action which would put any unnecessary strain on our operations in Desert Shield at this moment.

Second, I want to make the point that this bill does not forgive Egyptian debt. The Senate bill contains language under which the Congress required Egyptian debt to be forgiven. The House position in conference was essentially, "No way." We said we were not going to require the President to engage in that debt write down now, and we substituted language which said that if the President determined that it was essential to the national interest to do so, that he could engage in a writedown operation, but it would be the President who took that action. It would not be the Congress. This language does not require him to do so. It invites him to use his best judgment.

Second, the President on his own can take such action only after he engages in a burdensharing operation, so that our allies are asked to do the same thing that we do, so that the United States does not forgive Egyptian debt with the risk that the resources freed up by that would simply reflow to another European creditor, for instance.

The third point I would like to make is that this action costs the American taxpayer absolutely nothing, because the fact is that we're not receiving payments from Egypt. We are not going to receive payments from Egypt because in all practical terms, they are bankrupt. We have a massive S&L problem on our hands today because for years we did not recognize the uncollectability of certain debt in those institutions. We do not want to compound that problem with respect to international debt.

We can debate about whether the President's action was justified or not, but it should be perfectly clear that there is no requirement in this language for intelligence debt relief. The Congress takes no action to provide Egyptian debt relief by this legislation.

We changed the Senate language so that the President has to engage in a number of activities before any such write-down occurs, and if it does occur, it occurs upon the action of the President, not the Congress.

Mr. MFUME. Mr. Speaker, today I will oppose the foreign aid appropriations bill for fiscal year 1991.

My opposition to this bill is especially excruciating because I have always supported granting aid to those nations that are not only underdeveloped, but also to the countries that have been very staunch allies of the United States. Nonetheless, there is a provision within this bill that I cannot support. The forgiving of almost $7 billion in debt to Egypt is wrong.

Mr. Speaker, my principles prevent me from supporting this appropriation because it is inconceivable how the United States can provide $2.1 billion in foreign aid to the Nation of Egypt and then in the same instance turn around and forgive $6.7 billion of debt.

American workers and American taxpayers would cherish the day that our Government granted a 1-year debt amnesty for the heroic contributions they make daily in support of and the defense of this great Nation. I know that I can speak for the citizens of Baltimore and many other areas who cherish the thought of having their debts forgiven next year.

Many of those whom I have the privilege to represent have asked repeatedly why is it that we can provide these breaks for the Government of Egypt while our own people live in the streets and eat their daily meals at shelters and soup kitchens. They ask why are we forgiving the debt of other nations while at home we are telling our own citizenry that they must partake in shared sacrifice to reduce the deficit.

Mr. Speaker, I know many of my friends who are advocates of foreign aid and development will ponder why I cast my vote the way I did. In turn, I must say to them that I was there in the trenches along side you on every fight we had to increase and dignify the aid allotment to Africa. It is a result of those struggles that the funding for sub-Saharan Africa has been increased to $800 million in this bill.

I will state that I have always been there to send aid so that the Israelis may live in peace within secure borders and so that new housing guarantees would be made available to resettle thousands of Soviet and Ethiopian Jews. I have never wavered in that support.

Additionally, I have worked side-by-side with Chairman GEORGE W. CROCKETT on development issues for the Caribbean and understand the suffering and pain that our neighbors to the south must contend with. My support for chairman CROCKETT's Caribbean Development bill and my efforts to secure increased funds for this neglected region are matched by only a few Members of this Chamber.

Equally, I have gone on record to support the emerging democracies of Eastern Europe and have entertained visitors in my office from Lithuania, Poland, Latvia, Estonia, and Czechoslovakia.

So you see Mr. Speaker, I too have strong interests in this package, which is why it pains me so greatly to have to reject it because of its inequitable debt forgiveness provision.

In closing Mr. Speaker, I will continue to be a strong advocate for foreign assistance and development and hope that in the future we can produce legislative packages that prioritize our aid with special consideration given to our domestic situation.

Mr. CONTE. Mr. Speaker, I rise in support of the conference report to accompany H.R. 5114, making appropriations for the foreign operations, export financing and related programs in fiscal year 1991.

Mr. Speaker, this a most difficult bill to craft.

Its reach is literally global.

Its issues are often controversial.

The foreign ops bill offers us the yearly opportunity to revisit our foreign aid priorities and adjust them to our evolving needs.

And adjust them we did.

Perhaps the biggest change is one of priorities. H.R. 5114, following the lead of the House bill passed in June, refocuses a greater portion of aid toward humanitarian needs. At the same time, it lessens the military support we have been providing to other nations. And it allows us to continue a high level of support for our closest allies in the Middle East and for those countries participating in Operation Desert Shield.

And there are many other noteworthy provisions.

For the first time in many years, we have conditioned aid to El Salvador. One condition is insistence that those responsible for the killing of the six Jesuit priests be brought to justice.

As my colleagues are aware, this situation is appalling. Congress had no choice left but to send the strongest of possible signals that America can no longer sit idly by while those responsible for this heinous act go unpunished.

In H.R. 5114, we have increased assistance for the most vulnerable of the world's population. For children in need, we have provided almost a 50-percent increase through the important Child Survival Fund.

We have been sensitive to global health and humanitarian needs:

International efforts to combat AIDS were boosted 20 percent. We were successful in bringing up to $23,000,000, the World Health Organization portion of that funding.

We were able to fund the Peace Corps, our ever-vital, volunteer army in the war against poverty and hunger, at its highest funding level ever.

We provided substantial funding for the primary and secondary education program, and while we were not able to fund the successful American Schools and Hospitals Abroad Program at as high a level as I would have liked, we were able to increase the House number by a large percentage. A number of important projects, such as the American University in Beirut, receive part of their funding from ASHA.

I am pleased we will fund, at the Senate level, the International Fund for Agricultural Development, another successful program which was hit in our crunch to fund competing priorities.

I was also pleased we could fund, at the higher Senate level, the U.N. Development Programme. I've met often with Administrator Draper, and I never fail to be impressed with the good news stories he relates about UNDP's important work.

Another outstanding provision of this legislation, Mr. Speaker, increases dramatically the assistance we will be providing to the emerging democracies in Eastern Europe. We have provided support for the range of necessary assistance—agriculture, health, energy, the environment, scientific agreements, and housing.

In closing, let me mention two other critical sections of this bill.

I need not remind my colleagues how heavily the Persian Gulf situation weighs on our minds and hearts. Saddam, the aggressor, remains unyielding, and we stand our ground as well.

This bill backs up our national resolve with tough language prohibiting Government support for Iraq—for example, in the granting of export lincenses. Let's keep sending the message over there. No assistance in any way to Iraq.

And ending on a positive note, I commend the conferees for providing $200,000 to fund the Antarctic Protection Act of 1990—my bill—we cleared for the President last night which would protect that fragile environment from further outside assault. The $200,000 provided in H.R. 5114 will be used only for the purpose of negotiating one or more new agreements consistent with the Antarctic Protection Act.

The Antarctic Protection Act provides for an indefinite ban on the mineral resource activities that would cause damage to the environment of Antarctica. By providing these funds, the conferees do not intend that the $200,000 be used to negotiate, amend or implement the Convention on the Regulation of Antarctic Mineral Resource Activities, or CRAMRA, which is not an agreement consistent with the intent of the Antarctic Protection Act.

It's important to preserve this continent pristine and intact, and I'm pleased conferees included funding for it in this bill.

In short, Mr. Speaker, we have made fundamental progress in a number of key areas with this bill, and I urge its adoption.

Mr. LAGOMARSINO. Mr. Speaker, I rise in very reluctant support of this bill, foreign operations bill, and were it not for the very dangerous and precarious, and dangerous situation in the Middle East, where, as we debate this issue 200,000 of our young servicemen and women are upholding our interests.

I do not like the El Salvador language and if it were possible, I would vote to remove it.

However, having said that it is my opinion that the FLMN is already violating the conditions and I believe the President today could order release of all of the military money for El Salvador provided in this bill.

But the main reason I come down on the side of voting for the bill is that failure to do so could well cause great damage to our interest and delicate alliances in the Middle East.

Mr. LEVINE of California. Mr. Speaker, I rise in strong support of the conference report language on El Salvador. To begin, I would like to express my sincere admiration for the chairman of the subcommittee, Mr. OBEY, who has done a superlative job with this conference report in all its aspects, and who has been a leader on the Salvador issue in particular.

Despite the 11th-hour objections from the other side of the aisle, I remind my colleagues that the El Salvador language in this bill is already a compromise. Many Members believe, as I certainly do, that far deeper military aid cuts than the 50-percent contained in this bill, with far less Presidential discretion were justified in response to the bloodshed and human rights abuses perpetrated by the Salvador military with United States tax dollars.

This is not an extreme measure. It is one that is long overdue.

For 10 years, Congress has pleaded, cajoled and threatened aid cutoffs to encourage human rights progress and peace negotiations in El Salvador. The time for mere words is over. This legislation for the first time establishes a solid set of incentives to promote a negotiated end to the conflict.

This measure puts the onus on both sides in this struggle. It makes U.S. aid conditional on the behavior of both the armed forces and the FMLN. It places very strong pressure on the FMLN to keep the peace talks going, to refrain from a new military offensive, and to stop rearming themselves from abroad. It pressures the Government of El Salvador and the Salvadoran Armed Forces to confront their horrifying human rights record, and to take all possible measures to prevent these abuses from continuing.

In fact, with the successful outcome of the current peace negotiations in jeopardy, this legislation may be the best hope for keeping both sides at the negotiating table.

Mr. Speaker, the development of this language involved months of work by dozens of Members on both sides of the aisle. In particular, we have been privileged to have the leadership of our colleague from Massachusetts, Mr. MOAKLEY, and our colleague from Pennsylvania, Mr. MURTHA, who jointly authored the original House provision on El Salvador.

This is a good provision; the conference report deserves strong bipartisan support. I urge all Members to cast their vote for the conference report on foreign operations.

Mr. DORGAN of North Dakota. Mr. Speaker, the conference report on foreign aid appropriations for fiscal year 1991 creates a real dilemma for me. I say this as a supporter of the right kind of foreign aid and as the chairman of the International Task Force of the Hunger Committee.

On the one hand, the bill includes many vital and necessary programs which literally bring life, health, and hope to millions of poor people around the world. The bill supports such unique and worthy activities as the International Fund for Agricultural Development, Child Survival activities, and UNICEF. It also aids the economic development of friendly nations around the world.

On the other hand, it still provides billions in military aid to fight a war which is over: the cold war. It directs so much aid to relatively wealthy nations when the very poorest ones are struggling to feed and to vaccinate their own people.

The conference report also makes a telling mistake by adopting the Senate position and effectively forgiving some $7 billion in Egyptian military loans. I simply cannot endorse the notion that we should relinquish one-sixth the resources we need for deficit reduction in budget reconcilitation because of a sudden determination of the President. I acknowledge, at the same time, the concerted efforts of Chairman DAVID OBEY to devise the best possible agreement on Egyptian debt.

I do understand that Egypt needs help in dealing with some $32 billion in official foreign debt. But I also contend that Western Europe and Japan should begin to share the burden of relief, just as some Arab nations have recently done. Since the United States is already expected to spend about $17 billion on the Desert Shield Operation, at a time when we already face a $300 billion deficit, the President's plan for Egyptian debt forgiveness seems particularly ill-advised. I note, too, that we can't seem to fund a decent price support program for family farmers.

I voted for foreign aid appropriations when the House considered H.R. 5114. It is, therefore with regret that I feel obliged to vote against the conference report on foreign aid appropriations for fiscal year 1991.

Mr. GALLEGLY. Mr. Speaker, I rise in opposition to the foreign aid bill, primarily because of the language calling for the forgiveness of the entire amount of Egypt's official debt of $6.7 billion to the United States Government. While there are many laudable activities provided for in this bill, such as assistance to our most faithful ally in the Middle East, Israel,

which I have always strongly supported, there are several provisions that I cannot, in good conscience, support.

The House of Representatives has just voted to increase taxes on the American people by approximately $160 billion. I oppose this increase in taxes, because I believe we must cut spending, not increase taxes to reduce the deficit. However, this foreign aid bill includes the forgiveness $6.7 billion of Egypt's offical debt, owed to the Government of the United States. In actuality, this money is owed to the people of the United States. How can we take this money from the American people. How can we expect to balance our budget when we keep doing fiscally foolish things like this? It is true that Egypt is helping to defend Saudi Arabia against Iraqi aggression, and their assistance is appreciated. However, Egypt is not the only country to owe the United States money, and who would not, if given the choice, want to have their debt forgiven? Should this measure be approved, our Government is likely to be flooded with requests from other debtor nations to forgive their debts as well. This is an unacceptable precedent to set.

This debt forgiveness for Egypt has been couched in terms of rewarding those who help us in the current Persian Gulf crisis. Let it be said that Egypt has its own interests in the gulf that bring Egyptian soldiers to Saudi Arabia. We do not need to pay Egypt for its participation in the gulf. Saudi Arabia is already providing for the Egyptian contingent's logistics needs.

Mr. Speaker, we do need to cut our deficit and to spend our money more wisely. The forgiveness of Egypt's debt is not a way to spend our money wisely. For this reason I am opposing the foreign aid bill.

Mr. KASTENMEIER. Mr. Speaker, I want to thank the conference committee for its support of a small, but nonetheless important, section of the bill, calling for the creation of an international criminal court. This provision originated as House Concurrent Resolution 66, a bill introduced by the gentleman from Iowa [Mr. LEACH] and myself that attracted broad support in the form of over 25 sponsors, including a number of ranking Democratic and Republican members of the House Foreign Affairs Committee.

The International Law Commission of the United Nations released a report in July expressing support for the desirability of an international criminal court and a resolution was recently introduced by 14 Caribbean nations calling for the creation of an international venue for drug traffickers. Now, with approval of this conference report, is the time for the House of Representatives to show support for an international criminal court promoting the rule of international law.

The resolution expresses the sense of the Congress that we, as a country, should explore the need to establish an international criminal court. But, we should do so in a slow and deliberate manner. The President should proceed with deliberate speed and then report to the Congress by October 1, 1991, on the results of his efforts to establish such a court. In addition, the Judicial Conference, chaired by the Chief Justice of the United States, should report by the same date on the feasibility of, and the relationship to the Federal Judiciary of, an international criminal court.

In the long run, an international criminal court will assist us to deal with war crimes, crimes against humanity, torture, piracy, airport hijacking, hostage-taking, and other criminal activities that violate international conventions. There are few nations which have not been plagued by crimes of international importance: Commercial aircraft which are bombed out of the sky; pleasure boats hijacked while at sea; systematic genocide and torture; and illegal narcotics rings that operate internationally. Identifying the perpetrators of these heinous crimes is only the first step. All too many times, capture and prosecution of these criminals is hindered by political alliances, extradition treaties, and judicial systems which are incompatible. Civil liberties and due process of law must be respected. Creation of an international criminal court will be the first step toward ensuring consistency in the treatment of international criminal activity.

In the short term, this concurrent resolution will result in a cooperative working relationship between the three branches of government on an issue of great importance to the United States and the world community, at large.

I would like to thank, Mr. OBEY, Senator SPECTER, Mr. LEACH, members of the Foreign Affairs Committee, representatives of the administration—from the State Department—and the campaign for U.N. reform, Eric Cox, for their assistance in taking this step forward toward world peace through law.

Mr. OBEY. Mr. Speaker, I have no further requests for time. I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present. The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were yeas 188, nays 162, not voting 82, as follows:

[Roll No. 531]

YEAS—188

Andrews	Borski	Cooper
Annunzio	Brooks	Coughlin
Anthony	Broomfield	Courter
Atkins	Browder	Cox
AuCoin	Brown (CA)	Coyne
Ballenger	Buechner	Davis
Bartlett	Bustamante	de la Garza
Bateman	Campbell (CA)	Dicks
Beilenson	Cardin	Dixon
Bentley	Carper	Dornan (CA)
Berman	Carr	Downey
Bilbray	Chandler	Dwyer
Bliley	Clarke	Dymally
Boehlert	Coleman (TX)	Engel
Boggs	Collins	Erdreich
Bonior	Conyers	Espy
Fascell	Livingston	Rinaldo
Fazio	Lowery (CA)	Roe
Feighan	Lowey (NY)	Rohrabacher
Fish	Manton	Ros-Lehtinen
Foglietta	Markey	Roybal
Ford (MI)	Martinez	Sabo
Frank	Matsui	Sawyer
Frost	Mavroules	Saxton
Gallo	McCrery	Schaefer
Gejdenson	McDermott	Scheuer
Gekas	McHugh	Schiff
Gephardt	McMillan (NC)	Schumer
Gillmor	McMillen (MD)	Serrano
Gilman	McNulty	Shays
Gonzalez	Meyers	Sisisky
Goss	Michel	Skaggs
Grandy	Miller (WA)	Skeen
Gray	Mineta	Slaughter (NY)
Green	Moakley	Smith (FL)
Hamilton	Molinari	Smith (IA)
Harris	Montgomery	Smith (NJ)
Hastert	Morella	Solarz
Hatcher	Morrison (WA)	Spratt
Hertel	Murtha	Stearns
Hoagland	Nagle	Stenholm
Hochbrueckner	Natcher	Stokes
Houghton	Oakar	Studds
Hoyer	Oberstar	Sundquist
Hunter	Obey	Swift
Hyde	Ortiz	Synar
Inhofe	Owens (NY)	Torres
Johnson (CT)	Owens (UT)	Torricelli
Kennedy	Pallone	Udall
Kennelly	Panetta	Unsoeld
Kildee	Parker	Vander Jagt
Kolbe	Parris	Vento
Kostmayer	Paxon	Washington
Lagomarsino	Payne (NJ)	Waxman
Lancaster	Payne (VA)	Weiss
Lantos	Pelosi	Wilson
Leach (IA)	Penny	Wise
Lehman (FL)	Pickle	Wolf
Lent	Porter	Wolpe
Levin (MI)	Price	Wyden
Levine (CA)	Rangel	Yates
Lewis (CA)	Richardson	Young (AK)
Lightfoot	Ridge	

NAYS—162

Alexander	Fields	McCurdy
Anderson	Gallegly	McEwen
Applegate	Gaydos	Mfume
Archer	Geren	Miller (CA)
Armey	Gibbons	Miller (OH)
Baker	Goodling	Mollohan
Barnard	Grant	Moody
Bennett	Hall (TX)	Moorhead
Bereuter	Hammerschmidt	Myers
Bevill	Hancock	Neal (NC)
Bilirakis	Hansen	Nielson
Brown (CO)	Hayes (IL)	Oxley
Bruce	Hayes (LA)	Packard
Bryant	Hefley	Pashayan
Bunning	Hefner	Patterson
Byron	Henry	Pease
Campbell (CO)	Herger	Perkins
Chapman	Hiler	Petri
Clement	Hopkins	Pickett
Clinger	Hubbard	Poshard
Coble	Hughes	Rahall
Coleman (MO)	Hutto	Ravenel
Combest	Ireland	Ray
Condit	Jacobs	Regula
Costello	James	Rhodes
Craig	Johnson (SD)	Ritter
Dannemeyer	Jones (GA)	Roberts
Darden	Jones (NC)	Rogers
DeFazio	Jontz	Roth
DeLay	Kanjorski	Rowland (GA)
Dellums	Kaptur	Sarpalius
DeWine	Kasich	Savage
Dickinson	Kastenmeier	Schroeder
Donnelly	Kolter	Sensenbrenner
Dorgan (ND)	Kyl	Shumway
Douglas	Lehman (CA)	Shuster
Dreier	Lewis (FL)	Slattery
Duncan	Lewis (GA)	Slaughter (VA)
Durbin	Lloyd	Smith (NE)
Dyson	Long	Smith (TX)
Eckart	Marlenee	Smith, Robert (NH)
Edwards (OK)	Martin (NY)	
Emerson	Mazzoli	Smith, Robert (OR)
English	McCandless	
Evans	McCloskey	Snowe
Fawell	McCollum	Solomon

Spence	Thomas (CA)	Weldon
Staggers	Thomas (WY)	Wheat
Stallings	Traficant	Whittaker
Stangeland	Upton	Whitten
Stump	Valentine	Williams
Tanner	Visclosky	Wylie
Tauke	Volkmer	Yatron
Tauzin	Vucanovich	Young (FL)
Taylor	Walker	

NOT VOTING—82

Ackerman	Hall (OH)	Robinson
Aspin	Hawkins	Rose
Barton	Holloway	Rostenkowski
Bates	Horton	Roukema
Bosco	Huckaby	Rowland (CT)
Boucher	Jenkins	Russo
Boxer	Johnston	Saiki
Brennan	Kleczka	Sangmeister
Burton	LaFalce	Schneider
Callahan	Laughlin	Schuette
Clay	Leath (TX)	Schulze
Conte	Lipinski	Sharp
Crane	Luken, Thomas	Shaw
Crockett	Machtley	Sikorski
Derrick	Madigan	Skelton
Dingell	Martin (IL)	Smith (VT)
Early	McDade	Smith, Denny (OR)
Edwards (CA)	McGrath	
Flake	Mink	Stark
Flippo	Morrison (CT)	Tallon
Ford (TN)	Mrazek	Thomas (GA)
Frenzel	Murphy	Towns
Gingrich	Neal (MA)	Traxler
Glickman	Nelson	Walgren
Gordon	Nowak	Walsh
Gradison	Olin	Watkins
Guarini	Pursell	Weber
Gunderson	Quillen	

□ 2059

The Clerk announced the following pairs:

On this vote:

Mr. Ackerman for, with Mr. Kleczka against.

Mrs. Boxer for, with Mr. Denny Smith against.

Mr. Quillen for, with Ms. Schneider against.

Mr. McGrath for, with Mrs. Roukema against.

Messrs. DELLUMS, ANDERSON, SLAUGHTER of Virginia, LEWIS of Georgia, HAYES of Illinois, and MFUME changed their vote from "yea" to "nay."

Messrs. WASHINGTON, SCHAEFER, PARRIS, BROWDER, GRANDY, and LIGHTFOOT changed their vote from "nay" to "yea."

Mrs. BENTLEY changed her vote from "present" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SAXTON. Mr. Speaker, there are a number of Members of the House who are leaving our company after this evening. One of those Members, a very valuable member of the Committee on Armed Services, is the gentleman from New Jersey [Mr. COURTER]. Our good friend JIM will be leaving us after this evening.

Mr. Speaker, I ask unanimous consent that all Members who wish to do so have 5 legislative days in which to enter into the RECORD remarks regarding our colleague and friend, the gentleman from New Jersey [Mr. COURTER].

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentleman from New Jersey?

There was no objection.

□ 2100

EARLY ORGANIZATION OF THE HOUSE OF REPRESENTATIVES FOR THE 102D CONGRESS

Mr. GEPHARDT. Mr. Speaker, I send to the desk a resolution (H. Res. 543) and ask unanimous consent for its immediate consideration.

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution, as follows:

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

H. RES. 543

Resolved, That any organizational caucus or conference in the House of Representatives for the One Hundred Second Congress may begin on or after November 28, 1990.

SEC. 2. As used in this resolution, the term "organizational caucus or conference" means a party caucus or conference authorized to be called under section 202(a) of House Resolution 988, Ninety-third Congress, agreed to on October 8, 1974, and enacted into permanent law by chapter III of title I of the Supplemental Appropriations Act, 1975 (2 U.S.C. 29a(a)).

TERRY ANDERSON TURNS 43 TODAY

(Mr. HUBBARD asked and was given permission to address the House for 1 minute.)

Mr. HUBBARD. Mr. Speaker, kidnaped American journalist Terry Anderson, the longest held among 13 Westerners missing in Lebanon, turns 43 today, his sixth birthday in captivity.

The family of Terry Anderson, including his sister Peggy Say and brother-in-law David Say, of Cadiz, KY, ask that our Federal Government continue to do all it can to secure the release of Terry Anderson as soon as possible.

Mr. DORNAN of California. Mr. Speaker, will the gentleman yield?

Mr. HUBBARD. I yield to the gentleman from California.

Mr. DORNAN of California. Mr. Speaker, World War II for this country was 3 years and 8 months. This is Terry Anderson's sixth birthday; it is the middle of his sixth year in captivity. He was taken on March 16, and on June 9, 5 years ago, Tom Sutherland was taken. There are still six Americans there. There are several hundred in Iraq. I would hope that the Federal executive branch would do just what the gentleman from Kentucky [Mr. HUBBARD] said. Once Aoun was out of power, and Syria had it all, they were supposed to do something to get the six Americans out.

Mr. Speaker, I thank the gentleman from Kentucky [Mr. HUBBARD] for yielding.

FISHERY CONSERVATION AMENDMENTS OF 1990

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the House amendment to the Senate amendment to the bill (H.R. 2061) to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1993, and for other purposes.

The Clerk read as follows:

Senate amendment to House amendment to Senate amendment:

In lieu of the matter proposed to be inserted by the House amendment to the Senate amendment to the text of the bill, insert:

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. (a) SHORT TITLE.—The Act may be cited as the "Fishery Conservation Amendments of 1990".

(b) TABLE OF CONTENTS.—

SECTION 1. Short title; table of contents.

TITLE I—AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

Sec. 101. Findings, purposes, and policy.
Sec. 102. Definitions.
Sec. 103. Authority with respect to highly migratory species.
Sec. 104. Foreign fishing.
Sec. 105. Existing international fishery agreements.
Sec. 106. Permits for foreign fishing.
Sec. 107. Driftnet fishing.
Sec. 108. Regional Councils.
Sec. 109. Contents of fishery management plans.
Sec. 110. Action by Secretary on fishery management plans.
Sec. 111. Implementation of fishery management plans.
Sec. 112. State jurisdiction.
Sec. 113. Prohibition of certain acts.
Sec. 114. Civil penalties and permit sanctions.
Sec. 115. Criminal offenses and penalties.
Sec. 116. Criminal forfeitures.
Sec. 117. Enforcement.
Sec. 118. North Pacific fisheries research plan.
Sec. 119. Authorization of appropriations.
Sec. 120. Miscellaneous technical amendments.

TITLE II—ATLANTIC TUNAS CONVENTION ACT OF 1975

Sec. 201. Limitations on appointments of Commissioners.
Sec. 202. Termination of current terms and completion of pending appointments.
Sec. 203. Travel expenses of Commissioners.
Sec. 204. Travel expenses of advisory committee.
Sec. 205. Species working groups.

Sec. 206. Regulations to carry out Commission recommendations.
Sec. 207. Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish.
Sec. 208. Authorization of appropriations.
TITLE III—FISHERMEN'S PROTECTIVE ACT OF 1967
Sec. 301. Vessel seizure reimbursement authority.
TITLE IV—ANADROMOUS FISH CONSERVATION ACT
Sec. 401. Authorization of appropriations.
TITLE V—INTERJURISDICTIONAL FISHERIES ACT OF 1986
Sec. 501. Clarification of appointment limitation.
Sec. 502. Federal share of activities carried out with additional appropriations.
Sec. 503. Authorization of appropriations.
TITLE VI—CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT
Sec. 601. Authorization of appropriations.
TITLE VII—NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL
Sec. 701. Extension of termination date.
Sec. 702. Authorization of appropriations.
Sec. 703. Transfer of Saltonstall-Kennedy funds.
Sec. 704. Continuity of National Council membership.
Sec. 705. Continuity of Council functions, contracts, and personnel.
TITLE VIII—MISCELLANEOUS
Sec. 801. Certificate of legal origin for anadromous fish products.
TITLE IX—DOLPHIN PROTECTION CONSUMER INFORMATION
Sec. 901. Dolphin protection.
TITLE X—FISHERIES COMMISSION
Sec. 1001. Redesignation of Fisheries Commission.
TITLE XI—REPORT ON MARINE MAMMALS
Sec. 1101. Report on certain marine mammal populations.

TITLE I—AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

FINDINGS, PURPOSES, AND POLICY

SEC. 101. (a) FINDINGS.—Section 2(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(a)) is amended by adding at the end the following new paragraph:

"(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.".

(b) PURPOSES.—(1) Section 2(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(b)(1)) is amended by striking "except highly migratory species".

(2) Section 2(b)(5) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(b)(5)) is amended by striking "prepare, monitor, and revise" and inserting in lieu thereof "exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of".

(c) POLICY.—Section 2(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(c)) is amended—

(1) in paragraph (3) by inserting "considers the effects of fishing on immature fish and encourages development of practical measures that avoid unnecessary waste of fish;" immediately after "and enforcement;"

(2) by striking "and" at the end of paragraph (4);

(3) by striking the period at the end of paragraph (5) and inserting in lieu thereof ", and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation; and"; and

(4) by adding at the end the following new paragraph:

"(6) to foster and maintain the diversity of fisheries in the United States.".

DEFINITIONS

SEC. 102. (a) GENERAL.—Section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802) is amended—

(1) by redesignating paragraph (16) as paragraph (17), by redesignating paragraph (17) as paragraph (19), by redesignating paragraphs (18) through (23) as paragraphs (21) through (26), respectively, and by redesignating paragraphs (24) through (27) as paragraphs (28) through (31), respectively;

(2) in paragraph (7), by striking ", birds, and highly migratory species" and inserting in lieu thereof "and birds";

(3) by amending paragraph (14) to read as follows:

"(14) The term 'highly migratory species' means tuna species, marlin (Tetrapturus spp. and Makaira spp.), oceanic sharks, sailfishes (Istiophorus spp.), and swordfish (Xiphias gladius).";

(4) by inserting immediately after paragraph (15) the following new paragraph:

"(16) The term 'large-scale driftnet fishing' means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.";

(5) by inserting immediately after paragraph (17), as so redesignated, the following new paragraph:

"(18) The term 'migratory range' means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.";

(6) by inserting immediately after paragraph (19), as so redesignated, the following new paragraph:

"(20) The term 'observer' means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.";

(7) by inserting immediately after paragraph (26), as so redesignated, the following new paragraph:

"(27) The term 'tuna species' means the following:

"Albacore Tuna—Thunnus alalunga;

"Bigeye Tuna—Thunnus obesus;

"Bluefish Tuna—Thunnus thynnus;

"Skipjack Tuna—Katsuwonus pelamis; and

"Yellowfin Tuna—Thunnus albacares."; and

(8) by adding at the end the following new paragraph:

"(32) The term 'waters of a foreign nation' means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.".

(b) CONFORMING AMENDMENT.—Section 101(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811(b)(1)) is amended by striking "any foreign nation's" and all that follows and inserting in lieu thereof "any waters of a foreign nation.".

AUTHORITY WITH RESPECT TO HIGHLY MIGRATORY SPECIES

SEC. 103. (a) GENERAL.—Section 102 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1812) is amended to read as follows:

"SEC. 102. HIGHLY MIGRATORY SPECIES.

"The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout their range, both within and beyond the exclusive economic zone.".

(b) CONFORMING AMENDMENT.—The entry for section 102 in the table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"Sec. 102. Highly migratory species.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1992.

FOREIGN FISHING

SEC. 104. Subsection (d) of section 201 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821) is amended to read as follows:

"(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this Act.".

INTERNATIONAL FISHERY AGREEMENTS

SEC. 105. (a) HIGHLY MIGRATORY SPECIES AGREEMENTS.—Section 202 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822) is amended by redesignating subsection (e) as subsection (f) and by inserting immediately after subsection (d) the following new subsection:

"(e) HIGHLY MIGRATORY SPECIES AGREEMENTS.—

"(1) EVALUATION.—The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—

"(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;

"(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;

"(C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

"(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

"(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

"(2) ACCESS NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

"(3) REPORTS.—The Secretary of State shall report to the Congress—

"(A) within 12 months after the date of enactment of this subsection, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified; and

"(B) within six months after such date of enactment, on the results of the access negotiations required under paragraph (2).

"(4) NEGOTIATION.—The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

"(5) SOUTH PACIFIC TUNA TREATY.—It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and it Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.".

(b) DETERMINATIONS OF THE SECRETARY OF STATE.—(1) Section 205(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1825(a)) is amended—

(1) in paragraph (1) by striking "traditional" and by inserting "including fisheries for tuna species," immediately after "authority,"; and

(2) in paragraph (2) by striking "highly migratory" and inserting in lieu thereof "tuna".

(2) The amendments made by this subsection shall take effect on January 1, 1992.

PERMITS FOR FOREIGN FISHING

SEC. 106. (a) FEES.—Section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(10)) is amended to read as follows:

"(10) FEES.—

"(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

"(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.".

(b) SANCTIONS.—Section 204(b)(12) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(12)) is repealed.

DRIFTNET FISHING

SEC. 107. (a) GENERAL.—Section 206 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1826) is amended to read as follows:

"SEC. 206. LARGE-SCALE DRIFTNET FISHING.

"(a) SHORT TITLE.—This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the 'Driftnet Act Amendments of 1990'.

"(b) FINDINGS.—The Congress finds that—

"(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world's oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

"(2) the use of large-scale driftnets is expanding into new regions of the world's oceans, including the Atlantic Ocean and Caribbean Sea;

"(3) there is a pressing need for detailed and reliable information on the number of sea birds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

"(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

"(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

"(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

"(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation.

"(c) POLICY.—It is declared to be the policy of the Congress in this section that the United States should—

"(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;

"(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and

"(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

"(d) INTERNATIONAL AGREEMENTS.—The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international loan on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

"(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

"(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

"(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

"(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time such vessel is operating in designated areas beyond the exclusive economic zone of any nation;

"(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

"(6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;

"(7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

"(8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

"(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

"(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

"(e) REPORT.—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—

"(1) describing the steps taken to carry out the provisions of this section, particularly subsection (c);

"(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

"(3) identifying and evaluating the effectiveness of unilateral measures and multilateral measures, including sanctions, that

are available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize any additional measures that are needed if those are considered ineffective;

"(4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against fishing vessels engaged in fishing beyond the exclusive economic zone of any nation;

"(5) containing a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

"(6) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

"(f) CERTIFICATION.—If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (e)(6), the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

"(g) EFFECT ON SOVEREIGN RIGHTS.—This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this Act or other existing law.

"(h) DEFINITION.—As used in this section, the term 'living marine resources' includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.".

(b) CONFORMING AMENDMENT.—The entry for section 206 in the table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"SEC. 206. LARGE-SCALE DRIFTNET FISHING.".

REGIONAL COUNCILS

SEC. 108. (a) AUTHORITY OVER CERTAIN FISHERIES.—Section 302(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(a)) is amended by inserting "(except as provided in section 304(f)(3))" immediately before the period at the end of the first sentence in each of paragraphs (1) through (5).

(b) MEMBERS QUALIFICATIONS.—Paragraph (2) of section 302(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(b)) is amended to read as follows:

"(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

"(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall—

"(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

"(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

"(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

"(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

"(D) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.".

(c) LIMITATION ON TERMS OR VOTING MEMBERS.—Section 302(b)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)(3)) is amended by adding at the end the following new sentences: "No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term completed prior to January 1, 1986, shall not be counted in determining the number of consecutive terms served by any Council member.".

(d) COMPENSATION AND EXPENSES.—Section 302(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(d)) is amended to read as follows:

"(d) COMPENSATION AND EXPENSES.—The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall, until January 1, 1992, receive compensation at the daily rate for GS-18 of the General Schedule, and after December 31, 1991, at the daily rate for GS-16 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.".

(e) TRANSACTION OF BUSINESS.—(1) Section 302(e)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(e)(3)) is amended by striking "in the geographical area concerned" and inserting in lieu thereof "at appropriate times and places in any of the constituent States of the Council".

(2) Section 302(e)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(e)(4)) is amended by adding at the end the following new sentence: "The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such manner.".

(f) COMMITTEES AND PANELS.—Section 302(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(g)) is amended by adding at the end the following new paragraph:

"(3)(A) Each Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

"(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographic areas of authority of the Council.

"(4) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.".

(g) COUNCIL FUNCTIONS.—Paragraphs (1) and (5) of section 302(h) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(h)) are each amended by inserting "(except as provided in section 304(f)(3))" immediately before "within its geographical".

(h) FISHERY HABITAT CONCERNS.—Section 302(i) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(i)) is amended to read as follows:

"(i) FISHERY HABITAT CONCERNS.—(1) Each Council—

"(A) may comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; and

"(B) shall comment on and make recommendations concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat of an anad-

romous fishery resource under its jurisdiction.

"(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measures being considered by the agency for mitigating or offsetting the impact of the activity on such habitat.".

(i) CLOSED MEETINGS.—Section 302(j)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking the semicolon at the end of clause (ii) and all that follows through "time and place of the meeting." and inserting in lieu thereof a period; and

(B) by inserting "of paragraph (2)" immediately after "(D) and (F)"; and

(2) by adding at the end the following new subparagraph:

"(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment matters or other internal administrative matters.".

(j) CONSIDERATION OF NEW INFORMATION.—Section 302(j) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)) is amended by adding at the end the following new paragraph:

"(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.".

(k) INTERIM MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.—Notwithstanding the amendments made by subsections (a) and (g), any fishery management plan or amendment which—

(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (as amended by this Act) applies,

(2) was prepared by one or more Regional Fishery Management Councils, and

(3) was in force and effect on January 1, 1990, shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.

CONTENTS OF FISHERY MANAGEMENT PLANS

SEC. 109. (a) REQUIRED DATA COLLECTION AND GEAR.—Section 303(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(a)) is amended—

(1) in paragraph (1)(A) by inserting ", to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery" immediately before the semicolon at the end;

(2) in paragraph (1)(C) by inserting "regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits)," immediately after "this Act,";

(3) by amending paragraph (6) to read as follows:

"(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;";

(4) by striking the period at the end of paragraph (7) and inserting in lieu thereof a semicolon; and

(5) by adding at the end the following new paragraphs:

"(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan; and

"(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on—

"(A) participants in the fisheries affected by the plan or amendment; and

"(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants.".

(b) DISCRETIONARY PROVISIONS.—(1) Paragraph (1) of section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)) is amended to read as follows:

"(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

"(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or for anadromous species or Continental Shelf fishery resources beyond such zone;

"(B) the operator of any such vessel; or

"(C) any United States fish processor who first receives fish that are subject to the plan;".

(2) Section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)) is amended by redesignating paragraphs (7) and (8) as paragraph (9) and (10), respectively, and by inserting immediately after paragraph (6) the following new paragraphs:

"(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

"(8) require that observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;".

(c) CONFIDENTIALITY OF STATISTICS.—Section 303(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(d)) is amended—

(1) in the matter preceding paragraph (1) by striking "subsection (a)(5)" and inserting in lieu thereof "subsections (a) and (b)";

(2) by striking "or" at the end of paragraph (1);

(3) by redesignating paragraph (2) as paragraph (3);

(4) by inserting immediately after paragraph (1) the following new paragraph:

"(2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or"; and

(5) by adding at the end the following new sentence: "Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any statistic submitted in compliance with a requirement under subsection (a) or (b).".

(d) USE OF CERTAIN DATA.—Section 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853) is further amended by adding at the end the following new subsection:

"(f) RESTRICTION ON USE OF CERTAIN DATA.—The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), or the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

ACTION BY SECRETARY ON FISHERY MANAGEMENT PLANS

SEC. 110. (a) FISHERIES RESEARCH.

Subsection (e) of section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended to read as follows:

"(e) FISHERIES RESEARCH.—(1) Within one year after the date of enactment of the Fishery Conservation Amendments of 1990, and at least every three years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the five years immediately following such publication. The plan shall—

"(A) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in paragraph (2); and

"(B) indicate the goals and timetables for the program described in subparagraph (A); and

"(C) provide a role for affected commercial fishermen in such research, including involvement in field testing.

"(2) The areas of research referred to in paragraph (1) are as follows:

"(A) Research to support fishery conservation and management, including research on the economics of fisheries and biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

"(B) Conservation engineering research, including the study of fish behavior and the

development and testing of new gear technology and fishing techniques to minimize the harvest of nontarget species and promote efficient harvest of target species.

"(C) Information management research, including the development of a fishery information base and an information management system that will permit the full use of data in the support of effective fishery conservation and management.

"(3) In developing the plan required under paragraph (1), the Secretary shall consult with relevant Federal agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.".

(b) MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.—(1) Section 304(f) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(f)) is amended—

(A) by striking "MISCELLANEOUS DUTIES" and inserting in lieu thereof "FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL";

(B) in paragraph (1) by striking "If" and inserting in lieu thereof "Except as provided in paragraph (3), if"; and

(C) by adding at the end the following new paragraph:

"(3)(A) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

"(B) in accordance with the provisions of this Act and any other applicable law, the Secretary shall—

"(i) identify research and information priorities, including observer requirements and necessary data collection and analysis for the conservation and management of highly migratory species;

"(ii) prepare and amend fishery management plans with respect to highly migratory species fisheries to which this paragraph applies; and

"(iii) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), international fishery management measures with respect to fishing for highly migratory species.

"(C) In preparing or amending any fishery management plan under this paragraph, the Secretary shall—

"(i) conduct public hearings, at appropriate times and in appropriate locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan;

"(ii) consult with and consider the comments and views of commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species;

"(iii) consult with and consider the comments and views of affected Councils;

"(iv) evaluate the likely effects, if any, of conservation and management measures on participants in the fisheries affected by the plan and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors; and

"(v) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measure included in the plan.

"(D) Conservation and management measures contained in any fishery management plan under this paragraph shall—

"(i) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

"(ii) be fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose; and

"(iii) promote international conservation.

"(E) With respect to a highly migratory species for which the United States is authorized to harvest an allocation or quota under a relevant international fishery agreement, the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota.

"(F) In implementing the provisions of this paragraph, the Secretary shall consult with—

"(i) the Secretary of State;

"(ii) commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

"(iii) appropriate Councils.".

(2) Section "305(a)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(a)(3)), as redesignated by section 111(a)(1) of this Act, is amended by inserting "or (f)(3)" immediately after "304(c)".

(c) INCIDENTAL HARVEST RESEARCH—Section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended by adding at the end the following new subsection:

"(g) INCIDENTAL HARVEST RESEARCH.—(1) Within 9 months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, after consultation with the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, establish by regulation a 3-year program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils.

"(2) The program established pursuant to paragraph (1) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

"(3) For stocks of fish identified pursuant to paragraph (2), with priority given to stocks which (based upon the best available scientific information) are considered to be overfished, the Secretary shall conduct—

"(A) a program to collect and evaluate date on the nature and extent (including the spatial and temporal distribution) or incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

"(B) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

"(C) a program of data collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

"(4) The Secretary shall, in cooperation with affected interests, commence a program to design, and evaluate the efficacy of, technological devices and other changes in fishing technology for the reduction of incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing activity. Such program shall take into account local conditions and include evaluation of any reduction in incidental mortality, as well as any reduction or increase in the retention of shrimp in the course of normal fishing activity.

"(5) The Secretary shall, upon completion of the programs required by this subsection, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

"(6)(A) Except as provided in this paragraph, the Secretary may not implement any measures under this Act to reduce incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing which would restrict the period during which shrimp are harvested or would require the use of any technological device or other change in fishing technology.

"(B) The prohibition contained in subparagraph (A) shall cease on January 1, 1994.

"(C) This paragraph does not apply to any law or regulation in effect on the date of enactment of this paragraph, nor does it limit in any way the Secretary's authority to take action, including any limitation on entry permitted by this Act, for the conservation and management of the shrimp fishery resource.".

(d) ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN.—(1) The New England Fishery Management Council may submit to the Secretary of Commerce an amendment to the Atlantic Sea Scallop Fishery Management Plan. Any amendment submitted under this section shall—

(A) contain measures providing for the conservation and management of Atlantic sea scallops, that are not based primarily on the scallop meat count by which may include controls on scallop harvesting effort; and

(B) consider the views of fishermen and fish processors involved in the Atlantic sea scallop fishery.

(2) If no amendment is submitted under paragraph (1) before one year after the date of enactment of this Act, the Secretary of Commerce is encouraged to prepare the amendment described in paragraph (1) under section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854).

IMPLEMENTATION OF FISHERY MANAGEMENT PLANS

SEC. 111. (a) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855) is amended—

(A) by redesignating subsections (c), (d), and (e) as subsections (a), (b), and (c), respectively; and

(B) by redesignating subsections (g) and (h) as subsections (d) and (e), respectively.

(2) Section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended—

(A) in subsection (b)(1) by striking "305(c)" in the first sentence and inserting in lieu thereof "305(a)";

(B) in subsection (b)(3)(D) by striking "305(c)" and inserting in lieu thereof "305(a)"; and

(C) in subsection (c)(2)(B) by striking "305(c)" and inserting in lieu thereof "305(a)".

(b) JUDICIAL REVIEW OF CERTAIN IMPLEMENTING ACTIONS.—Section 305(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(b)), as redesignated by subsection (a)(1)(A), is amended to read as follows:

"(b) JUDICIAL REVIEW.—(1) Regulations promulgated by the Secretary under this Act and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable; except that—

"(A) section 705 of such title is not applicable, and

"(B) the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2) (A), (B), (C) or (D) of such title.

"(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing.

"(3)(A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1), not later than 45 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

"(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

"(4) Upon a motion by the person who files a petition under this subsection, the appropriate court sall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way."

STATE JURISDICTION

SEC. 112. Section 306(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856(c)) is amended—

(1) in paragraph (1)(B) by inserting "and the application specifies the species to be processed" before the period at the end; and

(2) by striking paragraph (2) and inserting in lieu thereof the following:

"(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)—

"(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after—

"(i) consulting with the appropriate Council and Marine Fisheries Commission, and

"(ii) considering any comment received from the Governor of any other State where the fishery occurs; and

"(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.".

PROHIBITION OF CERTAIN ACTS

SEC. 113. (a) PROHIBITIONS WITH RESPECT TO THEFT, ASSAULT, AND LARGE-SCALE DRIFTNET FISHING.—Section 307(a) of the Magnuson Fishery Conservation and Mangement Act (16 U.S.C. 1857(1)) is amended—

(1) by striking "or" at the end of subparagraph (I);

(2) by striking the period at the end of subparagraph (J) and inserting in lieu thereof a semicolon; and

(3) by adding at the end of the following new subparagraphs:

"(K) to knowingly steal, or without authorization, to remove, damage, or taper with—

"(i) fishing gear owned by another person, which is located in the exclusive economic zone, or

"(ii) fish contained in such fishing gear,

or to attempt to do so;

"(L) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any observer on a vessel under this Act;

"(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation; or

"(N) to strip pollock of its roe and discard the flesh of the pollock.".

(b) VIOLATION OF INTERNATIONAL FISHERY AGREEMENT.—Section 307 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

(1) in paragraph (3) by striking "; and" and inserting in lieu thereof a semicolon;

(2) in paragraph (4) by striking the period at the end and inserting in lieu thereof "; and;" and

(3) by adding at the end the following new paragraph:

"(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.".

CIVIL PENALTIES AND PERMIT SANCTIONS

SEC. 114.(a) INCREASED PENALTY; PERMIT SANCTIONS.—Section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858) is amended—

(1) in the section heading by inserting "AND PERMIT SANCTIONS" immediately after "CIVIL PENALTIES";

(2) in subsection (a) by striking "$25,000" in the second sentence and inserting in lieu thereof "$100,000"; and

(3) by adding at the end the following:

"(g) PERMIT SANCTIONS.—(1) in any case in which (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, or (C) any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any fishery resource law statute enforced by the Secretary has not been paid and is overdue, the Secretary may—

"(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

"(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

"(iii) deny such permit;

"(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

"(2) In imposing a sanction under this subsection, the Secretary shall take into account—

"(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

"(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

"(3) Transfer of ownership of a vesssel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.

"(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

"(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.".

(b) CONFORMING AMENDMENT.—The entry for section 308 in the table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"Sec. 308. Civil penalties and permit sanctions.".

CRIMINAL OFFENSES AND PENALTIES

SEC. 115. (a) OFFENSES.—Paragraph (1) of section 309(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1859(a)) is amended to read as follows:

"(1) section 307(1) (D), (E), (F), (H), (I), or (L); or".

(b) PUNISHMENT.—Section 309(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1859(b)) is amended—

(1) by striking "$50,000" and inserting in lieu thereof "100,000";

(2) by striking "$100,000" each place it appears and inserting in lieu thereof "$200,000";

(3) by inserting "any observer described in section 307(1)(L) or" immediately after "injury to"; and

(4) by inserting "observer or" immediately before "officer in fear".

CIVIL FORFEITURES

SEC. 116. Section 310(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1860(e)) is amended—

(1) by inserting "(1)" immediately before "For purposes"; and

(2) by adding at the end the following:

"(2) For purposes of this Act, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.".

ENFORCEMENT

SEC. 117. Section 311(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(e)) is amended to read as follows:

"(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provisions of this Act or of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—

"(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other fishery resource law enforced by the Secretary with respect to that fish or other property;

"(B) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property or any other violation of any provision of this Act or any other fishery resource law enforced by the Secretary;

"(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

"(D) any valid liens or mortgages against any property that has been forfeited;

"(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)) or under other provisions of the customs laws, as made applicable by section 310(c) of this Act to seizures made by the Secretary under this Act, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

"(F) rembursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), of any similar agreement authorized by law.

"(2) Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation.".

NORTH PACIFIC FISHERIES RESEARCH PLAN

SEC. 118. (a) Title III of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) is amended by adding at the end the following new section:

"SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN.

"(a) IN GENERAL.—The North Pacific Fishery Management Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which—

"(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

"(2) establishes a system of fees to pay for the costs of implementing the plan.

"(b) STANDARDS.—(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—

"(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

"(B) be fair and equitable to all vessels and processors;

"(C) be consistent with applicable provisions of law; and

"(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

"(2) Any system of fees established under this section shall—

"(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

"(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

"(D) not be used to offset amounts authorized under other provisions of law;

"(E) be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

"(H) provide that fees collected will only be used for implementing the plan established under this section; and

"(I) meet the requirements of section 9701(b) of title 31, United States Code.

"(c) ACTION BY SECRETARY.—(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

"(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

"(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

"(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

"(d) FISHERY OBSERVER FUND.—There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(e) SPECIAL PROVISIONS REGARDING OBSERVERS.—(1) The Secretary shall review—

"(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

"(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

"(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—

"(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

"(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.".

"(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended by inserting immediately after the entry for section 312 the following new entry:

"Sec. 313. North Pacific fisheries research plan.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 119. Section 406 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1882) is amended by adding at the end the following new paragraphs:

"(16) $77,200,000 for the fiscal year ending September 30, 1990.

"(17) $94,000,000 for the fiscal year ending September 30, 1991, of which $6,500,000 shall be used for enforcement and $5,000,000 shall be used to increase research and assessment efforts.

"(18) $98,000,000 for the fiscal year ending September 30, 1992.

"(19) $102,000,000 for the fiscal year ending September 30, 1993.".

MISCELLANEOUS TECHNICAL AMENDMENTS

SEC. 120. (a) INTERNATIONAL FISHERY AGREEMENTS.—Section 202(f) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822(f)), as so redesignated by section 105 of this Act, is amended by striking "a exclusive economic zone" and inserting in lieu thereof "an exclusive economic zone".

"(b) FOREIGN FISHING PERMITS.—Section 204(b)(4)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(4)(C)) is amended by striking "council" and inserting in lieu thereof "Council".

(c) COUNCIL PROCEDURAL MATTERS.—Section 302(j)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)(4)) is amended by striking "council employee" and inserting in lieu thereof "Council employee".

(d) ACTION BY SECRETARY.—Section 304(c)(2)(B) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(c)(2)(B)) is amended by striking "appropriate council" and inserting in lieu thereof "appropriate Council".

TITLE II—ATLANTIC TUNAS CONVENTION ACT OF 1975 LIMITATIONS ON APPOINTMENTS OF COMMISSIONERS

SEC. 201. (a) IN GENERAL.—Section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

(2) by adding at the end the following:

"(2) Of the Commissioners appointed under paragraph (1) who are not governmental employees—

"(A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

"(B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

"(3) The term of a Commissioner shall be three years.

"(B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner.".

(b) APPLICATION TO CURRENT COMMISSIONERS.—(1) Paragraph (2) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(a)), as added by this section, shall not apply to reappointment of an individual as a United States Commissioner of the International Commission for the Conservation of Atlantic Tunas (hereinafter in this title referred to as a "Commissioner") if that individual is serving in that position on the date of enactment of this Act.

(2) An individual serving a term as a Commissioner on the date of enactment of this Act shall not, by reason of that term of service, be ineligible under paragraph (3)(B) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(a)), as added by this section, for reappointment as a Commissioner.

TERMINATION OF CURRENT TERMS AND COMPLETION OF PENDING APPOINTMENTS

SEC. 202. The term as Commissioner of each individual serving in that position on the date of enactment of this Act shall terminate March 1, 1991. Not later than that date, the President shall complete appointment (or reappointment) of individuals to serve as Commissioners on and after that date.

TRAVEL EXPENSES OF COMMISSIONERS

SEC. 203. Section 3 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a) is amended by adding at the end the following new subsection:

"(d)(1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

"(2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.".

TRAVEL EXPENSES OF ADVISORY COMMITTEE

SEC. 204. Section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) is amended by striking "On approval" and all that follows and inserting in lieu thereof the following: "The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.".

SPECIES WORKING GROUPS

SEC. 205. The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.) is amended by inserting immediately after section 4 the following new section:

"SPECIES WORKING GROUPS

"SEC. 4A. The United States Commissioners may establish species working groups for the purpose of providing advice and recommendations" to the Commissioners and the advisory committee on matters relating to the conservation and management of any highly migratory species covered by the Convention. Any species working group shall consist of no more than 7 members of the advisory committee and no more than 4 scientific or technical personnel, as considered necessary by the Commissioner.".

REGULATIONS TO CARRY OUT COMMISSION RECOMMENDATIONS

SEC. 206. (a) Section 6(c)(1) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(1)) is amended by redesignating the existing text as subparagraph (A) and by adding at the end the following new subparagraphs:

"(B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

"(C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).".

(b) Section 6(c)(3) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(3)) is amended—

(1) in subparagraph (H) by striking "; and" and inserting in lieu thereof a semicolon; and

(2) by striking subparagraph (I) and inserting in lieu thereof the following:

"(I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

"(J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

"(K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention; except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission.".

RECOMMENDED COMMISSION ACTIONS REGARDING LARGE-SCALE DRIFTNET FISHING AND CONSERVATION OF ATLANTIC SWORDFISH

SEC. 207. Section 6(d) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(d)) is amended to read as follows:

"(d)(1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(16) of the Magnuson Fishery Conservation and Management Act) in the Convention area.

"(2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary within 3 months after each annual meeting of the Commission shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 208. Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 10. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in article X of the Convention, not more than $2,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.".

TITLE III—FISHERMEN'S PROTECTIVE ACT OF 1967

VESSEL SEIZURE REIMBURSEMENT AUTHORITY

SEC. 301. Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is

amended by striking "October 1, 1989" and inserting in lieu thereof "October 1, 1993".

TITLE IV—ANADROMOUS FISH CONSERVATION ACT

AUTHORIZATION OF APPROPRIATIONS

SEC. 401. Section 4(a) of the Anadromous Fish Conservation Act (16 U.S.C. 757d(a)) is amended—

(1) by striking paragraphs (1), (2), (3), (4), (5), and (6);

(2) by redesignating paragraph (7) as paragraph (1); and

(3) by adding at the end the following new paragraph:

"(2) $8,000,000 for each of the fiscal years 1990, 1991, 1992, 1993, 1994, and 1995.".

TITLE V—INTERJURISDICTIONAL FISHERIES ACT OF 1986

CLARIFICATION OF APPORTIONMENT LIMITATION

SEC. 501. Section 304(c)(3)(B) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4103(c)(3)(B)) is amended by inserting "which are managed under an interstate fishery management plan" immediately after "fishery resources".

FEDERAL SHARE OF ACTIVITIES CARRIED OUT WITH ADDITIONAL APPROPRIATIONS

SEC. 502. Section 308(b) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(b)) is amended—

(1) in paragraph (1) by striking "and" at the end;

(2) in paragraph (2) by striking the period at the end and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (2) the following new paragraph:

"(3) the Federal share of the cost of any activity carried out with an amount appropriated under the authority of this subsection shall be 75 percent of the cost of that activity.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 503. Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) in subsection (a) by striking "fiscal years 1987, 1988, and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995";

(2) in subsection (b) by striking "fiscal years 1988 and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995"; and

(3) in subsection (c) by striking "fiscal years 1988 and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, and 1993".

TITLE VI—CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT

AUTHORIZATION OF APPROPRIATIONS

SEC. 601. Section 7 of the Central, Western, and South Pacific Fisheries Development Act (16 U.S.C. 758e-5) is amended by striking "and 1988" and inserting in lieu thereof "1988, 1989, 1990, 1991, 1992, 1993, 1994, and 1995".

TITLE VII—NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL

EXTENSION OF TERMINATION DATE

SEC. 701. Section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(g)) is amended by striking "October 1, 1990" and inserting in lieu thereof "December 31, 1991".

AUTHORIZATION OF APPROPRIATIONS

SEC. 702. Section 209(d) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4008(d)) is amended by striking "1990" and inserting in lieu thereof "1991".

TRANSFER OF SALTONSTALL-KENNEDY FUNDS

SEC. 703. Section 2(b)(2) of the Act of August 11, 1939 (commonly known as the Saltonstall-Kennedy Act; 15 U.S.C. 713c-3(b)(2)), is amended by striking "fiscal year 1990" and inserting in lieu thereof "each of fiscal years 1990 and 1991".

CONTINUITY OF NATIONAL COUNCIL MEMBERSHIP

SEC. 704.(a) UNINTERRUPTED SERVICE.—Individuals serving on September 30, 1990, as members of the National Fish and Seafood Promotional Council shall be deemed to continue as members in uninterrupted service since the date of their initial appointment.

(b) FILLING OF VACANCIES.—Notwithstanding section 206(e) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(e)), any vacancy on the National Fish and Seafood Promotion Act not filled as of September 30, 1990, shall be filled within 60 days after the date of enactment of this Act.

(c) TECHNICAL AMENDMENT.—Section 207(a)(5) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4006(a)(5)) is amended by inserting "initial" immediately before "appointments".

CONTINUITY OF COUNCIL FUNCTIONS, CONTRACTS, AND PERSONNEL

SEC. 705. All current functions, contracts in force, and existing personnel of the National Fish and Seafood Promotional Council as of September 30, 1990, are reauthorized and extended, and shall continue as if uninterrupted, notwithstanding section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(g)) as in effect on September 30, 1990.

TITLE VIII—MISCELLANEOUS

CERTIFICATE OF LEGAL ORIGIN FOR ANADROMOUS FISH PRODUCTS

SEC. 801.(a) NEGOTIATIONS.—Within 60 days after the date of enactment of this Act, the Secretary of State shall commence negotiations with nations which import or export anadromous fish or anadromous fish products for the purpose of securing general agreement among such nations to implement effective measures to prohibit international trade in anadromous fish or anadromous fish products unless such fish or fish products are accompanied by a valid certificate of legal origin attesting that the fish product was lawfully harvested—

(1) within the jurisdiction of a nation having naturally occurring or artifically established anadromous fish populations of the same species as the imported or exported product; or

(2) on the high seas according to an international agreement among nations with jurisdiction over more than 1 percent of the stocks of anadromous fish being so harvested.

(b) ISSUANCE OF CERTIFICATES.—For the purposes of subsection (a), a valid certificate of legal origin may be issued only by a nation which—

(1) is the nation having jurisdiction over the vessel or other means by which the fish or fish product was harvested; and

(2) maintains regular harvests of anadromous fish in a manner consistent with the criteria for lawful harvests set out in subsection (a).

(c) BILATERAL OR MULTILATERAL AGREEMENTS.—Efforts undertaken by the Secretary of State pursuant to subsection (a) may, at the discretion of the Secretary, be directed toward achieving either bilateral or multilateral agreements, including trade agreements, whichever the Secretary determines to be most likely to result in the earliest possible date or dates of agreement by those nations which individually have in excess of $1,000,000, or the equivalent, in import or export trade in anadromous fish and anadromous fish products.

(d) REGULATIONS.—The Secretary of Commerce shall, within 180 days after the date of enactment of this Act, promulgate regulations provide for—

(1) the issuance of certificates of legal origin pursuant to agreements under subsection (a) for anadromous fish and anadromous fish products legally harvested by vessels of the United States;

(2) the delegation of the authority to issue certificates of legal origin to States, territories, or possessions of the United States which the Secretary of Commerce determines to have implemented a program which is sufficient to accomplish the purposes of subsection (a); and

(3) an orderly transition to such regulations, sufficient to ensure that United States commerce in anadromous fish and anadromous fish products is not unduly disrupted.

(e) REPORT REQUIRED.—The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall, within 180 days after the date of enactment of this Act, submit to the Congress a report—

(1) making recommendations as to the need for the adoption of United States import and export restrictions on anadromous fish and anadromous fish products consistent with subsection (a); and

(2) identifying, evaluating, and making recommendations regarding any specific statutory or regulatory changes that may be necessary for the adoption of such restrictions.

(f) CERTIFICATION.—If, at any time following the promulgation of the regulations required by subsection (d), the Secretary of Commerce finds that any nation is engaging in trade in unlawfully taken anadromous fish or anadromous fish products, the Secretary shall certify that fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a)(1) of the Fisherman's Protective Act of 1967 (22 U.S.C. 978(a)(1)).

TITLE IX—DOLPHIN PROTECTION CONSUMER INFORMATION

DOLPHIN PROTECTION

SEC. 901.(a) SHORT TITLE.—This section may be cited as the "Dolphin Protection Consumer Information Act".

(b) FINDINGS.—The Congress finds that—

(1) dolphins and other marine mammals are frequently killed in the course of tuna fishing operations in the eastern tropical Pacific Ocean and high seas driftnet fishing in other parts of the world;

(2) it is the policy of the United States to support a worldwide ban on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins; and

(3) consumers would like to know if the tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on dolphins.

(c) DEFINITIONS.—For the purposes of this section—

(1) the term "driftnet" and "driftnet fishing" have the meanings given those terms in section 4003 of the Driftnet Impact Moni-

toring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note);

(2) the term "eastern tropical Pacific Ocean" means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, 160 degrees west longitude, and the western coastlines of North, Central, and South America;

(3) the term "label" means a display of written, printed, or graphic matter on or affixed to the immediate container of any article;

(4) the term "Secretary" means the Secretary of Commerce; and

(5) the term "tuna product" means a food item which contains tuna and which has been processed for retail sale, except perishable sandwiches, salads, or other products with a shelf life of less than 3 days.

(d) LABELING STANDARD.—(1) It is a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term "Dolphin Safe" or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains—

(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing; or

(B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements of being considered dolphin safe under paragraph (2).

(2) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if—

(A) the vessel is of a type and size that the Secretary has determined is not capable of deploying its purse seine nets on or to encircle dolphin; or

(B)(i) the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphin;

(ii) the product is accompanied by a written statement executed by—

(I) the Secretary or the Secretary's designee, or

(II) a representative of the Inter-American Tropical Tuna Commission,

which states that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on or to encircle dolphin; and

(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product.

(e) ENFORCEMENT.—Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) that is false is liable for a civil penalty of not to exceed $100,000 assessed in an action brought in any appropriate district court of the United States on behalf of the Secretary.

(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 6 months after the date of the enactment of this Act, including regulations establishing procedures and requirements for ensuring that tuna products are labeled in accordance with subsection (d).

(g) TREATMENT OF FISH CAUGHT WITH DRIFTNETS.—Section 101(a)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2)) is amended—

(1) in subparagraph (C) by striking "and" after the semicolon at the end;

(2) in subparagraph (D) by striking the period at the end and inserting "; and "; and

(3) by adding at the end the following:

"(E)(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other waters of the high seas after July 1, 1992; and

"(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (E), the term "driftnet" has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note).".

(i) NEGOTIATIONS.—The Secretary of State shall immediately seek, through negotiations and discussions with appropriate foreign governments, to reduce and, as soon as possible, eliminate the practice of harvesting tuna through the use of purse seine nets intentionally deployed to encircle dolphins.

(i) EFFECTIVE DATE.—Subsections (d) and (e) shall take effect 6 months after the date of the enactment of this Act.

TITLE X—FISHERIES COMMISSION

REDESIGNATION OF FISHERIES COMMISSION

SEC. 1001. (a) IN GENERAL.—The Congress consents to and approves of the amendments described in subsection (b) to the interstate compact which constituted the Pacific Marine Fisheries Commission, approved by the Act of July 24, 1947 (61 Stat. 419; hereafter in this section referred to as the "compact").

(b) AMENDMENT DESCRIBED.—The amendments referred to in subsection (a) are the amendments approved and ratified before the effective date of this section by the contracting States to the compact, which—

(1) amend Article III of the compact to redesignate the Pacific Marine Fisheries Commission as the "Pacific States Marine Fisheries Commission"; and

(2) make such other amendments to the compact as are necessary solely to conform the text of the compact to the amendment described in paragraph (1).

(c) REFERENCES.—Any reference in a law, map, regulation, document, paper, or record of the United States to the Pacific Marine Fisheries Commission constituted by the compact is deemed to be a reference to the "Pacific States Marine Fisheries Commission".

TITLE XI—REPORT ON MARINE MAMMALS

REPORT ON MARINE MAMMAL POPULATIONS

SEC. 1101. The Secretary of Commerce, in consultation with the Secretary of the Interior, shall provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives within 12 months after the date of enactment of this Act a report—

(1) assessing population sizes and trends of harbor seals, sea otters, California sea lions, and northern sea lions, off the coast of the State of Washington, which assessment shall include the historic, present, and projected population sizes and the overall health of current populations of such marine mammals;

(2) assessing the effectiveness of sections 101(a)(3)(A) and 109(h) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(3)(A) and 1379(h)) with particular emphasis on the management of the lower Columbia River and Puget Sound marine mammal populations, which assessment shall describe how the agencies are interpreting and implementing such sections, how often such sections have been invoked, and whether such sections have been effective in the management of marine mammal populations and in responding to the problems which such sections were intended to address; and

(3) specifying long range management plans for the species of marine mammals listed in paragraph (1).

The SPEAKER. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. STUDDS] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. STUDDS].

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. GEPHARDT. Mr. Speaker, will the gentleman yield?

Mr. STUDDS. I yield to the gentleman from Missouri.

APPOINTMENT OF COMMITTEE OF TWO MEMBERS TO INFORM THE PRESIDENT THAT THE TWO HOUSES HAVE COMPLETED THEIR BUSINESS OF THE SESSION

Mr. GEPHARDT. Mr. Speaker, I offer a privileged resolution (H. Res. 544) and ask for its immediate consideration.

The Clerk read the resolution, as follows;

H. RES. 544

Resolved, That a committee of two Members be appointed by the House to join a similar committee appointed by the Senate, to wait upon the President of the United States and inform him that the two Houses have completed their business of the session and are ready to adjourn, unless the President has some other communication to make to them.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER. The Chair appoints as members of the committee on the part of the House to join a committee

on the part of the Senate to notify the President that the two Houses have completed their business of the session, unless the President has some other communication to make to them, the gentleman from Missouri [Mr. GEPHARDT] and the gentleman from Illinois [Mr. MICHEL].

Mr. STUDDS. Mr. Speaker, the version of H.R. 2061 before us is virtually identical to the bill approved by the House last week.

Very briefly the bill:

Reauthorizes the 200-mile limit law for an additional 3 years;

Calls for a worldwide ban on the use of deadly large-scale drift nets;

Increases the penalties for those who violate our conservation laws;

Extends U.S. fisheries jurisdiction over tuna;

Calls on the Secretary of Commerce to initiate strong international efforts to prevent overfishing of highly migratory species like swordfish; and

Tuna labeling provisions that will help consumers determine whether tuna products they purchase are "dolphin safe."

The changes made by the other body are mostly technical, although two provisions are worth noting.

First, the amendments make it clear that when sea samplers or observers are voluntarily invited on board a fishing vessel by its owner or captain, the information they gather cannot be used to prosecute a fisherman. In New England we have a very successful voluntary observer program and the bill will preserve the integrity of that data gathering system.

Second, the other body made a modification in provisions that exempts shrimp fishermen in the Gulf of Mexico and South Atlantic area from conservation requirements necessary to preserve bycatch species until January 1, 1994.

Mr. Speaker, I strongly object to these provisions and if it were not for that fact that the bill contains so many other good provisions, I would not support the bill. The language originally added by the other body sets a terrible precedent and is a giant step backwards for conservation. I intend to investigate this terrible bycatch problem next year and if necessary seek legislation to correct the problem.

I urge Members to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 2061 and urge its adoption by the House.

Mr. Speaker, I yield 1 minute to the gentleman from Washington [Mr. MILLER].

Mr. MILLER of Washington. Mr. Speaker, at long last, we complete the tasks of reauthorizing the Magnuson Fisheries Conservation and Management.

There were times when I feared we would not complete work on this bill because of intractable positions on the part of the Senate.

Mr. Speaker, this bill will help us protect our fisheries. It will help us end the use of large scale driftnets. We will establish a new observer program to help us better manage the fisheries. We will let consumers know if the tuna they buy is "dolphin safe." And, we will help our fishermen move toward a new era when we fully utilize all our fisheries.

This bill, Mr. Speaker, is not perfect. It does not contain some crucial changes I wanted to protect the interests of fishermen, processors, scientists, environmentalists, consumers and others from Washington state concerned about fisheries in the north Pacific. This bill does not reform the capital construction program. I hoped we would have permitted those with CCF accounts to use them for improving fishing vessel safety, protecting the environment, and improving the wholesomeness of the fish they catch. Unfortunately, the Senate did not make these changes. And, we were forced to compromise.

At the same time, Mr. Speaker, some provisions which were cause of concern to some of my constituents were removed. So, we won a little too.

Mr. Speaker, this law is named in honor of my State's late great Senator, Warren Magnuson. He envisioned Americans catching, processing, selling and enjoying the vast riches of our oceans. This reauthorization act does not change those national goals. Senator Magnuson's dream has been realized. My district has emerged as the capital of this Nation's seafood industry. Fishermen from my State catch half the edible seafood caught in our exclusive economic zone. Processors located in my State, process and sell seafood across our country and around the world.

Now, Mr. Speaker, we turn to a more difficult challenge—keeping the boom going. Our challenge in the coming years will be to help manage growth. This must be done fairly. NOAA and the councils must be consistent in administering the national standards of this act. The tough issues coming before us now require us to recognize that the fisheries we are managing are national resources. The bounty of the sea can serve all our citizens.

I urge my colleagues to support this compromise bill.

Mr. YOUNG of Alaska. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. SAXTON].

Mr. SAXTON. Mr. Speaker, I, too, rise in strong support of this bill and note that it is the major effort on the part of this House to protect, preserve, and conserve the various fisheries on the east and west coasts and on the gulf.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 2061 and urge its adoption by the House.

This legislation is the subject of 2 years of work by the Committee on Merchant Marine and Fisheries. Our committee held hearings throughout the country and received testimony from hundreds of witnesses. Although the final bill reflects changes made by the other body and therefore does not contain every provision that the House wanted, it is still a good bill and will go a long way toward conserving and managing the marine resources found off our shores.

Mr. Speaker, this is an important piece of legislation and in the last few weeks we have heard from hundreds of individuals in the fishing industry and the environmental community requesting that we approve the bill. I urge my colleagues to support its passage.

I now wish to direct the House's attention to various provisions that are contained in the bill before us and explain the intent of these provisions. References to the "act" are references to the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

The amendments to section 2(c)(3) of the act are designed to address the wasteful practice of catching fish solely for removal of their eggs without utilizing the whole carcass of the fish. We recognize that in every fishery there are fish other than the target species which can be accidentally harvested. It is not the intent of this section to prevent such incidental catch such as occurs in the shrimp fishery in the Gulf of Mexico.

The amendments to section 202 of the act include a requirement for the Secretary of State, in cooperation with the Secretary of Commerce, to initiate negotiations to allow U.S. fishing vessels to obtain access to the Exclusive Economic Zones of other nations. This language should be noted particularly in regard to Mexico. The House and the Senate have received requests to alleviate the embargo on tuna products from Mexico now imposed under the Marine Mammal Protection Act. We wish to make it clear that lifting the embargo should be tied to access to Mexican waters by U.S. tuna fishermen.

The amendments to section 204(b)(10) of the act are identical to those contained in the bill originally approved by the House. The language in House Report 101-393 regarding section 107 of the House bill should be viewed as the intent of Congress in regard to these amendments.

The amendments to section 206 of the act regarding driftnet fishing also deserve special attention. It is clear that the policy of the United States under this bill is to seek a permanent international ban on large-scale driftnet fishing. However, it should also be noted that the United States currently has interim bilateral arrangements with three nations which require mon-

itoring and enforcement of large-scale driftnet fisheries. The provisions of this amendment make clear that those bilateral agreements, if extended, shall include, at a minimum, the requirements of this section.

It should also be noted that the policy provisions of this section speak of securing a permanent ban on the use of destructive fishing practices. Since all fishing is by nature destructive, the intent of this amendment should be construed as seeking an end on those fishing practices which are highly wasteful. Further, it is clear that the use of certain types of fishing gear may not be wasteful and destructive, depending on how the gear is used. A good example is in the trawl fisheries of Alaska. Trawl vessels, which use appropriate-sized nets and fish in a manner that avoids excessive incidental catch, should not be considered destructive.

The amendments to section 302(b) of the act discuss the need for qualified individuals to be appointed to the Regional Fishery Management Councils. As was noted in House Report 101-393, there is a need for knowledge and experience on the part of Council members. We expect Governors to adhere to this requirement when making nominations. Further, we intend that the Secretary also apply this criteria strictly against Council nominees. If a nominee fails to meet the criteria, we expect the Secretary to reject the nominee, regardless of political or other considerations.

We do not intend to preclude the appointment of an individual who has gained knowledge or experience in fisheries conservation and management through direct participation in, and contribution to, fisheries conservation and management. Thus, an individual should be considered qualified for Council membership as a result of an active leadership role in a fisheries organization whose members participate in a fishery under that Council's jurisdiction.

The bill further amends section 302(b) of the act by establishing a limit on the number of consecutive terms that any Council member can serve. We believe that the Secretary of Commerce has often acted arbitrarily in determining the number of terms that can be served by a particular individual. For example, in the last round of Council appointments, the Secretary's designee applied a two-term limit rule. However, this rule was not applied to every Council or every nominee for every Council. By including this language on Council terms, the Committee expects to standardize the nomination and appointment process so that arbitrary political decisions by a political appointee cannot be made.

The amendment to section 302(e)(3) of the act allows a Council to meet in any of the constituent States of the Council. Among other things, this language is designed to allow the North Pacific Fishery Management Council to meet in the States of Oregon and Washington in order to accommodate the views of fishermen from those States who fish in the Exclusive Economic Zone off Alaska. However, as noted in House Report 101-393, various subcommittees of the North Pacific Council currently meet most of the time in Washington State. It is our expectation that the Council will show equity and fairness to fishermen by having more of its subcommittee meetings in Alaska.

The amendment to section 302(g) of the act requires each Council to establish and maintain a fishing industry advisory committee. This language is identical to section 109(f) of the bill passed by the House, and the language in House Report 101-393 in regard to this section should be used to identify the intent of the Congress.

The amendments to section 302(j)(3) of the act allow a Council to conduct closed meetings if prior public notice is given. These changes are made in recognition of the need for efficiency in operations, not as an endorsement of secrecy in Council work. The intent of the Congress is that the Council process continue to be an open one and that closed meetings be held only when absolutely necessary.

The amendments to section 303(b) of the act include authority for the Council to require that observers be carried on board a fishing vessel for data collection purposes. The amendment also makes clear that such a requirement cannot be imposed if the vessel is too small to carry an observer without physical displacement of one of the vessel crew members.

The amendment to section 303(d) of the act tries to strike a balance between the need for maintaining confidentiality and the need to have appropriate data to effectively conserve and manage a fishery. We have allowed State employees to receive confidential data under certain circumstances. We have also allowed the Council, rather than just the Council staff, to receive data if such receipt is approved by the Secretary.

We expect the Secretary to be extremely cautious in granting approval in order to avoid revealing confidential business or personal data to another individual who can use it for their own advantage. Further, under no circumstances should data of this nature which is transmitted to the Council be available to the general public. Release of the data to Council members is strictly for the purpose of making wise decisions in the conservation and management of fisheries. A Council member who uses that data for personal gain or reveals it to the public should be subject to the penalties that apply to those who reveal confidential data.

The amendment to section 304(f) of the act regarding management of highly migratory species fisheries is a complete reversal of the longstanding U.S. juridical position in regard to management of such species. This language was insisted upon by the other body and the House is constrained to accept it, no matter how reluctantly. We do wish to make clear that this language should not be construed to give an advantage to one group of fishermen over another, nor to provide an advantage to one type of fishing gear over another.

While fisheries need to be conserved and managed, management plans should not be used as a backdoor attempt to resolve political conflicts nor to put American citizens out of work simply because they use a particular type of fishing gear or engage in a particular type of fishing activity. Actions by the Councils and by the Secretary will be closely monitored and if we find that action is being taken to discriminate against a group of fishermen on the basis of the type of fishing gear they use, the law will be amended accordingly.

The amendment to section 306(c) is identical to language contained in the original House-passed measure and the language in House Report 101-393, discussing section 112 of the House bill, should be considered the intent of Congress. Furthermore, we note that the Coast Guard has raised questions about coordination between the Governors of States which allow foreign processing vessels access to State waters and the Coast Guard in regard to national security considerations. It is our intent that the Coast Guard work out equitable arrangements with coastal State Governors to resolve these concerns.

The amendment to section 307(1) of the act which adds new paragraphs (K), (L), and (M) are nearly identical to the provisions in section 113 of the House-passed bill. The language in House Report 101-393 regarding that section of the House bill should be considered as the intent of Congress in regard to this amendment.

The amendment to section 308 of the act is also identical to the provisions in the House-passed bill, and the discussion in House Report 101-393 regarding section 114 of the House bill should be considered the intent of Congress in regard to this section.

Title VII of the bill extends the existence of the National Fish and Seafood Promotional Council through December 31, 1991. Included in this title is language specifically requiring that members of the Council who were serving on the Council on September 30, 1990, be continued in their positions without interruption. This does

not preclude removal of a member for cause, or replacement of a member who resigns, retires, or dies. This title also specifically provides that all contracts entered into by the Council prior to September 30, 1990, shall remain in effect and not have to be subject to further bidding.

This language was included in recognition of the fact that the Council is engaged in a multiyear promotional effort and that effort should not be interrupted due to a temporary lapse of Council authority.

Title IX of the bill provides for consumer information in regard to dolphins. Section 901(d) of that title provides specific standards in regard to labels on cans of tuna that are identified as "Dolphin Safe." The language in this section should not be construed as preventing a processor from labeling his product as being caught in compliance with the Marine Mammal Protection Act if in fact that label can be honestly applied. Further, the prohibition on false claims regarding methods of fishing not harmful to dolphins cannot be applied across the board to any particular type of fishing gear. For example, purse seines which are used to harvest tuna can be deployed in such a manner that the tuna could be considered "Dolphin Safe" or could be considered caught in compliance with the Marine Mammal Protection Act. The use of a purse seine does not in and of itself result in a violation of section 901(d).

Mr. Speaker, I believe that this adequately explains the intent of Congress in regard to the provisions of this bill, and I urge again that it be adopted.

Mr. JONES of North Carolina. Mr. Speaker, I rise today in support of H.R. 2061, Fishery Conservation Amendments of 1990.

H.R. 2061 in large part reauthorizes and amends the Magnuson Fishery Conservation and Management Act of 1976. This important statute established a comprehensive system to conserve and manage the Nation's marine fishery resources. Under this system, the volume and value of the fisheries of the United States has increased dramatically with corresponding benefits to the national economy and the consumer.

The Magnuson Act is a complicated statute, and I will not discuss its many intricate details at this time. However, I would like to describe the purpose of several amendments to the act that have important implications for our national fish management programs.

Under existing provisions of the Magnuson Fishery Conservation and Management Act, authority to manage most fisheries within the U.S. 200-mile Exclusive Economic Zone—including those for species such as marlin, swordfish, sailfish, and sharks—lies with the eight Regional Fishery Management Councils.

When the Congress created the Regional Fishery Management Councils in 1976, we fully intended that they serve as the primary fishery managers in the U.S. Exclusive Economic Zone. In House Report 101-393 accompanying H.R. 2061 we reemphasized this policy as follows:

The Regional Councils have the primary responsibility for the management of fisheries found within the (U.S. exclusive economic zone). Only if it can be established that the Council has acted in a manner that is (a) in clear disregard of the National Standards contained in section 301, or (b) a clear violation of law, may the Secretary of Commerce disapprove a fishery management plan or amendment proposed by the Council. The Secretary may not substitute his judgment for that of the Council on a policy issue.

Until this amendment today, the Magnuson Act has treated tuna species differently from other fishery resources because tuna species range widely among the jurisdictions of various States and nations. Because of the highly migratory nature of tuna, the act has excluded tuna from the Council's authority and given the management authority for these species to the Secretary of Commerce.

After several hearings and extensive discussion during this Congress, the Committee on Merchant Marine and Fisheries included in H.R. 2061 a major change with regard to tuna. This change would have included tuna species within the authority of the Magnuson Act and the Fishery Management Councils. H.R. 2061 would not have changed existing Fishery Management Council authority to manage any other species.

H.R. 2061 as subsequently passed by the Senate, and as under House consideration today, takes a quite different approach. It not only gives management authority for tuna to the Secretary of Commerce but also takes management authority for other highly migratory species such as marlin, oceanic sharks, sailfish, and swordfish from the Regulatory Fishery Management Councils and gives that authority to the Secretary of Commerce.

Because of the committee philosophy favoring the Council management approach as expressed above, there was some initial reluctance to accept the transfer of management of these species to the Secretary of Commerce. However, because of the uniquely migratory nature of these species and the resulting necessity to take international conservation and management aspects into account, the Committee on Merchant Marine and Fisheries accepted the Secretarial management approach, and I urge my colleagues to vote for H.R. 2061 today.

However, I consider this to be a test case. If the Secretary fails to act wisely in the development and implementation of fishery management plans for these species, I am sure that we will be discussing the issue of authority to manage highly migratory species again when we consider the Magnuson Act again in 1993, or sooner if necessary. Several important aspects of the new management system are as follows:

The Secretary must not prepare management plans unilaterally or neglect the full public process in any management planning or implementation actions that he undertakes.

The Secretary must act in full accordance with the provisions of the Magnuson Act and any other applicable law. Secretarial management of highly migratory species should involve a process that is essentially similar to the Council process with full public and industry participation. The Secretary must maintain and follow the national standards and other criteria that are familiar to and accepted by the fishing industry and others who have worked with the Magnuson Act since it came into effect in 1977.

Section 110(b)—Management of Highly Migratory Species Fisheries—requires that the Secretary "shall consult with and consider" the views of interested parties. The committee feels very strongly that this provision must be followed to the maximum extent. It is the fundamental principle upon which the success or failure of this section of the bill will depend.

This should be done in part through holding an adequate number of public hearings in all areas that will be affected by a Secretarial management plan or amendment. Indeed, the Secretary should hold at least one set of hearings in appropriate geographical areas to assist him in formulating and gathering comment on the basic assumptions that will underlie a management plan for a highly migratory species, and an additional series of hearings on a proposed management regime before he actually proceeds with a fishery management plan or amendment. These hearings would then be followed by existing requirements for public review and comment on a proposed fishery management plan and implementing regulations.

This process should include the active participation of appropriate groups such as the Regional Fishery Management Councils and the ICCAT Advisory Panel and Commissioners, as well as interested industry groups.

The Secretary should take particular note of public comment when considering any interpretation of the requirement that "the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota" that the United States is authorized to harvest under a relevant international fishery agreement. Section 110(b)(3)(E) does not preclude the Secretary from taking additional management measures such as time and area closures in the interest of true conservation needs of the affected species, but the Secretary must also assure that U.S. fishermen are given a reasonable opportunity to harvest the U.S. allocation or quota established through the international fishery agreement. U.S. industry should not be subjected to management standards that are inequitable or unreasonable when compared to those that are required of fishermen from other fishing nations that are harvesting the same stock or stocks of highly migratory species under an international fisheries agreement.

Mr. Speaker, H.R. 2061 is an important step toward more effective conservation and management of our Nation's fishery resources, and I urge my colleagues to support it.

Mr. YOUNG of Alaska. Mr. Speaker, I yield back the balance of my time.

Mr. STUDDS. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Massachusetts [Mr. STUDDS] that the

House suspend the rules and concur in the Senate amendment to the House amendment to the Senate amendment to the bill, H.R. 2061.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment to the House amendment to the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

EXPANDING POWERS OF THE INDIAN ARTS AND CRAFTS BOARD

Mr. CAMPBELL of Colorado. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2006) to expand the powers of the Indian Arts and Crafts Board, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendment and the House amendments to the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

TITLE I—INDIAN ARTS AND CRAFTS

SEC. 101. SHORT TITLE.

This title may be cited as the "Indian Arts and Crafts Act of 1990".

SEC. 102. POWERS OF INDIAN ARTS AND CRAFTS BOARD.

Section 2 of the Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305a) is amended—

(1) in the first sentence—

(A) by striking "the Board" and inserting "the Secretary of the Interior through the Board"; and

(B) by striking "the Indian wards of the Government" and inserting "Indian individuals";

(2) by amending clause (g) to read as follows: "(g)(1) to create for the Board, or for an individual Indian or Indian tribe or Indian arts and crafts organization, trademarks of genuineness and quality for Indian products and the products of an individual Indian or particular Indian tribe or Indian arts and crafts organization; (2) to establish standards and regulations for the use of Government-owned trademarks by corporations, associations, or individuals, and to charge for such use under such licenses; (3) to register any such trademark owned by the Government in the United States Patent and Trademark Office without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe without charge; and (4) to pursue or defend in the courts any appeal or proceeding with respect to any final determination of that office;"; and

(3) by adding at the end the following new sentence: "For the purposes of this section, the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.".

SEC. 103. REFERRAL FOR CRIMINAL AND CIVIL VIOLATIONS.

The Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) is amended by adding at the end of the following:

"SEC. 5. (a) The Board may receive complaints of violations of section 1159 of title 18, United States Code, and refer complaints of such violations to the Federal Bureau of Investigation for appropriate investigation. After reviewing the investigation report, the Board may recommend to the Attorney General of the United States that criminal proceedings be instituted under that section.

"(b) The Board may recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action under section 6.".

SEC. 104. CRIMINAL PENALTY FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

(a) IN GENERAL.—Section 1159 of title 18, United States Code, is amended to read as follows:

"**§ 1159. Misrepresentation of Indian produced goods and products**

"(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.

"(b) Whoever knowingly violates subsection (a) shall—

"(1) in the case of a first violation, if an individual, be fined not more than $250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than $1,000,000; and

"(2) in the case of subsequent violations, if an individual, be fined not more than $1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than $5,000,000.

"(c) As used in this section—

"(1) the term 'Indian' means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

"(2) the terms 'Indian product' and 'product of a particular Indian tribe or Indian arts and crafts organization' has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

"(3) the term 'Indian tribe' means—

"(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

"(4) the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

"(d) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.".

(b) CONFORMING AMENDMENT.—The item relating to section 1159 in the table of sections for chapter 53 of title 18, United States Code, is amended to read as follows:

"1159. Misrepresentation of Indian produced goods and products.".

SEC. 105. CAUSE OF ACTION FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

The Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) (as amended by section 3) is further amended by adding at the end of the following:

"SEC. 6. (a) A person specified in subsection (c) may, in a civil action in a court of competent jurisdiction, bring an action against a person who offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States, to—

"(1) obtain injunctive or other equitable relief; and

"(2) recover the greater of—

"(A) treble damages; or

"(B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than $1,000 for each day on which the offer or display for sale or sale continues.

"(b) In addition to the relief specified in subsection (a), the court may award punitive damages and the costs of suit and a reasonable attorney's fee.

"(c)(1) A civil action under subsection (a) may be commenced—

"(A) by the Attorney General of the United States upon request of the Secretary of the Interior on behalf of an Indian who is a member of an Indian tribe or on behalf of an Indian tribe or Indian arts and crafts organization; or

"(B) by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of an Indian arts and crafts organization.

"(2) Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe, or Indian arts and crafts organization, except that—

"(A) in the case of paragraph (1)(A), the Attorney General may deduct from the amount recovered the amount for the costs of suit and reasonable attorney's fees awarded pursuant to subsection (b) and deposit the amount of such costs and fees as a reimbursement credited to appropriations currently available to the Attorney General at the time of receipt of the amount recovered; and

"(B) in the case of paragraph (1)(B), the amount recovered for the costs of suit and reasonable attorney's fees pursuant to subsection (b) may be deducted from the total amount awarded under subsection (a)(2).

"(d) As used in this section—

"(1) the term 'Indian' means any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

"(2) the terms 'Indian product' and 'product of a particular Indian tribe or Indian arts and crafts organization' has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

"(3) the term 'Indian tribe' means—

"(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

"(4) the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

"(e) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.".

SEC. 106. PENALTY FOR COUNTERFEITING INDIAN ARTS AND CRAFTS BOARD TRADEMARK.

Section 1158 of title 18, United States Code, is amended by striking "be fined not more than $500 or imprisoned not more than six months, or both; and" and inserting "(1) in the case of a first violation, if an individual, be fined not more than $250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than $1,000,000; and (2) in the case of subsequent violations, if an individual, be fined not more than $1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than $5,000,000; and (3)".

SEC. 107. CERTIFICATION OF INDIAN ARTISANS.

For the purposes of section 1159 of title 18, United States Code, and section 6 of the Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) an Indian tribe may not impose a fee in certifying an individual as an Indian artisan. For the purposes of this section, the term "Indian tribe" has the same meaning given such term in section 1159(c)(3) of title 18, United States Code.

TITLE II—TECHNICAL AND CLARIFYING AMENDMENTS

SEC. 201. SHORT TITLE.

The title may be cited as the "Indian Self-Determination and Education Assistance Act Amendments of 1990".

SEC. 202. AMENDMENTS TO INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.

The Indian Self-Determination and Education Assistance Act is amended as follows:

(1) In section 4(h) of such Act (25 U.S.C. 450b(h)), delete "in existence on the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988".

(2) In section 4(j) of such Act (25 U.S.C. 450b(j)), delete "contract entered" each place it appears and insert in lieu thereof "contract (or grant or cooperative agreement utilized under section 9 of this Act) entered".

(3) In section 5(d) of such Act (25 U.S.C. 450c(d)), delete the word "Any" and insert in lieu thereof "Except as provided in section 8 or 106(a)(3) of this Act," and before the period insert the words "through the respective Secretary".

SEC. 203. AMENDMENTS TO THE INDIAN SELF-DETERMINATION ACT.

(a) Section 106 of the Indian Self-Determination Act (25 U.S.C. 450j-1(e)) is amended by deleting "1988" and inserting in lieu thereof "1992".

(b) In section 102(d) of such Act (25 U.S.C. 450f(d)), immediately after "investigations,", insert "or for purposes of section 2679, title 28, United States Code, with respect to claims by any such person, on or after the date of the enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle,".

(c) Section 105(c)(1)(B) of such Act (25 U.S.C. 450j(c)(1)(B)) is amended to read as follows:

"(B) for a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization), in the case of a mature contract.".

(d) Section 105(d) of such Act (25 U.S.C. 450j(d)) is amended to read as follows:

"(d)(1) Beginning in fiscal year 1990, upon the election of a tribal organization, the Secretary shall use the calendar year as the basis for any contracts or agreements under this Act, unless the Secretary and the Indian tribe or tribal organization agree on a different period.

"(2) The Secretary shall, on or before April 1 of each year beginning in 1992, submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.".

(e) In paragraphs (2) and (3) of section 105(f) of such Act (25 U.S.C. 450j(f) (2) and (3)), insert "or real" immediately after "personal" each place it appears in such paragraphs.

(f) In section 107(c) of such Act (25 U.S.C. 450k(c)), immediately after "authorized", insert the following: ", with the participation of Indian tribes and tribal organizations,".

(g)(1) In section 301(a)(3) of the Indian Self-Determination Act (25 U.S.C. 450h(a)(3)), delete "reservation boundaries" and insert in lieu thereof "Indian country (as defined in chapter 53 of title 18, United States Code)".

(2) The amendment made by paragraph (1) shall not alter or otherwise modify or affect existing prohibitions or limitations on the Secretary's authority to acquire lands in trust.

TITLE III—AMENDMENTS TO OTHER ACTS

SEC. 301. AMENDMENTS TO OTHER ACTS.

(a) AMENDMENT TO INDIAN LAND CONSOLIDATION ACT.—Section 207(a) of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by deleting "No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe" and inserting in lieu thereof the following: "No undivided interest held by a member or nonmember Indian in any tract of trust land or restricted land within a tribe's reservation or outside of a reservation and subject to such tribe's jurisdiction shall descend by intestacy or devise but shall escheat to the reservation's recognized tribal government, or if outside of a reservation, to the recognized tribal government possessing jurisdiction over the land".

(b) AMENDMENT TO ACT OF NOVEMBER 8, 1988.—In section 1 of the Act entitled "An Act to declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes", approved November 8, 1988 (102 Stat. 3327), insert "and attached narrative metes and bounds description" immediately after "map" each time it appears.

(c) AMENDMENT TO THE ACT OF MARCH 29, 1956.—The second sentence of subsection (a) of the Act entitled "An Act to authorize the execution of mortgages and deeds of trust on individual Indian trust or restricted land", approved March 29, 1956 (25 U.S.C. 483a), is amended by inserting immediately before "State" the following: "tribe which has jurisdiction over such land or, in the case where no tribal foreclosure law exists, in accordance with the laws of the".

SEC. 302. AMENDMENT TO THE ACT OF JUNE 24, 1938.

Section 1 of the Act of June 24, 1938 (25 U.S.C. 162a) is amended by designating the existing text thereof as subsection (a), and by adding at the end thereof the following new subsection:

"(b)(1) Notwithstanding subsection (a), the Secretary of the Interior, at the request of any Indian tribe, in the case of trust funds of such tribe, or any individual Indian, in the case of trust funds of such individual, is authorized to invest such funds, or any part thereof, in guaranteed or public debt obligations of the United States or in a mutual fund, otherwise known as an open-ended diversified investment management company if—

"(A) the portfolio of such mutual fund consists entirely of public-debt obligations of the United States, or bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, or a combination thereof;

"(B) the trust funds to be invested exceed $50,000;

"(C) the mutual fund is registered by the Securities and Exchange Commission; and

"(D) the Secretary is satisfied with respect to the security and protection provided by the mutual fund against loss of the principal of such trust funds.

"(2) The Secretary, as a condition to complying with a request pursuant to paragraph (1) of this subsection, is authorized to require such tribe or individual Indian, as the case may be, to enter into an agreement with the Secretary for the purpose of relieving the United States of any liability in connection with the interest, or amount thereof, payable in connection with such trust funds so invested during the period of that investment.

"(3) Investments pursuant to paragraph (1) of this subsection shall be deemed to be the same as cash or a bank deposit for purposes of section 5 of the Act of September 21, 1959 (25 U.S.C. 955).".

SEC. 303. AMENDMENT TO INDIAN FINANCING ACT OF 1974.

(a) Section 101 of the Indian Financing Act of 1974 (25 U.S.C. 1461) is amended—

(1) by deleting "money markets," and inserting in lieu thereof the following: "money markets, or to supplement funds from private lenders, including loans guaranteed by the Secretary pursuant to section 201 of this Act,"; and

(2) by inserting immediately before the period at the end of the third sentence a comma and the following: "or, in the discretion of the Secretary of the Interior, as a contribution to the Indian Loan Guaranty and Insurance Fund authorized by section 217 of this Act, or for the payment of interest subsidies authorized by section 301 of this Act".

(b) Section 204 of the Indian Financing Act of 1974 (25 U.S.C. 1484) is amended—

(1) by deleting in the first sentence the word "prior"; and

(2) by deleting in the second sentence "shall review" and inserting in lieu thereof "may review".

SEC. 304. EXEMPTION.

Section 8 of the Act of October 19, 1973 (25 U.S.C. 1408) is amended by—

(1) inserting immediately after "lands" a comma and the following: "and income up to $4,000 per annum derived therefrom,"; and

(2) inserting immediately after "resource" the following: "or income".

TITLE IV—PUBLIC HEALTH SERVICE ACT

SEC. 401. AMENDMENT TO PUBLIC HEALTH SERVICE ACT.

Section 338J(a) of subpart III of part D of title III of the Public Health Service Act (42 U.S.C. 254s) is amended to read as follows:

"(a) Subject to the availability of funds appropriated under the authority of subsection (d), the Secretary shall provide funds to Kamehameha Schools/Bishop Estate for the purpose of providing scholarship assistance to students who—

"(1) meet the requirements of section 338A(b), and

"(2) are Native Hawaiians.".

TITLE V—BOARD OF INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

SEC. 501. GENERAL POWERS OF BOARD OF INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT.

(a) INTEREST AND INVESTMENT INCOME.—Section 1507 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4414) is amended by adding at the end the following new subsection:

"(c) INTEREST AND INVESTMENTS.—Interest and earnings on amounts received by the Institute pursuant to section 1531 invested under subsection (a)(12) shall be the property of the Institute and may be expended to carry out this title. The Board shall be held to a reasonable and prudent standard of care, given such information and circumstances as existed when the decision is made, in decisions involving investment of funds under subsection (a)(12).".

(b) INSURANCE.—Section 1507(a)(11) of such Act (20 U.S.C. 4414(a)(11)) is amended to read as follows:

"(11) to the extent not already provided by law, to obtain insurance to cover all activities of the Institute, including coverage relating to property and liability, or make other provisions against losses.".

SEC. 502. ESTABLISHMENTS WITHIN THE INSTITUTE.

Section 1510(b) of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4417(b)) is amended—

(1) in paragraph (2), by striking subparagraph (A) and redesignating subparagraphs (B) through (I) as subparagraphs (A) through (H), respectively;

(2) by striking "and" at the end of paragraph (1);

(3) by striking the period at the end of paragraph (2) and inserting "; and"; and

(4) by inserting after paragraph (2) the following:

"(3) a Museum of American Indian and Alaska Native Arts, which shall be under the direction of the President of the Institute.".

SEC. 503. TRANSFER OF FUNCTIONS.

Section 1514 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4421) is amended—

(1) by striking subsections (d), (e), and (f); and

(2) by adding at the end the following new subsection (d):

"(d) FORGIVENESS OF AMOUNTS OWED; HOLD HARMLESS.—(1) Subject to paragraph (2)—

"(A) the Institute shall be responsible for all obligations of the Institute incurred after June 2, 1988, and

"(B) the Secretary shall be responsible for all obligations of the Institute incurred on or before June 2, 1988, including those which accrued by reason of any statutory, contractual, or other reason prior to June 2, 1988, which became payable within two years of June 2, 1988.

"(2) With respect to all programs of the Federal government, in whatever form or from whatever source derived, the Institute shall only be held responsible for actions and requirements, either administrative, regulatory, or statutory in nature, for events which occurred after July 1, 1988, including the submission of reports, audits, and other required information. The United States may not seek any monetary damage or repayment for the commission of events, or omission to comply with either administrative or regulatory requirements, for any action which occurred prior to June 2, 1988.".

SEC. 504. COMPLIANCE WITH OTHER ACTS.

Section 1517 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4424) is amended by adding at the end the following:

"(c) OTHER FEDERAL ASSISTANCE.—Funds received by the institute pursuant to this Act shall not be regarded as Federal money for purposes of meeting any matching requirements for any Federal grant, contract or cooperative agreement.".

SEC. 505. ENDOWMENT PROGRAMS.

Section 1518 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4425) is amended to read as follows:

"SEC. 1518. ENDOWMENT PROGRAMS.

"(a) PROGRAM ENHANCEMENT ENDOWMENT.—

"(1)(A) From the total amount appropriated for this subsection pursuant to section 1531(a), funds may be deposited into a trust fund maintained by the Institute at a federally insured banking or savings institution.

"(B) The President of the Institute shall provide—

"(i) for the deposit into the trust fund referred to in subparagraph (A)—

"(I) of a capital contribution by the Institute in an amount equal to the amount of each Federal contribution; and

"(II) any earnings on the funds deposited under this paragraph; or

"(ii) for the reservation for the sole use of the Institute of any noncash, in-kind contributions of real or personal property, which property may at any time be converted to cash, which shall be deposited as a capital contribution into the trust fund referred to in subparagraph (A).

"(C) If at any time the Institute withdraws any capital contribution (as described in subparagraph (B)(i)) made by the Institute to the trust fund referred to in subparagraph (A) or puts any property (as described in subparagraph (B)(ii)) to a use which is not for the sole benefit of the Institute, an amount equal to the value of the Federal contribution shall be withdrawn from such trust fund and returned to the Treasury as miscellaneous receipts.

"(2) Interest deposited into the trust fund pursuant to paragraph (1)(B)(ii) may be periodically withdrawn and used, at the direction of the Board or its designee, to defray any expense associated with the operation of the Institute, including the expense of operations and maintenance, administration, academic and support personnel, community and student services programs, and technical assistance.

"(3) For the purpose of complying with the contribution requirement of paragraph (1)(B), the Institute may use funds or in-kind contributions of real or personal property fairly valued which are made available from any private or tribal source, including interest earned by the funds invested under this subsection. In-kind contributions shall be other than fully depreciable property or property which is designated for addition to the permanent collection of the Museum and shall be valued according to the procedures established for such purpose by the Secretary of the Treasury. For purposes of this paragraph, all contributions, including in-kind and real estate, which are on-hand as of the date of enactment of this Act and which have been received after June 2, 1988, but which have not been included in computations under this provision shall be eligible for matching with Federal funds appropriated in any fiscal year.

"(4) Amounts appropriated under section 1531(a) for use under this subsection shall be paid by the Secretary of the Treasury to the Institute as a Federal capital contribution equal to the amount of funds or the value of the in-kind contributions which the Institute demonstrates have been placed within the control of, or irrevocably committed to the use of, the Institute as a capital contribution of the Institute in accordance with this subsection.

"(b) CAPITAL IMPROVEMENT ENDOWMENT.—

"(1) In addition to the trust fund established under subsection (a), funds may be deposited into a trust fund maintained by the Institute at a federally insured banking or savings institution from the amount reserved for this subsection pursuant to section 1531(a) for the purpose of establishing a separate special endowment for capital improvement, (hereafter in this subsection referred to as the 'capital endowment fund') to pay expenses associated with site selection and preparation, site planning and architectural design and planning, new construction, materials and equipment procurement, renovation, alteration, repair, and other building and expansion costs of the Institute.

"(2) The President of the Institute shall provide for the deposit into the capital endowment fund of a capital contribution by the Institute in an amount equal to the amount of each Federal contribution and any earnings on amounts in the capital endowment fund.

"(3) Funds deposited by the Institute as a match for Federal contributions under paragraph (5) shall remain in the capital endowment fund for a period of not less than two years. If at any time the Institute withdraws any capital contribution to the capital endowment fund before the funds have been deposited for this two-year period, an equal amount of the Federal contribution shall be withdrawn from the capital endowment fund and returned to the Treasury as miscellaneous receipts. At the end of the

two-year period, the entire principal and interest of the funds deposited for this period, including the Federal matching portion, shall accrue, without reservation, to the Institute and may be withdrawn, in whole or in part, to defray expenses associated with capital acquisition and improvement of the Institute referred to in paragraph (1).

"(4) For the purpose of complying with the contribution requirement of paragraph (2), the Institute may use funds which are available from any private or tribal source.

"(5) Subject to paragraph (3), amounts appropriated under section 1531(a) for use under this subsection shall be paid by the Secretary of the Treasury to the Institute as a Federal capital contribution equal to the amount which the Institute demonstrates has been placed within the control of, or irrevocably committed to the use of, the Institute and is available for deposit as a capital contribution of the Institute in accordance with this subsection.

"(c) GENERAL ADMINISTRATIVE PROVISIONS.—(1) Funds in the trust funds described in subsections (a) and (b) shall be invested at a rate not less than that generally available for similar funds deposited at the same banking institution for the same period or periods of time.

"(2) No part of the net earnings of the trust funds established under this section shall inure to the benefit of any private person.

"(3) The President of the Institute shall provide for such other provisions governing the trust funds established under this section as may be necessary to protect the financial interest of the United States and to promote the purpose of this title as agreed to by the Secretary of the Treasury and the Board or its designee, including recordkeeping procedures for the investment of funds received under the trust fund established under subsection (b) and such other recordkeeping procedures for the expenditure of accumulated interest for the trust fund under subsection (a) as will allow the Secretary of the Treasury to audit and monitor activities under this section.".

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

Section 1531(a) of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4451(a)) is amended by adding at the end the following new paragraphs:

"(4) Funds appropriated under this subsection for the fiscal year 1992 and for each succeeding fiscal year shall be transferred by the Secretary of the Treasury through the most expeditious method available with the Institute being designated as its own certifying agency.

"(5) Funds are authorized to be appropriated for programs for more than one fiscal year. For the purpose of affording adequate notice of funding available under this Act, amounts appropriated in an appropriations Act for any fiscal year to carry out this Act may, subject to the appropriation, become available for obligations on July 1 of that fiscal year.".

House amendments to Senate amendments: Strike all of section 304.

Add at the end thereof the following new title:

"TITLE VI—MISCELLANEOUS PROVISIONS

"SEC. 601. COCHITI DAM LICENSE.

"Notwithstanding the provisions of any other Federal law, no license shall be issued by the Federal Energy Regulatory Commission for the development of hydroelectric power at the Army Corps of Engineers' Cochiti Dam located on the Pueblo de Cochiti Indian Reservation in the State of New Mexico.

"SEC. 602. DAKOTA WESLEYAN UNIVERSITY.

"Notwithstanding the provisions of section 487(c)(2)(B) of the Higher Education Act of 1965, the Secretary of Education shall reassess the amount owed by the Dakota Wesleyan University, located in Mitchell, South Dakota, in the amount of $159,260, plus any accrued interest thereon to $16,113.".

Mr. CAMPBELL of Colorado (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment and the House amendments to the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Colorado?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CAMPBELL of Colorado. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment and the House amendments to the Senate amendment just concurred in.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 5933. An act to provide for the temporary extension of the certain laws relating to housing and community development.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 3266. An act to control crime.

GENERAL LEAVE

Mr. YATES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material and tabular information, on the conference report on the bill, H.R. 5769, which is about to be considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1991

Mr. YATES. Mr. Speaker, pursuant to the rule, I call up the conference report on the bill (H.R. 5769) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes.

The Clerk read the title of the bill.

□ 2110

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to House Resolution 542, the conference report is considered as having been read.

The gentleman from Illinois [Mr. YATES] will be recognized for 30 minutes, and the gentleman from Ohio [Mr. REGULA] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. YATES].

Mr. YATES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today I bring before the House the conference report on fiscal year 1991 appropriations for the Department of the Interior and related agencies. This appropriation covers a wide variety of programs including national parks, wildlife refuges and forests; energy and minerals programs; cultural programs such as the Smithsonian, the National Gallery and the National Endowments for the Arts and Humanities; and programs for native Americans and Alaskan Natives.

The total amount of new budget authority provided for these and the many other important programs funded in the Interior bill is $11,735,825,000 which is within the allocation set by the budget agreement for both budget authority and outlays.

This has been a particularly challenging year with respect to crafting this appropriation. Several of the programs and issues in this conference report generate tremendous passion and emotion. These include:

First, the challenge of protecting a little bird called the Spotted Owl in our ancient forests and, indeed, the forests themselves while also considering the loggers and mill workers who depend on the timber industry for their livelihood;

Second, the question of the extent to which the areas off our coastline in the outer continental shelf should be opened to exploration for oil and gas exploration and development, given the environmentally sensitive nature of certain areas;

Third, the need for the preservation of our national parks, forests and wild-

life areas for ourselves and for generations to come;

Fourth, the need for maintaining our cultural heritage through such institutions as the Smithsonian and the Kennedy Center; and

Fifth, the extremely difficult and emotion-charged issue of how to address the current controversy surrounding the National Endowment for the Arts and the Humanities.

We had in conference over 1,700 items in disagreement between the House and the Senate. This conference report we bring before the House contains the results of many hard choices and compromises made on the part of both the House and Senate conferees. I believe the conference report is a good result of that effort.

It provides for desperately needed increases for the operation of our parks and wildlife areas as well as for the education and health programs which serve native Americans and Alaskan Natives. The Smithsonian Institution is funded at more than $312 million as compared with the administration's budget request of about $307 million. Essential energy research and development programs are preserved in this conference agreement and special emphasis is placed on conservation programs, including alternative energy research and weatherization assistance for which we bring back the full House amount. The Forest Service appropriation strikes a reasonable balance between environmental concerns, including endangered and threatened species, and the need for timber and the jobs related thereto.

Again this year the OCS moratoria generated a great deal of debate. Over 100 Members have expressed to me their concerns that the OCS program needs to be more specifically focused to address areas of high resource potential while putting areas of environmental sensitivity off limits. The House adopted, and ended up taking to conference with the Senate, four moratoria provisions covering a vast amount of the Nation's coastline, including California, the western coast of Florida, Washington and Oregon, the mid-Atlantic, the North Atlantic and Bristol Bay in Alaska. The House was able to maintain its OCS position in conference.

There is a total of $343,475,000 for land acquisition and State assistance in the conference agreement. The projects included under this heading include many worthy items for which Members of this House have requested consideration. We could not fund all the projects requested nor fund all the projects we did include at the levels we would have liked but, on the whole, I believe the agreements reached by the conferees amount to a good compromise which fairly balances the many competing needs.

The conference agreement on the arts issue is not one I personally would have preferred but it is the House position as approved by a large margin in the vote on the reauthorization bill for the National Foundation on the Arts and Humanities.

The conference agreement presented to you contains a small across-the-broad cut of about one-half of 1 percent. Regrettably this cut is needed to stay within our 302(b) allocation for budget authority and budget outlays. We went into conference with a House bill that included several provisions which would have generated revenues to offset some of the new budget authority in the bill. These provisions proved to be too bitter a pill for many Members to swallow, at least in their entirety, and as a result we are faced with a general reduction to come in below our budget target.

I want to express my sincere appreciation to all the subcommittee members who struggled mightily with the many difficult issues we faced in conference to bring you what I believe is a very good agreement. I believe this conference report is worthy of your full support and I ask you for your support.

At this point I would like to place in the RECORD a table detailing the results of the conference:

Interior and Related Agencies Appropriations Bill, FY 1991 (H.R. 5769)

	FY 1990 Enacted	FY 1991 Estimate	House	Senate	Conference	Conference compared with enacted
TITLE I - DEPARTMENT OF THE INTERIOR						
America the Beautiful						
America the Beautiful - Interior	.....	(366,277,000)	.....	.....	.....	.....
Bureau of Land Management						
Management of lands and resources	435,914,000	466,384,000	503,451,000	496,899,000	500,112,000	+64,198,000
Firefighting	486,488,000	165,585,000	246,892,000	168,765,000	168,765,000	-317,723,000
Construction and access	5,882,000	8,890,000	16,106,000	14,846,000	15,386,000	+9,504,000
Payments in lieu of taxes	105,000,000	105,000,000	105,000,000	105,000,000	105,000,000	.....
Land acquisition	12,556,000	24,278,000	16,228,000	19,101,000	15,649,000	+3,093,000
Oregon and California grant lands	94,040,000	65,536,000	81,451,000	87,453,000	84,476,000	-9,564,000
Range improvements (indefinite)	9,404,000	10,188,000	10,188,000	10,188,000	10,188,000	+784,000
Service charges, deposits, & forfeitures (indefinite)	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	.....
Miscellaneous trust funds (indefinite)	99,000	100,000	100,000	100,000	100,000	+1,000
Total, Bureau of Land Management	1,155,383,000	851,961,000	985,416,000	908,352,000	905,676,000	-249,707,000
United States Fish and Wildlife Service						
Resource management	393,644,000	420,688,000	471,858,000	461,881,000	476,272,000	+82,628,000
Construction and anadromous fish	58,098,000	33,273,000	68,375,000	85,833,000	93,113,000	+35,015,000
Land acquisition	73,990,000	56,700,000	84,750,000	101,660,000	101,150,000	+27,160,000
National Wildlife Refuge Fund	8,904,000	9,000,000	10,000,000	12,000,000	11,000,000	+2,096,000
North American wetlands conservation fund	.....	25,000,000	15,000,000	15,000,000	15,000,000	+15,000,000
Rewards and operations	.....	1,000,000	1,000,000	1,000,000	1,000,000	+1,000,000
Total, United States Fish and Wildlife Service	534,636,000	545,661,000	650,983,000	677,374,000	697,535,000	+162,899,000
National Park Service						
Operation of the national park system	767,804,000	830,804,000	874,178,000	873,791,000	881,317,000	+113,513,000
National recreation and preservation	15,923,000	10,125,000	17,968,000	16,278,000	18,398,000	+2,475,000
Historic preservation fund	32,308,000	33,665,000	34,665,000	34,665,000	34,665,000	+2,357,000
Construction	197,407,000	99,766,000	227,111,000	227,710,000	271,871,000	+74,464,000
(Liquidation of contract authority)	(12,000,000)	(20,000,000)	(52,700,000)	(28,000,000)	(52,700,000)	(+40,700,000)
Urban park and recreation fund	.....	.....	20,000,000	.....	20,000,000	+20,000,000
Land acquisition and state assistance	87,502,000	80,153,000	152,386,000	144,478,000	137,513,000	+50,011,000
Land and water conservation fund (rescission of contract authority)	-30,000,000	-30,000,000	-30,000,000	-30,000,000	-30,000,000	.....
John F. Kennedy Center for the Performing Arts	9,118,000	8,150,000	21,150,000	21,150,000	21,150,000	+12,032,000
Illinois and Michigan Canal National Heritage Corridor Commission	250,000	.....	250,000	250,000	250,000	.....
Total, National Park Service (net)	1,080,312,000	1,032,663,000	1,317,708,000	1,288,322,000	1,355,164,000	+274,852,000
Geological Survey						
Surveys, investigations, and research	484,402,000	506,578,000	571,904,000	567,412,000	573,704,000	+89,302,000
Minerals Management Service						
Leasing and royalty management	176,042,000	194,252,000	200,128,000	193,103,000	197,028,000	+20,986,000
Payments to States from receipts under Mineral Leasing	.....	558,000	.....	.....	.....	.....
Total, Minerals Management Service	176,042,000	194,810,000	200,128,000	193,103,000	197,028,000	+20,986,000
Bureau of Mines						
Mines and minerals	172,443,000	145,712,000	171,443,000	185,155,000	182,182,000	+9,739,000
Transfer from Defense	6,000,000	.....	.....	.....	.....	-6,000,000
Office of Surface Mining Reclamation and Enforcement						
Regulation and technology	102,728,000	110,845,000	112,027,000	112,147,000	111,427,000	+8,699,000
Abandoned mine reclamation fund (definite, trust fund)	192,772,000	149,896,000	199,406,000	199,486,000	200,006,000	+7,234,000
Total, Office of Surface Mining Reclamation and Enforcement	295,500,000	260,741,000	311,433,000	311,633,000	311,433,000	+15,933,000

Interior and Related Agencies Appropriations Bill, FY 1991 (H.R. 5769), Continued

	FY 1990 Enacted	FY 1991 Estimate	House	Senate	Conference	Conference compared with enacted
Bureau of Indian Affairs						
Operation of Indian Programs	1,021,488,000	1,018,185,000	1,329,259,000	1,303,379,000	1,326,997,000	+305,509,000
Construction	136,850,000	103,099,000	166,935,000	162,501,000	168,536,000	+31,686,000
Miscellaneous payments to Indians	191,864,000	52,407,000	53,931,000	56,431,000	56,431,000	-135,433,000
Navajo Rehabilitation Trust Fund	800,000	.....	2,000,000	4,000,000	3,000,000	+2,200,000
Revolving fund for loans (limitation on direct loans)	.....	(9,000,000)	(9,000,000)	.....	.....	.....
Indian loan guaranty and insurance fund	4,718,000	11,487,000	11,487,000	11,987,000	11,787,000	+7,069,000
(Limitation on guaranteed loans)	.....	(45,000,000)	(45,000,000)	.....	.....	.....
Total, Bureau of Indian Affairs	1,355,720,000	1,185,178,000	1,563,612,000	1,538,298,000	1,566,751,000	+211,031,000
Territorial and International Affairs						
Administration of territories	41,181,000	40,966,000	74,232,000	79,557,000	75,982,000	+34,801,000
Interest rate differential	35,308,000	30,237,000	30,237,000	30,237,000	30,237,000	-5,071,000
Total	76,489,000	71,203,000	104,469,000	109,794,000	106,219,000	+29,730,000
Trust Territory of the Pacific Islands	32,927,000	30,800,000	51,450,000	42,987,000	48,707,000	+15,780,000
Compact of Free Association	10,260,000	9,200,000	18,800,000	14,500,000	14,800,000	+4,540,000
Mandatory payments	13,000,000	10,000,000	10,000,000	10,000,000	10,000,000	-3,000,000
Total	23,260,000	19,200,000	28,800,000	24,500,000	24,800,000	+1,540,000
Total, Territorial Affairs	132,676,000	121,003,000	184,719,000	177,281,000	179,726,000	+47,050,000
Departmental Offices						
Office of the Secretary	50,331,000	61,626,000	57,671,000	58,812,000	58,736,000	+8,405,000
Oil spill emergency fund	7,279,000	.....	.....	.....	.....	-7,279,000
Office of the Solicitor	25,305,000	26,485,000	26,883,000	26,883,000	26,883,000	+1,578,000
Office of Inspector General	20,464,000	22,172,000	22,156,000	22,156,000	22,156,000	+1,692,000
Construction Management	1,800,000	2,039,000	2,097,000	2,097,000	2,097,000	+297,000
National Indian Gaming Commission	750,000	1,504,000	1,004,000	1,504,000	1,254,000	+504,000
Total, Departmental Offices	105,929,000	113,826,000	109,811,000	111,452,000	111,126,000	+5,197,000
Total, title I, Department of the Interior:						
New budget (obligational) authority (net)	5,499,043,000	4,958,133,000	6,067,157,000	5,958,382,000	6,080,325,000	+581,282,000
Appropriations	(5,529,043,000)	(4,988,133,000)	(6,097,157,000)	(5,988,382,000)	(6,110,325,000)	(+581,282,000)
Definite	(5,513,540,000)	(4,971,845,000)	(6,080,869,000)	(5,972,094,000)	(6,094,037,000)	(+580,497,000)
Indefinite	(15,503,000)	(16,288,000)	(16,288,000)	(16,288,000)	(16,288,000)	(+785,000)
Rescission	(-30,000,000)	(-30,000,000)	(-30,000,000)	(-30,000,000)	(-30,000,000)	.....
(Liquidation of contract authority)	(12,000,000)	(20,000,000)	(52,700,000)	(28,000,000)	(52,700,000)	(+40,700,000)
(Limitation on direct loans)	.....	(9,000,000)	(9,000,000)	.....	.....	.....
(Limitation on guaranteed loans)	.....	(45,000,000)	(45,000,000)	.....	.....	.....
TITLE II - RELATED AGENCIES						
DEPARTMENT OF AGRICULTURE						
Forest Service						
Forest research	145,175,000	148,672,000	167,693,000	165,284,000	168,512,000	+23,337,000
(By transfer)	(4,700,000)	.....	.....	.....	.....	(-4,700,000)
State and private forestry	104,248,000	231,617,000	132,806,000	190,932,000	183,377,000	+79,129,000
(By transfer)	(6,900,000)	.....	.....	.....	.....	(-6,900,000)
National forest system	1,145,299,000	1,211,543,000	1,274,021,000	1,303,847,000	1,302,687,000	+157,388,000
(By transfer)	(4,440,000)	.....	.....	.....	.....	(-4,440,000)
Forest Service firefighting	811,704,000	297,849,000	304,507,000	299,507,000	299,507,000	-512,197,000
Construction	221,960,000	222,906,000	243,705,000	299,208,000	278,593,000	+56,633,000
Timber receipts transfer to general fund (indefinite)	(-96,376,000)	(-96,280,000)	(-96,280,000)	(-96,280,000)	(-96,280,000)	(+96,000)
Timber purchaser credits	(112,000,000)	(116,249,000)	(110,000,000)	(110,000,000)	(110,000,000)	(-2,000,000)
Land acquisition	63,433,000	88,869,000	92,579,000	85,519,000	89,163,000	+25,730,000
Permanent, definite	(52,441,000)	(43,887,000)	(37,677,000)	(45,668,000)	(42,887,000)	(-9,554,000)
Operation and maintenance of recreation facilities	.....	9,084,000	.....	.....	.....	.....
Acquisition of lands for national forests, special acts	1,054,000	1,103,000	1,103,000	1,103,000	1,103,000	+49,000
Acquisition of lands to complete land exchanges (indefinite)	1,065,000	1,105,000	1,105,000	1,105,000	1,105,000	+40,000
Range betterment fund (indefinite)	4,643,000	4,578,000	4,578,000	4,578,000	4,578,000	-65,000
Gifts, donations and bequests for forest and rangeland research	30,000	30,000	30,000	30,000	30,000	.....
Early Winters land exchange	.....	.....	500,000	.....	500,000	+500,000
America the Beautiful - Agriculture	.....	(263,869,000)	.....	.....	.....	.....
Total, Forest Service	2,498,611,000	2,217,356,000	2,222,627,000	2,351,113,000	2,329,155,000	-169,456,000

Interior and Related Agencies Appropriations Bill, FY 1991 (H.R. 5769), Continued

	FY 1990 Enacted	FY 1991 Estimate	House	Senate	Conference	Conference compared with enacted
DEPARTMENT OF ENERGY						
Clean coal technology:						
Appropriation		-500,000,000	-565,000,000	-500,000,000	-565,000,000	-565,000,000
Advance appropriations, fiscal year 1990	-156,000,000					+156,000,000
Advance appropriations, fiscal year 1991	(631,000,000)					(-631,000,000)
Advance appropriations, fiscal year 1992	(600,000,000)					(-600,000,000)
Fossil energy research and development	416,539,000	202,309,000	443,258,000	459,322,000	461,167,000	+44,628,000
Alternative fuels production			-9,600,000	-9,600,000	-9,600,000	-9,600,000
Naval petroleum and oil shale reserves	189,439,000	210,610,000	224,310,000	210,610,000	224,310,000	+34,871,000
Energy conservation	408,688,000	212,591,000	497,684,000	470,941,000	497,784,000	+89,096,000
Economic regulation	18,300,000	16,408,000	16,816,000	16,816,000	16,816,000	-1,484,000
Emergency preparedness	6,551,000	6,467,000	6,617,000	7,117,000	7,117,000	+566,000
Strategic Petroleum Reserve	192,483,000	195,633,000	195,633,000	201,633,000	201,633,000	+9,150,000
SPR petroleum account	224,310,000	119,935,000	119,935,000			-224,310,000
Advance appropriations, fiscal year 1991	(108,458,000)					(-108,458,000)
Advance appropriations, fiscal year 1992		(90,860,000)	(90,860,000)	(196,188,000)	(196,188,000)	(+196,188,000)
Energy Information Administration	64,319,000	66,608,000	68,608,000	68,853,000	69,303,000	+4,984,000
Total, Department of Energy:						
New budget (obligational) authority	1,364,629,000	530,561,000	998,261,000	925,692,000	903,530,000	-461,099,000
Appropriations, fiscal year 1990	(1,364,629,000)	(530,561,000)	(998,261,000)	(925,692,000)	(903,530,000)	(-461,099,000)
Advance appropriations, fiscal year 1991	(739,458,000)					(-739,458,000)
Advance appropriations, fiscal year 1992	(600,000,000)	(90,860,000)	(90,860,000)	(196,188,000)	(196,188,000)	(-403,812,000)
DEPARTMENT OF HEALTH AND HUMAN SERVICES						
Indian Health Service						
Indian health services	1,178,337,000		1,419,700,000	1,414,500,000	1,418,600,000	+240,263,000
Tribal health administration		404,287,000				
Federal Indian health administration		874,637,000				
Indian health facilities	71,633,000	13,156,000	167,236,000	165,956,000	167,279,000	+95,646,000
Total, Indian Health Service	1,249,970,000	1,292,080,000	1,586,936,000	1,580,456,000	1,585,879,000	+335,909,000
DEPARTMENT OF EDUCATION						
Office of Elementary and Secondary Education						
Indian education	73,111,000	75,762,000	75,762,000	75,762,000	75,762,000	+2,651,000
Reappropriation	509,000					-509,000
OTHER RELATED AGENCIES						
Office of Navajo and Hopi Indian Relocation						
Salaries and expenses	36,422,000	31,449,000	33,749,000	33,749,000	33,749,000	-2,673,000
Institute of American Indian and Alaska Native Culture and Arts Development						
Payment to the Institute	4,305,000	4,347,000	5,673,000	4,602,000	5,476,000	+1,171,000
Smithsonian Institution						
Salaries and expenses	225,480,000	256,174,000	274,342,000	270,595,000	274,321,000	+48,841,000
Construction and improvements, National Zoological Park	6,424,000	6,671,000	6,671,000	6,671,000	6,671,000	+247,000
Repair and restoration of buildings	26,469,000	28,656,000	31,356,000	31,656,000	31,356,000	+4,887,000
Construction	8,320,000	16,189,000	15,989,000	16,189,000	15,489,000	+7,169,000
Total, Smithsonian Institution	266,693,000	307,690,000	328,358,000	325,111,000	327,837,000	+61,144,000
National Gallery of Art						
Salaries and expenses	40,161,000	46,098,000	46,276,000	46,276,000	46,276,000	+6,115,000
Repair, restoration and renovation of buildings	1,795,000	2,805,000	3,205,000	4,205,000	3,505,000	+1,710,000
Total, National Gallery of Art	41,956,000	48,903,000	49,481,000	50,481,000	49,781,000	+7,825,000
Woodrow Wilson International Center for Scholars						
Salaries and expenses	4,639,000	5,074,000	5,074,000	5,074,000	5,074,000	+435,000

Interior and Related Agencies Appropriations Bill, FY 1991 (H.R. 5769), Continued

	FY 1990 Enacted	FY 1991 Estimate	House	Senate	Conference	Conference compared with enacted
National Foundation on the Arts and the Humanities						
National Endowment for the Arts						
Grants and administration	144,105,000	147,000,000	152,000,000	142,000,000	147,000,000	+2,895,000
Matching grants	27,150,000	28,000,000	28,000,000	28,000,000	28,000,000	+850,000
Total, National Endowment for the Arts	171,255,000	175,000,000	180,000,000	170,000,000	175,000,000	+3,745,000
National Endowment for the Humanities						
Grants and administration	130,583,000	137,850,000	143,550,000	141,150,000	143,750,000	+13,167,000
Matching grants	26,327,000	27,150,000	27,150,000	27,150,000	27,150,000	+823,000
Total, National Endowment for the Humanities	156,910,000	165,000,000	170,700,000	168,300,000	170,900,000	+13,990,000
Institute of Museum Services						
Grants and administration	22,675,000	24,000,000	28,040,000	24,000,000	26,000,000	+3,325,000
Total, National Foundation on the Arts and the Humanities	350,840,000	364,000,000	378,740,000	362,300,000	371,900,000	+21,060,000
Commission of Fine Arts						
Salaries and expenses	509,000	549,000	637,000	637,000	637,000	+128,000
National Capital Arts and Cultural Affairs						
Grants	5,427,000	.....	6,250,000	6,250,000	6,250,000	+823,000
Advisory Council on Historic Preservation						
Salaries and expenses	1,894,000	2,238,000	2,238,000	2,238,000	2,238,000	+344,000
National Capital Planning Commission						
Salaries and expenses	3,090,000	3,258,000	3,448,000	3,438,000	3,448,000	+358,000
Franklin Delano Roosevelt Memorial Commission						
Salaries and expenses	28,000	28,000	28,000	28,000	28,000	.....
Pennsylvania Avenue Development Corporation						
Salaries and expenses	2,375,000	2,465,000	2,365,000	2,365,000	2,365,000	-10,000
Land acquisition and development fund	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	.....
Rescission	-4,900,000	.....	.....	.....	.....	+4,900,000
Public development	3,150,000	4,705,000	4,805,000	4,705,000	4,805,000	+1,655,000
Total, Pennsylvania Avenue Development Corporation	5,625,000	12,170,000	12,170,000	12,070,000	12,170,000	+6,545,000
United States Holocaust Memorial Council						
Holocaust Memorial Council	2,297,000	3,304,000	7,554,000	3,554,000	7,554,000	+5,257,000
Total, title II, Related Agencies:						
New budget (obligational) authority	5,910,555,000	4,898,769,000	5,716,986,000	5,742,555,000	5,720,468,000	-190,087,000
Appropriations, fiscal year 1990	(5,910,555,000)	(4,898,769,000)	(5,716,986,000)	(5,742,555,000)	(5,720,468,000)	(-190,087,000)
Definite	(5,909,238,000)	(4,893,086,000)	(5,711,303,000)	(5,736,872,000)	(5,714,785,000)	(-194,453,000)
Indefinite	(6,217,000)	(5,683,000)	(5,683,000)	(5,683,000)	(5,683,000)	(-534,000)
Rescission	(-4,900,000)	.....	.....	.....	.....	(+4,900,000)
Advance appropriations, fiscal year 1991	(791,899,000)	(43,887,000)	(37,677,000)	(45,668,000)	(42,887,000)	(-749,012,000)
Advance appropriations, fiscal year 1992	(600,000,000)	(90,860,000)	(90,860,000)	(196,188,000)	(196,188,000)	(-403,812,000)
(Timber receipt transfer to general fund, indefinite)	(-96,376,000)	(-96,280,000)	(-96,280,000)	(-96,280,000)	(-96,280,000)	(+96,000)
(Timber purchaser credits)	(112,000,000)	(116,249,000)	(110,000,000)	(110,000,000)	(110,000,000)	(-2,000,000)
TITLE III - GENERAL PROVISIONS						
General reduction of appropriations	.....	.....	.....	.....	-64,968,000	-64,968,000
Grand total:						
New budget (obligational) authority (net)	11,409,598,000	9,856,902,000	11,784,143,000	11,700,937,000	11,735,825,000	+326,227,000
Appropriations, fiscal year 1990 (net)	(11,409,598,000)	(9,856,902,000)	(11,784,143,000)	(11,700,937,000)	(11,735,825,000)	(+326,227,000)
Appropriations	(11,444,498,000)	(9,886,902,000)	(11,814,143,000)	(11,730,937,000)	(11,765,825,000)	(+321,327,000)
Definite	(11,422,778,000)	(9,864,931,000)	(11,792,172,000)	(11,708,966,000)	(11,743,854,000)	(+321,076,000)
Indefinite	(21,720,000)	(21,971,000)	(21,971,000)	(21,971,000)	(21,971,000)	(+251,000)
Rescissions	(-34,900,000)	(-30,000,000)	(-30,000,000)	(-30,000,000)	(-30,000,000)	(+4,900,000)
Advance appropriations, fiscal year 1991	(791,899,000)	(43,887,000)	(37,677,000)	(45,668,000)	(42,887,000)	(-749,012,000)
Advance appropriations, fiscal year 1992	(600,000,000)	(90,860,000)	(90,860,000)	(196,188,000)	(196,188,000)	(-403,812,000)
(Liquidation of contract authority)	(12,000,000)	(20,000,000)	(52,700,000)	(28,000,000)	(52,700,000)	(+40,700,000)
(Timber receipt transfer to general fund, indefinite)	(-96,376,000)	(-96,280,000)	(-96,280,000)	(-96,280,000)	(-96,280,000)	(+96,000)
(Timber purchaser credits)	(112,000,000)	(116,249,000)	(110,000,000)	(110,000,000)	(110,000,000)	(-2,000,000)
TITLE I -DEPARTMENT OF THE INTERIOR						
Bureau of Land Management	1,155,383,000	851,961,000	985,416,000	908,352,000	905,676,000	-249,707,000
United States Fish and Wildlife Service	534,636,000	545,861,000	650,983,000	677,374,000	697,535,000	+162,899,000
National Park Service	1,080,312,000	1,032,663,000	1,317,708,000	1,288,322,000	1,355,164,000	+274,852,000
Geological Survey	484,402,000	506,578,000	571,904,000	567,412,000	573,704,000	+89,302,000
Minerals Management Service	176,042,000	194,810,000	200,128,000	193,103,000	197,028,000	+20,986,000
Bureau of Mines	178,443,000	145,712,000	171,443,000	185,155,000	182,182,000	+3,739,000

Interior and Related Agencies Appropriations Bill, FY 1991 (H.R. 5769), Continued

	FY 1990 Enacted	FY 1991 Estimate	House	Senate	Conference	Conference compared with enacted
Office of Surface Mining Reclamation and Enforcement	295,500,000	260,741,000	311,433,000	311,633,000	311,433,000	+15,933,000
Bureau of Indian Affairs	1,355,720,000	1,185,178,000	1,563,612,000	1,538,298,000	1,566,751,000	+211,031,000
Territorial and International Affairs	132,676,000	121,003,000	184,719,000	177,281,000	179,726,000	+47,050,000
Secretarial Offices	105,929,000	113,826,000	109,811,000	111,452,000	111,126,000	+5,197,000
Total, Title I - Department of the Interior	5,499,043,000	4,958,133,000	6,067,157,000	5,958,382,000	6,080,325,000	+581,282,000
TITLE II - RELATED AGENCIES						
Forest Service	2,498,611,000	2,217,356,000	2,222,627,000	2,351,113,000	2,329,155,000	-169,456,000
Department of Energy	1,364,629,000	530,561,000	998,261,000	925,692,000	903,530,000	-461,099,000
Indian Health	1,249,970,000	1,292,080,000	1,586,936,000	1,580,456,000	1,585,879,000	+335,909,000
Indian Education	73,620,000	75,762,000	75,762,000	75,762,000	75,762,000	+2,142,000
Office of Navajo and Hopi Indian Relocation	36,422,000	31,449,000	33,749,000	33,749,000	33,749,000	-2,673,000
Institute of American Indian and Alaska Native Culture and Arts Development	4,305,000	4,347,000	5,673,000	4,602,000	5,476,000	+1,171,000
Smithsonian	266,693,000	307,690,000	328,358,000	325,111,000	327,837,000	+61,144,000
National Gallery of Art	41,956,000	48,903,000	49,481,000	50,481,000	49,781,000	+7,825,000
Woodrow Wilson International Center for Scholars	4,639,000	5,074,000	5,074,000	5,074,000	5,074,000	+435,000
National Endowment for the Arts	171,255,000	175,000,000	180,000,000	170,000,000	175,000,000	+3,745,000
National Endowment for the Humanities	156,910,000	165,000,000	170,700,000	168,300,000	170,900,000	+13,990,000
Institute of Museum Services	22,675,000	24,000,000	28,040,000	24,000,000	26,000,000	+3,325,000
Commission of Fine Arts	509,000	549,000	637,000	637,000	637,000	+128,000
National Capital Arts and Cultural Affairs	5,427,000	.....	6,250,000	6,250,000	6,250,000	+823,000
Advisory Council on Historic Preservation	1,894,000	2,238,000	2,238,000	2,238,000	2,238,000	+344,000
National Capital Planning Commission	3,090,000	3,258,000	3,448,000	3,438,000	3,448,000	+358,000
Franklin Delano Roosevelt Memorial Commission	28,000	28,000	28,000	28,000	28,000	.....
Pennsylvania Avenue Development Corporation	5,625,000	12,170,000	12,170,000	12,070,000	12,170,000	+6,545,000
Holocaust Memorial Council	2,297,000	3,304,000	7,554,000	3,554,000	7,554,000	+5,257,000
Total, Title II - Related Agencies	5,910,555,000	4,898,769,000	5,716,986,000	5,742,555,000	5,720,468,000	-190,087,000
TITLE III - GENERAL PROVISIONS						
General reduction of appropriations	.....	.....	.....	.....	-64,968,000	-64,968,000
Grand total	11,409,598,000	9,856,902,000	11,784,143,000	11,700,937,000	11,735,825,000	+326,227,000

Mr. Speaker, I reserve the balance of my time.

Mr. REGULA. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Speaker, I rise in support of the Interior appropriations conference report and want to commend the actions of the conferees. The spirit of bipartisan cooperation and understanding should be a standard that we all should seek.

I am especially pleased with the decision to leave out the language found in the House version, which would have implemented a new grazing fee schedule for users of public lands, and would have wreaked economic havoc on the cattle industry in my State, Nevada.

As a member of the authorizing committee with jurisdiction, I appreciate the conferees' actions deleting the House passed proposal placing a moratorium on the patenting of hardrock mining claims.

The conference report is an economically sound agreement, and I urge my colleagues' support.

Mr. REGULA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I will not take long. I think this is a great bill to close out our session. It is probably the most constructive bill that we dealt with in the course of the year's activities. One-third of the United States is public land. It is owned by all of the people of this Nation. We are the custodians of that land, and the way in which we manage it for the future.

Our national forests produce the timber to build the houses for America, produce the clean air that we breathe, and produce a marvelous recreation opportunity.

We all know what a wonderful heritage the national parks are for millions of Americans who enjoy them each year.

We know the preservation of our wildlife heritage that is part of our national lands. All of this is done through the appropriations in this bill.

On a practical sense, many of the key minerals that are vital for industry come off the public lands. Again, this is a very integral part of the future of America.

I think the most exciting new initiative in this bill this year is the America the Beautiful Program. The tree planting foundation is designed to generate millions of private dollars, with the goal of planting 1 billion trees. That is a marvelous objective, and that is beginning with the moneys that we have appropriated in this bill.

Another area that is becoming extremely important is the preservation of our water resources. We take water for granted in so many instances. Yet we see in the Western States a growing shortage.

We have a problem in many areas of the United States in getting clean, pure water. Many of the programs that are embodied in this bill will help keep the water pure for the future of our Nation.

Mr. Speaker, this is a bill that in many respects is self-financing in the sense that about $7.4 billion will be generated in revenues from the activities under this bill. We have tried to be very careful in the way we manage it. We are about 2.8 percent over fiscal year 1990, and I think that is remarkable, given the challenges that we have.

Mr. Speaker, I want to give credit to our chairman, the gentleman from Illinois [Mr. YATES]. We all owe him a debt of gratitude, both Republicans and Democrats. He fought hard for our projects in the conference with the Senate and gave great leadership for us. He worked hard with the Members of the other body to ensure that the projects of the Members here were recognized.

Mr. Speaker, we have an excellent bill. I urge all Members to support it.

Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. YOUNG], a member of the Committee on Appropriations.

Mr. YOUNG of Florida. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of this appropriations bill. I want to pay special tribute to the chairman of the committee, the gentleman from Illinois [Mr. YATES], and the ranking member, the gentleman from Ohio

[Mr. REGULA], and all members who served on the subcommittee.

Mr. Speaker, this bill managed successfully a matter of unique importance to Florida, an environmentally sensitive issue that was resolved favorably by this committee. The members of the subcommittee had a very difficult time in maintaining that position in conference with the other body, but they did prevail. They worked late into the night and early this morning, and I just want to express, on behalf of the people of Florida, our appreciation for the good work and the good support given us.

Mr. Speaker, we compliment the gentleman from Illinois [Mr. YATES] and the gentleman from Ohio [Mr. REGULA], as well as all members of that subcommittee.

□ 2120

Mr. REGULA. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. Mr. Speaker, I thank the gentleman for yielding the time. I will, of course, vote against the conference report despite the fact that there is much in the report which I think is critically important and should be done. However, there are some things that I think ought not to be done.

But I would like to take just a moment to reflect on my personal appreciation for the chairman of the committee, the ranking Republican on the committee, and the committee as a whole for the quality of their work and the good spirit with which they have brought their work and presented it to the floor.

If I could take a moment to focus on the chairman of the subcommittee, the gentleman from Illinois [Mr. YATES], who found himself throughout almost this entire year in the middle of what can only be characterized as a difficult debate, and throughout all of that debate I would say to the gentleman, Mr. YATES, you made your case well, you stated it with eloquence, you presented your case and defended it by the most skillful use of parliamentary options available to you, and in each and every case you did so as a true gentleman and a colleague. I, for one, having been on the learning side of that experience, would like to express my appreciation and say to you, Mr. [Mr. YATES, you are indeed a gentleman and a scholar, and I dare say also a poor judge of good whiskey.

I compliment you on your professionalism, your personal courtesy, and your patience with some of us young upstarts in the body.

Mr. YATES. Mr. Speaker, I yield such time as he may consume to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Speaker, first of all, I want to thank Chairman YATES and his staff for the excellent work they have done on this bill.

I specifically would like to speak in support of the funding in this bill which recognizes the importance of native American higher education through the Bureau of Indian Affairs Budget.

Haskell Indian Junior College, is one of only two national colleges for native Americans in the country and is located in Lawrence, KS.

Haskell has evolved and grown from an elementary school to high school, to a vocational-technical school, and finally to a comprehensive junior college. Haskell's mission as an intertribal college becomes more crucial as tribes and native Americans continue to strive for self-determination and self-sufficiency.

In the past Haskell has survived severe budgetary setbacks and has provided quality education to native Americans from across the country in spite of efforts by the previous administration to shut it down.

I am pleased the Appropriations Committee realized the importance of adequately funding Haskell and I am especially pleased the committee agreed to restore $394,000 to Haskell's instructional budget that President Bush had requested be cut.

This funding will bring Haskell's fiscal year 1991 instructional budget to the same level as the 1990 budget. And more importantly, it will allow a popular, and successful summer school program to continue next year.

The sum of $306,000 was also approved for necessary program development in the area of natural resources management and for equipment replacement which is in dire need of updating and modernization.

In addition, Haskell will receive $2.3 million for facilities improvements and repair [FI&R] on the Haskell Campus. This funding will address some of the safety concerns that were documented at the college in February by the inspector general of the Bureau of Indian Affairs.

I want to thank the conferees for recognizing the importance of this critical funding. Overall, this bill reflects a $3 million increase to Haskell's budget.

Finally, I would like to thank the conferees for report language which would allow Haskell to pursue initial plans for the construction of additional housing on campus. Housing is a top priority for Haskell as overcrowding has become a serious problem.

If young native Americans are not to be turned away from the educational opportunities Haskell has to offer, new residence hall spaces are required.

If self-determination and independence from Government are to remain the benchmark of Federal efforts toward native Americans, then we must do all we can to see that this population has access to quality education. Haskell Indian Junior College provides the tools for such an endeavor.

Again, Mr. Speaker, the support of our subcommittee chairman for Haskell will allow it to continue its mission and to grow in order to meet the needs of the 21st century.

Mr. YATES. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, I am strongly in favor of this measure.

Mr. Speaker, I rise in strong support of this appropriations bill. The Federal Government has an important role to play in protecting and promoting the environmental resources of central Texas, one of the most environmentally sensitive areas of the country, and this measure includes a number of items which are crucially important to my district.

I want to express my deep appreciation to the gentleman from Illinois [Mr. YATES] and the other members of this committee for their strong support for these projects. While they may not be of great national importance, people in my district are relying on our help. Texans know that they can't enjoy their environment unless they work to protect it.

There is much to protect. Central Texas is home to a variety of endangered and threatened species which are entitled to protection under the Endangered Species Act. Among the endangered species are the black-capped vireo, a small songbird which nests in the Hill County and several cave-dwelling invertebrates. Another songbird, the golden-cheeked warbler, was given an emergency listing as an endangered species. In addition, there are several plants being studied for listing as endangered species. To accommodate development with protection of the endangered species, Austin is working on a habitat conservation plan.

There has been an impressive and cooperative effort by a diverse group of people in central Texas to develop a plan which will balance the need to protect endangered species with the need to allow the public to enjoy the recreational and development opportunities in the Austin area. This group has spent $403,000 of its own money to map out what areas will be most suitable as habitats for the endangered species. It has been determined that 125,000 acres of land will be needed to protect the various endangered species adequately.

This legislation will provide $2 million, through the Fish and Wildlife Service, to assist in acquiring the land necessary for the habitat. This Federal seed money is provided on a matching basis only if the local groups are able to meet the requirement that they pay their share of acquisition costs.

Central Texas also has some of the most majestic live oak trees in Texas, but they are presently threatened by a fungus known as oak wilt, a fungal disease which kills live oaks, red oaks, and spanish oaks. Oak wilt has wiped out thousands of trees in my State—most of them in my district. With the support of the Federal Government, we have made progress fighting oak wilt, but my Texas State foresters tell me that the fungus is spreading—it has recently been spotted in the San Antonio area.

Last summer, the national press took great note of the poisoning of the Treaty Oak in Austin, TX, a 500-year-old tree under which, legend has it, Stephen F. Austin signed a peace treaty with native Americans in the early 1800's. The outpouring of public affection and compassion for this tree illustrates how strongly the people of central Texas feel about their environment—how the environment is to be valued not only for its beauty but also for its tradition. Just as they have

fought to save the Treaty Oak, they have fought to save trees suffering from oak wilt.

My State foresters report that progress is being made in the fight against oak wilt. Last year, Federal funds saved numerous trees by digging 62,000 feet of trenches around infected trees, which is part of the oak wilt suppression method. There is a promising new fungicide which helps to stop the spread of oak wilt fungus, but it only stops oak wilt in the branches, not in the roots, so the trenches must still be dug in order to fight oak wilt. That is the expensive part of oak wilt treatment.

This legislation would increase funding for the cooperative suppression account, which funds oak wilt suppression, and provide $300,000 for research to find ways to prevent and cure oak wilt.

Mr. Speaker, let me emphasize that for each Federal dollar devoted to oak wilt suppression, homeowners put up another dollar to fight oak wilt. The Federal Government is playing a valuable role in an effective program, one with impressive private support.

Further, central Texas is home of the Lyndon B. Johnson National Historical Park, which serves the many visitors to Johnson City, TX, who wish to learn more about President Johnson. The LBJ Park presently has an inadequate visitors center which occupies a leased space on the back porch of a house in Johnson City. Just a block or so away, there is the old Johnson City Hospital Building, which has not been used in several years.

This legislation will provide $1.1 million for planning and construction to allow the Park Service to convert this abandoned hospital building into a new visitors center for folks coming to the LBJ Park. This new visitors center will not only serve the public, but it will also enable Park Service employees presently housed in the post office building finally to have their own office facilities. And the post office, which needs more space, would have it.

Texans support these programs, both through hard work and financial contributions. They are all programs which carry out missions either mandated by the Federal Government or of benefit to the Nation. And they are all programs which cannot be effective without a significant Federal funding role. I once again thank the gentleman from Illinois [Mr. YATES] for his tireless cooperation, and I urge my colleagues to adopt this conference agreement.

Mr. REGULA. Mr. Speaker, I yield 8 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am a gray-haired upstart who is still a little concerned about some of the spending figures that I find in the bill. As I mentioned when this bill passed the House, somehow we managed to ignore the authorizing committee's figures and spent $28 million above what the authorization committee permitted.

Surprisingly enough, this conference committee went to conference with that figure that was $28 million above what the House had authorized and got there, and they found the Senate with a figure in the energy conservation area of $470 million, which was right at what the House had authorized. But guess what the conference committee did? The conference committee not only took the House figure that was $28 million above the House-authorized figures, or authorized figures by law, but they added to it. They went outside the scope and they added to the money that was already over the authorization.

And what did they do while they were increasing the money? They added a brand new pork barrel project. They found one from the Senate.

Members may recall that I was concerned when this came out of the House about the fact that we had just passed Public Law 101-425 for the metal castings bill, and I was concerned because in that bill we had said that we were going to have a competitive kind of atmosphere in which we would decide where these metal casting centers would come from. What I was told on the House floor was yes, that is true, that is what is in the metal castings bill, but we decided that we had to have one pilot program for the country, that we have to have a pilot program here, and we have decided as a committee that we are going to have that at the University of Alabama. So we allocated $1 million or so for the University of Alabama for its metal casting center.

Guess what happened in the conference committee? The conference committee found another place for a pilot program. Now we are going to have one at the University of Northern Iowa as well. I am sure that is another great metal casting institution. I am sure that the University of Northern Iowa also was competitive on all of this.

Can anyone tell me what is at the University of Northern Iowa that qualifies them to become a metal casting center?

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. WALKER. Does the gentleman from California know the answer to the question? I yield to the gentleman from California.

Mr. DANNEMEYER. Mr. Speaker, I am just curious, are they minting coins at this metal casting center?

Mr. WALKER. This is for metal casting research, and it is actually a good idea. I mean, we passed a bill around here, but what we said was that we ought to get the very best places in the country to try to put these institutes into the research.

Mr. DANNEMEYER. Are they minting gold coins or silver coins?

Mr. WALKER. I hope for the gentleman's sake that we do some gold coins along the way.

But the fact was that these were also supposed to be competed.

Now can anyone tell me what the qualifications are of the University of Northern Iowa to do metal casting research?

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, I thank the gentleman for yielding. I think the best answer I can give the gentleman, gray-haired upstart that he is, and experienced as he is as a member of the hierarchy of the Republican Party and the House, he must have at one time or another had occasion to deal with the Senate in conference.

Mr. WALKER. Yes. It is not a very pleasant experience.

Mr. YATES. It is a very harrowing experience. And when the Senate discovered that the House had one casting laboratory, the Senate decided that perhaps it ought to be balanced by one that it approved, and as a result, try as we did to maintain the assurance that I had given the gentleman when he addressed this question to me when the bill was before the House, in the course of the negotiations and the bargaining that took place, I felt that on this occasion I had to give in to them. I am sorry.

Mr. WALKER. I understand the gentleman's problem. So really the qualifications of the University of Northern Iowa is that Mr. HARKIN came into the conference committee and decided that he had to have this, and so that is the main qualification for running a pilot program which will end up being one of the chief research programs in metal castings for the country?

I would suggest that that is not exactly science the way I think of science being done. It strikes me that that is probably an abuse of the system. We are no longer talking about pilot programs. Now we are talking about just adding on whatever members of a particular conference want.

Mr. THOMAS of California. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from California.

Mr. THOMAS of California. Mr. Speaker, the gentleman mentioned the Member of the other body by name, and so it is pretty obvious that northern Iowa is an important place, given the contest for the U.S. Senate in Iowa. And the only way we are going to stop pilot programs being awarded this way is to say no, not to have a difficult time in conference, not to wring your hands, but to say the way you stop this practice is to simply vote no.

Mr. WALKER. Let me say to the gentleman what is disturbing then is, here we have passed an authorization bill, and the authorization bill's full language was language designed to make certain that all of these centers were competed, and now we find out

that the Congress simply ignores the law and decides to have a couple of centers put in just because someone wanted them, not because they had ever been competed against other worthy institutions across the country.

Mr. THOMAS of California. If the gentleman will yield further, the entire State of Iowa, and I am sure northern Iowa as well, are well known for their wrestling teams, and what we have here is the other body throwing its weight around.

Mr. WALKER. That may well be, and I wish someone would answer the question.

Mr. GRANDY. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Iowa.

Mr. GRANDY. Mr. Speaker, I appear to be the only Member on the floor from the State of Iowa, and I would like to respond to some of that. I do not, let me say at the outset, represent the University of Northern Iowa. Because my district adjoins our colleague, Mr. NAGLE'S district, who does represent the University of Northern Iowa, I am familiar with the institution, and it is my understanding that this grant is made to the University of Northern Iowa so that they can develop techniques in metal casting which will be more cost-efficient and more environmentally sensitive.

□ 2130

I can tell the gentleman that the University of Northern Iowa is one of three major universities in the State. It is perhaps, of the three, the least known for its scientific expertise, but under its new presidency, it is developing a program becoming more competitive, becoming more involved in scientific research, and that is as much as I can tell the gentleman about this grant.

Mr. WALKER. But does this university have any background or expertise in metals casting?

Mr. GRANDY. If the gentleman will continue to yield, I am not qualified to answer that question. Possibly the gentleman from Iowa [Mr. SMITH] from the Committee on Appropriations or my colleague, the gentleman from Iowa [Mr. NAGLE], but I will say that I would assume that this grant is made to them because they are developing that technology now.

The University of Iowa systems have normally received grants from this body because they have been competitive in areas of expertise whether agriculture or medicine.

Mr. WALKER. But the problem here is we are only going to get four centers in the entire country, and the idea behind the authorizing bill was we were going to compete those to make certain that the very best places got the scarce resources that we had. Now what has happened is that the Senator from his State has decided to simply pluck off one of those four and give it to the University of Northern Iowa. They may be the most qualified program in the country. I do not know. But I wish that they would have competed it under the provisions of the law rather than have done it this way. This is not the way to decide how good science shall be done.

This is a wrong method for determining the basic research agenda for this country, and that is what is happening here is the basic research agenda for the country is being determined in conference committee, whereas, the gentleman from Illinois has told us that it is difficult because every time the House comes in with a project, the Senate wants one, too.

Mr. REGULA. Mr. Speaker, I yield 2 minutes to the gentleman from Idaho [Mr. CRAIG].

Mr. CRAIG. Mr. Speaker, I thank my colleague for yielding me this time.

Mr. Speaker, I stand in support of H.R. 5769. For those of the Members in this body, Interior appropriation is a unique piece of legislation, extremely valuable to Western public land States like my State of Idaho. Why? Because the policy that is established by this appropriation bill will affect over 64 percent of the land mass of the State, and in large parts, a good share of the economic activity of the State from the livestock industry to the mining and the forest products industry.

Legislation like this is increasingly valuable. I am very pleased that we have been able to handle through the conference some extraneous material that was added to the bill here from grazing fees to a moratorium on patenting, of course, a concern about forest road language that was involved that has a tremendous impact upon the productivity of our forest lands and the ability of a lot of our communities to compete and maintain economic livelihoods has all been dealt with through this process in a fair and equitable way. I am tremendously appreciative of that.

I would like to recognize certainly the chairman of the committee, the gentleman from Illinois [Mr. YATES], our ranking member, the gentleman from Ohio [Mr. REGULA], the gentleman from Oregon [Mr. AUCOIN], and the gentleman from Washington [Mr. DICKS], who worked in behalf of building a balanced piece of legislation that really does recognize what is unique oftentimes to States west of the Mississippi that hold large public land masses.

While we are extremely concerned and environmentally concerned that the activity on those lands is properly conducted, we are unique in the sense that most people who do live in puliclands States fail to recognize that oftentimes what is on those lands can have a tremendous economic impact upon the communities that are associated or adjacent to those lands.

This legislation has dealt with many of those problems. I think it is reflective of the concerns that all of us have that we maintain the unique balance that is important, that we recognize the vital and critical environmental nature oftentimes of some of those lands but also recognize that a balanced use and a multiple use is necessary in the wise and expeditious use of those resources.

Mr. REGULA. Mr. Speaker, I yield 1 minute to the gentleman from Wyoming [Mr. THOMAS].

Mr. THOMAS of Wyoming. Mr. Speaker, I thank the ranking member for yielding me this time.

Mr. Speaker, I rise to compliment the leadership and the committee on the bill. I intend to vote for the bill.

I do want to place in the RECORD, and I want to, first of all, say that I concur with the comments of the previous speaker. Those of us who come from public-lands States have a unique situation, and I want to express my disappointment with the matter of onshore mineral rights.

As you know, public-lands States, and in my State, 50 percent of the land belongs to the Federal Government. In most of your States, of course, you had all the land that either went into private ownership through sale or now belongs to the State, and the royalties or the taxes thereon go to the State.

In our case, a number of years ago, as a matter of equity, there was a decision made to split those royalties 50/50 between the Federal Government and the State, and we thought that was a fair and equitable arrangement.

Here we find some reduction in that. In my State there will be a loss of $11 million. I think that is a matter of equity, and I hope we can deal with it next year.

Mr. REGULA. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri [Mr. COLEMAN].

Mr. COLEMAN of Missouri. Mr. Speaker, I rise in support of this conference report and commend the chairman, the gentleman from Illinois, and the gentleman from Ohio, for bringing it back to the House.

It does adopt the Williams-Coleman compromise language on reauthorizing the National Endowment for the Arts. I am glad that this is how it worked out.

I do note and recall that some of the reforms that we passed in the Williams-Coleman proposal which was contained in this bill require that grant recipients make detailed descriptions, that there be timetables and interim reports filed by artists. I think that is very important.

At the same time, we do not want to stifle creativity, and I think especially perhaps those who are receiving grants for writing purposes, the fact is that you just do not know what the next chapter might be or what your poem might be that you are going to be creating.

I do not think that we really want to have the decrease of creativity even under those reforms, so I hope, and I say I hope here, that in the administration of this new act that the chairman of the Endowment uses good common sense in recognizing this creativity and how difficult it is to prescribe or anticipate.

Mr. Speaker, I see the chairman, the gentleman from Montana [Mr. WILLIAMS], the cosponsor of our amendment, on the floor.

Mr. Speaker, I do yield to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, I thank the ranking member of our committee for his statement, and I concur in it.

I am hopeful that the chairman of the Endowment will understand our joint intention and the intention of our committee that the Chair of the Endowment exercise flexibility in determining the requirements with regard to the detailed interim reports, because as the gentleman in the well has noted, it is not the purpose of our reforms of the NEA to so create a bureaucracy that stifles creativity. We are hopeful that the chairman will exercise all the flexibility we believe the act provides him.

Mr. COLEMAN of Missouri. Mr. Speaker, I thank the chairman. I think flexibility and a commonsense approach, recognizing the true intent of the Congress and the fact that this new reauthorized agency has a new road to go down with the new law, and I again thank the people on the conference committee for adopting the House position on this important matter.

Mr. REGULA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just add to that for those who are interested in the NEA, the House language is much stronger than the Senate language and, therefore, I think in prevailing with the House position, which is the Williams-Coleman bill, we have a stronger set of guidelines for the National Endowment for the Arts, certainly much more so than we would have had with the Senate language.

I am pleased that we were able to get the House language.

Mr. Speaker, I yield 30 seconds to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I ask unanimous consent to strike from the bill the two unauthorized specially designated metal casting centers referred to in amendment No. 158 previously noted.

Mr. AUCOIN. Mr. Speaker, I object.

Mr. YATES. Mr. Speaker, I object.

The SPEAKER pro tempore. The Chair does not entertain that request. The Chair does not recognize for that purpose anyway.

The gentleman is out of order.

Mr. SYNAR. Mr. Chairman, this is a sad day for both the taxpayers and the environment. It is an embarrassment that the conference report on Interior appropriations does not contain an increase in the grazing fees for domestic livestock on public lands.

I am not alone in expressing my disappointment. When the House passed the Synar-Darden Grazing Fee Amendment on October 15, 1990, by a vote of 251 to 155, this body took an enormously important step toward improving management of 250 million acres of Federal rangelands administered by the Department of the Interior's Bureau of Land Management and the Department of Agriculture's U.S. Forest Service.

And, remarkably there has been an outpouring of support for this amendment in the States most affected by the Synar-Darden amendment. Accordingly, I have concluded that those who defend cattle rancher welfare are out of step with their own constituents and the taxpayers of this Nation, as well as a majority of this House.

Equally importantly, let us not forget that the Synar-Darden amendment would have made the taxpayers more than $325 million over the next 5 fiscal years.

Today, more than 55 years after passage of the Taylor Grazing Act, much of the public rangeland is still in unsatisfactory condition. In fact, the Bureau of Land Management's own reports show that 60 percent of the public rangeland will continue to be in fair to poor condition well into the next century.

Only 2 percent of the 1.6 million cattle producers in the country graze their cattle on Bureau of Land Management and Forest Service land. Unfortunately, the conferees were unwilling to even reduce $100 million of cattle rancher welfare each year..

Last year, many grazers in the 16 Western States—including 250 million acres of Federal rangelands—paid a fee of only $1.81 per animal unit month or AUM. This fee is far below the market rate and contrasts with fees ranging as high as $18 per AUM on other Federal lands, State lands, and private lands. This conference report does nothing to correct this obvious deficiency.

Ironically, Mr. Chairman, even though the Bureau of Land Management will charge a fee of $8.70 per AUM as the "value of forage consumed" as a result of trespass on public land—this conference report does nothing to increase the below market rates for legal access to our public lands.

It costs the taxpayer the same to feed every cow on public rangelands, whether it is trespassing or not. Cost has little to do with this argument. The culprit here is an outdated and unjustifiable subsidy for a tiny fraction of the U.S. livestock industry.

Unfortunately, this conference report perpetuates this grave injustice to the taxpayer and the environment.

The simple truth is: A small number of grazing permit holders are feeding off the Federal Treasury. They are chewing through at least $100 million of taxpayer money each year. And, the below-cost feeding frenzy has now been endorsed by this conference report.

As chairman of the Subcommittee on Environment, Energy and Natural Resources, I have had Federal grazing practices under review for several years. Our review has led me to conclude that grazing on our public lands is producing an ecological and fiscal disaster.

On October 15, 1990, after trying for 5 years to get a vote of the merits of this question, we succeeded. The House agreed: It is time for change. Nevertheless, when presented with an opportunity to charge welfare cattle ranchers their fair share, the majority of the conference committee voted for subsidies at the cost of the taxpayers and the environment.

Here is what was lost: Over the past 5 fiscal years, the taxpayers have lost more than $500 million, because grazing fees on their public rangelands were lower than fair market value.

During fiscal year 1991 as much as $150 million will be lost, because the conference report excludes the Synar-Darden Grazing Fees Amendment.

Instead of reducing the grazing subsidy by more than $325 million over the next 3 fiscal years and using these savings to fully fund Federal range improvement activities on a pay as you go basis, or to reduce the Federal deficit, this conference report continues cattle rancher welfare and endorses a fiscal and ecological disaster on our public lands.

As a direct result of this conference report, the Government will continue to encourage overgrazing of our public lands; the costs of the grazing program will continue to exceed receipts; and the taxpayer will continue to subsidize livestock that represents only 2 percent of total U.S. meat production.

To my colleagues, let me say that a vote for the Synar-Darden amendment was good for the taxpayers and the environment. This conference report is a grave disappointment. But, we are more determined than ever to reduce this outrageous subsidy.

We will be back again and again until we stop cattle rancher welfare once and for all. The winds of change are blowing in the Western States. The days of unbridled and unjustified resource subsidies are past.

In closing, I want to thank my colleagues who supported the Synar-Darden Grazing Fee Amendment, we lost this skirmish but we will win the battle.

And finally, let me pay tribute the chairman and ranking member of the Interior Appropriations Subcommittee. SID YATES and RALPH REGULA are two of the finest gentlemen and best legislators that we could ever hope to serve with. Their efforts in crafting this measure have been wise and skillful. I want to personally thank them for their friendship and support. Moreover, I want to declare that you richly deserve the praise and recognition of

everyone seeking solutions that are good for both the taxpayers and the environment.

Mr. PANETTA. Mr. Speaker, I rise in strong support of the conference report to H.R. 5769, the Department of the Interior and related agencies. In particular, I rise in support of the provisions of the bill addressing the issue of oil and gas development off the California coast and elsewhere.

As my colleagues know, the bill contains moratorium provisions in accordance with the President's OCS policy statement of June 26, 1990. The President announced in June his support for a moratorium on all new leasing off the coasts of California, Massachusetts, southwest Florida, Oregon, and Washington until after the year 2000, with the exception of an area in southern California which may be leased in 1996. This announcement was made in conjunction with findings submitted to the President by the President's Outer Continental Shelf [OCS] Leasing and Development Task Force which was created to resolve environmental concerns with lease sales 91 and 95 in California and 116 part II in southwest Florida.

In accordance with the President's policy, the committee has protected these areas from offshore leasing and related activities in its fiscal year 1991 bill.

As my colleagues know, I have led the fight in Congress in opposition to the drill-at-any cost mentality that has guided our Nation's OCS Program since former Secretary of the Interior James Watt opened the entire 1.4 billion acres of the Nation's OCS for development. It was this action by the Secretary, and its flagrant disregard for the mandate of the OCS Lands Act Amendments of 1978 which calls for a balance between resource protection and exploitation, that led to the Congress' first enactment of moratorium for the OCS Program that same year.

Since that time, I, with the support of the California delegation, have been engaged in 10 years of guerrilla warfare with the administration over this issue. Until the administration provided for long-term protection of sensitive areas, we were determined to prevent the exposure of our coastline to the threat of offshore development.

The net result of this warfare has been 9 years of moratoria. Only through the invaluable support of Members like Chairman SIDNEY YATES have we been able to obtain these stopgap measures so desperately needed to provide interim protection for our coasts.

These provisions worked to keep the last administration's unwise offshore leasing program in check, and provided us with the leverage needed to bring about this long-term agreement with the administration with regard to the protection of the California coastline.

As a leader in this fight, it is a victory for me to finally see Congress and the President in agreement that the aggressive areawide leasing programs from the Watt era are an irresponsible and unacceptable mismanagement of our Nation's resources and must be abandoned.

Unfortunately, there are those in Congress who have used the crisis in the Middle East as justification for calling upon the President to toss aside his carefully considered decision and open up the sensitive coastal areas he has protected for development. I commend the President for spurning these pleas and standing firm in his decision.

The fact remains that wholesale development of sensitive coastal areas containing only a few days' worth of oil would do nothing to advance the security interests of our Nation on an immediate basis or over the long term. The best way to truly protect our Nation's security interests is to break our dependency on Middle East oil through the enactment of tough energy conservation legislation as part of a long-term energy strategy for our Nation.

As such, I would also like to commend the House conferees for standing firm in conference and insisting on the House position on moratoria for all of the sensitive coastal areas protected in the House bill. I know it was a difficult fight, and I am sure that I speak for all of the delegations protected by the moratoria when I say we are truly thankful for your efforts.

While this bill provides us with critically needed interim protection, the battle is not over yet. The issue of permanent protection for sensitive coastal areas is yet to be resolved, and Congress still has the responsibility to enact legislative proposals to ensure that the President's OCS decision is strictly adhered to in future years and by future administrations. This bill takes the important first step in this process by protecting the areas set aside by the President for the next fiscal year and I urge my colleagues to help in this effort by offering their strong support for this bill.

Mr. CONTE. Mr. Speaker, I rise in support of the conference report on the Interior appropriations bill for fiscal year 1991.

This conference report, Mr. Speaker, is truly a work of art. Created over the past several months by the meticulous and exacting brush strokes of a great patron of the arts, SID YATES, the distinguished chairman of the subcommittee. He was ably assisted in this creation by the equally creative ranking member, my friend, RALPH REGULA, who served the minority with distinction. Both of these legislative artists have brought to the House a conference report that is reasonable. One that is fair, under budget responsive to the positions taken by the House.

The conference agreement provides $12.7 billion in new budget authority for the agencies and programs funded in this bill. That amount is above the President's budget and above the House passed level. But I should emphasize again that the agreement is under budget—the total amount provided in this bill is below the 302–B allocation for the Interior subcommittee.

Notwithstanding these increases, I support this agreement because it provides the resources necessary to take care of some of this Nation's great and irreplaceable treasures. The National Park Service oversees spectacular natural monuments like the Grand Canyon, the Everglades, Yellowstone, and Yosemite, just to name a few. The Fish and Wildlife Service cares for our living resources and manages over 450 wildlife refuges throughout the country. The Smithsonian, an institution I know well as a member of the Board of Regents, is literally our Nation's attic—maintaining a national collection of our history, art and culture. It's programs like these that justify the expenditures recommended in this agreement.

This agreement also includes a major increase for one of the few programs in this bill designed to meet human needs of low-income people. The Department of Energy Weatherization Program provides grants to low-income households so that the energy efficiency of their homes can be increased, thereby reducing burdensome energy bills.

With the onslaught of winter and in the face of energy prices that are already through the roof, low income families are in desperate need of assistance in reducing energy costs. On average, the weatherization of a low-income household saves about 15 to 20 percent of a family's energy bill on an annual basis. And that amounts to an entire LIHEAP payment.

In addition, the oil overcharge moneys, used in the past to supplement the Federal effort, are now drying up. During the next fiscal year, the funds available from this source will be reduced by 40 percent.

This conference agreement also includes a major structural reform of the National Endowment for the Arts. The conferees accepted the so-called Williams-Coleman authorization bill that was added to the Interior bill on the floor of the House. Although I voted for the amendment when it passed the House, I felt as the gentleman from Illinois [Mr. YATES] that the conferees should have accepted Senate amendment numbered 191, added in the Senate by Senator HATCH.

The Hatch amendment made significant structural reforms in the panel review procedures, and it included a workable mechanism for excluding art not worthy of Federal funding. On the other hand, the Williams-Coleman provision would require the NEA chairman to ensure that grants are made "taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public." Now that sounds like apple pie and motherhood, but in reality the NEA will have a difficult, if not impossible, time implementing this provision in a constitutional manner. "Decency" is not a word easily definable in legal terms. And furthermore, the potential for abuse and misuse of this language is real and the NEA should be careful to interpret the language fairly and narrowly.

Unfortunately, a majority of the conferees did not agree with the position taken by Mr. YATES and myself. In any case, the compromise accepted in the agreement is, by far, more acceptable than the approach offered by others who proposed to strap unconstitutional restrictions on the Endowment.

The NEA, over the past 25 years, has fostered the development of arts throughout this country. Over 85,000 grants have been awarded, and detractors of the Endowment are using just a handful of controversial projects to destroy the work of a quarter-century.

Mr. Speaker, I urge the House to accept this conference agreement. It is a compromise, but it's fair. The agreement is within the budget allocation and it provides the resources necessary to carry out important Fed-

eral programs. Vote yes on the conference report.

□ 2140

Mr. REGULA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. YATES. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DANNEMEYER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 298, nays 43, not voting 91, as follows:

[Roll No. 532]

YEAS—298

Alexander	de la Garza	Henry
Anderson	DeFazio	Herger
Andrews	Dellums	Hertel
Annunzio	DeWine	Hiler
Anthony	Dickinson	Hoagland
Applegate	Dicks	Hochbrueckner
Atkins	Donnelly	Hopkins
AuCoin	Dorgan (ND)	Houghton
Barnard	Douglas	Hoyer
Bateman	Downey	Hubbard
Beilenson	Durbin	Hughes
Bennett	Dwyer	Hunter
Bentley	Dymally	Hutto
Bereuter	Eckart	Hyde
Berman	Emerson	Ireland
Bevill	Engel	Jacobs
Bilbray	English	James
Bilirakis	Erdreich	Johnson (CT)
Bliley	Espy	Johnson (SD)
Boehlert	Evans	Jones (GA)
Boggs	Fascell	Jones (NC)
Bonior	Fawell	Jontz
Borski	Fazio	Kanjorski
Brooks	Feighan	Kaptur
Browder	Fish	Kasich
Brown (CA)	Foglietta	Kastenmeier
Bruce	Ford (TN)	Kennedy
Bryant	Frank	Kennelly
Buechner	Frost	Kildee
Bustamante	Gallegly	Kolbe
Byron	Gallo	Kolter
Campbell (CA)	Gaydos	Kostmayer
Campbell (CO)	Gejdenson	Kyl
Cardin	Gephardt	Lancaster
Carper	Geren	Lantos
Carr	Gillmor	Leach (IA)
Chandler	Gilman	Lehman (CA)
Chapman	Gonzalez	Lehman (FL)
Clarke	Goss	Lent
Clement	Grandy	Levin (MI)
Clinger	Grant	Levine (CA)
Coleman (MO)	Gray	Lewis (CA)
Coleman (TX)	Green	Lewis (GA)
Collins	Hall (TX)	Lightfoot
Conyers	Hamilton	Livingston
Cooper	Hammerschmidt	Long
Costello	Hansen	Lowery (CA)
Coughlin	Harris	Lowey (NY)
Courter	Hastert	Machtley
Coyne	Hatcher	Manton
Craig	Hayes (IL)	Markey
Darden	Hefley	Martin (NY)
Davis	Hefner	Martinez
Mavroules	Perkins	Spratt
Mazzoli	Pickle	Staggers
McCandless	Porter	Stallings
McCloskey	Posha-d	Stangeland
McCollum	Price	Stark
McCrery	Rahall	Stearns
McCurdy	Rangel	Stenholm
McDermott	Ravenel	Stokes
McHugh	Ray	Studds
McMillan (NC)	Regula	Sundquist
McMillen (MD)	Rhodes	Swift
McNulty	Richardson	Synar
Meyers	Ridge	Tanner
Mfume	Rinaldo	Tauke
Michel	Ritter	Tauzin
Miller (CA)	Roberts	Thomas (CA)
Miller (WA)	Roe	Thomas (WY)
Mineta	Rogers	Torres
Moakley	Ros-Lehtinen	Torricelli
Molinari	Roth	Traficant
Mollohan	Roybal	Udall
Montgomery	Sabo	Unsoeld
Moody	Sawyer	Upton
Morella	Saxton	Vander Jagt
Morrison (WA)	Schaefer	Vento
Murtha	Scheuer	Visclosky
Myers	Schiff	Volkmer
Nagle	Schroeder	Vucanovich
Natcher	Schumer	Washington
Neal (NC)	Serrano	Waxman
Oakar	Shays	Weiss
Oberstar	Sisisky	Weldon
Ortiz	Skaggs	Wheat
Owens (NY)	Skeen	Whittaker
Owens (UT)	Slattery	Whitten
Oxley	Slaughter (NY)	Williams
Packard	Slaughter (VA)	Wilson
Pallone	Smith (FL)	Wise
Panetta	Smith (IA)	Wolf
Parker	Smith (NE)	Wolpe
Parris	Smith (NJ)	Wyden
Pashayan	Smith (TX)	Wylie
Patterson	Smith, Robert (OR)	Yates
Payne (NJ)	Snowe	Yatron
Payne (VA)	Solarz	Young (AK)
Pease	Spence	Young (FL)
Pelosi		

NAYS—43

Archer	Duncan	Penny
Armey	Dyson	Petri
Baker	Fields	Pickett
Ballenger	Gekas	Rohrabacher
Bartlett	Goodling	Sarpalius
Brown (CO)	Hancock	Sensenbrenner
Bunning	Inhofe	Shumway
Coble	Lagomarsino	Shuster
Combest	Lewis (FL)	Smith, Robert (NH)
Condit	Lloyd	Solomon
Cox	Marlenee	Stump
Dannemeyer	Miller (OH)	Taylor
DeLay	Moorhead	Walker
Dornan (CA)	Nielson	
Dreier	Paxon	

NOT VOTING—91

Ackerman	Gunderson	Quillen
Aspin	Hall (OH)	Robinson
Barton	Hawkins	Rose
Bates	Hayes (LA)	Rostenkowski
Bosco	Holloway	Roukema
Boucher	Horton	Rowland (CT)
Boxer	Huckaby	Rowland (GA)
Brennan	Jenkins	Russo
Broomfield	Johnston	Saiki
Burton	Kleczka	Sangmeister
Callahan	LaFalce	Savage
Clay	Laughlin	Schneider
Conte	Leath (TX)	Schuette
Crane	Lipinski	Schulze
Crockett	Luken, Thomas	Sharp
Derrick	Madigan	Shaw
Dingell	Martin (IL)	Sikorski
Dixon	Matsui	Skelton
Early	McDade	Smith (VT)
Edwards (CA)	McEwen	Smith, Denny (OR)
Edwards (OK)	McGrath	Tallon
Flake	Mink	Thomas (GA)
Flippo	Morrison (CT)	Towns
Ford (MI)	Mrazek	Traxler
Frenzel	Murphy	Valentine
Gibbons	Neal (MA)	Walgren
Gingrich	Nelson	Watkins
Glickman	Nowak	Weber
Gordon	Obey	
Gradison	Olin	
Guarini	Pursell	

□ 2157

Mr. DYSON changed his vote from "yea" to "nay."

Mr. SMITH of Texas and Mr. LOWERY of California changed their vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MAKING IN ORDER CONSIDERATION OF AND WAIVING POINTS OF ORDER AGAINST HOUSE JOINT RESOLUTION 687, FURTHER CONTINUING APPROPRIATIONS, 1991

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that it shall be in order to consider in the House, the Joint Resolution (H.J. Res. 687) making further continuing appropriations for fiscal year 1991; that the joint resolution be debatable for not to exceed 1 hour, to be equally divided and controlled by the chairman and the gentleman from Ohio [Mr. REGULA]; that all points of order against the joint resolution and against its consideration be waived; and that the previous question shall be considered as ordered on the joint resolution to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

FURTHER CONTINUING APPROPRIATIONS, 1991

Mr. WHITTEN. Mr. Speaker, pursuant to the unanimous-consent request just adopted, I call up the joint resolution (H.J. Res. 687) making further continuing appropriations for the fiscal year 1991, and for other purposes, and ask for its consideration in the House.

The Clerk read the joint resolution, as follows:

H.J. RES. 687

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for the fiscal year 1991, and for other purposes, namely:

SEC. 101. (a) Such amounts as may be necessary for appropriations, funds, or other authority made available in the following appropriations Acts:

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991;

The Department of Defense Appropriations Act, 1991, notwithstanding section 502(a)(1) of the National Security Act of 1947;

The District of Columbia Appropriations Act, 1991;

The Energy and Water Development Appropriations Act, 1991;

The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, notwithstanding section 10 of Public Law 91-672 and section 15(a) of the State Department Basic Authorities Act of 1956;

The Department of Interior and Related Agencies Appropriations Act, 1991;

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991;

The Legislative Branch Appropriations Act, 1991;

The Military Construction Appropriations Act, 1991;

The Rural Development, Agriculture, and Related Agencies Appropriations Act, 1991;

The Department of Transportation and Related Agencies Appropriations Act, 1991;

The Treasury, Postal Service, and General Government Appropriations Act, 1991; and

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991; to the extent and in the manner reflected in the final action of the two Houses of Congress on the conference report and amendments in disagreement for each Act listed in this section and to the extent and in the manner provided for in the accompanying joint explanatory statements of the Committees of Conference.

(b) Appropriations and funds made available and authority granted pursuant to this joint resolution shall be available until (A) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (B) November 5, 1990, whichever first occurs.

SEC.102. Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 103. Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 104. Appropriations and funds made available by or authority granted pursuant to this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

SEC. 105. (a) Any order on sequestration for fiscal year 1991 issued before, on, or after the date of enactment of this joint resolution pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is suspended and no action shall be taken to implement any such order.

(b) Subsection (a) shall cause to be effective on the date set forth in section 101(b)(B).

SEC. 106. TEMPORARY INCREASE IN PUBLIC DEBT LIMIT.

During the period beginning on the date of the enactment of this joint resolution and until November 5, 1990, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased to $3,230,000,000,000.

The SPEAKER pro tempore. Pursuant to the earlier order of the House, the gentleman from Mississippi [Mr. WHITTEN] will be recognized for 30 minutes, and the gentleman from Ohio [Mr. REGULA] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Mississippi [Mr. WHITTEN].

GENERAL LEAVE

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on House Joint Resolution 687, and that I may include tabular and extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

□ 2200

Mr. WHITTEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, I thank the gentleman for yielding so that I may interrogate briefly one of the distinguished chairmen of the Committee on Appropriations, the gentleman from Alabama [Mr. BEVILL].

Mr. Chairman, I read with interest the language included in the conference report on H.R. 5019 regarding the purchase of ultrahigh performance computer machines by the Department of Energy. As one of the principal authors of the Competition in Contracting Act, my interest in ensuring competition in the Federal marketplace is second to none, especially in the field of computers.

My question is this; certain ultrahigh performance computer requirements of the Department of Energy can be met only by American products for which there is currently no competition. Will these products continue to be able to be purchased by DOE under the exception provided for this situation by the Competition in Contracting Act (10 U.S.C. 2304(c)(1)) and (41 U.S.C. 253(c)(1)).

Mr. BEVILL. Mr. Speaker, will the gentleman yield.

Mr. BROOKS. I yield to the gentleman from Alabama.

Mr. BEVILL. I thank the gentleman for yielding.

Mr. Speaker, the answer is yes, the gentleman is correct.

Mr. Speaker, I would like to commend the gentleman from Texas for his tireless efforts to see that there is competition.

Mr. BROOKS. I thank the chairman of the subcommittee.

Mr. Speaker, I am satisfied that the requirements and safeguards of our current procurement system are not disturbed by that conference report language.

Mr. WHITTEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, once again we are called on to pass a continuing resolution. House Joint Resolution 687 extends until the 5th of November, with a provision to suspend sequestration for that period as well as providing for a new ceiling on the national debt. This debt matter is done at the request of Treasury Secretary Brady and with the concurrence of the Ways and Means Committee.

With this continuing resolution, we set a new record, six continuing resolutions presented to the President in the same month, made necessary because of a difference of opinion with the same general end in mind.

Mr. Speaker, each time, in the absence of the continuing resolution, the whole government would have come to a halt. In fact, it did one time. A day was lost at a cost to the government of $1,500,000.

Again, I want to point out the national financial situation is not the fault of our Committee on Appropriations. Since 1945, the total of our bills has been $173 billion below the requests of the President.

This resolution is made necessary because it will take several days to get our latest appropriations bills through the technical enrollment process and to the President for signature.

We must be sure that the Government does not close down because of this necessary delay in getting the various appropriations bills and the reconciliation bill to the President for his signature.

Mr. Speaker, I congratulate our leadership—you, the majority leader, the minority leader, the minority whip, and others in the Senate for working out a settlement of the budget with the President.

In connection with the reconciliation bill (H.R. 5835), many Members of the House preferred the legislation as it passed "in the House of Representatives." That was not to be in conference.

Mr. Speaker, I want to thank SILVIO CONTE, the ranking Republican on the Appropriations Committee, for his support throughout this very difficult year. Without his help the appropriations process for fiscal year 1991 would have been even more difficult than it has been.

Mr. Speaker, this continuing resolution is necessary to hold the line until the bills conforming to the Reconciliation Act take over. I urge it be adopted.

Mr. Speaker, I reserve the balance of my time.

Mr. REGULA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the chairman of the Committee on Appropriations has explained this fully. I do not think there is any reason to say anything further other than the fact that this is a bridge to take care of the temporary needs until the bills are assigned.

The minority has no opposition. I urge a vote in favor of the joint resolution.

Mr. WHITTEN. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. PICKLE], a member of the Committee on Ways and Means.

Mr. PICKLE. I thank the gentleman for yielding.

Mr. Speaker, the Committee on Ways and Means concurs in this request. The Secretary of the Treasury has written to our chairman asking that this be done. We are in concurrence with this.

Mr. REGULA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WHITTEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to the earlier order of the House, the previous question is ordered.

The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DANNEMEYER. Mr. Speaker, I object to the vote on the ground a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 283, nays 49, not voting 100, as follows:

[Roll No. 533]

YEAS—283

Alexander	Bliley	Clement
Anderson	Boehlert	Clinger
Andrews	Boggs	Coble
Annunzio	Bonior	Coleman (MO)
Anthony	Borski	Coleman (TX)
Applegate	Brooks	Collins
Atkins	Browder	Combest
AuCoin	Brown (CA)	Conyers
Ballenger	Bruce	Cooper
Barnard	Bryant	Costello
Bartlett	Buechner	Coughlin
Bateman	Bustamante	Courter
Beilenson	Campbell (CA)	Coyne
Bennett	Campbell (CO)	Darden
Bentley	Cardin	Davis
Bereuter	Carper	de la Garza
Berman	Carr	DeFazio
Bevill	Chandler	Dellums
Bilbray	Chapman	DeWine
Bilirakis	Clarke	Dickinson
Donnelly	Lewis (FL)	Ros-Lehtinen
Dorgan (ND)	Lewis (GA)	Roth
Downey	Livingston	Roybal
Durbin	Lloyd	Sabo
Dwyer	Long	Sarpalius
Dymally	Lowery (CA)	Sawyer
Dyson	Lowey (NY)	Saxton
Eckart	Machtley	Schaefer
Engel	Manton	Scheuer
English	Markey	Schiff
Erdreich	Martin (NY)	Schumer
Espy	Martinez	Serrano
Evans	Mazzoli	Shays
Fascell	McCloskey	Shuster
Fazio	McCollum	Sisisky
Feighan	McCrery	Skaggs
Fish	McCurdy	Skeen
Ford (TN)	McDermott	Slattery
Frank	McHugh	Slaughter (NY)
Frost	McMillan (NC)	Slaughter (VA)
Gallegly	McMillen (MD)	Smith (FL)
Gallo	McNulty	Smith (IA)
Gaydos	Meyers	Smith (NE)
Gejdenson	Mfume	Smith (NJ)
Gekas	Michel	Smith (TX)
Gephardt	Miller (CA)	Smith, Robert (OR)
Geren	Miller (OH)	Snowe
Gonzalez	Miller (WA)	Solarz
Goss	Mineta	Spence
Grandy	Moakley	Spratt
Grant	Molinari	Staggers
Green	Mollohan	Stallings
Hamilton	Montgomery	Stangeland
Harris	Moody	Stark
Hatcher	Morella	Stearns
Hayes (IL)	Morrison (WA)	Stenholm
Hefner	Murtha	Stokes
Herger	Myers	Studds
Hertel	Nagle	Sundquist
Hiler	Natcher	Swift
Hoagland	Neal (NC)	Synar
Hochbrueckner	Oakar	Tanner
Hopkins	Oberstar	Tauke
Houghton	Obey	Tauzin
Hoyer	Ortiz	Taylor
Hubbard	Owens (UT)	Thomas (WY)
Hughes	Oxley	Torres
Hunter	Packard	Torricelli
Hutto	Pallone	Traficant
Hyde	Panetta	Udall
Ireland	Parker	Unsoeld
Jacobs	Parris	Valentine
James	Pashayan	Vander Jagt
Johnson (SD)	Patterson	Vento
Jones (GA)	Payne (NJ)	Visclosky
Jones (NC)	Payne (VA)	Volkmer
Jontz	Pease	Vucanovich
Kanjorski	Pelosi	Washington
Kaptur	Perkins	Waxman
Kasich	Pickett	Weiss
Kastenmeier	Pickle	Wheat
Kennedy	Poshard	Whittaker
Kennelly	Price	Whitten
Kildee	Rahall	Williams
Kolbe	Ravenel	Wise
Kolter	Ray	Wolf
Kostmayer	Regula	Wolpe
Lagomarsino	Rhodes	Wyden
Lancaster	Richardson	Wylie
Leach (IA)	Ridge	Yates
Lehman (CA)	Rinaldo	Yatron
Lent	Ritter	Young (AK)
Levin (MI)	Roberts	Young (FL)
Levine (CA)	Roe	
Lewis (CA)	Rogers	

NAYS—49

Archer	Frenzel	Nielson
Armey	Gilman	Paxon
Brown (CO)	Goodling	Penny
Bunning	Hall (TX)	Petri
Byron	Hammerschmidt	Porter
Condit	Hancock	Rohrabacher
Cox	Hansen	Sensenbrenner
Craig	Hastert	Shumway
Dannemeyer	Hefley	Smith, Robert (NH)
DeLay	Henry	Solomon
Dornan (CA)	Inhofe	Stump
Douglas	Johnson (CT)	Thomas (CA)
Dreier	Kyl	Upton
Duncan	Lightfoot	Walker
Emerson	Marlenee	Weldon
Fawell	McCandless	
Fields	Moorhead	

NOT VOTING—100

Ackerman	Guarini	Pursell
Aspin	Gunderson	Quillen
Baker	Hall (OH)	Rangel
Barton	Hawkins	Robinson
Bates	Hayes (LA)	Rose
Bosco	Holloway	Rostenkowski
Boucher	Horton	Roukema
Boxer	Huckaby	Rowland (CT)
Brennan	Jenkins	Rowland (GA)
Broomfield	Johnston	Russo
Burton	Kleczka	Saiki
Callahan	LaFalce	Sangmeister
Clay	Lantos	Savage
Conte	Laughlin	Schneider
Crane	Leath (TX)	Schroeder
Crockett	Lehman (FL)	Schuette
Derrick	Lipinski	Schulze
Dicks	Luken, Thomas	Sharp
Dingell	Madigan	Shaw
Dixon	Martin (IL)	Sikorski
Early	Matsui	Skelton
Edwards (CA)	Mavroules	Smith (VT)
Edwards (OK)	McDade	Smith, Denny (OR)
Flake	McEwen	Tallon
Flippo	McGrath	Thomas (GA)
Foglietta	Mink	Towns
Ford (MI)	Morrison (CT)	Traxler
Gibbons	Mrazek	Walgren
Gillmor	Murphy	Walsh
Gingrich	Neal (MA)	Watkins
Glickman	Nelson	Weber
Gordon	Nowak	Wilson
Gradison	Olin	
Gray	Owens (NY)	

□ 2223

Mr. THOMAS of California and Mr. LIGHTFOOT changed their vote from "yea" to "nay."

So the joint resolution was passsed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REPORT OF COMMITTEE TO INFORM THE PRESIDENT

The SPEAKER. The Chair will receive a message.

Mr. GEPHARDT. Mr. Speaker, the Committee to Notify the President is ready to report.

The SPEAKER. The Chair recognizes the majority leader and the Republican leader.

Mr. GEPHARDT. Mr. Speaker, the minority leader and your majority leader spoke to the President about an hour and a half ago. We informed him that we have finished our business and that we have an adjournment resolution that has been passed. We talked about the budget vote that occurred in the House this morning at 7 a.m., and we also talked about other important pieces of legislation that have been passed this year. Mr. Speaker, we talked about the clean air bill, the child care bill, the oilspill legislation, and a number of other pieces of legislation that have made this a very, very successful session of the Congress.

The President stated that he was pleased with all of the work that had been done, and, of course, especially congratulated the minority leader for his leadership and cooperation and help in passing the important budget legislation last night.

Mr. Speaker, I now turn to the minority leader.

Mr. MICHEL. Thank you. May I simply add that the kudo is returned, because the very first thing the President said was to express his sincere appreciation to the distinguished majority leader for the manner in which he held those arduously long negotiations on the budget and handled it with aplomb and a great deal of patience over a long period of time. He expressed his sincere appreciation to Members on both sides of the aisle for the many, many long hours that we have been in session during this Congress, far beyond what would normally be expected. He made no predictions about what would happen within the next 10 days or so, and expected obviously to see so many around later on for the annual Christmas party, whenever it is being held.

EXPRESSING APPRECIATION TO THE HONORABLE THOMAS S. FOLEY, SPEAKER OF THE HOUSE OF REPRESENTATIVES

Mr. MICHEL. Mr. Speaker, I offer a resolution (H. Res. 545) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 545

Resolved, That the thanks of the House are presented to the Honorable Thomas S. Foley, Speaker of the House of Representatives, for the able and impartial manner in which he has presided over its deliberations and performed the arduous duties of the Chair during his tenure as Speaker.

Mr. MICHEL. Mr. Speaker, obviously this resolution is represented by the minority leader, but I think on behalf of every Member of this House, both Republican and Democrat, we properly and appropriately express to you our sincere appreciation for the manner in which you have acquitted yourself, presiding as the presiding officer and Speaker of the House of Representatives.

You have dealt with us fairly and squarely, yes, even when it comes to audible votes. If we had the ayes to carry the day, you acknowledged it on our side. We appreciate that. We do not get much around here as members of the minority, but you have done your best to give us whatever breaks come to us from time to time. We are most appreciative of that, and I think we all want to thank you sincerely, from the bottom of our hearts.

The SPEAKER. The Chair thanks the Republican leader and Members.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 2230

SALUTE TO SPEAKER FOLEY

Mr. GEPHARDT. Mr. Speaker, on behalf of all of the Democratic Members, we salute you on the tremendous work you have done, and we all add our voice to the minority leader in commending you for a very successful session, and tell you that all of the people on this side of the aisle are obviously very proud of the work you have done and of you.

The SPEAKER. I thank the gentleman.

AUTHORIZING PRINTING OF REVISED EDITION OF RULES AND MANUAL OF HOUSE OF REPRESENTATIVES FOR THE 102D CONGRESS

Mr. GEPHARDT. Mr. Speaker, I offer a resolution (H. Res. 546), and I ask unanimous consent for its immediate consideration.

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 546

Resolved, That a revised edition of the Rules and Manual of the House of Representatives for the One Hundred Second Congress be printed as a House document, and that two thousand additional copies shall be printed and bound for the use of the House of Representatives, of which seven hundred copies shall be bound in leather with thumb index and delivered as may be directed by the Parliamentarian of the House for distribution to officers and Members of Congress.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING THE SPEAKER AND THE MINORITY LEADER TO ACCEPT RESIGNATIONS, APPOINT COMMISSIONS, BOARDS, AND COMMITTEES NOTWITHSTANDING SINE DIE ADJOURNMENT

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that notwithstanding the sine die adjournment of the 2d session of the 101st Congress, the Speaker be authorized to accept resignations, and to appoint commissions, boards, and committees authorized by law or by the House, and that the minority leader be authorized to accept resignations and to make appointments authorized by law or by the House.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

GRANTING MEMBERS OF THE HOUSE PRIVILEGE TO EXTEND AND REVISE REMARKS IN CONGRESSIONAL RECORD UNTIL LAST EDITION IS PUBLISHED

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that all Members of the House shall have the privilege, until the last edition authorized by the Joint Committee on Printing is published, to extend and revise their own remarks in the CONGRESSIONAL RECORD on more than one subject, if they so desire, and may also include therein such short quotations as may be necessary to explain or complete such extensions of remarks. But this order shall not apply to any subject matter which may have occurred, or to any speech delivered subsequent to the adjournment of Congress.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

AUTHORIZING CHAIRMAN AND RANKING MINORITY MEMBER OF EACH STANDING COMMITTEE AND SUBCOMMITTEE TO EXTEND REMARKS IN RECORD

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that the chairman and ranking minority member of each standing committee and each subcommittee be permitted to extend their remarks in the RECORD, up to and including the RECORD's last publication, and to include a summary of the work of that committee or subcommittee.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

AUTHORIZING PRINTING OF REPORTS FILED WITH CLERK FOLLOWING SINE DIE ADJOURNMENT

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that following adjournment sine die, committees authorized to conduct investigations may be permitted to file reports with the clerk; and that such reports, and reports on the activities of committees pursuant to clause 1(D), rule XI, may be printed by the Clerk as reports of the 101st Congress.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

DESIGNATION OF HONORABLE STENY HOYER TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS THROUGH NOVEMBER 9, 1990

The SPEAKER laid before the House the following communication from the Speaker:

WASHINGTON, DC,
October 27, 1990.

I hereby designate the Honorable STENY H. HOYER to act as Speaker pro tempore and to sign enrolled bills and joint resolutions through November 9, 1990.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

SELECTION OF MEMBERS TO BE ACCREDITED BY PRESIDENT AS ADDITIONAL OFFICIAL ADVISORS TO U.S. DELEGATIONS TO INTERNATIONAL CONFERENCES, MEETINGS AND NEGOTIATIONS SESSIONS RELATING TO TRADE AGREEMENTS

Mr. SPEAKER. Pursuant to the provisions of 19 U.S.C. 2211, the Chair has selected the following members of the Committee on Energy and Commerce to be accredited by the President as additional official advisers to the U.S. delegations to international conferences, meetings, and negotiation sessions relating to trade agreements on the part of the House:

Mr. MARKEY of Massachusetts;
Mr. WALGREN of Pennsylvania; and
Mr. LENT of New York.

AUTHORIZING MINTING OF SILVER PROOF COIN SETS

(Ms. PELOSI asked and was given permission to address the House for one minute, and to revise and extend her remarks.)

Ms. PELOSI. I am pleased to acknowledge the contribution of our esteemed colleague Chairman GONZALEZ and Senator BRYAN, in the development of this legislation, which would accomplish several goals.

By tradition, silver coins have been minted at the San Francisco Mint in the great city which I represent. Passage of this bill will help to ensure the economic viability of the San Francisco Mint and will contribute to the economic vitality of the city of San Francisco.

Coin collectors across the country have expressed interest in being able to obtain original 90 percent silver content dimes, quarters, and half dollars. Their purchase of these coins contributes revenue to our Federal Treasury.

The silver to be used in these proof sets would be purchased from the National Defense Strategic Stockpile, which has been used for silver coinage since 1985. Revenues from the sale of the silver from the stockpile are also used to buy needed strategic materials.

I urge my colleagues to support this bill.

Mr. Speaker, I would like to engage the chairman of the Banking, Finance and Urban Affairs Committee in a colloquy.

Mr. Chairman, it is my understanding that the silver proof coin sets authorized in this bill will be minted in San Francisco. Is that correct?

Mr. GONZALEZ. If the gentlewoman will yield, that is correct. The tradition is that silver coins are minted in the San Francisco Mint, and the gentlewoman has my pledge that I certainly shall work with the minority and make sure that the subcommittee ensures that these silver proof coin sets are minted in San Francisco.

I might advise the gentlewoman, the Mint with respect to silver coinage, as well as with everybody else, left its heart and its mint in San Francisco.

Ms. PELOSI. I thank the chairman for his understanding and for his sentiments about San Francisco.

GAS-RELATED ACTIVITIES ACT OF 1990

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and take from the Speaker's table the bill (H.R. 3656) to amend the Securities Exchange Act of 1934 to improve the clearance and settlement of transactions in securities and related instruments, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read as follows:

Senate amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Gas Related Activities Act of 1990".

SEC. 2. RULE OF CONSTRUCTION.

(a) TREATMENT OF CERTAIN ACQUISITIONS INVOLVING GAS COMPANIES OR GAS TRANSPORTATION OR STORAGE.—The acquisition by a registered company of any interest in any natural gas company or of any interest in any company organized to participate in activities involving the transportation or storage of natural gas, shall be deemed, for the purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies.

(b) TREATMENT OF ACQUISITIONS RELATED TO SUPPLY OF NATURAL GAS; COMMISSION DETERMINATION OF CUSTOMER INTEREST.—The acquisition by a registered company of any interest in any company organized to participate in activities (other than those of a natural gas company or involving the transportation or storage of natural gas) related to the supply of natural gas, including exploration, development, production, marketing, manufacture, or other similar activities related to the supply of natural or manufactured gas, shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies, if—

(1) the Commission determines, after notice and opportunity for hearing in which the company proposing the acquisition shall have the burden of proving, that such acquisition is in the interest of consumers each gas utility company of such registered company or consumers of any other subsidiary of such registered company; and

(2) the Commission determines that such acquisition will not be detrimental to the interest of consumers of any such gas utility company or other subsidiary or to the proper functioning of the registered holding company system.

(c) CASE-BY-CASE DECISIONS REQUIRED.—Each such determination under this section shall be made on a case-by-case basis, and not be based on any preset criteria.

(d) SAVINGS PROVISION.—Nothing herein shall be construed to affect the applicability of any other provisions of the Act to the acquisition or retention of any such interest by any such company.

(e) DEFINITIONS.—For purposes of this section—

(1) the term "registered company" means a company registered under the Act solely by reason of direct or indirect ownership of voting securities of one or more gas utility companies, or any subsidiary company of such registered company;

(2) the term "natural gas company" has the meaning given such term under the Natural Gas Act (15 U.S.C. 717(a) et seq.)); and

(3) the term "the Act" means the Public Utility Holding Company Act of 1935.

Amend the title so as to read: "An Act to clarify the application of the functional relationship test to gas utility holding companies registered under the Public Utility Holding Company Act of 1935.".

The SPEAKER. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the Gas Related Activities Act, introduced by Representative Walgren, addresses a critical issue regarding the Public Utility Holding Company Act of 1935 [PUCHA] that affects the three gas systems registered under PUHCA. In order to be effective participants in the gas industry's newly emerged competitive environment while retaining the benefits and protections afforded consumers under the act, these three gas systems must have the same degree of flexibility as exempt or non-PUHCA regulated gas companies in the acquisition of interests in certain ventures related to gas supply. Without this flexibility, the registered gas systems and their customers are, and will continue to be, placed at a disadvantage in the marketplace.

Investment in these activities has recently been constrained by the Securities Exchange Commission [SEC] Staff's interpretation of the "functional relationship" language under section 11(b) of PUHCA. Specifically, the SEC staff has determined that functionally related businesses must be primarily devoted to the benefit of the affiliated distribution companies in the System. In the context of the gas industry, this standard has required that transportation, marketing, storage and other nonutility activities must primarily benefit the affiliated utilities—the local distribution companies [LDC's]. To assure compliance, a preset criterion has been developed by the SEC staff: 50 percent of the revenues of the nonutility venture must come from the affiliated LDS's. The resultant limitations on transactions with nonaffiliates are clearly inconsistent with the flexibility needed if these companies are to serve as effective competitors under State and Federal Energy Regulatory Commission [FERC] policies which require or encourage dealings with nonaffiliates. The limitations on competitive flexibility can also be detrimental to consumers.

SUMMARY OF THE GRAA

The acquisiton or retention of gas-related businesses by the three registered gas systems is currently reviewed under section 11(b)(1) of PUHCA, which in relevant part, provides that:

Each registered holding company . . . shall take such action as the Commission shall find necessary to limit the operation of the holding company system to a single integrated public utility system, and to such other businesses as are *reasonably incidental, or economically necessary or appropriate* to the operations of such integrated public utility system . . .

The GRAA would declare in subsection 2(a) that, for purposes of section 11(b), the acquisition of a registered gas holding company of any interest in a business involved in the transportation or storage of natural gas is deemed to be reasonably incidental or economically necessary or appropriate to the operation of the gas utility system. For other gas supply-related activities, including exploration, production, development or marketing, subsection 2(b) of the GRAA would require the SEC to determine whether the acquisition of businesses participating in these activities by a registered gas company is in the interest of consumers of each gas utility company or of consumers of any subsidiary of such registered company. If the Commission makes this determination, then the acqusition of these activities would be deemed for the purposes of section 11(a)(1) to be reasonably incidental, or economically necessary or appropriate, unless the Commission finds that the acquisition would be detrimental to the interest of consumers or the proper functioning of the registered holding company system. The detrimental to the interest of consumers standard is derived from section 10 of the act. For purposes of this subsection the term "consumers" includes wholesale customers of subsidiaries such as pipelines and industrial customers.

The requirement that the proposed acquisition of an interest in one of these activities be in the interest of customers replaces the current interpretation of 11(b)(1) that the proposed activity must primarily benefit the affiliated LDC's. It is not intended that purely speculative benefits should meet this test, but that the company be able to show a reasonable expectation that an acquisition would be in the interest of the customers of the holding company. There are numerous activities which are in the interest of customers that could not meet the standard formerly imposed. The imposition by SEC staff of preset standards requiring that a certain level of revenues be obtained from affiliates could foreclose numerous activities that otherwise could be beneficial to the customers of one of the registered gas utility systems.

Examples includes a marketing company's ability to locate new markets for higher priced supplies, allowing release of those supplies from contracts with system companies, thereby lowering the cost for system customers. Similarly, the marketing company can locate lower cost supplies to the benefit of system customers. The functional relationship test as interpreted by SEC staff could have had the perverse effect of encouraging marketing companies to sell high priced gas to affiliated LDC's—a result not intended under PUHCA.

Unduly favoring the system's affiliated customers is recognized to be inconsistent with the FERC's open access and nondiscrimination policies. The requirement in the legislation of a showing of a benefit to customers of the system is not intended to conflict with those policies nor with regulations respecting marketing companies affiliated with natural gas pipelines. This section shall not be construed to require a marketing company to show preference for an affiliate nor for an existing system customer.

In the area of exploration and development, the acquisition of supplies that are not currently required for use by system companies may provide greater ease of access in the event of future shortages. Technical advances and expertise may also be developed through these activities that may benefit customers. Finally, there may exist assets that are either temporarily surplus to the needs of the system or that have been developed in the normal course of system operations. Use of these assets to maximize their value is recognized as a benefit to customers only so long as the proposed activity does not create a detriment to system consumers.

Subsection 2(b) also requires the SEC to provide notice and opportunity for a hearing before making a determination regarding whether a proposed acquisition is in the interest of customers. Where appropriate, in the Commission's judgment, the SEC may continue to delegate authority. The company proposing the acquisition will have the burden of proving that the acquisition satisfies the statutory test set forth in subsection (b). The imposition of this burden is intended to clarify what existing law requires; namely, that the company requesting the action must demonstrate that the statutory requirements are met. No modification of existing law regarding evidentiary standards or burden of proof is intended.

Subsection 2 also provides that the SEC shall not allow a proposed acquisition to proceed—even if the standards of subsection 2(b) are met—if the acquisition will be detrimental to the interests of consumers of any gas utility company owned by the registered gas company of any subsidiary of such company, or the proper functioning of the holding system. This reiteration of the consumer interest standard contained in section 10(b)(3) of the act is to clarify that GRAA does not bless all gas supply related activities, regardless of the impact on consumers, but rather it is intended that no acquisition should be permitted if detriment to consumers would result.

PURPOSE AND EFFECT

The GRAA is very narrow in scope. First, it is limited to the acquisition of gas supply-related businesses. Investments in businesses which are not related to gas, such as real estate, drug stores, or other similar activities, would remain subject to the functional relationship test requiring that the applicant prove that the proposed activity is reasonably incidental or economically necessary or appropriate to the utility business. All other provisions of PUHCA would continue to apply as well.

Second, the GRAA is limited to the application of the functional relationship test. All other PUHCA standards would continue to apply to investments in gas activities by the registered gas systems. The continued applicability of the other standards, as well as section 2 of the bill, responds to certain concerns raised by consumer groups. The National Association of State Utility Consumer Advocates [NASUCA] and the Ohio Office of Consumers' Counsel [OOCC] adopted resolutions recognizing the benefits of the GRAA with respect to transportation and storage. They also expressed concern that the GRAA might permit

unlimited expansion of nonregulated gas supply related activities regardless of whether those activities might be detrimental to LDC's. As a result, increased risks might be imposed on those LDC's. Concerns were expressed that gas empires could be created similar to the empires that the PUHCA has effectively dismantled.

The GRAA is not intended to be an avenue for empire building. The remaining SEC authority, together with the oversight authority of FERC and State Public Utility Commissions, are sufficient to prevent unlimited expansion of activities which may be detrimental to consumers.

The SEC is charged with oversight responsibility over the three registered gas systems and has authority under sections 7 and 10 of the PUHCA to consider whether their nonregulated activities might be detrimental to the interests of consumers and to take corrective action.

Section 7(d) provides that "the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that—

"(1) the security is not reasonably adapted to the security structure of the declarant and other companies in the same holding-company system;

"(2) the security is not reasonably adapted to the earning power of the declarant;

"(3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest;"

". . .; or"

"(6) the terms and conditions of the issue or sale of the security are *detrimental to the public interest or the interest of investors or consumers.*" (emphasis added).

As previously stated, section 10(b)(3) of the PUHCA requires that the Commission approve the acquisition of a security, a utility asset or an interest in a business "unless the Commission finds that—

"(3) such acquisition will unduly complicate the capital structure of the holding-company system of the applicant *or will be detrimental to the public interest or the interest of investors or consumers of the proper functioning of such holding-company system.*" (emphasis added).

Moreover, the last sentence of section 11(b)(1) has been interpreted to be a public standard for functionally related businesses. That test also continues to apply.

The SEC should continue to provide oversight under these provisions to assure that the registered gas systems' nonregulated, nonutility gas supply related activities do not create inappropriate risks to their affiliated utility systems through inordinate or imprudent expansion.

When one of the registered gas holding companies or one of its subsidiaries wishes to issue a security for the purpose of financing nonutility activities, section 7 applies. A notice of proposed transaction must be published in the Federal Register and State PUC's and representatives of consumer interests and other interested parties then have the opportunity to submit comments or request a hearing. If the proposed financing is for the purpose of an overexpansion in a nonregulated area, which may be viewed as excessively risky, intervenors have the right to request that the SEC deny the application or to seek appropriate protection for consumer interests.

Under section 7 excessive leveraging of the nonutility venture would not be permitted since such leveraging would adversely affect the consolidated debt-equity standard of the system as a whole. The SEC staff insists that registered utility systems maintain appropriate capital structures.

When the holding company parent wishes to acquire the security of a system subsidiary, or if the subsidiary wishes to expand through the acquisition of securities or another interest in a business, section 10 applies. Notice of the proposed transaction would be published, the opportunity to comment and request a hearing would exist and, again, if the proposed acquisition would be detrimental to the consumer of public interest, the application may be denied or the order conditioned to prevent a detrimental result.

The SEC's authority under section 10 is very broad and also enables the SEC to consider matters of public interest such as the anticompetitive effects of a transaction.

"The regulatory library includes a host of decisions establishing that when an agency is called upon to determine whether a proposal or condition satisfies the 'public interest', or another similar broad standard, the agency has the authority and typically the responsibility to consider a challenge based on the asserted anticompetitive purpose of consequences of the proposal." *City of Lafayette v. Securities and Exchange Commission*, 454 F.2d 941, 948 (D.C. Cir. 1971).

The GRAA is intended to conform the application of the functional relationship test to the competitive changes in the gas industry, while preserving the essential consumer protections the Act provides.

DEFINITIONS

The term "natural gas company" is defined in section 2(6) of the Natural Gas Act (15 U.S.C. § 717a) as:

"Natural gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

For purposes of the GRAA, the following definitions apply:

"Marketing" refers to the activities connected to the sale of company-owned production as well as the purchase of natural gas or manufactured gas for resale to others or the purchase or sale of natural gas or manufactured gas as an agent for others or brokering of gas.

"Exploration" refers to the process of searching for natural gas through such operations as seismic and geologic research and testing, as well as exploratory drilling for natural gas.

"Development" refers to the acquisition of acreage, land, leases or mineral rights containing expected or proven natural gas reserves, initial drilling for reserves, and any related activities necessary to remove natural gas.

"Production" refers to the drilling for natural gas, operation of natural gas wells, and removal of natural gas from reservoirs. A producer of natural gas may not necessarily own the natural gas reserves, but may be engaged in the sale of natural gas either as reserves in the ground or after removal from the natural gas well. A producer may operate and sell oil and other petroleum products, as well as natural gas, depending upon the presence of oil and natural gas in the geologic formation underlying a particular well. In the presence of other substances in the natural gas produced from a well, a producer may also operate natural gas processing and treatment facilities to remove such substances from the natural gas stream.

"Manufacture" refers to the creation of synthetic natural gas, as opposed to naturally occurring gas through industrial processes to create gas from nongaseous substances, such as coal gasification or conversion of biologic wastes to methane.

"Storage" refers to the injection of natural gas into partially depleted natural gas fields or other suitable natural gas storage facilities, holding the natural gas for a time in such storage field, subsequently withdrawing the natural gas, and any related activities and operation.

"Transportation" means the carriage of natural gas or manufactured gas through gathering facilities, intrastate pipelines facilities, off-shore pipeline facilities, or interstate pipeline facilities, as well as the carriage of liquefied and compressed natural gas by truck, ship or train.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the bill, H.R. 3656. It has been cleared on our side of the aisle.

The bill amends the Public Utility Holding Company Act to eliminate a regulatory obstacle that places the three natural gas companies registered under the act at a competitive disadvantage. These three companies, Columbia Gas, Consolidated Gas and National Fuel Gas, are well poised to bring needed new supplies of natural gas to the Northeastern region of the country. Yet, PUHCA prevents these companies from serving this region.

The bill makes clear that the acquisition of natural gas transportation or storage activities by a registered gas company or any of its subsidiaries is considered "reasonably incidental or economically appropriate or necessary" to the functioning of the company's gas system. It also provides similar treatment to the acquisition by a registered company or any of its subsidiaries of an exploration, development, marketing and other related gas supply activity if the SEC determines

that such an acquisition is directly or indirectly, in the short or long term, in the interest of affiliated or nonaffiliated customers served by the company.

I note that leading consumer organizations, including the Office of Ohio Consumer's Counsel, Environmental Action, and the National Association of State Utility Consumer Advocates support this bill. The National Association of Regulatory Utility Commissioners also supports this legislation.

I congratulate the Gentlemen from Massachusetts [Mr. MARKEY], from Ohio [Mr. OXLEY and Mr. ECKART], from Pennsylvania [Mr. RITTER], and from Virginia [Mr. BLILEY] for their outstanding work on this bill.

I urge my colleagues to support this bill.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD. I am happy to yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I would ask the gentleman, is there any cost to the taxpayers involved in this?

Mr. MOORHEAD. No cost that I know of, I would tell the gentleman.

Mr. WALKER. I thank the gentleman from California.

Mr. MOORHEAD. Mr. Speaker, I yield back the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER. The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and concur in the Senate amendments to the bill H.R. 3656.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendments just concurred in.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts.

There was no objection.

CONGRESS NEEDS TO ACT ON DEFENSE PRODUCTION ACT NOW

(Ms. OAKAR asked and was given permission to address the House for 1 minute, and to revise and extend her remarks.)

Ms. OAKAR. Mr. Speaker, I just want the Members' attention drawn to the fact that the Defense Production Act, which is so important for those who serve in Desert Shield, is still being delayed by the Senate. A few Senators have a hold on the bill, and I just wanted to point out publicly its importance.

This act is supporting the accelerated production of the chemical protective clothing for our members of our defense, the Arab defense missiles, the armored personnel carriers, the night vision goggles, the battle-hardened computers, and hopefully, for the sake of the American troops and their safety, the bill will be passed before we adjourn.

So I implore those Senators who have a hold on the bill to please remove it. We are in the process of negotiating some of the things they do not like in the bill, and if they can negotiate in good faith, we will get it passed tonight. It is very important for the safety of our own troops.

NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND CONTROL ACT OF 1990

Mr. TAUZIN. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 5390) to prevent and control infestations of the coastal inland waters of the United States by the zebra mussel and other nonindigenous aquatic species, to reauthorize the National Sea Grant College Program, and for other purposes.

Senate amendment:

Strike out all after the enacting clause and insert:

"TITLE I—AQUATIC NUISANCE PREVENTION AND CONTROL

"Subtitle A—General Provisions

"SECTION 1001. SHORT TITLE.

"This title may be cited as the "Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990".

"SEC. 1002. FINDINGS AND PURPOSES.

"(a) FINDINGS.—The Congress finds that—

"(1) the discharge of untreated water in the ballast tanks of vessels and through other means results in unintentional introductions of nonindigenous species to fresh, brackish, and saltwater environments;

"(2) when environmental conditions are favorable, nonindigenous species, such as the zebra mussel (Dreissena polymorpha), become established and may disrupt the aquatic environment and economy of affected coastal areas;

"(3) the zebra mussel was unintentionally introduced into the Great Lakes and, if left uncontrolled, is expected to infest over two-thirds of the continental United States through the international transportation of larvae and adults by vessels operating in inland waters; and

"(4) the potential economic disruption to communities affected by the zebra mussel due to its consideration of water pipes, boat hulls and other hard surfaces has been estimated at $5,000,000,000 by the year 2000, and the potential disruption to the diversity and abundance of native fish and other species could be severe.

"(b) PURPOSES.—The purposes of this Act are—

"(1) to prevent unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other requirements;

"(2) to coordinate federally conducted, funded or authorized research, prevention, control, information dissemination and other activities regarding the zebra mussel and other aquatic nuisance species;

"(3) to develop and carry out environmentally sound control methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange;

"(4) to understand and minimize economic and ecological impacts of nonindigenous aquatic nuisance species that become established, including the zebra mussel; and

"(5) to establish a program of research and technology development and assistance to States in the management and removal of zebra mussels.

"SEC. 1003. DEFINITIONS.

"As used in this Act, the term—

"(1) "appropriate Committees" means the Committee on Merchant Marine and Fisheries in the House of Representatives and the Committee on Environment and Public Works and Committee on Commerce, Science, and Transportation in the Senate; and

"(2) "aquatic nuisance species" means a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters;

"(3) "Assistant Secretary" means the Assistant Secretary of the Army (Civil Works);

"(4) "ballast water" means any water and associated sediments used to manipulate the trim and stability of a vessel;

"(5) "Director" means the Director of the United States Fish and Wildlife Service;

"(6) "exclusive economic zone" means the Exclusive Economic Zone of the United States established by Proclamation Number 5030, dated March 10, 1983, and the equivalent zone of Canada;

"(7) "environmentally sound" methods, efforts, actions or programs means methods, efforts, actions or programs to prevent introductions or control infestations of aquatic nuisance species that minimize adverse impacts to the structure and function of an ecosystem and adverse effects on non-target organisms and ecosystems and emphasize integrated pest management techniques and nonchemical measures;

"(8) "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.

"(9) "nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another;

"(10) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

"(11) "Task Force" means the Aquatic Nuisance Species Task Force established under section 1201 of this Act;

"(12) "territorial sea" means the best of the sea measured from the baseline of the United States determined in accordance

with international law, as set forth in Presidential Proclamation Number 5928, dated December 27, 1988;

"(13) "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere;

"(14) "waters of the United States" means the navigable waters and the territorial sea of the United States; and

"(15) "unintentional introduction" means an introduction of nonindigenous species that occurs as the result of activities other than the purposeful or intentional introduction of the species involved, such as the transport of nonindigenous species in ballast or in water used to transport fish, mollusks or crustaceans for aquaculture or other purposes.

"Subtitle B—Prevention of Unintentional Introductions of

"AQUATIC NUISANCE SPECIES

"SEC. 1101. AQUATIC NUISANCE SPECIES IN THE GREAT LAKES.

"(a) GUIDELINES.—(1) Not later than 6 months after the date of enactment of the Act, the Secretary shall issue voluntary guidelines to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the exchange of ballast water of vessels prior to entering those waters.

"(2) The guidelines issued under this subsection shall—

"(A) ensure to the maximum extent practicable that ballast water containing aquatic nuisance species is not discharged into the Great Lakes;

"(B) protect the safety of each vessel, its crew, and passengers;

"(C) take into consideration different vessel operating conditions; and

"(D) be based on the best scientific information available.

"(3) Within 12 months after the date of enactment of this Act, the Secretary shall carry out education and technical assistance programs and other measures to encourage compliance with the guidelines issued under this subsection.

"(b) AUTHORITY OF SECRETARY.—(1) Within 24 months after the date of enactment of this Act, the Secretary, in consultation with the Task Force, shall issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels.

"(2) The regulations issued under this subsection shall—

"(A) require all vessels that carry ballast water and enter a United States port on the Great Lakes after operating on the waters beyond the exclusive economic zone;

"(B) require a vessel to—

"(i) carry out exchange of ballast water on the waters beyond the exclusive economic zone prior to entry into any port within the Great Lakes;

"(ii) carry out an exchange of ballast water in other waters where the exchange does not pose a threat of infestation or spread of aquatic nuisance species in the Great Lakes and other waters of the United States, as recommended by the Task Force under section 1102(a)(1); or

"(iii) use environmentally sound alternative ballast water management methods if the Secretary determines that such alternative methods are as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species.

"(C) not affect or supersede any requirements or prohibitions pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(D) provide for sampling procedures to monitor compliance with the requirements of the regulations;

"(E) prohibit the operation of a vessel in the Great Lakes if the master of the vessel has not certified to the Secretary or the Secretary's designee by not later than the departure of that vessel from the first lock in the St. Lawrence Seaway that the vessel has complied with the requirements of the regulations;

"(F) request the Secretary of the Treasury to withhold or revoke the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) of a vessel, the owner or operator of which is in violation of the regulations;

"(G) protect the safety of each vessel, its crew, and passengers;

"(H) take into consideration different vessel operating conditions; and

"(I) be based on the best scientific information available.

"(c) CIVIL PENALTIES.—Any person who violates the regulations issued under subsection (b) shall be liable for a civil penalty in an amount not to exceed $25,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in remit for any civil penalty assessed under this subsection for that violation.

"(d) CRIMINAL PENALTIES.—Any person who knowingly violates the regulations issued under subsection (b) is guilty of a class C felony.

"(e) CONSULTATION WITH CANADA.—In developing the guidelines and regulations, the Secretary is encouraged to consult with the Government of Canada to develop an effective international program for preventing the introduction and speed of aquatic nuisance species in the Great Lakes from the ballast water of vessels.

"SEC. 1102. NATIONAL BALLAST WATER CONTROL PROGRAM.

"(a) STUDIES ON INTRODUCTION OF AQUATIC NUISANCE SPECIES BY VESSELS.—

"(1) BALLAST EXCHANGE STUDY.—The Task Force shall conduct a study—

"(A) to assess the environmental effects of ballast water exchange on the diversity and abundance of native species in receiving estuarine, marine and fresh waters of the United States; and

"(B) to identify areas within the waters of the United States and the exclusive economic zone, if any, where the exchange of ballast water does not pose a threat of infestation or spread of aquatic nuisance species in the Great Lakes and other waters of the United States.

"(2) BIOLOGICAL STUDY.—The Task Force shall conduct a study to determine whether aquatic nuisance species threaten the ecological characteristics and economic uses of waters of the United States other than the Great Lakes.

"(3) SHIPPING STUDY.—The Secretary shall conduct a study to determine the need for controls on vessels entering waters of the United States, other than the Great Lakes, to minimize the risk of unintentional introduction and dispersal of aquatic nuisance species in those waters. The study shall include an examination of—

"(A) the degree to which shipping may be a major pathway of transmission of aquatic nuisance species in those waters;

"(B) possible alternatives for controlling introduction of those species through shipping; and

"(C) the feasibility of implementing regional versus national control measures.

"(b) CONSULTATION.—The Secretary and the Task Force shall cooperate in conducting their respective studies under this section.

"(c) REPORTS.—

"(1) BALLAST EXCHANGE.—Not later than 18 months after the date of enactment of this Act and prior to the effective date of the regulations issued under section 1101(b), the Task Force shall submit a report to the appropriate Committees that presents the results of the study required under subsection (a)(1) and makes recommendations with respect to such regulations.

"(2) BIOLOGICAL AND SHIPPING STUDIES.—Not later than 18 months after the date of enactment of this Act, the Secretary and the Task Force shall each submit to the appropriate Committees a report on the results of their respective studies under paragraphs (2) and (3) of subsection (a).

"(d) NEGOTIATIONS.—The Secretary, working through the International Maritime Organization, is encouraged to enter into negotiations with the governments of foreign countries concerning the planning and implementation of measures aimed at the prevention and control of unintentional introductions of aquatic nuisance species in coastal waters.

"Subtitle C—Prevention and Control of Aquatic Nuisance Species

"SEC. 1201. ESTABLISHMENT OF TASK FORCE.

"(a) TASK FORCE.—There is hereby established an "Aquatic Nuisance Species Task Force".

"(b) MEMBERSHIP.—Membership of the Task Force shall consist of—

"(1) the Director;

"(2) the Under Secretary;

"(3) the Administrator of the Environmental Protection Agency;

"(4) the Commandant of the United States Coast Guard;

"(5) the Assistant Secretary; and

"(6) the head of any other Federal agency that the chairpersons designated under subsection (d) deem appropriate.

"(c) EX OFFICIO MEMBERS.—The chairpersons designated under subsection (d) shall invite representatives of the Great Lakes Commission and State agencies and other governmental entities to participate as ex officio members of the Task Force.

"(d) CHAIRPERSONS.—The Director and the Under Secretary shall serve as co-chairpersons of the Task Force and shall be jointly responsible, and are authorized to undertake such activities as may be necessary, for carrying out this subtitle in consultation and cooperation with the other members of the Task Force.

"(e) MEMORANDUM OF UNDERSTANDING.—Within six months of the date of enactment of this Act, the Director and the Under Secretary shall develop a memorandum of understanding that describes the role of each in jointly carrying out this subtitle.

"(f) COORDINATION.—Each Task Force member shall coordinate any action to carry out this subtitle with any such action by other members of the Task Force, and regional, State and local entities.

"SEC. 1202. AQUATIC NUISANCE SPECIES PROGRAM.

"(a) IN GENERAL.—The Task Force shall develop and implement a program for waters of the United States to prevent introduction and dispersal of aquatic nuisance species; to monitor, control and study such species; and to disseminate related information.

"(b) CONTENT.—The program developed under subsection (a) shall—

"(1) identify the goals, priorities, and approaches for aquatic nuisance species prevention, monitoring, control, education and research to be conducted or funded by the Federal Government;

"(2) describe the specific prevention, monitoring, control, education and research activities to be conducted by each Task Force member;

"(3) coordinate aquatic nuisance species programs and activities of Task Force members and affected State agencies;

"(4) describe the role of each Task Force member in implementing the elements of the program as set forth in this subtitle;

"(5) include recommendations for funding to implement elements of the program; and

"(6) develop a demonstration program of prevention, monitoring, control, education and research for the zebra mussel, to be implemented in the Great Lakes and any other waters infested, or likely to become infested in the near future, by the zebra mussel.

"(c) PREVENTION.—

"(1) IN GENERAL.—The Task Force shall establish and implement measures, within the program developed under subsection (a), to minimize the risk of introduction of aquatic nuisance species to waters of the United States, including—

"(A) identification of pathways by which aquatic organisms are introduced to waters of the United States;

"(B) assessment of the risk that an aquatic organism carried by an identified pathway may become an aquatic nuisance species; and

"(C) evaluation of whether measures to prevent introductions of aquatic nuisance species are effective and environmentally sound.

"(2) IMPLEMENTATION.—Whenever the Task Force determines that there is a substantial risk of unintentional introduction of an aquatic nuisance species by an identified pathway and that the adverse consequences of such an introduction are likely to be substantial, the Task Force shall, acting through the appropriate Federal agency, and after an opportunity for public comment, carry out cooperative, environmentally sound efforts with regional, State and local entities to minimize the risk of such an introduction.

"(d) MONITORING.—The Task Force shall establish and implement monitoring measures, within the program developed under subsection (a), to—

"(1) detect unintentional introductions of aquatic nuisance species;

"(2) determine the dispersal of aquatic nuisance species after introduction; and

"(3) provide for the early detection and prevention of infestations of aquatic nuisance species in unaffected drainage basins.

"(e) CONTROL.—

"(1) IN GENERAL.—The Task Force may develop cooperative efforts, within the program established under subsection (a), to control established aquatic nuisance species to minimize the risk of harm to the environment and the public health and welfare. For purposes of this Act, control efforts include eradication of infestations, reductions of populations, development of means of adapting human activities and public facilities to accommodate infestations, and prevention of the spread of aquatic nuisance species from infested areas. Such control efforts shall be developed in consultation with affected Federal agencies, States, Indian Tribes, local governments, interjurisdictional organizations, and other appropriate entities. Control actions authorized by this section shall be based on the best available scientific information and shall be conducted in an environmentally sound manner.

"(2) DECISIONS.—The Task Force or any other affected agency or entity may recommend that the Task Force initiate a control effort. In determining whether a control program is warranted, the Task Force shall evaluate the need for control (including the projected consequences of no control and less than full control); the technical and biological feasibility and cost-effectiveness of alternative control strategies and actions; whether the benefits of control, including costs avoided, exceed the costs of the program; the risk of harm to non-target organisms and ecosystems, public health and welfare; and such other considerations the Task Force determines appropriate. The Task Force shall also determine the nature and extent of control of target aquatic nuisance species that is feasible and desirable.

"(3) PROGRAMS.—If the Task Force determines in accordance with paragraph (2) that control of an aquatic nuisance species is warranted, the Task Force shall develop a proposed control program to achieve the target level of control. A notice summarizing the proposed action and soliciting comments shall be published in the Federal Register, in major newspapers in the region affected, and in principal trade publications of the industries affected. Within 180 days of proposing a control program, and after consultation with affected governmental and other appropriate entities and taking into consideration other comments received, the Task Force shall complete development of the proposed control program.

"(f) RESEARCH.—

"(1) PRIORITIES.—The Task Force shall, within the program developed under subsection (a), conduct research concerning—

"(A) the environmental and economic risks associated with the introduction of aquatic nuisance species into the waters of the United States;

"(B) the principal pathways by which aquatic nuisance species are introduced and disperse;

"(C) possible methods for the prevention, monitoring and control of aquatic nuisance species; and

"(D) the assessment of the effectiveness of prevention, monitoring and control methods.

"(2) PROTOCOL.—Within 90 days of the date of enactment of this Act, the Task Force shall establish and follow a protocol to ensure that research activities carried out under this subtitle do not result in the introduction of aquatic nuisance species to waters of the United States.

"(3) GRANTS FOR RESEARCH.—The Task Force shall allocate funds authorized under this Act for competitive research grants to study all aspects of aquatic nuisance species, which shall be administered through the National Sea Grant College Program and the Cooperative Fishery and Wildlife Research Units. Grants shall be conditioned to ensure that any recipient of funds follows protocol established under paragraph (2) of this subsection.

"(g) TECHNICAL ASSISTANCE.—The Task Force shall, within the program developed under subsection (a), provide technical assistance to State and local governments and persons to minimize the environmental, public health, and safety risks associated with aquatic nuisance species, including an early warning system for advance notice of possible infestations and appropriations responses.

"(h) EDUCATION.—The Task Force shall, with the program developed under subsection (a), establish and implement educational programs through Sea Grant Marine Advisory Services and any other available resources that it determines to be appropriate to inform the general public, State governments, governments of political subdivisions of States, and industrial and recreational users of aquatic resources in connection with matters concerning the identification of aquatic nuisance species, and control methods for such species, including the prevention of the further distribution of such species.

"(i) ZEBRA MUSSEL DEMONSTRATION PROGRAM.—

"(1) IN GENERAL.—The Task Force shall, within the program developed under subsection (a), undertake a program of prevention, monitoring, control, education and research for the zebra mussel to be implemented in the Great Lakes and any other waters of the United States infested or likely to become infested by the zebra mussel, including—

"(A) research and development concerning the species life history, environmental tolerances and impacts on fisheries and other ecosystem components, and the efficacy of control mechanisms and means of avoiding or minimizing impacts;

"(B) tracking the dispersal of the species and establishment of an early warning system to alert likely areas of future infestation;

"(C) development of control plans in coordination with regional, State and local entities; and

"(D) provision of technical assistance to regional, State and local entities to carry out this section.

"(2) PUBLIC FACILITY RESEARCH AND DEVELOPMENT.—The Assistant Secretary, in consultation with the Task Force, shall develop a program of research and technology development for the environmentally sound control of zebra mussels in and around public facilities. The Assistant Secretary shall collect and make available, through publications and other appropriate means, information pertaining to such control methods.

"(j) IMPLEMENTATION.—

"(1) REGULATIONS.—Not later than 18 months after the date of the enactment of this Act, the Director and the Under Secretary may issue such rules and regulations as may be necessary to implement this section.

"(2) PARTICIPATION OF OTHERS.—The Task Force shall provide opportunities for affected Federal agencies which are not part of the Task Force, State and local government agencies, and regional and other entities with the necessary expertise to participate in control programs. If these other agencies or entities have sufficient authority or jurisdiction and expertise and where this will be more efficient or effective, responsibility for implementing all or a portion of a control program may be delegated to such agencies or entities.

"(l) REPORTS.—

"(1) Not later than 12 months after the date of enactment of this Act, the Task Force shall submit a report describing the program developed under subsection (a), including the research protocol required under subsection (f)(2), to the appropriate Committees.

"(2) On an annual basis after the submission of the report under paragraph (1), the

Task Force shall submit a report to the appropriate Committees detailing progress in carrying out this section.

"SEC. 1203. GREAT LAKES REGIONAL COORDINATION.

"(a) IN GENERAL.—Not later than 30 days following the date of enactment of this Act, the Task Force shall request that the Great Lakes Commission (established under Article IV of the Great Lakes Compact to which the Congress granted consent in the Act of July 24, 1968, P.L. 90-419) convene a panel of Great Lakes representatives from Federal, State and local agencies and from private environmental and commercial interests to—

"(1) identify priorities for the Great Lakes with respect to aquatic nuisance species;

"(2) make recommendations to the Task Force regarding programs to carry out section 1202(i) of this Act;

"(3) assist the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes;

"(4) coordinate, where possible, aquatic nuisance species program activities in the Great Lakes that are not conducted pursuant to this Act;

"(5) provide advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

"(6) submit annually a report to the Task Force describing activities within the Great Lakes related to aquatic nuisance species prevention, research, control.

"(b) CONSULTATION.—The Task Force shall request that the Great Lakes Fishery Commission provide information to the panel convened under this section on technical and policy matters related to the international fishery resources of the Great Lakes.

"(c) CANADIAN PARTICIPATION.—The panel convened under this section is encouraged to invite representatives from the federal, provincial or territorial governments of Canada to participate as observers.

"SEC. 1204. STATE AQUATIC NUISANCE SPECIES MANAGEMENT PLANS.

"(a) STATE PLAN.—

"(1) IN GENERAL.—The Governor of each State may, after notice and opportunity for public comment, prepare and submit—

"(A) a comprehensive management plan to the Task Force for approval which identifies those areas or activities within the State, other than those related to public facilities, for which technical and financial assistance is needed to eliminate or reduce the environmental, public health, and safety risks associated with aquatic nuisance species, particularly the zebra mussel; and

"(B) a public facility management plan to the Assistant Secretary for approval which is limited solely to identifying those public facilities within the State for which technical and financial assistance is needed to reduce infestation of zebra mussels.

"(2) CONTENT.—Each plan shall, to the extent possible, identify the management practices and measures that will be undertaken to reduce infestations of aquatic nuisance species. Each plan shall—

"(A) identify and describe State and local programs for environmentally sound prevention and control of the target aquatic nuisance species;

"(B) identify Federal activities that may be needed for environmentally sound prevention and control of aquatic nuisance species and a description of the manner in which those activities should be coordinated with State and local government activities; and

"(C) a schedule of implementing the plan, including a schedule of annual objectives.

"(3) CONSULTATION.—

"(A) In developing and implementing a management plan, the State should, to the maximum extent practicable, involve local governments and regional entities, and public and private organizations that have expertise in the control of aquatic nuisance species.

"(B) Upon the request of a State, the Task Force or the Assistance Secretary, as appropriate under paragraph (1), may provide technical assistance in developing and implementing a management plan.

"(4) PLAN APPROVAL.—Within 90 days after the submission of a management plan, the Task Force or the Assistant Secretary in consultation with the Task Force, as appropriate under paragraph (1), shall review the proposed plan and approve it if it meets the requirements of this subsection or return the plan to the Governor with recommended modifications.

"(b) GRANT PROGRAM.—

"(1) STATE GRANTS.—The Director or the Assistant Secretary, as appropriate under subsection (a), may, at the recommendation of the Task Force, make grants to States with approved management plans for the implementation of those plans.

"(2) APPLICATION.—An application for a grant under this subsection shall include an identification and description of the best management practices and measures which the State proposes to utilize in implementing an approved management plan with any Federal assistance to be provided under the grant.

"(3) FEDERAL SHARE.—

"(A) The Federal share of the cost of each comprehensive management plan implemented with Federal assistance under this section in any fiscal year shall not exceed 75 percent of the cost incurred by the State in implementing such management program and the non-Federal share of such costs shall be provided from non-Federal sources.

"(B) The Federal share of the cost of each public facility management plan implemented with Federal assistance under this section in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such management program and the non-Federal share of such costs shall be provided from non-Federal sources.

"(4) ADMINISTRATIVE COSTS.—For the purposes of this section, administrative costs for activities and programs carried out with a grant in any fiscal year shall not exceed 5 percent of the amount of the grant in that year.

"(5) IN-KIND CONTRIBUTIONS.-In addition to cash outlays and payments, in-kind contributions of property or personnel services by non-Federal interests for activities under this section may be used for the non-Federal share of the cost of those activities.

"SEC. 1205. RELATIONSHIP TO OTHER LAWS.

"All actions taken by Federal agencies in implementing the provisions of section 1202 shall be consistent with all applicable Federal, State, and local environmental laws. Nothing in this title shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for aquatic nuisance species, or diminish or affect the jurisdiction of any State over species of fish and wildlife. Compliance with the control and eradication measures of any state or political subdivision thereof regarding aquatic nuisance species shall not relieve any person of the obligation to comply with the provisions of this subtitle.

"SEC. 1206. INTERNATIONAL COOPERATION.

"(a) ADVICE.—The Task Force shall provide timely advice to the Secretary of State concerning aquatic nuisance species that infest waters shared with other countries.

"(b) NEGOTIATIONS.—The Secretary of State, in consultation with the Task Force, is encouraged to initiate negotiations with the governments of foreign countries concerning the planning and implementation of prevention, monitoring, research, education, and control programs related to aquatic nuisance species infesting shared water resources.

"SEC. 1207. INTENTIONAL INTRODUCTIONS POLICY REVIEW.

"Within one year of the date of enactment of this Act, the Task Force shall, in consultation with State fish and wildlife agencies, other regional, State and local entities, potentially affected industries and other interested parties, identify and evaluate approaches for reducing the risk of adverse consequences associated with intentional introduction of aquatic organisms and submit a report of their findings, conclusions and recommendations to the appropriate Committees.

"SEC. 1208. INJURIOUS SPECIES.

"Section 42 (a) of Title 18, United States Code is amended by inserting "of the zebra mussel of the species Dreissena polymorpha;" after "Pteropus;".

"SEC. 1209. BROWN TREE SNAKE CONTROL PROGRAM.

"The Task Force shall, within the program developed under subsection (a), undertake a comprehensive, environmentally sound program in coordination with regional, territorial, State and local entities to control the brown tree snake (Boiqa irregularis) in Guam and other areas where the species is established outside of its historic range.

"Subtitle D—Authorizations of Appropriation

"SEC. 1301. AUTHORIZATIONS.

"(a) PREVENTION OF UNINTENTIONAL INTRODUCTIONS.—There are authorized to be appropriated to develop and implement the provisions of subtitle B—

"(1) $500,000 until the end of fiscal year 1992 to the Secretary to carry out sections 1101 and 1102(a)(3);

"(2) $2,000,000 until the end of fiscal year 1992 to the Director and Under Secretary to carry out the studies under sections 1102(a)(1) and 1102(a)(2); and

"(3) $1,000,000 for each of fiscal years 1993, 1994, and 1995 to the Secretary for implementation and enforcement of the regulations promulgated under section 1101.

"(b) TASK FORCE AND AQUATIC NUISANCE SPECIES PROGRAM.—There are authorized to be appropriated for each of fiscal years 1991, 1992, 1993, 1994, and 1995 to develop and implement the provisions of subtitle C—

"(1) $7,000,000 to the Director to carry out sections 1202 and 1209;

"(2) $5,000,000 to the Under Secretary to carry out section 1202;

"(3) $1,125,000 to fund aquatic nuisance species prevention and control research under section 1202(i) at the Great Lakes Environmental Research Laboratory of the National Oceanic and Atmospheric Administration;

"(4) $5,000,000 for competitive grants for university research on aquatic nuisance species under section 1202(f)(3) as follows:

"(A) $3,375,000 to fund grants under section 206 of the National Sea Grant College

Program Act (33 U.S.C. 1125), and of this amount, $2,500,000 to fund grants in the Great Lakes region; and

"(B) $1,675,000 to fund grants through the Cooperative Fisheries and Wildlife Research Unit Program of the United States Fish and Wildlife Service;

"(5) $500,000 to fund Sea Grant Marine Advisory Services education and technical assistance related to infestations of zebra mussels under sections 1202(g) and (h);

"(6) $200,000 to fund aquatic nuisance species prevention and control activities of the Great Lakes Commission; and

"(7) $2,000,000 to the Assistant Secretary to carry out section 1202(i)(2).

"(c) GRANTS FOR STATE MANAGEMENT PROGRAMS.—There are authorized to be appropriated for each of fiscal years 1991, 1992, 1993, 1994, and 1995 to make grants under section 1204—

"(1) $2,500,000 to the Director; and

"(2) $5,000,000 to the Assistant Secretary.

"(d) INTENTIONAL INTRODUCTIONS POLICY REVIEW.—There are authorized to be appropriated for fiscal year 1991, $500,000 to the Director and the Under Secretary to conduct the intentional introduction policy review under section 1207.

"SUBTITLE E—COOPERATIVE ENVIRONMENTAL ANALYSES

"SEC. 1401. ENVIRONMENTAL IMPACT ANALYSES.

"The Secretary of State, in consultation with the Council on Environmental Quality, is encouraged to enter into negotiations with the governments of Canada and Mexico to provide for reciprocal cooperative environmental impact analysis of major Federal actions which have significant transboundary effects on the quality of the human environment in the United States, Canada, and Mexico.

"TITLE II—GREAT LAKES FISH AND WILDLIFE RESTORATION

"SECTION 2001. SHORT TITLE.

"This title may be cited as the "Great Lakes Fish and Wildlife Restoration Act of 1990".

"SEC. 2002. FINDINGS.

"The Congress finds and declares the following:

"(1) As the human population of the Great Lakes Basin has expanded to over 35,000,000 people, great demands have been placed on the lakes for use for boating and other recreation, navigation, municipal and industrial water supply, waste disposal, power production, and other purposes. These growing and often conflicting demands exert pressure on the fish and wildlife resources of the Great Lakes Basin, including in the form of contaminants, invasion by nonindigenous species, habitat degradation and destruction, legal and illegal fishery resource harvest levels, and sea lamprey predation.

"(2) The fishery resources of the Great Lakes support recreational fisheries enjoyed by more than 5,000,000 people annually and commercial fisheries providing approximately 9,000 jobs. Together, these fisheries generate economic activity worth more than $4,400,000,000 annually to the United States.

"(3) The availability of a suitable forage base is essential to lake trout, walleye, yellow perch, and other recreational and commercially valuable fishery resources of the Great Lakes Basin. Protecting and restoring productive fish habitat, including by protecting water quality, is essential to the successful recovery of Great Lakes Basin fishery resources.

"(4) The Great Lakes Basin contains important breeding and migration habitat for all types of migratory birds. Many migratory bird species dependent on deteriorating Great Lakes Basin habitat have suffered serious population declines in recent years.

"(5) Over 80 percent of the original wetlands in the Great Lakes Basin have been destroyed and such losses continue at a rate of 20,000 acres annually.

"(6) Contaminant burdens in the fish and wildlife resources of the Great Lakes Basin are substantial and the impacts of those contaminants on the life functions of important fish and wildlife resources are poorly understood. Concern over the effects of those contaminants on human health have resulted in numerous public health advisories recommending restricted or no consumption of Great Lakes fish.

"(7) The lower Great Lakes are uniquely different from the upper Great Lakes biologically, physically, and in the degree of human use and shoreline development, and special fishery resource assessments and management activities are necessary to respond effectively to these special circumstances.

"SEC. 2003. PURPOSE.

"The purposes of this Act are—

"(1) to carry out a comprehensive study of the status, and the assessment, management, and restoration needs, of the fishery resources of the Great Lakes Basin;

"(2) to develop proposals to implement recommendations resulting from that study; and

"(3) to provide assistance to the Great Lakes Fisheries Commission, States, Indian Tribes, and other interested entities to encourage cooperative conservation, restoration and management of the fish and wildlife resources and their habitat of the Great Lakes Basin.

"SEC. 2004. DEFINITIONS.

"In this Act—

"(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

"(2) the term "Director" means the Director of the United States Fish and Wildlife Service;

"(3) the term "fish stock" means—

"(A) a taxonomically distinct species or subspecies of fish; or

"(B) any other aggregation of fish that are geographically, ecologically, behaviorally, or otherwise limited from breeding with individuals from other groups of fish and are capable of management as a unit;

"(4) the term "Great Lakes Basin" means the air, land, water, and living organisms within the drainage basin of the Saint Lawrence River at or upstream from the point at which the river becomes the international boundary between Canada and the United States;

"(5) the term "Indian Tribe" means any Indian tribe, band, village, nation, or other organized group or community that is recognized by the Bureau of Indian Affairs as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

"(6) the term "lower Great Lakes" means the region in which is located that portion of the Great Lakes Basin which is downstream from the confluence of the Saint Clair River and Lake Huron near Port Huron, Michigan;

"(7) the term "upper Great Lakes" means that portion of the Great Lakes Basin which is upstream from the confluence of the Saint Clair River and Lake Huron near Port Huron, Michigan.

"(8) the term "nonindigenous species" means a species of plant or animal that did not occur in the Great Lakes Basin before European colonization of North America;

"(9) the term "Secretary" means the Secretary of the Army; and

"(10) the term "State Director" means the head of the agency, department, board, commission, or other governmental entity of each of the States of New York, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, and the Commonwealth of Pennsylvania which is responsible for the management and conservation of the fish and wildlife resources of that State.

"SEC. 2005. GREAT LAKES FISHERY RESOURCES RESTORATION STUDY.

"(a) IN GENERAL.—The Director shall conduct a comprehensive study of the status of, and the assessment, management, and restoration needs of, the fishery resources of the Great Lakes Basin and shall provide the opportunity for the Secretary, the Administrator, State Directors, Indian Tribes, the Great Lakes Fishery Commission, appropriate Canadian Government entities, and other appropriate entities to participate in the study. The Director shall complete the study by October 1, 1994.

"(b) MEMORANDUM OF UNDERSTANDING.—To provide opportunities for the full participation of all affected entities in the planning and conduct of the study, the Director shall invite the entities identified in subsection (a) to enter into a memorandum of understanding regarding the scope and focus of the study and the responsibilities of each participant for conducting the study.

"(c) CONTENT OF STUDY.—A study under this section shall include, but not be limited to—

"(1) identifying and describing the component drainages of the Great Lakes Basin (including the drainage for each of the Great Lakes), analyzing how the characteristics and current or expected land and water uses of those drainages have affected, and can be expected to affect in the future, the fishery resources and fish habitats of the Great Lakes Basin;

"(2) analyzing historical fishery resource data for the Great Lakes Basin to identify the causes of past and continuing declines of the fishery resources and the impediments to restoring those resources;

"(3) evaluating the adequacy, effectiveness, and consistency of current Great Lakes interagency fisheries management plans and Federal and State water quality programs, with respect to their effects on Great Lakes fishery resources;

"(4) analyzing the impacts of, and management control alternatives for, recently introduced nonindigenous species, including the zebra mussel, the ruffe, and the spiny water flea in accordance with the Aquatic Nuisance Prevention and Control Act of 1990;

"(5) developing recommendations regarding—

"(A) an action plan to analyze the effects of contaminant levels on fishery resources;

"(B) an action plan for the cooperative restoration and enhancement of depleted, nationally significant fish stocks, including lake trout, yellow perch, lake sturgeon, walleye, forage fish, and Atlantic salmon;

"(C) planning and technical assistance that should be provided to the Great Lakes Fisheries Commission, States, and Indian

Tribes to assist their fishery resource restoration efforts;

"(D) mitigation measures to restore and enhance fishery resources adversely affected by past Federal (including federally assisted or approved) water resource development projects and other activities;

"(E) increasing the involvement of the International Joint Commission, the Great Lakes Commission, the Great Lakes Fishery Commission, and other interjurisdictional entities regarding fishery resources protection, restoration, and enhancement;

"(F) research projects and data gathering initiatives regarding population trends of fish stocks, including population abundance and structure, interspecific competition, survival rates, and behavioral patterns;

"(G) important fishery resource habitat and other areas that should be protected, restored, or enhanced for the benefit of Great Lakes fishery resources;

"(H) how private conservation organizations, recreational and commercial fishing interests, the aquaculture industry, and the general public could contribute to the implementation of the fishery resource restoration and enhancement recommendations developed pursuant to this Act; and

"(I) appropriate contributions that should be made by States and other non-Federal entities to the cost of activities undertaken to implement the recommendations, including a description of—

"(i) the activities that shall be cost-shared;

"(ii) the entities or individuals which shall share the costs of those activities;

"(iii) the proportion of appropriate project and activity costs that shall be borne by non-Federal interests; and

"(iv) how the entities or individuals who share costs should finance their contributions.

"(d) PROPOSALS FOR IMPLEMENTING RECOMMENDATIONS.—The Director shall develop proposals for implementing the recommendations of the study developed under subsection (c)(5). The proposals shall be consistent with the goals of the Great Lakes Water Quality Agreement, as revised in 1987, the 1954 Great Lakes Fisheries Convention, State and tribal fishery management jurisdiction, and the 1980 Joint Strategic Plan for the management of Great Lakes fishery resources.

"SEC. 2006. GOALS OF UNITED STATES FISH AND WILDLIFE SERVICE PROGRAMS RELATED TO GREAT LAKES FISH AND WILDLIFE RESOURCES.

"In administering programs of the United States Fish and Wildlife Service related to the Great Lakes Basin, the Director shall seek to achieve the following goals:

"(1) Restoring and maintaining self-sustaining fishery resource populations.

"(2) Minimizing the impacts of contaminants on fishery and wildlife resources.

"(3) Protecting, maintaining, and, where degraded and destroyed, restoring fish and wildlife habitat, including the enhancement and creation of wetlands that result in a net gain in the amount of those habitats.

"(4) Stopping illegal activities adversely impacting fishery and wildlife resources.

"(5) Restoring threatened and endangered species to viable, self-sustaining levels.

"(6) Protecting, managing, and conserving migratory birds.

"SEC. 2007. ESTABLISHMENT OF OFFICES.

"(a) GREAT LAKES COORDINATION OFFICE.—The Director shall establish a centrally located facility for the coordination of all United States Fish and Wildlife Service activities in the Great Lakes Basin, to be known as the "Great Lakes Coordination Office". The functional responsibilities of the Great Lakes Coordination Office shall include intra- and interagency coordination, information distribution, and public awareness outreach. The Great Lakes Coordination Office shall include all administrative and technical support necessary to carry out its responsibilities.

"(b) LOWER GREAT LAKES FISHERY RESOURCES OFFICE.—The Director shall establish an office with necessary administrative and technical support services to carry out all United States Fish and Wildlife Service operational activities related to fishery resource protection, restoration, maintenance, and enhancement in the Lower Great Lakes. The office shall be known as the "Lower Great Lakes Fishery Resources Office", and shall be centrally located in the lower Great Lakes so as to facilitate fishery resource restoration and enhancement activities relating to the lower Great Lakes.

"(c) UPPER GREAT LAKES FISHERY RESOURCES OFFICE.—The Director shall establish one or more offices with necessary administrative and technical support services to carry out United States Fish and Wildlife Service operational activities related to fishery resource protection, restoration, maintenance, and enhancement in the upper Great Lakes. Each of the offices shall be known as an "Upper Great Lakes Fishery Resources Office", and shall be appropriately located so as to facilitate fishery resource activities in the upper Great Lakes.

"SEC. 2008. ANNUAL REPORTS.

"Not later than 1 year after the date of the enactment of this Act and annually thereafter, the Director shall submit a report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate. Each such report shall describe—

"(1) the progress and findings of the studies conducted under section 2005, including recommendations of implementing activities, where appropriate, that would contribute to the restoration or improvement of one or more fish stocks of the Great Lakes Basin; and

"(2) activities undertaken to accomplish the goals stated in section 2006.

"SEC. 2009. AUTHORIZATION OF APPROPRIATIONS.

"(a) There are authorized to be appropriated to the Director—

"(1) for conducting a study under section 2005 not more than $4,000,000 for each of fiscal years 1991 through 1994;

"(2) to establish and operate the Great Lakes Coordination Office under section 2008(a) and Upper Great Lakes Fishery Resources Offices under section 2008(c), not more than $4,000,000 for each of fiscal years 1991 through 1995; and

"(3) to establish and operate the Lower Great Lakes Fishery Resources Offices under section 2008(b), not more than $2,000,000 for each of fiscal years 1991 through 1995.

"(b) There are authorized to be appropriated to the Secretary to carry out this Act, not more than $1,500,000 for each of fiscal years 1991 through 1995.".

TITLE III—WETLANDS

SEC. 301. SHORT TITLE.

This title may be cited as the "Coastal Wetlands Planning, Protection and Restoration Act".

SEC 302. DEFINITIONS.

As used in this title, the term—

(1) "Secretary" means the Secretary of the Army;

(2) "Administrator" means the Administrator of the Environmental Protection Agency;

(3) "development activities" means any activity, including the discharge of dredged or fill material, which results directly in a more than de minimus change in the hydrologic regime, bottom contour, or the type, distribution or diversity of hydrophytic vegetation, or which impairs the flow, reach, or circulation of surface water within wetlands or other waters;

(4) "State" means the State of Louisiana;

(5) "coastal State" means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes; for the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, and American Samoa;

(6) "coastal wetlands restoration project" means any technically feasible activity to create, restore, protect, or enhance coastal wetlands through sediment and freshwater diversion, water management, or other measures that the Task Force finds will significantly contribute to the long-term restoration or protection of the physical, chemical and biological integrity of coastal wetlands in the State of Louisiana, and includes any such activity authorized under this title or under any other provision of law, including, but not limited to, new projects, completion or expansion of existing or on-going projects, individual phases, portions, or components of projects and operation, maintenance and rehabilitation of completed projects; the primary purpose of a "coastal wetlands restoration project" shall not be to provide navigation, irrigation or flood control benefits;

(7) "coastal wetlands conservation project" means—

(A) the obtaining of a real property interest in coastal lands or waters, if the obtaining of such interest is subject to terms and conditions that will ensure that the real property will be administered for the long-term conservation of such lands and waters and the hydrology, water quality and fish and wildlife dependent thereon; and

(B) the restoration, management, or enhancement of coastal wetlands ecosystems if such restoration, management, or enhancement is conducted on coastal lands and waters that are administered for the long-term conservation of such lands and waters and the hydrology, water quality and fish and wildlife dependent thereon;

(8) "Governor" means the Governor of Louisiana;

(9) "Task Force" means the Louisiana Coastal Wetlands Conservation and Restoration Task Force which shall consist of the Secretary, who shall serve as chairman, the Administrator, the Governor, the Secretary of the Interior, the Secretary of Agriculture and the Secretary of Commerce; and

(10) "Director" means the Director of the United States Fish and Wildlife Service.

SEC. 303. PRIORITY LOUISIANA COASTAL WETLANDS RESTORATION PROJECTS.

(a) PRIORITY PROJECT LIST.—

(1) PREPARATION OF LIST.—Within forty-five days after the date of enactment of this title, the Secretary shall convene the Task Force to initiate a process to identify and prepare a list of coastal wetlands restoration

projects in Louisiana to provide for the long-term conservation of such wetlands and dependent fish and wildlife populations in order of priority, based on the cost-effectiveness of such projects in creating, restoring, protecting, or enhancing coastal wetlands, taking into account the quality of such coastal wetlands, with due allowance for small-scale projects necessary to demonstrate the use of new techniques or materials for coastal wetlands restoration.

(2) TASK FORCE PROCEDURES.—The Secretary shall convene meetings of the Task Force as appropriate to ensure that the list is produced and transmitted annually to the Congress as required by this subsection. If necessary to ensure transmittal of the list on a timely basis, the Task Force shall produce the list by a majority vote of those Task Force members who are present and voting; except that no coastal wetlands restoration project shall be placed on the list without the concurrence of the lead Task Force member that the project is cost effective and sound from an engineering perspective. Those projects which potentially impact navigation or flood control on the lower Mississippi River System shall be constructed consistent with section 304 of this Act.

(3) TRANSMITTAL OF LIST.—No later than one year after the date of enactment of this title, the Secretary shall transmit to the Congress the list of priority coastal wetlands restoration projects required by paragraph (1) of this subsection. Thereafter, the list shall be updated annually by the Task Force members and transmitted by the Secretary to the Congress as part of the President's annual budget submission. Annual transmittals of the list to the Congress shall include a status report on each project and a statement from the Secretary of the Treasury indicating the amounts available for expenditure to carry out this title.

(4) LIST CONTENTS.—

(A) AREA IDENTIFICATION; PROJECT DESCRIPTION.—The list of priority coastal wetlands restoration projects shall include, but not be limited to—

(i) identification, by map or other means, of the coastal area to be covered by the coastal wetlands restoration project; and

(ii) a detailed description of each proposed coastal wetlands restoration project including a justification for including such project on the list, the proposed activities to be carried out pursuant to each coastal wetlands restoration project, the benefits to be realized by such project, the identification of a lead Task Force member to undertake each proposed coastal wetlands restoration project and the responsibilities of each other participating Task Force member, an estimated timetable for the completion of each coastal wetlands restoration project, and the estimated cost of each project.

(B) PRE-PLAN.—Prior to the date on which the plan required by subsection (b) of this section becomes effective, such list shall include only those coastal wetlands restoration projects that can be substantially completed during a five-year period commencing on the date the project is placed on the list.

(C) Subsequent to the date on which the plan required by subsection (b) of this section becomes effective, such list shall include only those coastal wetlands restoration projects that have been identified in such plan.

(5) FUNDING.—The Secretary shall, with the funds made available in accordance with section 306 of this title, allocate funds among the members of the Task Force based on the need for such funds and such other factors as the Task Force deems appropriate to carry out the purposes of this subsection.

(b) FEDERAL AND STATE PROJECT PLANNING.—

(1) PLAN PREPARATION.—The Task Force shall prepare a plan to identify coastal wetlands restoration projects, in order of priority, based on the cost-effectiveness of such projects in creating, restoring, protecting, or enhancing the long-term conservation of coastal wetlands, taking into account the quality of such coastal wetlands, with due allowance for small-scale projects necessary to demonstrate the use of new techniques or materials for coastal wetlands restoration. Such restoration plan shall be completed within three years from the date of enactment of this title.

(2) PURPOSE OF THE PLAN.—The purpose of the restoration plan is to develop a comprehensive approach to restore and prevent the loss of coastal wetlands in Louisiana. Such plan shall coordinate and integrate coastal wetlands restoration projects in a manner that will ensure the long-term conservation of the coastal wetlands of Louisiana.

(3) INTEGRATION OF EXISTING PLANS.—In developing the restoration plan, the Task Force shall seek to integrate the "Louisiana Comprehensive Coastal Wetlands Feasibility Study" conducted by the Secretary of the Army and the "Coastal Wetlands Conservation and Restoration Plan" prepared by the State of Louisiana's Wetlands Conservation and Restoration Task Force.

(4) ELEMENTS OF THE PLAN.—The restoration plan developed pursuant to this subsection shall include—

(A) identification of the entire area in the State that contains coastal wetlands;

(B) identification, by map or other means, of coastal areas in Louisiana in need of coastal wetlands restoration projects;

(C) identification of high priority coastal wetlands restoration projects in Louisiana needed to address the areas identified in subparagraph (B) and that would provide for the long-term conservation of restored wetlands and dependent fish and wildlife populations;

(D) a listing of such coastal wetlands restoration projects, in order of priority, to be submitted annually, incorporating any project identified previously in lists produced and submitted under subsection (a) of this section;

(E) a detailed description of each proposed coastal wetlands restoration project, including a justification for including such project on the list;

(F) the proposed activities to be carried out pursuant to each coastal wetlands restoration project;

(G) the benefits to be realized by each such project;

(H) an estimated timetable for completion of each coastal wetlands restoration project;

(I) an estimate of the cost of each coastal wetlands restoration project;

(J) identification of a lead Task Force member to undertake each proposed coastal wetlands restoration project listed in the plan;

(K) consultation with the public and provision for public review during development of the plan; and

(L) evaluation of the effectiveness of each coastal wetlands restoration project in achieving long-term solutions to arresting coastal wetlands loss in Louisiana.

(5) PLAN MODIFICATION.—The Task Force may modify the restoration plan from time to time as necessary to carry out the purposes of this section.

(6) PLAN SUBMISSION.—Upon completion of the restoration plan, the Secretary shall submit the plan to the Congress. The restoration plan shall become effective ninety days after the date of its submission to the Congress.

(7) PLAN EVALUATION.—Not less than three years after the completion and submission of the restoration plan required by this subsection and at least every three years thereafter, the Task Force shall provide a report to the Congress containing a scientific evaluation of the effectiveness of the coastal wetlands restoration projects carried out under the plan in creating, restoring, protecting and enhancing coastal wetlands in Louisiana.

(c) COASTAL WETLANDS RESTORATION PROJECT BENEFITS.—Where such a determination is required under applicable law, the net ecological, aesthetic, and cultural benefits, together with the economic benefits, shall be deemed to exceed the costs of any coastal wetlands restoration project within the State which the Task Force finds to contribute significantly to wetlands restoration.

(d) CONSISTENCY.—(1) In implementing, maintaining, modifying, or rehabilitating navigation, flood control or irrigation projects, other than emergency actions, under other authorities, the Secretary, in consultation with the Director and the Administrator, shall ensure that such actions are consistent with the purposes of the restoration plan submitted pursuant to this section.

(2) At the request of the Governor of the State of Louisiana, the Secretary of Commerce shall approve the plan as an amendment to the State's coastal zone management program approved under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455).

(e) FUNDING OF WETLANDS RESTORATION PROJECTS.—The Secretary shall, with the funds made available in accordance with this title, allocate such funds among the members of the Task Force to carry out coastal wetlands restoration projects in accordance with the priorities set forth in the list transmitted in accordance with this section. The Secretary shall not fund a coastal wetlands restoration project unless that project is subject to such terms and conditions as necessary to ensure that wetlands restored, enhanced or managed through that project will be administered for the long-term conservation of such lands and waters and dependent fish and wildlife populations.

(f) COST-SHARING.—

(1) FEDERAL SHARE.—Amounts made available in accordance with section 306 of this title to carry out coastal wetlands restoration projects under this title shall provide 75 percent of the cost of such projects.

(2) FEDERAL SHARE UPON CONSERVATION PLAN APPROVAL.—Notwithstanding the previous paragraph, if the State develops a Coastal Wetlands Conservation Plan pursuant to this title, and such conservation plan is approved pursuant to section 304 of this title amounts made available in accordance with section 306 of this title for any coastal wetlands restoration project under this section shall be 85 percent of the cost of the project. In the event that the Secretary, the Director, and the Administrator jointly determine that the State is not taking reasonable steps to implement and administer a conservation plan developed and approved

pursuant to this title, amounts made available in accordance with section 306 of this title for any coastal wetlands restoration project shall revert to 75 percent of the cost of the project: *Provided, however,* That such reversion to the lower cost share level shall not occur until the Governor has been provided notice of, and opportunity for hearing on, any such determination by the Secretary, the Director, and Administrator, and the State has been given ninety days from such notice or hearing to take corrective action.

(3) FORM OF STATE SHARE.—The share of the cost required of the State shall be from a non-Federal source. Such State share shall consist of a cash contribution of not less than 5 percent of the cost of the project. The balance of such State share may take the form of lands, easements, or right-of-way, or any other form of in-kind contribution determined to be appropriate by the lead Task Force member.

(4) Paragraphs (1), (2), and (3) of this subsection shall not affect the existing cost-sharing agreements for the following projects: Caernarvon Freshwater Diversion, Davis Pond Freshwater Diversion, and Bonnet Carre Freshwater Diversion.

SEC. 304. LOUISIANA COASTAL WETLANDS CONSERVATION PLANNING.

(a) DEVELOPMENT OF CONSERVATION PLAN.—

(1) AGREEMENT.—The Secretary, the Director, and the Administrator are directed to enter into an agreement with the Governor, as set forth in paragraph (2) of this subsection, upon notification of the Governor's willingness to enter into such agreement.

(2) TERMS OF AGREEMENT.—

(A) Upon receiving notification pursuant to paragraph (1) of this subsection, the Secretary, the Director, and the Administrator shall promptly enter into an agreement (hereafter in this section referred to as the "agreement") with the State under the terms set forth in subparagraph (B) of this paragraph.

(B) The agreement shall—

(i) set forth a process by which the State agrees to develop, in accordance with this section, a coastal wetlands conservation plan (hereafter in this section referred to as the "conservation plan");

(ii) designate a single agency of the State to develop the conservation plan;

(iii) assure an opportunity for participation in the development of the conservation plan, during the planning period, by the public and by Federal and State agencies;

(iv) obligate the State, not later than three years after the date of signing the agreement, unless extended by the parties thereto, to submit the conservation plan to the Secretary, the Director, and the Administrator for their approval; and

(v) upon approval of the conservation plan, obligate the State to implement the conservation plan.

(3) GRANTS AND ASSISTANCE.—Upon the date of signing the agreement—

(A) the Administrator shall, in consultation with the Director, with the funds made available in accordance with section 306 of this title, make grants during the development of the conservation plan to assist the designated State agency in developing such plan. Such grants shall not exceed 75 percent of the cost of developing the plan; and

(B) the Secretary, the Director, and the Administrator shall provide technical assistance to the State to assist it in the development of the plan.

(b) CONSERVATION PLAN GOAL.—If a conservation plan is developed pursuant to this section, it shall have a goal of achieving no net loss of wetlands in the coastal areas of Louisiana as a result of development activities initiated subsequent to approval of the plan, exclusive of any wetlands gains achieved through implementation of the preceding section of this title.

(c) ELEMENTS OF CONSERVATION PLAN.—The conservation plan authorized by this section shall include—

(1) identification of the entire coastal area in the State that contains coastal wetlands;

(2) designation of a single State agency with the responsibility for implementing and enforcing the plan;

(3) identification of measures that the State shall take in addition to existing Federal authority to achieve a goal of no net loss of wetlands as a result of development activities, exclusive of any wetlands gains achieved through implementation of the preceding section of this title;

(4) a system that the State shall implement to account for gains and losses of coastal wetlands within coastal areas for purposes of evaluating the degree to which the goal of no net loss of wetlands as a result of development activities in such wetlands or other waters has been attained;

(5) satisfactory assurances that the State will have adequate personnel, funding, and authority to implement the plan;

(6) a program to be carried out by the State for the purpose of educating the public concerning the necessity to conserve wetlands;

(7) a program to encourage the use of technology by persons engaged in development activities that will result in negligible impact on wetlands; and

(8) a program for the review, evaluation, and identification of regulatory and nonregulatory options that will be adopted by the State to encourage and assist private owners of wetlands to continue to maintain those lands as wetlands.

(d) APPROVAL OF CONSERVATION PLAN.—

(1) IN GENERAL.—If the Governor submits a conservation plan to the Secretary, the Director, and the Administrator for their approval, the Secretary, the Director, and the Administrator shall, within one hundred and eighty days following receipt of such plan, approve or disapprove it.

(2) APPROVAL CRITERIA.—The Secretary, the Director, and the Administrator shall approve a conservation plan submitted by the Governor, if they determine that—

(A) the State has adequate authority to fully implement all provisions of such a plan;

(B) such a plan is adequate to attain the goal of no net loss of coastal wetlands as a result of development activities and complies with the other requirements of this section; and

(C) the plan was developed in accordance with the terms of the agreement set forth in subsection (a) of this section.

(e) MODIFICATION OF CONSERVATION PLAN.—

(1) NONCOMPLIANCE.—If the Secretary, the Director, and the Administrator determine that a conservation plan submitted by the Governor does not comply with the requirements of subsection (d) of this section, they shall submit to the Governor a statement explaining why the plan is not in compliance and how the plan should be changed to be in compliance.

(2) RECONSIDERATION.—If the Governor submits a modified conservation plan to the Secretary, the Director, and the Administrator for their reconsideration, the Secretary, the Director, and Administrator shall have ninety days to determine whether the modifications are sufficient to bring the plan into compliance with the requirements of subsection (d) of this section.

(3) APPROVAL OF MODIFIED PLAN.—If the Secretary, the Director, and the Administrator fail to approve or disapprove the conservation plan, as modified, within the ninety-day period following the date on which it was submitted to them by the Governor, such plan, as modified, shall be deemed to be approved effective upon the expiration of such ninety-day period.

(f) AMENDMENTS TO CONSERVATION PLAN.—If the Governor amends the conservation plan approved under this section, any such amended plan shall be considered a new plan and shall be subject to the requirements of this section; except that minor changes to such plan shall not be subject to the requirements of this section.

(g) IMPLEMENTATION OF CONSERVATION PLAN.—A conservation plan approved under this section shall be implemented as provided therein.

(h) FEDERAL OVERSIGHT.—

(1) INITIAL REPORT TO CONGRESS.—Within one hundred and eighty days after entering into the agreement required under subsection (a) of this section, the Secretary, the Director, and the Administrator shall report to the Congress as to the status of a conservation plan approved under this section and the progress of the State in carrying out such a plan, including an accounting, as required under subsection (c) of this section, of the gains and losses of coastal wetlands as a result of development activities.

(2) REPORTS TO CONGRESS.—Twenty-four months after the initial one hundred and eighty day period set forth in paragraph (1), and at the end of each twenty-four-month period thereafter, the Secretary, the Director, and the Administrator shall, report to the Congress on the status of the conservation plan and provide an evaluation of the effectiveness of the plan in meeting the goal of this section.

SEC. 305. NATIONAL COASTAL WETLANDS CONSERVATION GRANTS.

(a) MATCHING GRANTS.—The Director shall, with the funds made available in accordance with the next following section of this title, make matching grants to any coastal State to carry out coastal wetlands conservation projects from funds made available for that purpose.

(b) PRIORITY.—Subject to the cost-sharing requirements of this section, the Director may grant or otherwise provide any matching moneys to any coastal State which submits a proposal substantial in character and design to carry out a coastal wetlands conservation project. In awarding such matching grants, the Director shall give priority to coastal wetlands conservation projects that are—

(1) consistent with the National Wetlands Priority Conservation Plan developed under section 301 of the Emergency Wetlands Resources Act (16 U.S.C. 3921); and

(2) in coastal States that have established dedicated funding for programs to acquire coastal wetlands, natural areas and open spaces. In addition, priority consideration shall be given to coastal wetlands conservation projects in maritime forests on coastal barrier islands.

(c) CONDITIONS.—The Director may only grant or otherwise provide matching moneys to a coastal State for purposes of carrying out a coastal wetlands conservation

project if the grant or provision is subject to terms and conditions that will ensure that any real property interest acquired in whole or in part, or enhanced, managed, or restored with such moneys will be administered for the long-term conservation of such lands and waters and the fish and wildlife dependent thereon.

(d) COST-SHARING.—

(1) FEDERAL SHARE.—Grants to coastal States of matching moneys by the Director for any fiscal year to carry out coastal wetlands conservation projects shall be used for the payment of not to exceed 50 percent of the total costs of such projects: except that such matching moneys may be used for payment of not to exceed 75 percent of the costs of such projects if a coastal State has established a trust fund, from which the principal is not spent, for the purpose of acquiring coastal wetlands, other natural area or open spaces.

(2) FORM OF STATE SHARE.—The matching moneys required of a coastal State to carry out a coastal wetlands conservation project shall be derived from a non-Federal source.

(3) IN-KIND CONTRIBUTIONS.—In addition to cash outlays and payments, in-kind contributions of property or personnel services by non-Federal interests for activities under this section may be used for the non-Federal share of the cost of those activities.

(e) PARTIAL PAYMENTS.—

(1) The Director may from time to time make matching payments to carry out coastal wetlands conservation projects as such projects progress, but such payments, including previous payments, if any, shall not be more than the Federal pro rata share of any such project in conformity with subsection (d) of this section.

(2) The Director may enter into agreements to make matching payments on an initial portion of a coastal wetlands conservation project and to agree to make payments on the remaining Federal share of the costs of such project from subsequent moneys if and when they become available. The liability of the United States under such an agreement is contingent upon the continued availability of funds for the purpose of this section.

(f) WETLANDS ASSESSMENT.—The Director shall, with the funds made available in accordance with the next following section of this title, direct the U.S. Fish and Wildlife Service's National Wetland Inventory to update and digitize wetlands maps in the State of Texas and to conduct an assessment of the status, condition, and trends of wetlands in that State.

SEC. 306. DISTRIBUTION OF APPROPRIATIONS.

(a) PRIORITY PROJECT AND CONSERVATION PLANNING EXPENDITURES.—Of the total amount appropriated during a given fiscal year to carry out this title, 70 percent, not to exceed $70,000,000, shall be available, and shall remain available until expended, for the purposes of making expenditures—

(1) not to exceed the aggregate amount of $5,000,000 annually to assist the Task Force in the preparation of the list required under this title and the plan required under this title, including preparation of—

(A) preliminary assessments;

(B) general or site-specific inventories;

(C) reconnaissance, engineering or other studies;

(D) preliminary design work; and

(E) such other studies as may be necessary to identify and evaluate the feasibility of coastal wetlands restoration projects;

(2) to carry out coastal wetlands restoration projects in accordance with the priorities set forth on the list prepared under this title;

(3) to carry out wetlands restoration projects in accordance with the priorities set forth in the restoration plan prepared under this title;

(4) to make grants not to exceed $2,500,000 annually or $10,000,000 in total, to assist the agency designated by the State in development of the Coastal Wetlands Conservation Plan pursuant to this title.

(b) COASTAL WETLANDS CONSERVATION GRANTS.—Of the total amount appropriated during a given fiscal year to carry out this Title, 15 percent, not to exceed $15,000,000 shall be available, and shall remain available to the Director, for purposes of making grants—

(1) to any coastal State, except States eligible to receive funding under section 306(a), to carry out coastal wetlands conservation projects in accordance with section 305 of this title; and

(2) in the amount of $2,500,000 in total for an assessment of the status, condition, and trends of wetlands in the State of Texas.

(c) NORTH AMERICAN WETLANDS CONSERVATION.—Of the total amount appropriated during a given fiscal year to carry out this title, 15 percent, not to exceed $15,000,000, shall be available to, and shall remain available until expended by, the Secretary of the Interior for allocation to carry out wetlands conservation projects in any coastal State under section 8 of the North American Wetlands Conservation Act (Public Law 101-233, 103 Stat. 1968, December 13, 1989).

SEC. 307. GENERAL PROVISIONS.

(a) ADDITIONAL AUTHORITY FOR THE CORPS OF ENGINEERS.—The Secretary is authorized to carry out projects for the protection, restoration, or enhancement of aquatic and associated ecosystems, including projects for the protection, restoration, or creation of wetlands and coastal ecosystems. In carrying out such projects, the Secretary shall give such projects equal consideration with projects relating to irrigation, navigation, or flood control.

(b) STUDY.—The Secretary is hereby authorized and directed to study the feasibility of modifying the operation of existing navigation and flood control projects to allow for an increase in the share of the Mississippi River flows and sediment send down the Atchafalaya River for purposes of land building and wetlands nourishment.

SEC. 308. CONFORMING AMENDMENT.

16 U.S.C. 777c is amended by adding the following after the first sentence:

"The Secretary shall distribute 18 per centum of each annual appropriation made in accordance with the provisions of section 777b of this title as provided in the Coastal Wetlands Planning, Protection and Restoration Act; *Provided that,* notwithstanding the provisions of section 777b, such sums shall remain available to carry out such Act through fiscal year 1999.".

"TITLE IV—GREAT LAKES OIL POLLUTION RESEARCH AND DEVELOPMENT

"SEC. 4001. SHORT TITLE.

"This title may be cited as the "Great Lakes Oil Pollution Research and Development Act".

"SEC. 4002. GREAT LAKES OIL POLLUTION RESEARCH AND DEVELOPMENT.

"Section 7001 of the Oil Pollution Act of 1990 (Public Law 101-380) is amended as follows:

"(1) GREAT LAKES DEMONSTRATION PROJECT.—In subsection (c)(6), strike "3" and insert "4", strike "and" after "California,", and insert "and (D) ports on the Great Lakes," after "Louisiana,".

"(2) FUNDING.—In subsection (f) strike "21,250,000" and insert "22,000,000" and in subsection (f)(2) strike "2,250,000" and insert "3,000,000".".

□ 2240

The SPEAKER pro tempore (Mr. ECKART). Is a second demanded?

Mr. DAVIS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Louisiana [Mr. TAUZIN] will be recognized for 20 minutes, and the gentleman from Michigan [Mr. DAVIS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5390, an act to prevent and control infestations of U.S. waters by the zebra mussel and other aquatic nuisance species, to restore Great Lakes fish and wildlife, to restore coastal wetlands and to improve oilspill research and development in the Great Lakes.

The zebra mussel has proliferated in the Great Lakes, clogging water pipes and if uncontrolled, is expected to infest the waterways in over two-thirds of the continental United States. It is estimated that economic costs associated with the spread of this organism would be $5 billion by the year 2000.

Title I of this bill is designed to address the problem created by zebra mussels and other aquatic nuisance species. It establishes a regulatory program to control ballast water in vessels entering the Great Lakes, and mandates a research and control program for zebra mussels and other exotic species.

Title II requires the U.S. Fish and Wildlife Service to conduct a study to identify threats to the fish and wildlife resources of the Great Lakes.

Title III establishes a coastal wetland restoration program in Louisiana, and also establishes a separate coastal wetland restoration program for other coastal States. It also provides additional funds for wetland conservation projects in coastal States under the North American Wetlands Conservation Act.

Title IV provides for an oilspill cleanup demonstration project in the Great Lakes.

This is a worthwhile bill and I urge members to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5390, legislation that is critical for the Great Lakes. I would like to thank Congressman HERTEL, author of the legislation, for his fine efforts, and also Congressman STUDDS for his work on this bill.

Title I of the bill addresses an immediate problem for the lakes-zebra mussels. In 5 short years after being dumped in the Great Lakes by oceangoing ships, these small clamlike organisms have clogged industrial and municipal water intake pipes and boat motors, colonized fish spawning reefs, and have littered beaches with razor sharp shells.

The potential for severe economic harm is devastating, because these tiny aquatic animals have no natural predators to limit their numbers. Not only have they found their way into each of the Great Lakes, but are gaining a foodhold as far west as Northern Minnesota's St. Louis River, spreading fear of infestation to Minnesota's 10,000 lakes and the Mississippi River.

The bill will require the U.S. Coast Guard to develop voluntary guidelines to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the exchange of ballast water of vessels. Within 2 years these requirements would be made mandatory for the Great Lakes.

This title also establishes a Federal task force to develop a comprehensive research, monitoring, control, and eradication program for aquatic nuisance species. The bill also provides State grants to assist in implementing the program, and authorizes funds to various Federal agencies for their involvement in solving this problem.

Title II of the bill calls for a comprehensive study of the status, management, and restoration needs of the resources of the Great Lakes. The growing and often conflicting demands placed on the Great Lakes will continue to exert pressure on fish and wildlife. These pressures include contaminates, invasion of alien species such as the zebra mussel and sea lamprey, and the destruction of habitat.

The Fish and Wildlife Service, the Great Lakes Fisheries Commission, and State agencies already have the responsibility for managing these resources. Unfortunately, they have not been given adequate funding to address existing problems or put programs in place to prevent new ones. This bill does that.

Simply put, this title directs the Fish and Wildlife Serivce, the Environmental Protection Agency, the U.S. Corps of Engineers, State Fish and Wildlife Agencies, tribes, and Canadian officials to undertake a comprehensive study of the fish and wildlife resources of the lakes and report to Congress by October 1, 1994.

Title III of the bill addresses coastal wetlands planning, protection and restoration. It provides a program to help in halting coastal erosion in the State of Louisiana which loses roughly 50 square miles a year, it establishes a national coastal wetlands conservation program to assist other coastal states, and a program for acquisition, restoration, and enhancement for other high priority national wetlands.

Mr. Speaker, I again would like to compliment my colleague Congressman HERTEL whose leadership was instrumental in moving this legislation, and urge its adoption by the House.

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. DAVIS. I yield to the gentleman from California.

Mr. DANNEMEYER. Mr. Speaker, I would like to ask my friend, the gentleman from Louisiana, is this zebra mussel on the endangered species list?

Mr. TAUZIN. Mr. Speaker, will the gentleman yield?

Mr. DAVIS. I am happy to yield to the gentleman from Louisiana.

Mr. TAUZIN. Not only is it not on the endangered species list, but if we do not do something about it, we may have to put many of us on the endangered species list. It is a fast-spreading infestation.

Mr. DANNEMEYER. How did this critter escape the detection net of those people working in the U.S. Fish and Wildlife looking for endangered species to preserve?

Mr. TAUZIN. I can only tell the gentleman that not only is the species not endangered, it is proliferating at a rapid rate to amount to an infestation that needs to be controlled.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, I would like to seriously thank the gentleman and the distinguished minority leader for bringing this bill forward.

Everyone knows, the greatest fresh water supply in the world is in the Great Lakes region, and it is an area where the entire country in many ways gets our fresh water from that region. It is being plagued by a newfound creature called the zebra mussel that, indeed, came from foreign ships, as I understand it, and so we have to deal with this problem before it magnifies.

So it is extremely important to the region that I represent, the greater Cleveland and other Great Lakes areas, but it is also important for the sake of fresh water, our greatest natural resource.

I want to compliment both of the gentlemen and all the members of the committee and those who brought the bill forward.

Mr. TAUZIN. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, can the gentleman tell me how much money is involved in the bill we are talking about?

Mr. TAUZIN. Mr. Speaker, will the gentleman yield?

Mr. WALKER, I am happy to yield to the gentleman from Louisiana.

Mr. TAUZIN. The bill authorizes about $150 million, all coming from the trust funds of the Wydler-Breaux funds which, as you know, need not be appropriated. The Wydler-Breaux funds do not amount nearly to the amount authorized under the bill.

Mr. WALKER. This money is all money approved previously by the House in the bills that we sent out of here by unanimous consent?

Mr. TAUZIN. The gentleman is correct. Some of this bill was passed in the water resources bill, but some of it was passed in this bill as it went to the Senate. It has been combined in the Senate. All of it has been through the House, and I think it was approved unanimously by the House.

Mr. WALKER. I thank the gentleman.

Mr. YOUNG of Alaska. Mr. Speaker, H.R. 5390 is a bill that addresses many issues critical to the Great Lakes. Contained within the legislation though, is a title that deals with national wetlands conservation projects. My statement should provide clarification for those responsible for carrying out those projects.

Section 306(c) of title III of the bill, specifically directs that 15 percent, not to exceed $15 million, of funds available to carry out the Coastal Wetlands Planning, Protection and Restoration Act, shall be available to the Secretary of the Interior for wetland conservation projects in coastal States of the United States. These wetland conservation projects would be administered under the authority of the North American Wetland Conservation Act Public Law 101-233, 101 Stat. 1968, December 13, 1989).

Mr. Speaker, the North American Wetland Conservation Act was adopted by this Congress and signed into law last year as a way of providing funding for wetland conservation projects throughout North America. Section 8 of that act, provides that the Secretary of the Interior allocate funds made available to him under that act, in such a way that at least 50 percent, but not more than 70 percent, be available for wetland conservation projects in Canada and Mexico. The remainder of funds available at least 30 percent but not more than 50 percent, would be applied to wetland conservation projects in the United States.

I would like to point out that funds provided by section 306(c) would be used only for wetland conservation projects, as approved by the North American Wetlands Council, for coastal states within the United States. It was also the intent of the Members in agreeing to include this section in the bill that these funds would not be included with the funds available under the North American Wetland Conserva-

tion Act in determining the allocation of funds to Canada, Mexico, and the United States.

Mr. Speaker, our intent with the adoption of section 306(c) in title III of H.R. 5390, is simply to allow additional moneys to be used by the Secretary of the Interior under the existing authority provided through the North American Wetland Conservation Act—which provides for cost sharing with the private sector and the states—to benefit wetland conservation projects in the coastal States of the United States.

Mr. Speaker, I hope this provides clarity to this issue.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of H.R. 5390, an act to prevent and control infestations of U.S. waters by the zebra mussel and other aquatic nuisance species, to restore Great Lakes fish and wildlife, to restore coastal wetlands, and to improve oilspill research and development in the Great Lakes.

In particular, I would like to take this opportunity to express my strong support for the National Coastal Wetlands Conservation Grants Program which is established in section 3005 of this bill. Section 3005 allows the Director of the U.S. Fish and Wildlife to make grants to coastal States for wetlands conservation projects—defined in the bill as either obtaining real property interests in wetlands, or restoring or enhancing wetlands. In awarding these grants the Director is required to give priority consideration to projects which are consistent with the national wetlands priority conservation plan developed under section 301 of the Emergency Wetlands Act, and to States that have established dedicated funding for programs to acquire coastal wetlands. Additionally, the Director should give priority consideration to coastal wetlands projects in maritime forests on coastal barrier islands.

I would like to point out that this legislation is silent on how to specifically distribute wetlands conservation grants among the coastal States. Nowhere in the legislation does it say that grants should be given to every coastal State in a given fiscal year. Rather, the legislation directs the U.S. Fish and Wildife Service to give priority consideration to individual conservation projects that meet several general guidelines. However, it is my intent that the Director should attempt to maintain a regional balance in the distribution of grants to coastal States. I also note that funds for this grant program are derived from the sport fish restoration account. Therefore, I intend that the costs of administering this new grant program shall be reimbursed under the 6 percent administration set aside authorized for the Fish Restoration Program.

Finally, Mr. Speaker, I would like to point out that there are two rare and irreplaceable maritime forests in North Carolina—Nags Head Woods and Buxton Woods. These two maritime forests consist of ecologically important marshlands, Pine Hammocks, and Bay Forests. In addition, they are home to many endangered and threatened species. Local interests in North Carolina have been trying to preserve these maritime forests for many years. Proposals to protect maritime forests, such as Nags Head Woods and Buxton Woods, are to be given priority consideration under this legislation. Therefore, I have every expectation that the State of North Carolina shall obtain funding under this grant program to protect these and other valuable maritime forests.

In conclusion, I urge all Members to support this important piece of legislation.

Mr. NOWAK. Mr. Speaker, I rise in strong support of H.R. 5390; the Aquatic Nuisance Prevention and Control Act of 1990, a bill crafted to respond to the threat of the zebra mussel and other exotic species that find their way into U.S. waters. The zebra mussel in just 2 years has infiltrated the Great Lakes and colonized our water intake infrastructure; it is estimated it will cost the Nation more than $5 billion in damage and management costs over the next decade as it spreads from the Great Lakes to inland rivers and lakes.

This bill is a comprehensive interagency response to the problem of the exotic species and provides resources to NOAA, the U.S. Fish and Wildlife Service, the Coast Guard, and the U.S. Army Corps of Engineers for a coordinated attack on the prevention and control of the zebra mussel in particular.

Title II of the bill authorizes the Great Lakes Fish and Wildlife Restoration Act of 1990. The bill provides badly needed resouces to the U.S. Fish and Wildlife Service to assess our Great Lakes fishery and implement management programs critical to the stewardship of the fishery, now worth over $4.5 billion annually to the Great Lakes regional economy. In crafting this bill we consulted extensively with the Fish and Wildlife Service to ensure that this legislation would reflect the true programmatic needs of the Service in this new Great Lakes initiative. This modest Federal investment in the Great Lakes resource is long overdue and will make the U.S. Fish and Wildlife Service a full partner in the multi-agency Federal effort to clean up and enhance our valuable Great Lakes fishery.

Title III of the bill amends the recently enacted Oil Pollution Act of 1990 to include an oil pollution minimization demonstration project for the Great Lakes. The Great Lakes are a unique ecosystem that take a full 100 years for the water to cycle through. This warrants special consideration for the unique and certain devastation that a major oil spill would have on the system. Again I will thank the Chairman HERTEL for his excellent work in moving this provision along.

Mr. Speaker, a great deal of work has preceeded final passage of this legislation. I would like to commend the chairman of the Merchant Marine and Fisheries Committee Mr. JONES and ranking minority member BOB DAVIS, whom I worked closely with in crafting the fish and wildlife bill. Special thanks are owed to my colleagues, Chairman STUDDS and Chairman HERTEL, for their untiring efforts to see this legislation through final passage.

I strongly urge the adoption of this bill.

Mr. TAUZIN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DAVIS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisiana [Mr. TAUZIN] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 5390.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

DISCUSSION CONCERNING THE KISSIMMEE RIVER RESTORATION PROJECT

(Mr. ROE asked and was given permission to address the House for 1 minute.)

Mr. ROE. Mr. Speaker, I have asked for this 1-minute for the purpose of engaging in a colloquy with the gentleman from Minnesota.

Mr. STANGELAND. Mr. Speaker, will the gentleman yield?

Mr. ROE. I yield to the gentleman from Minnesota.

Mr. STANGELAND. This morning, the Senate passed a bill which would have conditionally authorized a project for the restoration of the Kissimmee River. However, no construction could begin on the project until the final report of the chief was completed, together with modifications recommended by the Secretary of the Army. While both the House and Senate versions of the Water Resources Development Act of 1990 contained similar provisions, the conference agreement did not include such a provision. When the House approved, and sent to the President the Water Resources Development Act of 1990, the bill did include a requirement for the Corps of Engineers to expedite a study for the restoration of the Kissimmee River. It is my understanding that the committee intends to follow the progress of this project carefully and work toward the prompt completion of the study.

Mr. ROE. The gentleman is correct. In fact, the law will require that the study be completed no later than April 1, 1992, and that plans and specifications suitable to allow the project to be bid for construction be prepared by June 1, 1994.

Mr. STANGELAND. With the requirements in the law for expedited completion of the study and post study engineering and design, I believe that the project will move foward at a fast pace.

Mr. ROE. I concur with my colleague. I also believe that the provisions for an expedited study of the project will enhance the pace at which this project proceeds. The committee looks forward to the prompt completion of this study and authorizing this project in accordance with the final report of the Chief of Engineers in the next Congress. With the assistance of the Florida delegation in the House

and the Senate, I have every reason to be confident that this project will move expeditiously.

Mr. STANGELAND. I thank the gentleman for his clarification concerning this important environmental project.

TEMPORARY EXTENSION OF CERTAIN LAWS RELATING TO HOUSING AND COMMUNITY DEVELOPMENT

Mr. GONZALEZ. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 5933) to provide for the temporary extension of the certain laws relating to housing and community development.

The Clerk read as follows:

Senate amendments:

Page 3, line 4, strike out "February 1, 1990" and insert "November 30, 1990".

Page 3, line 19, strike out "February 1, 1990" and insert "November 30, 1990".

Page 4, line 10, strike out "February 1, 1990" and insert "November 30, 1990".

The SPEAKER pro tempore. Is a second demanded?

Mr. WYLIE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. GONZALEZ] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. WYLIE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a very technical matter.

The other body amended the dates of the several extensions included in the House bill, H.R. 5933, from February 1, 1991, to November 30, 1990. This is agreeable and satisfactory to both the majority and the minority on our side and, therefore, I would urge the approval.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WYLIE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I associate myself with the remarks of the distinguished chairman. This is a temporary extension for some HUD programs which have already been authorized in the conference report. I urge adoption of this.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. GONZALEZ] that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 5933.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

REQUEST FOR CONSIDERATION OF H.R. 5891, RESOLUTION TRUST CORPORATION FUNDING ACT

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 5891) to provide additional funding for the Resolution Trust Corporation, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. ANNUNZIO. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard. Consideration of the bill is dispensed with.

CRIME CONTROL ACT OF 1990

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 3266) to control crime.

The Clerk read as follows:

[The bill S. 3266 will appear in a subsequent issue of the RECORD.]

The SPEAKER pro tempore. Is a second demanded?

Mr. McCOLLUM. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

□ 1050

The SPEAKER pro tempore (Mr. ECKART). The gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, and the gentleman from Florida [Mr. MCCOLLUM] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as all the Members are aware, the Judiciary Committees of both the House and the Senate, along with numerous other committees of both bodies, have worked for many months during the 101st Congress to assemble a comprehensive crime control bill. Both Houses passed such a measure, this body having acted on H.R. 5269, the Comprehensive Crime Control Act of 1990, earlier this month.

In the weeks since H.R. 5269 passed the House, there have been numerous meetings between the House and Senate, both on the staff level and the Member level, in an attempt to resolve the very real differences that existed between the two bills and to fashion a single piece of legislation that would win acceptance by the Congress and be signed by the President. These meetings have involved scores of people and hundreds of hours of time, and nobody can say that we did not give the effort to find common ground on this matter our best shot.

Unfortunately, during conference meetings this week, it was determined by the Members that it was simply impossible to reach agreement on a number of major issues contained in both bills. The differences were simply too great to bridge at this late hour in the session.

However, the members of the House and Senate meeting in conference agreed that it would be wrong if because of this failure to agree on the major issues, the important work of the two Judiciary Committees and other committees of the House and Senate on other criminal justice issues during the 101st Congress were to be lost. Accordingly, the conferees agreed that a document reflecting those matters on which there was a consensus of the Members—Republican and Democratic, House and Senate—should be assembled and enacted.

This is the bill before us tonight. It addresses numerous issues in such areas as child abuse, protection of the rights of victims of crime, funding for State and local law enforcement agencies, and drug trafficking. While it certainly does not contain all the provisions that most of the Members would have liked to enact during this Congress, it is an important step in the war against crime and one that is worthy of enactment in this final day of the 101st Congress.

One title of this omnibus bill is devoted to banking law enforcement. In a number of different ways this section of the bill addresses the legal system's response to the savings and loan scandal which threatens to cost the American people hundreds of billions of dollars over the coming years.

As the author of the final version of the Federal Debt Collection Procedures Act, to which the Senate has now formally agreed, I want to discuss some aspects of the legislation to make sure they are fully understood.

DEFINITION OF "DEBT"

The definition of "debt" was carefully written to make clear that the act will not apply to obligations which begin as purely private loan or contract obligations. For example, if one of our constituents goes to his neighborhood bank or thrift and takes out a business or personal loan, that transaction is between him and the bank or thrift. Unless it is a veterans' home loan or an FHA home loan or similar loan in which the Government is either the lender or the insurer or guarantor of the loan—that is, the co-

signer of the loan—then these loans will not come under coverage of this act's new procedures. This is true even if the bank or thrift later fails and is taken over by Federal regulators. If the Federal Government seeks to recover these loan or contract obligations, it may do so in exactly the way it proceeded in the past; it is not eligible to use the new procedures in this act.

Similarly, the act makes clear that it does not apply to any court judgment entered more than 10 years before the act's effective date. The collection of debts based on these earlier judgments will continue to be governed by current law rather than by this act.

EFFECT ON BANKRUPTCY LAWS

The act makes several clarifications to resolve potential ambiguities in its application or in its effect on other laws. One of those clarifications is that the act "shall not be construed to supersede or modify the operation of * * * title 11," United States Code—the Bankruptcy Code. This provision was carefully worded to make clear that the act would have absolutely no effect on the Bankruptcy Code; even provisions of the Bankruptcy Code making reference to nonbankruptcy law are to be read as if this act did not exist. The only exception is the provision in section 201 of the act, which amends a specific provision of the Bankruptcy Code.

HOMESTEAD AND OTHER EXEMPTIONS

The act's provisions regarding homestead and other exemptions have been changed considerably from both the original proposal which passed the Senate last November and the counterproposal which passed the House last month. In lieu of the uniform exemptions in the Senate bill or the different set of uniform exemptions in the House bill, the final version gives all debtors the right to elect either (1) the exemptions listed in section 522(D) of the Bankruptcy Code, or (2) the exemptions applicable under other Federal law as well as those applicable under the law of their State of residence. This is the same election given under the Bankruptcy Code to debtors in bankruptcy.

RECOVERABILITY OF SURCHARGE, ATTORNEYS FEES, OR OTHER COSTS

The act gives the United States the right to recover a surcharge of 10 percent of the amount of the debt, to cover litigation and enforcement costs. This surcharge may only be recovered in lawsuits which are brought under laws not providing some other amount to cover these costs and in which the United States does not receive an attorney's fee. Whichever of these additional amounts the United States recovers in a particular case, it should recover the amount in the same proceeding as is used to recover the debt itself.

NATIONWIDE SERVICE AND ENFORCEMENT

The act provides for both nationwide service of papers and nationwide enforcement of court orders. It will no longer be necessary to register a judgment pertaining to a debt covered under the act, or to commence an action or proceeding for the claim for a debt, in the district in which the debtor resides prior to its enforcement unless the debtor objects. If the debtor objects to enforcement from a district court other than in the district in which he resides, he is entitled under the act to have the action or proceeding transferred or the judgment registered there. Once the action is transferred to, or the judgment is registered in, the debtor's district, full enforcement under the act is available.

PREJUDGMENT DISCOVERY REGARDING DEBTOR'S FINANCIAL CONDITION

The act adds new authority for prejudgment discovery as to a debtor's financial condition. Under the act, if the court determines there is a reasonable likelihood that a debt exceeds $50,000, the United States may seek discovery regarding the debtor's financial condition from the debtor or third parties prior to judgment in connection with prejudgment remedies. Current law regarding postjudgment discovery as to a judgment debtor's financial condition is unaffected; such discovery may be taken irrespective of the amount of the debt.

Many courts ordinarily deny prejudgment discovery of a defendant's financial condition because such discovery is not deemed relevant to the issues of liability and damages. But in debt collection cases, the amount due is often not subject to reasonable contest, and the primary factual determination is whether the debtor is able to pay. Discovery regarding a debtor's financial condition prior to judgment will allow the United States to determine which cases merit no further attention due to the debtor's inability to make even an installment payment; it will also aid the use of prejudgment remedies to prevent dissipation of assets. Accordingly, the act permits prejudgment discovery for larger debts, subject to the Federal Rules of Civil Procedure.

INJUNCTIVE POWERS OF COURT

The courts generally have power to issue injunctions as necessary. To ensure that this bill is not read as a limitation on the court's inherent authority to issue injunctions and hold parties in contempt, the act contains a specific savings clause to clarify that courts retain their full complement of injunctive and contempt powers under Federal statutory law, under the Federal Rules of Civil Procedure, and under the inherent authority flowing from article III judicial power. The courts retain full power to issue injunctions to aid or protect a party, and to protect and enforce their own orders through injunctive and contempt powers. Because of the breadth of this authority, separate provisions for "orders in aid of execution" and "restraining notices" were superfluous and were not included.

PROTECTIVE ORDERS

The bill acknowledges the important role played by the court in supervising the enforcement process by expressly recognizing the court's authority to enter and modify protective orders on its own motion or otherwise. This broad and general authority to fashion appropriate relief eliminates the need to anticipate all possible abuses or problems. We fully expect that the United States will not attempt to circumvent the exempt property rights of the debtor. We fully expect that the Government will generally seek to satisfy a judgment in a way that will minimize the adverse impact on the debtor and that will not unnecessarily disrupt the debtor's affairs. And we fully expect that the debtor will normally be able to elect which property should be applied to the satisfaction of his debt. But if the United States were to ever attempt to abuse its power under this bill, the courts can steadfastly protect the debtor.

BANKRUPTCY TREATMENT OF STUDENT LOAN OBLIGATIONS

Section 201 of the act extends the Bankruptcy Code's nondischargeability of student loans to debts which are similar in nature to student loans. It also extends the time limitation on the discharge of these debts from 5 to 7 years.

A number of Federal agencies administer student loan-related programs under their own statutes, which provide different rules for dischargeability in bankruptcy of those loans or obligations. For example, section 338E of the Public Health Service Act provides that covered Public Health Service Act obligations may be discharged in bankruptcy only after a 5-year period has elapsed and only if nondischarge would be unconscionable.

Concern has been expressed that section 201 might be construed to supersede the more program-specific dischargeability provisions contained in statutes such as the Public Health Service Act. But the legislative intention in passing S. 84 is that section 201 will cover only those debts which are now covered by section 523(A)(8) of the Bankruptcy Code, rather than by these more specific statutes. The dischargeability of loans and obligations, such as those entered into under the Public Health Service Act, would continue to be determined by the provisions in the more program-specific statutes.

SAVINGS AND LOAN BANKRUPTCY PROVISIONS

The second part of the bill I would like to briefly mention is in the savings and loan section. These are

changes to the Bankruptcy Code which close off the bankruptcy escape hatch for bank and thrift insiders whose acts of financial fraud and malice will end up adding perhaps half a trillion dollars to the Federal debt. These provisions are narrowly crafted to hit only those who committed the worst abuses in the heyday of the Reagan deregulation era. But for those few who have been at the helm of one of the worst financial scandals in history, the hit will be hard. Banking regulators will now be able to prosecute these con artists with the needed confidence that the victories won in enforcement proceedings will not be nullified in bankruptcy proceedings.

I wish to emphasize how narrowly these bankruptcy provisions have been drawn, particularly through the use of the term "institution-affiliated party." In incorporating into the Bankruptcy Code the definition of institution-affiliated party as that term is used in FIRREA with reference to section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(u)), we intend that such term and the related bankruptcy provisions be applied to punish only those persons who personally were involved in wrongful acts that jeopardized the financial health of an insured depository institution.

It is not our intent for the new bankruptcy provisions to be used by a Federal depository institutions regulatory agency to seek to satisfy debts owed to depository institutions with assets of innocent persons who have had no personal involvement with any wrongful acts from which such debts arose. For example, if an innocent individual happened to have been affiliated at one time with a law firm or accounting firm which, through persons other than the innocent individual, committed one or more wrongful acts, the innocent individual should nevertheless receive the full protection of the bankruptcy laws; he should not be held vicariously liable for debts due to wrongful acts in which he did not participate and which he did not ratify.

We specifically approve the enunciation of this principle in *Matter of Walker*, 726 F.2d 452, 454 (8th Cir. 1984); *Anderson* v. *Anderson*, 29 B.R. 184, 191 (Bankr. N.D. Iowa 1983); and *Futscher* v. *Futscher*, 58 B.R. 14, 17 (Bankr. S.D. Ohio 1985). These cases are faithful to a fundamental tenet of bankruptcy, that an honest debtor should be relieved of the oppressive burden of his or her debts. *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 244 (1934).

I would like to make one last point about a very sensitive matter. The committee is aware that the case *Garner* v. *James*, 881 F. 2d 579 (8th Cir. 1989), is currently pending before the U.S. Supreme Court. The appeals court held in Garner that, because a State court judgment for fraud was based on a preponderance of the evidence, rather than clear and convincing evidence as required for nondischargeability under section 523(a) of the Bankruptcy Code, the debtor in bankruptcy was not estopped from contesting nondischargeability of a debt for fraud based on the State court judgment. Concern has been expressed that Congress, by making the changes to the Bankruptcy Code which are included in this act, might be considered to have addressed the questions before the court. We want to make very clear that in no way are these bankruptcy provisions intended to affect the court's consideration of the questions before it or to affect the disposition of that case.

I would like to ask the chairman of the Committee on Banking, Finance and Urban Affairs, it just cost us $10 or $12 billion in the last RTC appropriation?

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. BROOKS. I yield to the gentleman from Texas.

Mr. GONZALEZ. We were attempting to bring up the committee-approved bill which provided $10 billion, and that was just objected to, so there is no bill.

Mr. BROOKS. But we obviously see they need another $10 billion to keep going for another couple of months.

The savings and loan title tightens criminal penalties to be levied against individuals who defraud financial institutions, and enhances the enforcement powers of the Department of Justice and the Federal financial institution regulatory agencies, and will ensure that those who defraud those institutions will be made to pay the price. This is a tough and effective answer to a pressing national problem and it deserves the support of all the Members.

Another title of this bill incorporates the Federal Debt Collection Procedures Act of 1990. This title, which is based on the testimony of our U.S. attorneys that they need a uniform system to help them collect debts owed to the United States, will work to reduce the $90 billion of Federal debt that is currently outstanding. In a time of budget conditions such as we now face, the Members of this body owe it to the American people to ensure that the Debt Collection Procedures Act is approved.

Mr. Speaker, there are two particular provisions of the crime bill to which my Subcommittee on Economic and Commercial Law has devoted careful attention during the last session of this Congress. I would briefly like to describe these portions of the bill before us.

The first part I would like to discuss is a modified version of S. 84, The Federal Debt Collection Procedures Act of 1990, which we have negotiated over the past several weeks. It is based on a proposal from the U.S. attorneys to assist them in collecting debts owed the United States more efficiently and effectively. Under the current system, Federal laws giving rise to obligations are governed by uniform standards. But the standards and procedures for collecting judgments on those obligations are determined by State law. The patchwork of differing State laws makes the Justice Department's task of mounting an effective debt collection effort a difficult one, to say the least. At a time of massive Federal deficits, it is imperative that we actively seek out the over $99 billion in outstanding delinquent debts currently owed the Government, and that the U.S. Government not be hampered by procedural roadblocks in doing so.

On June 14 of this year, the Subcommittee on Economic and Commercial Law held a hearing on this subject. The U.S. attorneys made a strong case for a uniform Federal law and procedure. But other expert witnesses urged the subcommittee not to overlook the important protections given debtors and other creditors under State law in the drive for uniformity.

We have attempted to be responsive to both points of view. The bill before us today represents a balanced approach which preserves the thrust of the U.S. attorneys' proposal while showing appropriate regard for basic fairness to debtors, their dependents, and other creditors. In this regard, I was particularly concerned about attempts to override the State homestead laws under the guise of creating a more efficient debt collection procedure. Both the administration's debt collection proposal and the Senate's version of the bill contained a Draconian provision that would have essentially wiped out State homestead exemptions. Such a proposal would have sacrificed key citizen rights to procedural convenience.

The State homestead laws are citizen protections that are deeply rooted in the history of the several States, and which have served as a bulwark against excessive and unjustified intrusion into the affairs and basic welfare of the individual and his or her family. These laws were never put in place to coddle debtors: they were codified as a means of setting a boundary for the preservation of decency and individual dignity beyond which no party is allowed to intrude. They are rightfully considered the birthright of every citizen, and represent a historical bond of trust between State and citizen. The Texas homestead law has been a cornerstone of the Texas Constitution since the days of the Republic.

Fortunately, the Senate was willing to reconsider a proposal I sent to them

earlier in the week as a means of crafting an effective yet equitable proposal.

This version of the Federal debt collection legislation contains three major features: First, it would preserve in their entirety all State homestead laws; second, it would clarify and standardize the prejudgment and postjudgment remedies available to the U.S. attorneys in collecting Federal debts; and third, it would centralize all authority to prosecute and manage Federal debt collection efforts within the Department of Justice. I believe that, taken together, these features will achieve a balanced result by streamlining the debt collection process while affording fundamental protections to the rights of all individuals.

This bill has the enthusiastic support of the Justice Department and U.S. attorneys across the land. It represents the culmination of years of work by the U.S. attorneys to obtain the tools they need to forge an efficient, effective, and fair debt collection system. I urge my colleagues to join with me in passing this important legislation.

The second part of the bill I would like to briefly mention is in the savings and loan section. These are changes to the bankruptcy code which close off the bankruptcy "escape hatch" for bank and thrift insiders whose acts of financial fraud and malice will end up adding perhaps half a trillion dollars to the Federal debt. These provisions are narrowly crafted to hit only those who committed the worst abuses in the heyday of the Reagan deregulation era. But for those few who have been at the helm of one of the worst financial scandals in history, the hit will be hard. Banking regulators will now be able to prosecute these con-artists with the needed confidence that the victories won in enforcement proceedings will not be nullified in bankruptcy proceedings.

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. BROOKS. I yield to the chairman of the Committee on Banking, Finance and Urban Affairs, the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. I wonder if the chairman would be kind enough to tell Members what the status of the homestead provision is in this version?

Mr. BROOKS. Clean. The homestead provision in this bill basically is considered the first right of every citizen in some 29 States, is optional for the attorneys to use. It means that the homestead laws will remain intact in the State of Texas and 29 other States in this Union that have them.

Mr. GONZALEZ. Mr. Speaker, if the gentleman will continue to yield, am I interpreting that to mean that the provisos that had been included in the Senate version in which, in effect, would have superseded and vitiated such step provisions as the time-honored Texas State constitutional provision on homestead exception?

□ 2300

Am I to understand that is not in this version, or is there a modification of that version?

Mr. BROOKS. There is a slight modification in the S&L package. In the S&L package originally under the Wylie amendment that was a little broadly crafted, and in the conference we worked out some language that preserved the Wylie amendment, but narrows it to the people he really wanted to get to, which is those people who have a fiduciary relationship with a financial institution, No. 1

No. 2, those people who have been convicted of fraud.

No. 3, those people who willfully have failed to maintain an adequate reserve in those institutions.

With those three caveats it draws a circle around the people who are involved in fraud and does not involve the vast majority of people in all the States who have nothing to do with the management of S&L's.

With that kind of an agreement, the amendment was agreed to. The gentleman from Ohio [Mr. WYLIE] introduced it and it was agreed to and it is a part of the S&L package in this bill.

Mr. GONZALEZ. Mr. Speaker, if the gentleman will yield further, the gentleman will recall that portion of the S&L which was properly within the jurisdiction of the Banking Committee was never brought back to the Banking Committee. That is the reason I rose when the gentleman from Texas first entertained it in the House, and I objected and voted against the bill. That is the reason I was formulating this inquiry, because I cannot think of anything more devastating, as the gentleman well knows, in such States as Texas where all we have left for those little folks who all they have is a roof over their heads, preserved by the time honored and pioneer legislation in the State of Texas since its first constitution to preserve that homestead for that family.

Mr. BROOKS. They will keep it forever, I say to the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Mr. Speaker, I thank the gentleman.

PARLIAMENTARY INQUIRY

Ms. KAPTUR. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. ECKART). The gentlewoman will state her parliamentary inquiry.

Ms. KAPTUR. Mr. Speaker, I was just curious if the Chair could give some clarification on what might happen this evening on H.R. 5891, which previously had been brought up for discussion and then on a point of order was pulled from the agenda.

Might I make an inquiry as to whether or not that item will be brought back for consideration later this evening?

The SPEAKER pro tempore. The Chair cannot answer the gentlewoman's question directly, except to say that H.R. 5891 was brought under unanimous consent, and objection was heard.

Mr. McCOLLUM. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, we are going to be passing tonight a minic:ime bill, I guess that is the best way to describe it. It has a number of features that I support. In fact, I do not think there is anything in here that anybody in this room would want to oppose, and that is the problem with this bill. It contains no death penalty procedure revisions. It contains no drug kingpin death penalty. It contains no habeas corpus reform to take care of the problem with death row inmates being able to have endless appeals.

It has no reform of the exclusionary rule to be able to allow law officers to get evidence they seize in drug busts into evidence to get convictions.

This bill is gutted as far as the President's crime bill is concerned.

The conference we had the last couple days was a farce as far as being able to produce a tough crime bill is concerned.

We as a body should be ashamed that we call this an anticrime bill. That is not to say that the provisions in it again are not worthy of becoming law in their own right, but it is to say that those things that the American people have focused on and are fed up with our not addressing did not get resolved.

Why did this outrageous event occur in our conference? I will tell you why. It occurred because, first of all, we waited so late as a body to take up this bill. We should never allow a major crime bill to go as late as the last 3 weeks of a session before we take it up on the floor of the House. You cannot expect to be able to circumvent those who are objectors in the minority in both bodies who do not like the death penalty and habeas corpus reform and exclusionary reform, to allow something to pass at the end, I suppose.

And we should not have expected a conference that was not appointed until 3 weeks after we finished the bill to be able to work its way through a process like this in two days. It is outrageous that we let that happen.

Then in the conference when we had four Senators, Senators METZENBAUM, LEAHY, DECONCINI, and KENNEDY, who at the last moment had the opportunity to say yes to a stripped-down death penalty, say no, we will not even allow that to happen, and when we had our own conferees in the majority party on that side who had the chance to

send the bill back to the Senate as a proposal, voted on the record, "No, we don't want to send it back that way."

Mr. Speaker, we should be ashamed to call this a crime bill. As the Attorney General said in a statement he issued just today:

> The conferees' decision to drop use of the death penalty for federal crimes is welcome news only to violent criminals.
>
> Rejection of the death penalty along with the stripping of proposals which would control endless appeals by death row inmates and which would assist police in the gathering of evidence now takes the teeth out of this legislation.
>
> It is hard to comprehend at a time when citizen concern about crime is so high why some on Capitol Hill have such difficulty in passing a crime bill which is pro-law enforcement instead of pro-criminal. I will repeat that the first civil right of all Americans is the right to be safe in our homes, on our streets and in our communities.

We did not do this. We have now the facing of our constituents to say that we do not have these in the bill, and I think we should be ashamed to call this a crime bill.

Mr. BROOKS. Mr. Speaker, I yield 5 minutes to the gentleman from New Jersey [Mr. HUGHES], the chairman of the subcommittee, who has devoted several years to the perfection of a large number of titles in the original crime bill and he is due a lot of credit for objectively and constructively trying to improve the crime laws of this Nation.

Mr. HUGHES. Mr. Speaker, I thank the distinguished chairman of the full Judiciary Committee for yielding me this time.

Mr. Speaker, I am disappointed also that we do not have some additional measures. I would like to have seen the death penalty provisions in here.

I think we reported out some very responsible provisions that would provide some 30 categories for capital offenses, with an attempt to kill a standard which would pass constitutional muster.

I am very, very disappointed that we do not have a section in here dealing with habeas corpus, which indeed does need reform. Some of our prisoners on death row are there for 12 and 14 years, and it is shameful that 60 percent of our capital defendants on death row find their convictions reversed because of incompetent counsel, which we often catch up with after 10 or 12 years.

But I want to tell you, Mr. Speaker and my colleagues, I attempted to share with you when we were in here, when we were feeding at the trough trying to jazz this up and make it look like a tough crime bill, we put so much excess baggage in here that it was impossible really to try to resolve the major differences that existed in about seven sections of the bill, including the death penalty.

Frankly, that was the problem; but for my colleague, the gentleman from Florida, who I really in many respects admire, I am disappointed, because we worked 2 years in our Subcommittee on Crime with the gentleman's help, a partnership in developing about 11 titles in that bill, that the gentleman and I worked with our subcommittee on, and for the gentleman to suggest that those are not strong anticrime measures, you know, I do not think is very fair, and the gentleman knows that. The gentleman knows it is not fair.

If any of those titles had been brought to the floor of the House, we would be here on the floor of the House arguing for each and every title, because they are strong anticrime measures.

Let me give you some examples. The bill authorizes $220 million in Federal matching grants, enabling State and local governments to establish more effective prison programs to help alleviate the revolving door syndrome where defendants are incarcerated and then rotated out due to prison overcrowding. We are cutting prisoners loose throughout this country because we do not have prisons to house them in. Judges are sending youthful defendants home, youthful offenders in particular, four to five times because we do not have a place to put them.

□ 2310

So to suggest that that is not an important anticrime measure I think is unfair. It adds 12 new chemicals to the list of precursor chemicals under the Chemical Diversion and Trafficking Act that we worked on and passed in the Subcommittee on Crime a couple of years ago.

It provides for 12 additional new chemicals. That law was one of the most effective tools we provided. It should be up there with money laundering that we worked on and passed a number of years ago in our subcommittee and forfeiture, which is probably one of the proudest accomplishments of our subcommittee. It is up there in that league.

And to suggest that that is not an important anticrime measure is unfair, an unfair characterization. It makes important improvements in the asset forfeiture law. DEA is expected to confiscate about $1 billion in this coming year. That is much more than their entire budget.

To suggest that that is not important is unfair, it is an unfair characterization.

It places anabolic steroids in schedule 3 of the Controlled Substances Act and provides criminal penalties for the possession and distribution of those dangerous drugs.

To suggest that that is not a strong anticrime measure is unfair.

It tightens the money laundering statute, makes needed changes in several firearms statutes which come right from the President's crime bill.

It is unfair to characterize that as not a strong anticrime measure.

It provides enhanced penalties for addressing the savings and loans crisis. My colleague from Texas went into great detail about those provisions.

That represents a lot of work on the part of the committee, particularly Mr. SCHUMER and his subcommittee.

We made important changes in other criminal provisions regarding drugs, firearms, law enforcement.

In the area of child pornography, the gentleman knows in the early mornings of this session we worked until 4 this morning, and we have new child pornography provisions that puts recordkeeping back into it, a very strong measure that the gentleman from Florida and I wrote into the law a few years ago. So it tightens recordkeeping in a constitutional fashion. It also provides new penalties for possession of pornographic literature.

To suggest those are not strong anticrime measures misses the target. It is a good bill.

Mr. Speaker, I urge my colleagues to support it. Just because my colleague did not get everything he wanted does not mean it is not a good strong anticrime measure.

Mr. Speaker, the Crime Control Act of 1990 contains the following noteworthy provisions:

First. Correctional alternatives: Authorizes $220 million in Federal matching grants enabling State and local governments to establish more effective prison programs to help alleviate the revolving-door syndrome where defendants are incarcerated and then rotated out due to prison overcrowding.

Second. Ice, drug paraphernalia, and precursor chemicals titles: Adds 12 new chemicals to the list of precursor chemicals regulated under the Chemical Diversion and Trafficking Act; directs the Sentencing Commission to promulgate guidelines so ice offenses will be increased by two offense levels; strengthens the drug paraphernalia statute.

Third. Asset forfeiture: Makes important improvements in the asset forfeiture law improving the Government's ability to dispose of real estate and efficiently sell its assets.

Fourth. Anabolic steroids: Places anabolic steroids on schedule III of the Controlled Substances Act and provides criminal penalties for possession and distribution of these dangerous drugs.

Fifth. Victims of child abuse and other crime victims: Provides needed protection for victimized children and other victims of crime.

Sixth. Money laundering: Makes needed and essential improvements in the money laundering statutes.

Seventh. Firearms provisons: Makes needed changes in several firearms statutes which had been requested by the administration.

Eight. Savings and loans: Provides enhanced penalties for addressing the savings and loans crisis; protects assets from wrongful disposition; improves procedures for handling bank related cases; and sets up new coordinated level of enforcement in the executive branch.

Ninth. Makes important changes in other criminal provisions regarding drugs, firearms and law enforcement which will provide our law enforcement officers with much needed tools.

Tenth. Child pornography: Closes loophole through which child pornographers escape prosecution and provides tougher penalties for these child molesters.

Mr. McCOLLUM. Mr. Speaker, I yield myself 15 seconds just to respond to say that I do support everything that is in this bill. Mr. HUGHES is quite correct, this is a good bill.

The problem is it is outrageous about what was not put in it. And the public needs to know it was not in there and why it was not in there.

Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Speaker, I would like to correct my dear friend from Florida. It is not what was not put in it, it is what was stripped out it. It was in the bill.

Let me list to you, ladies and gentlemen, what was taken out of the bill. All death penalty provisions, habeas corpus reform, exclusionary rule reform, antipublic corruption provisions, drug testing of Federal offenders, penalty for firearms possession by juveniles, increased firearms and explosives penalties, several antidrug trafficking provisions, expanded assets forfeiture authority, drug user accountability provisions.

This bill was a strong anticrime bill when it passed this House overwhelmingly. It left here as Arnold Schwartzenegger, and it came back as Woodie Allen.

Every major provision has been eviscerated, emasculated from this bill. The conference is more like an ACLU seminar than a conference of the Committee on the Judiciary.

And to anybody's study—what was it?—"Saddle yon braying ass." That was a Barrymore line, in any event. I did not mean you, Mr. SCHUMER, not much.

Anyway, anybody studying civics, anybody studying civics, I just suggest never assume that what happens on this floor means anything or has any significance. It is in the conference where the bills are written. Pay attention to who is appointed to the conference. That is where the work is done.

Now, the laws are not only written in conference, they are shredded in conference. The Congress has labored mightily and brought forth a mouse. Crime is an important issue out there in the rest of America. The Democrats control the House, they control the Senate, and they could not bring forward a major crime bill.

This is all right, this is nice, but it is not what left this House.

Now I would like to yield to the gentleman from Alabama [Mr. HARRIS].

Mr. HARRIS. I thank the gentleman for yielding.

Mr. Speaker, I of course rise in strong support of the bill that we have before us. But I also want to rise to state my disappointment in the fact that we did not come back with a bill that had our habeas corpus provisions, which are supported by law enforcement officers all over this country. And the death penalty provisions.

I just look forward to working with the gentleman next time and hope that we can get these provisions that are so needed so that we can have finality of judgment.

Mr. HYDE. Vote for this bill, but remember it is a monument to failure because it is not even close to what it should be and to the way this bill passed the House.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the distinguished Member from Florida, a member of the Committee on the Judiciary, Mr. LARRY SMITH.

Mr. SMITH of Florida. I thank the chairman for yielding.

I certainly want to commend the chairman of the full committee, the gentleman from Texas [Mr. BROOKS] and the gentleman from New Jersey [Mr. HUGHES], chairman of the Subcommittee on Crime.

Ladies and gentlemen, we can all stand and bemoan the fact that bills we get back after conference are not the same as when they left. You give me a choice between Woodie Allen and nothing, I will even take Woodie Allen.

We have had a crime bill every 2 years since I have been in Congress for 4 terms. We tried very hard each time to plug up some of the loopholes in the law, and we have. And because we did not get everything we wanted, no one here should act like a petulant child and want to run away home with the ball, leaving the game completely.

There are a lot of good provisions in this bill which will help your local and State law enforcement do a better job against crime, against drugs, against juvenile crime, against all the things that all the people out there, your constituents and mine, want fixed.

That is all there is to it.

We will come back again next Congress and work more on another crime bill and maybe get some of the things we wanted.

Mr. McCOLLUM. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. FISH], the ranking member of the full Committee on the Judiciary.

Mr. FISH. Mr. Speaker and colleagues, the Crime Control Act of 1990 which we are bringing to the floor lacks major provisions adopted by the House. These are important provisions and cannot be minimized by the opposition. Nevertheless, it does contain at least two provisions which merit its support.

Title XXV, the Banking Law Enforcement Act, is closely patterned after H.R. 5401, which passed the House overwhelmingly. It strengthens the banking enforcement agencies' ability to recover funds from the S&L wrong-doers, and our colleague from Ohio [Mr. WYLIE], will further elaborate.

Title XXXIII is the Federal Debt Collections Act.

Here we break new ground at the request of the U.S. attorneys nationwide. It will make it easier for the United States to collect debts owed it. It provides for nationwide procedure uniformity in collection of debts.

The Federal Debt Collection Procedures Act of 1990, provides for nationwide procedural uniformity in the collection of sums owed the United States.

Today the Federal Government's debt collection efforts are hampered by the need to rely on very diverse State collection remedies. The current system encourages inefficiency because the Department of Justice must apply the laws of 50 States. In addition, the collection remedies available in some States are very inadequate. The results are unfair to the Federal Government and to debtors; persons with similar obligations to the United States—who reside in different parts of the country—receive very different treatment.

This legislation will make the debt collection process more manageable by establishing consistent collection mechanisms available nationwide. The United States will have flexible remedies throughout the country—and persons who owe money to the Federal Government will enjoy the same procedural rights regardless of where they live. Debtors no longer will be subjected to the inequities inherent in the current system.

The drafters of this legislation sought to balance creditor and debtor interests—developing procedures that are fair to the Federal Government and to persons with unsatisfied obligations.

The legislation we consider today, I am pleased to inform my colleagues, incorporates substantial improvements

fashioned in the weeks since this body initially passed a federal debt collection bill. One of the more significant changes relates to the description of property exempt from collection efforts. The original House passed bill included broad uniform exemptions for Federal debt collection purposes—replacing reliance on State law exemptions that are much more restrictive in the vast majority of States. The United States, as a consequence, could not have reached substantial assets that would have remained available to private creditors.

The revised formulation of Federal debt collection legislation retains State law exemptions while affording debtors the option of electing the exemption list included in the Federal Bankruptcy Code. Although debtors in some States can benefit from such an election, the modest exemptions in the Bankruptcy Code list will minimize any adverse impact on Federal debt collection efforts.

The bill provides a broad range of prejudgment and postjudgment remedies—affording the United States necessary flexibility to effectuate recoveries. Debtors are fully protected by detailed notice requirements and hearing rights. The grounds for granting prejudgment remedies appropriately are limited to special circumstances.

This legislation—in the form we consider today—provides for nationwide enforcement of writs, orders, and judgments. This supplements a provision in the original House passed bill authorizing nationwide service of process. The new proposed statutory language will prove beneficial to the United States by simplifying and expediting many enforcement efforts. A provision for transferring the action or proceeding to the district of the debtor's residence—in response to a timely request of the debtor—safeguards debtor interests.

The bill includes provisions protecting rights of the United States under other laws and clarifying that various authorities remain unimpeded. Federal courts, for example, retain their full range of injunctive powers. In recognition of the broad powers Federal courts will continue to exercise, we seek to avoid including superfluous delineations of authority in this legislation. Illustrative of this point is the fact that Federal courts will not need specific statutory language to issue orders in aid of execution—and for that reason such language is not included.

At a time when the American people justifiably are concerned about our enormous national debt, I think we can derive personal satisfaction from the passage of legislation designed to enhance the Federal Government's debt collection efforts. Debts that remain unpaid increase the burden on the vast majority of citizens who meet their obligations.

We need better collection mechanisms for enforcing payment from people with resources who seek to avoid their responsibilities. At the same time, we must protect honest debtors who seek to assert their legitimate rights.

This legislation promotes efficiency in the Federal debt collection process without compromising debtor safeguards.

I urge my colleagues to vote for final passage.

Mr. McCOLLUM. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. WYLIE], the senior ranking member on the Committee on Banking, Finance and Urban Affairs.

Mr. WYLIE. Mr. Speaker, I thank the gentleman for yielding.

I suggest an "aye" vote on the comprehensive crime bill.

Although I too am somewhat disappointed that some of the provisions were dropped in conference, such as the death penalty and habeas corpus provisions mentioned, overall it is an excellent comprehensive crime bill. I am especially pleased that an amendment that I offered on the House floor was preserved and is known as the Savings and Loan Crime Package.

The Wylie amendment offered to H.R. 5269, with the active support of Mr. FISH, Mr. SCHUMER, and Mr. MCCOLLUM, would authorize the FDIC and the RTC to preempt generous State homestead exemptions that have been used by S&L crooks to protect assets they have squirreled away from failing insured institutions.

The amendment passed on a voice vote with wide bipartisan support on this floor. My amendment was a very modest step to increase taxpayer recoveries in the S&L debacle. It involved a very narrow presumption of State homestead laws only in cases where fraud or other similar misconduct have been committed against the insured financial institution. That was explained very adequately by the distinguished chairman of the Committee on the Judiciary, the gentleman from Texas [Mr. BROOKS]. I am pleased and commend the chairman of the Committee on the Judiciary for his willingness to work with me on this compromise amendment which reflected my original intent. I want to thank him for that. All in all, I also compliment Senator BIDEN, who worked with all of us.

The compromise amendment would preempt State homesteads in cases where institution-affiliated parties commit acts of fraud, defalcation, embezzlement or willful or malicious injury against a financial institution.

I urge my colleagues to join me in passing this important amendment today as part of the omnibus crime bill, it is a very important amendment and will take a modest step for the taxpayer to recover many of the ill-gotten gains of the S&L crooks.

□ 2320

Mr. Speaker, I urge my colleagues to join me in passing this important bill which includes this very important amendment as a modest step for the taxpayer to recover many of the ill-gotten gains of the S&L crooks.

Mr. McCOLLUM. Mr. Speaker, I yield 1 minute to the gentleman from Indiana [Mr. HILER].

Mr. HILER. Mr. Speaker, I rise today in strong support of the S&L crime package contained in S. 3266 the compromise Comprehensive Crime Control Act of 1990. I want to commend all those members of the House and Senate Banking and Judiciary Committees who worked on this bill and I want to particularly commend the ranking member of the Banking Committee, CHALMERS WYLIE, for his tireless work on this legislation. I regret that other provisions from the House-passed crime bill were not included in S. 3266, but at this late date I still must support the bill in order to give our prosecutors and regulators the tools they need to pursue S&L crooks.

My constituents, just like folks all over the country, are disgusted by the S&L debacle and the money that the taxpayer is being forced to pay to protect insured depositors. They are demanding that the ones who were a major cause of this problem—the S&L crooks—be dealt with swiftly and severely. Title 25 of S. 3266 gives prosecutors and regulators badly needed additional tools to bring these criminals to justice.

The bill before us today is highly similar to H.R. 5050, legislation I sponsored earlier this year that was reported by the Banking Committee's Financial Institutions Subcommittee and then largely adopted by the Judiciary Committee. Almost three-fourths of H.R. 5050 is contained in the bill before us today. Provisions largely adopted from H.R. 5050 include:

A new crime for the concealment of assets from the FDIC or RTC;

Increased restitution authority for the Government;

Authority for prosecutors and regulators to freeze the assets of individuals that may be culpable for the failure of an insured institution;

The Taxpayer Recovery Act of 1990 that prevents miscreants from using the Bankruptcy Code or State homestead exemptions to shield their assets;

A new Federal fraudulent conveyances statute;

Expanded civil forfeiture provisions; and

Expanded authority for the RTC and FDIC to trace assets overseas.

However, I am troubled by one provision of the S&L title. The section concerning asset freezes I believe could be interpreted way too broadly. I am concerned that the OTS is intending to freeze individual's assets before a notice of charges or complaint is filed against them. It is not intended that the asset freeze provisions would permit such conduct which could violate fundamental due process.

In closing, let me say that this bill will enhance criminal prosecutions and increase recoveries at failed financial institutions. It will reduce the cost of the S&L problem to the taxpayer and give prosecutors additional tools to put the S&L crooks in jail. I strongly support the S&L provisions of S. 3266 and urge my colleagues to join me in working for its prompt passage.

Mr. McCOLLUM. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, Members of the House, I offer my congratulations to the opponents of the death penalty who were appointed and served on the conference on the crime bill. They did a masterful job. Just a handful of votes had these opponents of the death penalty. Just a few votes, and they were able to convince the conference to thwart the will of the House of Representatives which overwhelmingly, not once, not twice, but more than that approved of the death penalty in those brutal cases about which we read every single day.

I congratulate those opponents of the death penalty. They did a masterful job, and they thwarted the will of the American people in what they did in such a wondrous way in weaving their way through the conference and obliterating from the face of the Earth the last chance that the American public and the House that represents them had to impose strong sanctions on the murderous segment of our society who kills in drive-by killings, in mail bombings, in kidnap murders, in bank robbery murders, in assassinations, in terrorism, which is the will of the day of terrorists across the world, and the United States is its next large target.

Mr. Speaker, I congratulate the opponents of the death penalty who in those magnificent ways were able to weave their will in the conference that thwarted the will of the American people in law enforcement.

M. BROOKS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Wisconsin [Mr. KASTENMEIER], the ranking Democrat on the Committee on the Judiciary.

Mr. KASTENMEIER. Mr. Speaker, I thank the gentleman from Texas [Mr. BROOKS], my chairman, for yielding this time to me.

I want to say this about the bill: I am going to support this bill. It is characterized as noncontroversial. I do not know that we know that as a matter of fact. It is about 300 pages. It is a massive bill that we are working on.

Mr. Speaker, I only say that because part of the problem is that we are dealing with this issue late in the session and as a package involving a number of committees. The gentleman from Florida [Mr. MCCOLLUM] suggested that as one of the problems 3 weeks before the Senate appointed conferees, and we could deal with this. I would suggest in the future that the House might well consider proceeding ad seriatim, allowing, for example, the gentleman from New Jersey [Mr. HUGHES] of the Subcommittee on Crime to develop pieces of legislation singly and have them treated on the other side when they get over there in good season rather than our desire to promote massive packages involving scores of conferees, involving subject matter that most people cannot digest, certainly not in a few days. This should at least be one lesson to us as we try to conclude a decent crime package in the year 1990.

Mr. McCOLLUM. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. DEWINE], a member of the Subcommittee on Crime and the conference committee.

Mr. DEWINE. Mr. Speaker, there is a lot that should be in this crime bill that is simply not in the bill, but there are an awful lot of good things as well.

The gentleman from California [Mr. LEVINE] and I have spent a great deal of time working with the crime victims organizations throughout the country to craft a portion of this bill which helps the people who are really the most vulnerable in our criminal justice system, and that, namely, are the children who are victims of crime who have to testify in court. I know as a county prosecuting attorney, one of the most heart-wrenching cases when I used to be a prosecutor was to have a young child who is a victim of a crime, and then to have to take that child into court and have that child testify in what, even to an adult many times, is a very sterile, very tough situation. What this bill does in the provision in this bill is sort of put its arms around that child and help that child through the criminal justice system. It gives the trial court judge some tools to protect that child in court to make his or her day in court easier. There is closed-circuit TV so, if a child is afraid of testifying in front of the person who committed the crime against the child, that is allowed. The use of testimonial aids is allowed. Trial court judges for the first time have to take into consideration in deciding whether to grant a continuance or not, to delay the trial, has to take into consideration the victims of the crime, the person who many times is ignored.

So, Mr. Speaker, this is a very good provision which helps the victims of crime, particularly children who are victims. There are also other good provisions in the bill. We have toughened the penalties for anyone who tampers with a jury, anyone who in any way tampers with court officials or who threatens court officials. We also have provisions in this bill to set up four supplemental programs in the States to help the States and set up alternatives to actual incarceration. This will not only help in the overcrowding of the prisons, but also will help in the situation of reducing the recidivism rate and the repeat offender rate.

Mr. McCOLLUM. Mr. Speaker, I yield 2 minutes to the gentleman from New Hampshire [Mr. DOUGLAS], a member of the Subcommittee on Crime.

Mr. DOUGLAS. Mr. Speaker, it is rare that in one calendar day we can have a chance to see a vote on two defining issues between the parties. At 7 o'clock this morning, the Democrats decided they would rather penalize the taxpayers, and tonight we are going to see that they do not want to penalize murderers. What they sent us is a bill that is a Dukakis Massachusetts-style crime bill. No death penalty. We sent the Senate a Texas-style crime bill over the objection of the most liberal committee of this House, the House Committee on the Judiciary, a crime bill that had meaningful punishment for international terrorists. What did we get back? What we got back was the equivalent of starting out with a first-degree murder indictment and ending up with a parking ticket. The only way a murderer has to fear this crime bill is if someone throws it at him because the death penalty is gone, habeas corpus reform is gone, and the exclusionary reform is gone.

But what we do have and what we are left with is the hard brutal fact that yesterday the State Department issued an advisory, and the advisory says that the Government has received information as of yesterday of another terrorist threat to Americans in the Middle East and the Mediterranean.

□ 2330

That was in the crime bill that we sent to the Senate, an extraterritorial reach for our death penalty for terrorists who blow up airplanes and blow up ships carrying Americans. But those terrorists will not be affected by this crime bill, because all we are left with is the equivalent of a parking ticket, when we sent a tough, meaningful crime bill by a vote of 291 to 123. Our conferees sold us out and stabbed us in the back, just like they took care of the taxpayers this morning.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from California [Mr. LEVINE], a member of the committee.

Mr. LEVINE of California. Mr. Speaker, I want to commend my colleagues for pulling together this important crime bill.

I have worked closely with Mr. DEWINE and Mr. SCHUMER over the last few months to craft the child abuse title of this bill and I want to thank them for their hard work and commend also the fine committee chairman, Mr. BROOKS as well as Mr. HUGHES.

I believe these provisions will go a long way toward setting new standards for protecting America's abused children.

The time for these child abuse provisions is long overdue as we were reminded by the McMartin case in my own district.

Tragically, child abuse has reached epidemic proportions in this country in the last decade. And for many children, even if they have the courage to come forward with their stories, the trial itself can be like a second assault.

With a criminal justice system that was designed centuries ago to pit men against men, not a child against an adult, the deck is often stacked against our kids.

Unintentionally, the trial can often be seriously traumatic for our children, making them relive the psychological damage of the abuse unnecessarily.

The child abuse title of this bill will help to correct this and other critical problems facing child victims in our justice system.

The child abuse provisions in this bill strike a fair and proper balance between the needs of child victims and the constitutional rights of defendants. They ensure that our abused children are afforded the protections they need to come forward and tell their stories.

Too often, the system seems to have failed in that mission.

While providng better protection for our abused children, we must also make sure that our judges, attorneys, social workers, doctors, and police receive the best training possible in handling abuse cases, both before and during the trial.

This legislation accomplishes both tasks through an effective combination of grants programs and a landmark child victims bill of rights.

I urge my colleagues to support this critically needed legislation.

Mr. McCOLLUM. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, this bill is a good bill. There is no question there are good provisions in here. There are child pornography provisions in this bill, there are provisions on savings and loan crime, there are the child abuse provisions, there are the antisteroid provisions. There are good provisions in this bill, and every Member should vote for it. But it is still going to be ashamed of because we have not produced what the American public expected in a tough anticrime bill.

It has been nearly 20 years since the U.S. Supreme Court declared unconstitutional the procedures for the death penalty across this country. Every State in the Union that had the death penalty at that time has enacted procedural changes to reinstate the death penalty.

But the Federal Government has not done that. We had the opportunity. We passed it in both the Senate and the House, but we did not get it through a liberal conference that was stacked against it, just yesterday.

The fact of the matter is that this body, just Thursday, 2 days ago, voted 291 to 123 to instruct our conferees to insist on those death penalty procedures, and to insist on a death penalty provision that would give the opportunity for the death penalty where somebody is trafficking in huge quantities of narcotics, more than twice the amount necessary for life imprisonment. That got stripped out in conference.

We passed in this conference and instructed our conferees to hold to it tough provisions to end the process where death row inmates use endless appeals through Federal courts and habeas corpus to stop the carrying out of their sentences, and that got stripped out.

Also what got stripped out was the part about the exclusionary rule, with the good faith exception we instructed our conferees to abide by that would have allowed more evidence to get more convictions.

These should have been allowed, because these are the tough law enforcement provisions that law officers across the country, State attorney generals and those who are prosecutors asked us to give, and we did not produce, and the American public asked us to produce, and we did not produce.

Pass the bill tonight, but remember, our work is not done. We have to come back and produce a truly anticrime bill in the next Congress.

Mr. BROOKS. Mr. Speaker, I yield the final 2 minutes to the gentleman from New York [Mr. SCHUMER], the chairman of the Subcommittee on Criminal Justice.

Mr. SCHUMER. Mr. Speaker, we have heard a lot of argument about what this bill is not, and that we should vote against something because it is not this, or what it does not have.

Well, with that argument, I would tell Members that we could vote against every piece of legislation that ever came up. "It is not this, it is not that. I wanted this, I wanted that."

Let us talk about what this bill is. Many of the previous Members have talked about some of these things. I would like to focus on the savings and loan issue, one of the major parts of this bill.

I want to give some credit to the gentleman from Ohio, who did a great job on this. But what is done in this bill is we create new offenses to prohibit the concealment of assets from regulators. We provide for prejudgment attachment and set freezes.

You do not want the savings and loan crooks to abscond and escape with their money. This bill will stop it.

We disallow the use of bankruptcy laws to evade criminal liability. In other words, we do not allow those who have looted savings and loans to hide their dollars in a place where Government process cannot get to them. We give the FDIC and the Credit Union Administration the ability to limit and prohibit golden parachutes. How many of us have been outraged by the fact that as taxpayers are bailing out the savings and loans, the officers and directors are making hundreds of thousands of dollars in these golden parachutes as institutions crash down.

We establish a national commission to investigate the causes of the failures of the thrift industry, and we establish a new crime unit within the Department of Justice to get after and specifically investigate criminal activity.

Mr. Speaker, those things are what is in this bill. It is not a whole panoply of things not in the bill. We are voting yes or no on these issues, and on nothing else. If you vote yes, you are for these things; if you vote no, you are against them.

Mr. EDWARDS of California. Mr. Speaker, I rise in strong support of the bill. I did not get everything I wanted in this bill. Nobody did. I wanted to have the Racial Justice Act become law; that is an important civil rights measure that would go a long way towards eliminating racial disparities in the imposition of the death sentence. I wanted to have meaningful habeas corpus reform, to address the lengthy delays and the terrible state of legal representation provided in many capital cases. I did not get those provisions. Other Members did not get what they wanted.

But we have a solid bill. If fact, we have a remarkable bill. Over a period of several weeks, our staffs were able to put together a bill, every provision of which is acceptable to every member of the conference committee, from the most liberal to the most conservative.

This bill proves that the fight against crime is not a partisan issue. We sat down in an atmosphere of consensus, and we all agreed, Democrat and Republican alike, on many hard-hitting, serious provisions. This bill expands correctional options, and includes provisions on steroids and the dangerous new drug "ice," on the savings and loan crisis, on debt

collection, firearms, forfeiture, drug education, and so on. It is a good bill, and I urge its adoption.

As chairman of the Subcommittee on Civil and Constitutional Rights, I was involved in the negotiations and the drafting of the important provisions regarding Federal child abuse victim's rights and protections and would like to comment on the meaning of those provisions.

The bill permits a child victim to testify by closed circuit televison if the court makes certain individualized findings regarding the inability of the child to testify in the presence of the defendant. It is important to note that the bill lists four specific and exclusive factors and requires that the court determine that the child is unable to testify in open court in the presence of the defendant because of one or more of those factors. Similar language allows the taking of the child victim's testimony by videotape.

Under the criteria concerning the child's fear, a generalized finding that the child suffers from fear would not be enough to trigger closed-circuit testimony; the fear must be related to the prospect of testifying in the presence of the defendant. Similarly, under the criteria concerning infirmity, an illness or handicap would not trigger closed-circuit television because it was neither caused by the defendant nor likely to be mitigated by the child being permitted to testify outside of the defendant's presence.

It is also important to note that, although the bill's definition of "child" includes witnesses as well as victims, the language governing use of alternatives to live in-court testimony is limited to child victims. Both proposed new 18 U.S.C. 3509 (b)(1)(A) and (b)(2)(A), dealing with the use of closed-circuit television and videotaped depositions, apply only "in a proceeding involving an alleged offense against a child," and refer subsequently throughout to "the" child, rather than "a" child. The purpose of this language is to make clear that these extraordinary exceptions to the constitutional right to face-to-face confrontation are not designed to shield children from the common apprehensions a vulnerable and impressionable witness will feel from testifying in any judicial proceeding, but only to protect children from the trauma of confronting their alleged physical tormentors.

Finally, I would note that, in requiring that the defendant's televised image be relayed into the room where the child is testifying by closed-circuit television or videotaped deposition, the bill clearly contemplates that the monitor displaying the defendant's image be placed within the child's sight. To do otherwise would stretch the defendant's confrontation rights to the breaking point.

The SPEAKER pro tempore (Mr. ECKART). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the Senate bill, S. 3266.

The question was taken.

Mr. BROOKS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 313, nays 1, not voting 118, as follows:

[Roll No. 534]

YEAS—313

Alexander	Frank	McMillen (MD)
Anderson	Frenzel	McNulty
Andrews	Frost	Meyers
Annunzio	Gallegly	Mfume
Anthony	Gallo	Michel
Applegate	Gaydos	Miller (CA)
Archer	Gejdenson	Miller (OH)
Armey	Geren	Miller (WA)
Atkins	Gillmor	Mineta
AuCoin	Gilman	Moakley
Bartlett	Gonzalez	Molinari
Bateman	Goss	Mollohan
Beilenson	Grandy	Montgomery
Bennett	Grant	Moody
Bentley	Green	Moorhead
Bereuter	Hall (TX)	Morella
Berman	Hamilton	Morrison (WA)
Bilbray	Hammerschmidt	Murtha
Bilirakis	Hancock	Myers
Bliley	Hansen	Nagle
Boehlert	Harris	Natcher
Boggs	Hastert	Neal (NC)
Bonior	Hatcher	Nielson
Borski	Hayes (IL)	Oberstar
Bosco	Hefley	Obey
Brooks	Hefner	Ortiz
Browder	Henry	Owens (UT)
Brown (CA)	Herger	Oxley
Brown (CO)	Hertel	Packard
Bruce	Hiler	Pallone
Bryant	Hoagland	Parker
Buechner	Hochbrueckner	Parris
Bunning	Hopkins	Pashayan
Bustamante	Houghton	Patterson
Byron	Hoyer	Paxon
Campbell (CA)	Hubbard	Payne (NJ)
Cardin	Hughes	Payne (VA)
Carper	Hunter	Pease
Carr	Hyde	Pelosi
Chandler	Inhofe	Penny
Clement	Ireland	Perkins
Clinger	Jacobs	Petri
Coble	James	Pickett
Coleman (MO)	Johnson (CT)	Porter
Coleman (TX)	Johnson (SD)	Poshard
Collins	Jones (GA)	Price
Combest	Jontz	Rahall
Condit	Kanjorski	Ravenel
Conyers	Kaptur	Ray
Cooper	Kasich	Regula
Costello	Kastenmeier	Rhodes
Coughlin	Kennedy	Richardson
Courter	Kennelly	Ridge
Cox	Kildee	Rinaldo
Craig	Kolbe	Ritter
Dannemeyer	Kolter	Roberts
Darden	Kostmayer	Roe
Davis	Kyl	Rogers
de la Garza	Lagomarsino	Rohrabacher
DeFazio	Lancaster	Ros-Lehtinen
DeLay	Leach (IA)	Roth
Dellums	Lehman (CA)	Roybal
DeWine	Lehman (FL)	Sabo
Dicks	Lent	Sarpalius
Donnelly	Levin (MI)	Savage
Dorgan (ND)	Levine (CA)	Sawyer
Dornan (CA)	Lewis (CA)	Saxton
Douglas	Lewis (FL)	Scheuer
Downey	Lewis (GA)	Schiff
Dreier	Lightfoot	Schroeder
Duncan	Livingston	Schumer
Durbin	Lloyd	Sensenbrenner
Dymally	Long	Serrano
Dyson	Lowery (CA)	Shays
Eckart	Lowey (NY)	Shumway
Emerson	Markey	Skaggs
Engel	Marlenee	Skeen
English	Martin (NY)	Slattery
Erdreich	Martinez	Slaughter (NY)
Espy	Mazzoli	Slaughter (VA)
Evans	McCandless	Smith (FL)
Fascell	McCloskey	Smith (IA)
Fawell	McCollum	Smith (NE)
Fazio	McCrery	Smith (NJ)
Fields	McCurdy	Smith (TX)
Fish	McDermott	Smith, Robert (NH)
Foglietta	McHugh	Smith, Robert (OR)
Ford (TN)	McMillan (NC)	Snowe
Solarz	Synar	Walker
Solomon	Tanner	Washington
Spence	Tauke	Waxman
Spratt	Tauzin	Weiss
Staggers	Taylor	Weldon
Stallings	Thomas (WY)	Wheat
Stangeland	Torres	Whittaker
Stark	Torricelli	Williams
Stearns	Traficant	Wise
Stenholm	Udall	Wolf
Stokes	Unsoeld	Wolpe
Studds	Upton	Wyden
Stump	Vander Jagt	Wylie
Sundquist	Vento	Yates
Swift	Visclosky	Yatron
	Volkmer	Young (AK)
	Vucanovich	Young (FL)

NAYS—1

Gekas

NOT VOTING—118

Ackerman	Gradison	Panetta
Aspin	Gray	Pickle
Baker	Guarini	Pursell
Ballenger	Gunderson	Quillen
Barnard	Hall (OH)	Rangel
Barton	Hawkins	Robinson
Bates	Hayes (LA)	Rose
Bevill	Holloway	Rostenkowski
Boucher	Horton	Roukema
Boxer	Huckaby	Rowland (CT)
Brennan	Hutto	Rowland (GA)
Broomfield	Jenkins	Russo
Burton	Johnston	Saiki
Callahan	Jones (NC)	Sangmeister
Campbell (CO)	Kleczka	Schaefer
Chapman	LaFalce	Schneider
Clarke	Lantos	Schuette
Clay	Laughlin	Schulze
Conte	Leath (TX)	Sharp
Coyne	Lipinski	Shaw
Crane	Luken, Thomas	Shuster
Crockett	Machtley	Sikorski
Derrick	Madigan	Sisisky
Dickinson	Manton	Skelton
Dingell	Martin (IL)	Smith (VT)
Dixon	Matsui	Smith, Denny (OR)
Dwyer	Mavroules	Tallon
Early	McDade	Thomas (CA)
Edwards (CA)	McEwen	Thomas (GA)
Edwards (OK)	McGrath	Towns
Feighan	Mink	Traxler
Flake	Morrison (CT)	Valentine
Flippo	Mrazek	Walgren
Ford (MI)	Murphy	Walsh
Gephardt	Neal (MA)	Watkins
Gibbons	Nelson	Weber
Gingrich	Nowak	Whitten
Glickman	Oakar	Wilson
Goodling	Olin	
Gordon	Owens (NY)	

□ 2357

Mr. SAVAGE changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof), the rules were suspended and the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. PANETTA. Mr. Speaker, I was unable to be present for the following votes in the last week of the 101st Congress due to my presence in critical budget reconciliation meetings. Had I been present, I would have voted as follows:

Crime control bill, S. 3266: Rollcall No. 534, on final passage, "yes."

JUDICIAL IMPROVEMENTS ACT OF 1990

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 5316) to provide for the appointment of additional Federal circuit and district judges, and for other purposes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert: *That this Act may be cited as the "Judicial Improvements Act of 1990".*

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

The Congress finds that:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.
"471. Requirement for a district court civil justice expense and delay reduction plan.
"472. Development and implementation of a civil justice expense and delay reduction plan.
"473. Content of civil justice expense and delay reduction plans.
"474. Review of district court action.
"475. Periodic district court assessment.
"476. Enhancement of judicial information dissemination.
"477. Model civil justice expense and delay reduction plan.
"478. Advisory groups.
"479. Information on litigation management and cost and delay reduction.
"480. Training programs.
"481. Automated case information.
"482. Definitions.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months of the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years of filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 479. Information on litigation management and cost and delay reduction

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States Courts shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented

under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991 and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

(3) Within eighteen months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such districts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof:

"23. Civil justice expense and delay reduction plans ..... 471".

SEC. 104. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the four-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM.

(a) IN GENERAL.—(1) During the four-year period beginning on January 1, 1991, the Judicial Conference shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the six principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least five of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of three years. At the end of that three-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the six principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the six principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

39-059 O—92-30 (Pt. 25)

SEC. 106. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

(2) 4 additional circuit judges for the fourth circuit court of appeals;

(3) 1 additional circuit judge for the fifth circuit court of appeals;

(4) 1 additional circuit judge for the sixth circuit court of appeals;

(5) 1 additional circuit judge for the eighth circuit court of appeals; and

(6) 2 additional circuit judges for the tenth circuit court of appeals.

(b) TABLES.—In order that the table contained in section 44(a) of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

"Circuits	Number of Judges
District of Columbia	12
First	6
Second	13
Third	14
Fourth	15
Fifth	17
Sixth	16
Seventh	11
Eighth	11
Ninth	28
Tenth	12
Eleventh	12
Federal	12.".

SEC. 203. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the western district of Arkansas;

(2) 2 additional district judges for the northern district of California;

(3) 5 additional district judges for the central district of California;

(4) 1 additional district judge for the southern district of California;

(5) 2 additional district judges for the district of Connecticut;

(6) 2 additional district judges for the middle district of Florida;

(7) 1 additional district judge for the northern district of Florida;

(8) 1 additional district judge for the southern district of Florida;

(9) 1 additional district judge for the middle district of Georgia;

(10) 1 additional district judge for the northern district of Illinois;

(11) 1 additional district judge for the southern district of Iowa;

(12) 1 additional district judge for the western district of Louisiana;

(13) 1 additional district judge for the district of Maine;

(14) 1 additional district judge for the district of Massachusetts;

(15) 1 additional district judge for the southern district of Mississippi;

(16) 1 additional district judge for the eastern district of Missouri;

(17) 1 additional district judge for the district of New Hampshire;

(18) 3 additional district judges for the district of New Jersey;

(19) 1 additional district judge for the district of New Mexico;

(20) 1 additional district judge for the southern district of New York;

(21) 3 additional district judges for the eastern district of New York;

(22) 1 additional district judge for the middle district of North Carolina;

(23) 1 additional district judge for the southern district of Ohio.

(24) 1 additional district judge for the northern district of Oklahoma;

(25) 1 additional district judge for the western district of Oklahoma;

(26) 1 additional district judge for the district of Oregon;

(27) 3 additional district judges for the eastern district of Pennsylvania;

(28) 1 additional district judge for the middle district of Pennsylvania;

(29) 1 additional district judge for the district of South Carolina;

(30) 1 additional district judge for the eastern district of Tennessee;

(31) 1 additional district judge for the western district of Tennessee;

(32) 1 additional district judge for the middle district of Tennessee;

(33) 2 additional district judges for the northern district of Texas;

(34) 1 additional district judge for the eastern district of Texas;

(35) 5 additional district judges for the southern district of Texas;

(36) 3 additional district judges for the western district of Texas;

(37) 1 additional district judge for the district of Utah;

(38) 1 additional district judge for the eastern district of Washington;

(39) 1 additional district judge for the northern district of West Virginia;

(40) 1 additional district judge for the southern district of West Virginia; and

(41) 1 additional district judge for the district of Wyoming.

(b) EXISTING JUDGESHIPS.—(1) The existing district judgeships for the western district of Arkansas, the northern district of Illinois, the northern district of Indiana, the district of Massachusetts, the western district of New York, the eastern district of North Carolina, the northern district of Ohio, and the western district of Washington authorized by section 202(b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353, 98 Stat. 347-348) shall, as of the effective date of this title, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(2)(A) The existing two district judgeships for the eastern and western districts of Arkansas (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be district judgeships for the eastern district of Arkansas only, and the incumbents of such judgeships shall hold the offices under section 133 of title 28, United States Code, as amended by this title.

(B) The existing district judgeship for the northern and southern districts of Iowa (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be a district judgeship for the northern district of Iowa only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(C) The existing district judgeship for the northern, eastern, and western districts of Oklahoma (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) and the occupant of which has his official duty station at Oklahoma City on the date of enactment of this title, shall be a district judgeship for the western district of Oklahoma only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the northern district of Alabama;

(2) 1 additional district judge for the eastern district of California;

(3) 1 additional district judge for the district of Hawaii;

(4) 1 additional district judge for the central district of Illinois;

(5) 1 additional district judge for the southern district of Illinois;

(6) 1 additional district judge for the district of Kansas;

(7) 1 additional district judge for the western district of Michigan;

(8) 1 additional district judge for the eastern district of Missouri;

(9) 1 additional district judge for the district of Nebraska;

(10) 1 additional district judge for the northern district of New York;

(11) 1 additional district judge for the northern district of Ohio;

(12) 1 additional district judge for the eastern district of Pennsylvania; and

(13) 1 additional district judge for the eastern district of Virginia.

The first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring five years or more after the effective date of this title, shall not be filled.

(d) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsections (a) and (b) of this section, such table is amended to read as follows:

"DISTRICTS	JUDGES
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	8
Arkansas:	
Eastern	5

Western	3
California:	
Northern	14
Eastern	6
Central	27
Southern	8
Colorado	7
Connecticut	8
Delaware	4
District of Columbia	15
Florida:	
Northern	4
Middle	11
Southern	16
Georgia:	
Northern	11
Middle	4
Southern	3
Hawaii	3
Idaho	2
Illinois:	
Northern	22
Central	3
Southern	3
Indiana:	
Northern	5
Southern	5
Iowa:	
Northern	2
Southern	3
Kansas	5
Kentucky:	
Eastern	4
Western	4
Eastern and Western	1
Louisiana:	
Eastern	13
Middle	2
Western	7
Maine	3
Maryland	10
Massachusetts	13
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	
Northern	3
Southern	6
Missouri:	
Eastern	6
Western	5
Eastern and Western	2
Montana	3
Nebraska	3
Nevada	4
New Hampshire	3
New Jersey	17
New Mexico	5
New York:	
Northern	4
Southern	28
Eastern	15
Western	4
North Carolina:	
Eastern	4
Middle	4
Western	3
North Dakota	2
Ohio:	
Northern	11
Southern	8
Oklahoma:	
Northern	3
Eastern	1
Western	6
Northern, Eastern, and Western	1
Oregon	6
Pennsylvania:	
Eastern	22
Middle	6
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	9
South Dakota	3
Tennessee:	
Eastern	5
Middle	4
Western	5
Texas:	
Northern	12
Southern	18
Eastern	7
Western	10
Utah	5
Vermont	2
Virginia:	
Eastern	9
Western	4
Washington:	
Eastern	4
Western	7
West Virginia:	
Northern	3
Southern	5
Wisconsin:	
Eastern	4
Western	2
Wyoming	3.".

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this title.

SEC. 205. STUDY BY GENERAL ACCOUNTING OFFICE.

(a) IN GENERAL.—The Comptroller General of the United States shall review the policies, procedures, and methodologies used by the Judicial Conference of the United States in recommending to the Congress the creation of additional Federal judgeships. In conducting such review the Comptroller General shall, at a minimum, determine the extent to which such policies, procedures, and methodologies—

(1) provide an accurate measure of the workload of existing judges;

(2) are applied consistently to the various circuit courts of appeals and district courts; and

(3) provide an accurate indicator of the need for additional judgeships.

(b) REPORT TO CONGRESS.—The Comptroller General shall, not later than 18 months after the date of the enactment of this Act, report the results of the review conducted under subsection (a) to the Committees on the Judiciary of the House of Representatives and the Senate. The report shall include such recommendations as the Comptroller General considers appropriate for revisions of the policies, procedures, and methodologies used by the Judicial Conference that were reviewed in the report.

SEC. 206. EFFECTIVE DATE.

This title shall take effect on the date of enactment of this title.

TITLE III—IMPLEMENTATION OF FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

SEC. 301. SHORT TITLE.

This title may be cited as the "Federal Courts Study Committee Implementation Act of 1990".

SEC. 302. STUDY OF INTERCIRCUIT CONFLICTS AND STRUCTURAL ALTERNATIVES FOR THE COURTS OF APPEALS BY FEDERAL JUDICIAL CENTER.

(a) INTERCIRCUIT CONFLICTS.—The Board of the Federal Judicial Center is requested to conduct a study and submit to the Congress a report by January 1, 1992, on the number and frequency of conflicts among the judicial circuits in interpreting the law that remain unresolved because they are not heard by the Supreme Court.

(b) FACTORS TO CONSIDER IN STUDY.—In conducting such a study, the Center should consider, to the extent feasible, all relevant factors, such as whether the conflict—

(1) imposes economic costs or other harm on persons engaging in interstate commerce;

(2) encourages forum shopping among circuits;

(3) creates unfairness to litigants in different circuits, as in allowing Federal benefits in one circuit that are denied in other circuits; or

(4) encourages nonacquiescence by Federal agencies in the holdings of the courts of appeals for different circuits,

but are unlikely to be resolved by the Supreme Court.

(c) STRUCTURAL ALTERNATIVES FOR THE COURTS OF APPEALS.—The Board of the Federal Judicial Center is requested to study the full range of structural alternatives for the Federal Courts of Appeals and submit its report to the Congress and the Judicial Conference of the United States, no later than 2 years after the date of the enactment of this Act.

SEC. 303. EFFECT OF APPOINTMENT OF JUDGE AS DIRECTOR OF CERTAIN JUDICIAL BRANCH AGENCIES.

Section 133 of title 28, United States Code, is amended by adding at the end thereof the following:

(1) by inserting "(a)" before "The President"; and

(2) by adding at the end thereof the following:

"(b)(1) In any case in which a judge of the United States (other than a senior judge) assumes the duties of a full-time office of Federal judicial administration, the President shall appoint, by and with the advice and consent of the Senate, an additional judge for the court on which such judge serves. If the judge who assumes the duties of such full-time office leaves that office and resumes the duties as an active judge of the court, then the President shall not appoint a judge to fill the first vacancy which occurs thereafter in that court.

"(2) For purposes of paragraph (1), the term 'office of Federal judicial administration' means a position as Director of the Federal Judicial Center, Director of the Administrative Office of the United States Courts, administrative assistant to the Chief Justice.".

SEC. 304. EXTENSION OF TERMS OF OFFICE OF BANKRUPTCY JUDGES.

Section 152(a) of title 28, United States Code, is amended by inserting after the third sentence the following: "However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor.".

SEC. 305. APPEALS OF JUDGMENTS, ORDERS, AND DECREES OF BANKRUPTCY COURTS.

Section 158(b) of title 28, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and

(2) by inserting after paragraph (1) the following:

"(2) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a

joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.".

SEC. 306. RETIREMENT SYSTEM FOR CLAIMS COURT JUDGES.

(a) NEW RETIREMENT SYSTEM.—(1) Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 178. Retirement of judges of the Claims Court

"(a) A judge of the United States Claims Court who retires from office after attaining the age and meeting the service requirements, whether continuously or otherwise, of this subsection shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime, an annuity equal to the salary payable to Claims Court judges in regular active service. The age and service requirements for retirement under this subsection are as follows:

"Attained Age:	Years of Service:
65	15
66	14
67	13
68	12
69	11
70	10.

"(b) A judge of the Claims Court who is not reappointed following the expiration of the term of office of such judge, and who retires upon the completion of such term shall, subject to subsection (f), be entitled to receive, during the remainder of such judge's lifetime, an annuity equal to the salary payable to Claims Court judges in regular active service, if—

"(1) such judge has served at least 1 full term as judge of the Claims Court, and

"(2) not earlier than 9 months before the date on which the term of office of such judge expired, and not later than 6 months before such date, such judge advised the President in writing that such judge was willing to accept reappointment as a judge of the Claims Court.

"(c) A judge of the Claims Court who has served at least 5 years, whether continuously or otherwise, as such a judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime—

"(1) an annuity equal to 50 percent of the salary payable to Claims Court judges in regular active service, if before retirement such judge served less than 10 years, or

"(2) an annuity equal to the salary payable to Claims Court judges in regular active service, if before retirement such judge served at least 10 years.

"(d) A judge who retires under subsection (a) or (b), may, at or after such retirement, be called upon by the chief judge of the Claims Court to perform such judicial duties with the Claims Court as may be requested of the retired judge for any period or periods specified by the chief judge, except that in the case of any such judge—

"(1) the aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and

"(2) he or she shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a Claims Court judge in regular active service. Any individual performing judicial duties pursuant to this subsection shall receive the allowances for official travel and other expenses of a judge in regular active service.

"(e)(1) Any judge who retires under the provisions of subsection (a) or (b) of this section shall be designated 'senior judge'.

"(2) Any judge who retires under this section shall not be counted as a judge of the Claims Court for purposes of the number of judgeships authorized by section 171 of this title.

"(f)(1) A judge shall be entitled to an annuity under this section if the judge elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts in writing. Such an election—

"(A) may be made only while an individual is a judge of the Claims Court (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, such election may be made at any time before the day after the day on which his or her successor takes office); and

"(B) once made, shall, subject to subsection (k), be irrevocable.

"(2) A judge who elects to receive an annuity under this section shall not be entitled to receive—

"(A) any annuity to which such judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84, of title 5, for service performed as a judge or otherwise;

"(B) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

"(C) retired pay under section 7447 of the Internal Revenue Code of 1986; or

"(D) retired pay under section 4096 of title 38.

"(g) For purposes of calculating the years of service of an individual under subsections (a) and (c), only those years of service as a judge of the Claims Court or a commissioner of the United States Court of Claims shall be credited, and that portion of the aggregate number of years of such service that is a fractional part of 1 year shall not be credited if it is less than 6 months, and shall be credited if it is 6 months or more.

"(h) An annuity under this section shall be payable at the times and in the same manner as the salary of a Claims Court judge in regular active service. Such annuity shall begin to accrue on the day following the day on which the annuitant's salary as a judge in regular active service ceases to accrue.

"(i)(1) Payments under this section which would otherwise be made to a judge of the Claims Court based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

"(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

"(3) As used in this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or court of Indian offense.

"(j)(1) Subject to paragraph (2), any judge of the Claims Court who retires under this section and who thereafter in the practice of law represents (or supervises or directs the representation of) a client in making any civil claim against the United States or any agency thereof shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he so practices law.

"(2) If a judge of the Claims Court who retires under this section fails during any calendar year to perform judicial duties required of such judge by subsection (d), such judge shall forfeit all rights to an annuity under this section for the 1-year period which begins on the first day on which he or she so fails to perform such duties.

"(3) If a judge of the Claims Court who retires under this section accepts compensation for civil office or employment under the Government of the United States (other than the performance of judicial duties under subsection (d)), such judge shall forfeit all rights to an annuity under this section for the period for which such compensation is received.

"(4)(A) If a judge makes an election under this paragraph—

"(i) paragraphs (1) and (2) (and subsection (d)) shall not apply to such judge beginning on the date such election takes effect, and

"(ii) the annuity payable under this section to such judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such judge is entitled on the day before such effective date.

"(B) An election under subparagraph (A)—

"(i) may be made by a judge only if such judge meets the age and service requirements for retirement under subsection (a),

"(ii) may be made only during the period during which such judge may make an election to receive an annuity under this section or while the judge is receiving an annuity under this section, and

"(iii) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

"(C) Any election under this paragraph shall take effect on the first day of the first month following the month in which the election is made.

"(k)(1) Notwithstanding subsection (f)(1)(B), an individual who has filed an election under subsection (f) to receive an annuity may revoke such election at any time before the first day on which such annuity would (but for such revocation) begin to accrue with respect to such individual.

"(2) Any revocation under this subsection shall be made by filing a notice thereof in writing with the Director of Administrative Office of the United States Courts.

"(3) In the case of any revocation under this subsection—

"(A) for purposes of this section, the individual shall be treated as not having filed an election under subsection (b) to receive an annuity,

"(B) for purposes of section 376 of this title—

"(i) the individual shall be treated as not having filed an election under section 376(a)(1), and

"(ii) section 376(g) shall not apply, and the amount credited to such individual's account (together with interest at 3 percent per annum, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual,

"(C) no credit shall be allowed for any service as a judge of the Claims Court or as a commissioner of the United States Court of Claims unless with respect to such service either there has been deducted and withheld the amount required by chapter 83 or 84 (as the case may be) of title 5 or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

"(D) the Claims Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (f), and

"(E) if subparagraph (D) is complied with, service on the Claims Court or as a commissioner of the United States Court of Claims shall be treated as service with respect to which deductions and contributions had been made during the period of service.

"(l)(1) There is established in the Treasury a fund which shall be known as the 'Claims Court Judges Retirement Fund'. The Fund is appropriated for the payment of annuities and other payments under this section.

"(2) The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Claims Court Judges Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

"(3)(A) There are authorized to be appropriated to the Claims Court Judges Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

"(B) For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Claims Court Judges Retirement Fund, over the balance in the Fund as of the date the unfunded liability is determined. In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

"(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.".

(2) The table of sections at the beginning of chapter 7 of title 28, United States Code, is amended by adding at the end the following new item:

"178. Retirement of judges of the Claims Court.".

(b) JUDICIAL SURVIVORS' ANNUITIES.—(1) Section 376 of title 28, United States Code, is amended as follows:

(A) Subsection (a)(1) is amended—

(i) by striking out "or" at the end of subparagraph (E);

(ii) by adding "or" at the end of subparagraph (F);

(iii) by inserting after subparagraph (F) the following:

"(G) a judge of the United States Claims Court;";

(iv) by striking out "or (v)" and inserting in lieu thereof "(v)"; and

(v) by inserting before the semicolon at the end thereof the following: ", or (vi) the date of the enactment of the Federal Court Study Committee Implementation Act of 1990, in the case of a full-time judge of the Claims Court in active service on that date".

(B) Subsection (a)(2) is amended—

(i) by striking out "and" at the end of subparagraph (E);

(ii) by adding "and" at the end of subparagraph (F); and

(iii) by adding at the end thereof the following:

"(G) in the case of a judge of the United States Claims Court, an annuity paid under section 178 of this title;".

(C) Subsection (b) is amended in the last sentence by striking out "section 377" each place it appears and inserting in each such place "section 178 or 377".

(c) CIVIL SERVICE RETIREMENT SYSTEM.—(1) Section 8331 of title 5, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (24);

(B) by striking out the period at the end of paragraph (25) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(26) 'Claims Court judge' means a judge of the United States Claims Court who is appointed under chapter 7 of title 28 or who has served under section 167 of the Federal Courts Improvement Act of 1982.".

(2) Section 8334 of title 5, United States Code, is amended—

(A) in subsection (a)(1), by inserting "a Claims Court judge," after "Member,"; and

(B) in subsection (c), by inserting at the end of the table the following:

"Claims Court Judge	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to September 30, 1988.
	8	After September 30, 1988.".

(3) Section 8336(k) of title 5, United States Code, is amended to read as follows:

"(k) A bankruptcy judge, United States magistrate, or Claims Court judge who is separated from service, except by removal, after becoming 62 years of age and completing 5 years of civilian service, or after becoming 60 years of age and completing 10 years of service as a bankruptcy judge, United States magistrate, or Claims Court judge, is entitled to an annuity.".

(4) Section 8339(n) of title 5, United States Code, is amended to read as follows:

"(n) The annuity of an employee who is a Claims Court judge, bankruptcy judge, or United States magistrate is computed, with respect to service as a Claims Court judge, as a commissioner of the Court of Claims, as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate, and as a United States commissioner and with respect to the military service of any such individual (not exceeding 5 years) creditable under section 8332 of this title, by multiplying 2½ percent of the individual's average pay by the years of that service.".

(d) THRIFT SAVINGS PLAN.—(1) Subchapter III of chapter 84 of title 5, United States Code, is amended by adding at the end thereof the following:

"§ 8440b. Claims Court judges

"(a)(1) A judge of the United States Claims Court who is covered by section 178 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

"(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to this chapter.

"(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to Claims Court judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

"(2) The amount contributed by a Claims Court judge for any pay period shall not exceed 5 percent of basic pay for such pay period.

"(3) No contributions shall be made under section 8432(c) of this title for the benefit of a Claims Court judge making contributions under subsection (a) of this section.

"(4)(A) Section 8433(b) of this title applies to a Claims Court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an annuity under section 178 of title 28 (including a disability annuity under subsection (d) of such section).

"(B) Section 8433(d) of this title applies to any Claims Court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an annuity under section 178 of title 28.

"(5) With respect to Claims Court judges to whom this section applies, retirement under section 178 of title 28 is a separation from service for purposes of this subchapter and subchapter VII.

"(6) For purposes of this section, the terms 'retirement' and 'retire' include removal from office under section 178(c) of title 28 on the sole ground of mental or physical disability.

"(7) Sums contributed pursuant to this section by Claims Court judges, as well as all previous contributions to the Thrift Savings Fund by those judges, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

"(8) In the case of a Claims Court judge who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 178 of title 28, such annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.".

(2) The table of sections at the beginning of chapter 84 of title 5, United States Code,

is amended by adding at the end thereof the following:

"8440b. Claims Court judges.".

(e) TECHNICAL AND CONFORMING AMENDMENTS.—(1)(A) Section 402(1) of the Judicial Improvements and Access to Justice Act (102 Stat. 4650) is amended by striking out "redesignating paragraph (18)" and inserting in lieu thereof "redesignating paragraph (19)".

(B) Section 604(a) of title 28, United States Code, (relating to the duties of the Director of the Administrative Office of the United States Courts), as amended pursuant to the amendment made by subparagraph (A) of this paragraph, is amended—

(i) in paragraph (7) by inserting "judges of the United States Claims Court," after "judges of the United States,";

(ii) in paragraph (22) by adding "; and" after the semicolon;

(iii) by redesignating paragraph (23) as paragraph (24); and

(iv) by inserting after paragraph (22) the following:

"(23) Regulate and pay annuities to judges of the United States Claims Court in accordance with section 178 of this title; and".

(2) Section 8334(i) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) Notwithstanding any other provision of law, a judge of the United States Claims Court who is covered by section 178 of title 28 shall not be subject to deductions and contributions to the Fund if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge shall be entitled to a lump-sum credit under section 8342(a) of this title.".

(3) Section 8402 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(g) A judge of the United States Claims Court who is covered by section 178 of title 28 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.".

(f) EFFECTIVE DATE.—This section and the amendments made by this section shall apply to judges of, and senior judges in active service with, the United States Claims Court on or after the date of the enactment of this Act.

SEC. 307. APPOINTMENT OF DIRECTOR AND DEPUTY DIRECTOR OF THE ADMINISTRATIVE OFFICE.

Section 601 of title 28, United States Code, is amended in the second sentence by striking out "Supreme Court" and inserting in lieu thereof "Chief Justice of the United States, after consulting with the Judicial Conference".

SEC. 308. MAGISTRATES.

(a) CONSENT TO TRIAL IN CIVIL ACTIONS.—Section 636(c)(2) of title 28, United States Code, is amended—

(1) in the first sentence, by striking out "their right to consent to the exercise of" and inserting in lieu thereof "the availability of a magistrate to exercise"; and

(2) by striking out the third sentence and inserting in lieu thereof the following: "Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences.".

(b) EXTENSION OF TERMS OF OFFICE OF MAGISTRATES.—Section 631(f) of title 28, United States Code, is amended by striking out "60" and inserting in lieu thereof "180".

SEC. 309. APPEAL OF CERTAIN DETERMINATIONS RELATING TO BANKRUPTCY CASES.

(a) ABSTENTION DETERMINATIONS UNDER TITLE 11, UNITED STATES CODE.—Section 305(c) of title 11, United States Code, is amended by inserting before the period the following: "by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title".

(b) ABSTENTION DETERMINATIONS UNDER TITLE 28, UNITED STATES CODE.—The second sentence of section 1334(c)(2) of title 28, United States Code, is amended—

(1) by inserting "or not to abstain" after "to abstain", and

(2) by inserting the following before the period: "by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title".

(c) REMAND DETERMINATIONS UNDER TITLE 28, UNITED STATES CODE.—The second sentence of section 1452(b) of title 28, United States Code, is amended by inserting the following before the period: "by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title".

SEC. 310. SUPPLEMENTAL JURISDICTION.

(a) GRANT OF JURISDICTION.—Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1367. Supplemental jurisdiction

"(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

"(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

"(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

"(1) the claim raises a novel or complex issue of State law,

"(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

"(3) the district court has dismissed all claims over which it has original jurisdiction, or

"(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

"(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

"(e) As used in this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1367. Supplemental jurisdiction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to civil actions commenced on or after the date of the enactment of this Act.

SEC. 311. VENUE.

Section 1391 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "the judicial district" and all that follows through "arose" and inserting in lieu thereof the following: "(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced";

(2) in subsection (b), by striking out "may be brought" and all that follows through "law" and inserting in lieu thereof the following: "may, except as otherwise provided by law, be brought only if (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought";

(3) in subsection (e) by striking out "or (2)" and all that follows through "(4)", and inserting in lieu thereof "(2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3)".

SEC. 312. REMOVAL OF SEPARATE AND INDEPENDENT CLAIMS.

Section 1441(c) of title 28, United States Code, is amended—

(1) by striking out ", which would be removable if sued upon alone" and inserting in lieu thereof "within the jurisdiction conferred by section 1331 of this title"; and

(2) by striking out "remand all matters not otherwise within its original jurisdiction" and inserting in lieu thereof "may remand all matters in which State law predominates".

SEC. 313. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following:

"§ 1658. Time limitations on the commencement of civil actions arising under Acts of Congress

"Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1658. Time limitations on the commencement of civil actions arising under Acts of Congress.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to causes of action accruing on or after the date of the enactment of this Act.

SEC. 314. WITNESS AND JUROR FEES.

(a) WITNESS FEES.—Section 1821(b) of title 28, United States Code, is amended by striking out "$30" and inserting in lieu thereof "$40".

(b) JUROR FEES.—Section 1871(b) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "$30" and inserting in lieu thereof "$40";

(2) in paragraph (2) by striking out "$5" and inserting in lieu thereof "$10"; and

(3) in paragraph (3) by striking out "$5" and inserting in lieu thereof "$10".

SEC. 315. POWER OF SUPREME COURT TO DEFINE FINAL DECISION FOR PURPOSES OF SECTION 1291 OF TITLE 28, UNITED STATES CODE.

Section 2072 of title 28, United States Code, is amended by adding at the end thereof the following:

"(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.".

SEC. 316. EXTENSION OF LIFE OF PAROLE COMMISSION.

For the purposes of section 235(b) of Public Law 98-473 as it relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to "five years" or a "five-year period" shall be deemed a reference to "ten years" or a "ten-year period", respectively.

SEC. 317. BANKRUPTCY ADMINISTRATOR PROGRAM.

(a) EXTENSION.—Section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 28 U.S.C. 581 note) is amended—

(1) in subparagraph (A)(ii), by striking out "October 1, 1992" and inserting in lieu thereof "October 1, 2002";

(2) in subparagraph (F)(i)(II), by striking out "October 1, 1992" and inserting in lieu thereof "October 1, 2002";

(3) in subparagraph (F)(i), by striking out "October 1, 1993" and inserting in lieu thereof "October 1, 2003"; and

(4) in subparagraph (F)(ii), by striking out "October 1, 1993" and inserting in lieu thereof "October 1, 2003".

(b) STANDING.—A bankruptcy administrator may raise and may appear and be heard on any issue in any case under title 11, United States Code, but may not file a plan pursuant to section 1121(c) of such title.

(c) POWER OF THE COURT.—Section 302(d)(3)(A)(ii) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, as amended by subsection (a), is further amended by inserting before the period at the end thereof the following: ", except that the amendment to section 105(a) of title 11, United States Code, shall become effective as of the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990".

SEC. 318. STUDY OF FEDERAL DEFENDER PROGRAM.

(a) STUDY REQUIRED.—The Judicial Conference of the United States shall conduct a study of the Federal defender program under the Criminal Justice Act of 1964, as amended (enacting section 3006A of title 18, United States Code).

(b) ASSESSMENT OF PROGRAM.—In conducting the study, the Judicial Conference shall assess the effectiveness of the Federal defender program, including the following:

(1) The impact of judicial involvement in the selection and compensation of the Federal public defenders and the independence of Federal defender organizations, including the establishment and termination of Federal defender organizations and the Federal public defender and the community defender options.

(2) Equal employment and affirmative action procedures in the various Federal defender programs.

(3) Judicial involvement in the appointment and compensation of panel attorneys and experts.

(4) Adequacy of compensation for legal services provided under the Criminal Justice Act of 1964.

(5) The quality of the Criminal Justice Act of 1964 representation.

(6) The adequacy of administrative support for defender services programs.

(7) Maximum amounts of compensation for attorneys with regard to appeals of habeas corpus proceedings.

(8) Contempt, sanctions, and malpractice representation of panel attorneys.

(9) Appointment of counsel in multidefendant cases.

(10) Early appointment of counsel in general, and prior to the pretrial services interview in particular.

(11) The method and source of payment of the fees and expenses of fact witnesses for defendants with limited funds.

(12) The provisions of services or funds to financially eligible arrested but unconvicted persons for noncustodial transportation and subsistence expenses, including food and lodging, both prior to and during judicial proceedings.

(c) REPORT.—No later than March 31, 1992, the Judicial Conference shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the results of the study required under subsection (a). The report shall include—

(1) any recommendations for legislation that the Judicial Conference finds appropriate;

(2) a proposed formula for the compensation of Federal defender program counsel that includes an amount to cover reasonable overhead and a reasonable hourly fee; and

(3) a discussion of any procedural or operational changes that the Judicial Conference finds appropriate for implementation by the courts of the United States.

SEC. 319. AMENDMENTS TO THE ETHICS IN GOVERNMENT ACT OF 1978.

Section 502 of the Ethics in Government Act of 1978 (5 U.S.C. App.), as amended by the Ethics Reform Act of 1989, is amended—

(1) by inserting "(a) LIMITATIONS.—" before the first sentence; and

(2) by adding at the end thereof the following new subsection:

"(b) SENIOR JUDGES TEACHING COMPENSATION.—Any compensation for teaching received by a senior judge (as designated under section 294(b) of title 28, United States Code) approved under subsection (a)(5) of this section shall not be treated as outside earned income for the purpose of the limitation under section 501(a).".

SEC. 320. BIENNIAL CIRCUIT JUDICIAL CONFERENCE.

The first paragraph of section 333 of title 28, United States Code, is amended—

(1) in the first sentence, by striking out "annually" and inserting "biennially, and may summon annually,"; and

(2) in the last sentence—

(A) by striking out "the United States District Court for the District of the Canal Zone,"; and

(B) by striking out "and the District Court of the Virgin Islands shall also be summoned annually" and inserting in lieu thereof "the District Court of the Virgin Islands, and the District Court of the Northern Mariana Islands shall also be summoned biennially, and may be summoned annually,".

SEC. 321. CHANGE OF NAME OF UNITED STATES MAGISTRATES.

After the enactment of this Act, each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge, and any reference to any United States magistrate or magistrate that is contained in title 28, United States Code, in any other Federal statute, or in any regulation of any department or agency of the United States in the executive branch that was issued before the enactment of this Act, shall be deemed to refer to a United States magistrate judge appointed under section 631 of title 28, United States Code.

SEC. 322. LENGTH OF SERVICE REQUIRED FOR ELIGIBILITY UNDER THE JUDICIAL SURVIVORS' ANNUITIES ACT.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Section 376(h)(1) of title 28, United States Code, is amended—

(1) in the matter preceding subparagraph (A)—

(A) by inserting "(A)" before "after having completed"; and

(B) by inserting after "have actually been made" the following: ", or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made";

(2) by redesignating existing subparagraph (A) as clause (i);

(3) in existing subparagraph (B)—

(A) by striking out "(B)" and inserting in lieu thereof "(ii)";

(B) by striking out "(i)" and inserting in lieu thereof "(I)"; and

(C) by striking out "(ii)" and inserting in lieu thereof "(II)";

(4) in existing subparagraph (C)—

(A) by striking out "(C)" and inserting in lieu thereof "(iii)";

(B) in clause (i)—

(i) by striking out "(i)" and inserting in lieu thereof "(I)";

(ii) by striking out "subparagraph (1)(A) of this subsection" and inserting in lieu thereof "clause (i) of this paragraph";

(iii) by striking out "(ii)" and inserting in lieu thereof "(II)"; and

(iv) by striking out "(iii)" and inserting in lieu thereof "(III)"; and

(5) by adding at the end of subsection (h) the following:

"(6) In the case of the survivor or survivors of a judicial official to whom paragraph (1)(B) applies, there shall be deducted from the annuities otherwise payable under this section an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months prior to the judicial official's death.".

(b) DEFINITION OF ASSASSINATION.—Section 376(a) of title 28, United States Code, is amended—

(1) in paragraph (5)(C) by striking out "and" after the semicolon;

(2) in paragraph (6) by striking out the period and inserting in lieu thereof "; and"; and

(3) by inserting at the end the following new paragraph:

"(7) 'assassinated' and 'assassination' mean the killing of a judicial official described in paragraph (1) (A), (B), (F), or (G) of this section that is motivated by the performance by that judicial official of his or her official duties.".

(c) DETERMINATION OF ASSASSINATION BY DIRECTOR.—Section 376(i) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(i)"; and

(2) by adding at the end thereof the following:

"(2) The Director of the Administrative Office of the United States Courts shall determine whether the killing of a judicial official was an assassination, subject to review only by the Judicial Conference of the United States. The head of any Federal agency that investigates the killing of a judicial official shall provide information to the Director that would assist the Director in making such determination.".

(d) COMPUTATION OF WIDOW'S AND WIDOWER'S ANNUITY.—Section 376(l)(1)(ii) of title 28, United States Code, is amended by striking out "but more than eighteen months,".

(e) REFUND OF CONTRIBUTIONS TO FUND.—Section 376(o) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(o)";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) in subparagraph (A) as so redesignated, by inserting "subject to paragraph (2) of this subsection," before "before having completed"; and

(4) by adding at the end thereof the following new paragraph:

"(2) In cases in which a judicial official dies as a result of assassination and leaves a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section, paragraph (1)(A) of this subsection shall not apply.".

(f) OTHER BENEFITS.—Section 376 of title 28, United States Code, is amended by adding at the end thereof the following:

"(u) In the case of a judicial official who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of title 5 for any year would exceed the current salary for that year of the office of the judicial official.".

(g) EFFECTIVE DATE AND TRANSITION.—

(1) EFFECTIVE DATE.—Subject to paragraph (2), the amendments made by this Act shall apply to all judicial officials assassinated on or after May 28, 1979.

(2) RULES FOR RETROACTIVE APPLICATION.—(A) In the case of a judicial official who was assassinated on or after May 28, 1979, and before the date of the enactment of this Act, if the salary deductions provided by subsection (b) of section 376 of title 28, United States Code, or the deposits required by subsection (d) of such section, have been withdrawn pursuant to subsection (o) of such section, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount so withdrawn, with interest on the amount withdrawn at 3 percent per annum compounded on December 31 of each year.

(B) In the case of the survivor or survivors of a judicial official to whom this paragraph applies who had less than 18 months of service before being assassinated, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months before the judicial official's death, plus interest as described in subparagraph (A).

(C) Subject to subparagraphs (A) and (B), the survivor or survivors of a judicial official to whom this paragraph applies shall be entitled to the payment of annuities they would have received under section 376 of title 28, United States Code, for the period beginning on the date such judicial official was assassinated and ending the date of the enactment of this Act. The Secretary of the Treasury shall pay into the Judicial Survivors' Annuities fund, out of any money in the Treasury not otherwise appropriated, the amount of the annuities to which the survivor or survivors are entitled under this subparagraph.

(3) DEFINITION.—For purposes of this subsection, the term—

(A) "assassinated" and "assassination" have the meanings given those terms in section 376(a)(7) of title 28, United States Code, as added by this section; and

(B) "judicial official" has the meaning given that term in section 376(a)(1)(A) and (B) of title 28, United States Code.

(g) CONFORMING AMENDMENTS.—Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (h) is amended—

(A) in paragraph (2) by striking out "subparagraphs (1)(A) or (1)(B)" and inserting in lieu thereof "clause (i) or (ii) of paragraph (1)";

(B) in paragraph (3) by striking out "subparagraph" each place it appears and inserting in each such place "paragraph";

(C) in paragraph (4)—

(i) by striking out "subparagraph (1)(B)" each place it appears and inserting in each such place "paragraph (1)(ii)"; and

(ii) by striking out "subparagraph (1)(C)" and inserting in lieu thereof "paragraph (1)(iii)".

(2) Subsection (a)(5)(C) is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

SEC. 323. COMPOSITION OF JUDICIAL COUNCILS.

(a) COMPOSITION OF COUNCILS.—Section 332(a)(1) of title 28, United States Code, is amended to read as follows:

"(a)(1) The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he or she may designate, a meeting of the judicial council of the circuit, consisting of the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit, as such member is determined by majority vote of all such judges of the circuit in regular active services.".

(b) CONFORMING AMENDMENT.—Section 332(a) of title 28, United States Code, is amended by striking out paragraph (3) and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively.

SEC. 324. MISCELLANEOUS PROVISIONS.

(a) PLACE OF HOLDING COURT.—(1) Section 108 of title 28, United States Code, is amended by striking out "and Reno" in the last sentence and inserting in lieu thereof ", Reno, Ely and Lovelock".

(2) Section 112(a) of title 28, United States Code, is amended by striking out "and Utica" in the last sentence and inserting in lieu thereof "Utica, and Watertown".

(b) REVISION OF DIVISIONS OF SOUTH DAKOTA JUDICIAL DISTRICT.—Section 122 of title 28, United States Code, is amended—

(1) in paragraph (3), by striking out "Jackson,"; and

(2) by paragraph (4)—

(A) by inserting "Jackson," after "Harding,"; and

(B) by striking out "Shannon, Washabaugh, and Washington" and inserting in lieu thereof "and Shannon".

SEC. 325. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) TITLE 9, UNITED STATES CODE.—

(1) The section 15 of title 9, United States Code, that is designated "Appeals" is amended by redesignating such section as section 16.

(2) The table of sections at the beginning of chapter 1 of title 9, United States Code, is amended by striking out

"15. Appeals."

and inserting in lieu thereof

"15. Inapplicability of the Act of State doctrine.

"16. Appeals.".

(b) TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended as follows:

(1) Section 332(f)(1) is amended by striking out "(5 U.S.C. 5316)" and inserting in lieu thereof "under section 5315 of title 5".

(2) Section 375(a)(1) is amended by striking out "377 of title" and inserting in lieu thereof "377 of this title".

(3) Section 377 is amended—

(A) in subsection (f) by striking out "any annuity to which" and all that follows through the end of the subsection and inserting in lieu thereof the following:

"(1) any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as such a judge or magistrate or otherwise;

"(2) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

"(3) retired pay under section 7447 of the Internal Revenue Code of 1986; or

"(4) retired pay under section 4096 of title 38."; and

(B) in subsection (h) by striking out "in or after" and inserting in lieu thereof "on or after".

(4) Section 602(b) is amended by striking out "604(a)(15)(B)" and inserting in lieu thereof "604(a)(16)(B)".

(5) Section 995(a)(22) is amended by striking out "and" after the semicolon.

(6) Section 996(b) is amended by striking out "89 (Health Insurance), and 91 (Conflicts of Interest)" and inserting in lieu thereof "and 89 (Health Insurance)".

(7) Section 1499 is amended by inserting "and Safety" after "Hours".

(8) Section 1605(a)(6) is amended by striking out "State" and inserting in lieu thereof "state".

(9) Section 1610 is amended—

(A) in subsection (a)(6) by striking out "State" and inserting in lieu thereof "state"; and

(B) in subsection (e) by striking out "State" and inserting in lieu thereof "state".

(c) OTHER PROVISIONS OF LAW.—(1) Section 1011 of the Judicial Improvements and Access to Justice Act (102 Stat. 4668) is amended—

(A) by striking out "inserting a comma in lieu of the semicolon at the end thereof and adding thereafter" and inserting in lieu thereof "at the end"; and

(B) by striking out ": *Provided*, That" and inserting in lieu thereof ", except that".

(2) Section 204(b)(5)(A)(ii) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (102 Stat. 2201) is amended by striking out "whichever, occurs later," and inserting in lieu thereof "whichever occurs later,".

TITLE IV—JUDICIAL DISCIPLINE AND JUDICIAL REMOVAL

SEC. 401. SHORT TITLE.

This title may be cited as the "Judicial Discipline and Removal Reform Act of 1990".

Subtitle I—Judicial Discipline

SEC. 402. AMENDMENTS TO JUDICIAL COUNCILS REFORM AND JUDICIAL CONDUCT AND DISABILITY ACT OF 1980.

(a) IDENTIFICATION OF COMPLAINTS BY CHIEF JUDGE.—Paragraph (1) of section 372(c) of title 28, United States Code, is amended by adding at the end thereof the following: "In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.".

(b) MEMBERSHIP OF SPECIAL INVESTIGATIVE COMMITTEES.—Paragraph (4) of section 372(c) of such title is amended by adding at the end thereof the following: "A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.".

(c) PUBLIC AVAILABILITY OF IMPEACHMENT RECOMMENDATION.—(1) Paragraph (8) of section 372(c) of such title is amended by adding at the end thereof the following sentence: "Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.".

(2) Paragraph (14) of such section is amended—

(A) by striking out "All" and inserting in lieu thereof "Except as provided in paragraph (8), all";

(B) by striking out "unless" and inserting in lieu thereof "except to the extent that";

(C) in subparagraph (B) by inserting "such disclosure is" before "authorized";

(D) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(E) by inserting the following new subparagraph (A) immediately before subparagraph (B) (as so redesignated):

"(A) the judicial council of the circuit in its discretion releases a copy of a report of a special investigative committee under paragraph (5) to the complainant whose complaint initiated the investigation by that special committee and to the judge or magistrate whose conduct is the subject of the complaint;".

(d) IMPEACHMENT RECOMMENDATIONS WITH RESPECT TO CONVICTED JUDGES.—Section 372(c) of such title is further amended in paragraph (8)—

(1) by inserting "(A)" after "(8)"; and

(2) by adding at the end thereof the following:

"(B) If a judge or magistrate has been convicted of a felony and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under paragraph (7), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.".

(e) RULES BY JUDICIAL CONFERENCE AND JUDICIAL COUNCILS.—Paragraph (11) of section 372(c) of such title is amended by adding at the end thereof the following: "No rule promulgated under this subsection may limit the period of time within which a person may file a complaint under this subsection.".

(f) CONCLUSION OF PROCEEDINGS BY CHIEF JUDGE.—Paragraph (3)(B) of section 372(c) of such title is amended by inserting before the period the following: "or that action on the complaint is no longer necessary because of intervening events".

(g) DISMISSAL OF COMPLAINTS BY JUDICIAL COUNCILS.—Paragraph (6) of section 372(c) of such title is amended—

(1) by striking out "and" at the end of subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following:

"(C) may dismiss the complaint; and".

(h) REIMBURSEMENT FOR EXPENSES AND ATTORNEYS' FEES.—Section 372(c) of such title is further amended—

(1) by redesignating paragraphs (16) and (17) as paragraphs (17) and (18); and

(2) by inserting after paragraph (15) the following new paragraph:

"(16) Upon the request of a judge or magistrate whose conduct is the subject of a complaint under this subsection, the judicial council may, if the complaint has been finally dismissed under paragraph (6)(C), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge or magistrate during the investigation which would not have been incurred but for the requirements of this subsection.".

(i) TECHNICAL CORRECTIONS.—(1) Paragraph (7)(B) of section 372(c) of such title is amended—

(A) by striking out "has engaged in conduct" and inserting in lieu thereof "may have engaged in conduct"; and

(B) in clause (i) by striking out "article I" and inserting in lieu thereof "article II".

(2) Paragraph (14)(C) of such section, as redesignated by subsection (c)(2)(D) of this section, is amended by striking out "subject to the complaint" and inserting in lieu thereof "subject of the complaint".

SEC. 403. CONTEMPT POWER FOR CIRCUIT COUNCILS.

Section 332(d)(2) of title 28, United States Code, is amended by adding at the end thereof the following: "In the case of failure to comply with an order made under this subsection or a subpoena issued under section 372(c) of this title, a judicial council or a special committee appointed under section 372(c)(4) of this title may institute a contempt proceeding in any district court in which the judicial officer or employee of the circuit who fails to comply with the order made under this subsection shall be ordered to show cause before the court why he or she should not be held in contempt of court.".

SEC. 404. AMENDMENT TO OATH OF JUSTICES AND JUDGES.

Section 453 of title 28, United States Code, is amended by striking out "according to the best of my abilities and understanding, agreeably to" and inserting "under".

SEC. 405. AMENDMENT TO ETHICS IN GOVERNMENT ACT.

Section 104(b) of the Ethics in Government Act of 1978 (5 U.S.C. App. 104(b)) is amended by adding at the end thereof the following: "Whenever the Judicial Conference refers a name to the Attorney General under this subsection, the Judicial Conference also shall notify the judicial council of the circuit in which the named individual serves of the referral.".

SEC. 406. ADVISORY COMMITTEES FOR JUDICIAL DISCIPLINE RULES.

Section 2077(b) of title 28, United States Code, is amended by inserting before the period at the end of the first sentence the following: "and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit".

SEC. 407. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect 90 days after the date of the enactment of this Act.

Subtitle II—National Commission on Judicial Impeachment

SEC. 408. SHORT TITLE.

This subtitle may be cited as the "National Commission on Judicial Discipline and Removal Act".

SEC. 409. ESTABLISHMENT.

There is hereby established a commission to be known as the "National Commission on Judicial Discipline and Removal" (here-

after in this subtitle referred to as the "Commission").

SEC. 410. DUTIES OF COMMISSION.

The duties of the Commission are—

(1) to investigate and study the problems and issues involved in the tenure (including discipline and removal) of an article III judge;

(2) to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for discipline or removal of judges that would require amendment to the Constitution; and

(3) to prepare and submit to the Congress, the Chief Justice of the United States, and the President a report in accordance with section 415.

SEC. 411. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 13 members as follows:

(1) Three appointed by the President pro tempore of the Senate.

(2) Three appointed by the Speaker of the House of Representatives.

(3) Three appointed by the Chief Justice of the United States.

(4) Three appointed by the President.

(5) One appointed by the Conference of Chief Justices of the States of the United States.

(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

(c) QUORUM.—Six members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(d) CHAIRMAN.—The members of the Commission shall select one of the members to be the Chairman.

(e) APPOINTMENT DEADLINE.—The first appointments made under subsection (a) shall be made within 60 days after the date of the enactment of this Act.

(f) FIRST MEETING.—The first meeting of the Commission shall be called by the Chairman and shall be held within 90 days after the date of the enactment of this Act.

(g) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(h) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a Member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of a government becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

SEC. 412. COMPENSATION OF THE COMMISSION.

(a) PAY.—(1) Except as provided in paragraph (2), each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

(2) A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

(b) TRAVEL.—All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 413. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) DIRECTOR.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

(b) STAFF.—The Chairman of the Commission may appoint and fix the pay of such additional personnel as the Chairman finds necessary to enable the Commission to carry out its duties. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the annual rate of pay for any individual so appointed may not exceed a rate equal to the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of such title.

(c) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

SEC. 414. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission or, on authorization of the Commission, a member of the Commission may, for the purpose of carrying out this subtitle, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(b) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department, agency, or entity within the executive or judicial branch of the Federal Government information necessary to enable it to carry out this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of any Federal agency is authorized to make any of the facilities and services of such agency available to the Commission to assist the Commission in carrying out its duties under this subtitle.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 415. REPORT.

The Commission shall submit to each House of Congress, the Chief Justice of the United States, and the President a report not later than one year after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

SEC. 416. TERMINATION.

The Commission shall cease to exist on the date 30 days after the date it submits its report to the President and the Congress under section 415.

SEC. 417. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated the sum of $750,000 to carry out the provisions of this subtitle.

SEC. 418. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this Act.

TITLE V—TELEVISION PROGRAM IMPROVEMENT

SEC. 501. TELEVISION PROGRAM IMPROVEMENT.

(a) SHORT TITLE.—This section may be cited as the "Television Program Improvement Act of 1990".

(b) DEFINITIONS.—For purposes of this section—

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition;

(2) the term "person in the television industry" means a television network, any entity which produces programming (including theatrical motion pictures) for telecasting or telecasts programming, the National Cable Television Association, the Association of Independent Television Stations, Incorporated, the National Association of Broadcasters, the Motion Picture Association of America, the Community Antenna Television Association, and each of the networks' affiliate organizations, and shall include any individual acting on behalf of such person; and

(3) the term "telecast" means—

(A) to broadcast by a television broadcast station; or

(B) to transmit by a cable television system or a satellite television distribution service.

(c) EXEMPTION.—The antitrust laws shall not apply to any joint discussion, consideration, review, action, or agreement by or among persons in the television industry for the purpose of, and limited to, developing and disseminating voluntary guidelines designed alleviate the negative impact of violence in telecast material.

(d) LIMITATIONS.—(1) The exemption provided in subsection (c) shall not apply to any joint discussion, consideration, review, action, or agreement which results in a boycott of any person.

(2) The exemption provided in subsection (c) shall apply only to any joint discussion, consideration, review, action, or agreement engaged in only during the 3-year period beginning on the date of the enactment of this section.

TITLE VI—VISUAL ARTISTS RIGHTS

SEC. 601. SHORT TITLE.

This title may be cited as the "Visual Artists Rights Act of 1990".

SEC. 602. WORK OF VISUAL ART DEFINED.

Section 101 of title 17, United States Code, is amended by inserting after the paragraph defining "widow" the following:

"A 'work of visual art' is—

"(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of two hundred or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

"(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

"A work of visual art does not include—

"(A)(i) any poster, map globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

"(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

"(iii) any portion or part of any item described in clause (i) or (ii);

"(B) any work made for hire; or

"(C) any work not subject to copyright protection under this title.".

SEC. 603. RIGHTS OF ATTRIBUTION AND INTEGRITY.

(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Chapter 1 of title 17, United States Code, is amended by inserting after 106 the following new section:

"§ 106A. Rights of certain authors to attribution and integrity

"(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

"(1) shall have the right—

"(A) to claim authorship of that work, and

"(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

"(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

"(3) subject to the limitations set forth in section 113(d), shall have the right—

"(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

"(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

"(b) SCOPE AND EXERCISE OF RIGHTS.—Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual are coowners of the rights conferred by subsection (a) in that work.

"(c) EXCEPTIONS.—The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not distortion, mutilation, or other modification described in subsection (a)(3)(A).

"(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

"(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of 'work of visual art' in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

"(d) DURATION OF RIGHTS.—(1) With respect to works of visual art created on or after the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

"(2) With respect to works of visual art created before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the righs conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

"(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

"(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

"(e) TRANSFER AND WAIVER.—(1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

"(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work."

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by inserting after the item relating to section 106 the following new item:

"106A. Rights of certain authors to attribution and integrity.".

SEC. 604. REMOVAL OF WORKS OF VISUAL ART FROM BUILDINGS.

Section 113 of title 17, United States Code, is amended by adding at the end thereof the following:

"(d)(1) In a case in which—

"(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), and

"(B) the author consented to the installation of the work in the building either before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal,

then the rights conferred by paragraphs (2) and (3) of section 106A(a) shall not apply.

"(2) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), the author's rights under paragraphs (2) and (3) of section 106A(a) shall apply unless—

"(A) the owner has made a diligent, good faith attempt without success to notify the author of the owner's intended action affecting the work of visual art, or

"(B) the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal.

For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.

"(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection.".

SEC. 605. PREEMPTION.

Section 301 of title 17, United States Code, is amended by adding at the end the following:

"(f)(1) On or after the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, all legal or equitable rights that are equivalent to any of the rights conferred by section 106A with respect to works of visual art to which the rights conferred by section 106A apply are governed exclusively by section 106A and section 113(d) and the provisions of this title releating to such sections. Thereafter, no person is entitled to any such right or equivalent right in any work of visual art

under the common law or statutes of any State.

"(2) Nothing in paragraph (1) annuls or limits any rights or remedies under the common law or statutes of any State with respect to—

"(A) any cause of action from undertakings commenced before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990;

"(B) activities violating legal or equitable rights that are not equivalent to any of the rights conferred by section 106A with respect to works of visual art; or

"(C) activities violating legal or equitable rights which extend beyond the life of the author.".

SEC. 606. INFRINGEMENT ACTIONS.

(a) IN GENERAL.—Section 501(a) of title 17, United States Code, is amended—

(1) by inserting after "118" the following: "or of the author as provided in section 106A(a)"; and

(2) by striking out "copyright." and inserting in lieu thereof "copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a).".

(b) EXCLUSION OF CRIMINAL PENALTIES.—Section 506 of title 17, United States Code, is amended by adding at the end thereof the following:

"(f) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Nothing in this section applies to infringement of the rights conferred by section 106A(a).".

(c) REGISTRATION NOT A PREREQUISITE TO SUIT AND CERTAIN REMEDIES.—(1) Section 411(a) of title 17, United States Code, is amended in the first sentence by inserting after "United States" the following: "and an action brought for violation of the rights of the author under section 106A(a)".

(2) Section 412 of title 17, United States Code, is amended by inserting "an action brought for a violation of the rights of the author under section 106A(a) or" after "other than".

SEC. 607. FAIR USE.

Section 107 of title 17, United States Code, is amended by striking out "section 106" and inserting in lieu thereof "sections 106 and 106A".

SEC. 608. STUDIES BY COPYRIGHT OFFICE.

(a) STUDY ON WAIVER OF RIGHTS PROVISION.—

(1) STUDY.—The Register of Copyrights shall conduct a study on the extent to which rights conferred by subsection (a) of section 106A of title 17, United States Code, have been waived under subsection (e)(1) of such section.

(2) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report on the progress of the study conducted under paragraph (1). Not later than 5 years after such date of enactment, the Register of Copyrights shall submit to the Congress a final report on the results of the study conducted under paragraph (1), and any recommendations that the Register may have as a result of the study.

(b) STUDY ON RESALE ROYALTIES.—

(1) NATURE OF STUDY.—The Register of Copyrights, in consultation with the Chair of the National Endowment for the Arts, shall conduct a study on the feasibility of implementing—

(A) a requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and

(B) other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work.

(2) GROUPS TO BE CONSULTED.—The study under paragraph (1) shall be conducted in consultation with other appropriate departments and agencies of the United States, foreign governments, and groups involved in the creation, exhibition, dissemination, and preservation of works of art, including artists, art dealers, collectors of fine art, and curators of art museums.

(3) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report containing the results of the study conducted under this subsection.

SEC. 609. FIRST AMENDMENT APPLICATION.

This title does not authorize any governmental entity to take any action or enforce restrictions prohibited by the First Amendment to the Constitution of the United States.

SEC. 610. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b) and except as provided in subsection (c), this title and the amendments made by this title take effect 6 months after the date of the enactment of this Act.

(b) APPLICABILITY.—The rights created by section 106A of title 17, United States Code, shall apply to—

(1) works created before the effective date set forth in subsection (a) but title to which has not, as of such effective date, been transferred from the author, and

(2) works created on or after such effective date, but shall not apply to any destruction, distortion, mutilation, or other modification (as described in section 106A(a)(3) of such title) of any work which occurred before such effective date.

(c) SECTION 608.—Section 608 takes effect on the date of the enactment of this Act.

TITLE VII—ARCHITECTURAL WORKS

SEC. 701. SHORT TITLE.

This title may be cited as the "Architectural Works Copyright Protection Act".

SEC. 702. DEFINITIONS.

(a) ARCHITECTURAL WORKS.—Section 101 of title 17, United States Code, is amended by inserting after the definition of "anonymous work" the following:

"An 'architectural work' is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.".

(b) BERNE CONVENTION WORK.—Section 101 of title 17, United States Code, is amended in the definition of "Berne Convention work"—

(1) in paragraph (3XB) by striking "or" after the semicolon;

(2) in paragraph (4) by striking the period and inserting "; or"; and

(3) by inserting after paragraph (4) the following:

"(5) in the case of an architectural work embodied in a building, such building is erected in a country adhering to the Berne Convention.".

SEC. 703. SUBJECT MATTER OF COPYRIGHT.

Section 102(a) of title 17, United States Code, is amended—

(1) in paragraph (6) by striking "and" after the semicolon;

(2) in paragraph (7) by striking the period and inserting "; and"; and

(3) by adding after paragraph (7) the following: "(8) architectural works.".

SEC. 704. SCOPE OF EXCLUSIVE RIGHTS IN ARCHITECTURAL WORKS.

(a) IN GENERAL.—Chapter 1 of title 17, United States Code, is amended by adding at the end the following:

"§ 120. Scope of exclusive rights in architectural works

"(a) PICTORIAL REPRESENTATIONS PERMITTED.—The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

"(b) ALTERATIONS TO AND DESTRUCTION OF BUILDINGS.—Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.".

(b) CONFORMING AMENDMENTS.—(1) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end of the following:

"120. Scope of exclusive rights in architectural works.".

(2) Section 106 of title 17, United States Code, is amended by striking "119" and inserting "120".

SEC. 705. PREEMPTION.

Section 301(b) of title 17, United States Code, is amended—

(1) in paragraph (2) by striking "or" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; or"; and

(3) by adding after paragraph (3) the following:

"(4) State and local landmarks, historic preservation, zoning, or building codes, relating to architectural works protected under section 102(aX8).".

SEC. 706. EFFECTIVE DATE.

The amendments made by this title apply to—

(1) any architectural work created on or after the date of the enactment of this Act; and

(2) any architectural work that, on the date of the enactment of this Act, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under title 17, United States Code, by virtue of the amendments made by this title, shall terminate on December 31, 2002, unless the work is constructed by that date.

TITLE VIII—COMPUTER SOFTWARE

SEC. 801. SHORT TITLE.

This title may be cited as the "Computer Software Rental Amendments Act of 1990".

SEC. 802. RENTAL OF COMPUTER PROGRAMS.

Section 109(b) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(2) by striking paragraph (1) and inserting the following:

"(b)(1)(A) Notwithstanding the provisions of subsection (a), unless authorized by the

owners of copyright in the sound recording or the owner of copyright in a computer program (including any tape, disk, or other medium embodying such program), and in the case of a sound recording in the musical works embodied therein, neither the owner of a particular phonorecord nor any person in possession of a particular copy of a computer program (including any tape, disk, or other medium embodying such program), may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord or computer program (including any tape, disk, or other medium embodying such program) by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution. The transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes under this subsection.

"(B) This subsection does not apply to—

"(i) a computer program which is embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; or

"(ii) a computer program embodied in or used in conjunction with a limited purpose computer that is designed for playing video games and may be designed for other purposes.

"(C) Nothing in this subsection affects any provision of chapter 9 of this title.

"(2)(A) Nothing in this subsection shall apply to the lending of a computer program for nonprofit purposes by a nonprofit library, if each copy of a computer program which is lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

"(B) Not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990, and at such times thereafter as the Register of Copyright considers appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether this paragraph has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations that the Register of Copyrights considers necessary to carry out the purposes of this subsection.", and

(3) by striking paragraph (4), as redesignated by paragraph (1) of this section, and inserting the following:

"(4) Any person who distributes a phonorecord or a copy of a computer program (including any tape, disk, or other medium embodying such program) in violation of paragraph (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18.".

SEC. 803. PUBLIC DISPLAY OF ELECTRONIC VIDEO GAMES.

Section 109 of title 17, United States Code, is amended by adding at the end the following:

"(e) Notwithstanding the provisions of sections 106(4) and 106(5), in the case of an electronic audiovisual game intended for use in coin-operated equipment, the owner of a particular copy of such a game lawfully made under this title, is entitled, without the authority of the copyright owner of the game, to publicly perform or display that game in coin-operated equipment, except that this subsection shall not apply to any work of authorship embodied in the audiovisual game if the copyright owner of the electronic audiovisual game is not also the copyright owner of the work of authorship.".

SEC. 804. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made in sections 102, 104 and 105 shall take effect on the date of enactment. The amendments made by section 103 shall take effect one year from the date of enactment.

(b) PROSPECTIVE APPLICATION.—Section 109(b) of title 17, United States Code, as amended by section 102 of this Act, shall not affect the right of a person in possession of a particular copy of a computer program, who acquired such copy before the date of the enactment of this Act, to dispose of the possession of that copy on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code, as in effect on the day before such date of enactment.

(c) TERMINATION.—The amendments made by section 102 shall not apply to rentals, leasings, or lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring on or after October 1, 1997. The amendments made by section 103 shall not apply to public performances or displays that occur on or after October 1, 1995.

SEC. 805. RECORDATION OF SHAREWARE.

(a) IN GENERAL.—The Register of Copyrights is authorized, upon receipt of any document designated as pertaining to computer shareware and the fee prescribed by section 708 of title 17, United States Code, to record the document and return it with a certificate of recordation.

(b) MAINTENANCE OF RECORDS; PUBLICATION OF INFORMATION.—The Register of Copyrights is authorized to maintain current, separate records relating to the recordation of documents under subsection (a), and to compile and publish at periodic intervals information relating to such recordations. Such publications shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

(c) DEPOSIT OF COPIES IN LIBRARY OF CONGRESS.—In the case of public domain computer software, at the election of the person recording a document under subsection (a), 2 complete copies of the best edition (as defined in section 101 of title 17, United States Code) of the computer software as embodied in machine-readable form may be deposited for the benefit of the Machine-readable Collections Reading Room of the Library of Congress.

(d) REGULATIONS.—The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions of the Register under this section. All regulations established by the Register are subject to the approval of the Librarian of Congress.

The SPEAKER pro tempore (Mr. ECKART). Is a second demanded?

Mr. FISH. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

The SPEAKER pro tempore. The gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, and the gentleman from New York [Mr. FISH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us represents the consolidation of various pieces of legislation passed by the House during this Congress and ameded by the Senate earlier today.

The centerpiece of the bill is the Federal Judgeship Act of 1990, which provides badly-needed additional resources to the Federal judiciary. These provisions create 85 new Federal judgeships—74 for the district courts and 11 for the circuit courts of appeals. As amended, this section reflects the 61 judgeships included in the judgeship bill passed by the House last month, plus the 24 additional positions in the Senate judgeship proposal.

The bill also includes the Civil Justice Reform Act—legislation intended to reduce the high costs and unnecessary delays sometimes associated with civil litigation in Federal courts. The version reported by the Senate Judiciary Committee would have required each district court to adopt various new and innovative cost and delay reduction techniques. Many Federal judges objected to requiring such procedures across-the-board to all 94 district courts—particularly since it is unclear whether these new approaches will actually work as intended. As a result, the House-passed version made their use voluntary.

The compromise proposal before us today requires the use of such techniques only in a 10-district pilot program. The procedures will be voluntary in the other 84 districts.

Title III of the bill implements certain recommendations of the Federal Courts Study Committee—a blue-ribbon panel of judges, practicing attorneys, and Members of Congress formed to find ways of improving the operations of the courts. This section of the bill is very similar to the provisions of H.R. 5381, as passed by the House last month.

Title IV incorporates the language of the Judicial Discipline and Removal Reform Act passed by the House earlier this year. This section of the bill is intended to improve current judicial discipline mechanisms and establish a commission to study issues involving

the tenure of article III Federal judges—included discipline and removal.

Title V reflects the Television Violence Act, passed by the House last year. These provisions grant a 3-year exemption from the antitrust laws to television networks for the purpose of developing voluntary guidelines to alleviate the negative effect of violence in TV programs.

Title VI includes the Visual Artists Rights Act. This section, which reflects minor amendments to the version of the bill passed by the House earlier this year, provides rights "attribution" and "integrity" to certain visual artists. The purpose of these provisions is to protect both the reputations of such artists and the works of art they create.

Title VII incorporates the provisions of the House-passed Architectural Works Copyright Protection Act, which creates a new category of copyright subject matter for the constructed design of buildings.

Title VIII is a modified version of the Computer Software Rental Amendments Act passed by the House last month. These provisions create a narrowly focused exemption to the "first sale" doctrine of copyright law by prohibiting the unauthorized direct or indirect commercial rental of computer software.

Mr. Speaker, I must say that I am not enthusiastic about bringing to the floor a bill that reflects such a diverse collection of legislative initiatives. I would point out, however, that each piece of this bill has—in either an identical or similar form—already been approved by the House this Congress. In addition, the changes made by the Senate are reasonable and acceptable. In short, this is a solid legislative package and I urge my colleagues to support it.

□ 2400

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to speak in support of important legislation that authorizes badly needed new Federal judgeships. In addition, this measure contains important provisions which would promote civil justice reform, which would implement certain recommendations of the Federal Courts Study Committee, and address matters relating to judicial discipline, and would discourage violence on television.

TITLE I

As an original cosponsor of title I, the civil justice expense and delay reduction plan, I have followed its progress with considerable interest. Given the pressures that a litigious society continues to place on the administration of justice in the Federal courts, it's important that Congress recognize the pressing need for procedural reform. We need an expedited discovery process, firm trial dates, and the expanded use of alternative dispute resolution mechanisms. Title I of this legislation focuses attention upon case management as a vehicle for reducing cost and delay.

The basic issues boiled down to whether the provisions contained in this title should be made mandatory for each judiciary district. I know that many of our colleagues in the other body feel strongly that, to be effective, it must be made mandatory. The Federal judiciary, however, vigorously opposed the mandatory feature of this proposal. A compromise acceptable to both the judiciary and the Congress has been worked out whereby the judicial conference will designate 10 district courts out of the 94 districts to implement expense and delay reduction plans in accordance with the mandate of the bill.

A survey of more than 2,000 Americans in 1987 showed that 71 percent believed that the overall cost of lawsuits is too high, and 57 percent believed that the system fails to provide resolution of disputes without delay. In my opinion, title I of this legislation will begin to correct the dual problems of excessive cost and delay in our Federal courts.

TITLE II

Mr. Speaker, title II authorizes an additional 11 judgeships for U.S. Courts of Appeals and 74 new judgeships for U.S. district courts. An evaluation of current information relating to the capacities of Federal courts to handle their caseloads leads to the inescapable conclusion that relief is urgently needed. The legislation before us incorporates many of the judgeship recommendations of the judicial conference of the United States.

Long delays in judicial dispositions leave disputes unresolved and undermine the administration of justice. Improvements in case management techniques, in some situations, may provide the key to increases in judicial productivity—but new judgeships become essential when other mechanisms for addressing caseload pressures prove inadequate.

During a markup in the Subcommittee on Economic and Commercial Law, I offered an amendment providing a third new district court judgeship for the eastern district of New York and converting a new temporary judgeship for the southern district of New York into a permanent position. I was pleased that the subcommittee, in recognition of caseload demands in these districts, approved my amendment—which effectively is incorporated in the legislation before us.

Congress last acted 6 years ago to increase article III judicial positions for the district courts and the courts of appeals. We now must respond to the realities of caseloads today—including an upsurge in time-consuming drug-related criminal cases—by providing the Judiciary with the necessary positions to handle adjudications expeditiously.

TITLE III

Mr. Speaker, our courts subcommittee chairman, the gentleman from Wisconsin [Mr. KASTENMEIER], and the ranking minority member, the gentleman from California [Mr. MOORHEAD], deserve special credit for their diligent efforts as members of the Federal Courts Study Committee and their involvement in the drafting of title III of the bill.

The study committee's recommendations provide us with a useful, comprehensive list of key problems—both substantive and procedural—currently facing the Federal judiciary. The recommendations deal with topics ranging from mandatory minimum sentences to civil rights suits to intercircuit conflicts to the resource needs of the Federal courts.

House Judiciary Committee members know first hand about court congestion, delay, and the ever escalating cost of litigation. This title would, in part, implement the recommendations of the Federal courts study committee so as to deal with these problems.

TITLE IV

Mr. Speaker, title IV addresses the problems of judicial discipline and would create a commission to study the different approaches to impeaching and removing a judge for bad behavior. Judicial discipline has become a major concern in the past decade. Whether considered as a legislative issue under the United States Code or a constitutional issue under article III, judicial discipline is a current issue that requires our attention. Confidence in our judiciary can only be sustained and preserved if our citizens respect individual judges.

In addition, title IV creates a national commission to study the application of the impeachment process and perhaps propose alternatives for consideration by the Congress. I believe this is both timely and appropriate in light of the recent increases in the size of the judiciary, the recent number of judicial impeachments, and the legislative workload of the Congress.

At best, the impeachment process is cumbersome, time consuming, and expensive. I have been involved directly in the last three impeachments of Federal judges and realize that we must explore the constitutional possibilities of lessening what is a very burdensome process. The problem is removal, not the appointment of Federal judges. Nomination of a Federal judge to the bench is a presidential prerogative, and I am pleased to see that the question the administration had over the scope of the Commission's authority has been worked out. Study of the appointment process should not be a

part of the mandate of such a commission. I appreciate the efforts on the part of the chairman of the Courts Subcommittee, the gentleman from Wisconsin, in making clear to everyone that what we are concerned with here is the burdensome process of removing a Federal judge. I am looking forward to the recommendations of the Commission.

TITLE V

The Television Improvement Act of 1990 is identical to legislation which passed this House on August 1, 1989. The bill is, quite simply, a response to the fact that for some years representatives of the broadcasting industry have regularly cited their antitrust anxiety as a reason to avoid holding joint discussions to develop voluntary guidelines designed to limit television violence.

The Television Violence Act does not compel participation in such discussions. It neither requires, nor prohibits the broadcast of any specific program or material. It mandates nothing. It merely provides producers and broadcasters with an assurance they now lack—the ability to rely on the fact that no antitrust liability will attach if they should choose to meet and jointly discuss the subject of violence on television.

Mr. Speaker, this legislation constructively addresses important judiciary related matters. I urge my colleagues to support it.

Mr. BROOKS. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. KASTENMEIER], the distinguished ranking majority member of this committee.

Mr. KASTENMEIER. Mr. Speaker, I rise in support of H.R. 5316, an omnibus administration of justice and intellectual property improvements package. The bill creates 85 new Federal judgeships. Six additional titles of the bill were initiated or processed by the House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Administration of Justice, which I chair. I would like to add my thoughts about these titles, centering on Senate changes to previously passed House versions.

TITLE II—CIVIL JUSTICE REFORM

Title II, the Civil Justice Reform Act, is intended to reduce costs and delays associated with civil litigation by improving case management. It has been returned to us in substantially the same form as it was passed by this body on September 27, as H.R. 3898. The bill that had been reported by the Judiciary Committee and the bill that passed the House were different in one important respect. The Senate version provided that the contents of the expense and delay reduction plans which Federal judges are to implement "shall" include six principles and guidelines, while the House bill provided only that the plans "may" include those principles and guidelines. That difference was important, because it is one thing for the Congress to improve access to justice by encouraging effective case management as a means for reducing excessive costs and delays—which is what the House bill did. It is quite another for Congress to tell the judges how to do their job by micromanaging their dockets and scheduling decisions—which, I fear, is what the Senate bill would have done.

Title II as passed by the Senate preserves the district courts' discretion in fashioning expense and delay reduction plans. The only significant change from the House bill is that it creates a pilot program in which 10 districts—to be named by the judicial conference—are to participate in a 4-year experiment, in which the contents of those districts' expense and delay reduction plans are to conform with the six principles and guidelines identified in the bill. Because this pilot project is limited in size and duration, and gives the judicial conference the discretion to select the participating districts, it is unobjectionable to the judiciary and is deserving of your support.

TITLE III—FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

Title III is a revised version of the Federal Courts Study Committee Implementation Act, which passed the House on September 27 as H.R. 5381. Its purpose is to implement the noncontroversial recommendations of the Federal Courts Study Committee, which completed its congressionally mandated study last April. The principle difference between title III, and H.R. 5381, is that title III includes five provisions that were in the House bill as introduced, but which were deleted or revised before the House bill was passed. Four of those provisions—sections 304, 305, 309, and 417—relate to bankruptcy matters. They were withdrawn from the House bill because they were within the jurisdiction of the Subcommittee on Economic and Commercial Law, which did not have sufficient time to informally review and approve them before the bill was reported out of the Judiciary Committee. They have since been reviewed and agreed to. The fifth provision, section 316, extends the life of the Parole Commission. It too was in the House bill as introduced. My subcommittee, however, worked in coordination with the Department of Justice and the Subcommittee on Criminal Justice to substitute a more elaborate variation of this provision that would have created a successor agency to the Parole Commission. Senate representatives expressed reluctance to accept this more elaborate provision without having held hearings. In accepting the simpler Senate version today, we do not close the door on revisiting the House provison in the next Congress.

There are, in addition, two provisons in the Senate bill that were not in the House bill at any time. One, in section 324, creates new places of holding court in Nevada and revises the judicial district divisions in South Dakota. These provisions are supported by the judicial conference and are completely noncontroversial. The second, section 319, amends the Ethics in Government Act, to exempt teaching salaries from the financial limits imposed on the outside income of senior judges. In so doing, it encourages teaching among senior judges—who by virtue of their considerable experience, have much to contribute to institutions of higher learning, and who by virtue of being on senior status, have a reduced workload that allows them greater opportunity to teach without interfering with their judicial duties. This section is supported by the judicial conference and is acceptable.

Finally, there is one important change contained in section 315. The House bill had intended merely to authorize the Supreme Court to prescribe rules defining the scope of final decisions for purposes of appeal, but might have been misunderstood to require the Supreme Court to prescribe such rules. Section 315 makes it clear that we intend merely to permit the Supreme Court to prescribe rules on this subject.

TITLE IV—JUDICIAL DISCIPLINE REFORM

Title IV contains provisions relating to judicial discipline and removal. They are intended to improve the functioning of the Federal judicial discipline mechanism. This title is virtually identical to H.R. 1620, a bill that I authored in the House, with cosponsorship from Mr. MOORHEAD, and which passed on June 5 of this year. I am especially pleased to see that the Senate-passed bill includes the House bill's sections creating a National Commission on Judicial Impeachment, which will go a long way toward improving our understanding of a serious intergovernmental problem: The impeachment and removal from office of a growing number of Federal judges.

I would like to thank the two Senate sponsors, the Senator from Wisconsin [Mr. KOHL] and the Senator from Arizona [Mr. DECONCINI], for their support and assistance. Senator DECONCINI and I were, of course, sponsors of the 1980 Judicial Discipline Act that basically has worked well, but is now in need of several curative amendments. The act and the amendments respect the autonomy of the Federal judicial branch and will promote citizen respect for the rule of law.

TITLE VI—VISUAL ARTISTS RIGHTS

Title VI, the Visual Artists Rights Act of 1990, protects the integrity of the works of visual artists and the reputations and honor of those artists. By creating a right of integrity, it pro-

tects society against the mutilation and destruction of those works of visual art that make up an important part of our cultural heritage, and gives individual artists the legal right to prevent distorting changes in their work. By also creating a right of attribution, the act gives visual artists the legal right to prevent misattributions of their work. While this title is not necessary for this country's adherence to the Berne Convention, a very important international copyright treaty that the United States recently joined, it certainly strengthens our commitment to that convention.

The Senate has in certain respects amended the bill that was passed by the House, but in my opinion, and that of the Copyright Office, those amendments either do not harm the essential purpose of the bill, or they in fact add clarity to our work product.

One clarification provides that no governmental entity is authorized by this act to take any action or enforce any restrictions prohibited by the first amendment to the U.S. Constitution. I believe that the act in the form passed by the House did not authorize any such action or restriction, but of course, even if it had, the first amendment would prevail. This clarification is therefore acceptable.

A second amendment removes the House requirement that distortions, mutilations, or modifications of the work forming the basis of violations of the right of attribution be done intentionally or negligently. The artist must still, however, show that the distortion, mutilation, or other modification is prejudicial to his or her honor or reputation. This is an appropriate modification to the scope of the right of attribution.

A third amendment requires that actionable violations of the right of integrity through distortion, mutilation, or other modification be done intentionally, rather than negligently.

A fourth amendment separates destruction of works of visual art from distortions, mutilations, or modifications. For such destructions to be actionable, they must involve works of recognized stature. The required state of mind is intentional or grossly negligent. This change does not affect our adherence to the Berne Convention, since the convention does not create a destruction right.

A fifth amendment creates an exception to the integrity right to clarify that a modification of a work that results from the passage of time or the inherent nature of the materials is not actionable. The House version permitted legal action if such modification was the result of gross negligence. Appropriately, this change does not apply to the destruction right. In addition, the Copyright Office has advised me that the practical effect of the amendment may be minimal, since the Senate continues to permit causes of action for destruction, mutilation, or other modifications that are not the result of the passage of time, but which are the result of gross negligence.

A sixth amendment relates to the presentation exception. The modification of a work that is the result of a public presentation or conservation carried out in a grossly negligent manner remains actionable. The House version did not distinguish between public and private presentations, but in my opinion, this distinction will have no practical effect.

A seventh amendment limits the duration of the rights of attribution and integrity to the life of the author. The House bill extended the duration to the term applied to economic rights: the life of the author plus 50 years. While I believe that the interests of consistency in the copyright law support the House position, I am willing to go along with the Senate amendment because of an eighth, and very important, amendment to the preemption section of the act.

This eighth amendment narrows the scope of the general preemption language. It clarifies that Congress does not intend to preempt section 989 of the California Civil Code, the "cultural heritage protection," or any other similar State code. I believe that, in light of the Senate's limitation on the duration of the rights afforded by the act, this amendment is necessary to ensure compatibility with the Berne Convention.

Article 6bis of Berne in effect allows the United States to terminate some part of the moral rights of authors at the death of the author to the extent that our domestic law provided such a limitation at the time of our accession to the convention. Because the act terminates the rights it confers in works created on or after its effective date at the death of the author, it is necessary expressly to provide for the postmortem continuation of some aspects of the rights of attribution and integrity.

The approach taken by the Senate is to provide that State and common law rights that survive the death of the author are not preempted by the system of rights created by the act. The act does not expand or contract State or common law protections of artists' rights. It provides only that to the extent State and common law rights and remedies endure beyond the death of the author, such rights and remedies shall not be affected by the provisions of the act. Nor does the act require that State or common law causes of action akin to moral rights be extended past the death of the author where they are not now so extended. By so doing, we leave undisturbed the preexisting law based upon which the Berne Implementation Act of 1988 dealt with the general question of artists' rights.

The final Senate change concerns the effective date of the act. It provides that the rights created by this act are limited to works created after the effective date and to works created before the effective date, but title to which, as of the effective date, has not been transferred. This amendment in fact avoids taking clause arguments, and in this respect is salutary.

Without the efforts of the gentleman from Massachusetts [Mr. MARKEY], the senior Senator from Massachusetts, Senator KENNEDY, and my colleague from California [Mr. MOORHEAD], this bill could not have become law. I would like to express my gratitude to them for their hard work and patience.

TITLE VII—ARCHITECTURAL WORKS

Title VII provides intellectual property protection for certain types of architectural works. Its purpose is to bring the United States into compliance with very significant multilateral treaty obligations under the Berne Copyright Convention with respect to works of architecture, by creating a new category of copyright subject matter for the constructed design of buildings. Title VII is in all respects the same as title II of H.R. 5498, which I introduced with the ranking minority member, Mr. MOORHEAD, and which passed the House just last month. Architecture is a form of artistic expression that performs a very significant societal function. As a son of my congressional district, Frank Lloyd Wright, observed: "Buildings will always remain the most valuable aspect in a people's environment, the one most capable of cultural reaction." It is appropriate that we react, not only culturally, but legislatively as well, to promote and protect architectural expression.

TITLE VIII—COMPUTER SOFTWARE RENTAL

Title VIII is the Computer Software Rental Act of 1990, originally introduced by a key member of my subcommittee, Mr. SYNAR, and which passed the House on September 27. The software rental legislation balances the rights of software owners and users by establishing a narrowly drafted exception to the first sale doctrine to copyright law. The continued progress of software—the technology that makes computers work and fuels our information society—will result from a reduction of the first sale rights of purchasers. The only real difference between the House-passed bill and the Senate amendment addresses an anomally in current copyright law that prevents certain coin-operated equipment—electronic video games—from being used for their intended purpose. Called the Red Baron controversy, the bill circumscribes the public performance right for the playing of

electronic games. However, at the insistence of the Senate the provision is subjected to both a sunrise—effective 1 year after the date of enactment and a sunset—after 5 years.

The Senate made a technical change to title VIII at the request of the Association of Shareware Professionals and I agree with that change. The amendment authorizes the Library of Congress to accept public domain computer software rather than, as before, public domain shareware. I recognize that creators of computer shareware typically retain copyright in their works.

In response to correspondence and inquiries about the scope of the proposed legislation—such as a letter to me from the Institute of Electric and Electronics Engineers and another from United Technologies—some thoughts supplementing the House report are necessary.

Section 802 of title VIII of H.R. 5316 amends section 109(b) of title 17, United States Code, to give copyright owners of computer programs the right to prohibit the direct or indirect rental, lending, or lease of their computer programs for purposes of direct or indirect commercial advantage. There are, however, three exceptions to this right. These exceptions are for: First, nonprofit libraries and nonprofit educational institutions; second, computer programs embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; and, third, computer programs embodied in limited purpose computers designed for playing video games. Questions regarding the first two exceptions have arisen.

At the request of nonprofit educational institutions, the following provision was included in new section 109(b)(1)(A), title 17, United States Code:

> The transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes under this subsection.

Certain for-profit companies have inquired whether this language implies that the common practices of employees of a company carrying portable computers and associated software to other worksites, and of transferring employer-owned software among employees at the same location would be considered to consitute direct or indirect commercial advantage.

The bill is not intended to prohibit these common practices. The sole purpose of the quoted language is to highlight legitimate activities that occur in a nonprofit educational setting. The committee did not intend the provision to imply that similar activities, if carried out by for-profit entities, would be infringing. The transfer of copies within a single entity, whether nonprofit or for-profit, is exempt.

I have also heard concern that section 802 would interfere with the existing legitimate rental market for machines that are not themselves computers but which contain computer programs that govern or facilitate their operation as well as for computer hardware itself. This question was carefully considered by my subcommittee and the committee. In my view, the provisions of new subsection 109(b)(1)(i) adequately allow the rental of computer hardware that embody computer programs which cannot be copied during the ordinary operation or use of that machine, including the lease or lending of computers embodying software, by, for example, hotels and airports for patrons' individual business purposes. The touchstone in all these cases is whether the computer program embodied in the computer being rented or leased can be copied during the ordinary operation of the computer. The loading of a computer program into a computer is a copying of the program, and, if unauthorized or not exempt under other provisions of the Copyright Act, is an infringement. The focus of this bill is not on this question, but rather on the rental of a computer program that has already lawfully been loaded into a computer or other machine or product. If, after having been embodied in the computer or other machine or product, such a computer program can be copied during the ordinary operation of that machine or product, then the exemption does not apply.

Related questions have arisen with respect to purchase leasebacks of hardware and software, and, software purchase return policies. The question whether a transaction is a sale or a lease is typically one of State law. The computer industry uses a variety of license agreements, ranging from shrink wrap licenses for over-the-counter software to lengthy negotiated contracts for mainframe computers. Congress cannot draft legislation that addresses every such conceivable fact situation. We, however, should not disturb legitimate commercial activities that routinely involve a variety of products, one of which may include software. For example, most retail stores have return policies for purchases of products. Sometimes these policies include restocking charges. Where software is purchased under such policies, there is no rental or lease. On the other hand, where a store offers to repurchase software for a substantial part of the purchase price and offers free blank diskettes for copying, questions may arise whether the activity involves indirect commercial advantage.

In conclusion, I would again like to thank the gentleman from Texas [Mr. BROOKS], the gentleman from New York [Mr. FISH], and the gentleman from California [Mr. MOORHEAD] for their support and cooperation in bringing this fine piece of legislation to the floor. I would also like to express my appreciation to the Senator from Delaware [Mr. BIDEN], the Senator from Iowa [Mr. GRASSLEY], and the Senator from Wisconsin [Mr. KOHL] for their able leadership on the court reform aspects of the legislation, and to the Senator from Massachusetts [Mr. KENNEDY], the Senator from Arizona [Mr. DECONCINI], and the Senator from Utah [Mr. HATCH] for their unflagging efforts to pass the intellectual property components of the package.

Mr. FISH. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Speaker, I would like to commend the gentleman from Texas Chairman BROOKS, the gentleman from New York Mr. FISH and the gentleman from Wisconsin Mr. KASTENMEIER, on bringing this legislation to the floor and for the compromises reached with the other body. The time constraints and various pressures that they and the committee have operated under have been considerable and to bring this important issue to the House reflects highly on their deep concerns for civil justice, court reform, and copyright revision.

Last January the gentleman from Wisconsin and I joined as cosponsors of H.R. 3898, the Civil Justice Reform Act as introduced by our chairman, the gentleman from Texas [Mr. BROOKS], and the gentleman from New York [Mr. FISH], which was the counterpart to a bill introduced in the other body. Since that time an enormous amount of discussion has occurred in the legal community over nearly every aspect of that bill. Nobody challenges the goals of the bill; namely, to cut cost and delay in civil litigation.

Through very productive negotiations among the other body, the judicial branch and the House, a good middle ground has been worked out and is contained in title I of this legislation. The compromise would require the Judicial Conference to select 10 districts throughout the country to implement mandatory civil justice and delay reduction plans. The bill also includes a 7-year sunset. This legislation represents an important first step in requiring certain procedural changes in the U.S. district courts in order to promote just and inexpensive determinations.

Title II of H.R. 5316 is the Federal Judgeship Act of 1990, legislation which would authorize additional Fed-

eral district court and Federal circuit court judgeships.

While this bill does not go as far as the administration and Judicial Conference hoped it would, it is nevertheless a significant step toward dealing with the serious caseload problem faced in our Federal courts. The bill before the House of Representatives today would establish a total of 85 Federal judgeships—11 U.S. Court of Appeals judges and 74 new district court judgeships.

It has been over 6 years since additional judgeships were last authorized for the Federal courts. During that time we have seen tremendous changes in both the volume and the complexity of the workload of the Federal courts. Numerous pieces of legislation in recent years have had a strong impact on the courts. The implementation of the sentencing guidelines, new initiatives to fight the war on drugs, and the advent of mandatory minimum sentences, have all resulted in substantial additional work for the courts, and all have the potential to increase the burdens even more in the coming years.

Since the last judgeships were authorized in 1984, the number of criminal cases filed in the district courts has grown by nearly 30 percent. Drug cases alone have increased by nearly 130 percent and now represent approximately 30 percent of all criminal cases. In the courts of appeals, the situation is similar to that of the district courts. New filings have grown by nearly 30 percent since 1984 and by 13 percent in just the last 2 years.

The legislation before the House today makes it clear that the Federal courts most in need of additional resources are in the south, the southwest, and in my own State of California. I am pleased to note that during the markup of H.R. 5316 in the Subcommittee on Economic and Commercial Law, I sponsored an amendment to add an additional district court judgeship for the Central District of California. The legislation introduced by Chairman BROOKS and called for four additional judges in the central district, but as a result of my amendment, there would now be five. This Moorhead amendment was agreed to in subcommittee.

The Attorney General has stated many times that the justice system is a pipeline—investigators need prosecutors to bring cases and prosecutors need judges to try the cases. The new judgeships provided for in H.R. 5316 are badly needed and overdue resources. Congress must recognize that the war on drugs and the S&L prosecutions necessitate these ongoing commitments.

Mr. Speaker, I want to commend the gentleman from Wisconsin and our staffs for all of the work done in drafting title 3. We spent many months working on the study committee to come up with these changes. As you pointed out in an earlier statement, most of the problems that the Department of Justice had with the original bill have been deleted or modified.

These proposals are not controversial. Title 3 deals with institutional rather than substantive changes. This title, along with title 1 and title 2, are directed at fine tuning our Federal court system in order to secure a just, speedy and inexpensive determination of every action. Our Federal judiciary has problems in all three of these areas, delay, caused by rising caseloads and insufficient support services; spiraling costs, caused by litigation expenses and attorney fees; and inconsistent decisions, caused by the pressures placed on judges who must cope with the torrent of litigation.

This legislation will go a long way in helping to correct these problems and by so doing improve the delivery of justice in our Federal courts.

Title 4 addresses the conduct and discipline of Federal judges. I suppose its inevitable that the larger the Federal judiciary becomes the more likely are the increases in the number of bad judges. The responsibility for the ultimate discipline of a Federal judge lies with the Judiciary Committee, and the Congress. The Congress, in 1980, set in place a mechanism for judges to assist us in reviewing complaints and disciplinary problems relating to Federal judges. Title 4 would further fine tune that mechanism we put in place a decade ago.

To have a competent and honest judiciary is absolutely critical to any form of self government. If the people don't have confidence and trust in their judiciary, our whole system of government is substantially weakened.

In addition, title 4 would set up a national commission to briefly study and report back to the Congress on the different alternatives that might be available for disciplining and removing Federal judges. As a practical matter, the Judiciary Committee will not have time to address the problem this Congress but by this time next year we will have the work product of the commission and we can begin hearings on the problem.

Mr. Speaker, in conclusion, the Department of Justice when they testified before the subcommittee expressed concern that the study commission might go beyond the scope of its authority and study the appointment process for Federal judges. To correct this, and at the suggestion of the department, I offered an amendment that would limit the authority of the commission to recommend constitutional amendments relating only to the discipline and removal of Federal judges. That amendment was adopted by the subcommittee and further accepted by the full committee. To further clarify this point our chairman has agreed to drop the word appointment from the bill. This has been worked out with the Department of Justice and the administration.

Mr. Speaker, this legislation also contains a number of copyright provisions, especially the limitation on computer software rental, of which I am a cosponsor.

The potential loss to the U.S. economy should the rental of software become any more widespread can be seen clearly when we look to the losses suffered by the U.S. software developers by virtue of their inability to restrict commercial copy of their products in many foreign markets.

The future of U.S. trade in products and services based on intellectual and industrial properties, is critically dependent on a worldwide system of laws that provide adequate and effective protection against theft and unauthorized exploitation by others. Many of the newly industrialized countries and less developed countries do not have effective protection. How serious is this? A 1988 study prepared by the U.S. International Trade Commission, estimated the aggregate worldwide losses in sales for the U.S. as a result of inadequate, international copyright protection, range from $23 to $65 billion. This can also be translated into 300,000 to 600,000 jobs lost for the American worker. More than 80 countries, including the United States, belong to the Berne Convention. We became members as of March 1, 1989, as a result of legislation I cosponsored last Congress.

Mr. Speaker, this is important legislation, it represents the hard work of a number of Congressmen over many years and I urge its adoption.

□ 0010

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I rise in very strong support of this legislation. It is a good bill. The committees have worked very hard.

I want to congratulate in particular our distinguished chairman.

Mr. Speaker, the judges in this bill are desperately needed. There are three judges slated for New Jersey. Their workload is staggering, and we have needed those judges for a long time, so I urge my colleagues to support the bill.

Mr. FISH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MOORHEAD. Mr. Speaker, the House of Representatives now has legislation before it in H.R. 5316 to amend the Copyright Act to give new rights to certain visual artists. Twice before this year, the House approved versions of the Visual Artists Rights Act. Today we are asked, once again, to approve visual artists'

rights legislation. And, once again, I rise in support of this legislation.

When the House of Representatives first considered the Visual Artists Rights Act of 1990, I spoke at length about the care the House had taken to craft narrow legislation that protected certain limited categories of works of visual art, without interfering, directly or indirectly, with the ability of U.S. copyright owners and users to further the constitutional goal of ensuring public access to a broad, diverse array of creative works. I did so for two reasons.

First, I made those comments because of my concern that this legislation not be misconstrued in the future and read in such a way to impact upon the capacity of U.S. copyright industries to produce, alter and disseminate their works.

Second, I did so to underscore that my support for this legislation is predicated, in large part, on that fact that it is so narrowly drafted.

As the House turns again to the consideration of visual artist legislation, I feel compelled to reiterate my earlier comments regarding the inapplicability of this legislation outside of the narrow context of limited categories of works of visual art. I do so to disabuse anyone of any notion that the changes in the current version of the legislation might somehow breach the broad wall that we have erected against the legislation spilling over and affecting the producers of books, magazines, motion pictures and other creative works. While there are changes to certain portions of the legislation, they in no way change the protections we have carefully built into the bill in this regard. Therefore, my earlier remarks are equally applicable to the version of this legislation before us today and the version that we have approved twice before. Thus, I now insert in the RECORD the relevant portions of my remarks on the floor of the House from June 5, 1990 regarding H.R. 2690:

The purpose of the Visual Artists Rights Act of 1990 is twofold:

First, it is designed to preserve and protect certain limited categories of works of visual art that exist in single copies or in limited editions.

Second, it is designed to achieve this goal without interfering, directly or indirectly, with the ability of U.S. copyright owners and users to further the constitutional goal of ensuring public access to a broad, diverse array of creative works.

At this time I will elaborate on this second goal.

An overriding concern throughout the Subcommittee on Courts, Intellectual Property and the Administration of Justice's consideration of H.R. 2690, was developing legislation that did not impede the efforts of U.S. copyright owners to exercise the rights described in section 106 of our copyright law. This concern is particularly apparent in those portions of sections 2 and 3 of the bill that set forth both the kinds of works that do and do not fall within the definition of works of visual art and the kind of activities that are not covered by the protections afforded by this legislation.

First, the definition of works of visual art is an extremely narrow one and is readily distinguishable from all other categories of copyrighted material. As the committee report makes clear: "The definition is not synonymous with any other definition in the copyright act and, in particular, it is narrower than the definition of 'pictoral, graphic and sculptural works' set forth in 17 U.S.C. 101. It encompasses certain paintings, drawing, prints, sculptures, and finally still photographic images produced for exhibition purposes only. In all cases, these works are covered only in single copies or in limited editions of 200 or fewer copies." (Report at 13.)

Unless a work falls within this extremely narrow category of works, it is not accorded the protections provided for under the legislation. In the subcommittee's view, this narrow definition is essential to ensuring that the legislation is limited to protecting and preserving qualifying works that exist in single copies or limited editions.

Second, equally important to the proper functioning of the legislation is its delineation of the types of items or parts of items that do not fall within the scope of the definition of works of visual art. The types of items excluded from the definition of works of visual art is set out in subparagraph A of section 2 of the legislation. Significantly, the bill also excludes from the definition works-made-for-hire and works not subject to copyright protection under title 17.

Third, because, as the report states, "The exclusion from the definition of a work of visual art would be of little or no value if these industries (motion pictures, magazines, newspapers, etc.) could be held liable under section 106A for the manner in which they depict, portray, reproduce or otherwise make use of such a work," the committee added subsection (c)(3) to the legislation. This proposal underscores that H.R. 2690 protects only single copies or limited editions of 200 or fewer works of visual art and does not reach reproductions, depictions, portrayals and similar uses of works of visual art that are embodied in works excluded from the definition, including motion pictures, newspapers, books and magazines.

Taken together, these aforementioned provisions insulate U.S. copyright-intensive industries from liability under H.R. 2690. Therefore, H.R. 2690 will in no way impede the ability of these industries to produce and disseminate U.S. created works, or undercut America's pre-eminent copyright status both here and abroad.

Mr. Speaker, as my preceding comments make clear, H.R. 2690 is an important bill, albeit one with a very limited purpose. It should be a helpful tool in preserving and protecting certain works of visual art that are generally the product of the creative efforts of a single individual. Any effort to extend these types of protections to other situations is extremely problematic. There simply is no parallel between the works covered by this bill and other types of works, including those that are collaborative in nature and list in large numbers such as motion pictures, newspapers, magazines and textbooks. Introduction of the types of rights afforded under H.R. 2690 into these industries would inhibit the dissemination and production of these and similar works in the future. I thank you Mr. Speaker.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ECKART). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 5316.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment to the bill was concurred in.

A motion to reconsider was laid on the table.

COMMUNICATION FROM HON. GLENN ANDERSON, CHAIRMAN, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

The SPEAKER laid before the House the following message from the Committee on Public Works and Transportation, which was read and referred to the Committee on Appropriations:

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION,
Washington, DC, October 24, 1990.

Hon. THOMAS S. FOLEY,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the provisions of the Public Buildings Act of 1959, the House Committee on Public Works and Transportation approved the following resolutions on October 3, 1990:

LEASE RESOLUTIONS

Environmental Protection Agency, Chapel Hill, North Carolina.

Department of Justice, Cleveland, Ohio.

Department of the Navy, Norfolk, Virginia.

Bureau of Mines, Department of the Interior, Washington, DC.

Office of Personnel Management, Washington, DC.

Federal Building, Oakland, California (amendment).

The original and one copy of the authorizing resolution is enclosed.

Sincerely,

GLENN M. ANDERSON,
Chairman.

FURTHER MESSAGE FROM THE SENATE

A further message form the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 4808. An act to encourage solar, wind, waste, and geothermal power production by removing the size limitations contained in the Public Utility Regulatory Policies Act of 1978.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 185. An act to amend title 18 of the United States Code to punish as a Federal criminal offense the crimes of international parental child abduction, and

S. 3012. An act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1991, 1992, and 1993, and for other purposes.

The message also announced that the Senate agrees to the amendment

of the House to the amendment of the Senate numbered 7 to the bill (H.R. 5229) "An Act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1991, and for other purposes".

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate numbered 4 with an amendment:

ANTITRUST AMENDMENTS ACT OF 1990

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 29) to amend the Clayton Act regarding interlocking directorates and officers.

The Clerk read as follows:

Senate amendments:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Antitrust Amendments Act of 1990".

SEC. 2. Section 8 of the Clayton Act (15 U.S.C. 19) is amended to read as follows:

"SEC. 8. (a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

"(A) engaged in whole or in part in commerce; and

"(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than $10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

"(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

"(A) the competitive sales of either corporation are less than $1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

"(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

"(C) the competitive sales of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, 'competitive sales' means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, 'total sales' means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

"(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

"(4) For purposes of this section, the term 'officer' means an officer elected or chosen by the Board of Directors.

"(5) For each fiscal year commencing after September 30, 1990, the $10,000,000 and $1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than October 30 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

"(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reasons of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.".

SEC. 3. Section 10 of the Clayton Act (15 U.S.C. 20) is hereby repealed.

SEC 4. AMENDMENTS.

(a) RESTRAINT OF TRADE AMONG THE STATES.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended—

(1) by striking "one million dollars" and inserting "$10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

(b) MONOPOLY.—Section 2 of the Sherman Act (15 U.S.C. 2) is amended—

(1) by striking "one million dollars" and inserting "$10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

(c) OTHER RESTRAINTS OF TRADE.—Section 3 of the Sherman Act (15 U.S.C. 3) is amended—

(1) by striking "one million dollars" and inserting "$10,000,000", and

(2) by striking "one hundred thousand dollars" and inserting "$350,000".

TREBLE DAMAGES FOR THE UNITED STATES

SEC. 5. Section 4A of the Clayton Act (15 U.S.C. 15a), is amended by striking out "actual" and inserting in lieu thereof "threefold the".

Amend the title so as to read: "An Act entitled the 'Antitrust Amendments Act of 1990'.".

The SPEAKER pro tempore. Is a second demanded?

Mr. FISH. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, and the gentleman from New York [Mr. FISH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 29 is a package of antitrust measures which represents an important addition to the Nation's competition statutes. The bill contains three separate measures that: First, modernize the prohibitions against interlocking directorates in section 8 of the Clayton Act; second, increase fines for both individuals and corporations who commit criminal violations of the antitrust laws; and third, allow the Government to collect treble damages in its civil suits against violators.

Of all areas of the law, antitrust legislation seems to draw some of the most intense scrutiny and debate, and for a good reason: we have always afforded great importance to our competition statutes and the delicate balance required to ensure an open and free-moving economy. These measures before us go the heart of the legislative mission in keeping antitrust laws responsive to the changing needs in public and private suits. Two of the measures reinforce the ability of the Government to strike hard at those who commit economic crimes that harm competition. The other lends clarity to a prohibition against interlocks, which has not been amended in 75 years.

Since passage of the Clayton Act in 1914, the antitrust laws have forbidden a director from sitting on the board of two or more competing corporations when at least one of the corporations has "capital, surplus or undivided capital" aggregating more than $1 million.

While the fundamental purpose behind the enactment of section 8 remains an important one, the Judiciary Committee has concluded that the original statute does not adequately take into account the size or nature of the modern corporation in the current economy. In the current marketplace, the fact that a corporation may have capital, surplus, and undivided profits of $1 million should not automatically be taken as a sign that a director interlock will have a significant impact on competition. The committee believes that given the per se nature of the existing prohibition against interlocks, the creation of certain de minimis exceptions may likely assist corporations in selecting qualified directors without sacrificing any safeguards to prevent the dampening of competition.

I want to especially thank the original sponsor of the legislation, the gentleman from New York [Mr. FISH], for his interest in the legislation.

We have an extremely good and timely package of antitrust measures before us. I ask for support for H.R. 29.

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to particularly thank the chairman of the committee, my good friend, the gentleman from Texas [Mr. BROOKS] who I wish a wonderful November, December, and January, for his courtesy in bringing this important measure to the floor.

Mr. Speaker, I am pleased that this three-part "antitrust package" is being considered before the House before the 101st Congress adjourns. It is unfortunate that this important legislation comes up under circumstances of haste, as we move toward adjournment—because its full legal significance cannot be adequately described or anlayzed. Nevertheless, as the principal sponsor of H.R. 29 in the House, I am most gratified that this legislation is before us.

Importantly, this bill will revise and modernize the jurisdictional threshold contained in section 8 of the Clayton Act—a provision virtually untouched since its enactment in 1914.

Mr. Speaker, section 8 currently bars any person from serving as a director on the boards of two or more corporations engaged in interstate commerce if at least one of them has capital, surplus and undivided profits aggregating over $1 million, and if they, by virtue of their business and location, are or have been competitors. *Protecto Seal Co.* v. *Baroncik,* 484 F.2d 585, 589 (7th Cir., 1973); *United States* v. *Sears, Roebuck & Co.,* 111 F.Supp. 614, 617 (S.D.N.Y. 1953). *See* also *BankAmerica Corp.* v. *United States,* 462 U.S. 122, 127 (1983)—discussing the legislative history of section 8.

Corporations and the economy in general, of course, have grown to the extent that businesses having $1 million in capital are considered relatively small and are unlikely today to have the substantial economic impact originally envisioned. Proponents argue, therfore, that adjusting the limit upward would merely acknowledge the changes in the economy over the past 75 years.

Section 8 has become a serious problem for many businesses that are seeking qualifed directors. The statute imposes a per se standard of liability. That is, a violation can be found regardless of any showing of anticompetitive intent or effect. Furthermore, criminal penalties may be imposed for violations of section 8—the section is enforced by the Justice Department and the Federal Trade Commission—and treble damage actions can be brought by private claimants. Consequently, a violation of section 8 is a risky business.

This section 8 reform bill will accomplish the following:

First, raise the prohibition threshold from $1 to $10 million;

Second, require that both corporations involved exceed the $10 million threshold before an interlock could be prohibited;

Third, limit the prohibition to companies which are currently competitors, eliminating its application to companies which have been in competition only previously;

Fourth, add an indexing provision to section 8 which would annually adjust the jurisdictional threshold based on a percentage of GNP;

Fifth, insert a de minimis standard in the statute so that substantial competition between two corporations will be required before an interlock could be prohibited;

Sixth, make section 8 applicable to common carriers for the first time; and

Seventh, expand the prohibition to include corporate officers.

In addition, this measure would repeal section 10 of the Clayton Act. Section 10 requires compliance with competitive bidding regulations prescribed by the Interstate Commerce Commission whenever a railroad or other common carrier enters into financing, supply, construction or maintenance contracts in excess of $50,000 in any 1 year with a company with which it has a corporate interlock of personnel.

The intent of H.R. 29 is to bring the railroads under the Interlocking Directorate prohibitions in section 8—the standard that applies to all other businesses. Section 10 limits the ability of a railroad to do business with another company simply because one of its directors may work for the other company. Section 10 does not require that the railroad and the other company be direct competitors—which is, of course, the standard for the prohibition in section 8. Section 10 is a "legal relic" that should be repealed.

In extending section 8 coverage to common carriers, we do not intend to prohibit existing, regulated joint transportation pool arrangements. So, for example, "Competitive sales" as it is used in H.R. 29 does not extend to railroads offering their own equipment to shippers and offering equipment to shippers through jointly-owned car pools that are established pursuant to 49 U.S.C. 11342.

This measure also contains the provisions of the antitrust criminal penalties bill (H.R. 3341), which passed this House on October 17, 1989. It will increase fines for criminal violations of the Sherman Act to $10 million—up from the present $1 million—for corporations, and to $350,000—up from the present $100,000—for individuals.

Finally, this legislation will allow the U.S. Government to recover treble damages for antitrust injury. Currently, the United States only can recover actual damages under the Federal antitrust laws, while private parties can rcover treble damages. In these times of budgetary stress this change makes good sense, as well as good policy.

Mr. Speaker, I urge an "aye" vote on this omnibus antitrust bill.

Mr. FISH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time, and I yield back, the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and concur in the Senate amendments to the bill H.R. 29.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments to the bill were concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on the three bills just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ARIZONA DESERT WILDERNESS

Mr. VENTO. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 2570) to provide for the designation of certain public lands as wilderness in the State of Arizona, with an amendment.

The Clerk read as follows:

House amendment to Senate amendment to H.R. 2570. In lieu of the matter inserted by the Senate amendment, insert the following:

Section 1. SHORT TITLE. Titles I through III of this Act may be cited as the "Arizona Desert Wilderness Act of 1990".

TITLE I—DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT

SEC. 101. DESIGNATION AND MANAGEMENT.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following public lands are hereby designated as wilderness and therefore, as components of the National Wilderness Preservation System:

(1) certain lands in Mohave County, Arizona, which comprise approximately 23,600 acres, as generally depicted on a map entitled "Mount Wilson Wilderness" and dated February 1990, and which shall be known as the Mount Wilson Wilderness;

(2) certain lands in Mohave County, Arizona, which comprise approximately 31,070 acres, as generally depicted on a map entitled "Mount Tipton Wilderness" and dated February 1990, and which shall be known as the Mount Tipton Wilderness;

(3) certain lands in Mohave County, Arizona, which comprise approximately 27,530 acres, as generally depicted on a map entitled "Mount Nutt Wilderness" and dated February 1990, and which shall be known as the Mount Nutt Wilderness: *Provided,* That the existing water pipeline for the town of

Oatman, together with the right of ingress and egress thereto, may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(4) certain lands in Mohave County, Arizona, which comprise approximately 90,600 acres, as generally depicted on a map entitled "Warm Springs Wilderness" and dated February 1990, and which shall be known as the Warm Springs Wilderness;

(5) certain lands in Mohave County, Arizona, which comprise approximately 15,900 acres, as generally depicted on a map entitled "Aubrey Peak Wilderness" and dated February 1990, and which shall be known as the Aubrey Peak Wilderness;

(6) certain lands in La Paz County, Arizona, which comprise approximately 14,630 acres, as generally depicted on a map entitled "East Cactus Plain Wilderness" and dated February 1990, and which shall be known as the East Cactus Plain Wilderness;

(7) certain lands in Mohave and La Paz Counties, Arizona, which comprise approximately 41,600 acres, as generally depicted on a map entitled "Rawhide Mountains Wilderness" and dated February 1990, and which shall be known as the Rawhide Mountains Wilderness;

(8) certain lands in Mohave, Yavapai, and La Paz Counties, Arizona, which comprise approximately 126,760 acres, as generally depicted on a map entitled "Arrastra Mountain Wilderness" and dated February 1990, and which shall be known as the Arrastra Mountain Wilderness;

(9) certain lands in La Paz County, Arizona, which comprise approximately 25,287 acres, as generally depicted on a map entitled "Harcuvar Mountains Wilderness" and dated February 1990, and which shall be known as the Harcuvar Mountains Wilderness;

(10) certain lands in La Paz and Maricopa Counties, Arizona, which comprise approximately 22,865 acres, as generally depicted on a map entitled "Harquahala Mountains Wilderness" and dated February 1990, and which shall be known as the Harquahala Mountains Wilderness;

(11) certain lands in Maricopa County, Arizona, which comprise approximately 20,600 acres, as generally depicted on a map entitled "Big Horn Mountains Wilderness" and dated February 1990, and which shall be known as the Big Horn Mountains Wilderness;

(12) certain lands in Maricopa County, Arizona, which comprise approximately 30,170 acres, as generally depicted on a map entitled "Hummingbird Springs Wilderness" and dated February 1990, and which shall be known as the Hummingbird Springs Wilderness;

(13) certain lands in La Paz, Yuma, and Maricopa Counties, Arizona, which comprise approximately 89,000 acres, as generally depicted on a map entitled "Eagletail Mountains Wilderness" and dated February 1990, and which shall be known as the Eagletail Mountains Wilderness;

(14) certain lands in Maricopa County, Arizona, which comprise approximately 15,250 acres, as generally depicted on a map entitled "Signal Mountain Wilderness" and dated February 1990, and which shall be known as the Signal Mountains Wilderness;

(15) certain lands in Maricopa County, Arizona, which comprise approximately 61,000 acres, as generally depicted on a map entitled "Woolsey Peak Wilderness" and dated February 1990, and which shall be known as the Woolsey Peak Wilderness;

(16) certain lands in Maricopa County, Arizona, which comprise approximately 14,500 acres, as generally depicted on a map entitled "Sierra Estrella Wilderness" and dated February 1990, and which shall be known as the Sierra Estrella Wilderness;

(17) certain lands in Maricopa and Pinal Counties, Arizona, which comprise approximately 34,400 acres, as generally depicted on a map entitled "Table Top Wilderness" and dated February 1990, and which shall be known as the Table Top Wilderness;

(18) certain lands in Pima County, Arizona, which comprise approximately 5,080 acres, as generally depicted on a map entitled "Coyote Mountains Wilderness" and dated February 1990, and which shall be known as the Coyote Mountains Wilderness;

(19) certain lands in Pima County, Arizona, which comprise approximately 2,065 acres, as generally depicted on a map entitled "Baboquivari Peak Wilderness" and dated February 1990, and which shall be known as the Baboquivari Peak Wilderness;

(20) certain lands in Gila County, Arizona, which comprise approximately 9,201 acres, as generally depicted on a map entitled "Needle's Eye Wilderness" and dated February 1990, and which shall be known as the Needle's Eye Wilderness: *Provided*, That the right-of-way reserved by right-of-way reservation A-16043 dated October 20, 1986, together with the right of ingress and egress thereto, shall not be affected by this Act, and the existing powerline utilizing such right-of-way may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(21) certain lands in Graham County, Arizona, which comprise approximately 6,590 acres, as generally depicted on a map entitled "North Santa Teresa Wilderness" and dated February 1990, and which shall be known as the North Santa Teresa Wilderness;

(22) certain lands in Graham County, Arizona, which comprise approximately 10,883 acres, as generally depicted on a map entitled "Fishhooks Wilderness" and dated February 1990, and which shall be known as the Fishhooks Wilderness;

(23) certain lands in Cochise County, Arizona, which comprise approximately 11,998 acres, as generally depicted on a map entitled "Dos Cabezas Mountains Wilderness" and dated February 1990, and which shall be known as the Dos Cabezas Mountains Wilderness;

(24) certain lands in Graham and Cochise Counties, Arizona, which comprise approximately 6,600 acres, as generally depicted on a map entitled "Redfield Canyon Wilderness" and dated February 1990, and which shall be known as the Redfield Canyon Wilderness;

(25) certain lands in La Paz County, Arizona, which comprise approximately 18,805 acres, as generally depicted on a map entitled "Gibraltar Mountain Wilderness" and dated February 1990, and which shall be known as the Gibraltar Mountain Wilderness;

(26) certain lands in La Paz and Mohave Counties, Arizona, which comprise approximately 15,755 acres, as generally depicted on a map entitled "Swansea Wilderness" and dated February 1990, and which shall be known as the Swansea Wilderness;

(27) certain lands in LaPaz County, Arizona, which comprise approximately 29,095 acres, as generally depicted on a map entitled "Trigo Mountain Wilderness" and dated February 1990, and which shall be known as the Trigo Mountain Wilderness;

(28) certain lands in Yuma County, Arizona, which comprise approximately 8,855 acres, as generally depicted on a map entitled "Muggins Mountain Wilderness" and dated February 1990, and which shall be known as the Muggins Mountain Wilderness;

(29) certain lands in Yavapai and Maricopa Counties, Arizona, which comprise approximately 9,200 acres, as generally depicted on a map entitled "Hells Canyon Wilderness" and dated February 1990, and which shall be known as the Hells Canyon Wilderness;

(30) certain lands in Maricopa County, Arizona, which comprise approximately 63,600 acres, as generally depicted on a map entitled "North Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the North Maricopa Mountains Wilderness;

(31) certain lands in Maricopa County, Arizona, which comprise approximately 60,800 acres, as generally depicted on a map entitled "South Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the South Maricopa Mountains Wilderness;

(32) certain lands in Mohave County, Arizona, which comprise approximately 38,400 acres, as generally depicted on a map entitled "Wabayuma Peak Wilderness" and dated February 1990, and which shall be known as the Wabayuma Peak Wilderness;

(33) certain lands in Yavapai and Mohave Counties, Arizona, which comprise approximately 27,900 acres, as generally depicted on a map entitled "Upper Burro Creek Wilderness" and dated June 1990, and which shall be known as the Upper Burro Creek Wilderness;

(34) certain lands in Yavapai County, Arizona, which comprise approximately 11,840 acres, as generally depicted on a map entitled "Hassayampa River Canyon Wilderness" and dated February 1990, and which shall be known as the Hassayampa River Canyon Wilderness;

(35) certain lands in Pinal County, Arizona, which comprise approximately 5,800 acres, as generally depicted on a map entitled "White Canyon Wilderness" and dated February 1990, and which shall be known as the White Canyon Wilderness;

(36) certain lands in Yavapai County, Arizona, which comprise approximately 8,700 acres, as generally depicted on a map entitled "Tres Alamos Wilderness" and dated February 1990, and which shall be known as the Tres Alamos Wilderness;

(37) certain lands in Cochise, Greenlee, and Graham Counties, Arizona, which comprise approximately 19,650 acres, as generally depicted on a map entitled "Peloncillo Mountains Wilderness" and dated February 1990, and which shall be known as the Peloncillo Mountains Wilderness;

(38) certain lands in La Paz County, Arizona, which comprise approximately 21,680 acres, as generally depicted on a map entitled "New Water Mountains Wilderness" and dated February 1990, and which shall be known as the New Water Mountains Wilderness;

(39) certain lands in Pinal and Graham Counties, Arizona, which comprise approximately 12,711 acres, as generally depicted on a map entitled "Aravaipa Wilderness Additions" and dated February 1990, and which are hereby incorporated in and shall be deemed to be a part of the Aravaipa Canyon Wilderness (designated in Public Law 98-406, 98 Stat. 1491).

(b) MANAGEMENT.—Subject to valid existing rights, the wilderness areas designated by this title shall be administered by the

Secretary of the Interior (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this Act.

(c) MAP AND LEGAL DESCRIPTION.—As soon as practicable after enactment of this Act, the Secretary shall file a map and a legal description of each wilderness area designated under this title with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such legal description and map may be made. Copies of such map and legal description shall be on file and available for public inspection in the Office of the Director, Bureau of Land Management, United States Department of the Interior, and in the appropriate office of the Bureau of Land Management in Arizona.

(d) NO BUFFER ZONES.—The Congress does not intend for the designation of wilderness areas in the State of Arizona pursuant to this title to lead to the creation of protective perimeters or buffer zones around any such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(e) FISH AND WILDLIFE.—As provided in paragraph (7) of section 4(d) of the Wilderness Act, nothing in this title or in the Wilderness Act shall be construed as affecting the jurisdiction or responsibilities of the State of Arizona with respect to wildlife and fish on the public lands located in that State.

(f) LIVESTOCK.—(1) Grazing of livestock in wilderness areas designated by this title, where established prior to the date of the enactment of this Act, shall be administered in accordance with section 4(d)(4) of the Wilderness Act and the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(2) The Secretary is directed to review all policies, practices, and regulations of the Bureau of Land Management regarding livestock grazing in Bureau of Land Management administered wilderness areas in Arizona in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this title.

(g) WATER.—(1) With respect to each wilderness area designated by this title, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this title. The priority date of such reserved rights shall be the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(h) WILDLIFE MANAGEMENT.—In furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title, where consistent with relevant wilderness management plans, in accordance with appropriate policies and guidelines such as those set forth in Appendix B of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(i) MILITARY ACTIVITIES.—Nothing in this title shall preclude low level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes over wilderness areas designated by this title.

(j) MINERAL EXCHANGES.—It is the intent of Congress that private mineral rights within wilderness areas designated by this title be acquired as expeditiously as possible by the Secretary using existing authority to acquire such rights by exchange.

(k) BLACK ROCK WASH ROAD ACCESS.—(1) Section 101(a)(23) of the Arizona Wilderness Act of 1984 (98 Stat. 1487) is amended by striking "the governmental agency having jurisdictional authority may authorize limited access to the area, for private and administrative purposes, from U.S. Route 70 along Black Rock Wash to the vicinity of Black Rock;".

(2)(A) In order to permit adequate public and private access to Federal, State, and private lands on the east side of the Santa Teresa Mountains, the Secretary, acting through the Bureau of Indian Affairs, shall administer that portion of Black Rock Wash Road located within the boundaries of the San Carlos Apache Reservation so as to allow reasonable use of the road for private and administrative purposes and may permit limited public use of such road for the purpose of access to the public lands outside of the reservation boundary.

(B) The Secretary, acting through the Bureau of Indian Affairs, is authorized, subject to the provisions of the Act of June 18, 1934, Chapter 576, Section 16 (25 U.S.C. 476; 48 Stat. 987), to enter into cooperative agreements with the Bureau of Land Management, the Forest Service, and Graham County, Arizona, for signing, fencing, and maintenance of the portion of Black Rock Wash Road referred to in paragraph (A). The entering into of cooperative agreements as authorized by this subsection shall not be construed in any way as a determination of the ownership of such portion of Black Rock Wash Road.

(3) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(l) ALAMO DAM.—Nothing in this title shall be construed to affect the operation for flood control purposes of the Alamo Dam located on the Bill Williams River.

SEC. 102. AREAS RELEASED.

Excepting for the Baker Canyon area (AZ-040-070), and the approximately 57,800 acres of public land as generally depicted on a map entitled "Cactus Plain Wilderness Study Area" dated February, 1990, the Congress hereby finds and directs that all public lands in Arizona, administered by the Bureau of Land Management pursuant to the Federal Land Policy and Management Act of 1976 not designated as wilderness by this title, or previous Acts of Congress, have been adequately studied for wilderness designation pursuant to section 603 of such Act and are no longer subject to the requirement of section 603(c) of such Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

TITLE II—DESIGNATION OF THE GILA BOX RIPARIAN NATIONAL CONSERVATION AREA

SEC. 201. DESIGNATION AND MANAGEMENT.

(a) PURPOSES.—In order to conserve, protect, and enhance the riparian and associated areas described in subsection (b) and the aquatic, wildlife, archeological, paleontological, scientific, cultural, recreational, educational, scenic, and other resources and values of such areas, there is hereby established the Gila Box Riparian National Conservation Area (hereafter in this title referred to as the "conservation area").

(b) AREAS INCLUDED.—The conservation area shall consist of the public lands generally depicted on a map entitled "Gila Box Riparian National Conservation Area" dated February 1990, and comprising approximately 20,900 acres.

(c) MAP.—As soon as practicable after the date of enactment of this Act, a map and legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such map shall have the same force and effect as if included in this section. Copies of such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in the appropriate office of the Bureau of Land Management in Arizona.

(d) MANAGEMENT OF CONSERVATION AREA.—(1) The Secretary shall manage the conservation area in a manner that conserves, protects and enhances its resources and values, including the resources and values specified in subsection (a), pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this title.

(2) The Secretary shall allow only such uses of the conservation area as the Secretary finds will further the purposes for which the conservation area is established. Except where needed for administrative purposes or to respond to an emergency, use of motorized vehicles in the conservation area shall be permitted only on roads specifically designated for such use as part of the management plan prepared pursuant to subsection (g).

(e) WITHDRAWAL.—Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location,

entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing, and all amendments thereto.

(f) WATER.—(1) Congress hereby reserves a quantity of water sufficient to fulfill the purposes, as specified in subsection (a), for which the conservation area is established. The priority date of this reserved right shall be the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take all steps necessary to protect the right reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such right in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal rights reserved by this title are specific to the conservation area located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(5) Nothing in this title shall be construed to impair or conflict with the implementation of the authorization contained in section 304(f) of Public Law 90-537, approved September 30, 1968.

(g) MANAGEMENT PLAN.—(1) No later than two years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the conservation area (hereinafter in this title referred to as the "management plan") in order to fulfill the purposes for which the conservation area is established. The management plan shall be developed with full public participation and shall include provisions designed to assure protection of the resources and values (including the resources and values specified in subsection (a)) of the conservation area.

(2) The management plan shall include a discussion of the desirability of the inclusion in the conservation area of additional lands, including the lands not in Federal ownership that are contiguous to the boundary of the conservation area (as depicted on the map referenced in subsection (b) or as hereafter adjusted pursuant to subsection (h)) and within the area extending two miles on either side of the centerline of Eagle Creek from the point where Eagle Creek crosses the southern boundary of the Apache National Forest to the confluence of Eagle Creek with the Gila River (this area is hereafter referred to in this title as the "Eagle Creek riparian area").

(3) In order to better implement the management plan, the Secretary may enter into cooperative agreements with appropriate State and local agencies pursuant to section 307(b) of the Federal Land Policy and Management Act of 1976.

(4) In order to assist in the development and implementation of the management plan, the Secretary may authorize appropriate research, including research concerning the environmental, biological, hydrological, cultural, and other characteristics, resources, and values of the conservation area, pursuant to section 307(a) of the Federal Land Policy and Management Act of 1976.

(h) ACQUISITION AND BOUNDARY ADJUSTMENTS.—(1) Subject to the limitations set forth in paragraph (3), the Secretary is authorized to acquire non-Federal lands or interests therein within the boundaries of the conservation area or within the Eagle Creek riparian area.

(2) The Secretary is authorized to adjust the boundaries of the conservation area so as to incorporate within the conservation area any lands or interests within the Eagle Creek riparian area that may be acquired after the date of enactment of this Act as well as public lands within that portion of the Eagle Creek riparian area west of the centerline of Eagle Creek that the Secretary finds appropriate in order to properly manage such acquired lands as part of the conservation area. Any lands or interests so incorporated shall be managed as part of the conservation area.

(3) No lands or interests therein owned by the State of Arizona or any political subdivision of such State shall be acquired pursuant to this subsection except through donation or exchange, and no lands or interests within the conservation area or the Eagle Creek riparian area shall be acquired from any other party or entity except by donation, exchange, or purchase with the consent of the owner of such lands or interests.

(i) NO BUFFER ZONES.—The Congress does not intend for the establishment of the conservation area to lead to the creation of protective perimeters or buffer zones around the conservation area. The fact that there may be activities or uses on lands outside the conservation area that would not be permitted in the conservation area shall not preclude such activities or uses on such lands up to the boundary of the conservation area to the extent consistent with other applicable law.

(j) ADVISORY COMMITTEE.—The Secretary shall establish an advisory committee to advise the Secretary with respect to the preparation and implementation of the management plan. Such advisory committee shall consist of seven members appointed by the Secretary. One member shall be appointed from among recommendations submitted by the Governor of Arizona, one member shall be appointed from among recommendations submitted by the Graham County Board of Supervisors and one member shall be appointed from among recommendations submitted by the Greenlee County Board of Supervisors. The remaining members shall be persons recognized as experts in wildlife conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the purposes for which the conservation area is established.

(k) REPORT.—No later than five years after the date of enactment of this Act, and at least each ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate on the implementation of this title, the condition of the resources and values of the conservation area, and the progress of the Secretary in achieving the purposes for which the conservation area is established.

(l) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this title shall be subject to a fine in accordance with applicable provisions of the Sentencing Reform Act of 1984, or imprisonment of not more than 1 year, or both such fine and imprisonment.

(m) AUTHORIZATION.—There are hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this title.

TITLE III—DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE UNITED STATES FISH AND WILDLIFE SERVICE

SEC. 301. DESIGNATION AND MANAGEMENT

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following lands are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

(1) certain lands in the Havasu National Wildlife Refuge, Arizona, which comprise approximately 14,606 acres, as generally depicted on a map entitled "Havasu Wilderness" and dated March 13, 1990, and which shall be known as the Havasu Wilderness;

(2) certain lands in the Imperial National Wildlife Refuge, Arizona, which comprise approximately 9,220 acres, as generally depicted on a map entitled "Imperial Refuge Wilderness" and dated March 13, 1990, and which shall be known as the Imperial Refuge Wilderness;

(3) certain lands in the Kofa National Wildlife Refuge, Arizona, which comprise approximately 510,900 acres, and certain other public lands comprising approximately 5,300 acres which are hereby added to and incorporated within such refuge (and which shall be managed accordingly), all as generally depicted on a map entitled "Kofa Wilderness" and dated August 1, 1990, and which shall be known as the Kofa Wilderness; and

(4) certain lands in the Cabeza Prieta National Wildlife Refuge, Arizona, which comprise approximately 803,418 acres, as generally depicted on a map entitled "Cabeza Prieta Wilderness" and dated March 13, 1990, and which shall be known as the Cabeza Prieta Wilderness.

(b) MANAGEMENT.—Subject to valid existing rights, the wilderness areas designated under this title shall be administered by the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this title.

(c) MAP AND LEGAL DESCRIPTION.—As soon as practicable after enactment of this title, the Secretary shall file a map and a legal description of each wilderness area designated under this section with the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the United States House of Representatives and with the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such legal description and map may be made. Such map and legal description shall be on file and available for public inspection in the Office of the Director, United States Fish and Wildlife Service, United States Department of the Interior.

(1)(A) With respect to each wilderness area designated by this title, and subject to

the limitations set forth in subparagraph (B), Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this title. The priority date of such reserved rights shall be the date of enactment of this Act.

(B) With respect to the Havasu and Imperial wilderness areas designated by subsections (a)(1) and (a)(2) of this section, no rights to water of the Colorado River are reserved, either expressly, impliedly, or otherwise.

(2) The Secretary and all other officers of the United States shall take all steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate steam adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water right reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(e) NO EFFECT ON COLORADO RIVER DAMS.—Nothing in this title shall be construed to affect the operation of Federally owned dams located on the Colorado River in the Lower Basin.

(f) MILITARY ACTIVITIES.—Nothing in this title including the designation as wilderness of lands within the Cabeza Prieta National Wildlife Refuge, shall be construed as—

(1) precluding or otherwise affecting continued low-level overflights by military aircraft over such refuge or the maintenance of existing associated ground instrumentation, in accordance with any applicable interagency agreements in effect on the date of enactment of this Act; or

(2) precluding the Secretary of Defense from entering into new or renewed agreements with the Secretary concerning use by military aircraft of airspace over such refuge or the maintenance of existing associated ground instrumentation, consistent with management of the refuge for the purpose for which such refuge was established and in accordance with laws applicable to the National Wildlife Refuge System.

(g) LAW ENFORCEMENT BORDER ACTIVITIES.—Nothing in this title, including the designation as wilderness of lands within the Cabeza Prista National Wildlife Refuge, shall be construed as—

(1) precluding or otherwise affecting continued border operations by the Immigration and Naturalization Service, the Drug Enforcement Administration, or the United States Customs Service within such refuge, in accordance with any applicable interagency agreements in effect on the date of enactment of this Act; or

(2) precluding the Attorney General of the United States or the Secretary of the Treasury from entering into new or renewed agreements with the Secretary concerning Immigration and Naturalization Service, Drug Enforcement Administration, or United States Customs Service border operations within such refuge, consistent with management of the refuge for the purpose for which such refuge was established, and in accordance with laws applicable to the National Wildlife Refuge System.

SEC. 302. NO EFFECT ON UPPER BASIN.

Nothing in titles I, II, or III of this Act shall amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty pertaining to the Colorado River (including its tributaries) in the Upper Basin, including, but not limited to, the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

TITLE IV—FORT McDOWELL INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

SECTION 401. SHORT TITLE.

This Title may be cited as the "Fort McDowell Indian Community Water Rights Settlement Act of 1990".

SEC. 402. CONGRESSIONAL FINDINGS AND DECLARATIONS.

(a) The Congress finds that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on September 15, 1903, the United States Government established a reservation for the Fort McDowell Indian Community in Arizona north of the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to water and the financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self-sufficiency;

(6) proceedings to determine the full extent and nature of the Community's water rights and damages thereto are currently pending before the United States District Court in Arizona, the United States Claims Court, the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source, and before various federal agencies under the Federal Tort Claims Act;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle disputes over water and reduce the burdens of litigation;

(8) after more than five years of negotiation, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who are all party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, and to provide for the orderly development of the Community's lands;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately twelve thousand acre-feet of surface water to the Community; provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, the Congress declares that the purposes of this Act are: (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary of the Interior to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act.

SEC. 403. DEFINITIONS.

For purposes of this Act—

(a) "Agreement" means that agreement among the Fort McDowell Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District, the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is approved and executed by the Secretary of the Interior pursuant to sections 411(d) and 412(a)(8) of this Act.

(b) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(c) "CAWCD" means the Central Arizona Water Conservation District organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(d) "Community" means the Fort McDowell Indian Community, a community of Yavapai Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476), and duly recognized by the Secretary.

(e) "HVID" means the Harquahala Valley Irrigation District, an irrigation district or-

ganized under the laws of the State of Arizona.

(f) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(g) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(h) "Secretary" means the Secretary of the United States Department of the Interior.

(i) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

SEC. 404. KENT DECREE REREGULATION.

(a) To permit the Community to more fully utilize its water rights under the Kent Decree as provided in the Agreement and subsection (b) of this section, the agreement between the United States and the SRP dated June 3, 1935, as amended on November 26, 1935, relating to the Verde River Storage Works, and the agreement among the SRP, Phelps Dodge Corporation, and the Defense Plant Corporation dated March 1, 1944, including, but not limited to, the provisions of such agreements by which SRP saves and holds harmless the United States, and the rights of the United States and SRP to Verde River storage, are hereby ratified, confirmed and declared to be valid: *Provided, however,* That the priority date and quantification of these storage rights, and such other storage rights as may exist, shall be determined in an appropriate state proceeding in the State of Arizona. Nothing in this Act or the Agreement shall affect the validity or invalidity of any permit, right-of-way, license or grant held by Phelps Dodge Corporation for the utilization of land or water within the San Carlos Apache Reservation.

(b) The Secretary is authorized and directed to contract with SRP, for a period of not more than twenty-five years from the date the authorizations contained in section 409(b) of this Act become effective, for the utilization of up to three thousand acre-feet of the existing storage right of the United States and SRP behind Bartlett and Horseshoe Dams on the Verde River for the reregulation of the Community's rights to water under the Kent Decree. This storage space shall be for seasonal regulation only, with no annual carryover past October 1.

SEC. 405. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) The contract between the SRP and RWCD dated October 24, 1924, together with all amendments thereto and any extension thereof entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

(b) The Secretary is authorized and directed to revise the subcontract of the RWCD agricultural water service from the CAP to include an addendum substantially in the form of exhibit "10.3.2" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(c) The lands within the RWCD and the lands within the SRP shall be free from the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(d) Neither SRP nor the RWCD shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either of their participation in the settlement or their execution and performance of the Agreement, including, but not limited to, any exchanges provided for in the Agreement.

SEC. 406. OTHER WATER.

(a) The Secretary is authorized and directed to acquire for the Community thirteen thousand nine hundred thirty-three acre-feet of water from one or a combination of the following sources:

(1) CAP water permanently relinquished by the HVID pursuant to contract with the Secretary.

(2) CAP municipal and industrial water and CAP Indian priority water permanently relinquished by the City of Prescott, the Yavapai-Prescott Tribe, the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company pursuant to contract with the Secretary. Any water acquired by the Secretary pursuant to this section shall be acquired with the consent of the contracting entity and shall be assigned to the Community in partial satisfaction of the Secretary's obligation under this section.

(3) In the event that the Secretary cannot acquire thirteen thousand nine hundred and thirty-three acre-feet of water, solely or in combination, from the sources identified in subsections (a)(1) and (a)(2) of this section, then the Secretary is authorized to acquire, from all water resources within the State of Arizona at the disposal of the United States, water in amounts necessary to meet the requirements of this section.

HARQUAHALA VALLEY IRRIGATION DISTRICT

(b) The Secretary is authorized to contract with the HVID for the permanent relinquishment of any portion of HVID's rights to CAP agricultural water.

(1) The Secretary may use HVID water with its original CAP agricultural priority or may convert it, at the rate of one acre-foot per CAP-eligible acre, to a maximum of thirty-three thousand two hundred and sixty-three acre-feet of CAP Indian priority water. Up to thirteen thousand nine hundred and thirty-three acre-feet of such water shall be made available to the Community by contract with the Secretary.

(2) As consideration for the fair value of water relinquished under subsection (b) of this section, the Secretary is authorized:

(i) to credit the HVID with an appropriate share of its outstanding CAP distribution system debt, with such share reflecting the relationship between the amount of HVID CAP rights acquired by the Secretary and the total CAP allocation of the HVID; and

(ii) to offset the annual repayment requirements of the CAWCD under repayment contract numbered 14-06-W-245 in amounts which total the balance of the fair value of the water acquired and not accounted for under (i) above until such value is exhausted.

(3) In the event that the Secretary acquires all or a part of the CAP water rights of the HVID, the following shall apply:

(i) The Secretary is authorized to transfer title to existing federal facilities within HVID that are no longer needed for CAP purposes to the CAWCD or to other non-Federal entities.

(ii) The Secretary is authorized to approve or execute any agreements that are necessary to accomplish the transfer of HVID's CAP agricultural water rights to the Secretary for Indian water rights settlement purposes. As a condition of the transfer of such entitlement, the lands which are purchased by non-Federal interests within HVID must be excluded from HVID. Except as provided for in Article 8.7 of the December 1, 1988, contract between the United States and CAWCD, the excluded lands shall not be entitled to a supply of CAP water for agricultural purposes and shall not be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(iii) The agreement implementing the transfer of HVID's CAP agricultural water rights to the Secretary shall provide that any lands which remain in HVID or its successor shall continue to be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law as long as HVID, or its successor, has a Federal repayment obligation for the cost of the CAP distribution system. The agreement implementing the transfer shall provide that lands remaining in HVID, or its successor, will not bear costs of operation, maintenance, and replacement for the CAP distribution system greater than that which they would have in the absence of the transfer of HVID's CAP agricultural water rights.

(4) Water acquired by the Secretary for the Fort McDowell Indian Community pursuant to this subsection shall be delivered to the Community as provided for in the Agreement. Any remaining water acquired by the Secretary pursuant to this subsection (b) shall be used only in the settlement of water rights claims of other Indian tribes having claims to the water in the Salt and Verde River system.

VERDE RIVER WATERSHED

(c) Providing that the Secretary first acquires at least seven thousand acre-feet of CAP water from one or more of the entities named in subsection (a)(2), of this section, the Secretary is authorized to acquire, by purchase from willing sellers, land and water rights in the Big Chino Valley of the Verde River watershed, in an amount sufficient to replace all such water so acquired.

(1) The Secretary shall not acquire any land or water rights in the Big Chino Valley of the Verde River watershed until he has completed a study to determine whether, through the construction of water diversion, collection, and conveyance facilities to deliver water to a point near Sullivan Lake in Yavapai County, Arizona (hereinafter referred to as the "Sullivan Lake delivery point"), the exercise of such water rights will not have an adverse affect on the flow or the biota of the Verde River and that such exercise is not likely to jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species. The Secretary shall make the study required by this paragraph available to the public for inspection and comment upon its completion.

(2) The Secretary is authorized to enter into an agreement with the City of Prescott to reimburse the city for not to exceed $800,000 advanced to the Secretary by the city for the purpose of expediting completion of the study required in subsection (c)(1) of this section.

(3) If the Secretary determines, based upon the findings of the study, that the exercise of water rights will not have an adverse effect on the flow or the biota of the Verde River and is not likely to jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species, the Secretary shall be authorized to acquire land in the Big Chino Valley and to construct diversion, collection, and conveyance facilities sufficient to deliver the water to the Sullivan Lake delivery point.

(4) The Secretary shall develop and implement a continuous monitoring program to ensure that groundwater pumping from land acquired pursuant to this subsection (c) shall not adversely affect the flow or the biota of the Verde River and to ensure that it will not jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species. The program shall be developed prior to and implemented concurrent with the construction of the facilities described in subsection (c)(3) of this section.

(d) If the Secretary acquires the CAP contract or subcontracts of the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to a point downstream on the Verde River. Subject to the study required in subsection (d)(1) of this section and all applicable law, the Secretary is further authorized to place into the Verde River at the point downstream an amount of water sufficient, including all losses, to replace the water assigned by such entity or entities pursuant to this subsection.

(1) The Secretary shall not construct any water conveyance facilities from the Sullivan Lake delivery point to any point downstream on the Verde River to replace water assigned pursuant to subsection (a)(2) of this section, until he has completed a study to determine whether the flow of the Verde River may be augmented without jeopardizing the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species and, if the flow of the Verde may be so augmented, at what point or points downstream from the Sullivan Lake delivery point such augmentation would be most appropriate.

(2) The Secretary shall, in conjunction with arrangements for the delivery of water pursuant to this subsection (d), develop and implement a monitoring program to ensure that the augmentation of the Verde River will not jeopardize the continued existence of Meda fulgida (spikedace) or any other threatened or endangered species.

(e) If the Secretary acquires the CAP contract or subcontract of the Yavapai-Prescott Tribe or the City of Prescott, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to the City of Prescott's existing pumping facilities in the Little Chino Valley, Yavapai County, Arizona. If the Secretary constructs such water conveyance facilities, the City of Prescott shall repay the Secretary for the costs thereof. Nothing in this subsection shall be construed to prevent the City of Prescott from constructing such conveyance facilities itself.

(1) The Secretary shall deliver water to the City of Prescott's existing pumping facilities or to such other point as the Secretary and the City of Prescott may agree, in an amount sufficient, including all losses, to replace the water acquired from the City of Prescott and the Yavapai-Prescott Tribe.

(2) The Secretary is authorized and directed to enter into such agreements as are necessary to ensure that the Yavapai-Prescott Tribe will receive its share of the water to be developed by the Secretary pursuant to this subsection (e). Such agreement shall set forth the cost and other terms of delivery of such water.

(3) The Secretary is authorized and directed, at the request of the Yavapai-Prescott Indian Tribe, to enter into and renew agreements granting the Yavapai-Prescott Indian Tribe long-term grazing privileges on the land acquired by the Secretary pursuant to subsection (a)(2) of this section: *Provided*, That the exercise of such privileges by the Yavapai-Prescott Indian Tribe shall not interfere with the exercise of water rights upon such land except for water reasonably needed by the Yavapai-Prescott Indian Tribe in connection with grazing.

(f) The Secretary is authorized to contract to deliver replacement water to the entities identified in subsections (d) and (e) of this section which relinquish CAP water to the Secretary for the benefit of the Community. The replacement water shall be delivered by the Secretary at the Sullivan Lake delivery point unless otherwise agreed by the Secretary and the entity to receive the water. No replacement water may be delivered to any entity other than those identified in subsection (a)(2) of their section or their agents, and no replacement water may be used directly or indirectly outside Yavapai County, Arizona.

(g) The entities which relinquish CAP water to the Community pursuant to subsection (a)(2) of this section shall not be required to repay costs incurred by the United States pusuant to subsections (c) and (c)(3) of this section. The entities identified in subsection (d) of this section, except for any entity which is an Indian tribe, shall repay the United States so much of the cost of the undertaking identified in subsection (d) as the entities and the United States shall agree. The costs of any undertaking pursuant to this subsection (g) allocated to an Indian tribe shall be nonreimbursable.

(h) The Secretary is authorized and directed to study the sources and cost of the water supplies, other than those identified in this section, that can be used to satisfy the water rights of the Yavapai-Prescott Indian Tribe and of the Yavapai-Apache Indian Community of the Camp Verde Reservation. A separate study shall be made for each tribe. Each study shall be commenced within one hundred and eighty days after the enactment of this Act and shall be completed within one year after it is commenced. Copies of such studies shall be provided to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate.

(i) If the Secretary acquires water for the Community pursuant to subsection (a)(2) of this section, then the Secretary shall exclude, for the purpose of determining the allocation and repayment of costs of the CAP-as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be non-reimbursable.

(j) The Secretary shall, in the exercise of the authorities provided in subsection (a) of this section, comply with all applicable environmental law.

(k) If the Secretary acquires at least seven thousand acre-feet of CAP water from the entities identified in subsection (a)(2) of this section, there is authorized to be appropriated not to exceed $30,000,000 to pay the costs of acquiring the land and water resources identified in subsection (c) of this section and the costs allocable to the construction of diversion, collection, and conveyance facilities described in subsection (c); costs allocable to the construction or diversion, collection, and conveyance facilities shall be adjusted by such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein.

(l) There is authorized to be appropriated such sums as may be necessary to provide for the studies required in subsections (c)(1), (d)(1), and (h) of this section and for the monitoring programs described in subsections (c)(4) and (d)(2) of this section.

SEC. 407. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE.

(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2099, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the City of Phoenix under the terms and conditions of the Project Water lease set forth in exhibit "20.2.2" to the Agreement for a term commencing January 1, 2001, and ending December 31, 2099.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "20.2.1" to the Agreement and the terms and conditions of the Project Water Lease set forth in exhibit "20.2.2" to the Agreement are hereby authorized, approved, and confirmed.

(c) The United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section "6(b)" of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the City of Phoenix as lessee of the Project Water Lease herein authorized.

(d) The Community and the Secretary shall lease to the City of Phoenix, for a term commencing on January 1, 2001, and ending December 2099, for consideration in an amount agreed to by the Community and the City to be paid by the City to the Community, upon those reflected in the Project Water Lease set forth in exhibit "20.2.2" to the Agreement, the four thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Lease shall specifically provide that—

(1) the City of Phoenix, in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the CAWCD: *Provided*, That such

payments shall not be commenced earlier than October 1, 1999;

(2) except as otherwise provided in the Project Water Lease, the City of Phoenix shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 shall be United States of America and the CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Lease referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Notwithstanding any other provision statutory of or common law, the Community may, with the approval of the Secretary, lease water provided to the Community under section 406 of this Act for its fair market value for a term not to exceed 100 years as provided in the Agreement but in no event for use outside Pima, Pinal or Maricopa Counties, State of Arizona. If some or all of the water provided to the Community under section 406 of this Act is CAP water, the provisions of subsections of (a), (b), (c), (d), and (e) of this section 407 shall apply to any lease of such water.

(g) Except as authorized by this section, no water made available to the Community or its members pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

(h) If water is acquired from the Salt and Verde watershed pursuant to section 406(a)(3), no such water may be sold, leased, transferred, or in any way be used off of the Community's reservation.

SEC. 408. FORT McDOWELL INDIAN COMMUNITY DEVELOPMENT FUND; LOAN.

(a) As soon as practicable, the Community shall establish the Fort McDowell Indian Community Development Fund into which shall be deposited—

(1) by the Secretary, the funds appropriated pursuant to subsection (b) of this section; and

(2) by the State of Arizona, $2,000,000 required by paragraph 21.4 of the Agreement.

(b) There is hereby authorized to be appropriated, together with interest accruing from one year after the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into account the average market yield on outstanding Federal obligations of comparable maturity, $23,000,000 which the Secretary shall deposit into the Community Development Fund for the Community to use in the design and construction of facilities to put to beneficial use the Community's water entitlement and for other economic and community development on the Fort McDowell Indian Reservation.

(c) As of the date the authorizations contained in section 409(b) of this Act become effective, the Community, in its discretion, may use the Development Fund, principal and income, to fulfill the purposes of the Agreement and this title: *Provided*, That no amount of the Federal or State appropriations deposited into the Development Fund may be used to make per capita payments to members of the Community.

(d) As of the date the authorizations contained in section 409(b) of this Act become effective—

(1) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from, the Development Fund, and

(2) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Development Fund.

(e) The Secretary is authorized and directed to provide to the Community a loan pursuant to the Small Reclamation Projects Act (Ch. 972, 70 Stat. 1044, 43 U.S.C. 422a, as amended), in the amount of $13,000,000, to be repaid over a term of fifty years without interest, for the purpose of constructing facilities for the conveyance and delivery of water on the Fort McDowell Indian Reservation: *Provided*, That any requirements for qualifying for the loan are hereby waived, including, but not limited to, the provisions of section 3, 4(b)(2), 5(a) and 5(c) of the Small Reclamation Projects Act.

(1) The Community shall establish an account into which the Community shall deposit $1,000,000. The principal and all accrued income shall be retained in such fund until such time as the Community's obligation to repay the loan under subsection (e) is fulfilled.

(2) No appropriations for the construction of the CAP made after the date of enactment of this Act shall be used to plan, design, construct, or operate any facilities on the Fort McDowell Indian Reservation.

SEC. 409. SATISFACTION OF CLAIMS.

(a) The benefits realized by the Community's members under this Act shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this Act, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this Act.

(b) The Community and the Secretary on behalf of the United States are authorized, as part of the performance of the obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the effective date of this Act, which the Community and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(c) Except as provided in paragraphs 19.2 and 19.5 of the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona in its own right or on behalf of the Community based upon—

(1) water rights or injuries to water rights of the Community and its members; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community and its members.

(d) In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 412(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

SEC. 410. ENVIRONMENTAL COMPLIANCE.

(a) Execution of the settlement Agreement by the Secretary as provided for in section 411(d) shall not constitute major Federal action under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance, except as specifically directed otherwise herein, during the implementation phase of this settlement.

(b) There is hereby authorized to be appropriated such sums as may be necessary to carry out all necessary environmental compliance associated with this settlement, including mitigation measures adopted by the Secretary.

(c) With respect to this settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable environmental laws.

(d) Except as specifically set forth herein, the Secretary shall comply with all aspects of NEPA and the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), and other applicable environmental acts and regulations in proceeding through the implementation phase of this settlement: *Provided, however*, That in regard to NEPA compliance, the Secretary is precluded from studying or considering alternatives to the Community's on-reservation agriculture development plans which will be facilitated by the settlement, or performed under the Small Reclamation Projects loan made pursuant to section 408(e).

SEC. 411. MISCELLANEOUS PROVISIONS.

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court relating only and directly to the interpretation or enforcement of this title or the Agreement, naming the United States of America or the Community as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

(b) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this title or the Agreement against any lands within the Fort McDowell Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) Water received by entities other than the Community pursuant to the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(d) To the extent the Agreement does not conflict with the provisions of this title, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(e) As of the date the authorizations contained in section 409(b) of this Act become effective, section 302(a) of the Colorado River Basin Project Act (43 U.S.C. 1522(a)) shall no longer apply to the Community.

(f) An easement for the construction, operation and maintenance of the Community's water diversion system on and within the lands identified in the Community's special permit extension application dated July 12, 1990, filed with the United States Forest Service, Department of Agriculture, is hereby granted in perpetuity.

(g) As of the date the authorizations contained in section 409(b) of this Act and in section 410(b) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act (102 Stat. 2549) become effective, subsection 404(a) of this Act shall become effective as to the Salt River Pima-Maricopa Indian Community and the United States.

(h) Section 7(a) of the Salt River Pima-Maricopa Indian Community Water Rights Act (102 Stat. 2549) is hereby amended by striking the date "1990" and inserting in lieu thereof "1991."

SEC. 412. EFFECTIVE DATE.

(a) The authorizations contained in section 409(b) of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that:

(1) the Secretary has signed a contract with the SRP for the storage and reregulation of the Community's Kent Decree water pursuant to section 404;

(2) the RWCD subcontract for agricultural water service from CAP has been revised and executed as provided in section 405(b);

(3) the Secretary has acquired water pursuant to section 406 and made it available for delivery for the benefit of the Community;

(4) the funds authorized by section 408(b) have been appropriated and deposited into the Community Development Fund;

(5) the loan authorized by section 408(e) has been provided to the Community;

(6) the State of Arizona has appropriated and deposited into the Community Development Fund the $2,000,000 required by paragraph 21.4 of the Agreement;

(7) the stipulation which is attached to the Agreement as exhibit "19.5" has been approved; and

(8) the Agreement has been modified to the extent it is in conflict with this title and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) of this section have not occurred by December 31, 1993, sections 4, 5(a), and 5(b), if they have not theretofore become effective pursuant to the provisions of the Act of October 20, 1988 (Public Law 100-512), and sections 407, 408(a), 408(b), 408(e), 409(b), 409(c), 411(a), 411(b), 411(c), 411(d), 411(e) and 411(f) of this Act and any contracts entered into pursuant to those provisions shall not thereafter be effective, and any funds appropriated pursuant to section 408(b) of this Act shall revert to the Treasury, and any funds appropriated pursuant to paragraph 21.4 of the Agreement shall revert to the State of Arizona.

SEC. 413. OTHER CLAIMS.

Nothing in the Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community.

TITLE V—NATIONAL PARK SYSTEM UNITS IN TEXAS

SECTION 501. EXPANSION OF SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARK.

(a) EXPANSION.—Section 201(a) of the Act entitled "An Act to amend the Pennsylvania Avenue Development Corporation Act of 1972; to provide for the establishment of the San Antonio Missions National Historical Park; and other purposes" (16 U.S.C. 410ee(a)) is amended by inserting after the first sentence the following: "The park shall also consist of the lands and interests therein within the area bounded by the line depicted as 'Proposed Boundary Extension' on the maps entitled 'San Antonio Missions National Historical Park', numbered 472-80,075, 472-80,076, 472-80,077, 472-80,078, 472-80,079, 472-80,080, and 472-80,081 and dated June 7, 1990, which shall be on file and available for public inspection in the same manner as is such drawing.".

(b) DEVELOPMENT OF ESSENTIAL PUBLIC FACILITIES.—Section 201(f)(2) of such Act is amended by striking "not more than $500,000." and inserting "not more than $15,000,000.".

SECTION 502. LAKE MEREDITH NATIONAL RECREATION AREA.

(a) ESTABLISHMENT.—In order to provide for public outdoor recreation use and enjoyment of the lands and waters associated with Lake Meredith in the State of Texas, and to protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters, there is hereby established the Lake Meredith National Recreation Area (hereafter in this Act referred to as the "recreation area").

(b) AREA INCLUDED.—The recreation area shall consist of the lands, waters, and interests therein within the area generally depicted on the map entitled "Lake Meredith National Recreation Area Boundary Map, 'Fee-Take Line'", numbered SWRO—80,023-A, and dated September 1990. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereafter in this Act referred to as the "Secretary") may from time to time make minor revisions in the boundary of the recreation area.

(c) TRANSFER.—(1) Except as provided in paragraph (2), the Federal lands, waters, and interests therein within the recreation area are hereby transferred to the National Park Service.

(2) Those lands depicted on the map referred to in subsection (b) that are necessary for the continued operation, maintenance, and replacement of the Canadian River Project facilities and its purposes of providing for municipal and industrial water supply and flood control shall remain under the jurisdiction of the Bureau of Reclamation.

SEC. 503. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the recreation area in accordance with this Act and the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4), and the Act of August 7, 1946 (60 Stat. 885). In the administration of such recreation area, the Secretary may utilize such statutory authority as may be available to him for the protection of natural and cultural resources as he deems necessary to carry out the purposes of this Act.

(b) OPERATION OF CANADIAN RIVER PROJECT.—Nothing in this Act shall be construed to affect or interfere with the authority of the Secretary under the Act of December 29, 1950 (Public Law 81-898; 43 U.S.C. 600b et seq.), to operate Sanford Dam and Lake Meredith in accordance with and for the purposes set forth in that Act.

(c) LAND ACQUISITION.—Within the boundary of the recreation area, the Secretary may acquire lands and interests in lands by purchase with donated or appropriated funds, exchange, or transfer without reimbursement from any Federal agency.

(d) CULTURAL RESOURCES.—The Secretary shall conduct a survey of the cultural resources in the immediate vicinity of the recreation area. The Secretary is authorized to enter into cooperative agreements with the public or private entities, including landowners, for the purpose of conducting the survey required by this subsection. Not later than three years after the date on which funds have been made available, the Secretary shall submit a report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and National Resources of the Senate on the results of the survey required by this subsection.

(e) HUNTING AND FISHING.—(1) The Secretary shall permit hunting and fishing on lands and waters under the Secretary's jurisdiction within the recreation area in accordance with applicable Federal and State law. The Secretary may designate zones where, and establish periods when, hunting or fishing will not be permitted for reasons of public safety, administration, fish and wildlife management, or public use and enjoyment.

(2) Except in emergencies any regulations issued by the Secretary under this subsection shall be put into effect only after consultation with the appropriate State agencies responsible for hunting and fishing activities.

(f) COOPERATIVE AGREEMENTS.—For purposes of administering the recreational area, the Secretary may enter into cooperative agreements with any Federal agency, the State of Texas, or any political subdivision thereof, including the Canadian River Municipal Water Authority, for the rendering, on a reimbursable basis, of rescue, firefighting, law enforcement, fire prevention assistance, and other needs. The Secretary may enter into a cooperative agreement with the city of Fritch, Texas, to develop and operate a joint venture information center. Federal funds may be expended on non-Federal lands and improvements through cooperative agreements for the purpose of this section on a 50-50 matching basis.

SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of Sections 502 and 503 of this Act.

SEC. 505. ESTABLISHMENT OF AMISTAD NATIONAL RECREATIONAL AREA.

(a) In order to—

(1) provide for public outdoor recreation use and enjoyment of the lands and waters associated with the United States portion of the reservoir known as Lake Amistad, located on the boundary between the State of Texas and Mexico, and

(2) protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters.

there is hereby esablished the Amistad National Recreation Area (hereafter in this

section and section 506 referred to as the "recreation area").

(b) The recreation area shall consist of the Federal lands, waters, and interests therein within the area generally depicted on the map entitled "Boundary Map, Proposed Amistad National Recreation Area", numbered 621/20,013-B, and dated July 1969. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereafter in this Act referred to as the "Secretary") may from time to time make minor revisions in the boundary of the recreation area, but the total acreage of the recreation area may not exceed 58,500 acres. Within the boundary of the recreation area, the Secretary may acquire lands and interests in lands by purchase with donated or appropriated funds, exchange, or transfer without reimbursement from any Federal agency.

SEC. 506. ADMINISTRATION.

(a) The Secretary shall administer the recreation area in accordance with applicable provisions of this Act and the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4), and the Act of August 7, 1946 (60 Stat. 885). In the administration of such recreation area, the Secretary may utilize such statutory authority as may be available to him for the protection of natural and cultural resources as he deems necessary to carry out the purposes of this Act. Nothing in this Act shall be construed to amend or alter the responsibilities of the International Boundary and Water Commission, United States and Mexico, under any applicable treaty.

(b) The administration of the recreation area by the Secretary shall be subject to and in accordance with all applicable treaties, including the treaty between the United States and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, entered into force November 8, 1945 (59 Stat. 1219), and in accordance with the Act of July 7, 1960 (Public Law 86.605; 74 Stat. 360), and any commitment or agreement entered into pursuant to such treaty or Act, including (but not limited to) commitments or agreements relating to—

(1) the demarcation and maintenance of boundaries;

(2) the use, storage, and furnishing of water;

(3) control of floods;

(4) investigations relative to the operation of the Amistad Dam; and

(5) the production of hydroelectric energy.

(c) The Secretary shall conduct a survey of the cultural resources in the immediate vicinity of the recreation area. The Secretary is authorized to enter into cooperative agreements with public or private entities, including landowners, for the purpose of conducting the survey required by this subsection. Not later than two years after the date of enactment of this act, the Secretary shall submit a report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the results of the survey required by this subsection.

(d)(1) The Secretary shall permit hunting and fishing on lands and waters under the Secretary's jurisdiction within the recreation area in accordance with applicable Federal and State law. The Secretary may designate zones where, and establish periods when, hunting or fishing will not be permitted for reasons of public safety, administration, fish and wildlife management, or public use and enjoyment.

(2) Except in emergencies any regulations issued by the Secretary under this subsection shall be put into effect only after consultation with the appropriate State agencies responsible for hunting and fishing activities.

(e) For purposes of administering the recreation area, the Secretary may enter into cooperative agreements with any Federal agency, the State of Texas, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement and fire preventive assistance.

SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of sections 505 and 506 of this Act.

TITLE VI—UNDERGROUND RAILROAD STUDY

SECTION 601. PURPOSE.

The purpose of this title is to study the Underground Railroad, its routes and operations in order to preserve and interpret this aspect of American history.

SEC. 602. (a) The Secretary of the Interior, acting through the Director of the National Park Service, shall conduct a study of alternatives for commemorating and interpreting the Underground Railroad, the approximate routes taken by slaves escaping to freedom before the conclusion of the Civil War. The study shall include—

(1) the consideration of the establishment of a new unit of the national park system;

(2) the consideration of the establishment of various appropriate designations for those routes and sites utilized by the Underground Railroad, and alternative means to link those sites, including in Canada and Mexico;

(3) recommendations for cooperative arrangements which State and local governments, local historical organizations, and other entities; and

(4) cost estimates for the alternatives.

(b) The study shall be—

(1) conducted with public involvement and in consultation with the advisory committee established by section 4, State and local officials, scholarly and other interested organizations and individuals,

(2) completed no later than two years after the date on which funds are made available for the study, and

(3) submitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 603. Within three years after the date of enactment of this Act, the Secretary of the Interior, acting through the Director of the National Park Service, shall prepare and publish an interpretive handbook on the Underground Railroad in the larger context of American antebellum society, including the history of slavery and abolitionism.

SEC. 604. (a) the Secretary, upon funds being made available to carry out this title, shall establish the Underground Railroad Advisory Committee (hereafter in this subsection referred to as the "Advisory Committee"). The Advisory Committee shall be composed of nine members, appointed by the Secretary of the Interior, of whom—

(1) three shall have expertise in African-American History;

(2) two shall have expertise in historic preservation;

(3) one shall have expertise in American History; and

(4) three shall be from the general public.

The Advisory Committee shall designate one of its members as Chairperson.

(b) The Secretary, or the Secretary's designee, shall from time to time, but at least on three occasions, meet and consult with the Advisory Committee on matters relating to the study conducted under section 2.

(c) Members of the Advisory Committee shall serve without compensation as such, but the Secretary may pay expenses reasonably incurred in carrying out their responsibilities under this Act on vouchers signed by the Chairperson.

SEC. 605. There are authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE VII—SUDBURY, ASSABET, AND CONCORD RIVERS STUDY

SECTION 701. SHORT TITLE.

This title may be cited as the "Sudbury, Assabet, and Concord Wild and Scenic River Study Act".

SEC. 702. FINDINGS.

The Congress finds that—

(1) The Sudbury, Assabet, and Concord Rivers in the Commonwealth of Massachusetts possess resource values of national significance, including outstanding wildlife and ecological values, historic sites, and a cultural past important to America's literary heritage.

(2) Portions of this study segment have been listed on the Nationwide Rivers Inventory by the National Park Service.

(3) There is strong support among State and local officials and area residents and river users for a cooperative wild and scenic study of the area.

(4) In view of the longstanding Federal practice of assisting States and local governments in protecting conserving and enhancing rivers of national significance, the United States has an interest in assisting the Commonwealth of Massachusetts and the appropriate local governments in studying and developing a resource conservation and management plan for the river, consistent with the Wild and Scenic Rivers Act.

703. WILD AND SCENIC RIVER STUDY.

(a) LISTING FOR STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding the following new paragraph at the end thereof:

"( ) SUDBURY, ASSABET, AND CONCORD, MASSACHUSETTS.—The segment of the Sudbury from the Danforth Street Bridge in the town of Framingham, to its confluence with the Assabet, the Assabet from 1,000 feet downstream of the Damon Mill Dam in Concord to its confluence with the Sudbury and the Concord from the confluence of the Sudbury and Assabet downstream to the Route 3 Bridge in the town of Billerica. The study of such river segments shall be completed and the report submitted thereon not later than at the end of the third fiscal year beginning after the date of enactment of this paragraph.".

SEC. 704. ADVISORY COMMITTEE.

(a) APPOINTMENT.—At the earliest practicable date following the enactment of this Act, but not later than forty-five days after enactment, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall establish the Sudbury, Assabet, and

Concord Rivers Study Committee (hereinafter referred to as the "Committee"). The Secretary shall consult with the Committee on a regular basis during the conduct of the study required by section 3 of this Act (hereafter "the study") and the preparation and submission, pursuant to section 4 of the Wild and Scenic Rivers Act, of a report with respect to the river segments covered by the study.

(b) MEMBERSHIP AND PROCEDURES.—

(1) Membership on the Committee shall consist of 13 members appointed by the Secretary as follows:

(A) One member shall be appointed by the Secretary from the Fish and Wildlife Service.

(B) Two members shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Governor of the Commonwealth of Massachusetts.

(C) One member shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Sudbury Valley Trustees.

(D) One member shall be appointed by the Secretary from a list of candidates supplied to the Secretary by the Organization for the Assabet River.

(E) One member each shall be appointed by the Secretary from lists of candidates supplied to the Secretary by the Board of Selectmen or equivalent local governing body of each of the eight towns located within the area covered by the study.

(2) The members of the Committee shall elect a chairman, vice chairman, and recording secretary from the membership at the first official meeting of the Committee. Official minutes shall be kept of each regular and special meeting of the Committee and shall be open for public inspection.

(3) Any vacancy of the Committee shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Vacancies in the membership of the Committee shall not affect its power to function if there remain sufficient members to constitute a quorum under paragraph (4) of this subsection.

(4) A majority of the members of the Committee shall constitute a quorum for all meetings.

(5) The Committee shall advise the Secretary in conducting the study and concerning management alternatives should some or all of the river segments studied be included in the National Wild and Scenic Rivers System.

(6) Members of the Committee shall serve without compensation but may be reimbursed by the Secretary for reasonable and necessary expenses incurred by them in the performance of their duties as members of the Committee.

(7) The Committee may accept and utilize the services of voluntary, uncompensated pesonnel.

(8) The Committee shall terminate upon the submission to the President, pursuant to section 4 of the Wild and Scenic Rivers Act, of the report with respect to the river segments covered by the study.

SEC. 705. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE VIII—PRIVATE RELIEF PROVISIONS

SEC. 801. (a) Notwithstanding any other provision of law, including but not limited to section 8 of the Wild and Scenic Rivers Act (16 U.S.C. 1279) or any provision of the public land laws of the United States, the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall survey and convey all right, title, and interest of the United States to the property described in subsection (b) to Leroy W. Shebal in exchange for the sum of $650 in 1965 dollars adjusted for inflation to 1990 dollars, or $3,000 dollars, whichever is less, and subject to the following conditions:

(1) any deed of conveyance shall provide that existing improvements on such property shall not be substantially expanded and the use of such property shall be limited to prior or current levels; and

(2) the United States shall reserve a right of first refusal to reacquire such property at fair market value (as set forth in the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1905)) upon a decision by Leroy W. Shebal to convey such property or upon his death: *Provided,* That such right shall be extinguished if not exercised by the Secretary by payment in full within one year from (i) the date on which Leroy W. Shebal notifies the Secretary in writing of his decision to convey the property, or (ii) the death of Leroy W. Shebal, whichever occurs first.

(b) The property referred to in subsection (a) is the approximately five acres of land located at Township 8 North, Range 1 West, Section 36, west half of the southwest quarter, Fairbanks Meridian, and described in Small Tract Application #F-021611, which is currently under permit to Leroy W. Shebal.

SEC. 802. Section 1110(b) of the Alaska National Interest Lands Conservation Act (Public Law 96-487, 94 Stat. 2371) shall not apply to the property described in section 501(b).

SEC. 803. The provisions of this title shall be effective only if Leroy W. Shebal notifies the Secretary in writing within one year from the date of enactment of this Act of his intention to purchase from the United States the property described in section 801(b).

SEC. 804. Notwithstanding any other provision of law, the Secretary of the Interior shall convey to Mr. and Mrs. Kenneth Blevins of Kuna, Idaho, by quitclaim deed or other appropriate instrument and without consideration, all right, title, and interest of the United States, excluding oil, gas, and other mineral deposits, in and to a parcel of public land described as the East half, Southeast Quarter (E½SE¼) of Section 33, Township 2 North, Range 1 East, of the Boise Meridian in Ada County, Idaho.

TITLE IX—CAMP W.G. WILLIAMS LAND EXCHANGE

SECTION 901. SHORT TITLE AND DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the "Camp W.G. Williams Land Exchange Act of 1989".

(b) DEFINITIONS.—As used in this title—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "camp boundaries" means the exterior boundaries of Camp W.G. Williams after enactment of this Act, in Utah and Salt Lake Counties, Utah, as generally depicted on the map referenced in section 902(a) of this Act.

SEC. 902. EXCHANGE.

(a) OFFERS.—Notwithstanding any other provision of law, as soon as possible but not later than six months after the date of enactment of this Act, the Secretary shall offer to exchange lands identified as "FEDERAL LANDS OFFERED FOR EXCHANGE" on a map entitled "PROPOSED EXCHANGE FOR CAMP W.G. WILLIAMS, UTAH", dated August 25, 1989 (hereinafter referred to as the "map"), to the owners of tracts of private lands identified as "PRIVATE LANDS TO BE ADDED TO CAMP W.G. WILLIAMS BY EXCHANGE AND WITHDRAWAL" on such map. If the owners of any or all of such tracts of private lands accept the offer within two years after the date of enactment of this Act, then the Secretary as soon as practicable shall convey to such owner or owners or their designee title to so much of the identified land as is approximately equal in value to such tracts of private lands as are simultaneously conveyed to the United States.

(b) Any lands, identified on the map as "FEDERAL LANDS OFFERED FOR EXCHANGE", not exchanged shall be returned to the public domain.

SEC. 903. BUREAU OF LAND MANAGEMENT LANDS.

Lands identified on the map as "PUBLIC LANDS AT CAMP W.G. WILLIAMS TO BE WITHDRAWN" shall be transferred to the Department of the Army.

SEC. 904. ARMY LANDS.

Subject to the provisions of section 907, lands identified on the map as "WITHDRAWN LANDS TO BE RETURNED TO PUBLIC DOMAIN" shall be transferred to the Department of the Interior, returned to the public domain and managed accordingly.

SEC. 905. ACQUISITIONS.

The Secretary, in accordance with applicable law, is authorized to acquire, solely by donation or exchange from a willing seller, lands that are identified as 2a and 2b on the map, and is directed to transfer such lands to the Department of the Army for the explicit purpose of addition to Camp W.G. Williams. The Secretary of the Army shall modify the camp boundaries so as to encompass lands acquired pursuant to this subection.

SEC. 906. DEPARTMENT OF THE ARMY LANDS.

(a) All lands transferred, exchanged, or acquired by this Act within the camp boundaries shall immediately become a part of Camp W.G. Williams and shall be administered and managed by the Department of the Army in accordance with the same laws, regulations, and executive orders applicable to the lands under the jurisdiction of the Department of the Army adjoining such acquired tracts.

(b) Subject to valid existing rights, no lands owned by the United States within the camp boundaries shall be available for any form of settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral or geothermal leasing laws, and such lands shall be administered and managed by the Department of the Army.

(c) The provisions of this section shall be effective for a period of 20 years after the date of enactment of this Act, unless at the end of such 20-year period, the Secretary of the Army determines that such lands are still required for purposes of national security, in which case the provisions of this section shall be effective for a period of 40

years after the date of enactment of this Act.

SEC. 907. REVOCATION OF EXECUTIVE ORDER, ETC.

(a) REVOCATION.—(1) Executive Order 1922 of April 24, 1914, shall be revoked, only insofar as it affects lands outside of the camp boundaries and only upon acceptance by the Secretary of an appropriate certification by the Secretary of the Army that such lands do not contain any hazardous materials or substances, as defined by applicable Federal law. Upon such revocation, affected lands shall be returned to the public domain and managed accordingly.

(2) The Secretary of the Army shall perform all inspections and other actions necessary to make the certification required in paragraph (1), and shall report his findings to the Secretary, within one year after the date of enactment of this Act. Thereafter the Secretary of the Army shall hold harmless the Secretary for any liability associated with any hazardous materials or substances as defined by applicable Federal law that were placed upon or reasonably appear to have been placed upon the land prior to the return of the subject lands to the public domain.

(b) LIABILITY.—Upon the acquisition by the United States of any lands or interest in land pursuant to this title, any liability accruing to the United States as a result of such acquisition shall be deemed to vest in the United States Department of the Army. In no event shall liability vest in the Department of the Interior.

SEC. 908. MAPS AND LEGAL DESCRIPTIONS.

As soon as practicable after the date of enactment of this Act, the Secretary shall publish in the Federal Register a legal description of the lands proposed to be exchanged by this title and shall file such maps and the legal descriptions with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives.

TITLE X—TECHNICAL AMENDMENT TO TITLE V OF THE ARIZONA-IDAHO CONSERVATION ACT OF 1988

SEC. 1001. Title V of the Arizona-Idaho Conservation Act of 1988 (Public Law 100-696; 102 Stat. 4571) is amended as follows:

(a) Section 501 is amended by inserting after the parenthetical phrase and before the words "which the Secretary deems necessary" the words "or other appropriate lands as selected by the State of Arizona under section 28 of the Act of June 20, 1910 (30 Stat. 557, as amended by the Act of June 5, 1935, 49 Stat. 1477)".

(b) Section 502(b) is amended by adding the following new sentence at the end thereof: "With the consent of the State of Arizona and to the extent that the lands referred to in subsection (a) of this section are acquired by eminent domain, the Secretary may use as compensation the lands described in sections 501, and 507 (a)(1) and (a)(2) of this Act, and such other lands as the Secretary determines necessary to constitute the fair market value of the State of Arizona lands acquired by eminent domain.".

(c) Section 507(b) is redesignated as section 507(c), and the following new subsection (b) is added as follows:

"(b) CONVEYANCE TO THE STATE OF ARIZONA.—The Federal lands described in section 506(a) of this Act may be conveyed to the State of Arizona by the Secretary to the extent such conveyance is necessary to establish fair market value compensation for State lands described in section 502(a) acquired by eminent domain pursuant to section 502(b).".

TITLE XI—TAKE PRIDE IN AMERICA PROGRAM

SECTION 1101. SHORT TITLE.

This title may be cited as the "Take Pride in America Act".

SEC. 1102. ESTABLISHMENT OF TAKE PRIDE IN AMERICA PROGRAM.

(a) IN GENERAL.—There is hereby established the Take Pride in America Program within the Department of the Interior (hereinafter referred to as the "TPIA Program").

(b) PURPOSES.—The purposes of the TPIA Program shall include the following:

(1) To establish and maintain a public awareness campaign in cooperation with public and private organizations and individuals—

(A) to instill in the public the importance of the appropriate use of, and appreciation for Federal, State, and local lands, facilities, and natural and cultural resources;

(B) to encourage an attitude of stewardship and responsibility toward these lands, facilities, and resources; and

(C) to promote participation by individuals, organizations, and communities of a conservation ethic in caring for these lands, facilities, and resources.

(2) To conduct a national awards program to honor those individuals and entities which, in the opinion of the Secretary of the Interior (hereafter in this Act referred to as the "Secretary"), have distinguished themselves in the activities described in paragraph (1) of this subsection.

SEC. 1103. GIFTS AND BEQUESTS.

(a) AUTHORITY.—The Secretary may solicit, accept, hold, administer, invest in government securities, and use gifts and bequests of money and other personal property to aid or facilitate the purposes of the TPIA Program. Property so donated and accepted shall not be subject to sequestration.

(b) ACCOUNTING.—The Secretary shall maintain a full accounting of such gifts and bequests.

(c) TREATMENT OF DONATIONS, ETC.—For purposes of Federal law, property accepted pursuant to this section shall be considered as a gift, bequest, or devise to the United States.

(d) USE OF PROPERTY.—Any property and the proceeds thereof shall be used as nearly as practicable in accordance with the terms of the gift or bequest.

SEC. 1104. ADMINISTRATIVE SERVICES.

The Secretary of the Interior shall provide such facilities, administrative services, personnel, and support to the TPIA Program as the Secretary determines is necessary and appropriate.

SEC. 1105. VOLUNTEERS.

(a) AUTHORITY TO USE VOLUNTEERS.—The Secretary is authorized to recruit, train, and accept the services of individuals or entities, without compensation, as volunteers for or in aid of the purposes of the TPIA Program, without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that related to classification and General Schedule pay rates.

(b) INCIDENTAL EXPENSES.—The Secretary is authorized to provide for the incidental expenses of such volunteers, such as transportation, uniforms, lodging, or subsistence.

(c) VOLUNTEERS' STATUS AS FEDERAL EMPLOYEES.—(1) Except as otherwise provided in this subsection, a volunteer shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those provisions relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(2) For purposes of chapter 171 of title 28, United States Code (commonly referred to as the "Federal Tort Claims Act"), a volunteer under this subsection shall be considered an employee of the government (as defined in section 2671 of such title).

(3) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, a volunteer under this subsection shall be considered an employee (as defined in section 8101 of title 5, United States Code).

SEC. 1106. AUTHORITY TO EXECUTE CONTRACTS.

The Secretary is authorized to enter into contracts and cooperative agreements and generally to do any and all lawful acts necessary or appropriate to further the purposes of the TPIA Program.

SEC. 1107. DISTRIBUTION OF APPROPRIATE ITEMS.

The Secretary is authorized to distribute pamphlets and other such appropriate items in order to promote the purposes of the TPIA Program.

SEC. 1108. SLOGAN AND LOGO.

The "Take Pride in America" slogan and logo, which are registered by the Department of the Interior, and the goodwill associated with such slogan and logo, shall be administered pursuant to the TPIA Program.

SEC. 1109. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this title, not to exceed the amount expended for such purposes for fiscal year 1990.

(b) OTHER FEDERAL AGENCIES.—There are authorized to be appropriated to other Federal departments and agencies such sums as may be necessary to carry out the provisions of any other Take Pride in America programs established by such departments or agencies.

TITLE XII—CIVIL WAR AND OTHER STUDIES

SEC. 1201. SHORT TITLE.

This title may be cited as the "Civil War Sites Study Act of 1990".

SEC. 1202. DEFINITIONS.

For the purposes of this title—

(1) the term "Commission" means the Civil War Sites Advisory Commission established in section 105;

(2) the term "Secretary" means the Secretary of the Interior; and

(3) the term "Shenandoah Valley Civil War sites" means those sites and structures situated in the Shenandoah Valley in the Commonwealth of Virginia which are thematically tied with the nationally significant events that occurred in the region during the Civil War, including, but not limited to, General Thomas "Stonewall" Jackson's 1862 "Valley Campaign" and General Philip Sheridan's 1864 campaign culminating in the battle of Cedar Creek on October 19, 1864.

SEC. 1203. FINDINGS.

The Congress finds that—

(1) many sites and structures associated with the Civil War which represent important means by which the Civil War may continue to be understood and interpreted by the public are located in regions which are undergoing rapid urban and suburban development; and

(2) it is important to obtain current information on the significance of such sites, threats to their integrity, and alternatives for their preservation and interpretation for the benefit of the Nation.

SEC. 1204. SHENANDOAH VALLEY CIVIL WAR SITES STUDY.

(a) STUDY.—(1) The Secretary is authorized and directed to prepare a study of Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short- and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State, and local governments, or other public or private entities, as may be appropriate. Such alternatives may include, but shall not be limited to, designation as units of the National Park System or as affiliated areas. The study shall examine methods and make recommendations to continue current land use practices, such as agriculture, where feasible.

(2) The Secretary shall designate at least two nationally recognized Civil War historians to participate in the study required by paragraph (1).

(3) The study shall include the views and recommendations of the National Park System Advisory Board.

(b) TRANSMITTAL TO CONGRESS.—Not later than 1 year after the date that funds are made available for the study referred to in subsection (a), the Secretary shall transmit such study to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

SEC. 1205. ESTABLISHMENT OF CIVIL WAR SITES ADVISORY COMMISSION.

(a) IN GENERAL.—There is hereby established the Civil War Sites Advisory Commission. The Commission shall consist of thirteen members appointed as follows:

(1) Three individuals who are nationally recognized as experts and authorities on the history of the Civil War, and two individuals who are nationally recognized as experts and authorities in historic preservation and land use planning, appointed by the Secretary.

(2) The Director of the National Park Service or his or her designee.

(3) The chair of the Advisory Council on Historic Preservation, or his or her designee.

(4) Three individuals appointed by the Speaker of the United States House of Representatives in consultation with the Chairman and Ranking Minority Member of the Committee on Interior and Insular Affairs.

(5) Three individuals appointed by the President Pro Tempore of the United States Senate in consultation with the Chairman and Ranking Minority Member of the Committee on Energy and Natural Resources.

(b) CHAIR.—The Commission shall elect a chair from among its members.

(c) VACANCIES.—Vacancies occurring on the Commission shall not affect the authority of the remaining members of the Commission to carry out the functions of the Commission. Any vacancy in the Commission shall be promptly filled in the same manner in which the original appointment was made.

(d) QUORUM.—A simple majority of Commission members shall constitute a quorum.

(e) MEETINGS.—The Commission shall meet at least quarterly or upon the call of the chair or a majority of the members of the Commission.

(f) COMPENSATION.—Members of the Commission shall serve without compensation. Members of the Commission, when engaged in official Commission business, shall be entitled to travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service under section 5703 of title 5, United States Code.

(g) TERMINATION.—The Commission established pursuant to this section shall terminate 90 days after the transmittal of the report to Congress as provided in section 8(c).

SEC. 1206. STAFF OF THE COMMISSION.

(a) EXECUTIVE DIRECTOR.—The Director of the National Park Service, or his or her designee, shall serve as the Executive Director of the Commission.

(b) STAFF.—The Director of the National Park Service shall, on a reimbursable basis, detail such staff as the Commission may require to carry out its duties.

(c) STAFF OF OTHER AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

(d) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

SEC. 1207. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission may for the purpose of carrying out this title hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence as the Commission may deem advisable.

(b) BYLAWS.—The Commission may make such bylaws, rules and regulations, consistent with this title, as it considers necessary to carry out its functions under this title.

(c) DELEGATION.—When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(d) MAILS.—The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

SEC. 1208. DUTIES OF THE COMMISSION.

(a) PREPARATION OF STUDY.—The Commission shall prepare a study of historically significant sites and structures in the United States associated with the Civil War, other than Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short- and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State and local governments, or other public or private entities, as may be appropriate. The Commission shall research and propose innovative open space and land preservation techniques. Such alternatives may include but shall not be limited to designation as units of the National Park System or as affiliated areas. The study may include existing units of the National Park System.

(b) CONSULTATION.—During the preparation of the study referred to in subsection (a), the Commission shall consult with the Governors of affected States, affected units of local government, State and local historic preservation organizations, scholarly organizations, and such other interested parties as the Commission deems advisable.

(c) TRANSMITTAL TO THE SECRETARY AND CONGRESS.—Not later than 2 years after the date that funds are made available for the study referred to in subsection (a), the Commission shall transmit such study to the Secretary and the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

(d) REPORT.—Whenever the Commission submits a report of the study to the Secretary or the Office of Management and Budget, it shall concurrently transmit copies of that report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

SEC. 1209. REVISION OF THEMATIC FRAMEWORK.

In coordination with the major scholarly and professional organizations associated with the disciplines of history, archeology, architecture, and closely related fields, the Secretary shall undertake a complete revision of the National Park Service "Thematic Framework" to reflect current scholarship and research on (1) American history and culture, (2) historic and prehistoric archeology, and (3) architecture. The revision shall be transmitted to the United States House of Representatives Committee on Interior and Insular Affairs and the United States Senate Committee on Energy and Natural Resources not later than 18 months after the date of enactment of this Act. In making such revision, the Secretary shall ensure that the full diversity of American history and prehistory are represented in the revised "Thematic Framework".

SEC. 1210. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums not to exceed $2,000,000 to carry out the purposes of this title.

SEC. 1211. NATIONAL PARK SYSTEM ADVISORY BOARD.

Section 3 of the Act of August 21, 1935, entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. 461-467; 49 Stat. 666 et seq.) is amended—

(1) in the first sentence of subsection (a)—

(A) by striking "twelve" and inserting "sixteen";

(B) by striking "United States," and inserting "United States who have a demonstrated commitment to the National Park System,"; and

(C) by striking "and natural science," and inserting "anthropology, biology, geology, and related disciplines,";

(2) by adding at the end of subsection (a) the following: "Such board shall also provide recommendations on the designation of national historic landmarks and national natural landmarks. Such board is strongly encouraged to consult with the major scholarly and professional organizations in the appropriate disciplines in making such recommendations.";

(3) in the first sentence of subsection (b), by striking "1990" and inserting "1995"; and

(4) in the second sentence of subsection (b), by striking "In" and inserting "The pro-

visions of section 14(b) of the Federal Advisory Committee Act (the Act of October 6, 1972; 86 Stat. 776) are hereby waived with respect to the Board, but in".

SEC. 1212. NATIONAL PARK SYSTEM ADVISORY COUNCIL.

Section 3 of the Act of August 21, 1935, entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. 461-467; 49 Stat. 666 et seq.) is amended by adding at the end the following:

"(c) There is hereby established the National Park Service Advisory Council (hereafter in this section referred to as the "advisory council") which shall provide advice and counsel to the National Park System Advisory Board. Membership on the advisory council shall be limited to those individuals whose term on the advisory board has expired. Such individuals may serve as long as they remain active except that not more than 12 members may serve on the advisory council at any one time. Members of the advisory council shall not have a vote on the National Park System Advisory Board. Members of the advisory council shall receive no salary but may be paid expenses incidental to travel when engaged in discharging their duties as members. Initially, the Secretary shall choose 12 former members of the Advisory Board to constitute the advisory council. In so doing, the Secretary shall consider their professional expertise and demonstrated commitment to the National Park System and to the Advisory Board.".

SEC. 1213. The Secretary of the Interior (hereafter in this title referred to as the 'Secretary') is authorized and directed to conduct a systematic and comprehensive review of certain aspects of the National Park System and to submit on a periodic basis but not later than every 3 years a report to the Committee on Interior and Insular Affairs and the Committee on Appropriations of the United States House of Representatives and the Committee on Energy and Natural Resources and the Committee on Appropriations of the United States Senate on the findings of such review, together with such recommendations as the Secretary determines necessary. The first report shall be submitted no later than 3 years after the date of enactment of this Act.

SEC. 1214. In conducting and preparing the report referred to in section 1, the Secretary shall consult with appropriate officials of affected Federal, State and local agencies, together with national, regional, and local organizations, including but not limited to holding such public hearings as the Secretary determines to be appropriate to provide a full opportunity for public comment.

SEC. 1215. The report shall contain—

(a) A comprehensive listing of all authorized but unacquired lands within the exterior boundaries of each unit of the National Park System as of the date of enactment.

(b) A priority listing of all such unaquired parcels by individual park unit and for the National Park System as a whole. The list shall describe the acreage and ownership of each parcel, the estimated cost of acquisition for each parcel (subject to any statutory acquisition limitations for such lands), and the basis for such estimate.

(c) An analysis and evaluation of the current and future needs of each unit of the National Park System for resources management, interpretation, construction, operation and maintenance, personnel, housing, together with an estimate of the costs thereof.

SEC. 1216. Within one year after the date of enactment, the Secretary shall develop criteria to evaluate any proposed changes to the existing boundaries of individual park units including—

(a) analysis of whether or not the existing boundary provides for the adequate protection and preservation of the natural, historic, cultural, scenic and recreational resources integral to the unit;

(b) an evaluation of each parcel proposed for addition or deletion to the unit based on the analysis under paragraph (1);

(c) an assessment of the impact of potential boundary adjustments taking into consideration the factors in paragraph (c) as well as the effect of the adjustments on the local communities and surrounding area;

SEC. 1217. In proposing any boundary change after the date of enactment of this section, the Secretary shall—

(a) consult with affected agencies of state and local governments surrouning communities, affected land owners and private national, regional, and local organizations;

(b) apply the criteria developed pursuant to section 1216 and accompany this proposal with a statement reflecting the results of the application of such criteria;

(c) include with such an estimate of the cost for acquisition of my parcels proposed for acquisition together with the basis for the estimate and a statement on the relative priority for the acquisition of each parcel with in the priorities for acquisition of other lands for such unit and for the National Park System.

TITLE XIII

SEC. 1301. This Act may be cited as the "Clarks Fork Wild and Scenic River Designation Act of 1990".

SEC. 1302 DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)), as amended, is further amended by adding at the end the following:

"( ) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out this paragraph, there is authorized to be appropriated $500,000 for development and $750,000 for the acquisition of land and interests therein.

"(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any other Federal action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Provided that water from any development shall not intrude upon such segment. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designation as a component of the Wild and Scenic Rivers System.

"(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of Wyoming: Provided, That, notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

"(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such measures as may be necessary in the control of fire, insects, and diseases to fully protect the values for which the segment is designated as a wild river.".

The SPEAKER pro tempore. Is a second demanded?

Mr. RHODES. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes, and the gentleman from Arizona [Mr. RHODES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2570 is the Arizona wilderness bill sponsored by the distinguished gentleman from Arizona [Mr. UDALL] chairman of the Interior Committee. It passed the House in February of this year. It has now come back from the Senate with a long list of unrelated measures attached. Some of these are identical to bills that the House has already passed separately, and we are prepared to accept those additions.

Other additions made by the Senate, however, are not acceptable in their present form, and we are proposing to either revise those or to delete them from this bill, and return the resulting leaner package to the Senate, with the hope that they may be able to complete action on it promptly.

We are adding one item relating to the take pride in America bill earlier passed by the Senate.

Mr. RHODES. Mr. Speaker, I yield myself such time a I may consume.

Mr. Speaker, this bill, H.R. 2570, contains several titles which consist of original individual bills that previously had been passed by both the House and the Senate. It includes an Indian water rights settlement in the State of

Arizona, the designation of some 2 million acres-plus as wilderness in the State of Arizona and various other projects, Civil War studies and so forth in various parts of the United States, mostly in the West.

This is a bill which we normally would not bring to the floor under these circumstances and in this form, but we all know what time it is. We all know what day it is. In order for these projects, which are very important to individuals in various districts in the rest of the country, it is necessary for us to bring this bill in this form.

Mr. Speaker, I urge my colleagues to support H.R. 2570.

Mr. Speaker, I yield 2 minutes to the gentleman from Idaho [Mr. CRAIG].

Mr. CRAIG. Mr. Speaker, I thank my colleague for yielding me this time.

Mr. Speaker, this bill of collective issues and important legislation that has moved through the Interior Committee has, as has been mentioned by the chairman of the Public Lands Subcommittee, several pieces of legislation that are very critical and have been worked on for a good number of days and in some instances months, the Take Pride Program that has come over from the Senate, the Levin legislation dealing with a land exchange problem, and also I think it is important to understand that we have been trying to work out the differences that deal and the failure that the Pix-Sloan and Cedar Bluff Program is not in this legislation.

I must say that Senator DOLE is very concerned about this. The problem at this late hour with the failure to include some of this legislation is that it will have to be placed back in the Senate. I hope the chairman understands the complications of doing that at this late hour may well spell the doom of this legislation. I hope that will not be the case.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. CRAIG. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I appreciate the gentleman's concern. The gentleman has been working hard this evening to clear this bill, and I appreciate his work and his patience and that of other Members who have worked on this.

I hope that we can resolve the issue dealing with the measure that the gentleman is referring to.

Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

I would like to say, Mr. Speaker, that I likewise appreciate very much the hard work the gentleman from Idaho [Mr. CRAIG] has put in on this bill tonight, and I appreciate his willingness to allow us to send it back to the Senate so that the Senate can work its will.

It is my understanding now that the chairman of the subcommittee would like to enter into a colloquy with the gentleman from Wyoming, so I will reserve the balance of my time.

□ 0020

Mr. VENTO. Mr. Speaker, I yield such time as he may consume to the gentleman from Wyoming [Mr. THOMAS] for the purpose of a colloquy.

Mr. Speaker, if the gentleman would yield, I have some questions.

Mr. THOMAS of Wyoming. I would be glad to yield to the gentleman to engage in a colloquy on the Clark's Fork Road Wild and Scenic River.

Mr. VENTO. Does the gentleman agree that unless the United States acts to subject itself to a State procedure to quantify a Federal reserved water right, it is not required to do so?

Mr. THOMAS of Wyoming. Yes, that is right.

Mr. VENTO. And the McCarran Act amendment, an act of Congress, provides one way for that to occur?

Mr. THOMAS of Wyoming. Yes, that is correct.

Mr. VENTO. Am I right that the language here about quantifying the Clark's Fork Federal reserved right provides for the United States to act to start a quantification procedure under Wyoming law by application to be filed with the State engineer, which would also be an act of Congress?

Mr. THOMAS of Wyoming. That is my understanding.

Mr. VENTO. But this title would still permit the United States to act to perfect its water right by appeals from the State engineer's decision?

Mr. THOMAS of Wyoming. That is correct.

Mr. VENTO. I appreciate the gentleman's responses. It is a key part of the understanding in passing this measure. And I appreciate the gentleman yielding.

Mr. VENTO. Mr. Speaker, I have no further requests for time. This is an important measure. It represents a lot of work by the committee. It is a major act, one more crown jewel in the crown of, I think, one of the greatest conservationists who ever served in this body, MO UDALL.

Mr. Speaker, I yield back the balance of my time.

Mr. RHODES. Mr. Speaker, I urge passage of H.R. 2570.

Mr. UDALL. Mr. Speaker, I rise with great pleasure and considerable relief in support of H.R. 2570, the Arizona Desert Wilderness Act.

As I told the House earlier this year when we passed this bill and its companion, H.R. 2571, the Arizona Refuge Wilderness Act, the bill is the product of years of hard work. It is a bipartisan compromise, but it meets my standards for an acceptably aggressive wilderness bill.

I won't belabor the RECORD with a rendition of the bill's provisions. Indeed, the bill is hardly changed at all from the work of the House insofar as actual wilderness designations are concerned. The one exception is the establishment of a new and, in my opinion, very unfortunate boundary for the Upper Burro Creek Wilderness.

What has changed from the House bill is a rather strange cascade of water-related amendments that I am compelled to address for the RECORD. These unconstructive amendments are a grab bag of what some in the other body think the bill does not do with regard to water rights and water developments. These provisions have no practical effect, are unnecessary and do nothing at all to improve the legislation. In all instances, these amendments mirror existing law and/or practical facts of geography—they are essentially without effect.

Nonetheless, they are here and I want to take care that they are not erroneously interpreted as changing existing law. I would therefore like to clarify for the RECORD the scope of the following amendments and our intent in accepting them:

ALAMO DAM

(1) ALAMO DAM.—Nothing in this title shall be construed to impair or conflict with the implementation of the authorization contained in section 304(f) of Public Law 90-537, approved September 30, 1968.

The Alamo Dam is located upstream of two areas that are designated wilderness by this act: Swansea and Rawhide Mountains. The Senate added a provision to clarify that in so designating these areas, Congress does not intend to modify the existing authority of the Corps of Engineers to operate Alamo Dam for flood control purposes. The flood control operations of Alamo Dam have not impaired the wilderness values of Swansea and Rawhide Mountains so far, and it is our belief that continuation of those operations will not have a detrimental effect on their wilderness values in the future.

However, this section should not be interpreted as a direction to the Secretary of the Army to ignore downstream values when operating the dam for flood control purposes. Congress intends that the Secretary of the Army give consideration to downstream environmental values, including wilderness and riparian resources, in exercising his authority.

EFFECT ON PUBLIC LAW 90-537

(5) Nothing in this title shall be construed to impair or conflict with the implementation of the authorization contained in section 304(f) of Public Law 90-537, approved September 30, 1968.

Public Law 90-537 authorizes New Mexico to use 18,000-acre feet of water from the Gila River. The language added by the Senate merely provides assurance to New Mexico that this act is not amending or repealing the authorization in Public Law 90-537. I want to make clear that this amendment is not intended to expand that earlier authorization in any way. In addition, the amendment is not in any way a denial or limitation of the water right reserved for the Gila Box National Riparian Conservation Area.

NO WATER RIGHT ON COLORADO RIVER

(b) With respect to the Havasu and Imperial Wilderness Areas designated by subsections (a)(1) and (a)(2) of this title, no rights to water of the Colorado River are reserved, either expressly, impliedly, or otherwise.

The Senate added a number of provisions regarding this bill's lack of effect on the Colorado River, its waters, compacts relating to it and the operation of federally operated dams on the river. They are utterly unnecessary, as none of the areas designated as wilderness include any portion of the main stem of the Colorado River within their boundaries.

The wilderness areas designated within the Imperial and Havasu National Wildlife Refuges were specifically drawn above the historic high water mark of the river. Even without inclusion of special language, it is perfectly clear that no Federal water right is being established on the Colorado River. Once again, language has been included to provide comfort and assurance. And, once again, unnecessary language offers an opportunity for misinterpretation.

Although neither of these areas include any portion of the Colorado River, they both have water that arises within and flows through them in the form of seeps and springs. This disclaimer about a water right for the Colorado in no way affects the Federal water rights to these seeps and springs within the area, nor should this language be interpreted to diminish the scope or draw into question the existing Federal water right for the Havasu and Imperial National Wildlife Refuges, whose boundaries do include the Colorado River.

This provisioin also should not be construed to question the fact that other Federal designations that overlap the Colorado do have implied Federal reserved water rights. For example, the Grand Canyon National Park and Canyonlands National Park, which both straddle the Colorado River, have implied Federal reserved water rights which date back to their establishment.

In sum, this amendment has no practical effect, and thus has no real legal effect. It is, and should be clearly understood as, nothing more or less than redundant reassurance of the self-evident—that establishing a wilderness in the general geographic vicinity of the Colorado River does not establish a Federal reserved water right to the Colorado River.

NO EFFECT ON COLORADO RIVER DAMS

(e) NO EFFECT ON COLORADO RIVER DAMS.—Nothing in this title shall be construed to affect the operation of federally owned dams located on the Colorado River in the lower basin.

As with the amendment regarding no Federal water rights on the Colorado River, this amendment has no legal or practical effect. No portion of the Colorado River is included within wilderness areas designated by this act. It is therefore obvious on the face that these wilderness designations would not affect any federally owned dams on the Colorado River. Again, the boundaries of the wilderness areas were specifically drawn above the historic highwater mark to avoid any conflict with operation of dams on the Colorado River. This section is meaningless and unnecessary, but harmless in the context of this specific wilderness legislation.

NO EFFECT ON UPPER BASIN

Nothing in titles I, II, or III of this act shall amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty pertaining to the Colorado River (including its tributaries) in the upper basin, including, but not limited to, the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

This language may represent a new standard in the unnecessary. We have already stated that none of these designations are establishing a Federal water right on the Colorado River. Furthermore, none of these designations are within the upper basin of the Colorado River and therefore it is inconceivable that this legislation could have any possible impact on the upper basin States, their laws or their compacts. Even a cursory examination of the facts or of the geography would lead one to this conclusion.

Although this disclaimer is patently absurd in this context, and has no effect, either harmful or beneficial, I find its inclusion to be very disturbing. This provision leads the list of five sections added by the Senate whose sole purpose is to declare what the bill does not do. In each case, the clarification is utterly unnecessary, yet opens the door to the possibility of some future court or administrator acting on the theory that Congress must have meant something by incorporation of these amendments and act to apply them in some entirely inappropriate way.

Might, for example, a court wonder whether by specifically exempting a river which is nearby a wilderness area from any claims of a Federal water right, did Congress imply that without such specific exemptions a wilderness area could claim a Federal water right on a river outside of the boundaries of that wilderness area?

Mr. Speaker, this abandonment of legislative discipline is of great concern to me and if the 101st Congress had sufficient time remaining I would work hard to have this worthless provision stripped from this bill. But the greater interest today lies in passing this very important legislation and trusting that future courts, administrators, and legislators will put as much stock in these amendments as they deserve.

And so that I might close on a more positive note, Mr. Speaker, I would like to conclude by restating my remarks on this floor when the House passed H.R. 2570 on February 28.

I said then that each generation has its important tasks to complete. The generations of Udalls before me met their challenge to tame the wilderness, to settle it, and make it a home for succeeding generations. But the challenge of our generation is different. We must show ourselves capable not only of conquering nature but also of caring for it. We must show that we consider ourselves not only masters of our world, but also its willing dependents. It is important that those who come after us know that we cherished these living deserts, their waters, and all the life that regenerates itself there season after season, generation after generation. In wilderness, we value that which man did not create and by restraining man's altering hand, we hope to honor this powerful work.

Long after our own footsteps have been forgotten, these places will remain. Their eloquent stillness will bear testimony that we as a people are grateful for our chance to walk upon this Earth and that we have the strength, the courage, and the wisdom to leave at least these places as we found them.

Mr. THOMAS of Wyoming. Mr. Speaker, I am pleased with the approval of the Clarks Fork Wild and Scenic River Act in this the year of Wyoming's centennial celebration.

This issue has been debated since 1978 when the Forest Service first gave notice that a study was to begin. The final environmental impact statement, completed in February 1979, recommended a 21.5-mile section for wild and scenic designation and legislation was introduced in Congress on September 13, 1982, formally nominating it. By law, Congress had 3 years to act but did not do so. The delegation put the nomination on hold until a clear decision could be made about the proposed water projects affecting this stretch of the river. In August 1988, Governor Sullivan called for a Federal wild and scenic designation subject to certain conditions with regard to water.

Clarks Fork originates in Montana, swings down into Wyoming and then pours into the Yellowstone River which heads back up into Montana. In their final environmental impact statement, the Forest Service recommended a 21.5-mile segment of the river for designation. But to ensure that a downstream dam would not back water up into the wild and scenic designation, the Governor shortened the proposed stretch.

The bill provides funds for purchasing land, or interests in land, but only on a willing buyer/willing seller basis.

We worked hard to come up with legislation that would ensure that those values which make the Clarks Fork so remarkable would be protected for the enjoyment of future generations.

Again, Mr. Speaker, it is particularly fitting that we include the Clarks Fork in the wild and scenic system in the same year the State celebrates its 100th birthday.

Mr. RHODES. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ECKART). The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and concur in the Senate amendment with an amendment.

The question was taken; and (two thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in with an amendment.

A motion to reconsider was laid on the table.

FOR THE RELIEF OF LEROY W. SHEBAL OF NORTH POLE, AK

Mr. VENTO. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of the Senate bill (S. 620) for the relief of Leroy W. Shebal of North Pole, AK, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the consideration of the Senate bill?

The RHODES. Mr. Speaker, reserving the right to object, I do so to yield to the gentleman from Minnesota for an explanation.

Mr. VENTO. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, this simply provides relief of 5 acres, an important bill to the Senator from Alaska. We are accommodating that. I appreciate the cooperation of the body in meeting this need.

Mr. RHODES. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota [Mr. VENTO]?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 620

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. Notwithstanding any other provision of law, including, but not limited to section 8 of the Wild and Scenic Rivers Act (16 U.S.C. 1279) or any provision of the public land laws of the United States, the Secretary shall survey and convey all right, title, and interest of the United States in the approximately five acres located at township 8 north, range 1 west, section 36, west half of southwest quarter, Fairbanks Meridian and described in Small Tract Application Numbered F-021611 and which is currently under permit to Leroy W. Shebal, to Leroy W. Shebal in exchange for the sum of $650 in 1965 dollars adjusted for inflation to 1990 dollars or $3,000, whichever is less, and subject to the following conditions:

(a) existing improvements on such property may not be substantially expanded and use of the property is limited to prior or current levels;

(b) retention of a right of first refusal to reacquire such property at fair market value (as set forth in the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1905)) upon a decision by Leroy W. Shebal to sell such property on his death: *Provided*, That, such right shall be extinguished if not exercised by the Secretary by payment of such value within one year from the date on which Leroy W. Shebal notifies the Secretary in writing of his decision to sell the property or the date on which Leroy W. Shebal dies, whichever occurs first.

SEC. 2. Section 1110(b) of the Alaska National Interest Lands Conservation Act (Public Law 96-487, 94 Stat. 2371), shall not apply to the property described in section 1 of this Act.

SEC. 3. The provisions of this Act shall be effective only if Leroy W. Shebal notifies the Secretary, in writing within one year from the date of enactment of his intention to purchase the property.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ENVIRONMENTAL RESEARCH GEOGRAPHIC LOCATION INFORMATION ACT

Mr. ROE. Mr. Speaker, I ask unanimous consent to take from the speaker's table the Senate bill (S. 3069) to provide a method of locating private and Government research on environmental issues by geographic location, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. WALKER. Mr. Speaker, reserving the right to object, I yield to the gentleman from New Jersey for an explanation of the bill.

Mr. ROE. I thank the gentleman for yielding.

Mr. Speaker I rise in support of S. 3069. The purpose of the bill is to provide the public with the means to determine the location of environmental research conducted by both the public and private sectors.

Although the intent of this legislation may seem modest, in fact the bill could reap enormous benefits for all sectors of society. Hundreds of millions of dollars of environmental studies are conducted in this country every year, but the results are often inaccessible to the public because of the difficulty in determining the location of the research in question. Interested citizens may find it easier to learn about the tropical rain forests of Brazil or the highlands of Tibet than about the waste dumps in their own neighborhoods.

The Environmental Research Geographic Location Information Act would require the Environmental Protection Agency to review at least 35 scientific journals each year and to publish an annual index of the articles in those journals by geographic location. Distribution to the public would occur through the National Technical Information Service. The Congressional Budget Office estimates that the annual cost of these provisions would be no more than $65,000, an extremely small fraction of the money spent on environmental research in the United States.

Who would benefit from this bill? Certainly all of our constituents, who could learn much more easily about the quality of their local environment. Scientists would benefit from a system which allowed systematic tracking of changes in environmental quality over time. Industry would find it much easier to select appropriate plant sites, and the provisions would also assist numerous parties in the completion of due diligence audits.

Mr. Speaker, S. 3069 is a simple, but important measure which will ensure that the tax dollars of all of our constituents are spent much more effectively. I urge all of my colleagues to support the bill's enactment.

Mr. WALKER. Mr. Speaker, further reserving the right to object, I yield to the gentlewoman from Kansas [Mrs. MEYERS] the author of this bill.

Mrs. MEYERS of Kansas. Mr. Speaker, I want to thank the gentleman from New Jersey, Chairman ROE; the gentleman from Pennsylvania, Mr. WALKER; the members of the Committee on Science, Space, and Technology for their consideration of this bill. This legislation requires EPA to prepare an index of environmental scientific studies by geographic location. Current index services do not provide an effective means of locating environmental studies by geographic location.

EPA would provide this index to Congress so that we can better serve our constituents. EPA will also provide the index to the National Technical Information Service for distribution to the public at nominal cost, and it would be available in Government repository laboratories.

This legislation would help researchers, it would save dollars by eliminating repetitive research.

Mr. Speaker, I urge my colleagues to support passage of this bill.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The Clerk read as follows:

S. 3069

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Environmental Research Geographic Location Information Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) at present, there is no reliable method of locating private or Government research on environmental issues by geographic location; and

(2) a means of identifying environmental research conducted at specific geographic locations is needed for purposes such as detecting trends in environmental quality, assisting the public in learning about the quality and issues of their local environment, and providing a data base for identifying areas of critical environmental concern.

SEC. 3. PURPOSE.

The purpose of this Act is to develop a data base of environmental research articles indexed by geographic location.

SEC. 4. ENVIRONMENTAL PROTECTION AGENCY.

(a) RESEARCH JOURNALS.—Within 6 months following the date of the enactment of this Act, and from time to time thereafter, the Environmental Protection Agency shall identify not less than 35 important environmental research journals, conference proceedings or other reference sources in which scientific research or engineering studies related to air, water, or soil quality or pollution or other environmental issues are routinely published. In carrying out the re-

quirements of this subsection, at least 50 journals or proceedings shall be reviewed.

(b) INDEX.—(1) Within 12 months following the date of the enactment of this Act, and annually thereafter, the Environmental Protection Agency shall review the journals and other materials identified in subsection (a) and compile, maintain and publish an index of the articles contained therein during the preceding calendar year by geographic location. A copy of such index shall be made available to the Service for distribution to the public, and a copy shall be submitted to the Congress not less than 30 days prior to the date on which it is made available to the Service.

(2) Beginning 12 months after the date of the enactment of this Act, the Agency shall identify not less than 20 materials identified in subsection (a) which were published during the time period from 1970 to the year preceding enactment, and shall compile and publish a series of indices of articles contained therein by geographic location. The time frame which each index contains should not exceed 5 years.

(c) PURCHASE OF INFORMATION.—The Environmental Protection Agency is authorized to enter into contracts or other arrangements for the acquisition of data and other information necessary for purposes of this Act.

(d) REVISING LIST.—The Environmental Protection Agency shall review the list of references developed under this section at least biennially and shall revise the list of sources as appropriate.

(e) SPECIFIC LOCATION OF RESEARCH PROJECTS.—Unless exempted by the Administrator of the Environmental Protection Agency, all reports resulting from research projects sponsored by the Environmental Protection Agency and initiated after the expiration of the 36-month period following the date of enactment of this Act shall indicate the specific location to which the research pertains.

SEC. 5. AUTHORIZATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

SEC. 7. EXPIRATION OF ACT.

This Act shall expire 10 years after date of its enactment.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ROE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on S. 3069, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

CHIEF FINANCIAL OFFICERS ACT OF 1990

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5687) to amend title 31, United States Code, to improve the financial management of the Federal Government, as amended.

The Clerk read as follows:

H.R. 5687

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL PROVISIONS

SEC. 101. SHORT TITLE.

This Act may be cited as the "Chief Financial Officers Act of 1990".

SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) General management functions of the Office of Management and Budget need to be significantly enhanced to improve the efficiency and effectiveness of the Federal Government.

(2) Financial management functions of the Office of Management and Budget need to be significantly enhanced to provide overall direction and leadership in the development of a modern Federal financial management structure and associated systems.

(3) Billions of dollars are lost each year through fraud, waste, abuse, and mismanagement among the hundreds of programs in the Federal Government.

(4) These losses could be significantly decreased by improved management, including improved central coordination of internal controls and financial accounting.

(5) The Federal Government is in great need of fundamental reform in financial management requirements and practices as financial management systems are obsolete and inefficient, and do not provide complete, consistent, reliable, and timely information.

(6) Current financial reporting practices of the Federal Government do not accurately disclose the current and probable future cost of operating and investment decisions, including the future need for cash or other resources, do not permit adequate comparison of actual costs among executive agencies, and do not provide the timely information required for efficient management of programs.

(b) PURPOSES.—The purposes of this Act are the following:

(1) Bring more effective general and financial management practices to the Federal Government through statutory provisions which would establish in the Office of Management and Budget a Deputy Director for Management, establish an Office of Federal Financial Management headed by a Controller, and designate a Chief Financial Officer in each executive department and in each major executive agency in the Federal Government.

(2) Provide for improvement, in each agency of the Federal Government, of systems of accounting, financial management, and internal controls to assure the issuance of reliable financial information and to deter fraud, waste, and abuse of Government resources.

(3) Provide for the production of complete, reliable, timely, and consistent financial information for use by the executive branch of the Government and the Congress in the financing, management, and evaluation of Federal programs.

TITLE II—ESTABLISHMENT OF CHIEF FINANCIAL OFFICERS

SEC. 201. DEPUTY DIRECTOR FOR MANAGEMENT.

Section 502 of title 31, United States Code, as amended by this Act, is amended—

(1) by redesignating subsections (c), (d), and (e), as amended by this section, as subsections (d), (e), and (f); and

(2) by inserting after subsection (b) the following:

"(c) The Office has a Deputy Director for Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director for Management shall be the chief official responsible for financial management in the United States Government.".

SEC. 202. FUNCTIONS OF DEPUTY DIRECTOR FOR MANAGEMENT.

(a) CLERICAL AMENDMENTS.—Sections 503 and 504 of title 31, United States Code, are redesignated in order as sections 505 and 506, respectively.

(b) FUNCTIONS OF DEPUTY DIRECTOR FOR MANAGEMENT.—Subchapter I of chapter 5 of title 31, United States Code, is amended by inserting after section 502 the following:

"§ 503. Functions of Deputy Director for Management

"(a) Subject to the direction and approval of the Director, the Deputy Director for Management shall establish government-wide financial management policies for executive agencies and shall perform the following financial management functions:

"(1) Perform all functions of the Director, including all functions delegated by the President to the Director, relating to financial management.

"(2) Provide overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements, and by monitoring the establishment and operation of Federal Government financial management systems.

"(3) Review agency budget requests for financial management systems and operations, and advise the Director on the resources required to develop and effectively operate and maintain Federal Government financial management systems and to correct major deficiencies in such systems.

"(4) Review and, where appropriate, recommend to the Director changes to the budget and legislative proposals of agencies to ensure that they are in accordance with financial management plans of the Office of Management and Budget.

"(5) Monitor the financial execution of the budget in relation to actual expenditures, including timely performance reports.

"(6) Oversee, periodically review, and make recommendations to heads of agencies on the administrative structure of agencies with respect to their financial management activities.

"(7) Develop and maintain qualification standards for agency Chief Financial Officers and for agency Deputy Chief Financial Officers appointed under sections 901 and 903, respectively.

"(8) Provide advice to agency heads with respect to the selection of agency Chief Financial Officers and Deputy Chief Financial Officers.

"(9) Provide advice to agencies regarding the qualifications, recruitment, performance, and retention of other financial management personnel.

"(10) Assess the overall adequacy of the professional qualifications and capabilities of financial management staffs throughout the Government and make recommendations on ways to correct problems which impair the capacity of those staffs.

"(11) Settle differences that arise among agencies regarding the implementation of financial management policies.

"(12) Chair the Chief Financial Officers Council established by section 302 of the Chief Financial Officers Act of 1990.

"(13) Communicate with the financial officers of State and local governments, and foster the exchange with those officers of information concerning financial management standards, techniques, and processes.

"(14) Issue such other policies and directives as may be necessary to carry out this section, and perform any other function prescribed by the Director.

"(b) Subject to the direction and approval of the Director, the Deputy Director for Management shall establish general management policies for executive agencies and perform the following general management functions:

"(1) Coordinate and supervise the general management functions of the Office of Management and Budget.

"(2) Perform all functions of the Director, including all functions delegated by the President to the Director, relating to—

"(A) managerial systems, including the systematic measurement of performance;

"(B) procurement policy;

"(C) grant, cooperative agreement, and assistance management;

"(D) information and statistical policy;

"(E) property management;

"(F) human resources management;

"(G) regulatory affairs; and

"(H) other management functions, including organizational studies, long-range planning, program evaluation, productivity improvement, and experimentation and demonstration programs.

"(3) Provide complete, reliable, and timely information to the President, the Congress, and the public regarding the management activities of the executive branch.

"(4) Facilitate actions by the Congress and the executive branch to improve the management of Federal Government operations and to remove impediments to effective administration.

"(5) Provide leadership in management innovation, through—

"(A) experimentation, testing, and demonstration programs; and

"(B) the adoption of modern management concepts and technologies.

"(6) Work with State and local governments to improve and strengthen intergovernmental relations, and provide assistance to such governments with respect to intergovernmental programs and cooperative arrangements.

"(7) Review and, where appropriate, recommend to the Director changes to the budget and legislative proposals of agencies to ensure that they respond to program evaluations by, and are in accordance with general management plans of, the Office of Management and Budget.

"(8) Provide advice to agencies on the qualification, recruitment, performance, and retention of managerial personnel.

"(9) perform any other functions prescribed by the Director.".

SEC. 203. OFFICE OF FEDERAL FINANCIAL MANAGEMENT.

(a) ESTABLISHMENT.—Subchapter I of chapter 5 of title 31, United States Code, as amended by this Act, is amended by inserting after section 503 (as added by section 202 of this Act) the following:

"§ 504. Office of Federal Financial Management

"(a) There is established in the Office of Management and Budget an office to be known as the 'Office of Federal Financial Management'. The Office of Federal Financial Management, under the direction and control of the Deputy Director for Management of the Office of Management and Budget, shall carry out the financial management functions listed in section 503(a) of this title.

"(b) There shall be at the head of the Office of Federal Financial Management a Controller, who shall be appointed by the President, by and with the advice and consent of the Senate. The Controller shall be appointed from among individuals who possess—

"(1) demonstrated ability and practical experience in accounting, financial management, and financial systems; and

"(2) extensive practical experience in financial management in large governmental or business entities.

"(c) The Controller of the Office of Federal Financial Management shall be the deputy and principal advisor to the Deputy Director for Management in the performance by the Deputy Director for Management of functions described in section 503(a).".

(b) STATEMENT OF APPROPRIATIONS IN BUDGET.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

"(28) a separate statement of the amount of appropriations requested for the Office of Federal Financial Management.".

(c) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 5 of title 31, United States Code, is amended by striking the items relating to sections 503 and 504 and inserting the following:

"503. Functions of Deputy Director for Management.
"504. Office of Federal Financial Management.
"505. Office of Information and Regulatory Affairs.
"506. Office of Federal Procurement Policy.".

SEC. 204. DUTIES AND FUNCTIONS OF THE DEPARTMENT OF THE TREASURY.

Nothing in this Act shall be construed to interfere with the exercise of the functions, duties, and responsibilities of the Department of the Treasury, as in effect immediately before the enactment of this Act.

SEC. 205. AGENCY CHIEF FINANCIAL OFFICERS.

(a) IN GENERAL.—Subtitle I of title 31, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 9—AGENCY CHIEF FINANCIAL OFFICERS

"Sec.
"901. Establishment of agency Chief Financial Officers.
"902. Authority and functions of agency Chief Financial Officers.
"903. Establishment of agency Deputy Chief Financial Officers.

"§ 901. Establishment of agency Chief Financial Officers

"(a) There shall be within each agency described in subsection (b) an agency Chief Financial Officer. Each agency Chief Financial Officer shall—

"(1) for those agencies described in subsection (b)(1)—

"(A) be appointed by the President, by and with the advice and consent of the Senate; or

"(B) be designated by the President, in consultation with the head of the agency, from among officials of the agency who are required by law to be so appointed;

"(2) for those agencies described in subsection (b)(2)—

"(A) be appointed by the head of the agency;

"(B) be in the competitive service or the senior executive service; and

"(C) be career appointees; and

"(3) be appointed or designated, as applicable, from among individuals who possess demonstrated ability in general management of, and knowledge of and extensive practical experience in financial management practices in large governmental or business entities.

"(b)(1) The agencies referred to in subsection (a)(1) are the following:

"(A) The Department of Agriculture.
"(B) The Department of Commerce.
"(C) The Department of Defense.
"(D) The Department of Education.
"(E) The Department of Energy.
"(F) The Department of Health and Human Services.
"(G) The Department of Housing and Urban Development.
"(H) The Department of the Interior.
"(I) The Department of Justice.
"(J) The Department of Labor.
"(K) The Department of State.
"(L) The Department of Transportation.
"(M) The Department of the Treasury.
"(N) The Department of Veterans Affairs.
"(O) The Environmental Protection Agency.
"(P) The National Aeronautics and Space Administration.

"(2) The agencies referred to in subsection (a)(2) are the following:

"(A) The Agency for International Development.
"(B) The Federal Emergency Management Agency.
"(C) The General Services Administration.
"(D) The National Science Foundation.
"(E) The Nuclear Regulatory Commission.
"(F) The Office of Personnel Management.
"(G) The Small Business Administration.

"§ 902. Authority and functions of agency Chief Financial Officers

"(a) An agency Chief Financial Officer shall—

"(1) report directly to the head of the agency regarding financial management matters;

"(2) oversee all financial management activities relating to the programs and operations of the agency;

"(3) develop and maintain an integrated agency accounting and financial management system, including financial reporting and internal controls, which—

"(A) complies with applicable accounting principles, standards, and requirements, and internal control standards;

"(B) complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget;

"(C) complies with any other requirements applicable to such systems; and

"(D) provides for—

"(i) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of agency management;

"(ii) the development and reporting of cost information;

"(iii) the integration of accounting and budgeting information; and

"(iv) the systematic measurement of performance;

"(4) make recommendations to the head of the agency regarding the selection of the Deputy Chief Financial Officer of the agency;

"(5) direct, manage, and provide policy guidance and oversight of agency financial management personnel, activities, and operations, including—

"(A) the preparation and annual revision of an agency plan to—

"(i) implement the 5-year financial management plan prepared by the Director of the Office of Management and Budget under section 3512(a)(3) of this title; and

"(ii) comply with the requirements established under sections 3515 and subsections (e) and (f) of section 3521 of this title;

"(B) the development of agency financial management budgets;

"(C) the recruitment, selection, and training of personnel to carry out agency financial management functions;

"(D) the approval and management of agency financial management systems design or enhancement projects;

"(E) the implementation of agency asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control;

"(6) prepare and transmit, by not later than 60 days after the submission of the audit report required by section 3521(f) of this title, an annual report to the agency head and the Director of the Office of Management and Budget, which shall include—

"(A) a description and analysis of the status of financial management of the agency;

"(B) the annual financial statements prepared under section 3515 of this title;

"(C) the audit report transmitted to the head of the agency under section 3521(f) of this title;

"(D) a summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255); and

"(E) other information the head of the agency considers appropriate to fully inform the President and the Congress concerning the financial management of the agency;

"(7) monitor the financial execution of the budget of the agency in relation to actual expenditures, and prepare and submit to the head of the agency timely performance reports; and

"(8) review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.

"(b)(1) In addition to the authority otherwise provided by this section, each agency Chief Financial Officer—

"(A) subject to paragraph (2), shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which are the property of the agency or which are available to the agency, and which relate to programs and operations with respect to which that agency Chief Financial Officer has responsibilities under this section;

"(B) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this section from any Federal, State, or local governmental entity; and

"(C) to the extent and in such amounts as may be provided in advance by appropriations Acts, may—

"(i) enter into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services; and

"(ii) make such payments as may be necessary to carry out the provisions of this section.

"(2) Except as provided in paragraph (1)(B), this subsection does not provide to an agency Chief Financial Officer any access greater than permitted under any other law to records, reports, audits, reviews, documents, papers, recommendations, or other material of any Office of Inspector General established under the Inspector General Act of 1978 (5 U.S.C. App.).

"§ 903. Establishment of agency Deputy Chief Financial Officers

"(a) There shall be within each agency described in section 901(b) an agency Deputy Chief Financial Officer, who shall report directly to the agency Chief Financial Officer on financial management matters. The position of agency Deputy Chief Financial Officer shall be a career reserved position in the Senior Executive Service.

"(b) Consistent with qualification standards developed by, and in consultation with, the agency Chief Financial Officer and the Director of the Office of Management and Budget, the head of each agency shall appoint as Deputy Chief Financial Officer an individual with demonstrated ability and experience in accounting, budget execution, financial and management analysis, and systems development, and not less than 6 years practical experience in financial management at large governmental entities.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle I of title 31, United States Code, is amended by adding at the end the following:

"9. Agency Chief Financial Officers ..... 901.".

(c) CHIEF FINANCIAL OFFICERS OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(1) DESIGNATION.—The Secretary of Veterans Affairs and the Secretary of Housing and Urban Development may each designate as the agency Chief Financial Officer of that department for purposes of section 901 of title 31, United States Code, as amended by this section, the officer designated, respectively, under section 4(c) of the Department of Veterans Affairs Act (38 U.S.C. 201 note) and section 4(e) of the Department of Housing and Urban Development Act (42 U.S.C. 3533(e)), as in effect before the effective date of this Act.

(2) CONFORMING AMENDMENT.—Section 4(c) of the Department of Veterans Affairs Act (38 U.S.C. 201 note) and section 4(e) of the Department of Housing and Urban Development Act (42 U.S.C. 3533(e)), as added by section 121 of Public Law 101-235, are repealed.

SEC. 206. TRANSFER OF FUNCTIONS AND PERSONNEL OF AGENCY CHIEF FINANCIAL OFFICERS.

(a) AGENCY REVIEWS OF FINANCIAL MANAGEMENT ACTIVITIES.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall require each agency listed in subsection (b) of section 901 of title 31, United States Code, as amended by this Act, to conduct a review of its financial management activities for the purpose of consolidating its accounting, budgeting, and other financial management activities under the agency Chief Financial Officer appointed under subsection (a) of that section for the agency.

(b) REORGANIZATION PROPOSAL.—Not later than 120 days after the issuance of requirements under subsection (a) and subject to all laws vesting functions in particular officers and employees of the United States, the head of each agency shall submit to the Director of the Office of Management and Budget a proposal for reorganizing the agency for the purposes of this Act. Such proposal shall include—

(1) a description of all functions, powers, duties, personnel, property, or records which the agency Chief Financial Officer is proposed to have authority over, including those relating to functions that are not related to financial management activities; and

(2) a detailed outline of the administrative structure of the office of the agency Chief Financial Officer, including a description of the responsibility and authority of financial management personnel and resources in agencies or other subdivisions as appropriate to that agency.

(c) REVIEW AND APPROVAL OF PROPOSAL.—Not later than 60 days after receiving a proposal from the head of an agency under subsection (b), the Director of the Office of Management and Budget shall approve or disapprove the proposal and notify the head of the agency of that approval or disapproval. The Director shall approve each proposal which establishes an agency Chief Financial Officer in conformance with section 901 of title 31, United States Code, as added by this Act, and which establishes a financial management structure reasonably tailored to the functions of the agency. Upon approving or disapproving a proposal of an agency under this section, the Director shall transmit to the head of the agency a written notice of that approval or disapproval.

(d) IMPLEMENTATION OF PROPOSAL.—Upon receiving written notice of approval of a proposal under this section from the Director of the Office of Management and Budget, the head of an agency shall implement that proposal.

SEC. 207. COMPENSATION.

(a) COMPENSATION, LEVEL II.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

"Deputy Director for Management, Office of Management and Budget.".

(b) COMPENSATION, LEVEL III.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Controller, Office of Federal Financial Management, Office of Management and Budget.".

(c) COMPENSATION, LEVEL IV.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Chief Financial Officer, Department of Agriculture.

"Chief Financial Officer, Department of Commerce.

"Chief Financial Officer, Department of Defense.

"Chief Financial Officer, Department of Education.

"Chief Financial Officer, Department of Energy.

"Chief Financial Officer, Department of Health and Human Services.

"Chief Financial Officer, Department of Housing and Urban Development.

"Chief Financial Officer, Department of the Interior.

"Chief Financial Officer, Department of Justice.

"Chief Financial Officer, Department of Labor

"Chief Financial Officer, Department of State.

"Chief Financial Officer, Department of Transportation.

"Chief Financial Officer, Department of the Treasury.

"Chief Financial Officer, Department of Veterans Affairs.

"Chief Financial Officer, Environmental Protection Agency.

"Chief Financial Officer, National Aeronautics and Space Administration.".

TITLE III—ENHANCEMENT OF FEDERAL FINANCIAL MANAGEMENT ACTIVITIES

SEC. 301. FINANCIAL MANAGEMENT STATUS REPORT; 5-YEAR PLAN OF DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET.

(a) IN GENERAL.—Section 3512 of title 31, United States Code, is amended by striking the heading thereof, redesignating subsections (a) through (f) in order as subsections (b) through (g), and by inserting before such subsection (b), as so redesignated, the following:

"§ 3512. Executive agency accounting and other financial management reports and plans

"(a)(1) The Director of the Office of Management and Budget shall prepare and submit to the appropriate committees of the Congress a financial management status report and a governmentwide 5-year financial management plan.

"(2) A financial management status report under this subsection shall include—

"(A) a description and analysis of the status of financial management in the executive branch;

"(B) a summary of the most recently completed financial statements—

"(i) of Federal agencies under section 3515 of this title; and

"(ii) of Government corporations;

"(C) a summary of the most recently completed financial statement audits and reports—

"(i) of Federal agencies under section 3521 (e) and (f) of this title; and

"(ii) of Government corporations;

"(D) a summary of reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255); and

"(E) any other information the Director considers appropriate to fully inform the Congress regarding the financial management of the Federal Government.

"(3)(A) A governmentwide 5-year financial management plan under this subsection shall describe the activities the Director, the Deputy Director for Management, the Controller of the Office of Federal Financial Management, and agency Chief Financial Officers shall conduct over the next 5 fiscal years to improve the financial management of the Federal Government.

"(B) Each governmentwide 5-year financial management plan prepared under this subsection shall—

"(i) describe the existing financial management structure and any changes needed to establish an integrated financial management system;

"(ii) be consistent with applicable accounting principles, standards, and requirements;

"(iii) provide a strategy for developing and integrating individual agency accounting, financial information, and other financial management systems to ensure adequacy, consistency, and timeliness of financial information;

"(iv) identify and make proposals to eliminate duplicative and unnecessary systems, including encouraging agencies to share systems which have sufficient capacity to perform the functions needed;

"(v) identify projects to bring existing systems into compliance with the applicable standards and requirements;

"(vi) contain milestones for equipment acquisitions and other actions necessary to implement the 5-year plan consistent with the requirements of this section;

"(vii) identify financial management personnel needs and actions to ensure those needs are met;

"(viii) include a plan for ensuring the annual audit of financial statements of executive agencies pursuant to section 3521(h) of this title; and

"(ix) estimate the costs of implementing the governmentwide 5-year plan.

"(4)(A) Not later than 15 months after the date of the enactment of this subsection, the Director of the Office of Management and Budget shall submit the first financial management status report and governmentwide 5-year financial management plan under this subsection to the appropriate committees of the Congress.

"(B)(i) Not later than January 31 of each year thereafter, the Director of the Office of Management and Budget shall submit to the appropriate committees of the Congress a financial management status report and a revised governmentwide 5-year financial management plan to cover the succeeding 5 fiscal years, including a report on the accomplishments of the executive branch in implementing the plan during the preceding fiscal year.

"(ii) The Director shall include with each revised governmentwide 5-year financial management plan a description of any substantive changes in the financial statement audit plan required by paragraph (3)(B)(viii), progress made by executive agencies in implementing the audit plan, and any improvements in Federal Government financial management related to preparation and audit of financial statements of executive agencies.

"(5) Not later than 30 days after receiving each annual report under section 902(a)(6) of this title, the Director shall transmit to the Chairman of the Committee on Government Operations of the House of Representatives and the Chairman of the Committee on Governmental Affairs of the Senate a final copy of that report and any comments on the report by the Director.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 35 of title 31, United States Code, is amended by striking the item relating to section 3512 and inserting the following:

"3512. Executive agency accounting and other financial management reports and plans.".

SEC. 302. CHIEF FINANCIAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Financial Officers Council, consisting of—

(1) the Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the council;

(2) the Controller of the Office of Federal Financial Management of the Office of Management and Budget;

(3) the Fiscal Assistant Secretary of Treasury; and

(4) each of the agency Chief Financial Officers appointed under section 901 of title 31, United States Code, as amended by this Act.

(b) FUNCTIONS.—The Chief Financial Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as consolidation and modernization of financial systems, improved quality of financial information, financial data and information standards, internal controls, legislation affecting financial operations and organizations, and any other financial management matter.

SEC. 303. FINANCIAL STATEMENTS OF AGENCIES.

(a) PREPARATION OF FINANCIAL STATEMENTS.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 31, United States Code, is amended by adding at the end the following:

"§ 3515. Financial statements of agencies

"(a) Not later than March 31 of 1992 and each year thereafter, the head of each executive agency identified in section 901(b) of this title shall prepare and submit to the Director of the Office of Management and Budget a financial statement for the preceding fiscal year, covering—

"(1) each revolving fund and trust fund of the agency; and

"(2) to the extent practicable, the accounts of each office, bureau, and activity of the agency which performed substantial commercial functions during the preceding fiscal year.

"(b) Each financial statement of an executive agency under this section shall reflect—

"(1) the overall financial position of the revolving funds, trust funds, offices, bureaus, and activities covered by the statement, including assets and liabilities thereof;

"(2) results of operations of those revolving funds, trust funds, offices, bureaus, and activities;

"(3) cash flows or changes in financial position of those revolving funds, trust funds, offices, bureaus, and activities; and

"(4) a reconciliation to budget reports of the executive agency for those revolving funds, trust funds, offices, bureaus, and activities.

"(c) The Director of the Office of Management and Budget shall prescribe the form and content of the financial statements of executive agencies under this section, consistent with applicable accounting principles, standards, and requirements.

"(d) For purposes of this section, the term 'commercial functions' includes buying and leasing of real estate, providing insurance, making loans and loan guarantees, and other credit programs and any activity involving the provision of a service or thing of value for which a fee, royalty, rent, or other charge is imposed by an agency for services and things of value it provides.

"(e) Not later than March 31 of each year, the head of each executive agency designated by the President may prepare and submit to the Director of the Office of Management and Budget a financial statement for the preceding fiscal year, covering accounts of offices, bureaus, and activities of the agency in addition to those described in subsection (a).".

(2) EFFECTIVE DATE OF SUBSECTION.—Subsection (e) of section 3515 of title 31, United States Code, as added by paragraph (1), shall take effect on the date on which a resolution described in subsection (b)(1) of this section is passed by the Congress and approved by the President.

(3) WAIVER OF REQUIREMENT.—The Director of the Office of Management and Budget may, for fiscal year 1991, waive the application of section 3515(a) of title 31, United States Code, as amended by this subsection, with respect to any revolving fund, trust fund, or account of an executive agency.

(b) RESOLUTION APPROVING DESIGNATION OF AGENCIES.—

(1) RESOLUTION DESCRIBED.—A resolution referred to in subsection (a)(2) is a joint resolution the matter after the resolving clause of which is as follows: "That the Congress approves the executive agencies designated by the President pursuant to section 3515(e) of title 31, United States Code.".

(2) INTRODUCTION OF RESOLUTION.—No later than the first day of session following the day on which the President submits to the Congress a designation of executive agencies authorized to submit financial statements under section 3515(e) of title 31, United States Code, as added by subsection (a), a resolution as described in paragraph (1) shall be introduced (by request) in the House by the chairman of the Committee on Government Operations of the House of Representatives, or by a Member or Members of the House designated by such chairman; and shall be introduced (by request) in the Senate by the chairman of the Committee on Governmental Affairs of the Senate, or by a Member or Members of the Senate designated by such chairman.

(3) REFERRAL.—A resolution described in paragraph (1), shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House (and all resolutions with respect to the same designation of executive agencies shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 60 calendar days of continuous session of the Congress following the date of such resolution's introduction.

(4) DISCHARGE OF COMMITTEE.—If the committee to which is referred a resolution introduced pursuant to paragraph (2) (or, in the absence of such a resolution, the first resolution introduced with respect to the same designation of executive agencies) has not reported such resolution or identical resolution at the end of 60 calendar days of continuous session of the Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(5) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEE; VOTE ON FINAL PASSAGE.—(A) When the committee has reported, or has been deemed to be discharged (under paragraph (4)) from further consideration of, a resolution described in paragraph (1), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(B) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(C) Immediately following the conclusion of the debate on the resolution and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (1), shall be decided without debate.

(E) If, prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same designation of executive agencies from the other House, then—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(F) It shall not be in order in either the House of Representatives or the Senate to consider a resolution described in paragraph (1), or to consider any conference report on such a resolution, unless the Director of the Office of Management and Budget submits to the Congress a report under subsection (e).

(c) REPORT ON SUBSTANTIAL COMMERCIAL FUNCTIONS.—Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall determine and report to the Congress on which executive agencies or parts thereof perform substantial commercial functions for which financial statements can be prepared practicably under section 3515 of title 31, United States Code, as added by this section.

(d) PILOT PROJECT.—(1) Not later than March 31 of each of 1991, 1992, and 1993, the head of the Departments of Agriculture, Labor, and Veterans Affairs, the General Services Administration, and the Social Security Administration shall each prepare and submit to the Director of the Office of Management and Budget financial statements for the preceding fiscal year for the accounts of all of the offices, bureaus, and activities of that department or administration.

(2) Not later than March 31 of each of 1992 and 1993, the head of the Departments of Housing and Urban Development and the Army shall prepare and submit to the Director of the Office of Management and Budget financial statements for the preceding fiscal year for the accounts of all of the offices, bureaus, and activities of that department.

(3) Not later than March 31, 1993, the head of the Department of the Air Force, the Internal Revenue Service, and the United States Customs Service, shall each prepare and submit to the Director of the Office of Management and Budget financial statements for the preceding fiscal year for the accounts of all of the offices, bureaus, and activities of that department or service.

(4) Each financial statement prepared under this subsection shall be audited in accordance with section 3521 (e), (f), (g), and (h) of title 31, United States Code.

(e) REPORT ON INITIAL FINANCIAL STATEMENTS.—Not later than June 30, 1993, the Director of the Office of Management and Budget shall report to the Congress on the financial statements prepared for fiscal years 1990, 1991, and 1992 under subsection (a) of section 3515 of title 31, United States Code (as added by subsection (a) of this section) and under subsection (d) of this section. The report shall include analysis of—

(1) the accuracy of the data included in the financial statements;

(2) the difficulties each department and agency encountered in preparing the data included in the financial statements;

(3) the benefits derived from the preparation of the financial statements; and

(4) the cost associated with preparing and auditing the financial statements, including a description of any activities that were foregone as a result of that preparation and auditing.

(f) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 35 of title 31, United States Code, is amended by inserting after the item relating to section 3514 the following:

"3515. Financial statements of agencies.".

SEC. 304. FINANCIAL AUDITS OF AGENCIES.

(a) IN GENERAL.—Section 3521 of title 31, United States Code, is amended by adding at the end the following new subsections:

"(e) Each financial statement prepared under section 3515 by an agency shall be audited in accordance with applicable generally accepted government auditing standards—

"(1) in the case of an agency having an Inspector General appointed under the Inspector General Act of 1978 (5 U.S.C. App.), by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

"(2) in any other case, by an independent external auditor, as determined by the head of the agency.

"(f) Not later than June 30 following the fiscal year for which a financial statement is submitted under section 3515 of this title by an agency, the person who audits the statement for purpose of subsection (e) shall submit a report on the audit to the head of the agency. A report under this subsection shall be prepared in accordance with generally accepted government auditing standards.

"(g) The Comptroller General of the United States—

"(1) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

"(2) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the agency which prepared the statement, regarding the results of the review and make any recommen-

dation the Comptroller General considers appropriate; and

"(3) may audit a financial statement prepared under section 3515 of this title at the discretion of the Comptroller General or at the request of a committee of the Congress.

An audit the Comptroller General performs under this subsection shall be in lieu of the audit otherwise required by subsection (e) of this section. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

"(h) Each financial statement prepared by an executive agency for a fiscal year after fiscal year 1991 shall be audited in accordance with this section and the plan required by section 3512(a)(3)(B)(viii) of this title.".

(b) WAIVER OF REQUIREMENTS.—The Director of the Office of Management and Budget may waive application of subsections (e) and (f) of section 3521 of title 31, United States Code, as amended by this section, to a financial statement submitted by an agency for fiscal years 1990 and 1991.

SEC. 305. FINANCIAL AUDITS OF GOVERNMENT CORPORATIONS.

Section 9105 of title 31, United States Code, is amended to read as follows:

"§ 9105. Audits

"(a)(1) The financial statements of Government corporations shall be audited by the Inspector General of the corporation appointed under the Inspector General Act of 1978 (5 U.S.C. App.) or by an independent external auditor, as determined by the Inspector General or, if there is no Inspector General, by the head of the corporation.

"(2) Audits under this section shall be conducted in accordance with applicable generally accepted Government auditing standards.

"(3) Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the head of the Government corporation, to the Chairman of the Committee on Government Operations of the House of Representatives, and to the Chairman of the Committee on Governmental Affairs of the Senate.

"(4) The Comptroller General of the United States—

"(A) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

"(B) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the Government corporation which prepared the statement, regarding the results of the review and make any recommendation the Comptroller General of the United States considers appropriate; and

"(C) may audit a financial statement of a Government corporation at the discretion of the Comptroller General or at the request of a committee of the Congress.

An audit the Comptroller General performs under this paragraph shall be in lieu of the audit otherwise required by paragraph (1) of this subsection. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

"(5) A Government corporation shall reimburse the Comptroller General of the United States for the full cost of any audit conducted by the Comptroller General under this subsection, as determined by the Comptroller General. All reimbursements received under this paragraph by the Comptroller General of the United States shall be deposited in the Treasury as miscellaneous receipts.

"(b) Upon request of the Comptroller General of the United States, a Government corporation shall provide to the Comptroller General of the United States all books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the Government corporation and its auditor that the Comptroller General of the United States considers necessary to the performance of any audit or review under this section.

"(c) Activities of the Comptroller General of the United States under this section are in lieu of any audit of the financial transactions of a Government corporation that the Comptroller General is required to make under any other law.".

SEC. 306. MANAGEMENT REPORTS OF GOVERNMENT CORPORATIONS.

(a) IN GENERAL.—Section 9106 of title 31, United States Code, is amended to read as follows:

"§ 9106. Management reports

"(a)(1) A Government corporation shall submit an annual management report to the Congress not later than 180 days after the end of the Government corporation's fiscal year.

"(2) A management report under this subsection shall include—

"(A) a statement of financial position;

"(B) a statement of operations;

"(C) a statement of cash flows;

"(D) a reconciliation to the budget report of the Government corporation, if applicable;

"(E) a statement on internal accounting and administrative control systems by the head of the management of the corporation, consistent with the requirements for agency statements on internal accounting and administrative control systems under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255);

"(F) the report resulting from an audit of the financial statements of the corporation conducted under section 9105 of this title; and

"(G) any other comments and information necessary to inform the Congress about the operations and financial condition of the corporation.

"(b) A Government corporation shall provide the President, the Director of the Office of Management and Budget, and the Comptroller General of the United States a copy of the management report when it is submitted to Congress.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 91 of title 31, United States Code, is amended by striking the item relating to section 9106 and inserting the following:

"9106. Management reports.".

SEC. 307. ADOPTION OF CAPITAL ACCOUNTING STANDARDS.

No capital accounting standard or principle, including any human capital standard or principle, shall be adopted for use in an executive department or agency until such standard has been reported to the Congress and a period of 45 days of continuous session of the Congress has expired.

Amend the title so as to read: "An Act to amend title 31, United States Code, to improve the general and financial management of the Federal Government.".

The SPEAKER pro tempore. Is a second demanded?

Mr. SHAYS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. CONYERS] will be recognized for 20 minutes, and the gentleman from Connecticut [Mr. SHAYS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Speaker, H.R. 5687, the Chief Financial Officers Act of 1990, passed the House on October 15, 1990. The final legislation has been only slightly modified to address the concerns of the other body and the administration.

The Chief Financial Officers Act is perhaps the most important legislation this Congress can pass to rein in the massive amounts of fraud, waste, abuse, and mismanagement draining the Federal Treasury and undermining public confidence in Government. It will guard against future S&L's, HUD's, and other liabilities we face which are estimated to cost hundreds of billions of dollars in the coming years by making these problems more visable sooner.

I want to acknowledge the major contribution of the ranking minority member of the Government Operations Committee, the gentleman from New York [Mr. HORTON], in working with me to craft this legislation. My distinguished colleague has worked tirelessly on this issue for the past year and I thank him for his efforts.

Mr. Speaker, for the record I want to reaffirm the legislative history of section 303 of H.R. 5687, House of Representatives Report 101-818, part 1. Section 303 creates a new section 3515 of title 31, United States Code, which sets the statutory parameters under which all Federal agencies shall prepare financial statements of their activities.

Specifically, under section 3515(a) as added by section 303(a) of H.R. 5687, an agency is required to prepare not later than March 31 of 1992 and each year thereafter, a financial statement for revolving funds, trust funds, or for the accounts of all offices, bureaus, and activities of the agency which perform substantial commercial functions during the preceding fiscal year. This requirement clearly provides statutory authority for these particular matters.

In sections 303(d) (1), (2) and (3) of H.R. 5687, pilot projects are established for the purpose of requiring six departments, two administrations and two services to prepare financial statements for specific fiscal years for the accounts of all of the offices, bureaus,

and activities of that department, administration or service. These agencies were chosen because they have either previously prepared such a consolidated financial statement or they are in the process of preparing one.

Statutory authority for the offices, bureaus, and activities of all other departments and agencies to prepare financial statements is established under section 3515(e) of title 31, United States Code, as amended by H.R. 5687, and under section 303(a)(2) of the act, which establishes a process for enacting section 3515(e). This process has two requirements before all agencies can proceed with financial statements:

One, the Office of Management and Budget must conduct a study and report to the Congress on the utility, reliability and cost-benefit of preparing financial statements under section 3515 (a) of title 31, and under the pilot projects outlined in sections 303(d) (1), (2) and (3) OF H.R. 5687; and

Two, the President must submit a joint resolution to the Congress identifying the agencies which are authorized to prepare financial statements for all of their activities, and the Congress will vote on this highly privileged resolution after it has been discharged by the Committee on Government Operations in the House and the Committee on Governmental Affairs in the other body.

This elaborate process was created as a result of a great deal of negotiation within the Committee on Government Operations and between the Committee and the Administration. It was done with clear statutory intent: to prohibit the Office of Management and Budget from administratively requiring agencies to prepare financial statements. The clear prescription for those agencies and activities which would be required to prepare financial statements was due to the committee's strong concerns about the use and potential abuse of financial statements. The legislative report and the hearing record from September 17 and 18, 1990 which resulted in this legislation amply document those concerns.

Page 26 of the committee report on H.R. 5687, of which there were no dissenting views, clearly states the statutory proscription on the President's authority:

Section 3515(e) establishes three conditions which are to be met before all agencies shall be allowed to prepare comprehensive financial statements. First, the OMB Director must submit the report analyzing the costs versus benefits, and other matters, of preparing agency-wide financial statements required by section 303(b)(2) of this act. Second, the accounting study required by section 308 of this act must be completed and the standards approved. Third, the Congress must pass, and the President must sign, a resolution by December 31, 1993 which affirms the preparation and audit of agency-wide financial statements. Until all three conditions have been met, the committee intends this act to prohibit the President from unilateraly requiring offices, bureaus, and activities of agencies, other than those explicitly stated in section 3515(a) and (b), from preparing financial statements.

I would like to note that the report is based on the bill reported out of the committee on September 26, 1990. Changes made to the legislation prior to House floor consideration and as a result of revisions made in the other body resulted in the addition and deletion of some provisions and the reordering of others. As a result, section and subsection citations in the final passed bill may not exactly correspond to those in the committee report.

Mr. Speaker, I reserve the balance of my time.

Mr. SHAYS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5687, urge its adoption and ask unanimous consent that the statement of my friend and colleague, FRANK HORTON, the ranking minority member of the Committee on Government Operations, be included in the RECORD immediately following my statement.

The gentleman from New York [Mr. HORTON] has worked long and hard to see the chief financial officer legislation become a reality. He has championed the CFO concept for years and has played an integral role in bringing this legislation to the floor.

As a Member of Congress who was actively involved in the Committee on Government Operations' hearings on the HUD scandal, I can vouch for the critical need for this type of legislation. With better financial accounting and oversight some of the problems at HUD might have been caught before they reached such monstrous proportions.

I support this bill and urge its adoption. And thank the distinguished chairman of the Government Operations Committee, Mr. CONYERS, for his invaluable assistance in seeing this legislation become law.

□ 0030

Mr. Speaker, I yield back the balance of my time.

Mr. HORTON. Mr. Speaker, I rise again in strong support of H.R. 5687, the Chief Financial Officers Act of 1990, which has been passed by unanimous consent in the other body. With this vote, the House has the opportunity to send the President a piece of legislation which will go a long way toward eradicating waste, fraud, abuse, and mismanagement in our Federal Government. I commend the chairman of this committee, Mr. CONYERS, for his patience and cooperation while this bill was developed into its present form. All in all, the process took almost 2 years—the entire 101st Congress. I am happy we can close this Congress with such a positive piece of legislation.

Since being first passed by the House on October 15, this bill has undergone some minor changes. I am happy to say, though, that these changes have been sufficient to obtain the full support of the Comptroller General of the United States, Charles Bowsher, who has worked longer and harder than anyone else I know for comprehensive financial management legislation. I appreciate his efforts over the years, and I especially appreciate his willingness to work with our staffs and lend his support to the bill.

In my statement on the floor last week, when this bill first passed this House, I described the legislation in detail and remarked on my understanding of its effects on the balance of powers and organization of our Government. I would like to incorporate those comments by reference here today. This bill is technical in places, as is any comprehensive piece of Government-wide legislation. But its effects will be clear. This legislation will be a breath of fresh air in the halls of Federal Government management.

Mr. Speaker, I urge all Members to support H.R. 5687. Thank you.

Mr. CONYERS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ECKART). The question is on the motion offered by the gentleman from Michigan [Mr. CONYERS] that the House suspend the rules and pass the bill, H.R. 5687, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on H.R. 5687, the bill just passed.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT 1991

Mr. LEHMAN of Florida. Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 5229) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1991, and for other purposes, with a Senate amendment to the House amendment to the amendment of the Senate numbered 7 and concur in the Senate amendment to the House amendment to the amendment of the Senate numbered 7.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to Senate amendment No. 7, as follows:

Senate amendment to House amendment to Senate amendment No. 7:

Resolved, That the Senate agree to the amendment of the House of Representatives to the amendment of the Senate numbered 7 to the bill (H.R. 5229) entitled "An Act

making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1991, and for other purposes".

Resolved, That the Senate agree to the amendment of the House of Representatives to the amendment of the Senate numbered 4 with an amendment as follows: At the end of title III, add the following new section:

Sec.

(a) Notwithstanding any other provision of law, for the period January 1, 1992 through December 31, 1992, the Secretary of Transportation shall reduce the aggregate amount which a State may obligate for Federal-aid highways and highway safety construction programs by 25 percent if such State has a public authority which provides mass transportation for an urbanized area of such State with a population of 3,000,000 or more as determined under the 1980 decennial census of the United States, and if by October 1, 1991—

(1) laws of State do not authorize a general tax-based source of revenues to take effect on or before January 1, 1992, dedicated to paying the non-Federal share of projects for mass transportation eligible for assistance under the Urban Mass Transportation Act of 1964; or

(2) the laws of such State do not authorize the establishment of regional or local tax-based sources of revenues dedicated to pay such non-Federal share or for paying operating expenses of mass transit service so as to satisfy financial capacity standards as may be required by the Secretary of Transportation.

(b) For purposes of this section, the terms "mass transportation," "State," and "urbanized areas" have the meaning such terms have under section 12 of the Urban Mass Transportation Act of 1964.

(c) Any withholding defined under this section shall be waived if the Governor of the State—

(i) submits to the Secretary by October 1, 1991, a written certification stating that he is opposed to the enactment in his State of a law described in subsections (a) (1) and (2) and that funding as described in subsections (a) (1) and (2) would not improve public transportation safety.

(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution by a simple majority expressing its opposition to a law described in subsections (a) (1) and (2).

(d) This section shall remain in effect until December 31, 1992.

Mr. LEHMAN of Florida (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment to the House amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. ECKART). Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. LEHMAN] is recognized for 30 minutes.

Mr. LEHMAN of Florida. Mr. Speaker, I have no need for the 30 minutes, and I reserve the balance of my time.

The SPEAKER pro tempore. Does the gentleman from Virginia wish time?

Mr. WOLF. I have no request for time, Mr. Speaker.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. LEHMAN].

The motion was agreed to.

A motion to reconsider was laid on the table.

SOLAR, WIND, AND GEOTHERMAL POWER PRODUCTION INCENTIVES ACT OF 1990

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 4808) to encourge solar, wind, waste, and geothermal power production by removing the size limitation contained in the Public Utility Regulatory Policies Act of 1978.

The Clerk read as follows:

Senate amendment:

Page 7, strike out lines 12 to 18, and insert:

SEC. 6. RIGHT-OF-WAY USE.

(a) The proposed alignment of the Harold T. (Bizz) Johnson California-Pacific Northwest Intertie line authorized by Public Laws 98-360 and 99-88 within Contra Costa County, California is hereby rejected.

(b) The Secretary of Energy, acting through the Western Area Power Administration, in consultation with all Intertie project participants, shall, prior to January 30, 1991, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a proposed realignment of the Intertie within Contra Costa County, California.

(c) To the maximum extent practicable, the proposed realignment shall be consistent with the needs of affected landowners, Easy Bay Regional Park District, the environment, and system security and reliability.

(d) No action shall be taken to implement the proposed realignment prior to March 1, 1991.

The SPEAKER pro tempore. Is a second demanded?

Mr. LENT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There is no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes, and the gentleman from New York [Mr. LENT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill, H.R. 4808, was passed by the House on Tuesday, October 23. The Senate has now passed it with a small amendment to section 6 which was cleared with both sides in advance. Therefore, I urge my colleagues to vote for passage of this important energy bill and send it on to the President for his signature.

H.R. 4808 will permit and encourage the greater use of solar and renewable energy by removing size limitations under the Public Utility Regulatory Policies Act [PURPA].

PURPA was enacted in 1978 to create a market for solar, wind and other renewable energy power plants, among other purposes. It was hoped that by requiring utilities to purchase the power from renewable energy power plants, we could make a giant leap forward in the use of clean, domestic renewable energy.

At the time PURPA passed, there were size limits placed on renewable energy facilities that could qualify for PURPA's benefits. Since that time, these technologies have greatly improved and costs have come down. One solar developer, for example, estimates that allowing larger plants can help them drop their costs by two cents per kilowatt hour. Similar savings are possible in the wind, waste and geothermal energy industries as well. Lifting this size limitation therefore will allow renewable energy to make a larger contribution to our national energy supply at a lower cost.

Passage of this bill is extremely timely. Oil prices have risen in recent months to the levels experienced when we first passed PURPA in 1978. It is as clear now as it was then that this country needs to wean itself from imported sources of energy.

Second, Congress this week enacted the first sweeping reform of the Clean Air Act since the 1970's. It is appropriate that at same time we unshackle these renewable energy technologies that can lead to the ultimate solution to clean air.

I want to make two points clear about this legislation. Under the waste technologies in this bill, the Committee on Energy and Power specifically wanted to include energy from waste coal and scrap tires. Second, in the case of geothermal power plants, I believe that beginning to drill a well constitutes commencing construction.

I urge my colleagues to vote for passage of this important energy legislation.

Mr. LENT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is an excellent piece of legislation. It is a bipartisan piece of legislation. It will help our Nation with respect to renewable energy, and we urge its passage.

Mr. Speaker, I yield back the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Indiana [Mr. SHARP] and the gentleman from Micnigan [Mr. DINGELL] are in full accord on this legislation and support it completely.

Mr. MILLER of California. Mr. Speaker, the floor substitute for H.R. 4808 also contains a

provision that relates to the construction of the California-Oregon Transmission Project [COTP] transmission line within Contra Costa County, CA. This transmission line was authorized by Public Laws 98-360 and 99-88.

Under the original plan for the construction of the COTP the line was to be constructed entirely within an existing Western Area Power Administration right-of-way. Subsequently, a decision was made to build the line in a new right-of-way once it reached Contra Costa County.

Following the decision to construct the COTP line along an entirely new right-of-way I requested that the project managers take every possible action to accommodate the interests of the many parties and interests within Contra Costa County that would be adversely affected by the new line.

Construction of the line in the current proposed right-of-way, rather than the existing Western Area Power Administration corridor, could lead to the destruction of precious wetlands and wildlife habitat, stymie the expansion of the East Bay Regional Park District, and have an adverse impact on the interests of many affected landowners.

I also requested that the COTP project managers provide clear justification for the need to construct the line in a new right-of-way rather than the existing Western Area Power Administration right-of-way.

Unfortunately, the project managers of the COTP were either unwilling or unable to accommodate the legitimate interests of Contra Costa County residents concerning the new power line. They also failed to clearly justify the need to construct the COTP outside the existing Western Area Power Administration right-of-way, as originally proposed.

The provision contained in H.R. 4808 is an attempt to solve this problem. First, it prohibits the construction of the COTP within Contra Costa County on the current proposed right-of-way.

Second, the Western Area Power Administration, in consultation with all COTP participants, is directed to develop a new proposed realignment of the COTP right-of-way within Contra Costa County. The proposed realignment plan must be submitted to Congress prior to January 30, 1991. In order to give the Congress time to review the proposed realignment, no action may be taken to implement the realignment prior to March 1, 1991.

Third, the provision requires that the proposed realignment shall, to the maximum extent practicable, be consistent with the needs of affected landowners, East Bay Regional Park District, the environment, and system security and reliability.

Based on the information currently available, it appears that the alignment of the COTP line within Contra Costa County that is most consistent with the above-mentioned needs is the use of the existing Western Area Power Administration right-of-way.

Mr. Speaker, I believe that this provision will provide for a sensible solution to the many problems currently surrounding the construction of the COTP within Contra Costa County.

Mr. MARKEY. Mr. Speaker, I have no requests for time and yield back the balance of my time.

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 4808.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the legislation just considered and adopted.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

INDEPENDENT SAFETY BOARD ACT AMENDMENTS OF 1990

Mr. ANDERSON. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 3012) to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1991, 1992, and 1993, and for other purposes, as amended.

The Clerk read as follows:

S. 3012

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Independent Safety Board Act Amendments of 1990".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Section 309(a) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1907(a)) is amended by adding at the end the following: "There are authorized to be appropriated for the following: "There are authorized to be appropriated for the purposes of this Act not to exceed $32,000,000 for the fiscal year ending September 30, 1991; $38,600,000 for the fiscal year ending September 30, 1992; and $38,800,000 for the fiscal year ending September 30, 1993, such sums to remain available until expended.".

EXAMINATION AND TESTING

SEC. 3. (a) Section 304(b)(2) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)(2)) is amended by inserting "vessel," immediately before "vehicle" each place it appears.

(b) Section 304(b)(2) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)(2)) is amended by adding at the end the following new sentences: "The Board shall have sole authority to determine the manner in which testing will be carried out under this paragraph and under section 701(c) of the Federal Aviation Act of 1958, including determining the persons who will conduct the test, the type of test which will be conducted, and the persons who will witness the test. Such determinations are committed to the discretion of the Board and shall be made on the basis of the needs of the investigation being conducted by the Board and, where applicable, the provisions of this paragraph.".

COCKPIT VOICE RECORDER RECORDINGS AND TRANSCRIPTIONS

SEC. 4. Section 306 of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1905) is amended by striking subsection (c) and inserting in lieu thereof the following:

"(c) PUBLIC DISCLOSURE OF COCKPIT VOICE RECORDER RECORDINGS AND TRANSCRIPTIONS.—(1) Notwithstanding any other provision of law, the Board shall withhold from public disclosure cockpit voice recorder recordings and transcriptions, in whole or in part, of oral communications by and between flight crew members and ground stations, that are associated with accidents or incidents investigated by the Board.

"(2) Portions of a transcription of oral communications described in paragraph (1) which the Board determines relevant and pertinent to the accident or incident investigation shall be made available to the public by the Board—

"(A) if the Board conducts a public hearing with respect to such accident or incident, at the time of such hearing; and

"(B) if the Board does not conduct such a public hearing, at the time when a majority of other factual reports regarding the accident or incident is placed in the public docket.

"(3) Nothing in this section shall restrict the Board at any time from referring to cockpit voice recorder information in making recommendations.

"(d) USE OF COCKPIT VOICE RECORDER RECORDINGS AND TRANSCRIPTIONS IN JUDICIAL PROCEDURES.—(1) Except as provided in this subsection, in a judicial proceeding there shall not be discovery by a party—

"(A) of portions of cockpit voice recorder recordings and transcriptions other than such portions made available to the public by the Board under subsection (c)(2); and

"(B) of cockpit voice recorder recordings.

"(2) Subject to paragraph (4), a court may permit discovery of cockpit voice recorder transcriptions by a party if the court, after an in camera review of such transcriptions, finds that—

"(A) the portions of the transcriptions made available to the public under subsection (c) do not provide the party with sufficient information for the party to receive a fair trial; and

"(B) discovery of additional portions of transcriptions is necessary to provide the party with sufficient information for the party to receive a fair trial.

No cockpit voice recorder transcriptions prepared by or under the direction of the Board, other than portions made available by the Board under subsection (c), shall be required to be produced for an in camera review, or shall be subject to discovery, unless the cockpit voice recorder recordings are not available.

"(3) Subject to paragraph (4), a court may permit discovery of cockpit voice recorder recordings by a party if the court, after an in camera review of such recordings, finds that—

"(A) the portions of the transcriptions made available to the public under subsection (c) and to the party through discovery under paragraph (2) do not provide the party with sufficient information for the party to receive a fair trial; and

"(B) discovery of cockpit voice recorder recordings is necessary to provide the party with sufficient information for the party to receive a fair trial.

"(4) If, under paragraph (2) or (3), there is discovery in a judicial proceeding of a cockpit voice recorder recording or any portion of a cockpit voice transcription not made available to the public under subsection (c)(2), the court shall issue a protective order to limit the use of such recording or portion to the judicial proceeding and to prohibit dissemination of such recording or portion to any person who does not need access to such recording or portion for such proceeding.

"(5) A court may permit admission of a cockpit voice recorder recording or any portion of a cockpit voice recorder transcription not made available to the public under subsection (c)(2) into evidence in a judicial proceeding, only if the court places such recording or portion under seal to preclude the use of such recording or portion for purposes other than for such proceeding.".

TOXICOLOGICAL TESTING OF TRANSPORTATION DEPARTMENT EMPLOYEES

SEC. 5. (a) When the Department of Transportation, including any of its agencies, conducts post-accident or post-incident toxicological testing of an employee of the Department, specimen collection shall be accomplished as soon as practicable after the accident or incident, and the Department shall endeavor when feasible to complete such collection within four hours afer the accident or incident.

(b) The head of each agency within the Department of Transportation shall send to the Office of the Secretary of Transportation a report on the circumstances concerning the amount of time required to complete specimen collection related to a toxicological test which is conducted on an employee within that agency who is reasonably associated with the circumstances of an accident or incident within the investigative jurisdiction of the National Transportation Safety Board.

(c) Any failure to comply with the requirements of this section may not be asserted, by the subject of such testing, as a claim, cause of action, or defense in any administrative or judicial proceeding.

BOARD ACCESS TO TOXICOLOGICAL TESTING RECORDS

SEC. 6. Section 304(b) of the Independent Safety Board Act of 1974 (49 App. U.S.C. 1903(b)) is amended by redesignating paragraph (11) as paragraph (12) and by inserting immediately after paragraph (10) the following new paragraph:

"(11)(A) Notwithstanding section 503(e) of the Act entitled 'An Act making supplemental appropriations for the fiscal year ending September 30, 1987, and for other purposes', approved July 11, 1987 (5 U.S.C. 7301 note), the Board is authorized to obtain from the Secretary of Transportation, by written request, and shall be furnished—

"(i) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, which is conducted on an employee of the Department of Transportation, including any of its agencies, pursuant to post-accident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when that employee is reasonably associated with the circumstances of an accident or incident within the investigative jurisdiction of the Board; and

"(ii) any laboratory record providing documentation that such test is confirmed positive.

"(B) Except as provided in subparagraph (C), the Board shall maintain in confidence and exempt from public disclosure in accordance with section 552(b)(3) of title 5, United States Code—

"(i) any laboratory record, made available under subparagraph (A), of a confirmed and verified toxicological test which reveals medical use of a drug permitted under applicable regulations; and

"(ii) any medical information provided by the tested employee in connection with such test or in connection with a review of such test.

"(C) The Board may use such a laboratory record for development of any evidentiary record in an investigation by the Board of an accident or incident if—

"(i) the fitness of the employee who is the subject of the toxicological testing is at issue in the investigation; and

"(ii) the use of that record is necessary in the development of such evidentiary record.".

ODOMETER MILEAGE DISCLOSURE

SEC. 6. (a) Section 408(d)(2)(C) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(d)(2)(C)) is amended by striking the third sentence and inserting in lieu thereof the following: "The rule, consistent with the purposes of this Act and the need to facilitate enforcement thereof, shall prescribe that the form be issued by the State to the transferee in accordance with paragraph (2)(A)(i), shall prescribe that the person granted such power of attorney shall retain a copy of such power of attorney and shall submit the original back to the State with a copy of the title showing the restatement of the mileage, and may prescribe that the State retain the power of attorney and the copy of the title for an appropriate period or that the State adopt alternative measures consistent with the purposes of this title, taking into consideration costs to the State. The rule shall not require that a vehicle be titled in the State in which the power of attorney was issued.".

(b) The amendment made by subsection (a) shall be effective on the date of enactment of this Act and the Secretary of Transportation shall implement the amended section by promulgating a revision of existing regulations within 6 months after such effective date. Such rule shall consider the need to facilitate normal commercial transactions in the sale or exchange of motor vehicles.

REPORT ON LOW-LEVEL RADIOACTIVE WASTE TRANSPORTATION

SEC. 7. Within 12 months after the date of enactment of this Act, the Secretary of Transportation shall conduct and complete a thorough study of and prepare a report to Congress on the transportation of low-income radioactive waste, specifically including—

(1) an evaluation of the feasibility of requiring States that transport waste to a regional disposal facility established and operated under an interstate compact pursuant to section 4 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d) to use, to the maximum extent practicable, routes which are within the geographic borders of the States that are parties to the compact;

(2) factual information on the volume of low-level radioactive waste being shipped currently and estimates of such shipments for the calendar years 1991 through 1995;

(3) a list of the routes proposed to be used for shipment of such waste to the disposal facilities operated under such an interstate compact;

(4) a review of the process for determining and approving such routes;

(5) a review of the processes for resolving any disputes that may arise, between States and between Commissions created by such interstate compacts, regarding such routes; and

(6) identification of the public safety risks associated with possible accidents in transporting such waste and of the response plans to be employed in the event of a transportation accident.

INTERCITY RAIL PASSENGER SERVICE

SEC. 8. (a) Section 402(d)(1) of Rail Passenger Service Act (45 U.S.C. 562(d)(1)) is amended by adding at the end the following new sentence: "The Corporation may subsequently convey title or other interest in such property to a third party, if such reconveyance is found by the Commission to further the purposes of this Act.".

(b) The amendment made by subsection (a) shall apply to any proceeding instituted before, on, or after the date of enactment of this Act (including any such proceeding pending before any Federal court on such date of enactment).

COMMUTER RAIL SERVICE

SEC. 9. Withstanding any other provision of law, the National Railroad Passenger Corporation shall not discontinue commuter rail service between Valparaiso, Indiana and Chicago, Illinois, before May 6, 1991.

The SPEAKER pro tempore (Mr. DONNELLY). Is a second demanded?

Mr. HAMMERSCHMIDT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. ANDERSON] will be recognized for 20 minutes, and the gentleman from Arkansas [Mr. HAMMERSCHMIDT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. ANDERSON].

Mr. ANDERSON. Mr. Speaker, I yield 10 minutes to the gentleman from Ohio [Mr. ECKART], the distinguished member of the Subcommittee on Transportation and Hazardous Materials, and I ask unanimous consent that he be allowed to control that time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. ANDERSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support this important bill to reauthorize the National Transportation Safety Board for fiscal years 1991, 1992, and 1993. The bill was jointly reported by the Committee on Energy and Commerce and I wish to thank Chairman DINGELL and Chairman LUKEN and their fine staffs for their cooperation and their constructive suggestions for improving the bill.

The Safety Board is a relatively small agency. Former Board Chairman Jim King was fond of remarking that the entire annual budget of the Na-

tional Transportation Safety Board would run the Department of Transportation for about 3 minutes.

Although the National Transportation Safety Board is a small agency, it has crucial responsibilities for the safety of the traveling public. The Board is responsible for finding the causes of accidents so that changes in policy, training or equipment design can be made to prevent similar accidents in the future. The recommendations of the National Transportation Safety Board have resulted in safety improvements which have saved thousands of lives.

During the 1980's administration budget policies deprived the National Transportation Safety Board of the staff and resources it needs. Because of the lack of adequate staff, accident investigation reports and recommendations have come out more slowly than they should have. Our bill would remedy this and permit necessary increases in NTSB staffing. The legislation authorizes $32 million for the Board for fiscal year 1991, $38.6 million for fiscal year 1992, and $38.8 million for fiscal year 1993.

The bill also permits the Board to obtain the results of toxicological tests conducted by the Department of Transportation on DOT employees who are involved in an accident. This will facilitate accident investigations in which drug use is suspected.

The legislation prohibits the disclosure of the transcripts of cockpit voice recordings until the Board holds a hearing on an accident or until a majority of the other evidence is released. This will enable the public to receive a complete and accurate picture of all the evidence at one time, rather than focusing on the often sensational transcription of the flight crew's conversations, which may not have a bearing on the accident.

Another provision in the bill clarifies that the Board has authority to conduct tests and examinations of vessels in cases in which the Board has jurisdiction to investigate a maritime accident. The bill also clarifies that when the Board does conduct physical testing of aircraft and vehicles involved in accidents, the Board has the sole authority to determine the manner in which testing will be conducted. There have been recent cases in which courts have interfered with NTSB investigations at the request of litigants in accident cases. We believe that the needs of the public to learn the cause of an accident must, if necessary, take priority over the needs of parties to private litigation.

In conclusion, the bill now before us will provide the resources and legislative authority necessary for the Board to carry out its important safety responsibilities. I urge passage of the bill and reserve the balance of my time.

□ 0040

Mr. HAMMERSCHMIDT. Mr. Speaker, I yield 10 minutes of my time to the distinguished gentleman from Kansas [Mr. WHITTAKER], a member of the Committee on Energy and Commerce.

The SPEAKER pro tempore. Without objection, the gentleman from Kansas [Mr. WHITTAKER] may control the time.

There was no objection.

Mr. Speaker, I yield myself such time as I may consume.

Mr. HAMMERSCHMIDT. Mr. Speaker, this legislation reauthorizes the National Transportation Safety Board for another 3 years.

The NTSB is an independent agency. Its task is to investigate transportation accidents and incidents and make recommendations to improve safety. It is a small agency, but it plays an important role in enhancing transportation safety. Although its recommendations are not mandatory, about 80 percent of them are usually implemented.

Last year, the NTSB was authorized to receive $28.6 million. However, only $27.2 million was actually appropriated. This sort of reduced funding has been a chronic problem for this agency. It has caused staffing levels to drop and has hurt morale.

The bill before us now would help to correct this problem. It would set the NTSB's authorization at $32 million in fiscal year 1991, $38.6 million in fiscal year 1992, and $38.8 million in fiscal year 1993. This will help to restore and rejuvenate some of the talent at that agency.

This bill also includes two legislative provisions worth noting.

The first would limit the release of cockpit voice recorder—CVR—tapes and transcripts. This is needed to prevent the kind of embarrrassment that was caused last year when a court released portions of a CVR recording that were not in any way related to the accident.

The second legislative change would enable the NTSB to obtain the results of reasonable suspicion and postaccident drug tests that are done on air traffic controllers and other DOT employees. This will aid the Board in its determination of the cause of accidents.

This provision has been revised somewhat since our committee reported the bill back in June. At that time, I offered an amendment to ensure that the NTSB could obtain both positive and negative drug trests. I did this because, under current rules, drug tests can be conducted as much as 32 hours after the accident. It seemed that such a delay might mean that any drugs could be largely eliminated from a person's system. A test that is considered to be negative, however, might still indicate a trace of drugs that could be relevant in determining the cause of the accident. Accordingly, giving NTSB access to negative drug tests seemed appropriate.

Unfortunately, others with an interest in this issue did not agree. As a result, DOT and NTSB got together and developed a new drug testing provision. This provision gives NTSB access to only positive drug tests. But it also requires that the test be conducted within 4 hours of the accident whenever feasible.

This new 4-hour testing requirement largely takes care of the problems that led me to propose the negative-testing amendment in committee. Therefore, I support the revised drug-testing provision in this bill.

I understand that there has also been some disagreement between NTSB and DOT over the reasonable suspicion portion of the drug testing language. DOT is apparently of the view that the Board should not have access to the reasonable suspicion tests that were done on employees before the accident if the tests were not directly related to the accident. But I agree with the NTSB that these tests may show a pattern of drug use that could be relevant to finding the cause of the accident. Therefore, I am pleased that the reasonble suspicion language is still included in the bill.

Mr. Speaker, I support this bill and urge its approval by the House.

Mr. ECKART. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 3012. I first want to commend our colleagues from the Committee on Public Works and Transportation, and particularly Chairman ANDERSON, Chairman OBERSTAR, Mr. HAMMERSCHMIDT, and Mr. CLINGER, in bringing this important measure to the floor. I also want to commend my colleagues from the Energy and Commerce Committee, Chairman DINGELL, Chairman LUKEN, Mr. LENT, and Mr. WHITTAKER, for their efforts in crafting this legislation. We have worked closely with the Public Works Committee on this legislation and both committees support the bill that is before us today.

Mr. Speaker, the National Transportation Safety Board [NTSB] is not a large agency. But I think that all Members of this Congress recognize the critical role the Board palys in investigating transportation accidents and making recommendations to improve transportation safety in our country.

We all remember the evacuation of 30,000 people at Miamisburg, OH. We continue to mourn the loss of 16 lives that were lost at Chase, MD. We are still trying to deal with all of the environmental consequences of the *Exxon Valdez* oil spill. The NTSB has been the leading investigator of these and thousands of other transportation ac-

cidents. The work of the Board is crucial to obtain a better understanding of why these accidents happened and how we can prevent similar catastrophes in the future.

The NTSB has been in existence since 1967. The Board was originally established as part of the Department of Transportation and was granted authority to investigate the probable cause of transportation accidents. In 1974, the Congress decided to ensure the independence of the Board and passed legislation that separated it from DOT.

NTSB has broad authority to investigate a variety of transportation accidents, including any serious railroad accident, highway grade-crossing accidents, and hazardous materials accidents. The Board is also empowered to undertake special studies and to make recommendations regarding transportation safety. Last year, the Board investigated over 2,500 transportation accidents, resulting in almost 500 recommendations to improve transportation safety practices.

Our committee and subcommittee are well acquainted with the NTSB. Officials from the Board have testified on a variety of transportation legislation recently considered by our committee, including drug and alcohol testing of railroad workers, hazardous materials transportation issues, and railroad safety matters in general. Our committee, the Congress, and the American public have benefited greatly from the Board's technical expertise in addressing the full range of transportation safety issues.

During the last Congress, we enacted legislation to reauthorize the Board's important functions. This bill will reauthorize the Board's activities through fiscal year 1993 and clarifies certain powers the Board has in exercising its responsibilities. Currently the Board has 326 employees, as compared to over 400 employees 10 years ago. This bill will allow the Board to hire nine accident specialists, nine technical specialists, and four legal specialists in the near future. This will better enable the Board to keep up with its burgeoning workload and to fulfill its legal responsibilities.

By passing this legislation today, we can ensure that the Board has adequate funding and authority to continue its critical work in transportation safety. I urge my colleagues to favorably support S. 3012 and reserve the balance of my time.

Mr. Speaker, I reserve the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to state my strong support for the prompt reauthorization of the National Transportation Safety Board, a small but vitally important agency. I also want to commend the leadership of both the Energy and Commerce Committee and the Public Works Committee for their efforts to move this important measure in a timely manner. In particular, I want to express my appreciation to our Transportation Subcommittee Chairman, Mr. LUKEN, with whom I have worked closely on this and other pieces of transportation legislation.

At this point I would like to engage Mr. SWIFT in a colloquy.

I would like to engage the Congressman in a moment's colloquy, with reference to the provision making post-accident and post-incident drug test results of Federal employees available to NTSB investigators. We were careful in 1987 to guard against misuse of employee drug test results for unintended purposes. On the other hand, an exception in aid of the NTSB's statutory responsibility to determine accident and incident causation strikes me as reasonable. Am I correct that we are only allowing the NTSB access to positive test results from a particular accident or incident they are investigating?

Mr. ECKART. The Congressman is quite correct. We are not modifying Federal employee protections in any respect other than to make available the positive drug test results from that particular accident or incident. Furthermore, this provision does not give the NTSB the authority to obtain any other test results on that individual. We understand that the position is consistent with that of the Department of Transportation.

Mr. Speaker, because NTSB is literally an agency "on call" to respond to a transportation accident at any time, it is especially important that we avoid any lapse in its authorization. We all want the NTSB to have the tools it needs to help make all forms of travel safer. I urge the prompt approval of this bill.

Mr. HAMMERSCHMIDT. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, with all due respect, I must disagree with the gentleman's interpretation. In order for the NTSB, which is an independent agency, to do its job properly, it must have access to all positive reasonable suspicion and post-accident drug tests. This should include tests performed on an employee before the accident.

Reasonable suspicion drug test results prior to the accident may show a pattern of drug use that is relevant to the determination of probable cause.

Mr. ANDERSON. Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota [Mr. OBERSTAR].

Mr. OBERSTAR. Mr. Speaker, I just want to concur in the remarks of the gentleman from Arkansas [Mr. HAMMERSCHMIDT]. That is our understanding on the committee. We had a very extensive discussion of this matter in our hearings, in our markup, in our report, and the interpretation of the gentleman is exact.

Mr. WHITTAKER. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. LENT].

Mr. LENT. Mr. Speaker, the reauthorization we are considering today applies to a Federal agency which is quite small, but which plays a vital role in the continuing effort to improve the safety of all forms of transportation. The National Transportation Safety Board is charged with investigating transportation accidents and recommending safety improvements, without allegiance to any cabinet department or any one mode of transportation.

Although we hear of the NTSB most often when it is called upon to investigate aircraft crashes, the Board also plays an important role in areas such as rail transportation. For example, the Board was an early proponent of using event recorders—or airline-style "black boxes"—to record key data in railroad accidents. Partly as a result of the Board's efforts, the Rail Safety Improvement Act of 1988, legislation approved by this committee and enacted into law, required that the Department of Transportation conduct a rulemaking on the use of such locomotive event recorders. In fact, several of the improvements in the Federal rail safety laws enacted in 1988 were at least partially the outgrowths of specific accident investigations conducted by the NTSB.

The reauthorization measure we are considering today carries the Board's charter forward for 3 fiscal years, while making various technical improvements in its statutory grant of authority. The vital safety work of this agency enjoys broad bipartisan support, and I urge the prompt approval of this legislation to reauthorize the NTSB.

Mr. Speaker, this is one of the last, if not the last, item of business within the jurisdiction of the Committee on Energy and Commerce to come to the House floor in the 101st Congress. Thus, I want to briefly note that we will be losing three of our very valuable Republican members of the committee. The gentleman from Kansas [Mr. WHITTAKER] and the gentleman from Utah [Mr. NIELSON] are retiring. I have great faith in the people of Iowa, and thus I fully expect, and certainly hope, that our third departing member, Mr. TAUKE, will be working with us in the 102d Congress as a Member of the other body.

All three departing members—Mr. WHITTAKER, Mr. TAUKE, and Mr. NIELSON—will be sorely missed. We wish them well and commend them for their service in and to the House. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. ANDERSON] that the House suspend the rules and pass the Senate bill, S. 3012, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. CLINGER. Mr. Speaker, S. 3012 reauthorizes the National Transportation Safety Board through fiscal year 1993. Its authorizations provide a significant but necessary increase in funding. The bill also amends public law with respect to the public dissemination of cockpit voice recorder transcripts, and it compels the Department of Transportation to provide toxicological records of persons associated with accident investigations.

The NTSB is an independent agency having less than 400 employees. Yet, week after week, we in Congress, the Government, and indeed the public rely on the NTSB to provide factual, unbiased, findings and recommendations arising from accidents and incidents. Their advocacy of safety-driven changes in design and operation of most every facet of our transportation infrastructure has vastly improved the safety of the traveling public.

With respect to the cockpit transcripts, Members may recall about 2 years ago a court order in Texas directing the release of the cockpit transcripts and recordings that contained a number of nonpertinent comments. The bill before us in no way abridges the public's right to know, but does protect airline personnel from what may otherwise be considered unwarranted access to private conversations.

Finally, a provision in this legislation compels the Department of Transportation to provide laboratory records of toxicological tests of persons, including Federal employees, who are associated with accident investigations. Test results will be protected from public disclosure, except for those findings that may have a bearing on the investigation.

Mr. Speaker, I am a cosponsor of this legislation. I encourage all Members to support it.

□ 0050

GENERAL LEAVE

Mr. ANDERSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore (Mr. DONNELLY). Is there objection to the request of the gentleman from California?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2754. An act to require the Secretary of the Treasury to mint coins in commemoration of the quincentenary of the discovery of America by Christopher Columbus and to establish the Christopher Columbus Fellowship Foundation, and

H.R. 4793. An act to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

The message also announced that the Senate had passed bills of the followng titles, in which the concurrence of the House is requested:

S. 280. An act to amend the Wild and Scenic Rivers Act by designating a segment of the Niobrara River in Nebraska as a component of the National Wild and Scenic Rivers System.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENROLLMENT OF H.R. 486, DEFENSE PRODUCTION ACT AMENDMENTS OF 1990

Ms. OAKAR. Mr. Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (H. Con. Res. 400) to authorize the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 486.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

Mr. WYLIE. Mr. Speaker, reserving the right to object, I do not intend to object, but I would ask the gentlewoman from Ohio to explain why she is bringing this up under unanimous consent.

Ms. OAKAR. Mr. Speaker, will the gentleman yield?

Mr. WYLIE. I yield to the gentlewoman from Ohio.

Ms. OAKAR. Mr. Speaker, I am bringing this up because in conjunction with the Senate and with the Defense Department and others, we have decided to change some of the language so that it is more acceptable. Words like "shall" will be changed to "may" and we are extending the act from 2 years to 3 years.

They are minor changes, I think, but they feel they are important changes, and in the spirit of trying to work together we are making those changes.

Mr. WYLIE. Further reserving the right to object, I want to compliment the gentlewoman from Ohio for agreeing to this. It shows a degree of compromise on her part.

We do need this bill. The Defense Production Act which passed this House could not be passed by the Senate, and I know the gentlewoman is changing the word "shall" to "may" as it applies to discretionary domestic sources.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. WYLIE. Of course, I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, it is our intention to allow this bill to go through, but I think that this now will be the last bill of the evening that we will allow to go through without any votes. From now on in, if they do bring legislation up, it would be our intention to get votes on further legislation in the hopes that maybe that would send a signal that it is time to wrap things up and go home.

Mr. WYLIE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 400

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill H.R. 486, an Act to amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes, shall make the following changes:

(1) In section 133 of the bill, strike out paragraph (3) of the amended section 703(a) of the Defense Production Act of 1950, and insert the following:

"(3) delegate only to an individual described in paragraph (1) the authority to establish policies and procedures for exercising authority under title I; and

(2) In section 136 of the bill, in the proposed section 722(a)(1) of the Defense Production Act of 1950, strike "shall provide" and insert "may provide".

(3) In section 136 of the bill, in the proposed section 722(a)(2) of the Defense Reduction Act of 1950, strike "shall" and insert "may".

(4) In section 136 of the bill, in the proposed section 722(b)(2)(A) of the Defense Production Act of 1950, after "REVIEW.—" strike "The" and insert "Effective on and after October 1, 1991, the".

(5) In section 136 of the bill, in the proposed section 722(b)(2)(A) of the Defense Production Act of 1950, after "pursuant to subsection (a)" strike "shall" and insert "may".

(6) In section 136 of the bill, in the proposed section 722(b)(2)(A)(iii) of the Defense Production Act of 1950, after "(iii)" insert "include".

(7) In section 136 of the bill, in the proposed section 722(b)(2)(B) of the Defense Production Act of 1950—

(A) before "6 MAJOR WEAPON SYSTEMS" insert "NOT MORE THAN";

(B) strike "the Secretary of each military department to incorporate in such system a complete" and insert "an"; and

(C) strike "of 2 weapons of such" and insert "for not more than 2 weapons of each military".

(8) In section 136 of the bill, in the proposed section 722(f) of the Defense Production Act of 1950, before the period at the end, insert ", of which not more than $3,000,000 shall be available for purposes of subsection (b)(2)".

(9) In section 162 of the bill, strike "1993" and insert "1992".

(10) In section 201(a) of the bill, strike "shall" and insert "shall to the maximum extent practicable".

(11) In section 201(b)(2)(C) of the bill, strike "not less than" and insert "not to exceed".

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENTS ACT OF 1990

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4793) to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Administration Reauthorization and Amendments Act of 1990".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.
TITLE I—AUTHORIZATION OF SMALL BUSINESS ADMINISTRATION PROGRAMS
Sec. 101. Authorizations.
Sec. 102. Disaster salaries and expenses.
TITLE II—AMENDMENTS TO THE SMALL BUSINESS ACT AND RELATED ACTS
PART A—SMALL BUSINESS ACT
Sec. 201. Small business development centers.
Sec. 202. Export revolving line of credit.
Sec. 203. Two-year rule for eligibility in the minority small business and capital ownership development program.
Sec. 204. Size determinations relating to tribally owned business concerns.
Sec. 205. Joint ventures with tribally owned participants in the 8(a) program.
Sec. 206. Surety bond waiver authority.
Sec. 207. Establishing award eligibility for contract opportunities competed under section 8(a).
Sec. 208. Bundling of contracts.
Sec. 209. Designated procurement center representatives.
Sec. 210. Nonmanufacturer rule.
Sec. 211. Commission on Minority Business Development.
Sec. 212. Sunset on authority to provide technical and managerial assistance through private sector sources.
PART B—SMALL BUSINESS INVESTMENT ACT
Sec. 214. Development company financings.
Sec. 215. Small business investment companies.
Sec. 216. Pilot Preferred Surety Bond Guarantee Program.
PART C—SMALL BUSINESS ADMINISTRATION MANAGEMENT
Sec. 221. Regulations.
Sec. 222. Small Business Administration Deputy Administrator.
PART D—DEMONSTRATION PROGRAMS AND STUDIES
Sec. 231. Small Business Technology Transfer Demonstration Program.
Sec. 232. Pilot Technology Access Program.
Sec. 233. Feasibility study of business cooperation network.
Sec. 234. Study on impact of electronic data interchange technology.
PART E—REPEALERS AND TECHNICAL AMENDMENTS
Sec. 241. Department of Defense procurement reporting.
Sec. 242. Expired provision.
Sec. 243. Reporting of subcontracting activity.
Sec. 244. Notices of proposed procurement opportunities.
Sec. 245. Time limit on secondary market sales.
TITLE III—ASSISTANCE FOR RURAL SMALL BUSINESS CONCERNS
Sec. 301. Short title.
Sec. 302. Establishment of Office of Rural Affairs.
Sec. 303. SBDC rural activities.
Sec. 304. Catalog of programs to assist rural small business concerns.
Sec. 305. Area statistics in Presidential report.
Sec. 306. Rural small business conferences.
Sec. 307. Pilot rural development loan program.
Sec. 308. Rural small business incubators.
Sec. 309. Effects of deregulation on rural America.
Sec. 310. Tourism demonstration program.
Sec. 311. Rural tourism training program.
TITLE IV—MISCELLANEOUS AMENDMENTS
Sec. 401. Contract goals for minorities in printing related services.
Sec. 402. Suspension of liquidated damages under comprehensive small business subcontracting plans.
Sec. 403. Definition of architectural and engineering services.

TITLE I—AUTHORIZATION OF SMALL BUSINESS ADMINISTRATION PROGRAMS

SEC. 101. AUTHORIZATIONS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) by striking subsections (b) through (g),

(2) by redesignating subsection (h) as subsection (b), and

(3) by adding after subsection (b), as redesignated, the following new subsections:

"(c) The following program levels are authorized for fiscal year 1991:

"(1) For the programs authorized by this Act, the Administration is authorized to make $72,000,000 in direct and immediate participation loans; and of such sum the Administration is authorized to make $19,000,000 in loans as provided in section 7(a)(10), $24,000,000 in loans as provided in section 7(a)(11), $10,000,000 in loans as provided in section 7(a)(20), and $19,000,000 in loans to disabled veterans and Vietnam era veterans (as defined in section 1841, title 38, United States Code) under the general terms and conditions of section 7(a) of this Act.

"(2) For the programs authorized by this Act, the Administration is authorized to make $4,070,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $3,500,000,000 in general business loans as provided in section 7(a), $50,000,000 in loans as provided in section 7(a)(12)(B), and $520,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $19,000,000 in purchases of preferred stock and $200,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,800,000,000.

"(d) There are authorized to be appropriated to the Administration for fiscal year 1991 such sums as may be necessary to carry out the provisions of this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the provisions of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(e) The following program levels are authorized for fiscal year 1992:

"(1) For the programs authorized by this Act, the Administration is authorized to make $75,000,000 in direct and immediate participation loans; and of such sum the Administration is authorized to make $20,000,000 in loans as provided in section 7(a)(10), $25,000,000 in loans as provided in section 7(a)(11), $10,000,000 in loans as provided in section 7(a)(20), and $20,000,000 in loans to disabled veterans and Vietnam era veterans (as defined in section 1841, title 38, United States Code) under the general terms and conditions of section 7(a) of this Act.

"(2) For the programs authorized by this Act, the Administration is authorized to make $4,449,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $3,850,000,000 in general business loans as provided in section 7(a), $53,000,000 in loans as provided in section 7(a)(12)(B), and $546,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $20,000,000 in purchases of preferred stock and $210,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,890,000,000.

"(f) There are authorized to be appropriated to the Administration for fiscal year 1992 such sums as may be necessary to carry out the provisions of this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the provisions of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(g) The following program levels are authorized for fiscal year 1993:

"(1) For the programs authorized by this Act, the Administration is authorized to make $79,000,000 in direct and immediate participation loans; and of such sum the Administration is authorized to make $21,000,000 in loans as provided in section

7(a)(10), $26,000,000 in loans as provided in section 7(a)(11), $11,000,000 in loans as provided in section 7(a)(20), and $21,000,000 in loans to disabled veterans and Vietnam era veterans (as defined in section 1841, title 38, United States Code) under the general terms and conditions of section 7(a) of this Act.

"(2) For the programs authorized by this Act, the Administration is authorized to make $4,671,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $4,043,000,000 in general business loans as provided in section 7(a), $55,000,000 in loans as provided in section 7(a)(12)(B), and $573,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $21,000,000 in purchases of preferred stock and $221,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,985,000,000.

"(h) There are authorized to be appropriated to the Administration for fiscal year 1993 such sums as may be necessary to carry out the provisions of this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the provisions of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

"(i) The following program levels are authorized for fiscal year 1994:

"(1) For the programs authorized by this Act, the Administration is authorized to make $83,000,000 in direct and immediate participation loans; and of such sum the Administration is authorized to make $22,000,000 in loans as provided in section 7(a)(10), $27,000,000 in loans as provided in section 7(a)(11), $12,000,000 in loans as provided in section 7(a)(20), and $22,000,000 in loans to disabled veterans and Vietnam era veterans (as defined in section 1841, title 38, United States Code) under the general terms and conditions of section 7(a) of this Act.

"(2) For the programs authorized by this Act, the Administration is authorized to make $4,905,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $4,245,000,000 in general business loans as provided in section 7(a), $58,000,000 in loans as provided in section 7(a)(12)(B), and $602,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $22,000,000 in purchases of preferred stock and $232,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $2,084,000,000.

"(j) There are authorized to be appropriated to the Administration for fiscal year 1994 such sums as may be necessary to carry out the provisions of this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the provisions of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.".

SEC. 102. DISASTER SALARIES AND EXPENSES.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by adding at the end of subsection (a) the following new paragraph:

"(3) There are authorized to be transferred from the disaster loan revolving fund such sums as may be necessary and appropriate for administrative expenses of the Administration.".

TITLE II—AMENDMENTS TO THE SMALL BUSINESS ACT AND RELATED ACTS

PART A—SMALL BUSINESS ACT

SEC. 21. SMALL BUSINESS DEVELOPMENT CENTERS.

(a) FUNDING FORMULAS.—

(1) IN GENERAL.—Section 21 of the Small Business Act (15 U.S.C. 648) is amended by striking the second proviso in subsection (a)(4) and inserting the following: "*Provided further,* That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population of the United States, plus $100,000 for each State, but no State shall receive less than $200,000.";

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts, grants, or cooperative agreements for performance commencing on or after October 1, 1991. Contracts, grants, or cooperative agreements the performance of which commences before October 1, 1991, shall receive funding for the entire term of performance without regard to the amendment made by paragraph (1) and according to the State's pro rata share of a $65,000,000 program as computed on the effective date of this section under population estimates used for calendar year 1990 agreements, plus $50,000 for each State, but no State shall receive less than $200,000.

(b) SMALL BUSINESS DEVELOPMENT CENTER ACT.—Section 204 of the Small Business Development Center Act of 1980 (Public Law 96-302) is hereby repealed.

SEC. 202. EXPORT REVOLVING LINE OF CREDIT.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) by striking "for pre-export" in paragraph (14)(A), and

(2) by striking "18 months" and inserting "3 years" in paragraph (14)(A).

SEC. 203. TWO-YEAR RULE FOR ELIGIBILITY IN THE MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Small Business Administration may prescribe a minimum period of time during which a prospective Program Participant must be in operation in order to meet the eligibility requirements of section 8(a)(7)(A) of the Small Business Act (15 U.S.C. 637(a)(7)(A)), only if the Administration provides a waiver of such minimum period as set forth in subsection (b).

(b) WAIVER OF MINIMUM PERIOD OF OPERATION.—(1) The Administration shall provide that any requirement it establishes regarding the period of time a prospective Program Participant must be in operation may be waived and, a prospective Program Participant, who otherwise meets the requirements of section 8(a)(7)(A) of the Small Business Act, shall be considered to have demonstrated reasonable prospects for success, if—

(A) the individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;

(B) the prospective Program Participant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success;

(C) the prospective Program Participant has adequate capital to carry out its business plan;

(D) the prospective Program Participant has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category in which the prospective Program Participant is seeking Program certification; and

(E) the prospective Program Participant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform such contracts.

(2) The authority to make the determination that a prospective Program Participant has demonstrated its potential for success by meeting the criteria specified in paragraph (1) of this subsection shall be made by the Administrator of the Small Business Administration, or a designee of such officer.

SEC. 204. SIZE DETERMINATIONS RELATING TO TRIBALLY OWNED BUSINESS CONCERNS.

(a) AFFILIATION RULES.—Section 7(j)(10)(J)(ii) of the Small Business Act (15 U.S.C. 636(j)(10)(J)(ii)) is amended to read as follows:

"(ii)(I) Except as authorized by subclauses (II) or (III), no award shall be made pursuant to section 8(a) to a concern other than a small business concern.

"(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

"(III) Any joint venture established under the authority of section 602(b) of Public Law 100-656, the 'Business Opportunity Development Reform Act of 1988', shall be eligible for award of a contract pursuant to section 8(a).".

(b) TRIBAL HOLDING COMPANIES.—Section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)) is amended by inserting—

(1) in clause (A)(i)(II), after the word "tribe" the parenthetical phrase "(or a wholly owned business entity of such tribe)"; and

(2) in clause (A)(ii)(II), after the word "tribe" the parenthetical phrase "(or a wholly owned business entity of such tribe)".

SEC. 205. JOINT VENTURES WITH TRIBALLY OWNED PARTICIPANTS IN THE 8(a) PROGRAM.

Section 602 of the Business Opportunity Development Reform Act of 1988 (15 U.S.C. 637 note) is amended—

(1) in subsection (c), by striking "two" and inserting "5", and

(2) in subsection (e), by striking "September 30, 1991" and inserting "September 30, 1994".

SEC. 206. SURETY BOND WAIVER AUTHORITY.

Section 7(j)(13)(D)(iii) of the Small Business Act (15 U.S.C. 636(j)(13)(D)(iii)) is amended by striking "October 1, 1992" and inserting "October 1, 1994".

SEC. 207. ESTABLISHING AWARD ELIGIBILITY FOR CONTRACT OPPORTUNITIES COMPETED UNDER SECTION 8(a).

Section 8(a)(1) of the Small Business Act (15 U.S.C. 637(a)(1)) is amended—

(1) by striking subparagraph (B);

(2) by striking the flush left sentence following subparagraph (C);

(3) by redesignating subparagraph (C) as subparagraph (B); and

(4) by adding a new subparagraph (C) as follows:

"(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 7(j)(15), if—

"(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

"(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation.".

SEC. 208. BUNDLING OF CONTRACTS.

Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended by adding before "Whenever" the following new sentences: "If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, or (4) why construction cannot be procured as separate discrete projects. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities.".

SEC. 209. DESIGNATED PROCUREMENT CENTER REPRESENTATIVES.

Not later than 180 days after the date of the enactment of this Act, the Administrator of the Small Business Administration shall station a traditional procurement center representative at the Department of Agriculture, the Navy Sea Systems Command, and the Environmental Protection Agency. Such representatives shall be in addition to the representatives stationed or designated to be stationed on the date of enactment of this Act.

SEC. 210. NONMANUFACTURER RULE.

Section 8(a)(17)(B)(iv) of the Small Business Act (15 U.S.C. 637(a)(17)(B)(iv)) is amended to read as follows:

"(iv) represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

"(I) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offer or by the solicitation; or

"(II) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.".

SEC. 211. COMMISSION ON MINORITY BUSINESS DEVELOPMENT.

Section 505(c)(1)(A)(ii) of the Business Opportunity Development Reform Act of 1988 (15 U.S.C. 636 note) is amended to read as follows:

"(ii) The Under Secretary of Defense for Acquisition, or a designee of such Under Secretary.".

SEC. 212. SUNSET ON AUTHORITY TO PROVIDE TECHNICAL AND MANAGERIAL ASSISTANCE THROUGH PRIVATE SECTOR SOURCES.

Section 7(b) of the Small Business Computer Security and Education Act of 1984 (15 U.S.C. 633 note) is amended by striking "October 1, 1990" and inserting "March 31, 1991".

PART B—SMALL BUSINESS INVESTMENT ACT

SEC. 214. DEVELOPMENT COMPANY FINANCINGS.

(a) CONGRESSIONAL FINDINGS.—Section 501(a) of the Small Business Investment Act of 1958 (15 U.S.C. 695(a)) is amended to read as follows:

"(a) The Congress hereby finds and declares that the purpose of this title is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program authorized by this title.".

(b) POLICY CONSIDERATIONS.—Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended by adding at the end thereof the following new subsection:

"(d) In order to qualify for assistance under this title, the development company must demonstrate that the project to be funded is directed toward at least one of the following economic development objectives—

"(1) the creation of job opportunities within two years of the completion of the project or the preservation or retention of jobs attributable to the project;

"(2) improving the economy of the locality, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy; or

"(3) the achievement of one or more of the following public policy goals:

"(A) business district revitalization,

"(B) expansion of exports,

"(C) expansion of minority business development,

"(D) rural development,

"(E) enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports,

"(F) changes necessitated by Federal budget cutbacks, including defense related industries, or

"(G) business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees.

If eligibility is based upon the criteria set forth in paragraph (2) or (3), the project need not meet the job creation or job preservation criteria developed by the Administration if the overall portfolio of the development company meets or exceeds such job creation or retention criteria.".

(c) SPECIAL LOAN LIMITATIONS.—Section 502 of the Small Business Investment Act of 1958 is amended by striking the period at the end of paragraph (2) and by inserting the following: ", except loans meeting the criteria specified in section 501(d)(3) shall be limited to $1,000,000 for each such identifiable small business concern.".

SEC. 215. SMALL BUSINESS INVESTMENT COMPANIES.

(a) LIMITS IN CASES OF COMMON CONTROL.—

(1) IN GENERAL.—The last sentence of section 303(b)(1) of the Small Business Investment Act of 1958 is amended to read as follows: "In no event shall the debentures guaranteed and outstanding under this title of any such company or companies which are commonly controlled as determined by the Administration exceed $35,000,000.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall become effective on July 1, 1991.

(b) AMOUNT OF ASSISTANCE.—Section 303 of the Small Business Investment Act of 1958 (15 U.S.C. 683) is amended—

(1) by inserting "under the provisions of this title," in paragraph (6) of subsection (c) after "debentures or securities"; and

(2) by striking the third sentence in subsection (d).

SEC. 216. PILOT PREFERRED SURETY BOND GUARANTEE PROGRAM.

(a) SUNSET.—Section 207 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590, is amended to read as follows:

"The provisions contained in section 411(a)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(3)) shall cease to be effective after September 30, 1994.".

(b) EVALUATION AND REPORT.—Section 206 of the Small Business Administration Reauthorization and Amendment Act of 1988 is amended—

(1) in the first sentence, by striking "Not later than" and inserting "(a) not later than"; and

(2) by striking the last sentence and inserting:

"(b) The report required by subsection (a) shall be transmitted not later than March 1, 1994 and cover the period October 1, 1990 through September 30, 1993.".

PART C—SMALL BUSINESS ADMINISTRATION MANAGEMENT

SEC. 221. SMALL BUSINESS ADMINISTRATION DEPUTY ADMINISTRATOR.

(a) IN GENERAL.—Section 4 of the Small Business Act (15 U.S.C. 633) is amended by striking "The Administrator is authorized to appoint a Deputy Administrator and" in the fourth sentence of subsection (b)(1) and inserting the following: "The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate. The Administrator is authorized to appoint".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to any vacancy in the position of Deputy Administrator of the Small Business Administration after the date of the enactment of this Act.

PART D—DEMONSTRATION PROGRAMS AND STUDIES

SEC. 231. SMALL BUSINESS TECHNOLOGY TRANSFER DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—There is established within the Small Business Administration a Small Business Technology Transfer Demonstration Program (hereafter referred to as the "Program").

(b) PURPOSE OF PROGRAM.—The purpose of the Program is to demonstrate the feasibility of providing small businesses with education, training, and technical assistance with respect to technology transfer and application through an eligible entity.

(c) PROGRAM ACTIVITIES.—The eligible entity shall undertake, through a regional network of participating community and technical colleges, a program of activities to provide small business concerns training and assistance with respect to—

(1) technological innovations,

(2) statistical process control,

(3) computer-assisted design,

(4) computer-assisted manufacturing and computer-integrated manufacturing,

(5) implementation and deployment of telecommunications and other interactive systems, and

(6) other new equipment and advanced manufacturing processes.

(d) COOPERATIVE AGREEMENT.—The Administration is authorized to award a cooperative agreement to an eligible entity to undertake a demonstration program pursuant to this subsection.

(e) REGULATIONS.—

(1) IN GENERAL.—The Administrator shall issue regulations for the implementation of the Program within 180 days of the date of the enactment of this Act.

(2) ALLOCATION OF FUNDING.—In addition to any other matters which the Administration deems appropriate, such Program regulations shall provide for the allocation of funds among the educational institutions that comprise the eligible entity on the basis of scope of the assistance and training activities to be offered small business concerns under the Program and the capability of the educational institution to provide such Program activities.

(f) USE OF SMALL BUSINESS DEVELOPMENT CENTERS AND OTHER RESOURCES.—In implementing the Program, the Administrator shall assure that the eligible entity uses to the maximum extent feasible Small Business Development Centers, receiving support pursuant to section 21 of the Small Business Act (15 U.S.C. 648), and other available sources in conducting the Program.

(g) DURATION OF THE PROGRAM.—The Program shall terminate on September 30, 1993.

(h) REPORT.—The Administrator shall monitor the implementation of the Program established by this section and submit a report evaluating such implementation to the Committees on Small Business of the Senate and the House of Representatives by not later than June 30, 1993, including appropriate recommendations regarding continuation of the Program and its extension to other regions in the country.

(i) AUTHORIZATION.—There is authorized to be appropriated to the Small Business Administration $5,000,000 for each of the fiscal years 1991, 1992, and 1993 to carry out the Program established by this section.

(j) DEFINITIONS.—For purposes of this section:

(1) The term "eligible entity" means the Community College Association for Technology Transfer or, if such organization is not available, another not-for-profit association of community and technical colleges determined to be eligible for an award of a cooperative agreement, under the regulations issued pursuant to subsection (e).

(2) The term "Community College Association for Technology Transfer" ("CCATT") means a coalition currently composed of 16 community and technical colleges located in the Midwest which has proposed a cooperative regional program for technology transfer and application for the benefit of small businesses to revitalize the regional economy.

SEC. 232. PILOT TECHNOLOGY ACCESS PROGRAM.

(a) ESTABLISHMENT.—The Small Business Administration, in consultation with the National Institute of Standards and Technology and the National Technical Information Service, shall establish a Pilot Technology Access Program (hereafter in this section referred to as the "Program"), for making grants under this section to a maximum of 5 States.

(b) CRITERIA FOR SELECTION OF STATES.—The Administrator of the Small Business Administration shall establish competitive, merit-based criteria for the selection of States to receive grants on the basis of—

(1) the ability of the State to carry out the purposes described in subsection (d) in a manner relevant to the needs of industries in that State;

(2) the ability of the State to integrate the implementation of the Program with existing Federal and State technical and business assistance resources, including Small Business Development Centers; and

(3) the ability of the State to continue the program established pursuant to this section after the termination of the Program.

(c) MATCHING REQUIREMENT.—To be eligible to receive a grant under this section, a State shall be required to provide at least an equal amount of funds as that received under such grant.

(d) PURPOSE OF GRANTS.—Grants made to States under this section shall be for the purpose of increasing access by small businesses to on-line data base services that provide technical and business information, and access to technical experts, in a wide range of technologies, through such activities as—

(1) defraying the cost of access by small businesses to the data base services;

(2) training small businesses in the use of the data base services; and

(3) establishing a public point of access to the data base services.

Activities described in paragraphs (1) through (3) may be carried out through contract with a private entity.

(e) EVALUATION.—After the completion of 3 years after the date on which the first grant is issued under this section, and within 6 months after the termination of the Program, the General Accounting Office shall evaluate the effectiveness of the Program in stimulating technological progress, and shall report the findings to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science, and Transportation of the Senate.

(f) TERMINATION.—The Program shall terminate on September 30, 1995.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Small Business Administration for carrying out this section—

(1) $2,000,000 for fiscal year 1991; and

(2) $5,000,000 for each of the fiscal years 1992, 1993, 1994, and 1995.

SEC. 233. FEASIBILITY STUDY OF BUSINESS COOPERATION NETWORK.

(a) IN GENERAL.—The Administrator of the Small Business Administration shall conduct a study of the feasibility of establishing a business cooperation system similar to the Business Cooperation Network developed by the European Economic Community.

(b) PURPOSE.—The purpose of the study shall be to identify—

(1) the total cost to implement such a system in this country;

(2) all existing business data systems at the Federal, state, and local government levels which would be of assistance in developing a program similar to either the Euro-Info-Centre and/or the European Business Cooperation Network;

(3) all existing business data systems in the private sector which would be of assistance in developing a program similar to either the Euro-Info-Centre and/or the European Business Cooperation Network;

(4) the amount of time it would take to fully implement this program in all fifty States; and

(5) the benefits to the international competitiveness of the United States.

(c) PARTICIPATION.—In conducting the study, the Administrator shall encourage participation of all appropriate Federal departments and agencies, appropriate State departments and agencies, appropriate small business representative groups, and any other public and/or private entities which would play a role in the development of such a system.

(d) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the study together with recommendations for such legislative and administrative actions as the Administrator considers appropriate.

SEC. 234. STUDY ON IMPACT OF ELECTRONIC DATA INTERCHANGE TECHNOLOGY.

(a) IN GENERAL.—The Administrator of the Small Business Administration shall conduct a study of the impact of electronic data interchange technology on small business concerns.

(b) PURPOSE.—The purpose of the study shall be to identify—

(1) the benefits of electronic data interchange technology with respect to small business concerns;

(2) the adverse effects of electronic data interchange technology with respect to small business concerns;

(3) technical and financial assistance which the Small Business Administration

can offer to small business concerns which seek to use electronic data interchange technology;

(4) measures which may be taken to implement a uniform technical standard for electronic data interchange technology;

(5) measures which may be taken to prevent electronic data interchange technology in the Federal procurement process from having an adverse effect on small business concerns; and

(6) other measures which may be taken to prevent electronic data interchange technology from becoming a competitive barrier to small business concerns.

(c) PARTICIPATION.—In conducting the study, the Administrator shall encourage participation by Federal departments and agencies, small business concerns, and other private and public entities.

(d) REPORT.—Not later than one hundred and eighty days after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the study together with recommendations for such legislative and administrative actions as the Administrator considers appropriate.

PART E—REPEALERS AND TECHNICAL AMENDMENTS

SEC. 241. DEPARTMENT OF DEFENSE PROCUREMENT REPORTING.

Section 10(d) of the Small Business Act (15 U.S.C. 639(d)) is amended—

(1) by striking "the Department of Defense shall make a monthly report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives not less than 45 days after the close of the month" and inserting "the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives";

(2) by striking "small-business concerns" and inserting "small business concerns"; and

(3) by striking "such monthly reports" and inserting "such reports".

SEC. 242. EXPIRED PROVISION.

Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is amended—

(1) by striking subparagraphs (A) and (B) of paragraph (3); and

(2) by striking paragraph (8).

SEC. 243. REPORTING OF SUBCONTRACTING ACTIVITY.

Section 714 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) is amended by striking subsection (b) and by redesignating subsection (c) as subsection (b).

SEC. 244. NOTICES OF PROPOSED PROCUREMENT OPPORTUNITIES.

Section 8(g)(1) of the Small Business Act (15 U.S.C. 637(g)(1)) is amended by striking "(a)(1)" and inserting "(e)(1)".

SEC. 245. TIME LIMIT ON SECONDARY MARKET SALES.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by striking the last sentence of subparagraph (A) of paragraph (16).

TITLE III—ASSISTANCE FOR RURAL SMALL BUSINESS CONCERNS

SEC. 301. SHORT TITLE.

This title may be cited as the "Rural Small Business Enhancement Act of 1990".

SEC. 302. ESTABLISHMENT OF OFFICE OF RURAL AFFAIRS.

The Small Business Act (15 U.S.C. 631 et seq.) is amended by inserting after section 25 the following new section:

"SEC. 26. OFFICE OF RURAL AFFAIRS.

"(a) There is hereby established in the Small Business Administration an Office of Rural Affairs (hereafter in this section referred to as the 'Office').

"(b) The Office shall be headed by a director who shall be appointed by the Administrator not later than 90 days after the date of the enactment of this section.

"(c) The Office shall—

"(1) strive to achieve an equitable distribution of the financial assistance available from the Administration for small business concerns located in rural areas;

"(2) to the extent practicable, compile annual statistics on rural areas, including statistics concerning the population, poverty, job creation and retention, unemployment, business failures, and business startups;

"(3) provide information to industries, organizations, and State and local governments concerning the assistance available to rural small business concerns through the Administration and through other Federal departments and agencies;

"(4) provide information to industries, organizations, educational institutions, and State and local governments concerning programs administered by private organizations, educational institutions, and Federal, State, and local governments which improve the economic opportunities of rural citizens; and

"(5) work with the United States Tourism and Travel Administration to assist small businesses in rural areas with tourism promotion and development.".

SEC. 303. SBDC RURAL ACTIVITIES.

Section 21 of the Small Business Act is further amended—

(1) by striking "and" at the end of subparagraph (L) of subsection (c)(3)

(2) by redesignating subparagraph (M) of subsection (c)(3) as subparagraph (P); and

(3) by inserting after subparagraph (L) the following new subparagraphs:

"(M) in cooperation with the Department of Commerce, the Administration and other relevant Federal agencies, actively assisting rural small businesses in exporting by identifying and developing potential export markets for rural small businesses, facilitating export transactions for rural small businesses, developing linkages between United States' rural small businesses and prescreened foreign buyers, assisting rural small businesses to participate in international trade shows, assisting rural small businesses in obtaining export financing and developing marketing and production strategies;

"(N) assisting rural small businesses—

"(i) in developing marketing and production strategies that will enable them to better compete in the domestic market—

"(ii) by providing technical assistance needed by rural small businesses;

"(iii) by making available managerial assistance to rural small business concerns; and

"(iv) by providing information and assistance in obtaining financing for business startups and expansion;

"(O) in conjunction with the United States Travel and Tourism Administration, assist rural small business in developing the tourism potential of rural communities by—

"(i) identifying the cultural, historic, recreational, and scenic resources of such communities;

"(ii) providing assistance to small businesses in developing tourism marketing and promotion plans relating to tourism in rural areas; and

"(iii) assisting small business concerns to obtain capital for starting or expanding businesses primarily serving tourists; and".

SEC. 304. CATALOG OF PROGRAMS TO ASSIST RURAL SMALL BUSINESS CONCERNS.

(a) COMPILATION.—Not later than 180 days after the date of the enactment of this title, the Small Business Administration shall compile a catalog of programs administered by Federal and State departments and agencies which offer assistance to small business concerns in rural areas. Such catalog shall include a description of each such program and the name, address, and telephone number of the respective Federal and State officials responsible for administering the program.

(b) DISTRIBUTION.—Copies of the catalog compiled pursuant to subsection (a) shall be transmitted to the Congress and copies shall be made available to small business concerns in rural areas, appropriate trade associations, Federal and State agencies for the assistance of small business concerns, State and local chambers of commerce, other appropriate nonprofit organizations, and the general public.

(c) BIANNUAL UPDATE.—The Small Business Administration shall issue updates of the catalog compiled pursuant to subsection (a) by February 1, 1993, and February 1, 1995.

SEC. 305. AREA STATISTICS IN PRESIDENTIAL REPORT.

Section 303 of the Small Business Economic Policy Act of 1980 (Public Law 96-302) is amended by striking paragraph (2) of subsection (a) and inserting the following:

"(2) present current and historical data on production, employment, investment, population, job creation and retention, annual business failures, annual business startups, and other economic variables for small business in the economy as a whole and for small business in each sector of the economy, with, to the extent practicable, specific statistics divided as to urban, suburban, and rural areas;".

SEC. 306. RURAL SMALL BUSINESS CONFERENCES.

(a) IN GENERAL.—The Chief Counsel for Advocacy of the Small Business Administration shall, as soon as practicable after the catalog (described in section 305 and hereinafter referred to as the "catalog") is issued, but not later than 90 days after the date such catalog is issued, convene regional rural conferences in 5 cities or towns in the United States.

(b) PREPARATIONS.—Prior to the conferences, the Office of Advocacy shall—

(1) select the sites for the conferences in order to encourage the maximum participation of all interested parties including private citizens and representatives of business, government, educational and nonprofit institutions; and

(2) distribute the catalog of programs and such other background materials prepared by the Office of Advocacy as the Chief Counsel deems appropriate.

(c) PURPOSES OF THE CONFERENCES.—The conference shall—

(1) review the effectiveness of current Federal programs to promote rural small business and its needs, with particular reference to the catalog of such programs;

(2) review how current Federal programs could be made more accessible to small businesses located in rural areas;

(3) make recommendations on how current programs can be approved to better address small business needs in rural areas;

(4) review the availability and cost of capital, transportation, and telecommunications in rural areas;

(5) review the availability of technical assistance and training programs for small business needs in rural areas, including marketing, computer training, accounting, financing, and international trade; and

(6) determine any additional needs of small businesses in rural areas.

(d) REPORT.—The Chief Counsel for Advocacy shall prepare a summary of the findings and recommendations of each regional conference. Not later than 60 days after the last of the 5 regional conferences have been held, the Chief Counsel for Advocacy shall transmit such summaries to the Congress and the President, along with conclusions and recommendations, including specific legislative proposals and recommendations for administrative or other actions. The transmittal of the required information shall be deemed a report of the Chief Counsel for Advocacy under the terms and conditions of section 206 of Public Law 94-305. To the extent practicable, the report shall estimate the cost of implementing each recommendation of a regional conference as well as those of the Chief Counsel.

SEC. 307. PILOT RURAL DEVELOPMENT LOAN PROGRAM.

Section 7(a)(19) of the Small Business Act (15 U.S.C. 636(a)(19)) is amended by adding the following new paragraph:

"(C) In order to encourage lending institutions and other entities making loans authorized under this subsection to provide loans to small business loan applicants located in rural areas, such lenders shall be permitted to retain one-half of the fee collected pursuant to paragraph (18) on loans of less than $75,000. A participating lender may not retain any fee pursuant to this subparagraph if the amount committed and outstanding to the applicant would exceed $75,000 unless the amount in excess of $75,000 is an amount not approved under the provisions of this subparagraph. This subparagraph shall cease to be effective on October 1, 1995.".

SEC. 308. RURAL SMALL BUSINESS INCUBATORS.

It is the sense of the Congress that small business incubators can play a constructive role in rural development. Accordingly, the National Association of Development Companies, and any interested, certified development companies licensed by the Small Business Administration under title V of the Small Business Investment Act of 1958, and other interested parties are requested and encouraged to develop proposals under which Development Companies located in rural areas could establish, operate or otherwise cooperate with small business incubators for startup small business. Such proposals, including recommendations regarding needed Federal assistance, both monetary and legislative, should be submitted to the Small Business Administration and to the Committees on Small Business of the Senate and House of Representatives not later than 6 months after the date of enactment of this section.

SEC. 309. EFFECTS OF DEREGULATION ON RURAL AMERICA.

(a) STUDY.—The Office of Technology Assessment shall conduct a study of the effects of deregulation on the economic vitality of rural areas. Such study shall include, but not be limited to, a thorough analysis of the impact of deregulation on—

(1) the number of loans made by financial institutions to small businesses located in rural areas, a change in the level of security interests required for such loans, and the cost of such loans to rural small businesses for creation and expansion;

(2) airline service in cities and towns with populations of 100,000 or less, including airline fare, the number of flights available, number of seats available, scheduling of flights, continuity of service, number of markets being served by large and small airlines, availability of nonstop service, availability of direct service, number of economic cancellations, number of flight delays, the types of airplanes used, and time delays;

(3) the availability and costs of bus, rail and trucking transportation for businesses located in rural areas;

(4) the availability and costs of state-of-the-art telecommunications services to small businesses located in rural areas, including voice telephone service, private (not multiparty) telephone service, reliable facsimile document and data transmission, competitive long distance carriers, cellular (mobile) telephone service, multifrequency tone signaling services such as touchtone services, custom-calling services (including three-way calling, call forwarding, and call waiting), voicemail services, and 911 emergency services with automatic number identification;

(5) the availability and costs to rural schools, hospitals, and other public facilities, of sending and receiving audio and visual signals in cases where such ability will enhance the quality of services provided to rural residents and businesses; and

(6) the availability and costs of services enumerated in paragraphs (1) through (5) in urban areas compared to rural areas.

(b) REPORT.—Not later than 12 months after the date of enactment of this title, the Office of Technology Assessment shall transmit to Congress a report on the results of the study conducted under subsection (a) together with its recommendations on how to address the problems facing small businesses in rural areas.

SEC. 310. TOURISM DEMONSTRATION PROGRAM.

The Small Business Act is amended by inserting after section 26 the following new section:

"SEC. 27. TOURISM DEMONSTRATION PROGRAM.

"(a) IN GENERAL.—The Administration is authorized to make grants to conduct demonstration programs in 5 States in order to promote tourism activities delivered by small businesses. The purpose of the program shall be to demonstrate ways in which the economy in rural areas may be improved by encouraging tourism and its resulting increase in income and employment in rural areas. The Administration shall require as a condition of any grant under this section that the applicant also contribute to the demonstration program a sum equal to at least 25 percent of the amount of the funding requested from the Federal Government.

"(b) AUTHORIZATION.—There are authorized to be appropriated to carry out the provision of this section, $1,000,000 for fiscal year 1992 and such sums may remain available until expended.

"(c) REPORT.—Not later than February 1, 1993, the Administration shall submit to the President and the Congress a report on activities undertaken pursuant to this section.".

SEC. 311. RURAL TOURISM TRAINING PROGRAM.

The Chief Counsel for Advocacy of the Small Business Administration shall conduct training sessions on the types of Federal assistance available for the development of rural small businesses engaged in tourism and tourism-related activities. Such training sessions shall be conducted in conjunction with the Office of Rural Affairs (established pursuant to section 26 of the Small Business Act) and appropriate personnel designated by each district office of the Administration.

TITLE IV—MISCELLANEOUS AMENDMENTS

SEC. 401. CONTRACT GOALS FOR MINORITIES IN PRINTING RELATED SERVICES.

Section 843 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456; 44 U.S.C. 502 note) is amended—

(1) in subsection (a), by striking "and, during fiscal years 1989 and 1990," and inserting "and"; and

(2) by adding at the end thereof the following new subsection:

"(e) DURATION OF TEST.—The test program established by subsection (a) shall not apply to solicitations issued on or after October 1, 1993.".

SEC. 402. SUSPENSION OF LIQUIDATED DAMAGES UNDER COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLANS.

To facilitate participation in the test program for the negotiation of comprehensive small business subcontracting plans pursuant to section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1510), subsection (d) of such section is hereby suspended for the period of the test program as specified in subsection (e) of such section.

SEC. 403. DEFINITION OF ARCHITECTURAL AND ENGINEERING SERVICES.

Pursuant to section 742 of Public Law 100-656, modifications to Part 36 of the Federal Acquisition Regulation (48 C.F.R. Part 36) shall specify that the definition of architectural and engineering services includes surveying and mapping services to which the selection procedures of Subpart 36.6 of the Federal Acquisition Regulation apply.

The SPEAKER pro tempore (during the reading). Without objection, the further reading of the Senate amendment is dispensed with.

Mr. DANNEMEYER. Mr. Speaker, reserving the right to object, is there anything in this bill relating to the Resolution Trust Corporation?

Mr. SMITH of Iowa. Mr. Speaker, if the gentleman will yield, no, there is not. There is nothing in the bill that was not in it when it passed the House, nothing of any significance.

Mr. DANNEMEYER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to dispensing with the reading?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Iowa?

Mr. ECKART. Mr. Speaker, reserving the right to object, I would just like to inquire, under my reservation, is there anything relevant to the Superfund lender liability in this bill?

Mr. SMITH of Iowa. Mr. Speaker, if the gentleman will yield, no.

Mr. ECKART. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Iowa?

Mr. IRELAND. Reserving the right to object, Mr. Speaker, and I will not object at this time, I do so in order to yield to the gentleman from Iowa [Mr. SMITH] to explain the bill.

Mr. SMITH of Iowa. Mr. Speaker, this legislation is the major Small Business reauthorization bill of the Congress. It provides authorization levels for fiscal years 1992 through 1994 and makes a number of program changes.

The authorizations for the loan programs, both direct and guaranteed are unchanged from when the bill left the House. Nor are there any changes in the program levels for the investment company program or for surety bond guarantees.

In fact, almost all of title I of this bill, which, in addition to the authorizations, made a number of program changes, remains as it was passed by the House which my friend remembers was by a recorded vote of 398 to 26 on September 25.

As passed by the House, title II authorizes the prepayment of certain debentures or loans which are owned by the Federal Financing Bank and which were issued by investment companies or development companies a number of years ago. These programs today no longer involve the Federal Financing Bank as the debentures are sold to private investors. However, there are old ones outstanding with high interest rates and under FFB procedures, the prepayment penalties are so high that they effectively can not be prepaid. Our bill would have allowed prepayment upon the payment of a more reasonable prepayment penalty which would have been the equivalent of the maximum of 1 year's interest.

Unfortunately for us, however, several Senators who serve on the Senate Budget Committee placed a hold on this bill because of title II. The net result was that the Senate Small Business Committee could not call up the bill unless they agreed to delete title II.

I believe that title II is meritorious, but I cannot recommend that this House delay enactment of many needed provisions in the bill while we argue abut title II. Thus the Senate amendment deleted that provision and I concur in their decision to do so.

The House-passed bill contained provisions in title III to promote rural small business. Primarily for budgetary reasons, the Senate has refused to agree to any provisions which involve money for rural development in the form of new loan guarantees or grants.

My good friend and ranking minority member is the author of these provisions which proposed, first, minimum amounts for loans to establish incubators for small businesses in rural areas; and second, marketing assistance grants for projects and studies to assist rural small businesses; and third, rural tourism grants to assist in funding marketing studies and other projects designed to support small businesses in rural areas by increasing rural tourism.

Thus with reluctance I am urging the House to adopt the Senate amendment which deletes these provisions, but I do want to point out that we are adding, in the Senate amendment, additional provisions to assist small businesses in rural areas, a matter strongly supported by my friend from Pennsylvania and also by my colleague from Missouri, Mr. SKELTON.

For example, we are adding a provision to encourage lenders to make guaranteed loans of up to $75,000 to small businesses in rural areas by allowing lenders to retain one-half of a 2-point guarantee fee which at the present time they are required to collect from the borrower and remit totally to SBA. This will make these loans more profitable and thus encourage lenders to make them.

In addition, we are directing the SBA Office of Advocacy to hold regional conferences on rural development in five areas of the United States and to submit a report with findings and recommendations, including those from the Chief Counsel for Advocacy.

Finally, the bill would assist with rural development by authorizing in 1992 a demonstration program to develop concepts for use by small businesses in promoting tourism in rural areas.

I would point out to my colleagues that the Senate also made some changes by adding to House provisions and has proposed to extend sunsets on certain pilot programs such as a preferred surety bond guarantee program. These changes have my support, along with that, I hope, of my friend from Pennsylvania.

If my colleague will continue to yield, I want to take this opportunity to thank him and all of the other Members for cooperating in this endeavor so that as we enter the upcoming Congress we will not be under the gun to pass an authorization bill prior to the time that the House appropriates money for the Small Business Administration for fiscal year 1992.

I believe that the Senate amendment, although not exactly to my liking nor to my friend from Pennsylvania, nonetheless is the best that we can do. It represents a compromise which I urge all Members to support.

Mr. TORRES. Mr. Speaker and Members, thank you for this opportunity to say a few words about the conference report to reauthorize the Small Business Act. I ask for unanimous consent to revise and extend my remarks.

First of all, I want to thank our distinguished chairman, Congressman JOHN LAFALCE, and the distinguished chairman of the Senate committee, Senator DALE BUMPERS. I also wish to thank House committee staff members Don Terry and Tom Powers; and John Ball and Bill Montalto with the Senate committee. Moreover, I wish to thank Mr. Jorge Haynes, my subcommittee staff director, for a commendable task.

This reauthorization is the end of a long road for us but it is only the beginning for each of the provisions contained in this report we are considering here today.

I am particularly interested in two of the provisions contained in this report—the provision regarding the nonmanufacturer's rule and the suspension of liquidated damages.

The first provision, which I authored in the House, is intended to clarify and expand the waiver to the nonmanufacturer's rule. This provision would provide small and disadvantaged businesses, participating in the Small Business Administration's section 8(a) program, to obtain a waiver from the nonmanufacturers' rule when a small business cannot reasonably be expected to supply such firms with products.

While the nonmanufacturers' rule was designed to protect small business concerns, the administration's narrow interpretation of the rule has unnecessarily limited the Federal procurement opportunities available to small and disadvantaged firms. This provision will provide the flexibility that is currently lacking in the interpretation of the rule.

The second amendment suspends the so-called liquidated damages provision from application to the companywide subcontracting test program authorized by the 1990–91 DOD Authorization Act. I am supporting this suspension to enable the companywide subcontracting test program to have a full and fair opportunity to work. This provision, along with the newly enacted Mentor-Protege Pilot Program, will provide the aerospace industry some flexibility in achieving the 5 percent procurement goal.

This can now be accomplished in the most constructive and productive environment for the large companies and the smaller subcontracting companies.

I did not support this suspension of liquidated damages for the test program without much thought and discussion.

The aerospace industry still has many obstacles to overcome in incorporating the minority business community into their supplier base. But I have been assured by industry executives and their representatives that suspension of liquidated damages for the companywide test program will result in a pilot program beneficial to minority businesses.

Furthermore, I have been personally assured that the aerospace prime contractors are as committed to the success of the pilot Mentor-Protege Program as I am.

As the author of the original liquidated damages statute, enacted in Public Law 100–656, and a longtime critic of the aerospace industry's efforts to increase minority business participation, I am acutely aware of the risk that such a suspension poses to recent advances in this area. But I have confidence in the good faith of the firms participating in both pilot programs.

I believe that these two pilot programs offer us a unique opportunity to work together in

these tough times for the benefit of the prime contractors, subcontractors, the Department of Defense, and the economy as a whole.

Mr. CONTE. Mr. Speaker, I rise in strong support of this bill, the Small Business Reauthorization Act, which the Senate has amended and passed. I want to commend the distinguished chairman of the Committee on Small Business, Mr. JOHN LAFALCE. He has done an excellent job in getting this bill before us so that we may advance the interests of small businesses in this country.

This legislation contains provisions that will do much to help foster small businesses in this country. In the press of the Nation's business it sometimes appears that we forget about small business and its extreme importance to our economy. This bill shows that nothing could be further from the truth. The Small Business Committee works hard to promote the interests of small businesses and I am proud to have worked on that committee for the past 25 years.

I am particularly proud that two bills that I introduced are part of this legislation. The first is section 208, which was originally H.R. 2274, the Small Business Protection Act. This provision shields small businesses engaged in Federal procurement from the practice of bundling contracts and requires that agencies and procurement center representatives work together to maximize small business contracting opportunities. Small business contracting means increased competition and better use of the shrinking Federal procurement dollar.

The second is section 209, which was introduced as H.R. 4746. This section authorizes the SBA to station procurement center representatives at the EPA, the Department of Agriculture, and Navy Sea Systems Command. These agencies have combined budgets totaling over $13 billion. This will finally give full coverage to the seven Cabinet-level agencies with acquisition budgets over $600 million and enable the SBA to better monitor small business programs.

Mr. Speaker, these sections and this entire bill are important for ensuring that the most vital and innovative part of our economy gets the consideration it deserves. I support this measure, it is a fine piece of legislation, and I urge all my colleagues to support it as well.

Mr. MCDADE. Mr. Speaker, today I rise in support of the bill before this body which the Senate has amended and passed. Before I go any further, I want to express my appreciation to the distinguished gentleman from New York, our colleague, JOHN LAFALCE, the chairman of the committee, for the leadership he has shown in bringing us to this point. And I also want to thank all the members of the committee who have contributed to this work product. H.R. 4793 authorizes programs and activities at the SBA during the next 3 fiscal years and specifies program and activity levels for fiscal year 1991. This measure reflects broad bipartisan support for the programs of the U.S. Small Business Administration, the only Federal agency charged with assisting and promoting the development and growth of the Nation's small businesses. This is fully consistent with the President's own commitment to maintaining a strong vigorous small business sector and a Federal agency that can assist small business concerns. More than 19 million men and women nationwide own and operate small businesses. I believe they not only need, but deserve, to have a strong voice in their Government. They need to be heard on the issues that concern them and have a say in the formulation of policies and legislation that can affect their bottom line. We have seen to that in this bill.

During the hearing process, we undertook a tough review of SBA programs and activities. H.R. 4793 represents our best efforts to address weaknesses and strengthen existing programs. It is also an attempt to develop innovative, forward-looking initiatives that will assist America's small businesses in today's business environment while helping them to cope with the new competitive demands and challenges confronting them.

I would like to emphasize that all programs and activities authorized under the bill have been increased either slightly to reflect and meet growing demand or adjusted for inflation to maintain them at current levels.

The legislation authorizes various programs and activities at the Agency. These include many popular initiatives with strong congressional support such as the Small Business Development Center and the Small Business Institute Program. Other programs included in title I to assist the Nation's small entrepreneurs include:

The guaranteeing of loans made by banks and other institutions to eligible small businesses. It offers direct loans to specific target groups, including businesses located in areas suffering from high unemployment, or owned by Vietnam era or disabled veterans, handicapped individuals, and organizations employing the handicapped.

When disaster strikes at home, the SBA is there to make direct loans to help community businesses recover and rebuild.

SBA assists minority entrepreneurs by providing management and technical assistance and administering a special procurement program for them.

The Agency ensures that small businesses receive a fair proportion of Federal Government contracts for the purchase of needed goods and services.

Firms requiring specialized technical and management assistance can obtain it through the Agency.

The SBA helps entrepreneurs develop and expand the market for their goods and services overseas.

Small contractors in need of surety bonds can utilize the SBA surety bond guarantee program.

This is but a sampling of the spate of services and assistance the Agency has to offer.

The legislation also contains program initiatives included in the Rural Small Business Enhancement Act of 1990 (H.R. 4816), which I introduced and has bipartisan support. This title recognizes that over the past 150 years a strong agricultural base has been a source of economic vitality and employment for rural areas. However, the growth of other nations' agricultural capability and technological advances have required fewer people to be employed in farming. Agriculture is no longer rural America's chief employer. Today, only 2 percent of the U.S. population is employed in farming and only one-fourth of our over 2,000 rural counties are considered farm dependent. In fact, a recent survey by the USDA found that over 60 percent of all farming families currently receive income from off-farm employment.

The Federal Government has been slow in responding to changes in the rural economy and adapting its policies to accommodate these new realities. One major problem has been that many Federal programs intended to spur the creation and growth of nonagricultural businesses are targeted at large towns and cities.

Since 1981, the United States has produced almost 18 million new jobs, over 90 percent of which have been in urban areas. Less than 10 percent of these new jobs have been in rural areas. At the same time, while national unemployment hovers around 5 percent, half of the rural counties in the United States are experiencing unemployment of 10 percent or more.

The rural development title, which is supported by Mr. SKELTON, Chairman LAFALCE, and the members of the committee, would address the problems of small businesses in rural areas:

It would direct the Office of Advocacy to conduct five national rural conferences. The purpose of these conferences would be to examine the challenges facing rural areas; review the effectiveness of current Federal programs and recommend ways in which they could be improved to address the needs of rural small businesses; and evaluate the availability and expense of capital, air transportation, rail transportation, bus transportation, and state-of-the-art telecommunications in rural areas; and review the availability of technical assistance and training programs for business needs in rural areas, including such needs as marketing assistance, computer training, accounting assistance, credit assistance, and international trade opportunities.

It would establish within the SBA an Office of Rural Affairs to assist small business concerns in rural areas and to ensure that their voice is heard in Washington. It would make available to rural enterpreneurs a wide array of Federal assistance to help them grow and strengthen their businesses.

It would authorize a specialized guaranteed minirural loan program to make loans to assist entrepreneurs in rural areas in starting or expanding small businesses in rural areas.

The title would provide for a demonstration program in five States to promote the growth of small business concerns by increasing tourism in rural areas by developing the tourism potential of rural areas. Promoting increased tourism activity in rural areas is an effective economic development tool. It will help attract new visitors to rural areas and bring new customers to small businesses in such areas, creating or increasing demand for their goods and services. The project will also assist small firms in developing their ability in marketing their products and services to meet this anticipated new demand.

It would require small business development centers to assist rural small businesses in export and tourism development, and in increasing domestic sales and profits.

It would require the SBA to compile and distribute a catalog of Federal programs which offer assistance to small businesses.

Mr. Speaker, the rural development title as contained in this measure and presented to this body for its approval today is not as strong as the original title included in the bill that passed this House earlier this fall. While accepting many of the provisions of the House-passed title, the Senate objected to the financial assistance programs which the Members of this House overwhelmingly supported and approved. Regrettably, Senate intransigence on this issue could not be overcome. The rural development title that we present to this House today, while substantially less than that of the House-passed bill, can be considered a first step in the right direction. It is a beginning. The chairman of the Senate Committee on Small Business has signaled his intention to begin work next year on a comprehensive rural small business development initiative that will address the daunting challenges that face rural areas. I am encouraged by his assurance and will be pleased to work with Chairman LAFALCE, Mr. SKELTON, members of the House Small Business Committee, and our other colleagues to fashion a bill which will assist rural small businesses.

Mr. Speaker, the bill before this body is a responsible and reasoned approach to maintaining an important Federal agency that continues to provide valuable assistance and services to our Nation's small business men and women. I strongly urge my colleagues to support the bill.

Mr. TORRES. Mr. Speaker, thank you for this opportunity to say a few words about the conference report to reauthorize the Small Business Act. I ask for unanimous consent to revise and extend my remarks. First of all, I want to thank our distinguished chairman Congressman JOHN LAFALCE and the distinguished chairman of the Senate committee, Senator DALE BUMPERS. I also wish to thank House committee staff members, Don Terry and Tom Powers, and John Ball, and Bill Montalto with the Senate committee. This reauthorization is the end of a long road for us but it is only the beginning for each of the provisions contained in this report we are considering here today.

I am particularly interested in two of the provisions contained in this report regarding the nonmanufacturers' rule and the suspension of liquidated damages.

The first provision, which I authored in the House, is intended to clarify and expand the waiver to the nonmanufacturers' rule.

This provision would provide small and disadvantaged businesses participating in the Small Business Administration's section 8(a) program to obtain a waiver from the nonmanufacturer's rule when a small business cannot reasonably be expected to supply such firms with products.

While the nonmanufacturers' rule was designed to protect small business concerns, the Administration's narrow interpretation of the rule has unnecessarily limited the Federal procurement opportunities available to small and disadvantaged firms. This provision will provide the flexibility that is currently lacking in the interpretation of the rule.

The second amendment suspends the so-called liquidated damages provision from application to the companywide subcontracting test program authorized by the 1990–91 DOD Authorization Act.

I am supporting this suspension to enable the companywide subcontracting test program to have a full and fair opportunity to work. This provision, along with the newly enacted Mentor-Protege Pilot Program will provide the aerospace industry some flexibility in achieving the 5 percent procurement goal.

This can now be accomplished in the most constructive and productive environment for the large companies and the smaller subcontracting companies.

I did not support this suspension of liquidated damages for the test program without much thought and discussion. The aerospace industry still has many obstacles to overcome in incorporating the minority business community into their supplier base.

But I have been assured by industry executives and their representatives that suspension of liquidated damages for the companywide test program will result in a pilot program beneficial to minority businesses. Furthermore, I have been personally assured that the aerospace prime contractors are as committed to the success of the pilot mentor-protege pilot as I am.

As the author of the original liquidated damages statute enacted in Public Law 100–656, and a long-time critic of the aerospace industry's efforts to increase minority business participation, I am acutely aware of the risk that such a suspension poses to recent advances in this area.

But I have confidence in the good faith of the firms participating in both pilot programs. I believe that these two pilot programs offer us a unique opportunity to work together in these tough times for the benefit of the prime contractors, subcontractors, the department of defense and the economy as a whole.

Mr. IRELAND. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. ECKART). Is there objection to the initial request of the gentleman from Iowa?

Without objection, the Senate amendment is agreed to.

Mr. WALKER. Mr. Speaker, I ask that the question be put.

The SPEAKER. The Chair will state to the gentleman from Pennsylvania that this is a unanimous consent request to concur in the Senate amendment, so there is not a question to be put, unless the gentleman objects to the consideration of the bill.

Mr. WALKER. Reserving the right to object, I do not object to the consideration of the bill, but I do object, however, to the passage of the bill without a vote.

The SPEAKER pro tempore. The gentleman needs to restate his request, then.

Mr. WALKER. I would ask that the question be put.

The SPEAKER pro tempore. The gentleman has to state his request in a manner in which the question can be put. What is before the Chair is the unanimous consent request of the gentleman from Iowa, which can either be agreed to unanimously by the House, or can be objected to. There is no provision to vote on this matter, the Chair is advising the gentleman from Pennsylvania.

Mr. WALKER. Reserving the right to object, the matter brought before the House is for consideration of this conference report?

The SPEAKER pro tempore. The question was to concur in the Senate amendment. The Chair asked if there was objection to dispensing of the reading and the Chair heard none. Now the question was, is there objection to the original request of the gentleman from Iowa, which is to concur in the Senate amendment.

Mr. WALKER. It would be my intention not to object to the consideration, but I would want to object to the present request so that the question can be put and so that the House would have an opportunity to work its will.

The SPEAKER pro tempore. The Chair must interpret the gentleman's statement to be an objection, and the unanimous consent request of the gentleman from Iowa is objected to by the gentleman from Pennsylvania.

PARLIAMENTARY INQUIRY

Mr. SMITH of Iowa. Just a minute, Mr. Speaker. I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. SMITH of Iowa. Mr. Speaker, I had a unanimous consent request to pass the bill, and that is all it is. How can that be interpreted to be——

The SPEAKER pro tempore. The gentleman's request technically before the House is to concur in the Senate amendment, which requires the unanimous consent of the House.

Mr. SMITH of Iowa. Yes, it is just a unanimous consent request.

Will the gentleman reserve the right to object?

Mr. WALKER. Sure, I will reserve the right to object.

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman from Pennsylvania yield to me?

Mr. WALKER. I yield to the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Speaker, all we have here is the small business authorization bill that the committee worked on many, many months, really. It went to the Senate. They finally worked it out today, and there is no disagreement about it whatsoever. So we are just bringing it back for unanimous consent.

Mr. WALKER. I understand what the gentleman is doing. But it is also my understanding that the gentleman may move this matter, and if the gen-

tleman will move it, I am sure the House will approve it, but at this point I have stated previously that actions taken from now on in would be subjected to votes.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Iowa?

Mr. WALKER. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

Mr. SMITH of Iowa. Mr. Speaker, I move the same request.

The SPEAKER pro tempore. Does the gentleman from Iowa [Mr. SMITH] move to suspend the rules and concur in the Senate amendment?

Mr. SMITH of Iowa. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 4793) to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (For text of Senate amendment, see immediately prior proceedings of the House of today.)

The SPEAKER pro tempore. Is a second demanded?

Mr. IRELAND. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Iowa [Mr. SMITH] will be recognized for 20 minutes, and the gentleman from Florida [Mr. IRELAND] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Iowa [Mr. SMITH].

Mr. SMITH of Iowa. Mr. Speaker, I have already explained what the bill is, and I yield back the balance of my time.

Mr. IRELAND. Mr. Speaker, the measure has the strong support of this Member and the Members on this side of the aisle.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa [Mr. SMITH] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 4793.

The question was taken.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

□ 0100

The SPEAKER pro tempore (Mr. ECKART). The Chair will count for a quorum.

Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 250, nays 0, not voting 182, as follows:

[Roll No. 535]

YEAS—250

Anderson	Hayes (IL)	Parker
Applegate	Hefley	Pashayan
Archer	Hefner	Patterson
Armey	Henry	Paxon
AuCoin	Herger	Payne (NJ)
Bartlett	Hertel	Payne (VA)
Bateman	Hiler	Pease
Bennett	Hoagland	Perkins
Bentley	Hochbrueckner	Pickett
Bereuter	Hopkins	Poshard
Berman	Houghton	Price
Bilirakis	Hoyer	Rahall
Bliley	Hubbard	Ray
Boehlert	Hughes	Regula
Boggs	Hunter	Rhodes
Bonior	Ireland	Richardson
Borski	Jacobs	Ridge
Bosco	James	Rinaldo
Brooks	Johnson (CT)	Ritter
Browder	Johnson (SD)	Roberts
Brown (CO)	Jones (GA)	Rogers
Bruce	Jontz	Rohrabacher
Bryant	Kanjorski	Ros-Lehtinen
Bustamante	Kaptur	Roth
Byron	Kasich	Roybal
Campbell (CA)	Kennelly	Sabo
Cardin	Kildee	Sarpalius
Carr	Kolbe	Sawyer
Chandler	Kyl	Saxton
Clement	Lagomarsino	Schiff
Coble	Lancaster	Schumer
Coleman (MO)	Leach (IA)	Sensenbrenner
Coleman (TX)	Lehman (CA)	Serrano
Collins	Lent	Shays
Condit	Levin (MI)	Shumway
Cooper	Lewis (CA)	Skaggs
Costello	Lewis (FL)	Slattery
Coughlin	Lewis (GA)	Slaughter (NY)
Cox	Lightfoot	Slaughter (VA)
Dannemeyer	Livingston	Smith (FL)
Darden	Lloyd	Smith (IA)
Davis	Long	Smith (NE)
de la Garza	Lowery (CA)	Smith (NJ)
DeLay	Lowey (NY)	Smith (TX)
Dellums	Markey	Smith, Robert (NH)
DeWine	Martin (NY)	Smith, Robert (OR)
Donnelly	Mazzoli	Snowe
Dorgan (ND)	McCandless	Solomon
Dornan (CA)	McCloskey	Spence
Douglas	McCollum	Spratt
Dreier	McCrery	Stallings
Duncan	McDermott	Stangeland
Dymally	McHugh	Stearns
Dyson	McMillan (NC)	Stokes
Eckart	McMillen (MD)	Stump
Emerson	McNulty	Sundquist
Engel	Meyers	Tanner
Erdreich	Mfume	Tauke
Evans	Michel	Tauzin
Fascell	Miller (CA)	Taylor
Fawell	Miller (OH)	Thomas (WY)
Fazio	Miller (WA)	Torres
Fields	Mineta	Traficant
Foglietta	Moakley	Unsoeld
Ford (TN)	Molinari	Upton
Gallegly	Mollohan	Vander Jagt
Gejdenson	Moody	Vento
Gekas	Moorhead	Visclosky
Gephardt	Morella	Vucanovich
Geren	Morrison (WA)	Walker
Gillmor	Murtha	Weiss
Gilman	Myers	Weldon
Gonzalez	Nagle	Wheat
Goss	Natcher	Whittaker
Grandy	Neal (NC)	Williams
Gray	Nielson	Wise
Green	Oakar	Wolf
Hall (TX)	Oberstar	Wolpe
Hamilton	Obey	Wyden
Hammerschmidt	Ortiz	Wylie
Hancock	Owens (UT)	Young (AK)
Hansen	Packard	Young (FL)
Harris	Pallone	
Hastert	Panetta	

NAY—0

NOT VOTING—182

Ackerman	Aspin	Barton
Alexander	Atkins	Bates
Andrews	Baker	Beilenson
Annunzio	Ballenger	Bevill
Anthony	Barnard	Bilbray
Boucher	Hall (OH)	Quillen
Boxer	Hatcher	Rangel
Brennan	Hawkins	Ravenel
Broomfield	Hayes (LA)	Robinson
Brown (CA)	Holloway	Roe
Buechner	Horton	Rose
Bunning	Huckaby	Rostenkowski
Burton	Hutto	Roukema
Callahan	Hyde	Rowland (CT)
Campbell (CO)	Inhofe	Rowland (GA)
Carper	Jenkins	Russo
Chapman	Johnston	Saiki
Clarke	Jones (NC)	Sangmeister
Clay	Kastenmeier	Savage
Clinger	Kennedy	Schaefer
Combest	Kleczka	Scheuer
Conte	Kolter	Schneider
Conyers	Kostmayer	Schroeder
Courter	LaFalce	Schuette
Coyne	Lantos	Schulze
Craig	Laughlin	Sharp
Crane	Leath (TX)	Shaw
Crockett	Lehman (FL)	Shuster
DeFazio	Levine (CA)	Sikorski
Derrick	Lipinski	Sisisky
Dickinson	Luken, Thomas	Skeen
Dicks	Machtley	Skelton
Dingell	Madigan	Smith (VT)
Dixon	Manton	Smith, Denny (OR)
Downey	Marlenee	Solarz
Durbin	Martin (IL)	Staggers
Dwyer	Martinez	Stark
Early	Matsui	Stenholm
Edwards (CA)	Mavroules	Studds
Edwards (OK)	McCurdy	Swift
English	McDade	Synar
Espy	McEwen	Tallon
Feighan	McGrath	Thomas (CA)
Fish	Mink	Thomas (GA)
Flake	Montgomery	Torricelli
Flippo	Morrison (CT)	Towns
Ford (MI)	Mrazek	Traxler
Frank	Murphy	Udall
Frenzel	Neal (MA)	Valentine
Frost	Nelson	Volkmer
Gallo	Nowak	Walgren
Gaydos	Olin	Walsh
Gibbons	Owens (NY)	Washington
Gingrich	Oxley	Watkins
Glickman	Parris	Waxman
Goodling	Pelosi	Weber
Gordon	Penny	Whitten
Gradison	Petri	Wilson
Grant	Pickle	Yates
Guarini	Porter	Yatron
Gunderson	Pursell	

□ 0117

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in).

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 4793, the bill just passed.

The SPEAKER pro tempore (Mr. ECKART). Is there objection to the request of the gentleman from Texas?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence

of the House is requested a bill of the House of the following title:

H.R. 3209. An act to modify the boundaries of the Indiana Dunes National Lakeshore, and for other purposes.

The message also announced that the Senate agrees to the amendment of the House to the bill (H.R. 4009) "An act to authorize appropriations for fiscal year 1991 for the Federal Maritime Commission, and for other purposes" with an amendment.

The message also annouced that the Senate had passed a bill and a joint resolution of the following titles, in which the concurrence of the House is requested:

S. 2343. An act to amend the Wild and Scenic Rivers Act by designating a segment of the Clarks Fork River in the State of Wyoming as a component of the National Wild and Scenic Rivers System, and

S.J. Res. 388. Joint resolution waiving certain enrollment requirements with respect to S. 2830, the Food, Agriculture, Conservation and Trade Act of 1990.

NIOBRARA RIVER SCENIC RIVER DESIGNATION ACT OF 1989

Mr. VENTO. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the House amendment to the bill (S. 280) to amend the Wild and Scenic Rivers Act by designating a segment of the Niobrara River in Nebraska as a component of the National Wild and Scenic Rivers System.

The Clerk read as follows:

Senate amendments to House amendment:

Beginning on page 1, line 4, of the House amendment, delete section 2 in its entirety, insert the following new sections, and renumber the subsequent sections accordingly:

"SEC. 2. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end thereof the following:

"( ) NIOBRARA, NEBRASKA.—(A) The 40-mile segment from Borman Bridge southeast of Valentine downstream to its confluence with Chimney Creek and the 30-mile segment from the river's confluence with Rock Creek downstream to the State Highway 137 bridge, both segments to be classified as scenic and administered by the Secretary of the Interior. That portion of the 40-mile segment designated by this subparagraph located within the Fort Niobrara National Wildlife Refuge shall continue to be managed by the Secretary through the Director of the United States Fish and Wildlife Service.

"(B) The 25-mile segment from the western boundary of Knox County to its confluence with the Missouri River, including that segment of the Verdigre Creek from the north municipal boundary of Verdigre, Nebraska, to its confluence with the Niobrara, to be administered by the Secretary of the Interior as a recreational river.

After the consultation with State and local governments and the interested public, the Secretary shall take such action as is required under subsection (b) of this section.

"( ) MISSOURI RIVER, NEBRASKA AND SOUTH DAKOTA.—The 39-mile segment from the headwaters of Lewis and Clark Lake to the Ft. Randall Dam, to be administered by the Secretary of the Interior as a recreational river.".

SEC. 3. STUDY OF 6-MILE SEGMENT.

(a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding the following at the end:

"( ) NIOBRARA, NEBRASKA.—The 6-mile segment of the river from its confluence with Chimney Creek to its confluence with Rock Creek."

On page 4, line 16, strike "coordination with and pursuant to the advice of" and insert in lieu thereof "consultation with". On line 18, strike "such group may" and insert in lieu thereof "such group shall".

On page 5, beginning on line 3, strike subsection (c) in its entirety and insert in lieu thereof the following:

"(c) EROSION CONTROL.—Within the Missouri River segment designated by the amendment made by section 2 of this Act, the Secretary shall permit the use of erosion control techniques, including the use of rocks from the area for streambank stabilization purposes, subject to such conditions as the Secretary may prescribe, in consultation with the advisory group described in subsection (a) of this section, to protect the resource values for which such river segment was designated."

On page 7, line 11, strike "conduct" and insert in lieu thereof "undertake and complete".

On page 7, on lines 19 and 20, strike "March 1990, and such other lands in the immediate area that are relevant to such study." and insert in lieu thereof "March 1990.".

The SPEAKER pro tempore. Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

□ 0120

Mrs. SMITH of Nebraska. Mr. Speaker, I object to the ordering of the second, and on that I demand tellers.

The SPEAKER pro tempore (Mr. ECKART). The question is: Will a second be ordered?

Tellers were ordered, and the Speaker pro tempore appointed as tellers Mr. VENTO and Mrs. SMITH of Nebraska.

The House divided, and the tellers reported that there were—yeas 106, nays 80.

So a second was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes, and the gentleman from California [Mr. LAGOMARSINO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume. I will not take very much time.

This is the Niobrara River bill that passed by 358 votes in favor and 59 noes earlier this year, on June 26. It is slightly modified by the Senate, but acceptable and ready to go by the House.

Mr. LAGOMARSINO. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Nebraska [Mrs. SMITH].

PARLIAMENTARY INQUIRY

Mrs. SMITH of Nebraska. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentlewoman will state her parliamentary inquiry.

Mrs. SMITH of Nebraska. Mr. Speaker, do we have enough for a quorum? We had 106 and 80.

The SPEAKER pro tempore (Mr. ECKART). A point of order on that question does not lie at this point. The gentlewoman is proceeding on the time of the gentleman from California.

Mrs. SMITH of Nebraska. Mr. Speaker, I thank the gentleman for yielding me this time. I will be very brief, because this issue has been debated at length before; but let me tell you, that however you slice it, this legislation is unprecedented, plain and simple, because it circumvents current law. Current law says the river must be studied and this river in the heart of my district has not been studied.

Expert after expert, administration official after administration official has pointed out that the river has not been studied.

The National Park Service points out that they do not have enough information about that river to adminster it; however, it seems that the Congress is ready to decide what is best out there in my district in Nebraska.

Mr. Speaker, this action is against the wishes and the judgment of the administration. It is against the judgment of the National Park Service that must administer the law, and most importantly, it is against the wishes and the judgment of 78 percent of the people who live in Nebraska, in a poll taken by the respected Wirthlin Poll in June of this year.

Let me just say, Mr. Speaker, that I hope future Congresses will pay more attention to the judgment of the people out across our 435 districts in the future and not go against their wishes, as expressed by their Members of Congress.

Of course I am going to lose on this, and I will join in the distinguished footsteps of the gentleman from Michigan [Mr. DAVIS] who had a scenic river pushed down his throat; my good friend, the gentlewoman from Nevada [Mrs. VUCANOVICH] who had one pushed down her throat; the gentleman from Alaska [Mr. YOUNG] who had the Tongass Timber Act encroached on his district; the gentleman from Oregon [Mr. SMITH] who is

having another battle about a wild and scenic river.

But so much for that. I said I would be brief, so let me just finish by saying that this is my last night as Member of the Congress. I am going to miss my dear friends back here. You have been so kind to me, so generous; it has been 16 great years and it has been an honor and a privilege to be a part of this U.S. Congress.

My husband is sitting right up there in the gallery and he and I are both going to miss you.

Thank you, God bless, and I yield back the balance of my time.

□ 0130

Mr. LAGOMARSINO. Mr. Speaker, I yield 1 minute to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. I thank the gentleman for yielding time.

Mr. Speaker, the body has been through this many times, once perviously this year. This Member rises in strong support of the legislation.

My constituents do support it. Our view is that the majority in Nebraska support it. I am not going to trouble the Members any further this evening at this late hour.

I wanted you to know that I support passage of the legislation, and I ask for your vote.

Mr. VENTO. Mr. Speaker, I point out that the Members voted for this by a margin of 359 to 59 in June of this year.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

The SPEAKER pro tempore (Mr. ECKART). Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield back the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

I just want to point out that except for the Recreation River, all of the river is in Mrs. SMITH's district.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota that the House suspend the rules and concur in the Senate amendment to the House amendment to the Senate bill, S. 280.

The question was taken.

RECORDED VOTE

Mr. LAGOMARSINO. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a suspension vote; a two-thirds' vote is required.

The vote was taken by electronic device, and there were—ayes 157, noes 95, answered, not voting 181, as follows:

[Roll No. 536]

AYES—157

Anderson	Green	Owens (UT)
Anthony	Hamilton	Pallone
Applegate	Harris	Panetta
AuCoin	Hayes (IL)	Parker
Bennett	Hefley	Patterson
Bereuter	Hefner	Payne (NJ)
Berman	Henry	Payne (VA)
Boehlert	Hertel	Pease
Boggs	Hoagland	Pickett
Bonior	Hochbrueckner	Poshard
Borski	Hoyer	Price
Bosco	Hubbard	Rahall
Brooks	Hughes	Ray
Browder	Jacobs	Richardson
Bruce	Johnson (SD)	Rinaldo
Bryant	Jones (GA)	Roybal
Bustamante	Jontz	Sabo
Byron	Kanjorski	Sarpalius
Campbell (CA)	Kaptur	Sawyer
Cardin	Kennedy	Saxton
Carr	Kennelly	Scheuer
Clement	Kildee	Schiff
Coleman (TX)	Lancaster	Schumer
Collins	Leach (IA)	Serrano
Condit	Lehman (CA)	Sharp
Cooper	Levin (MI)	Shays
Costello	Lewis (GA)	Skaggs
Coughlin	Lloyd	Slattery
Cox	Long	Smith (FL)
Darden	Lowey (NY)	Smith (IA)
de la Garza	Markey	Smith (NJ)
DeWine	Mazzoli	Spratt
Dicks	McCloskey	Stallings
Donnelly	McDermott	Stokes
Dreier	McMillan (NC)	Sundquist
Dymally	McMillen (MD)	Tanner
Dyson	McNulty	Tauzin
Eckart	Mfume	Taylor
Engel	Miller (CA)	Traficant
English	Miller (WA)	Unsoeld
Erdreich	Mineta	Upton
Evans	Moakley	Vento
Fascell	Mollohan	Visclosky
Fazio	Moody	Weiss
Foglietta	Morella	Weldon
Foley	Murtha	Wheat
Ford (TN)	Nagle	Whittaker
Gejdenson	Natcher	Williams
Gephardt	Neal (NC)	Wise
Geren	Oakar	Wolpe
Gilman	Oberstar	Wyden
Goss	Obey	
Gray	Ortiz	

NOES—95

Armey	Hancock	Molinari
Bartlett	Hansen	Moorhead
Bateman	Hastert	Myers
Bentley	Herger	Nielson
Bilirakis	Hiler	Packard
Bliley	Hopkins	Pashayan
Brown (CO)	Houghton	Paxon
Buechner	Hunter	Perkins
Chandler	Ireland	Regula
Coble	James	Rhodes
Coleman (MO)	Johnson (CT)	Ridge
Dannemeyer	Kasich	Ritter
Davis	Kolbe	Roberts
DeLay	Kyl	Rogers
Dornan (CA)	Lagomarsino	Rohrabacher
Douglas	Lent	Ros-Lehtinen
Duncan	Lewis (CA)	Roth
Emerson	Lewis (FL)	Sensenbrenner
Fawell	Lightfoot	Shumway
Fields	Livingston	Slaughter (VA)
Gallegly	Lowery (CA)	Smith (NE)
Gekas	Martin (NY)	Smith (TX)
Gillmor	McCandless	Smith, Robert (NH)
Gonzalez	McCollum	
Goodling	McCrery	Smith, Robert (OR)
Grandy	McHugh	
Hall (TX)	Michel	Snowe
Hammerschmidt	Miller (OH)	Solomon
Spence	Thomas (WY)	Wylie
Stangeland	Vander Jagt	Young (AK)
Stearns	Vucanovich	Young (FL)
Stump	Walker	
Tauke	Wolf	

NOT VOTING—181

Ackerman	Gibbons	Petri
Alexander	Gingrich	Pickle
Andrews	Glickman	Porter
Annunzio	Gordon	Pursell
Archer	Gradison	Quillen
Aspin	Grant	Rangel
Atkins	Guarini	Ravenel
Baker	Gunderson	Robinson
Ballenger	Hall (OH)	Roe
Barnard	Hatcher	Rose
Barton	Hawkins	Rostenkowski
Bates	Hayes (LA)	Roukema
Beilenson	Holloway	Rowland (CT)
Bevill	Horton	Rowland (GA)
Bilbray	Huckaby	Russo
Boucher	Hutto	Saiki
Boxer	Hyde	Sangmeister
Brennan	Inhofe	Savage
Broomfield	Jenkins	Schaefer
Brown (CA)	Johnston	Schneider
Bunning	Jones (NC)	Schroeder
Burton	Kastenmeier	Schuette
Callahan	Kleczka	Schulze
Campbell (CO)	Kolter	Shaw
Carper	Kostmayer	Shuster
Chapman	LaFalce	Sikorski
Clarke	Lantos	Sisisky
Clay	Laughlin	Skeen
Clinger	Leath (TX)	Skelton
Combest	Lehman (FL)	Slaughter (NY)
Conte	Levine (CA)	Smith (VT)
Conyers	Lipinski	Smith, Denny (OR)
Courter	Luken, Thomas	Solarz
Coyne	Machtley	Staggers
Craig	Madigan	Stark
Crane	Manton	Stenholm
Crockett	Marlenee	Studds
DeFazio	Martin (IL)	Swift
Dellums	Martinez	Synar
Derrick	Matsui	Tallon
Dickinson	Mavroules	Thomas (CA)
Dingell	McCurdy	Thomas (GA)
Dixon	McDade	Torres
Dorgan (ND)	McEwen	Torricelli
Downey	McGrath	Towns
Durbin	Meyers	Traxler
Dwyer	Mink	Udall
Early	Montgomery	Valentine
Edwards (CA)	Morrison (CT)	Volkmer
Edwards (OK)	Morrison (WA)	Walgren
Espy	Mrazek	Walsh
Feighan	Murphy	Washington
Fish	Neal (MA)	Watkins
Flake	Nelson	Waxman
Flippo	Nowak	Weber
Ford (MI)	Olin	Whitten
Frank	Owens (NY)	Wilson
Frenzel	Oxley	Yates
Frost	Parris	Yatron
Gallo	Pelosi	
Gaydos	Penny	

□ 0149

Mr. McCOLLUM and Mr. KASICH changed their vote from "aye" to "no."

Mr. COX changed his vote from "no" to "aye."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. SLAUGHTER of New York. Mr. Speaker, I was unable to be present for one rollcall vote taken. Had I been present, I would have voted "yea" on rollcall vote 536.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of it clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following titles:

H. Con. Res. 399. Concurrent resolution providing for the sine die adjournment of the 101st Congress

□ 0150

FEDERAL MARITIME COMMISSION AUTHORIZATION ACT OF 1990

Mr. TAUZIN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4009), an act to authorize appropriations for fiscal year 1991 for the Federal Maritime Commission, and for other purposes, with a Senate amendment to the House amendment to the Senate amendment thereto, and concur in the Senate amendment to the House amendment to the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment to House amendment:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Maritime Commission Authorization Act of 1990".

TITLE I—FEDERAL MARITIME COMMISSION AUTHORIZATION FOR FISCAL YEAR 1991

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

In fiscal year 1991, $15,894,000 is authorized to be appropriated for the use of the Federal Maritime Commission; common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under paragraph (1)(b) of this section.

"(6) In furtherance of the purposes of paragraph (1)(b) of this section—

"(a) the Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

"(b) the Commission may require a report or answers to questions to be made under oath;

"(c) the Commission may prescribe the form and the time for response to a report and answers to questions; and

"(d) a person who fails to file a report, answer, documentry material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than $5,000 for each day that the information is not provided.

"(7) In proceedings under paragraph (1)(b) of this section—

"(a) the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

"(b) the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence;

"(c) subject to funds being provided by appropriations Acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States;

"(d) for failure to supply information ordered to be produced or compelled by subpoena in proceedings under paragraph (1)(b)(7) of this section, the Commission may—

"(i) after notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member, or

"(ii) assess a civil penalty of not more than $5,000 for each day that the information is not provided; and

"(e) when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

"(8) Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.

"(9) If the Commission finds that conditions that are unfavorable to shipping under paragraph (1)(b) of this section exist, the Commission may—

"(a) limit sailings to and from United States ports or the amount or type of cargo carrier;

(b) suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences in United States trades of which it is a member for any period the Commission specifies;

"(c) suspend, in whole or in part, an ocean common carrier's right to operate under an agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

"(d) impose a fee, not to exceed $1,000,000 per voyage; or

"(e) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

"(10) Upon request by the Commission—

"(a) the collector of customs at the port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, and shall collect any fees imposed by the Commission under paragraph (9)(d) of this section; and

"(b) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

"(11) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under paragraph (7)(d) or (9)(b) of this section, or after its right to use another tariff has been suspended under those paragraphs, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff.

"(12) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this section.".

TITLE II—DOCUMENTATION OF VESSELS

SEC. 201. WAIVERS FOR CERTAIN VESSELS.

(a) IN GENERAL.—Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of Transportation may issue a certificate of documentation for the following vessels:

(1) AMERICAN EAGLE (U.S. official number 523873).

(2) ANGELOS (hull identification number HAZ1432C0173 and State of Hawaii registration number HA1432C).

(3) ARCTIC SOUNDER (U.S. official number 569927).

(4) BIG DEAL (North Carolina registration number 8817BD).

(5) BOUNTY (U.S. official number 950956).

(6) CAMELOT (U.S. official number 923202).

(7) CHEROKEE V (U.S. official number 570746).

(8) CONQUEROR (U.S. official number 552790).

(9) ERNESTINA (U.S. official number 136423).

(10) ESPERANCE (U.S. official number 691732).

(11) FLORA VEE (U.S. official number 526631).

(12) GHOSTRIDER (U.S. official number 906121).

(13) HE ENALU (State of Hawaii registration number HA842CP).

(14) HELL'S-A-POPPIN (U.S. official number 963543).

(15) HIPPOCAMPUS (U.S. official number 560934).

(16) IMPULSE (U.S. official number 693209).

(17) JOB SITE (U.S. official number 595013).

(18) KAINALU (State of Hawaii registration number HA779CP).

(19) LADY ROSE ANNE (U.S. official number 603040).

(20) MARINER III (U.S. official number 225459).

(21) OCEAN PROWLER (U.S. official number 632751).

(22) OH BABY AT LAST (U.S. official number 938936).

(23) OPEN RETURN (U.S. official number 658669).

(24) PACIFIC PEARL (hull identification number MRY10161M76H414).

(25) PAULA SUE (State of Maryland registration number MD7449K).
(26) PLAYPEN (U.S. official number 617198).
(27) PUMPKIN (U.S. official number 627259).
(28) RANGGA (U.S. official number 675379).
(29) ROSE (U.S. official number 928811).
(30) ROUGH POINT (U.S. official number 917958).
(31) SALISA M (U.S. official number 265653).
(32) SEA DEVIL (U.S. official number 569316).
(33) SEAGULL (U.S. official number 958929).
(34) SEA NUGGET (State of Alaska registration number AK2233E).
(35) SEA WIND (U.S. official number 610694).
(36) SINBAD (ex-SANGRIA) (State of Alaska registration number AK 3650 and hull identification number 15846).
(37) SOLITAIRE (U.S. official number 521894).
(38) SWEE'PEA (State of Alaska registration number AK8550L and hull identification number PBL32012K990).
(39) SYRINGA (hull identification number 363412; U.S. Customs number 84-129170-6).
(40) WEATHERBIRD (U.S. official number 527918).
(41) WEATHERBIRD II (ex-AUNT BEE) (U.S. official number 652213).
(42) Eight inflatable vessels identified as follows:
(A) Serial number 3968B, model number J990.
(B) Serial number 4581B, model number J990.
(C) Serial number A501A, model number D989.
(D) Serial number A502A, model number D989.
(E) Serial number 6291C, model number G091.
(F) Serial number 6300C, model number G091.
(G) Serial number 7302C, model number G091.
(H) Serial number 7305C, model number G091.
(43) Submersible vessel PC 1805.

(b) WAIVER FOR CAPT. DARYL.—Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of Transportation may issue a certificate of documentation for the vessel CAPT. DARYL (United States official number 643920), to acquire, purchase, process, and transport fish and fish products in the fisheries of the United States; except that the vessel shall not be permitted (1) to regularly carry goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources on the outer Continental Shelf of the United States or (2) to engage in the transportation of fishery related products for hire in the Aleutian trade as defined in section 2102(b) of title 46, United States Code (as amended by section 602(a) of title VI of this Act), unless the vessel also complies with all the requirements of section 4502(a), (b), (c), and (f), section 5102(b)(5), section 8104(n), and section 8702(b) of title 46, United States Code (as amended by sections 602(b), (c), (d), and (e) of title VI of this Act).

SEC. 202. TREATMENT OF CERTAIN VESSELS.

Notwithstanding the provisions of paragraph (a)(4) of section 12102 of title 46, United States Code, and the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), a vessel of less than five hundred gross tons that was sold to and operated by a nonprofit corporation organized under United States law, the majority of whose directors are United States citizens, for use by that corporation exclusively as an oceanographic research vessel, shall be deemed to be owned by a citizen of the United States for documentation purposes, and has not been "sold foreign" unless the vessel has been placed under the registery of a nation other than the United States during the period of ownership by that corporation.

SEC. 203. SMALL PASSENGER VESSEL INSPECTION.

(a) CONSTRUCTIVE TONNAGE OF S/V ZODIAC.—The S/V ZODIAC (United States official number 223755) shall be deemed to be less than one hundred gross tons and, in applying the regulations relating to the inspection of passenger vessels, the Secretary of the department in which the Coast Guard is operating shall inspect that vessel under regulations applying to vessels of that weight.

(b) SUBCHAPTER T INSPECTION.—Notwithstanding any other provision of law, the Secretary of the department in which the Coast Guard is operating shall inspect the ZODIAC (United States official number 223755) under subchapter T of title 46, Code of Federal Regulations. Any certification issued by the Secretary under subchapter T for the ZODIAC shall permit that vessel to carry not more than forty-nine passengers on lakes, bays, and sounds service.

TITLE III—COAST GUARD OMNIBUS ACT OF 1990

SEC. 301. SHORT TITLE.

This title may be cited as the "Coast Guard Omnibus Act of 1990".

SEC. 302. DESIGNATION OF THE SIDNEY LANIER BRIDGE AS AN OBSTRUCTION TO NAVIGATION.

Notwithstanding another law, the Sidney Lanier Bridge at mile 6.3 on the Brunswick River in Georgia is deemed an unreasonable obstruction to navigation, and the Federal Government share of the cost of altering the Sidney Lanier Bridge shall not exceed 50 percent of such costs.

SEC. 303. EXEMPTION OF CERTAIN VESSELS USED AS MEMORIALS TO MERCHANT MARINERS FROM PASSENGER SHIP INSPECTION REQUIREMENTS.

(a) Section 3302 of title 46, United States Code, is amended by adding the following new subsection:

"(l)(1) The Secretary may issue a permit exempting the following vessels from the requirements of this part for passenger vessels so long as the vessels are owned by nonprofit organizations and operated as nonprofit memorials to merchant mariners:

"(A) The steamship John W. Brown (United States official numbered 242209), owned by Project Liberty Ship Baltimore, Incorporated, located in Baltimore, Maryland.

"(B) The steamship Lane Victory (United States offical numbered 248094), owned by the United States Merchant Marine Veterans of World War II, located in San Pedro, California.

"(C) The steamship Jeremiah O'Brien (United States official numbered 243622), owned by the United States Maritime Administration.

"(2) The Secretary may issue a permit for a specific voyage or for not more than one year. The Secretary may impose specific requirements about the number of passengers to be carried, manning, the areas or specific routes over which the vessel may operate, or other similar matters.

"(3) A designated Coast Guard official who has reason to believe that a vessel operating under this subsection is in a condition or is operated in a manner that creates an immediate threat to life or the environment or is operated in a manner that is inconsistent with this section, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.".

SEC. 304. BIENNIAL DESIGNATION OF MEMBERS OF THE COAST GUARD ACADEMY CONGRESSIONAL BOARD OF VISITORS.

Section 104 of title 14, United States Code, is amended to read as follows:

"(a) In addition to the Advisory Committee, a Board of Visitors to the Academy is established to visit the Academy annually and to make recommendations on the operation of the Academy.

"(b) The Board shall be composed of—

"(1) two Senators designated by the Chairman of the Committee on Commerce, Science, and Transportation of the Senate;

"(2) three Members of the House of Representatives designated by the Chairman of the Committee on Merchant Marine and Fisheries of the House of Representatives;

"(3) one Senator designated by the President of the Senate;

"(4) two Members of the House of Representatives designated by the Speaker of the House of Representatives; and

"(5) the Chairman of the Committee on Commerce, Science, and Transportation of the Senate and the Chairman of the Committee on Merchant Marine and Fisheries of the House of Representatives, as ex officio Members.

"(c) When a Member is unable to attend the annual meeting another Member may be designated as provided under subsection (b).

"(d) When an ex officio Member is unable to attend the annual meeting that Member may designate another Member.

"(e) Members of the Board shall be designated in the First Session and serve for the duration of the Congress.

"(f) The Board shall visit the Academy annually on the date chosen by the Secretary. Each Member of the Board shall be reimbursed, to the extent permitted by law, by the Coast Guard for actual expenses incurred while engaged in duties as a Member of the Board.".

SEC. 305. SIMPLIFIED MEASUREMENT OF CERTAIN BARGES.

Section 14301(b) of title 46, United States Code, is amended by adding the following:

"(6) a barge (except a barge engaged on a foreign voyage) unless the owner requests.".

SEC. 306. COAST GUARD BONDING REQUIREMENT.

"(a) IN GENERAL.—Chapter 17, of title 14, United States Code, is amended by adding at the end the following new section:

"667. Vessel construction bonding requirements.

"The Secretary or the Commandant may require bid, payment, performance, payment and performance, or completion bonds or other financial instruments from contractors for construction, alteration, repair, or maintenance of Coast Guard vessels if—

"(1) the bond is required by law; or

"(2) the Secretary or Commandant determines after investigation that the amount of the bond in excess of 20% of the value of the base contract quantity excluding options, would not prevent a responsible bidder or offeror from competing for award of the contract.".

"(b) CONFORMING AMENDMENT.—The analysis for chapter 17 of title 14, United States Code, is amended by inserting after the item relating to section 666 the following:

"667. Vessel construction bonding requirements.".

SEC. 307. EXEMPTION FOR DREDGES FROM FEDERAL PILOTAGE REQUIREMENT.

Section 8502 of title 46, United States Code, is amended—

"(1) in subsection (a) by striking "subsection (g)" and inserting in lieu thereof "subsections (g) and (i)"; and

"(2) by adding at the end the following new subsection:

"(i)(1) Except as provided in paragraph (2), a dredge to which this section would otherwise apply is exempt from the requirements of this section.

"(2) If the Secretary determines, after notice and comment, that the exemption under paragraph (1) creates a hazard to navigational safety in a specified area, the Secretary may require that a dredge exempted by paragraph (1) which is operating in that area shall comply with this section.".

SEC. 308. HEMPSTEAD, NEW YORK TRANSFER.

Notwithstanding another law, the Secretary of Transportation shall transfer by quitclaim, without consideration, to the Town of Hempstead, Nassau County, New York, all rights, title, and interest of the United States in Coast Guard property and improvements located at Reynolds Channel, Atlantic Beach, New York. The Secretary shall require the property to be surveyed before it is transferred and the transferee shall pay for that survey and all conveyance costs.

SEC. 309. SOUTH HAVEN, MICHIGAN TRANSFER.

(a) Notwithstanding another law, the Secretary of Transportation shall transfer without consideration to the City of South Haven, Michigan all rights, title, and interests of the United States in Coast Guard property described in subsection (b). The transferee shall pay for all conveyance costs.

(b) The property is part of block 52 in the original Village (now City) of South Haven, Van Buren County, Michigan, described as, beginning at a point found by commencing at the North quarter post of section 10. Town 1 South, range 17 West, Van Buren County, Michigan; thence with bearings referenced to the Corps of Engineers Harbor Line Survey of 1941. South 89 degrees 34' 36" West along the North line of the section, 2386.95 feet; thence South 00 degrees 25' 24" East at right angles to said section line. 450.64 feet to the place of beginning of this description, said place of beginning being 825.50 feet South 81 degrees 52' 10" West of the east terminus of the Black River Channel entrance; thence South 10 degrees 38' 30" East, 147.00 feet; thence South 81 degrees 52' 10" West, 131.47 feet; thence North 07 degrees 43' 50" West 146.85 feet; thence North 81 degrees 52' 10" East, 124.00 feet to the place of beignning of this description, as per a survey made July 11, 1925, by T.A. Smith, Van Buren County Surveyor, subject to existing easements and restrictions of record.

SEC. 310. MUSKEGON, MICHIGAN TRANSFER.

(a) Notwithstanding another law, the Secretary of Transportation shall transfer without consideration to the Secretary of Commerce all rights, title, and interest of the United States in Coast Guard property and improvements described as follows: Part of Block 739 of Revised Plat of City of Muskegon of part of section 28, Town 10 North, Range 17 West, City of Muskegon, Muskegon County, Michigan described as beginning at a point distant South 48 degrees 15 minutes 56 seconds East 414.13 feet from Corps of Engineers Disc Guard 2 and distant North 35 degrees 59 minutes 49 seconds West 225.70 feet from Corps of Engineers Monument MUS 34 and distant South 85 degrees 51 minutes 27 seconds West 727.32 feet from the Northwest corner of Block 757 of the Revised Plat of City of Muskegon and proceeding thence North 28 degrees 38 minutes 52 seconds West 230.13 feet; thence South 61 degrees 14 minutes 26 seconds West 14.96 feet; thence North 28 degrees 24 minutes West 128.23 feet; thence South 61 degrees 14 minutes 00 seconds West 150 feet, more or less, to the shore of Lake Michigan; thence Southeasterly 358 feet, more or less, along the shore of Lake Michigan to the intersection with the line bearing South 61 degrees 14 minutes 26 seconds West from the point of beginning; thence North 61 degrees 14 minutes 26 seconds East 163 feet, more or less, to the point of beginning.

(b) The Secretary of Commerce shall make the property transferred under this section available to the National Oceanic and Atmospheric Administration.

SEC. 311. STRATEGIC PLAN FOR INFORMATION RESOURCES MANAGEMENT.

(a) None of the funds authorized to be appropriated for use by the Coast Guard in Fiscal Year 1992 may be expended to acquire additional information resources, including information equipment, until the Commandant of the Coast Guard develops and implements a strategic information resources plan to identify long-term information priorities and link the Coast Guard's missions, priorities, and organizational strategies to Coast Guard information resources.

(b) The Commandant shall submit to the Committee on Commerce, Science, and Transportation in the Senate and to the Committee on Merchant Marine and Fisheries in the House of Representatives quarterly reports during Fiscal Year 1991 concerning the progress toward completion of the strategic information resources plan, and specifically listing any expenditures or obligations made to acquire information resources.

(c) Section 663 of title 14, United States Code, is amended in the first sentence, by striking "and Shore Facilities Plan." and inserting "Shore Facilities Plan, and Information Resources Management Plan."

SEC. 312. BOATING SAFETY PROGRAM.

Chapter 131 of title 46, United States Code, is amended—

(a) in section 13101(b)(2) by striking "and with the guidelines developed under that Act; and" and inserting "the Federal Aid in Sport Fish Restoration Act of 1950 (16 U.S.C. 777-777k), and with the guidelines developed under those Acts; and";

(b) in section 13102—

(1) in subsection (a)(3) by inserting "State" after the word "general";

(2) in subsection (c)(4) by inserting "or drugs" after the word "alcohol"; and

(3) in subsection (d) by striking "the proportionate share" and inserting "a proportionate share";

(c) in sections 13103(a)(3) and 13105(a) by striking "or obligated" each time it appears; and

(d) in section 13108(a)(1) to read as follows: "During the second quarter of a fiscal year and on the basis of computations made under section 13105 of this title and submitted by the States for the preceding fiscal year, the Secretary shall determine the percentage of the amounts available to which each eligible State is entitled for the next fiscal year.".

SEC. 313. DARE COUNTY, NORTH CAROLINA TRANSFER

Notwithstanding another law, the Secretary of Transportation shall transfer without consideration by quitclaim deed to Dare County, North Carolina all rights, title, and interest of the United States in Coast Guard property and improvements located on the northern end of Pea Island East side of State road 1257, 0.3 miles North of North Carolina Highway 12 in Rodanthe, Dare County, North Carolina. The Secretary shall require the property to be surveyed before it is transferred.

SEC. 314. BAYOU LAFOURCHE, LOUISIANA.

Bayou Lafourche, in the State of Louisiana, between the Percy Brown Road (Hwy 648), City of Thibodaux, Parish of Lafourche, and the Southern Pacific Railroad bridge crossing the bayou, City of Thibodaux, Parish of Lafourche, is declared to be a navigable waterway of the United States under chapter 11 of title 33, United States Code.

SEC. 315. RELEASE OF RESTRICTIONS.

(a) IN GENERAL.—Subject to subsection (b), the United States hereby releases, without monetary consideration, all restrictions, conditions, and limitations on the use, encumbrance, or conveyance of the property described in subsection (c), to the extent such restrictions, conditions, and limitations are enforceable by the United States.

(b) LIMITATION.—Notwithstanding subsection (a), the United States shall have the right of access to, and use of, the property described in subsection (c) for national defense purposes in time of war or national emergency.

(c) PROPERTY DESCRIBED.—The property referred to in subsections (a) and (b) consist of the following parcels of lands and improvements thereto located in Calcasieu Parish, Louisiana:

(1) A parcel commonly known as the Calcasieu Women's Shelter, consisting of 3 contiguous tracts described as follows:

Tract A—Commencing at a point N 45°28'31" E 198.3 feet from point A; thence S 44°29'9" E 169.3 feet; thence S 45°28'31" W 75 feet; thence N 44°29'9" W 169.3 feet thence N 45°28'31" E 75 feet to the point of commencement.

Tract A—Commencing at a point N 45°28'31" E 198.3 feet from point A; thence S 44°29'9" E 220 feet; thence N 45°28'31" E 50 feet; thence N 44°29'9" W 220 feet; thence S 45°28'31" E 50 feet to the point of commencement.

Tract A—Commencing at a point N 45°28'31" E 248.3 feet from point A; thence S 44°29'9" E 220 feet; thence N 45°28'31" E 50 feet; thence N 44°29'9" W 220 feet; thence S 45°28'31" E 50 feet to the point of commencement.

(2) A parcel, consisting of a tract of land containing 33.351 acres, more or less, in section 11, township 10 south, range 8 west, and described as follows:

Commencing at a point N 0°22'09" W 88.18 feet from northeast corner of the southeast

quarter of section 10, T 10 S-R 8 W; said point being point D of plat of survey entitled "Boundary Agreement of CAFB" dated August 7, 1973, and recorded in plat book 23, page 20 records of Calcasieu Parish, Louisiana: thence N 0°22'09" W 183.6 feet; thence S 79°45'09" E 226.33 feet to the point of commencement: thence S 79°45'09" E, thence 1843.02; thence N 11°36'26" E 965.89 feet, thence N 80°30'11" W 1196.35 feet, thence S 45°25'51" W 1162.28 feet to the point of commencement.

(d) MINERAL RESOURCES.—Nothing in this section shall affect the disposition or ownership of oil, gas, or other mineral resources associated with property described in subsection (c).

SEC. 316. COLD WATER SURVIVAL TRAINING CENTER.

In addition to any sums authorized to be appropriated for the Coast Guard for fiscal year 1992, $6,000,000 is authorized to be appropriated for fiscal year 1992 and transferred to the University of Alaska to establish a Cold Water Survival Training Center in Kenai, Alaska.

SEC. 317. FISHING VESSELS IN CALIFORNIA.

(a) DEFINITION.—For purposes of the application of sections 8103(a), 12102, 12110, and 12111 of title 46, United States Code, to a fishing vessel operating in waters subject to the jurisdiction of the United States off the coast of the State of California, the term "citizen of the United States" includes an alien lawfully admitted to the United States for permanent residence.

(b) TERMINATION.—This section shall terminate on October 1, 2000.

SEC. 318. NONNAVIGABILITY OF WISCONSIN RIVER.

This portion of the Wisconsin River above the hydroelectric dam at Prairie du Sac, Wisconsin, is hereby declared to be a nonnavigable waterway of the United States for purposes of title 46, United States Code, including but not limited to the provisions of such title relating to vessel inspection and vessel licensure, and the other maritime laws of the United States.

SEC. 319. MEDICAL CARE CONTRACTING AUTHORITY.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by adding at the end the following new section:

"668. Contracts for medical care for retirees, dependents, and survivors:

"(a) The Secretary may contract for the delivery of health care to which covered beneficiaries are entitled under chapter 55 of title 10. The Secretary may enter into a contract under this section with any of the following:

"(1) Health maintenance organizations.

"(2) Preferred provider organizations.

"(3) Individual providers, individual medical facilities, or insurers.

"(4) Consortiums of these providers, facilities, or insurers.

"(b) A contract entered into under this section may provide for the delivery of—

"(1) selected health care services;

"(2) total health care services for selected covered beneficiaries; or

"(3) total health care services for all covered beneficiaries who reside in a geographic area designated by the Secretary.

"(c) The Secretary may prescribe a premium, deductible, copayment, or other change for health care provided under this section.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 17 of title 14, United States Code, is amended by adding at the end the following:

"668. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care".

SEC. 320. PURCHASE OF CERTAIN DATA.

The National Oceanic and Atmospheric Administration is authorized to enter into a contract for the future purchase of atmospheric wind data. Any and all obligations of the Government under such contract shall be contingent upon the following terms:

(1) the data to be purchased must meet technical criteria specified in the contract and must be satisfactory to the National Oceanic and Atmospheric Administration; and

(2) the availability of appropriated funds.

TITLE IV—FALSE DISTRESS REPORTS

SECTION 401. PENALTIES AND LIABILITY FOR MAKING A FALSE DISTRESS REPORT.

Section 88 of title 14, United States Code, is amended by adding at the end the following new subsection:

"(c) An individual who knowingly and willfully communicates a false distress message to the Coast Guard or causes the Coast Guard to attempt to save lives and property when no help is needed is—

"(1) guilty of a class D felony;

"(2) subject to a civil penalty of not more than $5,000; and

"(3) liable for all costs the Coast Guard incurs as a result of the individual's action.".

TITLE V—ADDITIONAL COAST GUARD AUTHORIZATION FOR FISCAL YEAR 1991

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

Section 102 of Public Law 101-225, the Coast Guard Authorization Act of 1989, is amended by adding a new subsection to read as follows:

"(6) ENVIRONMENTAL COMPLIANCE AND RESTORATION.—For environmental compliance and restoration at Coast Guard facilities, $30,000,000.".

TITLE VI—ALEUTIAN TRADE ACT OF 1990

SEC. 601. SHORT TITLE.

This title may be cited as the "Aleutian Trade Act of 1990".

SEC. 602. ALASKA CARGO PROVISIONS.

(a) DEFINITION.—Section 2102 of title 46, United States Code, is amended by—

(1) designating the existing text as subsection (a); and

(2) adding the following new subsection at the end:

"(b) In chapters 33, 45, 51, 81, and 87 of this title, 'Aleutian trade' means the transportation of cargo (including fishery related products) for hire on board a fish tender vessel to or from a place in Alaska West of 153 degrees West longitude and East of 172 degrees East longitude, if that place receives weekly common carrier service by water, to or from a place in the United States (except a place in Alaska).".

(b) INSPECTION PROVISIONS.—Section 3302 (c) of title 46, United States Code, is amended by adding at the end the following:

"(3) A fishing, fish processing, or fish tender vessel of not more than 500 gross tons is exempt from secton 3301 (1), (6), and (7) of this title if—

"(A) when transporting cargo to or from a place in Alaska—

"(i) that place does not receive weekly common carrier service by water from a place in the United States; or

"(ii) the cargo is of a type not accepted by that common carrier service; or

"(B) in the case of a fish tender vessel, the vessel is not engaged in the Aleutian trade.

"(4) A fish tender vessel is exempt from section 3301 (1), (6), and (7) of this title when engaged in the Aleutian trade if the vessel—

"(A) is not more than 500 gross tons;

"(B) has an incline test performed by a marine surveyor; and

"(C) has written stability instructions posted on board the vessel.".

(c) SAFETY STANDARDS.—

(1) Section 4502 (b) and (c) of title 46, United States Code, is amended to read as follows:

"(b)(1) In addition to the requirements of subsection (a) of this section, the Secretary shall prescribe regulations requiring the installation, maintenance, and use of the equipment in paragraph (2) of this subsection for documented vessels to which this chapter applies that—

"(A) operates beyond the Boundary Line;

"(B) operate with more than 16 individuals on board; or

"(C) in the case of a fish tender vessel, engage in the Aleutian trade.

"(2) The equipment to be required is as follows:

"(A) alerting and locating equipment, including emergency position indicating radio beacons;

"(B) lifeboats or liferafts sufficient to accommodate all individuals on board;

"(C) at least one readily accessible immersion suit for each individual on board that vessel when operating on the waters described in section 3102 of this title;

"(D) radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities;

"(E) navigation equipment, including compasses, radar reflectors, nautical charts, and anchors;

"(F) first aid equipment, including medicine chests; and

"(G) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment.

"(c)(1) In addition to requirements described in subsections (a) and (b) of this section, the Secretary may prescribe regulations establishing the standards in paragraph (2) of this subsection for vessels to which this chapter applies that—

"(A)(i) were built after December 31, 1988, or undergo a major conversion completed after that date; and

"(ii) operate with more than 16 individuals on board; or

"(B) in the case of a fish tender vessel, engage in the Aleutian trade.

"(2) The standards shall be minimum safety standards, including standards relating to—

"(A) navigation equipment, including radars and fathometers;

"(B) lifesaving equipment, immersion suits, signaling devices, bilge pumps, bilge alarms, life rails, and grab rails;

"(C) fire protection and fire fighting equipment, including fire alarms and portable and semiportable fire extinguishing equipment;

"(D) use and installation of insulation material;

"(E) storage methods for flammable or combustible material; and

"(F) fuel, ventilation, and electrical systems.".

"(2) Section 4502(f) of title 46, United States Code, is amended to read as follows:

"(f) To ensure compliance with the requirements of this chapter, at least once every 2 years the Secretary shall examine—

"(1) a fish processing vessel; and

"(2) a fish tender vessel engaged in the Aleutian trade.".

"(d) LOAD LINES.—Section 5102(b)(5)(B) of title 46, United States Code, is amended to read as follows:

"(B)(i) is not on a foreign voyage; or

"(ii) engaged in the Aleutian trade (except a vessel in that trade assigned a load line at any time before June 1, 1992).".

"(e) MANNING.—

"(1) Section 8104 of title 46, United States Code, is amended by adding at the end the following:

"(n)(1) Except as provided in paragraph (2) of this subsection, on a fish tender vessel of not more than 500 gross tons engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 3 watches.

"(2) On a fish tender vessel of not more than 500 gross tons engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 2 watches, if the vessel—

"(A) before September 8, 1990, operated in that trade; or

"(B)(i) before September 8, 1990, was purchased to be used in that trade; and

"(ii) before June 1, 1992, entered into service in that trade.".

(2) Section 8702 of title 46, United States Code, is amended as follows:

(A) in subsection (a)(3) by striking "vessel" and substituting "vessel (except a fish tender vessel engaged in the Aleutian trade)";

(B) in subsection (b)(2) by—

(i) striking "50 percent on a vessel permitted under section 8104 of this title to maintain a 2-watch system."; and

(ii) substituting the following: "50 percent—

"(i) on a vessel permitted under section 8104 of this title to maintain a 2-watch system; or

"(ii) on a fish tender vessel engaged in the Aleutian trade.".

(3) For the purposes of chapter 73 of title 46, United States Code, the Secretary of Transportation shall accept the service used by an individual to qualify for an endorsement as able seaman—fishing industry as qualifying service toward an endorsement as an able seaman—

(A) under sections 7307 and 7309 of that title; or

(B) if the service is on board a vessel of at least 100 gross tons, under section 7308 of that title.

(f) EFFECTIVE DATES.—This section is effective on the date of enactment of this section except as follows:

(1) The requirements imposed by section 3302(c)(4)(B) and (C) of title 46, United States Code, (as enacted by subsection (b) of this section) is effective 6 months after the date of enactment of this Act.

(2) Before January 1, 1993, section 4502(c) (as amended by subsection (c) of this section) does not apply to a fish tender vessel engaged in the Aleutian trade, if the vessel—

(A)(i) before September 8, 1990, operated in that trade; or

(ii) before September 8, 1990, was purchased to be used in that trade and, before June 1, 1992, entered into service in that trade; and

(B) does not undergo a major conversion.

(3) Before January 1, 2003, a fish tender vessel is exempt from chapter 51 of title 46, United States Code, (as amended by subsection (d) of this section) when engaged in the Aleutian trade, if the vessel—

(A)(i) before September 8, 1990, operated in that trade; or

(ii) before September 8, 1990, was purchased to be used in this trade and, before June 1, 1992, entered into service in that trade;

(B) does not undergo a major conversion; and

(C) did not have a load line assigned at any time before the date of enactment of this Act.

(4) The requirements imposed by section 8702(b)(2) of title 46, United States Code, (as amended by subsection (e)(2)(B) of this section) are effective 1 year after the date of enactment of this Act.

SEC. 603. MISCELLANEOUS TECHNICAL AMENDMENT.

Title 46, United States Code, is amended as follows:

(1) Section 2101(14)(C) is amended by striking "(49 U.S.C. 1803)" and substituting "(49 App. U.S.C. 1803)".

(2) Section 3302(j)(2)(B) is amended by striking "(46 App. U.S.C. 1295(c))" and substituting "(46 App. U.S.C. 1295c)".

(3)(A) Section 4104 is repealed.

(B) The chapter analysis for chapter 41 is amended by striking item 4104.

(4) The catch line of section 5114 is amended by striking "officers employees" and substituting "officers and employees".

(5)(A) Section 5115 is repealed.

(B) The chapter analysis for chapter 51 is amended by striking item 5115.

(6) Section 8103(i)(1)(C) is amended by striking "Naturalization" and substituting "Nationality".

(7)(A) Section 8195 is repealed.

(B) The analysis for chapter 81 is amended by striking item 8105.

(8) The chapter analysis is amended by striking items 12113-12116, 12118, and 12121.

(9) Section 12109(b) is amended by striking "abroad such a pleasure vessel" and substituting "on board that recreational vessel".

(10) Sections 12501(b)(2)(A) and 12503(a)(2)(A) are amended to read as follows:

"(A) the owner's social security number or, if that number is not available, other means of identification acceptable to the Secretary; or".

(11) Section 12505 is amended by—

(A) striking subsections (b), (c), (d), and (f); and

(B) redesignating subsection (e) as subsection (b).

(12)(A) Section 14102 is repealed.

(B) The chapter analysis for chapter 141 is amended by striking item 14102.

(13) Section 31308 is amended by striking "(46 App. U.S.C. 1241 et seq.)" and substituting "26 App. U.S.C. 1271 et seq.)".

TITLE VII—MARITIME ADMINISTRATION AUTHORIZATION

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

In fiscal year 1991, the following amounts are authorized to be appropriated for the Maritime Administration.

(I) Any amounts necessary to liquidate obligations under operating-differential subsidy contracts for the fiscal year 1991 portion of the total of current contract authority.

(2) $35,690,000 for expenses related to manpower, education, and training, including—

(A) $25,205,000 for maritime training at the Merchant Marine Academy at Kings Point, New York;

(B) $8,872,000 for assistance to the State maritime academies; and

(C) $1,613,000 for manpower and additional training.

(3) $28,095,000 for operating programs.

(4) $7,902,000 for expenses related to national security support capabilities, including—

(A) $6,748,000 for the National Defense Reserve Fleet; and

(B) $1,154,000 for emergency planning operations.

(5) $225,000,000 for the Ready Reserve Force, including—

(A) $49,400,000 for fleet additions, replacements, acquisitions, and upgrading of vessels for the Ready Reserve Force;

(B) $171,600,000 for maintenance and operations programs in support of the Ready Reserve Force; and

(C) $4,000,000 for Ready Reserve Force faciltiies.

SEC. 702. NATIONAL MARITIME ENHANCEMENT INSTITUTES.

Section 8(e) of the Act of October 13, 1989 (Public Law 101-115; 103 Stat. 695) is amended to read as follows:

"(e) The Secretary may make awards on an equal matching basis to an institute designated under subsection (a) from amounts appropriated. The aggregate annual amount of the Federal share of the awards shall not exceed $100,000.".

SEC. 703. BOARD OF VISITORS.

Section 1303(h)(1) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(h)(1)), is amended to read as follows:

"(h)(1) A Board of Visitors to the Academy shall be established, for a term of two years commencing at the beginning of each Congress, to visit the Academy annually on a date determined by the Secretary and to make recommendations on the operation of the Academy.".

SEC. 704. SALE OF OBSOLETE VESSELS.

Section 510(i) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1160(i)), is amended to read as follows:

"(i) The Secretary of Transportation is authorized to acquire suitable documented vessels, as defined in section 2101 of title 46, United States Code, with funds in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, the acquired and obsolete vessels shall be valued at their scrap value in domestic or foreign markets as of the date of the acquisition for or sale from the National Defense Reserve Fleet; except that, in a transaction subject to this section, the value assigned to those vessels will be determined on the same basis, with consideration given to the fair value of the cost of positioning the traded-out vessel to the place of scrapping. All costs incident to the lay-up of the vessel acquired under this subsection may be paid from balances in the Fund. Notwithstanding the provisions of sections 9 and 37 of the Shipping Act, 1916, vessels sold from the National Defense Reserve Fleet under this subsection may be scrapped in approved foreign markets.".

SEC. 705. SHIP SHARING.

Section 4 of the Act of October 13, 1989 (Public Law 101-115; 103 Stat. 692) is amended—

(1) by inserting "legislative" immediately after "sixty"; and

(2) by adding at the end the following: "The Secretary shall not take any vessel, currently in service as a State academy training vessel, out of service for the purpose of implementing any alternative program, including ship sharing, until or unless the vessel is incapable of being maintained in good repair as required under section 1304(c)(1)(A) of the Merchant Marine Act, 1936. The Secretary shall not implement any program requiring that any State academy share its training vessel with another State academy without having first received the express consent of Congress to do so.".

SEC. 706. COAST GUARD EXAMINATION REQUIREMENT.

Section 3 of the Act of October 13, 1989 (Public Law 101-115; 103 Stat. 692), shall not be effective prior to October 1, 1994.

SEC. 707. COMMITMENT AGREEMENTS.

(a) IN GENERAL.—Section 1303(e)(3) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b (e)(3)), is amended—

(1) by inserting "(A)" immediately after "(3)"; and

(2) by adding at the end the following new subparagraph:

"(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), the Secretary of Transportation—

"(i) may recover from the individual the cost of education provided by the Federal Government; and

"(ii) shall request the Attorney General to begin court proceedings to recover the costs of education if the Secretary decides to seek recovery under clause (i)".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to individuals who sign agreements after the date of enactment of this Act under section 1303(e) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(e)).

SEC. 708. NOMINATION AND APPOINTMENT OF CADETS.

Section 1303(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(b)), is amended—

(1) in paragraph (1)—

(A) by striking "Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office)" and inserting in lieu thereof "Delegate from American Samoa";

(B) by striking "any individual who is" and inserting "any individual who is—"

(C) by inserting "or" immediately after "Commission," the last place it appears; and

(D) by striking ", or a resident of American Samoa if the individual is nominated by the Governor of American Samoa";

(2) in paragrpah (3)(A)(vi), by striking "Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office)" and inserting in lieu thereof "Delegate to the House of Representatives for American Samoa"; and

(3) in paragraph (7)—

(A) in subparagraph (A), by striking "annually", "until September 30, 1995,", and "up to six"; and

(B) in subparagraph (B), by striking "the Secretary shall insure that the Republic of Panama reimburse the Secretary" and inserting in lieu thereof "The Secretary shall be reimbursed".

SEC. 709. MERCHANT MARINER MEMORIAL.

(a) SHORT TITLE.—This section may be cited as the "Merchant Mariner Memorial Act of 1990".

(b) VESSEL CONVEYANCE AUTHORITY.—(1) Notwithstanding any other law, the Secretary of Transportation may convey to any group of not less than two and not more than three nonprofit organizations, without consideration, all rights, title, and interest of the United States Government in a vessel which—

(A) is in the National Defense Reserve Fleet on the date of enactment of this section;

(B) is of not less than 4,000 displacement tons;

(C) has no usefulness to the Government; and

(D) is scheduled to be scrapped.

(2) As a condition of conveying a vessel to a group of nonprofit organizations pursuant to this section, the Secretary shall require that each nonprofit organization in the group—

(A) before the date of that conveyance, enter into an agreement with the other nonprofit organizations in that group which requires—

(i) the sale of the vessel for scrap purposes; and

(ii) the equal division of the proceeds of the sale among the nonprofit organizations in that group;

(B) use its share of those proceeds for the expenses directly related to acquiring land for, designing, berthing, refurbishing, repairing, or constructing a memorial to merchant mariners;

(C) have raised, before the date of enactment of this section, at least $100,000 from non-Federal sources for use for establishing a memorial to merchant mariners; and

(D) agree to any other conditions the Secretary considers appropriate.

(3)(A) A nonprofit organization may apply to the Secretary for a conveyance under this section individually or as a member of a group of nonprofit organizations.

(B) The Secretary shall designate, for purposes of this section, groups of not less than two and not more than three nonprofit organizations which apply individually under this section.

(C) A nonprofit organization may not be a member of more than one group of nonprofit organizations for purposes of this section.

(c) DELIVERY.—The Secretary shall deliver a vessel conveyed under this section to a group of nonprofit organizations—

(1) at a place where the vessel is located on the date of the approval of the conveyance,

(2) in its condition on that date, and

(3) without cost of the Government.

(d) EXPIRATION.—The authority of the Secretary under this section to convey vessels shall expire two years after the date of enactment of this section.

SEC. 710. NON-VESSEL-OPERATING COMMON CARRIERS.

(a) SHORT TITLE.—This section may be cited as the "Non-Vessel-Operating Common Carrier Amendments of 1990.".

(b) BONDING OF NON-VESSEL-OPERATING COMMON CARRIERS.—The Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.) is amended by adding at the end the following new section:

"SEC. 23. BONDING OF NON-VESSEL-OPERATING COMMON CARRIERS.

"(a) BOND.—Each non-vessel-operating common carrier shall furnish to the Commission a bond in a form and an amount determined by the Commission to be satisfactory to insure the financial responsibility of that carrier, but in any event not less than $50,000.

"(b) SURETY.—A bond submitted pursuant to this section shall be issued by a surety company found acceptable by the Secretary of the Treasury.

"(c) CLAIMS AGAINST BOND.—A bond obtained pursuant to this section shall be available to pay any judgment for damages against a non-vessel-operating common carrier arising from its transportation-related activities or order for reparations issued pursuant to section 11 of this Act or any penalty assessed against a non-vessel-operating carrier pursuant to section 13 of this Act.

"(d) RESIDENT AGENT.—A non-vessel-operating common carrier not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

"(e) TARIFFS.—The Commission may suspend or cancel any or all tariffs of a non-vessel-operating common carrier for failure to maintain the bond required by subsection (a) of this section or to designate an agent as required by subsection (d) of this section or for a violation of section 10(a)(1) of this Act.".

(c) PROHIBITED ACTS.—Section 10(b) of the Shipping Act of 1984 (46 App. U.S.C. 1709(b)) is amended—

(1) by striking "or" at the end of paragraph (13);

(2) by redesignating paragraph (14) and any reference thereto as paragraph (16); and

(3) by inserting immediately after paragraph (1) the following new paragraphs:

"(14) knowingly and willfully accept cargo from or transport cargo for the account of a non-vessel-operating common carrier that does not have a tariff and a bond as required by sections 8 and 23 of this Act;

"(15) knowingly and willfuly enter into a service contract with a non-vessel-operating common carrier or in which a non-vessel-operating common carrier is listed as an affiliate that does not have a tariff and a bond as required by sections 8 and 23 of this Act; or".

(d) INTERIM RULES.—The Commission pay prescribe interim rules and regulations necessary to carry out the amendments made by this section.

(e) EFFECTIVE DATE.—This section shall become effective 90 days after the date of its enactment.

(f) CONFORMING AMENDMENT.—The table of contents in the first section of the Shipping Act of 1984 is amended by adding at the end of the following entry:

"Sec. 23. Bonding of non-vessel-operating common carriers.".

SEC. 711. TECHNICAL CORRECTION.

Section 8103 of title 46, United States Code is amended in subsection (i) by striking "Naturalization" and inserting "Nationality".

SEC. 712. MARITIME OIL POLLUTION PREVENTION, RESPONSE, AND CLEAN-UP TRAINING.

Section 1305 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295d), is amended by adding at the end the following new subsection:

"(c)(1) The Secretary shall assist maritime training institutions approved by the Secretary in establishing a maritime oil pollution prevention, response, and clean-up training program.

"(2) Under the program established under paragraph (1)—

"(A) the Secretary may provide, to maritime training institutions approved by the

Secretary, vessels described in paragraph (4), with title free of all liens, subject to the requirements specified under paragraph (3); and

"(B) in return for receipt of such vessels, such institutions shall—

"(i) employ the vessels for the training of students and appropriate maritime industry personnel in oil spill prevention, response, clean-up, and related skills; and

"(ii) make the vessels and qualified students available to appropriate Federal, State, and local oil spill response authorities in the event of a maritime oil spill.

"(3) The requirements referred to in paragraph (2)(A) are as follows:

"(i) any vessel provided under paragraph (2)(A) shall be tendered to the approved maritime training institution at a location determined by the Secretary;

"(ii) no such vessel may be sold, traded, chartered, donated, scrapped, or in any way altered or disposed of without the prior approval of the Secretary;

"(iii) no such vessel may be used in competition with any privately-owned vessel documented under the laws of the United States or any State, unless necessary to carry out the purposes of this subsection;

"(iv) any approved maritime training institution in possession of such a vessel which can no longer utilize the vessel for training purposes shall return the vessel to the Secretary, who shall take possession of the vessel at the training institution and thereafter may dispose of the vessel, or provide the vessel to another approved maritime training institution, as the Secretary determines appropriate; and

"(v) such other requirements or conditions as the Secretary determines appropriate.

"(4) The vessels referred to in paragraph (2)(A) are United States-built offshore supply vessels and United States-built tug/supply vessels in the possession of the Maritime Administration as a result of defaults on loans guaranteed under title XI of this Act.".

Mr. TAUZIN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. ECKART). Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Louisiana?

Mr. DAVIS. Mr. Speaker, reserving the right to object, I will not object, but I will ask the gentleman from Louisiana [Mr. TAUZIN] to make a quick explanation of this bill.

Mr. TAUZIN. Mr. Speaker, I rise in strong support of H.R. 4009, as amended. This House approved nearly all of its provisions earlier this month.

The bill authorizes appropriations of $15,894,000 for the Federal Maritime Commission and $557,887,000 for the Maritime Administration for fiscal year 1991. These amounts are identical to the administration's request for both of these agencies.

It also authorizes the issuance of appropriate coastwise and U.S. fisheries documents for a number of recreational and fishing vessels.

The bill also includes the Coast Guard Omnibus Act of 1990, the False Distress Reports Act, and the Supplemental Coast Guard Authorization Act.

The provisions of legislation to require the bonding of non-vessel-operating common carriers are incorporated in this bill.

The Merchant Mariner Memorial Act of 1990, which establishes a mechanism for funding such memorials, is included in the bill.

The Aleutian Trade Act of 1990 is also a part of this bill. It deals with the relationship between fish tender vessels and other cargo vessels operating in remote areas of Alaska.

Mr. DAVIS. Mr. Speaker, further reserving the right to object, I strongly support H.R. 4009, the Federal Maritime Commission authorization for fiscal year 1991, as amended by the Senate. The Senate amendments to H.R. 4009 also contain an authorization for the Maritime Administration for Fiscal Year 1991. The authorization levels for these agencies conform with the President's request for the FMC and the Maritime Administration, an important consideration during this period of increasing fiscal restraint. The bill also contains supplemental authorization for funding for the new environmental compliance and restoration account of the Coast Guard. Finally, the bill includes important provisions relating to the administration and management of the programs and functions of these three maritime agencies.

The Senate amendments to this bill contain many provisions previously passed by the House, including two provisions I strongly support. One of these is a requirement for the Secretary of Transportation and the Commandant of the Coast Guard to investigate when a 20-percent bond is required for a Coast Guard vessel construction contract to ensure that the amount of the bond does not preclude responsible small shipyards from bidding on the contract. Recently the Coast Guard has imposed 100-percent bonding requirements for Coast Guard vessel construction contracts. This practice is anti-competitive and unnecessary to protect the Government's interest. The requirement to investigate to ensure that a bond is not excessive will increase responsible competition for Coast Guard contracts and lower vessel construction costs for the Government.

Another provision I strongly support, requires the Coast Guard to develop a strategic plan for management of information resources, before acquisition of additional information resources in Fiscal Year 1992. Implementation of this management plan will ensure that funds for information resources are wisely spent, and that Coast Guard missions dependent upon up-to-date, accurate information, will benefit.

Although I will vote for final passage of this bill, I am strongly opposed to a provision in the Senate amendment that exempts vessels operating on a portion of the Wisconsin River from Coast Guard safety inspections. I am seriously concerned about the safety problems associated with this amendment, because innocent lives may be placed in jeopardy as a result of its passage. There should be no shortage of Coast Guard resources to perform vessels safety inspections, because in the recently passed Reconciliation Act we provided the Coast Guard with the authority to charge for its vessel inspection services. And there are other questions raised by the amendment, such as whether or not the vessel manning requirements continue to apply to vessel operations on this portion of the Wisconsin River, and whether or not the Occupational Safety and Health Administration will properly assume regulation of vessel operations in this area.

In spite of this provision, I fully support passage of the bill because of the funding it authorizes for the maritime agencies within our Government.

Mr. Speaker, I cannot pass up the opportunity to observe that this bill does, in fact, contain funding for those agencies that relate to maritime transportation. For two Congresses now I have introduced legislation to reorganize the maritime agencies and to establish within the Department of Transportation, a new Federal Maritime Administration, and to consolidate within that Administration, certain functions of Federal Government relating to maritime transportation. The latest bill is H.R. 1340. I have proposed this legislation, in part, because I believe this reorganization would save money and improve the effectiveness of the maritime agencies. Today's bill shows us that maritime functions can be consolidated without any difficulty. I hope that this bill is the precursor to an effort to achieve this objective, and that, in the 102d Congress, we can return to this proposition and adopt it.

Thank you, Mr. Speaker. I urge my colleagues to approve this authorization.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from Alaska [Mr. YOUNG].

Mr. YOUNG of Alaska. Mr. Speaker, I rise in support of the conference report on H.R. 4009 and urge its adoption.

I want to give special attention to the provisions of the bill dealing with vessels in the Aleutian trade. These provisions incorporate the text of H.R. 5802, which I introduced on October 6,

1990. They are designed to provide continued cargo service to remote communities in Alaska, while ensuring better safety standards for vessels operating in the Aleutian trade, as defined in these provisions.

I want to make clear that the vessels we are talking about here are those vessels classed as tenders by the U.S. Coast Guard, which carry cargo on a regular basis. They are not to be confused with fish tender vessels that provide the traditional tender service used by the fishing industry—that is, which carry fish from vessels to shore so that the fish can be processed. Further, this legislation is not intended to disrupt the normal beginning and end of season procedures whereby a fish processing facility will use its traditional tender vessels to pre-position, or carry home, equipment used by the fish processing facility during the course of a fishing season.

In brief, this legislation provides that vessels already in the service, or purchased before September 8, 1990, and put in the service within the time specified in the legislation, will have to meet safety and manning standards that they do not now meet, but meet them over a specified period of time. A list of those vessels which the House is aware will fall under this "grandfather" provision will follow my statement. Any vessels newly entering the service, or which undergo major conversion, will have to meet the new standards immediately.

Mr. Speaker, this legislation has been agreed to by all participants in the Aleutian trade and is acceptable to affected Members on both sides of the aisle. It represents a compromise necessary to provide greater safety to vessels in the trade, while ensuring that remote communities in Alaska do not lose their cargo service. I urge its adoption.

Fish tender names and official numbers of grandfathered vessels

[Western Pioneer, Inc.] Vessel name:	*Official Number*
Marlin	568721
Tarpon	576633
Sculpin	587573
Bowfin	604231
Dolphin	617019
Aleut Packer	580852
Capelin	506241
Sally J	620431
Yellowfin	927811
Redfin	656674
Eastern Wind	964583
Northern Wind	(1)
Coastal Nomad	686157
Coastal Ranger	520075
Coastal Trader	285716
Coastal Voyager	284906
Mokahana	266658
Sunmar Sea	666754
Sunmar Sky	683227
Sunmar Star	7119678

[1] Has applied for official name.

Mr. DAVIS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Louisiana?

There was no objection.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE MAJORITY LEADER

Mr. GEPHARDT. Mr. Speaker, I want to inform Members it is our intention to take up five additional unanimous-consent requests, but there will be no further votes this evening nor this session.

WAIVING CERTAIN ENROLLMENT REQUIREMENTS WITH RESPECT TO S. 2830, FOOD, AGRICULTURE, CONSERVATION AND TRADE ACT OF 1990

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate joint resolution (S.J. Res. 388) waiving certain enrollment requirements with respect to S. 2830, the Food, Agriculture, Conservation and Trade Act of 1990, and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 388

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WAIVER OF REQUIREMENT FOR PARCHMENT PRINTING OF ENROLLMENT OF CERTAIN MEASURES.

(a) WAIVER.—The provisions of sections 106 and 107 of title 1, United States Code, are waived with respect to the printing (on parchment or otherwise) of the enrollment of S. 2830 reconciliation bill, appropriation bill, or continuing resolution of the One Hundred First Congress presented to the President after the enactment of this joint resolution.

(b) CERTIFICATION OF ENROLLMENT BY THE SECRETARY OF THE SENATE.—The enrollment of S. 2830 shall be in such form as the Secretary of the Senate certifies to be a true enrollment.

SEC. 2. SUBSEQUENT PREPARATION AND CERTIFICATION OF PRINTED ENROLLMENT.

(a) PREPARATION.—

(1) IN GENERAL.—If S. 2830 is presented to the President in the form of a hand enrollment pursuant to the authority of section 1, then upon the enactment of that bill the Secretary of the Senate shall prepare a printed enrollment of the bill as in the case of a bill to which sections 106 and 107 of title 1, United States Code, apply.

(2) TYPOGRAPHICAL CORRECTIONS.—A printed enrollment prepared pursuant to paragraph (1) may, in order to conform to customary style for printed laws, include corrections in identation, type face, and type size and may include notations (in the margins or as otherwise appropriate) of obvious errors in spelling or punctuation in the hand enrollment.

(b) TRANSMITTAL TO PRESIDENT.—A printed enrollment prepared pursuant to subsection (a), after being certified by the Secretary of the Senate to be a correct printing of the hand enrollment, shall be signed by the presiding officer of each House of Congress and transmitted to the President.

(c) CERTIFICATION BY PRESIDENT; PRESERVATION IN ARCHIVES.—Upon certification by the President that a printed enrollment transmitted pursuant to subsection (b) is a correct printing of the hand enrollment, such printed enrollment shall be transmitted to the Archivist of the United States, who shall preserve it with the hand enrollment.

(d) PUBLICATION OF LAW.—In preparing the bill or joint resolution for publication in slip form and in the United States Statutes at Large pursuant to section 112 of title 1, United States Code, the Archivist of the United States shall use the printed enrollment certified by the President under subsection (c) in lieu of the hand enrollment.

SEC. 3. DEFINITIONS.

As used in this resolution:

(1) HAND ENROLLMENT.—The term "hand enrollment" means the enrollment, as authorized by section 1, of a bill or joint resolution for presentment to the President in a form other than the printed form required by sections 106 and 107 of title 1, United States Code.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENROLLMENT OF H.R. 486, DEFENSE PRODUCTION ACT AMENDMENTS OF 1990

Ms. OAKAR. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the concurrent resolution (H. Con. Res. 401) to authorize the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 486, and ask for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

Mr. WYLIE. Mr. Speaker, reserving the right to object, I do not intend to object, but I would yield to the gentlewoman from Ohio to explain why she is doing this.

Ms. OAKAR. Mr. Speaker, I thank my friend, the gentleman from Ohio [Mr. WYLIE] for his patience, his endurance, and his kindness.

Basically, this is essentially what we passed a few minutes ago, with one exception, one essential exception: 2 years of the extension of the Defense Production Act goes to 1 year.

Mr. WYLIE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 401

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill H.R. 486, an Act to amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes, shall make the following changes:

(1) In section 133 of the bill, strike out paragraph (3) of the amended section 703(a) of the Defense Production Act of 1950, and insert the following:

"(3) delegate only to an individual described in paragraph (1) the authority to establish policies and procedures for exercising authority under title I; and

(2) In section 136 of the bill, in the proposed section 722(a)(1) of the Defense Production Act of 1950, strike "shall provide" and insert "may provide".

(3) In section 136 of the bill, in the proposed section 722(a)(2) of the Defense Production Act of 1950, strike "shall" and insert "may".

(4) In section 136 of the bill, in the proposed section 722(b)(2)(A) of the Defense Production Act of 1950, after "REVIEW.—" strike "The" and insert "Effective on and after October 1, 1991, the".

(5) In section 136 of the bill, in the proposed section 722(b)(2)(A) of the Defense Production Act of 1950, after "pursuant to subsection (a)" strike "shall" and insert "may".

(6) In section 136 of the bill, in the proposed section 722(b)(2)(A)(iii) of the Defense Production Act of 1950, after "(iii)" insert "include".

(7) In section 136 of the bill, in the proposed section 722(b)(2)(B) of the Defense Production Act of 1950—

(A) before "6 MAJOR WEAPON SYSTEMS" insert "NOT MORE THAN";

(B) strike "the Secretary of each military department to incorporate in such system a complete" and insert "an"; and

(C) strike "of 2 weapons of such" and insert "for not more than 2 weapons of each military".

(8) In section 136 of the bill, in the proposed section 722(f) of the Defense Production Act of 1950, before the period at the end, insert ", of which not more than $3,000,000 shall be available for purposes of subsection (b)(2)".

(9) In section 162 of the bill, strike "1993" and insert "1991".

(10) In section 201(a) of the bill, strike "shall" and insert "may".

(11) In section 201(b)(2)(C) of the bill, strike "not less than" and insert "not to exceed".

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

FALLON PAIUTE-SHOSHONE INDIAN TRIBES WATER RIGHTS SETTLEMENT ACT OF 1990

Mr. VENTO. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of the Senate bill (S. 3084) to provide for the settlement of water right claims of the Fallon Paiute-Shoshone Indian Tribes, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mrs. VUCANOVICH. Mr. Speaker, reserving the right to object, and I do not object, but I would like to ask the gentleman to explain the bill.

Mr. VENTO. Mr. Speaker, this legislation will resolve the longstanding problems regarding the Newlands Project in Nevada and other issues related to the Truckee and Carson Rivers and Pyramid Lake and water right claims and Fallon Tribe Indian tribes.

The Senate legislation solves a number of problems of important water allocation and environmental problems associated with these water bodies.

In addition, the legislation gives congressional approval to the interstate allocation of waters of the Truckee and Carson Rivers between the States of Nevada and California.

I thank the gentlewoman from Nevada [Mrs. VUCANOVICH] for yielding, and for her cooperation.

Mrs. VUCANOVICH. Mr. Speaker, further reserving the right to object, I rise in support of S. 3084, a water settlement bill of major importance to the States of Nevada and California and to two Indian tribes within my district, the Pyramid Lake Paiutes and the Fallon Paiute-Shoshone Tribe. Issues that will be resolved in this bill have been the subject of litigation, negotiation, and compromise for over 100 years. The major provisions of this bill are as follows:

A longstanding attempt to negotiate an interstate allocation of the waters of Lake Tahoe, and the Truckee and Carson Rivers will finally be settled by this legislation.

A Federally listed endangered species of fish, the cui-ui, and threatened species of cutthroat trout will be put on the road to recovery by innovative "credit storage" provisions of this bill.

Likewise this bill provides a measure of drought protection for the cities of Reno and Sparks, NV, that would not otherwise be available, through allowance of storage of municipal and industrial water rights in Stampede Reservoir.

The Stillwater wetlands, an all-important stop on the Pacific flyway for migratory waterfowl and other birds, will be further protected and expanded through the willing-seller water rights purchases provisions of S. 3084.

A settlement fund is created for the Fallon Tribe in recognition of debts owed the tribe for takings in 1906 and again in 1978 when the Congress authorized improvements on their reservation but failed to appropriate the necessary sums.

An economic development fund for the Pyramid Lake Paiutes is established in recognition of the hard fought compromises this tribe has made with respect to Indian sovereignty issues that would otherwise frustrate the interstate water allocations of this bill. Furthermore, a fishery trust fund is established that will provide the tribe with monies for hatchery purposes and supplant the normal appropriation through the BIA.

The irrigation farmers on the Newlands project, the first project ever built by the then newly created Reclamation Service, will have their outstanding debt retired and be allowed to "waterbank" in Lahontan reservoir. Furthermore, the Secretary of the Interior is to undertake studies and mitigate impacts upon the groundwater resources of the Lahontan Valley that are attributable to the provisions of this bill.

Mr. Speaker, I must say that I would have preferred that this bill included a settlement of all outstanding issues on the Carson-Truckee River system. A major shortfall of this bill is that after months of negotiations no agreement could be reached between the parties to the so-called OCAP litigation. The Secretary's Operating Criteria and Procedures, or OCAP, for the management of the Newlands project is an outgrowth of the listing of the cui-ui as an endangered species. The Secretary is mandated to operate the irrigation system in the Lahontan Valley so as to aid in the recovery of this species, yet he is bound by court-decreed water rights to Newlands project farmers as well. Ths dual role has placed the Secretary squarely on the hot seat and indeed neither the farmers nor the Pyramid Lake Tribe has been satisfied with his decisions regarding management of the project.

A rather late amendment in the negotiations leading to markup of this bill in the Senate was adopted in that body. It freezes the 1988 OCAP and disallows litigation on this issue until 1998. Neither the Truckee-Carson Irrigation District nor the Pyramid Lake Tribe like this provision because both parties have been active in suing the Secretary on just this issue, albeit from greatly different points of view. The administration is insisting upon this limited relief from litigation in order to support the remainder of this bill.

Mr. Speaker, there are simply too many good parts to this bill to allow it to fail because of this provision. I note that the OCAP is not permanently mandated by Congress—a measure that I could not support—merely made off-limits to litigation for 7 years. I therefore grudgingly agree to the

OCAP language remaining in, and I urge my colleagues to support this bill.

Mr. STUDDS. Mr. Speaker, S. 3084, the Truckee-Carson-Pyramid Lake Water Settlement Act would settle a 15-year long dispute about the distribution of water between Nevada and California. The area was historically a unique haven for spectacular numbers of wildlife, and it provides habitat for one of the most endangered species in the country. Unfortunately, over the years, water has been diverted for agriculture and dried up the wet areas on which these wildlife and endangered species depend.

This bill takes a giant step toward addressing the water problems in the region. It will ensure that sufficient water will be available for the wildlife and especially the endangered species that depend on it. I have, however, a very serious concern about the bill. Section 209(j)(2) would statutorily declare the Bureau of Reclamation's operating criteria for the Newlands Reclamation Project to be valid, notwithstanding any other provision of law, and would shield those criteria from judicial review for 7 years. It would entrust the Secretary of the Interior with sole responsibility for determining the Secretary's obligations under the Endangered Species Act during this period. In so doing, it would set a bad precedent for addressing endangered species conflicts that arise in the future. This provision should not have been included in the bill.

I am supporting the bill only because I believe that the failure to do so would preclude the substantial benefits to wildlife that are embodied in the bill. To address this issue, I intend to initiate an effort to repeal that provision in the 102d Congress. That bill would subject the operating criteria for the Newlands project to all the provisions of the Endangered Species Act, including judicial review under that act, and I will do all I can to seek enactment of that provision in the next Congress.

Aside from this one provision, I believe the bill represents a landmark piece of wildlife legislation, and I urge Members to support it.

Mr. JONES of North Carolina. Mr. Speaker, the bill before us today, S. 3084, contains many provisions within the jurisdiction of the Committee on Merchant Marine and Fisheries. My staff has worked closely with the subcommittee staffs of Congressman MILLER and Senator BRADLEY and they have been very cooperative in attempting to address the concerns of my committee.

Title II of S. 3084 is of special concern to my committee due to its potential impact upon the provisions of the Endangered Species Act [ESA]. This title attempts to resolve a number of complicated water rights disputes in Nevada and California involving, among other matters, the Newlands Reclamation Project and the Pyramid Lake Paiute Tribe. The tribe has fought for years to increase the flow of water from the Truckee River into Pyramid Lake to help conserve two endangered and threatened fish which spawn in the lake. The agreements set out in title II are designed to discourage and eliminate the endless water rights litigation that has plagued this part of the country and to provide significant additional supplies of water for the endangered and threatened fisheries of Pyramid Lake.

The Committee on Merchant Marine and Fisheries has exclusive jurisdiction over the provisions of the Endangered Species Act. We, therefore, have a strong interest in reviewing whether the provisions of title II contain measures inconsistent with fundamental policies and provisions of the ESA.

I would first draw Members' attention to the disclaimer in section 210(b)(9) which states that nothing in this title shall be construed as waiving or modifying the requirements of the Endangered Species Act, including its consultation and reinitiation of consultation requirements under section 7, for Federal agencies implementing the provisions and agreements under title II. Although it is included in the section on general provisions at the back of the title, this disclaimer is of major importance and is to be interpreted literally and broadly to mean exactly what it says: Nothing in title II alters or modifies in any way the consultation and reinitiation of consultation responsibilities of the Bureau of Reclamation under title II.

Similarly, nothing in title II alters the existing responsibility of the Secretary to ensure that the operating agreement authorized under section 205 contains sufficient terms and conditions to avoid jeopardizing the continued existence of the listed Pyramid Lake fishery. In addition, section 205(a)(9) and section 210(b)(9) combine to require the Secretary to ensure that the terms of the operating agreement not foreclose the opportunity to reinitiate section 7 consultation if subsequent events would otherwise require such reinitiation for discretionary actions of the Secretary under the agreement.

This latter point is very important given the controversy that arose under the recent Arizona-Idaho Conservation Act regarding the construction of telescopes on Mount Graham in Arizona. The Department of Justice [DOJ] incorrectly interpreted provisions of that act as precluding the reinitiation of consultation when the population level of the Mount Graham red squirrel, an endangered species, deteriorated unexpectedly. It was never the intent of Congress to preclude the reinitiation of consultation under section 7. However, because this point was not expressly discussed in the legislative history of the Arizona-Idaho Conservation Act, DOJ misinterpreted congressional intent on that point. In order to avoid providing DOJ with another opportunity to misinterpret our intent, I am making it clear that the provisions of title II do not shield the Secretary and the Bureau of Reclamation from any future obligation to reinitiate consultation which might otherwise arise for discretionary actions of that agency.

The provisions of the Endangered Species Act and sections 205(a)(2)(B), 205(a)(5), and 210(b)(9) of S. 3084 do not prohibit the Federal Government from entering into binding agreements. Nor do they subject any such agreements to unilateral modification. Rather, these provisions apply to and constrain the manner in which the Secretary of the Interior and other Federal officials exercise any discretion they may have. In particular, the consultation and reinitiation of consultation responsibilities of the Secretary under section 7 only apply to the extent that the Secretary or other Federal officials retain discretion to modify their actions. If there is no such discretion, the Endangered Species Act cannot be invoked to modify or abrogate any binding obligation.

At our request, the Senate also added a proviso to the end of section 205(a)(5) to clarify that its restrictions on judicial review would not apply to any claim arising under the Endangered Species Act, as amended. This is only intended to apply to claims arising with regard to discretionary actions of the Secretary under the operating agreement.

The disclaimer in section 210(b)(9) also means that nothing in title II alters the current status of water rights under the Endangered Species Act. Section 2(C)(2) of the ESA states present congressional policy that water resource issues should be resolved in concert with the conservation of endangered and threatened species. Nothing in title II should be construed as modifying this carefully crafted balance which promotes both interests simultaneously.

I would also like to point out that there is nothing in sections 208(a)(2)(B) or 210(b)(4) which alters or diminishes the existing authority or responsibility of the U.S. Fish and Wildlife Service for the conservation of endangered or threatened species.

Finally, I would like to note that nothing in section 210(b)(2) should be interpreted as diminishing in any way the primary jurisdiction of the U.S. Fish and Wildlife Service over the management of the Anaho Island National Wildlife Refuge.

In summary, with the exception of section 209(j)(2), the parts of title II which affect the jurisdiction of my committee are generally acceptable. Section 209(j)(2) is bad public policy as it relates to the Endangered Species Act and is not a measure that I endorse. Nevertheless, given the strong support from the environmental community for this bill, I have chosen not to seek the deletion of this provision and send the bill back to an uncertain fate in the Senate. For that reason I reluctantly support the passage of S. 3084.

Mrs. VUCANOVICH. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3084

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FALLON PAIUTE SHOSHONE TRIBAL SETTLEMENT ACT

SEC. 101. SHORT TITLE.

This Act may be cited as the "Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990".

SEC. 102. SETTLEMENT FUND.

(A) There is hereby established within the Treasury of the United States, the "Fallon Paiute Shoshone Tribal Settlement Fund", hereinafter referred to in the Act as the "Fund".

(B) There is authorized to be appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund $3,000,000 in fiscal year 1992, and $8,000,000 in each year for fiscal year

1993, 1994, 1995, 1996 and 1997 for a total sum of $43,000,000.

(C)(1) The income of the Fund may be obligated and expended only for the folowing purposes:

(a) Tribal economic development, including development of long-term, profit-making opportunities for the Fallon Paiute Shoshone Tribes (hereinafter referred to in the Act as "Tribes") and its tribal members, and the development of employment opportunities for tribal members;

(b) Tribal governmental services and facilities;

(c) Per capita distributions to tribal members;

(d) Rehabilitation and betterment of the irrigation system on the Fallon Paiute Shoshone Indian Reservation (hereinafter referred to in the Act as "Reservation) Paiute Shoshone Indian Reservation (hereinafter referred to in the Act as "Reservation), not including lands added to the Reservation pursuant to the provisions of Public Law 95-337, 92 Stat. 455;

(e) Acquisition of lands, water rights or related property interests located outside the Reservation from willing sellers, and improvement of such lands;

(f) Acquisition of individually-owned land, water rights or related property interests on the Reservation from willing sellers, including those held in trust by the United States.

(2) Except as provided in subsection (C)(3) of this section, the principal of the Fund shall not be obligated or expended.

(3) In obligating and expending funds for the purposes set forth in subsections (C)(1)(d), (C)(1)(e) and (C)(1)(f) of this section, the Tribes may obligate and expend no more than 20 percent of the principal of the Fund, provided that any amounts so obligated and expended from principal must be restored to the principal from repayments of such amounts expended for the purposes identified in this subsection, or from income earned on the remaining principal.

(4) In obligating and expending funds for the purpose set forth in subsection (C)(1)(c), no more than twenty percent of the annual income from the Fund may be obligated or expended for the purpose of providing per capita payments to tribal members.

(D) The tribes shall invest, manage, and use the monies appropriated to the Fund for the purposes set forth in this section in accordance with the plan developed in consultation with the Secretary under subsection (F) of this section.

(E) Upon the request of the Tribes, the Secretary shall invest the sums deposited in, accruing to, and remaining in the Fund, in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037, 25 U.S.C. 162a, as amended. All income earned on such investments shall be added to the Fund.

(F)(1) The Tribes shall develop a plan, in consultation with the Secretary, for the investment, management, administration and expenditure of the monies in the Fund, and shall submit the plan to the Secretary. The plan shall set forth the manner in which such monies will be managed, administered and expended for the purposes outlined in subsection (C)(1) of this section. Such plan may be revised and updated by the Tribes in consultation with the Secretary.

(2) The plan shall include a description of a project for the rehabilitation and betterment of the existing irrigation system on the Reservation. The rehabilitation and betterment project shall include measures to increase the efficiency of irrigation deliveries. The Secretary may assist in the development of the rehabilitation and betterment project, and the Tribes shall use their best efforts to implement the project within four years of the time when appropriations authorized in subsection (B) of this section become available.

(3) Upon the request of the Tribes, the Secretary of the Treasury and the Secretary of the Interior shall make available to the Tribes, monies from the Fund to serve any of the purposes set forth in subsection (C)(1) of this section, except that no disbursement shall be made to the Tribes unless and until they adopt the plan required under this section.

(G) The provision of section 7 of Public Law 93-134, 87 Stat. 468, as amended by section 4 of Public Law 97-458, 96 Stat. 2513, 25 U.S.C. 1407, shall apply to any funds which may be distributed per capita under subsection (C)(1)(c) of this section.

SEC. 103. ACQUISITION AND USE OF LANDS AND WATER RIGHTS.

(A) Title to all lands, water rights and related property interests acquired under section 102(C)(1)(e) within the counties of Churchill and Lyon in the State of Nevada, shall be held in trust by the United States for the Tribes as part of the Reservation, provided that no more than 2,415.3 acres of such acquired lands and no more than 8,453.55 acre feet per year of such water rights shall be held in trust by the United States and become part of the Reservation under this subsection.

(B) Any lands acquired under section 102(C)(1) (e) or (f) shall be subject to the provisions of section 20 of the Act of October 17, 1988, 102 Stat. 2485.

(C)(1) Total annual use of water rights appurtenant to the Reservation which are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, whether used on the Reservation or transferred and used off the Reservation pursuant to applicable law, shall not exceed the sum of:

(a) 10,587.5 acre feet of water per year, which is the quantum of water rights served by the Newlands Reclamation Project appurtenant to the Fallon Paiute Shoshone Indian Reservation lands that are currently served by irrigation facilities; and

(b) the quantum of active Newlands Reclamation Project water rights currently located outside of the Reservation that may be added to the Reservation or water rights which are acquired by the Secretary and exercised to benefit Reservation wetlands.

(2) The requirements of section 103(C)(1) shall not take effect until the Tribes agree to the limitations on annual use of water rights set forth in subsection (1) of this section.

(D) The Secretary is authorized and directed to reimburse non-Federal entities for reasonable and customary costs for delivery of Newlands Reclamation Project water to serve water rights added to the Reservation under subsection (A) of this section, and to enter into renewable contracts for the payment of such costs, for a term not exceeding forty years.

(E) Subject to the limitation on the quantum of use set forth in subsection (C) of this section, and applicable state law, all water rights appurtenant to the Reservation that are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, may be used for irrigation, fish and wildlife, municipal and industrial, recreation, or water quality purposes, or for any other beneficial use subject to applicable laws of the State of Nevada. Nothing in this subsection is intended to affect the jurisdiction of the Tribes or the State of Nevada, if any, over the use and transfer of water rights within the Reservation or off the Reservation, or to create any express or implied Federal reserved water right.

(F)(1) The Tribes are authorized to acquire by purchase, by exchange of lands or water rights, or interests therein, including those held in trust for the Tribes, or by gift, any lands or water rights, or interests therein, including those held in trust, located within the Reservation, for any of the following purposes:

(a) Consolidating Reservation landholdings or water rights, including those held in trust;

(b) Eliminating fractionated heirship interests in Reservation lands or water rights, including those held in trust;

(c) Providing land or water rights for any tribal program;

(d) Improving the economy of the Tribes and the economic status of tribal members through the development of industry, recreational facilities, housing projects, or other means; and

(e) General rehabilitation and enhancement of the total resource potential of the Reservation; Provided that any water rights shall be transferred in compliance with applicable state law.

(2) Title to any lands or water rights, or interests therein, acquired by the Tribes within the counties of Churchill and Lyon in the State of Nevada under the authority of this subsection shall be held by the United States in trust for the Tribes.

SEC. 104. RELEASE OF CLAIMS.

(A)(1) The Secretary of the Treasury and the Secretary of the Interior shall not disburse any monies from the Fund until such time as the following conditions have been met:

(a) The Tribes have released any and all claims they may have against the United States resulting from any failure of the United States to comply with section 7 of Public Law 95-337, 93 Stat. 457;

(b) the Tribes have dismissed with prejudice their claims in Northern Paiute Nation v. United States, Docket No. 87-A, United States Claims Court;

(c) the Tribes have agreed to accept and abide by the limitation on use of water rights served by the Newlands Reclamation Project on the Reservation, as set forth in section 103(C);

(d) the Tribes have dismissed, without prejudice, their claims in Pyramid Lake Paiute Tribe of Indians v. Luian, No. R-85-197 (D. Nev.) and their objections to the Operating Criteria and Procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988, provided that such dismisal shall not prejudice in any respect the Tribes' right to object in and administrative or judicial proceeding to such Operating Criteria and Procedures, or any revisions thereto, or to assert that any Operating Criteria and Procedures should be changed due to new information, changes in environmental circumstance, changes in project descriptions or other relevant considerations, in accordance with the requirements of all applicable court decrees and applicable statutory requirements; and

(e) the Tribes agree to be bound by a plan developed and implemented by the Secretary in accordance with section 106 of this Title.

"(f)(1) the Tribes agree to indemnify the United States against monetary claims by any landowners who may hold water rights on the Reservation as of the date of enactment of the Act and who may assert that the provisions of section 103(C) of this Title effect an unlawful taking of their rights. *Provided*, That:

(i) the United States shall defend and resist any such claims at its own expense;

(ii) the Tribes shall be entitled to intervene in any administrative or judicial proceeding on such claims; and

(iii) the United States shall not compromise or settle any such claims without the consent of the Tribes.

(2) The provisions of this section shall not be construed as:

(i) implying that section 103(C) unlawfully takes any water rights;

(ii) conferring jurisdiction on any court or other tribunal to adjudicate any such taking claims;

(iii) waiving any immunities of the United States or the Tribes; or

(iv) otherwise establishing or enhancing any claims to water rights or for the unlawful taking of such rights."

(2) If the appropriations authorized in section 102(B) are not appropriated by the Congress, it shall be deemed that the conditions set forth in this Act have not been satisfied, and the Tribes may rescind their release of claims under this section and its agreement under subsection (c) of this section.

(3) Upon the appropriation of monies authorized in section 102(B) of this Act, and the allocation of such monies to the Fund, Section 7 of Public Law 95-337, 92 Stat. 457, shall be repealed.

SEC. 105. LIABILITY OF THE UNITED STATES.

(A) Except with regard to the responsibilities assumed by the United States under section 102(E), and those set forth in section 1301 of the Act of February 12, 1929, 45 Stat. 1164, as amended, 25 U.S.C. 161a, the United States shall not bear any obligation or liability regarding the investment, management, or use of funds by the Tribes.

(B) Except with regard to the responsibilities assumed by the United States under section 102(B), section 102(F)(3), section 103(A), section 103(D), section 103(F)(2), section 104(A)(1), and section 106, the United States shall not bear any obligation or liability for the implementation of the provisions of this Act.

SEC. 106. PLAN FOR THE CLOSURE OF TJ DRAIN.

(A) The Secretary, in consultation with the Tribes and in accordance with applicable law, shall develop and implement a plan for the closure, including if appropriate, modification of components, of the TJ drain system, including the main TJ drain, the TJ-1 drain and the A drain and its sublaterals, in order to address any significant environmental problems with that system and its closure.

(B) The plan shall include measures to provide necessary substitute drainage in accordance with Bureau of Reclamation standards for reservation lands in agricultural production as of the 1990 irrigation season that are served by that system, unless the Tribes and the Secretary agree otherwise.

(C) Implementation of the plan shall not interfere with ongoing agricultural operations.

(D) The United States shall bear all costs for developing and implementing the plan.

(E) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 107. DEFINITIONS.

For purposes of this Title, and for no other purposes—

(A) The term "Fallon Paiute Shoshone Tribal Settlement Fund" or "Fund" means the Fund established under section 102(A) of this Act to enable the Fallon Paiute Shoshone Tribes to carry out the purposes set forth in section 102(C)(1) of this Title.

(B) The term "income"means all interest, dividends, gains and other earnings resulting from the investment of the principal of the Fallon Paiute Shoshone Tribal Settlement Fund, and the earnings resulting from the investment of such income.

(C) The term "principal" means the total sum of monies appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund under section 102(B) of this Act.

(D) The term "Reservation" means the lands set aside for the benefit of the Fallon Paiute Shoshone Tribes by the orders of the Department of the Interior of April 20, 1907, and November 21, 1917, as expanded and confirmed by the Act of August 4, 1978, Public Law 95-337, 92 Stat. 457.

(E) The term "Secretary" means the Secretary of the Department of the Interior.

(F) The term "tribal members" means the enrolled members of the Fallon Paiute Shoshone Tribes.

(G) The term "Tribe" means the Fallon Paiute-Shoshone Tribe.

TITLE II—TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act."

SEC. 202. PURPOSES.

The purposes of this title shall be to:

(a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;

(b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation users, and recreation;

(c) authorize acquisition of water rights for fish and wildlife;

(d) encourage settlement of litigation and claims;

(e) fulfill Federal trust obligations toward Indian tribes;

(f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery;

(g) protest significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

SEC. 203. DEFINITIONS.

For purposes of this title:

(a) the term "Alpine court" means the court having continuing jurisdiction over the Alpine decree;

(b) the term "Alpine decree" means the final decree of the United States District Court for the District of Nevada in *United States of America* v. *Alpine Land and Reservoir Company*, Civ. No. D-183, entered December 18, 1980, and any supplements thereto;

(c) the term "Carson River basin" means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(d) the term "Fallon Tribe" means the Fallon Paiute-Shoshone Tribe;

(e) the term "Lahontan Valley wetlands" means wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation;

(f) the term "Lake Tahoe basin" means the drainage area naturally tributary to Lake Tahoe, including the lake, and including the Truckee River upstream of the intersection between the Truckee River and the western bounday of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;

(g) the term "Lower Truckee River" means the Truckee River below Derby Dam;

(h) the term "Operating Agreement" means the agreement to be negotiated between the Secretary and the States of California and Nevada and others, as more fully described in section 205 of this title;

(i) the term "Orr Ditch court" means the court having continuing jurisdiction over the Orr Ditch decree;

(j) the term "Orr Ditch decree" means the decree of the United States District Court for the District of Nevada in United States of America v. Orr Water Ditch Company, et al.—in Equity, Docket No. A3, including, but not limited to the Truckee River Agreement;

(k) the term "Preliminary Settlement Agreement as Modified by the Ratification Agreement" means the document with the title "Ratification Agreement by the United States of America," including Exhibit "1" attached thereto, submitted to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, by the Assistant Secretary for Water and Science, United States Department of the Interior, on August 2, 1990, as may be amended under the terms thereof. A copy of this agreement is included in the report of the Committee on Energy and Natural Resources as Appendix 1 to the Committee's report accompanying S. 1554;

(l) the term "Pyramid Lake fishery" means two fish species found in Pyramid Lake, the cui-ui (*Chasmistes cujus*) and the Lahontan cutthroat trout (*Salmo clarki henshawi*);

(m) the term "Pyramid Lake Tribe" means the Pyramid Lake Paiute Tribe;

(n) the term "Secretary" means the Secretary of the Interior;

(o) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River;

(p) the term "Truckee River basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that lake, but excluding the Lake Tahoe basin;

(q) the term "Truckee River General Electric court" means the United States District Court for the Eastern District of California court having continuing jurisdiction over the Truckee River General Electric decree;

(r) the term "Truckee River General Electric decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in United States of America v. Truckee River

General Electric Co., No. 14861, which case was transferred to the United States District Court for the Eastern District of California on Febraury 9, 1968, and is now designated No. S-643;

(s) the term "Truckee River reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservior, Prosser Creek Reservior, Martis Reservoir, and Stampede Reservoir; and

(t) the term "1948 Tripartite Agreement" means the agreement between the Truckee-Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service regarding the establishment, development, operation, and maintenance of Stillwater National Wildlife Refuge and Management Area, dated November 26, 1948.

SEC. 204. INTERSTATE ALLOCATION.

(a) CARSON RIVER.—(1) The interstate allocation of waters of the Carson River and its tributaries represented by the *Alpine* decree is confirmed.

(2) The allocations confirmed in paragraph (1) of this subsection shall not be construed as precluding, foreclosing, or limiting the assertion of any additional right to the waters of the Carson River or its tributaries which were in existence under applicable law as of January 1, 1989, but are not recognized in the *Alpine* decree. The allocation made in paragraph (1) of this subsection shall be modified to accommodate any such additional rights, and such additional rights, if established, shall be administered in accordance with the terms of the *Alpine* decree; except that the total amount of such additional allocations shall not exceed 1,300 acre-feet per-year by depletion for use in the State of California and 2,131 acre-feet per-year by depletion for use in the State of Nevada. This paragraph shall not be construed to allow any increase in diversions from the Carson River or its tributaries beyond those in existence on December 31, 1992.

(3) If, on or after the date of enactment of this title, all or any portion of the effluent imported from the Lake Tahoe basin into the watershed of the Carson River in California is discontinued by reason of a change in the place of the disposal of such effluent, including underground disposal, to the Truckee River basin or the Lake Tahoe basin, in a manner which results in increasing the available supply of water in the Nevada portion of the Truckee River basin, the allocation to California of the water of the West Fork of the Carson River and its tributaries for use in the State of California shall be augmented by an amount of water which may be diverted to storage, except that such storage:

(A) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River, as defined in the *Alpine* decree;

(B) shall not cause significant adverse effects to fish and wildlife;

(C) shall not exceed 2,000 acre-feet per year, or the quantity by which the available annual supply of water to the Nevada portion of the Truckee River basin is increased, whichever is less; and

(D) shall be available for irrigation use in that or subsequent years, except that the cumulative amount of such storage shall not exceed 2,000 acre-feet in any year.

(4) Storage specified by paragraph (3) of this subsection shall compensate the State of California for any such discontinuance as referred to in such paragraph; *Provided*, That, the augmentation authorized by such paragraph shall be used only on lands having appurtenant *Alpine* decree rights. Use of effluent for the irrigation of lands with appurtenant *Alpine* decree rights shall not result in the forfeiture or abandonment of all or any part of such appurtenant *Alpine* decree rights, but use of such wastewater shall not be deemed to create any new or additional water rights. Nothing in this title shall be construed as prohibiting the use of all or any portion of such effluent on any lands within the State of California. Any increased water delivered to the Truckee River shall only be available to satisfy existing rights under the Orr Ditch decree or, as appropriate, to augment inflows to Pyramid Lake.

(5) Nothing in this title shall foreclose the right of either State to study, either jointly or individually, the use of Carson River surface water, which might otherwise be lost to beneficial use, to enable conjunctive use of groundwater. For purposes of this paragraph, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River basin, as may be permitted under State law.

(6) Nothing in this title shall preclude the State of Nevada, agencies of the State of Nevada, private entities, or individuals from constructing storage facilities within the Carson River basin, except that such storage facilities shall be constructed and operated in accordance with all applicable State and Federal laws and shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(7) The right of any water right owner to seek a change in the beneficial use of water from irrigation to storage for municipal and industrial uses or other beneficial uses, as determined by applicable State law, is unaffected by this title. Water stored for municipal and industrial uses may be diverted to storage in a given year and held for municipal and industrial uses in that year or subsequent years. Such changes and storage shall be in accordance with the *Alpine* decree and applicable State laws.

(8) Interbasin transfers of Carson River water shall be allowed only as provided by applicable State law.

(b) LAKE TAHOE.—(1) Total annual gross diversions for use within the Lake Tahoe basin from all natural sources, including groundwater, and under all water rights in the basin shall not exceed 34,000 acre-feet per year. From this total, 23,000 acre-feet per year are allocated to the State of California for use within the Lake Tahoe basin and 11,000 acre-feet per year are allocated to the State of Nevada for use within the Lake Tahoe basin. Water allocated pursuant to this paragraph may, after use, be exported from the Lake Tahoe basin or reused.

(2) Total annual gross diversions for use allocated pursuant to paragraph (1) of this subsection shall be determined in accordance with the following conditions:

(A) Water diverted and used to make snow within the Lake Tahoe basin shall be charged to the allocation of each State as follows:

(i) the first 600 acre-feet used in California each year and the first 350 acre-feet used each year in Nevada shall not be charged to the gross diversion allocation of either State;

(ii) where water from the Lake Tahoe basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subpargraph, the percentage of such diversions chargeable to the gross diversion allocations of each State shall be specified in the Operating Agreement; and

(iii) The provisions of paragraph 204(b)(1) notwithstanding, criteria for charging incidental runoff, if any, into the Carson River basin or the Truckee River basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1) of this title.

(B) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of either State's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(C) Where water is diverted by a distribution system, as defined in clause (iii) of this subparagraph, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) where a water distribution system supplies any municipal, commercial, and/or industrial delivery points (not including fire hydrants, flushing or cleaning points), any one of which is not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source; or

(ii) where all municipal, commercial, and industrial delivery points (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system may be measured as the sum of all amounts of water supplied to each such delivery point, provided there is in effect for such water distribution system a water conservation and management plan. Such plan may be either an individual, local plan or an area-wide, regional, or basin-wide plan, except that such plan must be reviewed and found to be reasonable under all relevant circumstances by the State agency responsible for administering water rights, or any other entity delegated such responsibility under State law. Such plan must be reviewed every five years by the agency which prepared it, and implemented in accordance with its adopted schedule, and shall include all elements required by applicable State law and the following:

(a) an estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses;

(b) identification of conservation measures currently adopted and in practice;

(c) a description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use, with an evaluation of the costs, and significant environmental and other impacts of such measures;

(d) a schedule of implementation for proposed actions as indicated by the plan;

(e) a description of the frequency and magnitude of supply deficiences, including conditions of drought and emergency, and the ability to meet short-term deficiencies;

(f) an evaluation of management of water system pressures and peak demands;

(g) an evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs;

(h) an evaluation of public information and educational programs to promote wise use and eliminate waste;

(i) an evaluation of changes in pricing, rate structure, and regulations; and

(j) an evaluation of alternative water management practices, taking into account economic and non-economic factors (including environmental, social, health, and customer impact), technological factors, and incremental costs of additional supplies.

(iii) As used in this subparagraph, the term "water distribution system" means a point or points of diversion from a water supply source or sources, together with associated piping, which serve a number of identifiable delivery points, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system.

(iv) If a program for the review of water conservation and management plans as provided in clause (ii) of this subparagraph is not in effect in that portion of the Lake Tahoe basin within a State, all gross diversions within such State shall be measured at the point of diversion.

(D) For the purpose of this subsection, water inflow and infiltration to sewer lines shall not be considered a diversion of water, and such water shall not be charged to the gross diversion allocation of either State.

(E) Regulation of streamflow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either State.

(3) The transbasin diversions from the Lake Tahoe basin in Nevada and California identified in this paragraph may be continued, to the extent that such diversions are recognized as vested or perfected rights under the laws of State where each division is made. Unless otherwise provided in this subsection, such diversions are in addition to the other allocations made by this subsection. Such transbasin diversions are the following:

(A) diversion of a maximum of 3,000 acre-feet per year from Marlette Lake for use in Nevada;

(B) diversion of a maximum of 561 acre-feet per year from Lake Tahoe for use in Nevada as set forth in Nevada Permit to Appropriate Water No. 23017, except that such diversion shall count against the allocation to Nevada made by this subsection;

(C) diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

The transbasin diversions identified in subparagraphs (A), (C), and (D) of this paragraph may be transferred, for use only in the State where the recognized transbasin diversion exits, by lease of the right of use or by conveyance of the right, to the extent to which the right is vested or has been perfected. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or perfected. The transbasin diversion described in subparagraph (B) of this paragraph may be transferred in accordance with State law. With the exception of the transbasin diversion described in subparagraph (B), all water made available for use within the Lake Tahoe basin as a result of any such transfer shall not be charged against the allocations made by this section, and such water may be depleted.

(c) TRUCKEE RIVER.—(1) There is allocated to the State of California the right to divert or extract, or to utilize any combination thereof, within the Truckee River basin in California the gross amount of 32,000 acre-feet of water per year from all natural sources, including both surface and groundwater, in the Truckee River basin subject to the following terms and conditions:

(A) maximum annual diversion of surface supplies shall not exceed 10,000 acre-feet; except that all diversions of surface supplies for use within California shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in Claim Nos. 1 and 2 of the Orr Ditch decree, and all such diversions initiated after the date of enactment of this title shall be subject to the right of the Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for municipal, industrial, and domestic use in the Truckee Meadows in Nevada, as such right is more particularly described in Article V of the Truckee River Agreement;

(B) all new wells drilled after the date of enactment of this title shall be designed to minimize any short-term reductions of surface stream flows to the maximum extent feasible;

(C) any use within the State of Nevada of any Truckee River basin groundwater with a point of extraction within California shall be subordinate to existing and future uses in California, and any such use of water in Nevada shall cease to the extent that it causes extractions to exceed safe yield;

(D) except as otherwise provided in this paragraph, the extraction and use of groundwater pursuant to this subsection shall be subject to all terms and conditions of California law;

(E) determination of safe yield of any groundwater basin in the Truckee River basin in California shall be made by the United States Geological Survey in accordance with California law;

(F) water shall be diverted from within the Truckee River basin in California for use in California outside the Truckee River basin;

(G) if the Tahoe-Truckee Sanitation Agency or its successor (hereafter "TTSA") changes in whole or in part the place of disposal of its treated wastewater to a place outside the area between Martis Creek and the Truckee River below elevation 5800 NGVD Datum, or changes the existing method of disposing of its wastewater, which change in place or method of disposal reduces the amount or substantially changes the timing of return flows to the Truckee River of the treated wastewater, TTSA shall:

(i) acquire or arrange for the acquisition of preexisting water rights to divert and use water of the Truckee River or its tributaries in California or Nevada and discontinue the diversion and use of water at the preexisting point of diversion and place of use under such rights in a manner legally sufficient to offset such reduction in the amount of return flow or change in timing, and California's Truckee River basin gross diversion allocation shall continue to be charged the amount of the discontinued diversion; or

(ii) in compliance with California law, extract and discharge into the Truckee River or its tributaries an amount of Truckee River basin groundwater in California sufficient to offset such reduction or change in timing, subject to the following conditions:

(a) extraction and discharge of Truckee River Basin groundwater for purposes of this paragraph shall comply with the terms and conditions of subparagraphs 204(c)(1)(B) and (D) and shall not be deemed use of Truckee River basin groundwater within the State of Nevada within the meaning of subparagraph 204(c)(1)(D); and

(b) California's Truckee River basin gross diversion allocation shall be charged immediately with the amount of groundwater discharged and, when California's Truckee River Basin gross diversion allocation equals 22,000 acre-feet or when the total of any reductions resulting from the changes in the place or method of disposal exceed 1000 acre-feet, whichever occurs first, the California Truckee River basin gross diversion allocation shall thereafter be charged with an additional amount of water required to compensate for the return flows which would otherwise have accrued to the Truckee River basin from municipal and industrial use of the discharged groundwater. In no event shall the total of California's Truckee River gross diversions and extractions exceed 32,000 acre-feet.

(iii) For purposes of this paragraph, the existing method of disposal shall include, in addition to underground leach field disposal, surface spray or sprinkler infiltration of treated wastewater on the site between Martis Creek and the Truckee River referred to in this subsection.

(iv) The provisions of this paragraph requiring the acquisition of water rights or the extraction and discharge of groundwater to offset reductions in the amount of timing of return flow to the Truckee River shall also apply to entities other than TTSA that may treat and dispose of wastewater within the California portion of the Truckee River basin, but only if and to the extent that the treated wastewater is not returned to the Truckee River or its tributaries, as to timing and amount, substantially as if the wastewater had been treated and disposed of by TTSA in its existing place of disposal and by its existing method of disposal. The provisions of this paragraph shall not apply to entities treating and disposing of the wastewater from less than eight dwelling units.

(H) All uses of water for commercial, irrigated agriculture within the Truckee River basin within California initiated after the date of enactment of this title shall not impair and shall be junior and subordinate to all beneficial uses in Nevada, including, but not limited to, the use of water for the maintenance and preservation of the Pyramid Lake fishery. As used in this provision, the term "commercial, irrigated agriculture" shall include traditional commercial irrigated farming operations but shall not include the following uses: irrigated golf courses and other recreational facilities, commercial nurseries, normal silvicultural activities other than commercial tree farms, irrigation under riparian rights on land irrigated at any time prior to the date of enactment of this title, lawns and ornamental shrubbery on parcels which include commercial, residential, governmental, or public buildings, and irrigated areas of two acres or less on parcels which include a residence.

(I) Water diverted within the Truckee River basin and used to make snow shall be charged to California's Truckee River allocation as follows:

(i) the first 225 acre-feet used in California each year shall not be charged to the gross diversion allocation;

(ii) where water from the Truckee River basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to such allocation shall be specified in the Operating Agreement; and

(iii) the provisions of subparagraph 204(c)(1)(F) notwithstanding, criteria for charging incidental runoff, if any, into the Lake Tahoe basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1).

(J) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(K) For the purposes of this subsection, water inflow and infiltration to sewer lines is not a diversion of water, and such water shall not be charged to California's Truckee River basin allocation.

(2) There is additionally allocated to California the amount of water decreed to the Sierra Valley Water Company by judgment in the case of United States of America v. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

(3) There is allocated to the State of Nevada all water in excess of the allocations made in paragraphs 204(c) (1) and (2) of this title.

(4) The right to water for use on the Pyramid Lake Indian Reservation in the amounts provided in Claim Nos. 1 and 2 of the Orr Ditch decree is recognized and confirmed. In accordance with and subject to the terms of the Orr Ditch decree and applicable law, the United States, acting for and on behalf of the Pyramid Lake Tribe, and with the agreement of the Pyramid Lake Tribe, or the Pyramid Lake Tribe shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so decreed on the reservation.

(d) COMPLIANCE.—(1) Compliance with the allocations made by this section and with other provisions of this section applicable to each State shall be assured by each State. Within the third quarter following the end of each calendar year, each State shall publish a report of water use providing information necessary to determine compliance with the terms and conditions of this section.

(2) The United States District Courts for the Eastern District of California and the District of Nevada shall have jurisdiction to hear and decide any claims by any aggrieved party against the State of California, State of Nevada, or any other party where such claims allege failure to comply with the allocations or any other provision of this section. Normal rules of venue and transfers of cases between Federal courts shall remain in full force and effect. Each State, by accepting the allocations under this section, shall be deemed to have waived any immunity from the jurisdiction of such courts.

(e) FORFEITURE OR ABANDONMENT.—The provisions of this section shall not be interpreted to alter or affect the applicability of the law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with State law, nor shall the forfeiture for nonuse or abandonment of water rights under the applicable law of each State affect the allocations to each State made by this title.

(f) INTERSTATE TRANSFERS.—(1) Nothing in this title shall prevent the interstate transfer of water or water rights for use within the Truckee River basin, subject to the following provisions:

(A) Each such interstate transfer shall comply with all State laws applicable to transfer of water or water rights, including but not limited to State laws regulating change in point of diversion, place of use, and purpose of use of water, except that such laws must apply equally to interstate and intrastate transfers.

(B) Use of water so transferred shall be charged to the allocation of the State wherein use of water was being made prior to the transfer.

(C) Subject to subparagraph (A) of this paragraph, in addition to the application of State laws intended to prevent injury to other lawful users of water, each State may, to the extent authorized by State law, deny or condition a proposed interstate transfer of water or water rights having a source within the Truckee River basin where the State agency responsible for administering water rights finds, on the basis of substantial evidence that the transfer would have substantial adverse impacts on the environment or overall economy of the area from which the use of the water or water right would be transferred.

(D) Nothing in this paragraph shall be construed to limit the jurisdiction of any court to review any action taken pursuant to this paragraph.

(2) The jurisdiction of the Alpine court to administer, inter alia, interstate transfers of water or water rights on the Carson River under the Alpine decree, pursuant to jurisdiction reserved therein, including any amendment or supplement thereto, is confirmed. Each State may intervene of right in any proceeding before the Alpine court wherein the reserved jurisdiction of that court is invoked with respect to an interstate transfer of water or water rights, and may report to the court findings or decisions concerning the proposed change which have been made by the State agency responsible for administering water rights under any State law applicable to transfers or change in the point of diversion, purpose of use, or place of use of water.

(3) This subsection shall not be construed to authorize the State of California or the State of Nevada to deny or condition a transfer application made by the United States or its agencies if such denial or conditioning would be inconsistent with any clear congressional directive.

(g) USE OF WATER BY THE UNITED STATES.—Use of water by the United States of America or any of its agencies or instrumentalities, or by any Indian Tribe shall be charged to the allocation of the State wherein the use is made, except as otherwise provided in subsection (f) of this section.

(h) COURT DECREES.—Nothing in this section shall be construed as modifying or terminating any court decree, or the jurisdiction of any court.

(i) PLACE OF USE TO DETERMINE ALLOCATION.—Water diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used, except as otherwise provided in subsection (f) of this section.

(j) APPLICABILITY OF STATE LAW.—Nothing in this section shall be construed to alter the applicability of State law or procedures to the water allocated to the States hereunder.

SEC. 205. TRUCKEE RIVER WATER SUPPLY MANAGEMENT.

(a) OPERATING AGREEMENT.—(1) The Secretary shall negotiate an operating agreement (hereafter "Operating Agreement") with the State of Nevada and the State of California, after consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Operating Agreement shall provide for the operation of the Truckee River reservoirs and shall ensure that the reservoirs will be operated to:

(A) satisfy all applicable dam safety and flood control requirements;

(B) provided for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended;

(C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement and the appropriate agencies of the States of Nevada and California;

(D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee River General Electric decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law; and

(E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

(3) The Operating Agreement may include, but is not limited to, provisions concerning the following subjects:

(A) administration of the Operating Agreement, including but not limited to establishing or designating an agency or court to oversee operation of the Truckee River and Truckee River reservoirs;

(B) means of assuring compliance with the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement;

(C) operations of the Truckee River system which will not be changed;

(D) operations and procedures for use of Federal facilities for the purpose of meeting the Secretary's responsibilities under the Endangered Species Act, as amended;

(E) methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient uses of Lake Tahoe water under extreme drought conditions;

(F) procedures for management and operations at the Truckee River reservoirs;

(G) procedures for operation of the Truckee River reservoirs for instream beneficial uses of water within the Truckee River basin;

(H) operation of other reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the Operating Agreement; and

(I) procedures and criteria for implementing California's allocation of Truckee River water.

(4) To enter into effect, the Operating Agreement shall be executed by the Secretary, the State of Nevada, and the State of California and shall be submitted to the Orr Ditch court and the Truckee River General Electric court for approval of any necessary modifications in the provisions of the Orr Ditch decree or the Truckee River General Electric decree. Other affected parties may be offered the opportunity to execute the Operating Agreement.

(5) When an Operating Agreement meeting the requirements of this subsection has been approved by the Secretary, the State of Nevada, and the State of California, the Secretary, pursuant to title 5 of the United States Code, shall promulgate the Operating Agreement, together with such additional measures as have been agreed to by the Secretary, the State of Nevada, and the State of California, as the exclusive Federal regulations governing the Operating Agreement. The Secretary and the other signatories to the Operating Agreement shall, if necessary, develop and implement a plan to mitigate for any significant adverse environmental impacts resulting from the Operating Agreement. Any subsequent changes to the Operating Agreement must be adopted and promulgated in the same manner as the original Operating Agreement. Any changes which affect the Preliminary Settlement Agreement as modified by the Ratification Agreement must also be approved by the signatories thereto. Judicial review of any such promulgation of the Operating Agreement may be had by any aggrieved party in the United States District Court for the Eastern District of California or the United States District Court for District of Nevada. A request for review must be filed not later than 90 days after the promulgation of the Operating Agreement becomes final, and by a person who participated in the administrative proceedings leading to the final promulgation. The scope of such review shall be limited to the administrative record and the standard of review shall be that prescribed in 5 U.S.C. 706(2)(A)-(D): *Provided*, That the limits on judicial review in this paragraph shall not apply to any claim based on the provisions of the Endangered Species Act, as amended.

(6) The Secretary shall take such other actions as are necessary to implement the Preliminary Settlement Agreement as modified by the Ratification Agreement and to implement the Operating Agreement, including entering into contracts for the use of space in Truckee River reservoirs for the purposes of storing or exchanging water, subject to the preconditions that the Sierra Pacific Power Company and the Secretary shall have executed a mutually satisfactory agreement for payment by Sierra-Pacific Power Company of appropriate amounts for the availability and use of storage capacity in Stampede Reservoir and other reservoirs.

(7) As provided in the Preliminary Settlement Agreement as modified by the Ratification Agreement, firm and non-firm municipal and industrial credit water and the 7,500 acre-feet of fishery credit water in Stampede Reservoir to be available under worse than critical drought conditions shall be used only to supply municipal and industrial needs when drought conditions or emergency or repair conditions exist, or as may be required to be converted to fishery credit water. None of these quantities of water shall be used to serve normal year municipal and industrial needs except when an emergency or repair condition exits.

(8) Subject to the terms and conditions of the Preliminary Settlement Agreement as modified by the Ratification Agreement, all of the fishery credit water established thereunder shall be used by the United States solely for the benefit of the Pyramid Lake fishery.

(9) In negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof. The Secretary may not become a party to the Operating Agreement if the Secretary determines that the effects of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.

(b) AUTHORIZATION FOR USE OF WASHOE PROJECT FACILITIES, TRUCKEE RIVER STORAGE FACILITIES, AND LAKE TAHOE DAM AND RESERVOIR.—(1) The Secretary is authorized to use Washoe Project facilities, Truckee River Storage Project facilities, and Lake Tahoe Dam and Reservoir for the storage of nonprofit water to fulfill the purposes of this title, including the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement. The Secretary shall collect appropriate charges for such uses.

(2) Payments received by the Secretary pursuant to this subsection and paragraph 205(a)(6) shall be credited annually first to pay the operation and maintenance costs of Stampede Reservoir, then covered into the Lahontan Valley and Pryamid Lake Fish and Wildlife Fund created pursuant to subsection 206(f) of this title, with funds not needed for those purposes, if any, credited to the Reclamation Fund.

(3) The Secretary is authorized to enter into an interim agreement with the Sierra Pacific Power Company and Pyramid Lake Tribe to store water owned by Sierra Pacific Power Company in Stampede Reservoir, except that the amount of such storage shall not exceed 5,000 acre-feet on September 1 of any year, such agreement shall be superseded by the Preliminary Settlement as modified by the Ratification Agreement and the Operating Agreement upon the entry into effect of those agreements.

(c) RELEASE OF WASHOE PROJECT REPAYMENT OBLIGATION.—The Secretary is released from an obligation to secure payment for the costs of constructing Washoe Project facilities, other than the power plant, including those specified in the Act of August 1, 1956, 70 Stat. 775, and under Federal reclamation laws, and such costs are hereby made non-reimbursable. Authority to construct a reservoir at the Watasheamu site, together with other necessary works for impoundment, diversion, and delivery of water, generation and transmission of hydroelectric power, and drainage of lands as conferred to the Secretary in the Act of August 1, 1956, 70 Stat. 775, is hereby revoked.

SEC. 206. WETLANDS PROTECTION.

(a) AUTHORIZATION TO PURCHASE WATER RIGHTS.—(1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection:

(A) water rights acquired under this subsection shall, to the maximum extent practicable, be used for direct application to such wetlands and shall not be sold, exchanged, or otherwise disposed or except as provided by the National Wildlife Refuge Administration Act and for the benefit of fish and wildlife within the Lahontan Valley;

(B) the Secretary shall select from any water rights acquired pursuant to this subsection those water rights or portions thereof, if not all, that can be transferred to the wetlands referenced in this subsection consistent with subsection 209(b) of this title; and

(C) in implementing this subsection, the Secretary shall consult with the State of Nevada and affected interests. Those water rights or portions thereof, if not all, which the Secretary selects for transfer shall then be transferred in accordance with applicable court decree and State law, and shall be used to apply water directly to wetlands. No water rights shall be purchased, however, unless the Secretary expects that the water rights can be so transferred and applied to direct use to a substantial degree.

(2) Acqusition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water rights purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affected interests, except that any water rights acquired for Fallon Indian Reservation wetlands shall be managed by the Secretary in consultation with the Fallon Tribe; and

(C) prior to acquiring any water or water rights in the State of California for the Lahontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall prepare a record of decision on the basis of such consultations.

(3) The Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The con-

tracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

(4) Consistent with fulfillment of this subsection and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this subsection and the water management measures authorized by subsection 206(c). This study may be conducted in coordination with the studies authorized by paragraph 207(c)(5) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Enviroment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this Act.

(b) EXPANSION OF STILLWATER NATIONAL WILDLIFE REFUGE.—(1) Notwithstanding any other provision of law, the Secretary shall manage approximately 77,520 acres of Federal land in the State of Nevada, as depicted upon a map entitled "Stillwater National Wildlife Refuge," dated July 16, 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service, as a unit of the National Wildlife Refuge System.

(2) The lands identified in paragraph (1) of this subsection shall be known as the Stillwater National Wildlife Refuge and shall be managed by the Secretary through the United States Fish and Wildlife Service for the purpose of:

(A) maintaining and restoring natural biological diversity within the refuge;

(B) providing for the conservation and management of fish and wildlife and their habitats within the refuge;

(C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

(3) The Secretary shall administer all lands, waters, and interests therein transferred under this title in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966, as amended, except that any activity provided for under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The Secretary may utilize such additional statutory authority as may be available to the Secretary for the conservation and development of wildlife and natural resources, interpretive education, and outdoor recreation as the Secretary deems appropriate to carry out the purposes of this title.

(4) The Secretary is authorized to take such actions as may be necessary to prevent, correct, or mitigate for adverse water quality and fish and wildlife habitat conditions attributable to agricultural drain water originating from lands irrigated by the Newlands Project, except that nothing in this subsection shall be construed to preclude the use of the lands referred to in paragraph (1) of this subsection for Newlands Project drainage purposes. Such actions, if taken with respect to drains located on the Fallon Indian Reservation, shall be taken after consultation with the Fallon Tribe.

(5) Not later than November 26, 1997, after consultation with the State of Nevada and affected local interests, the Secretary shall submit to the Congress recommendations, if any, concerning:

(A) revisions in the boundaries of the Stillwater National Wildlife Refuge as may be appropriate to carry out the purposes of the Stillwater National Wildlife Refuge, and the provisions of subsection 206(a) of this section;

(B) transfer of any other United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for addition to the National Wildlife Refuge System; and

(C) identification of those lands currently under the jurisdiction of the United States Fish and Wildlife Service in the Lahontan Valley that no longer warrant continued status as units of the National Wildlife Refuge System, with recommendations for their disposition.

(c) WATER USE, NAVAL AIR STATION, FALLON, NEVADA.—(1) Not later than one year after the date of enactment of this title, the Secretary of the Navy, in consultation with the Secretary, shall undertake a study to develop land management plans or measures to achieve dust control, fire abatement and safety, and foreign object damage control on those lands owned by the United States within the Naval Air Station at Fallon, Nevada, in a manner that, to the maximum extent practicable, reduce direct surface deliveries of water. Water saved or conserved shall be defined as reduced project deliveries relative to the maximum annual headgate delivery entitlement associated with recently irrigated water-righted Navy lands. Recently irrigated water-righted Navy lands shall be determined by the Secretary of the Navy in consultation with the Secretary and the State of Nevada.

(2) The Secretary of the Navy shall promptly select and implement land management plans or measures developed by the study described in paragraph (1) of this subsection upon determining that water savings can be made without impairing the safety of operations at Naval Air Station, Fallon.

(3) All water no longer used and water rights no longer exercised by the Secretary of the Navy as a result of the implementation of the modified land management plan or measures specified by this subsection shall be managed by the Secretary for the benefit of fish and wildlife resources referenced in sections 206 and 207 of this title: *Provided*, That:

(A) as may be required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, the Secretary shall manage such water and water rights primarily for the conservation of the Pyramid Lake fishery and in a manner which is consistent with the Secretary's responsibilities under the Endangered Species Act, as amended, and the requirements of applicable operating criteria and procedures for the Newlands Project; and

(B) the Secretary may manage such water or transfer temporarily or permanently some or all of the water rights no longer exercised by the Secretary of the Navy for the benefit of the Lahontan Valley wetlands so long as such management or transfers are consistent with applicable operating criteria and procedures.

(4) The Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, shall fund and implement a demonstration project and test site for the cultivation and development of low-precipitation grasses, shrubs, and other native or appropriate high-desert plant species, including the development of appropriate soil stabilization and land management techniques, with the goal of restoring previously irrigated farmland in the Newlands Project area to a stable and ecologically appropriate dryland condition.

(5) The Secretary shall reimburse appropriate non-Federal entities for reasonable and customary operation and maintenance costs associated with delivery of the water that comes under the Secretary's management pursuant to this subsection.

(6) In carrying out the provisions of this subsection, the Secretary of the Navy and the Secretary shall comply with all applicable provisions of State law and fulfill the Federal trust obligation to the Pyramid Lake Tribe and the Fallon Tribe.

(d) STATE COST-SHARING.—The Secretary is authorized to enter into an agreement with the State of Nevada for use by the State of not less than $9 million of State funds for water and water rights acquisitions and other protective measures to benefit Lahontan Valley wetlands. The Secretary's authority under subsection 206(a) is contingent upon the State of Nevada making such sums available pursuant to the terms of the agreement referenced in this subsection.

(e) TRANSFER OF CARSON LAKE AND PASTURE.—The Secretary is authorized to convey to the State of Nevada Federal lands in the area known generally as the "Carson Lake and Pasture," as depicted on the map entitled "Carson Lake Area," dated July 16, 1990, for use by the State as a State wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State of Nevada shall execute an agreement, in consultation with affected local interests, including the operator of the Newlands Project, ensuring that the Carson Lake and Pasture shall be managed in a manner consistent with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The Secretary shall retain a right of reverter under such conveyance if the terms of the agreement are not observed by the State. The official map shall be on file with the United States Fish and Wildlife Service. Carson Lake and Pasture shall be eligible for receipt of water through Newlands Project facilities.

(f) LAHONTAN VALLEY AND PYRAMID LAKE FISH AND WILDLIFE FUND.—(1) There is hereby established in the Treasury of the United States the "Lahontan Valley and Pyramid Lake Fish and Wildlife Fund" which shall be available for deposit of donations from any source and funds provided under subsections 205 (a) and (b), 206(d), and subparagraph 208(a)(2)(C), if any, of this title.

(2) Moneys deposited into this fund shall be available for appropriation to the Secretary for fish and wildlife programs for Lahontan Valley consistent with this section and for protection and restoration of the Pyramid Lake fishery consistent with plans prepared under subsection 207(a) of this title. The Secretary shall endeavor to distribute benefits from this fund on an equal basis between the Pyramid Lake fishery and the Lahontan Valley wetlands, except that moneys deposited into the fund by the State of Nevada or donated by non-Federal enti-

ties or individuals for express purposes shall be available only for such purposes and may be expended without further appropriation, and funds deposited under subparagraph 208(a)(2)(C) shall only be available for the benefit of the Pyramid Lake fishery and may be expended without further appropriation.

(g) INDIAN LAKES AREA.—The Secretary is authorized to convey to the State of Nevada or Churchill County, Nevada, Federal lands in the area generally known as the Indian Lakes area, as depicted on the map entitled "Indian Lakes Area," dated July 16, 1990, pursuant to an agreement between the Secretary and the State of Nevada or Churchill County, Nevada, as appropriate, for the purposes of fish and wildlife, and recreation. Any activity provided under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The official map shall be on file with the United States Fish and Wildlife Service.

SEC. 207. CUI-UI AND LAHONTAN CUTTHROAT TROUT RECOVERY AND ENHANCEMENT PROGRAM.

(a) RECOVERY PLANS.—Pursuant to the Endangered Species Act, as amended, the Secretary shall expeditiously revise, update, and implement plans for the conservation and recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed and updated from time to time as appropriate in accordance with the Endangered Species Act, as amended, and shall include all relevant measures necessary to conserve and recover the species. Such plans and any amendments and revisions thereto shall take into account and be implemented in a manner consistent with the allocations of water to the State of Nevada and the State of California made under section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, if and when those allocations and agreements enter into effect.

(b) TRUCKEE RIVER REHABILITATION.—(1) The Secretary of the Army, in consultation with and with the assistance of the Pyramid Lake Tribe, State of Nevada, Environmental Protection Agency, the Secretary, and other interested parties, is authorized and directed to incorporate into its ongoing reconnaissance level study of the Truckee River, a study of the rehabilitation of the lower Truckee River to and including the river terminus delta at Pyramid Lake, for the benefit of the Pyramid Lake fishery. Such study shall analyze, among other relevant factors, the feasibility of:

(A) restoring riparian habitat and vegetative cover;

(B) stabilizing the course of the Truckee River to minimize erosion;

(C) improving spawning and migratory habitat for the cui-ui;

(D) improving spawning and migratory habitat for the Lahontan cutthroat trout; and

(E) improving or replacing existing facilities, or creating new facilities, to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Truckee River, and to upstream reaches above Derby Dam, to obtain access to upstream spawning habitat.

(2) There are authorized to be appropriated to the Secretary of the Army such funds as are necessary to supplement the ongoing reconnaissance level study, referenced in paragraph (1), to address and report on the activities and facilities described in that paragraph.

(c) ACQUISITION OF WATER RIGHTS.—(1) The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of the Pyramid Lake fishery in accordance with the provisions of this subsection. Water rights acquired under this subsection shall be exercised in a manner consistent with the Operating Agreement and the Preliminary Settlement Agreement as modified by the Ratification Agreement and, to the maximum extent practicable, used for the benefit of the Pyramid Lake fishery and shall not be sold, exchanged, or otherwise disposed of except to the benefit of the Pyramid Lake fishery.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water rights acquired must satisfy eligibility criteria adopted by the Secretary;

(B) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(C) prior to acquiring any water or water rights in the State of California for the Pyramid Lake fishery, the Secretary shall first consult with the Governor of California and prepare a record of decision on the basis of such consultation;

(D) all water rights shall be transferred in accordance with any applicable State law; and

(E) water rights acquired by the Secretary shall be managed by the Secretary in consultation with Pyramid Lake Tribe and affected interests.

(3) Nothing in this subsection shall be construed as limiting or affecting the authority of the Secretary to acquire water and water rights under other applicable laws.

(4) The Secretary is authorized to reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection.

(5) Consistent with fulfillment of this section and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this section. This study may be conducted in coordination with the studies authorized by paragraph 206(a)(4) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) USE OF STAMPEDE AND PROSSER RESERVOIRS.—(1) The rights of the United States to store water in Stampede Reservoir shall be used by the Secretary for the conservation of the Pyramid Lake fishery, except that such use must be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(2) The rights of the United States to store water in Prosser Creek Reservoir shall be used by the Secretary as may be required to restore and maintain the Pyramid Lake fishery pursuant to the Endangered Species Act, as amended, except that such use must be consistent with the Tahoe-Prosser Exchange Agreement, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(3) Nothing in this subsection shall prevent exchanges of such water or the use of the water stored in or released from these reservoirs for coordinated non-consumptive purposes, including recreation, instream beneficial uses, and generation of hydroelectric power. Subject to the Secretary's obligations to use water for the Pyramid Lake fishery, the Secretary is authorized to use storage capacity in the Truckee River reservoirs, including Stampede and Prosser Creek reservoirs, for storage of non-project water, including, but not limited to, storage of California's Truckee River basin surface water allocation, through negotiation of appropriate provisions for storage of such water in the Operating Agreement. To the extent it is not necessary for the Pyramid Lake fishery, the Secretary may allow Truckee River reservoir capacity dedicated to Washoe Project water to be used for exchanges of water or water rights, and to enable conjunctive use. In carrying out the provisions of this subsection, the Secretary shall comply with all applicable provisions of State law.

(e) OFFSETTING FLOWS.—Additional flows in the Truckee River and to Pyramid Lake resulting from the implementation of subsection 206(c) of this title are intended to offset any reductions in those flows which may be attributable to the allocations to California or Nevada under section 204 of this title or to the waivers in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

SEC. 208. PYRAMID LAKE FISHERIES AND DEVELOPMENT FUNDS.

(a) FUNDS ESTABLISHED.—(1) There are hereby established within the Treasury of the United States the "Pyramid Lake Paiute Fisheries Fund" and "Pyramid Lake Paiute Economic Development Fund".

(2) There is authorized to be appropriated to the Pyramid Lake Paiute Fisheries Fund $25,000,000.

(A) The principal of the Pyramid Lake Paiute Fisheries Fund shall be unavailable for withdrawal.

(B) Interest earned on the Pyramid Lake Paiute Fisheries Fund shall be available to the Pyramid Lake Tribe only for the purposes of operation and maintenance of fishery facilities at Pyramid Lake, excluding Marble Bluff Dam and Fishway, and for conservation of the Pyramid Lake fishery in accordance with plans prepared by the Pyramid Lake Tribe in consultation with and the concurrence of the United States Fish and Wildlife Service and approved by the Secretary. Of interest earned annually on the principal, 25 percent per year, or an amount which, in the sole judgment of the Secretary of the Treasury, is sufficient to maintain the principal of the fund at $25,000,000 in 1990 constant dollars, whichever is less, shall be retained in the fund as principal and shall not be available for withdrawal. Deposits of earned interest in excess of that amount may be made at the discretion of the Pyramid Lake Tribe, and all such

deposits and associated interest shall be available for withdrawal.

(C) All sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Fishery Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. Interest earnings not expended, added to principal, or obligated by the Pyramid Lake Tribe in the year in which such earnings accrue to the fund or in the four years that immediately follow shall be credited to the fund established under subsection 206(f) of this title.

(D) Subject to subparagraph (E) of this paragraph, the Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such eligible moneys from the Pyramid Lake Fishery Fund as are requested by the Pyramid Lake Tribe to carry out plans developed under subparagraph (B) of this paragraph.

(E) The Secretary and the Secretary of the Treasury shall not disburse moneys from the Pyramid Lake Paiute Fishery Fund until such time as the following conditions have been met:

(i) The Pyramid Lake Tribe has released any and all claims of any kind whatsoever against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title; and

(ii) The Pyramid Lake Tribe has assumed financial responsibility for operation and maintenance of the fishery facilities located at Pyramid Lake for the benefit of the Pyramid Lake fishery, excluding the Marble Bluff Dam and Fishway.

(3) There is authorized to be appropriated to the Pyramid Lake Paiute Economic Development Fund $40,000,000 in five equal annual installments in the 1993, 1994, 1995, 1996, and 1997 fiscal years.

(A) The principal and interest of the Pyramid Lake Paiute Economic Development Fund shall be available for tribal economic development only in accordance with a plan developed by the Pyramid Lake Tribe in consultation with the Secretary. The objectives of the plan shall be to develop long-term, profit-making opportunities for the Pyramid Lake Tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid Lake using the unique natural and cultural resources of the Pyramid Lake Indian Reservation. The plan shall be consistent with the fishery restoration goals of section 207 of this title. The plan may be revised and updated by the Pyramid Lake Tribe in consultation with the Secretary.

(B) The Pyramid Lake Tribe shall have complete discretion to invest and manage the Pyramid Lake Paiute Economic Development Fund, except that no portion of the principal shall be used to develop, operate, or finance any form of gaming or gambling, except as may be provided by the Indian Gaming Regulatory Act, Pub. L. 100-497 (102 Stat. 2467), and the United States shall not bear any obligation or liability regarding the investment, management, or use of such funds that the Pyramid Lake Tribe chooses to invest, manage, or use.

(C) If the Pyramid Lake Tribe so requests, all sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Economic Development Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. All such interest shall be added to the Pyramid Lake Paiute Economic Development Fund.

(D) The Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such moneys from the Pyramid Lake Economic Development Fund as are requested by the Pyramid Lake Tribe, except that no disbursements shall be made to the Pyramid Lake Tribe unless and until the Pyramid Lake Tribe adopts and submits to the Secretary the economic development plan described in subparagraph (A) of this paragraph, and section 204, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect in accordance with the terms of subsection 210(a) of this title.

(4) Under no circumstances shall any part of the principal of the funds established under this section be distributed to members of the Pyramid lake Tribe on a per capita basis.

(5) If, and to the extent that any portion of the sum authorized to be appropriated in paragraph 208(a)(2) is appropriated after fiscal year 1992, or in a lesser amount, there shall be deposited in the Pyramid Lake Paiute Fisheries Fund, subject to appropriations, in addition to the full contribution to the Pyramid Lake Paiute Fisheries Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had the amount authorized in paragraph 208(a)(2) been appropriated in full for fiscal year 1992.

(6) If, and to the extent that any portion of the sums authorized to be appropriated in paragraph 208(a)(3) are appropriated after fiscal years 1993, 1994, 1995, 1996, and 1997, or in lesser amounts than provided by paragraph 208(a)(3), there shall be deposited in the Pyramid Lake Paiute Economic Development Fund, subject to appropriations, in addition to the full contributions to the Pyramid Lake Paiute Economic Development Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amounts had the amounts authorized in paragraph 208(a)(3) been appropriated in full for fiscal years 1993, 1994, 1995, 1996, and 1997.

SEC. 209. NEWLANDS PROJECT IMPROVEMENT.

(a) EXPANSION OF AUTHORIZED PURPOSES.—(1) In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary is authorized to operate and maintain the project for the purposes of:

(A) fish and wildlife, including endangered and threatened species;

(B) municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;

(C) recreation;

(D) water quality; and

(E) any other purposes recognized as beneficial under the law of the State of Nevada.

(2) Additional uses of the Newlands Project made pursuant to this section shall have valid water rights and, if transferred, shall be transferred in accordance with State law.

(b) TRUCKEE RIVER DIVERSIONS.—The Secretary shall not implement any provision of this title in a manner that would:

(1) increase diversions of Truckee River water to the Newlands Project over those allowed under applicable operating criteria and procedures; or

(2) conflict with applicable court decrees.

(c) PROJECT EFFICIENCY STUDY.—(1) The Secretary shall study the feasibility of improving the conveyance efficiency of Newlands Project facilities to the extent that, within twelve years after the date of enactment of this title, on average not less than seventy-five percent of actual diversions under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes.

(2) The Secretary shall consider the effects of the measures required to achieve such efficiency on groundwater resources and wetlands in the Newlands Project area. The Secretary shall report the results of such study to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) WATER BANK.—The Secretary, in consultation with the State of Nevada and the operator of the Newlands Project, is authorized to use and enter into agreements to allow water right holders to use Newlands Project facilities in Nevada, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carryover storage of irrigation and other water for drought protection and other purposes, consistent with subsections (a) and (b) of this section. The use of such water shall be consistent with and subject to applicable State laws.

(e) RECREATION STUDY.—The Secretary, in consultation with the State of Nevada, is authorized to conduct a study to identify administrative, operational, and structural measures to benefit recreational use of Lahontan Reservoir and the Carson River downstream of Lahontan Dam. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(f) EFFLUENT REUSE STUDY.—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, the State of Nevada, and appropriate local entities, shall study the feasibility of reusing municipal wastewater for the purpose of wetland improvement or creation, or other beneficial purposes, in the areas of Fernley, Nevada, the former Lake Winnemucca National Wildlife Refuge, and the Lahontan Valley. The Secretary shall coordinate such studies with other efforts underway to manage wastewater from the Reno and Sparks, Nevada, area and to improve Truckee River and Pyramid Lake water quality. Such study shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives.

(g) REPAYMENT CANCELLATION.—Nothwithstanding any other provision of law, the Secretary may cancel all repayment obligations owing to the Bureau of Reclamation by the Truckee-Carson Irrigation District. As a precondition for the Secretary to cancel such obligations, the Truckee-Carson Irrigation District shall agree to collect all such unpaid repayment obligations and use such funds for water conservation measures.

For the purpose of this subsection and paragraph 209(h)(2), the term "water conservation measures" shall not include repair, modification, or replacement of Derby Dam.

(h) SETTLEMENT OF CLAIMS.—(1) The provisions of subsections 209 (d), (e), (f), and (g) of this section shall not become effective unless and until the Truckee-Carson Irrigation District has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted by applicable operating criteria and procedures.

(2) The provisions of subsection 209(g) of this section shall not become effective unless and until the State of Nevada provides not less than $4,000,000 for use in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(3) The Secretary is authorized to expend such sums as may be required to match equally the sums provided by the State of Nevada under paragraph (2) of this subsection. Such sums shall be available for use only in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(i) FISH AND WILDLIFE.—The Secretary shall, insofar as is consistent with project irrigation purposes and applicable operating criteria and procedures, manage existing Newlands Project re-regulatory reservoirs for the purpose of fish and wildlife.

(j) OPERATING CRITERIA AND PROCEDURES.—(1) In carrying out the provisions of this title, the Secretary shall act in a manner that is fully consistent with the decision in the case of *Pyramid Lake Paiute Tribe of Indians* v. *Morton*, 354 F. Supp. 252 (D.D.C. 1973).

(2) Notwithstanding any other provision of law, the operating criteria and procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988 shall remain in effect at least through December 31, 1997, unless the Secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act, as amended. Prior to December 31, 1997, no court or administrative tribunal shall have jurisdiction to set aside any of such operating criteria and procedures or to order or direct that they be changed in any way. All actions taken heretofore by the Secretary under any operating criteria and procedures are hereby declared to be valid and shall not be subject to review in any judicial or administrative proceeding, except as set forth in paragraph (3) of this subsection.

(3) The Secretary shall henceforth ensure compliance with all of the provisions of the operating criteria and procedures referenced in paragraph (2) of this subsection or any applicable provision of any other operating criteria or procedures for the Newlands Project previously adopted by the Secretary, and shall, pursuant to subsection 709(h) or judicial proceeding, pursue recoupment of any water diverted from the Truckee River in excess of the amounts permitted by any such operating criteria and procedures. The Secretary shall have exclusive authority and responsibility to pursue such recoupment, except that, if an agreement or order leading to such recoupment is not in effect as of December 31, 1997, any party with standing to pursue such recoupment prior to enactment of this title may pursue such recoupment thereafter. Any agreement or court order between the Secretary and other parties concerning recoupment of Truckee River water diverted in violation of applicable operating criteria and procedures shall be consistent with the requirements of this subsection and the Endangered Species Act, as amended, and shall be submitted for the review and approval of the court exercising jurisdiction over the operating criteria and procedures for the Newlands Project. All interested parties may participate in such review. In any recoupment action brought by any party, other than the Secretary, after December 31, 1997, the only relief available from any court of the United States will be the issuance of a declaratory judgment and injunctive relief directing any unlawful user of water to restore the amount of water unlawfully diverted. In no event shall a court enter any other in such a proceeding that will result in the expenditure of any funds out of the United States Treasury.

SEC. 210. MISCELLANEOUS PROVISIONS.

(a) CLAIMS SETTLEMENT.—(1) The effectiveness of section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the Secretary's authority to disburse funds under paragraph 208(a)(3) of this title are contingent upon dismissal with prejudice or other final resolution, with respect to the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the State of Nevada and the State of California, of the following outstanding litigation and proceedings:

(A) *Pyramid Lake Paiute Tribe* v. *California*, Civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California;

(B) *United States* v. *Truckee-Carson Irrigation District*, Civ. No. R-2987-RCB, United States District Court, District of Nevada;

(C) *Pyramid Lake Paiute Tribe* v. *Lujan*, Civ. S-87-1281-LKK, United States District Court, Eastern District of California;

(D) *Pyramid Lake Paiute Tribe* v. *Department of the Navy*, Civ. No. R-86-115-BRT in the United States District Court, District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(E) All pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

(2) In addition to any other conditions on the effectiveness of this title set forth in this title, the provisions of:

(A) section 204, subsections 206(c), 207(c) and (d), subparagraph 208(a)(3)(D), and paragraph 210(a)(3) of this title shall not take effect until:

(i) the agreements and regulations required under section 205 of this title, including the Truckee Meadows water conservation plan referenced in the Preliminary Settlement Agreement as modified by the Ratification Agreement, enter into effect;

(ii) the outstanding claims described in paragraph 210(a)(1) have been dismissed with prejudice or otherwise finally resolved;

(B) section 204 of this title, the Preliminary Settement Agreement as modified by the Ratification agreement, and the Operating Agreement, shall not take effect until the Pyramid Lake Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Lake Tribe; and

(C) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement the Operating Agreement, and subsection 207(d) shall not take effect until the funds authorized in paragraph 208(a)(3) of this title have been appropriated.

(3) On and after the effective date of section 204 of this title, except as otherwise specifically provided herein, no person or entity who has entered into the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement, or accepted any benefits or payments under this legislation, including any Indian Tribe and the States of California and Nevada, the United States and its officers and agencies may assert in any judicial or administrative proceeding a claim that is inconsistent with the allocations provided in section 204 of this title, or inconsistent or in conflict with the operational criteria for the Truckee River established pursuant to section 205 of this title. No person or entity who does not become a party to the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement may assert in any judicial or administrative proceeding any claim for water or water rights for the Pyramid Lake Tribe, the Pyramid Lake Indian Reservation, or the Pyramid Lake fishery. Any such claims are hereby barred and extinguished and no court of the United States may hear or consider any such claims by such persons or entities.

(b) GENERAL PROVISIONS.—(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and to all existing property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reservation shall be permanently held by the United States for the sole use and benefit of the Pyramid Lake Tribe.

(2) Anaho Island in its entirety is hereby recognized as part of the Pyramid Lake Indian Reservation. In recognition of the consent of the Pyramid Lake Tribe evidenced by Resolution No. 19-90 of the Pyramid Lake Paiute Tribal Council, all of Anaho Island shall hereafter be managed and administered by and under the primary jurisdiction of the United States Fish and Wildlife Service as an integral component of the National Wildlife Refuge System for the benefit and protection of colonial nesting species and other migratory birds. Anaho Island National Wildlife Refuge shall be managed by the United States Fish and Wildlife Service in accord with the National Wildlife Refuge System Administration Act, as amended, and other applicable provisions of Federal law. Consistent with the National Wildlife Refuge System Administration Act, as amended, the Director of the United States Fish and Wildlife Service is authorized to enter into cooperative agreements with the Pyramid Lake Tribe regarding Anaho Island National Wildlife Refuge.

(3) Subject to the relinquishment by the legislature of the State of Nevada of any claim the State of Nevada may have to ownership of the beds and banks of the Truckee River within the exterior boundaries of the Pyramid Lake Indian Reservation and of Pyramid Lake, those beds and banks are recognized as part of the Pyramid Lake Indian Reservation and as being held by the United States in trust for the sole use and benefit of the Pyramid Lake Tribe. Nothing in this subsection shall be deemed to recognize any right, title, or interest of the State of Nevada in those beds and banks which it would not otherwise have. No other provi-

sion of this title shall be contingent on the effectiveness of this subsection.

(4) Except as provided in paragraphs (2) and (9) of this subsection, the Pyramid Lake Tribe shall have the sole and exclusive authority to establish rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on all lands within the Pyramid Lake Indian Reservation except fee-patented land, provided that the regulation of such activities on fee-patented land within the Pyramid Lake Indian Reservation shall not be affected by this paragraph. Nothing in this paragraph shall be deemed to recognize or confer any criminal jurisdiction on the Pyramid Lake Tribe or to affect any regulatory jurisdiction of the State of Nevada with respect to any other matters.

(5) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement by the State of Nevada and Washoe County of the rules and regulations referred to in paragraph (4) adopted by the Pyramid Lake Tribe governing hunting, fishing, boating, and all forms of water based recreation against non-members of the Pyramid Lake Tribe and for State courts or other forums of the State of Nevada or its political subdivisions to exercise civil and criminal jurisdiction over violations of the Pyramid Lake Tribe's rules and regulations allegedly committed by such non-members, except as provided by paragraphs (2) and (9) of this subsection.

(6) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement of rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on fee-patented land within the Pyramid Lake Indian Reservation, except as provided by paragraphs (2) and (9) of this subsection.

(7) Nothing in this title shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe, except that this provision shall not be interpreted to impose any liability on the United States or its agencies for any damages resulting from actions taken by the Pyramid Lake Paiute Tribe as to which the United States is not a party or with respect to which the United States has no supervisory responsibility.

(8) Subject to the terms, conditions, and contingencies of and relating to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the United States on its own behalf and in its capacity as trustee to the Pyramid Lake Tribe confirms and ratifies the waivers of any right to object to the use and implementation of the water supply measures described in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement, and any waivers of sovereign immunity given in connection with that agreement or the Operating Agreement, upon the entry into effect of the Preliminary Settlement Agreement as modified by the Ratification Agreement;

(9) Nothing in this title shall be construed as waiving or altering the requirements of any Federal environmental or wildlife conservation law, including, but not limited to, the Endangered Species Act, as amended, including the consultation and reinitiation of consultation responsibilities of the Secretary under section 7 of the Act, and the National Environmental Policy Act of 1969.

(10) Nothing in this title shall be construed to create an express or implied Federal reserved water right.

(11) Nothing in this title shall subject the United States or any of its agencies or instrumentalities or any Indian Tribe to any State jurisdiction or

regulation to which they would not otherwise be subject.

(12) Nothing in this title is intended to abrogate the jurisdiction of or required approvals by the Nevada State Engineer or the California State Water Resources Control Board.

(13) Nothing in this title is intended to affect the power of the *Orr Ditch* court or the *Alpine* court to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch decree or the Alpine decree. Nothing in this title is intended to alter or conflict with any vested and perfected right of any person or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands Project for delivery of the water of the Truckee River to Derby Dam and for the diversion of such waters at Derby Dam pursuant to the Orr Ditch decree or any applicable law.

(14) No single provision or combination of provisions in this title, including interstate allocations under section 204, or associated agreements which may adversely affect inflows of water to Pyramid Lake shall form the basis for additional claims of water to benefit Pyramid Lake, the Pyramid Lake fishery, or lands within the Pyramid Lake Indian Reservation.

(15) Nothing in this title shall affect any claim of Federal reserved water rights, if any, to the Carson River or its tributaries for the benefit of lands within the Fallon Indian Reservation.

(16) The Secretary, in consultation with the State of Nevada and affected local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title.

(17) It is hereby declared that after August 26, 1935 and prior to the date of enactment of this title, there was no construction within the meaning of section 23(b) of the Federal Power Act, as amended, at the four run-of-river hydroelectric project works owned by Sierra Pacific Power Company and located on the Truckee River. Notwithstanding any other provision of law, after the date of enactment of this title, development of additional generating capacity at such project works that is accomplished through replacement of turbine generators and increases in effective head shall not constitute construction within the meaning of section 23(b) of the Federal Power Act, as amended: *Provided*, That such development may not change the location of or increase any existing impoundments and may not require diversions of water in excess of existing water rights for such project works: *Provided further*, That the diversions of water for the operation of such project works shall be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary shall take into account the monetary value of this provision to the Sierra Pacific Power Company in calculating the storage charge referred to in paragraph 205(a)(6).

(18) The Secretary is authorized, in accordance with this section and applicable provisions of existing law, to exchange surveyed public lands in Nevada for interests in fee patented lands, water rights, or surface rights to lands within or contiguous to the exterior boundaries of the Pyramid Lake Indian Reservation. The values of the lands or interests therein exchanged by the Secretary under this paragraph shall be substantially equal, but the Secretary is authorized to accept monetary payments from the owners of such fee patented lands, water rights, or surface rights as circumstances may require in order to compensate for any difference in value. Any such payments shall be deposited to the Treasury. The value of improvements on land to be exchanged shall be given due consideration and an appropriate allowance shall be made therefor in the valuation. Title to lands or any interest therein acquired by the Secretary pursuant to this subsection shall be taken in the name of the United States in trust for the Pyramid Lake Tribe and shall be added to the Pyramid Lake Indian Reservation.

(c) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated such sums as may be required to implement the provisions of this title.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

CLARKS FORK WILD AND SCENIC RIVER DESIGNATION ACT OF 1990

Mr. VENTO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2343) to amend the Wild and Scenic Rivers Act by designating a segment of the Clarks Fork River in the State of Wyoming as a component of the National Wild and Scenic Rivers System, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, I shall not object, but I yield to the gentleman from Minnesota [Mr. VENTO] to explain the bill.

Mr. VENTO. Mr. Speaker, what I intend to do here is in a moment to ask unanimous consent to offer an amendment to strike the Clarks Fork portion of this and leave the Merced portion of it and a provision that modifies the utilization of a reverter on a land exchange which was for public recreation purpose, but this would permit it to be used for an educational purpose. This would then become the Merced Wild and Scenic River vehicle, as we have passed the Clarks Fork River earlier in the Arizona wilderness.

Mr. HAMMERSCHMIDT. Mr. Speaker, I withdraw my reservation of objection.

□ 0200

The SPEAKER pro tempore (Mr. ECKART). Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in support of H.R. 4323, the Great Lakes Critical Programs Act of 1990. The bill before us is the Senate-passed version of the bill we passed in the House 1 month ago. While it is significantly different in many respects from the House-passed bill, it is all that the Senate is prepared to accept at this point and is better than no bill at all.

The Great Lakes provide recreational and commercial opportunities to the residents in the eight States which surround the largest system of freshwater in the world. It is a natural resource that supplies drinking water to millions of citizens and it also serves as an international system of navigation for those commercial vessels traveling between the United States and Canada and the world.

H.R. 4323, as passed by the Senate, would reauthorize the Great Lakes program under section 118 of the Clean Water Act for 1 year rather than for 6 years as in the House-passed bill. It would also call upon EPA and the States to establish water quality criteria and standards for Great Lakes waters as provided under the Great Lakes water quality agreement between the United States and Canada. In addition, the Senate has included provisions to address water quality problems at Onondaga Lake, NY, Lake Champlain on the New York-Vermont border, and Long Island Sound.

Let me commend the gentleman from New York, Mr. NOWAK, for his tireless efforts on this issue. He is to be commended for his willingness to work with all of the affected members in order to further the goals of ensuring better water quality for the Great Lakes. I know that the bill as passed by the Senate is less attractive to him than what passed the House previously.

While I would otherwise work with the gentleman from New York for changes in the bill, that option is not available to us at the present time. I pledge, however, to work with him during the next year, perhaps in the clean water reauthorization process, to address our mutual concerns about the bill in its current form.

I would like to thank Chairman ANDERSON and the ranking member of our Subcommittee on Water Resources, Mr. STANGELAND, for their hard work on this bill. I would also like to thank the leadership of the Committee on Merchant Marine and Fisheries for allowing this bill to come to the floor, notwithstanding their concerns over the bill as it was passed by the Senate.

The Clerk read the Senate bill, as follows:

S. 2343

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—LOWER MERCED WILD AND SCENIC RIVER

SECTION 101. DESIGNATION OF THE LOWER MERCED RIVER FOR INCLUSION IN THE WILD AND SCENIC RIVERS SYSTEM.

Section 3(a)(62) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(62)) is hereby amended—

(1) by striking "The main stem" and inserting in lieu thereof, "(A) The main stem";

(2) by striking "paragraph" wherever it appears and inserting in lieu thereof, "subparagraph"; and

(3) by adding the following new subparagraphs at the end thereof:

"(B)(i) The main stem from a point 300 feet upstream of the confluence with Bear Creek downstream to the point of maximum flood control storage of Lake McClure (elevation 867 feet mean sea level), consisting of approximately 8 miles, as generally depicted on the map entitled 'Merced Wild and Scenic River', dated April, 1990. The Secretary of the Interior shall administer the segment as recreational, from a point 300 feet upstream of the confluence with Bear Creek downstream to a point 300 feet west of the boundary of the Mountain King Mine, and as wild, from a point 300 feet west of the boundary of the Mountain King Mine to the point of maximum flood control storage of Lake McClure. The requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the Sierra Management Framework Plan for the Sierra Planning Area of the Folsom Resource Area, Bakersfield District, Bureau of Land Management. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subparagraph.

"(ii) To the extent permitted by, and in a manner consistent with section 7 of this Act (16 U.S.C. 1278), and in accordance with other applicable law, the Secretary of the Interior shall permit the construction and operation of such pumping facilities and associated pipelines as identified in the Bureau of Land Management right-of-way application CACA 26084, filed by the Mariposa County Water Agency on November 7, 1989, and known as the 'Saxon Creek Project', to assure an adequate supply of water from the Merced River to Mariposa County.

"(C) With respect to the segments on the main stem of the Merced River and the South Fork Merced River designated as recreational or scenic pursuant to this paragraph or by the appropriate agency pursuant to subsection (b), the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.".

SEC. 102. STUDY OF THE NORTH FORK OF THE MERCED RIVER.

Section 5(a) of the Wild and Scenic Rivers Act, as amended, (16 U.S.C. 1276(a)), is further amended by adding the following new paragraph at the end thereof:

"( ) NORTH FORK MERCED, CALIFORNIA.—The segment from its headwaters to its confluence with the Merced River, by the Secretary of Agriculture and the Secretary of the Interior.".

TITLE II—MERCED COUNTY, CALIFORNIA

SEC. 201. AUTHORIZATION OF ADDITIONAL USE.

(a) Subject to the requirements of this title, the county of Merced, California (hereinafter in this title referred to as the "county") is authorized to permit use of the land described in section 203 (hereinafter in this title referred to as the "land") for the purposes of an elementary school, notwithstanding the restrictions on use of such land otherwise applicable under the terms of conveyance of such land to the county by the United States.

(b) Except as specified in this title, this title shall not increase or diminish the authority or responsibility of the county with respect to the land.

SEC. 202. USE OF LAND FOR ELEMENTARY SCHOOL.

(a) The authority of the county under this title shall be limited to the authorization of use of the land for an elementary school serving children without regard to their race, creed, color, national origin, physical or mental disability, or sex, operated by a nonsectarian organization on a nonprofit basis and in compliance with all applicable requirements of the laws of the United States and the State of California.

(b) If the county permits use of the land as an elementary school, the county shall include information concerning such use in the biennial reports to the Secretary of the Interior required under the terms of conveyance of the land to the county by the United States.

(c) Any violation of the provisions of this title shall be deemed to be breach of the conditions and convenants under which the land was conveyed to the county by the United States, and shall have the same effect, as provided in the deed, whereby the United States conveyed the lands to the county.

SEC. 203. LAND DESCRIPTION.

The land referred to in section 201 is the south 15 acres of the 40 acres located in the northwest quarter of the southwest quarter of section 20, Township 7 South, Range 13 East, M.D.B&M. of Merced County, California, declared to be surplus property by the United States in action 9-D-Calif-1028 and conveyed to the county by deed recorded in volume 1941 at page 441 of the official records of Merced County, California.

TITLE III—CLARKS FORK WILD AND SCENIC RIVER

SEC. 301. SHORT TITLE.

This Act may be cited as the "Clarks Fork Wild and Scenic River Designation Act of 1990".

SEC. 302. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)), as amended, is further amended by adding at the end the following:

"( ) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out

this paragraph, there is authorized to be appropriated $500,000 for development and $750,000 for the acquisition of land and interests therein.

"(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any other Federal action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designation as a component of the Wild and Scenic Rivers System.

"(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of Wyoming: *Provided*, That, notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

"(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such measures as may be necessary in the control of fire, insects, and diseases to fully protect the values for which the segment is designated as a wild river.".

AMENDMENT OFFERED BY MR. VENTO

Mr. VENTO. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. VENTO: Strike title 3.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Minnesota [Mr. VENTO].

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

INDIANA DUNES NATIONAL LAKESHORE ACCESS AND ENHANCEMENT ACT OF 1990

Mr. VENTO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3209) to modify the boundaries of the Indiana Dunes National Lakeshore, and for other purposes, with a Senate amendment thereto, and disagree to the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indiana Dunes National Lakeshore Access and Enhancement Act of 1990".

SEC. 2. DEFINITION OF NATIONAL LAKESHORE ENABLING ACT.

For the purposes of this Act, the term "the Act" means the Act entitled "An Act to provide for the establishment of the Indiana Dunes National Lakeshore, and for other purposes", approved November 5, 1966, Public Law 89-761, as amended (16 U.S.C. 460u et seq.).

SEC. 3. BOUNDARIES.

(a) IN GENERAL.—Section 1 of the Act (16 U.S.C. 460u) is amended by striking out "October 1986, and numbered 626-80,033-B" and inserting in lieu thereof "October 1990, and numbered 626-80,038-C".

(b) CRESCENT DUNE.—Section 12 of the Act (16 U.S.C. 460u-12) is hereby repealed and the following new section is added in its place:

"SEC. 12. The Secretary shall acquire the area on the map referred to as area III-B only if such area can be acquired for not more than $5,000,000.".

SEC. 4. IMPROVED PROPERTY; RETENTION OF RIGHTS.

(a) ADDITIONAL AREAS.—The table in section 4 of the Act (16 U.S.C. 460u-3) is amended to read as follows:

"Property Within Boundaries of Map	Construction Began Before
Dated October 1990, No. 626-80,038-C	October 1, 1990
Dated October 1986, No. 626-80,033-B	February 1, 1986
Dated December 1980, No. 626-91014	January 1, 1981
Dated September 1976, No. 626-91007	February 1, 1973
Dated September 1966, No. LNPNE-1008-ID	January 4, 1965".

(b) RETENTION OF RIGHTS.—Section 5(a) of the Act (16 U.S.C. 406u-5(a)) is amended—

(1) in paragraph (2)(B), by striking "subparagraph (A)" and inserting in lieu thereof "subparagraph (A)(ii)"; and

(2) by adding at the end the following new paragraph:

SEC. 5. UNIT I-M.

The Act, as amended by section 4, is amended by adding at the end thereof the following new section:

"SEC. 25. (a) UNIT I-M.—Before acquiring lands or interests in land in Unit I-M (as designated on the map referred to in section 1 of this Act), the Secretary shall consult with the Commissioner of the Indiana Department of Transportation to determine what lands or interests in lands are required by the State of Indiana for improvements to State Road 49 and the reconstruction and relocation of the interchange with State Road 49 and U.S. 20 so that the acquisition by the Secretary of lands or interests in lands in Unit I-M shall not interfere with planned improvements to the interchange and State Road 49 in the area.".

"(b) The Secretary may acquire lands or interests in lands within Unit I-M only with the consent of the owner, so long as the existing residential land use remains substantially unchanged.".

SEC. 6. GREENBELT.

Section 18 of the Act (16 U.S.C. 460u-18) is amended—

(1) by inserting "(a)" after "SEC. 18."; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) In Northern Indiana Public Service Company (hereinafter in this section referred to as 'NIPSCO') is agreeable, the Secretary shall enter into a memorandum of agreement with NIPSCO that shall provide for the following with respect to Unit II-A (as designated on the map referred to in section 1 of this Act and hereinafter in this section referred to as the 'Greenbelt'):

"(A) NIPSCO shall provide the National Park Service with access for resource management and interpretation through the Greenbelt and across the dike for purposes of a public hiking trail.

"(B) The National Park Service shall have rights of access for resource management and interpretation of the Greenbelt area.

"(C) NIPSCO shall preserve the Greenbelt in its natural state. If NIPSCO utilizes the Greenbelt temporarily for a project involving pollution mitigation or construction on its adjacent facilities, NIPSCO shall restore the project area to its natural state.

"(D) If NIPSCO proposes a different use for the Greenbelt, NIPSCO shall notify the National Park Service, the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives and make no change in the use of the property until 3 years after the date such notice is given.

"(2) If a memorandum of agreement is entered into pursuant to paragraph (1), so long as such memorandum is in effect and the terms of such memorandum are being complied with, the Secretary may not acquire lands or interests in land in the Greenbelt belonging to NIPSCO.".

SEC. 7. VISITOR CENTER.

In order to commemorate the vision, dedication, and work of Dorothy Buell in saving the Indiana Dunes, the National Park Service visitor center at the Indiana Dunes National Lakeshore is designated as the "Dorothy Buell Memorial Visitor Center".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

Section 9 of the Act (16 U.S.C. 460u-9) is amended by adding at the end thereof the following new paragraph:

"In addition to any other sums authorized for the acquisition of lands and interests in lands, there are further authorized to be appropriated an additional $7,000,000 to be used for such purposes.".

Mr. VENTO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I yield to the gentleman from Minnesota so that he can explain the bill.

Mr. VENTO. Mr. Speaker, we are simply striking out the Senate amendment to the Indiana Dunes bill and inserting an amendment that is a stripped-down version of the Indiana Dunes legislation which we have passed without controversy earlier this session.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. LAGOMARSINO. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, is this one of the five bills that was agreed to?

Mr. VENTO. If the gentleman will yield, yes, it is H.R. 3209.

Mr. WALKER. I thank the gentleman.

Mr. LAGOMARSINO. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Minnesota?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the two previous measures.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

CONFERENCE REPORT OF H.R. 5399, LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1991

Mr. MURTHA submitted the following conference report and statement on the bill (H.R. 5399) making appropriations for the legislative branch for the fiscal year ending September 30, 1991, and for other purposes:

CONFERENCE REPORT (H. REPT. 101-965)

The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5399) "making appropriations for the Legislative Branch for the fiscal year ending September 30, 1991, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 3, 4, 7, 9, 10, 14, 15, 18, 26, 30, 33, 34, 35, 36, 37, 38, 50, 54, 56, 59, 61, 62, and 63.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 6, 8, 11, 12, 13, 16, 17, 21, 22, 23, 24, 25, 27, 28, 32, 39, 40, 41, 47, and 52, and agree to the same.

Amendment numbered 5:

That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 106. (a) The Act of July 31, 1946, as amended (40 U.S.C. Sec. 212a), is amended to read as follows:

SEC. 9. The Capitol Police shall police the United States Capitol Buildings and Grounds under the direction of the Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, and shall have the power to enforce the provisions of sections 193a to 193m, 212a, 212a-2, and 212b of this title and regulations promulgated under section 212b of this title, and to make arrests within the United States Capitol Buildings and Grounds for any violations of any law of the United States, of the District of Columbia, or of any State, or any regulation promulgated pursuant thereto: Provided, that for the fiscal year for which appropriations are made by this Act the Capitol Police shall have the additional authority to make arrests within the District of Columbia for crimes of violence, as defined in section 16 of Title 18, committed within the Capitol Buildings and Grounds and shall have the additional authority to make arrests, without a warrant, for crimes of violence, as defined in section 16 of Title 18, committed in the presence of any member of the Capitol Police performing official duties: Provided further, That the Metropolitan Police force of the District of Columbia are authorized to make arrests within the United States Capitol Buildings and Grounds for any violation of any such laws or regulations, but such authority shall not be construed as authorizing the Metropolitan Police force, except with the consent or upon the request of the Capitol Police Board, to enter such buildings to make arrests in response to complaints or to serve warrants or to patrol the United States Capitol Buildings and Grounds. For the purpose of this section, the word "grounds" shall include the House Office Buildings parking areas and that part or parts of property which have been or hereafter are acquired in the District of Columbia by the Architect of the Capitol, or by an officer of the Senate or the House, by lease, purchase, intergovernment transfer, or otherwise, for the use of the Senate, the House, or the Architect of the Capitol.

And the Senate agree to the same.

Amendment numbered 19:

That the House recede from its disagreement to the amendment of the Senate numbered 19, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the section number named in said amendment, insert: *108*; and the Senate agree to the same.

Amendment numbered 20:

That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *109*; and the Senate agree to the same.

Amendment numbered 29:

That the House recede from its disagreement to the amendment of the Senate numbered 29, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$15,268,000*; and the Senate agree to the same.

Amendment numbered 31:

That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows:

SEC. 205(a) The Architect of the Capitol may acquire on behalf of the United States Government by purchase, condemnation, transfer, or otherwise (1) all publicly or privately owned real property in lot 51 in square 869 in the District of Columbia, as that lot appears on the records in the office of the Surveyor of the District of Columbia on August 1, 1990, extending to the outer face of the curbs of the square in which it is located and including all alleys or parts of alleys and streets within the lot lines and curb lines surrounding such real property and (2) improvements to such real property.

(b) The first section of the Act of June 29, 1922 (42 Stat. 715; 2 U.S.C. 141), is amended by striking "the Library Building and on the grounds," and inserting "the Library of Congress buildings and grounds, (as defined in section 11 of the Act of August 4, 1950 (2 U.S.C. 167(j))),".

(c) The property and improvements acquired under subsection (a) shall be repaired and altered, to the maximum extent feasible as determined by the Architect of the Capitol, in compliance with one of the nationally recognized model building codes and with other applicable nationally recognized codes (including electrical codes, fire and life safety codes, plumbing codes, as determined appropriate by the Architect), using the latest edition of the nationally recognized codes referred to in this paragraph.

(d) Section 11 of the Act entitled "An Act relating to the policing of the buildings of the Library of Congress", approved August 4, 1950 (64 Stat. 412; 2 U.S.C. 167j), is amended by adding at the end the following new subsection:

"(c) For the purpose of this Act, the term 'Library of Congress buildings and grounds' shall include (1) all real property in lot 51 in square 869 in the District of Columbia, as that lot appears on the records in the office of the Surveyor of the District of Columbia on August 1, 1990, extending to the outer face of the curbs of the square in which it is located and including all alleys or parts of alleys and streets within the lot lines and curb lines surrounding such real property, and (2) improvements to such real property."

(e) Subsections (b) and (c) and the amendment made by subsection (d) shall take effect on the date the Architect of the Capital acquires the property and improvements described in subsection (a).

(f) There is authorized to be appropriated to the Architect of the Capitol $5,000,000 for carrying out the purposes of this section, to remain available until expended.

(g) Effective on the date on which the Architect of the Capitol acquires the property known as St. Cecilia's School (Lot 51 in square 869) in the District of Columbia, as provided by law, such property shall be available to the Librarian of Congress for use—

(1) as a day care center for children of employees of the Library of Congress and children of other employees of the legislative branch of the Government;

(2) for staff training and development for employees of the Library of Congress; and

(3) for other purposes relating to the operations of the Library of Congress.

Any use of such property shall be subject to approval by the Joint Committee on the Library, the Committee on House Administration of the House of Representatives, and the Committee on Rules and Administration of the Senate.

And the Senate agree to the same.

Amendment numbered 42:

That the House recede from its disagreement to the amendment of the Senate numbered 42, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the section number named in said amendment, insert: *310*; and the Senate agree to the same.

Amendment numbered 43:

That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *311*; and the Senate agree to the same.

Amendment numbered 44:

That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows:

In lieu of the matter striken and inserted by said amendment, insert:

(2)(A) with respect to the House of Representatives, allocation of funds for official mail to be made to each such person with respect to each session of Congress (with no transfer to any other session or to any other such person); and

(B) with respect to the Senate, allocation of funds for official mail to be made to each such person with respect to each session of Congress (with no transfer to any other session, other than transfers from the first session of a Congress to the second session of that Congress, or to any other such person); and

And the Senate agree to the same.

Amendment numbered 45:

That the House recede from its disagreement to the amendment of the Senate numbered 45, and agree to the same with an amendment, as follows:

Delete the matter proposed by said amendment and on page 43, line 11 of the hand engrossed House bill, H.R. 5399, strike "otherwise" and on page 46, line 4 strike "; and" and all that follows through and including "Code" on line 11; and the Senate agree to the same.

Amendment numbered 46:

That the House recede from its disagreement to the amendment of the Senate numbered 46, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:, *except that, with respect to the Senate, subsection (d) shall apply with respect to sessions of Congress beginning with the second session of the One Hundred Second Congress, and the funds referred to in paragraph (3) of such subsection shall not include personal funds of a Senator or Member of the House of Representatives*; and the Senate agree to the same.

Amendment numbered 48:

That the House recede from its disagreement to the amendment of the Senate numbered 48, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 312. (a) Notwithstanding any other provision of this Act, in order to reduce the total amount appropriated or otherwise made available by this Act for fiscal year 1991 (excluding any amounts required to be appropriated or otherwise made available by a provision of law)—

(1) of the amount appropriated for "House of Representatives" under the paragraph entitled "Salaries and Expenses", as set forth in title I, $4,500,000 shall be unavailable for obligation or expenditure in such fiscal year;

(2) of the amount appropriated for "Architect of the Capitol" under the paragraph entitled "Office of the Architect of the Capitol", "Salaries" as set forth in title I, $286,000 shall be unavailable for obligation or expenditure in such fiscal year;

(3) of the amount appropriated for "Architect of the Capitol" under the paragraph entitled "Capitol Buildings and Grounds", "Capitol Buildings", as set forth in title I, $4,590,000 shall be unavailable for obligation or expenditure in such fiscal year;

(4) of the amount appropriated for "Architect of the Capitol" under the paragraph entitled "Capitol Buildings and Grounds", "Capitol Grounds" as set forth in title I, $841,000 shall be unavailable for obligation or expenditure in such fiscal year;

(5) of the amount appropriated for "Architect of the Capitol" under the paragraph entitled "Senate Office Buildings", as set forth in title I, $4,700,000 shall be unavailable for obligation or expenditure in such fiscal year;

(6) of the amount appropriated for "Architect of the Capitol" under the paragraph entitled "Capitol Power Plant", as set forth in title I, $1,203,000 shall be unavailable for obligation or expenditure in such fiscal year;

(7) of the amount appropriated for "Library of Congress" under the paragraph entitled "Congressional Research Service", "Salaries and Expenses", as set forth in title I, $858,000 shall be unavailable for obligation or expenditure in such fiscal year;

(8) of the amount appropriated for "Government Printing Office" under the paragraph entitled "Congressional Printing and Binding", as set forth in title I, $2,250,000 shall be unavailable for obligation or expenditure in such fiscal year;

(9) of the amount appropriated for "Library of Congress" under the paragraph entitled "Salaries and Expenses", as set forth in title II, $2,607,000 shall be unavailable for obligation or expenditure in such fiscal year;

(10) of the amount appropriated for "Library of Congress" under the paragraph entitled "Copyright Office", "Salaries and Expenses", as set forth in title II, $217,000 shall be unavailable for obligation or expenditure in such fiscal year;

(11) of the amount appropriated for "Library of Congress" under the paragraph entitled "Books for the Blind and Physically Handicapped", "Salaries and Expenses", as set forth in title II, $1,005,000 shall be unavailable for obligation or expenditure in such fiscal year;

(12) of the amount appropriated for "Library of Congress" under the paragraph entitled "Furniture and Furnishings", as set forth in title II, $1,255,000 shall be unavailable for obligation or expenditure in such fiscal year;

(13) of the amount appropriated for "Architect of the Capitol" under the paragraph entitled "Library Buildings and Grounds", "Structural and Mechanical Care", as set forth in title II, $5,000,000 shall be unavailable for obligation or expenditure in such fiscal year;

(14) of the amount appropriated for "Government Printing Office" under the paragraph entitled "Office of Superintendent of Documents", "Salaries and Expenses", as set forth in title II, $755,000 shall be unavailable for obligation or expenditure in such fiscal year;

(15) of the amount appropriated for "General Accounting Office" under the paragraph entitled "Salaries and Expenses", as set forth in title II, $3,968,000 shall be unavailable for obligation or expenditure in such fiscal year;

(b) Any amount made unavailable for obligation or expenditure in fiscal year 1991 by subsection (a) shall remain available for obligation or expenditure (for that same purpose) in fiscal year 1992.

And the Senate to the same.

Amendment numbered 49:

That the House recede from its disagreement to the amendment of the Senate numbered 49, and agree to the same with an amendment, as follows:

In lieu of the first section number named in said amendment insert: *313*; and the Senate agree to the same.

Amendment numbered 51:

That the House recede from its disagreement to the amendment of the Senate numbered 51, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 314. The funds appropriated to the Clerk of the House in the Fiscal Year 1986 Urgent Supplemental Appropriations Act, Public Law 99-349, and subsequently transferred to the Architect of the Capitol pursuant to the Legislative Branch Appropriations Act, 1989, Public Law 100-458 for Capitol Complex Security Enhancements shall be withheld from obligation and disbursement until September 30, 1991 and pursuant to section 202 of Public Law 100-119, this action is a necessary (but secondary) result of a significant policy change: Provided, That not to exceed $300,000 of these funds may be obligated and disbursed before September 30, 1991, for vehicular barriers as proposed in the Capitol Complex Security Enhancements upon approval of the House and Senate Committees on Appropriations: Provided further, That upon approval by the House and Senate Committees on Appropriations, any part of these funds may be obligated and disbursed for planning and design of the visitors' centers proposed in the Capitol Complex Security Enhancements, with such enhancements, including the "Perimeter Security Plan," as may be approved by such committees: Provided further, That the committees responsible for review, approval, and other procedures under Section 102 of the Legislative Branch Appropriations Act of 1989 shall complete review and approval of the improved security plan by July 1, 1991: Provided further, That nothing in this section shall have the effect of waiving any requirement relating to review and approval by the House and Senate Committees on Appropriations with respect to detailed documentation describing the scope, cost, and construction schedule of the work to be accomplished through the funds involved.

And the Senate agree to the same.

Amendment numbered 53:

That the House recede from its disagreement to the amendment of the Senate numbered 53, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 316. Section 3210(a) of title 39, United States Code, is amended by adding at the end the following new paragraph:

"(7) A Member of the House of Representatives may not send any mass mailing outside the congressional district of the Member, except that—

"(A) a Member of the House of Representatives may send mass mailings to any area in a county, if any part of the county adjoins or is inside the congressional district of the Member; and

"(B) in the case of redistricting, on and after the date referred to in subsection (d)(1)(B), a Member of the House of Representatives may send mass mailings to the additional area described in that section.".

And the Senate agree to the same.

Amendment numbered 55:

That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *317*; and the Senate agree to the same.

Amendment numbered 57:

That the House recede from its disagreement to the amendment of the Senate numbered 57, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *318*; and the Senate agree to the same.

Amendment numbered 58:

That the House recede from its disagreement to the amendment of the Senate numbered 58, and agree to the same with an amendment, as follows:

In lieu of the first section number named in said amendment insert: *319*; and the Senate agree to the same.

Amendment numbered 60:

That the House recede from its disagreement to the amendment of the Senate numbered 60, and agree to the same with an amendment, as follows:

In lieu of the first section number named in said amendment insert: *320* and at the end of said amendment insert:

SEC. 321. Pursuant to section 140 of Public Law 97-92, Justices and judges of the United States are authorized during calendar year 1991 to receive a salary adjustment in accordance with 28 U.S.C. § 461.

SEC. 322. Appropriated funds received by the Library of Congress from other Federal agencies to cover general and administrative overhead costs generated by performing reimbursable work for other agencies under the authority of sections 1535 and 1536 of title 31, United States Code, may be expended or obligated—

(1) in the case of a reimbursement, only to such extent or in such amounts as are provided in appropriation Acts; or

(2) in the case of the advance payment, only—

(A) to pay for such general or administrative overhead costs as are attributable to the work performed for such other agency; or

(B) to such extent or in such amounts as are provided in appropriation Acts, with respect to any purpose not allowable under subparagraph (A).

SEC. 323. Section 316 of Public Law 101-302 is amended—

(1) in the first sentence of subsection (a) by—

(A) striking "1990" and inserting "1991".

SEC. 324. The Architect of the Capitol shall take such steps as may be necessary to ensure that room S-147 of the Capitol is prepared (to the extent of not less than 50 percent of its total square footage) for use by the Special Services Office. Any expenses necessary to carry out the preceding sentence may be paid out of any appropriations available to the Architect of the Capitol under this Act, in fiscal year 1991, for "Contingent Expenses" or "Capitol Buildings".

SEC. 325. Two floor tracking cable TV channels are authorized one for the Speaker and one for the Minority Leader.

And the Senate agrees to the same.

VIC FAZIO,
DAVID R. OBEY,
JOHN P. MURTHA,
BOB TRAXLER,
LINDY BOGGS,
JAMIE L. WHITTEN,
JERRY LEWIS,
SILVIO O. CONTE,
JOHN T. MYERS,
JOHN EDWARD PORTER,
Managers on the Part of the House.

HARRY REID,
ROBERT C. BYRD,
DON NICKLES,
TED STEVENS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5399) making appropriations for the Legislative Branch for the fiscal year ending September 30, 1991, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

TITLE I—CONGRESSIONAL OPERATIONS

SENATE

Amendment No. 1: Appropriates $437,082,500 for the operations of the Senate, and contains several administrative provisions, as proposed by the Senate. Inasmuch as the amendment relates solely to the Senate and in accord with long practice, under which each body determines its own housekeeping requirements and the other concurs without intervention, the managers on the part of the House, at the request of the managers on the part of the Senate, have receded to the Senate amendment.

JOINT ITEMS

CAPITOL POLICE BOARD

CAPITOL POLICE

SALARIES

Amendment No. 2: Appropriate $58,348,000 for Salaries, Capitol Police, as proposed by the House instead of $58,548,000 as proposed by the Senate.

Amendment No. 3: Appropriates $28,914,000 to the Sergeant at Arms of the House, to be disbursed by the Clerk of the House, as proposed by the House.

GENERAL EXPENSES

Amendment No. 4: Provides that no funds made available under "General Expenses," "Capitol Police" may be used to purchase nondomestic motorcycles as proposed by the House.

ADMINISTRATIVE PROVISION

Amendment No. 5: Amends the Senate amendment regarding the arrest powers and duties of the Capitol Police. These expanded arrest powers and duties are for the fiscal year only, and are not a permanent solution to a problem that needs urgent attention. The conferees strongly urge the appropriate authorizing committees to review the situation and develop the necessary regulations and legislation.

CONGRESSIONAL BUDGET OFFICE

SALARIES AND EXPENSES

Amendment No. 6: Appropriates $21,183,000 as proposed by the Senate instead of $19,229,000 as proposed by the House for the salaries and expenses of the Congressional Budget Office.

ARCHITECT OF THE CAPITOL

OFFICE OF THE ARCHITECT OF THE CAPITOL

SALARIES

Amendment No. 7: Appropriates $7,308,000 as proposed by the House instead of $7,022,000 as proposed by the Senate for salaries, Office of the Architect.

TRAVEL

LIMITATION

Amendment No. 8: Provides a limitation of $50,000 for travel, Office of the Architect of the Capitol, as proposed by the Senate instead of $20,000 as proposed by the House. The Office of the Architect requires these additional travel funds in connection with the prospective transfer of certain financial accounting processing to a remote site. At the conclusion of that project, the conferees expect that the travel limitation will revert to the historical level.

CONTINGENT EXPENSES

Amendment No. 9: Appropriates $100,000 for contingent expenses, Office of the Architect, as proposed by the House instead of $50,000 as proposed by the Senate. The managers direct that the Architect of the Capitol shall notify the appropriate Committee on Appropriations in writing at least seven days prior to any expenditure of contingent expenses over $2,000.

Amendment No. 10: Provides that contingent expenses remain available until expended as proposed by the House.

CAPITOL BUILDINGS AND GROUNDS

CAPITOL BUILDINGS

Amendment No. 11: Appropriates $26,680,000 for "Capitol Buildings," "Capitol Buildings and Grounds" as proposed by the Senate instead of $22,721,000 as proposed by the House.

Amendment No. 12: Provides that $8,244,000 the "Capitol Buildings," "Capitol Buildings and Grounds" shall remain available until expended as proposed by the Senate instead of $4,408,000 as proposed by the House.

Amendment No. 13: Provides that $5,020,000 shall be available without regard to section 3709 of the Revised Statutes as proposed by the Senate instead of $2,184,000 as proposed by the House.

CAPITOL GROUNDS

Amendment No. 14: Appropriates $4,659,000 for "Capitol Grounds" as proposed by the House instead of $3,818,000 as proposed by the Senate.

Amendment No. 15: Provides that $400,000 shall remain available until expended for "Capitol Grounds" as proposed by the House.

SENATE OFFICE BUILDINGS

Amendment No. 16: Appropriates $38,432,000 for "Senate Office Buildings" of which $10,196,000 shall remain available until expended as proposed by the Senate.

ADMINISTRATIVE PROVISION

Amendment No. 17: Provides authority to lease and maintain certain property for use by the United States Senate as proposed by the Senate.

CAPITOL POWER PLANT

Amendment No. 18: Appropriates $31,827,000 as proposed by the House for the Capitol Power Plant instead of $30,624,000 as proposed by the Senate.

ADMINISTRATIVE PROVISIONS

Amendment No. 19: Restores language stricken by the Senate which establishes an executive salary schedule for the top staff of the Architect of the Capitol as proposed by the House.

Amendment No. 20: Changes section number proposed by the House.

LIBRARY OF CONGRESS

CONGRESSIONAL RESEARCH SERVICE

SALARIES AND EXPENSES

Amendment No. 21: Appropriates $52,743,000 for salaries and expenses of the Congressional Research Service as proposed by the Senate instead of $51,885,000 as proposed by the House.

GOVERNMENT PRINTING OFFICE

CONGRESSIONAL PRINTING AND BINDING

Amendment No. 22: Appropriates $79,615,000 for "Congressional Printing and Binding," "Government Printing Office" as proposed by the Senate instead of $77,365,000 as proposed by the House. GPO is directed to propose a system to the Committee on House Administration and the Senate Committee on Rules and Administration for supplying blank paper to the House and Senate on an equal basis.

TITLE II—OTHER AGENCIES

LIBRARY OF CONGRESS

SALARIES AND EXPENSES

Amendment No. 23: Appropriates $183,000,000 for "Salaries and Expenses," "Library of Congress" as proposed by the Senate instead of $180,393,000 as proposed by the House. The conferees agree with the Senate report language but direct that the National Translation Service be a self-sustaining operation by fiscal year 1992, and be so presented in the budget estimates.

Amendment No. 24: Provides that $6,998,000 shall be available for the purchase of books as proposed by the Senate instead of $6,965,000 as proposed by the House.

COPYRIGHT OFFICE

SALARIES AND EXPENSES

Amendment No. 25: Provides that $23,118,000 shall be available for "Salaries and Expenses," "Copyright Office" as proposed by the Senate instead of $22,901,000 as proposed by the House.

BOOKS FOR THE BLIND AND PHYSICALLY HANDICAPPED

SALARIES AND EXPENSES

Amendment No. 26: Appropriates $41,136,000 for "Salaries and Expenses," Books for the Blind and Physically Handicapped" as proposed by the House instead of $40,131,000 as proposed by the Senate.

FURNITURE AND FURNISHINGS

Amendment No. 27: Appropriates $5,000,000 for "Furniture and Furnishings" as proposed by the Senate instead of $3,034,000 as proposed by the House.

Amendment No. 28: Provides that $1,422,000 for "Furniture and Furnishings" shall remain available until expended as proposed by the Senate.

ARCHITECT OF THE CAPITOL

LIBRARY BUILDINGS AND GROUNDS

STRUCTURAL AND MECHANICAL CARE

Amendment No. 29: Appropriates $15,268,000 for "Library Buildings and Grounds," "Structural and Mechanical Care," "Architect of the Capitol" instead of $14,868,000 as proposed by the House and $10,268,000 as proposed by the Senate. The additional funds over the Senate bill are for the purchase of the St. Cecelia's property for use by the Library of Congress.

Amendment No. 30: Provides that $6,500,000 shall remain available until expended as proposed by the House instead of $1,500,000 as proposed by the Senate for "Library Buildings and Grounds," "Structural and Mechanical Care."

ADMINISTRATIVE PROVISION

Amendment No. 31: Amends House language to authorize the purchase, lease-purchase, maintenance, and operation of the St. Cecelia's property for use by the Library of Congress. The authorization is patterned after H.R. 5708, which will not have time to be enacted during this session of Congress. In addition, the language authorizes day care and staff development uses, subject to approval by the appropriate committees.

GOVERNMENT PRINTING OFFICE

OFFICE OF SUPERINTENDENT OF DOCUMENTS

SALARIES AND EXPENSES

Amendment No. 32: Appropriates $26,500,000 as proposed by the Senate instead of $25,745,000 as proposed by the House for "Salaries and Expenses," "Superintendent of Documents." The funding allows for the production of the bound Congressional Record and the Foreign Relations of the United States for selected depository libraries only. The conferees grant approval for GPO to provide back issues of these two titles. In the case of the bound Gongressional Record, the conferees allow the distribution of the 1985 and forward editions to regional depository libraries only and to selected major libraries in states without depository libraries. Financing for these editions will be from available Salaries and Expenses appropriated funds with the use of commercial contracting wherever feasible to reduce costs. The Public Printer must keep the Appropriations Committees abreast of the CD-ROM pilot project on the bound Congressional Record so that this format can be considered for permanent use in the future in lieu of ink-on-paper. The conferees also recognize the importance of the Foreign Relations of the United States to historians and the library community. The authority for the reprinting of back issues of this title is granted using unexpended appropriations for those years. Funding this title in 1991 and forward will follow standard practice with the Superintendent of Documents riding the basic printing and binding requirement. This title will be procured in its entirety.

ADMINISTRATIVE PROVISIONS

Amendment Nos. 33-35: Restore House section numbers.

Amendment No. 36: Restores House language stricken by the Senate adjusting the executive levels of the Public Printer and Deputy Public Printer.

GENERAL ACCOUNTING OFFICE

SALARIES AND EXPENSES

Amendment No. 37: Appropriates $413,215,000 for the General Accounting Office as proposed by the House instead of $407,500,000 as proposed by the Senate.

TITLE III—GENERAL PROVISIONS

Amendment No. 38: Deletes Senate amendment providing conditions on the appropriations carried in the Act.

Amendment No. 39: Strikes House language regarding the Capitol Security Plan.

Amendment Nos. 40-41: Change section numbers as proposed by the Senate.

Amendment No. 42: Restores language of House bill regarding exemptions from jury duty, and changes the section number.

Amendment No. 43: Changes section number.

Amendment No. 44: Amends language stricken by the Senate to provide that a Senator may transfer an allocation for official mail from the first to the second session of a Congress.

Amendment No. 45: Deletes the language of the Senate amendment, strikes a word from the original text of the House bill to remove an ambiguity regarding unofficial office accounts, and removes subsection (g)(3), the definition of an unofficial office account, from the House franking reform language.

Amendment No. 46: Amends the Senate amendment to clarify that personal funds are not a proscribed source of funds for paying official expenses. The provision does not restrict use of Senators' and House Members' own personal resources for official purposes, nor does it preclude the acceptance of services provided to Congress on an official basis by federal, state, or local government agencies. Similarly, Senators and Members of the House may still participate in intern, volunteer, and fellowship programs that are primarily of educational benefit to students and other individuals.

Amendment No. 47: Strikes House language regarding a 2 percent reduction.

Amendment No. 48: Amends Senate language regarding an overall reduction in the amount appropriated in the Act, to be withheld from obligation. The amendment makes several reductions by withholding from obligation funds totaling $34,035,000, the nearly equivalent reduction made in the bill adopted by the House. With respect to the funds withheld from the House of Representatives, any necessary reprogrammings or transfers should be presented for approval to the House Committee on Appropriations. The reductions in "Salaries," Architect of the Capitol, are in the mandatory items. In "Capitol Buildings," the reductions are for Police office renovations, House restaurant, and the monumental stairs. In "Capitol Grounds," the reductions are in sidewalks, repairs to the Garfield Memorial, shuttle vans, equipment, and street lighting. In the Power Plant, the reductions are for various repairs and replacements. In "Library Buildings and Grounds," the reduction is in the Madison vestibule project, the Jefferson roof replacement, and in the St. Cecelia's purchase. Sufficient FY 1991 funds are provided to enter into a lease-purchase arrangement for fiscal year 1991, and to complete the purchase in FY 1992 when the additional funds are released for obligation. The reduction in Senate Office Buildings should be presented to the Senate Committee on Appropriations for approval. In Congressional Research Service, reductions are made for the Japan Task Force positions, except two may be added in FY 1991, unfinanced positions, and duplication of products. In Congressional Printing and Binding, reductions should be coordinated with the Joint Committee on Printing; similarly with the Superintendent of Documents reductions. For the Library of Congress, reductions are made in purchase of books, West Africa and Mexico field offices, preservation, management, automation, Japan Task Force, the funds for the Librarian emeritus assistant (the position is approved), and the Hispanic law specialist. For the Mexico office, funds are provided to augment existing dealer contracts or the Hispanic division to conduct more extensive searches for hard-to-acquire publications. For Copyright, the reduction is in the funds to fill unfinanced positions; for the National Library Service, price level items; and for furniture and furnishings, restoration and non-recurring items. For GAO, the reductions are in microcomputers, the telecommunications switch, building restoration, and support services. The conferees urge

GAO to find the means to continue the asbestos removal and building restoration project.

Amendment No. 49: Amends section number of language included in Senate bill regarding the John C. Stennis Center.

Amendment No. 50: Deletes Senate provision repealing the three newsletter limit. Such a repeal is included in Sec. 311.

Amendment No. 51: Amends language in Senate bill regarding the Capitol Security Plan by providing for the design and planning of visitors' centers and requiring review and approval of the improved security plan by July 1, 1991.

Amendment No. 52: Amends authority of the President pro tempore to issue pay orders as proposed by the Senate.

Amendment No. 53: Amends Senate provision regarding geographic limitation on mass mailings by authorizing such mailings into counties which adjoin the Congressional district.

Amendment No. 54: Deletes Senate provision regarding the appropriations for official mail.

Amendment No. 55: Provides that pay raise funds shall be absorbed within the levels appropriated in the Act as proposed by the Senate.

Amendment No. 56: Deletes Senate provision regarding release of and comments on General Accounting Office reports. House and Senate authorizing Committee have indicated they plan to hold hearings on this subject to consider the concerns expressed by Members of the House and Senate regarding the current policy of GAO.

Amendment No. 57: Changes number in the Senate provision regarding Senate reporting requirements.

Amendment No. 58: Changes section in the Senate provision regarding the Spark M. Matsunaga Medal of Peace award program.

Amendment No. 59: Deletes Senate provision regarding a waiver of penalty for continued government service in the legislative branch.

Amendment No. 60: Amends section number in Senate provision regarding the registration of mass mailings, and adds provision regarding a January 1991 cost-of-living adjustment for Federal judges, reimbursements to the Library of Congress, an extension of funds available for restoration of art in the Senate wing of the Capitol, the space assigned to the Special Services office, and floor tracking cable TV channels. Similar to the Senate floor tracking cable TV channels, two such stations are provided for the House of Representatives, one to be managed and operated by the Speaker or his designee and one to be managed and operated by the Minority Leader of his designee. Following a three month airing period, these channels shall be subject to review by the Speaker and the Minority Leader.

Amendment Nos. 61-63: Delete Senate provision regarding allocation transfers, cost reporting, and Library of Congress reductions.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1991 recommended by the Committee of Conference, with comparisons to the fiscal year 1990 amount, the 1991 budget estimates, and the House and Senate bills for 1991 follow:

New Budget (obligational) authority, fiscal year 1990	$1,941,913,100
Budget estimates of new (obligational) authority, fiscal year 1991	2,411,881,000
House bill, fiscal year 1991	1,670,823,000
Senate bill, fiscal year 1991	2,072,426,425
Conference agreement, fiscal year 1991	2,161,366,500
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1990	219,453,400
Budget estimates of new (obligational) authority, fiscal year 1991	−250,514,500
House bill, fiscal year 1991	490,543,500
Senate bill, fiscal year 1991	88,940,075

VIC FAZIO,
DAVID R. OBEY,
JOHN P. MURTHA,
BOB TRAXLER,
LINDY BOGGS,
JAMIE L. WHITTEN,
JERRY LEWIS,
SILVIO O. CONTE,
JOHN T. MYERS,
JOHN EDWARD PORTER,
Managers on the Part of the House.

HARRY REID,
ROBERT C. BYRD,
DON NICKLES,
TED STEVENS,
Managers of the Part of the Senate.

CONFERENCE REPORT ON S. 2740, WATER RESOURCES DEVELOPMENT ACT OF 1990

Mr. NOWAK submitted the following conference report and statement on the Senate bill (S. 2740) to provide for the conservation and development of water and related resources, to authorize the U.S. Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes:

CONFERENCE REPORT (H. REPT. 101-966)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2740) to provide for the conservation and development of water and related resources, to authorize the United States Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Water Resources Development Act of 1990".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Secretary defined.

TITLE I—WATER RESOURCES PROJECTS

Sec. 101. Project authorizations.
Sec. 102. Project modifications.
Sec. 103. Small navigation projects.
Sec. 104. Small flood control projects.
Sec. 105. Bay City, Michigan.
Sec. 106. Delaware River and tributaries, Pennsylvania.
Sec. 107. Continuation of authorization of certain projects.
Sec. 108. Hazard, Kentucky.
Sec. 109. Sauk Lake, Minnesota.
Sec. 110. Rehabilitation of Federal flood control levees.
Sec. 111. Belen, New Mexico.
Sec. 112. Lower Truckee River, Nevada.
Sec. 113. Arkansas Post Navigation Canal.
Sec. 114. Struthers, Ohio.
Sec. 115. Maysville, Kentucky.
Sec. 116. Studies.
Sec. 117. Cranston, Rhode Island.
Sec. 118. Technical assistance for New York Harbor.
Sec. 119. Project deauthorizations.
Sec. 120. Half Moon Bay Harbor.

TITLE II—LAND TRANSFERS

Sec. 201. Sneads, Florida.
Sec. 202. Ira D. Maclachlan American Legion Post, Sault Sainte Marie, Michigan.
Sec. 203. Aberdeen, Washington.
Sec. 204. Release of reversionary interest to Clay County, Georgia.
Sec. 205. Conveyance of Oakland Inner Harbor Tidal Canal property to cities of Oakland and Alameda, California.

TITLE III—GENERALLY APPLICABLE PROVISIONS

Sec. 301. Planning and engineering.
Sec. 302. Emergency response.
Sec. 303. Construction of navigation projects by non-federal interests.
Sec. 304. Project modifications for improvement of environment.
Sec. 305. Ability to pay.
Sec. 306. Environmental protection mission.
Sec. 307. Wetlands.
Sec. 308. Flood plain management.
Sec. 309. Shoreline protection.
Sec. 310. Reservoir management.
Sec. 311. Reservoir project operations.
Sec. 312. Environmental dredging.
Sec. 313. Protection of recreational and commercial uses.
Sec. 314. Operation and maintenance of hydroelectric facilities.
Sec. 315. Matters to be addressed in planning.
Sec. 316. Harbor maintenance trust fund amendment.
Sec. 317. Single entities.
Sec. 318. Technical assistance to private entities.
Sec. 319. Fees for development of State water plans.
Sec. 320. Cabin site leases.
Sec. 321. Information on floods and flood damages.
Sec. 322. Reduced pricing for certain water supply storage.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Great Lakes remedial action plans.
Sec. 402. Cross Florida Barge Canal.
Sec. 403. Wappingers Lake and Lake George, New York.
Sec. 404. Demonstration of construction of Federal project by non-federal interests.

Sec. 405. Upper Mississippi River plan.
Sec. 406. Construction of Virgin Islands projects by Secretary of the Army.
Sec. 407. Virginia Beach, Virginia.
Sec. 408. Declaration of nonnavigability for portions of Lake Erie.
Sec. 409. Wetlands enhancement opportunities.
Sec. 410. Raystown Lake, Pennsylvania.
Sec. 411. Onondaga Lake, New York.
Sec. 412. Alternatives to mud dump site for disposal of dredged material.
Sec. 413. Albermarle Sound-Roanoke River Basin, North Carolina.
Sec. 414. Rondout Creek and Wallkill River, New York and New Jersey.
Sec. 415. Regulation of Dworshak Dam, Idaho.
Sec. 416. Southeast light on Block Island, Rhode Island.
Sec. 417. Magnetic levitation technology.
Sec. 418. Riverside, California.
Sec. 419. Buy American.
Sec. 420. Sense of Congress.
Sec. 421. Woodlawn Beach, Hamburg, New York.

SEC. 2. SECRETARY DEFINED.

For purposes of this Act, the term "Secretary" means the Secretary of the Army.

TITLE I—WATER RESOURCES PROJECTS

SEC. 101. PROJECT AUTHORIZATIONS.

(a) PROJECTS WITH REPORT OF THE CHIEF OF ENGINEERS.—Except as provided in this subsection, the following projects for water resources development and conservation and other purposes are authorized to be carried out by the Secretary substantially in accordance with the plans, and subject to the conditions, recommended in the respective reports designated in this subsection:

(1) BAYOU LA BATRE, ALABAMA.—The project for navigation for Bayou La Batre, Alabama: Report of the Chief of Engineers, dated August 3, 1989, at a total cost of $16,230,000, with an estimated first Federal cost of $4,490,000 and an estimated first non-Federal cost of $11,740,000.

(2) HOMER SPIT, ALASKA.—The project for storm damage prevention, Homer Spit, Alaska: Report of the Chief of Engineers, dated June 28, 1990, at a total cost of $4,700,000, with an estimated first Federal cost of $3,050,000 and an estimated first non-Federal cost of $1,650,000, and an average annual cost of $242,000 for periodic nourishment over the 50-year life of the project, with an estimated annual Federal cost of $157,000 and an estimated annual non-Federal cost of $85,000.

(3) CLIFTON, SAN FRANCISCO RIVER, ARIZONA.—The project for flood control on the San Francisco River at Clifton, Arizona, authorized by section 401(d) of the Water Resources Development Act of 1986 (100 Stat. 4130), is modified to authorize the Secretary to construct the project substantially in accordance with the report of the Chief of Engineers, dated September 6, 1988, at a total cost of $12,510,000, with an estimated first Federal cost of $9,150,000 and an estimated first non-Federal cost of $3,360,000.

(4) NOGALES WASH AND TRIBUTARIES, ARIZONA.—The project for flood control, Nogales Wash and tributaries, Arizona: Report of the Chief of Engineers, dated February 28, 1989, at a total cost of $11,100,000, with an estimated first Federal cost of $8,300,000 and an estimated first non-Federal cost of $2,800,000. The Secretary shall cooperate with the Government of Mexico as necessary to provide for flood warning gauges in Mexico. The Secretary may proceed with the portion of the project in the United States before an agreement is reached with the Government of Mexico with respect to the portion of the project in Mexico.

(5) COYOTE AND BERRYESSA CREEKS, CALIFORNIA.—The project for flood control, Coyote and Berryessa Creeks, California: Report of the Chief of Engineers, dated February 7, 1989, at a total cost of $56,300,000, with an estimated first Federal cost of $39,000,000 and an estimated first non-Federal cost of $17,300,000.

(6) OCEANSIDE HARBOR, CALIFORNIA.—The project for navigation and storm damage reduction, Oceanside Harbor, California: Report of the Chief of Engineers, dated May 21, 1990, at a total cost of $5,100,000, with an estimated first Federal cost of $3,350,000 and an estimated first non-Federal cost of $1,750,000.

(7) VENTURA HARBOR, CALIFORNIA.—The project for navigation, Ventura Harbor, California: Report of the Chief of Engineers, dated June 5, 1990, at a total cost of $6,455,000, with an estimated first Federal cost of $5,175,000 and an estimated first non-Federal cost of $1,280,000.

(8) MARTIN COUNTY, FLORIDA.—The project for storm damage reduction, Martin County, Florida: Report of the Chief of Engineers dated November 20, 1989, at a total first cost of $9,400,000, with an estimated first Federal cost of $3,850,000 and an estimated first non-Federal cost of $5,550,000, and an average annual cost of $472,300 for periodic nourishment over the 50-year life of the project, with an estimated annual Federal cost of $193,600 and an estimated annual non-Federal cost of $278,700.

(9) MIAMI HARBOR CHANNEL, FLORIDA.—The project for navigation, Miami Harbor Channel, Florida: Report of the Chief of Engineers dated September 25, 1989, at a total cost of $67,100,000, with an estimated first Federal cost of $42,810,000 and an estimated first non-Federal cost of $24,290,000.

(10) MCALPINE LOCK AND DAM, INDIANA AND KENTUCKY.—The project for navigation, McAlpine Lock and Dam, Indiana and Kentucky: Report of the Chief of Engineers, dated June 29, 1990, at a total cost of $219,600,000, with a first Federal cost of $219,600,000. The Federal share of costs of construction of the project is to be paid one-half from amounts appropriated from the general fund of the Treasury and one-half from amounts appropriated from the Inland Waterways Trust Fund.

(11) FORT WAYNE, ST. MARY'S AND MAUMEE RIVERS, INDIANA.—The project for flood control, Fort Wayne, St. Mary's and Maumee Rivers, Indiana: Report of the Chief of Engineers, dated May 1, 1989, at a total cost of $35,618,400, with an estimated first Federal cost of $26,493,000 and an estimated first non-Federal cost of $9,125,400.

(12) ALOHA-RIGOLETTE, LOUISIANA.—The project for flood control, Aloha-Rigolette Area, Louisiana: Report of the Chief of Engineers dated April 11, 1990, at a total cost of $8,283,000, with an estimated first Federal cost of $6,212,000 and an estimated first non-Federal cost of $2,071,000.

(13) BOSTON HARBOR, MASSACHUSETTS.—The project for navigation, Boston Harbor, Massachusetts: Report of the Chief of Engineers, dated May 11, 1989, at a total cost of $26,200,000, with an estimated first Federal cost of $16,230,000 and an estimated first non-Federal cost of $9,970,000.

(14) ECORSE CREEK, WAYNE COUNTY, MICHIGAN.—The project for flood control, Ecorse Creek, Wayne County, Michigan: Report of the Chief of Engineers, dated August 8, 1989, at a total cost of $9,296,000, with an estimated first Federal cost of $6,754,000 and an estimated first non-Federal cost of $2,542,000.

(15) GREAT LAKES CONNECTING CHANNELS AND HARBORS, MICHIGAN AND MINNESOTA.—The project for navigation, Great Lakes Connecting Channels and Harbors, Michigan and Minnesota: Report of the Chief of Engineers, dated January 30, 1990, at a total cost of $13,148,400, with an estimated first Federal cost of $8,791,700 and an estimated first non-Federal cost of $4,356,700.

(16) COLDWATER CREEK, MISSOURI.—The project for flood control, Coldwater Creek, Missouri: Report of the Chief of Engineers, dated August 9, 1988, at a total cost of $22,829,000, with an estimated first Federal cost of $15,496,000 and an estimated first non-Federal cost of $7,333,000.

(17) RIVER DES PERES, MISSOURI.—The project for flood control, River Des Peres, Missouri: Report of the Chief of Engineers, dated May 23, 1989, at a total cost of $21,318,000, with an estimated first Federal cost of $15,846,000 and an estimated first non-Federal cost of $5,472,000.

(18) PASSAIC RIVER MAIN STEM, NEW JERSEY AND NEW YORK.—

(A) FLOOD CONTROL ELEMENTS.—

(i) IN GENERAL.—The project for flood control, Passaic River Main Stem, New Jersey and New York: Report of the Chief of Engineers, dated February 3, 1989, except that the main diversion tunnel shall be extended to include the outlet to Newark Bay, New Jersey, at a total cost of $1,200,000,000, with an estimated first Federal cost of $890,000,000 and an estimated first non-Federal cost of $310,000,000.

(ii) DESIGN AND CONSTRUCTION.—The Secretary shall design and construct the project in accordance with the Newark Bay tunnel outlet alternative described in the Phase I General Design Memorandum of the District Engineer, dated December 1987. The main diversion tunnel shall be extended approximately 6½ miles to outlet in Newark Bay, the 9 levee systems in Bergen, East Essex, and Passaic Counties which were associated with the eliminated Third River tunnel outlet shall be excluded from the project, and no dikes or levees shall be constructed along the Passaic River in Bergen County in connection with the project. With respect to the Newark Bay tunnel outlet project, all acquisition, use, condemnation, or requirement for parklands or properties in connection with the excluded 9 levee systems and the eliminated Third River tunnel outlet works, and any other acquisition, use or condemnation, or requirement for parkland or properties in Bergen County in connection with the project, is prohibited. The Secretary shall certify to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate that no detrimental flood impact will accrue in Bergen County as a result of the project.

(iii) APPLICABILITY OF COST SHARING.—Except as otherwise provided in this paragraph, the total project, including the extension to Newark Bay, shall be subject to cost sharing in accordance with section 103 of the Water Resources Development Act of 1986.

(iv) OPERATION AND MAINTENANCE.—The non-Federal sponsor shall maintain and operate the project after its completion in accordance with the regulations prescribed by the Secretary; except that the Secretary shall perform all measures to ensure integrity of the tunnel, including staffing of operation centers, cleaning and periodically inspect-

ing the tunnel structure, and testing and assuring the effectiveness of mechanical equipment at gated structures and pump stations.

(v) CREDIT FOR NON-FEDERAL WORK.—In recognition of the State of New Jersey's commitment to the project on June 28, 1984, all work completed after such date by the State or other non-Federal interests which is either compatible with or complementary to the project shall be considered as part of the project and shall be credited by the Secretary toward the non-Federal share of the cost of the project. Such work shall include, but not be limited to, those activities specified in the letter of the New Jersey Department of Environmental Protection, dated December 9, 1988, to the Office of the Chief of Engineers. However, only the portion of such work that meets the guidelines established under section 104 of the Water Resources Development Act of 1986 shall be considered as project costs for economic purposes. In applying such section 104 to the project, the Secretary shall likewise consider work carried out by non-Federal interests after June 28, 1984, and before the date of the enactment of this Act that otherwise meets the requirements of such section 104.

(B) STREAMBANK RESTORATION MEASURES.—The project shall include the construction of environmental and other streambank restoration measures (including bulkheads, recreation, greenbelt, and scenic overlook facilities) on the west bank of the Passaic River between Bridge and Jackson Streets in the city of Newark, New Jersey, at a total cost of $6,000,000. The non-Federal share of the project element authorized by this subparagraph shall be 25 percent. The value of the lands, easements, and rights-of-way provided by non-Federal interests shall be credited to the non-Federal share. Construction of the project element authorized by this subparagraph may be undertaken in advance of the other project features and shall not await implementation of the overall project.

(C) WETLANDS BANK.—

(i) PURPOSES.—The purposes of this subparagraph are to evaluate and demonstrate, for application on a national basis, the feasibility of and methods of obtaining an interim goal of no overall net loss of the Nation's remaining wetlands base and a long-term goal to increase the quality and quantity of the Nation's wetlands; of restoring and creating wetlands; of developing public and private initiatives to search out opportunities of restoring, preserving, and enhancing wetlands; and of improving understanding of the function of wetlands ecosystems in order to improve the effectiveness of the Nation's wetlands program, including evaluating the functions and values of wetlands, assessing cumulative impacts and the effectiveness of protection programs, and wetlands restoration and creation techniques.

(ii) ESTABLISHMENT.—The State of New Jersey shall establish a Passaic River Central Basin Wetlands Bank (hereinafter in this paragraph referred to as the "Wetlands Bank") to be comprised of lands which are acquired before, on, or after the date of the enactment of this Act by the State or any other non-Federal interest and which lie within the Passaic River Central Basin, New Jersey, natural storage area discussed in the report of the Chief Engineers and the Phase I General Design Memorandum.

(iii) USE.—The Wetlands Bank shall be available for mitigation purposes required under Federal or State law with respect to non-Federal activities carried out in the State.

(iv) COMPENSATION.—The State may receive compensation for making lands available under clause (iii).

(v) STATE OWNERSHIP AND OPERATION.—The State shall continue to own and operate, consistent with the purposes of the project authorized by this paragraph, lands made available for mitigation purposes under clause (iii).

(vi) ACQUISITION OF ADDITIONAL LANDS.—The State or other non-Federal interests may acquire for the Wetlands Bank additional lands which are in, adjacent to, or provide drainage for runoff and streamflows into the storage area described in clause (ii) and may use funds provided by sources other than the State for such purpose. Such lands shall include transition and buffer areas adjacent to the Central Basin natural storage wetlands and other Passaic River Basin areas, including the Rockaway, Pequannock, Ramapo, and Wanaque River watershed areas.

(vii) CREDIT.—The fair market value of lands acquired by the State or other non-Federal interests in the storage area described in clause (ii) before, on, or after the date of the enactment of this Act, the fair market value of lands acquired for the Wetlands Bank under clause (vi) before, on, or after such date of enactment, and the costs incurred by the State or other non-Federal interests in converting any of such lands to wetlands shall be credited to the non-Federal share of the cost of the project authorized by this paragraph.

(viii) TREATMENT OF ACQUIRED LANDS.—Lands acquired by the State for the Wetlands Bank shall not be treated as a project cost for purposes of economic evaluation of the project.

(ix) EFFECT ON OTHER LAWS.—Nothing in this subparagraph shall be construed as affecting any requirements under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 10 of the Act of March 3, 1899 (33 U.S.C. 403).

(19) RIO DE LA PLATA, PUERTO RICO.—The project for flood control, Rio De La Plata, Puerto Rico: Report of the Chief of Engineers, dated January 3, 1989, at a total cost of $58,968,000, with an estimated first Federal cost of $35,900,000 and an estimated first non-Federal cost of $23,068,000.

(20) MYRTLE BEACH, SOUTH CAROLINA.—The project for storm damage reduction, Myrtle Beach, South Carolina: Report of the Chief of Engineers, dated March 2, 1989, at a total cost of $59,730,000, with an estimated first Federal cost of $38,820,000 and an estimated first non-Federal cost of $20,910,000, and an average annual cost of $1,215,000 for period nourishment over the 50-year life of the project, with an estimated annual Federal cost of $790,000 and an estimated annual non-Federal cost of $425,000.

(21) BUFFALO BAYOU AND TRIBUTARIES, TEXAS.—The project for flood control, Buffalo Bayou and tributaries, Texas: Report of the Chief of Engineers, dated February 12, 1990, at a total cost of $727,364,000, with an estimated first Federal cost of $403,359,500 and an estimated first non-Federal cost of $324,004,500.

(22) RAY ROBERTS LAKE, GREENBELT, TEXAS.—The multiple purpose project, Ray Roberts Lake, Greenbelt, Texas, authorized by section 301 of the Rivers and Harbors Act of 1965, is modified to authorize the Secretary to construct recreation features substantially in accordance with the Report of the Chief of Engineers, dated December 24, 1987, at a total cost of $8,503,000, with an estimated first Federal cost of $3,189,000 and an estimated first non-Federal cost of $5,314,000.

(23) UPPER JORDAN RIVER, UTAH.—The project for flood control, Upper Jordan River, Utah: Report of the Chief of Engineers, dated November 16, 1988, at a total cost of $7,900,000, with an estimated first Federal cost of $5,200,000 and an estimated first non-Federal cost of $2,700,000.

(24) BUENA VISTA, VIRGINIA.—The project for flood control, Buena Vista, Virginia: Report of the Chief of Engineers, dated June 27, 1990, at a total cost of $55,100,000, with an estimated first Federal cost of $41,300,000 and an estimated first non-Federal cost of $13,800,000.

(25) MOOREFIELD, WEST VIRGINIA.—The project for flood control, Moorefield, West Virginia: Report of the Chief of Engineers, dated July 23, 1990, at a total cost of $16,260,000, with an estimated first Federal cost of $11,675,000 and an estimated first non-Federal cost of $4,585,000.

(26) PETERSBURG, WEST VIRGINIA.—The project for flood control, Petersburg, West Virginia: Report of the Chief of Engineers, dated June 29, 1990, at a total cost of $17,904,000, with an estimated first Federal cost of $10,044,000 and an estimated first non-Federal cost of $7,860,000.

(b) PROJECT SUBJECT TO FAVORABLE REPORT OF THE CHIEF OF ENGINEERS.—The project for flood control, Los Angeles County Drainage Area, California, at a total cost of $327,000,000, with an estimated first Federal cost of $163,500,000 and an estimated first non-Federal cost of $163,500,000, is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers and with such modifications as are recommended by the Secretary. No construction on the project may be initiated until such a report of the Chief of Engineers is issued and approved by the Secretary.

SEC. 102. PROJECT MODIFICATIONS.

(a) VILLAGE CREEK, ALABAMA.—The project for flood control, Village Creek, Alabama, authorized by section 401 of the Water Resources Development Act of 1986 (100 Stat. 4111), is modified to authorize the Secretary to acquire private vacant lands within the definite project boundaries established in the Real Estate Design Memorandum, dated March 4, 1988, as a nonstructural element of the project.

(b) KODIAK HARBOR, ALASKA.—The project for navigation, Kodiak Harbor, Alaska, authorized by section 202(a) of the Water Resources Development Act of 1986 (100 Stat. 4091), is modified to authorize the Secretary to construct the project at a total cost of $25,000,000, with an estimated first Federal cost of $22,500,000 and an estimated first non-Federal cost of $2,500,000.

(c) LOS ANGELES AND LONG BEACH HARBORS, SAN PEDRO BAY, CALIFORNIA.—Section 4(d) of the Water Resources Development Act of 1988 (102 Stat. 4015) is amended by inserting after "approved by the Secretary" in the first sentence the following: "or which is carried out after approval of the final report by the Secretary and which is determined by the Secretary to be compatible with the project".

(d) SACRAMENTO DEEP WATER SHIP CHANNEL, CALIFORNIA.—The project for navigation, Sacramento Deep Water Ship Channel, California, authorized by section 202(a) of the Water Resources Development Act of 1986 (100 Stat. 4092), is modified to direct the Secretary, if requested by a non-Federal sponsor, to enforce, on a reimbursable basis, the terms of any permit issued by the Secre-

tary under section 10 of the Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403), commonly known as the Rivers and Harbors Appropriations Act of 1899, to compel the relocation of any utility necessitated by the construction of such project.

(e) SANTA ANA MAINSTEM, CALIFORNIA.—The project for flood control, Santa Ana Mainstem, including Santiago Creek, California, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4113), is modified to authorize the Secretary to develop recreational trails and facilities on lands between Seven Oaks Dam and Prado Dam, including flood plain management areas.

(f) SAN LUIS REY RIVER, CALIFORNIA.—The project for flood control, San Luis Rey River, California, authorized pursuant to section 201 of the Flood Control Act of 1965 (42 U.S.C. 1962d-5), is modified to authorize the Secretary to construct the project at a total cost of $60,400,000, with an estimated first Federal cost of $45,100,000 and an estimated first non-Federal cost of $15,300,000.

(g) DELAWARE RIVER TO CHESAPEAKE BAY, DELAWARE AND MARYLAND.—The project for navigation, inland waterway from the Delaware River to the Chesapeake Bay, Delaware and Maryland, authorized by the first section of the Act of August 30, 1935 (49 Stat. 1030), and modified by the Act entitled "An Act authorizing construction of a highway bridge across the Chesapeake and Delaware Canal at Saint Georges, Delaware", approved August 7, 1939 (53 Stat. 1240-1241), is modified to direct the Secretary to replace the highway bridge on United States Route 13 in the vicinity of St. Georges, Delaware, to meet current and projected traffic needs, at a Federal cost of $115,000,000. The State may carry out the bridge replacement. If the State carries out the bridge replacement, the Secretary may reimburse the State for costs incurred.

(h) ALAFIA CHANNEL, FLORIDA.—

(1) PROJECT DEPTH.—The project for navigation, Tampa Harbor, Florida, authorized by section 4 of the Rivers and Harbors Act of September 22, 1922 (42 Stat. 1042), is modified to authorize the Secretary to maintain the Alafia Channel at a depth of 34 feet if the non-Federal sponsor dredges the channel to such depth; except that the non-Federal sponsor shall reimburse the United States for the incremental costs incurred by the Secretary in maintaining the channel at a depth greater than 30 feet.

(2) MAINTENANCE.—Nothing in this subsection shall be construed as affecting the Federal responsibility for maintenance of the Alafia channel to a depth of 30 feet.

(i) FERNANDINA HARBOR, FLORIDA.—The project for navigation, Fernandina Harbor, Florida, authorized by the River and Harbor Appropriation Act of June 14, 1880, is modified to redesignate the location of the turning basin between stations 0+00 of cut 8 and 5+45 of cut 10 to the area between stations 11+70 and 23+30 of cut 5. Such redesignation shall remain in effect until the ongoing study of Fernandina Harbor under section 107 of the River and Harbor Act of 1960 is completed and the resulting project is constructed.

(j) MANATEE HARBOR, FLORIDA.—The project for navigation, Manatee Harbor, Florida, authorized by section 202(a) of the Water Resources Development Act of 1986 (100 Stat. 4093), is modified to direct the Secretary to construct the project substantially in accordance with the post authorization change report, dated April 1990, at an estimated total cost of $27,589,000, with an estimated first Federal cost of $12,381,000 and an estimated first non-Federal cost of $15,208,000.

(k) ALENAIO STREAM, HAWAII.—The project for flood control, Alenaio Stream, Hawaii, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4114), is modified to authorize the Secretary to construct the project substantially in accordance with the report of the Chief of Engineers, dated August 15, 1983, as modified by the General Design Memorandum and Environmental Assessment, dated March 1990, at a total cost of $12,060,000, with an estimated first Federal cost of $7,730,000 and an estimated first non-Federal cost of $4,330,000.

(l) LOCKS AND DAM 26, MISSISSIPPI RIVER, ALTON, ILLINOIS AND MISSOURI.—The navigation project for replacement of locks and dam 26, Mississippi River, Alton, Illinois and Missouri, authorized by section 102 of Public Law 95-502, is modified to authorize the Secretary to provide project-related recreational development in the State of Illinois, that requires no separable project lands and includes site preparations and infrastructure for a marina and docking facilities, access roads and parking, a boat launching ramp, hiking trails, and picnicking facilities, at a Federal construction cost that will not increase the overall project cost estimate for recreational development. The recreational development shall be subject to cost-sharing with the State of Illinois.

(m) FALLS OF THE OHIO NATIONAL WILDLIFE CONSERVATION AREA, INDIANA.—The Falls of the Ohio National Wildlife Conservation Area, Indiana, authorized by title II of Public Law 97-137, is modified to authorize the Secretary to design and construct an interpretive center for such area, at a total cost of $3,200,000, with an estimated first Federal cost of $1,600,000 and an estimated first non-Federal cost of $1,600,000.

(n) DES MOINES RIVER AND GREENBELT, IOWA.—

(1) AREA DESCRIPTION.—The project for Des Moines Recreational River and Greenbelt, Iowa, authorized by the Supplemental Appropriations Act, 1985 (99 Stat. 313), is modified to include the area described in the Des Moines Recreational River and Greenbelt map, which description is printed in Committee Print 101-47 of the Committee on Public Works and Transportation of the House of Representatives, dated July 1990.

(2) FORMER AREA DESCRIPTION.—Section 604 of the Water Resources Development Act of 1986 (100 Stat. 4153) is repealed.

(o) SOUTH FRANKFORT, KENTUCKY.—The project for flood protection for the Ohio River Basin, authorized by section 4 of the Flood Control Act of June 28, 1938 (52 Stat. 1217), is modified to direct the Secretary, subject to section 903(c) of the Water Resources Development Act of 1986, to carry out a project for flood protection for South Frankfort, Kentucky, in accordance with plan R-1 of the Louisville District Commander's Re-evaluation Report, dated June 1990. The level of protection shall be no less than that afforded North Frankfort, Kentucky. In addition, the Secretary shall execute a local cooperation agreement for the project for South Frankfort not later than October 1991.

(p) RED RIVER WATERWAY, LOUISIANA.—The project for mitigation of fish and wildlife losses, Red River Waterway, Louisiana, authorized by section 601(a) of the Water Resources Development Act of 1986 (100 Stat. 4142), is modified to authorize the Secretary to acquire an additional 12,000 acres adjacent to or close to the Bayou Bodcau Wildlife Management Area.

(q) CROOKED AND INDIAN RIVERS, MICHIGAN.—

(1) NON-FEDERAL OPERATION AND MAINTENANCE.—The navigation project for the Crooked and Indian Rivers, Michigan, authorized by the Act entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes", approved September 3, 1954 (68 Stat. 1248), is modified to authorize the Secretary to enter into agreements with the State of Michigan and other non-Federal interests in such State to make operation and maintenance of such project a non-Federal responsibility.

(2) TERMS AND CONDITIONS.—The agreements referred to in paragraph (1) may—

(A) contain such terms and conditions as the Secretary determines to be necessary to protect the interests of the United States; and

(B) require the Secretary to make payments to the State of Michigan to cover the costs of operation, maintenance, and repair of such project for lake level regulation and other flood control purposes, including payments made in advance of such costs being incurred by the State.

(3) NON-FEDERAL IMPOSITION OF TOLLS.—Notwithstanding section 4 of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved July 5, 1884 (33 U.S.C. 5; 23 Stat. 147), during any period in which a non-Federal interest is responsible for operation and maintenance of the project described in paragraph (1), the non-Federal interest may impose upon boats and other watercraft using the project such tolls, operating charges, and other fees as may be necessary to pay the costs incurred by the non-Federal interest in connection with such project which are not covered by payments made by the Secretary under this subsection.

(r) ROUGE RIVER, MICHIGAN.—The multipurpose project at Rouge River, Michigan, authorized by the Act of August 30, 1935 (49 Stat. 1036-1037), is modified to authorize and direct the Secretary, in consultation with appropriate State and local agencies, to conduct a 1-year comprehensive study of the Rouge River streamflow enhancement project at the Rouge River, Huron River, and Belleville Lake for the purpose of identifying measures which will optimize achievement of the project's purposes while preserving and enhancing the quality of the Rouge River, Huron River, and Belleville Lake for current and future users. Upon completion of the study, the Secretary is authorized to provide, on a reimbursable basis, technical assistance in the implementation of measures identified in such study.

(s) MISSISSIPPI RIVER, ST. PAUL, MINNESOTA.—The project for flood control, Mississippi River at St. Paul, Minnesota, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4118), is modified to authorize the Secretary to construct the project substantially in accordance with the Design Memorandum, dated March 1990, and the Recreational Supplement, dated April 1990, at a total cost of $18,021,000, with an estimated first cost of $10,226,000 and an estimated first non-Federal cost of $7,795,000.

(t) BRUSH CREEK AND TRIBUTARIES, MISSOURI AND KANSAS.—The project for flood control, Brush Creek and tributaries, Missouri and

Kansas, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4168), is modified to authorize the Secretary to construct the project substantially in accordance with the Post Authorization Change Report, dated April 1969, as revised in January 1990, at a total cost of $26,200,000, with an estimated first Federal cost of $16,090,000 and an estimated first non-Federal cost of $10,110,000.

(u) MISSOURI RIVER BETWEEN FORT PECK DAM, MONTANA, AND GAVINS POINT DAM, SOUTH DAKOTA AND NEBRASKA.—Section 9 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved December 22, 1944 (58 Stat. 891), is amended by inserting "acquisition of real property and associated improvements (from willing sellers), and monetary compensation to affected landowners" after "including maintenance and rehabilitation of existing structures,".

(v) NEW YORK HARBOR DRIFT REMOVAL PROJECT, NEW YORK AND NEW JERSEY.—

(1) REMOVAL OF FLOATING MATERIAL.—The New York Harbor collection and removal of drift project, authorized by section 2 of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved March 4, 1915 (38 Stat. 1051) and section 91 of the Water Resources Development Act of 1974 (88 Stat. 39), is modified to authorize the Secretary to collect and remove floating material whenever the Secretary is collecting and removing debris which is an obstruction to navigation.

(2) CONTINUATION.—The Secretary shall continue engineering, design, and construction on the New York Harbor collection and removal of drift project, including construction of the 2nd phase in the Jersey City North reach which shall include remaining piers and debris in the Harsimus Cove area, construction of the Brooklyn II reach, and engineering and design for the remaining unconstructed reaches.

(3) BARGE REMOVAL.—As part of the New York Harbor collection and removal of drift project, the Secretary shall expedite necessary engineering, design, and removal of 7 abandoned barges from the Passaic River in Kearny, Nutley, and Passaic, New Jersey.

(4) PROHIBITION OF BURNING OF WOOD.—

(A) GENERAL RULE.—The New York Harbor collection and removal of drift project referred to in paragraph (1), including construction described in paragraph (2), is further modified to provide (i) that after December 31, 1990, material collected by the Secretary in carrying out the project may be disposed of only as provided in subparagraph (D), and (ii) that no later than December 31, 1993, the Administrator shall prohibit the burning of wood collected in carrying out the project on ocean waters.

(B) DEMONSTRATION OF ALTERNATIVES.—

(i) SURVEY.—The Secretary shall conduct a survey of potential acceptable alternative methods to the burning of wood on ocean waters which could be used for disposal of wood collected in carrying out the project.

(ii) GOAL.—Methods of disposal identified in the survey shall be demonstrated in accordance with subparagraph (D), with the goal of arriving at an implementable acceptable alternative method at the earliest practicable date.

(C) REPORT TO CONGRESS.—The Secretary shall report to the Committee on Public Works and Transportation of the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives by February 1, 1991, by January 1, 1992, and, if an implementable acceptable alternative method is not identified under this paragraph, by January 1, 1993, on the progress being made toward achieving an early end to the practice of burning of wood on ocean waters. Each of such reports shall describe specific methods and strategies and the results of the demonstration of those methods, specify a date by which an acceptable alternative method or methods is likely to be implementable, and include an estimate of the volume of wood collected in carrying out the project to be disposed of in calendar year 1991, 1992, or 1993, as the case may be. A final report shall be issued no later than December 31, 1993.

(D) DISPOSAL OF WOOD.—Effective January 1, 1991, and until December 31, 1993, at least half of the volume of wood estimated by the Secretary under subparagraph (C) to be collected in carrying out the project each year shall be disposed so as to demonstrate alternative methods of disposal. If bids received for alternative methods are substantially greater in cost than the cost of disposal by burning on ocean waters, the Secretary shall dispose of no more than half of the estimated volume at the lesser cost; except that, if a bid received for an alternative method is not substantially greater than the cost of disposal by burning on ocean waters, the Secretary shall select the alternative method.

(E) EPA PERMIT FOR DISPOSAL ON OCEAN WATERS.—The Administrator shall continue to issue permits for the disposal of wood collected in carrying out the project by burning on ocean waters until December 31, 1993, and shall designate an interim site for such disposal. If an acceptable alternative method for disposal of wood is determined to be implementable under subparagraph (F), the Administrator shall prohibit the burning of such wood at a date earlier than December 31, 1993.

(F) IMPLEMENTABLE ACCEPTABLE ALTERNATIVE.—The Administrator shall, by regulation, end the permitting of the disposal of wood collected in carrying out the project by burning on ocean waters at such time as one or more alternative methods of disposal are determined to be acceptable alternative methods and implementable by the Regional Administrator for Region II of the Environmental Protection Agency, the District Engineer for the New York District, the State of New Jersey, and the State of New York. Such determination shall be published in the Federal Register 5 working days after the date of such determination.

(G) DEFINITIONS.—For purposes of this paragraph, the following definitions apply:

(i) ACCEPTABLE ALTERNATIVE METHOD.—The term "acceptable alternative method" means a method of disposal of wood other than burning on ocean waters that is both environmentally appropriate and economically feasible.

(ii) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(w) HARSHA LAKE, OHIO.—

(1) PROJECT MODIFICATION.—The project for flood control, water supply, and recreation, Harsha Lake, Ohio, authorized by section 4 of the Flood Control Act of June 28, 1938 (52 Stat. 1217), is modified to provide that, if the State of Ohio does not enter into a contract before October 1, 1991, with the Clermont County Board of Commissioners for the delivery of not less than 20,000,000 gallons of water a day from water supply storage assigned to the State of Ohio from the project, water supply storage from the project sufficient to yield 20,000,000 gallons of water a day shall be reassigned to the Board.

(2) REIMBURSEMENT.—Upon a reassignment of water supply storage under paragraph (1), the Clermont County Board of Commissioners shall reimburse the State of Ohio for a proportionate share of amounts previously paid by the State to the Secretary for costs which are attributable to water supply storage which has been so reassigned.

(x) WEST COLUMBUS, OHIO.—The project for flood control, West Columbus, Ohio, authorized by section 3(a)(11) of the Water Resources Development Act of 1988 (102 Stat. 4014), is modified to authorize the Secretary to construct the project substantially in accordance with the report of the Chief of Engineers, dated February 9, 1988, as modified by the Phase II West Columbus Local Protection Project Re-evaluation Report, dated May 1990, at a total cost of $89,600,000, with an estimated first Federal cost of $63,700,000 and an estimated first non-Federal cost of $25,900,000.

(y) CANTON LAKE, OKLAHOMA.—The second paragraph under the heading "ARKANSAS RIVER BASIN" in section 10 of the Flood Control Act of 1946 (60 Stat. 647), as amended by the first paragraph under the heading "ARKANSAS RIVER BASIN" in section 203 of the Flood Control Act of 1948 (62 Stat. 1176), is amended—

(1) by striking "Enid, Oklahoma" and inserting "Oklahoma City, Oklahoma"; and

(2) by adding at the end the following: "Not later than 180 days after the date of the enactment of the Water Resources Development Act of 1990, the Secretary of the Army is directed (subject to agreement between the city of Oklahoma City, Oklahoma, or the Oklahoma City Municipal Improvement Authority and the city of Enid, Oklahoma, providing for such reassignment) to reassign to the city of Oklahoma City all the municipal and industrial storage in the Canton Reservoir for the city of Enid and all irrigation storage to municipal and industrial water supply storage (under the terms of the Water Supply Act of 1958 (72 Stat. 319-320)).".

(z) ROCHESTER, PENNSYLVANIA.—The project for navigation on the Ohio River at Rochester, Pennsylvania, authorized by section 13 of the River and Harbor Act of 1909 (35 Stat. 831), is modified to authorize the Secretary to construct safety facilities of a floating dock, a river access ramp, and roadway and parking areas at a total cost of $90,000.

(aa) COOPER LAKE AND CHANNELS, TEXAS.—The project for mitigation of fish and wildlife resource losses, Cooper Lake and Channels, Texas, authorized by section 601 of the Water Resources Development Act of 1986 (100 Stat. 4145), is modified to authorize the Secretary to construct the project substantially in accordance with the Post Authorization Change Notification Report, dated April 1990, at a total cost of $22,500,000, with an estimated first Federal cost of $12,400,000 and an estimated first non-Federal cost of $10,100,000.

(bb) DENISON, TEXAS.—The Act entitled "An Act to authorize the utilization of a limited amount of storage space in Lake Texoma for the purpose of water supply for the city of Denison, Texas", approved August 14, 1953 (67 Stat. 583), is amended by striking "in an amount not to exceed 13,000 acre-feet annually".

(cc) ROANOKE RIVER UPPER BASIN, VIRGINIA.—The flood control project for Roanoke River Upper Basin, Virginia, is modified—

(1) to provide that, notwithstanding section 215 of the Flood Control Act of 1968 (82 Stat. 747), work completed by non-Federal interests on flood protection measures at Roanoke Memorial Hospital shall be credited toward the non-Federal share of the cost of the project; and

(2) to direct the Secretary, notwithstanding such section 215, to reimburse the non-Federal sponsor $700,000, an amount equal to the Federal share of the costs of such work completed by the non-Federal interests, which may be applied to the non-Federal share of the cost of the project.

(dd) MCNARY LOCK AND DAM, WASHINGTON AND OREGON.—The project for McNary Lock and Dam, Second Powerhouse, Columbia River, Washington and Oregon, authorized by section 601(a) of the Water Resources Development Act of 1986 (100 Stat. 4146), is modified to direct the Secretary to construct the levee beautification portion of the project described in the Phase I General Design Memorandum: Report of the Chief of Engineers, dated June 24, 1981. In determining the new levee heights, the Secretary shall complete the feasibility studies underway for the Tri-Cities Levees, Washington, giving full consideration to the impact that present upstream reservoir storage has had in lowering water surface elevations during major floods.

(ee) WISCONSIN AND FOX RIVERS, WISCONSIN.—

(1) NON-FEDERAL OPERATION AND MAINTENANCE.—The navigation project for the Wisconsin and Fox Rivers, Wisconsin, authorized to be acquired pursuant to the Act entitled "An Act for the Improvement of Water Communication between the Mississippi River and Lake Michigan, by the Wisconsin and Fox Rivers", approved July 7, 1870 (16 Stat. 189), is modified to authorize the Secretary to enter into agreements with the State of Wisconsin and other non-Federal interests in such State to make operation and maintenance of such project a non-Federal responsibility.

(2) NON-FEDERAL IMPOSITION OF TOLLS.—Notwithstanding section 4 of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved July 5, 1884 (33 U.S.C. 5; 23 Stat. 147), during any period in which a non-Federal interest is responsible for operation, maintenance, and repair of the project described in paragraph (1), the non-Federal interest may impose upon boats and other watercraft using the project such tolls, operating charges, and other fees as may be necessary to pay the costs incurred by the non-Federal interest in connection with the project.

SEC. 103. SMALL NAVIGATION PROJECTS.

The Secretary shall conduct a study for each of the following projects and, after completion of such study, shall carry out the project under section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577):

(1) BOLLES HARBOR, MICHIGAN.—A navigation project at the mouth of the LaPliasance Creek, Bolles Harbor, Michigan, by construction of an offshore barrier.

(2) WARROAD HARBOR, MINNESOTA.—A navigation project to dredge the navigation channel and adjacent basin at Warroad Harbor, Minnesota. The project shall be undertaken to provide safe boating access and egress and to upgrade existing retaining walls.

(3) BUFFALO, NEW YORK.—A navigation project south of the existing dike disposal area in Buffalo, New York, by construction of a breakwater, fishing pier, and floating docks.

(4) ROCHESTER, NEW YORK.—A navigation project for the mouth of the Genesee River in Rochester, New York, by development and implementation of wave surge control measures.

SEC. 104. SMALL FLOOD CONTROL PROJECTS.

(a) PROJECT AUTHORIZATIONS.—The Secretary shall conduct a study for each of the following projects and, after completion of such study, shall carry out the project under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s):

(1) DRY JORDAN AND CROOKED CREEKS, ARKANSAS.—A project for flood control, Dry Jordan and Crooked Creeks, Harrison, Arkansas, including construction of improvements to provide enhanced flood control and recreation benefits.

(2) OLD SULFUR CREEK, ORLEANS, INDIANA.—A project for flood control, Old Sulfur Creek, Orleans, Indiana.

(3) FARMERS BRANCH CREEK, WHITE SETTLEMENT, TEXAS.—A nonstructural project for flood control, Farmers Branch Creek, White Settlement, Texas. Such project shall consist of relocation and purchase of residential structures located within the flood plain and shall be carried out on an expedited basis.

(4) KROUTS CREEK, WEST VIRGINIA.—A project for flood control, Krouts Creek in the vicinity of Huntington, West Virginia, including deepening and widening of the channel and culvert replacement.

(b) SAVAN GUT, VIRGIN ISLANDS.—

(1) MAXIMUM ALLOTMENT.—The maximum amount which may be allotted under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s) for the project for flood control, Savan Gut, Virgin Islands, shall be $10,000,000 instead of $5,000,000.

(2) COST SHARING.—Nothing in this subsection shall be construed as affecting any cost sharing requirements applicable to the project under the Water Resources Development Act of 1986.

SEC. 105. BAY CITY, MICHIGAN.

The Secretary may undertake a project for shoreline protection along the Saginaw River in Bay City, Michigan, at a total estimated cost of $6,105,000.

SEC. 106. DELAWARE RIVER AND TRIBUTARIES, PENNSYLVANIA.

The Secretary may carry out a project for shoreline protection for the Glen Foerd Historic Property in Philadelphia, Pennsylvania, along the Delaware River and tributaries, including restoration of seawalls.

SEC. 107. CONTINUATION OF AUTHORIZATION OF CERTAIN PROJECTS.

(a) GENERAL RULE.—Notwithstanding section 1001(b)(1) of the Water Resources Development Act of 1986, the following projects shall remain authorized to be carried out by the Secretary:

(1) PAJARO RIVER, SANTA CRUZ, CALIFORNIA.—The project for flood control, Pajaro River and tributaries, Santa Cruz, California, authorized by the Flood Control Act of 1966 (80 Stat. 1421).

(2) SANTA CRUZ HARBOR, CALIFORNIA.—The modification for sealing the east jetty of the project for Santa Cruz Harbor, California, authorized by section 811 of the Water Resources Development Act of 1986 (100 Stat. 4168).

(3) HILLSBORO INLET, FLORIDA.—Dredging of Hillsboro Inlet, Florida, authorized by section 301 of the River and Harbor Act of 1965 (79 Stat. 1090).

(4) LITTLE CALUMET RIVER BASIN, INDIANA.—The project for flood control, Little Calumet River basin (Cady Marsh Ditch), Indiana, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4115).

(5) LOUISIANA STATE PENITENTIARY LEVEE, LOUISIANA.—The project for flood control, Louisiana State Penitentiary Levee, Mississippi River, Louisiana, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4117).

(6) ONTONAGON HARBOR, MICHIGAN.—The project for navigation, Ontonagon Harbor, Michigan, authorized by the Rivers and Harbors Appropriations Act of June 25, 1910 (36 Stat. 655).

(7) OTTAWA RIVER HARBOR, MICHIGAN AND OHIO.—The project for navigation, Ottawa River Harbor, Michigan and Ohio, authorized by section 201 of the Flood Control Act of 1965 (79 Stat. 1073) and approved by committee resolution, in accordance with the Phase I General Design Memorandum for such project, dated November 1976, at a total cost of $13,200,000, with an estimated first Federal cost of $6,530,000 and an estimated non-Federal cost of $6,670,000.

(8) SAULT SAINTE MARIE, MICHIGAN.—The second lock for Sault Sainte Marie, Michigan, authorized by section 1149 of the Water Resources Development Act of 1986 (100 Stat. 4254-55); except that the Secretary shall conduct, not later than 180 days after the date of the enactment of this Act and after providing an opportunity for notice and comment, an analysis of the projected total tonnage of commercial cargo which will be delivered by vessels using such lock to or from ports in Canada and the States of Minnesota, Wisconsin, Indiana, Illinois, Michigan, Ohio, Pennsylvania, and New York. Such analysis shall be based on the Secretary's estimate, using current traffic statistics.

(9) CONNEAUT, OHIO.—The small boat harbor project for Conneaut, Ohio, authorized by section 101 of the River and Harbor Act of 1966 (80 Stat. 1405).

(10) FAIRPORT, OHIO.—The small boat harbor project for Fairport, Ohio, and the dredging of the navigation project for Fairport, Ohio, authorized pursuant to section 201 of the Flood Control Act of 1965 (42 U.S.C. 1962d-f).

(11) MEMPHIS HARBOR, MEMPHIS, TENNESSEE.—The project for navigation, Memphis Harbor, Memphis, Tennessee, authorized by section 601(a) of the Water Resources Development Act of 1986 (100 Stat. 4145).

(12) EAST FORK OF TRINITY RIVER, TEXAS.—The project for flood protection on the East Fork of the Trinity River, Texas, authorized by section 203 of the Flood Control Act of 1962 (76 Stat. 1185).

(13) NORFOLK HARBOR, VIRGINIA.—The project for deepening of 3 navigation anchorages at Norfolk Harbor, Virginia, authorized by section 301 of the River and Harbor Act of 1965 (79 Stat. 1090).

(b) LIMITATION.—A project described in subsection (a) shall not be authorized for construction after the last day of the 5-year period that begins on the date of the enactment of this Act unless, during such period, funds have been obligated for the construction (including planning and design) of the project.

(c) FREEPORT, ILLINOIS.—The project for flood control, Freeport, Illinois, authorized by section 5 of the Flood Control Act of June 22, 1936 (49 Stat. 1586) and deauthorized by

section 1002 of the Water Resources Development Act of 1986 (100 Stat. 4208), is authorized to be carried out by the Secretary.

SEC. 108. HAZARD, KENTUCKY.

The Secretary is authorized and directed to design and construct such flood control measures at or in the vicinity of Hazard, Kentucky, on the North Fork of the Kentucky River as the Secretary determines necessary and appropriate to afford the city of Hazard, Kentucky, and its immediate environs a level of protection against flooding at least sufficient to prevent any future losses to such city from the likelihood of flooding such as occurred in January 1957, at a total cost of $30,000,000. With respect to such project, Congress finds that the benefits determined in accordance with section 209 of the Flood Control Act of 1970 and attributable to the flood measures authorized for such project exceed the cost of such measures.

SEC. 109. SAUK LAKE, MINNESOTA.

The Secretary shall complete the project for removal of silt and aquatic weeds, Sauk Lake, Minnesota, authorized by section 602 of the Water Resources Development Act of 1986 (100 Stat. 4148), including acquisition of weed harvesting equipment using funds appropriated by Congress for such purpose, and shall carry out measures to protect and enhance water quality, including implementation of best management practices in the drainage basin.

SEC. 110. REHABILITATION OF FEDERAL FLOOD CONTROL LEVEES.

(a) PROJECTS.—The Secretary shall undertake—

(1) projects for rehabilitation and reconstruction of Federal flood control levees on the Arkansas River, Arkansas and Oklahoma, substantially in accordance with the Little Rock District Engineer's Arkansas River Basin, Arkansas and Oklahoma, Draft Feasibility Report, dated March 1990, and the Tulsa District Engineer's Keystone to Tulsa Reconnaissance Report, dated September 1989; and

(2) projects for rehabilitation and reconstruction of Federal flood control levees on the Red River, Oklahoma and Arkansas, below Denison Dam.

(b) PURPOSE OF PROJECTS.—The purpose of projects under this section shall be to make the levees comply with current Federal design standards.

(c) INCLUDED FEATURES.—The projects under this section shall include repairs of design deficiencies and replacement of deteriorated drainage structures and other appurtenances.

(d) COST SHARING.—Work carried out under this section shall be treated as new construction for purposes of determining the Federal and non-Federal shares of the cost of such work.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000 per fiscal year for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

SEC. 111. BELEN, NEW MEXICO.

(a) PROJECT AUTHORIZATION.—Subject to section 903(c) of the Water Resources Development Act of 1986, the Secretary is authorized to carry out a project for flood protection for the city of Belen, New Mexico, at a total cost of $19,576,000, with an estimated first Federal cost of $12,130,000 and an estimated first non-Federal cost of $7,446,000.

(b) REQUIRED MEASURES.—The project authorized by this section shall include measures to increase the capacity of the Belen Highline Canal so that such canal will function as a conveyance system to divert flood waters safely around the city of Belen and as an irrigation facility.

SEC. 112. LOWER TRUCKEE RIVER, NEVADA.

(a) PLANNING, ENGINEERING, AND DESIGN.—The Secretary is authorized to carry out planning, engineering, and design—

(1) for rehabilitation of the Lower Truckee River, Nevada, including—

(A) restoration of the riparian habitat and vegetative cover;

(B) stabilization of the course of the Lower Truckee River and minimization of erosion damage;

(C) provision of the best possible spawning habitat for the cui-ui fish; and

(D) provision of improved spawning habitat for the Lahontan cutthroat trout to the extent deemed feasible; and

(2) for facilities to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Lower Truckee River to obtain access to their upstream spawning grounds.

SEC. 113. ARKANSAS POST NAVIGATION CANAL.

The Secretary is authorized to carry out planning, engineering, and design for modifications to the Arkansas Post Navigation Canal of the McClellan-Kerr Arkansas River Navigation System for the purpose of improving environmental quality. Such modifications shall include a closure structure at the downstream end of the Morgan Point Bendway and related work.

SEC. 114. STRUTHERS, OHIO.

The Secretary is authorized to carry out design for replacement of the Bridge Street bridge in Struthers, Ohio, at a total cost of $2,400,000. The non-Federal share of the cost of such design shall be 50 percent.

SEC. 115. MAYSVILLE, KENTUCKY.

The Secretary is authorized to carry out design for construction of a bridge between Maysville, Kentucky, and the State of Ohio, at a total cost of $2,000,000. The non-Federal share of the cost of such design shall be 50 percent.

SEC. 116. STUDIES.

(a) SOUTH ATLANTIC CARGO TRAFFIC.—

(1) STUDY.—The Secretary, in conjunction with the Administrator of the Federal Maritime Administration of the Department of Transportation, shall conduct a study of the market for container ship traffic in the South Atlantic region of the United States from Port Everglades, Florida, to Norfolk, Virginia.

(2) PURPOSES.—The purposes of the study to be conducted under this subsection are as follows:

(A) Identifying major containerized cargo trade routes and commodity flows.

(B) Identifying inland transportation infrastructure needs.

(C) Projecting future traffic volumes.

(D) Forecasting future container vessel fleets.

(E) Developing origin-to-destination transportation costs.

(F) Developing differential trade route costs for origin-destination pairs.

(G) Forecasting future micro- and minibridging opportunities.

(H) Developing a computerized database of all traffic flows and costs.

(I) Forecasting future port infrastructure needs.

(3) REPORT.—Not later than 14 months after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this subsection.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $1,200,000.

(b) NORCO BLUFFS, CALIFORNIA.—The Secretary shall conduct a feasibility study of bank stabilization measures for Norco Bluffs, California, under the flood control program of the Corps of Engineers.

(c) RANCHO PALOS VERDES, CALIFORNIA.—The Secretary shall—

(1) complete the study of the feasibility of constructing shoreline erosion mitigation measures along the Rancho Palos Verdes coastline and in the city of Rolling Hills, California, authorized by section 712 of the Water Resources Development Act of 1986 (100 Stat. 4160); and

(2) in connection with such study, investigate measures to conserve fish and wildlife (as specified in section 704 of the Water Resources Development Act of 1986), including measures to demonstrate the effectiveness of intertidal marine habitat.

(d) SOUTHERN CALIFORNIA INFRASTRUCTURE RESTORATION.—

(1) STUDY.—The Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall conduct a feasibility study in the Southern California region of the problems and alternative solutions, including governmental roles and responsibilities, of restoring such region's public works infrastructure (including roads and highways, fixed rails, bridges, airports, flood control channels, dams, aqueducts, and utility pipes and lines) to full service following earthquakes which cause substantial damage to such infrastructure.

(2) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this subsection.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $1,500,000.

(e) SANTA MONICA BREAKWATER, CALIFORNIA.—The Secretary shall complete the reconnaissance investigation and feasibility study for the breakwater project, Santa Monica, California, not later than July 1, 1992, and may consider as commercial benefits, for purposes of section 119 of the 1970 River and Harbor Act, benefits from reestablishment of past charter fishing vessel accommodation activities which existed in the area from the 1930's prior to damage of the breakwater structure.

(f) CALIFORNIA OIL SPILL RESTORATION.—

(1) STUDY.—The Secretary, in consultation with the Director of the Federal Emergency Management Agency and the Commandant of the Coast Guard, shall conduct a feasibility study in the California coastal region of the problems and alternative solutions, including Federal and non-Federal roles and responsibilities, of containment and restoration of coastal waters and lands (including natural wildlife, habitat restoration, commercial, and recreational activities) following a major oil spill.

(2) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this subsection.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $1,500,000.

(g) SANTA ROSA, CALIFORNIA.—The Secretary may conduct a review and evaluation of proposals for storage facilities associated with wastewater reclamation and irrigation in Santa Rosa, California, for the purpose of developing recommendations concerning Federal and non-Federal participation in construction of such facilities.

(h) KISSIMMEE RIVER, CENTRAL AND SOUTHERN FLORIDA.—

(1) STUDY.—The Secretary shall conduct a feasibility study of the Kissimmee River in central and southern Florida for the purpose of determining modifications of the flood control project for central and southern Florida, authorized by section 203 of the Flood Control Act of 1948 (62 Stat. 1176), which are necessary to provide a comprehensive plan for the environmental restoration of the Kissimmee River. The study shall be based on implementing the Level II Backfilling Plan specified in the Kissimmee River Restoration, Alternative Plan Evaluation and Preliminary Design Report, dated June 1990, published by the South Florida Water Management District.

(2) REPORT.—Not later than April 1, 1992, the Secretary shall transmit to Congress a final report of the Chief of Engineers on the results of the study conducted under this subsection, together with such modifications as are recommended by the Secretary.

(3) POST-STUDY WORK.—All work necessary to prepare the project recommended by the Chief of Engineers, as modified by the Secretary, for construction bidding, including Feature Design Memoranda, shall be completed by June 1, 1994.

(i) NASSAU COUNTY, FLORIDA.—The Secretary is authorized to study the project for beach erosion control, Nassau County (Amelia Island), Florida, authorized by section 3 of the Water Resources Development Act of 1988 (102 Stat. 4013), for the purpose of determining whether or not such project should be modified to authorize beach nourishment for the southern beaches of Fernandina (south Amelia Island) from Florida Department of Natural Resources monument number 60 to monument number 79.

(j) THURMAN TO HAMBURG, IOWA.—The Secretary shall complete the feasibility phase of the study authorized by section 1152 of the Water Resources Development Act of 1986 (100 Stat. 4255), including completion of planning and specifications, not later than August 1, 1991.

(k) LAKE PONTCHARTRAIN, LOUISIANA.—

(1) STUDY.—The Secretary shall study the benefits which accrue to non-Federal sponsors from the project for flood protection on Lake Pontchartrain, Louisiana, authorized by section 204 of the Flood Control Act of 1965 (79 Stat. 1077), for the purposes of determining—

(A) whether or not such sponsors have received the expected benefits from the project; and

(B) whether or not there should be a reallocation of costs as a result of any unrealized expected benefits from the project.

(2) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this subsection.

(3) NON-FEDERAL RESPONSIBILITY DURING STUDY.—During the period beginning on the date of the enactment of this Act and ending on the 30th day following the date of transmission of the report under paragraph (2), non-Federal sponsors of the project referred to in paragraph (1) shall not be required to make payments on non-Federal responsibilities incurred for the St. Bernard Parish portion of the Chalmette area before or during such period.

(l) BUFFUMVILLE LAKE, MASSACHUSETTS.—The Secretary may study the flood control project for Buffumville Lake, Massachusetts, authorized by the Flood Control Act of August 18, 1941 (55 Stat. 639), for the purpose of determining whether or not such project should be modified to authorize low flow augmentation for improving water quality on the French River.

(m) PEARL RIVER BASIN, MISSISSIPPI.—The Secretary shall conduct a feasibility study of providing flood protection for the metropolitan area of Jackson, Mississippi, and the counties of Rankin, Hinds, Simpson, Lawrence, Marion, and Madison, Mississippi.

(n) ROCK CREEK, MARYLAND.—

(1) WATER QUALITY STUDY.—The Secretary shall conduct a study of methods of improving water quality of Rock Creek, Maryland.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this subsection.

(o) SAGINAW BAY, MICHIGAN.—

(1) EXTENSION OF DEADLINE FOR FEASIBILITY REPORT.—Section 711 of the Water Resources Development Act of 1986 (100 Stat. 4160) is amended by striking "1989" and inserting "1992".

(2) CONTINUATION OF FEASIBILITY STUDY AUTHORIZATION.—For purposes of section 710 of the Water Resources Development Act of 1986, the study authorized by section 711 of such Act shall be treated as being authorized on the date of the enactment of this Act.

(p) WATER SUPPLY, MINNESOTA AND NORTH DAKOTA.—

(1) IN GENERAL.—The Secretary shall conduct a study, with the States of Minnesota and North Dakota—

(A) to determine and recommend alternative plans to augment flows in the Red River of the North, Minnesota and North Dakota, including plans to supplement flows for municipal, industrial, agricultural, and fish and wildlife purposes; and

(B) to utilize and conserve water within the area.

(2) ADDITIONAL PURPOSES.—Additional purposes of the study under this subsection are as follows:

(A) To identify alternative courses of action during drought conditions.

(B) To address such issues as system capabilities, regulatory actions, water quality, treaty constraints, and institutional arrangements.

(C) To recommend short and long-term approaches to resolving water supply and use problems, including those that occur outside the area.

(3) SPECIFIC REQUIREMENTS.—In conducting the study under this subsection, the Secretary shall—

(A) recognize the need for continued flow into Canada;

(B) coordinate with the Bureau of Reclamation on actions being undertaken by the Bureau with respect to the Garrison Diversion Unit; and

(C) provide for appropriate consideration for protection of the Nation's water resources as well as the needs of the area for water management and water availability.

(q) LAKE WINNIBIGOSHISH, MINNESOTA.—The Secretary is authorized to conduct a study to determine whether the Secretary's jurisdiction should be expanded to include areas above the current pool regulation levels at Lake Winnibigoshish, Minnesota, and to identify methods for bank stabilization and preservation needed due to lake level regulation.

(r) LAKE OF THE WOODS, MINNESOTA.—

(1) INVESTIGATION.—The Secretary may undertake an investigation of the lands bordering on the Lake of the Woods, Minnesota, to determine if such lands and improvements thereto in the United States currently meet applicable requirements of international agreements concerning regulation of the levels of the Lake of the Woods.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall report to Congress on the progress made in carrying out this subsection and the need for further legislation to resolve any outstanding claims for damages caused by the need for additional protective works and measures to satisfy the requirements referred to in paragraph (1).

(s) HEADWATERS RESERVOIRS OF THE MISSISSIPPI RIVER, MINNESOTA.—The Secretary shall conduct a study of the 6 headwaters reservoirs of the Mississippi River, Minnesota, to assess lake currents and resulting siltation behavior and to determine the impact of lake levels on fish habitat and spawning success.

(t) HIGHFIELD WATER COMPANY, NEW JERSEY.—

(1) STUDY.—The Comptroller General shall conduct a study of the facts and circumstances concerning the claims of the Highfield Water Company, New Jersey, against the United States Army Corps of Engineers for the purpose of making recommendations for an appropriate settlement of such claims.

(2) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General shall transmit to Congress a report on the results of the study conducted under this subsection.

(u) MANASQUAN RIVER, NEW JERSEY.—

(1) STUDY.—The Secretary shall conduct a study of the feasibility of implementing flood control measures on the Manasquan River to alleviate flooding in Freehold, Howell, and other affected townships in New Jersey.

(2) REPORT.—Not later than December 31, 1992, the Secretary shall transmit to Congress a report on the results of the study conducted under this subsection.

(v) ACEQUIAS IRRIGATION SYSTEM, NEW MEXICO.—The Secretary is authorized to conduct a study of the Acequias irrigation system, New Mexico, to determine whether the project for restoration and preservation of such system, authorized by section 1113 of the Water Resources Development Act of 1986 (100 Stat. 4232), should be expanded to include additional areas of the system.

(w) BUFFALO, NEW YORK.—

(1) REVIEW AND EVALUATION.—The Secretary shall conduct a review and evaluation of the plan prepared by the city of Buffalo, New York, on flooding and associated water quality problems (including those associated with combined sewer overflows, sewer backups, and riverside outfalls) in the Buffalo, New York, metropolitan area.

(2) PURPOSES.—The purposes of the review and evaluation to be conducted under this subsection are to develop recommendations for Federal and non-Federal participation in solving the problems described in paragraph (1) and to identify flood control benefits of implementing the plan.

(3) REPORT.—Not later than 9 months after the date of the enactment of this Act, the Secretary shall transmit to Congress and the mayor of Buffalo, New York, a report on the results of the review and evaluation conducted under this subsection.

(x) CAESAR'S CREEK LAKE, OHIO.—

(1) STUDY.—The Secretary shall conduct a study of the water supply needs of Clinton County, Ohio.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the

Secretary shall transmit to Congress a report on the results of the study conducted under this subsection, together with recommendations for meeting the projected water supply needs of Clinton County, Ohio.

(y) LIBERTY, OHIO.—

(1) STUDY.—The Secretary shall conduct a study of the water supply needs of Liberty, Ohio.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this subsection, together with recommendations for meeting the projected water supply needs of Liberty, Ohio.

(z) WASHINGTONVILLE, OHIO.—

(1) STUDY.—The Secretary shall conduct a study of the water supply needs of Washingtonville, Ohio.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this subsection, together with recommendations for meeting the projected water supply needs of Washingtonville, Ohio.

(aa) MILL CREEK, TENNESSEE.—

(1) FEASIBILITY STUDY.—The Secretary shall study the feasibility of nondam options to alleviate flooding along Mill Creek and Seven Mile Creek, Tennessee.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this subsection, together with a recommended plan for alleviating the flooding referred to in paragraph (1).

(bb) NEW MADRID INFRASTRUCTURE RESTORATION.—

(1) STUDY.—The Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall conduct a feasibility study in the region surrounding the New Madrid Fault (including the States of Tennessee, Missouri, Arkansas, Kentucky, Mississippi, Indiana, and Illinois) of the problems and alternative solutions, including governmental roles and responsibilities, of restoring such region's public works infrastructure (including roads and highways, fixed rails, bridges, airports, flood control channels, dams, aqueducts, and utility pipes and lines) to full service following earthquakes which cause substantial damage to such infrastructure.

(2) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the study conducted under this subsection.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $1,500,000.

(cc) SOUTHWEST REGION FLOOD RESPONSE.—

(1) STUDY.—The Secretary, in consultation with the Secretary of Agriculture and the Director of the Federal Emergency Management Agency, shall conduct a study to evaluate—

(A) existing flood control measures in the Arkansas, Red, and Ouachita River basins, including the adequacy of flood control storage at existing reservoirs, operation of such reservoirs, and downstream flood control and local protection projects;

(B) the effectiveness of Federal emergency response capabilities to prevent or minimize loss of life and damage to property resulting from flooding; and

(C) the effectiveness of Federal disaster assistance programs in providing adequate and prompt compensation to flood victims.

(2) REPORT.—The Secretary shall transmit a report to Congress on the results of the study conducted under this subsection not later than 1 year after the date of the enactment of this Act. The report shall contain a detailed statement of the findings and conclusions of the Secretary, together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(dd) RADIUM REMOVAL.—

(1) STUDY.—The Secretary, in cooperation with State public authorities, may conduct a study of methods of mitigating radium contamination in ground water.

(2) TECHNICAL ASSISTANCE.—Upon application of a State public authority, the Secretary may provide, on a reimbursable basis, technical assistance with respect to development and installation of ground water treatment technologies needed to remove radium from ground water used as a source of public drinking water for residents of small communities.

(ee) MISSISSIPPI RIVER WATER QUALITY.—

(1) STUDY.—The Secretary shall conduct a study of the water quality of the Mississippi River.

(2) CONSULTATION AND ASSISTANCE.—In conducting the study under this subsection, the Secretary is authorized to consult with, and request the assistance of, the United States Geological Survey, the United States Fish and Wildlife Service, the Environmental Protection Agency, and appropriate States.

(3) FRAMEWORK.—The Secretary shall consult with the Federal agencies and States referred to in paragraph (2) to develop a framework for the study to be conducted under this subsection. Such framework shall be completed on or before the 120th day after the date of the enactment of this Act.

(4) REPORT.—Not later than December 31, 1992, the Secretary shall transmit a report to Congress on the results of the study conducted under this subsection, including findings and recommendations of the Secretary.

(5) FEDERAL SHARE.—The Federal share of the costs of carrying out this subsection shall be 50 percent.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $2,000,000.

SEC. 117. CRANSTON, RHODE ISLAND.

(a) STUDY.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall conduct a feasibility study of wastewater treatment options for transporting contamination from the central landfill site and other sources of pollution in Rhode Island to a wastewater treatment facility in Cranston, Rhode Island, through the use of a regional connector system.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this section.

(c) DEMONSTRATION PROGRAM.—After completion of the feasibility study under this section, the Secretary shall conduct a technology demonstration of the connector system described in subsection (a) to determine the capability of the system design to operate properly.

(d) FEDERAL SHARE.—The Federal share for carrying out this section shall be 50 percent.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $1,000,000 to carry out subsection (a) and $10,000,000 to carry out subsection (c).

SEC. 118. TECHNICAL ASSISTANCE FOR NEW YORK HARBOR.

The Secretary may provide, on a reimbursable basis, technical assistance with respect to a comprehensive review of New York Harbor and a systems investigation of the system of channels and anchorages of the Port of New York and New Jersey (including areas and channels outside the Federal system). Such technical assistance may include analysis of traffic design, shoaling, and hydraulics in order to determine the potential of streamlining the operation of such system and of reducing the potential for maritime accidents.

SEC. 119. PROJECT DEAUTHORIZATIONS.

(a) NOTIFICATION OF MEMBERS OF CONGRESS.—Section 1001(b)(2) of the Water Resources Development Act of 1986 (33 U.S.C. 579a(b)(2)) is amended by inserting after the first sentence the following new sentence: "Before submission of such list to Congress, the Secretary shall notify each Senator in whose State, and each Member of the House of Representatives in whose district, a project (including any part thereof) on such list would be located.".

(b) REPEAL OF OUTDATED DEAUTHORIZATION PROVISION.—Section 12 of the Water Resources Development Act of 1974 (33 U.S.C. 579) is repealed.

(c) SPECIFIED PROJECTS.—The following projects are not authorized after the date of the enactment of this Act, except with respect to any portion of such a project which portion has been completed before such date or is under construction on such date:

(1) GREENWICH HARBOR, CONNECTICUT.—The following portion of the channel at Greenwich Harbor, Connecticut, authorized by the Rivers and Harbors Appropriations Act of March 2, 1919 (40 Stat. 1276):

Beginning at a point on the limit line of the Federal Anchorage Area in Greenwich Harbor, such point having coordinates of N66,309.76 E358,059.81 and running thence northwesterly along the limit line of the Federal Anchorage Area N50°0104W, a distance of 621.62 feet to an angle point on the existing Federal Anchorage Area Limit Line having coordinates N66,709.18 E357,583.50; thence continuing along the existing Federal Anchorage Area Limit Line N39°5855E a distance of 200.00 feet to an angle point on the existing Federal Anchorage Area Limit Line having coordinates N66,862.43 E357,712.01; thence continuing along the existing Federal Anchorage Area Limit Line S50°0104E a distance of 140.00 feet to a point on the existing Federal Anchorage Area Limit Line having coordinates N66,772.47 E357,819.28; thence running into the existing Federal Anchorage Area S39°5855W a distance of 187.66 feet to a point having coordinates N66,628.75 E357,698.76; thence running in the existing Federal Anchorage Area S59°1032"E a distance of 376.47 feet to a point having coordinates N66,435.85 E358,022.05; thence running in the existing Federal Anchorage Area S16°4026"E a distance of 131.62 feet to the point and place of the beginning for a total area of 47,737 square feet.

(2) CONNEAUT HARBOR, OHIO.—The feature of the navigation project for Conneaut Harbor, Ohio, authorized by section 101 of the River and Harbor Act of 1962 (76 Stat. 1176), which feature is a channel lying easterly of the access channel and adjacent to the municipal pier.

(3) BIG RIVER RESERVOIR, RHODE ISLAND.—The water supply project, Big River Reservoir, Providence, Rhode Island, authorized

by section 601(a) of the Water Resources Development Act of 1986 (100 Stat. 4144).

SEC. 120. HALF MOON BAY HARBOR.

(a) DESIGNATION.—The harbor commonly known as Half Moon Bay Harbor, located in El Granada, California, shall hereafter be known and designated as "Pillar Point Harbor".

(b) LEGAL REFERENCES.—A reference in any law, map, regulation, document, record, or other paper of the United States to the harbor referred to in subsection (a) shall be deemed to be a reference to "Pillar Point Harbor".

TITLE II—LAND TRANSFERS

SEC. 201. SNEADS, FLORIDA.

(a) IN GENERAL.—The Secretary shall convey to the trustees of the Salem Wesleyan Church all right, title, and interest of the United States in and to the parcel of land described in subsection (b).

(b) PROPERTY DESCRIPTION.—The parcel of land referred to in subsection (a) contains approximately 2.30 acres lying in section 12, township 4 north, range 8 west, Tallahassee meridian, Jackson County, Florida, and is more particularly described as follows:

Beginning at a point that is 294 feet west of the east line and 294 feet north of the south line of the northeast quarter of the northeast quarter of such section 12, and at a corner of a tract of land now or formerly owned by the Salem Wesleyan Church;

Thence south along a line parallel to the east line of such section a distance of approximately 269 feet to a point that is 25 feet north of the south line of the northeast quarter of the northeast quarter of such section;

Thence west along a line parallel to the south line of the northeast quarter of the northeast quarter of such section a distance of approximately 425 feet to the eastern right-of-way line of Florida State Road Numbered S-69A;

Thence northerly along the eastern right-of-way line of such State road a distance of approximately 200 feet to the boundary of such Salem Wesleyan Church tract; and

Thence northeasterly along the boundary of such Salem Wesleyan Church tract approximately 450 feet to the point of beginning.

(c) PAYMENT OF FAIR MARKET VALUE.—The conveyance authorized by this section shall be made upon payment to the United States of a sum equal to the fair market value of the land as determined by the Secretary.

(d) CONDITIONS AND RESTRICTIONS.—The conveyance under this section shall be subject to a reversionary interest in the United States if the lands conveyed are used for other than church purposes. The Secretary may require such additional terms, conditions, reservations, and restrictions in connection with the conveyance as the Secretary determines are necessary to protect the interests of the United States.

(e) SURVEY COSTS.—The cost of any surveys necessary as an incident to the conveyance authorized by this section shall be borne by the trustees of the Salem Wesleyan Church.

(f) DEADLINE.—Subject to compliance with this section, the Secretary shall convey the parcel of land described in subsection (b) not later than 2 years after the date of the enactment of this Act.

SEC. 202. IRA D. MACLACHLAN AMERICAN LEGION POST, SAULT SAINTE MARIE, MICHIGAN.

The Secretary shall convey to the Commandant of the Coast Guard the parcel of land described in the Act of June 5, 1936 (49 Stat. 1481), and the building located thereon for use as a clubhouse for the local American Legion Post of Sault Sainte Marie, Michigan.

SEC. 203. ABERDEEN, WASHINGTON.

(a) IN GENERAL.—The Secretary may transfer to the city of Aberdeen, Washington, by quitclaim deed, all rights, interests, and title of the United States in the approximately 570.5 acres of land under the administrative jurisdiction of the Department of the Army acquired for the purposes of the project for Wynoochee Lake, Wynoochee River, Washington, authorized by section 203 of the Flood Control Act of 1962 (76 Stat. 1193), together with any improvements thereon.

(b) CONDITIONS.—A transfer under this section shall be subject to the following conditions:

(1) The city shall operate, maintain, repair, replace, and rehabilitate the project in accordance with regulations prescribed by the Secretary which are consistent with the project's authorized purposes, including fish and wildlife mitigation.

(2) The city shall hold and save the United States free from any claims or damages resulting from the operation, maintenance, repair, or rehabilitation of the project by the city or its contractors.

(3) If the city uses the land transferred under this section for any purpose other than the project's authorized purposes or generation of hydropower or fails to comply with paragraph (1) or (2), the Secretary shall notify the city of such use or failure. If the city does not correct such nonconforming use or failure during the 1-year period beginning on the date of such notification, the Secretary shall have a right of reverter to reclaim possession and title to the land transferred under this section.

(c) LIMITATION.—No transfer under this section may be made until the Secretary has determined that the city can operate, maintain, repair, replace, and rehabilitate the project.

(d) REPAYMENT OF CAPITAL COSTS.—Nothing in this section shall be construed to relieve the city of its obligations under the project contract to repay the capital costs of the project allocated to water supply. The Secretary may negotiate a cash settlement to allow the city to prepay the present value of the payments for capital costs due under the contract.

SEC. 204. RELEASE OF REVERSIONARY INTEREST TO CLAY COUNTY, GEORGIA.

(a) IN GENERAL.—Subject to the condition stated in subsection (b) and notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and section 108 of the River and Harbor Act of 1960 (33 U.S.C. 578), the Secretary shall release to Clay County, Georgia, without reimbursement, the reversionary interest of the United States in approximately 50 acres of land in the deed described in subsection (c).

(b) CONDITION.—

(1) REPLACEMENT REVERSIONARY INTEREST.—The condition referred to in subsection (a) is that Clay County, Georgia, agree to an amendment of the deed described in subsection (c) by which the reversionary interest that is released pursuant to subsection (a) is replaced with a reversionary interest as described in paragraph (2).

(2) DESCRIPTION.—The deed described in subsection (c) shall be amended to provide that the property conveyed by the deed is subject to the condition and restriction that it is to be used and enjoyed solely for the development of a retirement community, as that term may be defined by the parties in the instrument described in subsection (d), operated on a nonprofit basis by Clay County, Georgia, and its successors and assigns, or under a lease arrangement between the county and the South Georgia Methodist Home for the Aging, Inc., and that if the property is used for any other purpose, title to the property, including any improvements, shall revert to the United States.

(c) DESCRIPTION OF DEED.—The deed referred to in subsections (a) and (b) is the quitclaim deed dated October 22, 1963, by which the United States conveyed to Clay County, Georgia, the parcel of land lying in land lots 263 and 264, Seventh Land District, Clay County, Georgia.

(d) INSTRUMENT OF RELEASE.—The Secretary and Clay County, Georgia, shall execute and file in the appropriate office an amendment of deed, amended deed, deed of release, or other appropriate form of instrument or instruments effecting the substitution of reversionary interest authorized by this section.

SEC. 205. CONVEYANCE OF OAKLAND INNER HARBOR TIDAL CANAL PROPERTY TO CITIES OF OAKLAND AND ALAMEDA, CALIFORNIA.

The Secretary may convey, by quitclaim deed, the title of the United States in all or portions of the approximately 86 acres of uplands, tidelands, and submerged lands, commonly referred to as the Oakland Inner Harbor Tidal Canal, California, as follows:

(1) To the city of Oakland, the United States title to all or portions of that part of the Oakland Inner Harbor Tidal Canal which are located within the boundaries of the city of Oakland.

(2) To the city of Alameda, the United States title to all or portions of that part of the Oakland Inner Harbor Tidal Canal which are located within the boundaries of the city of Alameda.

The Secretary may reserve and retain from any such conveyance a right-of-way for the operation and maintenance of the authorized Federal channel in the Oakland Inner Harbor Tidal Canal.

TITLE III—GENERALLY APPLICABLE PROVISIONS

SEC. 301. PLANNING AND ENGINEERING.

Section 105(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2215(b)) is amended by adding at the end the following new sentence: "Costs of planning and engineering of projects for which non-Federal interests contributed 50 percent of the cost of the feasibility study shall be treated as costs of construction.".

SEC. 302. EMERGENCY RESPONSE.

Section 5(a)(1) of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved August 18, 1941 (33 U.S.C. 701n(a)(1)), is amended—

(1) in the first sentence by striking "flood emergency preparation," and inserting "preparation for emergency response to any natural disaster,"; and

(2) by inserting after the first sentence the following: "The emergency fund may also be expended for emergency dredging for restoration of authorized project depths for Federal navigable channels and waterways made necessary by flood, drought, earthquake, or other natural disasters.".

SEC. 303. CONSTRUCTION OF NAVIGATION PROJECTS BY NON-FEDERAL INTERESTS.

(a) TRANSMISSION OF HARBOR IMPROVEMENT STUDIES TO NON-FEDERAL INTERESTS.—Section 204(c) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(c)) is amended by inserting after the first sentence the follow-

ing new sentence: "The Secretary is further authorized to complete and transmit to the appropriate non-Federal interest any study for improvement to harbors or inland harbors of the United States that is initiated pursuant to section 107 of the River and Harbor Act of 1960 or, upon request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest.".

(b) REIMBURSEMENT.—Section 204 of such Act is amended—

(1) by redesignating the second subsection (e) and subsection (f), and any reference thereto, as subsections (f) and (g), respectively;

(2) in paragraph (1) of the first subsection (e) by inserting "including any small navigation project approved pursuant to section 107 of the River and Harbor Act of 1960," after "or separable element thereof,"; and

(3) in paragraph (1)(A) of the first subsection (e) by inserting "(or, in the case of a small navigation project, after completion of a favorable project report by the Corps of Engineers)" after "authorization of the project".

SEC. 304. PROJECT MODIFICATIONS FOR IMPROVEMENT OF ENVIRONMENT.

(a) REVIEW OF PROJECT OPERATIONS.—Section 1135(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2294 note), is amended by striking "before the date of enactment of this Act".

(b) MODIFICATION PROGRAM.—Section 1135(b) of such Act is amended—

(1) by striking "demonstration program in the 5-year period beginning on the date of enactment of this Act" and inserting "program"; and

(2) by striking "before the date of enactment of this Act".

(c) REPORT.—Section 1135(d) of such Act as amended to read as follows:

"(d) BIENNIAL REPORT.—Beginning in 1992 and every 2 years thereafter, the Secretary shall transmit to Congress a report on the results of reviews conducted under subsection (a) and on the program conducted under subsection (b).".

(d) FUNDING.—Section 1135(e) of such Act is amended by striking "$25,000,000 to carry out this section." and inserting "$15,000,000 annually to carry out this section.".

SEC. 305. ABILITY TO PAY.

(a) GENERAL RULE.—Section 103(m) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(m)) is amended to read as follows:

"(m) ABILITY TO PAY.—

"(1) GENERAL RULE.—Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay.

"(2) PROCEDURES.—

"(A) IN GENERAL.—The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

"(B) LIMITATIONS.—The procedures established pursuant to this subsection shall provide for a reduction in any non-Federal cash contribution required under subsection (a)(2) of this section. In addition, such procedures shall provide for determination of the eligibility of the non-Federal interest for a reduction in the required cash contribution on the basis of local, not statewide, economic and financial data.

"(C) REGULATIONS.—Not later than 1 year after the date of the enactment of this subparagraph, the Secretary shall issue regulations establishing the procedures required by this paragraph.".

(b) CONTINUATION OF EXISTING REGULATIONS.—Regulations issued to carry out section 103(m) of the Water Resources Development Act of 1986 before the date of the enactment of this Act and in effect on such date shall continue in effect until regulations are issued pursuant to paragraph (2)(C) of such section, as added by subsection (a) of this section.

SEC. 306. ENVIRONMENTAL PROTECTION MISSION.

(a) GENERAL RULE.—The Secretary shall include environmental protection as one of the primary missions of the Corps of Engineers in planning, designing, constructing, operating, and maintaining water resources projects.

(b) LIMITATION.—Nothing in this section affects—

(1) existing Corps of Engineers' authorities, including its authorities with respect to navigation and flood control;

(2) pending Corps of Engineers permit applications or pending lawsuits involving permits or water resources projects; or

(3) the application of public interest review procedures for Corps of Engineers permits.

SEC. 307. WETLANDS.

(a) GOALS AND ACTION PLAN.—

(1) GOALS.—There is established, as part of the Corps of Engineers water resources development program, an interim goal of no overall net loss of the Nation's remaining wetlands base, as defined by acreage and function, and a long-term goal to increase the quality and quantity of the Nation's wetlands, as defined by acreage and function.

(2) USE OF AUTHORITIES.—The Secretary shall utilize all appropriate authorities, including those to restore and create wetlands, in meeting the interim and long-term goals.

(3) ACTION PLAN.—

(A) DEVELOPMENT.—The Secretary shall develop, in consultation with the Environmental Protection Agency, the Fish and Wildlife Service, and other appropriate Federal agencies, a wetlands action plan to achieve the goals established by this subsection as soon as possible.

(B) CONTENTS.—The plan shall include and identify actions to be taken by the Secretary in achieving the goals and any new authorities which may be necessary to accelerate attainment of the goals.

(C) COMPLETION DEADLINE.—The Secretary shall complete the plan not later than 1 year after the date of enactment of this Act.

(b) CONSTRUCTED WETLANDS FOR MUD CREEK, ARKANSAS.—Notwithstanding any other provision of law, the Secretary is authorized and directed to establish and carry out a research and pilot project to evaluate and demonstrate—

(1) the use of constructed wetlands for wastewater treatment, and

(2) methods by which such projects contribute—

(A) to meeting the objective of the Federal Water Pollution Control Act to restore and maintain the physical, chemical, and biological integrity of the Nation's waters, and

(B) to attaining the goals established by subsection (a).

The project under this subsection shall be carried out to improve the quality of effluent discharged from publicly owned treatment works operated by the city of Fayetteville, Arkansas, into Mud Creek or its tributaries.

(c) NON-FEDERAL RESPONSIBILITIES.—For the project conducted under subsection (b), the non-Federal interest shall agree—

(1) to provide, without cost to the United States, all lands, easements, rights-of-way, relocations, and dredged material disposal areas necessary for construction and subsequent research and demonstration work;

(2) to hold and save the United States free from damages due to construction, operation, and maintenance of the project, except damages due to the fault or negligence of the United States or its contractors; and

(3) to operate and maintain the restored or constructed wetlands in accordance with good management practices; except that nothing in this paragraph shall be construed as precluding a Federal agency from agreeing to operate and maintain the restored or reconstructed wetlands.

The value of the non-Federal lands, easements, rights-of-way, relocations, and dredged material disposal areas provided by the non-Federal interest shall be credited toward the non-Federal share of project design and construction costs. The non-Federal share of project design and construction costs shall be 25 percent.

(d) WETLANDS RESTORATION AND ENHANCEMENT DEMONSTRATION PROGRAM.—

(1) ESTABLISHMENT AND IMPLEMENTATION.—The Secretary, in consultation with the Administrator, is authorized to establish and implement a demonstration program for the purpose of determining the feasibility of wetlands restoration, enhancement, and creation as a means of contributing to the goals established by subsection (a).

(2) GOAL.—The goal of the program under this subsection shall be to establish a limited number of demonstration wetlands restoration, enhancement, and creation areas in districts of the Corps of Engineers for the purpose of evaluating the technical and scientific long-term feasibility of such areas as a means of contributing to the attainment of the goals established by subsection (a). Federal and State land-owning agencies and private parties may contribute to such areas.

(3) FACTORS TO CONSIDER.—In establishing the demonstration program under this subsection, the Secretary shall consider—

(A) past experience with wetlands restoration, enhancement, and creation;

(B) the appropriate means of measuring benefits of compensatory mitigation activities, including enhancement or restoration of existing wetlands or creation of wetlands;

(C) the appropriate geographic scope for which wetlands loss may be offset by restoration, enhancement, and creation efforts;

(D) the technical feasibility and scientific likelihood that wetlands can be successfully restored, enhanced, and created;

(E) means of establishing liability for, and long-term ownership of, wetlands restoration, enhancement, and creation areas; and

(F) responsibilities for short- and long-term project monitoring.

(4) REPORTING.—

(A) TO THE CHIEF OF ENGINEERS.—The district engineer for each district of the Corps of Engineers in which a wetlands restoration, enhancement, and creation area is established under this subsection shall transmit annual reports to the Chief of Engineers describing the amount and value of wetlands restored, enhanced, and created for the area and a summary of whether the area is contributing to the goal established in paragraph (2).

(B) TO CONGRESS.—Not later than 3 years after the date of the enactment of this Act, the Secretary shall transmit to Congress a report evaluating the use of wetlands restoration, enhancement, and creation areas in

fulfilling the goal established by paragraph (2), together with recommendations on whether or not to continue use of such areas as a means of meeting the goals established by subsection (a).

(5) EFFECT ON OTHER LAWS.—Nothing in this subsection affects any requirements under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 10 of the Act of March 3, 1899 (33 U.S.C. 403).

(e) TRAINING AND CERTIFICATION OF DELINEATORS.—

(1) IN GENERAL.—The Secretary is authorized to establish a program for the training and certification of individuals as wetlands delineators. As part of such program, the Secretary shall carry out demonstration projects in districts of the Corps of Engineers. The program shall include training and certification of delineators and procedures for expediting consideration and acceptance of delineations performed by certified delineators.

(2) REPORTS.—The Secretary shall transmit to Congress periodic reports concerning the status of the program and any recommendations on improving the content and implementation of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

SEC. 308. FLOOD PLAIN MANAGEMENT.

(a) BENEFIT-COST ANALYSIS.—The Secretary shall not include in the benefit base for justifying Federal flood damage reduction projects—

(1)(A) any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation after July 1, 1991; or

(B) in the case of a county substantially located within the 100-year flood plain, any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 10-year flood plain after July 1, 1991; and

(2) any structure which becomes located in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation or in the 10-year flood plain, as the case may be, by virtue of constrictions placed in the flood plain after July 1, 1991.

(b) COUNTIES SUBSTANTIALLY LOCATED WITHIN 100-YEAR FLOOD PLAIN.—For the purposes of subsection (a), a county is substantially located within the 100-year flood plain—

(1) if the county is comprised of lands of which 50 percent or more are located in the 100-year flood plain; and

(2) if the Secretary determines that application of the requirement contained in subsection (a)(1)(A) with respect to the county would unreasonably restrain continued economic development or unreasonably limit the availability of needed flood control measures.

(c) COST SHARING.—Not later than January 1, 1992, the Secretary shall transmit to Congress a report on the feasibility and advisability of increasing the non-Federal share of costs for new projects in areas where new or substantially improved structures and other constrictions are built or placed in the 100-year flood plain or the 10-year flood plain, as the case may be, after the initial date of the affected governmental unit's entry into the regular program of the national flood insurance program of the National Flood Insurance Act of 1968.

(d) REGULATIONS.—Not later than 6 months after the date on which a report is transmitted to Congress under subsection (b), the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall issue regulations to implement subsection (a). Such regulations shall define key terms, such as new or substantially improved structure, constriction, 10-year flood plain, and 100-year flood plain.

(e) APPLICABILITY.—The provisions of this section shall not apply to any project, or separable element thereof, for which a final report of the Chief of Engineers has been forwarded to the Secretary before the last day of the 6-month period beginning on the date on which regulations are issued pursuant to subsection (a) but not later than July 1, 1993.

SEC. 309. SHORELINE PROTECTION.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the advisability of not participating in the planning, implementation, or maintenance of any beach stabilization or renourishment project involving Federal funds unless the State in which the proposed project will be located has established or committed to establish a beach front management program that includes—

(1) restrictions on new development seaward of an erosion setback line (based on preproject beach size) of at least 30 times the annual erosion rate;

(2) restrictions on construction of new structural stabilization projects, such as seawalls and groins, and their reconstruction if damaged by 50 percent or more;

(3) provisions for the relocation of structures in erosion-prone areas;

(4) provisions to assure public access to beaches stabilized or renourished with Federal funds after January 1, 1991; and

(5) such other provisions as the Secretary may prescribe by regulation to prevent hazardous or environmentally damaging shoreline development.

SEC. 310. RESERVOIR MANAGEMENT.

(a) TECHNICAL ADVISORY COMMITTEE.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall establish for major reservoirs under the jurisdiction of the Corps of Engineers a technical advisory committee to provide to the Secretary and Corps of Engineers recommendations on reservoir monitoring and options for reservoir research. The Secretary shall determine the membership of the committee, except that the Secretary may not appoint more than 6 members and shall ensure a predominance of members with appropriate academic, technical, or scientific qualifications. Members shall serve without pay, and the Secretary shall provide any necessary facilities, staff, and other support services in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.).

(b) PUBLIC PARTICIPATION.—The Secretary shall ensure that, in developing or revising reservoir operating manuals of the Corps of Engineers, the Corps shall provide significant opportunities for public participation, including opportunities for public hearings. The Secretary shall issue regulations to implement this subsection, including a requirement that all appropriate informational materials relating to proposed management decisions of the Corps be made available to the public sufficiently in advance of public hearings. Not later than January 1, 1992, the Secretary shall transmit to Congress a report on measures taken pursuant to this subsection.

SEC. 311. RESERVOIR PROJECT OPERATIONS.

(a) STUDY.—The Secretary shall conduct a study of the operations of reservoir projects which are under the jurisdiction of the Secretary—

(1) to identify the purposes for which each such project is authorized; and

(2) to identify the purposes for which each such project is being operated.

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under subsection (a).

SEC. 312. ENVIRONMENTAL DREDGING.

(a) OPERATION AND MAINTENANCE OF NAVIGATION PROJECTS.—Whenever necessary to meet the requirements of the Federal Water Pollution Control Act, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, may remove, as part of operation and maintenance of a navigation project, contaminated sediments outside the boundaries of and adjacent to the navigation channel.

(b) NONPROJECT SPECIFIC.—

(1) IN GENERAL.—The Secretary may remove contaminated sediments from the navigable waters of the United States for the purpose of environmental enhancement and water quality improvement if such removal is requested by a non-Federal sponsor and the sponsor agrees to pay 50 percent of the cost of such removal.

(2) MAXIMUM AMOUNT.—The Secretary may not expend more than $10,000,000 in a fiscal year to carry out this subsection.

(c) JOINT PLAN REQUIREMENT.—The Secretary may only remove contaminated sediments under subsection (b) in accordance with a joint plan developed by the Secretary and interested Federal, State, and local government officials. Such plan must include an opportunity for public comment, a description of the work to be undertaken, the method to be used for dredged material disposal, the roles and responsibilities of the Secretary and non-Federal sponsors, and identification of sources of funding.

(d) DISPOSAL COSTS.—Costs of disposal of contaminated sediments removed under this section shall be a non-Federal responsibility.

(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to affect the rights and responsibilities of any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(f) TERMINATION DATE.—This section shall not be effective after the last day of the 5-year period beginning on the date of the enactment of this Act; except that the Secretary may complete any project commenced under this section on or before such last day.

SEC. 313. PROTECTION OF RECREATIONAL AND COMMERCIAL USES.

(a) GENERAL RULE.—In planning any water resources project, the Secretary shall consider the impact of the project on existing and future recreational and commercial uses in the area surrounding the project.

(b) MAINTENANCE.—Whenever the Secretary maintains, repairs, rehabilitates, or reconstructs a water resources project which will result in a change in the configuration of a structure which is a part of such project, the Secretary, to the maximum extent practicable, shall carry out such maintenance, repair, rehabilitation, or reconstruction in a manner which will not adversely affect any recreational use established with respect to such project before the date of such mainte-

nance, repair, rehabilitation, or reconstruction.

(c) MITIGATION.—

(1) IN GENERAL.—If maintenance, repair, rehabilitation, or reconstruction of a water resources project by the Secretary results in a change in the configuration of any structure which is a part of such project and has an adverse effect on a recreational use established with respect to such project before the date of such maintenance, repair, rehabilitation, or reconstruction, the Secretary, to the maximum extent practicable, shall take such actions as may be necessary to restore such recreational use or provide alternative opportunities for comparable recreational use.

(2) MAXIMUM AMOUNT.—The Secretary may not expend more than $2,000,000 in a fiscal year to carry out this subsection.

(3) TERMINATION DATE.—This subsection shall not be effective after the last day of the 5-year period beginning on the date of the enactment of this Act; except that the Secretary may complete any restoration commenced under this subsection on or before such last day.

(d) APPLICABILITY.—

(1) GENERAL RULE.—Subsections (b) and (c) shall apply to maintenance, repair, rehabilitation, or reconstruction for which physical construction is initiated after May 1, 1988.

(2) LIMITATION.—Subsections (b) and (c) shall not apply to any action of the Secretary which is necessary to discontinue the operation of a water resources project.

(e) COST SHARING.—Costs incurred by the Secretary to carry out the objectives of this section shall be allocated to recreation and shall be payable by the beneficiaries of the recreation.

SEC. 314. OPERATION AND MAINTENANCE OF HYDROELECTRIC FACILITIES.

Activities currently performed by personnel under the direction of the Secretary in connection with the operation and maintenance of hydroelectric power generating facilities at Corps of Engineers water resources projects are to be considered as inherently governmental functions and not commercial activities. This section does not prohibit contracting out major maintenance or other functions which are currently contracted out or studying services not directly connected with project maintenance and operations.

SEC. 315. MATTERS TO BE ADDRESSED IN PLANNING.

Section 904 of the Water Resources Development Act of 1986 (33 U.S.C. 2281) is amended by inserting "(including preservation and enhancement of the environment)" after "environment".

SEC. 316. HARBOR MAINTENANCE TRUST FUND AMENDMENT.

Section 210(a)(2) of the Water Resources Development Act of 1986 (33 U.S.C. 2238) is amended by striking "not more than 40 percent" and inserting "up to 100 percent".

SEC. 317. SINGLE ENTITIES.

For purposes of Federal participation in water resource development projects which are to be carried out by the Secretary, benefits which are to be provided to a facility owned by a State (including the District of Columbia and a territory or possession of the United States), county, municipality, or other public entity shall not be treated as benefits to be provided a single owner or single entity. The Secretary shall not treat such a facility as a single owner or single entity for any purpose.

SEC. 318. TECHNICAL ASSISTANCE TO PRIVATE ENTITIES.

(a) USE OF CORPS RESEARCH AND DEVELOPMENT LABS.—The Secretary is authorized to use Corps of Engineers research and development laboratories to provide research and development assistance to corporations, partnerships, limited partnerships, consortia, public and private foundations, universities, and nonprofit organizations operating within the United States, territories or possessions of the United States, and the Commonwealths of Puerto Rico and the Northern Mariana Islands—

(1) if the entity furnishes in advance of fiscal obligation by the United States such funds as are necessary to cover any and all costs of such research and development assistance;

(2) if the Secretary determines that the research and development assistance to be provided is within the mission of the Corps of Engineers and is in the public interest;

(3) if the entity has certified to the Secretary that provision of such research and development assistance is not otherwise reasonably and expeditiously obtainable from the private sector; and

(4) if the entity has agreed to hold and save the United States free from any damages due to any such research and development assistance.

(b) CONTRACT.—The Secretary may provide research and development assistance under subsection (a), or any part thereof, by contract.

(c) TECHNICAL ASSISTANCE PROGRAM.—Section 9 of the Water Resources Development Act of 1988 (102 Stat. 4024; 33 U.S.C. 2314 note) is amended—

(1) in the section heading by striking "DEMONSTRATION";

(2) in the first sentence of subsection (a) by striking "to undertake a demonstration program for a 2-year period, which shall begin within 6 months after the date of the enactment of this Act,";

(3) by striking subsection (d); and

(4) by redesignating subsection (e), and any reference thereto, as subsection (d).

SEC. 319. FEES FOR DEVELOPMENT OF STATE WATER PLANS.

Section 22 of the Water Resources Development Act of 1974 (42 U.S.C. 1962d-16), is amended—

(1) by redesignating subsections (b) and (c), and any reference thereto, as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection:

"(b) FEES.—

"(1) ESTABLISHMENT AND COLLECTION.—For the purpose of recovering 50 percent of the total cost of providing assistance pursuant to this section, the Secretary of the Army is authorized to establish appropriate fees, as determined by the Secretary, and to collect such fees from States and other non-Federal public bodies to whom assistance is provided under this section.

"(2) PHASE-IN.—The Secretary shall phase in the cost sharing program under this subsection by recovering—

"(A) approximately 10 percent of the total cost of providing assistance in fiscal year 1991;

"(B) approximately 30 percent of the total cost in fiscal year 1992; and

"(C) approximately 50 percent of the total cost in fiscal year 1993 and each succeeding fiscal year.

"(3) DEPOSIT AND USE.—Fees collected under this subsection shall be deposited into the account in the Treasury of the United States entitled, 'Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)' and shall be available until expended to carry out this section.".

SEC. 320. CABIN SITE LEASES.

Section 1134(d) of the Water Resources Development Act of 1986 (100 Stat. 4251) is amended by inserting "cabin or trailer and" after "lawfully installed dock or".

SEC. 321. INFORMATION ON FLOODS AND FLOOD DAMAGES.

Section 206 of the Flood Control Act of 1960 (74 Stat. 500; 33 U.S.C. 709a), is amended—

(1) by redesignating subsection (b), and any reference thereto, as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

"(b) FEES.—The Secretary of the Army is authorized to establish and collect fees from Federal agencies and private persons for the purpose of recovering the cost of providing services pursuant to this section. Funds collected pursuant to this section shall be deposited into the account of the Treasury of the United States entitled 'Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)' and shall be available until expended to carry out this section. No fees shall be collected from State, regional, or local governments or other non-Federal public agencies for services provided pursuant to this section.".

SEC. 322. REDUCED PRICING FOR CERTAIN WATER SUPPLY STORAGE.

(a) PROVISION OF STORAGE SPACE.—If a low income community requests the Secretary to provide water supply storage space in a water resources development project operated by the Secretary and if the amount of space requested is available or could be made available through reallocation of water supply storage space in the project or through modifications to operation of the project, the Secretary may provide such space to the community at a price determined under subsection (c).

(b) MAXIMUM AMOUNT OF STORAGE SPACE.—The maximum amount of water supply storage space which may be provided to a community under this section may not exceed an amount of water supply storage space sufficient to yield 2,000,000 gallons of water per day.

(c) PRICE.—The Secretary shall provide water supply storage space under this section at a price which is the greater of—

(1) the updated construction cost of the project allocated to provide such amount of water supply storage space or $100 per acre foot of storage space, whichever is less; and

(2) the value of the benefits which are lost as a result of providing such water supply storage space.

(d) DETERMINATIONS.—For purposes of subsection (c), the determinations of updated construction costs and value of benefits lost shall be made by the Secretary on the basis of the most recent information available.

(e) INFLATION ADJUSTMENT OF DOLLAR AMOUNT.—The $100 amount set forth in subsection (c) shall be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics.

(f) NON-FEDERAL RESPONSIBILITIES.—Nothing in this section shall be construed as affecting the responsibility of non-Federal interests to provide operation and maintenance costs assigned to water supply storage provided under this section.

(g) LOW INCOME COMMUNITY DEFINED.—The term "low income community" means a

community with a population of less than 20,000 which is located in a county with a per capita income less than the per capita income of two-thirds of the counties in the United States.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. GREAT LAKES REMEDIAL ACTION PLANS.

(a) ASSISTANCE.—The Secretary is authorized to provide technical, planning, and engineering assistance to States and local governments in the development and implementation of remedial action plans for areas of concern in the Great Lakes identified under the Great Lakes Water Quality Agreement of 1978. Non-Federal interests shall contribute 50 percent of the costs of such assistance.

(b) MAXIMUM AMOUNT.—The Secretary may not expend more than $3,000,000 in a fiscal year to carry out this section.

SEC. 402. CROSS FLORIDA BARGE CANAL.

Section 1114 of the Water Resources Development Act of 1986 (16 U.S.C. 460tt; 100 Stat. 4232) is amended to read as follows:

"SEC. 1114. CROSS FLORIDA BARGE CANAL.

"(a) DEAUTHORIZATION.—The barge canal project located between the Gulf of Mexico and the Atlantic Ocean (hereinafter in this section referred to as the 'project'), as described in the Act of July 23, 1942 (56 Stat. 703), shall be deauthorized by operation of law immediately upon the Governor and Cabinet of the State of Florida adopting a resolution specifically agreeing on behalf of the State of Florida (hereinafter in this section referred to as the 'State') to all of the terms of the agreement prescribed in subsection (b).

"(b) TRANSFER OF PROJECT LANDS.—Notwithstanding any other provision of law, the Secretary is, subject to the provisions of subsections (d) and (e), directed to transfer to the State all lands and interests in lands acquired by the Secretary and facilities completed for the project in subsection (a), without consideration, if the State agrees to each of the following:

"(1) The State shall agree to hold the United States harmless from all claims arising from or through the operations of the lands and facilities conveyed by the United States.

"(2) The State shall agree to preserve and maintain a greenway corridor which shall be open to the public for compatible recreation and conservation activities and which shall be continuous, except for areas referred to in subparagraphs (A) and (C) of this paragraph, along the project route over lands acquired by the Secretary or by the State or State Canal Authority, or lands acquired along the project route in the future by the State or State Canal Authority, to the maximum width possible, as determined in the management plan to be developed by the State for former project lands. Such greenway corridor shall not be less than 300 yards wide, except for the following areas:

"(A) Any area of the project corridor where, as of the date of the enactment of this subparagraph, no land is owned by the State or State Canal Authority.

"(B) Any area of the project corridor where, as of the date of the enactment of this subparagraph, the land owned by the State or State Canal Authority is less than 300 yards wide.

"(C) Any area of the project corridor where a road or bridge crosses the project corridor.

"(3) Consistent with paragraph (2) of this subsection, the State shall create a State park or conservation/recreation area in the lands and interests in lands acquired for the project lying between the Atlantic Ocean and the western boundaries of sections 20 and 29, township 15 south, range 23 east.

"(4) The State shall agree, consistent with paragraphs (2), (5) and (6) of this subsection, to preserve, enhance, interpret, and manage the water and related land resources of the area containing cultural, fish and wildlife, scenic, and recreational values in the remaining lands and interests in land acquired for the project, lying west of sections 20 and 29, township 15 south, range 23 east, as determined by the State, for the benefit and enjoyment of present and future generations of people and the development of outdoor recreation.

"(5) The State shall agree to pay, from the assets of the State Canal Authority and the Cross Florida Canal Navigation District, including revenues from the sale of former project lands declared surplus by the State management plan, to the counties of Citrus, Clay, Duval, Levy, Marion, and Putnam a minimum aggregate sum of $32,000,000 in cash or, at the option of the counties, payment to be made by conveyance of surplus former project lands selected by the State at current appraised values.

"(6) The State shall agree to provide that, after repayment of all sums due to the counties of Citrus, Clay, Duval, Levy, Marion, and Putnam, the State may use any remaining funds generated from the sale of former project lands declared surplus by the State to acquire the fee title to lands along the project route as to which less than fee title was obtained, or to purchase privately owned lands, or easements over such privately owned lands, lying within the proposed project route, consistent with paragraphs (2), (3), and (4) of this subsection, according to such priorities as are determined in the management plan to be developed by the State for former project lands. Any remaining funds generated from the sale of former project lands declared surplus by the State shall be used for the improvement and management of the greenway corridor consistent with paragraphs (2), (3), and (4) of this subsection.

"(c) ENFORCEMENT.—

"(1) REMEDIES AND JURISDICTION.—The United States is directed to vigorously enforce the agreement referred to in subsections (a) and (b) in the courts of the United States and shall be entitled to any remedies in equity or law, including, without limitation, injunctive relief. The court, in issuing any final order in any suit brought pursuant to this subsection, may, in its discretion, award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing party. The United States district courts shall have original and exclusive jurisdiction of any action under this subsection.

"(2) STATE REMEDIES.—The State shall be entitled to the same remedies listed in paragraph (1) of this subsection in the courts of the State or of the United States.

"(d) TIME OF TRANSFER.—Actual transfer of lands and management responsibilities under this section shall not occur on the constructed portions of the project lying between the Atlantic Ocean and the Eureka Lock and Dam, inclusive, and between the Gulf of Mexico and the Inglis Lock and Dam, inclusive, until the last day of the 24-month period beginning on the date of the enactment of the Water Resources Development Act of 1990.

"(e) MANAGEMENT PENDING TRANSFER.—In the 24-month period following the date of the enactment of the Water Resources Development Act of 1990, the Secretary shall carry out any and all programmed maintenance on the portions of the project outlined in subsection (d).

"(f) SURVEY.—The exact acreage and legal description of the real property to be transferred pursuant to this section shall be determined by a survey which is satisfactory to the Secretary and to the State. The cost of such survey shall be borne by the State.".

SEC. 403. WAPPINGERS LAKE AND LAKE GEORGE, NEW YORK.

Section 602(a) of the Water Resources Development Act of 1986 (100 Stat. 4148-49) is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(10) Wappingers Lake, New York, for removal of silt and aquatic growth; and

"(11) Lake George, New York, for removal of silt and aquatic growth, stump removal, and the control of pollution.".

SEC. 404. DEMONSTRATION OF CONSTRUCTION OF FEDERAL PROJECT BY NON-FEDERAL INTERESTS.

(a) IN GENERAL.—For purposes of demonstrating the safety benefits and economic efficiencies which would accrue as a consequence of non-Federal management of harbor improvement projects, the Secretary shall enter into agreements with 2 non-Federal interests pursuant to which the non-Federal interests will undertake part or all of a harbor project authorized by law, by utilizing their own personnel or by procuring outside services, if the cost of doing so will not exceed the cost of the Secretary undertaking the project. If proposals for such agreements meet the criteria of section 204 of the Water Resources Development Act of 1986, the agreements shall be entered into not later than 1 year after the date of the enactment of this Act.

(b) LIMITATION.—At least 1 project carried out pursuant to this section shall pertain to improvements to a major ship channel which carries a substantial volume of both passenger and cargo traffic.

(c) REPORT.—The Secretary shall transmit to Congress a report regarding the safety benefits and economic efficiencies accrued from entering into agreements with non-Federal interests under this section.

SEC. 405. UPPER MISSISSIPPI RIVER PLAN.

Section 1103 of the Water Resources Development Act of 1986 (33 U.S.C. 652) is amended—

(1) in paragraph (e)(2) by striking "ten" and inserting "15";

(2) in paragraph (e)(3) by striking "eight" and inserting "13";

(3) in paragraph (e)(4) by striking "nine" and inserting "14";

(4) in paragraph (e)(5) by striking "seven" and inserting "12"; and

(5) in paragraph (f)(2)(A) by striking "ten" and inserting "15".

SEC. 406. CONSTRUCTION OF VIRGIN ISLANDS PROJECTS BY SECRETARY OF THE ARMY.

(a) GENERAL RULE.—Upon request of the Governor of the Virgin Islands with respect to a construction project in the Virgin Islands for which Federal financial assistance is available under any law of the United States, the Federal official administering such assistance may make such assistance available to the Secretary instead of the Virgin Islands. The Secretary shall use such

assistance to carry out such project in accordance with the provisions of such law.

(b) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as relieving the Virgin Islands from complying with any requirements for non-Federal cooperation with respect to a construction project carried out with Federal financial assistance provided to the Secretary pursuant to this section; except that the Secretary shall be responsible for complying with administrative and fiscal requirements associated with utilization of such assistance.

(c) TERMINATION DATE.—Subsection (a) shall not be effective after the last day of the 3-year period beginning on the date of the enactment of this Act; except that the Secretary shall complete construction of any project commenced under subsection (a) before such day.

SEC. 407. VIRGINIA BEACH, VIRGINIA.

(a) LOCAL COOPERATION AGREEMENT EFFECTIVE DATE.—The Secretary shall enter into a local cooperative agreement with the city of Virginia Beach, Virginia, for beach nourishment in accordance with section 145 of the Water Resources Development Act of 1976 (33 U.S.C. 426j). The local cooperation agreement shall be effective from February 6, 1987.

(b) REIMBURSEMENT.—The Secretary is authorized to reimburse the city of Virginia Beach for the Federal share of beach nourishment in accordance with section 103(c)(5) of the Water Resources Development Act of 1986.

SEC. 408. DECLARATION OF NONNAVIGABILITY FOR PORTIONS OF LAKE ERIE.

(a) AREA TO BE DECLARED NONNAVIGABLE; PUBLIC INTEREST.—Unless the Secretary finds, after consultation with local and regional public officials (including local and regional public planning organizations), that the proposed projects to be undertaken within the boundaries of Lake Erie described in Committee Print 101–48 of the Committee on Public Works and Transportation of the House of Representatives, dated July 1990, are not in the public interest then, subject to subsections (b) and (c) of this section, those portions of Lake Erie, bounded and described in such Committee print, are declared to be nonnavigable waters of the United States.

(b) LIMITS ON APPLICABILITY; REGULATORY REQUIREMENTS.—The declaration under subsection (a) shall apply only to those parts of the areas described in the Committee print referred to in subsection (a) which are or will be bulkheaded and filled or otherwise occupied by permanent structures, including marina facilities. All such work is subject to all applicable Federal statutes and regulations including, but not limited to, sections 9 and 10 of the Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401 and 403), commonly known as the Rivers and Harbors Appropriations Act of 1899, section 404 of the Federal Water Pollution Control Act, and the National Environmental Policy Act of 1969.

(c) EXPIRATION DATE.—If, 20 years from the date of the enactment of this Act, any area or part thereof described in the Committee print referred to in subsection (a) is not bulkheaded or filled or occupied by permanent structures, including marina facilities, in accordance with the requirements set out in subsection (b), or if work in connection with any activity permitted in subsection (b) is not commenced within 5 years after issuance of such permits, then the declaration of nonnavigability for such area or part thereof shall expire.

SEC. 409. WETLANDS ENHANCEMENT OPPORTUNITIES.

Not later than January 20, 1992, the Secretary shall transmit to Congress a list which specifically identifies opportunities of enhancing wetlands in connection with construction and operation of water resource projects.

SEC. 410. RAYSTOWN LAKE, PENNSYLVANIA.

The Secretary shall submit to Congress for approval any proposed changes in the allocation of storage for the Raystown Lake project, Pennsylvania, which result from the on-going Raystown Lake reallocation study undertaken by the District Engineer for the Baltimore District. Pending submission to and approval by Congress of the results of the study, the Secretary may not reallocate storage at the project.

SEC. 411. ONONDAGA LAKE, NEW YORK.

(a) MANAGEMENT CONFERENCE.—The Assistant Secretary of the Army for Civil Works, the Administrator of the Environmental Protection Agency, and the Governor of the State of New York, acting jointly, shall convene a management conference for the restoration, conservation, and management of Onondaga Lake, New York. The purposes of the management conference shall include—

(1) the development, in the 2-year period beginning on the date of the enactment of this Act, of a comprehensive restoration, conservation, and management plan for Onondaga Lake that recommends priority corrective actions and compliance schedules for the cleanup of such lake; and

(2) the coordination of the implementation of such plan by the State of New York, the Army Corps of Engineers, the Environmental Protection Agency, and all local agencies, governments, and other groups participating in such management conference.

(b) ADMINISTRATIVE PROVISIONS.—

(1) MEMBERSHIP.—The members of the management conference shall include, at a minimum, the Assistant Secretary of the Army for Civil Works, the Administrator of the Environmental Protection Agency, the Governor of the State of New York, and representatives of—

(A) the attorney general of the State of New York;

(B) Onondaga County, New York; and

(C) the city of Syracuse, New York.

(2) DESIGNATED REPRESENTATIVE.—Any member of the management conference may designate a representative to attend meetings of the management conference and otherwise represent such member on the management conference.

(3) EX OFFICIO MEMBERS.—The management conference shall have ex officio members which shall include, at a minimum—

(A) the United States Senators from the State of New York; and

(B) each member of the United States House of Representatives within whose congressional district any portion of Onondaga Lake lies.

(4) STANDING COMMITTEES.—The management conference shall have standing committees which shall include, at a minimum—

(A) a Citizens Advisory Committee; and

(B) a Technical Review Committee.

(c) REQUIRED ACTIONS UPON PLAN COMPLETION.—

(1) APPROVAL.—Not later than 120 days after the completion of the plan developed pursuant to subsection (a) and after providing for public review and comment, the Assistant Secretary of the Army for Civil Works and the Administrator of the Environmental Protection Agency shall approve such plan if such plan meets the requirements of this section and if the Governor of the State of New York concurs in such approval.

(2) IMPLEMENTATION.—Upon approval of the plan under this subsection, such plan shall be implemented.

(d) GRANTS.—

(1) IN GENERAL.—The Assistant Secretary of the Army for Civil Works and the Administrator of the Environmental Protection Agency are authorized to make grants to the State of New York to perform activities authorized under this section or to contract for such performance. Such grants may not exceed 70 percent of the costs of such activities and the non-Federal share of such costs shall be provided by non-Federal sources. Administrative services for the development and implementation of the plan approved pursuant to subsection (a) shall be provided by a not-for-profit corporation established for the purpose of assisting with the planning and coordination of the cleanup of Onondaga Lake.

(2) USE OF GRANTS.—To carry out this section, the Governor of the State of New York may, using funds made available pursuant to paragraph (1), make grants for—

(A) research, surveys, administrative services, and studies approved by the management conference as necessary for the development of the plan under this section;

(B) other activities, including administrative services, that are approved by the management conference and are necessary to implement the plan approved by the management conference pursuant to subsection (a); and

(C) gathering data and retaining expert consultants in support of litigation undertaken by the State of New York to compel cleanup or obtain cleanup and damage costs from parties responsible for the pollution of Onondaga Lake, including administrative services.

(3) IN-KIND PAYMENTS.—In-kind payments shall qualify for the purpose of meeting the total non-Federal matching requirements of this subsection.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary and the Administrator of the Environmental Protection Agency such sums as may be necessary to carry out this section.

(f) EFFECT ON LIABILITY.—Grants made under this section shall not relieve from liability any person who would otherwise be liable under Federal or State law for damages, response costs, natural resource damages, restitution, equitable relief, or any other relief.

SEC. 412. ALTERNATIVES TO MUD DUMP SITE FOR DISPOSAL OF DREDGED MATERIAL.

(a) REPORT.—Within 90 days after the date of the enactment of this Act, the Administrator of the Environmental Protection Agency shall submit to the Congress a final report on the feasibility of designating an alternative site to the Mud Dump Site at a distance not less than 20 miles from the shoreline.

(b) PLAN.—Within 180 days after the date of the enactment of this Act, the Secretary and the Administrator of the Environmental Protection Agency shall submit to Congress a plan for the long-term management of dredged material from the New York/New Jersey Harbor region. The plan shall include—

(1) an identification of the source, quantities, and characteristics of material to be dredged;

(2) a discussion of potential alternative sites for disposal of dredged material, including the feasibility of altering the boundaries of the Mud Dump Site;

(3) measures to reduce the quantities of dredged material proposed for ocean disposal;

(4) measures to reduce the amount of contaminants in materials proposed to be dredged from the Harbor through source controls and decontamination technology;

(5) a program for monitoring the physical, chemical, and biological effects of dumping dredged material at the Mud Dump Site; and

(6) a study of the characteristics of the bottom sediments, including type and distribution.

(c) DEMONSTRATION PROJECT.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall implement a demonstration project for disposing on an annual basis up to 10 percent of the material dredged from the New York/New Jersey Harbor region in an environmentally sound manner other than by ocean disposal. Environmentally sound alternatives may include, among others, capping of borrow pits, construction of a containment island, application for landfill cover, habitat restoration, and use of decontamination technology.

(d) MUD DUMP SITE DEFINED.—For purposes of this section, the term "Mud Dump Site" means the area located approximately 5¾ miles east of Sandy Hook, New Jersey, with boundary coordinates of 40 degrees, 23 minutes, 48 seconds North, 73 degrees, 51 minutes, 28 seconds West; 40 degrees, 21 minutes, 48 seconds North, 73 degrees, 50 minutes, 00 seconds West; 40 degrees, 21 minutes, 48 seconds North; 73 degrees, 51 minutes, 28 seconds West; and 40 degrees, 23 minutes, 48 seconds North; 73 degrees, 50 minutes, 00 seconds West.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal year 1991, $3,000,000 to implement subsection (b) and $1,000,000 to implement subsection (c), and such sums as may be necessary for fiscal year 1992.

(f) REPEAL.—Section 211 of the Water Resources Development Act of 1986 (33 U.S.C. 2239) is repealed.

SEC. 413. ALBEMARLE SOUND-ROANOKE RIVER BASIN, NORTH CAROLINA.

Not later than January 1, 1992, the Secretary shall review the report mandated by section 5 of Public Law 100-589 with respect to project application 83-0747-06, make a determination of the impact of the project in light of such report, and take all action he deems appropriate, including permit modification, notwithstanding any construction that may have occurred.

SEC. 414. RONDOUT CREEK AND WALLKILL RIVER, NEW YORK AND NEW JERSEY.

(a) NON-FEDERAL SHARE.—If the Secretary determines that a design deficiency exists in the North Ellenville portion of the project for flood control, Rondout Creek and Wallkill River and their tributaries, New York and New Jersey, authorized by section 203 of the Flood Control Act of 1962 (76 Stat. 1181), the non-Federal share of correcting such deficiency shall be the same as the non-Federal share of the project as originally authorized and constructed.

(b) DEADLINE FOR DETERMINATION.—The Secretary must make the determination under subsection (a) not later than the 90th day following the date of the enactment of this Act.

SEC. 415. REGULATION OF DWORSHAK DAM, IDAHO.

(a) JOINT REPORT.—On or before January 1, 1994, or as soon thereafter as reasonably practicable, as part of the joint systems operations review by the Army Corps of Engineers, the Secretary, the Commissioner of the Bureau of Reclamation, and the Administrator of the Bonneville Power Administration shall issue a joint report to Congress on the regulation of Dworshak Dam, Idaho, including the following:

(1) An analysis of the current recreational and transportation usage of Dworshak Reservoir and the potential for such usage given differing operating criteria for the dam.

(2) Identification of the annual time period during which the operating criteria for Dworshak Dam has the greatest impact on recreational and transportation usage of the reservoir.

(3) Recommendations for achieving to the greatest degree the Corps of Engineers' project purposes and suggestions for mitigating any adverse impacts on recreational and transportation usage of the Dworshak Reservoir.

(b) PUBLIC MEETINGS.—The Secretary shall, in cooperation with the Administrator of the Bonneville Power Administration, conduct public meetings in the vicinity of Dworshak Dam, Idaho, for the purpose of keeping the public informed about projected drawdowns of Dworshak Reservoir and the reasons for such drawdowns.

SEC. 416. SOUTHEAST LIGHT ON BLOCK ISLAND, RHODE ISLAND.

(a) RELOCATION.—The Secretary shall relocate the Southeast Light on Block Island, Rhode Island, to a more suitable location on such island.

(b) TERMS, CONDITIONS, AND OBLIGATIONS.—Nothing in this section shall be construed as relieving any person operating the Southeast Light on Block Island of any term, condition, or obligation to which such person is subject with respect to such operation on the day before the date of the enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section the lesser of $970,000 or 50 percent of the total cost of relocating the southeast light.

SEC. 417. MAGNETIC LEVITATION TECHNOLOGY.

(a) RESEARCH AND DEVELOPMENT.—The Secretary is authorized, in cooperation with the Secretary of Transportation, to conduct research and development activities on magnetic levitation technology or to provide for such research and development.

(b) COLLABORATION.—The Secretary is authorized to collaborate with non-Federal entities (including State and local governments, colleges and universities, and corporations, partnerships, sole proprietorships, and trade associations which are incorporated or established under laws of a State or the District of Columbia) in carrying out research and development on magnetic levitation technology.

(c) COOPERATIVE RESEARCH CONTRACTS.—In carrying out this section, the Secretary may enter into contracts or cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a), except that the Secretary may fund up to 50 percent of the cost of each collaborative research and development project undertaken.

(d) LICENSING OF RESEARCH AND DEVELOPMENT.—The research, development, and use of any technology developed under an agreement entered into pursuant to this section, including the terms under which such technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701-3714). In addition, the Secretary may require the non-Federal entity to certify that such research and development will be performed substantially in the United States and that products embodying inventions made under an agreement entered into pursuant to this section or produced through the use of such inventions will be manufactured substantially in the United States.

(e) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this section, there is authorized to be appropriated $1,000,000 for fiscal year 1990 and $4,000,000 for fiscal year 1991. Such funds shall remain available until expended. No funds are authorized to be appropriated under this section for any fiscal year beginning after September 30, 1991.

SEC. 418. RIVERSIDE, CALIFORNIA.

If the holder and owner of a leasehold mineral and royalty interest in the existing Prado Flood Control Basin in Riverside, California, requests the Administrator of General Services to exchange such interest for excess Federal property, the Administrator shall acquire such interest by exchange of excess Federal property. Such acquisition must be completed not later than 270 days after the date of such request. The Administrator shall undertake an evaluation and appraisal of an interest to be acquired under this section.

SEC. 419. BUY AMERICAN.

(a) STUDY.—The Secretary shall conduct a study of the requirements of the use of materials and products produced in the United States as they apply to water resource projects carried out by the Secretary for the purpose of determining whether or not such requirements are meeting the objectives for which they are being imposed and whether or not additional requirements are necessary to meet such objectives.

(b) REVIEW.—The study under this section shall include a review of the application of existing requirements and a description of the types and amounts of domestic and foreign materials and products used in water resource projects administered by the Secretary.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this section, together with recommendations for any modifications to requirements described in subsection (a).

SEC. 420. SENSE OF CONGRESS.

It is the sense of Congress that priority consideration will be given to the authorization of water resources development projects which are recommended by the Chief of Engineers in reports completed after the date of the enactment of this Act.

SEC. 421. WOODLAWN BEACH, HAMBURG, NEW YORK.

(a) DEMONSTRATION PROJECT.—The Administrator of the Environmental Protection Agency is authorized to undertake a demonstration project to eliminate contamination of the waters in the vicinity of Woodlawn Beach, Hamburg, New York, from nonpoint sources of pollution resulting from surface runoff and septic system contamination entering Rush and Blasdell Creeks. The project shall include control of sources of pollution, relocation of Rush and Blasdell Creeks, and construction of a settling pond.

(b) NON-FEDERAL SHARE.—The non-Federal share of the cost of the project under this section shall be 50 percent.

And the House agree to the same.

From the Committee on Public Works and Transportation, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE
(except for consideration of section 309 of the Senate bill),
NORMAN Y. MINETA
(except for consideration of section 309 of the Senate bill),
JAMES L. OBERSTAR,
HENRY J. NOWAK,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND.

Solely for consideration of section 309 of the Senate bill:

NICK RAHALL,
DOUG APPLEGATE.

From the Committee on Merchant Marine and Fisheries, for consideration of matters within jurisdiction of that committee contained in the Senate bill, and in the House amendment, and modifications committed to conference:

WALTER B. JONES,
BOB DAVIS,
DON YOUNG.

From the Committee on Energy and Commerce, for consideration of section 309 of the Senate bill, and modifications committed to conference:

JOHN D. DINGELL,
TOM LUKEN,
AL SWIFT,
JIM SLATTERY,
DOUG WALGREN,
NORMAN F. LENT,
BOB WHITTAKER,
MATT RINALDO.

From the Committee on Science, Space, and Technology, for consideration of section 309 of the Senate bill, and section 13 of the House amendment, and modifications committed to conference.

ROBERT A. ROE,
NORMAN Y. MINETA,
ROBERT G. TORRICELLI,
TIM VALENTINE,
JIMMY HAYES,
Managers on the Part of the House.

DANIEL PATRICK MOYNIHAN,
FRANK R. LAUTENBERG,
HARRY REID,
JOHN W. CHAFEE,
STEVE SYMMS,
J.W. WARNER,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2740) to provide for the conservation and development of water and related resources, to authorize the United States Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the Conferees, and minor drafting and clarifying changes.

STATEMENT OF MANAGERS

Passage of the 1990 Water Resources Development Act continues the practice of enacting omnibus water resources authorizing legislation on a biennial basis. Adhering to this schedule is possible because the Congress and the Executive Branch concur in their commitment to the environmental and cost sharing reforms of the Water Resources Development Act of 1986 (Public Law 99-662).

All of the provisions of this act comply with the cost sharing and financial reforms of the Water Resources Development Act of 1986. The environmental reforms of that legislation have been continued and in some instances expanded in this legislation as well.

The Conferees have deleted a number of projects which would have been authorized subject to the satisfactory completion of the Corps planning process and approval of the recommended project by the Secretary of the Army. In doing so, the Conferees do not imply that these are not meritorious projects. The reason they were proposed for authorization prior to completion of Corps review was precisely because of their merit. However, the biennial schedule for passage of Water Resources Development legislation is firmly established and will allow Congress to revisit these projects soon after they complete the Corps planning process. The commitment to give these projects priority consideration is confirmed in the sense of the Congress resolution in section 420. All costs in the conference agreement are based on October 1989 price levels.

PROJECT AUTHORIZATIONS

Senate Bill

The Senate bill authorizes twenty-five water resources development projects for construction in accordance with favorable reports of the Chief of Engineers, and three projects for construction subject to favorable reports of the Chief of Engineers and approval by the Secretary of the Army.

House Bill

The House amendment authorizes twenty-five projects for construction in accordance with favorable reports of the Chief of Engineers, and six projects for construction subject to favorable reports of the Chief of Engineers and approval by the Secretary of the Army.

Conference Agreement

The Conference agreement authorizes twenty-five projects for construction in accordance with favorable reports of the Chief of Engineers, and one project for construction subject to a favorable report of the Chief of Engineers and approval by the Secretary of the Army. Twenty-five of these projects are contained in both the Senate bill and the House amendment. The projects in the conference agreement are as follows:

Bayou La Batre, Alabama—Navigation
Homer Spit, Alaska—Storm Damage Prevention
Clifton, San Francisco River, Arizona—Flood Control
Nogales Wash and Tributaries, Arizona—Flood Control
Coyote and Berryessa Creeks, California—Flood Control
Los Angeles County Drainage Area, California—Flood Control
Oceanside Harbor, California—Navigation & Storm Damage Prevention
Ventura Harbor, California—Navigation
Martin County, Florida—Storm Damage Prevention
Miami Harbor Channel, Florida—Navigation
McAlpine Lock and Dam, Indiana & Kentucky—Inland Navigation
Fort Wayne, St. Mary's and Maumee Rivers, Indiana—Flood Control
Aloha-Rigolette, Louisiana—Flood Control
Boston Harbor, Massachusetts—Navigation
Ecorse Creek, Wayne County, Michigan—Flood Control
Great Lakes Connecting Channels and Harbors, Michigan and Minnesota—Navigation
Coldwater Creek, Missouri—Flood Control
River Des Peres, Missouri—Flood Control
Passaic River Main Stem, New Jersey and New York—Flood Control
Rio De La Plata, Puerto Rico—Flood Control
Myrtle Beach, South Carolina—Storm Damage Reduction
Buffalo Bayou and Tributaries, Texas—Flood Control
Ray Roberts Lake Greenbelt, Texas—Multi-purpose
Upper Jordan River, Utah—Flood Control
Buena Vista, Virginia—Flood Control
Moorefield, West Virginia—Flood Control
Petersburg, West Virginia—Flood Control

The project authorized subject to a favorable report of the Chief of Engineers, as approved by the Secretary, is for flood control, Los Angeles County Drainage Area.

PROJECT MODIFICATIONS

Senate Bill

The Senate bill contains eleven modifications of previously authorized projects.

House Amendment

The House amendment contains forty-six modifications of previously authorized projects.

Conference Agreement

The conference agreement contains the following modifications to previously authorized projects.

The agreed to provisions are as follows:

Village Creek, Alabama.—Authorizes the Secretary to acquire private vacant lands in the project boundary.

Los Angeles and Long Beach Harbors, California.—Modifies the existing process for determining what work will be eligible for credit against the non-Federal share of project costs.

Sacramento Deep Water Ship Channel, California.—Directs the Secretary to enforce any permits issued under Section 10 of the Rivers and Harbors Act of 1899 to compel utility relocations necessary for project construction.

Santa Ana Mainstem, California.—Authorizes the Secretary to develop recreation fa-

cilities between Seven Oaks Dam and Prado Dam.

San Luis Rey, California.—Increases the project cost ceiling.

Delaware River to Chesapeake Bay, Delaware.—Directs the Secretary to replace the highway bridge currently owned by the Federal government on U.S. Route 13 in the vicinity of St. Georges, Delaware.

Alafia Channel, Florida.—Authorizes the Secretary to maintain the channel to a depth of 34 feet with the incremental cost of maintaining the channel at the increased depth over 30 feet to be paid for by non-Federal interests.

Fernandina Harbor, Florida.—Redesignates the location of the turning basin in the harbor.

Kissimmee River, Central and Southern Florida.—Authorizes the Secretary to complete a feasibility study of a plan to restore the Kissimmee River for environmental purposes.

Manatee Harbor, Florida.—Increases the cost ceiling.

Alenaio Stream, Hawaii.—Increases the cost ceiling.

Falls of the Ohio Conservation Area, Indiana.—Authorizes the Secretary to design and construct an interpretive center for the area.

Des Moines River Greenbelt, Iowa.—Modifies the project to include the area described in the Des Moines Recreational River and Greenbelt as reflected in Committee Print 101-47 of the Committee on Public Works and Transportation of the House of Representatives, dated July 1990.

Lake Pontchartrain, Louisiana.—Authorizes the Secretary to conduct a study of the reallocation of project costs.

Red River Waterway, Louisiana.—Authorizes the Secretary to include an additional twelve thousand acres of land adjacent to the Bayou Bodcau Wildlife Management Area in the mitigation of the Red River Waterway project.

Buffumville Lake, Massachusetts.—Authorizes the Secretary to study the prospects for low flow augmentation for the improvement of water quality on the French River.

Crooked and Indian Rivers, Michigan.—Authorizes the Secretary to enter into agreements with the State of Michigan and other non-Federal interests in the State to make operation and maintenance of the project a non-Federal responsibility.

Locks and Dam 26, Mississippi River, Alton, Illinois and Missouri.—Authorizes the Secretary to construct recreation facilities in Illinois.

Rouge River, Michigan.—Authorizes the Secretary to study water resource problems and provide reimbursable technical assistance.

Mississippi River, St. Paul, Minnesota.—Increases the cost ceiling.

Pearl River Basin, Shoccoe, Mississippi.—Authorizes the Secretary to conduct a feasibility study of potential solutions to flood control problems in the area.

Brush Creek and Tributaries, Missouri and Kansas.—Increases the cost ceiling.

Acequias System, New Mexico.—Authorizes the Secretary to study modifications to the existing project.

New York Harbor Drift Removal Project, New York.—Authorizes various new work under the existing project authority.

Harsha Lake, Ohio.—Authorizes the reassignment of water supply storage.

Canton Lake, Oklahoma.—Authorizes the reassignment of water supply storage.

Cooper Lake and Channels, Texas.—Increases the cost ceiling.

Denison, Texas.—Modifies the current allocation of water supply storage space.

McNary Lock and Dam, Washington and Oregon.—Reauthorizes the levee beautification portion of the project.

Wisconsin and Fox Rivers, Wisconsin.—Authorizes the Secretary to enter into an agreement with the State of Wisconsin and other non-Federal interests to make operation and maintenance of the project a non-Federal responsibility.

GENERAL PROVISIONS

Both the Senate bill and the House amendment contain a number of provisions dealing generally with the water resources program of the Corps of Engineers and with individual projects or programs. Those agreed to by the conferees include the following:

Planning and Engineering.—Clarifies Section 105(b) of the 1986 Water Resources Development Act.

Funding of Costs Advanced to Commercial Navigation.—Amends Section 210 of the Water Resources Development Act of 1986 to allow for not more than 100 percent of the eligible operation and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States to be appropriated from the navigation trust fund.

Emergency Response.—Authorizes the participation of the Corps of Engineers in the preparations for any natural disaster and allows for the use of emergency funds for emergency dredging.

Construction of Navigation Projects by non-Federal Interests.—Authorizes the construction of small navigation projects by non-Federal interests.

Project Modifications for Improvement of the Environment.—Modifies Section 1135 of the Water Resources Development Act of 1986 to make the program permanent.

Ability to Pay.—Directs the Secretary to redraft regulations relating to Section 103(m) of the Water Resources Development Act of 1986 to require determinations be made on the basis of local economic data.

Environmental Protection Mission.—Directs the Secretary to include environmental protection as one of the primary missions of the Corps of Engineers in planning, designing, constructing, operating, and maintaining water projects.

Wetlands.—Establishes wetland protection goals for the Corps of Engineers.

Flood Plain Management.—Restricts Corps of Engineers involvement in projects which would protect structures built in the 100 year flood plain after July 1, 1991.

Shoreline Protection.—Directs the Secretary to transmit a report on the advisability of not participating in beach stabilization projects unless a State beach front management program is established.

Reservoir Management.—Establishes a commission to provide the Secretary with recommendations on reservoir monitoring and options for research.

Reservoir Project Operations.—Directs the Secretary to prepare a study on the authorized project purposes of all existing Corps reservoir projects and the purposes for which each project is currently being operated.

Environmental Dredging.—Establishes a five year program to allow the Corps of Engineers to perform dredging outside navigation channels for environmental purposes if cost shared by non-Federal interests on a 50-50 basis. $10 million annually is authorized for this purpose.

Operation and Maintenance of Hydroelectric Facilities.—Defines operation and maintenance activities in connection with hydroelectric power generating facilities at Corps of Engineers projects to be inherently governmental functions.

Great Lakes Remedial Action Plans.—Establishes a program of technical assistance for the development of such plans on a 50-50 cost shared basis. Authorizes $3 million annually for this purpose.

Planning.—Amends Section 904 of the 1986 Water Resources Development Act by adding preservation and enhancement of the environment to the list of those matters to be addressed in the planning of water resources projects.

Cross Florida Barge Canal.—Provides for the deauthorization of the Canal and the transfer of Canal assets and property to the state of Florida.

Small Navigation Projects.—Authorizes the completion of reports under section 107 of the River and Harbor Act of 1960 for Buffalo, New York, Rochester, New York, Bolles Harbor, Michigan and Warroad Harbor, Minnesota.

Onondaga Lake, New York.—Authorizes the establishment of a management conference for the restoration, conservation, and management of Onondaga Lake, New York.

Clean Lakes.—Adds Wappingers Lake, New York, and Lake George, New York to the list of projects eligible under Section 602 of the Water Resources Development Act of 1986 and amends the existing authority for the Sauk Lake, Minnesota project under this program.

Small Flood Control Projects.—Authorizes the completion of reports under section 205 of the Flood Control Act of 1948 for Dry Jordan and Crooked Creeks, Arkansas; Old Sulphur Creek, Orleans, Indiana; Farmers Branch Creek, White Settlement, Texas; Savan Gut, Virgin Islands; and Krouts Creek, West Virginia.

Bay City, Michigan.—Authorizes the Secretary to undertake shoreline protection work along the Saginaw River.

Delaware River, Pennsylvania.—Authorizes the Secretary to undertake shoreline protection work at the Glen Foerd Historic Property.

Continuation of authorizations.—Directs that the following projects are to remain authorized for construction for an additional period of five years:

Santa Cruz Harbor, California
Pajaro River, California
Hillsboro Inlet, Florida
Little Calumet River, Indiana
Louisiana State Penitentiary Levee
Ontonagon Harbor, Michigan
Ottawa River Harbor, Michigan
Sault Ste. Marie Second Lock, Michigan
Conneaut, Ohio
Fairport, Ohio
Memphis Harbor, Tennessee
East Fork of the Trinity River, Texas
Norfolk Harbor Anchorages, Virginia
Freeport, Illinois

Hazard, Kentucky.—Authorizes the Secretary to construct this project in such a manner as to provide protection from flooding and damages such as occurred in January, 1957.

Demonstration of Construction.—Directs the Secretary to enter into agreements with two non-Federal interests to undertake construction of habor projects authorized by law, and provides that at least one of these demonstrations shall pertain to improve-

ments to a major ship channel which carries a large volume of passenger and cargo traffic.

Modification of Reversionary Interest.—Modifies the reversionary interest in land conveyed to Clay County, Georgia in 1963 to allow the United Methodist Church to build and operate a retirement village.

Upper Mississippi River Plan.—Continues the authorization for Section 1103(e)(2) of the Water Resources Development Act of 1986 for an additional five years.

Cabin Site Leases.—Modifies Section 1134(d) of the 1986 Water Resources Development Act to include cabins and trailers.

Land Conveyances.—Authorizes the conveyance of property in Sneads, Florida to the Salem Wesleyan Church; transfers the Ira D. Maclachlan American Legion Post property from the Corps of Engineers to the Coast Guard; and transfers the project for Wynoochee Lake to the city of Aberdeen, Washington.

Alternatives to the Mud Dump.—Authorizes a review of alternatives to the placement of dredged material at this site.

Projects in the Virgin Islands.—Allows the Secretary to accept federal financial assistance made available to the Virgin Islands to carry out projects in the Islands.

Water Supply Studies.—Authorizes the Secretary to conduct a study of the water supply needs of Liberty, Ohio.

Cranston, Rhode Island.—Authorizes the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to participate in the development of an environmental remediation and enhancement project in Cranston, Rhode Island.

Rondout Creek and Wallkill River, New York and New Jersey.—The Secretary is authorized to correct the problems at this project upon a finding that the existing situation is the result of a design deficiency of the Corps of Engineers.

Virginia Beach, Virginia.—Directs the Secretary to enter into a local cooperation agreement with the city of Virginia Beach for beach nourishment in accordance with Section 934 of the 1986 Water Resources Development Act, and related purposes.

Southwest Region Flood Response.—Authorizes the Secretary to conduct a study of existing flood control measures and flood response in the Arkansas, Red, and Ouachita River Basins.

Rehabilitation of Levees.—Authorizes a program of levee repair for the Arkansas River to be cost shared as if the work were new construction. The program is authorized for a period of five years with an annual authorization ceiling of five million dollars.

Casesar's Creek Lake, Ohio.—Authorizes a study of water supply needs at this facility.

Non-Navigability.—Portions of Lake Erie described in Committee Print 101-48 of the Committee on Public Works and Transportation of the House of Representatives, dated July, 1990 are declared to be non-navigable waters of the United States.

Wetlands Enhancement.—Authorizes a report on opportunites to enhance wetlands in connection with construction and operation of water resources projects.

Radium Removal.—Authorizes a study of methods to mitigate radium contamination in water and a program of reimbursable technical assistance.

Studies.—Authorizes the following studies of water resources related issues:

South Atlantic Cargo Traffic Study
Rancho Palos Verdes, California
Southern California Infrastructure Study
California Oil Spill study
Thurman to Hamburg, Iowa
Rock Creek, Maryland
Saginaw Bay, Michigan
Water Supply, Minnesota and North Dakota
Upper Mississippi River Water Quality
Highfield Water County, New Jersey
Manasquan River, New Jersey
Buffalo, New York
Mill Cree, Tennessee
New Madrid Infrastructure Study
Lake of the Woods, Minnesota

New York Harbor Traffic Review.—Authorizes the Secretary to provide reimbursable technical assistance in conjunction with a study of New York Harbor Traffic.

Deauthorizations.—Specifically deauthorizes the following projects:

Greenwich Harbor, Connecticut
Conneaut Harbor, Ohio
Big River Reservoir, Rhode Island

Half Moon Bay.—Renames Half Moon Bay Harbor, in El Granada, California, as "Pillar Point Harbor".

Raystown Lake, Pennsylvania.—Directs the Secretary to submit to Congress proposed changes in the allocation of storage for the Raystown Lake.

Buy America.—Requires a study related to the acquisition of materials by the Corps of Engineers.

Oakland Land Conveyance.—Authorizes the Secretary to convey 86 acres referred to as the Oakland Inner Harbor Tidal Canal partly to the city of Oakland, and partly to the city of Alameda.

Belen, New Mexico.—Authorizes the Secretary to construct the project pursuant to Section 903(c) of the Water Resources Development Act of 1986.

Pyramid Lake, Nevada.—Authorizes the Secretary to conduct planning, engineering, and design for environmental enhancement work.

Roanoke Hospital.—Authorizes the Secretary to reimburse the non-Federal interests for work completed which was a federal responsibility.

Dworshak Dam.—Directs the Secretary to make a report on the operations of this facility.

Lake Winnibigoshish.—Authorizes a study of the bank erosion problems at this location.

Mississippi River headwaters.—Authorizes a study of the siltation and fish habitat at the Mississippi River headwater lakes.

Block Island, Rhode Island.—Authorizes the Secretary to relocate the Southeast Light at Block Island.

Arkansas Post Navigation Canal.—Authorizes the Secretary to conduct planning, engineering and design for environmental enhancement activity at this location.

Single Entity.—Establishes that public facilities are not to be considered single entity beneficiaries.

Missouri River Streambank Erosion.—Amends Section 33 of the Water Resources Development Act of 1988 to allow for the acquisition of real property, and monetary compensation.

Maglev.—Authorizes the Secretary to undertake Research and Development activities relating to MAGLEV.

Work for others.—Amends the authority of the Corps of Engineers to contract with non-Federal interests for services.

Section 22 Cost Sharing.—Authorizes cost sharing for this program of technical assistance.

Flood Plain Management Services.—Authorizes reimbursement to the Federal government for certain of these services.

DEEP DRAFT NAVIGATION MAINTENANCE

The conferees have included authority for the Corps of Engineers to use up to one hundred percent of navigation maintenance costs from the navigation trust fund established in the Water Resources Development Act of 1986. The funds which flow into this trust fund are determined by the level of the ad valorum fee applied to exports and imports. Setting the rate of this fee is not the responsibility of the Public Works Committees. The conferees have provided this authority to the Corps in order to ensure that all funds which are deposited into the Navigation Trust Fund are expended on harbor maintenance.

The conferees recognize, however, that no definition of eligible operation and maintenance costs—for which the monies of the Navigation Trust Fund may be used—exists. It is the intention of the conferees that money in this Trust Fund be fully utilized for the maintenance activities which the Corps currently performs in order to keep authorized channels at authorized depths. The conferees wish to express their concern that the Corps fully utilize the funds available in this Trust Fund and makes no effort to exclude any maintenance function now performed by the Corps from its annual maintenance program.

PUBLIC COMMENT

During the Conference on this legislation concerns were raised with Senate langauge relating to public review of the Corps of Engineers "Engineer Regulations". Compromise language could not be agreed upon. The conferees wish to make clear that the Public Works Committees intend to review this issue in the next Congress.

PASSAIC RIVER BASIN

Section 101(a)(18) authorizes the project for flood control in the Passaic River Basin, including the extension of the main diversion tunnel to Newark Bay. The conferees have included language in the House bill which excludes project works from Bergen County, New Jersey.

The extension of the tunnel to Newark Bay, which has been shown to be engineeringly sound, is a necessary adjustment to the plan recommended by the Secretary of the Army, as the recommended plan is not considered to be implementable because of overriding social, environmental, and political concerns associated with a Third River Tunnel outlet location. In reaching this conclusion, the conferees considered both the concerns of those who would be protected and those who would be impacted by the recommended plan. The conferees also note the importance of the project, which will treat the most significant unresolved flood problem on the east coast of the United States. In consideration of these factors, the conferees recognize that the project with the Newark Bay tunnel outlet is the only viable comprehensive plan.

The project as authorized contains the necessary adjustments to the project resulting from the extension of the main diversion tunnel to Newark Bay. This change in the project eliminates nine Lower Passaic River levee systems along with the Third River tunnel outlet with which they were associated. However, the diversion tunnel with the Newark Bay outlet, which provides comprehensive protection to Morris, Passaic, Essex, Bergen, and Hudson Counties, will

divert floodwaters away from and around the Lower Passaic River, thus providing significant fluvial flood protection to additional areas in Bergen, East Essex, and Passaic Counties without any levee systems. It is recognized that the elimination of the nine Lower Passaic River Levees will result in a continued vulnerability to hurricane and tidal storms in these areas. However, the conferees accept the desire of local interests to preserve existing open space, parklands, and properties along these Lower Passaic River areas despite the need for hurricane and tidal storm protection. The conferees note particularly the fluvial flood protection which will be provided to these areas of the project. The exclusion of the Third River tunnel outlet and its associated levees also prohibits any acquisition, use, condemnation or requirement of Bergen County parklands or property for the project. This is intended to insure that the excluded features, or any other such project works in Bergen County, are not to be implemented, nor surveyed, studied or designed as part of the preconstruction engineering and design for the project.

The conferees recognize the regional nature of the main stem Passaic River Flood Protection Project, which directly involves five counties and forty municipalities, and whose operation encompasses the monitoring of rainfall and streamflows over the entire 935 square mile Passaic River watershed, including portions of the States of New Jersey and New York, ten counties, and 132 municipalities. Most significantly, the operation and maintenance of the diversion tunnels are central to protecting portions of the most densely developed metropolitan area in the nation against frequent and destructive flooding. The conferees are aware that the operation of the diversion tunnels, including inlet and outlet works, and integral levees and channel modifications are critical to the functioning of the overall project. Operation of the dual inlet tunnel system is technically complex and will require a sophisticated operations center. In recognition of the regional nature of the project and the overriding need for integrity of the functioning of the diversion tunnel works, the authorization provides that the Secretary shall perform specified work to ensure the integrity of the functioning of the tunnels. This requirement may result in a cost savings to the United States and the State of New Jersey and will serve to minimize the risks associated with the coordination of regional project operations. The conferees note that other elements of the project would be operated and maintained by the non Federal sponsor.

The Conferees remain firmly committed to the successful implementation of the environmental policies contained in the 1986 Water Resources Development Act. In this regard the conference report has adopted language contained in the House bill which authorizes streambank restoration measures, and the establishment, use, and the acquisition of lands for a wetlands bank. In including such language the Conferees have attempted to maximize the environmental attributes of the project by emphasizing the regions need for open space, greenbelt recreation areas and wetlands in balance with environmentally sustainable growth. The Conferees believe that the environmental quality benefits attributed to such provisions as streambank restoration along the West bank of the Passaic River in Newark, New Jersey, and the establishment, use and acquisition of additional transition, buffer and watershed lands for the wetlands bank, significantly exceed the cost of these measures, and in fact, fully meet the requirements of Section 907 of the 1986 Water Resources Development Act. Accordingly, the Conferees recognize that these provisions are clearly justified based on the foregoing, and do not require further analysis by the Secretary as any such attempt at quantification of such benefits would be demeaning to the environmental significance of the intent of the provisions.

The project includes features which are also responsive to the environmental needs of the project area. Such innovation features include the nonstructural measure of acquiring and preserving Central Basin natural flood storage acreage, the underground construction of the tunnel diversion which greatly limits both surface disruption and impacts to natural resources, and other environmental design and operation features integral to the tunnel which insure the project will not adversely impact on public groundwater supplies or aquifer recharge, and greatly minimize adverse impacts to wetlands. The Conferees are aware that the Corps of Engineers has entered into a Memorandum of Agreement with the United States Environmental Protection Agency to insure that all unavoidable project impacts to wetlands are fully compensated for. The Conferees also recognize the Secretary's commitments under the Fish and Wildlife Coordination Act and other Federal laws to fully mitigate adverse fish and wildlife impacts. In addition to the foregoing the Secretary is directed to go beyond these initiatives in order for the project to be fully responsive to the environmental policies intended by the Conferees.

For example, the establishment, use and acquisition of additional lands for the wetlands bank is intended to provide a mechanism for encouraging the protection of open space and wetlands beyond those lands included in the project a preservation of natural storage area, while also minimizing increases in future flood damages. The Conferees recognize that the Passaic River Basin lies within the most urbanized and densely populated area in the United States. As such, remaining open space and wetlands are subject to intense development pressure, notwithstanding Federal and State legislation which regulate development in sensitive areas. The relative scarcity of such lands and the historical development and fragmentation of both private and publicly owned open space underscores the environmental value of the few large open space areas that remain in the basin. The Conferees, therefore, intend that lands in both private and public ownership may be acquired for the wetlands bank in order to encourage the protection for large contiguous tracts of open space. The Conferees intend for the wetlands bank to be not only comprised of lands which lie within the Passaic River Central Basin natural storage area, but also to include adjacent transition and buffer areas, and other Passaic River Basin areas which drain into the Central Basin, such as, for example, the Newark Paquannock watershed and the Sterling Forest area of the Wanaque watershed among others. The Conferees do not intend to require that all such lands acquired for the wetlands bank by the State of New Jersey be acquired in fee ownership. For lands made available by other non-Federal interests it is intended that the acquisition of an easement consistent with the needs of the wetlands bank will be sufficient. Nor must lands be existing wetlands to be included in the bank; to the contrary, the Conferees expect that the inclusion of lands with other habitat types in the bank will provide opportunities for creating additional wetlands and for further diversifying the ecological values of the project area. In directing that the fair market value of lands acquired by the State or other non-Federal interests, and the costs incurred in converting any such lands to wetlands shall be credited to the non-Federal share of the project, the Conferees recognize that some of these actions may be undertaken by the State or non-Federal interests on their own initiative; this is irrelevant to the determination of such credits because of the link and compatibility to the Main Stem Passaic River Project, as authorized in the Conference Report.

With regard to the authorization of credits towards the non-Federal share of the cost of the project, the Conferees recognize that the activities specified in the Conference Report are not inclusive, and intend that other items to be specifically identified by the State of New Jersey which are compatible with the project shall be credited by the Secretary. For example, the State's credit request for the cost of constructing levees and/or flood walls compatible with the project design is intended to include actions such as the construction of the Rockaway #3 levee by the Township of Parsippany-Troy Hills, New Jersey. One other specific example is the recommendation by the Secretary that the State of New Jersey protect additional natural flood storage areas by maintaining existing Central Basin floodways with the project. The State of New Jersey has agreed to this section in order to avoid inducing development in natural flood storage lands currently within floodway areas. The Conferees recognize the wisdom of this approach. Therefore, the Conferees intend for credits toward the non-Federal share of the project to include costs to the State of New Jersey or other non-Federal interests associated with maintaining such floodway boundaries, although these costs shall not be treated as a project cost for purposes of economic evaluation.

LAKE PONTCHARTRAIN AND VICINITY, LOUISIANA

The Lake Pontchartrain and Vicinity, Louisiana hurricane protection project provides hurricane protection to the metropolitan New Orleans area. As originally authorized by Section 204 of Public Law 89-298 the recommended plan included the construction of a large barrier structure to prevent storm water surges from entering Lake Pontchartrain and flooding developed areas during hurricanes. In 1977, as a result of environmental litigation, a plan for the construction of high level levees was substituted for the barrier plan.

It was not necessary for the original barrier plan to address the problems associated with outfall canals that provide drainage of storm waters into Lake Pontchartain from the City of New Orleans. These problems must not be resolved in completing the high level plan. One option under consideration is the contruction of structures which will close the outfall canals at London and Orleans Avenues during periods of hurricane conditions. Local authorities have raised legitimate concerns that this would result in flooding within the City because water discharged from drainage pumps would not flow into Lake Pontchartrain when the structures are closed.

The conferees do not believe it was the intent of Congress in authorizing this

project to compound flooding or drainage problems in the City of New Orleans. Therefore, the conferees direct the Corps to treat the outfall canals as part of the overall hurricane protection project, and to favorably consider a plan that raises the levees along the entire lengths of the London Avenue and Orleans Avenue Canals to grades sufficient to confine a standard project hurricane with costs to be borne by both Federal and local assuring authorities.

CROSS FLORIDA BARGE CANAL

The conference agreement includes a provision deauthorizing the Cross Florida Barge Canal and transfers to the State of Florida, without consideration, all Federal lands acquired for the canal, and facilities completed for the project, for the purposes of combining them with State-acquired lands and creating a "greenway corridor." The deauthorization and land transfer are conditioned upon the State, through a resolution adopted by the Governor and State Cabinet, agreeing to several terms. The primary terms include the following.

First, the State must agree to create, preserve and maintain a greenway corridor along the original canal route (from the Gulf of Mexico to the Atlantic Ocean) to be used by the public only for compatible recreation and conservation activities as defined in a management plan to be developed by the State. The management plan must describe the actual boundaries for the corridor which must be at least 300 yards wide except for those areas where a) as of the date of enactment, the State owned no land or the land it did own was less than 300 yards wide, or b) a road or bridge crosses the corridor. It is the conferees' intention that the State management plan describe in a comprehensive fashion how the State will create, manage and improve the greenway.

Second, the State must agree to designate the eastern portion of the corridor (from the southwest boundary of the Oklawaha River Basin to the Atlantic Ocean) a State park, conservation area and/or recreation area.

Third, the state must agree to preserve, enhance, interpret and manage the western portion of the corridor (from the Gulf of Mexico to the southwest boundary of the Oklawaha River) for the public interest inperpetuity, subject to the designation and sale of non-environmentally sensitive parcels of property as surplus lands pursuant to the State management plan. It is the conferees' intention that the public interest be defined as the conservation of environmental, recreational and cultural values of the greenway.

Fourth, the State must agree to pay six counties—Citrus, Clay, Duval, Levy, Marion and Putnam—at least $32 million as reimbursement for taxes they collected earlier to help build the canal. Cash payments may be derived only from assets of the State Canal authority, the Cross Florida Navigation District or from the sale of former canal lands designated surplus by the State. In lieu of cash, the counties may choose to accept former canal lands designated surplus by the State.

Fifth, the State must agree that it may use any funds remaining after the sale of such surplus lands to acquire additional land for the corridor as prescribed in its management plan. Any and all such funds not used for land acquisition must be used only for improving and managing the greenway.

While the Secretary must transfer all Federal lands to the State immediately upon the passage of the State's resolution, he must retain title to the locks and other constructed portions of the canal lying between the Atlantic Ocean and the Eureka Lock and Dam, inclusive, and the Gulf of Mexico and the Inglis Lock and Dam, for 24 months after the date of enactment. During the time, he must carry out all programmed maintenance on these portions of the canal project.

WETLANDS

The House-passed bill included language authorizing the Corps to establish a program to demonstrate the effectiveness of wetlands mitigation banking to address problems of wetlands mitigation and restoration in connection with the Corps' regulatory program and the operation of their civil works program. Because of the controversy surrounding wetlands mitigation banks, the Conferees have modified the provision to authorize the Corps to demonstrate restoration and enhancement of wetlands in order to achieve the interim goal of no net loss and a long term goal of net gain of wetlands. In undertaking this demonstration program, the Corps should consider evaluation techniques which could be useful in assessing wetlands mitigation banking for further consideration by the Congress.

BUY AMERICAN

Section 419 of the conference agreement directs the Secretary of the Army to conduct a study of the requirements of the use of materials and products produced in the United States as they apply to water resources projects carried out by the Secretary for the purpose of determining whether or not such requirements are meeting the objectives for which they are being proposed. The House bill, in section 82, required that, with certain exceptions, materials and products used in the projects authorized in the bill must be produced in the United States. The conferees have determined that it would be appropriate to have the benefit of a study to determine what problems might exist with current Buy American laws before adopting any legislative changes. Section 419 has therefore been included to direct such a study.

MIAMI RIVER

The Conferees note that section 1162 of the Water Resources Development Act of 1986 authorized and directed the Secretary to remove polluted bottom sediments from the Miami River and Seybold Canal in Miami, Florida. The non-federal sponsor for this project is anxious to begin the removal of these polluted sediments. The Conferees encourage the Secretary to budget for and promptly proceed with the cleanup of these polluted sediments to improve the water quality of the Miami River and Seybold Canal. The Conferees emphasize the language in section 1162 providing that the maximum non-Federal share for the work authorized in that section is capped at 25 percent of the work undertaken, including the costs for the contribution of lands, easements, rights-of-way, relocations and alterations necessary for initial dredging and subsequent maintenance.

MONONGAHELA RIVER LOCKS AND DAMS, 2, 3, AND 4

The Managers of the bill note that the final conference report does not include contingent authorization for navigation improvements on the lower Monongahela River Locks and Dams 2, 3, and 4. During public hearings before both the House and Senate authorizing committees, witnesses argued that the existing navigation structures are in such a serious state of disrepair and structural instability that there is a substantial risk of catastrophic failure in the near future. More than 48,000 jobs in the region are directly dependent on the commerce of this river with thousands more in the coal, utility, steel, chemical, and manufacturing industries indirectly dependent.

Consequently, both the House and Senate versions of the bill contained provisions for authorization to improve the project pending a final report of the Chief of Engineers. While this is not the preferred method of authorizing navigation projects, the committees felt that the near-emergency conditions warranted such action. Unfortunately this project could not be included in the final report.

The managers direct that the Corps of Engineers expedite the feasibility study leading to a final report of the Chief of Engineers with all sense of urgency so that Congress may authorize the improvements on this stretch of the river during the next Congress.

From the Committee on Public Works and Transportation, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE
(except for consideration of section 309 of the Senate bill),
NORMAN Y. MINETA
(except for consideration of section 309 of the Senate bill),
JAMES L. OBERSTAR,
HENRY J. NOWAK,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND.

Solely for consideration of section 309 of the Senate bill:

NICK RAHALL,
DOUG APPLEGATE.

From the Committee on Merchant Marine and Fisheries, for consideration of matters within jurisdiction of that committee contained in the Senate bill, and the House amendment, and modifications committed to conference:

WALTER B. JONES,
BOB DAVIS,
DON YOUNG.

From the Committee on Energy and Commerce, for consideration of section 309 of the Senate bill, and modifications committed to conference:

JOHN D. DINGELL,
TOM LUKEN,
AL SWIFT,
JIM SLATTERY,
DOUG WALGREN,
NORMAN F. LENT,
BOB WHITTAKER,
MATT RINALDO.

From the Committee on Science, Space, and Technology, for consideration of section 309 of the Senate bill, and section 13 the House amendment, and modifications committed to conference:

ROBERT A. ROE,
NORMAN Y. MINETA,
ROBERT G. TORRICELLI,
TIM VALENTINE,
JIMMY HAYES,
Managers on the Part of the House.

DANIEL PATRICK MOYNIHAN,
FRANK R. LAUTENBERG,
HARRY REID,
JOHN H. CHAFEE,
STEVE SYMMS,
J.W. WARNER,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 5114, FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1991

Mr. COLEMAN of Texas submitted the following conference report and statement on the bill (H.R. 5114) making appropriations for Foreign Operations, Export Financing, and Related Programs for the fiscal year ending September 30, 1991, and for other purposes:

CONFERENCE REPORT (H. REPT. 101-968)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5114) making appropriations for Foreign Operations, Export Financing, and Related Programs for the fiscal year ending September 30, 1991, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 3, 4, 6, 8, 9, 25, 26, 33, 38, 52, 59, 64, 99, 105, 107, 110, 120, 125, 134, 139, 154, 167, 170, 171, 185, 187, 189, and 197.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 5, 10, 11, 12, 13, 14, 15, 17, 20, 21, 22, 24, 27, 29, 30, 31, 32, 34, 37, 40, 45, 46, 49, 50, 51, 53, 55, 56, 58, 65, 66, 67, 70, 72, 75, 76, 77, 78, 79, 81, 82, 84, 85, 86, 87, 88, 89, 91, 92, 93, 94, 97, 98, 100, 106, 111, 112, 113, 114, 115, 116, 117, 118, 119, 122, 124, 126, 128, 129, 130, 131, 133, 135, 137, 140, 143, 145, 147, 148, 149, 151, 153, 157, 158, 160, 162, 165, 199, and agree to the same.

Amendment numbered 7:

That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows:

In lieu of the sum proposed in said amendment, insert: *$126,854,000*; and the Senate agree to the same.

Amendment numbered 16:

That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the sum named in said amendment, insert: *$225,000*; and the Senate agree to the same.

Amendment numbered 18-19:

That the House recede from its disagreement to the amendment of the Senate numbered 18-19, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *Provided further, That funds appropriated under this heading for family planning purposes shall not be reduced by a proportion greater than other functional development assistance accounts in order to comply with requirements to provide assistance from funds appropriated to carry out chapter 1 of part I or to carry out part I of the Foreign Assistance Act of 1961*; and the Senate agree to the same.

Amendment numbered 23:

That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$23,000,000*; and the Senate agree to the same.

Amendment numbered 28:

That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment, as follows:

Strike all after the words "from Poland" named in said amendment, and insert in lieu thereof: , *Hungary and Czechoslovakia*; and the Senate agree to the same.

Amendment numbered 35:

That the House recede from its disagreement to the amendment of the Senate numbered 35, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

For necessary expenses to carry out the provisions of chapter 10 of part I of the Foreign Assistance Act of 1961, as enacted by this Act, $800,000,000, to remain available until September 30, 1992: Provided, That up to $3,500,000 of the funds appropriated under this heading may be made available, notwithstanding any other provision of law, to support the participation of disadvantaged South Africans in private enterprise development in South Africa: Provided further, That such assistance provided to support the participation of disadvantaged South Africans in private enterprise shall not be used to provide support to organizations or groups which are financed or controlled by the Government of South Africa: Provided further, That not less than $50,000,000 of the funds appropriated under this heading may be made available to assist activities supported by the Southern Africa Development Coordination Conference: Provided further, That funds appropriated under this heading which are made available for activities supported by the Southern Africa Development Coordination Conference shall be made available notwithstanding section 518 of this Act and section 620(q) of the Foreign Assistance Act of 1961: Provided further, That up to 5 per centum of the funds made available under this heading may be used for operating expenses of the Agency for International Development for increasing (above the level of resources available for fiscal year 1989) the organizational resources which the Agency has available for development assistance activities for sub-Saharan Africa, and shall be in addition to amounts otherwise allocated to the Agency's Bureau for Africa.

And the Senate agree to the same.

Amendment numbered 36:

That the House recede from its disagreement to the amendment of the Senate numbered 36, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

None of the funds appropriated by this Act to carry out chapters 1 and 10 of part I of the Foreign Assistance Act of 1961 shall be transferred to the Government of Zaire: Provided, That this provision shall not be construed to prohibit nongovernmental organizations from working with appropriate ministries or departments of the Government of Zaire.

And the Senate agree to the same.

Amendment numbered 39:

That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended as follows:

In lieu of the first sum named in said amendment, insert: *$1,000,000*; and the Senate agree to the same.

Amendment numbered 41:

That the House recede from its disagreement to the amendment of the Senate numbered 41, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$57,000,000*; and the Senate agree to the same.

Amendment numbered 42:

That the House recede from its disagreement to the amendment of the Senate numbered 42, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *Provided, That, notwithstanding any other provision of law, the authority of section 108(i) of the Foreign Assistance Act of 1961 may be used to provide up to $10,000,000 in loan guarantees for each of two projects during the fiscal year 1991: Provided further, That, notwithstanding any other provision of law, there shall be held in reserve in the revolving fund account established pursuant to section 108 of that Act only such amounts as are estimated to be sufficient to cover the expected net liabilities on loan guarantees outstanding under the program authorized by section 108(i): Provided further, That to the extent that funds held in reserve are not adequate to discharge liabilities under guarantees provided under section 108(i), funds appropriated under the heading "Economic Support Fund" shall be made available to discharge such liabilities.*

During fiscal year 1991, obligations for assistance from amounts in the revoling fund account under section 108 shall not exceed $15,000,000; and the Senate agree to the same.

Amendment numbered 43:

That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$29,000,000*; and the Senate agree to the same.

Amendment Numbered 44:

That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows:

In lieu of the matter stricken by said amendment, insert: *Provided, That in order to effectively monitor its program for the West Bank and Gaza, the Agency for International Development shall station one professional at either the Consulate General in Jerusalem or the Embassy in Tel Aviv*; and the Senate agree to the same.

Amendment numbered 47:

That the House recede from its disagreement to the amendment of the Senate numbered 47, and agree to the same with an amendment, as follows:

After the words "*Provided further,* That" named in said amendment, insert: *up to*; and the Senate agree to the same.

Amendment numbered 48:

That the House recede from its disagreement to the amendment of the Senate numbered 48, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *Provided further, That the Inspector General of the Agency for International Development may, at his discretion and after consultation with the Secretary of State, establish a regional office in Europe in order to carry out audit and other responsibilities with regard to assistance programs for Eastern Europe*; and the Senate agree to the same.

Amendment numbered 54:

That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment, insert: *$62,500,000*; and the Senate agree to the same.

Amendment numbered 57:

That the House recede from its disagreement to the amendment of the Senate numbered 57, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

After the words "Act of 1961" insert: *: Provided further, That of the funds appropriated under this heading, not less than $200,000 shall be transferred to the Bureau of Oceans, International Environment and Scientific Affairs of the Department of State to be used only to implement the Antarctic Protection Act of 1990: Provided further, That none of the funds appropriated by this Act to carry out the provisions of chapters 1 and 10 of part I of the Foreign Assistance Act of 1961 may be used for tied-aid credits: Provided further, That for purposes of the previous proviso the term "tied-aid credits" means any credit, within the meaning of section 15(h)(1) of the Export-Import Bank Act of 1945, which is used for blended or parallel financing, as those terms are defined by sections 15(h) (4) and (5), respectively, of such Act*; and the Senate agree to the same.

Amendment numbered 60:

That the House recede from its disagreement to the amendment of the Senate numbered 60, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following: *$160,000,000, of which $60,000,000 shall be derived by transfer, one-half from funds appropriated to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 and one-half from funds appropriated to carry out chapter 4 of part II of the Act*; and the Senate agree to the same.

Amendment numbered 61:

That the House recede from its disagreement to the amendment of the Senate numbered 61, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided further, That up to a total of $40,000,000 of the funds appropriated to carry out sections 103 through 106 and chapter 4 of part II of such Act may be transferred to and consolidated and merged with the funds appropriated under this heading notwithstanding the limitations on transfers between accounts contained in section 514 of this Act and sections 109 and 610 of the Foreign Assistance Act of 1961: Provided further, That any funds transferred to carry out the purposes of the previous proviso shall be made available only for projects and activities which are consistent with the purposes of those funds as initially appropriated: Provided further, That of the total amount of funds transferred to carry out the purposes of this heading not less than 50 per centum shall be derived from funds appropriated to carry out chapter 4 of part II of the Foreign Assistance Act: Provided further, That transfers of any funds to carry out the purposes of this heading shall be subject to the regular notification procedures of the Committees on Appropriations*; and the Senate agree to the same.

Amendment numbered 62:

That the House recede from its disagreement to the amendment of the Senate numbered 62, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$369,675,000*; and the Senate agree to the same.

Amendment numbered 63:

That the House recede from its disagreement to the amendment of the Senate numbered 63, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$113,675,000*; and the Senate agree to the same.

Amendment numbered 68:

That the House recede from its disagreement to the amendment of the Senate numbered 68, and agree to the same with an amendment, as follows:

After the words "energy resources" named in said amendment, insert: *an further including training, technical assistance for related energy and environmental investments or regulation, local production of environmental or energy-related equipment, promotion of U.S. technologies, and dealing with health problems directly associated with pollution*; and the Senate agree to the same.

Amendment numbered 69:

That the House recede from its disagreement to the amendment of the Senate numbered 69, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$19,000,000*; and the Senate agree to the same.

Amendment numbered 71:

That the House recede from its disagreement to the amendment of the Senate numbered 71, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$90,000,000*; and the Senate agree to the same.

Amendment numbered 73:

That the House recede from its disagreement to the amendment of the Senate numbered 73, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$27,000,000*; and the Senate agree to the same.

Amendment numbered 74:

That the House recede from its disagreement to the amendment of the Senate numbered 74, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *with emphasis on technical assistance and training for development of market-oriented policies, restructuring and creation of financial institutions (such as stock markets, insurance companies and banks), creation and management of private business organizations, and privatization of state business organizations; and*

(7) $40,000,000, of which $10,000,000 shall be derived by transfer from funds provided for environment and energy activities under this heading, and which shall be provided for agricultural and rural development activities with emphasis on technical assistance and training for development of rural economies and market-oriented policies, restructuring and creation of agricultural financial institutions and marketing systems, development of food processing, food transport and food storage systems, creation and management of agribusiness organizations (including farmer-owned cooperatives), and privatization of state farms, agribusiness and credit institutions; and the Senate agree to the same.

Amendment numbered 80:

That the House recede from its disagreement to the amendment of the Senate numbered 80, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment insert: *$500,000*; and the Senate agree to the same.

Amendment numbered 83:

That the House recede from its disagreement to the amendment of the Senate numbered 83, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided further, That of the funds appropriated by this Act to carry out chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, not less than $5,000,000, to be derived in equal amounts from funds appropriated for each of those chapters, shall be made available for the Affected Thai Village Program;* and the Senate agree to the same.

Amendment numbered 90:

That the House recede from its disagreement to the amendment of the Senate numbered 90, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$4,663,420,800*; and the Senate agree to the same.

Amendment numbered 95:

That the House recede from its disagreement to the amendment of the Senate numbered 95, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the first sum named in said amendment, insert: *$403,500,000*

In lieu of the second sum named in said amendment, insert: *$403,500,000*; and the Senate agree to the same.

Amendment numbered 96:

That the House recede from its disagreement to the amendment of the Senate numbered 96, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

If Turkey receives any funds under this heading on a grant basis then not less than $30,000,000 of the funds provided for Greece shall be made available as grants: Provided, That funds; and the Senate agree to the same.

Amendment numbered 101:

That the House recede from its disagreement to the amendment of the Senate numbered 101, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment, insert: *$43,000,000*; and the Senate agree to the same.

Amendment numbered 102:

That the House recede from its disagreement to the amendment of the Senate numbered 102, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$350,000,000 only*; and the Senate agree to the same.

Amendment numbered 103:

That the House recede from its disagreement to the amendment of the Senate numbered 103, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$500,000,000 only*; and the Senate agree to the same.

Amendment numbered 104:

That the House recede from its disagreement to the amendment of the Senate numbered 104, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows: , *and up to $100,000,000 shall be available for Portugal*; and the Senate agree to the same.

Amendment numbered 108:

That the House recede from its disagreement to the amendment of the Senate numbered 108, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$20,000,000*; and the Senate agree to the same.

Amendment numbered 109:

That the House recede from its disagreement to the amendment of the Senate numbered 109, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$20,000,000*; and the Senate agree to the same.

Amendment numbered 121:

That the House recede from its disagreement to the amendment of the Senate numbered 121, and agree to the same with an amendment, as follows:

In lieu of subsection (d)(1) inserted by said amendment, insert:

(d) WITHHOLDING OF MILITARY ASSISTANCE.—(1) IN GENERAL.—Fifty percent of the total United States military assistance allocated for El Salvador for fiscal year 1991 shall be withheld from obligation or expenditure (as the case may be) except as provided in paragraphs (2) and (3).

In lieu of subsection (j)(2)(B) inserted by said amendment, insert:

(B) assistance to carry out section 23 of the Arms Export Control Act.

And the Senate agree to the same.

Amendment numbered 123:

That the House recede from its disagreement to the amendment of the Senate numbered 123, and agree to the same with an amendment, as follows:

After the words "the Caribbean," named in subsection (d)(1) of said amendment, insert: *$100,000 shall be for the Charles Darwin Station,*

In lieu of subsection (f) inserted by said amendment, insert:

(f) Chapter 1 of part II of the Foreign Assistance Act of 1961 is amended by adding the following new section:

"Sec. 518. NATURAL RESOURCES AND WILDLIFE MANAGEMENT.—

"(a) AUTHORITY TO TRANSFER NONLETHAL EXCESS DEFENSE ARTICLES AND SMALL ARMS.—Subject to the limitations in this section, the President may transfer non-lethal excess defense articles and small arms to friendly countries and to international organizations and private and voluntary organizations for the purposes contained in section 119 of this Act.

"(b) LIMITATION ON TRANSFERS.—Transfers under this section shall be subject to the limitations contained in section 516(b).

"(c) TRANSPORTATION.—The Department is authorized to transport nonlethal excess defense articles and small arms made available pursuant to this section without charge on a space available basis.

"(d) WAIVER OF REQUIREMENTS FOR REIMBURSEMENT OF DOD EXPENSES.—Section 632(d) shall not apply with respect to transfers of nonlethal excess defense articles and small arms under this section or the transportation of such articles as authorized by subsection (c).

"(e) NOTIFICATION TO COMMITTEES OF CONGRESS—The President may not transfer nonlethal excess defense articles and small arms under this section until 30 days after he has notified the Committees on Appropriations of the proposed transfer. This notification shall include a certification of the need for the transfer and an assessment of the impact of the transfer on the military readiness of the United States. Transfers under this section shall also be subject to the notification requirements of section 516(c) of this Act.".

And the Senate agree to the same.

Amendment numbered 127:

That the House recede from its disagreement to the amendment of the Senate numbered 127, and agree to the same with an amendment, as follows:

In lieu of the date "November 11" named in said amendment, insert: *October 31*; and the Senate agree to the same.

Amendment numbered 132:

That the House recede from its disagreement to the amendment of the Senate numbered 132, and agree to the same with an amendment, as follows:

In lieu of the words "technical changes" named in said amendment, insert: *time compliance*; and the Senate agree to the same.

Amendment numbered 136:

That the House recede from its disagreement to the amendment of the Senate numbered 136, and agree to the same with an amendment, as follows:

In lieu of the matter stricken by said amendment, insert: *Provided further, That the Secretary of State and the Secretary of the Treasury should in every feasible instance notify the Appropriations Committees of the Congress and such other Committees as appropriate not less than 15 days prior to any formal multilateral or bilateral negotiation for official debt restructuring, rescheduling, or relief: Provided further, That the Secretary of State or the Secretary of the Treasury, as appropriate, shall report not later than the first of February, 1991 and annually thereafter a consolidated statement of the budgetary implications of all debt-related agreements entered into force during the preceding fiscal year*; and the Senate agree to the same.

Amendment numbered 138:

That the House recede from its disagreement to the amendment of the Senate numbered 138, and agree to the same with an amendment, as follows:

In lieu of the matter stricken by said amendment, insert:

COMMISSION ON FOREIGN ASSISTANCE MANAGEMENT

SEC. 557. (a) ESTABLISHMENT.—There is established the Commission on Management of Agency for International Development Programs (hereafter in this section referred to as the "Commission").

(b) MEMBERSHIP.—The Commission shall consist of 5 members appointed by the President after consultation with the Chairmen of the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives and the Chairmen of the Committee on Appropriations and the Committee on Foreign Relations of the Senate. Individual members of the Commission shall be from the private sector. The President shall designate the Chairman of the Commission from among its members.

(c) DUTIES.—The Commission shall conduct a thorough study and recommend appropriate administrative action and legislation necessary in connection with the following:

(1) The adequacy of systems of program management, including evaluation and coordination, taking into consideration, among other things—

(A) the need to identify central foci within the Agency to coordinate its program and management responsibilities and to evaluate the Agency's program and management performance;

(B) the need to develop specific indicators of effective performance for both program and management functions;

(2) the adequacy of personnel management systems, taking into consideration, among other things—

(A) the need to systematically ensure the integration of program, operating expense, and personnel levels;

(B) the need to adjust personnel and operating expense levels among organizational units in order to meet changing program requirements;

(C) the capacity to meet changing requirements for program and management skills in headquarters offices and field missions;

(D) the significance of operating and program funding distinctions as they affect the ability of the Agency to adjust its personnel to program requirements;

(3) the adequacy of systems of personal accountability for program management, taking into consideration, among other things—

(A) the need to establish and identify clear lines of decision-making responsibility among headquarters offices and between headquarters and field missions;

(B) the need to ensure that an individual's performance in the implementation and management of the Agency's program portfolio is appropriately reflected in its promotion and assignment processses.

(d) REPORT.—The Commission shall submit a comprehensive report to the President and to the Congress, not later than six months from the date after which all members of the Commission have been appointed, containing the findings and recommendations of the Commission with respect to its study. The Commission should work with the General Accounting Office and consult with General Accounting Office reports and studies on managment issues concerning the Agency for International Development in the conduct of its study. The Commission shall cease to exist on the thirtieth day after the date on which it files the comprehensive report under this subsection.

(e) COMPENSATION AND PER DIEM.—(1) COMPENSATION.—Members of the Commission shall receive no pay on account of their service on the Commission.

(2) PER DIEM.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(f) AUTHORITIES.—(1) IN GENERAL.—The Commission or any member it authorizes may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, request such attendance, take such testimony, and receive such evi-

dence, as the Commission considers appropriate.

(2) APPOINTMENTS.—Subject to such rules as may be adopted by the Commission, the Chairman of the Commission, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classifications and General Schedule pay rates, may appoint and fix the compensation of a Director and such other staff as the Chairman considers necessary.

(3) TEMPORARY SERVICES.—The Chairman of the Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay then in effect for GS-18 of the General Schedule (5 U.S.C. 5332(a)).

(4) ADMINISTRATIVE SUPPORT.—Upon the request of the Chairman of the Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist it in carrying out its duties under this section. The Administrator of the Agency for International Development shall provide to the Commission on a reimbursable basis such administrative support services as the Chairman of the Commission may request and the Administrator of the Agency for International Development may deem appropriate.

(5) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any department or agency of the United States appropriate information necessary to enable it to carry out this section. Upon the request of the Chairman of the Commission, the head of such department or agency shall furnish such appropriate information to the Commission.

(g) FUNDING.—In addition to funds otherwise available for such purposes, up to $500,000 of the unearmarked funds appropriated by this Act under the heading "Operating Expenses of the Agency for International Development" may be made available for purposes of this section.

And the Senate agree to the same.

Amendment numbered 141:

That the House recede from its disagreement to the amendment of the Senate numbered 141, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

GENERAL AUTHORIZATIONS

SEC. 562.

SUB-SAHARAN AFRICA

(a) AUTHORIZATION.—Part I of the Foreign Assistance Act of 1961 is amended by adding after chapter 9 the following new chapter:

"CHAPTER 10—DEVELOPMENT FUND FOR AFRICA

"SEC. 496. LONG-TERM DEVELOPMENT ASSISTANCE FOR SUB-SAHARAN AFRICA.

"(a) FINDINGS.—The Congress finds that—

"(1) drought and famine have caused countless deaths and untold suffering among the people of sub-Saharan Africa;

"(2) drought and famine in combination with other factors such as decertification, government neglect of the agricultural sector, and inappropriate economic policies have severely affected long-term development in sub-Saharan Africa; and

"(3) the most cost-effective and efficient way of overcoming Africa's vulnerability to drought and famine is to address Africa's long-term development needs through a process that builds upon the needs and capabilities of the African people, promotes sustained and equitable economic growth, preserves the environment, and protects the rights of the individual.

"(b) AUTHORITY TO FURNISH ASSISTANCE.—The President is authorized to furnish project and program assistance, on such terms and conditions as he may determine in accordance with the policies contained in this section, for long-term development in sub-Saharan Africa.

"(c) PURPOSE OF ASSISTANCE.—

"(1) PURPOSE.—The purpose of assistance under this section shall be to help the poor majority of men and women in sub-Saharan Africa to participate in a process of long-term development through economic growth that is equitable, participatory, environmentally sustainable, and self-reliant.

"(2) USE OF ASSISTANCE TO ENCOURAGE PRIVATE SECTOR DEVELOPMENT.—Assistance under this section should, in a manner consistent with paragraph (1), be used to promote sustained economic growth, encourage private sector development, promote individual initiatives, and help to reduce the role of central governments in areas more appropriate for the private sector.

"(d) APPLICATION OF DEVELOPMENT ASSISTANCE GENERAL AUTHORITIES AND POLICIES.—Except to the extent inconsistent with this section—

"(1) any reference in any law to chapter 1 of this part (including references to sections 103 through 106) shall be deemed to include a reference to this section; and

"(2) assistance under this section shall be provided consistent with the policies contained in section 102.

"(e) PRIVATE AND VOLUNTARY ORGANIZATIONS.—

"(1) CONSULTATION TO ENSURE LOCAL PERSPECTIVES.—The Agency for International Development shall take into account the local-level perspectives of the rural and urban poor in sub-Saharan Africa, including women, during the planning process for project and program assistance under this section. In order to gain that perspective the Agency for International Development should consult closely with African, United States, and other private and voluntary organizations that have demonstrated effectiveness in or commitment to the promotion of local, grassroots activities on behalf of long-term development in sub-Saharan Africa as described in subsection (c).

"(2) DEFINITION OF PRIVATE AND VOLUNTARY ORGANIZATIONS.—For purposes of this section, the term "private and voluntary organizations" includes (in addition to entities traditionally considered to be private and voluntary organizations) cooperatives, credit unions, trade unions, women's groups, nonprofit development research institutions, and indigenous local organizations, which are private and nonprofit.

"(f) LOCAL INVOLVEMENT IN PROJECT IMPLEMENTATION.—Local people, including women, shall be closely consulted and involved in the implementation of every project under this section which has a local focus.

"(g) PARTICIPATION OF AFRICAN WOMEN.—The Agency for International Development shall ensure that development activities assisted under this section incorporate a significant expansion of the participation (including decision-making) and integration of African women in each of the critical sectors described in subsection (i).

"(h) TYPES OF ASSISTANCE.—

"(1) PROJECTS AND PROGRAMS TO ADDRESS CRITICAL SECTORAL PRIORITIES.—Assistance under this section shall emphasize primarily projects and programs to address critical sectoral priorities for long-term development described in subsection (i).

"(2) REFORM OF ECONOMIC POLICIES.—

"(A) USE OF PROGRAM ASSISTANCE.—Assistance under this section may also include program assistance to promote reform of sectoral economic policies affecting long-term development in sub-saharan Africa as described in subsection (c), with primary emphasis on reform of economic policies to support the critical sectoral priorities described in subsection (i).

"(B) PROTECTION OF VULNERABLE GROUPS.—Assisted policy reforms shall also include provisions to protect vulnerable groups (especially poor, isolated, and female farmers, the urban poor, and children including displaced children) and long-term environmental interests from possible negative consequences of the reforms.

"(3) OTHER ASSISTANCE.—Funds made available to carry out this section shall be used almost exclusively for assistance in accordance with paragraphs (1) and (2). Assistance consistent with the purpose of subsection (c) may also be furnished under this section to carry out the provisions of sections 103 through 106 of this Act.

"(i) CRITICAL SECTORAL PRIORITIES.—The critical sectoral priorities for long-term development, as described in subsection (c), are the following:

"(1) AGRICULTURAL PRODUCTION AND NATURAL RESOURCES.—

"(A) AGRICULTURAL PRODUCTION.—Increasing agricultural production in ways which protect and restore the natural resource base, especially food production, through agricultural policy changes, agricultural research (including participatory research directly involving small farmers) and extension, development and promotion of agriculture marketing activities, credit facilities, and appropriate production packages, and the construction and improvement of needed production-related infrastructure such as farm-to-market roads, small-scale irrigation, and rural electrification. Within this process, emphasis shall be given to promoting increased equity in rural income distribution, recognizing the role of small farmers.

"(B) NATURAL RESOURCE BASE.—Maintaining and restoring the renewable natural resource base primarily in ways which increase agricultural production, through the following:

"(i) Small-scale, affordable, resource-conserving, low-risk local projects, using appropriate technologies (including traditional agricultural methods) suited to local environmental, resource, and climatic conditions, and featuring close consultation with and involvement of local people at all stages of project design and implementation. Emphasis shall be given to grants for African local government organizations, international or African nongovernmental organizations, and United States private and voluntary organizations.

"(ii) Support for efforts at national and regional levels to provide technical and other support for projects of the kinds described in clause (i) and to strengthen the capacities of African countries to provide effective extension and other services in support of environmentally sustainable increases in food production.

"(iii) Support for special training and education efforts to improve the capacity of

countries in sub-Saharan Africa to manage their own environments and natural resources.

"(iv) Support for low-cost desalination activities in order to increase the availability of fresh water sources in sub-Saharan Africa.

"(2) HEALTH.—Improving health conditions, with special emphasis on meeting the health needs of mothers and children (including displaced children) through the establishment of primary health care systems that give priority to preventive health and that will be ultimately self-sustaining.

"(3) VOLUNTARY FAMILY PLANNING SERVICES.—Providing increased access to voluntary family planning services, including encouragement of private, community, and local government initiatives.

"(4) EDUCATION.—Improving the relevance, equity, and efficiency of education, with special emphasis on improving primary education.

"(5) INCOME-GENERATING OPPORTUNITIES.—Developing income-generating opportunities for the unemployed and underemployed in urban and rural areas through, among other things, support for off-farm employment opportunities in micro- and small scale labor-intensive enterprises.

"(j) MINIMUM LEVELS OF ASSISTANCE FOR CERTAIN CRITICAL SECTORS.—The Agency for International Development should target the equivalent of 10 percent of the amount authorized to be appropriated for each fiscal year to carry out this chapter for each of the following:

"(1) The activities described in subsection (i)(1)(B), including identifiable components of agricultural production projects.

"(2) The activities described in subsection (i)(2).

"(3) The activities described in subsection (i)(3).

"(k) EFFECTIVE USE OF ASSISTANCE.—Assistance provided under this section shall be concentrated in countries which will make the most effective use of such assistance in order to fulfill the purpose specified in subsection (c), especially those countries (including those of the Sahel region) having the greatest need for outside assistance.

"(l) PROMOTION OF REGIONAL INTEGRATION.—Assistance under this section shall, to the extent consistent with this section, include assistance to promote the regional and subregional integration of African production structures, markets, and infrastructure.

"(m) DONOR COORDINATION MECHANISM.—Funds made available to carry out this section may be used to assist the governments of countries in sub-Saharan Africa to increase their capacity to participate effective in donor coordination mechanisms at the country, regional, and sector levels.

"(n) RELATION TO OTHER AUTHORITIES.—

"(1) ASSISTANCE UNDER OTHER AUTHORITIES.—The authority granted by this section to provide assistance for long-term development in sub-Saharan Africa is not intended to preclude the use of other authorities for that purpose. Centrally-funded programs which benefit sub-Saharan Africa shall continue to be funded under chapter 1 of part I of this Act.

"(2) TRANSFER AUTHORITIES.—

"(A) The transfer authority contained in section 109 of this Act shall not apply with respect to this section.

"(B) The transfer authority contained in section 610(a) of this Act may not be used to transfer funds made available to carry out this section in order to allow them to be used in carrying out any other provision of this Act.

"(3) REPROGRAMMING NOTIFICATIONS.—Section 634A of this Act does not apply with respect to funds made available to carry out this section.

"(4) PROCUREMENT OF GOODS AND SERVICES.—In order to allow the assistance authorized by this section to be furnished as effectively and expeditiously as possible, section 604(a) of this Act, and similar provisions relating to the procurement of goods and services, shall not apply with respect to goods and services procured for use in carrying out this section. The exemption provided by this paragraph shall not be construed to apply to the Comprehensive Anti-Apartheid Act of 1986.

"(o) SUPPORT FOR SADCC PROJECTS.—

"(1) AUTHORITY TO PROVIDE ASSISTANCE.—To the extent funds are provided for such purpose in the annual Foreign Operations, Export Financing, and Related Programs Appropriations Act, funds made available to carry out this chapter may be used to assist sector projects, in the sectors specified in paragraph (2), that are supported by the Southern Africa Development Coordination Conference (SADCC) to enhance the economic development of the member states forming that regional institution.

"(2) SECTORS.—The sectors with respect to which assistance may be provided under this subsection are the following: transportation; manpower development; agriculture and natural resources; energy (including the improved utilization of electrical power sources which already exist in the member states and offer the potential to swiftly reduce the dependence of those states on South Africa for electricity); and industrial development and trade (including private sector initiatives).

"(3) RELATION TO DFA POLICIES AND AUTHORITIES.—To the maximum extent feasible, the assistance authorized by this subsection shall be provided consistent with the policies and authorities contained in the preceding subsection of this section.

"SEC. 497. AUTHORIZATIONS OF APPROPRIATIONS FOR THE DEVELOPMENT FUND FOR AFRICA.

"Funds appropriated to carry out this chapter are authorized to be made available until expended. It is the sense of the Congress that the authority of this subsection should be used to extend the period of availability of those funds whenever appropriate to improve the quality of assistance provided under section 496.".

(b) EVALUATIONS.—It is the sense of the Congress that there should be periodic evaluations of the progress of the Agency for International Development in achieving the purpose specified in section 496(c) of the Foreign Assistance Act of 1961.

(c) REPORTS TO CONGRESS.—As part of the annual Congressional Presentation materials for economic assistance, the Administrator of the Agency for International Development shall include a description of the progress made during the previous fiscal year in carrying out chapter 10 of part I of the Foreign Assistance Act of 1961 in three countries in sub-Saharan Africa which represent differing economic situations and levels of progress. The description shall include—

(1) the nature and extent of consultation to ensure local perspectives, as described in subsections (e)(1) and (f) of section 496;

(2) the degree of involvement of local people in the implementation of projects having a local focus;

(3) the extent to which there has been expansion of the participation and integration of African women in each of the critical sectors specified in section 496(i);

(4) program assistance provided, including the amounts obligated, the criteria used for assisting reforms, and the provisions made pursuant to section 496(h)(2)(B) to protect vulnerable groups from possible negative consequences of the reforms; and

(5) a description of the assistance for the critical sector priorities specified in section 496(i), by sector, including the amounts obligated.

(d) CONFORMING AMENDMENTS.—The Foreign Assistance Act of 1961 is amended—

(1) in section 105(b)—

(A) by striking out "(b)(1)" and inserting in lieu thereof "(b)"; and

(B) by striking out paragraph (2);

(2) in section 113(b)(1), by inserting "and chapter 10 of this part" after "this chapter";

(3) in section 116(e)(1)—

(A) by inserting ", chapter 10 of this part," after "available under this chapter"; and

(B) by inserting before the period at the end of the first sentence "or under chapter 10 of this part, except that funds made available under chapter 10 of this part may only be used under this subsection with respect to countries in sub-Saharan Africa";

(4) in subsection (c)(1) of section 117 (relating to environment and natural resources), by inserting "and chapter 10 of this part" after "this chapter";

(5) by repealing section 121;

(6) in section 123—

(A) in subsection (b), by inserting "and chapter 10 of this part" after "this chapter"; and

(B) in subsection (g), by striking out "121, or 491" and inserting in lieu thereof "491, or 496'"

(7) in section 126(b)(1), by inserting ", and chapter 10 of this part," after "this chapter"; and

(8) in section 531(a), by inserting "or, in the case of countries in sub-Saharan Africa, chapter 10 of part I" after "chapter 1 of part I".

EXPORT-IMPORT BANK

The authorities made available under title IV of this Act for the Export-Import Bank may be used by the Bank, notwithstanding section 2(b)(2) of the Export-Import Bank Act of 1945, in connection with the purchase or lease of any product by any East European country, or any agency or national thereof: Provided, That section 2(b)(6)(B)(vi) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(6)(B)(vi)) is amended by striking out "1990" and inserting in lieu thereof "1992".

POLAND ASSISTANCE

Section 2223(a) of the American Aid to Poland Act of 1988 (7 U.S.C. 1431 note) is amended by inserting "governmental and" after "used by": Provided, That Section 416(b)(7)(D)(ii) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)(7)(D)(ii)) is amended in the penultimate sentence—(1) by striking out "such" and inserting in lieu thereof "governmental and nongovernmental"; and (2) by inserting "governmental or" after "activities of".

FIRST CLASS AIR TRAVEL RESTRICTIONS

The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks and of the International Monetary Fund—

(1) to seek the adoption, within 12 months after the date of the enactment of this section, of administrative procedures prohibiting personnel of their respective banks and the affiliates of such banks, and of the Fund,

from using first class air travel for business of such banks or of the Fund.

(2) if such procedures are not so adopted, report to the Secretary and Congress on the estimated additional costs (if any) incurred by their respective banks or the Fund by reason of the use of first class air travel by personnel of such banks or of the Fund in lieu of coach or business class air travel, who shall make such report available to the Congress on request.

INTERNATIONAL BANKING PROVISIONS

(a) PROVISIONS RELATING TO THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT.—

(1) AUTHORITY OF THE UNITED STATES TO PARTICIPATE IN THE NINTH REPLENISHMENT OF THE INTERNATIONAL DEVELOPMENT ASSOCIATION.—The International Development Association Act (22 U.S.C. 284 et seq.) is amended by adding at the end the following:

"SEC. 21. NINTH REPLENISHMENT.

"(a) IN GENERAL.—The United States Governor is hereby authorized to agree on behalf of the United States to pay to the Association $3,180,000,000 to the ninth replenishment of the resources of the Association, subject to obtaining the necessary appropriations.

"(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $3,180,000,000 for payment by the Secretary of the Treasury.".

(2) POLICY PROVISIONS.—The International Financial Institutions Act (22 U.S.C. 262c et seq.) is amended by redesignating section 1617 as section 1619 and by inserting after section 1616 the following:

"SEC. 1617. IMPROVEMENT OF INTERACTION BETWEEN INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT AND NONGOVERNMENTAL ORGANIZATIONS.

"(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to propose, and urge the Executive Board and the management of the bank to develop and implement specific mechanisms designed to—

"(1) substantially improve the ability of the staff of the bank to interact with nongovernmental organizations and other local groups that are affected by loans made by the bank to borrower countries; and

"(2) delegate to the field offices of the bank in borrowing countries greater responsibility for decisions with respect to proposals for projects in such countries that are to be financed by the bank.

"(b) CERTAIN MECHANISMS URGED.—The mechanisms described in subsection (a) shall include, at a minimum, the following measures:

"(1) An instruction to the management of the bank to undertake efforts to appropriately train and significantly increase the number of bank professional staff (based in Washington, District of Columbia, as of the date of the enactment of this section) assigned, on a rotating basis, to field offices of the bank in borrower countries.

"(2) The assignment to at least 1 professional in each field office of the bank in a borrower country of responsibility for relations with local nongovernmental organizations, and for the preparation and submission to appropriate staff of the bank of a report on the impact of project loans to be made by the bank to the country, based on views solicited from local people who will be affected by such loans, which shall be included as part of the project appraisal report.

"(3) The establishment of the Grassroots Collaboration Program described in section 1602(a).

"(4) Before a project loan is made to a borrower country, the country is to be required to hold open hearings on the proposed project preparation.

"(5) The establishment of assessment procedures which allow affected parties and nongovernmental organizations to review information describing a prospective project or policy loan design, in a timely manner, before the loan is submitted to the Executive Board for approval.

"SEC. 1618. POPULATION, HEALTH, AND NUTRITION PROGRAMS.

"The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to urge the bank to support an increase in the amount the bank lends annually to support population, health, and nutrition programs of the borrower countries.".

(b) INTERNATIONAL FINANCIAL INSTITUTIONS PROVISIONS.—

(1) POLICY PROVISIONS.—The International Financial Institutions Act (22 U.S.C. 262c et seq.), as amended by subsection (a)(2) of this section, is amended by redesignating section 1619 as section 1620 and by inserting after section 1618 the following:

"SEC. 1619. EQUAL EMPLOYMENT OPPORTUNITIES.

"The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks and of the International Monetary Fund to use the voices and votes of the Executive Directors to urge their respective banks and the Fund to adopt a policy which provides, and implement procedures which ensure, that such banks and the Fund, and the affiliates of such banks and of the Fund, shall not discriminate against any person on the basis of race, ethnicity, gender, color, or religious affiliation in any determination related to employment.".

(2) MISCELLANEOUS TECHNICAL CORRECTIONS RELATING TO THE INTERNATIONAL DEVELOPMENT AND FINANCE ACT OF 1989.—Section 701(g) of the International Financial Institutions Act (22 U.S.C. 262d(g)) is amended—

(A) by striking "(2)"; and

(B) by striking "specified in paragraph (1)" and inserting "of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and of the Committee on Foreign Relations of the Senate".

(3) COMPARABLE STATUS FOR THE UNITED STATES EXECUTIVE DIRECTOR OF THE AFRICAN DEVELOPMENT BANK.—Section 1333(a) of the African Development Bank Act (22 U.S.C. 290i-1(a)) is amended by striking "Governor and an Alternate Governor" and inserting "Governor, an Alternate Governor, and a Director".

(c) EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT.—

(1) SHORT TITLE.—This subsection may be cited as the "European Bank for Reconstruction and Development Act".

(2) ACCEPTANCE OF MEMBERSHIP.—The President is hereby authorized to accept membership for the United States in the European Bank for Reconstruction and Development (in this subsection referred to as the "Bank") provided for by the agreement establishing the Bank (in this subsection referred to as the "Agreement"), signed by May 29, 1990.

(3) GOVERNOR AND ALTERNATE GOVERNOR.—

(A) APPOINTMENT.—The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank, an alternate for the Governor, and a Director of the Bank.

(B) COMPENSATION.—Any person who serves as a Governor of the Bank or as an alternate for the Governor may not receive any salary or other compensation from the United States by reason of such service.

(4) APPLICABILITY OF CERTAIN PROVISIONS OF THE BRETTON WOODS AGREEMENTS ACT.—Section 4 of the Bretton Woods Agreements Act shall apply to the Bank in the same manner in which such section applies to the International Bank for Reconstruction and Development and the International Monetary Fund.

(5) FEDERAL RESERVE BANKS AS DEPOSITORIES.—Any Federal Reserve Bank which is requested to do so by the Bank may act as its depository, or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall exercise general supervision over the carrying out of these functions.

(6) SUBSCRIPTION OF STOCK.—

(A) SUBSCRIPTION AUTHORITY.—

(i) IN GENERAL.—The Secretary of the Treasury may subscribe on behalf of the United States to 100,000 shares of the capital stock of the bank.

(ii) EFFECTIVENESS OF SUBSCRIPTION COMMITMENT.—Any commitment to make such subscription shall be effective only to such extent or in such amounts as are provided for in advance by appropriations Acts.

(B) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For payment by the Secretary of the Treasury of the subscription of the United States for shares described in subparagraph (A), there are authorized to be appropriated $1,167,010,000 without fiscal year limitation.

(C) DISPOSITION OF NET INCOME DISTRIBUTIONS BY THE BANK.—Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

(7) JURISDICTION AND VENUE OF CIVIL ACTIONS BY OR AGAINST THE BANK.—

(A) JURISDICTION.—The United States district courts shall have original and exclusive jurisdiction of any civil action brought in the United States by or against the Bank.

(B) VENUE.—For purposes of section 1391(b) of title 28, United States Code, the Bank shall be deemed to be a resident of the judicial district in which the principal office of the Bank in the United States, or its agent appointed for the purpose of accepting service or notice of service, is located.

(8) EFFECTIVENESS OF AGREEMENT.—The Agreement shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in the Bank and the entry into force of the Agreement.

(9) EXEMPTION FROM SECURITIES LAWS FOR CERTAIN SECURITIES ISSUED BY THE BANK; REPORTS REQUIRED.—

(A) EXEMPTION FROM SECURITIES LAWS; REPORTS TO SECURITIES AND EXCHANGE COMMISSION.—Any securities issued by the Bank (including any guaranty by the Bank, whether or not limited in scope) in connection with the raising of funds for inclusion in the Bank's ordinary capital resources as defined in article 7 of the Agreement and any securities guaranteed by the Bank as to both principal and interest to which the commitment in article 6, paragraph 4, of the Agreement is expressly applicable, shall be deemed to be

exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 and section 3(a)(12) of the Securities Exchange Act of 1934. The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

(B) AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION TO SUSPEND EXEMPTION; REPORTS TO THE CONGRESS.—The Securities and Exchange Commission, acting in consultation with such agency or officer as the President shall designate, may suspend the provisions of subparagraph (A) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to the Congress such information as it shall deem advisable with regard to the operations and effect of this paragraph.

(10) TECHNICAL AMENDMENTS.—

(A) ANNUAL REPORT REQUIRED ON PARTICIPATION OF THE UNITED STATES IN THE BANK.—Section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2)) is amended by inserting "European Bank for Reconstruction and Development," before "International Development Association,".

(B) EXEMPTION FROM LIMITATIONS AND RESTRICTIONS ON POWER OF NATIONAL BANKING ASSOCIATIONS TO DEAL IN AND UNDERWRITE INVESTMENT SECURITIES OF THE BANK.—The 7th sentence of paragraph 7 of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by inserting "the European Bank for Reconstruction and Development," before "the Inter-American Development Bank,".

(C) BENEFITS FOR UNITED STATES CITIZEN-REPRESENTATIVES TO THE BANK.—Section 51 of the Act entitled "An Act to authorize United States participation in increases in the resources of certain international financial institutions, to provide for an annual audit of the Exchange Stabilization Fund by the General Accounting Office, and for other purposes." (Public Law 91-599; 22 U.S.C. 276c-2) is amended by inserting "the European Bank for Reconstruction and Development," before "the Inter-American Development Bank,".

(11) CONGRESSIONAL CONSULTATIONS.—During negotiations on the establishment of operational guidelines for the Bank, the Secretary of the Treasury shall—

(A) consult on a regular and timely basis with the Committee on Banking, Finance and Urban Affairs and the Committee on Appropriations of the House of Representatives, and the Committee on Foreign Relations and the Committee on Appropriations of the Senate;

(B) seek to ensure that procedures and mechanisms are established, including the creation of specific departments or staffs within the Bank, which will allow the Bank to assess the impact of any loans, guarantees, or other activities on the environment and on internationally recognized human rights in borrower countries; and

(C) report, through consultation within 90 days after the date of the enactment of this Act, to the Committees specified in subparagraph (A) on the progress of efforts to create such procedures and mechanisms.

(d) EXPORT-IMPORT BANK PROVISIONS.—

(1) INCREASE IN AMOUNTS AUTHORIZED TO BE APPROPRIATED FOR THE TIED AID CREDIT FUND; EXTENSION OF AUTHORIZATION.—Section 15(e)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635i-3(e)(1)) is amended by striking "and for fiscal years 1990 and 1991, $300,000,000" and inserting "for fiscal year 1990, $300,000,000, and for each of fiscal years 1991 and 1992, $500,000,000".

(2) CONFORMING AMENDMENT.—Section 15(c)(2) of such Act (12 U.S.C. 635i-3(c)(2)) is amended by striking "1991" and inserting "1992".

(e) INTERNATIONAL FINANCE CORPORATION PROVISIONS.—

(1) EXEMPTION FROM SECURITIES LAWS FOR CERTAIN SECURITIES ISSUED BY THE INTERNATIONAL FINANCE CORPORATION.—

(A) EXEMPTION FROM SECURITIES LAWS; REPORTS REQUIRED.—The International Finance Corporation Act (22 U.S.C. 282 et seq.) is amended by adding at the end the following:

"SEC. 13. SECURITIES ISSUED BY THE CORPORATION.

"(a) EXEMPTION FROM SECURITIES LAWS; REPORTS TO SECURITIES AND EXCHANGE COMMISSION.—Any securities issued by the Corporation (including any guaranty by the Corporation, whether or not limited in scope) and any securities guaranteed by the Corporation as to both principal and interest shall be deemed to be exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 and section 3(a)(12) of the Securities Exchange Act of 1934. The Corporation shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Corporation and its operations and necessary in the public interest or for the protection of investors.

"(b) AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION TO SUSPEND EXEMPTION; REPORTS TO THE CONGRESS.—The Securities and Exchange Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, is authorized to suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Corporation during the period of such suspension. The Commission shall include in its annual reports to the Congress such information as it shall deem advisable with regard to the operations and effect of this section.".

(B) EXEMPTION FROM LIMITATIONS AND RESTRICTIONS ON POWER OF NATIONAL BANKING ASSOCIATIONS TO DEAL IN AND UNDERWRITE INVESTMENT SECURITIES OF THE INTERNATIONAL FINANCE CORPORATION.—The 7th sentence of paragraph 7 of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by striking "the African Development Bank or the Inter-American Investment Corporation,", and inserting "the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation,".

And the Senate agree to the same.

Amendment numbered 142:

That the House recede from its disagreement to the amendment of the Senate numbered 142, and agree to the same with an amendment, as follows:

After subsection (g) inserted in said amendment, insert the following:

(h) Any funds made available during fiscal year 1991 to carry out the purposes of this section, either appropriated by this Act or derived by transfer from any other source, in excess of $7,500,000 shall be subject to the regular reprogramming procedures of the Committee on Appropriations.

And the Senate agree to the same.

Amendment numbered 144:

That the House recede from its disagreement to the amendment of the Senate numbered 144, and agree to the same with an amendment, as follows:

In lieu of "Section 5669(d)" named in said amendment, insert: Section 566(d); and the Senate agree to the same.

Amendment numbered 146:

That the House recede from its disagreement to the amendment of the Senate numbered 146, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: not less than $7,500,000 to be derived in equal amounts from funds appropriated to carry out chapter 1 of part I and chapter 4 of part II shall be; and the Senate agree to the same.

Amendment numbered 150:

That the House recede from its disagreement to the amendment of the Senate numbered 150, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *"$378,000,000 for fiscal year 1991, of which amount not less than $300,000,000 shall be for stockpiles in Israel"*; and the Senate agree to the same.

Amendment numbered 152:

That the House recede from its disagreement to the amendment of the Senate numbered 152, and agree to the same with an amendement, as follows:

In lieu of subsection (b)(1) inserted by said amendment, insert:

(1) the state of emergency in Pakistan did not interfere in the fair conduct of National Assembly elections;

In subsection (b)(2) after the words "parties and all" insert: *legal*

In lieu of subsection (b)(4) inserted by said amendment, insert:

(4) the process of convening the National Assembly is progressing without interference.

And the Senate agree to the same.

Amendment numbered 155:

That the House recede from its disagreement to the amendment of the Senate numbered 155, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *for such purposes as:*

(i) project and sector assistance activities, or

(ii) debt and deficit financing; or, and the Senate agree to the same.

Amendment numbered 156:

That the House recede from its disagreement to the amendment of the Senate numbered 156, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

(5) CONFORMING AMENDMENTS.—The provisions of this subsection shall supersede the tenth and eleventh provisos contained under the heading "Sub-Saharan Africa, Development Assistance" as included in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 and sections 531(d) and 609 of the Foreign Assistance Act of 1961.

And the Senate agree to the same.

Amendment numbered 159:

That the House recede from its disagreement to the amendment of the Senate numbered 159, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

SEC. 579.(a) None of the funds made available by this Act for the European Bank for Reconstruction and Development may be obligated until the President reaches an agree-

ment or agreements, as necessary, with the Polish Government or with other creditors, the authority to enter into which he is hereby granted notwithstanding any other provision of law, which accurately reflect the real collectability of the debts of the Polish Government to the Government of the United States and which adjusts the amount of debt and debt service payable by the Polish Government to the Government of the United States accordingly, subject to the following conditions:

(1) an International Monetary Fund agreement is in effect with respect to Poland, and it is clear that it is the intent of the Polish Government to continue full implementation of that program, and

(2) the recent historic change of the Polish Government into a democracy has been maintained, and

(3) the Polish Government is seeking comparable treatment of both public and private external debt.

(b) If the President determines that, in order to substantially increase the probability of other creditor governments and commercial bankers taking actions adjusting or restructuring their Polish debt to reflect its real collectability, it is best for the United States to use the authority contained in subsection (a), then the President may exercise the authority of subsection (a) unilaterally.

(c) Funds may be obligated notwithstanding subsection (a) subject to the regular notification procedures of the Committees on Appropriations.

And the Senate agree to the same.

Amendment numbered 161:

That the House recede from its disagreement to the amendment of the Senate numbered 161, and agree to the same with an amendment, as follows:

In lieu of the words "two years" named in said amendment, insert: *Three years*; and the Senate agree to the same.

Amendment numbered 163:

That the House recede from its disagreement to the amendment of the Senate numbered 163, and agree to the same with an amendment, as follows:

After "Sec. 583." named in said amendment, delete: "(a)"

After the words "section 570 of this Act" insert: *: Provided further, That local currencies made available for the Jagiellonian University under this heading shall be made available only to the extent that they do not diminish planned funding for the American Children's Hospital, Krakow, Poland*

Delete subsection (b) inserted in said amendment.

And the Senate agree to the same.

Amendment numbered 164:

That the House recede from its disagreement to the amendment of the Senate numbered 164, and agree to the same with an amendment, as follows:

After the word "operations" in subsection (3), insert: *and establishment of a system of public notification and comment during the development of EBRD policies and operating procedures*

After the words "restoration and protection" named in subsection (4) of said amendment, delete "; and" and all that follows through "training" named in subsection (5) of said amendment.

And the Senate agree to the same.

Amendment numbered 166:

That the House recede from its disagreement to the amendment of the Senate numbered 166, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

IRAQ SANCTIONS ACT OF 1990

SEC. 586. SHORT TITLE.

Section 586 through 586J of this Act may be cited as the "Iraq Sanctions Act of 1990".

SEC. 586A. DECLARATIONS REGARDING IRAQ's INVASION OF KUWAIT.

The Congress:—

(1) condemns Iraq's invasion of Kuwait on August 2, 1990;

(2) supports the actions that have been taken by the President in response to that invasion;

(3) calls for the immediate and unconditional withdrawal of Iraqi forces from Kuwait;

(4) supports the efforts of the United Nations Security Council to end this violation of international law and threat to international peace;

(5) supports the imposition and enforcement of multilateral sanctions against Iraq;

(6) calls on United States allies and other countries to support fully the efforts of the United Nations Security Council, and to take other appropriate actions, to bring about an end to Iraq's occupation of Kuwait; and

(7) condemns the brutal occupation of Kuwait by Iraq and its gross violations of internationally recognized human rights in Kuwait, including widespread arrests, torture, summary executions, and mass extrajudicial killings.

SEC. 586B. CONSULTATIONS WITH CONGRESS.

The President shall keep the Congress fully informed, and shall consult with the Congress, with respect to current and anticipated events regarding the international crisis caused by Iraq's invasion of Kuwait, including with respect to United States actions.

SEC. 586C. TRADE EMBARGO AGAINST IRAQ.

(a) CONTINUATION OF EMBARGO.—Except as otherwise provided in this section, the President shall continue to impose the trade embargo and other economic sanctions with respect to Iraq and Kuwait that the United States is imposing, in response to Iraq's invasion of Kuwait, pursuant to Executive Orders Number 12724 and 12725 (August 9, 1990) and, to the extent they are still in effect, Executive Orders Number 12722 and 12723 (August 2, 1990). Notwithstanding any other provision of law, no funds, credits, guarantees, or insurance appropriated or otherwise made available by this or any other Act for fiscal year 1991 or any fiscal year thereafter shall be used to support or administer any financial or commercial operation of any United States Government department, agency, or other entity, or of any person subject to the jurisdiction of the United States, for the benefit of the Government of Iraq, its agencies or instrumentalities, or any person working on behalf of the Government of Iraq, contrary to the trade embargo and other economic sanctions imposed in accordance with this section.

(b) HUMANITARIAN ASSISTANCE.—To the extent that transactions involving foodstuffs or payments for foodstuffs are exempted "in humanitarian circumstances" from the prohibitions established by the United States pursuant to United Nations Security Council Resolution 661 (1990), those exemptions shall be limited to foodstuffs that are to be provided consistent with United Nations Security Council Resolution 666 (1990) and other relevant Security Council resolutions.

(c) NOTICE TO CONGRESS OF EXCEPTIONS TO AND TERMINATION OF SANCTIONS.—

(1) NOTICE OF REGULATIONS.—Any regulations issued after the date of enactment of this Act with respect to the economic sanctions imposed with respect to Iraq and Kuwait by the United States under Executive Orders Number 12722 and 12723 (August 2, 1990) and Executive Orders Number 12724 and 12725 (August 9, 1990) shall be submitted to the Congress before those regulations take effect.

(2) NOTICE OF TERMINATION OF SANCTIONS.—The President shall notify the Congress at least 15 days before the termination, in whole or in part, of any sanction imposed with respect to Iraq or Kuwait pursuant to those Executive Orders.

(d) RELATION TO OTHER LAWS.—

(1) SANCTIONS LEGISLATION.—The sanctions that are described in subsection (a) are in addition to, and not in lieu of the sanctions provided for in section 586G of this Act or any other provision of law.

(2) NATIONAL EMERGENCIES AND UNITED NATIONS LEGISLATION.—Nothing in this section supersedes any provision of the National Emergencies Act or any authority of the President under the International Emergency Economic Powers Act or section 5(a) of the United Nations Participation Act of 1945.

SEC 586D. COMPLIANCE WITH UNITED NATIONS SANCTIONS AGAINST IRAQ

(a) DENIAL OF ASSISTANCE.—None of the funds appropriated or otherwise made available pursuant to this Act to carry out the Foreign Assistance Act of 1961 (including title IV of chapter 2 of part I, relating to the Overseas Private Investment Corporation) or the Arms Export Control Act may be used to provide assistance to any country that is not in compliance with the United Nations Security Council sanctions against Iraq unless the President determines and so certifies to the Congress that—

(1) such assistance is in the national interest of the United States;

(2) such assistance will directly benefit the needy people in that country; or

(3) the assistance to be provided will be humanitarian assistance for foreign nationals who have fled Iraq and Kuwait.

(b) IMPORT SANCTIONS.—If the President considers that the taking of such action would promote the effectiveness of the economic sanctions of the United Nations and the United States imposed with respect to Iraq, and is consistent with the national interest, the President may prohibit, for such a period of time as he considers appropriate, the importation into the United States of any or all products of any foreign country that has not prohibited—

(1) the importation of products of Iraq into its customs territory, and

(2) the export of its products to Iraq.

SEC. 586E. PENALTIES FOR VIOLATIONS OF EMBARGO.

Notwithstanding section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) and section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b))—

(1) a civil penalty of not to exceed $250,000 may be imposed on any person who, after the date of enactment of this Act, violates or evades or attempts to violate or evade Executive Order Number 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive Order; and

(2) whoever, after the date of enactment of this Act, willfully violates or evades or attempts to violate or evade Executive Order Number 12722, 12723, 12724, or 12725 or any

license, order, or regulation issued under any such Executive Order—

(A) shall, upon conviction, be fined not more than $1,000,000, if a person other than a natural person; or

(B) if a natural person, shall, upon conviction, be fined not more than $1,000,000, be imprisoned for not more than 12 years, or both.

Any officer, director, or agent of any corporation who knowingly participates in a violation, evasion, or attempt described in paragraph (2) may be punished by imposition of the fine or imprisonment (or both) specified in subparagraph (B) of that paragraph.

SECTION 586F. DECLARATIONS REGARDING IRAQ'S LONG-STANDING VIOLATIONS OF INTERNATIONAL LAW.

(a) IRAQ'S VIOLATIONS OF INTERNATIONAL LAW.—The Congress determines that—

(1) the Government of Iraq has demonstrated repeated and blatant disregard for its obligations under international law by violating the Charter of the United Nations, the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (done at Geneva, June 17, 1925), as well as other international treaties;

(2) the Government of Iraq is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights and is obligated under the Covenants, as well as the Universal Declaration of Human Rights, to respect internationally recognized human rights;

(3) the State Department's Country Reports on Human Rights Practices for 1989 again characterizes Iraq's human rights record as "abysmal";

(4) Amnesty International, Middle East Watch, and other independent human rights organizations have documented extensive, systematic, and continuing human rights abuses by the Government of Iraq, including summary executions, mass political killings, disappearances, widespread use of torture, arbitrary arrests and prolonged detention without trial of thousands of political opponents, forced relocation and deportation, denial of nearly all civil and political rights such as freedom of association, assembly, speech, and the press, and the imprisonment, torture, and execution of children;

(5) since 1987, the Government of Iraq has intensified its severe repression of the Kurdish minority of Iraq, deliberately destroyed more than 3,000 villages and towns in the Kurdish regions, and forcibly expelled more than 500,000 people, thus effectively depopulating the rural areas of Iraqi Kurdistan;

(6) Iraq has blatantly violated international law by initiating use of chemical weapons in the Iran-Iraq war;

(7) Iraq has also violated international law by using chemical weapons against its own Kurdish citizens, resulting in tens of thousands of deaths and more than 65,000 refugees;

(8) Iraq continues to expand its chemical weapons capability, and President Saddam Hussein has threatened to use chemical weapons against other nations;

(9) persuasive evidence exists that Iraq is developing biological weapons in violation of international law;

(10) there are strong indications that Iraq has taken steps to produce nuclear weapons and has attempted to smuggle from the United States, in violation of United States law, components for triggering devices used in nuclear warheads whose manufacture would contravene the Treaty on the Non-Proliferation of Nuclear Weapons, to which Iraq is a party; and

(11) Iraqi President Saddam Hussein has threatened to use terrorism against other nations in violation of international law and has increased Iraq's support for the Palestine Liberation Organization and other Palestinian groups that have conducted terrorist acts.

(b) HUMAN RIGHTS VIOLATIONS.—The Congress determines that the Government of Iraq is engaged in a consistent pattern of gross violations of internationally recognized human rights. All provisions of law that impose sanctions against a country whose government is engaged in a consistent pattern of gross violations of internationally recognized human rights shall be fully enforced against Iraq.

(c) SUPPORT FOR INTERNATIONAL TERRORISM.—(1) The Congress determines that Iraq is a country which has repeatedly provided support for acts of international terrorism, a country which grants sanctuary from prosecution to individuals or groups which have committed an act of international terrorism, and a country which otherwise supports international terrorism. The provisions of law specified in paragraph (2) and all other provisions of law that impose sanctions against a country which has repeatedly provided support for acts of international terrorism, which grants sanctuary from prosecution to an individual or group which has committed an act of international terrorism, or which otherwise supports international terrorism shall be fully enforced against Iraq.

(2) The provisions of law referred to in paragraph (1) are—

(A) section 40 of the Arms Export Control Act;

(B) section 620A of the Foreign Assistance Act of 1961;

(C) sections 555 and 556 of this Act (and the corresponding sections of predecessor foreign operations appropriations Acts); and

(D) section 555 of the International Security and Development Cooperation Act of 1985.

(d) MULTILATERAL COOPERATION.—The Congress calls on the President to seek multilateral cooperation—

(1) to deny dangerous technologies to Iraq;

(2) to induce Iraq to respect internationally recognized human rights; and

(3) to induce Iraq to allow appropriate international humanitarian and human rights organizations to have access to Iraq and Kuwait, including the areas in northern Iraq traditionally inhabited by Kurds.

SEC. 586G. SANCTIONS AGAINST IRAQ.

(a) IMPOSITION.—Except as provided in section 586H, the following sanctions shall apply with respect to Iraq:

(1) FMS SALES.—The United States Government shall not enter into any sale with Iraq under the Arms Export Control Act.

(2) COMMERCIAL ARMS SALES.—Licenses shall not be issued for the export to Iraq of any item on the United States Munitions List.

(3) EXPORTS OF CERTAIN GOODS AND TECHNOLOGY.—The authorities of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405) shall be used to prohibit the export to Iraq of any goods or technology listed pursuant to that section or section 5(c)(1) of that Act (50 U.S.C. App. 2404(c)(1)) on the control list provided for in section 4(b) of that Act (50 U.S.C. App. 2403(b)).

(4) NUCLEAR EQUIPMENT, MATERIALS, AND TECHNOLOGY.—

(A) NRC LICENSES.—The Nuclear Regulatory Commission shall not issue any license or other authorization under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) for the export to Iraq of any source or special nuclear material, any production or utilization facility, any sensitive nuclear technology, any component, item, or substance determined to have significance for nuclear explosive purposes pursuant to section 109b. of the Atomic Energy Act of 1954 (42 U.S.C. 2139(b)), or any other material or technology requiring such a license or authorization.

(B) DISTRIBUTION OF NUCLEAR MATERIALS.—The authority of the Atomic Energy Act of 1954 shall not be used to distribute any special nuclear material, source material, or byproduct material to Iraq.

(C) DOE AUTHORIZATIONS.—The Secretary of Energy shall not provide a specific authorization under section 57b. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)(2)) for any activity that would constitute directly or indirectly engaging in Iraq in activities that require a specific authorization under that section.

(5) ASSISTANCE FROM INTERNATIONAL FINANCIAL INSTITUTIONS.—The United States shall oppose any loan or financial or technical assistance to Iraq by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d).

(6) ASSISTANCE THROUGH THE EXPORT-IMPORT BANK.—Credits and credit guarantees through the Export-Import Bank of the United States shall be denied to Iraq.

(7) ASSISTANCE THROUGH THE COMMODITY CREDIT CORPORATION.—Credit, credit guarantees, and other assistance through the Commodity Credit Corporation shall be denied to Iraq.

(8) FOREIGN ASSISTANCE.—All forms of assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 and following) other than emergency assistance for medical supplies and other forms of emergency humanitarian assistance, and under the Arms Export Control Act (22 U.S.C. 2751 and following) shall be denied to Iraq.

(b) CONTRACT SANCTITY.—For purposes of the export controls imposed pursuant to subsection (a)(3), the date described in subsection (m)(1) of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405) shall be deemed to be August 1, 1990.

SEC. 586H. WAIVER AUTHORITY.

(a) IN GENERAL.—The President may waive the requirements of any paragraph of section 586G(a) if the President makes a certification under subsection (b) or subsection (c).

(b) CERTIFICATION OF FUNDAMENTAL CHANGES IN IRAQI POLICIES AND ACTIONS.—The authority of subsection (a) may be exercised 60 days after the President certifies to the Congress that—

(1) the Government of Iraq—

(A) has demonstrated, through a pattern of conduct, substantial improvement in its respect for internationally human rights;

(B) is not acquiring, developing, or manufacturing (i) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses; and

(C) does not provide support for international terrorism;

(2) the Government of Iraq is in substantial compliance with its obligations under international law, including—

(A) the Charter of the United Nations;

(B) the International Covenant on Civil and Political Rights (done at New York, December 16, 1966) and the International Covenant on Economic, Social, and Cultural Rights (done at New York, December 16, 1966);

(C) the Convention on the Prevention and Punishment of the Crime of Genocide (done at Paris, December 9, 1948);

(D) the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (done at Geneva, June 7, 1925);

(E) the Treaty on the Non-Proliferation of Nuclear Weapons (done at Washington, London, and Moscow, July 1, 1968); and

(F) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (done at Washington, London, and Moscow, April 10, 1972); and

(3) the President has determined that it is essential to the national interests of the United States to exercise the authority of subsection (a).

(c) CERTIFICATION OF FUNDAMENTAL CHANGES IN IRAQI LEADERSHIP AND POLICIES.—The authority of subsection (a) may be exercised 30 days after the President certifies to the Congress that—

(1) there has been a fundamental change in the leadership of the Government of Iraq; and

(2) the new Government of Iraq has provided reliable and credible assurances that—

(A) it respects internationally recognized human rights and it will demonstrate such respect through its conduct;

(B) it is not acquiring, developing, or manufacturing and it will not acquire, develop, or manufacture (i) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses;

(C) it is not and will not provide support for international terrorism; and

(D) it is and will continue to be in substantial compliance with its obligations under international law, including all the treaties specified in subparagraphs (A) through (F) of subsection (b)(2).

(d) INFORMATION TO BE INCLUDED IN CERTIFICATIONS.—Any certification under subsection (b) or (c) shall include the justification for each determination required by that subsection. The certification shall also specify which paragraphs of section 586G(a) the President will waive pursuant to that certification.

SEC. 586I. DENIAL OF LICENSES FOR CERTAIN EXPORTS TO COUNTRIES ASSISTING IRAQ'S ROCKET OR CHEMICAL, BIOLOGICAL, OR NUCLEAR WEAPONS CAPABILITY.

(a) RESTRICTION ON EXPORT LICENSES.—None of the funds appropriated by this or any other Act may be used to approve the licensing for export of any supercomputer to any country whose government the President determines is assisting, or whose government officials the President determines are assisting, Iraq to improve its rocket technology or chemical, biological, or nuclear weapons capability.

(b) NEGOTIATIONS.—The President is directed to begin immediate negotiations with those governments with which the United States has bilateral supercomputer agreements, including the Government of the United Kingdom and the Government of Japan, on conditions restricting the transfer to Iraq of supercomputer or associated technology.

SEC. 586J. REPORTS TO CONGRESS.

(a) STUDY AND REPORT ON THE INTERNATIONAL EXPORT TO IRAQ OF NUCLEAR, BIOLOGICAL, CHEMICAL, AND BALLISTIC MISSILE TECHNOLOGY.—(1) The President shall conduct a study on the sale, export, and third party transfer or development of nuclear, biological, chemical, and ballistic missile technology to or with Iraq including—

(A) an identification of specific countries, as well as companies and individuals, both foreign and domestic, engaged in such sale or export of, nuclear, biological, chemical, and ballistic missile technology;

(B) a detailed description and analysis of the international supply, information, support, and co-production network, individual, corporate, and state, responsible for Iraq's current capability in the area of nuclear, biological, chemical, and ballistic missile technology; and

(C) a recommendation of standards and procedures against which to measure and verify a decision of the Government of Iraq to terminate the development, production, co-production, and deployment of nuclear, biological, chemical, and offensive ballistic missile technology as well as the destruction of all existing facilities associated with such technologies.

(2) The President shall include in the study required by paragraph (1) specific recommendations on new mechanisms, to include, but not be limited to, legal, political, economic and regulatory, whereby the United States might contribute, in conjunction with its friends, allies, and the international community, to the management, control, or elimination of the threat of nuclear, biological, chemical, and ballistic missile proliferation.

(3) Not later than March 30, 1991, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report, in both classified and unclassified form, setting forth the findings of the study required by paragraph (1) of this subsection.

(b) STUDY AND REPORT ON IRAQ'S OFFENSIVE MILITARY CAPABILITY.—(1) The President shall conduct a study on Iraq's offensive military capability and its affect on the Middle East balance of power including an assessment of Iraq's power projection capability, the prospects for another sustained conflict with Iran, joint Iraqi-Jordanian military cooperation, the threat Iraq's arms transfer activities pose to United States allies in the Middle East, and the extension of Iraq's political-military influence into Africa and Latin America.

(2) Not later than March 30, 1991, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report, in both classified and unclassified form, setting forth the findings of the study required by paragraph (1).

(c) REPORT ON SANCTIONS TAKEN BY OTHER NATIONS AGAINST IRAQ.—(1) The President shall prepare a report on the steps taken by other nations, both before and after the August 2, 1990, invasion of Kuwait, to curtail the export of goods, services, and technologies to Iraq which might contribute to, or enhance, Iraq's nuclear, biological, chemical, and ballistic missile capability.

(2) The President shall provide a complete accounting of international compliance with each of the sanctions resolutions adopted by the United Nations Security Council against Iraq since August 2, 1990, and shall list, by name, each country which to his knowledge, has provided any assistance to Iraq and the amount and type of that assistance in violation of each United Nations resolution.

(3) The President shall make every effort to encourage other nations, in whatever forum or context, to adopt sanctions toward Iraq similar to those contained in this section.

(4) Not later than every six months after the date of enactment of this Act, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report in both classified and unclassified form, setting forth the findings of the study required by paragraph (1) of this subsection.

And the Senate agree to the same.

Amendment numbered 168:

That the House recede from its disagreement to the amendment of the Senate numbered 168, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *SEC. 587*; and the Senate agree to the same.

Amendment numbered 169:

That the House recede from its disagreement to the amendment of the Senate numbered 169, and agree to the same with an amendment, as follows:

In lieu of "SEC. 589" named in said amendment insert: *SEC. 588*

In lieu of the sum "$50,000,000" named in said amendment, insert: *$25,000,000*; and the Senate agree to the same.

Amendment numbered 172:

That the House recede from its disagreement to the amendment of the Senate numbered 172, and agree to the same with an amendment, as follows:

In lieu of "SEC. 599A" named in said amendment insert: *SEC. 589*; and the Senate agree to the same.

Amendment numbered 173:

That the House recede from its disagreement to the amendment of the Senate numbered 173, and agree to the same with an amendment, as follows:

In lieu of "SEC. 599B" named in said amendment insert: *SEC. 590*; and the Senate agree to the same.

Amendment numbered 175:

That the House recede from its disagreement to the amendment of the Senate numbered 175, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

NOTIFICATIONS FOR EMERGENCY ASSISTANCE

SEC. 591. The prior notification requirements contained in section 523 of this Act may be waived if failure to do so would pose a substantial risk to human health or welfare: Provided, That in case of any such waiver, notification to the Congress, or the appropriate congressional committees, shall be provided as early as practicable, but in no event later than three days after taking the action to which such notification re-

quirement was applicable in the context of the circumstances necessitating such waiver: Provided further, That any notification provided pursuant to this section shall contain an explanation of the circumstances necessitating the use of the authority of this section.

And the Senate agree to the same.

Amendment numbered 176:

That the House recede from its disagreement to the amendment of the Senate numbered 176, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

SUPPORT FOR EGYPTIAN MILITARY DEPLOYMENTS IN THE GULF

SEC. 592. MULTILATERAL DEBT NEGOTIATIONS.—The Congress finds that Egypt has official debt obligations that far exceed the amounts owed to the United States. The Congress further finds that Egypt's debt situation can be addressed effectively only in a multilateral context involving its major creditor governments and addressing both military and economic debt.

Therefore, before the authority contained in subsection (b) is exercised, the President shall seek to convene a multilateral conference of the major official creditors of the Government of Egypt for the purpose of adjusting Egypt's official debt in a manner which reflects the real collectability of that debt.

The President in such negotiations shall explicitly and strongly encourage other governments holding major amounts of Egyptian military debt to give that debt the same treatment that it is being accorded by the United States.

(a) DEBT MORATORIUM.—(1) There shall be a moratorium on the payment obligation by Egypt beginning on October 1, 1990, and ending on March 31, 1991, with respect to the notes described in paragraph (2);

(2) the notes with respect to which this moratorium shall apply are all notes made by Egypt evidencing amounts owed by Egypt to the United States (or any agency of the United States) as a result of loans made before October 1, 1990, by the United States (or any of its agencies) to Egypt under the Arms Export Control Act (all such loans being hereinafter collectively referred to as the "AECA Loans");

(3) section 518 of this Act, section 620(g) of the Foreign Assistance Act of 1961, and any other provision that similarly restricts the furnishing of assistance to countries in default on payment to the United States of principal or interest shall not apply during the moratorium described in paragraph (1) with respect to amounts owed by Egypt under the AECA Loans; and

(4) nothing in this subsection shall interfere with, or otherwise diminish, the obligation of the Secretary of Defense as guarantor with respect to the AECA Loans.

(b) DEBT CONSOLIDATION IN THE DEPARTMENT OF DEFENSE.—As soon as feasible after the enactment of this Act, the Secretary of Defense shall—

(1) issue to the Secretary of the Treasury sufficient notes or other obligations to purchase all notes made by Egypt evidencing amounts owed by Egypt to the United States (or any agency of the United States), other than amounts already owed to the Secretary of Defense, as a result of AECA Loans; and

(2) purchase all such notes made by Egypt, such purchase being considered to discharge the responsibilities of the Secretary of Defense as guarantor of such notes.

(c) PRESIDENTIAL REPORT ON THE REAL VALUE OF EGYPTIAN DEBT OWED TO THE UNITED STATES AND PRESIDENTIAL MILITARY DEBT REDUCTION AUTHORITY.—After the Department of Defense has taken the actions described in subsection (b),

(1) the President shall submit a report to Congress in which he determines the value of the AECA Loans and all other loans owed by Egypt to the United States based on realistic payment expectations as of October 1, 1990, and an explanation of the factors considered by the President in determining the value; and

(2) after the President has submitted the report to Congress provided for in paragraph (1), the President may

(A) reduce the amount owed by Egypt to the Secretary of Defense to an amount that equals the value of the AECA Loans as determined by the President in the report described in paragraph (1);

(B) direct the Secretary of Defense to amend, modify or otherwise alter the notes described in subsection (a)(2) so that the amended, modified or altered notes (the "amended notes") evidence a principal amount owed by Egypt to the Secretary of Defense equal to the value of the AECA Loans as determined under paragraph (1), and contain such terms and conditions as the President may determine consistent with the purposes of this section, provided that such terms and conditions shall not—

(i) reflect any interest accrued in respect of the period between October 1, 1990, and March 31, 1991; and

(ii) require Egypt to make any payment before March 31, 1991; and

(C) reduce the amount owed by the Secretary of Defense under all notes or other obligations issued by the Secretary of Defense to the Secretary of the Treasury that are related to any guarantees of any AECA Loans (including all notes or other obligations issued under subsection (b)) by multiplying it by a fraction, the numerator of which shall equal the value of the AECA Loans as determined under paragraph (1), and the denominator of which shall equal the sum of (i) the amount owed by the Secretary of Defense under notes issued to the Secretary of the Treasury pursuant to Subsection (b)(1), plus (ii) the amount owed by Egypt as a result of the AECA Loans to the Secretary of Defense as of October 1, 1990, plus (iii) the amount that Egypt would have owed as a result of the AECA Loans to the Secretary of Defense in respect of the period beginning October 1, 1990, and ending immediately before the President makes the reduction described in subsection (c)(2)(A).

The military debt reduction authority provided by this subsection shall be limited such that no reduction shall result in a decrease in the principal value of the AECA Loans below the discounted net present value which would result from a restructuring of the AECA Loans according to the terms and conditions which apply to the loans of the International Development Association, (principal shall be repayable over 40 years and shall bear no interest, and there shall be a 10 year grace period after which period 2 per centum of the loan shall be repaid annually for a period of 10 years, and 4 per centum of the loan shall be repaid annually during the remaining years).

(d) DEBT CANCELLATION AUTHORITY.—(1) The President, notwithstanding any other provision of law, in the context of the multilateral debt negotiations provided for in this section may reduce to zero the amended notes (in the manner specified in subsection (e)(2) (A) and (B)) only if other major holders of Egyptian military debt agree to equal or comparable reductions. If such other creditors do not agree to comparable reductions in their Egyptian military debt the President shall so report to Congress.

(2) If the President reports to Congress under paragraph (1) then he may further determine that it is essential to the national security interests of the United States to unilaterally cancel the requirement of Egypt to repay the United States for such Egyptian military debt.

(e) CONSIDERATIONS.—(1) In making this determination under subsection (d)(2), the President may consider—

(A) the unique nature of Egypt's contribution to Desert Shield, and its leadership role in supporting international efforts in the face of Iraqi aggression in the Arabian Peninsula;

(B) the impact on the Egyptian economy of the events surrounding the Iraqi aggression;

(C) the long-term prospects for economic growth and stability in Egypt, and the effect on those prospects of such a determination;

(D) the role that Egypt's assumption of FMS debt played in furtherance of the common security interests of Egypt and the United States, and the role if any that such debt was expected to have relative to other forms of official debt in generating income and promoting growth in the Egyptian economy;

(E) the willingness of other countries to participate in efforts to address the issue of official Egyptian military debt on a multilateral basis; and

(F) any other national security interests of the United States; and

(2) If the President determines in the report provided for in subsection (d) that doing so is essential to the success of Desert Shield, or to enhance peace and stability in the Middle East, then he is hereby authorized to reduce to zero—

(A) the amount owed by Egypt to the Secretary of Defense under the amended notes; and

(B) the amount owed by the Secretary of Defense under all notes or other obligations issued by the Secretary of Defense to the Secretary of the Treasury that are related to any guarantees of any AECA Loans, including all notes or other obligations issued under subsection (b)(1).

(f) The President may carry out the purposes of this section notwithstanding any other provision of law.

And the Senate agree to the same.

Amendment numbered 177;

That the House recede from its disagreement to the amendment of the Senate numbered 177, and agree to the same with an amendment, as follows:

In lieu of "SEC. 599F" named in said amendment insert: *SEC. 593*

Strike all after the words "freedoms of expression" and insert in lieu thereof: *: Provided, That none of the funds appropriated by this Act under the headings "Economic Support Fund" and "Foreign Military Financing Program" may be obligated or expended for Kenya until 30 days after such report is transmitted to the Congress.*; and the Senate agree to the same.

Amendment numbered 178;

That the House recede from its disagreement to the amendment of the Senate numbered 178, and agree to the same with an amendment, as follows:

In lieu of "SEC. 599G" named in said amendment insert: *SEC. 594*; and the Senate agree to the same.

Amendment numbered 179:

That the House recede from its disagreement to the amendment of the Senate numbered 179, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *SEC. 595*; and the Senate agree to the same.

Amendment numbered 180:

That the House recede from its disagreement to the amendment of the Senate numbered 180, and agree to the same with an amendment, as follows:

In lieu of "SEC. 599I" named in said amendment insert: *SEC. 596*

On line 10, page 170, of the hand engrossed Senate amendments after "such" insert: *nonlethal*

On line 15, page 170, of the hand engrossed Senate amendments after "transfer" insert: *nonlethal*

On line 23, page 170, of the hand engrossed Senate amendments after "the" insert: *nonlethal*

On line 13, page 171, of the hand engrossed Senate amendments after "ring" insert: *nonlethal*

On line 18, page 171, of the hand engrossed Senate amendments after "of" insert: *nonlethal*

On line 2, page 172, of the hand engrossed Senate amendments after "furnished" insert: *nonlethal*

On line 4, page 172, of the hand engrossed Senate amendments after "value of the" insert: *nonlethal*

On line 9, page 172, of the hand engrossed Senate amendments after "of" insert: *nonlethal*

On line 13, page 172, of the hand engrossed Senate amendments after "of" insert: *nonlethal*

On line 19, page 172, of the hand engrossed Senate amendments after "the" insert: *nonlethal*

After line 24, page 172, insert the following new subsection:

(d) During fiscal year 1991, the provisions of section 573(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, shall be applicable, for the period specified therein, to excess defense articles made available under sections 516 and 519 of the Foreign Assistance Act of 1961.

And the Senate agree to the same.

Amendment numbered 181:

That the House recede from its disagreement to the amendment of the Senate numbered 181, and agree to the same with an amendment, as follows:

In lieu of "SEC. 599J" named in said amendment insert: *SEC. 597*

Strike lines 9 through 15 on page 173 of the hand engrossed Senate amendments and insert in lieu thereof:

(1) the Government of El Salvador has made significant progress in establishing an independent civilian judiciary and prosecutorial and investigative system. For purposes of this paragraph "significant progress" means certification that—

Strike subsection (c) of said amendment.

And the Senate agree to the same.

Amendment numbered 182:

That the House recede from its disagreement to the amendment of the Senate numbered 182, and agree to the same with an amendment, as follows:

In lieu of "SEC. 599K" named in said amendment insert: *SEC. 598*; and the Senate agree to the same.

Amendment numbered 183:

That the House recede from its disagreement to the amendment of the Senate numbered 183, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment insert:

PRIORITY DELIVERY OF EQUIPMENT

SEC. 599. Notwithstanding any other provision of law, the delivery of excess defense articles that are to be transferred on a grant basis under Section 516 of the Foreign Assistance Act to NATO allies and to major non-NATO allies on the southern and southeastern flank of NATO shall be given priority to the maximum extent feasible over the delivery of such excess defense articles to other countries.

And the Senate agree to the same.

Amendment numbered 184:

That the House recede from its disagreement to the amendment of the Senate numbered 184, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

YUGOSLAVIA

SEC. 599A. Six months after the date of enactment of this Act, (1) none of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to provide any direct assistance to the Federal Republic of Yugoslavia, and (2) the Secretary of the Treasury shall instruct the United States Executive Director of each international financial institution to use the voice and vote of the United States to oppose any assistance of the respective institutions to the Federal Republic of Yugoslavia: Provided, That this section shall not apply to assistance intended to support democratic parties or movements, emergency or humanitarian assistance, or the furtherance of human rights: Provided further, That this section shall not apply if all six of the individual Republics of the Federal Republic of Yugoslavia have held free and fair multiparty elections and are not enaged in a pattern of systematic gross violations of human rights: Provided further, That notwithstanding the failure of the individual Republics of the Socialist Federal Republic of Yugoslavia to have held free and fair multiparty elections within six months of the enactment of this Act, this section shall not apply if the Secretary of State certifies that the Socialist Federal Republic of Yugoslavia is making significant strides toward complying with the obligations of the Helsinki Accords and is encouraging any Republic which has not held free and fair multiparty elections to do so.

And the Senate agree to the same.

Amendment numbered 186:

That the House recede from its disagreement to the amendment of the Senate numbered 186, and agree to the same with an amendment, as follows:

In lieu of "SEC. 599O" named in said amendment, insert: *SEC. 599B*

On line 8, page 185 of the hand engrossed Senate amendments strike out: *"not less than"*; and the Senate agree to the same.

Amendment numbered 188:

That the House recede from its disagreement to the amendment of the Senate number 188, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

BENEFITS FOR UNITED STATES HOSTAGES IN IRAQ AND KUWAIT AND UNITED STATES HOSTAGES CAPTURED IN LEBANON

SEC. 599C. (a) ELIGIBILITY.—United States hostages in Iraq and Kuwait, and United States hostages captured in Lebanon, shall subject to the availability of funds under subsection (e), be entitled to the benefits described in this section. Except as otherwise provided in this section or other provision of law, no such individual or any family member shall receive any benefit under the provisions of title 5, United States Code.

(b) PAYMENTS FOR DURATION OF HOSTAGE STATUS, LIFE INSURANCE, AND HEALTH INSURANCE.—(1) Not later than 30 days after the date of enactment of this Act, the Office of Personnel Management, after consultation with the Department of State, shall prescribe regulations, consistent with this section, for the application of the provisions of chapter 87 (relating to life insurance) and chapter 89 (relating to health insurance) of title 5, United States Code, to the United States hostages in Iraq or Kawait, and United States hostages captured in Lebanon, and their family members for the period that such hostages remain in hostage status.

(2) United States hostages in Iraq or Kuwait, and United States hostages captured in Lebanon, shall, subject to the availability of funds under subsection (e), be paid at the rate of pay for a position at GS-9 of the General Schedule for the period in which such hostages remained in a hostage status without the hostages (or their family members on their behalf) receiving salaries or wages from their employers.

(3) During the period of an individual's hostage status and during the 12-month period after the hostage status of that individual ceases, such individual and his family members shall, subject to the availability of funds under subsection (e), be entitled to health benefits covered by paragraph (1) if such benefits were not provided by any other insurance coverage.

(4) During the period of an individual's hostage status and during the 12-month period after the hostage status of that individual ceases, that individual shall, subject to the availability of funds under subsection (e), be entitled to life insurance benefits covered by paragraph (1) if such benefits were not provided by any other insurance coverage.

(c) ADMINISTRATION OF AUTHORITIES.—(1) For purposes of this section, the Secretary of State shall certify to such officer of the United States as may require such information the names of the United States hostages in Iraq and Kuwait, and United States hostages captured in Lebanon, and their family members.

(2) For purposes of the protection of the identity of any individual, the Secretary of State may submit any certification under this subsection in classified form.

(3) The Secretary of State may require of any individual such verification of hostage status as he may deem necessary.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "hostage status" means, with respect to United States hostages in Iraq and Kuwait, the status of being held in custody by governmental or military authorities of a country or taking refuge within that country in fear of being taken into such custody (including residing in any diplomatic mission or consular post in that country); and, with respect to United States hostages captured in Lebanon, the status of a person described in paragraph (4)(B);

(2) the term "family members" means spouses, dependents, any individuals who are members of the households of United States hostages in Iraq and Kuwait or United States hostages captured in Lebanon;

(3) the term "United States economic sanctions against Iraq" means the exercise of authorities under the International Emergency Economic Powers Act by the President with respect to financial transactions with Iraq;

(4)(A) the term "United States hostages in Iraq and Kuwait" means United States nationals, or family members of United States nationals, who are in a hostage status in Iraq or Kuwait during the period beginning on August 2, 1990, and terminating on the date on which United States economic sanctios against Iraq are lifted; and

(B) the term "United States hostages captured in Lebanon" means United States nationals who have been forcibly detained, held hostage, or interned by an enemy government or its agents, or a hostile force, in Lebanon since January 1, 1990.

(5) the term "United States national" means any individual who is a citizen of the United States or who, though not a citizen of the United States, owes permanent allegiance to the United States.

(e) ALLOCATION OF FUNDS.—(1) of the funds appropriated by this Act under the heading "Economic Support Fund", up to $10,000,000 shall be available to carry out this section.

(2) The authority to obligate funds under the authority provided by this section shall expire six months after the date of enactment of this Act.

And the Senate agree to the same.

Amendment numbered 190:

That the House recede from its disagreement to the amendment of the Senate numbered 190, and agree to the same with an amendment, as follows:

In lieu of "SEC. 559T" named in said amendment insert: *SEC. 599D*; and the Senate agree to the same.

Amendment numbered 191:

That the House recede from its disagreement to the amendment of the Senate numbered 191, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *SEC. 599E*; and the Senate agree to the same.

Amendment numbered 192:

That the House recede from its disagreement to the amendment of the Senate numbered 192, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *SEC. 599F*; and the Senate agree to the same.

Amendment numbered 193:

That the House recede from its disagreement to the amendment of the Senate numbered 193, and agree to the same with an amendment, as follows:

In lieu of the section number named in the amendment, insert: *SEC. 599G*

After the words "sense of the" named in subsection (b) of said amendment, strike "Senate" and insert: *Congress*; and the Senate agree to the same.

Amendment numbered 194:

That the House recede from its disagreement to the amendment of the Senate numbered 194, and agree to the same with an amendment, as follows:

In lieu of section number "SEC. 599X" named in said amendment insert: *SEC. 599H*

In lieu of paragraph (c) inserted by said amendment, insert:

(c) PENALTIES.—After consulting with the Attorney General and the Director of the Office of National Drug Control Policy, the President shall impose penalties or sanctions including temporarily or permanently prohibiting any corporation, partnership, individual or business association (i) refusing to maintain records for the purpose of monitoring and regulating transactions of listed precursor chemicals, or (ii) refusing to make such records available to United States law enforcement authorities for investigative purposes (in coordination with the local law enforcement agency in which such corporation, partnership, individual, or business association resides, is created or has its principal place of business) from engaging in any or all transactions, in goods or services, within the commerce of the United States.

And the Senate agrees to the same.

Amendment numbered 195:

That the House recede from its disagreement to the amendment of the Senate numbered 195, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *SEC. 599I*; and the Senate agrees to the same.

Amendment numbered 196:

That the House recede from its disagreement to the amendment of the Senate numbered 196, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *SEC. 599J*; and the Senate agrees to the same.

Amendment numbered 198:

That the House recede from its disagreement to the amendment of the Senate numbered 198, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment insert:

SEC. 599K. Funds appropriated in the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1991 for title III of the Agricultural Trade Development and Assistance Act of 1954 shall be made available for the donation of commodities as authorized by law.

And the Senate agrees to the same.

DAVID R. OBEY,
SIDNEY R. YATES,
MATTHEW F. MCHUGH,
WILLIAM LEHMAN,
CHARLES WILSON,
WILLIAM H. GRAY III,
BOB MRAZEK,
RON COLEMAN,
JAMIE L. WHITTEN,
JERRY LEWIS
(except for enterprise for Americas initiative—Amendment 141),
JOHN PORTER
(except for enterprise for Americas initiative—Amendment 141),
DEAN GALLO
(except for enterprise for Americas initiative—Amendment 141),
SILVIO O. CONTE,
Managers on the Part of the House.

PATRICK J. LEAHY,
DANIEL K. INOUYE,
DENNIS DECONCINI,
FRANK R. LAUTENBERG,
TOM HARKIN,
BARBARA A. MIKULSKI,
ROBERT C. BYRD,
ROBERT W. KASTEN, Jr.,
ALFONSE D'AMATO,
WARREN RUDMAN,
ARLEN SPECTER,
DON NICKLES,
TED STEVENS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5114) making appropriations for Foreign Operations, Export Financing, and Related Programs for the fiscal year ending September 30, 1991, and for other purposes submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I—MULTILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL FINANCIAL INSTITUTIONS

CONTRIBUTION TO THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Amendment No. 1: Appropriates $110,592,409 for the International Bank for Reconstruction and Development as proposed by the Senate instead of $50,000,795 as proposed by the House.

Amendment No. 2: Inserts language which withholds 25 percent of the funds appropriated for the International Bank for Reconstruction and Development from obligation until the Secretary of the Treasury submits a report on actions the Bank has taken during fiscal year 1990 and contemplated for fiscal year 1991 in support of energy, forestry conservation and family planning activities.

INTERNATIONAL FINANCE CORPORATION

The conferees understand that the Treasury Department has been discussing the issue of a capital increase for the International Finance Corporation with other countries for some time.

The Joint World Bank/IMF Development Committee, meeting on September 24th, noted that given the changes made in Eastern Europe and the distinct movement of many developing countries toward the private sector, IFC's resources will become constrained. The group of 24 nations called for a decision on an IFC capital increase by the end of the year.

The conferees direct the Department to complete its evaluation of IFC's capital increase soon in order to allow other IFC shareholding nations to make their decisions on IFC's capital increase by the end of the year.

Amendment No. 3: Deletes language proposed by the Senate relating to night vision equipment.

Amendment No. 4: Deletes language proposed by the Senate conforming PL 480 provisions. The conferees agree to provide the proposed language as part of Amendment Number 198.

LIMITATION ON CALLABLE CAPITAL

Amendment No. 5: Limits callable capital subscriptions of the Internationl Bank for Reconstruction and Development to $2,899,610,241 as proposed by the Senate instead of $1,619,692,365 as proposed by the House.

INTER-AMERICAN INVESTMENT CORPORATION

Amendment No. 6: Provides $13,000,000 for the Inter-American Investment Corporation Capital Stock as proposed by the House.

ASIAN DEVELOPMENT FUND

Amendment No. 7: Appropriates $126,854,000 for the Asian Development Fund. The Senate had proposed $187,882,457. The House had proposed $243,900,000.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Amendment No. 8: Appropriates $70,020,600 for the initial United States paid-in capital share for the European Bank for Reconstruction and Development as proposed by the House instead of $56,820,600 as proposed by the Senate.

Amendment No. 9: Deletes Senate language requiring authorization of the European Development Bank prior to expenditure of funds.

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

Amendment No. 10: Appropriates $284,730,000 for International Organizations and Programs as proposed by the Senate instead of $268,750,000 as proposed by the House.

The conferees have agreed that the $15,800,000 earmarked for the United Nations Environment Program be allocated as follows:

$15,000,000 is to go directly to the United Nations Environment Program's Environment Fund, and;

$800,000 is to be used to support other multilateral activities such as the Vienna Convention for Protection of the Ozone Layer, the Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, and the South Pacific Regional Seas Program and Related Protocols.

INTERNATIONAL ORGANIZATIONS AND PROGRAMS EARMARKS

Amendment No. 11: Earmarks $109,000,000 for the United Nations Development program as proposed by the Senate instead of $104,000,000 as proposed by the House.

Amendment No. 12: Earmarks $450,000 for the World Heritage Fund as proposed by the Senate instead of $220,000 as proposed by the House.

Amendment No. 13: Earmarks $500,000 for the Tropical Forestry Action Plan.

Also, earmarks $250,000 for the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat.

Amendment No. 14: Earmarks $30,000,000 for the United States contribution to the replenishment of the International Fund for Agricultural Development as proposed by the Senate instead of $20,000,000 as proposed by the House.

Amendment No. 15: Inserts language proposed by the Senate requiring the Secretary of State to make certain determinations on the Tropical Forestry Action Plan and report them to Congress prior to making funds available for that program.

TITLE II—BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

AGENCY FOR INTERNATIONAL DEVELOPMENT

AGRICULTURE, RURAL DEVELOPMENT, AND NUTRITION, DEVELOPMENT ASSISTANCE

Amendment No. 16: Earmarks $225,000 for the Associate Professional Officers Program instead of $375,000 as proposed by the House.

Amendment No. 17: Deletes earmark proposed by the House which would have provided $5,000,000 for the International Fund For Agricultural Development. The conferees agree to provide funding for IFAD under the International Organizations and Programs account.

WORLD AGRICULTURAL DEVELOPMENT FOUNDATION

In 1990 the World Agricultural Development Foundation, as referred to in the Senate Report, was developed as a private sector home for several major agricultural development programs. The conferees recommend that the Agency for International Development provide up to $1,000,000 for the World Agricultural Development Foundation to be matched by private sources.

POPULATION, DEVELOPMENT ASSISTANCE

Amendment No. 18/19: The conferees have included language in the bill which states that, in providing development assistance funds in order to satisfy earmarks that may be derived from development assistance accounts, funds made available to carry out population programs are not to be reduced by a proportion which is greater than other development assistance accounts. In implementing this provision, the conferees recognize that individual development assistance accounts contain their own particular earmarks which make it difficult for those accounts to be used proportionately to provide a share of the funding for more general earmarks which are derived from all development accounts. However, the conferees expect that after taking into consideration the statutory demands on the individual AID accounts, family planning not be reduced by a proportion that is greater than other development assistance accounts.

Amendment No. 20: Inserts a provision requiring that 65 percent of funding under the Population, Development Assistance account be used for the Office of Population, as proposed by the Senate.

Amendment No. 21: Provides for up to 5 percent of Population, Development Assistance funds to be used for operating expenses for the administration of family planning assistance programs.

HEALTH, DEVELOPMENT ASSISTANCE

Amendment No. 22: Deletes an earmark of $3,500,000 as proposed by the House for the Gorgas Memorial Institute of Tropical And Preventive Medicine. The conferees agree that the Agency for International Development should examine the needs of the Gorgas Institute and find ways to assist its programs during fiscal year 1991.

Both the House and the Senate have earmarked $5,000,000 for the River Blindness Program. It is the intention of the conferees that a portion of this amount may be provided to private voluntary organizations to distribute ivermectin in OCP and non-OCP countries. The conferees expect PVO's to work within the framework of host countries' national river blindness control programs.

INTERNATIONAL AIDS PREVENTION AND CONTROL PROGRAM

Amendment No. 23: Earmarks $23,000,000 within the International AIDS Prevention and Control Program for the World Health Organization for its use in financing the Global Program on AIDS, including activities implemented by the Pan American Health Organization instead of $26,000,000 as proposed by the House or $21,000,000 as proposed by the Senate. The conferees agree that both the World Health Organization and the Agency for International Development need to strengthen their management of their AIDS programs and to initiate better coordination between the two organizations.

Amendment No. 24: Provides waivers for AIDS Prevention and Control Programs in countries under the "Brooke Amendment", and waives all other prohibitions with the exception of countries listed under terrorist country prohibitions.

EDUCATION AND HUMAN RESOURCES, DEVELOPMENT ASSISTANCE

SOVIET AND EAST EUROPEAN RESEARCH AND TRAINING

Amendment No. 25: Earmarks $5,400,000 for Soviet and East European research and training under the Department of State's Title VIII program on Soviet and regional studies as proposed by the House.

NORTH/SOUTH CENTER

Amendment No. 26: Earmarks $10,000,000 for the Center for Cultural and Technical Interchange Between North and South as proposed by the House. The $10,000,000 in funding for the North/South Center is to promote better relations between the United States and the nations of Latin America and the Caribbean and Canada through programs of education, cooperative study, training and research. It is the conferees intent that the funds provided be utilized to greatly expand the activities of the North/South Center, located in Florida and associated with the University of Miami, so that it may operate a range of programs with respect to the Western Hemisphere similar to those conducted by the East/West Center established pursuant to legislation enacted in 1960 to promote better relations between the United States and the countries of Asia and the Pacific. The conferees expect the University of Miami to establish cooperative agreements and to include academic exchange programs with the University of Texas system and the Texas A & M University system.

PRIMARY AND SECONDARY EDUCATION

Amendment No. 27: Earmarks $67,100,000 in Education and Human Resources Development assistance for primary and secondary education as proposed by the Senate. The provision also requires that the Agency for International Development must initiate three new bilateral projects in basic primary and secondary education in fiscal year 1991, and that at least two of the projects are to be initiated in sub-Saharan Africa.

INTERNATIONAL STUDENT EXCHANGE PROGRAM

Amendment No. 28: Earmarks $20,000,000 for the International Student Exchange Program, of which $3,000,000 is sub-earmarked for Poland, Czechoslovakia and Hungary.

PRIVATE SECTOR, ENVIRONMENT, AND ENERGY DEVELOPMENT ASSISTANCE

Amendment No. 29: Deletes House language earmarking funds for elephant conservation. The conference agreement addresses this earmark under Amendment Number 123.

Amendment No. 30: Deletes House language earmarking funds for the Agency for International Development Office of Energy. The conference agreement addresses this earmark under Amendment Number 123.

Amendment No. 31: Deletes House language earmarking funds for the Agency for International Development for environment and global warming activities. The conference agreement addresses this earmark under Amendment Number 123.

Amendment No. 32: Deletes House language requiring that earmarks described in amendments 29-31 be funded under the Private Sector, Environment and Energy Development Assistance account.

TECHNICAL ASSISTANCE

Amendment No. 33: Earmarks $150,000 through the Agency for International Development for the United States Bureau of Labor Statistics to provide technical assistance for the training of statisticians and economists in Czechoslovakia and the Soviet Union as proposed by the House. These funds will help the Bureau of Labor Statistics assist and train personnel in the development of accurate statistical measurements as these countries move from centralized economies to market economies.

INTERNATIONAL ARID LANDS RESEARCH AND COORDINATION

The conferees agree that the Agency for International Development should follow the report language concerning arid lands research and coordination included in the Senate report.

MICRO ENTERPRISE DEVELOPMENT

Amendment No. 34: Earmarks $75,000,000 for Micro Enterprise Development, as proposed by the Senate. The provision also allows local currencies to be used in order to make up the Micro Enterprise earmark.

SUB-SAHARAN AFRICA, DEVELOPMENT ASSISTANCE

Amendment No. 35: Appropriates $800,000,000 for sub-Saharan Africa, of which not less than $50,000,000 is to support activities supported by the Southern Africa Development Coordination Conference, and up to $3,500,000 is for non-government private enterprise development in South Africa. Language related to criteria for implementing programs in Africa is addressed in Amendment Number 141.

ZAIRE

Amendment No. 36: Inserts language prohibiting development assistance funds from being transferred to Zaire and clarifying that nongovernmental organizations are not prohibited from working with appropriate ministries or departments of the Government of Zaire. Both the House and the Senate provided prohibitions to funding for Zaire, and raised questions concerning reported corruption and human rights violations in that country. However, in order to provide a continuation of humanitarian programs and child survival activities in Zaire the conferees agree that development programs in Zaire may be funded, but funding for programs should not go through the Government of Zaire. The conferees agree that the Agency for International Development should carefully monitor development assistance provided for programs in Zaire and exercise strong fiscal control.

The conferees wish to clarify that under this provision no obligated funds can be transferred to the Government of Zaire. The provision would not therefore prohibit activities from being undertaken with nongovernmental organizations so long as contracts or grants are entered into with those organizations by the Agency for International Development and not by the Government of Zaire. Similarly, the prohibition would not bar AID from procuring with bilateral funds commodities, such as medicines and vaccines used in child survival activities in Zaire.

HUMANITARIAN ASSISTANCE FOR CAMBODIAN CHILDREN

Amendment No. 37: Inserts language proposed by the Senate allowing United States private and voluntary organizations to be part of the program to provide assistance to Cambodian children.

ASSISTANCE FOR LATVIA, LITHUANIA, AND ESTONIA

Amendment No. 38: Deletes an earmark proposed by the Senate pertaining to development and Economic Support Fund assistance for U.S. private and voluntary organizations assisting organizations and individuals in Latvia, Lithuania and Estonia.

APPROPRIATE TECHNOLOGY

Amendment No. 39: Appropriates $1,000,000 for Appropriate Technology International. The conferees agree that the funding provided is additive to the $3,000,000 operating budget presently funded under the AID-ATI cooperative agreement. Also, the conference agreement provides that ATI should qualify, along with any cooperative development organization, for development assistance funds appropriated or otherwise made available for United States private and voluntary organizations.

The conferees are in full agreement with language in the Senate report, which states: "In its technology and small enterprise development activities Appropriate Technology International assists private small producers in developing countries in implementation of section 107 of the Foreign Assistance Act. In the past, ATI has experienced certain management problems, but the Committee is encouraged that new leadership in 1990 is more sharply focusing ATI's mission, scaling up ATI's collaborative work with major international donors, and providing expert services to USAID missions abroad."

HUMANITARIAN ASSISTANCE FOR ROMANIA

Amendment No. 40: Inserts Senate language earmarking $3,000,000 in assistance for children in Romania.

CARIBBEAN COUNTRIES

The conferees urge the Agency for International Development to pay greater attention to the island nations of the Caribbean. Despite these nations' longstanding embrace of democratic principles and free markets, they have yet to be the focus of any concerted development program on the part of AID.

The Agency for International Development is to develop an outline of the four or five most pressing infrastructural or sectoral shortfalls of the Commonwealth Caribbean on a country by country basis, as well as the four or five most promising bases of social and economic development.

It is the hope of the conferees that this would provide a starting point for more in depth discussion regarding the economic potential of the region. For fiscal year 1991, the conferees urge that AID allocate no less than $20,000,000 above the President's request to this region in development assistance and that no one country should receive more than 10 percent of the total increase.

PRIVATE SECTOR REVOLVING FUND

Amendment No. 41: Provides a limitation of $57,000,000 for the Private Sector Revolving Fund instead of $12,500,000 as proposed by the House or $62,500,000 as proposed by the Senate.

Amendment No. 42: Provides language leaving the project guarantee loan ceiling at $3,000,000. However, the conferees agree to allow two pilot projects not to exceed $10,000,000 in loan guarantees each. Also, the conferees agree to provide a back up reserve to the Private Sector Revolving Fund through assistance provided under the Economic Support Fund, and a $15,000,000 direct loan program.

AMERICAN SCHOOLS AND HOSPITALS ABROAD

Amendment No. 43: Appropriates $29,000,000 for American Schools and Hospitals Abroad, instead of $35,000,000 as proposed by the Senate and $23,000,000 as proposed by the House.

The conferees agree with the Senate report which reaffirms strong support for the ASHA projects in China. While there is much more that the Chinese government should be doing in the area of human rights that would help reduce the strained relations between our two countries, the conferees believe that the United States should continue to maintain open communications with and support those elements in China who are committed to meaningful reforms in the economic, political, and human rights fields.

Over the past several years, the House and Senate have encouraged and supported ASHA projects in China as a demonstration of how citizens of our two countries can work together for mutual understanding and rebuild Sino-American exchanges in the fields of education and medicine. The conferees strongly support these projects because they are designed to help keep open the opportunities for economic and political progress in China through their unique people-to-people exchange programs.

The American educational and medical institutions now sponsoring the ASHA projects in China have been particularly effective in establishing excellent relationships and sound projects with their Chinese colleagues and Nanjing and Fudan Universities and the Shanghai First People's Hospital. The conferees are aware of the very positive reports about the work being done at these institutions.

The conferees believe these projects merit continued ASHA program funding support in fiscal year 1991.

OPERATING EXPENSES OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT

Amendment No. 44: Deletes language proposed by the House providing a limitation of $15,000,000 on the contribution to the Foreign Affairs Administrative Support System (FAAS) of the Department of State by the Agency for International Development. The conferees agree that in the past there has been inequity in charges to AID by the Department of State in the FAAS. The conference agreement to lift the limitation on FAAS payments by AID has been done with the understanding that the FAAS charges to AID will not exceed $15,000,000 in fiscal year 1991. The Department of State is to brief the Committees on Appropriations on any changes in the FAAS system. The conferees feel that any revisions to the program should enhance cost effectiveness, improve efficiency, and provide equity among participating agencies. If this is not done the conferees believe that a limitation in the future on AID payments to FAAS will be appropriate.

The amendment also includes a provision that requires the Agency for International Development to station one professional at either the Consulate General in Jerusalem or the Embassy in Tel Aviv in order to effectively monitor AID programs for the West Bank and Gaza.

OFFICE OF THE INSPECTOR GENERAL

Amendment No. 45: Appropriates $33,884,000 as proposed by the Senate in-

stead of $31,384,000 as proposed by the House for operating expenses for the Office of the Inspector General.

Amendment No. 46: Inserts a personnel ceiling for the Inspector General at 251 as proposed by the Senate instead of 240 as proposed by the House.

Amendment No. 47: Provides up to $1,000,000 in Eastern European assistance for the Inspector General to audit Eastern European programs.

Amendment No. 48: Inserts language which allows at the discretion of the AID Inspector General the establishment of an IG regional office in Europe to audit Eastern European programs.

ECONOMIC SUPPORT FUND

FUNDING LEVEL

Amendment No. 49: Appropriates $3,141,000,000 as proposed by the Senate instead of $3,460,000,000 as proposed by the House.

ASSISTANCE TO ISRAEL

Amendment No. 50: Inserts Senate language which allows the use of up to $200,000,000 of the Economic Support Funds made available for Israel to be used for any of the purposes for which military assistance is provided.

ASSISTANCE TO EL SALVADOR

Amendment No. 51: Inserts a Senate provision which withholds $1,500,000 designated for El Salvador's Special Investigative Unit until a report is submitted by the Secretary of State.

The conferees express their dismay at the continued inability of the government of El Salvador to resolve the matter of the expropriation without compensation of the San Salvador Electric Light Company, CAESS. Despite numerous expressions of intent by the administration and the Congress that it be resolved, this case remains unsolved.

This bill contains language which requires that the President report on the extent to which demonstrable progress has been made in resolving the CAESS matter prior to the disbursement of the fiscal year 1991 ESF funds. To expedite current discussions, the presidential report should include a detailed discussion of the extent to which progress has been made on such key components of the talks as basic approach, tax treatment, and currency convertibility. By prescribing this degree of specificity in the report, it is intended that the administration redouble its efforts to resolve this matter once and for all.

ASSISTANCE TO JORDAN

Amendment No. 52: Earmarks $35,000,000 for Jordan as proposed by the House.

ASSISTANCE TO MOROCCO

Amendment No. 53: Earmarks $20,000,000 for Morocco as proposed by the Senate.

ASSISTANCE TO PERU, BOLIVIA AND COLOMBIA

Amendment No. 54: Inserts language permitting up to $62,500,000 of Economic Support Funds to be used for ESF, Administration of Justice, law enforcement and military assistance programs in Peru, Bolivia and Colombia. If funding is provided through the Foreign Military Financing Program it must be provided within ceilings for Peru, Bolivia and Colombia in that account.

UNIVERSITY OF CENTRAL AMERICA

Amendment No. 55: Inserts Senate language requiring the United States and El Salvador to jointly program El Salvador colones equivalent of $10,000,000 for the purpose of retiring the debt owed by the University of Central America to the Inter-American Development Bank.

TIED-AID CREDITS

Amendment No. 56: Inserts language increasing the limitation on tied-aid credits from $50,000,000 as proposed by the House to $300,000,000 as proposed by the Senate.

DEBT FOR DEVELOPMENT

Amendment No 57: Restores House provision permitting up to $20,000,000 in Economic Support funds to provide grant assistance to capitalize an endowment to be used by nongovernmental organizations to purchase the discounted commercial debt of Mexico as part of a debt for development swap.

The conferees commend AID for its support of innovative approaches to providing assistance for education and human resources development projects. The International Foundation for Education and Self-Help's (IFESH) debt for development initiative currently underway in Nigeria, Guinea, and Niger, among other countries, offers a unique model for the much needed development and expansion of the human resource infrastructure in developing countries.

The conferees recommend that AID provide up to $10,000,000 to expand its debt for development initiatives in Africa and elsewhere in the developing world. Attention should be given to initiatives of private voluntary organizations, including PVO joint ventures.

The conferees reaffirm their support for the establishment of a debt-for-development endowment for Mexico. United States Government funds contributed to the endowment are to be matched by other commitments from foundations, universities and the private sector. The endowment should be administered by the non-federal donors. These funds can be used to purchase Mexican debt on the secondary market. Mexico would contribute in local currency to help finance mutually agreed upon development projects in an amount at least equal to the share of the United States.

The provision also prohibits the use of Development Assistance Funds for tied-aid credits.

ANTARCTIC PROTECTION ACT

Economic Support Funds in the amount of $200,000 have been earmarked for the Antarctic Protection Act.

LEBANON

Amendment No. 58: Deletes language earmarking $7,500,000 for Lebanon. The conferees have agreed to provide Lebanon with $7,500,000 as addressed in Amendment No. 146.

INTERNATIONAL FUND FOR IRELAND

Amendment No. 59: Appropriates $20,000,000 for the International Fund for Ireland, as proposed by the House.

Given the serious budget difficulties facing the United States, there was considerable debate among the managers on the part of the House and the Senate regarding the United States contributions to the International Fund for Ireland. Without attempting to minimize those differences, the conferees wish to take this opportunity to state certain points on which they agree.

The conferees agree that the primary responsibility for dealing with problems of economic and social development and reconciliation in northern Ireland rests with the governments of Great Britain and Ireland. The conferees also agree that those governments should continue to press for wider and more substantial international support for the International Fund for Ireland.

The conferees agree that the Fund has had some success in creating job opportunities, establishing small businesses, bringing people—Protestant and Catholic—together, and contributing to an improved climate of moderation and reconciliation. The conferees further agree that the Fund must continue to focus its efforts on projects that will create permanent, full-time jobs in the areas that have suffered most severely from the consequences of the instability of recent years. Finally, the conferees agree that the management of the Fund must make greater effort to ensure that monies made available to the Fund are not misused, and that programs, projects, and activities supported by the Fund are above reproach.

Disagreement continues to exist between the managers on the part of the House and the Senate concerning future U.S. contributions to the Fund.

MULTILATERAL ASSISTANCE INITIATIVE FOR THE PHILIPPINES

Amendment No. 60: Provides $160,000,000 for the Philippine Multilateral Assistance Initiative, of which $60,000,000 is provided by transfer equally from development assistance and the economic support fund.

Amendment No. 61: Provides that an additional $40,000,000 may be transferred to the Philippines under certain conditions.

ASSISTANCE FOR EASTERN EUROPE

Amendment No. 62: Provides $369,675,000 for the Eastern European assistance program, a split between the House and Senate levels.

TECHNICAL ASSISTANCE AND TRAINING

Amendment No. 63: Earmarks $113,675,000 for technical assistance and training instead of $80,000,000 as proposed by the House and $35,000,000 as proposed by the Senate.

Amendment No. 64: Deletes Senate proposal striking reference to the private sector in the technical assistance and training account for Eastern Europe.

HOUSING SECTOR

Amendment No. 65: Provides $15,000,000 for the Housing sector for Eastern Europe as proposed by the senate instead of $30,000,000 as proposed by the House.

Amendment No. 66: Deletes the article "the".

Amendment No. 67: Strikes redundant language.

ENERGY AND ENVIRONMENT

Amendment No. 68: Inserts new language and retains proposed Senate language in the Eastern Europe environment and energy account. The language provides for emphasis on end-use energy efficiency, conservation, and reliance on renewable energy sources as well as allowing expenditures for a broad range of environment and energy related activities.

DEMOCRATIC PLURALISM

Amendment No. 69: Provides $19,000,000 instead of $7,500,000 as proposed by the House and $20,000,000 as proposed by the Senate for activities which foster democratic pluralism in Eastern Europe. The conferees agree to support programs which directly focus on improving the capacities of Eastern European parliaments. The conferees strongly support current proposals from two senior United States legislative taskforces addressing the needs of the Eastern European parliaments.

The conferees direct that the funds provided under the heading "Assistance for Eastern Europe" for activities to foster democratic pluralism, $750,000 be available only to assist development of the Polish Senat and Sejm Parliamentary Library and Research Center under the "Gift of Democracy to Poland" program established under Senate Concurrent Resolution 74 of the 101st Congress (agreed to October 26, 1989) sponsored by the joint bipartisan leadership. The conferees note that this year the joint leadership sponsored "Gift of Democracy" program has provided substantial guidance and implementation of information technology to the new Polish Parliament which has become a model for assistance to other Eastern European countries.

The conferees also direct that the activities and program planned by the "Frost Taskforce" receive substantial funding in accord with the budget it has developed and provided to the conferees.

Amendment No. 70: Inserts Senate language emphasizing support for elected parliaments of Eastern European nations and for member and staff exchanges. The conferees agree that these funds are intended for the support of Eastern Europeans rather than to fund their United States counterparts.

ENTERPRISE FUNDS

Amendment No. 71: Inserts $90,000,000 for the Polish-American and Hungarian-American Enterprise Funds, instead of $113,675,000 proposed by the House and $72,500,000 proposed by the Senate. The conferees agree with House language restricting expenditures to the Funds to a minimum rate necessary but strongly emphasize that this language was done solely for financial outlay purposes and that AID is not to attempt to second-guess investment decisions. The conferees support the Senate report language on this matter.

Amendment No. 72: Strikes the word "and" as proposed by the Senate.

PRIVATE ENTERPRISE ACTIVITIES

Amendment No. 73: Inserts $27,000,000 for other private enterprise activities in Eastern Europe instead of $100,000,000 proposed by the House and $65,000,000 proposed by the Senate. This action was taken in order to provide the highest reasonable level to the technical assistance account.

AGRICULTURE

Amendment No. 74: Inserts Senate language on private enterprise, and creates and funds an agriculture account for Eastern Europe at $40,000,000 of which $10,000,000 is provided by transfer. Includes new language describing the purposes of the agriculture account including technical assistance and training and new language on agribusiness, credit, rural and market economies and food transport, storage, and privatization of state farms.

Amendment No. 75: Inserts Senate language allowing not more than 50 percent of the environment and health-related funds for Eastern Europe to go to any one country.

OPERATING EXPENSES

Amendment No. 76: Inserts Senate language allowing up to $1,000,000 of the Eastern European funds to be spent on operating expenses.

Amendment No. 77: Inserts a Senate technical amendment placing the Eastern European assistance program within the administrative authorities of economic assistance.

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL

Amendment No. 78: Inserts a limitation of $117,792,000 on the amount of funds that can be expended prior to the receipt of a report from the Secretary of State describing measures being taken to correct management deficiencies in the Bureau of International Narcotics.

ANTI-NARCOTICS RESOURCE REQUIREMENTS

Amendment No. 79: Inserts language proposed by the Senate requiring the President to undertake an analysis of anti-narcotics efforts and assets of transshipment countries. The conferees intend that the analysis of assets of transshipment countries concentrate on anti-narcotics assets.

MIGRATION AND REFUGEE ASSISTANCE

Amendment No. 80: Earmarks $500,000 for Tibetan refugees. The Senate proposed $1,000,000 for the Tibetan program and the conferees agree that every effort should be made to provide a $1,000,000 program for Tibetan refugees in fiscal year 1991.

Amendment No. 81: Earmarks $1,500,000 for the Thai-Cambodian Border Protection program as proposed by the Senate.

Amendment No. 82: Earmarks $1,500,000 for the Anti-Piracy program as proposed by the Senate.

Amendment No. 83: Earmarks $5,000,000 out of funds made available for the Economic Support Fund and Development assistance for the Affected Thai Village Program, as proposed by the Senate.

Amendment No. 84: Earmarks $10,000,000 for the Comprehensive Plan of Action as proposed by the Senate.

Amendment No. 85: Appropriates $8,528,000 for the Administrative Expenses account as proposed by the Senate instead of $8,250,000 as proposed by the House.

Amendment No. 86: Inserts Senate language requiring that the transfer of funds for refugee admissions be subject to the regular Committee notification process.

TITLE III—MILITARY ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL MILITARY EDUCATION AND TRAINING

Administrative No. 87: Earmarks $1,000,000 for courses and other programs for civilians and military officials in managing, administering and training in management, judicial systems and military codes of conduct, as proposed by the Senate.

Amendment No. 88: Inserts Senate language prohibiting IMET funding for Malaysia, Zaire, Liberia, Sudan and Somalia.

Amendment No. 89: Inserts Senate language permitting civilian training under specific criteria for IMET funding.

FOREIGN MILITARY FINANCING PROGRAM

FUNDING LEVEL

Amendment No. 90: Appropriates $4,663,420,800 for the Foreign Military Financing Program grants instead of $4,229,920,800 as proposed by the House and $4,692,268,056 as proposed by the Senate.

ASSISTANCE FOR JORDAN

Amendment No. 91: Deletes $50,000,000 earmark for Jordan as proposed by the House.

EGYPTIAN FMS REPAYMENTS

Amendment No. 92: Deletes House provision indicating that not less than $100,000,000 in fiscal year 1991 FMF was to be used for the repayment of Egyptian Foreign Military Sales debt.

ASSISTANCE TO ISRAEL

Amendment No. 93: Provides that $1,695,000,000 in Foreign Military Financing for Israel by provided within 30 days of enactment or October 31, whichever is later, as proposed by the Senate.

Amendment No. 94: Inserts language which changes existing procedures on grant agreements with Foreign Military Financing recipient countries. The conferees wish to clarify that this provision does not remove the requirement for grant agreements to be signed with recipient countries of foreign military financing funding.

Amendment No. 95: Provides $403,500,000 for Foreign Military Financing program loans instead of $405,000,000 as proposed by the House and $0 proposed by the Senate, restores House language setting loan interest rates at not less than 5 percent, restores House language requiring changes in country funding levels in concessional financing allocations be submitted through regular notification procedures, and restores House language limiting gross obligations of direct loans not to exceed $403,500,000 instead of $405,000,000 as proposed by the House and $0 proposed by the Senate.

Amendment No. 96: Deletes House language specifying a 7 to 10 ratio for Foreign Military Financing program funds for Greece and Turkey and specifies certain allocations for loans and grants to those countries. Also, inserts language that if Turkey receives funds on a grant basis then not less than $30,000,000 in grant funds are to be provided to Greece.

Amendment No. 97: Deletes House language which would have required that uncommitted Foreign Military Sales balances for the Philippines be available for contract only until January 1, 1991.

THIRD COUNTRY TRANSFERS

Amendment No. 98: Inserts Senate language which expands current authority on third country transfers to allow countries to resell pre-1986 U.S. supplied arms to third countries.

AIRCRAFT LEASING

Amendment No. 99: Deletes Senate language which waives any requirement that Foreign Military Financing funds be used to loan or lease aircraft (including helicopters).

LIBERIA PROHIBITION

Amendment No. 100: Inserts a provision prohibiting FMF funding for Liberia.

ASSISTANCE TO MOROCCO

Amendment No. 101: Earmarks $43,000,000 for Morocco.

ASSISTANCE TO GREECE

Amendment No. 102: Earmarks $350,000,000 for Greece instead of $381,500,000 as proposed by the Senate.

ASSISTANCE TO TURKEY

Amendment No. 103: Earmarks $500,000,000 for Turkey instead of $545,000,000 as proposed by the Senate.

Amendment No. 104: Provides up to $100,000,000 in FMF for Portugal. The Senate had no ceiling, but the House had a limitation of $95,000,000.

SPECIAL DEFENSE ACQUISITION FUND

(Limitation on Obligations)

Amendment No. 105: Deletes section number proposed by the Senate.

Amendment No. 106: Provides a limitation of $350,000,000 for the Special Defense Acquisition Fund as proposed by the Senate instead of $278,796,000 as proposed by the House.

Amendment No. 107: Deletes a Senate provision earmarking $100,000,000 for Israel of SDAF authority to be payable over a three year period.

TITLE IV—EXPORT ASSISTANCE

Export-Import Bank of the United States

limitation on program activity

Amendment No. 108: Provides $20,000,000 for interest subsidy payments instead of $25,000,000 as proposed by the Senate or $8,000,000 as proposed by the House.

Amendment No. 109: Provides a limitation on gross obligations for interest subsidy payments of $20,000,000 instead of $25,000,000 as proposed by the Senate or $8,000,000 as proposed by the House.

Amendment No. 110: Deletes Senate language relating to Ex-Im in Eastern Europe. This matter is handled under amendment number 141.

TITLE V—GENERAL PROVISIONS

Transfers Between Accounts

Amendment No. 111: Deletes language proposed by the House. The Amendment corrects a transition.

Deobligation/Reobligation Authority

Amendment No. 112: Inserts new subsection designation proposed by the Senate.

Amendment No. 113: Inserts deobligation/reobligation authority for military assistance programs through the notification process as proposed by the Senate.

Availability of Funds

Amendment No. 114: Inserts citation proposed by the Senate.

Amendment No. 115: Strikes citation designation as proposed by the Senate which corrects a technical reference.

Limitation of Assistance to Countries in Default

Amendment No. 116: Adds Nicaragua to the list of countries for which the "Brooke Amendment" is waived as proposed by the Senate.

The conferees strongly support the democratically-elected government of Violeta Chamorro and support her efforts to revitalize Nicaragua's economy.

Nicaragua has numerous arrearages to international financial institutions totalling more than $2.5 billion and an external debt of about $8 billion. For that reason, the conferees have included Nicaragua on the list of nations for which the "Brooke" provision is waived.

The conferees also support the Administration's request for Economic Support Funds for Nicaragua. Strong bipartisan support existed for the $300 million in supplemental appropriations for Nicaragua earlier this year. Although the 1991 budget request for ESF has not been fully appropriated in this bill, the conferees support the Administration's request of $200 million in ESF for Nicaragua and expect the Administration to provide as close as possible to its original request for Nicaragua.

Notification Requirements

Amendment No. 117: Deletes a House provision permitting exemption to the notification process.

Amendment No. 118: Deletes language proposed by the House addressing conditions under which Congress receives project notifications.

Amendment No. 119: Inserts language proposed by the Senate exempting certain categories of changes from Congressional notification requirements.

Prohibitions Against U.S. Employees Recognizing or Negotiating With PLO

Amendment No. 120: Restores language proposed by the House and strikes language proposed by the Senate.

El Salvador

Amendment No. 121: Inserts language on policy toward El Salvador as proposed by the Senate with two alterations. The withholding of military assistance outlined in section 531(d)(1) would apply only to military assistance allocated for El Salvador for fiscal year 1991. The conferees understand that according to the Defense Security Assistance Agency, as of October 16, 1990, the total amount of unobligated military assistance in the pipeline for El Salvador was $10,349,000. The definition of the term "military assistance" described in section 531(j)(2)(B) was amended to include assistance to carry out section 23 of the Arms Export Control Act.

Concern was expressed about the possibility of impediments to future legislation the President might seek to alter or remove the El Salvador provision from the bill. Without in any way suggesting what their position might be on future legislation, the managers for both the Senate and the House express their commitment to seek expeditious consideration for any legislation requested by the President concerning a resumption of assistance prohibited pursuant to section 531(c)(2).

Environment and Global Warming

Amendment No. 122: Inserts language proposed by the Senate which prohibits funds in this Act from being available for any program, project or activity which would result in any significant loss of tropical forests or involve industrial timber extraction in primary tropical forest areas. The House had proposed a similar prohibition that addressed only loss of tropical forests.

Amendment No. 123: Inserts language proposed by the Senate which provides earmarks for environment and energy activities. The House had proposed similar earmarks. The conferees agreed to include an additional earmark of $100,000 for the Charles Darwin Station. In addition, the authority to use excess defense equipment for biological diversity activities was altered to specify that the authority was for nonlethal excess defense articles and small arms only. The notification requirements were also clarified.

Montreal Protocol Facilitation Funds

Amendment No. 124: Inserts Senate language allowing use of funds from both sections 103 and 106 of the Foreign Assistance Act of 1961 for this transfer.

Afghanistan—Humanitarian Assistance

Amendment No. 125: Restores House language specifying that up to $70,000,000 may be used for humanitarian assistance for Afghanistan. The conferees urge that this program receive a high priority in the allocation process and that the urgent needs of the people of Afghanistan be taken into account.

El Salvador—Investigations of Murders

Amendment No. 126: Inserts language proposed by the Senate inserting "and".

Amendment No. 127: Inserts Senate language adding the bombing of FENASTRAS headquarters to the list of cases included under this provision. The conferees also changed the date in the Senate language.

Special Notification Requirements

Amendment No. 128: Inserts Senate language including Guatemala in the list of countries requiring prior notification for use of funds in this Act.

Child Survival and AIDS Activities

Amendment No. 129: Inserts Senate language expanding Agency for International Development reimbursement authority for individuals working on AIDS prevention and child survival activities to include individuals from private voluntary organizations as well as institutions of higher learning.

Amendment No. 130: Inserts Senate language clarifying that such individuals involved in this program are not to be included in any personnel ceilings.

Chile

Amendment No. 131: Inserts new subsection designation as proposed by the Senate.

Amendment No. 132: Inserts the Senate language which allows a specific exception to section 726(c) of the International Security Development Cooperation Act of 1981 for retrofitting of certain aircraft owned by the Chilean Air Force. A technical correction was also included changing "technical changes" to "time compliance".

Defense Equipment Drawdown

Amendment No. 133: Deletes language proposed by the House which would have limited the aggregate use of the authorities of section 506(a) of the Foreign Assistance Act of 1961 to $100,000,000.

Amendment No. 134: Deletes subsection designation as proposed by the Senate.

Authorization Requirement

Amendment No. 135: Inserts waiver of authorization requirements as proposed by the Senate.

Notification to Congress on Debt Relief Agreements

Amendment No. 136: Inserts new language requiring additional notifications on debt negotiations and an annual report. The conferees are concerned at the poor state of Paris Club record keeping at the Department of State. The Paris Club report required by the conferees last year was very poor and was missing considerable information. The conferees are further concerned that the Department is rarely complying with the existing reporting requirements. If State Department performance cannot improve in this regard the conferees may well consider the idea that these activities could be better handled by the Department of Treasury.

Depleted Uranium

Amendment No. 137: Inserts Senate language which authorizes the President to waive prohibitions on the sale of M-833 antitank shells if to do so is in the national security interests of the United States.

Commission on Foreign Assistance Management

Amendment No. 138: Deletes a House provision withholding Economic Support Funds for Honduras. Inserts a new provision establishing a Commission on Foreign Assistance Management.

The conferees are concerned about the problems in AID's management of foreign assistance programs. In hearings in the Foreign Operations Subcommittees, in AID Inspector General Audits, and in General Accounting Office reports a persistent pattern of systemic problems of management, accountability and program evaluation has emerged. Therefore, the conferees are recommending bill language providing for the establishment of an independent commission to review management, accountability

and evaluation issues in AID, and to report to the Administrator and Congress on measures which could strengthen overall management of the Agency. The provision requires that the independent commission provide recommendations for actions which may be taken administratively and for legislation where additional authorities may be necessary. This report will enable the Committees on Appropriations to take its findings and recommendations into account in the preparation of the fiscal year 1992 appropriation.

To meet the modest administrative and support costs of the independent commission, the conferees provide that up to $500,000 of AID's operating expenses may be allocated to the commission. The conferees expect AID Inspector General to detail personnel to provide staff support to the commission, and to make information on management matters available to the members of the commission.

NARCOTICS CONTROL PROGRAM

Amendment No. 139: Restores House language which provides a waiver of section 521 of this Act for Bolivia, Peru, Colombia, Ecuador, and Jamaica.

Amendment No. 140: Inserts Senate language which makes requirements to withhold assistance for major drug producing countries applicable to the countries receiving assistance under this section.

AUTHORIZATIONS

Amendment No. 141: Strikes House language on Cambodia and Senate language on Burma. Inserts authorization language for sub-Saharan Africa, Export-Import Bank authorities to work in Eastern Europe and the Bank's narcotics/related activities, and authorizes the European Bank for Reconstruction and Development and the International Development Association, as well as containing certain miscellaneous provisions regarding international financial institutions.

ASSISTANCE FOR CAMBODIAN DEMOCRACY

Amendment No. 142: Inserts Senate language providing up to $20,000,000 in humanitarian and development assistance for Cambodians including the Cambodian non-communist resistance under certain conditions. The conferees agreed that any funds either appropriated by this Act or derived by transfer in excess of $7,500,000 shall be subject to the regular reprogramming procedures.

STINGERS IN THE PERSIAN GULF

Amendment No. 143: Inserts subsection designation as proposed by the Senate.

Amendment No. 144: Inserts Senate language which repeals a ban on the sale of military equipment to Qatar. The Secretary of Defense has informed Congress that it is in the national interest to reestablish United States-Qatari security relations because of their support for United States troops in the Middle East. The conferees also made a technical correction to the section designation.

LEBANON

Amendment No. 145: Inserts the phrase "Of the funds" as proposed by the Senate.

Amendment No. 146: Inserts language providing an earmark of not less than $7,500,000 for Lebanon and requires that the earmark be derived equally from development assistance and economic support fund assistance.

Amendment No. 147: Inserts language proposed by the Senate inserting "and".

LOCATION OF STOCKPILES

Amendment No. 148: Strikes House language on location of stockpiles as proposed by the Senate.

Amendment No. 149: Inserts Senate language which makes permanent the authority to locate stockpiles within the boundaries of major non-NATO allies.

Amendment No. 150: Inserts language which places the overall limit on the value of additional military stockpiled material outside the United States in fiscal year 1991 to $378,000,000 and specifies that $300,000,000 of that amount be for stockpiles in Israel.

ASSISTANCE FOR PAKISTAN

Amendment No. 151: Inserts new subsection designation proposed by the Senate.

Amendment No. 152: Inserts language restricting funds from certain accounts in the bill being made available to Pakistan unless the President certifies that certain conditions have been met. The provision also requires that no funds in the bill may be obligated or expended except through regular reprogramming procedures.

SEPARATE ACCOUNTS

Amendment No. 153: Inserts Senate language substituting the word "agreements" for "arrangements", a technical adjustment.

Amendment No. 154: Retain House language requiring agreements to cover all generated local currencies rather than all deposited local currencies.

Amendment No. 155: Inserts adjusted Senate language stating examples of acceptable uses of local currencies as proposed by the Senate with the exception of general budget support.

Amendment No. 156: Strikes proposed new Senate language on local currencies deposited and retains Senate language addressing sub-Saharan African, Development Assistance.

ELIGIBILITY FOR OVERSEAS PRIVATE INVESTMENT CORPORATION

Amendment No. 157: Inserts Senate language expanding eligibility of OPIC programs to East European countries.

Amendment No. 158: Inserts Senate language defining OPIC authorities in Poland, Hungary, and other East European countries as proposed by the Senate.

EASTERN EUROPEAN BANK

Amendment No. 159: Inserts language dealing with authority to adjust Polish debt.

The conferees agree that sometimes economic actions must be taken to attack economic problems which if not dealt with lead to human disaster.

After World War II, the United States and other western creditors forgave substantial amounts of German debt because we had learned a lesson from the aftermath of World War I and because we believed that the German economy was crucial to the economic welfare of the people of all of Western Europe. After World War I, the allies chose to grind the German people into the dust demanding payment of enormous war reparations. That action produced the bitter resentment which allowed Hitler to come to power.

Poland faces economic conditions almost as miserable today as those faced by Germany before the war. Yet, the Polish people who fought with the allies were a victim of that war. As a result of the war, with the acquiescence of the West, a communist government was imposed from the outside on the Polish people. That history creates a special obligation for the West. It is necessary to stabilize the economic foundation of Poland today in order to enhance the ability of democratic forces in Poland to succeed and in order to ensure a transition to a market economy. The success of the Polish economy is crucial to the other economies of Eastern Europe and as proof to the Soviet Union that market economic reforms and democratic reforms can work.

The conferees agree that it is imperative that the Government of the United States and other creditor governments and commercial creditors of the Government of Poland recognize the basic fact that Poland is incapable of repaying the vast majority of its external debt.

The conferees have therefore granted the President the authority necessary to recognize that uncollectability and adjust Polish debt to the United States accordingly as other creditors take comparable actions.

While this action is unusual, it is not without precedent. German debts were adjusted after World War II. Indonesian debt was adjusted in 1972. Debt of the poorest African countries has been adjusted since 1988. Military debt of various countries owed to the U.S. was adjusted since 1988. The Brady Plan has resulted in the adjustment of certain commercial bank debt during the last few years and the Administration has pending a proposal to address the debt of Central American, Caribbean and South American countries owed to the United States.

Debt adjustment agreements for the democratic government of Poland should recognize that Polish economic conditions and therefore the collectability of Polish debt are far worse than the economic conditions which faced the Federal Republic of Germany in the early 1950's when its external debts were adjusted under both the London Agreement on German External Debts and under other postwar official bilateral debt agreements reached with the Allied powers and Denmark. At that time, the German debt to GNP ratio was 15.6 percent and the German debt to export ratio was 87.1 percent. For Poland today these same ratios, which reflect dire economic circumstances in Poland and the inability of the Polish government to service its debt, are 63.9 percent and 300.7 percent.

CASH FLOW FINANCING LIMITATION

Amendment No. 160: Strikes language proposed by the House on cash flow financing, and an across-the-board reduction. The conferees remain concerned that the current extent of cash flow financing in the foreign military financing program restricts the flexibility of the Congress to make adjustments in future levels of military assistance.

FUTURE ASSISTANCE PROJECTIONS

Amendment No. 161: Inserts language on future assistance projections requiring a submission of a three-year budget projection.

HUMAN RIGHTS

Amendment No. 162: Inserts Senate language requiring the Secretary of State to submit, within 30 days of the submission of the annual human rights report, a listing of countries which engage in a consistent pattern of gross violations of human rights and a description of how Foreign Military Financing assistance will be used to promote human rights.

The conferees request that the annual human rights report required by section 502B of the Foreign Assistance Act of 1961 be submitted to the Committees on Appro-

39-059 O—92-34 (Pt. 25)

priations at the same time that it is formally submitted to the Congress.

POLAND LOCAL CURRENCIES

Amendment No. 163: Inserts language providing the equivalent of $500,000 in Polish local currencies for the Research Center on Jewish History and Culture of the Jagellonian University of Krakow, Poland.

The conferees further stipulate that funds for this project can only be made available to the extent they do not diminish the planned funding for the American Children's Hospital in Krakow. The conferees deleted Senate language on the Polish Senat and Sejm. This issue is addressed under funding for Eastern Europe.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Amendment No. 164: Inserts language concerning environmental aspects of structure, operating procedures and by-laws of the EBRD.

The conferees also urge the Secretary of the Treasury to vigorously seek establishment of an Environmental Fund to provide grants and loans for technical assistance, development of environmental institutions and regulatory systems, public education, and training.

PROPERTY MANAGEMENT FUND

Amendment No. 165: Inserts Senate provision allowing the Agency for International Development to use proceeds of sales of overseas property for various purposes.

The conferees intend that in exercising the authority to use funds for dependent schools, that AID shall use those fund only for schools whose enrollment is primarily United States Government personnel or their dependents.

IRAQ SANCTIONS

Amendment No. 166: Inserts language concerning Iraq Sanctions.

MILITARY AID LIMITED TO DEMOCRATIC GOVERNMENTS

Amendment No. 167: Strikes language inserted by the Senate.

The conferees affirm that supporting democratic governments is a primary goal of United States foreign policy. With the end of the Cold War U.S. military assistance should be provided, to the maximum extent possible consistent with the national interest, to achieve the goal of promoting and strenghtening democratic governments.

The conferees therefore urge that no military assistance be made available to any government that is not democratically elected or making substantial progress towards democratic institutions. The President should apply the criteria contained in the State Department's annual report on human rights and other information in determining whether or not a government meets this standard. The conferees agree that the President should have the discretion to provide assistance if he determines that it is in the national interest of the United States.

The conferees recognize that in some cases, such as constitutional monarchies, the legislative branch of a government may be democratically elected while the executive is not. The conferees would consider such a government democratic if the legislature is freely and fairly elected.

AID IG PERSONNEL CHANGES

Amendment No. 168: Inserts language proposed by the Senate giving AID foreign service IG employees the same rights as civil service officers.

CONTINGENCY AUTHORITIES

Amendment No. 169: Provides language increasing the limitation on existing contingency authority from $10,000,000 to $25,000,000 in any fiscal year. The Senate had proposed increasing the limitation to $50,000,000.

IRAQ SANCTIONS

Amendment No. 170: Deletes Senate language relating to Iraq sanctions. This matter has been consolidated under amendment number 166.

IRAQ SANCTIONS

Amendment No. 171: Deletes language relating to Iraq sanctions. This matter has been consolidated under amendment number 166.

EXCESS DEFENSE ARTICLES

Amendment No. 172: Inserts Senate provision expanding the eligibility of countries who may receive excess defense articles to countries who have contributed armed forces to deter Iraq. Also inserts new section number 589.

CHEMICAL WEAPONS

Amendment No. 173: Inserts provision prohibiting the use of any funds in the bill from being used to finance the procurement of chemicals that may be used for chemical weapons production. Also inserts new section number 590.

FOREIGN SERVICE GRIEVANCE PROCEDURES

Amendment No. 174: Deletes language proposed by the Senate concerning changes to the Foreign Service grievance procedures.

The conferees agree to remove Section 594 of the Senate bill and defer to the objections raised by the Post Office and Civil Service Committee one of the House authorizing committees that the section impinged on its jurisdiction. Section 594 is a long overdue amendment to the Foreign Service Act of 1980. It provides Foreign Service officers with rights Civil Service employees have long possessed: to file complaints involving prohibited discrimination pursuant to more expeditious negotiated grievance procedures. Currently, Foreign Service officers are compelled to file such complaints through time-consuming appeals procedures such as agencies' EEO offices. The Conferees strongly urge the authorizing committees to correct this inequity expeditiously during the next Congress.

NOTIFICATIONS FOR EMERGENCY ASSISTANCE

Amendment No. 175: Inserts a provision allowing for waivers to the fifteen day notification in cases where a failure to do so would pose a substantial risk to human health or welfare.

EGYPTIAN DEBT

Amendment No. 176: Inserts a provision allowing the President under certain conditions to adjust or cancel Egyptian military debt.

KENYA

Amendment No. 177: Inserts Senate language prohibiting funds to Kenya unless the President certifies that Kenya is taking steps on the release of political prisoners, stopping physical abuse, restoring independent of the judiciary and restoring freedoms of expression.

CARIBBEAN POLICY TRAINING

Amendment No. 178: Inserts new language permitting police training for the Eastern Caribbean in connection with a regional security system.

ENTERPRISE FOR THE AMERICAS INITIATIVE

Amendment No. 179: Inserts a Sense of Congress Resolution that the President's Enterprise for the Americas Initiative could be helpful in the region and should be given prompt consideration.

EXCESS DEFENSE ARTICLES

Amendment No. 180: Deletes Senate language expressig a Sense of Congress on the Enterprise for the Americas Initiative.

JUDICIAL REFORM IN EL SALVADOR

Amendment No. 181: Inserts language proposed by the Senate which requires that 10 percent of the military assistance funds withheld for El Salvador be placed in a fund for judicial reform. The conferees agree to delete a Senate provision establishing a commission on judicial reform.

EXTENSION OF REFUGEE CATEGORIES

Amendment No. 182: Inserts provision extending fiscal year 1990 refugee categories.

PRIORITY DELIVERY OF EQUIPMENT

Amendment No. 183: Inserts provision allowing priority delivery of excess defense articles to NATO allies and major non-NATO allies of the southern and southeastern flank of NATO.

YUGOSLAVIA PROHIBITION

Amendment No. 184: Inserts language concerning a possible prohibition of assistance to Yugoslavia.

INDEX OF ECONOMIC FREEDOM

Amendment No. 185: Deletes Senate language related to the development of a system of country-by-country evaluation.

While the conferees have agreed not to include bill language as recommended by the Senate establishing an index of economic freedom, they nonetheless encourage the Agency for International Development and the Department of the Treasury to seriously consider developing such an index.

As enumerated in the Senate legislation, the index should include such factors as property rights, government regulations, activities of the so-called "informal sector", wage and price controls, tax policy, trade policy, restrictions on investment and capital flows, the size of the state sector, and banking regulations and policies.

The conferees are generally supportive of the proposition that such an index should be utilized to help evaluate which countries should receive foreign assistance. Perhaps more important, such an index would be useful to promote improvements in economic conditions while retaining flexibility in designing and implementing development programs and projects.

DEFENSE EQUIPMENT DRAWDOWN FOR ISRAEL

Amendment No. 186: Inserts language stating that the President may direct the drawdown, for Israel, of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training, of an aggregate value of $700,000,000. It is the intention of the conferees to give the President the flexibility to provide Israel up to $700,000,000 in defense equipment in order to address the circumstances arising from the recent invasion by Iraq of Kuwait.

ANGOLA FAMINE

Amendment No. 187: Deletes Sense of the Senate language concerning the famine in Angola. The conferees endorse the issues raised in the Sense of the Senate language.

HOSTAGES IN KUWAIT AND IRAQ

Amendment No. 188: Inserts language providing up to $10,000,000 in Economic Support Funds to provide life and health insurance benefits for U.S. hostages (and their family members) in Iraq and Kuwait. The provision also provides salary payments. The conference agreement makes the provision effective for six months.

LITHUANIA, LATVIA AND ESTONIA

Amendment No. 189: Deletes language proposed by the Senate to provide $10,000,000 in medical aid and humanitarian assistance from development assistance and the Economic Support Fund for Lithuania, Latvia and Estonia.

FORCED CONSCRIPTION

Amendment No. 190: Provides language which prohibits assistance to any government that fails to protect children from forced conscription into military service. The provision is amended to include a new section number 599D.

INTERNATIONAL COURT

Amendment No. 191: Inserts language expressing the Sense of Congress on the creation of an International Criminal Court. The section is amended to provide a new section number 599E.

PROGRESS AND LEADERSHIP OF THE CITIZENS DEMOCRACY CORPS

Amendment No. 192: Inserts a new provision requiring the President to report to Congress the name of a qualified individual in the private sector who will serve as the Chairman of the Citizens Democracy Corps. The provision requires the President to submit a report to Congress by December 15, 1990, regarding the CDC's strategic implementation plan.

POLISH DEBT

Amendment No. 193: Expresses the Sense of the Congress regarding a reduction in Polish debt. The Senate had proposed a Sense of the Senate.

CHEMICALS USED IN PRODUCTION OF ILLICIT NARCOTICS

Amendment No. 194: Inserts new language directing the Attorney General to undertake negotiations concerning the production, transshipment, and sale of chemicals used in the production of Illicit Narcotics.

VIET NAM TRAVEL

Amendment No. 195: Inserts new language expressing the Sense of the Senate that the per diem travel limitation in Vietnam should be increased as a response to Vietnamese cooperation on the POW and MIA issues.

WEST BANK SCHOOLS

Amendment No. 196: Inserts new language commending Israel for opening West Bank schools of different types and expresses hopes that they will be respected as places of learning.

INTERNATIONAL FINANCIAL INSTITUTIONS TRAVEL

Amendment No. 197: Deletes language urging the Secretary of Treasury to direct the Executive Directors of the international financial institutions to urge the elimination of first class travel by employees of those institutions.

CONFORMING PUBLIC LAW 480 AMENDMENT

Amendment No. 198: Conforms Public Law 480 to provisions of the farm bill as proposed by the Senate.

TITLE VI—INTERNATIONAL FORESTRY COOPERATION

Amendment No. 199: Inserts Senate language, the "International Forestry Cooperation Act of 1990" providing legislative policy on international forestry matters and authorizing appropriations.

The conferees agree to include a title providing authority to the Secretary of Agriculture to carry out activities abroad in support of forestry and related natural resources, focusing on key countries which could have a substantial impact on emissions of greenhouse gases related to global warming. The Secretary of Agriculture is to provide assistance in support of international forestry in countries that receive assistance from the Agency for International Development only at the request or with the concurrence of the Administrator of the Agency for International Development.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1991 recommended by the Committee of Conference, with comparisons to the fiscal year 1990 amount, the 1991 budget estimates, and the House and Senate bills for 1991 follow:

New budget (obligational) authority, fiscal year 1990	$15,523,490,180
Budget estimates of new (obligational) authority, fiscal year 1991	15,518,826,537
House bill, fiscal year 1991	15,637,093,273
Senate bill, fiscal year 1991	15,533,051,000
Conference agreement, fiscal year 1991	15,389,400,887
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1990	−134,089,293
Budget estimates of new (obligational) authority, fiscal year 1991	−129,425,650
House bill, fiscal year 1991	−247,692,386
Senate bill, fiscal year 1991	−143,650,113

DAVID R. OBEY,
SIDNEY R. YATES,
MATTHEW F. MCHUGH,
WILLIAM LEHMAN,
CHARLES WILSON,
WILLIAM H. GRAY III,
BOB MRAZEK,
RON COLEMAN,
JAMIE L. WHITTEN,
JERRY LEWIS
(except for enterprise for Americas initiative—Amendment 141),
JOHN PORTER
(except for enterprise for Americas initiative—Amendment 141),
DEAN GALLO
(except for enterprise for Americas initiative—Amendment 141),
SILVIO O. CONTE,
Managers on the Part of the House.

PATRICK J. LEAHY,
DANIEL K. INOUYE,
DENNIS DECONCINI,
FRANK R. LAUTENBERG,
TOM HARKIN,
BARBARA A. MIKULSKI,
ROBERT C. BYRD,
ROBERT W. KASTEN, Jr.,
ALFONSE D'AMATO,
WARREN RUDMAN,
ARLEN SPECTER,
DON NICKLES,
TED STEVENS,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 5769, DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT 1991

Mr. YATES submitted the following conference report and statement on the bill (H.R. 5769) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes:

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5769) "making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 12, 16, 20, 25, 26, 28, 32, 33, 36, 38, 41, 53, 54, 56, 57, 59, 65, 66, 102, 104, 109, 120, 127, 129, 133, 134, 135, 137, 142, 143, 153, 156, 161, 177, 181, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 212, 213, 214, 218, and 222.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 7, 8, 18, 21, 31, 35, 39, 42, 43, 46, 60, 61, 62, 67, 68, 69, 71, 76, 77, 81, 83, 84, 85, 86, 87, 88, 111, 112, 115, 122, 123, 124, 125, 126, 132, 138, 139, 140, 141, 145, 146, 148, 150, 151, 154, 159, 162, 163, 165, 169, 172, 173, 175, 182, 184, 190, 210, 211, and 215 and agree to the same.

Amendment numbered 1:

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$500,112,000*; and the Senate agree to the same.

Amendment numbered 4:

That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$15,386,000*; and the Senate agree to the same.

Amendment numbered 5:

That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$15,649,000*; and the Senate agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$84,476,000*; and the Senate agree to the same.

Amendment numbered 9:

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$476,272,000*; and the Senate agree to the same.

Amendment numbered 10:

That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$9,313,000*; and the Senate agree to the same.

Amendment numbered 11:

That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$93,113,000*; and the Senate agree to the same.

Amendment numbered 13:

That the House recede from its disagreement to the amendment of the Senate numbered 13, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *, the National Training Center, Crab Orchard National Wildlife Refuge dam,*; and the Senate agree to the same.

Amendment numbered 14:

That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided further, That the Patuxent Wildlife Research Center (PWRC) is authorized to enter into a cooperative agreement with the Washington Suburban Sanitary Commission (WSSC) for the purposes of allowing the WSSC to place a water tower on land of the PWRC in return for which the WSSC will provide a continuous supply of potable water to the PWRC National Wildlife Visitor Center. The placement of said water tower will be near the present southern boundary of the PWRC adjacent to Springfield Road and shall encompass no more than five (5) acres of land: Provided further,* That Title 16 U.S.C. Section 3832(a)(6) is amended by adding at the end thereof the following: *Provided however,* no refund of rental payments and cost sharing payments shall be required when the land is purchased by or for the U.S. Fish and Wildlife Service;

And the Senate agree to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$101,150,000*; and the Senate agree to the same.

Amendment numbered 17:

That the House recede from its disagreement to the amendment of the Senate numbered 17, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$11,000,000*; and the Senate agree to the same.

Amendment numbered 19:

That the House recede from its disagreement to the amendment of the Senate numbered 19, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$881,317,000*; and the Senate agree to the same.

Amendment numbered 22:

That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided further, That $85,000 shall be available to assist the town of Harpers Ferry, West Virginia for police force use*; and the Senate agree to the same.

Amendment numbered 23:

That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$18,398,000*; and the Senate agree to the same.

Amendment numbered 24:

That the House recede from its disagreement to the amendment of the Senate numbered 24, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$271,871,000*; and the Senate agree to the same.

Amendment numbered 27:

That the House recede from its disagreement to the amendment of the Senate numbered 27, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided further, That of the funds provided under this heading, $4,500,000 shall be available for a grant for the restoration of the Keith Albee Theatre in Huntington, West Virginia, as if authorized by the Historic Sites Act of 1935 (16 U.S.C. 462(e)) such grant funds to be made available on an as needed basis*; and the Senate agree to the same.

Amendment numbered 29:

That the House recede from its disagreement to the amendment of the Senate numbered 29, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$137,513,000*; and the Senate agree to the same.

Amendment numbered 30:

That the House recede from its disagreement to the amendment of the Senate numbered 30, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$33,400,000*; and the Senate agree to the same.

Amendment numbered 34:

That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

For the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 as amended (16 U.S.C. 460l-8(f)(3)), the Cap Erb Wildlife Preserve of approximately 6 acres that on the effective date of this section is proposed by the City of Boone, Iowa, to be substituted for land formerly in Blair Park that was converted to non-recreation use, shall be deemed by the Secretary of the Interior to be of equivalent usefullness and location as the land which was so converted: Provided, That if the proposed substitute land is not equal in fair market value, the difference shall be made up in land elsewhere by the State of Iowa.

And the Senate agree to the same.

Amendment numbered 37:

That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided further, That with respect to lands and waters under the jurisdiction of the Secretary of the Interior within the City of Rocks National Reserve established by title II of Public Law 100-696, the Secretary shall hereafter permit hunting in accordance with the otherwise applicable laws of the United States and the State of Idaho, except that he may designate zones where and periods when no hunting may be permitted for reasons of public safety, administration, floral and faunal protection and management, or public use and enjoyment: Provided further, That except in emergencies, any regulation prescribing such restrictions shall be put into effect only after consultation with the appropriate state agency having jurisdiction over hunting activities: Provided further, That with respect to lands and waters under the jurisdiction of the Secretary within the Hagerman Fossil Beds National Monument, established by title III of Public Law 100-696, the Secretary shall hereafter permit hunting and fishing as well as maintenance of structures necessary to undertake such activities, including but not limited to duck and goose blinds on those lands within an area fifty feet in elevation above the high water level of the Snake River in accordance with otherwise applicable laws of the United States and the State of Idaho.*

And the Senate agree to the same.

Amendment numbered 40:

That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$573,704,000*; and the Senate agree to the same.

Amendment numbered 44:

That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$197,028,000*; and the Senate agree to the same.

Amendment numbered 45:

That the House recede from its disagreement to the amendment of the Senate numbered 45, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$65,552,000*; and the Senate agree to the same.

Amendment numbered 47:

That the House recede from its disagreement to the amendment of the Senate numbered 47, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the sum named, insert: *$68,200,000*; and the Senate agree to the same.

Amendment numbered 48:

That the House recede from its disagreement to the amendment of the Senate numbered 48, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$182,182,000*; and the Senate agree to the same.

Amendment numbered 49:

That the House recede from its disagreement to the amendment of the Senate numbered 49, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$102,182,000*; and the Senate agree to the same.

Amendment numbered 50:

That the House recede from its disagreement to the amendment of the Senate numbered 50, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$109,927,000*; and the Senate agree to the same.

Amendment numbered 51:

That the House recede from its disagreement to the amendment of the Senate numbered 51, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided further, That notwithstanding the requirements of section 705 of Public Law 95-87 (30 U.S.C. 1295) appropriations herein shall be available to fund the full costs to the States to implement the Applicant Violator System in compliance with the January 24, 1990 Settlement Agreement between Save Our Cumberland Mountains, Inc. et al. and Manuel Lujan, Jr., Secretary, U.S. Department of the Interior, et al.*

And the Senate agree to the same.

Amendment numbered 52:

That the House recede from its disagreement to the amendment of the Senate numbered 52, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$200,006,000*; and the Senate agree to the same.

Amendment numbered 55:

That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$1,326,997,000*; and the Senate agree to the same.

Amendment numbered 58:

That the House recede from its disagreement to the amendment of the Senate numbered 58, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the sum named, insert *$3,000,000*; and the Senate agree to the same.

Amendment numbered 63:

That the House recede from its disagreement to the amendment of the Senate numbered 63, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows: *: Provided, That none of the funds provided in this Act may be used to prepare a reprogramming proposal to reorganize the Bureau of Indian Affairs until a task force consisting of tribal, Bureau and departmental representatives reviews any proposal to reorganize the Bureau and reports to the Committees on Appropriations regarding consultation and a review of the proposal: Provided further, That none of the funds provided in this Act may be used to undertake a reorganization pursuant to 64 Stat. 1262 or any other provision of law*

And the Senate agree to the same.

Amendment numbered 64:

That the House recede from its disagreement to the amendment of the Senate numbered 64, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$168,536,000*; and the Senate agree to the same.

Amendment numbered 70:

That the House recede from its disagreement to the amendment of the Senate numbered 70, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment insert *$3,000,000*; and the Senate agree to the same.

Amendment numbered 72:

That the House recede from its disagreement to the amendment of the Senate numbered 72, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$3,000,000*; and the Senate agree to the same.

Amendment numbered 73:

That the House recede from its disagreement to the amendment of the Senate numbered 73, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$11,787,000*; and the Senate agree to the same.

Amendment numbered 74:

That the House recede from its disagreement to the amendment of the Senate numbered 74, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$106,219,000*; and the Senate agree to the same.

Amendment numbered 75:

That the House recede from its disagreement to the amendment of the Senate numbered 75, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$102,912,000*; and the Senate agree to the same.

Amendment numbered 78:

That the House recede from its disagreement to the amendment of the Senate numbered 78, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$48,707,000*; and the Senate agree to the same.

Amendment numbered 79:

That the House recede from its disagreement to the amendment of the Senate numbered 79, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$24,800,000*; and the Senate agree to the same.

Amendment numbered 80:

That the House recede from its disagreement to the amendment of the Senate numbered 80, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$58,736,000*; and the Senate agree to the same.

Amendment numbered 82:

That the House recede from its disagreement to the amendment of the Senate numbered 82, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$1,254,000*; and the Senate agree to the same.

Amendment numbered 89:

That the House recede from its disagreement to the amendment of the Senate numbered 89, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment as amended as follows:

In lieu of the section number named, insert *107*; and the Senate agree to the same.

Amendment numbered 90:

That the House recede from its disagreement to the amendment of the Senate numbered 90, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *108*; and the Senate agree to the same.

Amendment numbered 91:

That the House recede from its disagreement to the amendment of the Senate numbered 91, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *109*; and the Senate agree to the same.

Amendment numbered 92:

That the House recede from its disagreement to the amendment of the Senate numbered 92, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the section number named insert: *110*; and the Senate agree to the same.

Amendment numbered 93:

That the House recede from its disagreement to the amendment of the Senate numbered 93, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the section number named insert: *111*; and the Senate agree to the same.

Amendment numbered 94:

That the House recede from its disagreement to the amendment of the Senate numbered 94, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the section number named insert: *112*; and the Senate agree to the same.

Amendment numbered 95:

That the House recede from its disagreement to the amendment of the Senate numbered 95, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the first section number named, insert: *113*; and the Senate agree to the same.

Amendment numbered 96:

That the House recede from its disagreement to the amendment of the Senate numbered 96, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the section number named, insert: *114*; and the Senate agree to the same.

Amendment numbered 97:

That the House recede from its disagreement to the amendment of the Senate numbered 97, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows:

SEC. 115. The provision of section 114 shall not apply if the transfer of management or control is ratified by law.

And the senate agree to the same.

Amendment numbered 98:

That the House recede from its disagreement to the amendment of the Senate numbered 98, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *116*; and the Senate agree to the same.

Amendment numbered 99:

That the House recede from its disagreement to the amendment of the Senate numbered 99, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended as follows:

In lieu of the section number named, insert; *117*; and the Senate agree to the same.

Amendment numbered 100:

That the House recede from its disagreement to the amendment of the Senate numbered 100, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended as follows:

In lieu of the section number named, insert; *118*; and the Senate agree to the same.

Amendment numbered 101:

That the House recede from its disagreement to the amendment of the Senate numbered 101, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

SEC. 119. None of the funds available to the Bureau of Indian Affairs in this or any other Act shall be used to evict, or demolish the homes or structures of those members of the Yakima Indian Tribe presently residing at federal in lieu fishing sites located at Cooks Landing and Underwood in the State of Washington within the area ceded to the United States of America under the Treaty with the Yakima, 1855, 12 Stat. 698 (1859), until a final decision is issued by the court of jurisdiction in the case now pending.

And the Senate agree to the same.

Amendment numbered 103:

That the House recede from its disagreement to the amendment of the Senate numbered 103, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 120. STATUTE OF LIMITATIONS.

Holders of mining claims subject to the injunction issued in Northern Alaska Environmental Center v. Hodel, Civil Case J-85-009, U.S. District Court, (District of Alaska) may file an action for inverse condemnation against the United States at least until December 31, 1999.

SEC. 121. APPRAISAL PROCEDURE.

(a) Holders of unpatented mining claims subject to the injunction issued in Northern Alaska Environmental Center v. Hodel, Civil Case J-85-009, U.S. District Court, (District of Alaska) may apply to the Department of the Interior for a validity determination. The validity determination shall be conducted jointly by the National Park Service and the Bureau of Land Management within two years of application, subject to the availability of appropriated funds. Upon completion of the validity determintion, copies of the final written report, reviewed and approved by the Bureau of Land Management, shall be provided to the claimant.

(b) Upon receipt by the National Park Service of (1) and finding of validity pursuant to subsection (a), or evidence of a valid patent, and (2) an offer of sale of said mining claims, the National Park Service shall commence the appraisal process pursuant to subsection (c).

(c) Upon fulfillment of the requirements of subsection (b), a panel of three persons shall be selected pursuant to the procedures of the American Arbitration Association. The panel shall consist of an attorney familiar with mining law, a registered professional mining engineer/geologist familiar with mineral appraisal and methods of production for the type of claim in question, and in the case of patented mining claims an appraiser qualified to perform surface estate appraisals. The appraisal shall be completed within one year of the date the panel is selected. Nothing in this subsection shall require the conduct of a new appraisal for lands or claims for which a valid current government appraisal already exists.

(d) Within six months of completion of the appraisal process for a mining claim under subsection (c), the National Park Service shall, subject to the availability of appropriated funds, or as soon thereafter as funds become available, make an offer to the claimant to purchase said claim for the appraised value. The claimant shall have six months to accept or reject the offer.

And the Senate agree to the same.

Amendment numbered 105:

That the House recede from its disagreement to the amendment of the Senate numbered 105, and agree to the same with an amendment, as follows:

In lieu of the first section number named in said amendment insert: *122*; and the Senate agree to the same.

Amendment numbered 106:

That the House recede from its disagreement to the amendment of the Senate numbered 106, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$168,512,000*; and the Senate agree to the same.

Amendment numbered 107:

That the House recede from its disagreement to the amendment of the Senate numbered 107, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$183,377,000*; and the Senate agree to the same.

Amendment numbered 108:

That the House recede from its disagreement to the amendment of the Senate numbered 108, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided, That a grant of $4,500,000 for the construction and equipping of a hardwood training center and a flexible manufacturing center*; and the Senate agree to the same.

Amendment numbered 110:

That the House recede from its disagreement to the amendment of the Senate numbered 110, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$1,302,687,000*; and the Senate agree to the same.

Amendment numbered 113:

That the House recede from its disagreement to the amemdment of the Senate numbered 113, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following: *: Provided further, That timber volume authorized or scheduled for sale during fiscal year 1990, but which remains unsold at the end of fiscal year 1990, shall be offered for sale during fiscal year 1991 in addition to the fiscal year 1991 timber sale volume to the extent possible.*

And the Senate agree to the same.

Amendment numbered 114:

That the House recede from its disagreement to the amendment of the Senate numbered 114, and agree to the same with an amendment, as follows:

In lieu of " up to "named in said amendment, insert: *no more than*; and the Senate agree to the same.

Amendment numbered 116:

That the House recede from its disagreement to the amendment of the Senate numbered 116, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$278,593,000*; and the Senate agree to the same.

Amendment numbered 117:

That the House recede from its disagreement to the amendment of the Senate numbered 117, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$83,245,000*; and the Senate agree to the same.

Amendment numbered 118:

That the House recede from its disagreement to the amendment of the Senate numbered 118, and agree to the same with an amendment, as follows:

In lieu of the sun named by said amendment insert *$195,348,000*; and the Senate agree to the same.

Amendment numbered 119:

That the House recede from its disagreement to the amendment of the Senate numbered 119, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$89,163,000*; and the Senate agree to the same.

Amendment numbered 121:

That the House recede from its disagreement to the amendment of the Senate numbered 121, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *Provided, That of the funds previously appropriated under this head for land acquisition, the Forest Service shall match on a dollar-for-dollar basis, but not to exceed $769,000, any amount that the Bonneville Power Administration makes available to implement the Northwest Resource Information Center, Inc.'s water resource and fish enhancement proposal of April 20, 1990, as amended June 8, 1990, and September 6, 1990, and as certified by the Area Ranger of the Sawtooth National Recreation Area on October 1, 1990: Provided further, That the funds shall not be expended by the Forest Service to implement the proposal unless it is stipulated that the Federal government will receive from the owner of Busterback Ranch the full interest and control of the water rights necessary to meet fully the anadromous fish requirements of the proposal.*

And the Senate agree to the same.

Amendment numbered 128:

That the House recede from its disagreement to the amendment of the Senate numbered 128, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

None of the funds available in this Act shall be used for timber sale preparation using clearcutting or other forms of even-age management in hardwood stands in the Shawnee National Forest, Illinois.

None of the funds available in this Act shall be used for timber sale preparation using clearcutting in hardwood stands in excess of 25 percent of the fiscal year 1989 harvested volume in the Wayne National

Forest, Ohio: Provided, That this limitation shall not apply to hardwood stands damaged by natural disaster: Provided further, That landscape architects shall be used to maintain a visually pleasing forest.

And the Senate agree to the same.

Amendment numbered 130:

That the House recede from its disagreement to the amendment of the Senate numbered 130, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment, insert: *$1,500*; and the Senate agree to the same.

Amendment numbered 131:

That the House recede from its disagreement to the amendment of the Senate numbered 131, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$42,887,000*; and the Senate agree to the same.

Amendment numbered 136:

That the House recede from its disagreement to the amendment of the Senate numbered 136, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

Notwithstanding any other provision of law, funds allocated by the Forest Service to a specific national forest in fiscal year 1992 for National Forest System trail construction; trail maintenance; wildlife and fish habitat management; soil, water and air management; cultural resource management; wilderness management; and reforestation and stand improvement shall be increased by 5 per centum on October 1, 1991 if the specific national forest attains the timber sale offer volume and timber pipeline preparation volume target established for fiscal year 1991: Provided, That these funds shall be made available in fiscal year 1992 from fiscal year 1991 timber receipts returned to the Federal Treasury and shall be available until expended: Provided further, That these funds are in addition to any other funds appropriated for these activities and can be merged into regular appropriated accounts.

And the Senate agree to the same.

Amendment numbered 144:

That the House recede from its disagreement to the amendment of the Senate numbered 144, and agree to the same with an amendment, as follows:

In lieu of "January 1, 1991" named in said amendment, insert: *February 1, 1991*; and the Senate agree to the same.

Amendment numbered 147:

That the House recede from its disagreement to the amendment of the Senate numbered 147, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *Provided further, That funds provided under this head in this or any other appropriations Act shall be expended only in accordance with the provisions governing the use of such funds contained under this head in this or any other appropriations Act.*

And the Senate agree to the same.

Amendment numbered 149:

That the House recede from its disagreement to the amendment of the Senate numbered 149, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$461,167,000*; and the Senate agree to the same.

Amendment numbered 152:

That the House recede from its disagreement to the amendment of the Senate numbered 152, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

Of the funds provided herein, $2,500,000 shall be for a grant for the National Research Center for Coal and Energy, and $2,000,000 shall be for a grant to be matched on an equal basis from other sources for the University of North Dakota Energy and Environmental Research Center.

And the Senate agree to the same.

Amendment numbered 155:

That the House recede from its disagreement to the amendment of the Senate numbered 155, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert: *$497,784,000*; and the Senate agree to the same.

Amendment numbered 157:

That the House recede from its disagreement to the amendment of the Senate numbered 157, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert: *$1,000,000*; and the Senate agree to the same.

Amendment numbered 158:

That the House recede from its disagreement to the amendment of the Senate numbered 158, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following: *establishment of a National Metal Casting Research Institute at the University of Northern Iowa and $1,000,000 of the amount under this heading shall be for establishment of a National Metal Casting Research Institute at the University of Alabama, such institutes to be established consistent with the provisions of Public Law 101-425*; and the Senate agree to the same.

Amendment numbered 160:

That the House recede from its disagreement to the amendment of the Senate numbered 160, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert the following:

$2,250,000 of the amount provided under this heading shall be available for a grant to the National Center for Alternate Transportation Fuels: Provided further, That $3,000,000 of the amount provided under this heading shall be available for a project to develop an integrated manufacturing information system for the steel industry, and the government share of the costs of such project shall not exceed fifty per centum using the same criteria for acceptance of contributions as for steel and aluminum research below: Provided further, That $17,500,000

And the Senate agree to the same.

Amendment numbered 164:

That the House recede from its disagreement to the amendment of the Senate numbered 164, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows: *: Provided, That appropriations herein made shall not be available for leasing of facilities for the storage of crude oil for the Strategic Petroleum Reserve unless the quantity of oil stored in or deliverable to Government-owned storage facilities by virtue of contractual obligations is equal to 750,000,000 barrels*

And the Senate agree to the same.

Amendment numbered 166:

That the House recede from its disagreement to the amendment of the Senate numbered 166, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows: *: Provided further, That no funds made available by this or any other Act may be used for the leasing of crude oil from a foreign government, a foreign State-owned oil company, or an agent of either, except pursuant to the procedures of Section 174, Part C, title I of the Energy Policy and Conservation Act (42 U.S.C. 6211 et seq.), as contained in Section 6 of Public Law 101-383*

And the Senate agree to the same.

Amendment numbered 167:

That the House recede from its disagreement to the amendment of the Senate numbered 167, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$69,303,000*; and the Senate agree to the same.

Amendment numbered 168:

That the House recede from its disagreement to the amendment of the Senate numbered 168, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows:

None of the funds made available to the Department of Energy under this Act shall be used to implement or finance authorized price support or loan guarantee programs unless specific provision is made for such programs in an appropriations Act.

And the Senate agree to the same.

Amendment numbered 170:

That the House recede from its disagreement to the amendment of the Senate numbered 170, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$1,418,600,000*; and the Senate agree to the same.

Amendment numbered 171:

That the House recede from its disagreement to the amendment of the Senate numbered 171, and agree to the same with an amendment, as follows:

In lieu of "300cc-2" named in said amendment, insert: *300aaa-2*; and the Senate agree to the same.

Amendment numbered 174:

That the House recede from its disagreement to the amendment of the Senate numbered 174, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$167,279,000*; and the Senate agree to the same.

Amendment numbered 176:

That the House recede from its disagreement to the amendment of the Senate numbered 176, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided, That no later than 30 days after the end of each quarter of the fiscal year, the Indian Health Service is to report to the Committees on Appropriations of the United States House of Representatives and the United States Senate on any proposed adjustments to existing leases involving additional space or proposed additional leases for permanent structures to be used in the delivery of Indian health care services*

And the Senate agree to the same.

Amendment numbered 178:

That the House recede from its disagreement to the amendment of the Senate numbered 178, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$5,476,000*; and the Senate agree to the same.

Amendment numbered 179:

That the House recede from its disagreement to the amendment of the Senate numbered 179, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$274,321,000*; and the Senate agree to the same.

Amendment numbered 180:

That the House recede from its disagreement to the amendment of the Senate numbered 180, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$18,332,000*; and the Senate agree to the same.

Amendment numbered 183:

That the House recede from its disagreement to the amendment of the Senate numbered 183, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$15,489,000*; and the Senate agree to the same.

Amendment numbered 185:

That the House recede from its disagreement to the amendment of the Senate numbered 185, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$3,505,000*; and the Senate agree to the same.

Amendment numbered 186:

That the House recede from its disagreement to the amendment of the Senate numbered 186, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$147,000,000*; and the Senate agree to the same.

Amendment numbered 187:

That the House recede from its disagreement to the amendment of the Senate numbered 187, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$143,750,000*; and the Senate agree to the same.

Amendment numbered 188:

That the House recede from its disagreement to the amendment of the Senate numbered 188, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$7,900,000*; and the Senate agree to the same.

Amendment numbered 189:

That the House recede from its disagreement to the amendment of the Senate numbered 189, and agree to the same with an amendment, as follows:

In lieu of the sum named by said amendment insert *$26,000,000*; and the Senate agree to the same.

Amendment numbered 209:

That the House recede from its disagreement to the amendment of the Senate numbered 209, and agree to the same with an amendment, as follows:

After the words "year 1991" named in said amendment, insert: *and thereafter*; and the Senate agree to the same.

Amendment numbered 216:

That the House recede from its disagreement to the amendment of the Senate numbered 216, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended as follows:

In lieu of the first section number named in said amendment, insert *318*; and the Senate agree to the same.

Amendment numbered 217:

That the House recede from its disagreement to the amendment of the Senate numbered 217, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *319*; and the Senate agree to the same.

Amendment numbered 219:

That the House recede from its disagreement to the amendment of the Senate numbered 219, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert the following:

SEC. 320. Section 1352(e)(2)(c) of Subchapter III of chapter 13 of title 31, United States Code, as contained in section 319 of Public Law 101-121 is hereby amended by adding after $150,000," the following: "or the single family maximum mortgage limit for affected programs, whichever is greater,".

And the Senate agree to the same.

Amendment numbered 220:

That the House recede from its disagreement to the amendment of the Senate numbered 220, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *321*; and the Senate agree to the same.

Amendment numbered 221:

That the House recede from its disagreement to the amendment of the Senate numbered 221, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *322*; and the Senate agree to the same.

Amendment numbered 223:

That the House recede from its disagreement to the amendment of the Senate numbered 223, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 323. Those public lands, more particularly described as the B1/2 NW1/4 section 9, T13N, R70E, M.D.M. are hereby withdrawn and reserved as an administrative site under the jurisdiction of the National Park Service for the purposes of Great Basin National Park. The General Services Administration is hereby authorized to transfer to the National Park Service any excess lands and improvements under its jurisdiction within the aforesaid lands on a nonreimbursable basis.

And the Senate agree to the same.

Amendment numbered 224:

That the House recede from its disagreement to the amendment of the Senate numbered 224, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 324. None of the funds available to the Advisory Council on Historic Preservation may be used to process comments on undertakings of Federal agencies, as specified in Sections 106 and 110 of the National Historic Preservation Act of 1966, as amended, on grants or contracts to institutions or facilities whose main activity is the conduct of scientific research and such agencies shall be relieved from the requirement of seeking comments on such undertakings unless requested in writing by the grantee.

SEC. 325. Each amount of budget authority for the fiscal year ending September 30, 1991, provided in this Act, for payments not required by law is hereby reduced by 0.524 precentum: Provided, That such reductions shall be applied ratably to each account, program, activity, and project provided for in this Act.

And the Senate agree to the same.

Amendment numbered 225:

That the House recede from its disagreement to the amendment of the Senate numbered 225, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *326*; and the Senate agree to the same.

SIDNEY R. YATES,
JOHN P. MURTHA,
NORMAN D. DICKS,
LES AUCOIN,
TOM BEVILL,
CHET ATKINS,
JAMIE L. WHITTEN,
RALPH REGULA,
JOSEPH M. MCDADE,
BILL LOWERY,
SILVIO O. CONTE.

Managers on the Part of the House.

ROBERT C. BYRD,
J. BENNETT JOHNSTON,
PAT LEAHY,
DENNIS DECONCINI,
QUENTIN BURDICK,
DALE BUMPERS,
ERNEST F. HOLLINGS,
HARRY REID,
JAMES A. MCCLURE,
TED STEVENS,
JAKE GARN,
THAD COCHRAN,
WARREN RUDMAN,
DON NICKLES,
PETE V. DOMENICI.

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5769), making appropriations for the Department of the Interior and Related Agencies for the fiscal year ending September 30, 1991, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The conference agreement on H.R. 5769 incorporates some of the provisions of both the House and the Senate versions of the bill. The language and allocations set forth in House Report 101-789 and Senate Report 101-534 shall be complied with unless specifically addressed to the contrary in the conference agreement and accompanying statement of the managers.

TITLE I—DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

Amendment No. 1: Appropriates $500,112,000 for management of lands and resources instead of $503,451,000 as proposed by the House and $496,899,000 as proposed by the Senate. The net decrease below the amount proposed by the House consists of increases of $300,000 for mining law administration in Alaska; $1,000,000 for lands, realty, and rights-of-way, including $250,000 for the Las Vegas, NV district office; $568,000 for Alaska lands; $313,000 for forest management; $175,000 for greenstripping and $50,000 for the Oregon/Washington riparian program, both in range management; $50,000 for the Oregon/Wash-

ington riparian program in soil, water, and air management; $50,000 for the Oregon/Washington riparian program and $1,145,000 for Alaska subsistence management, both in wildlife habitat management; $220,000 for the Iditarod NHT, AK in recreation resources management; $1,890,000 for Alaska cadastral survey without emphasis on private sector contracts; and $400,000 for the existing archeological resources protection unit in resources protection and law enforcement; and decreases of $500,000 in oil and gas; $1,500,000 for removal costs in wild horse and burro management; $700,000 in range management; $50,000 for general riparian management and $1,400,000 for global warming studies, both in soil, water, and air management; $1,850,000 in wildlife habitat management; $500,000 in wilderness management; and $3,000,000 in facilities maintenance.

The managers agree that:

1. The toal amount in the account for riparian management is $9,955,000, including $1,725,000 for the Oregon/Washington Riparian Enhancement Plan. A total increase of $1,000,000 is included in each of the soil, water, and air management; range management; and wildlife habitat management programs; consisting of $800,000 for general reparian programs and $200,000 for the Oregon/Washington program;

2. Within the wildlife habitat management program increase over the budget, exclusive of Alaska subsistence management, the increase is $1,000,000 for riparian programs, $1,100,000 for general wildlife habitat management, $1,100,000 for endangered species management, $300,000 for fisheries management, and $700,000 for challenge grants;

3. Protection of fossil trackways in the Robledo Mountains near Las Cruces, New Mexico will be accomplished in the BLM management planning process;

4. Within increases in recreation resources management an additional $735,000 is included for Oregon wild and scenic rivers;

5. Within the total recreation resources management account $350,000 is included for Colorado River recreation in Utah; and

6. Within totals in this account no less than $650,000 in recreation resources management, $300,000 in facilities maintenance, and $30,000 for law enforcement is for the Red Rock Canyon Special Recreation Management Area, NV.

Amendment No. 2: Deletes House language as proposed by the Senate which would have prohibited the issuance of land patents for mining or mill site claims. The managers agree that, based on actions that have occurred on this legislation with regard to the Mining Law of 1872, a thorough review of the Mining Law's provisions and its effects needs to be undertaken by the cognizant authorizing committees.

Amendment No. 3: Appropriates $168,765,000 for firefighting as proposed by the Senate instead of $246,892,000 as proposed by the House. The amendment provides the budget estimate plus allowances for pay increases and restoration of administrative and staffing reductions.

CONSTRUCTION AND ACCESS

Amendment No. 4: Appropriates $15,386,000 for construction and access instead of $16,106,000 as proposed by the House and $14,846,000 as proposed by the Senate. The increase above the amount proposed by the Senate consists of $160,000 for a visitor contact station at the Hole-in-the-Wall area in the East Mohave National Scenic Area, $180,000 for a ranger/visitor contact station in the Santa Rosa National Scenic Area, and $200,000 for repairs to the Kelso Depot in the East Mohave National Scenic Area, if donated to the government.

LAND ACQUISITION

Amendment No. 5: Appropriates $15,649,000 for land acquisition instead of $16,228,000 as proposed by the House and $19,101,000 as proposed by the Senate.

The managers agree to the following distribution of funds:

Acquisition Management	$1,050,000
Inholdings	1,000,000
Arkansas River Access, CO	50,000
Big Wood River, ID	200,000
Blackwell Island, ID	250,000
Blue Water Canyon, NM	175,000
Bonita Creek ACEC, AZ	330,000
Carrizo Plains, CA	3,500,000
Chuckwalla Bench ACEC, CA	700,000
Desert Tortoise Nat. Area, CA	200,000
East Mojave NSA, CA	300,000
King Range NCA, CA	300,000
Lopez Island, WA	575,000
Lower Salmon River, ID	1,448,000
New River ACEC, OR	1,000,000
N. Fork American WSR, CA	100,000
Owyhee WSR, OR/ID	39,000
Powderhorn WSA, CO	675,000
Ruby Canyon, CO	350,000
San Pedro ACEC, AZ	400,000
Snake River Birds of Prey, ID	153,000
S. Fork Merced River, CA	250,000
S. Fork Snake River, ID	454,000
Steens Mountain, OR	1,350,000
Upper Sacramento River, CA	800,000
Total, Land Acquisition	15,649,000

The managers agree that beginning in FY 1991 the Bureau of Land Management, Fish and Wildlife Service, Park Service and Forest Service should transfer any unobligated balances of appropriations provided for the acquisition of specific parcels to the emergencies line within 30 days of the date of purchase. Funds provided for general and ongoing acquisition programs within a particular park are not subject to this provision. The agencies should provide monthly reports to the Committees on Appropriations on what projects they anticipate funding with the transferred funds. No project in excess of $100,000 is to be funded with these monies until the Committees on Appropriations have had 30 days to review the proposed expenditures.

OREGON AND CALIFORNIA GRANT LANDS

Amendment No. 6: Appropriates $84,476,000 for Oregon and California grant lands instead of $81,451,000 as proposed by the House and $87,453,000 as proposed by the Senate. The net increase above the amount proposed by the House consists of increases of $2,500,000 for timber sales preparation and old growth inventories; $300,000 for habitat conservation area boundary identification; $250,000 for litigation support; and $150,000 for economic impact studies; and a decrease of $175,000 for reforestation and timber stand maintenance.

Amendment No. 7: Deletes House language authorizing payment of incidental costs and nonmonetary awards of nominal value to private individuals and organizations making contributions to Bureau programs as proposed by the Senate. A general provision in Title I addresses this issue.

Amendment No. 8: Makes permanent the ability to enter into cooperative arrangements for challenge cost-share programs as proposed by the Senate. The House provision was for one year.

U.S. FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

Amendment No. 9: Appropriates $476,272,000 for resource management instead of $471,858,000 as proposed by the House and $461,881,000 as proposed by the Senate.

The net change to the House position includes increases of $300,000 for recovery of Hawaii's endangered species, $300,000 for the Animal Plant Health Inspection Service, $306,000 to continue the Maine field office, $141,000 to maintain a fisheries biologist and a contaminant specialist at the Elkins field office for Chesapeake Bay activities, $1,200,000 for ATTRA, $75,000 for cultural resources at Stillwater NWR, NV, $200,000 for water rights of Quivira NWR, $225,000 for operations at Lake Ophelia NWR, LA, $120,000 for Cape Romaine NWR, SC, $650,000 for Chesapeake Bay related activities, $125,000 for Ohio River NWR, WV, $3,700,000 for Alaska subsistence; $2,000,000 for oil spill damage assessment in Alaska, $300,000 for Marine Mammal law enforcement, $350,000 for pintail population surveys, $500,000 for the Lower Snake River Compensation Fund, $600,000 for wetland loss studies, $75,000 to initiate Chehalis River studies, $350,000 for Hawaii bird studies, a $50,000 reduction from the amount recommended by the Senate, $62,000 for the Pacific Marine Fisheries Commission, $288,000 for fishery assistance offices, $400,000 for fisheries studies on Alaska refuges, $150,000 to continue mountain lion studies, $150,000 for transfer of Victoria field station to Texas A&M, $300,000 for a striped bass study related to the Chesapeake Bay, $300,000 for the Leetown NFRC, WV, $300,000 for the Arctic Goose education program, $250,000 for a survey of waterfowl nesting pairs in Alaska, $250,000 for sea otter research and population studies, $200,000 for a study of seabird population and dynamics, $175,000 for Tustumena Lake salmon research, $300,000 for Yukon River salmon research, $200,000 for Middle Rio Grande Bosque to be managed under ecological services, $650,000 for the training office, $200,000 for management training programs, $210,000 to support the Swan Falls Joint Agreement, $300,000 for one new Co-op unit; and decreases to the House position of $500,000 in consultation, $200,000 in Northern Spotted Owl activities under the endangered species program, $1,475,000 in recovery, $150,000 for hydroelectric licensing and relicensing, $300,000 in Section 404 consultations, $100,000 in the amount provided for environmental contaminants field staff, $500,000 for natural resource damage assessments, $400,000 for contaminant biomonitoring, $150,000 for Hawaii refuges, $100,000 for Walnut Creek NWR, IA, $800,000 for new and expanding refuges, $1,750,000 for refuge maintenance, $600,000 for refuge contaminant cleanup, $200,000 for the challenge grant program, $250,000 for the Washington State ecosystem project, $400,000 for non-southwest water rights issues, $150,000 for law enforcement field operations, $250,000 for non-game migratory birds in the migratory bird program, $228,000 for hatchery operations, $870,000 for hatchery maintenance, $100,000 for chemical analyses, $60,000 for the Merrimack FAO, $250,000 for research related to

non-game migratory birds, $130,000 for equipment purchase at the Aquatic Animal Health Diagnostic Lab, $200,000 for Hawaiian Forest Birds proposed by the House, $400,000 for research maintenance, $100,000 for the Wellsboro Fish Lab, $950,000 for Southeastern Instream Flow, $125,000 for the International Center for Preservation of Animals, and $100,000 for spotted owl research.

The managers agree that:

1. Within the $250,000 increase for prelisting is $65,000 for Lake Champlain area activities;

2. There is $200,000 for purchase of water rights at Quivira NWR, KS within the increase provided;

3. Valley City ($228,000) and Gavins Point ($60,000) are included within the increase provided for hatchery operations;

4. Biodiversity activities of $300,000 for the northwest and $150,000 for Grand Island are included within the $1,000,000 included for gap analysis;

5. The budget request for endangered species recovery includes $580,000 for the Bruneau Hot Springs Snail;

6. $1,500,000 is included for the Northeast Anadromous Fish Lab with not less than 25 FTE's assigned to the Lab;

7. $425,000 shall be allocated for development of instream flow methods in coolwater streams of the northeastern United States;

8. $250,000 over the fiscal 1991 budget request is for the Southeast Fish Culture Laboratory in Marion, Alabama. This increase above the requested amount is to fill needed staff positions. The total appropriation for the Southeast Fish Culture Laboratory is $1.2 million to continue aquaculture research only at the Marion, Alabama lab site; and,

9. The Cambridge, MD Office of the Division of Law Enforcement is to be treated in the same manner as similar offices.

Amendment No. 10: Provides $9,313,000 for the Lower Snake River Compensation Plan instead of $8,813,000 as proposed by the House and $9,713,000 as proposed by the Senate.

CONSTRUCTION AND AN ANADROMOUS FISH

Amendment No. 11: Appropriates $93,113,000 for construction and anadromous fish instead of $68,375,000 as proposed by the House and $85,833,000 as proposed by the Senate.

The managers agree to the following distributions:

Advance planning	$42,000
Alaska Maritime NWR, AK	3,440,000
Alligator River NWR, NC	440,000
Anadromous fish grants	1,500,000
Bear River NWR, UT (refuge reconstruction)	1,052,000
Cameron Prairie NWR, LA	400,000
Coleman NFH, CA:	
Hatchery rehabilitation	2,000,000
No. 3 intake structure	787,000
Pollution abatement	713,000
Crab Orchard NWR, IL:	
Little Grassy Dam	1,000,000
Sewage treatment facilities	90,000
Superfund	6,000,000
D.C. Booth Hatchery	400,000
Dam safety inspections	445,000
Elkins field office, WV	550,000
Hakalau Forest NWR, HI (fencing)	300,000
Harpers Ferry National Training Center, WV	15,950,000
Jones Hole NFH, UT	2,750,000
Kenai NWR, AK (Skilak Loop)	1,500,000
Leetown National Fisheries Research Center, WV	1,800,000
Mattamuskeet NWR, NC	176,000
Mora NFH, NM	3,000,000
Natchitoches NFH, LA	1,100,000
National Wetlands Research Center, LA	6,650,000
Okefenokee NWR, GA/FL	2,100,000
Patuxent Wildlife Research Center, MD:	
Hazardous waste	1,000,000
Pollution abatement	2,700,000
Visitor facility	6,000,000
Quivira NWR, KS (headquarters addition)	600,000
Rachel Carson NWR, ME (visitor center)	300,000
Regional bridge inspection and design	342,000
Sandpoint Fisheries Resource Center, WA (replacement lab)	6,100,000
Selawik NWR, AK	1,625,000
Striped bass study	300,000
Tinicum National Environmental Center, PA	250,000
Walnut Creek NWR, LA	3,100,000
White River NFH (hatchery rehabilitation)	1,250,000
White Sulphur Springs	500,000
Wichita Mountains NWR, OK (Lake Elmer Thomas dam)	8,828,000
Emergency construction projects	2,000,000
Engineering services, transfer from resource management	4,033,000
Total, construction and anadromous fish	93,113,000

The House managers agree to the reprogramming of funds for Bogue Chitto NWR as proposed by the Senate.

Amendment No. 12: Provides $1,800,000 for the Anadromous Fish Conservation Act as proposed by the House instead of nothing as proposed by the Senate.

Amendment No. 13: Provides that a procurement for the National Training Center and the Crab Orchard NWR, IL dam may be issued which includes the full scope of the facility as proposed by the Senate. The House had no such provision.

Amendment No. 14: Authorizes placement of a water tower on the Patuxent Wildlife Research Center in return for a continuous supply of potable water to the National Wildlife Visitor Center as proposed by the Senate. The House had no such provision.

LAND ACQUISITION

Amendment No. 15: Appropriates $101,150,000 for land acquisition instead of $84,750,000 as proposed by the House and $101,660,000 as proposed by the Senate.

The managers agree to the following distribution:

Acquisition Management	$7,000,000
Emergency and hardship	1,500,000
Inholdings	2,000,000
Ace River Basin, SC	1,500,000
Aransas NWR, TX	2,200,000
Archie Carr NWR, FL	2,000,000
Back Bay NWR, VA	2,000,000
Balcones Canyonland Habitat, TX	2,000,000
Bayou Cocodrie NWR, LA	1,500,000
Bear Valley NWR, OR	800,000
Bogue Chitto NWR, LA	1,000,000
Cape May NWR, NJ	3,500,000
Coquille Point, OR	750,000
Cyprus Creek (Cache River), IL	1,000,000
Dahomey NWR, MS	2,000,000
Deep fork NWR, OK	750,000
E. B. Forsythe NWR, NJ	3,250,000
Grand Cote NWR, LA	1,500,000
Great Meadows NWR, MA	3,375,000
Great Swamp NWR, NJ	2,000,000
Harpers Ferry, WV	9,000,000
James Campbell NWR, HI	3,000,000
James River, VA	2,400,000
Lake Ophelia NWR, LA	750,000
Lower Rio Grande Valley NWR, TX	9,500,000
Minnesota Valley NWR, MN	1,000,000
National Key Deer Refuge, FL	2,000,000
Nestucca Bay, OR	1,000,000
Ohio River Islands	1,250,000
Pettaquamscutt NWR, RI	1,500,000
Rachel Carson NWR, ME	2,000,000
Rainwater Basin, NB	600,000
Realfoot Lake NWR, TN	1,000,000
Ridgefield NWR, WA	1,400,000
Sacramento River NWR, CA	4,500,000
San Francisco Bay NWR, CA	2,000,000
San Pablo Bay NWR, CA	3,700,000
Stillwater NWR, NW (water rights)	2,000,000
Tensas NWR, LA	600,000
Tinicum NEC, PA	875,000
Wallkill NWR, NJ	4,000,000
Walnut Creek NWR, IA	3,000,000
Wetlands (NFWF)	2,000,000
Wichita National Environmental Center	450,000
Total, Land Acquisition	101,150,000

The managers agree that if additional land acquisition funds are required for the National Training Center, a reprogramming should be submitted.

Amendment No. 16: Deletes Senate amendment earmarking $2,500,000 to purchase land for the Marais des Cygnes Wildlife Refuge in Linn County, KS.

NATIONAL WILDLIFE REFUGE FUND

Amendment No. 17: Appropriates $11,000,000 for the National Wildlife Refuge Fund instead of $10,000,000 as proposed by the House and $12,000,000 as proposed by the Senate.

Amendment No. 18: Adds the phrase "to remain available until expended" to the North American Wetlands Conservation Fund account as authorized and as proposed by the Senate.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

Amendment No. 19: Appropriates $881,317,000 for Operation of the National Park System instead of $874,178,000 as proposed by the House and $873,791,000 as proposed by the Senate.

In the management of park areas the managers agree to the following increases above the budget request of $75,687,000: $1,000,000 for Alaska subsistence, $1,065,000 for oil spill damage assessment, $5,000,000 to be distributed equally among the parks based on the budget estimate, $200,000 for the Merrimack River Basin and $78,000 for the Student Conservation Association. In addition, the following park areas will receive specific increases above the $5,000,000 to be distributed as follows:

Acadia NP, ME	$200,000
Big South Fork	300,000
Boston Afro-American	80,000

Buffalo River	125,000
Coulee Dam	300,000
Cuyahoga Valley NRA, OH	650,000
Edison NHS, NJ	150,000
Fort Union	65,000
Frederick L. Olmsted	315,000
Gateway NRA	800,000
Gauley	83,000
Great Basin	50,000
Harpers Ferry	100,000
Hot Springs NP, AK	250,000
Jean Lafitte	200,000
Kalaupapa	600,000
Lake Meredith	60,000
Lincoln Home	500,000
Lowell	610,000
Minute Man	100,000
Natchez NHP, MS	100,000
New River Gorge NR, WV	800,000
Padre Island NS, TX	340,000
Petroglyphs NM, NM	300,000
Saint Gaudens	50,000
St. Croix (temporary visitor center)	81,000
Women's Rights	50,000

The changes to the House position for visitor protection and safety include $400,000 for Lake Mead NRA, $100,000 for Delaware Water Gap and $75,000 for a Denali NPP ambulance. For the National Park Police there is an increase of $800,000 for unbudgeted pension costs. In maintenance, there are increases to the House position of $110,000 for Antietam, $300,000 for Delaware Water Gap, $300,000 for Lake Mead sanitation and $160,000 for flood mitigation and $200,000 for the Phoenix Indian School; and decreases of $1,000,000 for new and expanding areas and $2,400,000 for repair and rehabilitation. Within repair and rehabilitation is $1,000,000 for hiking trails.

The change to the resource management amount of the House is a decrease of $500,000 for cultural resources training, $330,000 in global climate change program, $200,000 for ethnography and an increase of $30,000 for Kaloko-Honokolou NHP vegetation management. In international affairs there is an increase of $180,000 for the US/USSR Joint Park.

For water resources, there is an increase of $500,000 above the House for an Everglades area study.

Within the amount recommended for general management plans the following are to be funded:

Civil War Commission	$500,000
Pony Express	150,000
Wilson Lake, KS	125,000
Petroglyphs GMP	125,000
City of Refuge	100,000
Atchafalaya	75,000
Quincy MA	250,000
Benjamin Harrison study	80,000
Chesapeake Bay Gateways	250,000
WV coal heritage study	100,000
Bramwell new area study	150,000
Matewan WV	150,000
Jazz Park study	100,000
Natchez NHP MS	150,000
San Francisco Maritime	125,000
Cleveland to Zoar Corridor Study	175,000
Birmingham District Corridor	250,000
New Bedford/Falls River Study	250,000
Delaware Valley Study	100,000
GGNRA (Giacomini)	125,000
Missouri NRR GMP	150,000
Shenandoah Civil War sites	100,000
Can River Study	100,000

The following increases to the budget request are included for Statutory and Contractual Aid:

Lowell Commission	$130,000
Mary McLeod Bethune	100,000
M.L. King Jr. Center	351,000
Blackstone River Corridor	700,000
Native Hawaiian Culture and Arts	2,000,000
Miss. River Corridor Comm	200,000
Maine Acadian Culture Comm	75,000
International Peace Garden	250,000
Warren County, MS	500,000
Wheeling Park Commission	325,000
Turkey Run Farm Park	225,000
Delaware and Lehigh	350,000
National Constitution Center	250,000
Sloss Furnaces NHL, AL	250,000
Johnstown Area Heritage Assn	500,000
Southwestern PA Heritage	550,000
William McKinley Memorial	516,000
Steel Industry Task Force	500,000
Owensboro Community College	100,000

The changes to the House position in general administration include decreases of $200,000 for the women's initiative, $202,000 for a drug free work place and $586,000 in administrative reductions. There is an increase of $1,500,000 for District of Columbia water and sewer payments.

The managers agree to the following:

1. The increase of $17,906,000 for the pay raise and restoration of administrative reductions is to go on a proportional basis to all units of the Park Service including the Washington Office, regional offices and the U.S. Park Police as proposed by the Senate.

2. Independence Hall should receive $654,000 above the budget request.

3. The $200,000 for ethnography is for a servicewide program with emphasis on the Southwest.

4. Summer hours for Ft. McHenry should be from 8:00 am to 8:00 pm.

5. The $100,000 for Owensboro Community College is for a teleteaching demonstration.

Amendment No. 20: Provides $600,000 for the National Institute for the Conservation of Cultural Property as proposed by the House and stricken by the Senate.

Amendment No. 21: Deletes House language regarding the reorganization of the Office of Congressional and Legislative Affairs.

The managers remain concerned with the organizational structure of the National Park Service Division of Legislation and Congressional Liaison. The managers have been assured that corrective personnel actions are underway and shall be completed at the soonest possible date. Agreed that the president situation is untenable in its inefficiencies and deleterious effects on personnel, the managers expect the Director of the National Park Service to act quickly to honor his assurances and report to the Committees on the progress made toward compliance.

Amendment No. 22: Continues funding the Harpers Ferry, West Virginia police on an annual basis rather than making a permanent entitlement as proposed by the Senate. The House had no such provision.

The managers recognize the conflicting interests of the two Houses in the Williamsport Training Center and direct the Office of the Associate Director for Planning to conduct a study, largely along the guideline included in House Report 101-789, with respect to the possible relocation of this operation. The report should also be based on any other criteria that the Associate Director concludes may be appropriate for the efficient operation and successful conduct of the structural rehabilitation and preservation training activities presently conducted at Williamsport. Every reasonable effort should be made to identify and evaluate potential relocation sites which are in reasonable proximity to the existing training site in order to minimize the disruption of ongoing training activities and to the domestic affairs of the employees of the Williamsport Training Center.

NATIONAL RECREATION AND PRESERVATION

Amendment No. 23: Appropriates $18,398,000 for national recreation and preservation instead of $17,968,000 as proposed by the House and $16,278,000 as proposed by the Senate.

The change to the House position includes the following increases: $60,000 for the Midland Trail Association, $310,000 for the Walker to Wilsonburg Trail, $175,000 for a Kaiwi Shoreline feasibility study, $50,000 for a Millville, NJ historic structures survey, $300,000 for the Institute for History and Technology, $50,000 for a Commercial Township, NJ historic structures survey, $160,000 for HAER in Allegheny County, PA and $150,000 for the Homestead strike centennial; and decreases of $500,000 in the rivers and trails assistance program, $200,000 in the rivers and trails study program, and $125,000 for a history thermatic outline.

Within the $500,000 increase over the budget request for rivers and trails studies are funds adequate to handle New England rivers and trails studies.

There is $100,000 for the metropolitan corridor area studies within funds provided.

HISTORIC PRESERVATION FUND

Within the amount provided in $250,000 for the Distressed Cities program of the National Trust. The National Trust is also to give the highest consideration to support for the Hilo, HI mainstreet project.

CONSTRUCTION

Amendment No. 24: Appropriates $271,871,000 for construction instead of $227,111,000 as proposed by the House and $227,710,000 as proposed by the Senate.

The managers have agreed to the following distribution of funds:

	Planning	Construction
Agate Fossil Beds NM, NB		$1,150,000
America's Industrial Heritage	$3,532,000	9,662,000
Andersonville NHS, GA	324,000	320,000
Appalachian NST, NY		587,000
Appomattox Courthouse NHP, VA	15,000	600,000
Assateague Island, NS (visitor center)	450,000	
Big South Fork NRA, KY		500,000
Big Thicket NP, TX	114,000	3,100,000
Biscayne NP, FL	25,000	3,250,000
Blue Ridge Parkway:		
Fisher Peak	250,000	
Park headquarters	443,000	
Dam safety modifications, North Carolina		1,900,000
Boston NHP, MA:		
Old South rehabiltation	659,000	
Dorchester Heights planning	480,000	
C&O Canal (Brunswick, Hancock, and Williamsport rewatering		2,300,000
Canyonlands NP, UT (visitor center)	1,100,000	4,900,000
Cape Hatteras NS, NC (Kinnakeet)		727,000
Capital area parks (bicycle trails)		675,000
Chickamauga/Chattanooga NMP:		
Road construction		1,000,000
Visitor center parking lot		300,000
Chickasaw NRA, OK: Veteran's Lake dam safety modifications		600,000
Cordell Hull NHS, TN	500,000	
Coulee Dam NRA, WA:		
Lake fluctuation retrofits	130,000	
Boat launch ramps	140,000	
Crater Lake NP, OR	1,895,000	5,309,000
Cuyahoga NRA, OH:		
Cuy Station Road Bridge		459,000
Boston Company Store	95,000	
Remove abandoned structures		400,000
Ohio and Erie Towpath Canal		1,960,000
Rail line bridge and tract		851,000
Krejci Toxic Waste Site		3,207,000
Virginia Kendall		1,508,000

	Planning	Construction
Delaware Water Gap NRA, NJ:		
Smithfield Beach		2,900,000
Blue Mountain dams		770,000
Weygadt Visitor Center	1,530,000	
Denali NPP:		
Southside Visitor Center	385,000	
Teklanika comfort station	180,000	
El Malpais NM, NM	500,000	
Everglades NP, FL water delivery system		7,500,000
F.D.R. Memorial, DC	1,214,000	2,730,000
Fisk University NHS, TN		1,500,000
Foothills Parkway, TN		2,000,000
Fort McHenry NM, MD (rehabilitation)	90,000	1,500,000
Fort Larned NHS, KS (visitor center)	590,000	
Fort Sumpter NM, SC (visitor center)	540,000	3,287,000
Fort Vancouver NHS, WA	89,000	1,600,000
Gates of the Arctic NPP, AK	480,000	1,316,000
Gateway NRA, NJ/NY:		
Canarsie Pier		5,000,000
Great Kills bathhouse	1,400,000	
Jacob Riis Park	1,000,000	6,000,000
New Jersey bathhouses, Sandyhook	300,000	3,200,000
Parking lots G and J		
George Washington Memorial Parkway, VA:		
Maintenance-building		3,800,000
Glen Echo	1,375,000	
Gettysburg NMP, PA (historic pathways)	75,000	
Glen Canyon NRA, AZ (drought mitigation)		970,000
Grant Home NHS, MO	100,000	
Great Basin NP, NV	96,000	
Great Smokey Mountains NP, NC:		
Deep Creek	284,000	
Oconoluftee Visitor Center	413,000	
Hagerman Fossil Beds NM, ID	183,000	
Haleakala NP, HI (fencing)		300,000
Harpers Ferry NHP, WV	1,400,000	1,512,000
Hawaii Volcanoes NP, HI (fencing)		300,000
Herritage Park, PA (study)	200,000	
Hot Springs NP, AR:		
Flood repair		5,250,000
Landscaping	350,000	2,030,000
Indiana Dumes NL, IN (complete campground)		700,000
James A. Garfield NHS, OH		1,500,000
Jean Lafitte NHPP, LA:		
Barataria unit		350,000
German Cultural Center		225,000
Italian Cultural Center		300,000
French Quarter Visitor Center		750,000
Jefferson National Expansion, IL	325,000	
Jimmy Carter NHS, GA (High school)		300,000
John Day Fossil Beds, NM, OR	126,000	
Kalaupapa NHP, HI	250,000	3,510,000
Keith Albee Theatre, WV		4,500,000
Klondike Gold Rush NHP, AK	600,000	
Knife River Indian Villages NHS, ND		600,000
Lake Mead NRA, NV/AZ: Replace sewage lagoons	170,000	3,199,000
Lake Meredith NRA, TX	200,000	
Lane College, TN		1,500,000
LBJ Ranch NHP, TX (hospital conversion)	500,000	600,000
Lincoln Home NHS, IL:		
Dean House		500,000
Arnold Hosue	170,000	
Henson Robinson House	75,000	262,000
Lowell NHS, MA:		
Kirk St. Agents House and Suffolk Mill		668,000
Boott Mill Museum		1,180,000
Commission projects		2,215,000
Mammoth Cave NP, KY	252,000	2,000,000
Mesa Verde NP, CO (water system)	340,000	4,800,000
Natchez Trace Parkway	1,600,000	15,900,000
New Jersey Coastal Heritage Trail		400,000
New River George NR, WV	1,305,000	6,100,000
Newark Symphony Hall NHS, NJ		1,500,000
No. Cascades NP, WA	320,000	1,100,000
Padre Island NHS, TX (visitor center)		337,000
Perry's Victory and International Peace Memorial NHS, OH (housing and maintenance facility)	457,000	
Saguaro NM, AZ (Red Hills visitor center)	132,000	1,931,000
Saint Gaudens NHS, NH	750,000	
Salem NHS, MA:		
Construction/installation of signs	20,000	25,000
Interpretive exhibits	400,000	600,000
Historic wharves		4,750,000
Visitor center		2,000,000
Salem project administration/ops	175,000	
GMP/environmental study	95,000	
San Francisco Maritime NHS, CA		2,000,000
Saugus Iron Works NHS, MA	125,000	
Sequoia NP, CA (Giant Forest visitor facilities)	960,000	6,641,000
Sleeping Bear Dunes NL, MI	240,000	2,800,000
Steamtown NHS, PA		11,000,000
Stones River NBP, TN	78,000	507,000
Theodore Roosevelt NP, ND (north unit visitor center)		400,000
Thomas Stone NHS, MD	290,000	
Tuskegee Institute NHS, AL		4,000,000
Women's Rights NHP, NY	200,000	11,800,000
Wrangell-St. Elias NPP, AK	540,000	
Yellowstone NP, WY:		
Fishing bridge	300,000	
Canyon Village wastewater treatment system	100,000	2,614,000
Winter facilities		500,000
Yosemite NP, CA:		
Rehabilitation park electrical system	417,000	3,430,000
Employee housing at El Portal	670,000	4,940,000
GMP-Roads	411,000	
Maintenance facility at El Portal	820,000	
Emergency and unscheduled projects		3,250,000
Employee housing	990,000	8,000,000
Other planning	6,728,000	
Total	45,457,000	226,414,000

The managers believe that a scaled down plan for the Saint Gaudens NHS should be developed.

Amendment No. 25: Provides $2,000,000 to assist local communities to protect Mammoth Cave National Park from groundwater pollution as proposed by the House.

Amendment No. 26: Restores House language stricken by the Senate regarding construction funding for the George Washington Memorial Parkway and the Baltimore-Washington Parkway.

Amendment No. 27: Earmarks $4,500,000 for the Keith Albee Theatre instead of $8,000,000 as proposed by the Senate. The House did not have a similar provision. The amendment also deletes the earmark for the Liberty Science Center.

URBAN PARK AND RECREATION

Amendment No. 28: Appropriates $20,000,000 for the Urban Park and Recreation Fund as proposed by the House and nothing as proposed by the Senate.

LAND ACQUISITION AND STATE ASSISTANCE

Amendment No. 29: Appropriates $137,513,000 for land acquisition and State assistance instead of $152,386,000 as proposed by the House and $144,478,000 as proposed by the Senate. The managers agree to the following distribution of funds:

Assistance to States:	
Matching Grants	$30,000,000
Administrative Expenses	3,400,000
Subtotal, State programs	33,400,000
National Park Service:	
Acquisition Management	7,000,000
Emergency and Hardship Acquisitions	5,000,000
Inholdings	2,000,000
Acadia NP, ME	800,000
Appalachian Trail	7,000,000
Big South Fork NP, TN	1,000,000
Blue Ridge Parkway, VA (inholdings)	250,000
C&O Canal, DC	7,000,000
Chattahoochee NRA, GA	1,000,000
Congaree Swamp NM, SC	3,000,000
Cumberland Island NS, GA	4,000,000
Cuyahoga Valley NRA, OH	3,000,000
Delaware Water Gap NJ/PA	940,000
Denali NPP, AK	6,000,000
El Malpais NM, NM	2,000,000
Everglades Buffer Strip, FL	4,200,000
Everglades NP, FL	7,500,000
Fire Island NS, NY	1,800,000
Fort Moultrie NM, SC	100,000
Fredericksburg/Spotsylvania NMP, VA	400,000
Gauley River NR, WV	2,000,000
Golden Gate NRA, CA (Sweeney Ridge Access)	475,000
Guadalupe Mtns. NP, TX	1,900,000
Indiana Dunes NL, IN	5,000,000
Jefferson Nat'l Expansion NHS, IL	1,000,000
John Muir NHS, GA	1,500,000
Lake Clark NPP, AK	950,000
Morristown NHP, NJ	585,000
Natchez NHP, MS	2,500,000
New River Gorge NR, WV	2,000,000
Olympic NP, WA	2,000,000
Petroglyphs NM, NM	2,000,000
Pinelands NR, NJ (hardship cases)	500,000
Saint Croix NSR, WI	2,000,000
Samoa NP, Samoa	300,000
Santa Monica Mtns. NRA, CA	12,000,000
Saxton House, OH	320,000
Sleeping Bear Dunes NL, MI	500,000
Stones River NB, TN	443,000
Timucuan Preserve, FL	2,000,000
Truman Home NHS, MO	250,000
Subtotal, NPS acquisition	104,113,000
Total, Land Acquisition and state assistance	137,513,000

The amount provided for Delaware Water Gap NRA includes $640,000 for Pennsylvania and $300,000 for New Jersey.

Amendment No. 30: Provides 33,400,000 for State grants instead of $50,000,000 as proposed by the House and $35,000,000 as proposed by the Senate.

Amendment No. 31: Provides $3,400,000 for administration of the State Assistance program as proposed by the Senate instead of $3,300,000 as proposed by the House.

Amendment No. 32: Restores House language stricken by the Senate regarding the acquisition of property in Canton, Ohio.

Amendment No. 33: Restores House language regarding the authorization for purchase of the Everglades Buffer Strip.

Amendment No. 34: Modifies language proposed by the Senate to assure that equal value is received for land converted from public park purposes. This provision allows substitution of land to take place if additional recreation land is created in Iowa to balance the loss in Boone, Iowa. The House had no such provision.

ADMINISTRATIVE PROVISIONS

Amendment No. 35: Deletes House provision regarding additions to the list of National Historic Landmarks and the National Register of Historic Places without the consent of the owner. This issue is addressed in Amendment Number 224 and under the heading advisory Council on Historic Preservation.

Amendment No. 36: Restores House language giving the National Park Service authority to repair bridges on a rail excursion line in northeastern Pennsylvania.

Amendment No. 37: Provides authority for hunting at City of Rocks National Reserve and hunting and fishing at Hagerman Fossil Beds NM, ID. The managers agreed there should be no trapping at either unit.

Amendment No. 38: Deletes Senate provision making $350,000 available for an environmental impact statement to determine the engineering requirements and environmental effects of construction of an all-weather surface on the Burr Trail in Utah.

Amendment No. 39: Allows the National Park Service to acquire an administrative site by donation of up to sixteen acres instead of ten as is in current law as proposed

by the Senate. The House had no such provision.

GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

Amendment No. 40: Appropriates $573,704,000 for Surveys, investigations, and research instead of $571,904,000 as proposed by the House and $567,412,000 as proposed by the Senate.

The net increase above the amount proposed by the House consists of increases of $400,000 for improvements to the Hawaiian Volcano Observatory; $250,000 for the CO-GEOMAP geological mapping program; $500,000 for western Louisiana-eastern Texas coastal studies; $1,500,000 for RARE II lands mineral resource surveys, and $1,000,000 for an upper Mississippi River water quality study in the Federal water resources program; and decreases of $400,000 for Alaska volcano monitoring; $250,000 for national (GEOMAP) geological mapping; $300,000 for coal availability studies; $500,000 for repair of existing streamflow instrumentation in the Federal water resources program; and $400,000 for training programs associated with water information clearinghouse activities.

The managers agree that the increase for coal availability studies will allow for work in Ohio coals.

The managers agree that the USGS should operate a water quality monitoring station on the Alsek River, Alaska.

Amendment No. 41: Deletes Senate proposed language earmarking $1,000,000 for a study of the water quality of the upper Mississippi River. The House had no earmark.

Amendment No. 42: Earmarks $66,109,000 for Federal-State cooperative water resources investigations as proposed by the Senate, instead of $64,299,000 as proposed by the House.

ADMINISTRATIVE PROVISIONS

Amendment No. 43: Deletes House language which provided nonmonetary awards to contributors to Geological Survey programs, as proposed by the Senate. Similar language is in a Department-wide general provision included in Amendment No. 99.

MINERALS MANAGEMENT SERVICE

LEASING AND ROYALTY MANAGEMENT

Amendment No. 44: Appropriates $197,028,000 for leasing and royalty management instead of $200,128,000 as proposed by the House and $193,103,000 as proposed by the Senate.

The change from the House level includes an increase of $4,000,000 in royalty management for payments to Louisiana and State lessees for drainage from oil and gas leases in the West Delta field of the Outer Continental Shelf; and decreases of $3,500,000 in the leasing and environmental program for environmental studies on the Pacific Northwest OCS, $3,075,000 for global change research, and $500,000 from other OCS environmental studies and $25,000 from executive direction to be taken from travel.

The managers agree that:

1. Funds for payments to Louisiana and State lessees for drainage from oil and gas leases in the West Delta field of the OCS may not be obligated until the Committees have had an opportunity to conduct a full hearing on this subject and agreed to the use of the funds, following the established reprogramming procedures;

2. The study required in House Report 101-789 on ocean currents off North Carolina should be initiated using $500,000 of available funds;

3. The costs associated with the environmental sciences review panel required under Section 6003 of Public Law 101-380 should be accommodated within available funds;

4. The managers take no position with respect to the repurchase of the 73 existing leases in the Eastern Gulf of Mexico south of 26 degrees north latitude and east of 86 degrees west longitude;

5. The National Academy of Sciences evaluation of information on Alaska OCS sale areas is not intended to delay the sales planned in those areas in fiscal year 1991, and should consider the information available from the nationwide OCS assessment currently being conducted by the NAS;

6. Funds for environmental studies should be allocated principally to OCS areas which remain candidates for leasing in the near term and in the next five-year plan;

7. Studies required under the Pacific Northwest OCS task force agreement should proceed within available funds;

8. The MMS is expected to cooperate with the States on requests to unitize hydrocarbon-bearing areas;

9. Funds added for additional inspectors take into consideration the fact that these individuals will not be hired until later in the fiscal year and the MMS is expected to fund the full annual cost associated with these positions in its next budget request; and

10. Increases to the budget request for pay raises and administrative expenses are to be distributed equitably to each program and the Committees are to be notified of that distribution.

Amendment No. 45: Provides $65,552,000 for royalty management rather than $61,552,000 as proposed by the House and $65,527,000 as proposed by the Senate.

The amendment provides an increase of $4,000,000 above the House level for royalty management as described in Amendment No. 44.

Amendment No. 46: Makes permanent an increase in the maximum MMS uniform allowance to $400 per year, as proposed by the Senate. The House provision was for one year.

Amendment No. 47: Restores and amends House language stricken by the Senate requiring the deduction of administrative costs of collecting mineral leasing receipts prior to their distribution to the States and to the Federal Treasury. The amended language requires the deduction of 50 percent of administrative costs prior to distribution of receipts instead of 100 percent as proposed by the House and nothing as proposed by the Senate.

BUREAU OF MINES

MINES AND MINERALS

Amendment No. 48: Appropriates $182,182,000 for mines and minerals instead of $171,443,000 as proposed by the House and $185,155,000 as proposed by the Senate.

The increases above the House level for health, safety and mining technology research include $1,000,000 for rockbursts, $100,000 for computer-assisted mining systems, $2,700,000 to continue the cost-shared Casa Grande in-situ copper leaching field test and $1,250,000 for in-house research on in-situ copper leaching, and $500,000 for equipment upgrades at the Bureau's research centers. In minerals and materials science there is an increase of $1,000,000 to continue strategic and critical minerals research at the Idaho National Engineering Laboratory. In environmental technology, increases above the House level include $1,000,000 for hazardous waste technology including biotechnology research, $500,000 to continue water contamination research at the University of Idaho, and $250,000 to continue soil revegetation research at abandoned mine lands in Arkansas. There is also an increase of $4,479,000 for allotment grants to the mineral institutes. These increases are partially offset by decreases in health, safety and mining technology research, of $200,000 for dust control. $250,000 for explosives, $100,000 for diesel engines, $490,000 for mine worker safety/human factors and $1,000,000 in environmental technology research for biotechnology.

The managers expect that the Spokane research center will receive a fair share of the increased funds provided for hazardous waste technology; that none of the funds provided for mineral institute grants will be provided to those institutes which do not meet the established criteria for eligibility; and that increases to the budget request for pay raises and administrative expenses are to be distributed equitably to each program.

The managers agree that none of the $500,000 provided for equipment upgrades at the Bureau's research centers is to be obligated until the Bureau has reported to the Committees on its needs in this area and the extent to which equipment needs are not being met adequately through the current practice of funding equipment acquisition as a part of total project cost. The Bureau should report to the Committees no later than February 1, 1991, including an overall list, in priority order, of unmet needs for equipment acquisition and a list for each research center with cost information by project.

The managers understand that development of the coal resource potential in the Western Arctic may pose significant challenges with respect to surface and underground mining. The Bureau is to examine the need for additional research in this area and include in its fiscal year 1992 budget request a list, in priority order, or potential projects, their associated costs, and the timeframe over which these projects should be conducted.

The managers agree that the Bureau should establish a standard escalation factor for helium prices charged to Federal customers and keep the Committees apprised of Bureau efforts in this area.

Amendment No. 49: Earmarks $102,182,000 to remain available until expended instead of $95,922,000 as proposed by the House and $104,672,000 as proposed by the Senate.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

REGULATION AND TECHNOLOGY

Amendment No. 50: Appropriates $109,927,000 for regulation and technology instead of $110,527,000 as proposed by the House and $110,647,000 as proposed by the Senate.

The decrease to the amount proposed by the House deletes the $600,000 requested in the budget as a base adjustment for current operations. The managers agree such an adjustment has not been justified by OSM for this account. These funds have been added to the abandoned mine reclamation account under Amendment No. 52.

The managers agree that increases to the budget request for pay raises and administrative expenses are to be distributed equitably to each program.

Amendment No. 51: Modifies language proposed by the Senate to specify the date

of and parties to the AVS agreement. The House had no such provision.

The managers agree that the Federal government should pay the full cost of implementing the AVS agreement in fiscal year 1991. In future years the AVS should become an integral part of the State's regulatory programs and, as such, be incorporated into the Title V grant program which is cost-shared by the Federal government and the States. Full Federal funding is appropriate for initial implementation costs and to provide sufficient time for the States to incorporate ongoing AVS operational costs in their budget cycles.

ABANDONED MINE RECLAMATION FUND

Amendment No. 52: Appropriates $200,006,000 for the abandoned mine reclamation fund instead of $199,406,000 as proposed by the House and $199,486,000 as proposed by the Senate.

The increase to the amount proposed by the House provides $600,000 in this account rather than in the regulation and technology account to correct a misalignment of funds.

The managers expect the OSM to cease its practice of living beyond its means at the expense of State reclamation programs and of Federal reclamation efforts in non-program States.

The managers particularly are displeased by the OSM's use of funds for high priority projects, appropriated for reclamation in non-primacy States, for other purposes without prior approval by the Committees and expect the OSM to comply carefully with reprogramming guidelines in the future. Further, the OSM is to report by December 1, 1990 on the remaining inventory of high priority reclamation projects as described in House report 101-789. The managers direct that no more than $300,000 be used for high priority projects on Federal lands. The OSM also should report semi-annually on AML obligations by the States.

With respect to emergency reclamation projects, the managers encourage the OSM to explore cost-saving approaches such as using surplus heavy equipment made available by the Federal government to nonprofit centers such as the 11th Congressional District Regional Equipment Center.

The managers agree that increases to the budget request for pay raises and administrative expenses are to be distributed equitably to each program.

Amendment No. 53: Restores language proposed by the House and stricken by the Senate requiring that 23 full-time equivalent positions be maintained in the anthracite reclamation program at the Wilkes Barre, Pennsylvania field office.

Amendment No. 54: Deletes language inserted by the Senate providing for the use of AML funds for a mine fire in Pennsylvania.

The managers understand that the State is addressing this problem as is appropriate. To the extent that the OSM is able to provide expert, technical assistance with this emergency, it is urged to do so.

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

Amendment No. 55: Appropriates $1,326,997,000 for operation of Indian programs instead of $1,329,259,000 as proposed by the House and $1,303,379,000 as proposed by the Senate. The decrease from the level proposed by the House consists of increases of $250,000 for continuing education; $50,000 for education tribe/agency operations for adult education at Turtle Mountain; $285,000 for tribal government services; $100,000 for natural resources, general for the Fort Berthold geographic information system; $300,000 for forestry, for fuel breaks, Glenallen, AK; $700,000 for Indian rights protection, which consists of an increase of $800,000 for studies and tribal review ($100,000 each for the Hopi and Navajo tribes) of Black Mesa water quality and a decrease of $100,000 for Lummi gravesites; $895,000 for real estate and financial trust services, which includes a decrease of $175,000 for Yurok surveys, an increase of $70,000 for Narragansett trust lands, and an increase of $1,000,000 for land record improvements; $570,000 for management and administration, which includes $250,000 for the Office of Audit and Evaluation, $100,000 to lease space in a facility owned by the Nez Perce tribe in Lapwai, ID, subject to GSA approval of the lease, and $220,000 for tax liabilities in Barrow, AK; $150,000 for automatic data processing; and $200,000 for education program management, which includes $50,000 for central office staff travel and $150,000 for monitoring and evaluation; and decreases of $700,000 for school operations; $500,000 for social services for Indian Child Welfare Act grants; $50,000 for employment development for the United Sioux Tribes Development Corporation; $1,476,000 for tribal services tribe/agency operations; $300,000 for economic development for grants to Michigan tribes; $293,000 for natural resources, agriculture, which is an increase of $207,000 for flood recovery of Havasupai, AZ and a decrease of $500,000 for the TRICAPP program; $450,000 for natural resources, water resources, which is a decrease of $750,000 for freshwater planning in Washington and an increase of $300,000 for Miccosukee water management; $818,000 for wildlife and parks; $930,000 for natural resources, tribe/agency operations; $145,000 for trust responsibilities, tribe/agency operations, which includes decreases of $100,000 for the Flathead realty office and $45,000 for the Omaha real estate program; and $100,000 for facilities management for software engineering.

The decrease for school operations consists of decreases from the House level of $600,000 for declining enrollment, $200,000 for substance abuse counselors, $300,000 for the parental and community involvement initiative, and increases of $300,000 for the transfer of Rocky Boy's, MT schools to the local public school system and $100,000 for the Navajo child sexual abuse project. The managers agree that student transportation funds should be transferred back to their original line in the budget

The increase for continuing education consists of a decrease of $100,000 for Haskell Indian Junior College, an increase of $600,000 for Navajo Community College, and a decrease of $250,000 for the Mansfield teleteaching demonstration project. This is the final year of funding for this project.

The increase for tribal government services is comprised of increases of $50,000 for the Deputy Assistant Secretary's Office, $300,000 for the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives, $175,000 for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw, and decreases of $90,000 for the four Scotts Valley tribes and $150,000 for the Yurok Council.

The decrease for tribal services, tribe/agency operations consists of increases of $169,000 for Klamath aid to tribal government, $100,000 for Turtle Mountain tribal courts, $275,000 for the Gila River juvenile detention center, $300,000 for social services for the Navajo child sexual abuse project; $100,000 for law enforcement for the Mescalero Apache, $100,000 for the law enforcement program for the San Carlos Apache, $50,000 for Taos Pueblo law enforcement, $100,000 for Truxton Canon agency law enforcement (for a total of $200,000 for the agency, none of which is specifically earmarked), $100,000 for Pasqua Yaqui law enforcement, and $300,000 for a general increase in law enforcement; and decreases of $25,000 for Lac Courte Oreilles community fire protection, $60,000 for Quinault community fire protection, $40,000 for Quileute tribal courts, $50,000 for Klamath tribal courts for the law and order code, $15,000 for the Saginaw Chippewa tribal court, $50,000 for Fort Peck tribal courts, $30,000 for the tribal court of the Grand Traverse, $50,000 for the Menominee tribal court, $100,000 for the tribal court of the Oglala Sioux, $75,000 for the Rosebud Sioux tribal court, $50,000 for the tribal court at Hopi, $100,000 for Gila River law enforcement, $50,000 for Hopi law enforcement, $50,000 for Lummi law enforcement, $50,000 for law enforcement at Lower Elwha, $50,000 for Red Lake law enforcement, $25,000 for law enforcement at Saginaw Chippewa, $50,000 for Swinomish law enforcement, $50,000 for Winnebago law enforcement, $100,000 for self-governance planning grants, and $2,000,000 for funding to address needs resulting from self-governance tribal compacts.

The decrease for natural resources, wildlife and parks consists of decreases of $125,000 for unresolved hunting and fishing rights, $400,000 for shellfish management, $50,000 for the Northwest Indian Fish Commission, $200,000 for Columbia River Tribes planning, $300,000 for the Circle of Flight tribal waterfowl initiative, $100,000 for the Native American Fish and Wildlife Society, and an increase of $357,000 for tribal management and development projects. The tribal management and development change consists of increases of $50,000 for the White Mountain Apache, $200,000 for Columbia River Tribes planning, $100,000 for the Native American Fish and Wildlife Society, $350,000 for the Chugach Regional Resource Commission, $135,000 for Havasupai flood recovery, and decreases of $125,000 for Chippewa intertribal monitoring, $75,000 for Lac du Flambeau, $50,000 for Montana tribes (leaving $110,000 for Fort Peck), $50,000 for Fond du Lac, $70,000 for Jicarilla Apache, $50,000 for Passamaquoddy conservation, $35,000 for the St. Croix Chippewa, and $23,000 for Keweenaw Bay.

The decrease for natural resources, tribe/agency operations consists of decreases of $1,000,000 for timber sales backlog (leaving $1,000,000 for the backlog and $1,000,000 for spotted owl coordination), $100,000 each for Zuni and Fond du Lac forestry, $80,000 for Oglala Sioux wildlife, $50,000 for Karuk fisheries, and $100,000 for Yurok fisheries; and an increase of $500,000 for Standing Rock Sioux water and rangeland development. The tribe should seek other sources of funding, such as economic development grants, for the balance of these funds.

With respect to reports requested by the House, the managers expect the Bureau to submit the information as quickly as possible but not later than November 15, 1990.

The managers have not earmarked funds for the use of the Education Director's discretionary funds. These funds are to be awarded for high-priority, meritorious projects that develop during the year. The

managers are aware of the model scholastic enrichment and enhancement program at Sherman Indian High School and hope sufficient funding can be provided to the program in 1991.

The Bureau should award a grant to the Lac Courte Oreilles band on a one-time basis to study the problem of regaining law enforcement powers from the State of Wisconsin.

Within the funds provided for Indian Child Welfare Act grants, $70,000 shall be provided to the St. Augustine's Center, and the Bureau is directed to work with the Center to convert their next application for funding to a multi-year program application.

Within the funds requested in the budget and approved by the managers for tribe/agency operations for social services, the managers agree to the following allocations: Fort Peck, $150,000; Ramah Navajo, $50,000; Standing Rock Sioux, $200,000; Hopi, $100,000; and Grande Ronde, $125,000. The managers expect a joint report, involving BIA, IHS, and tribal participation, regarding the status of the Hopi child sexual abuse project by March 1, 1991.

Of the funds provided for the self-governance planning grants, $125,000 is available for the education initiative proposed by the Lummi Tribe.

Funding provided for water resources within natural resources development is to be provided, among others, to the Winnebago water inventory, the Minnesota Chippewa water research lab, and the Seminole water management program. Also within natural resources, the $350,000 recommended under wildlife and parks for the 1854 treaty ceded area is to be allocated to the Bois Forte, Grand Portage and Fond du Lac bands.

The reference to the Penobscot mineral assessment in the House and Senate reports is to the joint Penobscot/Passamaquoddy assessment.

Within the total funds provided for water rights negotiation and settlement, the managers recommend a total of $1,800,000 for the Little Colorado River deliberations. Within this amount, $100,000 each is to be made available to the Hopi and Navajo tribes, and $75,000 is to be provided to the San Juan Southern Paiute for review and participation.

The managers understand that the budget request includes funding for a fisheries biologist in the Phoenix Area Office who will be available to assist with the programs of the Duck Valley Indian Reservation.

As soon as possible after the start of the fiscal year, the managers request that the Bureau of Indian Affairs collect data from participant tribes, and prepare a report on how funds are to be allocated to Washington State tribes for natural resources—related activities in fiscal year 1991. The Bureau is to prepare a second report to be submitted at the end of the fiscal year detailing how these funds were actually spent.

Of the $750,000 made available to coordinate freshwater resource planning activities for tribes in Washington State, $350,000 is to be made available to the Muckleshoot Tribe. These funds cannot be utilized for the preparation or pursuit of any form of litigation, including any ongoing litigation for shellfish, fisheries, or other water issues. The managers request that a report be provided as soon after the start of the fiscal year as possible showing how the funds have been allocated, and a further report should be submitted at the end of the year detailing how the funds were actually spent.

Amendment No. 56: Provides $210,000,000 for forwarding funding of BIA schools as proposed by the House rather than $190,000,000 as proposed by the Senate.

Amendment No. 57: Provides $72,024,000 for BIA scholarships, vocational education, and Johnson-O'Malley assistance as proposed by the House instead of $72,684,000 as proposed by the Senate.

Amendment No. 58: Restores the matter stricken by the Senate and provides $3,000,000 for self-governance tribal compacts instead of $5,000,000 as proposed by the House. These funds are to remain available until expended and are to be used to address shortfalls in connection with the self-governance demonstration, over the remaining two to three years of the demonstration.

Amendment No. 59: Restores amount proposed by the House earmarking $1,327,000 for Navajo-Hopi activities instead of $1,027,000 as proposed by the Senate.

Amendment No. 60: Provides for the extinguishment of tax liabilities and associated costs incurred by an Alaska Native in Barrow, AK who received erroneous tax advice from the Bureau of Indian Affairs as proposed by the Senate. The House had no such provision.

Amendment No. 61: Provides $300,000 for the operation of the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives as proposed by the Senate. The House had no such provision.

Amendment No. 62: Deletes language proposed by the House which would have directed the Bureau to pay $103,361 to the Institute of American Indian and Alaska Native Culture and Arts Development for severance costs for former Bureau employees.

Amendment No. 63: Modifies language proposed by the House and stricken by the Senate. The amendment directs that none of the funds are to be used for the preparation of reprogramming requests for the Bureau of Indian Affairs, or to reorganize the BIA pursuant to authorities contained in Reorganization Plan No. 3 of 150, until such time as a task force comprised of Bureau, departmental, and tribal participants has been formed, carried out an expanded tribal consultation process, and reported to the Committees with a series of recommendations, including a review of the tribal consultation process and the results therefrom regarding the proposed reorganization.

CONSTRUCTION

Amendment No. 64: Appropriates $168,536,000 for construction instead of $166,935,000 as proposed by the House and $162,501,000 as proposed by the Senate.

The net increase over the House level consists of increases of $250,000 for emergency electrical repairs at Havasupai, $2,430,000 for the San Carlos irrigation project, which includes funds for emergency drought assistance for both individuals and the Gila River Farms (estimated at $833,000), $1,000,000 for the Tamgas Creek Hatchery, $1,000,000 for the Walker River Paiute irrigation project, $500,000 for Tohono O'odham road maintenance and construction, and decreases of $1,000,000 for the Lac Courte Oreilles gymnasium, $250,000 for FI&R advance planning and design, $500,000 for the demolition of excess space, $833,000 for Gila River Farms, $246,000 for the Zia Pueblo diversion dam, $250,000 for the Fort Peck irrigation project, and $500,000 for Fort Belknap land acquisition.

The managers concur in the House directive regarding continuation of the current arrangements between the Bureau of Indian Affairs and the Office of Construction Management, and the instructions to continue submitting quarterly reports about progress against Committee directives.

With respect to the Navajo Indian Irrigation Project, the managers concur with the House report language and urge the Secretary to review the proposed schedule for full construction of NIIP and to request adequate funds for this purpose in 1992 and future years.

The $100,000 in funding provided within advanced planning and design funds is for a study of a cultural resources center for the Chickasaw Nation.

Within housing funds, the Bureau is to make up to $375,000 available to Truxton Canon agency for emergency replacement or repair of homes for the Havasupai tribe.

Amendment No. 65: Deletes language proposed by the Senate which would have transferred $550,000 from the Navajo Indian Irrigation Project to the Hogback Irrigation Project. The managers direct that $400,000 in unobligated irrigation funds be reprogrammed to the Hogback project.

Amendment No. 66: Deletes language proposed by the Senate limiting transfer of the BIA Safety of Dams program to management responsibility.

Amendment No. 67: Provides that funds appropriated for the BIA safety of dams program may be used by BIA or the tribes, on a case-by-case basis, to solicit the technical expertise of the Bureau of Reclamation as proposed by the Senate. The House had no such provision.

Amendment No. 68: Provides that none of the funds provided for the safety of dams program are available for transfer pursuant to the emergency transfer authorities contained in this Act as proposed by the Senate. The House had no such provision.

MISCELLANEOUS PAYMENTS TO INDIANS

Amendment No. 69: Appropriations $56,431,000 as proposed by the Senate instead of $53,931,000 as proposed by the House. Within the funds are $3,000,000 for distribution to the trusts of St. George and St. Paul Islands in Alaska, and $500,000 for Yurok land acquisition.

The managers do not object to the use of interest which has accrued on the San Luis Rey Tribal Development Fund established pursuant to Section 105 of Public Law 100-675, known as the San Luis Rey Indian Water Rights Settlement Act, by the San Louis Rey Indian Water Authority for the purposes of enabling the Authority to fulfill its responsibilities under the Act.

Amendment No. 70: Provides authorization for $3,000,000 to be distributed to the trusts of St. George and St. Paul Islands in Alaska, instead of $3,500,000 as proposed by the Senate and no authorization as proposed by the House.

Amendment No. 71: Provides that $35,000,000 shall be available on October 1, 1991, subject to enactment of H.R. 5367 as proposed by the Senate. The House had no such provision. The amendment provides funding for the legislation providing for renegotiation of leases of the Seneca Nation in New York.

NAVAJO REHABILITATION TRUST FUND

Amendment No. 72: Appropriates $3,000,000 rather than $2,000,000 as proposed by the House and $4,000,000 as proposed by the Senate, for payment to the Trust Fund.

INDIAN LOAN GUARANTY AND INSURANCE FUND

Amendment No. 73: Appropriates $11,787,000 rather than $11,487,000 as proposed by the House and $11,987,000 as proposed by the Senate. The increased funds above the House level will allow for more technical assistance for Indian commercial enterprises.

TERRITORIAL AND INTERNATIONAL AFFAIRS

ADMINISTRATION OF TERRITORIES

Amendment No. 74: Appropriates $106,219,000 for administration of territories instead of $104,469,000 as proposed by the House and $109,794,000 as proposed by the Senate. The net decrease from the amount proposed by the Senate consists of an increase of $2,200,000 for the Virgin Islands for the St. Croix airport, and decreases of $275,000 for American Samoa (consisting of increases of $400,000 for an additional classroom and $75,000 for 2 school buses, and a decrease of $750,000 for seawall improvements for Nuuuli); $3,000,000 for the American Memorial Park in the Northern Marianas; and $2,500,000 for the disaster assistance fund.

The managers have provided $7,500,000 to establish the disaster assistance fund for all the insular areas. Among the needs to be considered for funding from this source are the unfunded hazard mitigation projects in the Virgin Islands as a result of Hurricane Hugo, which total $4,500,000.

The increase of $1,000,000 in operating funds for American Samoa is contingent on the American Samoa government establishing an autonomous or semi-autonomous hospital authority.

Amendment No. 75: Provides $102,912,000 for technical assistance, maintenance assistance and grants to territorial governments instead of $101,162,000 as proposed by the House and $106,487,000 as proposed by the Senate. The net decrease from the amount proposed by the Senate consists of the increases and decreases discussed under the previous amendment.

Amendment No. 76: Provides $1,025,000 for a grant to the Close Up Foundation as proposed by the Senate instead of $935,000 as proposed by the House.

Amendment No. 77: Provides that disaster hazard mitigation projects are not available for obligation until authorizing legislation is enacted as proposed by the Senate. The House had no such provision.

TRUST TERRITORY OF THE PACIFIC ISLANDS

Amendment No. 78: Appropriates $48,707,000 for the Trust Territory instead of $51,450,000 as proposed by the House and $42,987,000 as proposed by the Senate. The net decrease from the amount proposed by the House consists of decreases of $1,600,000 for the Palau hospital, $1,200,000 for the Koror sewer system, $650,000 for Koror school roofing and $493,000 for capital improvement program (CIP) deficiencies; and an increase of $1,200,000 for road repairs in Palau. Within the funds for road repairs, up to $400,000 may be used for contingency funds for the Koror-Babelthaup bridge, if needed. The amount provided for Koror school roofing will allow that project to be initiated in fiscal year 1991; the balance of the funds will be provided when a more complete estimate of the costs is provided. The funds provided for CIP deficiencies are to be distributed as indicated in the Senate report, except for Anguar-Peleliu water, which is $75,000; Pohnpei power, which is $330,000; and the addition of $350,000 for the Laura electrical project.

The managers expect that the Department will recognize, in the case of Palau, that the local government needs flexibility in dealing with situations that arise in Palau requiring funding, and will ensure that such flexibility is provided to the maximum extent possible.

The Office of Territorial and International Affairs is directed to provide the report on outstanding medical referral debts called for in the House report by no later than January 15, 1991.

COMPACT OF FREE ASSOCIATION

Amendment No. 79: Appropriates $24,800,000 for the Compact of Free Association instead of $28,800,000 as proposed by the House and $24,500,000 as proposed by the Senate. The increase over the amount recommended by the Senate is $300,000 for the Enewetak support program. The managers request the Departments of the Interior and Energy, and their contractors, to work with the Enewetak Council and the Government of the Marshall Islands to devise a plan and timetable for turning over management of the support program to local government control, including responsibilities for monitoring program activities, as expeditiously as possible. A report on this plan should be submitted to the Appropriations Committees by April 15, 1991.

OFFICE OF THE SECRETARY

Amendment No. 80: Appropriates $58,736,000 for the Office of the Secretary instead of $57,671,000 as proposed by the House and $58,812,000 as proposed by the Senate.

The increase over the House includes the following: $100,000 to allow the Office of the Undersecretary to participate more fully in an ongoing land acquisition study, $300,000 for quality assurance, $375,000 for acquisition and property management, $90,000 for administrative services and $200,000 for management analysis.

Amendment No. 81: Makes $55,000 available to pay the claim of Dick A. Blenden as settled in United States v. Blenden, Civil Action Numbered 85-1587 (D.N.M.) as proposed by the Senate. The House had no such provision.

NATIONAL INDIAN GAMING COMMISSION

Amendment No. 82: Appropriates $1,254,000 for the National Indian Gaming Commission instead of $1,004,000 as proposed by the House and $1,504,000 as proposed by the Senate.

GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR

Amendment No. 83: Allows transfer of funds by the Secretary of the Interior for the emergency replacement, reconstruction, or repair of aircraft, buildings, utilities, or other facilities or equipment damaged or destroyed by fire, flood, storm or other unavoidable causes as proposed by the Senate. The House had no such provision. Abuses of this transfer authority by not proposing supplemental appropriations will be monitored closely.

Amendment No. 84: Allows transfer of funds for suppression of forest fires and for response to other emergency situations as proposed by the Senate. The House had no such provision. Abuses of this authority by not proposing supplemental appropriations will be monitored closely.

Amendment Nos. 85-88: Change four section numbers as proposed by the Senate.

Amendment No. 89: Restores House language stricken by the Senate providing that no funds be obligated or expended to change the name of Mount McKinley, and changes section number.

Amendment Nos. 90 and 91: Change House and Senate proposed section numbers.

Amendment No. 92: Restores House language stricken by the Senate placing a moratorium on the expenditure of funds for activities placed under restriction in the President's OCS Statement of June 26, 1990, and changes a section number. The areas covered by this moratorium include Northern, Central and Southern California; the North Atlantic; Washington and Oregon; and the Eastern Gulf of Mexico south of 26 degrees north latitude and east of 86 degrees west longitude.

Amendment No. 93: Restores House language stricken by the Senate placing a moratorium on the expenditure of funds for OCS leasing, exploration and development activities in the North Aleutian Basin offshore Alaska and changes a section number.

Amendment No. 94: Restores House language stricken by the Senate placing a moratorium on the expenditure of funds for OCS preleasing and leasing activities in the Eastern Gulf of Mexico and changes a section number. This moratorium applies to Sale 137 offshore Florida.

Amendment No. 95: Restores House language stricken by the Senate placing a moratorium on the expenditure of funds for preleasing and leasing activities in a portion of the Mid-Atlantic planning area and changes a section number. This moratorium applies to a portion of Sale 121, extending from the State/Federal waters boundary out fifty miles from Rhode Island through Maryland.

Amendment Nos. 96-97: Restores House language regarding management of Matagorda Island.

Amendment No. 98: Changes House and Senate proposed section number.

Amendment No. 99: Changes the section number proposed by the Senate and allows the use of funds to provide nonmonetary awards of nominal value to contributors to Department of the Interior program as proposed by the Senate. The House had no such provision.

Amendment No. 100: Changes Senate proposed section number and allows the use of funds to pay incidental costs of volunteers working on programs of the Department of the Interior, as proposed by the Senate. The House had no such provision.

Amendment No. 101: Prohibits eviction or demolishing of homes of Yakima Indians residing at "in lieu" fishing sites as proposed by the senate, amended to make the provision effective until a final court decision has been issued. The House had no such provision.

The managers suggest that the Secretary of the Interior reevaluate the present eviction action being brought against members of the Yakima Indian Tribe at the Federal "in lieu" fishing sites located at Cooks Landing and Underwood in the State of Washington. The managers understand that additional fishing sites for other treaty fishermen were authorized during the 100th Congress. The managers suggest that the Secretary of the Interior discuss this matter with the Yakima Indian Nation and report back to the Senate and House Appropriations Committees within 120 days.

Amendment No. 102: Deletes Senate provision regarding an authorization for the National Park Service for payment of testing for brucellosis.

Amendment No. 103: Inserts and amends language regarding an appraisal process for mining claims in Alaska and extends until 1999 the date through which inverse condemnations may be filed as proposed by the Senate.

Amendment No. 104: Deletes Senate amendment providing for reporting of attendance at political demonstrations.

The managers agree that the National Park Service should establish and publish guidelines for making estimates of the number of people who attend a mass political demonstration in the area known as the Mall or elsewhere in the District of Columbia. The managers further agree that it is important for the methodology for estimating the number of people attending demonstrations be consistent from one demonstration to another.

Amendment No. 105: Modifies the boundaries of the Cranberry Wilderness as proposed by the Senate and changes the section number. The House had no such provision.

TITLE II—RELATED AGENCIES

DEPARTMENT OF AGRICULTURE—FOREST SERVICE

FOREST RESEARCH

Amendment No. 106: Appropriates $168,512,000 for forest research instead of $167,693,000 as proposed by the House and $165,284,000 as proposed by the Senate. The net increase over the amount proposed by the House consists of the following increases: for forest protection research, $100,000 for eastside forest research at Bend, OR, $150,000 for silviculture research, Bozeman, MT, $200,000 for southern pine disease research, Gulfport, MS, $109,000 for insect research and $159,000 for forest decline research at Hamden, CT, $100,000 for root disease, Moscow, ID, and $195,000 for pest impact assessment, Research Triangle Park, NC; for resource analysis research, $150,000 for cultural resources research at Albuquerque, NM, $150,000 for inventory at St. Paul, MN; for timber management research, $182,000 for silviculture research at Boise, ID, $100,000 for reforestation research at Corvallis, OR, $150,000 for white spruce research, Fairbanks, AK, $300,000 for alternative management research at Monticello, AR, $50,000 for genetic adaptability at Moscow, ID, $250,000 for new perspectives research (for a total of $3,000,000); $220,000 for southern pine genetics at Normal, AL, $253,000 for spruce fir research at Orono, ME, $211,000 for soil productivity research at Research Triangle Park, NC, $350,000 for southern forest productivity grants, and $147,000 for multiple use evaluation, St. Paul, MN; for forest environmental research, $200,000 for Boise, ID (within the total at Boise, $375,000 is for non-point source pollution research), $100,000 for COPE/integrated resources research at Corvallis, OR, $124,000 for tropical forestry, Honolulu, HI, $50,000 for fish habitat research, Juneau, AK, $50,000 for elk/deer/timber research at La Grande, OR, $50,000 for snow hydrology research at Laramie, WY, $200,000 for rangeland management research at Pineville, LA, (to phase out this program) and $100,000 for riparian zones research at Rapid City, SD; and for forest products and harvesting research, $300,000 for timber bridges at Madison, WI; and the following decreases: for forest protection research, $130,000 for tree root biology, Athens, GA, $1,700,000 for global change research (to be distributed by the Forest Service), $50,000 for western spruce budworm research, La Grande, OR, $35,000 for root diseases research and $15,000 for wood products treatment at Madison, WI, and $200,000 for fire and air resources, Seattle; for resource analysis research, $250,000 for the vegetation survey at Research Triangle Park, NC, and $50,000 for international trade, Portland; for timber management research, $109,000 for silviculture research at Columbia, MO, $340,000 for management assessment, Gainesville, FL, $152,000 for early growth, Rhinelander, WI, and $100,000 for tropical forestry research, Rio Piedras, PR; for forest environment research, $150,000 at Arcata, CA, and $100,000 at Fresno, CA, for spotted owl research, $50,000 for threatened and endangered species research at Fresno, CA, $100,000 for neotropical migratory birds research, and $200,000 for the southern forest research cooperative, Raleigh, NC; and for forest products research at Madison, WI, $50,000 for biopulping and $100,000 for panel products.

Of the $3,000,000 provided for new perspectives research, $1,250,000 is for the Olympic Natural Resources Center, WA, $300,000 is for aerial forestry, $450,000 is for H.J. Andrews, and $1,000,000 is unallocated for use nationwide. The Forest Service should report to the Committees on how the funds will be allocated as soon as possible.

The $300,000 included for the Chicago heat island research project shall be allocated to the North Central research station.

The managers agree that the $300,000 provided for gypsy moth cooperative research is not earmarked; however, the managers are aware of the proposed research on the gypsymoth situation in Westmoreland County, PA, and Pennsylvania State University may apply for funding to address these research needs. The $500,000 provided to Morgantown for gypsy moth research does not include funds for cooperative research. There is no earmark of insect research funds at Gulfport, MS.

Of the toal timber bridge funds, at least $250,000 is to be available for West Virginia University.

The managers agree that the Forest Service should designate a coordinator for the neotropical migratory birds research program, within the funds provided.

Any of the funds provided for La Grande, OR, may be dedicated toward complementary research at the Blue Mountain Resources Center.

The $400,000 provided for the surface metallurgy project, Forest Products Laboratory and Oregon Graduate Center, is the final funding for this project.

STATE AND PRIVATE FORESTRY

Amendment No. 107: Appropriates $183,377,000 instead of $132,806,000 as proposed by the House and $190,932,000 as proposed by the Senate. The increase over the amount proposed by the House consists of increases of $2,500,000 for cooperative lands pest suppression, $8,021,000 for Appalachian integrated pest management, $1,000,000 for fire protection, for training and technical assistance for the southeastern United States, $38,370,000 for forest management and utilization including increases of $2,500,000 for forest resource management, $2,500,000 for stewardship, $1,500,000 for rural development, $20,000,000 for stewardship incentives/tree planting, $3,000,000 for emergency reforestation for South Carolina, $2,700,000 for timber bridges, and $6,170,000 for urban forestry (including $900,000 to restore the base, $270,000 for a management plan in New Jersey, and $5,000,000 for tree planting); and $2,380,000 for special projects (including increases of $325,000 for Northern forest lands study, $55,000 for a matching grant to Petersburg, AK, $4,500,000 for a grant to Mercer County, WV, and a decrease of $2,500,000 for tropical forestry); and a decrease of $1,700,000 to Federal pest management lands suppression.

The funds provided for the stewardship program should be distributed in the same manner as the fiscal year 1990 appropriations.

The managers have included $100,000 for surveys related to spruce bark beetle on non-Federal lands in Alaska within the cooperative lands survey program.

Within urban forestry, there is $100,000 for Chicago and $50,000 for Tower Grove Park, St. Louis. There is also $500,000 for the State of Arizona for a demonstration project of desert-adaptive trees.

The $500,000 reduction in wood utilization is transferred for continued operation of the Timber Resource Information Center.

There are no funds specifically earmarked for the neotropical migratory bird program.

Within the funds provided for the rural development program, there is $1,100,000 earmarked for projects in Iowa as listed in the Senate report.

The House and Senate reports both provided $2,000,000 for projects to diversify timber dependent communities in Oregon and Washington. With regard to the Oregon share, the managers direct that the funds be provided as a grant to the Oregon Economic Development Department for a value added wood products manufacturing project in Springfield, OR.

Amendment No. 108: Inserts language proposed by the Senate, amended to provide a grant of $4,500,000 to Mercer County, WV, and to delete Senate language providing $725,000 for a study of the air tanker fleet.

The managers agree that the balance of the funds for the Mercer County grant will be provided in 1992.

The managers continue to remain concerned about the growing costs of the firefighting program. In recent years, the emergency expenses for Federal wildfire suppression have consumed an inordinate share of the Subcommittee's 302(b) allocation, thereby reducing the Subcommittee's ability to address adequately other priorities. Increasingly, demands are placed on the cooperative fire protection program in response to the growing rural/urban interface. The managers expect the Forest Service, in preparation for the fiscal year 1992 appropriations hearings, to review the composition of the firefighting program. The Forest Service should be prepared to address the manner in which comprehensive planning and coordination at the Federal, State, and local levels occurs. The managers are interested in the management of the program and the extent to which greater cost efficiencies are possible.

Amendment No. 109: Deletes language proposed by the Senate which provided $250,000 for a grant for a study of the Sterling Forest. The managers have included the funds for this study to be conducted by the Forest Service, and the bill language is not necessary as the study is authorized in other legislation.

NATIONAL FOREST SYSTEM

Amendment No. 110: Appropriates $1,302,687,000 for the national forest system instead of $1,274,021,000 as proposed by the House and $1,303,847,000, as proposed by the Senate. The net increase over the

amount proposed by the House consists of increases of $800,000 for minerals, $400,000 for land line location, $1,500,000 for facilities maintenance, for compliance with the consent decree in Region 5, $10,000,000 for road maintenance, $4,793,000 for timber resource inventory which includes $4,000,000 for the old growth inventory to keep this project on track for completion in fiscal year 1992, $1,536,000 for silvicultural examination, $9,535,000 for timber sales preparation, $1,500,000 for nursery and tree improvements, $260,000 for wildlife habitat (consisting of increases of $1,000,000 for Alaska subsistence and $500,000 for Region 6 monitoring and decreases of $650,000 for operations, $500,000 for improvements and $90,000 for a wolverine study), $117,000 for inland fish habitat (consisting of increases of $500,000 for the Monongahela NF and $117,000 for the Cranberry River liming project, and a decrease of $500,000 to operations), $2,410,000 for anadromous fish habitat (including $530,000 for improvements, $1,000,000 for the Columbia River Basin, $500,000 for the Tongass NF and $380,000 for transboundary rivers), $8,000,000 for general administration (including $2,000,000 for line management and $6,000,000 for program support), and $5,500,000 for Exxon Valdez assessment and clean up; and decreases of $500,000 for cooperative law enforcement, $750,000 for trail maintenance, $9,935,000 for harvest administration, $1,500,000 for timber stand improvement, $1,000,000 for recreation use, $500,000 for wilderness, $500,000 for cultural resources, $1,000,000 for range vegetation, $2,000,000 for soil, water and air operations.

With regard to the proposed geographic information system procurement, the managers agree that up to $1,000,000 shall be used for an independent, outside review of the documentation and justification prepared to date by the Forest Service, prior to release of the request for proposals (RFP). The review should include the items discussed in the Senate report as well as the valuation of the requirements, and the analyses of the information and system performance needs. The Forest Service is requested to inform the Committees who will perform this review, and the estimated cost and timeframe, as soon as possible.

The managers agree that $30,000 of wilderness management funds are earmarked for the Sawtooth NRA, and $250,000 of the trail maintenance funds are for the Tongass NF. Within recreation funds, there is $350,000 for completion of environmental reviews associated with recreational opportunities on the Targhee NF. Within wildlife and fish management, there is $260,000 for migratory songbirds, $500,000 for anadromous fish, Green and White Mountain NF's, and $60,000 for Penoke Run, Allegheny NF. A total of $135,000 for the Morehead RD, Daniel Boone NF and $550,000 for the Grand Island NRA shall be provided from national forest system, firefighting and construction funds.

The managers expect the Forest Service to continue efforts to control costs and to improve the explanation and justification of cost increases and price assumptions for unit costs associated with the conduct of Forest Service programs. The managers expect the Forest Service to submit, as requested by the Senate, a report by March 1, 1991 on a comprehensive analysis of its costs, and a multiyear program to achieve an annual reduction in these costs of not less than 5 percent.

With respect to the below-cost timber sales test, the managers do not include the test in these recommendations. Instead, the Forest Service should continue its efforts to implement the comprehensive below-cost policy, whereby the Forest Service is undertaking review of its costs and revenues, and other factors contributing to the below-cost situation. The managers expect the Forest Service to review its methods of accounting for the costs and benefits of its programs, and that in analyzing the below-cost timber sale issue, the Forest Service also give consideration to the impacts of the timber sales program on local communities.

With respect to minimum bids and the transaction evidence appraisal system, the managers expect the Forest Service to address the concerns raised in the Senate report and to respond to the Committees on these issues no later than March 1, 1991. Concurrent with this review, the Forest Service is to submit a plan identifying the procedures and timing for addressing these concerns and moving toward implementation.

The managers understand that the new forest plans for the Forest Service include goals of reduced use of clearcutting in harvesting timber. According to the Forest Service, these plans are intended to result in an average decrease of 25 percent in the amount of clearcutting. The managers expect the Forest Service to follow the forest plans in attaining these objectives. The managers also understand that the 25 percent goal is not necessarily applied to particular forests or particular sites, but rather, is an overall goal.

The managers agree to the directions recommended by the Senate for the Timber Sale Program Information Reporting System, but expect the Forest Service to keep the Committees informed by the steps and associated costs necessary to implement these changes.

Within the total funds provided for the national forest system account, the Forest Service may conduct such new perspectives demonstration projects as are appropriate and consistent with forest plans. The managers agree that $200,000 is available for a new forestry demonstration by the Olympic Natural Resources Center.

With regard to the report requested in the House report on the K-V trust fund, the Forest Service should also include in the report an analysis of how the amounts that are deposited in the trust fund are determined.

The managers direct the Forest Service to conduct the appropriate validity examination on mining claims in the area of Winner Creek in the Chugach NF, AK.

The $7,500,000 in recreation funds included in the budget related to the below-cost test shall be reallocated nationally.

The managers agree that the Forest Service shall identify clearly in its budget explanatory notes the funding provided for specific purposes and whether prior year add-ons are continued or not. If the funds are proposed to be redirected for other purposes, such redirection shall be specifically identified.

Under the U.S.-Canada salmon treaty, the United States agreed to conduct salmon enhancement activities in the Stikine and Taku Rivers which traverse both Canada and the U.S. The managers have provided $380,000 for this commitment.

Amendment No. 111: Provides that unexpended 1990 balances shall be merged and made part of the 1991 appropriation as proposed by the Senate instead of unobligated balances as proposed by the House.

Amendment No. 112: Strike language regarding balances to be returned to the Treasury as proposed by the Senate.

Amendment No. 113: Amends language proposed by the Senate to provide for the 1990 unsold timber volume to be offered in 1991, to the extent possible. The House had no such provision.

Amendment No. 114: Provides language proposed by the Senate that will allow a maximum of $5,000,000 of road maintenance funds to be used for the planned obliteration of roads no longer needed. The House had no such provision.

FOREST SERVICE FIREFIGHTING

Amendment No. 115: Appropriates $299,507,000 for firefighting as proposed by the Senate instead of $304,507,000 as proposed by the House.

CONSTRUCTION

Amendment No. 116: Appropriates $278,593,000 for construction instead of $243,705,000 as proposed by the House and $299,208,000 as proposed by the Senate. The increase over the amount proposed by the House consists of increases of $10,000,000 for the forestry research laboratory at Northern Arizona University, $1,629,00 for Phase II of the forestry laboratory at Mississippi State University, $975,000 for the Gauley Ranger District, Monongahela NM, $500,000 to complete a ranger station on the Toiyabe NF, $1,472,000 for recreation projects, including increases of $435,000 for recreation projects on the Monongahela NF, $542,000 for projects in Arizona, $200,000 for Hells Canyon NRA (including $75,000 for Hat Point Overlook design and $125,000 for planning the Hells Canyon Discovery Center, Clarkston, WA), $150,000 for design at Corney Lake Dam, Kisatchie NF, $55,000 for improvements at Hancock and Rochester, VT, $3,000,000 for the Ketchikan Visitors Center, $392,000 for Las Huertas Canyon, NM, $278,000 for Trout Pond, George Washington NF, $500,000 for sewer line connections in Big Cottonwood Canyon, UT, $750,000 for the Uwharrie NF, and $170,000 for the Corinth recreation area, AL, and a decrease of $5,000,000 for the backlog; $21,191,000 for road construction, including $10,000,000 for the forest road program and $11,191,000 for recreation or other projects (including $726,000 for the Monongahela NF, $500,000 for the Salmon River Road (with the balance of $4,500,000 to be provided in future years), $50,000 for Hancock and Rochester, VT, $45,000 for Hat Point Overlook, $190,000 for the Howell Canyon Road, ID, $440,000 for Trout Pond, George Washington NF, $350,000 for the Athens RD scenic byway, Wayne NF, $90,000 for the Corinth recreation area, AL, $1,300,000 for access to the Clear Creek recreation area, AL, and $7,500,000 for access related to the $15,000,000 provided for priority recreation projects); and decreases of $160,000 for the H.J. Andrews experiment station, OR and $719,000 for trail construction (including increases of $188,000 for the Monongahela NF, $20,000 for Hancock and Rochester, VT, $250,000 for Guest River Gorge, VA, $125,000 for Walla Walla, WA, $30,000 for Silver Lake, UT, and $93,000 for Dewdrop Bank and Webbs Ferry fishing trails, Allegheny NF; and decreases of $1,000,000 for the backlog and $425,000 for the Ironton RD, Wayne NF, leaving $425,000).

With respect to recreation construction needs throughout the national forest system, the managers are concerned about the establishment of priorities on a region-

by-region basis. The Forest Service should report to the Appropriations Committees by February 1, 1991 on the progress being made in establishing nationwide recreation priorities and ensuring that funds are distributed equitably among regions.

Amendment No. 117: Earmarks $83,245,000 for construction of buildings and other facilities instead of $68,829,000 as proposed by the House and $82,895,000 as proposed by the Senate. The increase over the amount proposed by the House consists of the facilities projects discussed under Amendment No. 116.

Amendment No. 118: Earmarks $195,348,000 for construction of forest roads and trails instead of $174,876,000 as proposed by the House and $214,804,000 as proposed by the Senate. The increase over the amount proposed by the House is discussed under Amendment No. 116.

LAND ACQUISITION

Amendment No. 119: Appropriates $89,163,000 for land acquisition instead of $92,579,000 as proposed by the House and $85,519,000 as proposed by the Senate. The managers agree to the following distribution of funds:

Acquisition Management	$6,500,000
Cash Equalization	1,000,000
Emergency Acquisitions	3,000,000
Inholdings	2,000,000
Appalachian Trail	4,000,000
Bankhead NF, AL (Clear Creek)	4,200,000
Bridger Teton NF, WY	2,800,000
Cascade Head, OR	1,860,000
Chattooga WSR, NC	2,800,000
Chequamegon NF, WI (center site)	250,000
Columbia River Gorge NSA, OR/WA	7,400,000
Daniel Boone NF, KY	1,500,000
Francis Marion NF, SC	2,000,000
Gallatin NF, MT	4,000,000
Green Mountain NF, VT	1,035,000
Hells Canyon, OR/ID:	
Cache Creek	2,500,000
Chief Joseph Grave Site	300,000
Henry Jackson Wilderness, WA	580,000
Hiawatha NF, MI	150,000
Jefferson NF, VA/KY: (Guest River Gorge Trail)	400,000
Kisatchie NF, LA	350,000
Lake Tahoe Basin, CA/NV	2,900,000
Los Padres NF, CA	175,000
Middle Fork of the Clearwater WSR, ID	275,000
Monongahela NF, WV	3,700,000
Mt. Baker-Snoqualmie NF, WA	7,000,000
Oconee NF, GA (Ocmulgee)	1,000,000
Ottawa NF, MI	400,000
Ouachita NF, AR/OK	5,500,000
Ozark NF, AR	1,000,000
Pacific Crest Trail (Castle Peak)	2,000,000
Rattlesnake Greenway, MT	633,000
San Juan NF, CO (Piedra Valley Ranch)	4,000,000
Shawnee NF, IL	1,500,000
Skagit WSR, WA	1,000,000
Toiyabe NF, CA (Hope Valley)	3,400,000
Uwharrie NF, NC	750,000
Wayne NF, OH	2,500,000
Wenatchee NF, WA (Alpine Lakes)	4,000,000
White Mountain NF, NH	305,000
Total	89,163,000

The $4,000,000 for the Gallatin NF, Mt includes $3,500,000 for elk habitat and $500,000 for Crazy Mountains.

With regard to land acquisition at Columbia River Gorge National Scenic Area, if the Reynolds property is acquired, the Forest Service should confer with the United States Fish and Wildlife Service on how best to integrate the wildlife and wetlands resources of the property into the Scenic Area management plan.

The Forest Service should use unobligated balances from land acquisition appropriations from the Siuslaw National Forest and Cascade Head for acquisitions in the Siuslaw's Ten Mile Creek area if acquisition opportunities arise.

Amendment No. 120: Restores House language stricken by the Senate earmarking $300,000 for acquisition of land and interests near the Old Chief Joseph Gravesite in Oregon. The managers expect the property owners and affected tribes to reconcile conflicts over the property so that acquisition of all or part of it can be done on a willing seller basis.

Amendment No. 121: Revises the Senate amendment regarding the purchase of water rights within the Sawtooth National Recreation Area, ID. The managers have included language to assure that the water rights will belong to the U.S. government and that no more than $769,000 shall be paid for the water rights.

ADMINISTRATIVE PROVISIONS

Amendment No. 122: Provides additional authority for use of timber salvage sale funds as proposed by the Senate, including sales preparation to replace sales lost to fire or other causes and to replace sales inventory. The House had no such provision.

Amendment No. 123: Provides that moneys received from the timber salvage sales program shall be considered in computing the 25 percent payments to local governments under 16 U.S.C. 500 as proposed by the Senate. The House had no such provision.

Amendment No. 124: Provides that payments from salvage receipts shall not be made before October 1, 1991, and includes a citation to Public Law 100-119, the Deficit Reduction Act, as proposed by the Senate. The House had no such provision.

Amendment No. 125: Makes funds of the Forest Service available to disseminate information to individuals and organizations through the use of nonmonetary items of nominal value as proposed by the Senate. The House had no such provision.

Amendment No. 126: Provides that Forest Service funds are available to incur expenses related to nonmonetary recognition of individuals and organizations that contribute to Forest Service programs as proposed by the Senate. The House had no such provision.

Amendment No. 127: Restores language proposed by the House and stricken by the Senate which names a mountain peak in California "Crooks Peak".

Amendment No. 128: Restores language proposed by the House and stricken by the Senate on timber practices in the Shawnee and Wayne National Forests, amended to further condition practices in the Wayne National Forest.

The managers note that the use of clearcutting on the Wayne National Forest had declined over the last ten years as management of amenity values such as recreation, visual resources, wildlife, and cultural resources have increased. At the time the forest plan was prepared, with public participation in the land allocation, clearcutting and shelterwood methods of timber harvest were projected to be the primary cutting methods. The managers believe that clearcutting must be reduced on both the Shawnee and Wayne National Forests to prevent damage to sensitive lands, decreases in visual quality, and fragmentation of forested lands.

Amendment No. 129: Restores language proposed by the House and stricken by the Senate which prohibits the use of funds to issue a permit for contruction of a motel-restaurant or simliar facilities within the exterior boundaries of the Allegheny NF, PA. The language does not prohibit the planning process, including full public involvement, from continuing during fiscal year 1991.

Amendment No. 130: Provides authority for the Chief of the Forest Service to use $1,500 of funds available to the Forest Service for official reception and representation expenses, instead of $2,000 as proposed by the Senate and nothing as proposed by the House.

Amendment No. 131: Provides that $42,887,000 shall be available from the Tongass Timber Supply Fund instead of $37,677,000 as proposed by the House and $45,668,000 as proposed by the Senate. The managers agree that the number provided differs from the request in the 1991 budget request as follows: an increase of $371,000 for sales preparation, and decreases of $371,000 from general administration and $1,000,000 from timber stand improvement.

Within the National Forest System there is an increase of $250,000 for additional trail maintenance and $500,000 for anadromous fish habitat on the Tongass.

Amendment No. 132: Provides that all of the funds available from the Tongass Timber Supply Fund is fiscal year 1991 shall be deemed obligated as of October 1, 1990, as proposed by the Senate. The House had no such provision.

Amendment No. 133: Deletes language proposed by the Senate which would have directed the Forest Service to achieve specific timber volume levels, by region, in fiscal year 1991.

The managers agree to the following timber offer targets by region:

Gross Volume

Region:	*Billion board feet*
1	980
2	340
3	400
4	390
5	1.552
6	3.450
8	1.230
9	821
10	383
Total	9.546

The Forest Service is expected to make every effort to achieve these offer levels, and is to report on its progress throughout the year as directed in the Senate report.

Amendment No. 134: Deletes language proposed by the Senate which would have directed the Forest Service to prepare specific timber volume levels, by region, in fiscal year 1991 to offer in future years.

The managers expect the Forest Service to make every effort possible to achieve the regional goals included in the Senate report for preparing sales for future years. The managers are very concerned at how the additional funds provided in the past several

years to refill the pipeline have been used, and why more progress has not been made in having more sales prepared in the pipeline and ready to offer.

Amendment No. 135: Deletes Senate language which would have required the Secretary of the Treasury to transfer funds from timber receipts to the Secretary of Agriculture if timber sale volume is short of the target of having 125 percent of the average annual sale quantity fully prepared at the start of the fiscal year.

The managers expect the Forest Service to continue to work, with the additional funds provided by this Act, toward the target of having more than the average annual allowable sale quantity prepared in the pipeline at the start of each fiscal year.

Amendment No. 136: Includes language proposed by the Senate amended to provide for a 5 percent increase in certain specified Forest Service programs in fiscal year 1992, to be derived from timber receipts, if a specific forest achieves its timber sale offer and pipeline preparation targets in fiscal year 1991. The managers have included this language on a one-time only test basis, and will examine the results before determining if this authority should continue.

Amendment No. 137: Deletes language proposed by the Senate which would have directed the Forest Service to implement land management stewardship contracts and would have provided for sharing of any savings realized. Both the House and Senate Committee reports have directed the Forest Service to use more of these types of contracts, and the Committees will expect further information from the Forest Service as to any cost savings that are realized by using such contracts, and how such cost savings are determined.

Amendment No. 138: Authorizes the Forest Service to employ or contract with persons at regular rates of pay to perform work occassioned by various emergencies such as fires, storms, floods or earthquakes as proposed by the Senate. The House had no such provision.

Amendment No. 139: Authorizes the Forest Service Chief to establish an advisory committee on the Ouachita NF. The House had no such provision.

Amendment No. 140: Amends Public Law 87-869 to increase the amount authorized to be spent for recreational facilities for Forest Service employees at isolated locations from $35,000 to $100,000 as proposed by the Senate. The House had no such provision.

Amendment No. 141: Directs the Forest Service to begin preparation of environmental documents necessary to implement the Region 6 land and resource management plans as proposed by the Senate. The House had no such provision.

DEPARTMENT OF ENERGY

CLEAN COAL TECHNOLOGY

Amendment No. 142: Provides $35,000,000 for clean coal technology on September 1, 1991 as proposed by the House instead of $100,000,000 as proposed by the Senate. This amendment and Amendment No. 143 shift the availability of $65,000,000 from fiscal year 1991 to fiscal year 1992.

Amendment No. 143: Provides $315,000,000 for clean coal technology on October 1, 1991 as proposed by the House instead of $250,000,000 as proposed by the Senate. This amendment and Amendment No. 142 shift the availability of $65,000,000 from fiscal year 1991 to fiscal year 1992.

Amendment No. 144: Provides dates for two solicitations for clean coal technology as proposed by the Senate. The date for CCT-IV is amended to February 1, 1991 from January 1, 1991. The date for CCT-V is not changed from the Senate date of March 1, 1992.

The managers have agreed to a February 1, 1991 date for the next solicitation to enable the Department to publish a draft solicitation for comment by interested parties. It is expected that there will be changes to evaluation criteria and other factors that make it imperative that potential proposers have an opportunity to comment on the content of the solicitation.

The managers urge the Department to include potential benefits to remote, import-dependent sites as a program policy factor in evaluating proposals. The Department should also consider projects which can provide multiple fuel resource options for regions which are more than seventy-five percent dependent on one fuel form for total energy requirements.

Amendment No. 145: Requires selection of projects within eight months of the requests for proposals required by Amendment No. 144 as proposed by the Senate. The House had no such provision.

Amendment No. 146: Requires repayment of government contributions to projects under conditions identical to the most recent clean coal solicitation as proposed by the Senate. The House had no such provision.

Amendment No. 147: Provides that funds for clean coal technology may be expended only under conditions contained in appropriations Acts. The Senate language had prohibited geographic restrictions on the expenditure of funds. The House had no such provision. The managers direct that no preferential consideration be given to any project referenced explicitly or implicitly in other legislation.

The managers agree to delete bill language dealing with geographic restrictions based on such restrictions being deleted from clean air legislation.

Amendment No. 148: Earmarks employees to two fossil energy technology centers as proposed by the Senate. The House had no such provision. The managers agree that the earmarks for PETC and METC are minimum levels and may be increased as necessary.

The managers agree that no more than the current 30 fulltime equivalent positions from fossil energy research and development may be used in the clean coal program in fiscal year 1991.

FOSSIL ENERGY

Amendment No. 149: Appropriates $461,167,000 instead of $443,258,000 as proposed by the House and $459,322,000 as proposed by the Senate.

The net increase above the amount proposed by the House consists of increases of $54,000 for advanced research in gas stream cleanup at METC, $100,000 for research at Ames Laboratory (Iowa) and $250,000 for biodesulfurization of coal at INEL, both in coal preparation; $500,000 for advanced NO_x/SO_x research in flue gas cleanup: $1,050,000 in particulate control and $500,000 for support research, both in gas stream cleanup: $50,000 for coal utilization research directed by METC: $600,000 for global climate change assessment, $100,000 for instrumentation research at METC, and $150,000 for components research, all in advanced research and technology development; $1,700,000 for the consortium for fossil fuel liquefaction science, including up to $300,000 for equipment used in consortium research, in advanced liquefaction research; $500,000 for ongoing and generic research in direct liquefaction; $400,000 for ongoing and generic research in indirect liquefaction; $90,000 for METC directed research and $270,000 for PETC directed research, both in combustion advanced research; $2,000,000 to initiate advanced PFB testing, $500,000 for ongoing advanced systems development, $300,000 for turbine assessment for industrial applications, and $100,000 for METC research, all in PFB combustion; $500,000 for low emissions boiler and high performance power systems work in advanced combusiton; $1,500,000 for continuing two coal-fired turbine contracts and termination costs for a third contract, $300,000 for design of a high efficiency indirect fired turbine demonstration, and $600,000 for coal slurry tests at Allison facilities, all in the heat engine turbine program; $1,500,000 for sorbent testing in a fixed-bed gasifier in the coal gasification power production program; $1,500,000 for micorbial recovering and reservoir wettibility, of which $200,000 is for ongoing work at New Mexico Tech, and $2,100,000 for a program on the Gulf of Mexico OCS, both in enhanced light oil recovery; $1,000,000 for tar sands research at the University of Utah; $500,000 for rock fragmentaiton and hydrology research in oil shale; $600,000 for a multistrata test and $300,000 for research in gas hydrates, both in unconventional gas recovery; $2,500,000 for equipment for the National Research Center for Coal and Energy; $2,000,000 for a 50-50 cost shared facility at UNDEERC; $5,400,000 in prior year funds not used to offset current needs; $750,000 for the first year of a Hawaii energy study described in the Senate report; and $1,320,000 for purchase of supercomputer time at the University of Nevada-Las Vegas; and decreases of $1,000,000 for the University of Pittsburgh research in coal preparation; $100,000 for ammonia catalyst work in gas stream cleanup; $250,000 in materials and $100,000 in bioprocessing, both in advanced research and technology development; $1,600,000 in the base level restoration and $700,000 in catalyst and indirect liquefaction research, both in advanced liquefaction research; $500,000 in coal liquefaction support studies; $200,000 in METC research in AFB combustion research; $100,000 in fuel cell research; $2,000,000 in tubular solid oxide fuel cell research; $150,000 in advanced coal gasification research, with no less than $500,000 of the remaining increase for biogasification; $75,000 for the METC fluid bed gasifier in gasification power production; $50,000 for general research in co-products gasification; $300,000 for liquids from methane and $600,000 in petroleum chemistry and properties in supporting research, both in advanced extraction and process technology; $1,000,000 in eastern oil shale; $1,000,000 for the cost-shared reservoir definition project in unconventional gas recovery; $1,000,000 in unobligated balances set aside for gasifier construction; $3,000,000 for the Federal/State cooperative program in oil and gas; $750,000 for Hoe Creek, WY site cleanup in environmental restoration; and $200,000 in the fuels program.

The managers agree that:

1. Within funds in indirect liquefaction for work on alcohols, oxygenates, and ethers, $1,000,000 is to initiate a joint project between West Virginia University and industry on catalysts for the production of higher alcohols;

2. With regard to the $2,000,000 included for testing of advanced PFB systems no

funds are to be committed to a specific site design until a report is submitted to the Committees on Appropriations describing alternative programs and sites for testing, the time and cost involved in each alternative, the pros and cons of each, and the extent of industrial commitment to the project;

3. With regard to advanced concepts in fuel cells, the $2,000,000 included in both House and Senate actions is for monolithic solid oxide fuel cells;

4. For the project in the heat engine turbine program which would demonstrate an indirectly-fired cycle, no construction may begin unless a commitment of not less than 35 percent cost-sharing is obtained from others;

5. The diesel heat engine program includes two ongoing systems contracts and the innovative concept contract with Caterpillar;

6. Of the $2,100,000 increase above the budget for liquids from methane $700,000 is for METC directed research and $1,400,000 is for PETC directed research;

7. $500,000 of the increase previously identified for the oil recovery technology partnership should be used for the ongoing CO_2 recovery work by New Mexico Tech and Stanford;

8. The enhanced oil recovery project for the Gulf of Mexico OCS should be focused on accelerating the gathering of information on by-passed oil resources in a manner consistent with the recently adopted enhanced oil recovery plan. Follow-on to such information gathering and analysis, including field work as required, should be carried out within the plan framework and on a competitive cost-shared basis. If competition is feasible in the date gathering stage, the managers encourage it;

9. The required cost-share figure for scaling up eastern oil shale processes is 40 percent;

10. The Department is directed to solicit proposals from existing molten carbonate fuel cell contractors for the demonstration of full-size fuel cell stacks. Such proposals may be made independently or in conjunction with site operators and/or utilities. Funding would be considered only for the stacks themselves with appropriate technology safeguards. The Department should issue a request for such proposals in a timely manner, and report the results to the Committees on Appropriations for consideration in the fiscal year 1992 budget process;

11. The fossil energy organization shall purchase supercomputer time needed for programmatic purposes from the University of Nevada-Las Vegas for all requirements above those capabilities on hand and planned with the fossil energy organization, up to a limit of $1,820,000, $1,320,000 of which was added by the conference. Of the Additional $500,000 within funds at least 50 percent shall be used within the global change increase;

12. Existing funds in coal preparation that cannot be used in the joint DOE/EPRI program may be used to scale up promising technologies at other facilities;

13. Within funds for university coal research $500,000 is for the Historically Black Colleges and Universities (HBCU) program;

14. No more than one percent of each budget category may be used for technical and program management support, and such amounts must continue to be shown in the budget document for each research and development activity;

15. Up to 5 percent of internal (non-contract) research and development funds for METC, PETC, WRI, UNDEERC, and NIPER may be used for equipment, and such use shall continue to be reported quarterly;

16. For UNDEERC and WRI, a report on the distribution of non-cost-shared research activities is required by November 30, 1990;

17. Funding for Argonne National Laboratory shall be at levels equivalent to those of fiscal year 1990 with maximum emphasis on its core research progam;

18. No funds for construction of a fixed-bed gasifier at METC may be committed until a written commitment is obtained from parties that would commercialize the technology to cost-share at a level of at least 20% of the cost of construction of the gasifier and its ancillary equipment (estimated total cost of $25 million) in addition to the report required by Senate report 101-534. No commitment is made to a separate hot gas cleanup system in conjunction with the gasifier;

19. 50-50 cost-sharing is required only for the cooperative research programs at UNDEERC and WRI, funded at $2,500,000 for each organization;

20. The Department is expected to maintain a fossil energy organization with 32 SES positions, of which 5 each should be allocated to PETC and METC, and in addition appointments should be made immediately to open SES positions for which candidates have been selected and certified;

21. There is a projected funding shortfall in the headquarters program direction account because the fossil energy organization has failed to initiate any actions to reduce personnel levels as required by the statement of the managers on the fiscal year 1990 Act (House report 101-264). The managers note that this shortfall exists despite the addition of $5.8 million above the budget by the Congress. The managers expect the Department to produce a general plan to bring the size of the headquarters organization under control. If such a plan is produced, and progress toward its goals is demonstrated, the Committees would be willing to consider a reprogramming to eliminate the remaining shortfall;

22. The Department's reprogramming request for the use of funds from the now defunct oil mining project is approved;

23. $80,000 added in light oil enhanced recovery and $389,000 added in heavy oil enhanced recovery to restore employment floors are for 6 FTEs at METC and may be used in either research activity; and

24. The biodesulfurization funds for INEL are to plan scale up of technology provided there is demonstrated industry interest and participation.

Amendment No. 150: Earmarks $2,969,000 for the fuels program as proposed by the Senate instead of $3,169,000 as proposed by the House.

Amendment No. 151: Strikes House provision earmarking $3,000,000 for a cooperative research program with States as proposed by the Senate.

Amendment No. 152: Provides for a grant of $2,500,000 to the National Research Center for Coal and Energy instead of $3,500,000 as proposed by the Senate, and provides a $2,000,000 grant to the University of North Dakota Energy and Environmental Research Center (UNDEERC) with a statutory requirement for 50-50 cost-sharing for this latter project instead of a $3,500,000 grant with no statutory cost-sharing requirements as proposed by the Senate. The House bill contained neither grant. The UNDEERC grant is for a facility costing a total of $7,000,000, a maximum of $3,500,000 of which could be expected to be provided by the Department of Energy.

NAVAL PETROLEUM AND OIL SHALE RESERVES

Amendment No. 153: Appropriates $224,310,000 for Naval Petroleum and Oil Shale Reserves as proposed by the House instead of $210,610,000 as proposed by the Senate.

Amendment No. 154: Provides that revenues in excess of $638,000,000 received in fiscal year 1991 from operation of the Naval Petroleum Reserves be deposited in the SPR petroleum account to purchase oil for the Strategic Petroleum Reserve as proposed by the Senate. The House had no such provision.

ENERGY CONSERVATION

Amendment No. 155: Appropriates $497,784,000 for energy conservation instead of $497,684,000 as proposed by the House and $470,941,000 as proposed by the Senate. The net increase above the amount proposed by the House consists of increases of $200,000 for industrialized housing in building systems; $3,000,000 for an integrated manufacturing information system project in the steel industry, $1,000,000 for a metals casting research institute at the University of Northern Iowa, and $600,000 for the metals initiative, all in industrial process efficiency; $2,250,000 for a grant for the National Center for Alternate Fuels in alternative fuels utilization; and $1,100,000 for sodium-sulfur, zinc-bromine, and lithium metal sulfide battery research, $250,000 for the modularized electric vehicle component program, $500,000 for the electric vehicle site operators' user task force, and $450,000 for PEM fuel cell research at Los Alamos National Laboratory, all in electric and hybrid vehicles; and decreases of $250,000 for electrochromic windows and $2,000,000 for standards and guidelines, both in building systems; $300,000 in solar cooling in technology and consumer products; $250,000 in technical evaluation, analysis, and planning and $200,000 in near-term conservation, both in analysis and technology transfer; $1,000,000 in urban waste combustion; $700,000 in separations research in industrial process efficiency; $1,000,000 for low NO_x combustor development in vehicle propulsion; $1,500,000 in advanced materials; $1,000,000 for supercritical combustion and $200,000 in biocatalysis, both in energy conversion and utilization technologies (ECUT); and $600,000 in program direction in State and local programs.

The managers agree that:

1. Of the total amounts for industrialized housing programs, $1,500,000 is for the University of Oregon and Florida Solar Energy Center consortium;

2. Within amounts for alternative fuels utilization $300,000 is to continue the Hawaii methanol fuels program;

3. The principles described in Senate Report 101-534 with regard to an expanded cost-shared battery research program with automotive manufacturers and equipment suppliers are appropriate, and such a program should be pursued aggressively;

4. Transfers of funds for personnel costs between program direction activities do not require advance reprogramming approval, but should be reflected in the Department's "Base Table" submitted to the Appropriations Committees;

5. With regard to the purchase of vehicles for the site operators' user task force, such vehicles must be purchased under the restrictions established in the statement of

the managers accompanying the Conference Report on H.R. 2788 (House Report 101-264);

6. No funds are earmarked for low income weatherization incentive programs;

7. Within State and local program direction funds, $250,000 is for the Territorial Energy Assistance program;

8. Oil heating research funds are not subject to mandatory cost-sharing, but such cost-sharing is encouraged where possible; and

9. Within analysis and technology transfer $175,000 is for an energy efficient design at the Oregon Art Institute.

Amendment No. 156: Earmarks $247,893,000 for State energy conservation programs as proposed by the House instead of $223,000,000 as proposed by the Senate.

Amendment No. 157: Earmarks $1,000,000 for metals casting centers instead of $1,300,000 as proposed by the Senate and $1,250,000 as proposed by the House.

Amendment No. 158: Provides $1,000,000 each for two metals casting research institutes, one at the University of Northern Iowa and one at the University of Alabama. The Senate proposed $1,300,000 for a center at the University of Northern Iowa. The House proposed $1,250,000 for the University of Alabama institute.

Amendment No. 159: Deletes House earmark for a University of Alabama metals casting institute as proposed by the Senate. The institute is contained in Amendment No. 158 for $1,000,000.

Amendment No. 160: Earmarks $2,250,000 for the National Center for Alternate Transportation Fuels instead of $3,000,000 as proposed by the Senate in Amendment No. 161. The House had no such provision.

The amendment also earmarks $3,000,000 for a 50-50 cost-shared steel industry project separate from the allowance of $17,500,000 for the metals initiative. The Senate had included $6,000,000 for the project within $24,600,000 for the initiative. The House had no such project within the $16,900,000 earmarked for the initiative.

Amendment No. 161: Deletes Senate proposed $3,000,000 grant to the National Center for Alternate Transportation Fuels. The House had no similar provision. This matter is addressed in Amendment No. 160.

EMERGENCY PREPAREDNESS

Amendment No. 162: Appropriates $7,117,000 for emergency preparedness as proposed by the Senate instead of $6,617,000 as proposed by the House.

STRATEGIC PETROLEUM RESERVE

Amendment No. 163: Appropriates $201,633,000 for the Strategic Petroleum Reserve as proposed by the Senate instead of $195,633,000 as proposed by the House.

Amendment No. 164: Restores the House proposed prohibition on the leasing of facilities for storage of crude oil which was stricken by the Senate, amended to allow leasing if current government-owned facilities are full.

SPR PETROLEUM ACCOUNT

Amendment No. 165: Appropriates $196,188,000 for the SPR petroleum account for fiscal year 1992 as proposed by the Senate instead of $119,935,000 for fiscal year 1991 and $90,860,000 for fiscal year 1992 as proposed by the House.

The managers agree not to provide additional new budget authority for crude oil purchases in fiscal year 1991 based on the availability of significant amounts of funds from various sources, and the prospect of continued suspension of purchases during the current Mideast situation. Approximately $267 million is estimated to be available currently for oil purchases; $56 million from excess receipts from the Naval Petroleum Reserves, $108 million from advance appropriations, $50 million in unobligated balances carried forward from fiscal year 1990, and $53 million obligated for oil not yet delivered. In addition, it is estimated that receipts from the sale of approximately 4 million barrels of oil from the Reserve will provide $144 million above that amount. Assuming purchases could resume in the last half of the year, these funds could provide oil at a rate of 100,000 barrels a day at a price of $23 a barrel.

Funds are provided for fiscal year 1992 to continue the practice of allowing advance ordering for the first few months of the next year to assure a smooth flow of oil to facilities, at the same rate estimated for the current year.

Amendment No. 166: Restores the House proposed prohibition on the leasing of crude oil which was stricken by the Senate, amended to assure Congressional approval of any such lease made with foreign governments or their agents.

ENERGY INFORMATION ADMINISTRATION

Amendment No. 167: Appropriates $69,303,000 for the Energy Information Administration instead of $68,608,000 as proposed by the House and $68,853,000 as proposed by the Senate.

The net increase above the amount proposed by the House consists of an increase of $745,000 for renewable and end-use data, and a decrease of $50,000 for national energy strategy support.

ADMINISTRATIVE PROVISIONS, DEPARTMENT OF ENERGY

Amendment No. 168: Restores a provision proposed by the House and stricken by the Senate, which would have prohibited the use of funds for price support and loan guarantee programs and the leasing of facilities for crude oil, or crude oil itself, for the Strategic Petroleum Reserve unless specifically provided for in an appropriations Act, amended to delete leasing prohibitions. This matter is addressed in amendments dealing with the Strategic Petroleum Reserve.

Amendment No. 169: Corrects spelling of "contracts" as proposed by the Senate.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

Amendment No. 170: Appropriates $1,418,600,000 for Indian Health Services instead of $1,419,700,000 as proposed by the House and $1,414,500,000 as proposed by the Senate. The net decrease from the amount proposed by the House consists of increases in the hospitals and clinics program of $650,000 for a nursing initiative to address staffing needs and $2,000,000 for the Alaska community health aide program; $100,000 under the mental health program for the Hopi special child sexual abuse project in addition to the $100,000 to be made available within the fiscal year 1991 base budget and $300,000 for the Navajo child sexual abuse project; $1,121,000 under the alcoholism program for population growth and $1,000,000 for unmet needs with emphasis on fetal alcohol syndrome treatment, training, prevention and education of which $200,000 is for the Alaska Area Native Health Service FAS program; $1,500,000 for contract health services of which $100,000 is for Tucson, $1,200,000 is for Phoenix and $200,000 is for Navajo; $885,000 in the sanitation program for population growth; $167,000 in health education for population growth; $1,050,000 under the community health representatives program for population growth; and $250,000 in manpower for nursing programs authorized by 25 U.S.C. 1616e, $200,000 for recruitment programs authorized by 25 U.S.C. 1612c and 1616b, and $400,000 for preparatory scholarship programs authorized by 25 U.S.C. 1613; and decreases in hospitals and clinics of $1,835,000 for population growth and $1,000,000 for emergency services, $99,000 under dental health for population growth, $2,000,000 in mental health for unmet needs and $103,000 for population growth, $1,106,000 in contract health services for population growth, $80,000 in public health nursing for population growth, $1,000,000 for community health representatives staffing, $1,000,000 in urban health for alcoholism and $500,000 for services in St. Paul, Minnesota, and $2,000,000 in direct operations for a quality management initiative.

The managers have agreed to the distribution of population growth increases as proposed by the Senate.

The managers expect each Tribe to receive a portion of the funds provided for population growth with consideration given to relative need. Distribution of these and other increases are not tied to the timing of the release of Indian health care improvement funds. The population growth funds should be distributed as quickly as possible and used for existing program needs and one-time purchases such as the replenishment of medical supplies. These funds are not to be used to establish new programs. The managers expect that a portion of these funds will be used for the Alaska community health aide program.

Funds provided for special pay increases are not limited to physician pay and should be distributed to all eligible categories.

The funds added to the budget request for the nursing initiative under the hospitals and clinics program consist of $700,000 for advanced specialty training, $300,000 for a senior commissioned officers student training extern program, $350,000 for a nurse intern program and $300,00 to place a full-time nurse recruiter in each IHS area.

The managers agree that the IHS should work with BIA on evaluations of the Hopi and Navajo child sexual abuse projects and report to the Committees on the extent of the need for these services and future funding requirements. These evaluations should take advantage of existing data on these projects to the extent they are available.

The managers agree that the important ongoing FAS research at the University of Washington should be continued. The $200,000 earmarked for the Alaska area native health service FAS program has been provided with the understanding it will be matched with $600,000 in State funds and $900,000 from the municipality of Anchorage. With respect to the balance of the funds added for unmet needs in the alcoholism program, the managers expect the IHS to consider, as appropriate, expansion of existing services and new projects.

The $1,000,000 increase over the budget request for the Gallup, New Mexico alcoholism program is provided in addition to the $200,000 in the base for the current program. The additional funds include $900,000 for operation of an alcohol crisis center to be constructed with State and city of Gallup funds and $100,000 for repairs and renovations to the Crownpoint facility which will be used for on-reservation services. The

managers are encouraged by the coordinated effort in the Gallup area to address the severe alcoholism problems there. The project officials should continue to work closely with all concerned parties and to identify alternative sources of financing to supplement Federal appropriations.

The managers agree that the IHS should report quarterly on the status of the demonstration program on joint ventures with tribes for the construction of health centers.

Funds have been provided for an education initiative as proposed by the House with respect to the use of smokeless tobacco by Alaskan native youths. The managers expect the IHS to report on the results of this initiative and the advisability of expanding the program to other locations.

The managers understand that the $5,000,000 increase in fiscal year 1990 for medically needy and medically indigent onreservation Indians in the Phoenix, Tucson and Navajo areas is in the fiscal year 1991 base budget. This increase should remain in the base in subsequent fiscal years and should in no way prejudice the distribution of other contract health services funding for those areas. The managers have added a total of $1,500,000 in fiscal year 1991 to rectify inequities in the distribution of contract health funds to those areas in fiscal year 1990. These increases also should remain in the base budget for fiscal year 1992 and beyond.

The managers agree that reports required of the IHS in House Report 101-789 and Senate Report 101-534 may be combined to the extent practicable to reduce the number of reports provided to the Committees and the number of reviews within the IHS and HHS bureaucracy.

The managers also agree that future IHS budget requests should include a description of unmet needs within each budget subactivity and an explanation of the extent to which those needs will be addressed given the level requested in the budget.

The managers expect the IHS to include in the service area for health programs for the Oneida Nation of New York the counties of Oneida, Madison, Onandaga, Herkimer, Chenango and Cortland.

Amendment No. 171: Corrects a Senate proposed statutory reference with respect to funds received for the care and treatment of paying patients. The House had no such provision.

Amendment No. 172: The amendment strikes a House reference to a particular section of the Indian Health Care Improvement Act with respect to IHS scholarship programs as proposed by the Senate.

Amendment No. 173: The amendment inserts a reference to 25 U.S.C. 1613 with respect to IHS scholarship programs as proposed by the Senate.

INDIAN HEALTH FACILITIES

Amendment No. 174: Appropriates $167,279,000 for Indian health facilities instead of $167,236,000 as proposed by the House and $165,956,000 as proposed by the Senate.

The net increase over the amount provided by the House consists of an increase of $4,500,000 for construction of staff housing in Barrow, Alaska which is partially offset by a decrease of $4,457,000 for staff housing in Pine Ridge, South Dakota.

The managers agree that the IHS may reprogram up to $250,000 for planning, design and construction of facilities on the IHS priority list without advance approval from the Committees. Such reprogrammings, actual and planned, should be reported in annual budget submissions. The managers also do not object to the reprogramming of funds not to exceed $451,000 for the construction of the Sallisaw clinic.

The managers expect the IHS to provide in future budget submissions an estimate of funds required to meet unscheduled emergency sanitation projects. The IHS also should update its priority list of needed sanitation projects, considered to be economically feasible, for existing homes and include this list in annual budget submissions.

Amendment No. 175: Strikes House language on IHS leasing arrangements as proposed by the Senate.

Amendment No. 176: Provides for a quarterly report to the Committees on Appropriations on proposed adjustments to leases as proposed by the Senate, amended to include a provision limiting the requirement to additional space. The House had similar language stricken by Amendment No. 175.

The managers agree that the IHS should not enter into any new leasing arrangement resulting in increased space prior to notifying the Committees of such arrangements. The managers expect the IHS to submit quarterly reports on proposed additional lease space as directed in Senate report 101-534. Further, the managers expect the IHS to develop and clearly communicate to the tribes the methodology by which requests for additional lease space acquired by IHS under Public Law 94-437 or by tribally-contracted programs under Public Law 93-638 will be considered and ranked. The managers agree that the IHS leasing priority system shall not apply to leases completed in accordance with established General Services Administration procedures (for space to be occupied by Federal employees). The IHS is to notify the Committees in its quarterly reports prior to expanding or relocating such space. The Committees will review these reports, and will notify IHS if further information is required before proceeding with any particular lease. The IHS also is to report annual lease cost information in its budget submissions.

Amendment No. 177: Deletes Senate language prohibiting the closure or restructuring of the Tucson area office without Committee approval.

The managers agree that no office within the IHS may be closed, relocated or restructured without receiving advance approval from the Committees following established reprogramming guidelines. The managers expect to be kept fully informed of proposed changes in organizational structure or location, including changes in the Tucson area office, and of IHS efforts to work with tribes before proceeding with reorganizational plans. The managers will not hesitate to include bill language in future appropriations if reprogramming guidelines are not followed fully in this area.

OTHER RELATED AGENCIES

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

SALARIES AND EXPENSES

The managers expect the Office of Navajo and Hopi Indian Relocation to proceed with the relocation program in a humane and deliberate fashion, considering the needs of all eligible relocatees. Further, the managers agree that the Office and the Navajo Nation should work with Navajo residents on the Hopi Partitioned Lands (HPL) to ensure that relocation of those families is accomplished as soon as possible so that full control over the HPL can be achieved by the Hopi Tribe.

The managers do not object to the reprogramming of $1,500,000 for an economic development project on the New Lands to construct an electronics assembly plant, under the conditions specified in the Senate report. This project appears to be an excellent opportunity for the New Lands area. Nonetheless, the use of housing funds for this project must be reimbursed through subsequent rental payments. It would not be fair to delay the relocation effort further by diverting housing funds to other projects without the prospect of repaying those funds over a reasonable time period.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE

CULTURE AND ARTS DEVELOPMENT

PAYMENT TO THE INSTITUTE

Amendment No. 178: Appropriates $5,476,000 for payment to the Institute instead of $5,673,000 as proposed by the House and $4,602,000 as proposed by the Senate. The decrease from the amount proposed by the House consists of an increase of $103,000 for payment of severance costs of former employees, and a decrease of $300,000 to the request.

The managers expect the Administration to comply with the law and include the request of the Institute in the President's budget without change.

SMITHSONIAN INSTITUTION

SALARIES AND EXPENSES

Amendment No. 179: Appropriates $274,321,000 for salaries and expenses instead of $274,342,000 as proposed by the House and $270,595,000 as proposed by the Senate. The net change from the amounts proposed by the House are increases of $834,000 for the National Museum of the American Indian, including $300,000 for the Bronx storage building, $550,000 for reinstallation of the Freer Gallery, $300,000 for a feasibility study related to relocation of mail order activities, $432,000 for protection services, and $300,000 for the "Family Farm" program at the 1991 Folklife Festival; and decreases of $475,000 for Smithsonian Astrophysical Observatory, including decreases of $135,000 for atmospheric chemistry and $382,000 for positions related to the submillimeter array, and an increase of $42,000 for rent, $81,000 for the Tropical Research Institute, $64,000 for international environmental science, $632,000 for major scientific instrumentation for the submillimeter array, $115,000 for the National Museum of Natural History, including $100,000 for a new position for public programs and $15,000 to global change research, $1,000,000 for the National Museum of American Art for the inventory of outdoor sculpture, $20,000 for the Hirshhorn, and $50,000 for the Office of the Treasurer.

The decrease to the submillimeter array includes a reduction of $40,000 related to site selection activities, until the Mount Graham situation is resolved.

The managers have agreed to some reductions in the initiatives proposed in the budget, which will defer or slow down some of these new activities, and have also restored funds needed for important base activities, such as reopening the Freer Gallery on schedule and adding more guard positions. The managers expect to work with the Smithsonian in the future to continue to set priorities and to address how to meet funding needs for those priorities.

Amendment No. 180: Earmarks $18,332,000 to remain available until expended instead of $20,402,000 as proposed by the House and $19,347,000 as proposed by the Senate.

REPAIR AND RESTORATION OF BUILDINGS

Amendment No. 181: Appropriates $31,356,000 as proposed by the House instead of $31,656,000 as proposed by the Senate. The decrease of $300,000 is for advanced planning and design.

Amendment No. 182: Strikes language proposed by the House making $1,500,000 for the East Court building of the National Museum of Natural History available, subject to authorization. This language will be included under the Construction account.

CONSTRUCTION

Amendment No. 183: Appropriates $15,489,000 for construction instead of $15,989,000 as proposed by the House and $16,189,000 as proposed by the Senate.

The decrease below the amount proposed by the House is $500,000 for the National Museum of the American Indian, for the addition to the Bronx building. $300,000 of these funds have been restored under the salaries and expenses account to complete the project.

Amendment No. 184: Makes $1,500,000 for the East Court Building of the National Museum of Natural History available, subject to authorization as proposed by the Senate. The House had no such provision.

The managers on the part of the House reaffirm their position on the use of planning funds for the proposed extension to the National Air and Space Museum, and the managers on the part of the Senate reaffirm their position on this issue.

NATIONAL GALLERY OF ART

REPAIR, RESTORATION AND RENOVATION OF BUILDINGS

Amendment No. 185: Appropriates $3,505,000 for repair, restoration and renovation of buildings instead of $3,205,000 as proposed by the House and $4,205,000 as proposed by the Senate. The increase over the amount proposed by the House consists of increases of $200,000 for restoration to the base request, and $100,000 for planning and design of the underground administrative addition, for a total of $700,000 for that purpose.

WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

SALARIES AND EXPENSES

The managers agree the Woodrow Wilson International Center for Scholars should continue its efforts to maximize the use of available resources and expect the Center to increase its in-house staff by 3 FTEs within available funds.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

NATIONAL ENDOWMENT FOR THE ARTS

GRANTS AND ADMINISTRATION

Amendment No. 186: Appropriates $147,000,000 for grants and administration, National Endowment for the Arts, instead of $152,000,000 as proposed by the House and $142,000,000 as proposed by the Senate.

The managers agree to the following distribution:

Arts in Education	6,600,000
Dance	8,850,000
Design Arts	4,150,000
Expansion Arts	6,500,000
Folk Arts	3,300,000
Inter-Arts	4,000,000
Literature	5,000,000
Media Arts	12,000,000
Museums	11,400,000
Music	12,200,000
Opera-Musical Theater	4,200,000
Local Programs	2,600,000
Theater	10,800,000
Visual Arts	6,100,000
Advancement	1,300,000
Challenge	300,000
State programs	26,100,000
Policy Planning and research	900,000
Administration	20,700,000
Total	147,000,000

NATIONAL ENDOWMENT FOR THE HUMANITIES

GRANTS AND ADMINISTRATION

Amendment No. 187: Appropriates $143,750,000 for grants and administration, National Endowment for the Humanities, instead of $143,550,000 as proposed by the House and $141,150,000 as proposed by the Senate.

The managers agree to the following distribution:

Media grants	$9,200,000
Museums and historical organizations	9,100,000
Public humanities projects	2,200,000
Humanities projects in libraries	2,800,000
Education programs	17,900,000
Fellowships and seminars	16,300,000
Research grants	18,600,000
State programs	27,000,000
Office of Preservation	22,700,000
Administration	17,950,000
Total	$143,750,000

Amendment No. 188: Earmarks $7,900,000 for the Office of Preservation instead of $8,700,000 as proposed by the House and $4,200,000 as proposed by the Senate.

INSTITUTE OF MUSEUM SERVICES

Amendment No. 189: Appropriates $26,000,000 for the Institute of Museum Services instead of $28,040,000 as proposed by the House and $24,000,000 as proposed by the Senate. The change to the House position includes a decrease of $1,730,000 in operating support grants and $310,000 in conservation grants.

ADMINISTRATIVE PROVISIONS

Amendment No. 190: Deletes House language which would have prohibited any requirement to sign an affidavit respecting the content of a product of a grant.

Amendment No. 191: Deletes Senate provision establishing reforms for the National Endowment for the Arts.

Amendment No. 192: Deletes Senate provision regarding use of appropriated funds to promote, disseminate, or produce material which denigrates the objects or beliefs of the adherents of a particular religion.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

The managers expect the Advisory Council on Historic Preservation to report quarterly on its efforts to reduce casework backlog. Language has been included under general provisions in Title III to exempt undertakings pursuant to Federal grants or contracts to scientific institutions or facilities from the comment requirements of Sections 106 and 110 of the National Historic Preservation Act of 1966.

NATIONAL CAPITAL PLANNING COMMISSION

SALARIES AND EXPENSES

Amendment No. 193: Appropriates $3,448,000 as proposed by the House instead of $3,438,000 as proposed by the Senate.

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

PUBLIC DEVELOPMENT

Amendment No. 194: Appropriates $4,805,000 as proposed by the House instead of $4,705,000 as proposed by the Senate.

UNITED STATES HOLOCAUST MEMORIAL COUNCIL

HOLOCAUST MEMORIAL COUNCIL

Amendment No. 195: Appropriates $7,554,000 for the Holocaust Memorial Council as proposed by the House instead of $3,554,000 as proposed by the Senate.

TITLE III—GENERAL PROVISIONS

Amendment No. 196: Restores language proposed by the House which provides that no funds may be obligated to transfer a property in the City of Minneapolis from the Department of Housing and Urban Development to any Indian tribe.

Amendment Nos. 197-208: Restore House section numbers changed by the Senate.

Amendment No. 209: Makes permanent Federal tort claim coverage for Indian contractors, in order to meet the requirements of Section 201(c)(1) of Public Law 100-472 (102 Stat. 2285), instead of one year coverage as proposed by the House and the Senate.

Amendment No. 210: Strikes a House proposed reference to the effective date of this Act and inserts the date of September 30, 1990 as proposed by the Senate. The amendment provides for Federal tort claim coverage to be effective as of the date named.

Amendment No. 211: Strikes a House proposed reference to the effective date of this legislation and inserts the date of September 30, 1990 as proposed by the Senate.

Amendment Nos. 212-213: Restores House Section numbers changed by the Senate.

Amendment No. 214: Appropriates $500,000 for a supplement to the Final Environmental Impact Statement for the proposed Early Winters Alpine Sports site in the Methow Valley, Washington as proposed by the House. The Forest Service has indicated that this work can be completed within one year.

Amendment No. 215: Strikes House provision of a grazing fee of $4.35 per animal unit month in 1991 rising to $8.70 per animal unit month in 1995. The Senate had no such provision. The managers agree that the authorizing committees should investigate the basis for livestock grazing fees carefully in the coming year and arrive at a solution to this issue.

Amendment No. 216: Restores the provisions of H.R. 4825 which authorizes the National Endowment for the Arts, the National Endowment for the Humanities and the Institute of Museum Services.

It is the intent of the managers that the percentages of funds specified in the bill for direct State grants, be taken from the total of NEA program grants funds and not from the entire appropriation of the agency.

Amendment No. 217: Prohibits use of Department of the Interior or Forest Service funds to reimburse any other Federal department for litigation costs associated with the Prince William Sound oilspill as proposed by the Senate and changes the section number. The House had no such provision.

Amendment No. 218: Deletes the Senate language preventing any expenditures for an EIS related to the re-introduction of wolves in and around Yellowstone NP. The managers agree that the Secretary shall, within 30 days of enactment, appoint a 10 member Wolf Management Committee. The Committee's task shall be to develop a wolf re-introduction and management plan for Yellowstone National Park and the Central Idaho Wilderness Area. The Committee shall consist of the following:

1. One representative from the Fish & Game Departments of each of the States of Idaho, Montana and Wyoming.
2. One representative from the National Park Service.
3. One representative from the U.S. Forest Service.
4. One representative from the U.S. Fish and Wildlife Service.
5. Two representatives from conservation organizations.
6. Two representatives from the livestock/hunting community.

The panel shall make available to the Secretary and the Congress by May 15, 1991 its completed plan along with its recommendations. The Committee's plan shall represent a consensus agreement of Committee members with at least six members supporting the plan.

Amendment No. 219: Exempts home mortgage guarantees from certain reporting requirements as proposed by the Senate, amended to change the statutory citation.

Amendment No. 220: Prohibits implementing a new fee schedule or increasing fees charged for communication site fees by the Forest Service or the Bureau of Land Management, as proposed by the Senate. The House had no such provision.

Amendment No. 221: Prohibits the use of funds to mark hardwood sawtimber harvested from Federal lands east of the 100th meridian to make it readily identifiable at all times before its manufacture, as proposed by the Senate and changes the section number. The House had no such provision.

Amendment No. 222: Deletes language proposed by the Senate which would have provided that all funds in the Act related to the oil spill cleanup in Prince William Sound would be transferred to the Secretary of the Interior for coordination of all such activities.

The managers have agreed to provide $5,500,000 to the Forest Service and $2,000,000 to the Fish and Wildlife Service for oil spill cleanup and damage assessment.

Amendment No. 223: Provides for an administrative site for Great Basin National Park, NV from lands currently under the jurisdiction of the Forest Service is proposed by the Senate amended to substitute "withdrawn and reserved" for "established" and changes the section number. The House had no such provision.

Amendment No. 224: Deletes language proposed by the Senate on aid to local educational agencies and inserts a provision exempting scientific institutions from the comment requirements of Sections 106 and 110 of the National Historic Preservation Act of 1966, and a provision directing a percent general reduction to each account in this Act to bring the total amount appropriated herein under the budget allocation.

The managers direct the Secretary of Education to review the impact aid status of the Minot and Grand Forks Air Force Base School Districts. The Secretary is further directed to refrain from removing the districts from the impact aid program until the review is complete. The review shall last no longer than 180 days.

Amendment No. 225: Directs the Secretary of the Interior to report to Congress by March 1, 1991, on lands in Alaska which were transferred under the Native Claims Settlement Act and subsequently discovered to be contaminated, as proposed by the Senate. The House had no such provision.

APPLICATION OF GENERAL REDUCTIONS

The level at which reductions shall be taken pursuant to the Deficit Reduction Act of 1985, if such reductions are required in fiscal year 1991, is defined by the managers as follows:

As provided for by section 252(a)(1)(B)(i) of Public Law 99-177 and for the purposes of a Presidential Order issued pursuant to section 252 of said Act, the term "program, project, and activity" for items under the jurisdiction of the Appropriations Subcommittees on the Department of the Interior and Related Agencies of the House of Representatives and the Senate is defined as (1) any item specifically identified in tables or written material set forth in the Interior and Related Agencies Appropriations Act, or accompanying committee reports or the conference report and accompanying joint explanatory statement of the managers of the committee of conference; (2) any Government-owned or Government-operated facility; and (3) management units, such as national parks, national forests, fish hatcheries, wildlife refuges, research units, regional, State and other administrative units and the like, for which funds are provided in fiscal year 1991.

The managers emphasize that any item for which a specific dollar amount is mentioned in an accompanying report, including all increases over the budget estimate approved by the conference shall be subject to a percentage reduction no greater or less than the percentage reduction applied to all non-defense accounts.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1991 recommended by the Committee of Conference, with comparisons to the fiscal year 1990 amount, the 1991 budget estimates, and the House and Senate bills for 1991 follow:

New budget (obligational) authority, fiscal year 1990	$11,409,598,000
Budget estimates of new (obligational) authority, fiscal year 1991	9,856,902,000
House bill, fiscal year 1991	11,784,143,000
Senate bill, fiscal year 1991	11,700,937,000
Conference agreement, fiscal year 1991	11,735,825,000
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1990	+326,227,000
Budget estimates of new (obligational) authority, fiscal year 1991	+1,878,923,000
House bill, fiscal year 1991	−48,318,000
Senate bill, fiscal year 1991	+34,888,000

SIDNEY R. YATES,
J. P. MURTHA,
NORMAN D. DICKS,
LES AUCOIN,
TOM BEVILL,
CHET ATKINS,
JAMIE L. WHITTEN,
RALPH REGULA,
JOSEPH M. MCDADE,
BILL LOWERY,
SILVIO O. CONTE,
Managers on the Part of the House.

ROBERT C. BYRD,
J. BENNETT JOHNSTON,
PAT LEAHY,
DENNIS DECONCINI,
QUENTIN BURDICK,
DALE BUMPERS,
ERNEST F. HOLLINGS,
HARRY REID,
JAMES A. MCCLURE,
TED STEVENS,
JAKE GARN,
THAD COCHRAN,
WARREN RUDMAN,
DON NICKLES,
PETE V. DOMENICI,
Managers on the Part of the Senate.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[Pursuant to the order of the House on Oct. 28, 1990, the following reports were filed on Nov. 1, 1990]

Mr. CONYERS: Committee on Government Operations. Report on the abuse and mismanagement at HUD (Rept. 101-977). Referred to the Committee of the Whole House on the State of the Union.

SENATE BILLS AND CONCURRENT RESOLUTION REFERRED

Bills and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 185. An act to amend title 18 of the United States Code to punish as a Federal criminal offense the crimes of international parental child abduction; to the Committee on the Judiciary.

S. 1888. An act to designate the United States Post Office located in Monterey, Tennessee, as the "J.E. 'Eddie' Russell Post Office", to the Committee on Post Office and Civil Service.

S. 1933. An act to provide for the minting of coins in commemoration of the bicentennial of the death of Benjamin Franklin and to enact a fire service bill of rights and programs to fulfill those rights; to the Committee on Banking, Finance and Urban Affairs.

S. 3049. An act to amend the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act; to the Committee on Banking, Finance and Urban Affairs.

S. 3069. An act to provide a method of locating private and Government research on environmental issues by geographic location; to the Committee on Science, Space, and Technology.

S. 3262. An act to modify the authorities for a flood control project on the Kissimme River, Florida, and for other purposes; to the Committee on Public Works and Transportation.

S. Con. Res. 155. Concurrent resolution recognizing the sesquicentennial of the Treaty of Waitangi, New Zealand's principal founding document, and the 151st anniver-

sary of United States-New Zealand Relations; to the Committee on Foreign Affairs.

ENROLLED BILL SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 3562. An act to amend the Federal Food, Drug, and Cosmetic Act to prescribe nutrition labeling for foods, and for other purposes.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 1430. An act to enhance national and community service, and for other purposes.

SINE DIE ADJOURNMENT

Mr. GEPHARDT. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER. In accordance with the provisions of House Concurrent Resolution 399, the Chair declares the second session of the 101st Congress adjourned sine die.

Thereupon (at 2 o'clock and 2 minutes a.m.), pursuant to House Concurrent Resolution 399, the House adjourned.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports and amended reports of various committees of the U.S. House of Representatives concerning foreign currencies and U.S. dollars utilized by them during the second and third quarter of 1990 pursuant to Public Law 95-384, are as follows:

AMENDED REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON MERCHANT MARINE AND FISHERIES, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 1 AND JUNE 30, 1990

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Raymond, E. O'Malley	5/31	6/2	Belgium		[3] 220.00						220.00
Committee total					220.00						220.00

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Sept. 17, 1990: Additional 1-day per diem issued by State Department. During stay in Belgium, did not receive authorized per diem.

WALTER B. JONES, Chairman, Oct. 16, 1990.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON ARMED SERVICES, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1990

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Visit to Iceland, Finland, Sweden, and Norway, July 1–8, 1990:											
Hon. Dennis M. Hertel	7/1	7/3	Iceland		364.00						364.00
	7/3	7/4	Finland		237.00						237.00
	7/4	7/6	Sweden		630.00						630.00
	7/6	7/8	Norway		464.00						464.00
Hon. Jim Courter	7/1	7/3	Iceland		364.00						364.00
	7/3	7/4	Finland		237.00						237.00
	7/4	7/6	Sweden		630.00						630.00
	7/6	7/8	Norway		464.00						464.00
Ms. Marilyn A. Elrod	7/1	7/3	Iceland		364.00						364.00
	7/3	7/4	Finland		237.00						237.00
	7/4	7/6	Sweden		630.00						630.00
	7/6	7/8	Norway		464.00						464.00
Mr. William A. Andahazy	7/1	7/3	Iceland		364.00						364.00
	7/3	7/4	Finland		237.00						237.00
	7/4	7/6	Sweden		630.00						630.00
	7/6	7/8	Norway		464.00						464.00
Delegation expenses	7/4	7/6	Sweden						291.51		291.51
Visit to Mexico, July 1–6, 1990:											
Hon. Ike Skelton	7/1	7/6	Mexico		760.00						760.00
Mr. Archie D. Barrett	7/1	7/6	Mexico		760.00						760.00
Delegation expenses	7/1	7/6	Mexico				224.16		58.32		282.48
Visit to Germany, Aug. 1–3, 1990:											
Hon. Marvin Leath	8/1	8/3	Germany								
Commercial transportation							4,803.20				4,803.20
Visit to Switzerland, Aug. 5–9, 1990:											
Hon. H. Martin Lancaster	8/5	8/9	Switzerland		1,100.00						1,100.00
Visit to Germany and Italy, Aug. 25–Sept. 4, 1990:											
Hon. H. Martin Lancaster	8/21	8/29	Germany		1,469.00						1,469.00
	8/29	9/4	Italy		225.00						225.00
Commercial transportation			Switzerland				5,306.00				5,306.00
Visit to Japan and Korea, Aug. 31–Sept. 2, 1990:											
Hon. Ike Skelton	8/28	8/31	Japan		723.00						723.00
	8/31	9/2	Korea		390.00						390.00
Hon. Solomon P. Ortiz	8/28	8/31	Japan		723.00						723.00
	8/31	9/2	Korea		390.00						390.00
Mr. Archie D. Barrett	8/28	8/31	Japan		723.00						723.00
	8/31	9/2	Korea		390.00						390.00
Visit to the United Kingdom, Aug. 25–Sept. 4, 1990:											
Hon. Marvin Leath	8/31	9/4	United Kingdom		1,463.00		672.88		287.06		2,422.94
Commercial transportation							5,774.00				5,774.00

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON ARMED SERVICES, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1990—Continued

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Mr. Peter M. Steffes	8/25	9/2	United Kingdom		1,645.00		672.88		287.06		2,604.94
Commercial transportation							3,366.00				3,366.00
Mr. William T. Fleshman	8/27	9/2	United Kingdom		1,173.00						1,173.00
Commercial transportation							3,366.00				3,366.00
Committee total					18,714.00		24,185.12		923.95		43,823.07

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

LES ASPIN, Chairman, Oct. 18, 1990.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON EDUCATION AND LABOR, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1990

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Cass Ballenger	8/6	8/8	Nicaragua		225.00		[3]3,591.25				3,816.25
			El Salvador								
Hon. A. Hawkins	8/9	8/11	Yugoslavia		501.00		[4]4,578.00				5,079.00
	8/12	8/15	Austria		594.00		[4]686.00		[5]245.00		1,280.00
	8/16	8/19	Spain		1,084.00		[5]634.00		[5]245.00		1,963.00
Hon. Charles Hayes	8/9	8/11	Yugoslavia		501.00		[4]4,578.00				5,079.00
	8/12	8/15	Austria		594.00		686.00				1,280.00
	8/16	8/18	Spain		713.00		[5]634.00		[5]245.00		1,592.00
Hon. W. Goodling	8/9	8/11	Yugoslavia		501.00		[4]4,578.00				5,079.00
	8/12	8/15	Austria		594.00		686.00				1,280.00
	8/16	8/19	Spain		1,084.00		[5]634.00		[5]245.00		1,963.00
Carole Stringer	8/9	8/11	Yugoslavia		501.00		[4]4,578.00				5,079.00
	8/12	8/15	Austria		594.00		686.00				1,280.00
	8/16	8/19	Spain		1,084.00		[5]634.00		[5]245.00		1,963.00
Terri Schroeder	8/9	8/11	Yugoslavia		501.00		[4]4,578.00				5,079.00
	8/12	8/15	Austria		594.00		686.00				1,280.00
	8/16	8/19	Spain		1,084.00		[5]634.00		[5]245.00		1,963.00
Andrew Hartman	8/9	8/11	Yugoslavia		501.00		[4]4,578.00				5,079.00
	8/12	8/15	Austria		594.00		686.00				1,280.00
	8/16	8/19	Spain		1,084.00		[5]634.00		[5]245.00		1,963.00
Committee total					12,928.00		38,979.25		1,470.00		53,377.25

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Military transportation pro-rated cost.
[4] Travel from and return to continental United States.
[5] Figures are rounded to nearest dollar.

AUGUSTUS F. HAWKINS, Chairman, Oct. 24, 1990.

HOUSE VOUCHER TABLE

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON MERCHANT MARINE AND FISHERIES, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1990

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Helen Delich Bentley	9/28	9/30	Yugoslavia				[3]4,375.00		[4]734.16		
							[5]40.00				5,149.16
Committee total							4,415.00		734.16		5,149.16

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Prorated share of air transportation; 7 hours at $625 per hour—U.S. Air Force.
[4] Official telephone/telefax messages.
[5] Ground transportation.

WALTER B. JONES, Chairman, Oct. 16, 1990.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4117. A letter from the Department of Defense, transmitting notification of the Department of the Air Force's intent to study the conversion to contract performance the commercial activities program of Gila Bend Air Force Auxiliary Field [AFAF] and Barry M. Goldwater Range, AZ, pursuant to 10 U.S.C. 2304 nt.; to the Committee on Armed Services.

4118. A letter from the Assistant Attorney General, Department of Justice, transmitting the views of the Department of Justice on H.R. 5756, the "Campaign Advertising Act"; to the Committee on Energy and Commerce.

4119. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4120. A letter from the Administrator, General Services Administration, transmitting determination that it is in the public interest to use procedures other than competitive procedures with respect to the amendment of the solicitation for the design and construction of a U.S. Courthouse and Federal/Municipal Office Building in the city of New York at Foley Square, pursuant to Public Law 100-202; jointly, to the Committee on Government Operations and Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. FAZIO: Committee of conference. Conference report on H.R. 5399 (Rept. 101-965). Ordered to be printed.

Mr. NOWAK: Committee of conference. Conference report on S. 2740 (Rept. 101-966). Ordered to be printed.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5505. A bill to amend the Atomic Energy Act of 1954 to authorize the States to regulate the disposal of low-level radioactive waste for which the Nuclear Regulatory Commission does not require disposal in a licensed facility; with amendments (Rept. 101-967, Pt. 1). Ordered to be printed.

Mr. OBEY: Committee of conference. Conference report on H.R. 5114 (Rept. 101-968). Ordered to be printed.

Mr. FROST: Committee on Rules. House Resolution 540. Resolution waiving certain points of order against consideration of the conference report on the bill (H.R. 5399) making appropriations for the legislative branch for the fiscal year ending September 30, 1991, and for other purposes, and against its consideration (Rept. 101-969). Referred to the House Calendar.

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 4210. A bill to amend the Antarctic Conservation Act of 1978 to protect the environment of Antarctica, and for other purposes; with an amendment (Rept. 101-970, Pt. 1). Ordered to be printed.

Mr. YATES: Committee of conference. Conference report on H.R. 5769 (Rept. 101-971). Ordered to be printed.

Mr. MOAKLEY: Committee on Rules. House Resolution 541. Resolution waiving certain points of order against consideration of the conference report on the bill (H.R. 5114) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes, and against its consideration (Rept. 101-972). Referred to the House Calendar.

Ms. SLAUGHTER of New York: Committee on Rules. House Resolution 542. Resolution waiving certain points of order against consideration of the conference report on the bill (H.R. 5769) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes, and against its consideration (Rept. 101-973). Referred to the House Calendar.

Mr. GONZALEZ: Committee on Banking, Finance and Urban Affairs. H.R. 5891. A bill to provide additional funding for the Resolution Trust Corporation, and for other purposes (Rept. 101-974). Referred to the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 5111. A bill to amend chapter 96 (relating to racketeer influenced and corrupt organizations) of title 18, United States Code; with an amendment (Rept. 101-975). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 1663. A bill to modify the antitrust exemption applicable to the business of insurance; with an amendment (Rept. 101-976). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BRUCE:

H.R. 5961. A bill to amend part B of title XVIII of the Social Security Act to permit beneficiaries to obtain upgraded items of equipment; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. MONTGOMERY (for himself, Mr. STUMP, Mr. MCEWEN, and Mr. APPLEGATE):

H.R. 5962. A bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to extend certain expiring authorities and requirements under progams administered by the Secretary of Veterans Affairs; to make certain technical corrections; and for other purposes; to the Committee on Veterans' Affairs.

By Mr. MARKEY:

H.R. 5963. A bill to amend the Internal Revenue Code of 1986 and title I of the Employee Retirement Income Security Act of 1974 to clarify applicability of such provisions to transfers of certain excess assets from defined benefit pension plans to qualified housing assistance plans established and maintained under collective bargaining agreements; jointly, to the Committees on Ways and Means and Education and Labor.

By Mr. ANDERSON:

H.R. 5964. A bill to authorize the Secretary of Transportation to conduct a study of the use of intermodal containers on the Nation's highways and of violations of Federal and State highway weight laws through the use of intermodal containers on the Nation's highways, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. ANDERSON (for himself, Mr. JONES of North Carolina, Mr. NOWAK, and Mr. STUDDS):

H.R. 5965. A bill to provide for the protection of marine coastal waters and the Great Lakes, to extend the authorizations for the Federal Water Pollution Control Act, and for other purposes; jointly, to the Committees on Public Works and Transportation and Merchant Marine and Fisheries.

By Mr. COOPER (for himself and Mr. SYNAR):

H.R. 5966. A bill to amend the Clean Air Act to begin reducing the accumulation of greenhouse gases in the atmosphere, to create incentives to improve the efficiency of fossil fuel use, to create incentives for the use of low carbon fuels and renewable energy resources, to allow regulatory credit for carbon dioxide reductions produced as a byproduct of the Acid Rain Control Program and other energy efficiency programs, and to stimulate private market development of carbon dioxide reducing technologies; to the Committee on Energy and Commerce.

By Mr. DORGAN of North Dakota:

H.R. 5967. A bill to implement certain recommendations of the Garrison Unit Joint Tribal Advisory Committee regarding the entitlement of the Three Affiliated Tribes and the Standing Rock Sioux Tribe to additional financial compensation for the taking of reservation lands for the site of the Garrison Dam and Reservoir and the Oahe Dam and Reservoir, and for other purposes; jointly, to the Committees on Interior and Insular Affairs and Public Works and Transportation.

By Mr. HAYES of Louisiana (for himself, Mr. RIDGE, Mr. THOMAS of Georgia, Mr. TAUZIN, Mr. YOUNG of Alaska, Mr. DYSON, Mr. VALENTINE, Mr. MCCRERY, Mr. BAKER, Mr. BATEMAN, Mr. BUNNING, Mr. HANSEN, Mr. CRAIG, Mr. DENNY SMITH, Mr. CALLAHAN, Mr. THOMAS of Wyoming, Mrs. VUCANOVICH, and Mr. SISISKY):

H.R. 5968. A bill to amend the Federal Water Pollution Control Act to establish a comprehensive program for conserving and managing wetlands in the United States, and for other purposes; jointly, to the Committees on Public Works and Transportation and Merchant Marine and Fisheries.

By Mr. MCGRATH:

H.R. 5969. A bill to amend the Internal Revenue Code of 1986 to limit the interest deduction of foreign corporations that hold interests of less than 10 percent in partnerships engaged in business in the United States; to the Committee on Ways and Means.

By Mr. MARKEY:

H.R. 5970. A bill to require the Secretary of the Interior to establish a comprehensive recycling program for units operated by the National Park Service and the U.S. Fish and Wildlife Service, to require the Secretary of Agriculture to establish such a program for the U.S. Forest Service, and for other purposes; jointly, to the Committees on Agriculture, Interior and Insular Affairs, and Merchant Marine and Fisheries.

H.R. 5971. A bill to increase testing for radon in residential housing and in schools, to create a commission to provide increased public awareness of radon, and for other purposes; jointly, to the Committees on Energy and Commerce; Banking, Finance and Urban Affairs; and Education and Labor.

By Mr. MICHEL (by request):

H.R. 5972. A bill to improve enforcement of the Employee Retirement Income Security Act of 1974, and for other purposes; jointly, to the Committees on Education and Labor and Ways and Means.

By Mr. PANETTA:

H.R. 5973. A bill to designate the waters of the central coast of California as a national marine sanctuary; to the Committee on Merchant Marine and Fisheries.

By Mr. SAWYER (for himself and Mr. GOODLING):

H.R. 5974. A bill to amend the Job Training Partnership Act to establish education and training programs in areas with high rates of foreign workers; to the Committee on Education and Labor.

By Mr. COX (for himself, Mr. ARCHER, Mr. ARMEY, Mr. BAKER, Mr. BALLENGER, Mr. BARTON of Texas, Mr. BARTLETT, Mr. BATEMAN, Mrs. BENTLEY, Mr. BEREUTER, Mr. BILIRAKIS, Mr. BLILEY, Mr. BROWN of Colorado, Mr. BUECHNER, Mr. BURTON of Indiana, Mr. BUNNING, Mr. BROOMFIELD, Mr. CALLAHAN, Mr. CAMPBELL of California, Mr. COBLE, Mr. CRAIG, Mr. CRANE, Mr. DANNEMEYER, Mr. DELAY, Mr. DICKINSON, Mr. DOUGLAS, Mr. DORNAN of California, Mr. DREIER of California, Mr. DUNCAN, Mr. EDWARDS of Oklahoma, Mr. EMERSON, Mr. FRENZEL, Mr. GALLO, Mr. GILLMOR, Mr. GINGRICH, Mr. GOSS, Mr. GRANDY, Mr. GRANT, Mr. GUNDERSON, Mr. HANCOCK, Mr. HANSEN, Mr. HERGER, Mr. HILER, Mr. HASTERT, Mr. HEFLEY, Mr. HOLLOWAY, Mr. HOUGHTON, Mr. HUNTER, Mr. HYDE, Mr. INHOFE, Mr. IRELAND, Mr. JAMES, Mrs. JOHNSON of Connecticut, Mr. KASICH, Mr. KOLBE, Mr. KYL, Mr. LAGOMARSINO, Mr. LEWIS of California, Mr. LEWIS of Florida, Mr. LIGHTFOOT, Mr. LIVINGSTON, Mr. LOWERY of California, Mr. MACHTLEY, Mr. MADIGAN, Mrs. MARTIN of Illinois, Mr. MCCANDLESS, Mr. MCCOLLUM, Mr. MCCRERY, Mr. MCEWEN, Mrs. MEYERS of Kansas, Mr. MICHEL, Ms. MOLINARI, Mr. MOORHEAD, Mr. NIELSON of Utah, Mr. OXLEY, Mr. PACKARD, Mr. PARKER, Mr. PARRIS, Mrs. PATTERSON, Mr. PAXON, Mr. PENNY, Mr. PETRI, Mr. PURSELL, Mr. RHODES, Mr. RINALDO, Mr. RITTER, Mr. ROHRABACHER, Mr. ROBERTS, Ms. ROS-LEHTINEN, Mrs. ROUKEMA, Mr. ROWLAND of Connecticut, Ms. SCHNEIDER, Mr. SENSENBRENNER, Mr. SHAW, Mr. SHUMWAY, Mr. ROBERT F. SMITH, Mr. SMITH of New Hampshire, Mr. DENNY SMITH, Mr. SMITH of Texas, Mrs. SMITH of Nebraska, Ms. SNOWE, Mr. SOLOMON, Mr. STANGELAND, Mr. STEARNS, Mr. TAUKE, Mr. THOMAS of California, Mr. THOMAS of Wyoming, Mr. UPTON, Mrs. VUCANOVICH, Mr. WALKER, Mr. WALSH, and Mr. WELDON):

H.R. 5975. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to reform the budget process, and for other purposes; jointly, to the Committees on Government Operations, Rules, Appropriations, and Ways and Means.

By Mr. YOUNG of Alaska:

H.R. 5976. A bill to provide for clarification of certain land use and conveyance statutes in the State of Alaska; to the Committee on Interior and Insular Affairs.

By Mr. WHITTEN:

H.J. Res. 687. Joint resolution making further continuing appropriations for the fiscal year 1991, and for other purposes; jointly, to the Committees on Appropriations and Ways and Means.

By Mr. WILLIAMS:

H. Con. Res. 398. Concurrent resolution directing the Clerk of the House of Representatives to change the enrollment of H.R. 5932.

By Mr. GEPHARDT:

H. Con. Res. 399. Concurrent resolution providing for the sine die adjournment of the 101st Congress; considered and agreed to.

By Ms. OAKAR:

H. Con. Res. 400. Concurrent resolution to authorize the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 486.

H. Con. Res. 401. Concurrent resolution to authorize the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 486.

By Mr. GEPHARDT (for himself and Mr. MICHEL):

H. Res. 543. Resolution relating to early organization of the House of Representatives for the One Hundred Second Congress; considered and agreed to.

By Mr. GEPHARDT:

H. Res. 544. Resolution providing for the committee to notify the President of completion of business; considered and agreed to.

By Mr. MICHEL:

H. Res. 545. Resolution presenting the thanks of the House to Speaker Thomas S. Foley.

By Mr. GEPHARDT:

H. Res. 546. Resolution providing for the printing of the revised edition of the Rules and Manual of the House of Representatives for the One Hundred Second Congress; considered and agreed to.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. PANETTA introduced a bill for the relief of Velig Mehmed Dag; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 446: Mr. MATSUI.

H.R. 2816: Mrs. JOHNSON of Connecticut.

H.R. 2870: Mr. STOKES.

H.R. 3388: Mr. MOODY and Mr. BARTON of Texas.

H.R. 3603: Mr. OBERSTAR, Mr. NIELSON of Utah, Mr. TORRES, and Mr. DICKS.

H.R. 4475: Mr. BROWDER.

H.R. 4481: Mr. SCHIFF.

H.R. 4483: Mr. TORRICELLI.

H.R. 5416: Mr. PALLONE.

H.R. 5596: Mrs. ROUKEMA.

H.R. 5735: Mr. RHODES.

H.R. 5741: Mr. JOHNSON of South Dakota and Mr. MAZZOLI.

H.R. 5895: Mr. HOCHBRUECKNER.

H.R. 5905: Mr. KOLBE, Mr. EMERSON, and Mr. CLINGER.

H.R. 5917: Mr. DELLUMS.

H.R. 5949: Mr. NELSON of Flordia, Mr. GIBBONS, Mr. BENNETT, Mr. FASCELL, and Mr. HUTTO.

H.J. Res. 411: Mr. LIGHTFOOT, Mr. BOEHLERT, and Mr. ROWLAND of Connecticut.

H.J. Res. 642: Mr. MAZZOLI.

H. Con. Res. 147: Mr. KYL and Mr. GILMAN.

H. Con. Res. 367: Mr. HORTON.

H. Con. Res. 372: Mr. MOODY.

H. Con. Res. 373: Mr. KYL and Mr. PANETTA.

H. Con. Res. 377: Mr. PEASE.

H. Con. Res. 380: Mr. BUSTAMANTE and Mr. DREIER of California.

H. Res. 122: Mr. UPTON.

PETITIONS, ETC.

Under clause 1 of rule XXII,

254. The SPEAKER presented a petition of the American Library Association, Chicago, IL, relative to flag burning; to the Committee on the Judiciary.

EXTENSIONS OF REMARKS

THOMAS E. TONKIN

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PANETTA. Mr. Speaker, I rise today to pay tribute to Mr. Thomas Tonkin, a man who has unselfishly devoted his life to helping others at a time when altruism seems to be fading by the wayside. Tom is not only a nationally and internationally recognized leader in the health care industry, both in hospital design and operations, but he is a man with superior character and integrity.

Tom has been the president and chief executive officer of the Community Hospital Foundation and related corporations since 1973. From 1955 to 1973, he was the administrator for the Community Hospital of the Monterey California Peninsula. He has served on numerous hospital and health-related associations as chairman, administrator, or member. Yet it is not the many offices Tom has held that make him a great man, it is his kind disposition and charity. He has not strayed from his high ideals throughout his career, as can be clearly recognized if one looks at just a few of his many accomplishments.

In 1962, Tom Tonkin became a pioneer for the idea of a total health program that integrates the body, mind, and spirit as a package to wellness and recovery. He wanted to build a hospital that emphasized a physical environment in which function and atmosphere would play a major role in patients' recovery process. He envisioned an aesthetically pleasing hospital to produce reassurance and relaxation for patients, their families, and hosptial staff. Tom set his mind to it and implemented his revolutionary idea. He developed the single-bed concept to provide the utmost privacy for patients, and also added music and art to further enhance a total health program. Many health-care institutions are just now recognizing the importance of this concept.

Tom was also the founding director of the California Hosptials Associated Insurance Services, Inc. [CHAIS]. CHAIS is a corporation developed to provide the most cost-effective, quality service on property, casualty, and employee benefit products to member hospitals in California. CHAIS is unique in that it is a hospital-owned insurance facility operating for the benefit of all California hospitals, using a combination of commercial insurance and self-insurance techniques through the vehicle of group purchasing power for the ultimate benefit of long-term stability and reduced costs. Tom has been helping to transform the health-care industry into a service for everyone, not just those who are fortunate enough to afford care.

Tom Tonkin has worked particularly hard for the Monterey Peninsula in health-care and community activities. In 1982, he established the Maurine Church Coburn School of Nursing with a grant from the Maurine Church Coburn Charitable Trust, under the leadership of Milton C. Coburn. The school, operated on the Monterey Peninsula College campus, offers a 2-year program of study leading to an associate in science degree in nursing. The school of nursing graduates approximately 50 students per year, most of whom are employed in local health-care institutions. The primary purpose of the school is to develop a sufficient pool of registered nurses who will be working for the hospital, convalescent centers, and home health-care agencies on the Monterey Peninsula. The benefit to the Monterey Peninsula has not only come from the continuous influx of nurses, but of the heightened educational and professional opportunities the school adds to the area.

Tom Tonkin's community involvement clearly knows no bounds. He has been president of the Monterey County Heart Association, director of the Visiting Nurse Association, president of the Carmel Rotary Club, and professional gifts chairman of the United Way. I could not even begin to list off all of the organizations to which he has devoted his time and efforts. Tom is a simply a class act—a gentleman of the highest degree.

Mr. Speaker, I ask my colleagues to join me now in commending Mr. Thomas Tonkin. It is with great respect and pride that I salute the outstanding achievements, contributions, and character of Tom Tonkin.

MEDICARE BENEFICIARY ASSISTANCE ACT, H.R. 5517, PROVISIONS ENACTED IN OMNIBUS BUDGET RECONCILIATION LAW

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ROYBAL. Mr. Speaker, today I, along with my distinguished colleagues, Representatives HENRY WAXMAN, MATTHEW RINALDO, and RALPH REGULA, are pleased to announce the enactment of the Medicare Beneficiary Assistance Act, H.R. 5517, provisions as part of the omnibus budget reconciliation law.

The Beneficiary Assistance Act provisions are a critical step toward rebuilding the relationship between Medicare and its beneficiaries, a relationship that is greatly strained as Medicare beneficiaries feel increasingly estranged from their program. By enacting the Beneficiary Assistance Act provisions, we have an opportunity to begin to rebuild the relationship between Medicare and its beneficiaries.

The new law directs the Secretary to establish a health insurance advisory service: First, to operate within appropriate local federal offices such as Social Security District Offices, second, to conduct community outreach programs, and third, to provide a complimentary toll-free telephone service. This beneficiary assistance service is to help beneficiaries with, first, information on and problems with Medicare, second, linkages to Medicaid, and third, Federal information on private Medigap policies. The Secretary, in conjunction with Congress, is expected to ensure that sufficient and additional staff are provided to carry out these functions.

We want to express our deep appreciation to the Health Center Financing Administration as well as the overall Department of Health and Human Services for their advice on this proposal. In my Committee on Aging hearing on the 25th anniversary of Medicare and Medicaid, Dr. Gail Wilensky, the Administrator of these two programs, stated her firm commitment to building a stronger and more positive relationship between Medicare and its beneficiaries. Secretary Sullivan has also made a firm commitment of the Department to one-stop shopping and one-stop service when it comes to Medicare and Social Security. My committee and I look forward to working closely with Dr. Sullivan and Dr. Wilensky over the next months to put an effective beneficiary assistance program into place.

Over a decade ago, Medicare and Social Security had a system in place in each Social Security district office to help Medicare beneficiaries deal with their problems with and the complexities of the Medicare Program. Sadly, not only was that vital service not strengthened, but was allowed to atrophy.

Prior to this new law, Medicare beneficiaries were at a loss when they tried to get help. Nobody has had it as their primary responsibility to make sure that beneficiaries can appropriately access and adequately understand Medicare and Medicaid—a program for which many Medicare beneficiaries may qualify. This must change before current and future beneficiaries lose even more of their confidence in these two programs.

Beneficiaries during their working and retirement years have paid in substantial amounts of money to support the Medicare and Medicaid Programs. Their children and grandchildren are doing the same. When the system fails, an increased burden falls on the beneficiary and, in many cases, also falls on the children and grandchildren who must help their parents and grandparents to find their way through the Medicare and Medicaid mazes.

No private company could survive long with customer relations as poor as are Medicare and Medicaid's. In our view, Medicare and Medicaid cannot be allowed to continue their poor performance and survive politically. This new law launches us down the path toward better beneficiary relations and stronger Medicare and Medicaid Programs.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Mr. Speaker, I insert a summary of the Medicare beneficiary assistance provisions in the RECORD.

SUMMARY

SEC. 4359. HEALTH INSURANCE ADVISORY SERVICE FOR MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the "beneficiary assistance program") to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) OUTREACH ELEMENTS.—The beneficiary assistance program shall provide assistance—

(1) through operation using local Federal offices that provide information on the medicare program,

(2) using community outreach programs, and

(3) using a toll-free telephone information assistance program shall

ASSISTANCE PROVIDED.—The beneficiary assistance program shall provide for information, counseling, and assistance for medicare-eligible individuals with respect to at least the following;

(1) With respect to the medicare program—

(A) eligibility,

(B) benefits (both covered and not covered),

(C) the process of payment for services,

(D) rights and process for appeals of determinations,

(E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and

(F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program—

(A) eligibility, benefits, and the application process,

(B) linkages between the medicaid and medicare programs, and

(C) referral to appropriate State and local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies—

(A) the program under section 1882 of the Social Security Act and standards required under such program,

(B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,

(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and

(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the medicare program and to improve the relationship between beneficiaries and the program.

(d) EDUCATIONAL MATERIAL.—The Secretary, through the Administrator of the Health Care Financing Administration, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) NOTICE TO BENEFICIARIES.—The Secretary shall take such steps as are necessary to assure that medicare-eligible beneficiariers and the general public are made aware of the beneficiary assistance program.

(f) REPORT.—The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the medicare program and medicare-eligible individuals.

THE SAVINGS AND LOAN SCANDAL

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MATSUI. Mr. Speaker, one of the costliest and most widespread economic debacles in our Nation's history—the savings and loan scandal—shows no sign of abating.

The Congressional Budget Office has estimated that Congress will be compelled to appropriate approximately $300 billion to resolve this mess. Other analysts believe that the cost will run as high as $500 billion.

One of the worst aspects of the Savings and Loan disaster is the impact it is having on the country's economy, particularly the real estate sector. The billions of dollars in real estate acquired by the Resolution Trust Corporation [RTC] has the potential to substantially depress real estate values in many parts of the country.

Currently, the RTC is estimated to hold 40,000 properties with a book value of approximately $14 billion. In a few years, its inventory may grow to over 300,000 properties.

Until these properties are sold and returned to the private sector, they will continue to cost the taxpayer millions of dollars in holding costs. Unfortunately, the pace of RTC sales are disappointingly slow. Each day, scores of properties are added to the RTC's inventory.

Why has the RCT had so much difficulty in disposing of these assets? First, these properties are distressed. Many of them are in disrepair or partially complete and were therefore unable to generate sufficient income to sustain the debt held by the thrift institutions. As a consequence these properties were foreclosed upon, generally by the thrift institutions which were subsequently acquired by the U.S. Government.

Second, the RTC has been overwhelmed by the task before it. Considering its limited resources and the immensity of its responsibilities, the RTC has done a reasonable job of managing and selling the properties under its control. Yet, the severity of the crisis continues to worsen and there has been no indication that the RTC will be able to bring this disaster to an end.

Third, and perhaps paramount, investors have little reason to acquire these properties. That is not to say that all of the properties currently held by the RTC are worthless. In fact, properties generating positive cash flow are the exception rather than the rule. Unfortunately, the bulk of RTC properties are generating insufficient income to warrant private sector investment.

Mr. Speaker, unless we can stimulate private sector interest in these properties, government costs will continue to escalate.

Therefore, Mr. Speaker, I intend to develop legislation for the next Congress that I believe will help provide incentives for private sector investment in RTC-owned real estate. In my respects, this credit would follow the example of the highly successful low-income housing tax credit. The legislation would authorize a 5-year, 80 percent tax credit for the acquisition of certain RTC properties. This credit would include the cost of rehabilitation and completion such that when returned to the private sector these properties can begin generating income. My purpose at this time is to generate discussion among Members of Congress, the administration and interested parties with the hope that we can pursue this legislation expeditiously next year. In addition, I understand Senator ROTH is considering introducing similar legislation and I look forward to working with the distinguished Senator from Delaware.

The legislation would authorize $500 million of credit for each of fiscal years 1992 and 1993. Preliminary estimates prepared by economists indicate that quickly selling RTC held property through the credit mechanism would produce twice as much income to the Government than the alternative of holding these properties for extended periods, even when the costs associated with the credit are considered. This represents a tremendous savings to the American taxpayer.

The reasons for this savings are quite simple. By selling the property quickly, the RTC, the Federal Government and, ultimately, the taxpayer, will save the expensive holding costs and realize the benefits of the time value of money.

Mr. Speaker, it has been suggested that, instead of offering a tax credit, the RTC should reduce the price of its holdings and continue cutting the price until these thousands of properties are sold.

However, taking this simplistic approach would only accelerate the current downward trend of real estate values that exists in many parts of the country. Indeed, in passing FIRREA, Congress appropriately restricted the RIC's ability to reduce prices, precisely because of this concern. It is my belief that a tax credit mechansim will avoid this problem.

Used in conjunction with the RTC credit and other options provided by law, the RTC should be able to sell properties, help arrest the downward slide of real estate values and restrain the spiraling costs of the S&L bailout. I recognize that no one tool can be used to the exclusion of others and hope that the RTC credit will be used with other means available to the RTC to dispose of this property quickly.

Funds generated by private investment as a result of the RTC credit would be paid directly to the RTC, not to private properties. It is my intention to exclude persons who have owned the property in question or who have a record of defaulting on mortgage loans. The amount of credit available with respect to any property would be determined either by the RTC itself or some other Federal agency—and I specifically invite comment on who should have this responsibility. Prior to allocating credit to a particular property, the RTC would be required

to use reasonable efforts to sell this property without utilizing the credit.

Mr. Speaker, there is one more element of my proposal which needs to be emphasized. Unlike various other credit programs, the RTC credit would provide for an equity kicker for the Government. The RTC credit provides an incentive for investors to invest in property, restore it to full economic viability, and maintain the property's capital value. At some future time, perhaps 5 to 7 years, the investor would either sell the property or refinance it. Whenever a sale or refinancing took place, the Government would receive a check for up to 20 percent of the profits

Finally, although this proposal would permit a limited amount of credit to be used to offset taxes on any type of income, this credit would not allow taxpayers to eliminate tax liability.

Mr. Speaker, the RTC credit program will not be a panacea—it will not by itself resolve the fiscal and economic dilemmas created by the savings and loan bailout. But, used judiciously, in conjunction with other options, the RTC credit program can help us to gain some control over this rapidly growing problem.

I look forward to working with my colleagues in developing this proposal.

JUST COMPENSATION FOR NORTH DAKOTA TRIBES

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. DORGAN of North Dakota. Mr. Speaker, today I am introducing a bill which will provide long-overdue compensation to two North Dakota Indian tribes whose lives and lands were devastated by public power projects. This bill will compensate the Three Affiliated Tribes and the Standing Rock Sioux Tribe for having their reservations inundated by the reservoirs behind the Garrison and Oahe Dams.

These tribes lost some 300,000 acres of land as reservoirs swept across their tribal homelands. In the process, schools, hospitals, homes, and the only bridges spanning the Missouri River sectors of the reservations were destroyed. And so was a traditional culture, society, and economy which had sustained these proud peoples for generations.

DEVASTATING LOSSES

Uprooted from the fertile Missouri River bottomlands, hundreds of families were forced to abandon a way of life. Sadly, many have not found health or happiness in their new towns and new communities. The Three Affiliated Tribes, I learned at a 1987 hearing, lost their customary source of fresh fruits and vegetables and soon suffered a diabetes rate over 10 times the national average.

Tribal members at Standing Rock faced much the same fate. Switching to the high sodium, high fat commodity foods and away from traditional diets has compounded the staggering problems of heart disease, diabetes, and kidney problems on the reservation. A recent hearing which I held has pointed the way for some needed improvements, but there is still much to do.

Unemployment rates often exceeding 50 percent and rampant alcoholism continue to debilitate the lives of tribal members on both reservations. Despite earnest efforts to generate jobs and to curb alcoholism, progress has been slow at best.

This compensation legislation offers the opportunity to reverse these sorry trends and to write a new chapter in the history of Federal-tribal relations. The bill declares that the Federal Government perpetrated grievous damage to these tribes and now must seek to redress those wrongs, beyond the paltry payments they received at the time of the taking acts.

THE ADVISORY COMMISSION RECOMMENDATIONS

The legislation grows out of recommendations from the Joint Tribal Advisory Commission, a special investigative body impaneled by Secretary of the Interior Hodel in 1985. The commission reported that:

> The tribes of the Standing Rock and Fort Berthold Reservations bore an inordinate share of the cost of implementing the Pick-Sloan Missouri River Basin Program mainstream reservoirs.

The panel recommended financial and other compensation to make up the difference between the tribes actual loss and the amount they received at the time of the taking. The commission recommendations ranged from $180 to $350 million for Standing Rock and from $180 million to some $400 million for Fort Berthold.

The bill provides compensation below those levels as a result of a GAO review and years of hard work and compromise. The challenge was to find a level of compensation which reasonably redressed the tribes' losses while also taking account of our present fiscal pressures. The bill, therefore, provides approximately $150 million in compensation to the Three Affiliated Tribes and $90 million for the Standing Rock Sioux Tribe.

COMPENSATION FOR EDUCATION AND ECONOMIC DEVELOPMENT

The compensation is provided not as direct payments but in the form of economic recovery funds. The tribes may use only the interest from these funds for education, social welfare, economic development, and other programs which must be approved by the Secretary of the Interior.

In addition, it embraces recommendations to sell or transfer certain lands no longer needed for management of the reservoirs to the tribes, to the prior Indian or non-Indian owners—or their heirs—and to the state of North Dakota. It further makes adjustments to current plans for irrigation on the two reservations to give the tribes more flexibility in advancing economic development.

I might add, parenthetically, that this legislation is part of a wider and ongoing effort to compensate all the citizens of North Dakota for the adverse impacts of the Garrison and Oahe Dams. My State is still struggling to realize the promise of water development provided by the Garrison Diversion Reformulation Act. A string of broken Federal promises has prevented us from moving ahead with projects to deliver reliable supplies of water for drinking, industrial development and irrigation in a semiarid state.

In conclusion, I offer this legislation for the review of my colleagues and the tribes themselves in order that we might together craft the best possible compensation package. Similar legislation has been introduced by Senators CONRAD and BURDICK in the Senate. I understand that we may have to make some adjustments to this bill—whether to the terms of compensation, the definitions of tribes, the treatment of land transfers, and the revisions to tribal irrigation.

This is a very complex issue, although the need for action is crystal clear. I want to thank the tribes for their unending patience in writing a compensation bill. I seek my colleagues' cooperation, in turn, to see that justice is finally done.

THE COMPREHENSIVE WETLANDS CONSERVATION AND MANAGEMENT ACT OF 1990

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. YOUNG of Alaska. Mr. Speaker, I rise today to join my colleagues, Mr. HAYES, Mr. RIDGE, Mr. TAUZIN, and Mr. THOMAS, in the introduction of the Comprehensive Wetlands Conservation and Management Act of 1990. At this late hour, we are introducing legislation to provide a discussion vehicle for resolution of the complex issues related to wetlands conservation and management. While there are many aspects of this legislation that I am not completely comfortable with, it is a compromise that may solve a nationwide lack of confidence that has surrounded the section 404 program in the last several years.

This legislation is a complete overhaul of the 404 program. It starts by expanding the types of activities that will require permits while protecting traditional exemptions such as farming. It also recognizes that all wetlands are not of equal value and should not be treated the same. It divides wetlands into three classifications, with varying requirements based on the habitat and water quality of each wetland. This will overcome a significant shortcoming in the existing program by allowing greater protections for those high value wetlands while still allowing for economic growth in this Nation.

This legislation also recognizes that any wetlands program must respect the rights of private property owners. Since a large majority of the wetlands in this country are privately owned, or have significant private property rights associated with them, it is important to recognize that if we choose as a nation to protect a valuable wetlands, the Nation must compensate the owner for the taking of private property interests.

The program also allows for States to set up statewide mitigation banking programs which will allow for improvement in overall wetlands values. The bill also allows the States to take over management of the permitting process and to develop their own wetlands enhancement programs.

Mr. Speaker this is far from a perfect bill, there are many areas of this legislation that I

am not entirely comfortable with but my colleagues and I are putting it forward today in order to facilitate a dialog that will allow us to move forward early in the next Congress to address this critical problem.

IN TRIBUTE TO MARGUERITE STITT CHURCH

HON. DAN ROSTENKOWSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ROSTENKOWSKI. Mr. Speaker, it is my privilege to join with Mr. PORTER and other Members in honoring the memory of our friend and former colleague in the House of Representatives, Hon. Marguerite Stitt Church, a woman for whom I have always had the highest respect.

Mrs. Church came to Washington with her husband, Ralph, when he was first elected to Congress. Upon Mr. Church's death in 1950, she was easily elected as his replacement in the House.

One of the first 50 women in Congress, Mrs. Church served for six terms. Her tenure spanned some troubled times—the Korean war, the McCarthy era, and the advent of the cold war and nuclear age. Mrs. Church's insight into international affairs and her intelligence and dedication helped to establish the world role of the United States which carried us into the modern era.

Mrs. Church's service on the House Committee on Foreign Affairs, her outstanding leadership in the areas of child and social welfare, and her accomplishments in the areas of civil and women's rights also will be remembered for many years to come.

On a more personal note, I credit Marguerite Stitt Church for doing me an immense favor, even though unintended on her part. She and I were on a television show together, about 30 years ago. It was a pioneering public events show called "Capitol Hill to Chicago," moderated by Chicago journalist John Madigan on CBS. I was still smoking then, and I smoked during the show. Marguerite did not mind, or at least gave me no reason to believe it bothered her.

Nevertheless, letters started arriving within a few days, chastising me for smoking in the presence of such a fine lady. The writers were genuinely offended for Marguerite. I felt terrible about it and decided then and there never to smoke on television again. It was not long thereafter that I gave up the habit altogether. To this day, I thank Marguerite Stitt Church.

I also recall with great respect Marguerite's superb oratorical skills. She could really put a speech together and get her message across. One speech in particular sticks in my mind. Although a strong ideological Republican, she was seized with enthusiasm for the concept of the Peace Corps when it was unveiled by President Kennedy. Casting partisanship aside, she made a stirring speech in support, a speech which had a great effect on her listeners.

My family joins me in expressing our heartfelt sympathy to Marguerite's family—her children and her many grandchildren. May she rest in peace.

INTRODUCTION OF A BILL FOR THE RELIEF OF VELID DAG

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PANETTA. Mr. Speaker, today I am introducing private legislation for the relief of Mr. Velid Dag, a long-time resident of the United States who has languished for more than 40 years in diplomatic limbo. Born in Turkey in 1918, Mr. Dag first visited the United States in August 1939, as an economics student attending Indiana University. He later returned in 1950 to marry Hyla Mac Tillman, a U.S. citizen. Mr. Dag separated from his wife in 1973 and was remarried to Jane Hansen, also a U.S. citizen, in that same year. He then embarked on a long and distinguished career in service to our country at the old Army Language School and the renamed Defense Language Institute in Monterey, CA. He was the chairman of the Turkish language department for years until his retirement in 1977. Because Mr. Dag, though, acting pursuant to advice from the Turkish Embassy, applied for, and in 1942 was granted, an exemption from U.S. military service as a neutral alien, according to existing law at that time he was forever barred from U.S. citizenship.

When in 1958 Mr. Dag was faced with deportation for failing to maintain nonimmigrant status, the late Congressman Teague introduced private legislation for his relief. That same year Congress passed legislation (H.R. 6968) which became Private Law 85–724 canceling the warrants for Mr. Dag's deportation, but denying him permanent resident status in the United States.

Mr. Speaker, I believe that the United States owes more to Mr. Dag in return for his long and loyal service to our country, which has denied him citizenship despite his diligent work in the sensitive field of training members of our Armed Forces in foreign languages. This injustice is all the more pronounced since the circumstance barring his citizenship—namely, the fact that he exercised in 1942 his right as a neutral alien not to serve in the U.S. military—would not be an issue today due to subsequent changes in law (Public Law 92–129). In 1971, lawfully admitted nonimmigrant aliens were exempted from the requirement to register for service in the U.S. military. When Mr. Dag opted to exempt himself from U.S. military service, he was a nonimmigrant alien, the very class of persons excluded from the registration requirement by the enactment of Public Law 92–129.

Moreover, there are compelling humanitarian reasons for approving my legislation on behalf of Mr. Dag. For 40 years, Mr. Dag has been prohibited from leaving the United States. When Mr. Dag learned 10 years ago of the illness and then death of his sister-in-law in Turkey, he was torn with grief and despair at not being able to be with his family. His brother is still suffering from ill health, and Mr. Dag desperately wants to spend time with his brother before it is too late. Despite repeated efforts to seek redress through the Immigration and Naturalization Service, Mr. Dag has not been able to obtain relief through administrative channels. The last and only hope for him is enactment of private legislation for his relief. This must be done quickly. It should not be our policy to keep a loyal resident of our country separated from his loved ones in Turkey at a time when they are in need of his presence and assistance.

Mr. Speaker, Mr. Dag's patience has been truly remarkable, but the time for patience has run out. It is now long past time Congress take remedial action to remove an obsolete obstacle to his becoming a U.S. citizen, with all the rights and benefits such status accords him. Mr. Dag, who recently celebrated his 72d birthday, has paid his dues and now deserves to be freed from his long captivity in his adopted land.

The very least this Congress should do is to pass legislation enabling Mr. Dag to travel beyond the borders of the United States. And so I urge my colleagues to support this legislation. The text of the bill follows:

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Velig Mehmed Dag shall be considered to have been lawfully admitted to the United States for permanent residence notwithstanding section 212(a)(22) of the Immigration and Nationality Act, if he—

(1) is found to be otherwise admissible under the provisions of that Act, and

(2) applies to the Attorney General for permanent residence status within 2 years after the date of the enactment of this Act.

(b) The exemption under subsection (a) shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge before the date of the enactment of this Act.

THE COMPREHENSIVE WETLANDS CONSERVATION AND MANAGEMENT ACT OF 1990

HON. JAMES A. HAYES

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. HAYES of Louisiana. Mr. Speaker, I rise today to join with my colleagues Mr. RIDGE, Mr. THOMAS of Georgia, Mr. TAUZIN, and Mr. YOUNG of Alaska, along with several other Members, in the introduction of the Comprehensive Wetlands Conservation and Management Act of 1990.

Mr. Speaker, we have joined together today to offer a solution to the wetlands problems we are currently experiencing in each of our home districts. Whether you consider yourself to be an environmentalist or one who is more supportive of developmental activities, you must recognize that the current system of wetlands regulation clearly does not work for you. Each year we continue to lose over 450,000 acres of wetlands, a rate of loss that we can no longer tolerate. Concurrently, we have also managed to burden our communities, who must meet their expanding needs, with a regulatory process that devalues individuals' property, cuts local governments' tax base, and accepts as standard operating procedures a process that delays permit deci-

sions from being rendered for years. Obviously, there are no winners in this scenario.

In response to this crisis, I have worked to craft a proposal that will establish a new national wetlands program that will conserve our wetlands resources, while accommodating the need for continued economic growth and reasonable protection of private property rights. With the help of many members from around the country I believe this bill has also been drafted to reflect the regional nuances that make the wetlands of such places as Louisiana, Alaska, Pennsylvania, and the northern flyways of Minnesota, so distinctive.

For the first time, this bill would establish a true comprehensive national wetlands policy, rather than simply extrapolating an inadequate law, that currently governs only Corps of Engineers' dredge-and-fill activities, to meet our needs. It would expand the jurisdiction of wetlands regulations to cover such currently allowable activities as excavating, burning, and draining.

More importantly, however, it would also categorize and classify wetlands by their values and functions for regulatory purposes. Those lands with the highest value would be fully protected from use; wetlands with significant values that can support some uses would be subject to a new permit process; and minimal value wetlands would be removed from the permitting process. I believe that this change in procedure is critical in order to focus our attention and dollars on the most important wetlands and those in greatest jeopardy.

Furthermore, the bill finally addresses, at the congressional level, the issue of "takings" This proposal would provide compensation at fair market values for those properties classified as off limits, thus recognizing the burdensome cost we have previously passed on to the private landowner without any regard to their economic losses. In short, this provision will finally require the Federal Government to pay for, and treat wetlands as the national treasures they are so commonly referred to as.

Nonetheless, I want to remind my colleagues that this is still a working document. The bill still has many areas that will require our additional attention and clarification yet we are offering this proposal today in order to spur a substantive dialog on exactly how our wetlands should be managed.

For example, I would point to these concerns as subjects on which we seek additional advice: How to handle regulations surrounding temporary disturbances; how to best manage the prairie pothole regions of this country; and how can we improve the time efficiency of the decision-rending process.

Clearly, no one is winning in the battle to save our wetlands, yet everyone involved is giving us clues as to what they believe our new policy should resemble. I would stress to my colleagues that we can no longer put off this problem and simply blame it on a faulty system, geological processes, or an irreverance for our Earth. We must change the way we view and use our wetlands and I would commend, along with my fellow colleagues, that we use this legislation as the first step to rethinking our approach and meeting our challenge to better protect and manage this country's natural resources.

INTRODUCTION OF THE MEDICARE HOME MEDICAL EQUIPMENT UPGRADE

HON. TERRY L. BRUCE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. BRUCE. Mr. Speaker, Medicare's requirements for obtaining home medical equipment make reimbursements easy on the Medicare Program, but often work against the needs of Medicare patients. Medicare will reimburse beneficiaries for the purchase of home care items. Unfortunately, certain program requirements, regarding home medical equipment have a negative impact on beneficiary services. Today, I am introducing H.R. 5961, to correct this problem. Two examples illustrate the need for this legislation.

First. A physician prescribes a standard wheelchair for a 70-year-old woman. She goes to a local home medical equipment supplier to be fitted for her Medicare-prescribed wheelchair. During her fitting, she asks the supplier if she can get a wheelchair with an extra high back cushion to give her added support. She is told she can't have the upgraded piece of equipment because the supplier accepts assignment—agrees to accept the Medicare-approved amount as payment in full. Because of current Medicare regulations, the woman cannot pay the difference to receive the upgraded wheelchair. She must pay for it in full, without the benefit of the Medicare allowance.

Second. A 65-year-old Medicare beneficiary is for medical reasons prescribed a walker to help him get around the house. The supplier he selects to fill his prescription accepts assignment on his walker claim. The beneficiary notices that the supplier also can offer him a walker with a drop seat that doubles as a portable chair if he suddenly needs to sit down. Current Medicare rules would also prevent this beneficiary from getting this walker unless he pays the entire cost, even if the beneficiary was willing to pay the difference for the upgrade.

These beneficiaries are prohibited from getting the home medical equipment items they want under existing Medicare rules. H.R. 5961 would correct this prejudice to allow beneficiaries to determine for themselves what equipment is in their best interest. It is designed to allow Medicare beneficiaries access to all types of home medical equipment, available to the general population, even if the supplier accepts assignment.

The bill also includes safeguards to protect the beneficiary and continue program integrity. The protections require first, that the supplier offer and make available to the beneficiary the standard piece of equipment; second, that the beneficiary sign a voluntary and informed consent statement; and third, that an itemized list of all charges be provided in the upgrade statement.

H.R. 5961 will ensure that Medicare beneficiaries have the same opportunities as others and are not treated like second-class citizens because they are covered by Medicare.

H.R. 5961

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ALLOWING MEDICARE BENEFICIARIES ACCESS TO UPGRADED ITEMS OF DURABLE MEDICAL EQUIPMENT.

(a) IN GENERAL.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:

"(16)(A) Subject to subparagraph (B), if a supplier of an item of durable medical equipment has (through purchase or rental arrangement) furnished an upgraded item (as defined in subparagraph (D)) and has accepted assignment for that item to a patient in excess of or more expensive than the standard item for which payment may be made under section 1834(a), the supplier may, in addition to the amount the supplier may charge the patient for the standard item under this section, charge the patient an additional amount equal to the difference between the supplier's customary charge for the upgraded item and the amount the supplier may charge the patient for the standard item under this section.

"(B) A supplier who has accepted assignment may charge a patient an additional amount under subparagraph (A) if the patient certifies that—

"(i) the patient requested that the supplier furnish the upgraded item; and

"(ii) before offering to furnish the upgraded item, the supplier—

"(I) offered to furnish the standard item to the patient, and

"(II) provided the patient with an itemized summary of the supplier's charges and the portion of the total amount to be charged that will be paid under this title.

"(C) A supplier who knowingly and willfully imposes a charge in excess of the charge permitted under subparagraph (A) or in violation of subparagraph (B) shall be subject to a civil money penalty of not to exceed $2,000. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(D) For puposes of this paragraph, an 'upgraded item' is a piece of durable medical equipment the cost of which is in excess of the standard item for which payment may be made under section 1834(a).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items of durable medical equipment furnished on or after January 1, 1991.

ELEGY FOR THE 101ST CONGRESS

HON. TONY P. HALL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. HALL of Ohio. Mr. Speaker—

You can talk of cleaner air
or providing more child care
and the voters, like as not
it doesn't phase 'em.

But when it comes to taxes
we get letters. We get faxes.
And the voters want the heads

of them that raise 'em.

You can talk of civil rights
when we're working late some night
and the public gives you
almost no attention.

But tinker with their pensions
or their personal exemptions
they'll come at you shouting
things I cannot mention.

Now this process isn't easy
and sometimes makes me queasy
when I think of how much
Congressmen are hated.

But I don't wonder whether
we're all going down together
when I think of how the
President is rated.

There's no political advancement
in a revenue enhancement
And, the Congress can't be
deficit promoters.

But when we burst the bubble
we get nothing for our trouble
but a one-way ticket home
to face the voters.

Well, we're leaving and it's sad
cause we've made the voters mad
the mood around this House
is one of fear.

But, the voters might forgive us
and just one more chance they'll give us
if we promise to be better
come next year.

TRIBUTE TO WALTER E. FAUNTROY

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. TOWNS. Mr. Speaker, no one has worked more tirelessly in the cause of justice for all people than WALTER E. FAUNTROY, our colleague who has represented the District of Columbia for the past 19 years.

I want to pay special tribute to WALTER because he often does not receive credit for the advances in political participation which District residents now enjoy. Home rule and the Voting Rights Amendments were legislative victories for the District which are too often overlooked. These victories would not have been possible without the tenacity and commitment of the gentleman from the District of Columbia. WALTER came to Congress with a "made-up mind" to remove the shackles of the "last plantation" from around the District of Columbia. While the District has not gained full voting representation in the Congress, the statehood movement would not have the legitimacy it currently enjoys without the groundwork which WALTER established.

Our colleague, however, will be remembered not only for his advocacy for District issues but also for his dedication to improving the lives of so many here in the United States and abroad. WALTER has truly been committed to using political participation as a means for improving the quality of life for disadvantaged Americans. His championship of justice for the people of Haiti is a testament to the old adage that "one person can make a difference". As chairman of the House Banking Subcommittee on International Development, WALTER's leadership in international finance matters has set new standards for U.S. involvement in international financial institutions.

I am proud to call WALTER FAUNTROY a friend. It is not often that you have a person in the political arena who stands by his or her convictions even when there may be a political cost. WALTER has often been a "lone voice in the wilderness", on many issues, but he has always made himself heard. I will truly miss the gentleman from the District of Columbia; principled men of "good will" are often difficult to find in this business. Fortunately, with WALTER, we didn't have to look far.

STRUGGLE IS WHAT MAKES DEMOCRACY WORK

HON. ELIZABETH J. PATTERSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mrs. PATTERSON. Mr. Speaker, democracy is not always swift. This has been particularly evident in the budget deliberations between the House of Representatives, the Senate and the White House over the past several weeks.

Sometimes, prolcnged debate can be interpreted as ineffectiveness. In fact, each of us is aware of the criticism that has been leveled at the President and the Congress from many quarters as we have earnestly attempted to do the right thing in resolving our budget dilemma. We are understandably impatient, wanting to solve all of our problems at once. During our struggles, we sometimes overlook an important fact: The process is working.

I, for one, am tremendously proud to be a participant in this democracy and, though it does not always move as quickly in the directions I would have it travel, though it is not always swift, it is always sure. For all of its imperfections, it is still the best governmental process on the face of the Earth.

When the House is in session on the weekends, as has been the case in recent weeks, I have the opportunity to attend church services here in Washington. This past weekend, my family and I attended Capitol Hill United Methodist Church, located five blocks from our Nation's Capitol. We heard an insightful, timely sermon from the minister about our way of Government and our way of life and the human foibles which sometimes prevent us from fully appreciating them.

I would like to share with my colleagues the text of the following remarks delivered on October 21 by the Reverend Richard E. Stetler:

[Capitol Hill United Methodist Church]

THE POWER OF DUAL CITIZENSHIP

(By Richard E. Stetler)

I believe one of the more interesting dilemmas facing Christianity today is how to get people to take it just as seriously as they do other experiences. We all know our response when someone comes to us with something that is making spectacular claims. Advertisers are constantly doing that to us and yet for those of us who understand the techniques of the industry, we know that quite often their product cannot deliver the goods. Anyone who even remotely believes that they could switch Folger's crystals for real ground coffee beans in our cups and not have us notice the difference is sadly mistaken. If it is true, it may tell more about the palate of coffee drinkers than it does about their crystals.

The people who market religion often don't have it themselves. If they did, they would stop linking grandiose promises by God to the giving of money. And they would stop preying on people's fears with threats of eternal punishment. Believe me, if God wanted any of those folks on the airwaves, God would open the door for them to do so without their having to raid the Social Security checks of the elderly.

When people see religion in action today, typically the behavior they see is anything but the faithful at work. Today in the Middle East, we hear of such things as "Holy Wars." We hear about "Christian militias." We witness fanaticism which calls our country the great Satan of the world.

Even if we consider today's typical Christian church in our country, they are often looked upon as service stations where people come in to get their oil changed and to get their chassis lubricated. Why? So they can get out there in the world again, having had their focus realigned about the meaning of what it is that they do. Churches are frequently judged by how the service and program makes people feel. Isn't that choir wonderful? Doesn't that minister hit the nail on the head nearly every week? But, what is that?

I suspect that there is nothing wrong with all of that unless that is how we define our faith. If that is where our faith begins and ends, it is no wonder that when we get out into the world, our faith doesn't seem to empower us. We are drained from all the energy we expend in doing what we do. We are tired and weary. We dip into our well and find it dry. We pray and our lives appear unchanged.

What is your faith for you? What do you honestly expect of it? Is there a real power that energizes you during moments that used to sap you of your vitality? Is your faith an ethic which allows you to exhibit quality behavior allowing you to love those around you? Does your faith provide you with a place to stand, a place apart from the material world, a place which allows you to make creative decisions that come from an unseen reality known by Jesus as the Kingdom of God?

In this morning's lesson, Jesus gives us a perfect image of what it is like to be faced a choice where there was no correct answer in the material sense. And yet, because of what Jesus knew, he was able to give an answer that totally silenced those who had come to trap him publicly. In so answering, Jesus gives us a glance at the power life can have.

The question that was handed Jesus dealt with one of the issues that Congress has been debating in recent months, taxation. Palestine was an occupied country and the Jews were subject to the Roman Empire. The question was, is it or is it not lawful to pay taxes to Rome?

This was a very serious question facing Jesus. The situation was well orchestrated by his enemies. The two groups which had come together to confront Jesus were, themselves, bitter enemies. The Pharisees deeply resented any payment of taxes to Rome. To the Jew God was the only king and to pay taxes to any king was to admit the validity of his kingship and thereby insult God. To the more fanatical of the Jews, paying anything to Rome kept them on the cutting edge of rebellion.

The other group that had come were the Herodians, the party loyal to King Herod of Galilee, who owed his power to the Romans. The fact that the Pharisees and the Herodians would come together showed how serious they were about getting rid of Jesus. For the moment, the two parties laid aside their differences. That's the nature of politics when both parties have something they want.

Had Jesus said that it was lawful to pay taxes to Rome, he would have lost credibility among all the Jews who were eagerly listening for his answer. Had he said that it was unlawful to pay the tax, the Herodians would have promptly reported him to the Romans as a seditious person and his arrest would have most certainly followed. What was he to do? How could he possibly answer such a question without incriminating himself?

Jesus asked for a coin and said, "Whose face and names are these?" They said, "Caesar's." And Jesus gave them the classical response, "Render unto Casear the things that are Caeser's and unto God the things that are God's." Our lesson continues, "When they heard this, they were amazed; and they left him and went away."

Where did that answer come from? I would like to suggest to you that it came from another level of consciousness, a level that is readily available to all of us. Jesus over and over again showed us that we can hold dual citizenship, both here on earth and also on a level he called, "The Kingdom of God." His entire life was dedicated to showing us how the spirit and attitudes of the Kingdom life can empower and renew our physical lives here on earth. Yet, that truth continues to escape many of us.

So many people get caught up in the middle of the struggles here, that they forget that life is much more than this. Life alone can drain us. Indeed, life alone can destroy us. Why? Because we don't take time to understand the purpose of living. We aren't taking time to understand what our experiences mean. If we take many of our experiences only on face value, it is no wonder that we become depressed and feel hopeless. To survive in this life, especially at the speed with which most of us live, we must draw our strength from a much broader understanding of what life is. Every one of us faces this: rich, poor, powerful, gifted . . . we all wrestle with this.

All of us can remember Len Bias, that gifted basketball player from the University of Maryland that had signed a multi-million dollar contract with the Boston Celtics. He had the strengths of family, of religion, of education, of sports and economic independence. He had it all, but he didn't understand it. He couldn't tie it all together so he could find meaning. He sought meaning for it all in crack cocaine and it killed him.

About that time, Senator John East of North Carolina, who was a strong advocate of the pro-life movement, took his own life. He could not understand his own declining health.

Some of the older members of the church can remember the words to a song, "What's the use of worrying? It never was worthwhile; so pack up your troubles in your old kit bag and Smile, Smile, Smile."

That song was written and performed by Felix Powell. Felix sang that song for the last time in 1942. When he finished, he left the stage, went into his dressing room and shot himself.

Folks, we can lip the words of our faith, but unless we have the actual experience from the other dimension, little will work for us. We simply won't have the vision to understand what it is we are experiencing.

Right now there are many people in this country who don't understand Congress. We are seeing a lot of Congress-bashing these days, as if we can hang all our troubles on people who are in many ways just like ourselves. They feel the hurt, they have clay feet just like the rest of us. And if you think they are overpaid, you ought to follow one of them around for a month, while looking at their responsibility. Now Jose Canseco of the Oakland Athletics, he's a tad overpaid. He receives $3,500 for each inning, and yet we gladly pay for him.

Out of the woodwork recently has come a retiree who took from his retirement a large sum of money to run full page ads in many of our nation's leading newspapers to complain about everything. His conclusion is to vote everyone out of office.

Many Americans read his comments and they quickly conclude, "This guy is right!" They see the price of gasoline, never realizing that it's still a bargain compared to many other nations of the world. They see the failure of our Savings and Loan industry. They see the high interest rate and the declining stock market. They see people graduating from high school who can't read or write. And they say, "Our elected officials are to blame."

I heard a woman say on the radio the other day, "I've never voted in my life, but you can bet I'm voting this time." I'll bet she won't because she probably doesn't know enough about the voting process to understand she must first register. She has no idea that she and about 50 percent of the American electorate are just as responsible for where we are right now as anyone else. For that matter, we all are!

Looking at the situation just as it is can be frustrating and confusing, but there is another level from which to view all of this. I haven't heard anyone say it. I haven't read it anyway. Right now we are experiencing the very substance which has been the spirit of America. Struggling with each other to make our laws is what has made our country the role model for the rest of the free world. Our form of government is working! Things have been out of balance for too long and we are working on it. When this budget crisis is over and our nation once again assumes responsibility for itself, you will see that all of the correctives that are taking place now will serve ultimately to prove the worth of the Democracy and freedom that most of us simply take for granted. Too many Americans simply haven't taken the time to understand the complexity of the issues. One can't unravel a ball of string overnight that has taken 58 years to get that way. But, we are working on it.

How can we bring a higher perspective to our living if we ignore the attitudes that can come from the Kingdom? If we don't find our faith working for us, don't blame Christianity for not delivering the promised land. Let us check out your dual citizenship. Are we well grounded in the Kingdom or do we get so caught up in the petty struggles that we forget why we have been given those struggles in the first place?

So many of the issues we face in life seem so ultimate, but they are not. Life only becomes a massive struggle for those who neglect their dual citizenship. Believe me, absolutely nothing in our physical life has any meaning at all if you don't have one foot in the Kingdom. That's why faith doesn't work. That's why Len Bias, Senator East and Felix Powell checked out. They couldn't make any sense of their experiences.

"Render unto Caesar the things that are Caesar's, and unto God the things which are God's." Wasn't Jesus telling us to live as fully as we can in the world in which we find ourselves, while remembering always that we have within these bodies of ours a wonderfully beautiful, creative spirit that is absolutely limitless and infinite?

Remember, all of these things which we take so seriously are one day going to pass away. Indeed, our lives as we know them will one day end. We are only here for such a short time. Not to see life against that background is to be out of touch with reality. And to willfully deny ourselves the full benefits and power of the dual citizenship doesn't make any sense. But many of us do that. We want to end our marriages. We want to vote everyone out of Congress. We want our cake and eat it too. We seek vengence of those who have hurt us. We hold grudges. All of these are symptoms which should be screaming out to us that our experiences are sucking us into them and they are pulling us down because of the choices we are making. Jesus Christ showed us another way. Look to him.

Jesus was given two choices: do we pay taxes or do we not pay taxes. His answer was: "Sure you pay taxes, but don't let that bother you. Taxes are part of life. Just remember that your life belongs to God and your spirit needs to honor God by everything you do, even the attitude you have when you pay taxes."

I'll bet if life is getting to you today, that you are forgetting who you are and you are forgetting why God put you here. Lighten up! Life is much more than the pressures of the moment. Life is a beautiful gift when we render unto God the things that are God's.

TRIBUTE TO GEORGE W. CROCKETT, JR.

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. TOWNS. Mr. Speaker, GEORGE W. CROCKETT, JR., leaves having had the pleasure of two distinguished careers, first as a jurist and second as a Member of the House of Representatives.

Judge CROCKETT has been a strong advocate for equitable development assistance to countries in sub-Saharan Africa and the Caribbean. At a time when our policy in the Americas was turning backward toward the Monroe Doctrine, his chairmanship of the Subcommittee on Western Hemisphere Affairs brought a progressive approach to our foreign policy in the Caribbean and Latin and Central America. GEORGE's work on behalf of enhancing promotional opportunities for minorities in the Foreign Service will long be remembered. The gentleman from the 13th District of Michigan has never been afraid to speak his mind on matters of justice and equity. The Judge is truly one politician who believes that human rights must be measured by one yardstick.

I wish him well in his second retirement and I hope that he will continue to be a voice for equity and justice for all people.

HOW NOT TO SURVIVE IN AMERICA—BE A MOM

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. STARK. Mr. Speaker, in the immortal words of Vice President Dan Quayle, "If we don't succeed, we run the risk of failure." With regard to policies affecting our children, our Government has failed. We must succeed, for the sake of future generations of Americans.

To quote from the following article in the Christian Science Monitor: "It'll be a special day when the Pentagon has to hold bake sales to raise money for bombs and schools don't have to." How apt.

If you care about kids, and you care about family values, then you ought to be outraged about the upside-down priorities of our Government. The United States and South Africa are the only industrialized countries in the world that have no national prenatal care program, no parental-leave policies, and no national child care program. That speaks volumes.

I recommend the following article by Amy Kaplan, a freelance writer from Sacramento, California:

[From the Christian Science Monitor, Oct. 23, 1990]

HOW NOT TO SURVIVE IN AMERICA—BE A MOM

(By Amy R. Kaplan)

Generally the parent who drops out of the work force and stays home with the children for an average of 11 years is the mother. Using this premise, it's easy to say that women get it coming and going.

They get no job security or parental-leave benefits, access to affordable and good child care, and limited health-care coverage when they have children. If they stay out of the work force for even a short time to raise their children, they lose out on valuable Social Security and pension benefits when they are old. They risk ending their lives in poverty.

It is hard to grant that America is a country that values families when women face such dire consequences for having and then caring for their own children. A country that values families makes provision for families.

What Americans really value is individualism. That's well known. How families survive and what they do with their children is considered a private matter. Families are not a matter of public concern. This outlook worked fine when we all lived on our frontier homesteads and took care of ourselves; when families were a cohesive economic unit and didn't face financial hardship and loss of benefits if the mother stayed home with the children.

This certainly is not the case anymore and hasn't been for some time. The dollar has lost so much real value in the past 15 years that in traditional two-parent families both parents must work to survive. In single-family households, which are almost the norm now, the hustle just to live day to day is even more intense.

Economic and cultural changes have made the survival of families a matter for public concern. Concern for the elderly fostered the passage of the Social Security Act in the 1930s. Concern for families should foster the passage of federal family-policy legislation in the 1990s.

South Africa and the United States are the only industrialized countries in the world that have no national prenatal-care program, no parental-leave policies, and no national child-care program. We worry a lot about whether to keep abortion legal, but we don't worry much about babies after they are born. Even fiercely capitalistic Japan has a comprehensive family policy.

The US House of Representatives recently passed a bill guaranteeing three months of unpaid parental leave to employees of businesses with over 50 employees. The Congress has passed child-care legislation. President Bush vetoed both. Why? The legislation is "too expensive" and "takes individual initiative away from employers." What tired, old excuses. There's always enough money in the budget to pay for Stealth bombers and the like, but there isn't enough money to support families.

A truism that contradicts these old excuses is that employees who feel valued by the employer are happier and more productive than employees who feel neglected. American companies that have implemented family policies have found that productivity and worker morale have increased tremendously. Family policies don't take away individual initiative. Rather, they create a positive business environment and don't inhibit growth.

The truth is, many Americans still entertain the fantasy of Dad going off to work and Mom at home with the kids. Everyone knows this isn't true anymore, but we just can't let go of the image. It's so comforting. We figure that people who can't live that way have problems that aren't ours. We won't see that the economy and society have simply changed.

The irony of clinging to this fantasy family is that if we did have a national family policy, we'd probably have more families like the ones we mourn for. If women could stay home with their children and not face financial hardship, loss of medical benefits, and poverty in old age, many probably would stay home for a few years and care for their kids.

It's time to look reality in the face. This country needs to support families. Women should not be penalized on both ends for caring for their children at home. Likewise, mothers who must work should be assured adequate leave, medical care, and safe, affordable child care when they return to work.

Taking care of families and capitalism are not clashing concepts. Most Western European countries have had comprehensive family policies since the end of World War II or before.

Having children and raising them should not be a losing proposition. A national family policy is an important component to national security. A secure nation is built on secure families.

There's a slogan going around that says, "It'll be a special day when the Pentagon has to hold bake sales to raise money for bombs and schools don't have to." To rephrase, "It'll be a special day when taking care of families means taking care of the country."

IN TRIBUTE TO RETIRING DELEGATE WALTER FAUNTROY

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mrs. COLLINS. Mr. Speaker, I want to add my voice to the chorus of those bidding a fond farewell to our colleague, the Honorable WALTER FAUNTROY.

WALTER arrived here with the illustrious class sworn-in in January 1971. Among his classmates are the Honorable RONALD DELLUMS, the late Ralph Metcalfe, the Honorable Parren Mitchell, and the Honorable CHARLES RANGEL. And WALTER fit right into this highly motivated, dedicated and politically astute group.

I think the thing that we will always remember about WALTER is that he served under circumstances that few of us in this body can understand or appreciate. Washington is Congress' "toy" city. As a result unlike his colleagues, he was unable to vote on the floor of the House. Can any of us imagine trying to serve our constituents without being able to enter a vote on their behalf?

Because of the structure of the home rule charter of the District of Columbia, Congress gets to review the laws that are passed by the city council. How outraged any one of us would feel if Congress tried to tell our constituents that they couldn't enact a law that had been properly passed by our city, county or State government.

Or Heaven forbid, Congress should try to tell the city of Chicago how to spend money it has raised from its own sources of revenue. My Chicago delegation colleagues and I would fight to the death any such action to micromanage our city.

But WALTER has learned to control his outrage and work within the confines of the system. He is an eloquent and effective spokesperson for the needs of the people of the District. Even without a vote to barker, he has done a tremendous job getting support for the city and its policies. I guess he must have learned his quiet diplomacy during his days in the civil rights struggle and that training has served him well.

Having cut his political teeth in the struggle for equality during the fifties and sixties, Walter has never forgotten the need to advance the cause of civil and human rights both here in the United States and abroad. He was one of the founding protesters of the South African Embassy. The civil disobedience there led directly to enactment of landmark antiapartheid legislation.

I guess WALTER'S interest in human rights worldwide is a natural outgrowth of his deeper concern for people. That concern led him into the ministry, into the civil rights movement and just recently, to take as a foster child a "boarder baby". At a time when most of us are cuddling our grandchildren, then quickly passing them back to their parents when we get tired or the children get cranky, WALTER and his wife Dorothy are taking on an awesome responsibility. But this one act of kindness and brotherly love will not just help their

little girl, but will no doubt get other families to thinking that they, too, should look into adoption and give one of these forgotten children a warm and loving home.

WALTER, we will miss your compassion, devotion, determination, humor and yes, even your melodious voice. But luckily for us, you'll be just up the road at New Bethel. Yes, we will miss you, but we'll never forget you.

IN HONOR OF CONGRESSMAN GEORGE CROCKETT

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. STOKES. Mr. Speaker, I want to thank my colleagues for this opportunity to pay tribute to our colleagues, the distinguished gentleman from Michigan, Mr. CROCKETT, who is retiring following 10 years of service in the Congress. The 13th Congressional District of Michigan and the Nation has benefitted from his tenure.

His retirement from the House of Representatives will mark the end of GEORGE CROCKETT's third stint in public service and a career dedicated to upholding constitutional liberties and helping those in need. In 1950, he founded the first interracial law firm where he remained a partner for 16 years. He also served as judge of the recorders court in Detroit; visiting judge of the Michigan Court of Appeals; and acting corporation counsel for the city of Detroit.

Mr. Speaker, long before coming to Congress, while I was a practicing lawyer in Cleveland, OH, I knew of the extraordinary reputation of Judge CROCKETT as a lawyer. Judge CROCKETT, while practicing law, epitomized what a good lawyer is all about. He was a brillant trial lawyer whose devotion to his clients' civil and constitutional rights were legend. As a lawyer, he participated in some of the most sensational trials in the Nation. On one occasion, he was sentenced to jail and served several months by a judge who felt that Judge CROCKETT's devotion to the protection of his client's constitutional rights in a trial warranted his being found in contempt of court.

I can also recall when Judge CROCKETT defended the current mayor of Detroit, Coleman Young, before the old House Un-American Activities Committee many years ago. For myself and other young trial lawyers around the county, Judge CROCKETT was our idol. When he became a judge in Detroit, MI, he carried on the bench with him the same legendary reputation which he had acquired as a lawyer for fairness, thoroughness and judiciousness.

In the Congress, Judge CROCKETT has served with distinction as a member of the House Foreign Affairs Committee where he chairs the Subcommittee on Western Hemisphere Affairs; and serves as a member of the Subcommittee on Africa. He is also a member of the Judiciary Committee and its Subcommittee on Courts, Civil Liberties and Administration of Justice.

Mr. Speaker, Judge CROCKETT is a man who has now established a unique reputation for himself in three careers; as a lawyer, a judge, and a legislator. I am proud to have known him and to have served with him as a friend and colleague in the U.S. Congress. I join my colleagues in biding a fond farewell to Judge CROCKETT and I wish him and his lovely wife, Harriet, much happiness in his retirement. My wife, Jay, also joins me in this wish.

OPPOSITION TO THE BUDGET

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HUGHES. Mr. Speaker, on October 16, this House passed a budget that, although somewhat flawed, represented the first fair, serious attempt at fiscal responsibility passed by either body in over 10 years. Specifically, that budget provided for a 5-year, $500 billion reduction in the deficit. I voted for that resolution, even though I was troubled by some of its provisions, because it provided a positive framework for reducing the deficit while moving our economy forward.

The budget now before us shares many of that budget's strong points, but it has also taken several giant steps backward from the earlier proposal. In fact, the more I look at this budget the worse it becomes. This package is a combination of missed opportunities to cut spending, poor foreign policy, and a convoluted tax policy which favors the wealthy and special interests at the expense of low- and middle-income Americans.

Believe me, I share everyone's frustration over the budget impasse, and I don't want to prolong this agony 1 minute longer than anyone else. But the fact remains, we are creating an economic blueprint for our country that we will have to live with for the next 5 years. Given the magnitude of the situation, I cannot vote for a budget resolution that is basically unfair and represents poor policy.

One provision which is particularly disgraceful is the user fee on recreational boaters. Worth much less than the special interest giveaways to oil companies in this bill, this boat tax was arm-twisted into the package in a gross violation of the legislative process.

The Merchant Marine and Fisheries Committee, on which I serve, reported user fee provisions in accordance with the Budget Committee's instructions, only to have them totally disregarded and replaced with this unfair, unwarranted tax. This flagrant disregard for committee jurisdiction and the expertise of committee members occurred despite the fact that the committee and the Congress have rejected this tax for 10 years in a row. When Congress reconvenes, I will spare no effort to see that this travesty is repealed.

On a brighter note, the budget before us does retain the House bill's approach to Medicare cuts. That budget's Medicare cuts and premium increases were a third smaller than the budget summit plan, and that was one of the main reasons why I supported the Democratic alternative.

I am very pleased that this budget will not unduly punish senior citizens for medical cost increases they cannot control. Until we undertake sweeping reforms of our medical system, we will continue to see the cost of health care, and the Medicare Program, rise much faster than the general inflation rate. Our lack of action on the underlying problem is no excuse for denying older Americans access to decent and affordable medical care.

Taxpayers did not fare so well on the gas tax provision. The second worst feature of the summit agreement was its heavy reliance on gas taxes without a compensating decrease in income taxes for the poor and the middle class. Such a tax is regressive, inflationary, and hits hard at the pocketbooks of working men and women.

The House plan omitted this tax altogether and relied on more progressive revenue sources. The plan now before us adopts a 5-cent-per-gallon increase. Though half of the 10-cent tax proposed in the budget summit, I would still have preferred to see this tax delayed until the price of gasoline returns to a more normal price level, or eliminated entirely through additional spending cuts.

Most of the changes from the House bill are of two types. First, straightforward, fair tax provisions have been replaced with complicated deduction limits, phaseouts, and regressive gas taxes. While doing little to change the effective tax rates in the bill, these changes will punish some taxpayers arbitrarily.

The deduction limit, while structured to minimize this effect, discourages taxpayers with low deductions from making charitable contributions and unfairly limits the deduction for State and local taxes.

New Jersey and New York—with their high tax bases—are particularly hard hit by these provisions. We are already in the throes of a recession. New Jersey has just increased the income tax rate, and now this bill would disallow a greater portion of the deduction for State and local taxes. That's a double whammy. The same goes for the higher Federal taxes on alcohol and cigarettes, which were just raised in New Jersey.

Overall, the changes in this bill on the tax side of the ledger are disappointing. They muddle the tax code for no good reason other than to make the package more politically palatable to the Senate and to the President. What's more, they are the wrong way to go.

We could have achieved the savings we need through a surtax on those with incomes over $500,000. The affluent aren't complaining about paying their fair share of taxes. Recent polls have shown that even the millionaires know we need to raise their taxes to balance the budget, and they realize they will be better off because our economy will be stronger. We should not have given in to the President on this point and dropped the surtax on those with very high incomes.

My single greatest objection to this budget package, however, is its failure to achieve deep and significant reductions in spending. There is nothing more important which we in Congress can do for our economy, and for our children's prosperity, than to reduce the Federal deficit. Federal borrowing, not the tax code, is the real reason for the high cost of capital in this country. The way to deal with that problem is to cut spending on the discre-

tionary side of the budget as well as rebuilding the revenue base.

Unfortunately, this budget completely misses the boat when it comes to spending cuts. It doesn't even reach the $500 billion savings level which was the centerpiece of the House plan. This budget doesn't scrap one major strategic weapons system, even though the cold war is winding down. In fact, it provides $45 billion in additional funding in this area.

This budget forgives Egypt's $7 billion foreign debt. That's outrageous. Instead of stepping up our efforts to collect the money they owe us, we are sending a signal to all other foreign debtors to get in line for similar treatment. What kind of foreign policy is that?

At the same time, we could have frozen many discretionary programs, or adjusted them only for inflation, to hold the line. I know that domestic spending only makes up a small part of the Federal budget, and that many programs have taken more than their fair share of hits in recent years. Nevertheless, we could have achieved additional cuts on the spending side to perhaps have eliminated the need for an increase in the gasoline tax until the present price spiral levels off.

Yet another unfortunate thing that happened to the House Democratic plan is that it came back to us with some special interest trinkets. This bill should reinstate the windfall profits tax—not give away more tax breaks to oil companies. Is there anyone here who believes that the present doubling of the price of oil isn't enough incentive to find and produce more? If it's not, we need to look for better alternatives. And where in this bill are the tax incentives for solar power, home energy consideration, and other alternatives to oil consumption? I guess that makes too much sense.

Some of our negotiators also succeeded in excluding wide screen televisions, expensive stereos, video cameras, works of art, and other expensive luxuries from the luxury tax. The boat builders in my district, however, were not so fortunate. Despite the fact that domestic boat sales have declined sharply in recent years and many companies are laying off workers, this American-dominated industry is being hit with a tax broadside that could well sink what's left of it.

I never asked that boats be excluded from the luxury tax, but I did present an alternative plan that would probably have raised more revenue while hurting the industry less. Specifically, my plan sought to split the luxury tax between new and used boats at 5 percent each, instead of 10 percent only on new boats over $100,000 in value. I am very disappointed that my plan for boats was brushed off by the negotiators, while the comparable tax on airplane kicks in at $250,000. There is no reason for such a huge differential.

The Coast Guard user fee—which doesn't even apply to services rendered—coupled with the boat tax, are particularly onerous to coastal States such as New Jersey. It's jut not fair to single out certain industries like tourism and boatbuilding to bear the brunt of this deficit reduction effort.

Mr. Speaker, we need a budget that cuts spending in such programs as defense, space, and other nondiscretionary spending areas. We need a budget which makes wealthy individuals and corporations pay their fair share, and provides tax relief that is fairer to the middle class and less complex. Unfortunately, this bill does not achieve any of those goals. While it pains me to say so, I urge my colleagues to vote against this resolution. We must insist on a budget package that is fair to all regions of our country, to all sectors of our economy, and above all, to working class Americans.

THE RADON AWARENESS AND DISCLOSURE ACT OF 1990

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MARKEY. Mr. Speaker, I rise to offer the Radon Awareness and Disclosure Act of 1990. This legislation addresses the serious health threat of naturally occurring radon gas, and the equally serious lack of action to date in addressing this silent killer, by promoting increased public awareness, encouraging more testing, and requiring greater disclosure of radon levels to the public.

Radon is a killer. The Environmental Protection Agency has determined that radon is second only to smoking as the leading cause of lung cancer in this country, claiming about 21,000 lives each year. Testing to discover the presence of elevated levels of radon is relatively simple and inexpensive, yet little testing has been done, and most people remain unaware of the threat to their families.

This lack of testing and public awareness has serious consequences. EPA estimates that 10 percent of homes in this country have radon levels above the level at which EPA recommends action be taken to correct the problem. These homes have levels of radon risk equal to, or greater than, smoking two packs of cigarettes a day, or having 400 chest x rays a year. Yet only a tiny percentage of homeowners have even tested for radon, much less spent the few hundred dollars necessary to correct the problem. We require millions of dollars of asbestos removal projects each year, while not even requiring a $20-test for the presence of radon which poses a far greater threat.

This bill will provide for the testing and disclosure of threatening levels of radon in federally assisted or federally owned housing, in schools, and in the workplace. It will also protect consumers from fraudulent or inaccurate radon testing devices and services by establishing a radon measurement certification program and by authorizing the Administrator of the Environmental Protection Agency to establish quality control assurances for companies which offer radon testing products. Finally, the bill will create incentives for States to adopt innovative programs to encourage people to test for radon.

TESTING FOR RADON DURING REAL ESTATE TRANSACTIONS

An important provision of the bill is the authorization for radon tests as a part of all federally assisted housing transactions. Federal agencies or Government corporations offering federally assisted mortgages are directed to require a radon test before offering Federal assistance for the purchase of a home. This testing requirement will apply to approximately 80 percent of all housing transactions. Homes that do not change hands will not be affected, but by including housing transfers, we will be able to reach a large number of homes each year.

RADON IN SCHOOLS

Radon is especially hazardous to children, and the bill's provisions for the testing of all schools by 1997 will protect the most vulnerable members of our society. It establishes a fund to provide grants and loans to local educational agencies, and requires that those schools in areas with a greater than average health risk of radon exposure be tested by 1993, and all schools by 1997. Again, many schools will test below the EPA action level, but for the very low cost of the test, it is certainly worth testing all schools to determine which ones have dangerous levels of radon exposure. This is particularly true given that the EPA has found some areas of the country where 50 percent 60 percent, or even 70 percent of the homes have elevated levels of radon.

RADON IN THE WORK PLACE

The bill provides for consultation between the Environmental Protection Agency and the Occupational Safety and Health Administration in setting a standard for the safe level of exposure in the workplace. It will extend testing into the workplace, and provide that employees be notified when the level of radon is above the standard established by EPA and OSHA.

PERFORMANCE PROGRAM FOR RADON TESTING

An important companion to this expanded testing is the change in the proficiency program for radon testing devices and services from a voluntary program to a mandatory one. The GAO reported in August of this year that the voluntary nature of the proficiency program was allowing companies producing faulty or inaccurate testing devices or services to continue offering their product to the public. The result was a loss of consumer confidence in the industry, less testing, and a waste of consumer resources. In this bill we require the proficiency program mandatory and the quality control assurances recommended by the GAO.

PRESIDENT'S COMMISSION ON RADON AWARENESS

Efforts to raise public awareness of the health threats of radon have had disappointing results to date. The Presidential Commission created in this bill will draw the best available talent to develop innovative ways of raising public awareness, and encourage people to take the individual action necessary to protect their families.

This legislation does not require mitigation of radon, although mitigation is relatively inexpensive. The bill leaves the decision to take action against radon in the hands of individual homeowners, and focuses on promoting testing, disclosure, and public awareness. The bill provides that information be made more readily available and more dependable so that consumers can make informed decisions about radon. Armed with accurate information about radon levels in homes, schools, and

workplaces, people will be able to make more rational and cost-effective decisions to protect their own health and that of their family.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Radon Awareness and Disclosure Act".

SEC. 2 FINDINGS.

The Congress finds the following:

(1) The Environmental Protection Agency has determined that radon is second only to smoking as the leading cause of lung cancer, resulting in about 21,000 deaths each year.

(2) Testing for elevated levels of radon is relatively simple and inexpensive.

(3) There is not an adequate effort by Federal agencies to encourage testing for radon.

(4) Efforts to encourage testing have had disappointing results, reaching less than 4 percent of homes to date.

(5) The lack of a mandatory certification process leads to inaccurate testing, erosion of public confidence in the industry, and a waste of consumer investment.

(6) Studies by the Environmental Protection Agency indicate that 54 percent of schools tested have at least one room with elevated levels of radon.

(7) Radon may be especially hazardous to small children who spend a substantial portion of a day in school buildings.

(8) Testing for radon in the work place has not occurred by any significant degree, and elevated levels of radon continue to pose a serious threat to the health of workers.

TITLE I—THREE-YEAR EXTENSION OF INDOOR RADON ABATEMENT PROVISIONS OF TOXIC SUBSTANCES CONTROL ACT

SEC. 101. 3-YEAR EXTENSION OF AUTHORIZATION.

The following sections of title III of the Toxic Substances Control Act (15 U.S.C. 2662 et seq.) are each amended by striking out "and 1991" and inserting in lieu thereof "1991, 1992, 1993, and 1994";

(1) Section 305(f).

(2) Section 306(j)(1).

(3) Section 308(f).

TITLE II—RADON TESTING PROVISIONS

SEC. 201. TESTING OR FEDERALLY ASSISTED HOUSING.

(a) TESTING.—Title III of the Toxic Substance Control Act is amended by adding at the end the following new section:

"SEC. 312. TESTING OF FEDERALLY ASSISTED AND FEDERALLY OWNED HOUSING.

"(a) FEDERALLY ASSISTED HOUSING.—Any Federal department or agency, any Government corporation, and any Government-controlled corporation that provides a Federally related mortgage, directly or indirectly, for the purchase of a house, shall require, before such mortgage may be received, that such house be tested for radon and that the results of the test be made available to potential purchasers.".

(b) CLERICAL AMENDMENT.—The table of contents for title III of such Act (contained in section 1 of such Act) is amended by adding to the end the following new item:

"Sec. 312. Testing of Federally assisted and Federally owned housing.".

SEC. 202. PERFORMANCE PROGRAM FOR RADON PRODUCTS AND SERVICES.

(a) PERFORMANCE PROGRAM.—Title III of the Toxic Substances Control Act, as amended by section 202, is further amended by adding at the end the following new section:

"SEC 313. PERFORMANCE PROGRAM FOR RADON PRODUCTS AND SERVICES.

"(a) TESTING PROGRAM.—(1) The Administrator of the Environmental Protection Agency shall establish a program requiring that—

"(A) any product offered for sale, or device used in connection with a service offered to the public, for the measurement of radon meets minimum performance critieria; and

"(B) any operator of a device, or person employing a technique, used in connection with a service offered to the public for the measurement of radon meets a minimum level of proficiency.

"(2) Such program shall include procedures for ordering the recall of any product sold for the measurement of radon which does not meet minimum performance criteria under paragraph (1)(A), for ordering the discontinuance of any service offered to the public for the measurement of radon which does not meet minimum levels of proficiency under paragraph (1)(B), and for establishing adequate quality assurance requirements for each person or company offering radon measurement services to the public.

"(b) USER FEE.—(1) The Administrator shall establish a schedule of user fees for persons who manufacture any product or device described in subsection (a)(1)(A) and for persons who operate a device or employ a technique described in subsection (a)(1)(B). The amount of such fees shall be designed to cover the operating and administrative costs of the Environmental Protection Agency for carrying out the program established under subsection (a) with respect to such persons.

"(2) The Administrator may waive or reduce any fee established under paragraph (1) with respect to persons who agree to test for the presence of radon in public and nonprofit child care facilities, schools, hospitals, nursing homes, or other care facilities.

"(c) USE OF FUNDS.—Amounts received for user fees under subsection (b) shall be deposited in a Radon Service Account established in the Treasury of the United States for use by the Administrator, to the extent provided in appropriations Acts, in carrying out the program established under subsection (a).".

"(b) CLERICAL AMENDMENT.—The table of contents for title III of such Act (contained in section 1 of such Act), as amended by section 202, is further amended by adding at the end the following new item:

"Sec. 313. Performance program for radon products and service.".

"(c) CONFORMING AMENDMENT.—Subsection (a)(2) of section 305 of the Toxic Substances Control Act (15 U.S.C. 2665(a)(1)) is amended by striking out "the effectiveness of radon measurement devices and methods.".

SEC. 203. REPORT TO CONGRESS ON RADON TESTING.

"(a) EVALUATION.—The Administrator of the Environmental Protection Agency, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Agriculture, and the Secretary of Veterans' Affairs shall jointly evaluate current efforts to promote radon testing and ways to increase the use of radon testing during real estate transactions.

"(b) REPORT.—The Administrator and such Secretaries shall report to Congress by October 1, 1991, on ways to improve the effectiveness of alternative strategies for promoting such testing, including consideration of the following:

"(A) Grants to support development of radon testing strategies by States.

"(B) Financial incentives.

"(C) Testing and disclosure of radon levels during real estate transactions.

"(D) Public awareness.

"(E) Testing and disclosure of radon levels in the workplace.

"(2) In preparing the report, the Administrator and such Secretaries shall consult with concerned parties, including public interest groups, health officials, the radon testing industry, realtors, home builders, labor organizations, and States.

SEC. 204. GRANT PREFERENCE FOR STATES ADOPTING COMPREHENSIVE TESTING PROGRAM.

Section 306(d) of the Toxic Substances Control Act (15 U.S.C. 2666(d)) is amended by adding at the end the following: "The Administrator shall give highest preference to States which make reasonable efforts to ensure the adoption of requirements for radon testing in the course of residential real estate transactions.".

TITLE II—RADON IN SCHOOLS

SEC. 301. DEFINITIONS.

In this title:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "local educational agency" means—

(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854),

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operated pursuant to section 6 of the Act of September 30, 1950 (64 Stat. 1107), relating to impact aid for children who reside on Federal property.

(3) The term "nonprofit elementary or secondary school" means any elementary or secondary school (as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854)) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which insures, or may lawfully insure, to the benefit of any private shareholder or individual.

(4) The term "school building" means—

(A) any structure suitable for use as a classroom, including a school facility such as a laboratory, library, or school eating facility used for the preparation of food,

(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education,

(C) any other facility used for the instruction of students or for the administration of educational or research programs.

SEC. 302. REQUIREMENT FOR RADON TESTING IN SCHOOLS.

(a) TESTING BY LOCAL EDUCATIONAL AGENCIES.—The Administrator shall promulgate regulations requiring each local educational agency to test each school building under the authority of the agency. Such regulations shall require that school buildings in areas identified by the Administrator as having higher than average risk of radon exposure shall be tested no later than September 30, 1993. Such regulations may require other school buildings to be tested.

(b) AVAILABILITY OF RESULTS.—In the case of any school building that is tested pursu-

ant to this section, the results of the testing shall be available in the administrative offices of the local educational agency with authority over the school building for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall send the results to the Administrator and to the State radiation office. If the test reveals a level of radon above the Environmental Protection Agency action level contained in the Environmental Protection Agency's action level for radon developed pursuant to section 303 of the Toxic Substances Control Act, the local educational agency shall send the results to each parent, teacher, and employee organization.

SEC. 303. TESTING AND MITIGATION PROFICIENCY REQUIREMENT.

Testing required under section 302 and any radon mitigation devices and methods which are implemented as a result of such testing shall be carried out consistent with any guidelines established by the Administrator and conducted by a firm or individual which has been approved by the Administrator pursuant to the proficiency programs established pursuant to sections 305 and 313 of the Toxic Substances Control Act (as added by section 203 of this Act).

SEC. 304. FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES.

(a) RADON TESTING AND MITIGATION ASSISTANCE PROGRAM.—There is hereby established within the Environmental Protection Agency a Radon Testing and Mitigation Assistance Program (hereinafter in this title referred to as the "Assistance Program"), to provide financial assistance to implement the program established by section 302 and for radon mitigation devices and methods determined to be necessary as a result of such testing. The Assistance Program shall be administered in accordance with this section.

(b) SUBMISSION OF APPLICATIONS.—(1) Applications for financial assistance shall be submitted by a local educational agency to the Governor, or the Governor's designee, who shall establish a priority list based on the nature and magnitude of the potential exposure to radon.

(2) Applications shall be submitted by the Governor to the Administrator who shall review and rank such applications, without regard to the public or private nature of the school involved, pursuant to subsection (c)(1) and propose financing pursuant to the financial need of the local educational agency.

(c) ADMINISTRATOR'S REVIEW.—(1) The Administrator shall review and list in priority order applications for financial assistance. In ranking applications, the Administrator shall consider—

(A) the priority assigned to the testing or mitigation program by the Governor;

(B) the nature and magnitude of the potential exposure to radon; and

(C) the extent to which the testing or mitigation proposed by the applicant is cost-effective compared to other techniques.

(2) In determining whether an applicant is eligible for assistance, and the nature and amount of financial assistance, the Administrator shall consider the financial resources available to the applicant as certified by the Governor.

(d) FINANICAL NEED.—In no event shall financial assistance be provided under this title to an applicant if the Administrator determines that such applicant has resources adequate to support an appropriate radon testing or mitigation program.

(e) LOANS AND GRANTS.—An applicant for financial assistance maybe awarded a grant of up to 50 percent of the cost of a testing program or may receive a loan for up to 100 percent of the cost of a mitigation program.

(f) APPLICATION REQUIREMENTS.—No financial assistance may be provided under this section unless an application has been submitted to the Administrator in accordance with any procedures developed by the Administrator.

SEC. 305. REGULATIONS.

The Administrator shall promulgate rules and regulations as necessary to implement the authorities and requirements of this title.

SEC. 306. ENFORCEMENT.

(a) CIVIL PENALTIES.—Any local educational agency which violates the requirements of this title or which knowingly submits false information regarding testing to the Governor is liable for a civil penalty of not more than $100 for each day during which the violation continues. For purposes of this subsection, "violation" means a failure to comply with respect to a single school building. The court shall order that any civil penalty collected under this subsection be used by the local educational agency for purposes of complying with this subsection. The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection.

(b) CITIZEN COMPLAINTS.—Any person may file a complaint with the Administrator or with the Governor of the State in which the school building is located with respect to radon in a school building. If the Administrator or Governor receives a complaint under this subsection containing allegations which provide a reasonable basis to believe that a violation of this subsection has occurred, the Administrator or Governor shall investigate and respond (including taking enforcement action where appropriate) to the complaint within a reasonable period of time.

SEC. 307. PREEMPTION.

(a) CONSTRUCTION OF PROVISIONS AS NOT PREEMPTING OTHER LAWS.—Nothing in this title shall be construed, interpreted, or applied to preempt, displace, or supplant any other State or Federal law, whether statutory or common.

(b) AWARD OF COSTS AND DAMAGE AWARDS.—Nothing in this title shall be construed or interpreted to preclude any court from awarding costs and damages associated with the testing or mitigation of radon contamination, or a portion of such costs, at any time.

(c) CONSTRUCTION OF PROVISIONS AS NOT PROHIBITING MORE STRINGENT STATE REQUIREMENTS.—Nothing in this title shall be construed or interpreted as preempting a State from establishing any liability or more stringent requirements with respect to radon in school buildings within such State.

(d) CREATION OF CAUSE OF ACTION.—Nothing in this title creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

(e) EFFECT OF PROVISIONS IN CIVIL ACTIONS FOR DAMAGES.—It is not the intent of Congress that this section or rules, regulations, or orders issued pursuant to this section be interpreted as influencing, in either the plaintiff's or defendant's favor, the disposition of any civil action for damages relating to radon. This section does not affect the authority of any court to make a determination in any adjudicatory proceedings under applicable State law with respect to the admission into evidence or any other use of this title or rules, regulations, or orders issued pursuant to this title.

SEC. 308. AUTHORIZATION.

(a) TESTING.—There is authorized to be appropriated to the Administrator not more than $5,000,000 for each of the fiscal years 1992, 1993, and 1994, for purposes of grants to local educational agencies for carrying out testing required by this title. Such amount shall remain available for expenditure until September 30, 1994.

(b) MITIGATION.—There is authorized to be appropriated to the Administrator such funds as may be necessary for the fiscal years 1992, 1993, and 1994 for purposes of loans to local educational agencies for implementing any radon mitigation devices or methods determined to be necessary as a result of testing carried out under section 302 of this title.

TITLE IV—PRESIDENT'S COMMISSION ON RADON AWARENESS

SEC. 401. ESTABLISHMENT.

There is established a commission to be known as the President's Commission on Radon Awareness (hereinafter in this title referred to as the "Commission").

SEC. 402. DUTIES OF COMMISSION.

The Commission shall—

(1) examine public awareness programs in effect on the date of the enactment of this Act which are—

(A) implemented through various segments of mass media; and

(B) intended to raise public awareness of the health threats of radon and the benefits of testing for radon;

(2) act as an administrative and coordinating body for the voluntary donation of resources from—

(A) television, radio, cable communications, and print media;

(B) the health industry;

(C) the advertising industry;

(D) the business sector of the United States; and

(E) radon testing and mitigation organizations; to assist the implementation of new programs and national strategies for dissemination of information intended to raise awareness of the health threats of radon;

(3) encourage media outlets throughout the country to provide information aimed at increasing radon awareness, including public service announcements and advertisements; and

(4) evaluate the effectiveness and assist in the update of programs and national strategies formulated with the assistance of the Commission.

SEC. 403. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed by the President within 30 days after the date of the enactment of this Act, and should include representatives of—

(1) advertising agencies;

(2) television, radio, cable communications, and print media;

(3) the health industry;

(4) other segments of the business sector of the United States;

(5) experts in the field of radiation science;

(6) the radon testing and remediation industry; and

(7) other Federal agencies, as designated by the President.

(b) TERMS.—

(1) Except as provided in paragraphs (2) and (3), members shall be appointed for terms of 3 years.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(3) A member may serve after the expiration of the member's term until a successor to the member has taken office.

(c) BASIC PAY AND EXPENSES.—

(1) Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government services are allowed travel expenses under section 5703 of title 5, United States Code.

SEC. 404. MEETINGS.

(a) IN GENERAL.—

(1) The Commission shall meet at the call of the Moderator.

(2) The Moderator shall convene the first meeting of the Commission within 30 days after the date of the completion of appointments under section 403(a).

(b) MODERATOR.—One member of the Commission shall be designated by the President to serve as Moderator of the Commission.

(c) QUORUM AND PROCEDURE.—The Commisssion shall adopt rules regarding quorum requirements and meeting procedures the Commission deems appropriate at the first meeting of the Commission.

(d) VOTING.—Decisions and official acts of the Commission shall be according to the vote of a majority of members at a properly called meeting.

SEC. 405. STAFF.

(a) EXPERTS AND CONSULTANTS.—The Moderator, with the approval of the Commission, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(b) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title.

SEC. 406. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(b) OBTAINING OFFICIAL DATA.—Upon the request of the Moderator of the Commission, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title.

(c) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. 407. REPORT.

The Commission shall transmit to the President and to each House of Congress a report not later than July 31 of each year which contains a detailed statement of the activities of the Commission during the preceding year, including a summary of the number of public service announcements produced by the Commission and published or broadcast.

SEC. 408. TERMINATION.

The Commission shall terminate on a date which is three years after the date on which members of the Commission are first appointed, unless the President, by Executive order, extends the authority of the Commission.

TITLE V—RADON IN THE WORKPLACE

SEC. 501. STANDARD FOR RADON IN THE WORKPLACE.

Not later than one year after the date of the enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with the Administrator of Occupational Safety and Health, shall determine, and set a standard for, the level of exposure to radon in the workplace that is associated with no greater health risk to workers than the health risk indicated in the Environmental Protection Agency's action level for radon developed pursuant to section 303 of the Toxic Substances Control Act. The standard set under the preceding sentence shall supersede the regulations contained in section 1910.96 of title 29 of the Code of Federal Regulations, pursuant to Public Law 91-596.

BLOOD SERVICE GETS HELP FROM ST. PAUL

HON. GERRY SIKORSKI

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. SIKORSKI. Mr. Speaker, recently, I was introduced to the national senior vice president of the Red Cross, Dr. Jeff McCullough, an internationally renowned researcher from the University of Minnesota who previously served as the regional director of the St. Paul Red Cross. Dr. McCullough received strong recommendations from my constituents and I wish him every success in this new post. I commend the following article from the St. Paul Pioneer Press detailing the creation of the position and Dr. McCullough's work to the attention of my colleagues.

BLOOD SERVICE GETS HELP FROM ST. PAUL

(By Walter Parker)

The American Red Cross blood service, under heavy fire this year from Congress, the press and federal regulators for sloppy management practices that threatened the nation's blood supply, desperately needed someone new in charge—someone with a white hat and big broom.

Reaching all the way to St. Paul, they plucked Dr. Jeff McCullough, 52. The chief of regional bood banking for the St. Paul Red Cross for the last 19 years, McCullough started work at Red Cross headquarters in Washington, DC, on Wednesday. He'll be spending one year there as senior vice president of the Red Cross' $500 million blood service operation.

Red Cross leaders, including chairman George F. Moody, a California banker, say McCullough has a firm mandate to reorganize a blood system that worked well in the post-World War II era but is now in danger of losing its ability to keep pace with the new challenges posed by AIDS and other diseases.

"There's a very wide consensus among Red Cross leaders across the country that there's one guy who can do this job, and that's Jeff McCullough," said Patrick Morand, director of the Baltimore Red Cross region and former director in St. Paul. "He's a man with totally independent standing as a scientist and administrator."

McCullough, a soft-spoken, deliberate person with a distinguished research background as a full professor of laboratory medicine at the University of Minnesota, didn't seek the national post. In fact, he plans to commute on weekends from Washington to his home in Edina, where he and his wife, Maureen, live with their two small sons.

Red Cross observers say it's been a hallmark of McCullough's career to accept and move with change. When some of the public became frightened of AIDS, and began to demand more autologous giving (donating for one's self in advance of elective surgery) and directed giving, those practices were adopted willingly in St. Paul, not fought behind the scenes. Donated blood is routinely subjected to five more tests than it was in 1985, which increases the amount of blood that must be recruited. Again, St. Paul was regarded as a leader in introducing the tests.

"The Red Cross is fundamentally a humanitarian, social service organization, but it also operates a highly technical, costly blood service," McCullough said in an interview. "When you're trying to do things in a uniform way across 54 administrative regions, you can't have 54 semi-Mom & Pop organizations doing what seems to be good locally."

Last Aug. 10, Red Cross Chairman Moody announced a reorganization that for the first time made it indisputably clear that the final say on blood-handling procedures and record-keeping across the country must come from headquarters in Washington. And the 54 Red Cross blood regions, which provide half of the nation's blood supply, will be monitored closely for compliance by a beefed-up national staff.

Part of McCullough's job will be to put that new system in place, without destroying the bedrock of the Red Cross: its image as an essentially local operation that both depends upon and rewards the goodwill of people in literally thousands of towns and cities.

Problems with pockets of the system—not including the St. Paul region—became glaringly public this spring. The Washington, D.C., regional office, for example, only a few blocks from national headquarters, was shut down after audits by the U.S. Food and Drug Administration found a large backlog of error reports that had not been filed properly with Red Cross headquarters. Other regions had similar backlogs, making it impossible to analyze current error reports so that patterns of errors could be promptly detected and fixed.

In addition, at the Washington office, there were delays in AIDS "lookbacks," or followups of people who received blood from donors who on subsequent donations tested positive for the AIDS antibody. The Red Cross is supposed to promptly notify all such recipients that they may have been exposed to the virus.

Those problems, as well as others documented in a Pulitzer Prize-winning series of articles on blood banking deficiencies last year in the Philadelphia Inquirer, prompted a "searing self-examination" at the Red Cross, Moody said at the Aug. 10 press conference in Washington.

It has also become obvious, McCullough said last week, that Red Cross centers across the country, including St. Paul's, are due for some expensive replacements of computer systems to keep track of the 6.3 million blood units donated annually by 4.2 million Americans. The computers need to be made more consistent and integrated nationally as well, he said.

Each blood unit received at a blood bank must be separated into three or four component parts, such as red cells, infection-fighting white cells and platelets, within six hours after donation. They are then stored while testing for AIDS, hepatitis and other diseases are completed—a total of up to 15 tests. In addition, donor names are double-checked to make sure they're not on lists of people with diseases that bar them from giving.

No blood that flunks a test is supposed to be shipped from blood banks, most of which have sophisticated systems to prevent that from happening. And in fact that seldom, if ever happens, according to Red Cross officials.

"The good news in all this is that not one hot (AIDS-infected) unit got out," said Morand of the controversy that arose this year. The violations that got centers such as Washington in trouble involved error-reporting backlogs, not erroneous releases of contaminated blood.

"We've gotten AIDS out of the blood supply, and we've gotten hepatitis out of the blood supply. It's never been safer," said McCullough, referring to the effectiveness of tests performed on every unit of blood donated. "At the same time, expectations have risen to new levels, so we have to move on. It's like the space program: you can't have your rocket work 99.9 percent of the time."

USTR MUST EXPAND ITS VISION OF A POSSIBLE UNITED STATES-MEXICO FREE TRADE AGREEMENT

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PEASE. Mr. Speaker, last September 26, President Bush formally notified the House Ways and Means Committee that he intends to immediately begin negotiations with a view to establishing a proposed Free-Trade agreement [FTA] between the United States and Mexico.

I am not opposed to such negotiations per se. Since joining the General Agreement on Tariffs and Trade [GATT] in 1986, the Government of Mexico has slashed tariffs, removed import licensing restrictions, and eased foreign investment rules. In response, the United States Government has doubled Mexico's share of our steel market, offered $2.5 billion in generalized system of preferences benefits to Mexico this year, and attempted to provide a measure of debt relief. But I am opposed to these negotiations proceeding on the narrow, artificially constrained basis announced by the United States and Mexican trade negotiators yesterday. I call the attention of my colleagues to the following article from the October 26, 1990, edition to the Journal of Commerce.

It is clear that closer and expanded integration of the American and Mexican national economies is inevitable. Unprecedented opportunities now exist, as President Bush has stated, "to eliminate barriers to the flow of goods, services, and investment, and to protect intellectual property rights." But the real challenge before trade policymakers in the United States and Mexico is to find ways in which to guide and manage growing United States-Mexico trade ties in mutually beneficial, equitable, and humane terms.

There have arisen, as President Bush has pointed out, "substantial opportunities for mutual benefit in further lowering impediments to bilateral trade in goods and services and to investment." However, there are certain to be winners and losers if a United States-Mexico FTA is established. Far too little economic data, research, and analyses are available to reliably predict who will benefit and who will be hurt. This being the case, I invite my colleagues in writing to President Bush and to United State-Trade Representative Carla Hills to underscore some basic concerns many of us share about the way in which United States-Mexico FTA discussions should proceed along with some issues that should be on the table from the outset.

First, neither the United States Government nor the Mexican Government has recognized publicly the need to incorporate a social charter in any United States-Mexico FTA to address fundamental labor, health, environmental, and political policy differences that exist between the two countries.

For example, the Government of Mexico has manipulated, dominated, and effectively controlled attempts to organize Mexican labor for much of the 20th century. It is not surprising, consequently, that the average manufacturing wage in Mexico currently is $0.57 compared to $10.47 in the U.S.

Tensions along the United States-Mexican border are steadily growing with three times as many illegal immigrants from Mexico being picked up every month compared to last year's pace. I am very concerned about a veritable tidal wave of legal Mexican workers coming to the United States in conjunction with a United States-Mexico FTA.

Environmental and public health standards in Mexico are very weak compared to American standards which are about to be toughened by amendments to the Clean Air Act. Enforcement of what standards do exist in Mexico is quite lax.

Since the 1920's, Mexico has been governed by an authoritarian, undemocratic, one-party system under the control of the Institutional Revolutionary Party [PRI]. I am encouraged by the limited electoral reforms in progress. But sweeping changes in the Mexican polity are still to come to facilitate elections that are more fair and democratic, thereby encouraging pluralism in that society as a whole.

Second, the Government of Canada recently has expressed an interest in seeing the bilateral United States-Mexico trade discussion transformed into a trilateral dialogue designed to explore the possible establishment of a North American FTA. I question what United States advantages are to be gained by establishing separate and distinct bilateral FTA's with Canada and Mexico that could easily result in different rules being applied to United States trade with our largest and third largest trading partners.

President Bush has already highlighted several important issue areas to be covered if a mutually beneficial United States-Mexico FTA is to be established. But his goals and priorities are incomplete. I hope that many of my colleagues, at this important juncture, will join me in writing to President Bush and to United States Trade Representative Carla Hills to emphasize that they need to expand their vision of what should be covered by a possible United States-Mexico FTA to include these equally important issues that must be frankly discussed and negotiated with Mexico, and possibly Canada as well. I will be circulating a draft letter and Dear Colleague toward this end next week.

There is no precedent for negotiating an FTA between the United States and a trading partner at Mexico's current level of economic development. Therefore, it is imperative that the Congress be actively engaged at all stages—in framing the issue parameters of the negotiations as they are defined at the outset, during the tough bargaining to follow, and in determining the final terms of an agreement. President Bush's pending request that a United States-Mexico FTA be considered on a fast-track basis must be weighed in this context.

[From the Journal of Commerce, Oct. 26, 1990]

UNITED STATES, MEXICO TO LIMIT TRADE PACT COVERAGE

(By Richard Lawrence)

WASHINGTON.—The U.S. and Mexican governments have agreed to exclude from their prospective free trade negotiations such issues as the environment, labor rights and drug control, officials from both countries said Thursday.

Moreover, said Herminio Blanco, Mexico's chief trade negotiator, Mexico will not negotiate policy changes involving energy, basic pharmaceuticals, electricity and rail services—all the province of the Mexican government.

The decision to limit the scope of the negotiations could lead to problems in the U.S. Congress. Environmental and labor groups are starting to push for agreements on environmental and labor standards as part of an overall U.S.-Mexican trade pact.

Rep. Terry Bruce, D-Ill., recently introduced a resolution calling for an administration study of environmental, labor and antitrust factors in U.S.-Mexican trade, to help guide the U.S.-Mexican negotiations.

American labor and other interests fear that some U.S. companies will exploit Mexico's laxer standards in those areas to the detriment of the U.S. economy.

Whatever the United States and Mexico negotiate, Mr. Blanco told a meeting sponsored by the Overseas Development Council, will be limited to "goods and services."

Mexico, he said, will not alter its environmental laws nor make any changes to its constitution. At the same time, he said,

Mexico will not press the United States to open its borders wider to Mexican workers.

"This will be an agreement on trade issues," he emphasized.

Robert Fisher, director of Mexican affairs at the U.S. trade representative's office, also ruled out incorporating labor and environmental, as well as drug control, negotiations in a trade agreement.

To include such matters, he said, could "kill the (trade) deal," Some opponents of a U.S-Mexican free trade pact, he suggested, might try to make it into "a Christmas tree," loaded with issues that would lead to the agreement's defeat.

Mr. Fisher's comments brought a sharp rejoinder from Stuart Hudson, a National Wildlife Federation spokesman. Incorporating environmental considerations into the trade agreement, he argued, will cut future environmental costs.

A U.S.-Mexican free trade agreement, he and others maintain, will intensify pressure on both U.S. and Mexican natural resources. Both countries, said Mr. Hudson, will benefit if those problems are addressed now rather than later.

The United States' main goals in the Mexican trade negotiations are expected to be improving Mexico's intellectual property rights protection and opening Mexico wider to U.S. agricultural exports, American investors, and services firms .

WILLIAM PASSMORE: EAST CHICAGOAN OF THE YEAR

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. VISCLOSKY. Mr. Speaker, I rise to pay tribute to an outstanding public servant and a genuine gentleman, Mr. William "Bill" Passmore.

As job developer for the Lake County Job Training Corp., Bill is responsible for promoting and placing the clients of this Job Training Partnership Act agency into adequate living wage employment opportunities. Bill's success in this task is due in part to his multilingual capabilities—being able to communicate in Spanish, Polish, Serbian, and Hungrarian—but also in his ability to communicate with his heart.

Bill is special in that he has the ability to understand people. He is an individual that can restore one's dignity after the traumatic loss of employment, comfort lonely and frightened patients at St. Catherine Hospital during his regular visits, uplift and encourage youth to continue in their education, guide fellow parishioners at St. Mark A.M.E. Zion Church as a Sunday school teacher, and prepare ex-convicts for the transition from institutional life to open society.

The impact of his efforts have earned Bill the respect and love of those who have been fortunate to know him. A lifelong resident of East Chicago, IN, he has actively been involved in the Tradewinds Rehabilitation Center, serves on the St. Catherine Hospital Community Advisory Board and is a charter member of the East Chicago Exchange Club. Additionally, Bill acts as an adviser to Senator RICHARD LUGAR for issues that impact the physically challenged.

Bill was appointed to the Governor's Commission on the Handicapped by Governor Otis R. Bowen, recognized as the 1984 NAACP Outstanding Citizen of the Year, and selected as the Outstanding Handicapped American of the Year by President Richard M. Nixon in 1968.

William Passomore is being honored by Twin City Community Services as East Chicagoan of the Year for his outstanding civic and humanitarian contributions. I commend them for their selection and I congratulate Bill on the remarkable contributions he has made, and continues to make, to northwest Indiana, the State of Indiana, and the Nation.

INTRODUCTION OF THE PUBLIC RECREATION AREA RECYCLING INCENTIVES AND EDUCATION ACT

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MARKEY. Mr. Speaker, I rise today to introduce the Public Recreation Area Recycling Incentives and Education Act. This important and timely legislation would require the Department of the Interior and Department of Agriculture to establish comprehensive recycling programs at national parks, Forest Service campgrounds and other public recreation areas operated by the National Park Service, Fish and Wildlife Service, and the Forest Service.

Recently, we have witnessed the reemergence of a new era of environmental consciousness. From the nationwide participation in the celebration of Earth Day to the passage of oil spill and clean air legislation this year, this transformation in awareness and attitude is increasingly powerful. Nowhere is this more evident than in the heightened participation nationwide in recycling programs.

The Public Recreation Area Recycling Incentives and Education Act [PRARIE Act] promotes additional recycling while simultaneously promoting public education, resource management and research. This legislation requires the Departments of the Interior and Agriculture to establish recycling programs for easily recyclable materials that they sell or distribute to the public. So, if they distribute brochures, then they must set up a paper recycling program. If they sell soda cans, then they must start an aluminum recycling program. This way, each area can focus on the recyclable materials in greatest abundance at the area, and thereby conserve natural resources, combat litter, raise public awareness and hopefully even make some money.

Yosemite National Park and its concessionaire, the Curry Co., have already initiated an exemplary recycling program that can be a model for all parks. Furthermore, the Dow Chemical Co. has combined forces with the National Park Service to launch a comprehensive recycling program to help conservation and promote efficient solid waste management in several parks nationwide.

This mutually beneficial relationship between the recycling program and public education efforts evolves from a section in the bill which provides that each Service direct at least 50 percent of the revenue generated from the recycling program toward education, resource management and research. The remaining revenue may be used by the Service for any otherwise allowable public purpose relating to the enhancement of the public recreation area.

The bill also calls for each Secretary to conduct a study of the recycling program in consultation with park cooperative associations, public interest groups, concessionaires' associations, and local residents near the areas. Each study will consist of a report on the effectiveness of the respective recycling programs and an analysis of the programs' effects on recycling, litter reduction, public education efforts and the role of concessionaires and local residents.

In addition to the aesthetically pleasing repercussions of recycling, there is a very serious scientific reason to promote such a program as well—our nation's scarce and overused landfills. The number of new facilities being opened are declining and many of the existing ones do not meet current Federal and State standards for safe design. Inversely, Americans are producing more solid waste than ever. In fact, American municipal waste production has grown from 87.5 million tons per year in 1960, to 157.7 million tons in 1986, enough to fill a convoy of 10-ton garbage trucks, 145,000 miles long, which is over half the distance between the Earth and Moon.

Our national parks have been called "the Nation's largest open universities." The PRARIE Act will help expand the curriculum at these "open universities" and expose tens of millions of Americans to the simplicity and effectivensss of recycling.

I am including in the RECORD a memorandum I received from the Interior Department in response to a letter on this topic that I wrote Secretary Lujan. I am looking forward to working on this promising approach with Secretary Lujan and Agriculture Secretary Yeutter, the park concessionaires, the National Parks and Conservation Association, and all other organizations invovled in encouraging recycling national parks. I look forward to pursuing this issue in the future with my colleagues in the House.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES
Washington, DC, July 27, 1990.

MR. MANUEL LUJAN JR.,
Secretary, Department of Interior, 1849 C St., Washington, DC.

DEAR MR. SECRETARY: Last autumn, you initiated an important step toward improving our environment through your decision to ban the use of non-biodegradable products at the Department of Interior's main cafeteria. At the time, you said, "As employees of the U.S. Department of Interior . . . I believe it is essential that we set an example of resolute action in preserving the quality of our environment."

You also took the step of urging concessionaires at national parks to adopt voluntarily a similar ban. Furthermore, you indicated that you would accept exceptions to a complete ban as long as the plastic items were disposed of through a recycling program. At the time of your announcement,

the Yosemite National Park and Curry Company, the concessionaire at that park, had already imposed a ban on polystyrene products in the park. Since then, Dow Chemical Company has combined forces with the National Park Service to launch a comprehensive recycling program to help conservation and promote efficient solid waste management in several parks nationwide.

I am greatly interested in the impact of your decision. How many national parks have joined Yosemite National Park and the Curry Company in implementing the voluntary ban or adopting a recycling program? Have you received positive or negative feedback from the participating parks and concessionaires? What has been the monetary impact of such programs? Particularly, what has been the impact on recycling? What has been the impact on litter? Do you believe that other departments could learn from the Department of Interior's ban of nonbiodegradable products?

I commend you for your initiative in this area, and I would greatly appreciate a response, at your earliest convenience, to these questions. If you have any questions, please contact me or Diana Lazarus of my staff at 225-2836

Thank you for your cooperation in this matter.

Sincerely,

EDWARD J. MARKEY,
Member of Congress.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, August 28, 1990.

Hon. EDWARD J. MARKEY,
House of Representatives, Washington, DC.

DEAR MR. MARKEY: Thank you for your letter of July 27 to Secretary Lujan regarding recycling programs within the Department of the Interior.

At my request, the Director, National Park Service, has prepared the enclosed memorandum in response to your inquiry.

There have been interest and support among the national parks for the recycling program. Director Ridenour has personally demonstrated his active support for the proper management of solid waste through memoranda and recycling articles in publications.

We appreciate your interest in the programs of the Department of the Interior.

Sincerely,

KNUTE KNUDSON JR.,
Deputy Assistant Secretary for Fish and Wildlife and Parks.

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Washington, DC, August 15, 1990.

Memorandum

To: Assistant Secretary for Fish and Wildlife and Parks.

From: Acting Director, National Park Service.

Subject: Recycling Programs.

We have reviewed Representative Markey's letter of July 27 regarding recycling programs within the Department of the Interior.

The National Park Service (NPS) has initiated an Integrated Solid Waste Alternative Program (ISWAP). A draft guidance document has been developed and implementation is anticipated in the fall. This program is comprised of the following five major elements:

(1) *Recycling and Composting Programs*—Parks are encouraged to initiate their own recycling and composting programs or to coordinate their programs with existing community efforts. In addition to the materials that are normally considered as recyclables (glass, aluminum, plastic, paper, cardboard, etc.), parks will also recycle hazardous waste materials like batteries, waste oil and solvents.

Although the recycling program is primarily a solid waste program, recycling actions should extend to all waste material.

(2) *Source Reduction and Waste Minimization*—Parks will begin to maximize the utilization of their resources and reduce the quantity and/or toxicity of materials and products before the waste is actually generated. Some examples of source reduction and waste minimization practices are: (1) double-sided copying, (2) using the back side of waste paper for messages, (3) purchasing products only in quantity that can be used in a year or for a specific project, and (4) purchase materials of least toxicity that will accomplish the job.

(3) *Community Outreach and Interpretive Programs*—Because most of the park units' solid waste goes to community landfills, the sites must work cooperatively and in partnership with the communities, private industry and citizens to promote sound solid waste management practices. In addition, units are encouraged to develop interpretive programs, brochures and exhibits for visitors that discuss solid waste management issues.

The NPS-Dow Chemical/Huntsman Chemical Companies Recycling Program that Representative Markey mentioned in his letter is an outstanding example of this cooperative effort between Government and industry.

(4) *Landfill Operation within NPS Jurisdiction*—NPS is currently developing regulations for the management and operation of landfills within NPS jurisdiction. These regulations and guidance documents will help to ensure that NPS-operated landfills conform to all applicable Federal, State and local laws and refrain from establishing landfills in National Park System units except where no other alternatives exist.

(5) *Recycled Products*—NPS is also investigating using more recycled products. Such items include recycled paper, plastic, glass, metals, etc.

According to a survey conducted in the spring of 1989, 105 national park units recycle at least one or more items. The amounts of materials being recycled are: aluminum (76,190 lbs.), glass (345,116 lbs.), paper (159,720 lbs.), oil (12,296 lbs.), plastic (730 lbs.) and miscellaneous materials (574,396 lbs.). This information represents data that was collected prior to the NPS ISWAP initiative. We anticipate that once the program is implemented, the number of participating parks and amounts recycled will increase.

Concessioners also see this issue as a high concern. As Representative Markey noted, the Yosemite Park and Curry Company's Recycling Program is both comprehensive and exemplary. However, even small concessioner operations are fully cooperating and establishing recycling programs. An example of this is the Concessioner Recycling Program (Oregon Inlet) at Cape Hatteras National Seashore. The concessioner who operates a fishing supply and dock operation has begun recycling aluminum cans and batteries that the fishing boats bring in.

Although we have no current data on the number of concessioners who are recycling, the number of concessioners who recycled, as reported in the 1989 spring survey, was seven.

Because the ISWAP program is still in the developmental stage, impacts on funding and litter have yet to be determined.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Recreation Area Recycling Incentives and Education Act".

SEC. 2. RECYCLING REQUIREMENT.

(a) GENERAL RULE.—

(1) NATIONAL PARK SERVICE AND UNITED STATES FISH AND WILDLIFE SERVICE.—The Secretary of the Interior shall establish a comprehensive recycling program for public recreation areas operated by the National Park Service and the United States Fish and Wildlife Service.

(2) UNITED STATES FOREST SERVICE.—The Secretary of Agriculture shall establish a comprehensive recycling program for public recreation areas operated by the United States Forest Service.

(b) REQUIREMENTS FOR PROGRAMS.—Each program established under subsection (a) shall provide for the recycling of—

(1) paper, plastics, glass, and aluminum and other metals, to the extent such materials are sold or distributed at the public recreation area or used to package items sold or distributed at the area; and

(2) other materials, such as waste oil, batteries, solvents, considered appropriate for recycling by the manager of the public recreation area.

(c) TIME FOR ESTABLISHMENT OF RECYCLING PROGRAMS.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the Secretary of the Interior and the Secretary of Agriculture, as appropriate, shall establish recycling programs as required by subsection (a)—

(A) for at least 50 percent of the public recreation areas operated by each Service by not later than December 31, 1992; and

(B) for all of the public recreation areas operated by each Service by not later than December 31, 1993.

(2) WAIVER.—

(A) EXCLUSION OF NOT MORE THAN 10 PERCENT OF PUBLIC RECREATION AREAS.—Subject to subparagraph (B), each Service may exclude not more than 10 percent of the public recreation areas operated by such Service from the recycling program established for such Service as required by subsection (a).

(B) CRITERIA TO BE ESTABLISHED BY APPROPRIATE SECRETARY.—

(i) GENERAL REQUIREMENT.—The Secretary of the Interior and the Secretary of Agriculture shall each establish criteria under which each Service under their respective jurisdictions may exclude public recreation areas from the recycling program pursuant to subparagraph (A).

(ii) BASIS FOR CRITERIA.—In establishing criteria as required by clause (i), each Secretary shall consider the following criteria:

(I) The number of visitors to the public recreation area.

(II) The specific logistics of the public recreation area.

(III) The size of the public recreation area.

(IV) The local availability of markets for recycled materials.

(d) USE OF REVENUES.—To the extent provided in appropriations Acts, each Service may use any revenues received from recycling programs as follows:

(1) RESOURCE MANAGEMENT AND RESEARCH.—Not less than 50 percent of such revenues shall be used for resource management, research, and interpretation.

(2) OTHER PUBLIC PURPOSES.—Not more than 50 percent of such revenues may be used for any otherwise allowable public purpose relating to the enhancement of the public recreation areas at which the revenues were realized.

(e) STUDIES REQUIRED.—

(1) GENERAL REQUIREMENT.—The Secretary of the Interior and the Secretary of Agriculture shall each conduct studies on the effectiveness of the respective recycling programs established as required by this Act.

(2) CONTENTS.—Each study conducted as required by paragraph (1) shall analyze, with respect to the recycling program concerned—

(A) effects on recycling of materials;

(B) public education efforts;

(C) effects on litter reduction; and

(D) the role of concessionaires and local residents.

(3) CONSULTANT REQUIRED.—In conducting each study required by paragraph (1), the Secretary concerned shall consult with—

(A) park cooperative associations;

(B) public interest groups;

(C) concessionaires' associations, and

(D) local residents.

(f) PUBLIC EDUCATION.—The Secretary of the Interior and the Secretary of Agriculture shall direct each manager of a public recreation area conducting a recycling program, to the maximum extent practicable, to educate visitors to the public recreation area about the recycling program for such area and the benefits to the public recreation area and the local community of such program.

(g) PUBLIC RECREATION AREAS.—The term "public recreation areas" includes any unit operated by the National Park Service, the United States Fish and Wildlife Service, or the United States Forest Service that serves the public.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for purposes of carrying out this Act, $1,000,000 for the fiscal year 1992.

H.R. 5229

HON. WILLIAM H. GRAY III

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. GRAY. Mr. Speaker, today the House adopted a Senate amendment to the conference report on the fiscal year 1991 Transportation appropriations bill, H.R. 5229. The amendment contains language requiring all States with major mass transit systems to establish a source of dedicated revenue for transit. The language reflects a final agreement on a provision that I originally authored.

Mr. Speaker, the administration has already made its position clear on the issue of dedicated revenue. U.S. Secretary of Transportation, Samuel Skinner, has called dedicated State revenue an essential part of the mass transit funding formula. This provision puts the U.S. Congress on record in support of dedicated revenue as well. The Administrator of the Urban Mass Transportation Administration, Bryan Clymer, has said the provision is in line with administration policy.

Mr. Speaker, a number of our States have already adopted dedicated revenue to support their transit systems. Among other things, these States demonstrate that there are a variety of ways that dedicated revenue can be established and that the requirements of this amendment can be met. A State can make a multiyear funding commitment to transit from general tax revenue, designate part of existing user fees to transit, enact a new user fee dedicated to transit, or raise a new tax dedicated to transit.

Mr. Speaker, these policies have proved to be strong foundations on which to build solid transit systems. Nonetheless, the amendment does allow any State to exempt themselves from the requirement for dedicated revenue if the Governor and both houses of the State legislature declare that they are opposed to dedicated revenue and if the Governor declares that dedicated revenue would not improve public transportation safety.

Mr. Speaker, according to the amendment, the U.S. Secretary of Transportation must certify the opposition of the Governor and the State legislature. In doing so, the Secretary should be certain to certify that the Governor and the State legislature have declared their opposition to any form of dedicated revenue, not just to one particular proposal for establishing dedicated revenue, before the Secretary can grant a waiver from the requirements of this amendment.

Mr. Speaker, with the adoption of this policy, the Congress has further established its already strong commitment to mass transit.

HEAR THE REPARATIONS ISSUE NOW

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. STOKES. Mr. Speaker, recently, Rev. Marvin McMickle, who serves as pastor of the Antioch Baptist Church in Cleveland, OH, and president of the Cleveland branch of the NAACP, addressed the issue of reparations for African-Americans as compensation for the efforts of slavery. As a cosponsor of the bill introduced by Congressman CONYERS which seeks to accomplish this, I read with great interest Reverend McMickle's remarks, which were published in the Cleveland Plain Dealer. In his remarks, he said,

If ever there was a crime against humanity, the African slave trade and the continuing practice of racial segregation in the United States is that crime.

Mr. Speaker, I want to take this opportunity to share Reverend McMickle's remarks with my colleagues. I hope they will take a moment to consider his analysis of the issue.

[From the Cleveland Plain Dealer, Oct. 23, 1990]

HEAR THE REPARATIONS ISSUE NOW

(By Rev. Marvin A. McMickle)

Whether or not people agree with the manner in which the discussion about reparations for African-Americans as compensation for the efforts of salvery was handled in Cleveland City Council last week, the issue must be heard and ultimately resolved.

Reparations for African-Americans are an issue whose time has come. Had not the U.S. Congress approved funds for Japanese—Americans interned during World War II, and had not the U.S. attorney general knelt before the receipient of the first $20,000 payment and offered her a tearful apology, this matter might not have come so quickly to a head. But it cannot be expected that African-Americans will hold their peace in light of the events of the last two weeks.

What happened to thousands of Japanese—Americans who lost homes, businesses, freedoms and constitutionally guaranteed due process of law, was an immoral offense for which some corrective measures are justified. African-Americans do not begrudge the compensation or the apology to those Japanese-Americans. African-Americans do resent the apparent selective enforcement of the principle of compensation for past injustices.

The bill introduced by Rep. John Conyers of Michigan points this country in the direction of compensation for African-Americans as a result of the 345 years of injustice they experienced between the start of the U.S. slave system in 1619 and the passage of the first Civil Rights Bill in 1964. It was in support of the bill that Cleveland City Council voted on Oct 15.

If ever there was a crime against humanity, the African slave trade and the continuing practice of racial segregation in the United States is that crime. More than 10 million African people were robbed from their native homes. They were jammed into slave ships so tightly that millions died during the months-long journey across the Atlantic. Upon arrival in this hemisphere, especially in this country, they were sold into life-long bondage, branded like cattle, forced to breed so as to produce more slaves, worked from sunrise to past sundown, prevented from learning to read or write, denied the right to own personal property.

Their marriages were not considered legal. Families were broken up through slave trading at the will of the owners. They were dressed in rags, fed on scraps, housed in flimsy shacks, beaten and killed for the slighest offense, and told by "Christian preachers" that their condition was the will of God.

After slavery they were exploited by the share-cropping system of farming where they did all the work but received none of the proceeds. They were intimidated by the Ku Klux Klan. They were denied the right to vote. They were segregated into inferior facilities at every level of social interaction all across the country. They left the rural South to find opportunity in the industrialized North, only to discover that racism and segregation were as prevalent in Cleveland, Chicago and New York, as they were in Nashville, Biloxi or Birmingham.

Their condition was the result of local sheriffs, racist governors and a largely unsympathetic federal government that left slaves and their freed offspring at the mercy of local customs and practices. One ruling after another by the U.S. Supreme Court hardened the despair in which African-Americans were locked and resistance to any change in their status.

The two most chilling of those rulings was the Dred Scott decision of 1857, which ruled that runaway slaves could be hunted down even in non-slave holding states and forcibly

returned to slavery. Hence, there was no guarantee of escape for a slave anywhere in the United States. Even more devastating was the 1896 ruling called Plessy vs. Ferguson, occurring 33 years after the slaves were allegedly freed. That decision declared that "black men have no rights that white men must respect." Thus, every attempt by former slaves to make the U.S. Constitution apply to them was declared futile. No part of the Bill of Rights or any other protection for American citizens applied to them. And so things remained until the Civil Rights Movement of the 1950s and '60s.

African-Americans are saying that this long midnight of pain and legally sanctioned humiliation demands some national expression of compensation. The nation has touched a wound that is still bleeding in the African-American community, by responding to one justifiable concern (Japanese) but continuing to ignore another.

What happened in Cleveland City Council was not just about council procedures. It was, at a much deeper level, about the pain that belongs to those who have been once again overlooked.

Some supporters of the Japanese-American compensation program who oppose a similar program for African-Americans, argue that payments are only going to actual survivors of the internment camps. There are no survivors of slavery, they argue, presuming that lynch mobs, brutality, loss of due process, forced segregation and exclusion from whole segments of society, all came to a prompt halt in 1865.

The truth is, this nation has taken legal steps to correct past injustices only since 1964. The Voting Rights Bill of 1965 was extended in 1985 only after a Reagan veto was overriden. So even our legal remedies are not widely supported, mainly because this nation has not yet resolved that a wrong has been done that demands compensation.

How should the process begin for reparations to African-Americans? It does not have to start with money. My mother is older than the Japanese woman who received that first $20,000 check from Richard Thornburg. When she graduated as valedictorian of her high school class, she was not allowed to give the traditional speech, because of the racist practices of the Chicago public school system. That was one of many insults she experienced on the basis of her race.

Let someone from Washington seek her out, get down on their knees and tearfully apologize to her, and through her to millions of others. That would be a first step in the right direction.

NEW YORK UNIVERSITY HONORS THE PRESIDENT OF MEXICO

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. GREEN of New York. Mr. Speaker, recently the distinguished President of Mexico, Carlos Salinas de Gortari, received the honorary degree of doctor of laws from New York University. The honorary degree was presented by our distinguished former colleague in the House of Representatives, Dr. John Brademas, who is now president of New York University.

I share here with my colleagues the text of the honorary degree, and also excerpts from President Salinas de Gortari's remarks at New York University.

TEXT OF HONORARY DEGREE CITATION

CARLOS SALINAS DE GORTARI, DOCTOR OF LAWS

Carlos Salinas de Gortari—President of Mexico, only a third of the way through your six-year term, you have moved boldly to modernize the Mexican economy and to usher in an era of democratic reform. A man of formidable intellect, after earning three advanced degrees from Harvard, you went on to a remarkable career in government, becoming, at the age of 34, Minister of Planning and budget, and then, in December 1988, the youngest person in half a century to be elected to your nation's highest office. You have said, "To govern, after all, means to do what has to be done." Since assuming the responsibilities of the presidency, you have accomplished much of what had to be done: spurring economic recovery by lowering inflation, reducing foreign debt and liberalizing trade; acting to combat corruption and to open your political system; fighting the narcotics traffic; and channeling, through a program you call "Solidarity", funds from the sale of nationalized business firms to essential social services. Your call this summer for a free-trade agreement between the United States and Mexico typifies both your realism and your vision. We at New York University share your commitment to "building a new relationship of friendship, free of myths and mistrust" between our two great lands and peoples. By virtue of the authority vested in me, I am pleased to confer upon you the degree of Doctor of Laws, honoris causa.

JOHN BRADEMAS,
President.

OCTOBER 1, 1990.

EXCERPTS OF REMARKS OF PRESIDENT CARLOS SALINAS DE GORTARI

For two countries that share a border more than 3,000 kilometers long and whose peoples, by their own free will and conviction, embrace humanity's highest values, it is paradoxical and highly inadvisable that their past and present political and economic realities should remain shrouded in darkness and mystery for the majority of their respective inhabitants. Unfamiliarity is accompanied by mistrust in our dealings; ignorance of each other's history clouds understanding of present circumstances; the shadow of forgetfulness weakens the strength of shared values, the benefits of broader exchanges and the desire to enrich one's life by discovering the different creative expressions of the human spirit.

Today I have the opportunity to speak of Mexicans' own experience and views; to open a window on a nation that is proud of its age-old Indian past, its Spanish heritage and the strength that stems from the blending of the two races. The diversity of this heritage is the unity of our people today; its strength is their principal wealth. This is why we celebrate that heritage in our paintings and poems, in our music and architecture, in our universities and museums and in our villages and cities. This Mexican nation is your neighbor, and in mutual respect, is also an invaluable friend.

The three major movements in our history—Independence in 1810, Reform in 1857 and Revolution in 1910—taught us to respect our most deeply-rooted traditions and values, and never to forget the strife and the blood that were the cost of building our nation's identity. That is why it is so important to us to preserve our culture and our Mexican way of life. Today, faced with the major transformation taking place in the world, my country knows that to defend what is ours, what makes us different from others, we too must make far-reaching, in-depth changes. Thus, we have made the decision to take an active part in the new world dynamics currently under way.

CHANGES IN MEXICO

In my country, change has been less resounding, but that has not made it any less decisive. Mexico's changes are affecting every aspect of the nation's life. Institutions and political practices have been modified, a far-reaching process of state reform is under way, a new culture based on shared responsibilities is gaining strength and society as a whole is showing increasing solidarity with those who have least, in the countryside, in low-income neighborhoods and in Indian communities. All of this is taking place in a climate of freedom and political stability, In contrast with other comparable countries, it is this foundation which has made the vigorous transformation of Mexican economic structures possible, lasting and successful.

Mexico has a vigorous system of political parties. The days of what was practically a one-party system have been left behind, and hard-fought political campaigns are the hallmark of all municipal, state and national elections. Millions of Mexicans now live under local governments headed by members of the opposition parties and there is no area of public life in which differing political views are not fully expressed. New consensus among political parties has allowed for highly encouraging electoral legislation reforms that ensure greater objectivity and accuracy in election results. New balances of power have once again in our history found the broad margins of freedom that are in keeping with our long tradition of building and strengthening the nation's institutions.

REFORM OF MEXICAN STATE

State reform is a forward-looking proposal, precisely because it strengthens the state's ability to lead without abuse, to head but not replace. The Mexican state, which became increasingly proprietary during the period of reconstruction and industrial takeoff, is itself promoting these reforms, which will enable it to meet its major social obligations more effectively. It could not have been otherwise. A complex, diverse and exigent society demanded efficient institutions, in closer contact with the people, that would do away with the impunity and overbearing power of those who are charged with serving the public, and not with using their charge to serve their own ends. Thus, applying the law and reaching concerted agreements with the different sectors and groups of society are ongoing tasks of government. Furthermore, in a country with so many deficiencies, a proprietary and inefficient State is unacceptable. Consequently, the government is privatizing deregulating and opening up new opportunities for the initiative and action of society, while focusing its political attention and resources on relieving poverty, not through handouts, but by combining its efforts with the determination and participation of the most needy communities.

EIGHTY-TWO MILLION MEXICANS

In Mexico, we have never underestimated the magnitude of the challenge facing the country. In addition to accumulated deficiencies, we are feeling the effects of almost

a decade of economic stagnation. Mexicans now number 82 million and, despite progress made in population control, more than 10 million inhabitants will be added to that number during the six years of my administration. This additional population is comparable to the entire population of Belgium, Norway or Ecuador, and represents a clear and urgent need for more food, urban services, housing and education, a cleaner environment, and honest and productive lifestyles. Mexico, in other words, must begin to grow again.

Without hesitation or indecision, we decided to apply a full-fledged and consistent economic strategy that would enable us to lay the groundwork for gradual, sustained growth. To grow on a continuous basis, we set out to stabilize the economy and modernize the productive plant. It was a great transition, aimed at attacking the most acute economic problems: macroeconomic imbalances, structural inefficiencies and excessive foreign debt.

HIGHEST PRIORITY: LOWER DEFICIT

Our highest priority has been to lower the public deficit, because it is this which determines the margins of action for stabilizing the economy and directing structural reforms and preventing them from being weakened. We therefore invariably maintained strict fiscal discipline and set ourselves the immediate goal of reducing the inflationary spiral by means of an agreement between the productive sectors and the government itself that has shown very encouraging results: inflation dropped from 200 percent in 1987 to around 20 percent in 1989 and 1990, and the public deficit decreased from 16 percent of the GDP in 1988 to 1 percent this year.

We maximized our opportunities for renegotiating the debt and its servicing—indispensable for stability—by offering major official guarantees and demonstrating the reliability of the government and society. In this arduous and intensive process we always acted with the conviction that we had both the technical arguments and the moral reasons needed to persuade our creditors. By following that course we secured a timely and satisfactory agreement that lowered the debt by 20 billion dollars. During this process we avoided indexing the economy, always a temptation when inflation rates are high, since indexing causes inflexibility that in the long run brings about even more inflaton.

MODERNIZE THE ECONOMY

Greater economic stability in itself does not guarantee growth. To achieve that end it was necessary to modernize the productive apparatus. We moved from one of the world's most closed economies to one of the most open. Rapid trade liberation is essential during the period of transition because a gradual approach impedes the transition process, but a too hasty liberalization of financial mechanisms must be avoided, as it leads to speculation and capital flight. We are now practically without tariff barriers, with rates averaging around 10 percent, whereas we previously had tariffs higher than 50 percent, and in some cases as high as 100 percent.

At the same time we carried out an effective process of deregulation, which was not just a matter of simplifying bureaucratic procedures, but was aimed at improving the efficiency of the productive plant, bringing domestic prices into line with prices abroad and promoting technological change. We deregulated broad sectors of the economy, particularly telecommunications and transport. In this way, we prepared ourselves to meet the fierce competition, both domestic and foreign, that would motivate efficiency and help bring down inflation, and would also ensure our access to the goods and services markets, capital and new technologies.

We privatized nonstrategic public enterprises by stages in order to maximize public revenues and assure the continuing productivity of the enterprises concerned. Contrary to other experiences in privatization, Mexico first improved the efficiency of their operation, and then proceeded to liquidate those that were not viable and drew up a schedule that would avoid the risks of selling them off too cheaply or hastily, while also taking into account the impact of such actions on fiscal revenues and supply. Today the government is more efficient in attending to its basic responsibilities. The people know that the purpose of the privatization actions is to achieve a sounder economy and to channel more resources to tackling the vexatious problem poverty. That is why they support the government's program.

We now have new regulations that facilitate foreign investment and promote the opening of new markets for our export products. As a result, we have obtained the entry of close to 2.5 billion dollars of foreign investment and the return of a similar amount of flight capital. Moreover, the export picture, until the recent oil crisis, had turned around from being predominantly one of exports of petroleum (70 percent) to exports of predominantly manufactured goods. Part of our success has consisted of maintaining on a permanent basis a coherent and sustained economic policy, directed by uniform and pragmatic teams of officials. In our circumstances, these measures have shaped a strengthened economy and a new and more productive and solidary spirit in society.

INTERNATIONAL COOPERATION

It is in this same spirit of internal modernization that we have proposed to engage in a more meaningful dialogue and to strengthen our ties of cooperation with countries and economic blocs throughout the world. Thus we have reached framework agreements with the European Community and we have participated in the Pacific Economic Cooperation Conference. Latin America, where we have our deepest historical and cultural roots, has been the scene of an ongoing exploration of possibilities for specific projects and bilateral and multilateral accords. The ideal of a single Latin American homeland, proclaimed by Bolivar in the second decade of the nineteenth century, remains valid. Our nations are still determined to consolidate their democratic systems of government, to assure the validity of human rights and to take realistic, viable and concrete steps toward a true economic and cultural integration in the region.

A FREE-TRADE AGREEMENT

Specifically, we have already initiated consultations with the United States of America, the world's largest economy, that are intended to lead eventually to a free-trade agreement, which in time will be extended to include Canada as well. This will constitute the world's largest trade region, a market capable of competing with the Europe of 1992 and with the power of Japan and the Asiatic Pacific Basin.

Mexico's interest in these forthcoming negotiations is to obtain a guaranteed access of its products to that market; that is, the elimination of tariff and nontariff barriers that block the free flow of goods and services, in strict reciprocity with the liberalization of trade that we ourselves have carried out. An agreement of this kind will generate new sources of employment for Mexicans, so that they will no longer have to go north of the Rio Grande to look for jobs. If we do not create those jobs in Mexico, Mexican labor will compete for job opportunities here in this country. By strengthening our economy and expanding our market, demand for U.S. products will be reactivated, and this will be a direct stimulus to the creation of jobs in the United States.

To conclude, the honor being conferred on me today by New York University, home to students from every state in this country and more than 110 foreign countries, is a source of great encouragement to me. I view this distinction as a recognition of the efforts made by the people of Mexico to successfully complete the material and humanistic process of change demanded by our history and those new times.

TRIBUTE TO BILL NELSON

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. HORTON. Mr. Speaker, I rise today to pay tribute to our colleague BILL NELSON, a man who has served this body with distinction for the past 12 years.

BILL has done an outstanding job representing the interests of the people of Florida's 11th District. As the chairman of the House Science Subcommittee, BILL has distinguished himself as a knowledgeable proponent of NASA, and he has played an enormous role in rebuilding our country's space program. BILL's commitment to the space program resulted in his having the enviable experience of taking the ride of a lifetime—a trip on the Space Shuttle *Columbia*.

I want to commend BILL for the leadership and service to this great country of ours, which I have been privileged to witness for the past 12 years. He is a dedicated American and a strong, thoughtful, and compassionate leader. The 11th Congressional District of Florida will have a difficult time replacing BILL, and his retirement is certainly a loss for this body and the Nation. He will be missed.

TRIBUTE TO WALTER FAUNTROY

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. STOKES. Mr. Speaker, I am proud to honor our colleague and friend, WALTER FAUNTROY. For the past 19 years, WALTER has worked tirelessly on behalf of the residents of the District of Columbia. He has served his constituency and our Nation well.

WALTER FAUNTROY was active in the struggle for civil rights and social justice long before his election to this body. He was the District's coordinator for the historic march on Washington in 1963 and coordinated the

Selma-to-Montgomery March in 1965. The network of support he developed during the Civil Rights Movement helped to lay the foundation for some of his most important achievements in the Congress.

Mr. Speaker, our colleague is responsible for the development of the Home Rule Charter, which allows the residents of the District of Columbia to elect their own mayor and local legislature. He affected the course of national policy on South Africa when in 1984 he became the first Member of Congress to be arrested for demonstrating in front of the South African Embassy. His strong belief and stance on the issue of apartheid led to the adoption of economic sanctions against South Africa which remain in place. As the second ranking member of the Banking, Finance, and Urban Affairs Committee; ranking member of the House District Committee; and a member of the Select Committee on Narcotics Abuse and Control, WALTER has been a conscientious, fair, and effective legislator.

Mr. Speaker, WALTER FAUNTROY will also leave his mark within the Congressional Black Caucus. The Black Leadership Family Plan, the National Black Leadership Roundtable, and the CBC Braintrust on Black Voter Participation were developed under WALTER's leadership and direction.

WALTER FAUNTROY is more than an effective legislator, however. He is a warm, caring, and compassionate individual who cares about his family, his constituents, and this institution. I fondly recall conversations with WALTER over the years. He is always quick to offer counsel and support. During my tenure as chairman of the House Assassinations Committee on which WALTER served, we developed a close friendship which I have treasured over the years.

Mr. Speaker, our colleague, WALTER FAUNTROY, will be missed in the Halls of Congress. I thank my colleagues for this opportunity to express to WALTER my appreciation and best wishes. He is an outstanding legislator and a great friend.

VOICE OF DEMOCRACY

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. HALL of Texas. Mr. Speaker, I rise today to share with my colleagues some remarks offered by a special young lady, Miss Jennifer Lynn Svoboda, of Richardson, TX. In her speech entitled "Voice of Democracy," Jennifer reminds us of the important democratic principles of truth and freedom, upon which this Nation was founded.

VOICE OF DEMOCRACY

(By Jennifer Lynn Svoboda)

On a windy day in the spring, a snail was slowly working his way up the side of a mulberry tree. Thinking they would have some fun teasing him, a couple of robins started to heckle him. "Hey," one of the robins said, "don't you know there aren't any mulberries in that tree this time of year?"

"That's right," the snail said, "but there will be by the time I get there." This same attitude was shared by our Founding Fathers when they formed this great nation. No matter what the opposition, the taste of freedom led them to believe that they could persevere in their search for true justice and liberty. This persistence epitomizes the American ideal of the search for what is just. It makes me proud of America to know that our forefathers were willing to stand up for the values of freedom and truth.

The American patriot, Thomas Paine envisioned the true ideal of freedom when he said, "Freedom is getting up happy and looking forward to the day ahead. Freedom is knowing that you can cope with and enjoy this day, and, very likely, tomorrow, and tomorrow." With the formation of America, the people sought the immediate reward—freedom. Under the oppressive English rule at that time, our founders set a precedent that has been followed ever since. America provides the opportunity to each of her citizens the freedom of speech, press, and myriads of other privileges. No other nation quite captures the essence of the American Democracy, which delicately balances the necessary freedoms with the amount of security needed to uphold these in the first place. It makes me proud to think those people started a system that allows me to have such freedoms. Today, we are granted this privilege, to do as we wish, within the boundaries of the law. This provides the foundation for successful incentive. This wondrous system paves the way for happiness, supporting the ideals that make Americans proud.

Along with freedom is the value of truth, which has remained the paradigm of Democracy. America has always sought an openness to achieve the greatest amount of justice. With America's people seeking truth, all of the injustices are brought out in the open to be altered for the benefit of all. Albert Schweitzer expresses the same opinion when he says, "Truth has no special time of it's own. It's hour is now—always." Truth remains the vital thread of our society. Without it, Americans would not know what is happening throughout the world. I feel secure that our system of checks and balances provides one of the greatest sources of truth. Not one branch of Government can succeed without the other, thus resulting in a tightly knit, efficient system. I feel proud to be a part of this mass unit—not a machine, but a giant heart, supplying the lifeline to billions of people. Robert Straker agrees with this idea when he notes, "No matter how seemingly unconnected with human affairs or remote from human interests a newly discovered truth may appear to be, time and genius will some day make it minister to human welfare." In seeking truth, America makes me feel proud and secure about the future and longevity of our country. I am proud of America, the miraculous system that upholds the values of freedom and truth.

Like the snail, it has taken us a while to reach the mulberries, but all in all, it was worth the climb, no matter what the opposition presented. In his words, Franklin Delano Roosevelt best summarizes this view. "There are those, I know, who will reply that the liberation of humanity, the freedom of man and mind is nothing but a dream. They are right. It is the American dream."

Mr. Speaker, as the 101st Congess comes to a close tonight, let us take a moment to consider the insightful words of Miss Svoboda.

TRIBUTE TO BILL NELSON

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MATSUI. Mr. Speaker, I rise today to pay tribute to an outstanding Member of the U.S. House of Representatives whose impending departure will be felt by all of us. As we complete our work for this session of Congress, I hope we will take a moment to pause and reflect on the outstanding contribution that Florida Congressman BILL NELSON has given this body during his 12 years of service.

BILL'S devotion to his family and his work makes me proud to be his friend. At home, BILL is a proud family man, he and his wife Grace have two children, Billy, age 14, and Nan Ellen, age 13, who have unconditionally supported him and contributed to his success. On the job, BILL has earned a reputation as a man who could be relied upon to get the job done. In searching for the definition of the word "dedication" one need not look any further than the name BILL NELSON. BILL and I started our careers in Congress at the same time and I am not the only one who can attest to the many accomplishments that he leaves as his legacy. Certainly we will always remember BILL as NASA's champion. As chairman of the Space, Science and Applications Subcommittee, BILL supported the Space Program in every possible way. He pushed through essential legislation for the continued funding and support of NASA's programs. He also went on the most spectacular factfinding mission in the history of the House of Representatives as an astronaut on a space shuttle mission in 1986.

In light of his accomplishments, BILL will be greatly missed by his colleagues and friends in Washington. His many achievements will surely serve as an inspiration to Members of Congress for many generations to come. I am confident that he will have continued success in whatever path he chooses to follow from this point.

Mr. Speaker, and colleagues, please join me in saluting this man of dedication, my friend BILL NELSON.

THE 225TH ANNIVERSARY OF MECKLENBURG COUNTY

HON. LEWIS F. PAYNE, JR.

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PAYNE of Virginia. Mr. Speaker, I wish to submit for the RECORD my remarks given at the 225th Anniversary of Mecklenburg County.

Friends and fellow Virginians of Mecklenburg County, thank you for inviting me to be at this special Boydton Day celebrating the 225th Anniversary of this historic county. I regret that I am unable to be there in person due to a special session of Congress, this is the latest date Congress has been in session since World War II. It's a real honor for me to participate in your program today. Mecklenburg County is re-

plete with American history from our nation's earliest days—and even before. There's no question that this countryside and you people have a heritage that will continue into a great future too. For the people of this county are the true grit of America, the fiber of our nation, the stars in our stars and stripes.

This very land on which you meet today was once the western frontier of our nation. Your ancestors were the men and women who built this country with their own courage and remarkable endurance. Even before we were a nation, this part of colonial Virginia was the cradle of democracy. Mecklenburg farmers, planters, and merchant men and women were firebrands of independence. From the days of Bacon's Rebellion against the British Governor to the pre-revolutionary days of Mecklenburg's Robert Mumford and his friend Patrick Henry, the earliest Mecklenburg Americans defiantly opposed the hated British Stamp Act—at the risk of their lives. Years before the Declaration of Independence, Mecklenburg sounded the great liberty bell of freedom.

Mecklenburg men fought beside General George Washington in 22 engagements with the British, they suffered the painful winter of 1777 at Valley Forge. And they were there with Washington at Yorktown to lick Cornwallis and decisively free this nation! What a proud heritage!

The history of this peaceful Southside country boasts with colorful heroes of every stripe, both men and women, young and old, black and white. In the early days, Baronet Skipwith built the lovely Prestwould Estate with local artisans and stone from local quarries—(he even made his own nails). His remarkable wife Lady Jean was a truly liberated 18th Century American woman. Gifted both as a guitarist and pianist she also collected an 850 volume library—the finest anywhere in America in the days of Thomas Jefferson, and the largest library collection by any woman of her day.

What a colorful history this country can recall. The finest horses in America were bred, raised and raced right here. World famous healing waters from your natural mineral springs were shipped around the globe.

During the devastating Civil War, 1,260 men and boys from Mecklenburg fought under the great Confederate Generals at Bull Run, Sharpsburg and Gettysburg. In fact, eight Mecklenburg units courageously joined in Pickett's ill-fated charge. These people have known war and suffering. And whenever they were called, they responded. Mecklenburg has known prosperity and fame; victory and defeat. Your ancestors have tasted bone-dry poverty during the Reconstruction and again in the Depression.

Sometimes the people of this county lived by barter; there wasn't money anywhere. But hard times here didn't make the people bitter. Nor did they run away. Instead, it made their spirit strong and proud. They always found a way to get back on their feet again—often with the help of the tobacco crop that kept a lot of farmers alive through many generations.

Mecklenburg has always been beautiful and rich in nature's resources. Your forests are full of soft wood and hard wood timber providing timbering jobs and wood for building. Your beautiful lakes have been drawing new folks from all over the nation to the clean water, open skies and lovely water fronts along your lakes and rivers.

You can be justifiably proud of your native sons and daughters. People like Mecklenburg's Earl Gregory who won the Congressional Medal of Honor in WWI for gallantry and bravery beyond the call of duty. Or Donald Bruce who lovingly and quietly had eleven libraries built in this area and stocked them with fine books for long-term economic and cultural development.

There was James Solomon Russell, born a slave, who by grit and determination, got himself educated and ordained as an Episcopal Minister. He founded scores of churches and the much respected St. Pauls College that's academically demanding to this day. Rev. Russell was a leader of his generation.

The late Dan Daniel, my predecessor in Congress, was a sharecropper's son who rose up from the dust of poverty to become one of the most beloved of your native sons, whom you elected to the Congress. You asked him to represent you for 20 years, until his untimely death in 1988. A hundred different Members of Congress came to his funeral.

Yes, you have so much to be proud of in Mecklenburg County. Here is a heritage and history of a people who meet challenges and rise up strong; a people who over many generations have learned and lived the values that make America a truly great nation; a people not afraid of hard work and sweat; a people who have good common sense and fairness; who are friendly to strangers; and a people with deep independence and justifiable pride.

There's the smell of success in this county. You are the people that draw new industries here where the air is clean and the water is pure; where local communities make new companies welcome. People here don't mind working hard for a day's pay. I think you people of Mecklenburg are still the same self-reliant people who pioneered this land when this was our western frontier. You are the same people who told the British you wouldn't stand for taxation without representation. You are the people who kindled the American Revolution.

And I believe you will be part of a new America made of self-reliant people who are friendly and ingenious. As we struggle together through these difficult economic times and the Middle East dilemmas let us together build a new world for our children and their children. We Virginians have seen plenty of challenges before now—floods and fires, Reconstruction and Depression and War. Each time we've risen stronger.

Congratulations on your 225th Anniversary. A time will come when your great-great grandchildren will look back 225 years from today. And they'll say: "Those were good people who lived here in 1990. I'm proud to say they were my forefathers and mothers."

It has been an honor for me to serve you in the US Congress. I appreciate the support you have given me. I will do my very best to represent you honorably and honestly; and Lord willing, with a bit of wisdom for the good of this country, and this State, and this District and this beautiful Mecklenburg County.

Thank you and God bless you.

TRIBUTE TO DOMINIC A. DONIO, M.D.

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. RITTER. Mr. Speaker, I rise today sadly to pay tribute to my good friend, Dr. Dominic Donio, Allentown, PA, who passed away on October 12, 1990.

Dr. Donio was not only a healer, but a kind and gentle man who was truly dedicated to his work and to the people. He was highly respected by the community and his colleagues.

Dr. Donio was director of the department of physical medicine and rehabilitation at Sacred Heart Hospital, Allentown, PA, 1951–80. In addition, he served as director of rehabilitation medicine at Cedarbrook, South Whitehall Township. While at Sacred Heart, he was past president of the executive medical board, director of the Parkinson's Disease Clinic, member of the Citation Board of Trustees, and past chairman of both the intern-resident committee and the credentials committee. In 1981, he was awarded the Alumnus of the Year award from Sacred Heart, and the former Allentown-Sacred Heart Hospital Center. In recognition of his years of service, the rehabilitation department at Sacred Heart was renamed the D.A. Donio Department of Physical Medicine and Rehabilitation in 1984.

Dr. Donio was a former consultant to the department of physical medicine and rehabilitation at St. Luke's Hospital and Muhlenberg Hospital Center. In 1986, he was appointed associate professor of physical medicine and rehabilitation at Temple University, Philadelphia.

From 1950–70, he served as medical examiner for the Boy Scouts of America, Lehigh Council.

Dr. Donio was an Army veteran of World War II and the Korean war, serving as medical officer and attaining the rank of captain.

He was past president of the Pennsylvania Academy of Physical Medicine and Rehabilitation and the American Academy of Electromyography and Electrodiagnosis, a diplomate of the American Academy of Physical Medicine and Rehabilitation, a member of the American Congress of Rehabilitation Medicine, and a fellow of the American College of Physicians.

I had the personal pleasure of knowing Dr. Donio and enjoyed his friendship, his good advice, and his leadership in our community. Allentown and the Lehigh Valley were enriched by Dr. Donio's life and work.

Mr. Speaker, please join me in extending heartfelt sympathy to his daughter, Adeline; sons, Dominic, John Michael, Anthony, Peter, and David; to his grandchildren, great-grandchildren, and great-great grandchildren; and to his sister, Helen Delterzo, New York City.

TRIBUTE TO FORREST "KIRK" KIRKPATRICK

HON. ALAN B. MOLLOHAN

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MOLLOHAN. Mr. Speaker, I rise today to share the wonderful words of an outstanding citizen of my State with you and my colleagues.

The prayer that I will submit for the RECORD below was written by Forrest "Kirk" Kirkpatrick, a man whose list of achievements cannot be summarized and whose contribution to society and his community cannot be adequately described.

Kirk, whose 85th birthday has just passed, has done more with his life than most of us could even conceive of doing. Kirk attended Bethany College, where he also served as dean and professor from 1927 to 1952. He also received his LLD. from Bethany and another LLD. from Steubenville; to further expand his education, he did graduate studies at the University of Pittsburgh, University of London, Oxford University, and, at age 70, at Cambridge University. An accomplished academician, Mr. Kirkpatrick also held visiting professorships at New York University, Columbia University, the University of Pittsburgh, University of Akron, University of Wisconsin, and Cornell University.

Kirk's life, however, has not been lived in the ivory towers of academia: he served as the general manager of personnel at RCA in New York from 1941 to 1975, was assistant to the president at the Wheeling-Pittsburgh Steel Corp. from 1952 to 1964 and was vice president of that corporation from 1964 until his retirement in 1970. At this point, Forrest Kirkpatrick assumed a visiting professorship at West Virginia University where he taught until 1980.

In addition to this academic and professional contribution to our society, Kirk served as a director on the boards of High Valley Hospital, the Wheeling Symphony, where he also held tenure as president, and Wheeling College. He served as a consultant to the U.S. Department of State (1945), the U.S. Postal Service (1953), the American Council on Education (1938–45), the American Youth Conference (1935–37), the Education Testing Service (1946–54), and the Manpower Advisory Commission of the Department of Labor (1963–69). Kirk also served on the U.S. Mission to Sweden for the Department of Labor in 1962, and was a delegate to the White House Conference on Education in 1955. He served on the board of governors of the Universities of West Virginia from 1957 to 1969, and on the West Virginia Commission on Higher Education, as well as being a member of the National Association for Manufacturers, and was chairman of the Education Commission of Iron and Steel.

I know these lists of Forrest Kirkpatrick's achievements is almost prohibitively long, but I would recommend going over them closely so that you can see what a great man Forrest Kirkpatrick is. I also want to share with you a prayer that Forrest Kirkpatrick, who is also an ordained minister, wrote on the occasion of his 85th birthday. His attitudes toward our human condition and our human frailty are well worth sharing with all of our constituents.

I would like to take this opportunity of thanking Forrest Kirkpatrick for the wonderful influence he has had on everyone whose life he touched and respectfully submit for the RECORD a copy of this "Prayer on My Eighty-Fifth Birthday."

A PRAYER ON MY EIGHTY-FIFTH BIRTHDAY

Dear God . . . Thou knowest better than I know myself that I have grown old . . . For me it is not a happy situation. Age is not something to hide or something to boast about . . . In spite of the years help me always to keep a good supply of zest and self-confidence . . . Keep me hungry for new ideas and opportunities to see and learn . . . Keep me searching for a life of quality . . .

Seal my lips to my aches and ailments. They are increasing, and the love of talking about them may become sweeter as the years go by . . . And as to all past heartaches, frustrations and disappointments, let them gradually fade away remembering that others have had even heavier burdens . . . When others talk of their problems, help me to listen with patience and sympathy . . . Let me be always generous with love and good cheer . . .

Keep me from the fatal habit of thinking I must say something on every subject and on every occasion . . . Make me reflective but not moody; positive and constructive but not pushy . . . And, dear God, remind me, from time to time, of the errors and stumblings in my own life, and therefore let me be reluctant to find fault with others . . . Let me be especially kind with the young and less able . . .

In the quiet precincts of my own home, let me reflect occasionally with some pride and satisfaction on accomplishments of my own career—in arenas large and small, and with competition and adversaries formidable and tough . . . But keep me humble even in remembering because in each instance my performance could have been better . . .

Let me never cease to be grateful to those who have been helpful and supportive through the years—friends and loved ones, teachers, neighbors and colleagues, and so many who have touched my life in one way or in many ways, enriching it and giving added warmth and strength . . . Let me love and enjoy little children—even when they are noisy, unkempt, and naughty—for they, in their own fashion, add special brightness and hope . . . to the whole world . . . and especially to those of us without family . . .

Help me, dear God, to give encouragement to those who are on the threshold of increased responsibilities—and as best I can, to set an example of dependability and high standards . . . Help me to forget and forgive any evil and unkind words and deeds that may come my way . . . In personal deportment, let me shun the tawdry and unworthy . . . From the terrible sins of envy, bitterness or pretense, deliver me!

Forgive me for things done from time to time that have not been pleasing in Thy sight, and for things not done that should have been done . . . Help me even now to create—albeit in a very modest way—a better and kinder neighborhood and world . . .

As the years move along, let me fear the increasing shadows and the pain of loneliness . . . They are part of the last testing ground . . .

Help me to sustain and enlarge a durable faith as I quietly walk toward the sunset . . . I know that in the grandeur and goodness of God there is everlasting assurance!

IN TRIBUTE TO THE RETIRING CONGRESSMAN GEORGE CROCKETT

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. COLLINS. Mr. Speaker, it always saddens me when a colleague who has made substantial progressive contributions over the years chooses to retire. In the case of GEORGE CROCKETT, I am especially remorseful because, in addition to being a colleague of mine in the House, GEORGE has been a good friend, a beacon of wisdom, and a source of solace to me over the many years that we have served together.

GEORGE and I have enjoyed many good times together in our years shared as Representatives. But, perhaps even more notably, we have endured many disappointments together during the Reagan era as we commiserated over a succession of legislative tragedies that hurt our people back home and deeply touched our souls. But through it all, steady GEORGE would always remind me, "Don't worry, CARDISS. Our day will come."

You see, GEORGE and I came to Congress, although at different times, for essentially the same reasons. GEORGE genuinely cares about the folks back home, not only in a professional sense but on an intimate, personal level as well. GEORGE has seen poverty. He has seen injustice. And GEORGE has remained rock solid in his conviction that these problems must be cured. Even when his views were unpopular, GEORGE stuck to his principles. And I have the greatest admiration for his determination to stand as an oak in the hurricane when the alternative would be detrimental to the people who are counting on him the most.

GEORGE, you have seen turmoil and controversy, conflict and pressure. In the midst of it all, you have provided a guiding light to many through your years of knowledge and experience. Now, I congratulate you. You have earned relaxation after years of contribution. It has been a treasured pleasure to serve with you and you will be missed here in the House of Representatives.

May happiness, bounty, and calm await you.

TRIBUTE TO DEBORAH SZEKELY

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FASCELL. Mr. Speaker, I rise to pay tribute to a distinguished citizen, Deborah Szekely, who last month ended 6 years of public service to the United States as President of the Inter-American Foundation. The Foundation is a small but important U.S. Agency which provides development assistance directly to indigenous self-help organizations in Latin America and the Caribbean.

Deborah Szekely took charge of the Inter-American Foundation at a difficult moment in history. Some doubted that she was the right choice to provide leadership at a critical moment. After 6 years, it is clear to all who have worked with her that she was precisely the right choice. Her energy, enthusiasm, imagination, courage, and tenacity have contributed significantly to the Foundation's record of achievement. She kept the Foundation on the firm and steady course Congress and its founding board of directors and president had set for it. She safely guided the Foundation through a period of significant challenges to its independence and has left for her successors a strong and viable institution.

During her 6-year tenure as the Foundation's president, Deborah Szekely increased bipartisan support for the Foundation and displayed a verve for innovation. As she is fond of saying, she took lemons handed to her and made them into lemonade. Although not formally trained as a development specialist, Deborah has spent a lifetime living and working in a developing country—Mexico—and strongly identified with the goals and aspirations of Hispanic people. In this sense, she earned her development education the old fashioned way by working alongside the people which our development programs seek to assist. Moreover, precisely because Deborah was not a Washington insider, she was able to approach the Foundation's mission with a fresh perspective. She did not hesitate to question the prevailing wisdom on how best to assist the poor in developing countries. Her efforts resulted in real gains for the Foundation, increasing its productivity, streamlining operations, and developing more effective ways in which to assist the poor to improve their lives and their communities.

In sum, Deborah Szekely has left the Inter-American Foundation a far stronger and more vital institution than that which she found. For this achievement, she will always have my respect and gratitude.

I also wish to congratulate Deborah on two new challenges which she is about to undertake. At the invitation of the Department of State and under the auspices of the Organization of American States, Deborah has been appointed the principal U.S. delegate to the Inter-American Commission on Women. I can think of no one better suited than Deborah Szekely to represent our country on issues of vital importance to women throughout this hemisphere.

As if this new challenge is not sufficiently demanding, Deborah has taken it upon herself to create a new Foundation which she hopes will replicate in this country what the Inter-American Foundation is doing in Latin America and the Caribbean. Specifically, the Eureka Foundation will be dedicated to supporting, training, and networking key caregivers at inner-city agencies serving the needs of young children and their families. In this way, Deborah intends to repay the American people for the special opportunity provided to her when she became president of the Inter-American Foundation.

Mr. President, I salute Deborah Szekely for her splendid contributions to the Inter-American Foundation, her lifelong commitment to voluntarism, and dedication to making lemons into lemonade. She will be missed but not soon forgotten.

H.R. 1436, PLATORO RESERVOIR BILL

HON. BEN NIGHTHORSE CAMPBELL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. CAMPBELL of Colorado. Mr. Speaker, I am happy that an agreement has finally been reached to allow for the operation of the Platoro Reservoir in southern Colorado to be transferred to local water users.

The members of the Conejos Water Conservation District believe that by assuming the risk and responsibility for making this irrigation project work, they can implement an aggressive local water management program to take advantage of the project's irrigation benefits.

Located high in the mountains, the project was built by the Bureau of Reclamation in 1951 as a part of the San Luis Valley irrigation project. Because of the administration of the interstate Rio Grande compact, the reservoir has never been used.

For nearly 40 years the water in Platoro Reservoir has been wasted because water simply fills the reservoir, then is released so that it does not spill over the top. This is a crime because the Conejos Valley is one of the poorest in the country with unemployment averaging around 15 percent. This bill will allow the valley's farmers to use the water to grow crops and allow its residents to use the fish and wildlife enhancement provisions to attract visitors to the region.

The Platoro Reservoir was designed in the 1930's and 1940's—before NEPA or the Fish and Wildlife Coordination Act. No instream flows were provided below the dam. This bill resolves that problem by requiring the Conejos District to provide instream flows by releasing water that would have been used for irrigation.

I would like to thank all the members of the Colorado and New Mexico House delegations who cosponsored this legislation and who have shown such strong support for it. The members of the Colorado General Assembly also deserve thanks because they overwhelmingly approved a loan to the district so this transfer can go forward.

I would also like to thank the members of the Conejos Water Conservation District, Bob Robbins in particular, because without their foresight this bill would not have been drafted in the first place. Instead of simply seeking to renegotiate their repayment contract with the Bureau, they decided to try and make this project work.

I send a special thanks to Colorado conservationists and to Darrell Knuffke of the Colorado Wilderness Society. They not only helped to ensure that the minimum stream flows contained in the bill would be adequate, but have built a foundation based on cooperation that I hope will last.

We have demonstrated that water users can be sensitive to the needs of fish and wildlife. We have also helped begin to lay the groundwork for the eventual wild and scenic designation of the Conejos River because the instream flows contained in the bill exceed the minimum amount necessary to qualify as a wild and scenic river. I look forward to working with both water users and conservationists to ensure that this long-term goal is achieved.

This is a truly important achievement and I hope water users and conservationists everywhere are watching.

I urge my colleagues to support this bill and I yield back the balance of my time.

TRIBUTE TO HON. BILL NELSON

HON. FRANK ANNUNZIO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ANNUNZIO. Mr. Speaker, I rise to pay tribute to Congressman BILL NELSON, who is leaving the Congress after 12 years of dedicated service.

I have had the pleasure of working with BILL, since he serves as a member of my Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Banking, Finance and Urban Affairs Committee, and I have come to know and respect BILL for his knowledge and his leadership abilities. His tireless efforts on behalf of his constituents in the 11th Congressional District of Florida, and on behalf of the citizens of the United States, are admired and most worthy of recognition.

Elected to Congress in 1978, BILL NELSON has served with diligence and distinction as a Member of the House of Representatives. As chairman of the Subcommittee on Space Science and Applications of the House Science, Space, and Technology Committee, BILL became the second Member of Congress to go into space, while serving in office, as part of a space shuttle crew. He flew on the space shuttle *Columbia,* which took off on January 12, 1986, from Cape Canaveral, located in his own congressional district.

BILL is a fine legislator, a dedicated and devoted American, and a Congressman of great ability and skill, who has compiled a commendable record of achievement during the 12 years he has served in the House of Representatives. He will truly be missed by all of us in the Congress who have had the opportunity to know him and to work with him.

I extend to BILL NELSON my best wishes for continued success in all of his future endeavors.

THE ALASKA PENINSULA WILDERNESS DESIGNATION ACT OF 1990

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. YOUNG of Alaska. Mr. Speaker, today I am introducing a bill entitled the Alaska Peninsula Wilderness Designation Act of 1990. This bill provides for the designation of approxi-

mately 2.9 million acres of wilderness in the Aniakchak National Monument and Preserve, the Alaska Peninsula National Wildlife Refuge, and the Becharof National Wildlife Refuge. In addition, the legislation also authorizes the acquisition of approximately 275,000 acres of selection rights of Koniag, Inc., a Native regional corporation with interests in lands in these three conservation units. With this acquisition these units will in essence be made whole.

It may be hard to believe that I would support, much less sponsor, a bill that provides for wilderness. My opposition to wilderness designation has always been to the broad, sweeping designations advocated by some over the objections of local residents to preclude any opportunity for development. That is not the case here. The proposed designations do not conflict with the transportation and access corridors identified by the Bristol Bay plan. The designations have local support. The designations made by this legislation have been reviewed by the administration. They will not prevent the continued use of these lands by the sportsman and the subsistence hunter.

Mr. Speaker, I will cautiously move forward with this legislation. If this legislation becomes the vehicle for amendments which are contested, it will not pass, now or in the next Congress.

TRIBUTE TO JIM COURTER

HON. MATTHEW J. RINALDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. RINALDO. Mr. Speaker, I rise to honor my good friend, JIM COURTER, for his 12 years of distinguished service in this Chamber.

As a top member of the Armed Services Committee, JIM has attained a position of special expertise on national security issues. He worked hard to implement President Reagan's proposals for revitalizing our national defense, which had declined after the Vietnam war, and his efforts have been recognized by a wide range of national security and veterans groups.

JIM has also actively and consistently worked at the enormous task of cutting unnecessary Federal spending. He came here with a strong ideological commitment to the elimination of waste in the Federal Government, and he has supported virtually every effort to end unnecessary programs. We will certainly miss him as we continue to grapple with the spiraling budget deficit.

I wish him the best of everything as he returns home to New Jersey, and I am glad to have had the chance to work with him for the past several years. He was an asset to this body and leaves with the satisfaction of knowing that his initiatives and commitment on the Armed service committee will long be remembered and will serve as a legacy to his effectiveness as a Member of this body.

WAR LOOMS, PEACE BECKONS

HON. JIM LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. LEACH of Iowa. Mr. Speaker, as the Congress adjourns early this morning, this Member rises to comment about several international circumstances, particularly the situation in the Persian Gulf where the prospect of war looms as a far better than 50–50 prospect before this Congress reconvenes in the wake of the November elections.

As the world community has come to understand, there is extraordinary support both within the Congress and the country at large for the adroit diplomacy President Bush has brought to bear on the gulf crisis.

What we have witnessed in the region is not only a ruthless assault on the political independence of a small state, but a rapacious grab for oil wealth that threatens the economic independence of the rest of the world. Recognizing that the principle of non-aggression has been wantonly violated and that vital interests are at stake, the Bush administration has mustered a principled as well as potentially muscular response to the brutal Iraqi aggression.

In his speech to the Congress last month President Bush precisely and persuasively articulated the by now familiar four original goals animating American policy in the Arabian Peninsula. His enunciation of "a new world order" as a new and explicit fifth objective of the United States demands particular attention.

In the profoundest geostrategic as well as philosophical sense, it is no mere hyperbole to exclaim that ours is a world transformed. Over the last 18 months the United States and its associated friends and allies have witnessed, with considerable amazement, the effectual disintegration of their most formidable potential adversary: the Soviet Union and the Warsaw Pact.

Central Europe has cast off its Stalinist chains. Germany stands on the threshold of reunification. That archaic model of inefficiency, the command economy, is being steadily and in some cases decisively abandoned. The "Wealth of Nations," not "Das Kapital," is now the text of choice for the study of political economy in Budapest, Prague, Warsaw, and increasingly, even Moscow. And in the exhilarating experience of nation-building, the peoples of Eastern and central Europe are—to paraphrase Thomas Jefferson—happily rediscovering "the blessings and security of self-government" which Americans take as their birthright.

Moreover, as George Kennan so remarkably prophesied some four decades ago, the latent economic pressures under which the Kremlin has strained and groaned since 1917 has led at last not only to the perceptible mellowing of Soviet foreign policy, but the apparent Balkanization of the Soviet state and hence the diminution of its power.

With Leninism now a dying creed, and Moscow's imperialist spirit patently flagging, the causes of Soviet-American rivalry have of late progressively diminished. The Soviet-American relationship has developed from the modest stage of détente, to more hopeful rapprochement, and is now approaching what the classical diplomatists would have called an entente: a mutual recognition of a similarity of views and interests, with the understanding that any commonality of interest is limited to discrete issues rather than anything approaching formal alliance.

As a former internationalist Republican Secretary of State once observed, "foreign policies are not built upon abstractions. They are the result of practical conceptions of the national interest arising from some immediate exigency or standing out vividly in historical perspective." In the present circumstance, both the requirements of the moment and traditional principles of American statecraft together demonstrate the enlightened American self-interest in strengthening the sinews of international law and its institutions.

Based upon a shared coincidence of interest among many states, and a steadfast determination to safeguard shared interests and values, the perils of armed confrontation are yielding sublime opportunity. Dramatically symbolized by extraordinary Soviet-American cooperation, a new partnership of nations appears on the threshold of being forged by Iraq's violent assault on the international system. This is the uplifting and hopeful promise evoked by President Bush's goal of fostering a "new world order:" one premised upon broad allegiance to and protection of norms of international law, with responses crafted in association with the community of nations.

Unlike Grenada and Panama, at issue in the Middle East today is the development of an international response to a problem with global implications. Throughout the world, governments and peoples are crediting President Bush with carving a strategic response differently than that which they believed would have characterized the last administration. I would simply emphasize, that in the 1980's Washington too often underestimated the deep-seated American instinct for internationalism, and the widespread support for rather than antagonism to credible collective approaches to international security.

While there is an ambivalence, if not tension, in the American psyche between isolationism and internationalism, between go-it-alone-ism and team playing, my sense is that given the traumas of post-World War II interventions, the American people are reluctant to assume the lone role of policeman for the world. On the other hand, they accept as a credible obligation that the United States should play a significant role with others as international highway patrolmen. Like the crafting of Franklin Roosevelt's New Deal, President Bush's articulation of a "new world order" theme has defined his Presidency in crisis and in action rather than, as is too often done, simply as the sloganeering of candidates.

Here it should be underscored that internationalism and the use of force are not irreconcilable. Neither the Covenant of the League of Nations nor the Charter of the United Nations were premised on pacifist doctrine. While both the failed League and the U.N. systems implicitly lean to collective security, each ac-

knowledged the inherent right of aggrieved nations to engage in individual as well as collective self-defense.

In some circumstances, an unduly cramped interpretation of the legitimate right of individual or collective self-defense can be as damaging to world order as the contemptuous treatment of international law itself. If law-abiding states are to properly defend themselves and the international system against aggression, then statesmen cannot construe the law—as Abraham Lincoln once reflected in a time of grave domestic trial—"by any hypercritical rules." Like the American Constitution, the United Nations Charter is not a suicide pact.

International politics is, as the late protestant theologian Rheinhold Niebuhr wrote, an arena "where conscience and power meet, where the ethical and coercive factors of human life will interpenetrate and work out their tentative and uneasy compromises." It is the hard duty of the statesman to abjure from invoking moral absolutes as the basis for policy when, for example, the use of force today may save lives and thereby prevent a greater catastrophe from ensuing.

To be sure, military conflict with Iraq is eminently avoidable. But based on the current obduracy and intransigence in Baghdad, as well as the firm resolve of the international community that Iraq disgorge Kuwait, conflict looks more likely than otherwise.

In the event diplomacy fails, and in an effort to establish the United Nations as the accepted bulwark of a revitalized international political order, the optimal course of action would be to fly the American flag alongside the blue flag of the United Nations and for Soviet forces to serve alongside American.

From an historical as well as principled perspective, there is no need to be apologetic about raising the blue flag. The United Nations system, after all, was in no small measure an American conception, the self-styled "Great Design" of two wartime Presidents, Wilson and Roosevelt. As such, its utilization is profoundly consistent with the best traditions of American statecraft.

Moreover, the Charter of the United Nations was established for just this type of circumstance. Common sense tells us that credible collective security is the preferred route today just as it was 50 years ago in dealing with Saddam Hussein's political precursor, Adolf Hitler. Hopefully once the storm clouds have passed, and unlike the dismal fate of the League of Nations in the 1930's, the international community will be able to conclude that the United Nations has finally functioned as its framers intended.

Should military action become necessary, the United States is confronted with the option of employing force as the dominant power in concert with lesser powers, or as a co-leader with the Soviet Union and the other permanent members of the Security Council.

There are obvious military disadvantages to a collectivist United Nations as opposed to an almost exclusively American command, but assuming the concurrence of the Perm Five, one factor alone makes the risks of not including the Soviets prohibitive.

Assuming that the decision is made to expel current Iraqi forces from Kuwait, substantial forces will have to cross into Kuwait, at which point Saddam Hussein will be forced to determine whether to withdraw or to reinforce his side. My guess is that despite his dictator's pride, he would be given little choice but to order retreat in the face of demonstrated Soviet-American resolve.

On the other hand, in what the Arab world might perceive as a confrontation almost exclusively with Israel's principal ally, a power extended almost 10,000 miles from its home territory, his decision might be more belligerent and hence costly.

But one of the most difficult decisions in this context may be of a political and not strategic hue. This ancillary but exigent issue relates to public opinion, foreign and domestic, and what political scientists call policy legitimacy. No one doubts the compelling moral and economic case for denying Iraq the fruits of aggression. But if military force needs be used, what is the politically preferred means?

On the one hand, favorable action by the Security Council under article 42 to authorize military action would provide the United States the maximum degree of international legal, political, and moral support for forcibly evicting Saddam Hussein from Kuwait. On the other hand, depending upon the nuances of intra-Security Council politics, the implicit or explicit failure of Washington to receive such sanction might complicate the legitimation in world public opinion of any United States-led effort to drive Iraq out of Kuwait. In a worst-case scenario, an implicit or explicit Security Council "disapproval" could substantially impair the President's freedom of action. Thus from Washington's perspective, the decision whether to seek an article 42 sanction is attended with certain elements of political risk.

If force must be used, my own strong preference is for collective action under a Security Council mandate. But if an article 42 enforcement action is not forthcoming, it should be clear beyond all doubt that articles 51, 52, and 106 of the Charter provide sufficient international legal sanction for a forcible reaction against Iraqi aggression. After all, a sovereign country has been brutally invaded and brusquely annexed. But whichever the legal justification, let it be understood that if the conflict is not resolved in a manner which at least restores the status quo ante, then our current international structure and—in particular the United Nations—will be seriously deranged and grievously jeopardized.

Thus at issue in the Kuwaiti crisis is not only an outcome where individual nation-states may be winners or losers, but one in which the international system has an enormous stake. In short, the world community has a great deal at stake in the success of American diplomacy.

Crucially, the world community has to look more to the aftermath of a confrontation with Hussein than to the confrontation itself. The result of an American-Iraqi showdown is foreordained, but the cost is not. Nor are future relations of the Arab world with the West if it appears that loss of iife, particularly that of noncombatants, is excessive.

It is key that Kuwait be liberated, that Hussein be embarrassed, but that the Arab world not be humiliated. In this regard, the greater the initial collective response, the greater the chance of minimizing future terrorism and bringing long-term peace and stability to the gulf.

Yet at the present juncture U.S. options in the current circumstance do not, in the current paradigms of international politics and geostrategic reasoning, advance solutions to long-simmering and potentially explosive political and economic problems that hallmark the region. Despite expedient new political alignments, Iraq's Saddam Hussein is not the only potential aggressor in the Mideast.

Although Saddam has unsuccessfully attempted to color his plunder of Kuwait as the act of an Arab Robin Hood, an act of international brigandage cannot be disguised. Yet America must recognize there is a genuine problem between have and have nots throughout the Middle East. No American policy should identify exclusively with emirs and sheiks without recognizing that long-term stability demands concern for the ordinary citizens within countries as refugees without. There are a lot of citizens without homelands in the Middle East today.

It is fashionable upon college campuses these days for young men and women to sport T-shirts decorated with pithy philosophical maxims. One I recently saw on a jogger read: "the future isn't what it used to be." This is particularly true of events in the Middle East where the landscape of geopolitics has been changed in the last three months.

There are many geostrategic events in the Middle East that have nothing to do with Israel, and yet paradoxically there are few that don't have an Israeli factor. For instance, today in Kuwait aggression impelled in part by a desire to commit a bank heist as well as petroleum ripoff is being recklessly colored by Saddam and his fellow Iraqi perpetrators as a partial holy war against Zionism.

From the Israeli perspective, the confidence level that Palestinians can be dealt with realistically has been dramatically undercut by the enthusiastic embrace by many of Saddam as a potential liberator.

From a broader regional perspective, Yasir Arafat appears to have committed a tortuous strategic error. Strategically, he erred by backing the wrong horse. Philosophically, by agreeing that Kuwait should become part of Iraq, he has de facto accepted the notion that borders are not inviolate, which precisely jeopardizes his own philosophical stance vis-a-vis Palestine and Security Council Resolution 242—which calls, among other things, for the establishment of "secure and recognized boundaries."

In effect, Arafat has dealt himself out of any serious negotiations. On the other hand, the most important issue at stake for the United States and the West in confronting Iraq is not just the outcome of this month's standoff, but the aftereffects of a potential military conflagration. It is imperative in this regard that the United States make it abundantly clear that there is no linkage between Iraq's aggression and Palestinian aspirations.

Astonishingly, in less than ten weeks, not only has Arafat undercut his own position but King Hussein has undercut his as well. The king's forlorn effort to undercut the legitimacy of Saudi control of the holy places of Mecca

and Medina through a Hashemite alliance of expediency with Iraq has been met with incredulity. At this stage, a Jordanian imperium looks less likely than a growth of Palestinian influence and possible control of Amman.

Another vital factor in the swiftly changing Middle Eastern scene is a simple function of demographics. The hundreds of thousands of Soviet emigres pouring into Israel help stabilize and securitize its future just as, by contrast, the Palestinian diaspora destabilize so many other countries in the Middle East. These phenomena will have to be factored into the new Middle Eastern strategic framework.

In this context, President Bush's remarkable foreign policy record deserves review. The extraordinary marshalling of Security Council judgments in the Iraqi crisis would appear to vindicate the administration's approach to dealing forthrightly with the Soviet leadership, and directly with the Chinese. The President has elevated foreign policy in the United States by personalizing it, by being his own desk officer for China, his own Harry Hopkins with the Soviet Union.

In terms of our relations with Beijing, one crucial aspect of the Mideast crisis that has received scant attention by the Congress is the cooperation or at least nonobstructionism of the PRC in the Security Council at this critical time.

In both the instance of Iraq and the emerging U.N.-sponsored settlement in Cambodia, the government in Beijing has, perhaps reluctantly and with substantial reservations, nevertheless progressively determined to side with the institutions of international law and order established and propelled by the framers of the United Nations Charter.

These and other positive signs of enhanced Chinese cooperation with the United States and the international community in efforts to advance regional stability and global order can only be welcomed by the world at large. The United States not only has an important interest in a humanely govened China which pursues policies of economic and political reform at home but a China which also plays a responsible role in world affairs. In this regard, it is to be hoped that in the aftermath of the gulf crisis China will join with the United States and other concerned countries in a sustained international effort to curb the proliferation of chemical, biological, and nuclear weapons and ballistic missiles in the Middle East and elsewhere.

In the view of this Member, the challenge for American statecraft is to continue, within the limits of our power and influence, to nurture Chinese policies which contribute to the peace and stability of the Asia-Pacific region and which comport with the norms of the international community.

If there is a lesson for Congress in the challenges posed by Sino-American relations, it would appear to be that rhetorical posturing which would bolt the door on our historical open door policy with China may be solace for the soul but risky to the national interest.

When emergencies arise, as they must, or when long-simmering disputes reach the point where credible resolution appears possible, leaders must be able to communicate with each other on a basis of mutual respect. It would simply have been disastrous if the United States had followed the siren of congressional perturbations and turned off serious communication with China a year ago.

In terms of Soviet-American cooperation, a new post-cold-war cooperation has been manifest in the Iraqi crisis, as well as the Cambodian civil war, and in tentatively seeking a political solution to the terrible conflict in Afghanistan.

A new more cooperative relationship with the Soviet Union is perhaps more important in the Middle East than any part of the world, other perhaps than Eastern Europe, because of long-term Soviet military ties with various regimes and the lingering extremism of Marxist-Leninist philosophy. Syria, for instance, is a current ally against Iraq, but is responsible for more terrorism than perhaps any state in the region in the last decade. Iraq, for its part not only represents a current threat, but whatever the outcome of the current crisis, a rearmed or even more heavily armed revanchist Iraq could pose a formidable threat to regional peace. In addition, other actors in the region have from time to time shown aggressive proclivities. Thus the problem is both long term and regional as well as short term and country specific. In this context, continued Soviet cooperation is crucial.

One prospective element of new international cooperation in the region is the imperative of containing Saddam Hussein's biochemical weapons and nascent nuclear weapons capacity. Holding aside for the moment the military intervention option, surely one near- to long-term possibility would be for the Security Council to mandate the implementation of strict and verifiable measures to bar Iraq—and possibly other nation-states in the region—from obtaining or stockpiling weapons of mass destruction. In addition, a conventional weapons drawdown, focusing principally but not exclusively on states constituting potential threats to the region, might at some point also be contemplated. But in any endeavor such as these the active participation of the Soviet Union, as well as the other members of the Permanent Five—all of whom have been major conventional arms exporters—would be vital.

At a minimum, it cannot be in the interest of any of the great powers to see Iraq or similarly constituted militarist regimes attain a bona fide nuclear weapons capacity. Therefore, a necessary complement to any concerted Soviet-American or international nonproliferation strategy for the region must be a commitment to strengthening the Nuclear Non-Proliferation Treaty. It is not enough for the United States to simply rail at others in the developing world for the proliferation of chemical and nuclear weapons. Here I would note that a potential political spur toward nonproliferation in the Third World would be the commitment of the developed world to the negotiation of a verifiable and comprehensive nuclear test ban [CTB].

Until this decade, the policy of the United States for six administrations commencing with Dwight Eisenhower had been that we would support a CTB when and if the Soviet Union accepted the principle of onsite inspection. As this Congress knows, United States and Soviet negotiators have completed work in Geneva on verification protocols for the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty. According to the administration itself, these protocols provide for unprecedented onsite and in-country verification measures designed to ensure verification of compliance with the TTBT and the PNET.

In other words, in principle and in fact the Soviets have indicated that from their perspective onsite inspections are no longer an obstacle to the negotiation of a CTB. This philosophical departure on the onsite inspection issue stands in many ways as one of the most important arms control breakthroughs for it makes a whole spectrum of arms control initiatives more realistic, not the least of which is a comprehensive test ban.

In the context of the proliferation problem most poignantly illustrated in the Iraqi crisis, a CTB is regarded by most nonnuclear countries as the single most important step nuclear powers can take toward effective and verifiable arms control. Obviously, official rhetoric is not always indicative of actual policies in international diplomacy. Nevertheless, if it should prove that the rhetoric of developing countries mirrors actual policy views, then undue skepticism or opposition to a test ban by the United States would have the unfortunate result of undercutting the continued viability of the Nuclear Non-Proliferation Treaty, as well as other vital elements of America's non-proliferation regime. In a geographic sense such undercutting would extend not just to the Middle East, but to the almost equally turbulent Indian subcontinent. There negotiation of a CTB holds some, if not the only, prospect of gaining Pakistani and Indian support for the Nuclear Non-Proliferation Treaty.

From an arms control perspective, the decade of the 1990's may well be remembered as a period of intense concern with nonproliferation. Arresting the spread of this plague of weapons of mass detruction and the potential for extraordinary havoc and inhumanity it represents, will undoubtedly achieve signal importance in American national security policy. Yet the hard and inescapable truth is that our nonproliferation regime today looks increasingly less credible and less effective than the national interest plainly requires. With the 1995 conference on the extension of the NPT only a few years away, progress on extending and strengthening the nonproliferation regime will depend more than ever on effective leadership from Moscow and Washington.

America has traditionally been in the vanguard in virtually all internationalist endeavors. Yet one of the more astonishing developments of international politics in recent years has been the unfolding of a remarkably progressive Soviet view toward international law and its institutions, particularly the United Nations. From the mid-1980's on, one would be hard pressed to conclude that Washington was any more internationalist than that suggested by the rhetoric coming out of the Kremlin.

In contrast to the siege mentality and class-based political analysis that characterized historic Soviet attitudes toward international institutions, Moscow's "new thinking" now embraces the United Nations as "a place for the

mutual search for a balance of differing, contradictory, yet real, interests of the contemporary community of states and nations." In a healthy competitive departure to historical Soviet politics, Gorbachev has foursquarely endorsed "the primacy of international law in politics;" advocated an expansion of the cooperation of states in uprooting international terrorism; and even proposed the creation, under U.N. aegis, of "a tribunal to investigate acts of international terrorism."

The last Soviet proposal is of some personal interest to this Member, because it has long been my hope that the administration would give serious consideration to advancing within the U.N. system the creation of an International Criminal Court to hold accountable individuals who violate international conventions. Such a court would be a complement to the World Court, which exclusively adjudicates disputes between states.

I raise the notion of creating an International Criminal Court at this time because terrorist crimes, usually directed against individuals, small states or relatively small groups of people, challenge nonetheless the rule of law. The two most appropriate potential defendants to proceedings in such a court should be Pol Pot for his propagation of genocide against a people, and Saddam Hussein for his brazen violation of civilized norms of behavior in his invasion of Kuwait, in his use of human shields, as well as poison gas, which has been outlawed by both the Geneva Convention of 1925 and the Biological Weapons Convention of 1972.

Yet despite the unfolding potentialities for cooperation between Moscow and Washington on a host of claimant international issues, it must be understood that in dealing with Gorbachev the United States is dealing with a president with an army but without a country. As we have all come to understand, so poignantly symbolized by the aspirations for Baltic independence and the "500 days" plan of boisterous Boris Yeltsin, the Soviet Union appears to be collapsing from within as well as without.

Well might Winston Churchill have remarked about travails of Mr. Gorbachev's Soviet Russia, as he did about the sudden demise of Imperial Germany in "The World Crisis":

"When the great organizations of this world are strained beyond breaking point, their structure often collapses at all points simultaneously. There is nothing on which policy, however wise, can build; no foothold can be found for virtue or valor, no authority or impetus for a rescuing genius."

The only opportunity Gorbachev apparently has to exercise discretion and appear decisive is in foreign policy. He is indecisive on the home front, precisely because there is no solid governmental or political infrastructure upon which he can effectually impose the power of decision. Hence, Gorbachev appears to have concluded that his only legitimizing potential leadership is to become an internationalist instead of adventurist.

Great change in world affairs may involve great leaders but generally speaking change springs from the bottom of society up, not from the top down. The history of America, for instance, is that revolutionary change stems from individual rights and springs from individual initiative. The wondrous change taking place in the Soviet Union is reflected in the policies espoused by Mr. Gorbachev, but it is clear that Soviet society is moving national leadership, not the reverse. For change to be institutionalized it must reflect the will of the people which is often discordant with government and competitive within itself.

In this regard, Congress ought to be reminded that change in Russia—while symbolized by Gorbachev—is not identical with Gorbachev's status or fate. Many movements exist expressing serious concern for the future of Soviet society, particularly the clamoring for greater autonomy and independence of the Republics and the demands for greater democratic and social accountability by the people.

The quest for national identity is not a Russia-specific phenomenon; it is occurring as well among the Kremlin's former Communist client states in central Europe. America cannot forget that the world wars of the first half of this century have a central European origin. We should be very careful to recognize as we become involved in the Persian Gulf that we turn our backs on events in central Europe at substantial peril.

War looms, but peace beckons and congressional priority must be reordered to reflect opportunities as well as dangers.

TRIBUTE TO BILL NELSON

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. BENNETT. Mr. Speaker, I have taken this time to express on behalf of all of the Florida delegation in Congress, and I believe on behalf of all Members of Congress, our regret that BILL NELSON will not be with us in January as he returns to private law practice in Florida. We will certainly all greatly miss him.

He had a very distinguished career in the State legislature before he came to Congress in the 96th Congress, and he has had an extremely constructive career here in Congress. He was chosen one of the Outstanding Young Men in America in 1972 and he has brought a spirit of youth and vitality to Congress which all of us treasure.

Some people are capable of positive thinking and constructive ideas in a way which brings leadership and gets results and BILL NELSON is that sort of a person. In Washington, we will all remember him as going from the U.S. House of Representatives to outer space in connection with his work on the Committee on Science, Space, and Technology. While here in Congress we have a special love and affection for him because he constantly inspired us to do our best and set a good example in himself in our doing that. We will miss him, his lovely wife and family but we know they will have a rich and productive life as they return to Florida early in 1991. My wife Jean and I express to him and Grace our steadfast love.

Mr. Speaker, the fine staff of Congressman NELSON gave me its tribute to their boss, and I included this along with some remarks I've received from my esteemed colleague from Florida, SAM GIBBONS.

OCTOBER 26, 1990.

TO BILL NELSON:

We are marking today the end of a distinguished twelve-year career in the House of Representatives. You are a caring individual who has served your constituency with dedication. You have always treated us with respect and provided us with a positive experience while serving as a member of Congress.

You have experienced many events during the course of your Congressional career; some wonderful, some tragic. We have been fortunate to have shared your excitement and achievements when you flew aboard the space shuttle Columbia. Throughout the difficult times, you were a pillar of strength and source of support for those of us who experienced the Challenger tragedy with you.

We commend you for your desire to continue in public service. Although we may not be by your side when you achieve your future goals, the bonds of friendship we share with you will always keep us close.

Thank you for giving us this opportunity to work with you.

With love and affection,

Your staff,

Dana Borresen, Dulcie Burns, David Dickerson, Dottie Graves, Guy Guzzone, Laure Lamy, Tracy Lewis, Kathleen Marvaso, Ted Moohead, Doris Phillips, Wilma Robertson, Marilyn Rosenthal, Jim Southerland, and Ruthan Wirman.

TRIBUTE TO HON. BILL NELSON

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mrs. MORELLA. Mr. Speaker, I would like to offer my best wishes to BILL NELSON. In my two terms in Congress, I am pleased to have had the opportunity to work with BILL as a member of the Science, Space, and Technology Committee. During that time, he has ably chaired the Subcommittee on Space, Science, and Applications. Through the assistance of BILL's chairmanship, NASA has been guided through some difficult times when the space program was in disarray.

Although his work here in Congress has been notable, BILL may, however, best be remembered for his mission in January 1986 on the space shuttle Columbia. BILL was the second Member of Congress to fly on the shuttle.

At the end of this 101st Congress, BILL NELSON will be leaving Washington after serving 12 distinguished years. I wish him well.

INTRODUCTION OF THE CENTRAL COAST NATIONAL MARINE SANCTUARY ACT

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PANETTA. Mr. Speaker, I am very pleased to rise today to introduce legislation

to designate the Central Coast National Marine Sanctuary along the central coast of California.

This coastal area, which runs mostly along San Luis Obispo County, represents one of the most unique marine ecosystems along the Nation's west coast and has a rich variety of sensitive coastal habitats including significant wetlands and estuaries as well as rocky intertidal zones and subtidal rocky reef communities.

The area is home to many threatened and endangered species including the California sea otter, seven endangered species of whale, and four species of sea turtles, and is also a major feeding and resting area for migratory birds protected under international treaties.

One of the more significant resources of the areas are the Nipomo Dunes which have been designated as a National Natural Landmark. The Nipomo Dunes contain the largest coastal dunes in California and have immeasurable ecological and scenic value, high educational, scientific and recreational importance, and represents one of the few coastal areas in the State still in an undisturbed condition.

The central coast supports a thriving commercial fishing industry and other industries dependent upon the health of the coastal waters, such as its tourist industry which attracts over 1.5 million visitors a year.

In addition to having numerous sensitive marine resources worthy of preservation and research, the central coast also has archaeological significance as it was once the home of several Chumash Indian village sites for at least 9,000 years. This is the densest area of 9,000-year-old sites known along the western contiguous States to the Canadian border. Archaeologists have discovered literally hundreds of Chumash sites in these coastal waters and they are the subject of ongoing study.

Despite the importance of this coastal area, its well-being is being threatened by a variety of pollutants including the drainage of pesticides and other toxics into the waters and the expanding industrial uses of the waters. The discharging of these pollutants is increasing at a rate which causes great concern for the health, habitat, and continued productivity of the central coastal waters.

As the existing State and Federal regulatory and management authorities applicable to the waters of the central coast are inadequate to provide the kind of comprehensive and coordinated conservation and management of this nationally significant marine environment, a national marine sanctuary designation is warranted for this area.

It is my hope that the designation of the central coast as a national marine sanctuary will not only serve to preserve the unique and sensitive environment of this area but also provide a means for protecting this vital resource on which so many in the community depend for their livelihoods.

Mr. Speaker, it is clear that the central coast of California is an important, significant, and sensitive marine resource worthy of the stature and protection of national marine sanctuary designation. I urge my colleagues to join me in this effort by supporting the adoption of this legislation.

HEIDI WOEBKENBERG: JACKSON COUNTY APPLE FESTIVAL PRINCESS

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. McEWEN. Mr. Speaker, I commend to my colleagues today a lovely young woman from my district, Heidi Woebkenberg.

Hailing from Jackson, OH, Heidi has served with distinction as the Princess of the 50th Annual Jackson County Apple Festival.

As a senior at Jackson High School, Heidi's musical, academic, and leadership skills have set a standard for excellence. She has been an invaluable member of the symphonic, pep, and marching bands, where she lead the Flag Corps as its captain. She also sings in the Glee Club and Women's Choir.

With all of her activities, Heidi is also an honor roll student and a member of the National Honor Society. The Scholarship Team and Hi-Q also have benefited from her active membership. In addition, she is a Girl Scout and a member of 4–H.

I also ask my colleagues to recognize Heidi's proud parents, Thomas and Patricia. Heidi's successes reflect the untold contributions made over the years by them.

Heidi has announced her intention to attend Ohio University to study pharmacy. I ask my colleagues to join me in wishing Heidi continued success in this and all her future endeavors.

THE J.E. (EDDIE) RUSSELL POST OFFICE

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. GORDON. Mr. Speaker, S. 1888, which is essentially the same as my bill, H.R. 3679, is a bill that would pay tribute to a fine servant of the people of Tennessee and of the United States. This bill would name the post office that serves Monterey, TN, the J.E. (Eddie) Russell Post Office.

Mr. Speaker, many people worked hard to bring this bill to fruition, and I want to compliment and thank all those who assisted, particularly the chairman of the committee, the gentleman from Michigan [Mr. FORD], the ranking member, the gentleman from New York [Mr. GILMAN], and the chairman of the Postal Operations subcommittee, the gentleman from Indiana [Mr. MCCLOSKEY]. I also want to praise the people of Monterey, TN, for bringing this matter to my attention and working to bring it about.

Mr. Speaker, Eddie Russell was a career postal employee who worked hard for many years to serve the people of his community, his State, and his country. Eddie Rusell correctly recognized that his community needed the post office that will bear his name, and he is credited with being instrumental in obtaining the new facility.

Eddie is a native of Carthage, TN, where he played football, was a member of the FFA and the Spanish Club, and served as class treasurer. He attended Cumberland College in Lebanon, TN. He was a member of the Mount Tabor Missionary Baptist Church.

He was employed by the Upper Cumberland Electric Membership Cooperative in Carthage, TN, for 6 years. Due to physical injuries he resigned a promising career with the cooperative and went to work for the Postal Service, first in Carthage, then as postmaster of the Baxter, TN, post office and finally as postmaster of the Monterey, TN, post office, where he remained until his death.

Mr. Speaker, I am asking for passage of this bill naming the Monterey post office in honor of Eddie Baxter because the people of Monterey want it. They circulated a petition signed by hundreds of people requesting that the Congress carry out their wishes and rename this post office. Let me quote from that petition.

We the undersigned, being citizens of the Monterey, Tennessee community and customers of the Monterey Postal Facility respectfully request your consideration to honor the late Eddie Russell by naming the new postal facility located at 304 West Commercial Avenue in his honor.

Eddie was a respected member of our community who was dedicated to serving others. He also had great respect among his peers of the U.S. Postal Service. This desire to better serve his community was never more evident than in the new structure he was so instrumental in obtaining.

Mr. Speaker, the people of Monterey made their wishes clear. Let us go forward and honor Eddie Russell, a dedicated servant of his community and an outstanding employee of the U.S. Postal Service.

ALASKA NATIVE CLAIMS SETTLEMENT ACT

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. YOUNG of Alaska. Mr. Speaker, it is a privilege today to offer legislation relating to technical changes with the Alaska Native Claims Settlement Act of 1971 and other land statutes in Alaska. The Alaska Native Claims Settlement Act [ANCSA] resolved land claims issues raised by Alaska Natives in 1971. ANCSA also instructed the Secretary of Interior to begin the process of granting land allotments to Alaska Native allotment applicants for lands traditionally used by the applicants.

This bill focuses on clarification of several land status statutes in Alaska. Specifically, section two of this bill would amend the Alaska National Interest Lands Conservation Act [ANILCA] to allow relief for specifically named allottees near Nome, Alaska to obtain approval of their allotments at Fort Davis, AK. Fort Davis was previously listed as military land in the 1900's, returned to the Department of the Interior in 1921, but withdrawal was not modified to show restoration to public land use. These lands were not valid in ANILCA because the withdrawals were not identified

as a bar to conveyance until 1979, too late to make the ANILCA Title and Conference Report. This section of my bill will legislatively approve the 18 Fort Davis allotment applicatioins near Nome, AK.

Section 3 of this bill will amend section 18 of ANCSA by adding language to allow amended land descriptions for lands selected by the State of Alaska, if equal in acreage and the State of Alaska agrees to reconvey or relinquish the land described in the amendment. This section also includes language to assure that the State entitlement is not increased or reduced. It allows relocation of allotments out of State parks and other legislatively designated areas to more usable land without the cost and time of reconveyance. This section will allow Natives, whose land was mistakenly conveyed to the State, to relocate their allotments on other State lands.

Section 4 amends Section 12(b) of ANCSA by adding a subsection (12) to relieve the Secretary of the Interior's obligation to fulfill entitlements under ANCSA to two Native groups, Montana Creek Native Association and Caswell Native Association. In February of 1976, Cook Inlet Region, Inc. [CIRI], entered into an agreement with the two Native groups, in which CIRI agreed to convey 11,520 acres of land to each group in satisfaction of their group land entitlement. In 1982 CIRI conveyed the land to the groups as required by the 1976 agreement; however, the Secretary of the Interior was not a party to the agreement.

Section 5 amends section 19(b) of ANCSA to allow conveyance to the Elim Native Corp. of approximately 45,726 acres which they included in their land selections pursuant to the Alaska Native Claims Settlement Act. These particular lands are in dispute because when BLM conveyed the Norton Bay Reserve to the Elim Native Corp., it conveyed land within the 1929 boundaries of 300,000 acres rather than the original 1917 boundaries of 350,000 acres. The difference is due to a 1929 Executive Order No. 5207, signed by President Hoover, reducing the original Norton Bay Reserve, which is thought to have been unlawful in light of a 1927 statute enacted by Congress precluding the President from altering the boundaries of Executive Order reserves.

Section 6 amends section 7(h)(C)(ii) of ANCSA by adding language to include brothers and sisters in allowing an adult holder to transfer Settlement Common Stock to his or her brothers and sisters.

Section 7 amends ANCSA section 21(j) to allow a Native Corp. to establish a shareholder homesite program after 1991, so long as the alienability of the corporation's Settlements Common Stock has not been terminated.

Section 8 amends the patent to the State of Alaska to instruct the Secretary of the Interior to remove the reverter clause for lands patented to the State of Alaska for airport purposes.

Section 9 modifies the boundary of the Chugach National Forest to include 9,300 acres of earthquake-slumped lowlands, which the BLM feels could be more efficiently and effectively managed by the Forest Service. The State of Alaska has indicated that it does not wish to select these lands, and the Forest Service is willing to incorporate them within the Chugach National Forest.

Section 10 of this bill will provide for the conveyance of certain lands to the Rabbit Creek Lions Club. The Secretary of the Interior is authorized and directed, under current fair market value less 50 percent, to convey 0.93 acres of land to the Rabbit Creek Lions Club. This conveyance shall reserve all minerals to the United States.

Finally, Section 11 provides for clarification of land status for certain facilities owned by the University of Alaska.

Mr. Speaker, I have worked with the rest of the Alaska delegation, the Governor, the Alaska Federation of Natives, the Bureau of Land Management and all those affected by the legislation in resolving some of the issues addressed in this bill. Although the changes envisioned by the legislation are technical in nature, they are necessary clarification of existing law. I thank the Alaska Programs staff of the BLM for their assistance and in particular Jean Rivers-Council for her assistance in the preparation of this legislation.

Mr. Speaker, it is my intention to pursue consideration of this legislation after an opportunity for a congressional hearing early in the 102d Congress.

IS THIS WAR INEVITABLE?

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Ms. KAPTUR. Mr. Speaker, a headline in last Sunday's paper read "U.S. Force Seen as Only Option." It is not the first headline I have read which suggests that the tilt among policy makers here in Washington is toward the inevitability of war with Iraq. I find this troubling. Washington seems to be moving quickly to a threshold and mindset—absent the engagement of the American people in the debate—which assumes that war with Iraq is the only option the President can choose.

The rationale for the inevitability of war goes something like this: The trade sanctions will take too long to work and they may not work at all. The war will be quick, over in a month. Air superiority is already given; it is only a matter of getting all our tanks on the ground before they make the run up the highway to Baghdad. Saddam Hussein must be stopped. Better to do it now than later when he has more chemical if not nuclear weapons. Let's get on with it.

As administration policymakers formulate their endgame strategy for the crisis, the full weight of my constitutional responsibilities to vote for or against sending our troops into battle weighs heavily on me. The country seems to have rapidly settled into the routine of the crisis in the gulf. And, that may be the danger. There is nothing routine about slipping into a war when so many Americans are concerned about the long-term objectives of the current policy.

I find it strangely unreal to hear a cheery "Hi, Mom," from a young soldier in Saudi Arabia as I watch the morning news and read the headline, "U.S. Force Seen as Only Option." I ask myself, how will I feel if 2 months from now the soldier who said "Hi, Mom," has died in battle and I did not see fit to ask some real questions.

Do I support the President? Yes, of course, I do. Who in America would want to question a President under such circumstances? Is Saddam Hussein a killer with a mission? You bet. Yet, questions must be asked. If the President has adopted a don't-mess-around approach to preparing for war, shouldn't the Congress show the same seriousness of purpose and at some point debate the merits of why we are in the gulf.

Query. Are we inadvertently backdooring our way into war, letting events determine policy rather that the other way around? Query. How legitimate is the Government of Kuwait; is it right to ask Americans to sacrifice their lives to restore a government that was already suppressing its own domestic opposition? Query. What diplomatic channels, if any, are being explored to resolve this crisis? If not, why not? Query. If America is being asked by our allies to take out Saddam Hussein, shouldn't the American people be asked first? Query. Can you have a war without bodybags?

I give President Bush great credit. He has spoken with clarity about why he acted, as our Commander-in-Chief, to commit American troops to Saudi Arabia once Saddam Hussein invaded Kuwait. There is a line in the sand, don't cross it. Hussein got the message. So, I applaud the President. But now a different question is posed. Do we go to war to win back Kuwait? It is one thing to draw a line in the sand to defend Saudi Arabia. It is quite another to take offensive action that may include the invasion of Iraq and lead to a full-scale Middle East conflict.

I had friends who died in Vietnam who never knew the why of it all. They never got a straight answer from President Johnson, a Democratic President, about why they and their buddies were getting killed. The result was that my generation, the Vietnam generation, grew up skeptical if not cynical about official explanations and statements.

That skepticism was also directed at the legislative branch of our Government for not asking searching questions about why we were in Vietnam before it was too late. Now, it is my turn to ask questions. When it comes to war, Washington must shed its get-along-to-go-along habit of waiting to see how events will unfold. It is still incredible to me that over 100,000 Americans lost their lives during my lifetime in two wars, Korea and Vietnam, and Congress never once carried out its constitutional responsibilities to declare war. When it comes to war, I am of a mind to call myself a strict constructionist.

If there is a simple rule about reaching a decision to go to war, maybe it should be this: Clarity in language is directly proportional to the proximity of death; a soldier shouldn't be confused about why he or she is dying; parents and families shouldn't feel that their sons and daughters have died in vain. Yet, even now, despite the President's recent speech to the country, I detect a deal of uncertainty, unease, if not outright confusion on the part of the American people about our reasons for

being in the gulf and the logic of a war with Iraq.

If administration policymakers believe war is inevitable, then the American people must be fully engaged in the decisionmaking process now, not after the first casualty reports come in that shock Americans into questioning the gulf policy. The last thing our military needs after going through the Vietnam experience is another case of battle fatigue on the home front. The strength of American resolve will be directly proportional to the extent to which the American people are given a clear picture of what is to come. Questions must be asked and answered.

I have many questions about why this crisis in the gulf has reached the threshold of war. I wonder why the United States policy toward Saddam Hussein prior to the invasion was so equivocal? Did the administration give Saddam Hussein the green light tc invade Kuwait? No, but it wasn't red either. Other questions. Why didn't the United States invest in a little gunboat diplomacy once our intelligence agencies correctly predicted that the invasion was imminent. As recently as May 21 of this year, the Navy had the U.S.S. *Reid* at anchor in Kuwait's harbor. More than anything, I wonder why our Embassy in Kuwait did not alert American citizens in Kuwait, many of whom are now hostages, to the coming danger at the same time we were alerting the Kuwaiti Government of the impending threat?

But these questions about past policy are overshadowed by questions that need to be answered before we reach the point of imminent hostilities. Are the Ameriacn people fully prepared to put "Free Kuwait" bumper stickers on their cars in order to restore a Kuwait Government that is undemocratic? Are we prepared for a wider Middle East conflict that will surely include Iraqi-supported terrorist attacks on American civilians? Will our allies stick with us when the tough choices come and our troops are committed to battle? Do they recognize, particularily the Japanese, who rely much more than we do on Middle East oil that any reluctance on their part to share the burden will only fuel further American resentment toward them?

Finally, to the heart of the question: Have we become so dependent on foreign oil that we are willing to lose hundreds if not thousands of American soldiers to protect that continued dependency? Is our quality of life to use the President's phrase, so conditioned by comfort that we will send an army into battle to ensure our ease; to protect our right to fill up our imported cars with imported oil? It is distressing to me that America's interests in the gulf are deemed vital in large part because we Americans did not have the foresight nor discipline in the 1980's to hammner out an energy policy that made the Untied States energy independent.

President Bush has shown enormous diplomatic skill in winding down the cold war and putting a worldwide coalition together to oppose Saddam Hussein. Shouldn't that same skill be used, even in the back channels, to get Hussein to the negotiating table? And, if a Middle East negotiating conference is called, will the President be willing to put the Palestinian question on the agenda?

Some Americans may question the properiety of Congress asking any questions at a time when nearly 200,000 American combat troops are in the field. But let's remember, American resolve withered away in Vietnam because the administration and the Congress never engaged the American people until it was too late. American resolve in the gulf crisis will only be stronger when the why's and what if's are answered to the satisfaction of the American people.

President Bush has my support and the strong support of the American people in his efforts to enforce the trade embargo against Iraq. As long as this crisis remains a war of uplinks and downlinks most Americans will take a wait-and-see attitude. If Hussein attacks our troops or engages terrorists to do his dirty work, the support of the American people will be absolute.

But if our policymakers see war as inevitable, which seems to be the growing consensus, than the logic of the coming war must, at some point, be put squarely to the American people. The confusion about why we are in the gulf must be resolved and Congress must go on record one way or the other. When it comes to war, mush words and warm resolutions won't do the job. When it comes to getting killed, our soldiers shouldn't be confused about why they are dying.

TRIBUTE TO JIM COURTER

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. GALLO. Mr. Speaker, as the 101st Congress comes to a close, I want to say a few words on behalf of my colleague from the 12th District of New Jersey, JIM COURTER, who will be leaving this body at the close of this session.

JIM has served the people of central New Jersey for 12 years as a Member of this body.

During that time, he has fought for positive programs that have had an impact on New Jersey.

As a member of the Armed Services Committee, he has fought for programs to insure a strong America.

When I came to Congress in 1985, JIM was instrumental in providing that extra measure of cooperation that enabled me to hit the ground running as a new Member of the U.S. House.

Since that time, we have worked closely on a number of issues of importance to New Jersey.

During those battles, I have always known JIM to be a fighter.

He believes in the goals he is supporting and is willing to put it all on the line to move those initiatives forward.

In 1989, JIM waged a hard-fought campaign in an effort to become New Jersey's Governor.

Anyone who has accepted such a challenge knows that it represents a major personal commitment.

I commend JIM for his energy and his commitment to that campaign.

Last February, JIM announced that he would not seek reelection to Congress.

At this juncture, it is understandable that JIM would want to take a break from his career in public service to enjoy more time with his family.

I know I speak for my colleagues in the House when I say that JIM's insights and his energy will be missed.

In fact, we have been so reluctant to see you go, JIM, that we have stayed in session a full 3 weeks beyond adjournment.

As the 101th Congress comes to a close, we salute our colleague and friend, JIM COURTER, and wish for him all the best as he looks to the future.

INTRODUCTION OF THE CARBON-DIOXIDE OFFSETS POLICY ENABLING ACT [COPE] DEALING WITH GLOBAL WARMING

HON. JIM COOPER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. COOPER. Mr. Speaker, the United States of America is about to be embarrassed internationally. At the second World Climate Conference in Geneva which convenes today, we will be one of the only developed nations on Earth not to have a policy even to set targets to control global warming.

Having just labored for 13 years to pass the Clean Air Act of 1990, many colleagues are probably saying, "I thought we fixed our air pollution problems for a while," or, "We can't revisit these issues so soon." The fact is, of course, that the Clean Air Act, for all of its landmark achievements, is aimed primarily at domestic air quality problems, not at the international problems that affect every nation on the planet. Believe it or not, groundwork on the next clean air act needs to begin during the upcoming adjournment. Other nations are far ahead of us.

This year's Clean Air Act did have a slender provision that will help us begin to measure our Nation's contribution to the global warming problem. My floor amendment to the legislation, which survived conference intact, will require electric utilities to measure and report the volume of their CO_2 emissions. This will enable them, unlike other types of industry in America, to establish a baseline of CO_2 emissions so that we know their growth and shrinkage.

The legislation that Congressman MIKE SYNAR and I are introducing today is the next step. It will not only help us measure how much we are disturbing our atmosphere with manmade CO_2, it will help us limit that disturbance. This is an innovative, cost-effective, free-market proposal that Dr. Daniel Dudek at the Enviromental Defense Fund helped us formulate. We realize, of course, that legislation introduced so late in this session of Congress is really intended to be debated in the 102d Congress, but it is important to begin the early stages of those discussions soon.

THE LEGISLATION

Everyone wants to have jobs without pollution, economic growth without global warming; the question is how best to reconcile these seemingly conflicting interests. Since almost all fossil fuel combustion increases CO_2 emissions, how do you make sure that new combustion does not add to the heavy burden of CO_2 gases that we have already placed in our atmosphere?

Not many Americans realize that we are adding 6.14 tons of CO_2 to our atmosphere per person every year in America as a result of our electrical generating, refining, transportation, and manufacturing processes. This manmade burden to our atmosphere is not the inevitable result of progress; it is the result of wasting carbon. In Japan, for example, comparable emissions are only 2.5 tons per person, less than half of our emissions. These are 1988 figures from the Organization for Economic Cooperation and Development, as quoted in the Washington Post of October 24, 1990.

The first step is to slow or halt the growth of our emissions, at least on a per-capita basis. Japan has indicated that within the next 10 years it will freeze its CO_2 emissions at 1990 levels, only allowing for population growth. This is an ambitious program for a nation that could have followed our example and doubled its pollution before thinking of controlling it. Apparently Japan is planning to have an industrial policy that relies heavily on nuclear power, mass transit, and other means of reducing their per-capita tonnage emissions. Japan seems to be relying on a centralized, command-and-control approach to the problem.

Our legislation puts a loose cap on U.S. emissions of CO_2 by requiring new large sources of CO_2 to find offsets to their emissions before they increase net pollution. Put more simply, we are asking large industry to do some environmental good for every bit of environmental harm that they are intending to cause. We don't necessarily ask industry to clean up after itself, but at least after some other industry. It is the environmental equivalent of pay-as-you-go budget legislation.

This is very different from command-and-control regulation such as is practiced in Japan or even under our older environmental laws. Under our bill, Government sets broad parameters but industry is free to operate within those parameters.

It is helpful to think of industry as divided into two groups, although many individual firms will actually fall into both categories. One group needs to be able to build new factories, burn more fossil fuel, and emit more CO_2. The other group is able to take CO_2 out of the atmosphere, it just hasn't bothered to or been allowed to yet. Perhaps it is already burning fuel, but in a way that is inefficient and that could be improved with incentives.

Our proposal allows both groups to do business with each other, for their own good and for the good of the Nation and the planet. A new industry could offset its pollution by giving older industry an incentive to clean up its act. In this way the older industry can also perhaps become a growth industry by using its great unrecognized and unused resource, the capacity to reduce CO_2 emissions. Their balance sheets will contain a new marketable asset.

The possibilities for tradeoffs are almost endless. Industries which need to burn more carbon can work with industries that can burn: First, low-carbon fuel, that is, oil or natural gas; Second, high-carbon fuel more efficient—clean-coal technology; Third, less fuel period—conservation, plant retirement, and so forth.

Sometimes huge offsets are available from industries that could reduce their CFC or methane emissions, gases which are many times worse for our atmosphere than simple CO_2. The Environmental Protection Agency estimates that the amount of CFC's which are already contained in rigid foams such as home insulation are the equivalent of 800 million tons of CO_2. These CFC's must be destroyed and not discharged to the atmosphere; they will be if people have an incentive to do so.

Other offsets are available from industries that can improve on current Government efficiency standards, such as CAFE or NAECA for automobiles and appliances, and yet have no commercial incentive to do so. Once they win their Government lable they have nothing to sell to most of their customers in a more advanced product. This offset bill would give them something valuable to sell.

Still more offsets are available from cogeneration facilities, nuclear and hydro plants, and other types of energy technology.

Finally, forest preservation and reforestation are additional ways that net CO_2 emissions can be reliably offset. Trees are a wonderful sink of CO_2 in addition to their many other benefits.

The only Government role in all this is to keep the trading honest. The Federal Government should set guidelines for the States so that they can tell how much new CO_2 is really going to be emitted from a new plant and, therefore, how much of an offset is required. The Government should also be able to tell whether the offset is real, not just a temporary or illusory decrease.

No Government bureaucrat, whether in Washington or in a State capitol, will be able to impose a rigid cleanup technology on new industry. Industry itself will come up with the imaginative and cost-effective solutions. Sometimes the offset may be preserving a neighboring forest; sometimes the forest may be across the Nation. Ultimately, that forest may be in a distant country, such as the Guatemalan forest that was recently planted by an enterprising Connecticut utility. Since the environmental benefits are worldwide, the market for offsets is worldwide; the only administrative problem is verifying compliance in another sovereign nation.

THE BOTTOM LINE

The fundamental principle of the legislation is that current industry is not paying the full cost of its pollution when it sells its products. That cost is imposed on world climate, and we all end up suffering. Economists call that hidden cost an externality and it is hard to quantify and trace. The answer is not simply to penalize industry, however, since we depend on it for jobs and products. The answer is to encourage industry to find ways to reduce CO_2, ways that they haven't implemented yet. Using this approach, value is discovered in unlikely but deserving places. The hidden cost of pollution is no longer hidden; it is no longer externalized; it is offset by simultaneous reductions in kind.

There are many advantages of this approach over simply taxing CO_2 emissions, which is superficially appealing and which also seems to be a free-market reform.

One advantage is that the price of the offset is not fixed as it is with a tax. An offset is not a rigid and bureaucratic tax formula which tries to approximate the cost of marginal environmental damage and which may be affordable to some industries but not to others. The price of these offsets is determined by the ingenuity of both the buyer and seller of the offsets.

A further advantage is that government's hunger for revenue is not a factor with offsets as it is with taxes; industry is paying for pollution reduction and only for pollution reduction.

Another advantage of offsets over taxes is that the behavior of both the buyer and seller of offsets is altered, not just the behavior of the excise taxpayer. Why not have everyone involved with CO_2 contribute to a solution?

And the environmental benefit is exact because you are dealing in the proper currency: CO_2 reductions, not dollars and cents. You don't need to worry about undertaxing or overtaxing the polluting source.

Finally, a tax on CO_2 is really a tax on growth whereas an offset system raises industry costs in much the same way that a tax on inefficiency would. Since it is almost impossible for Government to measure and tax inefficiency, it is handy for industry to expose and reduce it for us by means of the offset mechanism.

In short, this is a type of regulation which is still fairly new in the environmental area but which seems to provide multiple benefits. A version of it is being tried in the acid rain title of the recently passed Clean Air Act. To be sure there are flaws in the approach. Industry sometimes prefers the certainty of bureaucratic regulation to having to dig up offsets somewhere around the country, especially when long-term projects are involved. Conversely, environmentalists want the certainty of real CO_2 reductions, with a minimum of gaming by industry.

The theory is very powerful, however, and I believe it is worth giving it a try. To fall back on old-fashioned command-and-control regulation for a global problem of this magnitude could mean wasting tens of billions of dollars. To tax CO_2 emissions begins solving only half the problem and in a crude and cumbersome way. The better plan is to require offsets, as this legislation does, so that everyone is involved in the search for the cheapest, most efficient, most reliable solution to the problem.

I urge my colleagues to take a look at this legislation at their leisure after the elections and to consider cosponsoring this new type of environmental approach in the 102d Congress.

REGARDING HOUSE INTERIOR SUBCOMMITTEE APPROVAL OF H.R. 1611, THE SOLANO PROJECT INDEBTEDNESS PREPAYMENT ACT

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FAZIO. Mr. Speaker, I rise to draw the attention of my colleagues to recent approval by the House Interior Subcommittee on Water, Power and Offshore Energy Resources of H.R. 1611, the Solano project Indebtedness Prepayment Act, a bill I introduced earlier this Congress.

On Tuesday of this week, the subcommittee reported out H.R. 1611, after adopting a provision in the nature of a substitute to the original text. I have submitted for the RECORD a copy of that substitute as well as a section-by-section analysis of the measure.

I would like to thank the chairman of the subcommittee, Mr. MILLER of California, for his assistance in developing this substitute and his cooperation in bringing the bill before the subcommittee for its consideration. The subcommittee's action is an important step toward enactment, which I hope will occur during the next Congress. I think it indicates that the Federal issues surrounding the sale of the Solano project and its water distribution facilities to a consortium of local municipal agencies in Solano County have largely been resolved.

We have agreement on a fair price and on the disposition of the proceeds from the sale. We have also included provisions to protect Putah Creek during drought years and authorized substantial improvements to the recreational facilities at Lake Berryessa. Chairman MILLER played a key role in forging a fair and innovative resolution to these issues.

Despite the substantial progress that we have made thus far, I intend to work with Solano County and the Putah Creek interests in the coming months to explore further protections for the creek. I also intend to continue to work with the recreational interests around the lake to ensure that their current interests remain protected under the bill.

And, I have encouraged Napa County to work with Solano County to try and reach an agreement on Napa's outstanding water supply concerns. Solano has a firm offer on the table that would provide approximately 15,000 acre feet of water to meet Napa's water needs. That offer deserves serious consideration.

Mr. Speaker, I think the subcommittee substitute is a good bill and represents a sound means for determining the fair price for the sale of a Federal asset, such as the Solano project, to another level of government for its existing public purpose.

H.R. 1611

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. MILLER OF CALIFORNIA

The amendment is as follows:

On page 1, line 3, strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Solano Project Indebtedness Prepayment Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Solano Project is a Federal reclamation project located in Solano, Yolo, and Napa Counties, California. The project was constructed by the United States between 1953 and 1958 for the purposes of providing water supply and incidental flood control benefits;

(2) the Solano Project supplies approximately 65 per centum of Solano County's public water supply;

(3) the California State Water Resources Control Board has granted water rights permits to the Bureau of Reclamation for the Solano Project which establish that Solano County is the place of use for Solano Project water, with the exception of four thousand acre-feet used annually by the University of California-Davis in Yolo County pursuant to contract, and with a provisional reservation of up to thirty-three thousand acre-feet for the Putah Creek watershed above Monticello Dam;

(4) repayment of the Solano Project's reimbursable capital costs is the exclusive obligation of the Solano County Water Agencies, and said Agencies have repaid more than half of these costs;

(5) the Solano County Water Agencies perform all operation and maintenance for the Solano Project under contract with the United States, and they have paid all operation and maintenance costs of the project;

(6) the Solano Project has no financial or physical interconnection with any other local, State, or Federal water project;

(b) PURPOSES.—

The purposes of this Act are—

(1) to convey to the Water Users fee title to the water supply facilities of the Solano Project upon payment to the United States by the Water Users of the sum calculated in accordance with section 4 of this Act;

(2) to provide for continuation of all public benefit purposes of the Solano Project, to provide for enhancement of Putah Creek fisheries, wildlife and riparian habitat, and to protect groundwater recharge and diversion rights downstream of Putah Diversion Dam in conformance with all decisions and orders of the California State Water Resources Control Board;

(3) to provide the Water Users with local ownership over their principal public water supply facilities;

(4) to eliminate significant Federal liabilities; and

(5) to benefit the Federal Treasury from such payment and title transfer.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the term

(a) "Book value" of the water supply facilities means an amount which equals the product of the depreciable facilities costs and the applicable depreciation factor.

(b) "Capital/O&M adjustment" means the amount in arrears, if any, of capital repayments or operation and maintenance expenses due pursuant to the water service contract, plus accrued interest.

(c) "Construction defect and dam safety adjustment" means $7,270,000 for purposes of this Act.

(d) "Depreciable facilities costs" means the reimbursable capital costs of the water supply facilities of the Project which are to be transferred.

(e) "Depreciation factor" means a percentage derived by calculating the number and fraction of years between the date of purchase and the year 2033 and then dividing by 75.

(f) "Reimbursable capital costs" means the original reimbursable costs of the Solano Project, as set forth in the Bureau of Reclamation document entitled "Solano Project Statement of Project Construction Cost and Repayment," dated September 30, 1989 ("Solano Project Statement") attached as Appendix "A" in the report accompanying H.R. 1611.

(g) "Remaining indebtedness" means the remaining balance of the reimbursable capital costs of the Solano Project, as set forth in the Solano Project Statement, and as adjusted thereafter to reflect any payments made prior to the date of transfer.

(h) "Secretary" means the Secretary of the Interior.

(i) "Solano County Water Agencies" means one or more public agencies in Solano County which have used water from the Solano Project and who are member agencies of the Water Users.

(j) "Solano Project" means the reclamation project described in House Document Numbered 65, eighty-first Congress, first session (1949).

(k) "Water service contract" means the contract between the United States and the Solano County Flood Control and Water Conservation District for water service and for operation and maintenance of certain works of the Solano Project, dated March 7, 1955 (Contract No. 14-06-200-4090).

(l) "Water supply facilities" means—

(1) the Monticello Dam and spillway;

(2) Lake Solano and the Putah Diversion Dam;

(3) the Putah South Canal;

(4) all appurtenant facilities and rights to each of such facilities, including existing Federal easements and rights-of-way.

This term does not include Lake Berryessa, its shoreline or any recreational features of the Solano Project.

(m) "Water Users" means a public agency formed under the laws of the State of California duly organized and existing and:

(1) including all member public agencies of the Solano Water Authority and the Solano County Flood Control and Water Conservation District, public agencies formed under the laws of the State of California;

(2) having a governing board in which a majority of the members are representatives of those local entities holding contracts for water from the Solano Project on the date of enactment of this Act; and

(3) approved by both the Solano Water Authority and the Solano County Flood Control and Water Conservation District.

SEC. 4. AGREEMENT FOR TRANSFER OF THE SOLANO PROJECT WATER SUPPLY FACILITIES AND PAYMENT.

(a) AGREEMENT.—The Secretary shall, as soon as practicable after the date of enactment of this Act, enter into an agreement with the Water Users for—

(1) the payment of the sum calculated in accordance with section 4(b) of this Act; and

(2) the transfer to the Water Users of all right, title, and interest in and to the land and properties comprising the water supply facilities of the Solano Project described in section 3(l).

(b) PRICE.—The price paid by the Water Users for the water supply facilities of the Solano Project shall be the amount which is the total of—

(1) the remaining indebtedness;

(2) the book value of the water supply facilities;

(3) any capital/O&M adjustment amount; and

(4) all administrative costs incurred by the United States in effectuating the agreement and the transfer, less

(5) the dam safety and construction defect adjustment; *Provided, however,* That in no event shall the sum determined in subparagraphs (1)-(5) of this subsection above be less than 66 per centum of the original reimbursable capital costs of the water supply facilities of the Solano Project which are to be transferred.

(c) TRANSFER.—Subject to the provisions of section 7 of this Act, upon the payment of the amount specified in section 4(a)(1), the Secretary shall transfer to the Water Users all right, title, and interest in and to the water supply facilities of the Solano Project, as described in section 3(1).

SEC. 5. RESPONSIBILITIES OF THE WATER USERS.

The Agreement specified in section 4(a) shall provide that upon transfer of the water supply facilities, the Water Users shall, except as provided in this Act, assume all liability for administration, operation, and maintenance of said facilities and shall continue to provide for the operation thereof for the authorized Solano Project purposes including (but not limited to) all water supply contracts heretofore entered into by the Secretary; the protection of Putah Creek fisheries, wildlife, riparian habitat, ground water recharge, and downstream diversion rights, including adherence to minimum water release schedules for Putah Creek downstream of Monticello Dam and Putah Diversion Dam in conformance with all applicable decisions and orders of the State of California Water Resources Control Board; and incidental flood control benefits currently enjoyed by downstream property owners on Putah Creek.

SEC. 6. RESPONSIBILITIES OF THE UNITED STATES.

(a) PRETRANSFER CONFIRMATION.—The Secretary may not enter into an agreement for the transfer of title to the water supply facilities of the Solano Project unless the Secretary finds that the water entitlements for the Solano Project that existed on the date of enactment of this Act are, by the terms of the Water Users' organizational contract or enactment, guaranteed to such member units of the Solano County Flood Control and Water Conservation District and agencies of the State of California in the future.

(b) RECREATION.

(1) The Secretary shall be responsible for, and retain full title to and control over the surface of Lake Berryessa and Federal lands underlying and surrounding the Lake, and shall retain full title to all recreational facilities, exclusive of those properly constructed by concessionaires under applicable contracts; concessionaire contracts; interests in real property associated therewith; and similar associated rights and obligations. The Secretary shall consult with the State of California and local governments in Napa County, California, prior to implementing any change in operating procedures for such lands. The Secretary is authorized to enter into contracts or other agreements with Napa County, California, regarding land use controls, law enforcement, water supply, wastewater treatment, and other matters of concern within the boundaries of lands surrounding Lake Berryessa that were originally included in the lands acquired for the Solano project.

(2) The Secretary, acting through the Bureau of Reclamation, is authorized to obtain water from Lake Berryessa consistent with its existing State water rights permit for recreational or other resource management purposes at Lake Berryessa, including that required for concession operations, in the manner, amounts, and at times as may be determined by the Bureau of Reclamation.

(3) The Secretary, acting through the Bureau of Reclamation, is authorized to make available funds collected from recreation entrance and user fees, to local and/or State law enforcement agencies to enforce rules and regulations as are necessary for regulating the use of all project lands and waters associated with Lake Berryessa, and to protect the health, safety, and enjoyment of the public, and ensure the protection of project facilities and natural resources.

(4) The Secretary is hereby authorized to enter into joint future projects with Lake Berryessa concessionares to develop, operate, and maintain such short-term recreational facilities as he deems necessary for the safety, health, protection, and outdoor recreational use by the visiting public, and, to amend existing concession agreements, including extending terms as necessary for amortization of concessionaire investments, to accommodate such joint future projects.

(5) The Secretary is authorized to assist, or enter into agreements with the State of California, or political subdivision thereof, or a non-federal agency or agencies or organizations as appropriate, for the planning, development and construction of water and wastewater treatment systems, which would result in the protection and improvement of the waters of Lake Berryessa.

(6) There is authorized to be appropriated to the Secretary the sum of $12,000,000 (December, 1990 price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuation in development costs as indicated by cost indices, for those short-term public recreation developments and resource management actions, including concession master planning, which are eventually selected in the Reservoir Area Management Plan (RAMP) for Lake Berryessa and, for the planning, development and construction of the joint future projects and water and wastewater treatment systems described in subsections (b)(4) and (b)(5) of this section respectively. Funds collected from recreation entrance and user fees may be made available, as required, for the operation, management and development of recreational and resource needs at Lake Berryessa. All funds authorized to be appropriated under this subsection shall be nonreimbursable.

(7) The United States shall provide in the agreement transferring title to the water supply facilities that no activities upon the recreational interests hereby reserved to it shall, as determined by the Secretary after consultation with the Water Users, burden the Water Users' use of the water supply facilities of the Solano Project, reduce storage capacity or yield of Lake Berryessa, or degrade the Solano Project's water quality, except that, as described in subsection (b)(2) of this section, water will be made available for recreational and resource management purposes.

(c) PUTAH CREEK ENHANCEMENT.

(1) The Secretary is authorized and directed to participate in a program the Secretary funds feasible and appropriate to enhance the instream, riparian and environmental values of Putah Creek. Such program shall be at full Federal cost, shall cause no reduction in Solano Project supplies, and shall include but need not be limited to:

(A) In order to enhance flows in Putah Creek which are prescribed by the California State Water Resources Control Board, arrangements as are necessary to provide at no net cost to any other party at least 5,000 acre-feet of supplemental water supply to Putah Creek during dry years as defined by the California State Water Resources Control Board in Decision 869 as amended by Order WR 84-7.

(B) For purposes of more efficiently distributing such supplemental supplies and any additional amounts as the California State Water Resources Control Board may deem appropriate, a water conveyance with a capacity of no less than eight cubic feet per second and with several outlets as may be appropriate, from the headworks of the Putah South Canal to Putah Creek at Stevenson Bridge Road, at a cost of approximately $3,000,000.

(2) There are hereby authorized to be appropriated such sums as may be necessary to implement this subsection.

SEC. 7. PAYMENT TO THE NATIONAL FISH AND WILDLIFE FOUNDATION.

(a) PAYMENT.—The Secretary shall transfer all right, title, and interest in and to the water supply facilities of the Solano Project to the Water Users after the Secretary has received notification from the National Fish and Wildlife Foundation (hereinafter the "Foundation") that the Water Users have made the payment specified in section 4(b) to the Foundation.

(b) DISPOSITION OF PAYMENT.—The payment specified in subsection (a) shall be deposited in a separate account by the Foundation in accordance with the provisions of section 4(c) of Public Law 98-244 (16 U.S.C. 3703(c)). Interest from such account shall be utilized by the Foundation for matching grants with non-profit organizations and institutions in California to carry out the purposes of the Foundation as specified in section 2 of Public Law 98-244 (16 U.S.C. 3701(b)).

SEC. 8. VESTED RIGHTS AND STATE LAWS UNAFFECTED.

Nothing in this Act shall—

(a) be construed as affecting or intending to affect or to interfere in any way with State laws relating to the control, appropriation, use, or distribution of water used for the Solano Project or relating to the protection of fish and wildlife, or any vested right acquired thereunder; and

(b) in any way affect any right of the State of California or any landowners, appropriator, or user of water in, to, or from any interstate stream or the waters thereof.

Amend the title so as to read as follows:

"To authorize the Secretary of the Interior to execute an agreement providing for the transfer of title to specified water supply facilities of the Solano Project, and for other purposes.".

SECTION-BY-SECTION ANALYSIS

H.R. 1611, THE SOLANO PROJECT INDEBTEDNESS PREPAYMENT ACT

The purpose of this bill is to authorize the Secretary of the Interior to enter into an agreement for the purchase, payment of existing indebtedness and transfer of specified water supply facilities of the Solano Reclamation Project to an organization of public entities holding contracts for the Solano Project water. The Solano Project is a "stand-alone" federal reclamation project located in Northern California. The bill provides for a transfer price consisting of: 1) the total outstanding Solano Project reim-

bursable capital debt; 2) the "book value" of the water supply facilities to be transferred; 3) any repayment shortfalls, and interest accrued thereon; and 4) any administrative costs incurred by the United States in effectuating the transfer. From this amount is subtracted a dam safety and construction defect credit consisting of approximately 40% of an estimated $19 million in costs to be incurred by the Solano County water users to correct inherent construction defects and perform safety of dam repairs. The bill further provides that the purchase price shall in no event be less than 66 percent of the original reimbursable capital costs of the water supply facilities which are to be transferred.

The payment by the Solano County water users would be made to the National Fish and Wildlife Foundation, a federally-created charitable and nonprofit corporation which conducts conservation and management activities relating to fish, wildlife and plant resources. The Foundation will invest the funds and utilize the interest payments thereon to make matching grants for fish and wildlife purposes to nonprofit organizations in California.

Upon payment of the transfer price, title to the Project's Monticello Dam, associated downstream distribution facilities and related federal easements and rights-of-way, would be transferred. Lake Berryessa, its shoreline and all recreational features underlying and surrounding the Lake would remain under federal jurisdiction, control and ownership.

SHORT TITLE

Section 1 provides that the Act may be cited as the "Solano Project Indebtedness Prepayment Act."

FINDINGS AND PURPOSE

Section 2 sets forth certain findings of Congress concerning the history and functions of the Solano Project and states the purposes of the legislation—to convey to the Solano County water users fee title to specified water supply features of the Solano Project upon payment of the transfer price, and to insure that the public benefit purposes of the Solano Project are continued.

Section 2 contains particular findings which specify, among other things, that: (1) the Solano Project is a federal reclamation project constructed for the purposes of providing water supply and incidental flood control benefits; (2) that the Solano Project supplies approximately 65 percent of Solano County's public water supply; (3) that water rights permits provide that Solano County, with two limited exceptions, is the place of use for Solano Project water, and that under California and federal law, rights to water from the Solano Project will remain subject to state jurisdiction and control; (4) that the repayment of the Solano Project's reimbursable capital debt is the exclusive obligation of the Solano County water users; (5) that project works and functions of the Solano Project are the responsibility of the Solano County water users; and (6) that the Solano Project is a "stand-alone" project which has no financial or physical interconnection with any other local, state, or federal project.

DEFINITIONS

Section 3 contains the definitions used in the Act. These terms are provided primarily for purposes of setting forth the methodology to be used in calculating the purchase price for the Solano Project water supply facilities.

Section 3(a) defines the term "book value" which is the residual value of the depreciable water supply facilities of the Solano Project at the time of transfer.

Section 3(b) defines the term "capital/O&M adjustment" as the amount in arrears, if any, of capital payments or operation and maintenance expenses owed under the water service contract, plus accrued interest.

Section 3(c) defines the "construction defect and dam safety adjustment." This is the only component of the transfer price formula which is defined as a fixed amount. The amount represents the federal share (approximately 40%) of the estimated $19 million in expenditures deemed necessary to correct inherent construction defects and make safety of dam repairs at the Solano Project.

Section 3(d) defines "depreciable facilities costs" as the reimbursable capital costs of the water supply facilities to be transferred.

Section 3(e) defines the term "depreciation factor" as a percentage derived by calculating the number of years between the date of transfer and the year 2033 (which is the seventy-fifth year from the in-service date of the Solano Project) and then dividing by 75. The seventy-five year depreciation period for the water supply facilities reflects an extension of the normal fifty-year depreciation period for such facilities.

Section 3(f) defines "reimbursable capital costs" as the original reimbursable costs of the Solano Project as set forth in the most recent Bureau of Reclamation project-specific documents.

Section 3(g) defines "remaining indebtedness" as the remaining balance of the reimbursable capital costs, as defined in Section 3(f), as of the actual date of transfer.

Sections 3(h), 3(j) and 3(k) are self-explanatory and define the terms "Secretary," "Solano Project" and "water service contract."

Section 3(i) defines the "Solano County Water Agencies," as those Solano County public entities which both use or have used water from the Solano Project and which are member agencies of the Water Users.

Section 3(l) specifically defines the water supply facilities, and attendant property rights, to be transferred. Further, it expressly provides that neither Lake Berryessa, its shoreline, nor any of the recreational facilities of the Solano Project are to be transferred and will remain under federal jurisdiction and control.

Section 3(m) defines the Solano County "Water Users," the entity which will receive title to the Solano Project upon payment of the transfer price. The Water Users are defined to include all local public agencies that have used water from the Solano Project. Specifically, the term refers to a public agency under California law which: 1) includes all member public agencies of the Solano Water Authority and the Solano County Flood Control and Water Conservation District; 2) has a governing board in which a majority of the members are representatives of local entities holding contracts for water from the Solano Project on the date of enactment of this Act; and 3) approved by both the Solano Water Authority and the Solano County Flood Control and Water Conservation District. The Solano Water Authority and the Solano County Flood Control and Water Conservation District are comprised of the same member agencies.

AGREEMENT FOR TRANSFER OF THE SOLANO PROJECT WATER SUPPLY FACILITIES AND PAYMENT

Section 4(a) sets forth the terms of transfer of the Solano Project to the Solano water users. It provides that as soon as is practicable after enactment of the legislation, the Secretary and the Water Users shall enter into an agreement for the payment of the transfer price and for the transfer to the Water Users of all right, title and interest in or to the specified water supply facilities of the Solano Project.

Section 4(b) sets forth the price to be paid by the Water Users for the water supply facilities. The price to be paid shall be the sum of: 1) the remaining indebtedness; 2) the book value of the water supply facilities; 3) any capital/O&M adjustment amount; and 4) all administrative costs incurred by the United States in effectuating the transfer. From this amount is to be subtracted the dam safety and construction defect adjustment, with the further proviso that in no event shall the total price paid by the Water Users be less than a price floor equal to 66% of the original reimbursable capital costs of the water supply facilities to be transferred.

Section 4(c) provides that the Secretary shall transfer to the Water Users all right, title, and interest in and to the water supply facilities upon payment of the amount specified in Section 4(b) and upon receiving notification of such payment by the National Fish and Wildlife Foundation, as specified in Section 7(a).

RESPONSIBILITIES OF THE WATER USERS

Section 5 provides that the Water Users shall assume, except as otherwise provided in the bill, all liability for the administration, operation, and maintenance of the designated water supply facilities upon their transfer. This section further specifies that the Water Users will continue to provide for the operation of all authorized Solano Project purposes including the protection within Putah Creek of fisheries, wildlife, riparian habitat, ground water recharge, and downstream diversion rights, including minimum water release schedules for Putah Creek downstream of Monticello Dam and the Putah Diversion Dam in conformance with all applicable decisions and orders of the State of California Water Resources Control Board and incidental flood control benefits currently enjoyed by downstream property owners on Putah Creek.

RESPONSIBILITIES OF THE UNITED STATES

Section 6 sets forth the federal responsibilities associated with the transfer. Section 6(a) insures that water entitlements for the Solano Project are not affected by the transfer. This subsection provides that the Secretary may not enter into a title transfer agreement with the Water Users unless satisfied that water entitlements for the Solano Project, as exist on the date of enactment, remain guaranteed to affected member units of the Solano County Flood Control and Water Conservation District and agencies of the state of California in the future.

Section 6(b) sets forth detailed provisions governing the recreational facilities at Lake Berryessa. Section 6(b)(1) provides that the federal government shall retain jurisdiction and control over the surface of Lake Berryessa as well as federal lands underlying and surrounding the Lake and shall retain full title to all recreational facilities except those facilities constructed by concession-

aires pursuant to contracts with the federal government, concessionaire contracts, interests in real property associated therewith and similar associated rights and obligations. In recognition of the fact that Lake Berryessa is located in Napa County, this subsection further provides that the Secretary shall consult with both the State of California and local governments in Napa County, California, prior to implementing any change in recreational operations. Further, it authorizes the Secretary to enter into contracts with Napa County regarding land use controls, law enforcement, water supply, wastewater treatment, and other matters of concern within the retained federal lands following transfer of the specified water supply facilities.

Section 6(b)(2) authorizes the Secretary to obtain water from Lake Berryessa, consistent with its existing state water rights permit, for recreational or other resource management purposes.

Section 6(b)(3) authorizes the Secretary to transfer funds collected from recreational entrance and user fees to local and/or state law enforcement agencies for the purposes of: regulating the use of all project lands and waters associated with Lake Berryessa; protecting public health, safety and enjoyment of these lands; and, insuring the protection of project facilities and natural resources.

Section 6(b)(4) provides the Secretary with the authority to enter into joint projects with Lake Berryessa concessionaires in order to develop, operate, and maintain short-term recreational facilities which he deems necessary for the safety, health, protection, and outdoor recreational use by the public, and to amend existing concession agreements to accommodate such joint projects.

Section 6(b)(5) authorizes the Secretary to assist or enter into agreements with the State of California, or political subdivisions thereof or non-federal agencies for the planning, development and construction of water and wastewater treatment systems which would protect and improve the waters of Lake Berryessa.

Section 6(b)(6) authorizes the appropriation to the Secretary of $12 million for: short-term public recreation development and resource management actions included in the Reservoir Area Management Plan (RAMP) for Lake Berryessa; and, for the planning, development and construction of the joint projects and water and wastewater treatment systems described in subsections 6(b)(4) and 6(b)(5), respectively. It also provides that recreational entrance and user fees may be used for the operation, management and development of recreational and resource needs at Lake Berryessa and provides that all funds authorized to be appropriated under this subsection are nonreimbursable.

Section 6(b)(7) provides that in the agreement transferring title to the water supply facilities to the Water Users that no activities upon the recreational interests reserved to the United States shall burden the Water Users' use of the water supply facilities of the Solano Project, reduce the storage capacity or yield of Lake Berryessa, or degrade the Solano Project's water quality except for the authority granted the Secretary to obtain water for recreational or other resource management purposes as set forth in subsection 6(b)(2).

Section 6(c) sets forth a federal program for enhancement of the instream, riparian and environmental values of that portion of Putah Creek located downstream of the Putah Diversion Dam and authorizes such sums as may be necessary for its implementation. This federal enhancement program at Putah Creek shall be at full federal cost, cause no reduction in Solano Project supplies, and include: 1) arrangements as are necessary to provide at no net cost to any non-federal party at least 5,000 acre-feet of supplemental water supply to Putah Creek during dry years as defined by the California Water Resources Control Board; and 2) a water conveyance with a capacity of no less than eight cubic feet per second and with appropriate outlets, from the headworks of the Putah South Canal to Putah Creek at Stevenson Bridge Road, at a cost of approximately $3,000,000.

PAYMENT TO THE NATIONAL FISH AND WILDLIFE FOUNDATION

Section 7(a) provides that the Secretary shall transfer all right, title, and interest in and to the Solano Project's water supply facilities to the Water Users following receipt by the Secretary of notification that the National Fish and Wildlife Foundation has received payment of the transfer price.

Section 7(b) governs the disposition of the transfer price payment and specifies that it shall be deposited in a separate account administered by the Foundation in accordance with separate statutory requirements, and that interest from the account shall be utilized for matching grants with non-profit organizations and institutions in California to carry out the fish, wildlife and plant resources conservation and management objectives of the Foundation as specified in section 2 of Public Law 98-244 (16 U.S.C. § 3701(b)).

VESTED RIGHTS AND STATE LAWS UNAFFECTED

Section 8(a) provides that this legislation shall not be construed as affecting or intending to affect or interfere with California laws relating to the control, appropriation, use, or distribution of Solano Project water or to the protection of fish and wildlife, or any vested right acquired thereunder. Section 8(b) provides that the legislation shall not affect rights of the state or any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof.

THE BALTIMORE URBAN LEAGUE'S SALUTE TO THE BLACK FAMILY

HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MFUME. Mr. Speaker, today I rise before this body to share with my colleagues a very special happening that will take place in my congressional district in Baltimore. On November 18, the Baltimore Urban League will once again pay tribute to the black family. This Fourth Annual Salute to the Black Family brings with it a deep sense of pride, respect and love for our rich heritage and for each other.

Mr. Speaker, many obstacles over the years have played havoc with the hearts and minds of the black populace. Those trials and tribulations have slowly but steadily chipped away at our foundation. Still, the black family has endured this test of time.

The Baltimore Urban League recognizes, and rightfully so, that it is the family unit to which we must give credit for holding together a culture that has experienced significant changes and significant challenges.

It seems that families of African ancestry, today, disproportionately face a state of siege like no other we have seen in our history. The proliferation of drugs in our communities has brought on crime and violence of great proportions. Unemployment and underemployment continues to tug at the heartstrings of the family and the community of which we are all a part. Homelessness is also a dreadful reality in the minority community, and, Mr. Speaker, I could go on and on. But we have endured.

The Baltimore Urban League's mission is one of health, education, and welfare. Founded in 1924, the league has moved throughout the community to assist, celebrate, organize, advocate, educate, and to form a partnership with the citizens of Baltimore.

During this period, continuous emphasis has been directed toward the family. With the help of a grant, the league was able to establish a Strengthening the Family Life Program, which achieved national recognition. This program later developed into the consumer service department of the Baltimore Urban League.

In addition to advocacy for improved educational resources and programs, the Baltimore Urban League's education and youth incentives department has provided information about scholarship resources and special workshops, clinics, cultural activities, and counseling services for students and parents, thereby, encouraging involvement by all members of the family unit.

The league's housing department has sponsored numerous programs and furnished direct assistance in home ownership and mortgage matters. This is a very valuable resource for today's average family, which is plagued with housing shortages and limited incomes.

The Urban League has truly served the black community well by bringing together this union of men, women, and children to celebrate our accomplishments and to strengthen our bonds.

I applaud the Baltimore Urban League for being the vanguard in the black community's quest for unity. I trust my colleagues will join me in extending kudos to the Baltimore Urban League for recognizing the family as an idea whose time has come.

REPORT OF THE TASK FORCE ON THE CONGRESSIONAL RECORD

HON. THOMAS S. FOLEY

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FOLEY. Mr. Speaker, on February 7, 1990, the House adopted House Resolution 330, directing the Committee on House Administration to develop recommendations with respect to deletions from the CONGRESSIONAL RECORD.

I take this time to convey to the House the report of the Committee's Task Force on the Congressional Record, which I offer for insertion in the RECORD at this point:

COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC, July 25, 1990.

Hon. FRANK ANNUNZIO,
Chairman, Committee on House Administration, Washington, DC.

DEAR MR. CHAIRMAN: The Task Force on the Congressional Record has completed its assignment relative to H. Res. 330, and I am transmitting herewith the Task Force's final report.

I appreciated the opportunity to Chair the Task Force, and hope you won't hesitate to let me know if I can be of further assistance.

Sincerely,

THOMAS J. MANTON,
Chairman,
Task Force on the Congressional Record.

COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC, July 31, 1990.

Hon. THOMAS S. FOLEY,
Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to H. Res. 330, we appointed a three member task force, comprised of the Honorable Thomas Manton, Chairman, the Honorable Martin Frost, and the Honorable William Dickinson, to study the questions involved and report to the Committee its findings and recommendations.

The task force met during the months of April through June, studied the issue, and has filed its findings and recommendations with the Committee on House Administration. Pursuant thereto, we are pleased to forward the findings and recommendations to you.

Sincerely,

FRANK ANNUNZIO,
Chairman,
WILLIAM M. THOMAS,
Ranking Minority Member.

Enclosure.

REPORT OF THE TASK FORCE ON THE CONGRESSIONAL RECORD

On February 7, 1990, the House adopted H. Res. 330, introduced by Mr. Walker, of Pennsylvania, directing the Committee on House Administration to "report to the House as soon as practicable its recommendations with respect to deletions from the Congressional Record . . ."[1]

Chairman Annunzio appointed a Task Force, consisting of Mr. Manton of New York as Chairman and Mr. Frost of Texas and Mr. Dickinson of Alabama as Members, to review the matters raised by the Resolution and to report its findings and conclusions to the Committee.

The Task Force met on April 5, 1990 in informal session with the Parliamentarian, the Clerk of the House, Committee Counsel and interested staff members.

BACKGROUND

The sponsor of the Resolution, in his remarks upon introduction, noted that, with the broadcasting of House proceedings generally available to the public, there is now an "accurate presentation available to the public, there is now an "accurate presentation of what goes on in the House of Representatives. The [Congressional Record] is a record of what we wish we had said, if only we had said it right."

The issue addressed by H. Res. 330 apparently arose from a deletion from the Record on February 1, 1990, when the transcript of the remarks was reviewed after the statement was delivered. Two questions arising from the incident are: 1) Was the deletion properly made under the existing rules and practices governing revisions and extensions of remarks, and 2) Is there need to revise existing rules to make the Congressional Record adhere even more closely to the televised proceedings?

HISTORY AND PRECEDENTS

Article 1, Section 5 of the Constitution requires "Each House shall keep a Journal of its proceedings, and from time to time, publish the same." The Constitutionally prescribed Journals do not, however, include debates. Reporting of the debates and proceedings of the Congress began with the 1789 Congress, meeting in New York. An informal publication, the Congressional Register, was published by Thomas Lloyd. From 1790 to 1895, debates were reported in newspapers, but no official report, other than the Journal, was regularly provided. In 1834, the Annals of Congress attempted to publish proceedings of previous Congresses, and the Congressional Globe reported Congress from 1833 to 1873. All of these publications were private ventures.

For the first hundred years of the Republic, there was no Congressional Record. It was only in 1873 that the Government Printing Office began to print a "substantially verbatim" Congressional Record. From then to now, there has been debate about the status of the Record, about policies governing "extension and revision", about its cost, and about its probative value as a legal document.

44 USC 901 requires that the Congressional Record "shall be substantially a verbatim report of proceedings . . ." Courts have held, however, that the Record is not necessarily reflective of the position of the Congress. The U.S. Court of Appeals, in Gregg v. Barrett, decided in 1985, held that ". . . Congress as an institution is not a speaker at all under these circumstances . . . the willing speaker is the member who makes a speech and who wishes to revise and extend his remarks."[2] Judge Gerhard Gesell, in an earlier opinion, said, "Congress is perfectly capable of enforcing against its members statutory and rule directives concerning how members' views on public issues are to be reported in the Record."[3]

The most recent floor action concerning the Congressional Record was the 1985 consideration of H. Res. 230, dealing with remarks not spoken but inserted. The resolution, applicable to the 99th Congress, also provided that, "notwithstanding any other rule or joint rule relating to the publication of the Congressional Record, for the remainder of the Ninety-ninth Congress, the Congressional Record shall contain a substantially verbatim account of remarks actually spoken during the proceedings of the House, subject to such technical, grammatical, and typographical corrections as may be authorized by the Member delivering the remarks involved." This principle, emobodied in the regulations of the Joint Committee on Printing, has been placed in the House Rules Manual.[4]

DISCUSSION

The incident giving rise to H. Res. 330 involved matter actually spoken and later deleted. Deschler's Precedents, Chapter 5, Sec. 17 ff., discusses precedents and rulings regarding deletions. The general principles for deletions are:

"Although the Congressional Record is substantially a verbatim report of proceedings, the House frequently excludes from the Record remarks made out of order or unparliamentary remarks which reflect unfavorably upon the House, its committees or individual Members. Remarks made on the floor by a Member after he has been called to order, without recognition by the Chair, or without consent of the Member occupying the floor, are frequently deleted from the Record by the House, the Speaker, or the Member in revising his remarks."

"A Member occasionally makes a remark in the heat of debate which reflects unfavorably upon the House, its membership, or its committees, and which he immediately regrets. In such instances the Member who has spoken the words may request the unanimous consent of the House that they be deleted from the Record or such request may be made by another Member. The House frequently agrees to these requests made in the spirit of apology."

"During floor debate a Member will sometimes demand that words spoken by another Member be taken down. The Speaker then determines whether the words spoken in debate reflect unfavorably upon the House, its membership or institutions. If the Speaker rules the words unparliamentary, a Member frequently makes a motion or introduces a resolution to delete the unparliamentary remarks from the Record. Occasionally the Speaker [by unanimous consent] will immediately order the unparliamentary remarks deleted from the Record, without awaiting action by the House."[5]

The general authority provided to "revise and extend" is subject to limitations established in rules and precedents. It has long been the practice of the House for a Member to edit and revise his remarks before publication in the RECORD. The consent of the House is required, however, for the correction of major errors or the deletion of unparliamentary remarks or remarks made out of order.

Revisions are limited to correction of grammatical or technical matters that do not alter in any material way the substance of the remarks. Revisions in excess of this are improper and may be challenged. There are other limitations on the authority to revise: A Member may not delete proceedings by which his words are taken down, remarks interjected by another Member to whom he has yielded, or to whom he has responded. Nor may a Member revise remarks that alter the text of colloquies with other Members without their consent.

Deletions, other than grammatical and technical changes, therefore, can only be made with permission of the House, on the initiative of a Member or the Speaker.

A letter from then Chairman of the Joint Committee on Printing Senator Charles Mathias to Chairman Frank Annunzio (February 4, 1986) made an important observation:

[1] See Appendix for full text.

[2] *Gregg v. Barrett*, 771 F. 2d. 539 (1985)

[3] *Gregg v. Barrett*, 594 F. Supp. 108 (1984)

[4] H. Doc. 100-248, 101st Congress, Sec. 924.

[5] This was last documented in 1945, and is not the modern practice, unless the words were spoken without the Member being recognized, e.g., when the Member having control of the time did not yield to him.

"As you know, the RECORD has often been the subject to criticism for its lack of accuracy in relation to the actual floor proceedings which it was meant to report. I have always supported the notion of greater compliance with the rules and the restrictions associated with revisions to Members' statements. I firmly believe that the 'Laws and Rules for Publication of the CONGRESSIONAL RECORD', if properly enforced, would result in a more accurate publication. I also believe that Members should be subject to stricter limitations on the length, content, and location of their remarks in the daily RECORD . . ." [6]

TASK FORCE DISCUSSIONS

The Task Force met with the Parliamentarian, the Clerk, and the Committee Counsel, to explore issues raised by H. Res. 330. The Parliamentarian, describing the specific incident of deletion giving rise to the resolution, stated that he had approached the Member, through an intermediary, after the offending words were given and suggested that he might wish to delete them as unparliamentary. This advice, while consistent with older precedents allowing the Chair to delete unparliamentary language, was not in accordance with the guidelines adopted in the 99th Congress cited above, as the Parliamentarian later admitted. After this discussion, the words were deleted by the Official Reporter on advice of the Parliamentarian and with the consent and approval of the Member who had made the statement. They did not appear in the transcript or the printed RECORD for the day. Had the rules and precedents been properly observed, they would have appeared in the RECORD, but could have been deleted by unanimous consent from the permanent RECORD. Had a point of order been made at the time of delivery, the words might have been deleted in the regular order.

Because House rules provide that a Member shall not be held to answer nor subject to censure of the House for unparliamentary words spoken in debate if further debate or other business has intervened, the Task Force concluded that Members and staff need to be more aware of the rules and to pay closer attention to activities on the floor.

The Task Force recommends that the Rules Committee consider amending House Rule XXXIV to elevate the current Joint Committee on Printing Guidelines for printing the CONGRESSIONAL RECORD, also included as a footnote to House Rule XXXIV, to a House Rule in their own right. Specifically, the Task Force recommends the following:

1) The CONGRESSIONAL RECORD should be a substantially verbatim account of remarks made during Floor proceedings with corrections being technical, grammatical or typographical in nature only, so as to make the process one more of verification than revision.

2) Deletion of unparliamentary remarks would be allowed only through consent or order of the House.

3) Members would be subject to the authority of the House for any abuses of the leave to revise and extend, including any violation of this rule or any of the rules regarding the CONGRESSIONAL RECORD promulgated by the Joint Committee on Printing.

Through this elevation, Members would have specific guidance regarding additions, deletions and technical corrections to the CONGRESSIONAL RECORD.

[6] See Appendix for complete text.

Although the rules, properly enforced, provide a process for managing revision and extension of remarks, as well as deletions of unparliamentary language, there may still be a need to make some changes to the CONGRESSIONAL RECORD to make it reflect more accurately the floor proceedings as televised. The Task Force recommends that the Joint Committee on Printing review its regulations in this regard.

Many of the questions raised by improper deletions or extensions center around the practice of granting special orders which are delivered to a substantially empty chamber. In the absence of Members who are listening and paying attention to the Member addressing the House, compliance with the rules becomes a matter of chance. While the Parliamentarians and other floor staff are ever available to provide advice and guidance, Members should not expect them to be enforcers of the rules. Members must themselves assume the responsibility for compliance, whether speaking, presiding, or present on the floor.

The Task Force does not at this time see any need to modify the rules, in the belief that this report, in addition to renewed emphasis on the existing guidelines and regulations, should help achieve the goal of a more accurate and nearly verbatim record of House proceedings.

H. RES. 330

Whereas the gentleman from Illinois, Mr. Savage, addressed the House on February 1, 1990, in the period known as Special Orders;

Whereas certain of his remarks did not appear in the body of the CONGRESSIONAL RECORD of February 1, 1990;

Whereas numerous other examples of deletions from the CONGRESSIONAL RECORD of remarks actually uttered on the floor have been mentioned in the press; and

Whereas these omissions seriously threaten the integrity of the proceedings of the House: Now, therefore, be it

Resolved, That the Committee on House Administration report to the House as soon as practicable its recommendations with respect to deletions from the CONGRESSIONAL RECORD pursuant to permission granted by the House to revise and extend remarks, in light of the adoption by the House of clause 9, Rule I which directs the Speaker to implement a system of complete and unedited audio and visual broadcasting and recording of the proceedings of the House of Representatives.

JOINT COMMITTEE ON PRINTING,
Washington, DC, February 4, 1986.

Hon. FRANK ANNUNZIO,
Chairman, Committee on House Administration,
Washington, DC.

DEAR FRANK: Some time ago you and Ranking Minority Member Frenzel wrote to the Joint Committee regarding the application of Rule 7 of the "Laws and Rules for Publication of the CONGRESSIONAL RECORD". That rule mandates that if the edited manuscript of a Member's floor remarks is not returned to the clerks by the RECORD's press deadline, then the remarks will be withheld from that day's issue and printed in a subsequent issue in the Extension of Remarks section. Your letter suggested that the Rule be changed so that if Members do not return manuscript copy on time, the clerks would reconstruct the manuscript from available electronic recordings of the proceedings. The remarks would then be printed as spoken rather than withheld for later publication.

While this suggestion has initial appeal, there are several substantial drawbacks which militate against the change. First, all Members occasionally make misstatements or errors of fact, or use improper syntax or grammar. Current procedures allow Members to correct such problems prior to their remarks being published. The change you suggest would eliminate this editing prerogative in cases where, through no fault of their own, Members do not receive a copy of their remarks to edit. In the example cited in your letter, this was precisely what would have occurred. Members McCandless, Foley, Walker, Gekas and Lundgren would have had their unedited remarks printed in the daily RECORD perhaps with substantial errors—simply because of the failure of a messenger. The example, therefore, represents a failure of the delivery system rather than the failure of Rule 7. The colloquy as properly edited was eventually printed in the Extensions of Remarks, and it will appear in its proper place in the debate when the permanent bound CONGRESSIONAL RECORD is published.

Second, the example cited in your letter points up the even more troublesome matter of colloquies between several Members. In order to maintain the integrity of the whole, colloquies are edited serially by the Members who took part in the colloquy. The Member who controlled the time gets to edit last. That being the case, a Member who speaks at the end of a colloquy, and particularly the Member who controls the time, has the ability to determine whether other Members' remarks appear as edited, or as reconstructed by the clerks. This control may be excercised either through inadvertence or by intent. In either case, one Member has power over another's remarks. For example, suppose a Member who spoke early in a colloquy makes a misstatement of fact. When he receives the manuscript, he corrects the errors and passes the copy to the next Member who spoke in the colloquy. That next Member, or any other Member who spoke after him, can cause the first Member's unedited misstatement to appear in the RECORD simply by not returning the manuscript to the clerk. This could happen, even though that first Member had permission to revise and extend and properly did so.

The third reason for endorsing the existing rule is that little or no harm is done by withholding material from the daily RECORD when a manuscript is not returned. The material will appear in the Extensions of Remarks and eventually will appear in its proper position in the debate when the permanent bound edition of the CONGRESSIONAL RECORD is published. This permanent edition is the official record looked to for legislative interpretation. For your information, the Joint Committee recently has obtained a commitment from the Public Printer to improve the production schedule for the permanent edition. In the future, it should be published within a year following the end of a session of Congress.

As you know, the RECORD has often been subject to criticism for its lack of accuracy in relation to the actual floor proceedings which it was meant to report. I have always supported the notion of greater compliance to the rules and the restrictions associated with revisions to Members' statements. I firmly believe that the "Laws and Rules for Publication of the CONGRESSIONAL RECORD", if properly enforced, would result in a more

accurate publication. I also believe that Members should be subject to stricter limitations on the length, content, and location of their remarks in the daily Record. To this end, I would welcome your support in efforts to promote a greater awareness on the part of our colleagues in Congress and their recognition and adherence to the rules concerning the CONGRESSIONAL RECORD.

With best wishes,

Sincerely,

CHARLES MCC. MATHIAS, Jr.
Chairman.

THE STATE OF AMERICAN ENERGY DEPENDENCY

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. WEISS. Mr. Speaker, even if the United States emerges successfully from the Persian Gulf crisis, and even if oil prices tumble to the pre-invasion levels, we still face another crisis: this nation's excessive dependency on foreign oil, which is a big reason we are in Saudi Arabia.

But the President and Congress have little, if anything, constructive to say about American dependency on foreign oil. Congress has held a few hearings on energy security. The President has made a few statements on how abominable our dependency is. Everyone is waiting for the Department of Energy to produce the National Energy Strategy in December—the silver bullet to slay the beast of dependency. But I am not holding my breath for that strategy. It will make recommendations to the President, and who knows what he will do with it then?

The national debate on energy policy should begin immediately. The state of American energy dependency is severe.

The United States imports nearly half of the oil it consumes, and the Persian Gulf countries export about 25 percent of that foreign oil. What's more, oil makes up about 40 percent of all the energy we consume, which is far more than any other energy resource. Of the total amount of oil consumed per day, imported oil accounts for about 8 million barrels, or slightly more than half of the total. Cars, buses, trucks and planes consume most of the oil.

To be sure, oil imports are expensive to the United States. The cost of Operation Desert Shield will be about $15 billion a year. In 1989, imported oil cost the United States $48 billion, which is out of a total trade deficit of $109 billion. Cheap foreign oil throughout the 1980s undersold domestic producers, forcing some of them to close contributing to the recession in oil states. Oil is expensive when the costs to human health, the environment, and the clean up of oil spills and pollution are tabulated. When these costs are added to oil prices, oil dependency is high by any account.

With the price of a barrel of oil seesawing between $30 and $40, and with some 240,000 American troops in Saudi Arabia, the dire state of American energy dependency would seem to be obvious to everyone. It's not.

The corporate average fuel efficiency standard [CAFE] for automobiles has slipped in recent years. A measure to improve the CAFE standard was recently defeated in the Senate. Meanwhile, Detroit is building cars that are bigger and heavier. Congress has done little to curb domestic consumption, except to place a modest tax on gasoline that will have a dubious effect on reducing consumption.

In short, the President and Congress are playing Russian roulette with this Nation's energy dependency. The best hope for a reprieve from high oil prices is that the Iraq-Kuwait situation will work itself out peacefully, so it can be business as usual in the American oil market and economy. This is no way to run an oil-dependent nation.

A common argument about our dependency is that domestic oil production needs to be increased. But the United States will not drill its way out of foreign oil dependency. Even under the best circumstances, increased domestic oil production is only a short-term solution.

The United States already has more operating oil wells than any country in the world. There are 612,448 oil wells trying to pump the 26.5 billion barrels in proven U.S. oil reserves. About 80 percent of those wells pump less than 10 barrels of oil per day. If all foreign oil imports were stopped, and given the current rates of consumption, the domestic oil reserves would not last into the year 2000.

Unless the United States somehow significantly reduces its dependency, we will have no choice but to continue going to the world market for oil. Under this scenario, the United States will be locked into the vagaries of the world oil market, with all of its geopolitical and economic consequences. The United States desperately needs some kind of national agenda for this Nation's energy use.

The American people have a right to know about their government's plans, or the lack thereof, for the future use of publicly owned domestic energy resources. They have a right to be informed of this Nation's consumption rate of the different energy resources, those resources availability, the tradeoffs involved, and what the government is doing to create greater energy efficiency.

Neither President Bush nor President Reagan prepared the country for the tough choices ahead about energy use. Throughout the 1980s, the United States was the beneficiary of cheap foreign oil. As long as foreign oil remained inexpensive and accessible, the United States had no problem. That time has long passed. The question is whether we will confront those difficult choices or continue the present fiction of limitless, trouble-free oil supplies.

CONGRATULATIONS TO HAROLD L. STARK

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. VISCLOSKY. Mr. Speaker, I rise to ask my colleagues to join with me in congratulating Harold L. Stark on his retirement. This year, Harold completes 18 years of outstanding and distinguished service with the Tri-City Community Mental Health Center of East Chicago, IN.

Throughout his adult life, Harold has been very active in organizations that address those who are in need in our society. He is the past president and current treasurer of the board of directors of Tri-City Mental Health Center, a former chairman of the Mental Health/Mental Retardation Task Force, a member of the Governor's Citizen Council/Advisory Committee on Addiction Services and the Governor's Task Force on the Employment of the Handicapped, past president of the Indiana University Northwest Labor Advisory Committee and a Governor Bowen appointee to the Indiana Commission on Aging and Aged.

Harold was the founder of the AFL-CIO Union Counselor Association, past president of the Lake County Indiana Economic Opportunity Council and liaison for the AFL-CIO Community Services with the Lake Area United Way. He has served as a board member of the Visiting Nurse Association Professional Advisory Committee, a board member of Referral and Emergency Services, Inc., and an officer and board member of the Foundation for Comprehensive Health.

On November 16, 1990, Harold will be honored at the 18th annual dinner meeting of the Tri-City Community Mental Health Center. The date is significant because it is National Philanthropy Day—Harold is clearly deserving of being recognized and formally thanked for his outstanding contributions to improving the lives of his fellow citizens.

Although he will be sorely missed, his retirement is well deserved. I know that Patricia Sonaty and the officers and members of the board of the Tri-City Community Mental Health Center, and indeed the entire community, join me in thanking Harold for his efforts and wish him the best in his retirement.

REUBEN R. JONES

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. McEWEN. Mr. Speaker, Ohio and farmers everywhere lost a hero and a great friend when Reuben R. Jones, of Circleville, OH, died at age 73 on September 7, 1990. Although we mourn his passing, I join his many friends, family, and admirers in celebrating the many contributions he made, as a farmer, a religious and community leader, and as a family man. In every way, he enriched our lives.

It came as no surprise when Reuben Jones was inducted into the 25th Agricultural Hall of Fame this August at the Ohio State Fair. His contributions to agriculture as a farmer, breeder, and administrator are so extensive it is hard to believe they are the work of one man.

As a breeder of Holstein cattle, he earned national recognition by winning the Progressive Breeders Registry Award for 8 years. He was the first president of the Pickaway Farmer's Club. He also served as president and vice president of the Ohio State Holstein Association and was a member of the Ohio Exhi-

bition Commission. He brought his considerable talents to Washington, DC, where he directed the Livestock and Dairy Division of the Agriculture Stabilization and Conservation Service in the Department of Agriculture.

Reuben was an active and invaluable member of many other agriculture organizations including: Farmers Home Administration, Dairy Science Advisory Board, Ross County Swine Board, Ross County Milk Producers Board, and the Pickaway County Farm Bureau.

It's nearly impossible to list all of Reuben's awards and citations, but the Ohio State Breeders Award for Holstein cattle deserves a special mention. Reuben, however, is best remembered for his willingness to devote his time, knowledge, and experience to help others. Reuben never turned away from a challenge or said no to a request for his assistance. We are all better for that. In recognition of these efforts, he was made an honorary member of Future Farmers of America and Alpha Zeta Fraternity at the Ohio State University. Reuben was a natural choice for the Governor's Commission on Agriculture and once again served us all with distinction.

Deep faith and a lifetime of service to God was another hallmark of Reuben's life. While his kindness and charity touched everyone, the First Baptist Church in Chillicothe, OH, benefited most directly from his membership during the last 50 years. This leader in agriculture was also a leader of his church, serving as a member of the board of trustees for 40 years. For the last 35 years, he lead the board as its chairman.

A life of enormous accomplishment was equally matched by Reuben's love and contributions to his family. One of five boys and five girls, Reuben was born on August 3, 1917, in Jackson County, OH, to Marshall and Emma Jones Cosby. His family will miss him most of all and he leaves behind a large and loving family. Two of his sisters, Ilo Banks and Gustava Smith, survive. My deepest sympathies are with his wife, Dorothy M. Ford Jones, and his five children, Marvin H. Jones, Lewis R. Jones, Raymond and Diane Jones, Carvel and Inez Simmons, and Unice F. Foster. Reuben also leaves behind 11 grandchildren and 3 great-grandchildren.

[From the Chillicothe Gazette]

Reuben R. Jones

Reuben R. Jones, age 73, of Circleville, died Friday evening, Sept. 7, 1990, in Riverside Methodist Hospital.

He was born Aug. 3, 1917 in Jackson County to Marshall and Emma Jones Cosby.

Survivors include his wife, Dorothy M. Ford Jones; five children of Reuben and Jenevee Jones, sons, Marvin H. Jones, Buffalo, NY, Lewis R. Jones, Cincinnati, Raymond and Diane Jones, Chillicothe; daughters, Carvel and Inez Simmons, Cincinnati, and Unice F. Foster, Oakland, Calif.; 11 grandchildren; three great-grandchildren; two sisters, Ilo Banks, Chillicothe and Gustava Smith, Worthington. He was preceded in death by four brothers and three sisters.

Funeral service will be held Tuesday at 1 p.m. at the First Baptist Church, Chillicothe, with Rev. Melvin Woodard Sr. officiating. Burial will be in Forest Cemetery, Circleville. Friends may call 3-9 p.m. today at the Defenbaugh-Wise Funeral Home, Circleville, and one hour prior to the service at the church.

Mr. Jones was inducted into the 25th Agricultural Hall of Fame in August of 1990 at the Ohio State Fair. He has had national recognition for the Progressive Breeders Registry Award for breeding Holstein cattle for eight years. He was the director of the Livestock and Dairy Division of ASCS in the Department of Agriculture in Washington, D.C. He was president and vice president of the State Holstein Association and the first president of the Pickaway Farmer's Club, as well as a member of the Ohio Exhibition Commission.

Mr. Jones had received awards for the following citations: State Breeders Award for Holstein cattle; honorary member of Future Farmers of America; honorary member of the Alpha Zeta Fraternity at The Ohio State University; and was appointed to the Governor's Commission on Agriculture. He was a member of Farmers Home Administration, Dairy Science Advisory Board, Ross County Swine Board, Ross County Milk Producers Board and the Pickaway County Farm Bureau. For the past 35 years Mr. Jones had been the Chairman of the Board of Trustees for the First Baptist Church, Chillicothe, and a 40-year board member. He was a member of the church for 50 years.

Memorial contributions may be made to the Scholarship Fund, Dairy Science Department of OSU.

TRIBUTE TO BILL NELSON

HON. EARL HUTTO

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. HUTTO. Mr. Speaker, I want to pay tribute to my good friend BILL NELSON who is retiring from this body at the end of the 101st Congress. BILL and I have been good friends and colleagues for more than 18 years and I am sorry to see him go.

I first met BILL when he and I were elected to the Florida House of Representatives in 1972. Our desks were within close proximity in the House Chamber and we served on some of the same committees. We also came to the Congress together after the election of 1978. So, we were on the same track, but when BILL decided to go into outer space this is where I would draw the line. Likewise, when he decided to launch a statewide race for Governor I said he did it with my admiration but I had no desire to run for any statewide office in Florida due to the fact it is almost as far to Key West from Pensacola as it is from Pensacola to Chicago. Only if I lived in Delaware or perhaps Rhode Island would I follow my friend into such a venture.

Although BILL NELSON's home in Melbourne is about 300 to 400 miles from my district in Northwest Florida, BILL does have roots in my area of the panhandle. His 101-year-old grandmother as well as several uncles and cousins reside in Orange Hill in Washington County which was in my district before the reapportionment of 1982. His Uncle Ferrell, a former member of the county school board, is a watermelon farmer and I remember fondly the days when my family and I rode on the back of his pickup truck in the annual Watermelon Festival Parade in Chipley. BILL is a frequent visitor with his relatives and we are always glad to have him and his family in what I call "the good part of Florida."

As BILL NELSON leaves the Congress he carries with him a distinguished career in politics. In his service in the Florida Legislature and in the Congress he has shown a concern for America and its people. He has worked hard for his constituents as evidenced by his accomplishments for the Kennedy Space Center in his district while serving as a subcommittee chairman of the Space, Science, and Technology Committee. BILL became something of an expert on space and we were thrilled for him when he became an astronaut and went into space aboard one of our shuttle flights.

BILL's wife Grace is a lovely charming lady and they have two fine children. Nancy and I treasure our friendship with the Nelsons and we wish them God's blessings in all their endeavors.

ROSY ASSUMPTIONS

HON. JIM MOODY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MOODY. Mr. Speaker, I voted against the conference report on the budget for reasons: First, the wealthy still won't pay their fair share. Second, medicare cuts are too severe. Third, it didn't cut enough, especially in military spending. Fourth, limiting the deductibility of State and local taxes in order to prevent an increase in the top rate for the very wealthy, as the President insisted, is bad tax policy that will end up hurting States like Wisconsin. Fifth, the hits on farming incomes are excessive.

The overall package is way too timid. It only cuts $40 billion from a 1991 deficit now estimated at $300 billion. Additional cuts in spending, especially in military spending, should have been insisted on over White House and objections.

This package continues defense spending at a Cold War level with nearly $200 billion earmarked for the strategic defense of Europe and Japan. Eliminating the $50 billion we spend defending Japan's shipping sealanes would have equalled the entire gasoline tax increase.

This package does make dramatic progress in turning away from the 1980's habit of tax breaks for the wealthy and increased burdens on the middle class. But the feature of limiting deductions, so people making over $200,000 could avoid paying at the 33-percent Federal rate should not have been added. It's fine for low-tax energy States like Texas but bad for high tax States like Wisconsin.

Finally, the entire deficit cuts here are too small. The claim that this package will eliminate the budget deficit in 6 years is pure fiction. The economic assumptions used to calculate future savings, like doubled GNP growth, a 4-percent inflation rate and plummeting interest rates are just the same old rosy assumptions that got us into trouble in the past.

I hope next year we resume the debate over tax fairness and insist that millionaires pay their share. We must also declare war on excess defense spending.

While we make these deeper deficit cuts we must be fair to the family farmer and to the elderly and disabled under Medicare who are truly low-income.

Above all we must stop using rosy, unrealistic economic assumptions.

CONGRATULATIONS TO HAROLD L. STARK

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. VISCLOSKY. Mr. Speaker, I rise to ask my colleagues to join with me in congratulating Harold L. Stark on his retirement. This year, Harold completes 18 years of outstanding and distinguished service with the Tri-City Community Mental Health Center of East Chicago, IN.

Throughout his adult life, Harold has been very active in organizations that address those who are in need in our society. He is the past president and current treasurer of the board of directors of Tri-City Mental Health Center, a former chairman of the mental health/mental retardation task force, a member of the govenor's citizen council/advisory committee on addiction services and the governor's task force on the employment of the handicapped, past president of the Indiana University Northwest Labor Advisory Committee and a Governor Bowen appointee to the Indiana Commission on Aging and Aged.

Harold was the founder of the AFL-CIO Union Counselor Association, past president of the Lake County Indiana Economic Opportunity Council and liaison for AFL-CIO Community Services with the Lake Area United Way. He has served as a board member of the Visiting Nurse Association professional advisory committee, a board member of Referral and Emergency Services, Inc., and an officer, and board member of the Foundation for Comprehensive Health.

On November 16, 1990, Harold will be honored at the 18th annual dinner meeting of the Tri-City Community Mental Health Center. The date is significant because it is National Philanthropy Day. Harold is clearly deserving of being recognized and formally thanked for his outstanding contributions to improving the lives of his fellow citizens.

Although he will be sorely missed, his retirement is well deserved. I know that Patricia Sonaty and the officers and members of the board of the Tri-City Community Mental Health Center, and indeed the entire community, join me in thanking Harold for his efforts and wish him the best in his retirement.

TRIBUTE TO JIM COURTER

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. LEWIS of California. Mr. Speaker, I would like to take a moment to pay tribute to my good friend and colleague JIM COURTER. Not only was he a classmate, our offices were on the same floor in the Cannon Building. We developed a lasting friendship walking to the Chamber for votes during late night sessions similar to these. He has been a valued member of the Armed Services Committee and a true friend.

Mr. Speaker, I simply want my good friend from New Jersey to know that his presence will be missed in this House and we all wish him the very best.

THE HAZARDOUS MATERIALS TRANSPORTATION REAUTHORIZATION AND AMENDMENTS ACT OF 1990

HON. DAVID E. SKAGGS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. SKAGGS. Mr. Speaker, while I don't plan to object to this bill today, I am greatly disappointed that, since the bill has been brought up under a unanimous consent order, the House will not be permitted to consider a very important amendment I had intended to offer.

My amendment would require the Federal Government to comply with the same Federal and State hazardous material transportation requirements that every other shipper must comply with. Radioactive and other hazardous materials are no less dangerous when handled by the Federal Government than when transported by private haulers. That's why it makes sense to require Federal agencies to abide by the same requirements as everyone else.

Recognizing that there are certain situations when there may be a compelling reason for exempting the Federal Government from these requirements, my amendment sets up a process by which the Secretary of Transportation may grant exemptions to individual agencies upon demonstration that the application of a specific requirement would impose an unreasonable burden upon the agency.

Other major environmental laws, such as the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act, apply to the Federal Government. There is simply no reason not to follow these examples and extend HMTA to cover all Federal transportation.

Mr. Chairman, I understand that the last minute crunch of legislation and the impending adjournment deadline lease us few options other than this unanimous consent order. However, for those of us representing areas where the Federal Government produces and transports large quantities of hazardous materials, there is simply no room for shortcuts. No excuse for holding the Federal Government to a lesser standard than the one we expect of others.

I do appreciate your willingness, Mr. Chairman, (the gentleman from California, Mr. MINETA), to commit to hold hearings and consider legislation next session dealing with the critical issue of Federal compliance. This issue is important and we need to address it. Anything less compromises the safety of America's citizens.

I'd like to take a moment to mention a few other provisions in the bill that are of particular importance to me.

First, this bill includes an amendment I authored that explicitly requires all private contractors to the Federal Government who transport and handle hazardous materials to comply with all Federal, State, and local HAZMAT laws. While some argue that this is already the case, the fact is that some contractors persist in claiming "sovereign immunity" in order to avoid compliance with State and local HAZMAT regulations. For example, the shipping firm that won the contract to haul hazardous shipments to WIPP has tried to evade Colorado's regulations by claiming that since they're under contract to the Department of Energy Colorado's laws don't apply to them. Meanwhile, the State of Colorado is dragged into unnecessary and costly lawsuits. The language in this bill makes clear once and for all that Federal contractors must comply with all relevant regulations.

Second, while not going as far as I'd hoped on Federal compliance, the committee did accept my proposal to extend the bill's training provisions to all persons handling hazardous materials. That includes employees of Federal, State, and local governments and Indian tribes. Again it is just as important that Government employees receive training on the proper methods of handling hazardous materials as it is for employees of private haulers.

Third, the bill includes report language I authored addressing the issue of mountain driving. Transporting hazardous materials through mountainous regions can be treacherous even for the most experienced drivers, yet it is difficult to ensure that truckers have adequate levels of training for safe mountainous driving. Colorado State Patrol records indicate that trucks delivering supplies through Summit County, which is located up in the mountains, use the "runaway" truck ramps once every 10 days, or about 37 times a year, and about half of these lose their cargo. In every one of these accidents the truck driver had an out-of-State driver's license. Also, in almost every case, the driver involved in truck accidents had no experience driving in the mountains.

To address this issue, the committee report language requests that the Secretary of Transportation review the efficacy of the commercial drivers license requirements on mountain driving skills, currently being phased in around the Nation and, if he deems necessary, recommend additional training requirements regarding the special factors particular to safe transportation of hazardous materials in mountainous regions.

Finally, let me just say that I think this bill will help to minimize the dangers associated

with transporting hazardous materials. It does that by strengthening existing programs and developing new ones with respect to training, routing, emergency response, permitting, inspection, registration, and enforcement. I congratulate you, Mr. Chairman, for your work on this legislation, and look forward to continuing our work together next year to ensure the safe transportation of hazardous materials.

TRIBUTE TO PATRICIA McCONNELL

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. GILMAN. Mr. Speaker, I would like to take this opportunity to congratulate one of my constituents, Patricia McConnell of Warwick, NY, on receiving the coveted 1990 Theodore Roosevelt Conservation Award.

Throughout her career, Pat McConnell has demonstrated her concern and knowledge of our environment equaled by few. As the past president of the New York State Association of Conservation Commissions, a member and past chairman of the town of Warwick Conservation Committee from 1973 through 1989, and currently an adjunct professor at the school of theoretical and applied science at Ramapo College, Pat has dedicated her career to the protection and enhancement of the environment, often donating her time to the causes in which she believes.

Most recently, Pat has focused on the global issue of deforestation, teaching a course on tropical ecosystems and conducting a field trip for environmental students to the rain forests of Central America. As my colleagues are aware, this is a particularly important topic relating to global warming, and the preservation of our world's biological diversity. Additionally, Pat organized a 3-day national conference on radon, held at Ramapo College. Radon has been identified as perhaps one of the greatest cancer dangers in homes throughout our Nation. Both of these issues are pressing environmental concerns. It is heartwarming to know that Pat McConnell continues to work on behalf of our environment and all of us.

Mr. Speaker, I commend Pat McConnell for her accomplishments and invite my colleagues to join in congratulating her on receiving the Theodore Roosevelt Conservation Award.

TRIBUTE TO REGION XI BLACKS IN GOVERNMENT

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FAUNTROY. Mr. Speaker, I take great pleasure in rising today to pay tribute to region XI Blacks in Government [BIG] for their many outstanding accomplishments over the years. I am pleased to inform you that the organization will host the 1990 Regional Training Conference and Awards Banquet on Friday and Saturday, November 16 and 17, 1990 at the Howard University Blackburn Center.

BIG was conceived and organized in 1975 by a group of Department of Health, Education, and Welfare employees. BIG was incorporated as a nonprofit organization under the District of Columbia jurisdiction in 1976. Today, over 100 chapters exist throughout eleven regions.

There is great diversity in the interests, backgrounds and occupations of those who hold membership with BIG. For example, diversity in occupations ranges from that of council members, State legislators, executives, managers, supervisors, administrative assistants, police officers, city managers, to that of clerical and other support staff.

BIG functions as an employee support group, an advocacy group, and a resource group for black civil servants. BIG's goals and objectives are clearly stated, and over the years, the organization has done a tremendous job in obtaining the goals that they have set. For example, BIG serves as an advocate of equal opportunity for blacks in the government; the organization has done an outstanding job of working toward the elimination of the practice of racism against blacks in the government; they are committed to promoting professionalism among blacks in the government; in an effort to keep their members well informed, on an ongoing basis, they provide nonpartisan platforms on major issues of local and national significance.

Mr. Speaker, this tribute to BIG is well deserved, and on behalf of the citizens of the District of Columbia, I am pleased to take this rare opportunity to extend this expression of gratitude to BIG for its many substantial accomplishments. I encourage BIG to keep up the good work.

WE THE PEOPLE * * * BICENTENNIAL PROGRAM TEACHES STUDENTS IMPORTANT CONSTITUTIONAL LESSONS

HON. MIKE ESPY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ESPY. Mr. Speaker, I would like to bring to your attention the exemplary curricular materials that are used in the National Bicentennial Competition on the Constitution and Bill of Rights. The program is cosponsored by the Commission on the Bicentennial of the U.S. Constitution and funded by an act of Congress.

The We the People * * * high school text, developed by the Center for Civic Education, is used to prepare students for the competition and contains teaching methods which combine expository and inquiry methods. This approach requires the active participation of the students themselves as teams, and enables them to apply their knowledge to a wide variety of political questions and problems.

The We the People * * * text, for example, not only examines the evolution of constitutional government, but also focuses study on fundamental rights, that is, the protection of freedom of religion, freedom of expression, due process of law, and equal protection of the laws under the Bill of Rights and the fourteenth amendment. Lesson 24 is entitled "How does the Constitution promote equal protection of the laws" and devotes special attention to the following terms and ideas: the Civil War amendments, fourteenth amendment, equal protection of the laws, Jim Crow laws, "separate but equal", segregation, Plessy versus Ferguson, and Brown versus Board of Education.

Students examine historical and contemporary situations involving constitutional issues and grapple with the task of proposing and evaluating solutions to those issues. Students discuss the constitutionality of the actions of State and local governments in situations involving alleged discrimination in issues of employment, housing, education, and suffrage. By dealing with such issues, students develop a more profound appreciation of our constitutional democracy, its underlying principles and values, and the responsibiliy of both government and citizens alike to promote the realization of our nation's ideals.

Mr. Speaker, I am pleased to report that the schools in the 2d District of Mississippi are actively participating in the We the People * * * National Bicentennial Competition. Under the excellent leadership of the Mississippi State coordinator, Dr. Charles Washington, director of the John C. Stennis Institute of Government at Mississippi State University, the program has flourished considerably. The congressional district coordinator, Sherry Fisher of Vicksburg, MS, has done an outstanding job of implementing the bicentennial program in my congressional district. These programs will provide students with the intellectual tools necessary to be informed and participatory citizens.

I commend the Center for Civic Education for their role in developing the excellent We the People * * * curricular materials for administering the National Bicentennial Competition.

H.R. 3656, COORDINATED CLEARANCE

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. WALGREN. Mr. Speaker, I introduced the Gas Related Activities Act last June along with my colleagues Mr. ECKART, Mr. MURPHY, Mr. BLILEY, Mr. OXLEY, and Mr. RITTER.

This is vitally needed legislation. It will allow the three registered gas systems, Columbia Gas, National Fuel, and Consolidated Gas, to fully participate in the very competitive natural gas industry. Without this legislation, these companies would be subject to an overly narrow SEC interpretation of the functional relationship test under the Public Utility Holding Company Act. Contrary to FERC and State policies requiring nondiscriminatory arms-length transactions, the SEC's interpretation of section 11(b)(1) of PUHCA requires the registered gas companies to favor their affiliated gas utilities. The SEC's approach unnecessarily limits the companies' operations to the det-

riment of consumers. For example, under the SEC's interpretation of the functional relationship test, a registered gas company could be prohibited from entering a new market to provide lower cost gas to consumers of unaffiliated local distribution companies.

The Gas Related Activities Act resolves the problem in favor of competition the regulatory conflict between the SEC's narrow reading of PUHCA, on the one hand, and the pro-competition policies of the FERC and the States, on the other. The bill provides that the acquisition by a registered gas company of natural gas transportation or storage activities is deemed to be functionally related. It provides similar treatment to the acquisition of exploration, marketing and other gas supply related activities if the Commission determines that the acquisition is in the interest of consumers of the gas utilities owned by the registered gas systems or consumers of any subsidiary of the registered system, unless the acquisition would be detrimental to consumers of the system.

I would like to thank the gentleman from Massachusetts [Mr. MARKEY], for his outstanding efforts in support of this legislation.

UPON THE RETIREMENT OF TROY BRAMLETT

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PANETTA. Mr. Speaker, I rise today to pay tribute to Troy Bramlett, the superintendent for the Monterey County Office of Education, on his retirement after 35 years of education service. His success at implementing several key programs for Monterey County has transformed education in the area to a top-notch level.

Mr. Bramlett has taught every grade from kindergarten through college and has spent the last 20 years as a school superintendent. He was superintendent of the Pacific Grove Unified School District for almost 10 years before being elected county superintendent of schools in 1983. The political pressures and stress associated with elected county positions did not bring Mr. Bramlett down, however. He has largely accomplished the goals he set for Monterey County almost 8 years ago.

The highlights of his achievements are astounding. He worked long and hard to obtain a satellite campus of California State University at San José in Salinas, CA. A satellite campus will bring heightened opportunities for Salinas and its surrounding communities.

Mr. Bramlett also made a change in the formula for State funds to educate severely handicapped children in the county, which resulted in $2 million in added State aid, plus $350,000 more each year in the years to come. There are many who would like increased programs for the severely handicapped, but few who are able to obtain the funding. Mr. Bramlett worked many long hours to secure the State money and he deserves the utmost recognition for his diligence.

Continuous programs such as Head Start, migrant education, and special education, for not only the handicapped but also the Juvenile Hall programs, were implemented because of Mr. Bramlett's efforts. A plan for a Toto Park science camp was also pushed through because of Troy Bramlett. In addition, he established a modern data processing system for the county office of education after many years of frustrating delays and outdated computer support.

Mr. Bramlett has selflessly devoted the majority of his life to furthering education. Unfortunately, his health has taken the brunt of his work. However, I am confident that his dogged determination that overcame obstacles in education will pull him out of whatever challenge he may face now and in the future.

Mr. Speaker, I ask my colleagues to join me now in congratulating a man who is leaving his mark in the most important of professions. It is with great respect and pride that I salute the achievements of Troy Bramlett.

TRIBUTE TO HON. BILL NELSON

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. GIBBONS. Mr. Speaker, the Florida delegation and the Congress will lose a fine Member at the end of this session when my good friend BILL NELSON leaves.

While BILL made a place for himself in the history books because of his ride through space, he has earned the gratitude of Floridians and Americans because of his dedication to good government.

Martha and I have been proud to know BILL and Grace during BILL's service to our State and Nation. He served Florida in the State legislature before his election to Congress 12 years ago, and I know BILL will continue his public service in the years ahead.

BILL will be missed in the Congress, but he won't be forgotten. Martha and I join in telling BILL and Grace: You have a place in our hearts and we know the future holds great promise.

H.R. 2840, AS AMENDED BY THE SENATE COASTAL BARRIER IMPROVEMENT ACT OF 1990

HON. ARLAN STANGELAND

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. STANGELAND. Mr. Speaker, I rise in support of H.R. 2840, as amended by the Senate. The Coastal Barrier Improvement Act of 1990 offers important protections for our Nation's fragile coastal barriers and prevents unwise investments and expenditures by the Federal Government.

H.R. 2840 first passed the House on September 28, 1990. In developing the House's bill, the Public Works and Transportation Committee worked closely with Merchant Marine and Fisheries to address several areas within our committee's jurisdiction regarding coastal water quality and land use and public works projects. In particular, we addressed issues involving the Corps of Engineers and the maintenance or improvement of navigation channels and consistency with the goals of the Coastal Barriers Resources Act.

On that note, I'd like to thank Chairman GLENN ANDERSON, ranking minority member JOHN PAUL HAMMERSCHMIDT and Water Resources Subcommittee Chairman HENRY NOWAK for their leadership and involvement and other committees for their cooperation.

The Senate amendments make only one change to the provisions House Public Works and Transportation focused on in the House bill. The Senate revise our language on "existing Federal navigation channels" so that the test for whether a channel or structure is considered to be existing is whether it was authorized before the date on which the relevant system unit or portion of the system unit was included within the system. As always, I appreciate the contributions and cooperation of the Senate Environment and Public Works Committee.

Mr. Speaker, H.R. 2840, as amended by the Senate, advances water quality protection and sensitive shoreline development. I urge my colleagues to support the compromise.

TRIBUTE TO PAUL WILLIAM BERTUCCIO, OUTSTANDING CITIZEN, ON HIS 70TH BIRTHDAY

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PANETTA. Mr. Speaker, I rise today to pay tribute to Mr. Paul William Bertuccio on his November 1, 1990, 70th birthday.

A true supporter of the Hollister, CA, community and surrounding area, Mr. Bertuccio has given of himself in many ways. After the October 17, 1989 earthquake that viciously crumbled several major areas in the 16th Congressional District, he provided the facilities to store the Hollister water supply for community use. In addition, he made his vast array of equipment and materials available to aid in the area recovery efforts immediately after the quake. His spirit of pulling people together to renew the community quickly became contagious and sped the rebuilding of Hollister.

What really shines as an example of his kind-hearted nature though, was his receipt of the Citizen of the Year award in 1984. I can think of no one more deserving for this award than Paul. He has given so much to Hollister with his community involvement and sponsorship of activities. The Citizen of the Year award is also especially dear to Paul because his parents immigrated from Italy to Hollister in 1903. His family has always been extremely proud to be living in the United States, and receiving the award was the icing on the cake.

Presently, Mr. Bertuccio is a member of the board of directors of the Production Credit Association in California. He previously served on the San Benito Planning Commission for 9 years.

Paul has also been involved in agri-business for 50 years and currently farms 2,500 acres. He has grown many types of vegetables,

fruits, and nuts in and around Hollister and the Central Valley. His produce, in fact, has reached many area of California and Mexico, as well as the Eastern and Southern parts of the United States.

Mr. Speaker, I ask my colleagues to join me now in congratulating Paul William Bertuccio on his 70th birthday. The United States would improve drastically if all of our Nation's citizens took the time and effort to help our communities as Paul has.

UNITED STATES SHOULD SEEK THE CREATION OF A UNITED NATIONS MILITARY COMMAND IN THE PERSIAN GULF AND NOT INITIATE COMBAT

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PEASE. Mr. Speaker, there are two main reasons why we should support H. Con. Res. 372. The first is that we, as the legislative branch, should not allow the executive branch to fight an undeclared war in the Middle East. The second is that the United States, as a world leader and as a member of the United Nations, can gain substantially from the creation of a United Nations Command.

Lately, there has been much loose talk about the President starting a war while the Congress is out of session. Recent events in Saudi Arabia seem to lend some credence to this talk. There has been a manpower buildup, including heavy equipment and armor, which will end by placing at least 250,000 troops in the desert. At this time of year, weather conditions are more favorable to military operations than they are in the summer. Saddam Hussein is sending out feelers for negotiations and is releasing hostages in a piecemeal fashion, which weakens the resolve of the multilateral forces to fight and makes the need for quick military action seem more pressing.

The history of executive military operations since the end of the Vietnam War and the enactment of the War Powers Resolution has been one of constant frictions; Presidents seem to chafe at the suggestion there are limits either to their power as Commanders-in-Chief or to the extent to which they can act in an emergency. Indeed, most of the more recent cases in which Presidents have used force have either been undertaken when Congress was not in session or have been of less than 60 days' duration in order to avoid the language of the War Powers Resolution. The invasion of Panama is an example of the former case, and the invasion of Grenada is an example of the latter.

The usual reason that Presidents cite for not seeking prior approval from Congress in the use of short-term military force is that speed and secrecy are necessary parts of a modern military operation, and Congress is not always able to give its consent while preserving both of these factors. Secretary Baker recently remarked that he would be unable to give Congress "a carte-blanche promise to consult with all 535 members" if the Bush administration decided to attack Iraq. Presidents have usually informed a small number of people in the congressional leadership and called it a consultation to maintain the forms of the War Powers Resolution.

From a strictly military viewpoint, a sneak attack launched from Saudi Arabia, without prior congressional approval, may be tempting. But Operation Desert Shield was conceived as a defensive action to protect Saudi Arabia. The American people support it as a defensive measure. There are very few Americans who would tell our troops to hold their fire if Iraqi tanks were bearing down on them. But the American people are more cautious about offensive action on our part; they do not want unnecessary loss of life, either American or allied, if it can be avoided. The sanctions against Iraq are starting to have an effect, and Iraq is an outcast in the diplomatic community. As long as there exists a non-military solution to the crisis, we owe it to the American people to seek it.

The Founding Fathers gave the power to declare war to the legislative branch, the branch which is more responsible to the people, as insurance that any war which the United States entered would be supported by the people. They gave the power to conduct that war to the executive branch that it might be directed efficiently. We represent the people more closely than does the President, and if we are to uphold our oath to the Constitution, we must not allow the President to move against Saddam Hussein without our express consent.

This is not to imply that I oppose President Bush. I feel that he has done a masterful job of marshaling international support against Iraqi aggression and has acted properly, so far, in his handling of the situation. But he would be ill-advised to order any unilateral military action now. An effective multilateral military presence is a much sounder idea. Militarily, it spreads the burden of any action over several nations, not just one. Politically, it shows the world that there is more than just one nation which has interest in Kuwait and multiplies the pressure which can be brought to bear on Iraq. President Bush has agreed to this priniciple by his joint efforts with the Saudi Government on land and by his participation in the naval interdiction.

If his principle is sound, however, his practice could be improved a great deal. The ground forces would be hard-pressed to function efficiently in any type of combat situation. There are at least five different international command structures for land forces, including one territorial division between the United States-European Command and the United States Central Command. United States forces must seek permission to act from the government of both Saudi Arabia and Turkey. The sea forces are only informally linked to each other. There are 30 different nations involved, with several different (and potentially conflicting) languages, religions, and political systems. The current command stucture calls for coordination at higher levels of command, but as a veteran, I can tell you that if smaller units, say battalion- or brigade-sized, cannot cooperate, they cannot function effectively. For these reasons, the United States should make its forces available to a United Nations Command. A single command structure will reduce confusion and will give all the troops involved, American or allied, more of a fighting chance if hostilities should erupt. In addition to the combat problems that a United Nations Command would solve, logistical problems could also allow countries which do not field troops to make contributions of materiel or money to the effort.

Most of the world is at odds with Saddam Hussein, but the United States has held a special leadership role in this crisis. Up until now, the United States has borne most of the political, economic, and military impact of Operation Desert Shield. Good leaders delegate authority; poor leaders do everything themselves. By enacting this legislation, we state that the United States should act the part of a good leader in the new international order which is emerging after the cold war. We should not appear to stand alone against Saddam Hussein; we will inflame the anti-American sentiment already present in the region. We should not fund Operation Desert Shield alone. Many other countries should contribute as well. Finally, if we should come into conflict with Iraq, we should not fight them alone; we will lose only American lives.

H. Con. Res. 372 sends a message to the President that, although we support him, we will not allow him to act against the will of the American people. It also sends a message to Saddam Hussein that the United States is serious about denying him the fruits of his aggression. For all of our troops in Saudi Arabia, for their families here in the United States, and for the security and stability of the Middle East, I urge that President Bush seek the creation of a United Nations Military Command for the multilateral forces now deployed in and around Saudi Arabia along the lines called for by my distinguished colleague, Congressman CHARLES BENNETT, in H. Con. Res. 372.

TAX POLICY

HON. JOHN HILER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. HILER. Mr. Speaker, the Economic Report of the President, January 1989, contains an informative and illustrative section titled "Tax Policy and Its Impact on the Economy in the 1980s'." This section illustrates both verbally and graphically that the Economic Recovery Tax of 1981 and the Tax Reform Act of 1986 had a dramatic impact on the tax burden of the median-income earner in the country.

I urge my colleagues to review this section so that in the next few days as questions arise over the economic policies of the 1980's, they are able to separate fact from fiction.

ECONOMIC REPORT OF THE PRESIDENT TRANSMITTED TO THE CONGRESS JANUARY 1989

TAX POLICY AND ITS IMPACT ON THE ECONOMY IN THE 1980'S

The Congress has enacted two tax acts of historic significance since 1981: The Economic Recovery Tax Act of 1981 (ERTA) and the Tax Reform Act of 1986 (TRA).

These acts have resulted in a fundamental restructuring of income taxation in the United States to improve incentives to produce, save, and invest and to encourage more efficient use of resources in the private sector.

The Economic Recovery Tax Act of 1981 reduced the top marginal tax rate for individual income from 70 to 50 percent. It reduced marginal tax rates on given levels of nominal income for all tax brackets while indexing personal exemptions, the standard deduction, and tax brackets in 1985 to prevent bracket creep. The indexation of tax brackets was designed to prevent future inflation from pushing individuals with no change in real income into higher tax brackets.

The act significantly reduced the average burden of taxation for American families compared with what it would have been without a change in the tax law. The tax reduction resulted primarily from a 23 percent across-the-board cut in marginal tax rates. Another provision of ERTA was a special deduction for married couples designed to encourage labor force participation of both spouses by lowering the marginal tax rate on earnings of the lower earning spouse. These cuts in marginal tax rates acted to increase the incentives to work and to invest. The act also encouraged household saving through special deductions for retirement saving.

ERTA significantly changed the treatment of capital expenditures to encourage private investment and research and development. The accelerated cost recovery system and an increase in the investment tax credit for some types of equipment allowed an increase in the real after-tax rate of return for many types of investment. The provision to allow expensing of up to $5,000 worth of equipment in 1982 and 1983 is likely to have increased the return to all types of small business investment. The Tax Reform Act of 1986 increased expensing of capital to $10,000 worth of equipment. Expensing allows businesses to deduct capital outlays as a current cost when calculating taxable income.

Changes in the tax treatment of investment goods increased the real rate of return to investment in the United States relative to that in foreign nations and partially offset the distortions resulting from the high inflation of the 1970s. ERTA significantly reduced the effective tax rates on all new depreciable assets, but was relatively more favorable to investment in equipment and vehicles than to other types of investment goods.

The Economic Recovery Tax Act sought to improve future living standards by reducing the tax rates on capital income and encouraging investment. This historic change in tax policy sought to increase the Nation's capital stock.

Unlike many of the tax cuts of the postwar era, ERTA was designed as a fundamental restructuring of the tax system rather than as a temporary stimulus to aggregate demand. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) scaled back some of the investment incentives of ERTA by adjusting the accelerated cost recovery system in order to prevent cost recovery benefits from actually exceeding those of expensing. Nevertheless, the ERTA-TEFRA reforms significantly reduced the effective tax rate on most investments. One estimate shows that ERTA sharply reduced tax rates on capital by more than 50 percent, on average, compared with effective tax rates prevailing in 1980. Despite the TEFRA changes that increased effective tax rates on capital (which in some cases was zero or negative), these tax rates were still estimated in 1982 to be considerably below the levels that prevailed in the 1970s.

The Tax Reform Act of 1986 represented a broad overhaul, probably the most extensive in U.S. history, of the structure of both the personal and corporate income tax. This act further lowered marginal tax rates on personal income and reduced the number of tax brackets while broadening the tax base to prevent significant loss of tax revenue. The act eliminated many tax preferences that distort choices so as to improve efficiency of resource use. The revenues obtained from reducing wasteful tax preferences have allowed a reduction in statutory marginal tax rates for taxpayers so as to encourage work effort and capital formation. The top personal marginal tax rate effective in 1988 is 33 percent for taxpayers subject to phase-out provisions affecting the personal exemptions and the 15 percent bracket. However, the top marginal tax rate for those in the highest taxable income class is limited to 28 percent.

The Tax Reform Act of 1986 also resulted in a somewhat higher effective marginal tax rate on capital income because it changed depreciation rules, the tax treatment of long-term capital gains, and repealed the investment tax credit. However, more uniform tax rates on alternative types of investments also resulted from a change in depreciation rules designed to improve the allocation of investment. Phasing out tax preferences such as the deduction of nonmortgage consumer interest on personal income tax returns was designed to change the allocation of private spending away from consumer durables toward business investment.

By reducing personal and corporate marginal tax rates, it has been possible to reduce the Federal Government's drag on both growth in the private sector and incentives. Reduction in personal and corporate income tax rates has not, however, resulted in a decline in Federal revenues as a percent of GNP because the tax base has been broadened, the economic expansion has increased income, payroll taxes have been increased, and wasteful tax preferences have been eliminated. Nevertheless, the reduction in tax rates has served to make disposable income greater than it would otherwise have been, thereby allowing more private consumption and saving while encouraging private investment.

Research on the effects of U.S. personal tax rate reductions under ERTA indicates that changes in taxpayer behavior that increased taxable income recouped as much as 40 percent of the revenue loss that would have resulted from the tax rate cuts. Some evidence on the effects of the ERTA tax cuts indicates that the response to the reduction in marginal tax rates has been greatest for taxpayers in the highest tax brackets: as a result the share of income tax paid by the highest income groups actually increased. Annual taxes paid by taxpayers with nominal taxable incomes of $200,000 or more increased by nearly $10 billion in 1985 relative to what they would have paid had no change in tax rates and no macroeconomic response to the changes in tax rates occurred.

REDUCTION IN TYPICAL FAMILY TAX BURDENS

The tax reforms of the 1980s have prevented the Federal income tax burden from increasing sharply for virtually all families. For example, had there been no tax changes during the 1980s, a married couple with two dependent children with a single earner earning a median income of $29,654 in 1987 and taking average itemized deductions would have paid $3,840 in Federal income tax. With the reduced tax rates this family's Federal income tax liability in 1987 was actually $2,389. Such a family pays 38 percent less in personal taxes than it would have were the 1980 tax law still in effect. The average Federal tax rate for this family in 1987 was 8.1 percent. Were the 1980's law still in effect, this family would pay an average tax rate of 12.9 percent.

Two-earner families have enjoyed even greater savings. A family consisting of a married couple and two dependent children, taking average itemized deductions and earning the median income of $38,022 for two-earner families of four in 1987, enjoyed a 51 percent Federal tax cut. Such a family would have paid $5,009 in income taxes were the 1980 law still in effect in 1987. The actual tax bill was only $2,456, a tax cut of $2,553. The average tax rate for such a family would have been 13.2 percent without tax changes since 1980. With the tax changes of the 1980s this family paid only 6.5 percent of its income in taxes. Table 2-1 shows how tax changes have affected one- and two-earner families with median income under assumptions about their average tax deductions. Estimates for 1988 show similar tax savings after the provisions of TRA were fully in effect.

TABLE 2-1.—INCOME TAX REDUCTIONS: CURRENT LAW VERSUS 1980 LAW, MEDIAN INCOME ONE-EARNER AND TWO-EARNER FAMILIES OF FOUR

Year	Median income one-earner family of four				Median income two-earner family of four			
	Income	Taxes under		Reductions under current law [1]	Income	Taxes under		Reductions under current law [1]
		Current tax law [1]	1980 tax law			Current tax law [1]	1980 tax law	
1980	$20,249	$2,081	$2,081	$0	$25,669	$2,227	$2,227	$0
1981	21,690	2,266	2,295	29	27,803	2,605	2,648	43
1982	22,777	2,217	2,487	270	29,316	2,333	2,970	637
1983	23,885	2,183	2,691	508	30,581	2,150	3,236	1,086
1984	25,561	2,295	3,003	708	32,549	2,313	3,670	1,357
1985	25,849	2,284	3,087	803	34,469	2,541	4,129	1,588
1986	28,388	2,591	3,574	983	35,336	2,598	4,353	1,755
1987	29,654	2,389	3,840	1,451	38,022	2,456	5,009	2,553

TABLE 2-1.—INCOME TAX REDUCTIONS: CURRENT LAW VERSUS 1980 LAW, MEDIAN INCOME ONE-EARNER AND TWO-EARNER FAMILIES OF FOUR—Continued

Year	Median income one-earner family of four				Median income two-earner family of four			
	Income	Taxes under		Reductions under current law [1]	Income	Taxes under		Reductions under current law [1]
		Current tax law [1]	1980 tax law			Current tax law [1]	1980 tax law	
1988 [2]	30,863	2,626	4,106	1,480	39,572	2,737	5,393	2,656

[1] "Current tax law" refers to the law in effect in year shown.
[2] Estimated.
Sources: Department of Labor (median income data) and Office of Management and Budget.

The reductions in the marginal tax on labor income encourage labor force participation particularly of second earners. Because TRA reduced the difference between gross wages and net wages at the margin, it provides workers with an incentive to increase their work effort.

The act cut the average Federal tax rate paid by families with an annual income of less than $10,000 by more than one-half, and it is estimated that tax reform will reduce the number of low-income families paying Federal income tax in 1988 by more than 4 million.

CLOSING INTEREST DEDUCTION AVAILABLE TO FOREIGN CORPORATIONS WITH U.S. PARTNERSHIPS

HON. RAYMOND J. McGRATH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. McGRATH. Mr. Speaker, I am introducing legislation at this late date simply to indicate to responsible tax practitioners my continuing interest in closing a loophole in the Internal Revenue Code involving overly generous interest deduction available to certain foreign corporations with interests in U.S. partnerships. I had offered an amendment in committee addressing this matter but I did not become part of the tax package we enacted earlier this morning.

This issue was brought to my attention by tax attorneys in New York, who are involved in sophisticated international transactions. These individuals have subsequently informed me that many practitioners feel compelled to recommend strategies to take advantage of this overly generous deduction.

Section 1.861-9T(e)(7)(i) of the Federal Tax Regulations governs calculation of the interest deduction available to foreign corporations. Foreign corporations owning less than 10 percent of a U.S. partnership are permitted to deduct a portion of worldwide interest expense on top of their allowable share of the partnership's interest expense.

I understand that present law has resulted in pressure on partnerships with foreign corporate partners to incur large amounts of debt to maximize the interest deduction and reduce tax paid to the United States. I hope that introduction of this bill will serve as notice that I intend to continue to pursue this issue.

IN SUPPORT OF S. 1893, THE ASBESTOS SCHOOL HAZARD ABATEMENT ACT

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mrs. COLLINS. Mr. Speaker, I rise in support of S. 1893, the Asbestos School Hazard Abatement Act.

Years ago, asbestos was liberally used in construction. Years later, it was found that asbestos is responsible for causing physical ailments and disease, including cancer. Only in recent years have we begun to replace asbestos with benign building materials.

Ironically, schools were one of the classifications of structures most frequently built with asbestos. The tragedy is this material is much more likely to affect young children and we were faced with a situation where our most susceptible citizens were forced to be exposed to harm which the government posed. Passing the original Asbestos School Hazard Abatement Act was a very appropriate, responsible measure to clean up a mess that was created—albeit inadvertently—by government.

Today we are asked to clean up a few other problems with this program. Most notably, the Senate amendment, offered by majority leader MITCHELL on behalf of Senator METZENBAUM, remembers the individuals who are actively involved in making our schools safe for our children. Their amendment would require asbestos abatement training to the workers who are engaged in doing so, and it would provide grants to ensure that that training is undertaken. It is only sensible that, in curing one problem, we do not want to create another.

Mr. Speaker, S. 1893 is a reasonable, responsible reform that will avoid greater expense and tragedy in years to come. I encourage all my colleagues to support it.

CASEY KASEM, AN EXEMPLARY ARAB AMERICAN CITIZEN

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. DYMALLY. Mr. Speaker, I rise today to recognize a fellow American who has devoted himself to making this country a better one for all of us. Few Americans are unfamiliar with the warm voice of Casey Kasem, creator of the "American Top 40" show. Casey's voice has been heard from coast to coast for the past 20 years. His civic contributions to this Nation are not as well recognized. Throughout his career, he has worked hard to stop nuclear proliferation and for the rights of the homeless in America. As an Arab-American, he has been a strong advocate for peace in the Middle East.

Casey's devotion and commitment to peace and human rights coupled with his down to Earth demeanor gained him the respect and admiration of the American public.

Casey Kasem's courage in expressing his pride in his ethnic heritage, when many second generation Arab-Americans who came to this country at the turn of this century declined to do so for fear of the prejudice against them, make his contributions even more significant. He relentlessly sought to demonstrate the unfair stereotypes of Arabs, and Arab-Americans by bringing to our attention the significant contributions of many Americans of Arab ethnic background. As Arab-Americans have increasingly become the targets of negative stereotypes in the media, and as Arabs have become the new villains in the media, Casey's voice rose to protest this unfair treatment of his people.

Casey's work takes greater urgency now than ever, as our troops mass in the Middle East. His support for a peaceful resolve in the Persian Gulf as well as his opposition to the increased racism and discrimination against Americans of Arab ethnic descent is crucial.

Mr. Speaker, at this time I would like to share with my colleagues the following article from People magazine about Casey Kasem.

ALARMED BY WARTIME PRIDE AND PREJUDICE, DEEJAY CASEY KASEM RAISES HIS VOICE TO DEFEND HIS FELLOW ARAB-AMERICANS

Coming up: the real name and ethnic origin of syndicated Top 40 radio host Casey Kasem. (Pause.) That's right! The originator of "American Top 40" and now host of "Casey's Top 40, with Casey Kasem," two of the most successful shows on modern radio, is an American-born Arab of Lebanese descent—and his real name is Kemal Amen Kasem!

That's just how Kasem, the deejay famous for introducing tunes with quickie biobits, might introduce himself these days. For 20 years the peppy, upbeat disc jockey has been a regular radio fixture with his Top 40 show (currently heard on more than 500 stations), but he has now emerged as the unlikely voice of a cause instead of a countdown. Kasem, 58, has turned up this past month on the "MacNeil-Lehrer Report," CNN and elsewhere to oppose the U.S. military presence in the Middle East and to counter growing anti-Arab hostility back home. Without resorting to war, "we ought to be able to find ways to squeeze that man [Saddam Hussein] enough so that he backs off and retreats from Kuwait," argues Kasem. More important, "We should not have gone in before Arab troops." Says

Kasem: "I think there are too many cowboys there and in Washington who think the best way is to shoot from the hip. I don't want to see our boys coming back in bags. And I don't want to see Arabs die."

Kasem blames much of the current hawkish climate on warped stereotypes that for years have "demonized and dehumanized Arabs. We think of them, to quote an Israeli general, as 'cockroaches to be kept in bottles.' That's not the kind of mind-set that is healthy for the world."

In placing blame for that mind-set, Kasem looks to Hollywood first. "Seventy years ago "The Sheik" began to create the idea in Americans that all Arabs were knife-wielding, gun-toting womanizers and not to be trusted," he says. "Then television came along, and it got even worse. I don't have any objection to a show with an Arab bad guy. But where are the Arab policemen? Or Arabs like John Sununu, the President's Chief of Staff, and George Mitchell, the Senate Majority Leader?"

Among the country's 2.5 million Arab-Americans, argues Kasem, are many, like Sununu and Mitchell, whose Arabic origins have simply gone unrecognized. Among them, he notes, are consumer advocate Ralph Nader, pop stars Tiffany and Paula Abdul, Indy winner Bobby Rahal, heart surgeon Michael De Bakey and others. "We've been a quiet minority, but we've been very much a part of the fabric of this country," says Kasem.

As a child in Detroit, Kasem says he suffered few prejudices himself. His mother was Lebanese-American, his father an immigrant Lebanese grocer who "didn't care if he ever went back to the old country, he loved America so much. Growing up, I didn't root for the Arabs in 'Beau Geste.' I was an American. I didn't question that the Arabs were the bad guys."

After starting as a sports broadcaster in high school, Kasem began landing acting jobs in radio dramas, including "The Lone Ranger" and "Sergeant Preston of the Yukon," while at Detroit's Wayne State University. That led to work with the Armed Forces Network while he was with the Army in Korea. After a series of deejay jobs back in the States, he moved to L.A. in 1963 and branched out, doing small film roles and cartoon voice-overs. He launched his national Top-40 show in 1970 and has had a similar TV show, "America's Top Ten," for the past decade.

Long an antinuclear lobbyist and homeless-rights advocate, Kasem traces his active Arab-American politicking to the 1982 Israeli invasion of Lebanon. "You wind up with 20,000 dead Lebanese and Palestinians, 40,000 maimed and 150,000 left homeless," he says. "That's when my shoe was stepped on. All of a sudden, that was really close to home."

Outside the radio studio, home for Kasem is actually a Holmby Hills, Calif., spread complete with sunken tennis court and a three-hole golf course where he and wife Jean, 35 (formerly ditsy Loretta of TV's "The Tortellis"), moved this spring. The couple recently had their first child, 3-month-old Libety Irene, after eight miscarriages, and credit the birth to a new immunological procedure performed by doctors at UCLA Medical Center. In all, Jean spent eight months in bed during the pregnancy. Kasem, who has three teenagers from a previous marriage, says he now plans to cut back on his schedule to devote more time to home life and his causes.

That means he won't be lowering his voice when it comes to Arab-American bias. Kasem insists he'll keep right on protesting U.S. military actions in the Middle East along with fellow opponents like Ron Kovic and Daniel Ellsberg. Guns may be poised in the Gulf, says Kasem, but "the only way we're ever going to get a solution is through dialogue, not through war."

(Steve Dougherty, Doris Bacon in Los Angeles.)

OCEAN SPRAY CRANBERRIES SPONSORS "RACE TO SAVE THE PLANET"

HON. DAVID R. OBEY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. OBEY. Mr. Speaker, I would like to call the attention of my colleagues to the recent public television series, "Race to Save The Planet," and to Ocean Spray Cranberries, a principal national corporate underwriter of this outstanding program.

The program focuses upon the causes and effects of worldwide ecological damage in a basic and fascinating way. Perhaps more importantly, it offers logical and attainable solutions to these problems. The show makes a vitally important observation: That pollution in our air, water, and soil is not some inscrutable, intractable situation. Because pollution is caused by man, it can be solved by man. Ocean Spray Cranberries, is grower-owned cooperative, agrees.

Ocean Spray consists of family farmers, most of whom live and work on the land upon which they cultivate fruit, including cranberries. Cranberries occur naturally in a unique characteristic of the environment, wetlands, but only in the presence of the most fragile combination of pure water, peat soils, and geological conditions. To grow their fruit, growers must preserve and nurture what they cannot create.

These family farmers are spearheading efforts to research the exciting potential of biological pest controls and integrated pest management, environmentally sensitive ways to control crop-damaging pests by using natural predators and less pesticides. Significantly, their quiet and diligent efforts in these areas can serve as a general model for other kinds of agriculture.

So today, I invite my colleagues to join me in recognizing American cranberry growers' stewardship of the environment and Ocean Spray's support of the outstanding television program, "Race To Save the Planet," and its message that all Americans can make a difference by themselves being stewards of the environment.

HONORING THE MELLMAN AWARDEES

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. SCHEUER. Mr. Speaker, the Martin L. Mellman Service to the Community Award was established in memory of a Nassau County Democratic leader who will long be remembered for a life as dedicated to the community as it was active. As Martin Mellman gave, so do the recipients of the award so appropriately named in his honor.

On this year, the 2d Annual Mellman Award is given to two worthy individuals who have emulated and expanded this same selfless dedication.

Mr. Speaker, Julian Ullman is a longtime resident and businessman in Great Neck, has ably served as both a Nassau County committeeman, and as a zone leader. An Army veteran, he is a member in good standing of the American Israel Public Affairs Committee, known as AIPAC. His involvement extends to the speakers bureau of both B'nai B'rith and Hadassah.

Mr. Ullman is a charter member and vice president of the Jewish political caucus, and a long time member of Temple Israel. He is a member of the Reform Democratic Association, and truly a leader in our community.

Mr. Speaker, our other honoree, Ray M.S. Tucker, Esq., is also a valued community member. A practicing attorney in New Hyde Park, she is a community activist, Democratic committeewoman, and zone leader.

Mr. Speaker, Mrs. Tucker's plate is full to overflowing. In addition to her Democratic activities on behalf of the neighborhoods and residents, she is a director on the Board of the Women's Bar Association of the State of New York.

Ray Tucker is a past president director of Herricks Community Life Center, where she has served for 15 years bringing solace, counseling, education and direction to substance abusers.

Mr. Speaker, Mrs. Tucker's list of accomplishments and leadership goes on. She was president of the Nassau County Women's Bar Association, president of Park Section (Lakeville), National Council of Jewish Women. For 4 years, she served as a director of the National Council of Jewish Women. She has the remarkable distinction of serving as the first Chair of the National Religious Coalition for Abortion Rights.

Her service also includes law guardian in family court and as an arbitrator in district court.

Mr. Speaker, Mrs. Tucker's outstanding leadership in the law, in the Democratic Party, and in the community make her a perfect example of what is right in America today, and an outstanding choice for this honor.

Mr. Speaker, it is an honor and a pleasure to join in saluting these worthy individuals who have given so much of themselves to make a better world. I would also salute the beautiful new tradition of the Martin L. Mellman awards.

THE POWER OF WOMAN POWER

HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MFUME. Mr. Speaker, it is with a great sense of respect that I rise before this body today to salute the women in my congression-

al district in Baltimore, specifically, an organization known as Woman Power, Inc.

Woman Power was organized in 1958 as an independent, multipartisan organization to stimulate women to become more civic-minded citizens. I commend its founders, Victorine Q. Adams, a true pioneer in Baltimore politics and a legend in her own time, and Ethel P. Rich, for their vision and their desire to make a difference.

Woman Power gets its strength through a community oriented union of women from all segments of society. They are dedicated to the premise that women represent an enormous untapped reservoir of energy, intelligence, drive, wisdom, influence, and especially votes—all of which should be—and must be—harnessed, and directed, into the cadence of political action.

Mr. Speaker, as a member of the Caucus on Women's Issues, I do not now, nor have I ever, underestimated the power of the women in our society. It is on their shoulders that the burden of many extraordinary responsibilities lie and they have shouldered that burden well. I applaud them for their patience and tenacity in their efforts to gain equal recognition.

Women remain aggressively present in all aspects of the family, business and political spheres. They are the backbone and cornerstone of our Nation's infrastructure and have earned and deserve the right to be recognized for their contributions to our growth and development process.

Woman Power, Inc., is celebrating 32 years of excellence. For the past 32 years this organization has worked diligently to disseminate political information. For 32 years, they have worked to direct action on community issues, and to stimulate public awareness for utilizing the electoral process to influence economic, social, and civic progress.

For the past 32 years, Woman Power, Inc., has incited the involvement of all women, at all levels, from the highly trained to the lesser skilled. They firmly believe that each woman can reach someone, that every woman can teach someone. They eagerly discard the fallacy of being weaker than their male counterpart and seek instead to form a partnership for a strong and equal society. Baltimore boasts of an impressive cadre of women who are leaders in our churches and our schools, women who have paved the way as politicos and civic activists.

Mr. Speaker, it is with pride that I applaud this organization for a job well done. It is with respect that I rise to pay tribute to the members of Woman Power, past and present, for their unceasing dedication to the betterment of mankind. It is with sincerity that I proclaim my support of their efforts and my thanks for their contributions.

IN CELEBRATION OF THE 225TH ANNIVERSARY OF ST. JOSEPH'S PARISH

HON. MARGE S. ROUKEMA

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mrs. ROUKEMA. Mr. Speaker, I rise today to ask my colleagues to join with me and pay tribute to St. Joseph's Church of West Milford, NJ. Celebrating its 225th anniversary this year, St. Joseph's is the oldest parish in the State of New Jersey.

Over many years, Mr. Speaker, St. Joseph's has survived good times and bad. The parish was founded in 1765 near Echo Lake in what is now West Milford by a Jesuit priest named Ferdinand Steinmeier. At the time, New Jersey remained a colony of the British Crown and, as such, enforced strict laws prohibiting practice of the Catholic religion. In order to avoid both persecution and prosecution, Father Steinmeier assumed the alias, Doctor Farmer and performed services in the safety of the homes of members of the parish.

For many years, Father Farmer, a former university professor, kept accurate records of the baptisms, marriages, first communions, and confirmations performed in the parish. To this day, these detailed records provide a source of history for many of the residents of the St. Joseph's area.

The end of the Revolutionary War in 1786 brought independence for the colonies and the beginning of religious freedom for the Americans. Sadly for the parishioners of St. Joseph's, 1786 also brought the death of Father Farmer. Without an ordained minister, it would be 30 years later that Mass was once again celebrated in the parish.

In 1829, Father Donohue came to Echo Lake and helped the congregation build its first church which was dedicated to St. Joseph. At this time, the congregation had grown to include over 100 parishioners who were mostly descendents of the pioneer settlers, Hessian prisoners of war as well as the first outriders of the Irish immigration that would come to America.

As years passed, the congregation outgrew its first building and in 1886, a new church was built. Tragedy struck the parish in 1904 as the church was destroyed by fire. Down but not out, the members rallied to build a new church which opened its doors the following year. This sanctuary has served the St. Joseph's parish to the present day.

Mr. Speaker, St. Joseph's today is a strong contributor to the local community. In addition to church services, the parish offers the St. Joseph's School, founded in 1956, offering education from prekindergarten to eighth grade levels. I invite my colleagues to join with me in congratulating St. Joseph's on their many years and offering best wishes for many more to come.

THE COMPREHENSIVE WETLANDS CONSERVATION AND MANAGEMENT ACT OF 1990

HON. LINDSAY THOMAS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. THOMAS of Georgia. Mr. Speaker, yesterday I joined several of my bipartisan colleagues in introducing the Comprehensive Wetlands Conservation and Management Act of 1990. Although we believe this measure is a good start, we do consider it to be in draft form. We welcome comments from our colleagues and from anyone interested in improving our current wetlands management system. Our intent is to perfect this bill through the input we receive, and reintroduce it in the 102d Congress.

It is time that we seriously consider Federal wetlands legislation that will protect our Nation's wetlands while observing private property rights and allowing for sustained economic growth. We have created our bill with those ideals in mind.

The legislation we propose increases the types of activities which require a Federal permit to perform in wetlands; narrows the definition of wetlands to those areas that are functional wetlands; categorizes wetland areas by functions and values; and centralizes Federal permitting in one agency.

As with any comprehensive bill, there is no doubt that people will find individual provisions which disturb them. I have concerns about one or two provisions myself. I strongly believe, however, that on the whole this bill represents a comprehensive and responsible beginning toward improving our current system.

Mr. Speaker, I hope that each of my colleagues will give this measure careful consideration.

A TRIBUTE TO FRANCIS F. MILLS

HON. JOHN JOSEPH MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MOAKLEY. Mr. Speaker, I invite my colleagues in Congress to join me in paying tribute to Frank Mills a distinguished member of the administration of Boston College. After almost 17 years of exemplary service to Boston College in the role of director of financing resources my good friend Frank will retire from service to Boston College, its staff, faculty, and students.

Frank Mills has performed an admirable service to Boston College and has played an instrumental role in representing Boston College before Congress and the Federal Government. More importantly, Frank Mills has been a good friend to many of us in the Massachusetts congressional delegation through the years. His knowledge and understanding of the numerous financial issues confronting higher education is legend and he has been a key adviser to us on these issues.

Mr. Speaker, Boston College has been very fortunate to have an individual with such a high level of dedication and integrity representing the university. His loyalty to the principals of Boston College cannot be disputed.

Mr. Speaker, I wish Frank Mills well in his retirement. He has earned it.

FUNDING FOR THE RESOLUTION TRUST CORPORATION

HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MFUME. Mr. Speaker, RTC funding is a difficult issue for Congress to face, particularly at this time. Nevertheless, the administration insists that funding is needed before adjournment in order to spare the taxpayer an even greater cost burden to clean up the S&L problem. The RTC estimates the cost of delay to be roughly in the range of $250 million to $300 million for every quarter that the RTC is forced to halt operations—an action they say will occur if we do not act before adjournment. In fact, the administration says that Congress' inaction, our inaction, on RTC funding has already begun to affect the resolution process.

We all certainly don't want to cause the taxpayer to bear any avoidable additional costs associated with the S&L problem. However, I am happy to see this body take a more cautious approach in terms of the amount and duration of time that we will attempt to continue funding the RTC. I believe that a question of accountability exists here and just as the RTC is holding the Congress accountable for any slowing up and subsequent cost of delays in the resolution process, the RTC is accountable to the Congress to make it clear what progress has been made, what steps are necessary, and how they are adhering to all aspects of Public Law 101-71.

Mr. Speaker, August 9, 1990, marked the 1 year anniversary of the creation of the RTC. At that point, an annual report was due to this Congress on several provisions contained in Public Law 101-71. To date, Mr. Speaker, I have yet to see such a report. Also, as many of you know, I have great concerns about the contracting practices of the RTC with respect to the use of private contractors to carry out the tasks of cleaning up the S&L industry. For over a year, I have been requesting information, much of which is still unavailable to me to date.

And so, Mr. Speaker, when I can't get the information that I need to understand some of the intricacies of the operations of the RTC, I cannot then sit here and be gung-ho ready to pump additional funds into the RTC at the threat of delays costing the taxpayers more money than the additional funds will. I cannot, after reflecting on the proceedings of this House in recent weeks as we strive to resolve the budget situation, even sit here and be comfortable with short-term funding to the tune of $10 billion.

Nevertheless, I will support the short-term funding needs of the RTC and I applaud the chairman for his willingness to do only what is absolutely necessary until we can convene next year and discuss thoroughly the long-term needs of the RTC.

TEXAS ROSE FESTIVAL QUEEN KATHERINE CLAIRE DUNCAN

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. HALL of Texas. Mr. Speaker, the annual occasion of the Texas Rose Festival in Tyler, TX, has just concluded and I wish to recognize this year's Texas Rose Festival Queen, Katherine Claire Duncan.

Queen Claire is the daughter of Dr. and Mrs. S. Edwin Duncan of Tyler. She is a communications major at the University of Texas at Austin.

The beauty of the rose is no more evident than in Tyler, TX, the Rose Capital of the World where the lovely rose, our national flower, is annually celebrated. The beauty and intelligence of Queen Claire compliments the beauty and loveliness of the rose itself.

Mr. Speaker, I feel a kinship to the lovely queen and her family; her brother, Clay Duncan, served with distinction as a legislative assistant in my Washington DC, office during the summer of 1989, and we are hopeful that Queen Claire can follow in his footsteps during the summer of 1991.

The Duncan's are a wonderful and giving family—and just as I feel fortunate to be their Congressman and friend—all of Tyler should feel fortunate that Claire serves as our Rose Queen.

As we adjourn today, may we do so in honor of the Queen of the Texas Rose Festival.

TRIBUTE TO ROY ROMAN

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. BROWN of California. Mr. Speaker, I would like to ask my colleagues to join me in saluting Mr. Roy Roman, president of Local 687 of the National Federation of Federal Employees at Norton Air Force Base, CA.

Roy has demonstrated a keen ability and willingness to speak up and work for the interests of the hundreds of members of Local 687 at Norton Air Force Base. Roy provided me with key suggestions and advice that I used in drafting H.R. 5977, a bill to provide assistance to Federal employees in the event of reductions in force. Roy also presented important testimony at a field hearing of the Human Resources Subcommittee of the House Committee on Post Office and Civil Service held in San Bernardino, CA, on July 9, 1990. That hearing was held to look at Norton Air Force Base as a case study of the key issues facing employees and public service agencies as a military base closes. Through his candid and forthright testimony, Roy ensured that the concerns of Norton's civilian employees were fully appreciated by the House of Representatives.

Mr. Speaker, I feel that the Federal Government has an obligation to do everything it can to soften the landing for Federal employees when their places of work are closed. We can do this through programs that effectively find employees new and comparable Federal jobs, through programs that train employees for new types of work, and through programs that utilize cost-effective methods of early retirement.

Mr. Speaker, Roy Roman has been a strong advocate for Norton's employees on all of these fronts, and for that, I ask my colleagues to join me in recognizing Roy for his fine work.

WILLIAM PASSMORE: "EAST CHICAGOAN OF THE YEAR"

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. VISCLOSKY. Mr. Speaker, I rise to pay tribute to an outstanding public servant and a genuine gentleman, Mr. William "Bill" Passmore.

As job developer for the Lake County Job Training Corp., Bill is responsible for promoting and placing the clients of this Job Training Partnership Act agency into adequate living wage employment opportunities. Bill's success in this task is due in part to his multi-lingual capabilities—being able to communicate in Spanish, Polish, Serbian and Hungarian—but also in his ability to communicate with his heart.

Bill is special in that he has the ability to understand people. He is an individual that can restore one's dignity after the traumatic loss of employment, comfort lonely and frightened patients at St. Catherine Hospital during his regular visits, uplift and encourage youth to continue in their education, guide fellow parishioners at St. Mark A.M.E. Zion Church as a Sunday school teacher and prepare ex-convicts for the transition from institutional life to open society.

The impact of his efforts have earned Bill the respect and love of those who have been fortunate to know him. A life-long resident of East Chicago, IN, he has actively been involved in the Tradewinds Rehabilitation Center, serves on the St. Catherine Hospital Community Advisory Board, and is a charter member of the East Chicago Exchange Club. Additionally, Bill acts as an adviser to Senator Richard Lugar for issues that impact the physically challenged.

Bill was appointed to the Governor's Commission on the Handicapped by Governor Otis R. Bowen, recognized as the 1984 NAACP Outstanding Citizen of the Year, selected as the "Outstanding Handicapped American of the Year" by President Richard M. Nixon in 1968.

William Passmore is being honored by Twin City Community Services as "East Chicagoan of the Year" for his outstanding civic and humanitarian contributions. I commend them for their selection and I congratulate Bill on the remarkable contributions he has made, and continues to make, to northwest Indiana, the State of Indiana and the Nation.

INTRODUCTION OF TEXTILE MACHINERY LEGISLATION

HON. CASS BALLENGER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. BALLENGER. Mr. Speaker, I am reintroducing legislation that builds on and improves legislation I introduced in March 1989—the Textile Machinery Modernization Act of 1989. Since introduction of the original bill, I have worked with industry representatives and my colleagues in Congress to clarify and define the legislation.

The textile machinery industry is comprised of approximately 500 companies, employing 17,800 citizens. The industry consists primarily of small businesses producing finished machinery, parts and accessories used in the production of textile mill products for apparel, defense, furniture, and industrial applications. Not only has the U.S. market been besieged with foreign imports of textile machinery, but U.S. firms have lost out on export opportunities due to foreign trade barriers.

Like the original bill, this legislation establishes a textile machinery modernization fund within the Department of Treasury to support research for the modernization of the American textile machinery industry. The fund consists of a portion of existing revenues collected from duties levied on imports of textile machinery. The fund is capped at 10 percent or $10 million of these import duties, whichever is greater.

The Secretary of Commerce, in consultation with industry representatives, would administer the funds in the form of grants for research and development projects. To demonstrate the industry's commitment, all potential grant recipients must have already incurred the total costs associated with the research project prior to being awarded a grant. Additionally, the Federal share cannot exceed 60 percent of the total cost of the project.

Research and development is crucial to the future viability of all industry, including the domestic textile machinery industry. This legislation would establish the necessary R&D funds without raising tariffs or restricting imports. With the concern over the lack of civilian research and development, I believe it is time we took action to bolster a crucial domestic industry and preserve American jobs.

MILITARY BANDS' RIGHT TO VEND THEIR RECORDS

HON. ALAN B. MOLLOHAN

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MOLLOHAN. Mr. Speaker, I rise today to draw your attention and that of my colleagues to a provision of the recently passed Defense authorization conference report.

The report we voted on was over 700 pages long and dealt with what is possibly the most important issue in the United States: our national defense. It also included in it a relatively minor provision that would allow U.S. military bands to commercially produce and vend recordings of their music. I support the provision and think that military bands can make a valuable contribution to the music industry.

I do, however, want to raise some questions about the way this worthwhile provision was put into the bill. Were there hearings held on the issue of unfair competition by Government-subsidized bands being allowed to make commercial gain? Was there discussion on how this proposal is to be implemented? What do professional musicians think of the measure?

I hope that, during the next year, the relevant committees will examine this issue closely, will revisit these questions, and will hold hearings on this excellent project. It is only fair and will be a good way of ensuring that military bands will be able to retain the right to vend their records.

JOSEPH ROMA: A VETERAN'S VETERAN

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mrs. LOWEY of New York. Mr. Speaker, I am delighted to have this opportunity to pay tribute to Joseph Roma, the outgoing commander of the Westchester County American Legion.

Commander Roma has been an active and dedicated leader of the Westchester veterans community for many years. He has used his experience and knowledge to advance projects which will enhance the lives of veterans throughout the area.

He has worked vigorously to ensure that the concerns of the members of American Legion Posts have a place on the county, State, and national agendas. In doing so, he has bridged many gaps in the veterans agenda on every level of government.

In addition to his service directly to the veterans community, Joseph Roma knows the importance of civic understanding among young Americans. He serves as the chairman of the American Legion committee to promote knowledge of the U.S. Constitution among school students. This program effectively reaches out to our youth, educates them about the strength of our Constitution and the vital importance that veterans play in preserving democratic ideals and freedom throughout the world.

Joseph Roma has been a veteran's veteran. It gives me great pleasure to join the Westchester American Legion in honoring him for his commitment to our community and the values he has long defended. He is truly a leader and an ambassador of the American ideal.

TIM WULIGER: CIVIC DYNAMO

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FEIGHAN. Mr. Speaker, I would like to call the attention of my colleagues to the fine work being done by one of my constituents, Timothy F. Wuliger. At the end of this year, Tim is stepping down as president of the Heartland Political Action Committee which is based in Cleveland. Tim established Heartland in 1986 and has been its driving force.

Tim deserves praise for his work with Heartland but his impressive credentials extend into other areas as well. A lawyer Tim holds a law degree from Georgetown and an MBA from Case Western Reserve. He is the founder and president of Mail Media, a successful direct mail company.

Tim is a community activist, a veritable civic dynamo. From 1980 until 1984, he served on the Orange Village Council. From 1985 until 1989, he was a member of the Orange City Board of Education.

He is a cofounder of the Adam Walsh Center for Missing Children and was its first president. He is a member of the young leadership cabinet of the UJA as well as a member of the National Jewish Community Relations Advisory Council. He is a trustee of the Cleveland Jewish News, chairman of the Israel Task Force of the Cleveland Jewish Federation and cochair of the service and technology division of the Cleveland Jewish Welfare Fund Campaign. I'd enumerate the rest of his volunteer activities but the hour is late and we are trying to put the 101st Congress to bed.

Suffice it to say that Tim Wuliger is an unusually accomplished man. At 39, he has accomplished more than many of the rest of us could accomplish in several lifetimes. I'm proud to call Tim and his terrific wife, Sandy, friends. And his wonderful kids, Elissa and Jason, are proud to call him Dad. Greater Cleveland is lucky to have the Wuliger family among us. Thanks, Tim, and keep up the good work.

HONORING THE 20TH ANNIVERSARY OF THE QUEENSBOROUGH ORCHESTRA

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. SCHEUER. Mr. Speaker, the arts have ever been the cornerstone of society, and we in Queens are blessed with many shining examples of the lively arts at work.

Mr. Speaker, one of the brightest stars in our arts constellation is the Queensborough Orchestra, which celebrates its 20-year anniversary this year.

The orchestra is twice blessed, because the original conductor, Martin Canellakis is also celebrating his 20th anniversary with the or-

chestra. And at 14 years, Mark Russel Amsterdam also provided beautiful direction.

The orchestra has been a forum for the finest young soloists. Musicians from Queens have found a home here, a place to grow and nurture their talents. Local audiences have been doubly treated, first to fine renditions of wonderful music, and second, to the knowledge that local artists are being afforded a chance to display their talents.

Mr. Speaker, the Queensborough Orchestra is truly a shining example of community. The support for the orchestra comes from individuals, local business, corporations, foundations, city and State arts councils, and the Queensborough Community College. In return, the orchestra provides endless enjoyment and culture for the community that supports it.

Mr. Speaker, a few communities have the enviable position of having a local symphony. In Queens, in our lovely concert hall, we can proudly say we are among that few.

And, Mr. Speaker, Queens is a better place for the presence of the Queensborough Orchestra.

CONGRATULATIONS TO CONVENTION II ON A SUCCESSFUL MODEL CONSTITUTIONAL CONVENTION

HON. JAMES M. INHOFE

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. INHOFE. Mr. Speaker, I wish to commend all the young people who participated in the 15th annual session of Convention II, held in Washington, February 7 through 11, 1990. It gives me great pleasure to inform my distinguished colleagues that 130 high school students representing eight States and the District of Columbia, including Connecticut, Illinois, Massachusetts, Missouri, New Jersey, New York, Oklahoma, Pennsylvania, and South Carolina participated this year. During the week's proceedings, students act as the original constitutional delegates—proposing, debating and voting on amendments to the Constitution.

Following the process of original constitutional convention, these delegates considered some of the most significant and controversial issues facing our Nation. The delegates considered 10 amendments: CR 308, relative to naturalized citizens becoming President; CR 334, relative to the election of the President; CR 238, relative to national voting representation for the District of Columbia; CR 176, relative to abortion; CR 146, relative to euthanasia; CR 430, relative to the terms of flag burning; CR 428, relative to prayer in school; CR 414, relative to an official language of the United States; CR 300, relative to Presidential line-item veto; and CR 506, relative to limiting terms of Supreme Court Justices. Only two amendments—CR 308 and CR 334—received the required two-thirds majority for passage. These students have indicated similar resistance to modifying the Constitution as has the U.S. Congress, demonstrating a great respect for a document formulated over 200 years ago.

Mr. Speaker, I again commend these young people for their participation in such a unique and rewarding experience. I also commend Convention II on its 15th year and wish its continued success in enhancing the knowledge about our Constitution and its heritage for the future leaders of our great Nation.

ECONOMIC EMBARGO AGAINST IRAQ IS WORKING

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PALLONE. Mr. Speaker, the international economic embargo against Iraq is working. After only 3 months, Iraq is starting to feel the pinch and showing signs of desperation. Of all things, gasoline, in that oil-rich country, is being rationed, because of shortages of imported chemicals needed to refine crude oil. Iraqi industry is grinding to a halt because of shortages of spare parts and raw materials. In an effort to get their hands on some hard currency fast, the Iraqis are offering to sell their oil at half price to anyone who'll buy it.

As the weeks and months of the economic embargo drag on, the American people—and their elected representatives—are understandably growing impatient. Some are calling for a dramatic military strike against Iraq. Other voices are being heard in favor of sitting down with Saddam Hussein at the negotiating table. Both of these suggestions are off the mark.

Offensive action against Iraq has the potential for causing massive loss of American lives, and there's no guarantee that the military action could be concluded quickly.

On the other hand, a negotiated settlement would confer on Saddam a respectability in the community of nations that he does not deserve and send a signal that naked aggression against a small, vulnerable neighbor can pay off in the long run.

The American people, by a wide margin, favor maintaining our cautious approach and want to wait and see if the economic sanctions are effective. We should heed this commonsense wisdom, and not let impatience force us into taking foolhardy actions or making unnecessary concessions to the dictator of Baghdad.

STUDENTS WORK FOR VOTER TURNOUT

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. OBERSTAR. Mr. Speaker, as we adjourn the 101st Congress, the general election is less than 9 days away. I would like to call the attention of my colleagues to a project undertaken by a school in my district.

Mesabi East Intermediate School in Biwabik has challenged other junior high school students across the State of Minnesota to encourage adults in their community to vote.

There are four contest categories:

1. By precinct—individual students, small groups or entire classes can select a particular precinct and have it assigned to them by the contest organizers. Trophies awards will be presented to two winners in this category: the precinct with the highest proportional voter turnout and the precinct with the most improvement over the previous election.

2. Essay—students can submit a 100- to 200-word essay about why people should vote in the upcoming election. The winner will receive a $50 savings bond and will have the essay published in the Duluth News Tribune.

3. Video—participants can produce a 30-second video public service announcement encouraing people to vote. The winner will also receive a $50 savings bond and the opportunity to have their work aired on local television.

4. Audio—contestants can also record a 30-second audio public service announcement. The winner will also receive a $50 bond and the opportunity to hear the spot broadcast on local radio.

Mr. Speaker, the contest shows the commitment these young people have to our democratic system. It also reflects their vision and ingenuity. I ask you and my colleagues to join me in congratulating the students of Mesabi East Intermediate School in Biwabik, MN, for their fine work in a very, very good cause.

UNITED STATES-MEXICO FREE TRADE AGREEMENT

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. LEWIS of California. Mr. Speaker, on September 25, 1990, President Bush notified Congress of his intention to negotiate a free trade agreement with Mexico. President Bush is responding to a formal request from President Salinas for a free trade agreement with his country. In addition, Canada has expressed an interest in participating in the negotiations.

Congressman KOLBE and I have called on our Republican colleagues to consider the positive potential of a United States-Mexico free trade agreement. Several Members have highlighted their views here. Mr. CRANE provided facts to counter some of the more destructive myths currently circulating about a United States-Mexico free trade agreement. Mr. DREIER reviewed the evolution of United States-Mexico relations in the 1980's. Mr. IHOFE focused on the tremendous potential in expanded trade and Mr. LIVINGSTON on privatization. Mr. FIELDS noted the importance of a future, integrated United States-Mexico market to confront the challenge of EC 1992. Mr. LOWERY discussed mequiladoras.

U.S. Government, academic, business, and labor leaders are already debating the free trade agreement. The Mexican public is also debating the idea. One recent Mexican poll showed 59 percent of the persons interviewed favored a free trade agreement with the United States.

In this debate, we, as House Republicans, want to be on record in favor of a strong, for-

ward looking United States-Mexico free trade agreement and we believe the United States public will stand behind President Bush's decision to start negotiations with Mexico.

You may ask, why focus on a United States-Mexico free trade agreement? Dramatic changes have occurred in Eastern Europe and the Soviet Union. Tensions in the Middle East are demanding our attention. But this is also an historic moment in our hemisphere. Current trends and converging economic philosophies in the Western Hemisphere cannot be ignored.

Our shared 2,000-mile border and free market economic forces are drawing the United States-Mexican economies together. A free trade agreement offers our two economies a framework for the next stage in our economic relationship, one that goes beyond the assembly lines of the maquiladoras and increases the competitiveness of both our economies.

Mexico is emerging once again as a creditworthy country. With its debt reduction plan in place Mexico has cautiously resumed borrowing in international markets. The new borrowing has come in the form of bonds issued for oil exploration, new power plants, and telephone equipment.

The Mexican Government is opening up its economy to foreign investment. The United States already has a majority stake in foreign investment in our southern neighbor. At the end of the 1989 $16 billion, or 63 percent of total foreign direct investment in Mexico, originated in the United States.

Mexico's economy is growing again, at almost 3 percent per year. Rudy Dornbusch of the Massachusetts Institute of Technology has written that—

When Mexico grows, a substantial portion of the extra income is spent on United States goods and services. No precise estimates are available, but it might be as much as 15 cents of every extra dollar of income. The extra spending might be for agricultural goods, professional services, or consumer goods.

United States and Mexican economic policies are also converging. The U.S. economy has long been based on free and fair trade. Today, Mexico is charting a new economic policy course, in line with our own. In 1986, Mexico joined the General Agreement on Tariffs and Trade [GATT]. This move made Mexico a full member of the international trading system. Mexico has surpassed its commitments to the GATT and dramatically liberalized its trade regime. Our negotiators can further the momentum of Mexican policymakers and set a high standard for future trade agreements.

A free trade agreement, as Presidents Bush and Salinas have said, is the best vehicle for a vigorous partnership. I support the free trade agreement as an economic partnership with Mexico—a partnership that will open markets to more trade, investment, and most importantly, to opportunities for North Americans.

Let's not forget that a free trade agreement with Mexico is also a natural first step toward President Bush's vision of a hemispheric free trade area. President Bush outlined this vision in the enterprise for the Americas initiative. Mexico's Minister of Trade and Industry Jaime Serra-Puche has said that President Bush's initiative has caught the imagination of Latin America. We want to move forward in negotiations with Mexico to build a stronger North American economy and demonstrate our commitment to this vision of a stronger, prosperous hemisphere.

UNITED STATES-MEXICO FREE-TRADE AGREEMENT: OPPORTUNITY AND CHALLENGE TO CONGRESS

HON. JIM KOLBE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. KOLBE. Mr. Speaker, these past few months in Congress have been difficult for this body, and for the country. The divisions have been deep, and the rhetoric strong. And while this year in Washington has been marked by strain and discord, one bright star has begun to glow brightly. That is the prospect of a United States-Mexico free-trade agreement.

For the past 4 years, I have sponsored legislation calling for the negotiation of a United States-Mexico free-trade agreement. More recently, I moved a step further, joining with Senators GRAMM and DOMENICI in introducing legislation to authorize the negotiation of a Mexico-United States FTA. While I can hardly claim credit for the joint announcement this fall that negotiations would begin, I hope in some small way I have helped foster a climate in Congress in which discussion of this link is now possible.

In the last several years, relations between the United States and Mexico, particularly in economic terms, have dramatically improved. Yet, despite this progress, there are many concerns to be addressed and questions to be answered. In fact, I believe a majority in Congress doesn't fully appreciate the economic and political events that have led to this dramatic juncture in our shared history.

The basic question we must be able to answer is this: Why does a United States-Mexico free-trade agreement make sense? As obvious as the answer to that question may seem, the fact remains that many—perhaps most—policy makers, business leaders, and Americans in general do not recognize the size or importance of this relationship to the United States.

A free trade agreement has moved from dream to reality because of unilateral action by Mexico to open and reform its economy. Mexico has done more in the last 5 years to modernize and open its economy than all the actions of the previous half century. From joining GATT to slashing structural trade barriers, Mexico has embraced a free-market economy. As a result, our bilateral trade with Mexico has doubled.

These unilateral actions by Mexico, strongly supported in the United States, have been advanced by bilateral initiatives between the United States and Mexico to expand trade between our countries, to develop mechanisms to support this trade, and provide for the orderly resolution of disputes. Ongoing multilateral trade discussions, notably the Uruguay round of GATT talks, could—if successful—eliminate many of the barriers to trade that exist between the United States and Mexico. Of course, not all problems have been solved, but we have a strong headstart on many of the core issues. With the progress that has been made on these issues, we can conclude that a full United States-Mexico free-trade agreement is both attainable and desirable.

A United States-Mexico FTA doesn't make sense simply because our relationship is now strong enough to support such an alliance. A United States-Mexico FTA presents compelling economic and policy arguments as well. It is a realistic proposition that contains great mutual benefits for both countries. Moreover, it could serve as the cornerstone of a comprehensive hemispheric policy.

The negotiations of such an agreement will clearly benefit both countries. The very act of entering into negotiations puts Mexico on an irreversible path of development. It will institutionalize the reforms that have been enacted thus far. An FTA with the United States will attract the investment dollars Mexico so desperately needs. It will give Mexico access to superior United States technology and management practices and link Mexico even more closely to the United States market. It will help protect Mexico from harmful economic policy shifts in the United States, and allow for more efficient economic planning. Finally, an FTA will cement Mexico's position in the North American economy, and give it more clout, with a more advantageous negotiating position vis-a-vis other global powers.

While Mexico stands to greatly gain from a link to the United States, the benefits to our country will be just as dramatic. First, we will have greater access to a rapidly expanding market that hungers for U.S. consumer products. U.S. firms will benefit from increased access to investment opportunities, and probably to energy resources.

If these benefits along are enticing, it is on the broader scale that the true benefits of a United States-Mexico alliance are seen, as the United States struggle to remain competitive in a global economy. A United States-Mexico FTA, leading to an alliance encompassing the United States, Mexico, and Canada will allow us to better compete with other emerging trading blocs in Europe and Asia. Discussions next spring could easily take shape to include all three countries, and create the most powerful economic bloc in the world.

Finally, the United States can no longer overlook the broader policy implications of relations with Mexico. Mexico is important as the cornerstone of a comprehensive, hemispheric policy. President Salinas has shown himself to be a leader who speaks not only for his own nation, but for an emerging democratic, market-oriented Central and South America. Just as Mexico is the physical bridge to South America, Mexico can serve as the policy bridge from the United States to this important, but often over-looked, region.

We must understand that this discussion is really about economics, and about securing the competitive future of the United States in

the world. These discussions are about building on an already strong economic reltionship, providing for growth and development in Mexico, and making North America a force in the global trading community.

A second fundamental question that must be answered is the Canada question. When President Bush notified Congress of his intention to negotiate with Mexico, he noted that Canada has expressed a desire to participate. While sending a signal to the Hill that trilateral negotiations may be considered, the President stopped short of committing to bring Canada fully into the talks. In fact, discussions are ongoing to decide how Canada will be involved.

I think we should view the prospects of a trilateral agreement with excitement. It would enable us to merge two separate agreements, into one, a single agreement encompassing all of North America, that would allow for the free flow of goods and services from the Yukon to the Yucatan. Such an arrangement would create a trading block of upward of 400 million in population, and would vie with Europe for the most dynamic market in the world.

I think there is a good reason to include Canada as a full partner in the talks. But, Mexico may have other views. A final decision on Canada's involvement will be made between Ambassador Hills and Secretary Serra early next year. Congress should also consider what dimensions Canada's involvement adds to the talks.

Finally, Congress must begin to focus on what we hope to gain in the agreement, and how the negotiating process will take place. The United States must have a clear idea when the negotiations start of what we want the final package to look like. President Bush has said his goal is to provide for the elimination of all tariff and nontariff barriers to trade in goods and services, to eliminate all barriers to investment, and to provide for protection of intellectual property rights. Within these broad parameters, though, are many subissues that must be considered in advance.

The reverse is also true. We should also consider in advance what we do not want to cover. I would imagine there are any number of points of negotiation that could cause quite a bit of concern if they are on the table in 6 months. For example, free labor movements, or agricultural or water subsidies, or Government procurement could raise very politically sensitive concerns. These are just examples, but they illustrate the kinds of questions Congress must begin to raise.

Work over the last several years between the United States and Mexico and in multilateral talks has paved the way for a quick resolution of these negotiations. The remaining issues—certainly the unresolved trade issues—are less difficult than most people realize.

This is an advantage for both countries. Each has an interest in seeing these negotiations completed quickly. For Mexico, these negotiations have taken on great significance. Many of President Salinas' initiatives depend on his ability to produce tangible economic results. President Salinas is banking on the hope that this agreement with the United States will be the final impetus needed to produce dramatic new flows of foreign investment to jump start their economy.

This all boils down to one thing: Congress must begin to focus on all elements and issues involved in the negotiations of a free trade agreement with Mexico that could, possibly, include Canada at the table. We must consider the macroconcerns, such as labor wages, job displacement, immigration, and hemispheric policy, that these discussions will effect. We must also focus on the more specific, sensitive sectoral interests: automobiles; textiles; agriculture—particularly fresh fruits and vegetables; steel; and other labor intensive industries, that will be at the core of the talks.

I am concerned that with our many other pressing demands and distractions, Congress has failed to fully recognize the scope and proximity of these discussions. The United States is hurtling toward negotiations with two of our top three trading partners to redraw economic boundaries in this hemisphere. It is imperative that we begin to carefully consider the issue that could shape the focus of our trade policy into the next century.

The following articles and statements submitted by a number of Republican colleagues are intended to begin this process and to provide Members with helpful background information on these questions.

FREQUENTLY ASKED QUESTIONS ABOUT THE FREE TRADE AGREEMENT

Commerce's Mexico Desk has received many questions on U.S.-Mexican issues since the announcement June 10, 1990, of the President's interest in negotiating a Free Trade Agreement. Here are the answers to some of the most frequently asked questons.

What is the level of trade between Mexico and the United States?

Mexico is our third largest trading partner, after Canada and Japan, and our third largest export market. U.S. exports to Mexico were up 20 percent in 1989 to $25 billion, while imports grew by 17 percent to $27 billion. Total bilateral trade was a record $52 billion.

The United States has run a merchandise trade deficit with Mexico since 1982. The U.S. deficit has declined from a peak of $7.7 billion in 1983, to $2.2 billion in 1989.

In the first half of 1990, the U.S. deficit was $0.9 billion (down from $1.1 billion in first-half 1989).

What is the composition of trade between the United States and Mexico in manufactured goods?

In 1989, 82 percent of U.S. exports to Mexico, and 72 percent of U.S. imports from Mexico, were manufactured goods.

Leading U.S. exports were motor vehicle parts, processed food, electronic components, telecommunications equipment, electrical switchgear, and aircraft. Mexican tariffs on these goods ranged from 10 to 20 percent.

Fastest growing imports were motor vehicles, automotive parts, telecommunications equipment, and electrical distribution and switching gear. U.S. tariffs on these goods ranged from 0 to 8.5 percent.

What is the difference between a free trade agreement and a common market?

A common market involves questions of political and economic national sovereignty by including consolidation of governing bodies, policies, and procedures under a single unified system, such as the European Economic Community.

A free trade agreement would mean unimpeded exchange and flow of goods and services between trading partners regardless of international boundaries.

What are the legislative requirements to formally enter into FTA negotiations with Mexico?

"Fast track" consideration of trade agreements is provided for by the Omnibus Trade and Competitiveness Act of 1988. Key provisions of the authority include that the foreign country request negotiation of an FTA; and that the President give the Congress a 60-legislative-day notice of intent to negotiate an FTA. (President Bush notified Congress on Sept. 25. 1990, of the intent to negotiate an FTA with Mexico.)

During the 60-legislative-day period, either committee can disapprove fast track authority by a majority vote. Disapproval would all but end the possibility of FTA negotiations.

The 60-legislative-days can translate into five to ten months of calendar time, depending on the Congressional schedule. Formal negotiations would begin following this 60-day Congressional consideration period.

What are the areas of greatest U.S. interest in an FTA with Mexico?

President Bush and Salinas defined the proposed FTA as a process of gradual and comprehensive elimination of trade barriers between the United States and Mexico.

The United States is likely to seek a comprehensive agreement covering goods and services, intellectual property rights, and investment. We would seek to eliminate, or reduce substantially, all distortions or barriers to goods, services, and investment, and discuss changes that would improve and expand their flow.

Before negotiations are begun, the Administration will seek views and advice from the Congress and the private sector on the shape and scope of an agreement.

What are some of the non-tariff barriers to the export of U.S. goods to Mexico?

Import permits and licenses are still required in Mexico for products such as wood and wood products and auto parts and are required on more than 200 other products.

Procurement: Mexico encourages "buy national" policies in sectors such as telecommunications and construction products (wood and flat glass).

Standards, testing, and certification, as well as registration and certificate-of-origin requirements, are problems in processed food, alcoholic beverages, and telecommunications.

Exclusive sales and/or distribution contracts are used by Mexican brewers to tie up local retail outlets, limiting imports of alcoholic beverages.

There are quantitative restrictions on automobiles.

Intellectual property rights protection remains a problem for U.S. companies, especially in the pharmaceutical sector.

Investment regulations in Mexico have been liberalized considerably since 1988; however, there are still significant limitations on domestic and foreign investment. Direct foreign investment is still sharply restricted in auto parts, petrochemicals industries, utilities, and some service sectors, particularly the financial services and land transportation areas.

How would an FTA affect the growth of the U.S. capital goods sectors?

An FTA should result in increased prosperity for both countries. Increasing growth and competitiveness in both economies will translate into more jobs, products that are

more globally competitive, and increased exports for both countries.

Although a U.S.-Mexico FTA would not be as comprehensive as the European Community's 1992 program, the growth generated by the FTA could have some of the same results as the EC's efforts to eliminate trade barriers. The United States has gone, in three years, from a $23 billion trade deficit with the EC to a surplus of just over $1 billion. One of the principal reasons for this is growing demand in the EC for U.S. products, especially capital goods. The source of this demand is new growth generated in Europe by the elimination of internal barriers to trade. We may see a similar development with Mexico. Growth in Mexico caused by an FTA may generate an increased demand for U.S. manufactured products, especially capital goods.

What is the status of U.S.-Mexican automotive trade, including any talks that have been held recently?

Automotive trade is the largest component of U.S.-Mexican bilateral trade. In 1989, the United States exported $3.9 billion in automotive products to Mexico and imported $5.8 billion from Mexico—a $1.9 billion surplus for Mexico.

In December 1989, the Mexican government liberalized trade in this sector by allowing more imports of new vehicles (through established Mexican producers) and by reducing local content requirements.

The decree permits a rationalization of the Mexican automotive industry as it encourages the production of only those products in which Mexican companies are competitive.

Although liberalization has taken place in the investment arena, foreign investment in the auto parts sector continues to be limited to 40 percent and must have prior approval by the Foreign Investments Commission.

REVIEW OF TRADE AND INVESTMENT LIBERALIZATION MEASURES BY MEXICO AND PROSPECTS FOR FUTURE UNITED STATES-MEXICAN RELATIONS

PHASE I: RECENT TRADE AND INVESTMENT REFORMS UNDERTAKEN BY MEXICO AND IMPLICATIONS FOR THE UNITED STATES

EXECUTIVE SUMMARY

This report covers the first phase of the Commission's investigation of Mexico's trade and investment reforms and the implications of those reforms for the United States. On October 18, 1989, the Commission received a request from the House Committee on Ways and Means to provide a comprehensive review of Mexico's recent trade and investment reforms and to explore experts' views on prospects for future U.S.-Mexican relations. In response to the Committee's request, the Commission instituted a two-phase study, investigation No. 332-282, under section 332(g) of the Tariff Act of 1930. Phase II, Prospects for Future United States-Mexican Relations, will be submitted to the Committee in October 1990.

Overview: The Mexican Economy

Prior to its recent reforms, Mexico's economic policies during the post-war era were highly interventionist and protective. Like many other developing countries, Mexico pursued industrialization through import substitution. It imposed formidable tariffs and nontariff barriers on imports and subsidized manufacturing industries. Moreover, the Government restricted direct foreign investment and foreign ownership of assets, controlled the peso exchange rate, restricted access to foreign exchange, assumed direct control of more than 1,000 business enterprises, and established complex regulations for others. These policies helped to develop the manufacturing sector, but they also created problems that contributed to the economic crises Mexico faced in the 1980s.

By the late 1970s, Mexico had accumulated a sizable debt that it could not service without additional loans. The world's commercial banks stopped lending to Mexico in the summer of 1982. On August 8, 1982, Mexico announced that it could not make scheduled payments on its $86 billion debt and turned to the IMF for assistance.

After the 1982 debt crisis, the Mexican economy began to expand in 1984, but the improvement was short-lived. By 1985, economic stagnation had again set in. New international financial agreements were reached in 1986. Major shocks, including a devastating earthquake in 1985 and dramatic declines in world oil prices, virtually halted Mexico's economic growth. Mexico obtained new agreements with the IMF, World Bank, and commercial bank creditors in 1986. In exchange, Mexico agreed to major reforms of its economic policies, including reductions in tariffs and restrictions on trade, liberalization of foreign investment, reductions in public spending, tax reform, divestiture of state-owned enterprises, and reform of domestic price controls.

On July 23, 1989, Mexico became the first country to reach a tentative new debt agreement under the Brady Plan. Mexico's commercial bank creditors agreed, for the first time, to forgive part of Mexico's medium- and long-term debts to them. The agreement also provides for a substantial recuction in interest rates on part of the debt, and for several billion dollars in new loans and other assistance.

GATT Accession and Other International Developments

On November 26, 1985, President Miguel de la Madrid announced that Mexico would begin negotiations with GATT for membership. In August 1986, Mexico became the 92nd Contracting Party. Mexico first attempted to joint the GATT in 1979. However, on March 18, 1980, President Jose Lopez Portillo announced that Mexico would delay its entry to GATT, based on various internal political and economic considerations.

Mexico agreed to become a signatory to five of the Tokyo Round Codes: licensing, customs valuation, antidumping, standards, and subsidies. Mexico signed three of the codes on July 26, 1987; the Standards Code was signed in January 1988. The Subsidies code as yet to be signed.

Two "Understanding" between the United States and Mexico have emphasized the importance of liberalized bilateral trade. Most analysts agree that the 1987 Framework Understanding was a catalyst that improved U.S.-Mexican bilateral relations. The 1989 consultative Understanding Regarding Trade and Investment Talks created a parallel mechanism for industry-specific and cross-sectoral negotiations. Negotiations on various topics will be completed over the next several years; standards and petrochemnicals have been chosen as the first topics.

Mexico is viewed as a moderate in the Uruguay Round; it has offered highly regarded proposals in three traditionally controvesial areas. In the services negotiating group, Mexico has advocated the principle of "relative reciprocity." In intellectual property rights discussions, Mexico has proposed a balance between protection and development. In investment, it proposed a study of trade-related investment measures. During the investment discussions, Mexico was singled out by U.S. representatives as an example of a country that has eased investment restrictions without hampering development.

Deregulation and Privatization in Mexico

Based on the premise that excessive and obsolete regulations were largely responsible for inefficiency in the use of Mexican resources, Mexico has implmented a far-reaching program of deregulation. The Mexican Secretariat of Commerce and Industrial Development (SECOFI) has been given the mandate to make new rules that are simpler, less pervasive and rigid, and that allow more room for private initiative and competition. The extensive regulatory revision currently underway in Mexico amounts to a deregulation of the economy as a whole and paves the way for privatization in many areas.

Over 25 different areas of the Mexican economy have been deregulated or are currently being reviewed for deregulation. These areas include domestic motor carriers, telecommunications, petrochemicals, standards and packaging, the financial system, insurance, customs brokers, certain commodities (sugar, cacao, coffee), fishing, technology transfer, trade secrets, and agriculture.

Although many of the deregulations have been implemented only very recently, some implications are already emerging. For example, the liberalizing effect of the new trucking rules on the maquiladora industry is likely to reduce costs and improve economies of scale. Better opportunities for sales by U.S. agricultural exporters could result from the reorganization of Mexico's farm sector.

The Government of Mexico is proceeding with a program of privatization with the clear objective of divesting public enterprises in favor of private, including foreign, investors. Mexican policymakers have stated their intention to reduce the public burden of subsidizing unprofitable enterprises and to generate revenues by the sale of state-owned entities.

As part of the privatization process, the Mexican Government has partially scaled down its participation in some sectors and completely withdrawn from others. For example the Mexican Government has scaled down its participation in such areas as food processing, production of textiles, secondary petrochemcials, wood and paper products, and construction materials. The Government has reduced its presence in the automobile industry by selling Renault de Mexico. Sales of state-owned enterprises producing trucks, buses, tractors, motor, and autoparts have also taken place or are in progress.

In December 1982 the Government of Mexico owned 1,155 entities. As of February 1990, 801 of those entities had been divested or authorized for divestment. As of February 1990, the privatization process had been finalized for 619 companies and was still in progress for 182 companies. The companies that are yet to come up for sale are of larger size and complexity than those for which transactions have already been completed. Also, some of the new candidates for privatization operate in noncompetitive markets. Therefore, they will require regulatory, financial, and operational adjustments before

being offered for sale in a competitive market.

Mexican officials have encountered difficulties in selling a number of companies earmarked for divestment at a price they consider fair. This problem explains the relatively large number of entities for which authorized divestment has not yet been completed. A notable example of a difficult privatization effort is the Compania Minera de Cananea, Mexico's largest copper company and one of the largest copper mines in the world. Private investors are reluctant to assume Cananea's huge debts.

Mexico's Trade Regime

Mexico has reduced its maximum import tariff from a level of 100 percent in 1986 to a current level of 20 percent. This exceeds Mexico's commitment to the GATT to reduce its maximum tariff to 50 percent. Mexico's trade-weighted average tariff is currently about 11 percent—low by developing country standards.

As a result of major trade liberalization measures begun in mid-1985, Mexico has moved from an extremely restrictive import regime in which almost every item was subject to an import permit, to a regime in which quantitative restrictions now apply in only a few selected sectors of the economy. However, Mexico continues to maintain import permit requirements for roughly 330 items (about 3 percent of total number of tariff items). For example, quantitative restrictions continue to apply for oil and oil derivatives, motor vehicles, pharmaceutical products, footwear, electronic equipment, and certain agricultural products. About 59 percent of the value of U.S. agricultural exports to Mexico require import permits. According to a recent GAO report, these requirements are significant barriers to U.S. agricultural exports to Mexico.

Mexico is currently considering or is in the process of liberalizing its rules regarding the three sectors that are regulated by industrial development plans. New rules regarding the automotive, pharmaceutical, and electronics sectors will open these traditionally protected sectors to foreign competition.

In 1986, Mexico enacted a statute containing antidumping and countervailing duty laws. Mexico has initiated countervailing duty investigations very seldom, however, a recent study identifies Mexico as the 5th most frequent initiator of antidumping proceedings during the 1987-88 period, behind the United States, Canada, the European Community, and Australia.

Foreign Investment

In May 1989, Mexico made sweeping reforms to its rules governing foreign investment. Without changing the 1973 law that significantly restricts foreign investment, Mexico has promulgated new rules that provide for greater transparency, increased foreign participation, and greater efficiency in the application process.

Among other things, the May 1989 foreign investment regulations include provisions that allow up to 100-percent foreign investment in companies in unclassified activities. The range of economic sectors expressly open to wholly foreign-ownership has been broadened significantly. Foreign investment of up to 100-percent is allowed in unclassified activities which account for 72.5 percent of the 754 economic activities that comprise the Mexican economy. Included are certain industries such as glass, cement, iron, steel, and cellulose for which administrative restrictions had previously restricted majority foreign participation. Of the remaining 207 classified activities, 40 more are open to 100 percent foreign investment, with prior approval. Moreover, majority foreign participation in many of the classified categories is possible through a temporary 20-year trust mechanism.

While the new foreign investment regulations affect a wide range of activities, the implications in several areas are especially noteworthy. For example, telecommunications is now considered a classified activity in which foreign investment is allowed up to 49 percent. Prior to the 1989 regulations, foreign participation in telecommunications services was prohibited.

In an effort to deregulate the petrochemical industry and provide greater opportunities for private investment, on August 14, 1989, Mexico announced a major reclassification of petrochemicals. Fourteen basic petrochemicals were reclassified as secondary, further reducing the list of basic petrochemicals from 34 to 20 products. In addition, the number of petrochemicals classified as secondary was drastically reduced from approximately 605 to 66 products as 539 products moved into the unrestricted tertiary category.

The limitation on foreign investment in the Mexican insurance industry has been relaxed. A new insurance decree lifts the prohibition on new foreign investment in the insurance industry and raises the allowable level of foreign participation from 15 percent to 49 percent.

In December 1989, Mexico published new regulations which open state banks to limited foreign participation. Under certain conditions, foreign investors are now able to obtain up to 34 percent ownership through new non-voting shares. Direct foreign participation is still prohibited.

In December 1989, a new maquiladora decree significantly changed the rules relating to the issue of maquiladoras seling products in Mexico. Under certain conditions, a maquiladora may now sell locally an amount equal to 50 percent of its total export sales during the preceding 12 months. Local sales must be in addition to the maquiladora's pre-established level of exports. Therefore, to sell on the domestic market, a maquiladora must increase its production.

The 1989 maquiladora decree included significantly streamlined administrative procedures to encourage the expansion or establishment of a maquiladora. A "single window" was created at SECOFI to handle all administrative details. Under the prior regulatory framework, negotiations with 9 different government agencies was required.

The 1989 maquiladora decree creates a more predictable environment for long-term investments. The term for which maquiladora licenses are effective has been changed to an indefinite, open-ended period. Previously, such licenses (although routinely renewed) were valid for only 2 years. The new decree provides greater certainty for long-term investments.

Current Mexican Intellectual Property Protection

Mexican law and enforcement of intellectual property protection has undergone significant change over the past several years. Mexico has announced plans to strengthen process and product patent protection and improve the enforcement of trademarks and trade secrets. As a result of this action, Mexico has been removed from the U.S. Special 301 "Priority Watch List."

Prior to 1987, Mexican law provided no trade secret protection. Amendments in 1987 to the 1976 Law of Inventions and Trademarks (LIT) provides limited protection of trade secrets. Additional trade secret protection was provided in January 1990 with the promulgation of regulations liberalizing the registration of license agreements between foreign companies and Mexican subsidiaries.

Review of Trade and Investment Liberalization Measures by Mexico and Prospects for Future United States-Mexico Relations

Phase II: Summary of Views on Prospects for Future United States-Mexico Relations

Executive Summary

On October 18, 1989, the Committee on Ways and Means, U.S. House of Representatives, requested the U.S. International Trade Commission to conduct a two-party study to provide (1) a comprehensive review of Mexico's recent trade and investment reforms and (2) a summary of experts' views on prospects for future United States-Mexican trade relations. In response to the Committee's request, the Commission instituted investigation No. 332-282, under section 332(g) of the Tariff Act of 1930. Phase I, Recent Trade and Investment Reforms Undertaken by Mexico and Implications for the United States, was submitted to the Committee in April 1990.

The current report covers the second phase of the Commission's investigation of the new direction Mexico is pursuing in its trade and investment regime. As requested by the House Ways and Means Committee, the Commission surveyed experts for their opinions on such proposals as a free trade area agreement (FTA), an enhanced dispute settlement mechanism, sectoral approaches, possibilities under the 1987 U.S.-Mexican Framework Understanding and the 1989 Trade and Investment Facilitation Talks (TIFTs), and other options for enhanced United States-Mexican trade relations. Views were obtained by the Commission from U.S. and foreign trade negotiators and other government officials, U.S. and foreign private sector representatives active in business or trade between the United States and Mexico, academics with relevant expertise, and executives of industry associations, labor unions, and other nongovernmental organizations.

Several themes emerged from the views put forth by the many representatives of governments, private industry, and academia who participated in the study. These observations are summarized as follows:

Although many experts advocated a cautious, "go-slow" approach in negotiations, the overwhelming majority of experts supported the concept of an FTA as the most appropriate option for the United States and Mexico to pursue for the purpose of enhancing their bilateral trade relationship. Only if an FTA is not possible, did the majority recommend that the two countries engage in sectoral negotiations—and then only as an interim measure to keep moving toward the establishment of an FTA.

Experts expressed a variety of opinions regarding what should be included in a United States-Mexican FTA but generally agreed that any agreement should be GATT-consistent and comprehensive, addressing not only general market access issues, but also such issues as investment, protection of intellectual property, certain service sectors, product standards and certification, trans-

portation and other infrastructure issues, agriculture, and energy.

Most experts agreed that negotiation of an FTA could be made more difficult by inclusion of certain contentious or non-trade issues, including labor mobility, foreign participation in Mexican petroleum exploration and extraction, drug interdiction, human rights issues, environmental protection standards, and political reform in Mexico. A majority of participants expressed the opinion that these issues have no place in trade negotiations.

The general U.S. perception was that market access in Mexico has improved dramatically since Mexico began undertaking economic reforms in 1985, but that many impediments to trade remain that could be appropriately addressed under the auspices of an FTA. The general Mexican perception about market access to the United States can be summed up with the words of one Mexican participant who said, "there has been a past pattern of the United States increasing trade barriers whenever Mexico becomes competitive in a particular industry."

Most experts noted that although the United States and Mexico have disparate levels of economic development, their economies are also complementary and thus invite closer trade ties for the mutual benefit of both countries. For that reason, only a few participants said that an FTA between the United States and Mexico—a country that is significantly less economically advanced—would be inappropriate or inadvisable.

Almost all of the experts, whether supporting or opposing the concept of a U.S.-Mexican FTA, acknowledged that any agreement would likely result in job losses in the United States as companies shift their production to lower-cost Mexico. Among those sectors cited as likely to be particularly affected were automobiles and auto parts, apparel, electronic, toys, fresh vegetables, and food processing.

Persons who were knowledgeable about the current U.S. negotiating approach with Mexico generally agreed that the 1987 Framework Understanding and the 1989 TIFTs laid the groundwork for a United States-Mexican FTA by presenting a good forum for negotiations, improving trade relations, and changing some stereotypical attitudes on both sides of the border. Those few experts who preferred sector accords to an FTA, said the sector accords could be negotiated within the framework of the Understanding and the TIFTs.

Experts who commented on the implications of a United States-Mexican FTA for third countries generally agreed that such an arrangement could dilute the benefits of the United States-Canada FTA by making Mexican products more competive than Canadian products in the U.S. market. The Canadian industries identified as being particularly adversely affected are telecommunications equipment, electronic equipment, and power generation equipment. Most participants believed that trade diversion from other Latin American countries and the Caribbean would be minimal, but that the newly industrializing economies of the Far East would probably lose investors to Mexico.

Most experts were confident that the Uruguay Round would conclude successfully and that potential United States-Mexican FTA negotiations would not frustrate or detract from the Round. The majority of U.S. participants indicated, however, that the United States should not enter into FTA negotiations until the Round is concluded, while the majority of Mexican participants said the negotiations should begin as soon as possible.

United States-Mexico FTA Option

Advantages

The majority of experts said that a comprehensive FTA holds the best prospect for broadening the United States-Mexican trade relationship. Some of the major advantages for the United States of an agreement cited by participants were that it would:

Enhance U.S. competitive advantage among a world of emerging trading blocs;

Improve U.S. access to a growing Mexican market of 85 millon consumers;

Benefit specific U.S. industry and agriculture sectors;

Help develop the U.S. border area;

Create jobs in the United States;

Give certainty and predictability to U.S. investors by making Mexican economic liberalization permanent;

Benefit U.S. consumers with lower prices for Mexican products; and

Decrease the flow of illegal immigration into the United States.

Major advantages for Mexico of a United States-Mexican FTA cited by participants were that it would:

Provide "secure" access to the U.S. market;

Increase employment;

Increase Mexican productivity and competitiveness;

Increase and accelerate capital and investment flows;

All Mexico to earn foreign exchange to meet its foreign debt burden; and

Lower inflation.

Disadvantages

The majority of participants said that they saw no long-term disadvantages to a United States-Mexican FTA. Those opposing the FTA option, however, were usually vociferous in their opposition. U.S. labor representatives, for example, were concerned about the negative effects that such an agreement might have on the U.S. labor force. A number of experts representing different segments of the U.S. agricultural sector, concerned about negative effects on U.S. domestic production, were also adamently opposed to an FTA. Some of the major disdvantages of an agreement for the United States as cited by participants were that it would:

Adversely affect U.S. workers;

Hurt certain segments of the U.S. agricultural sector;

Hurt the economies of the U.S. border areas;

Have a negative effect on the environment;

Not necessarily improve the U.S. trade balance; and

Enable Mexico to seek exemption from U.S. trade laws.

Major disadvantges for Mexico of a United States-Mexico FTA as cited by participants were that it would:

Provide few benefits for Mexican workers;

Hurt the small Mexican farmer; and

Hurt certain segments of Mexican industry.

Sector Accord Option

The majority of participants did not favor the sectoral approach either as an alternative to an FTA or as a way of achieving broader trade liberalization objectives. They said that, although sector accords would be easier negotiate than an FTA, they have the disadvantage of being too narrowly focused, thereby making it difficult to balance benefits. Some experts, however, preferred the sectoral approach. Labor representatives, for example, said that sector accords are easier to manage than a comprehensive FTA, thus affording more opportunities to protect workers who could be displaced as a result of increased competition. Others said that the best way to achieve an FTA is on a step-by-step basis, through a series of individual sector accord negotiations.

Experts identified three general sector-specific advantages that are likely to result from free trade rules: the potential for complementary production, which would allow each country to concentrate on areas of comparative advantage; the possible creation of a strong, synergistic trading bloc which could more effectively counter foreign competition; and an expanded Mexican market. The primary concern expressed by experts for all sectors in both Mexico and the United States was that freer trade has the potential to cost jobs. Other troubling issues included the consequences of lack of intelletual property protection for U.S. products in Mexico; the possibility of foreign domination of Mexican natural resources; price pressure on U.S. products from Mexican imports; and the likelihood that Mexico might serve as a conduit to the U.S. market for other foreign producers.

Following are the advantages and disadvantages of freer trade on certain sectors for the United States and Mexico, as suggested by participants in the investigation.

Agriculture

Advantages

Would encourage specialization in complementary agricultural production of the two countries. Current Mexican import licensing requirements could be eliminated or revised under an FTA or sector accord. The potential for increased investment in Mexico could reduce industry labor costs and increase the efficiency of the Mexican food processing industry. Mexico could enjoy lower U.S. tariffs and more transparent and equitable phytosanitary measures and marketing orders.

Disadvantages

The current wage differential between Mexican and U.S. workers would lead to relocation of production and processing activities, thereby eliminating U.S. jobs. Agricultural employment in Mexico might also be adversely affected since more efficient U.S. firms would displace Mexican farmers and force reform of the Mexican ejido system.

Computers, telecommunication equipment, electronics

Advantages

Would greatly expand the market for computers and equipment and telecommunications equipment in Mexico. Mexico would gain access to technology necessary to compete internationally and to update its telecommunications system.

Disadvantages

Small Mexican-owned computer equipment and software companies would not be able to compete if all tariffs and nontariff barriers were eliminated.

Energy

Advantages

Could increase the possibilities for collaborative efforts between U.S. and Mexican firms in drilling or exploration activities; such efforts would also benefit ancillary U.S. suppliers. Mexican experts noted that

an FTA could increase access to capital for needed expansion and improvement of facilities.

Disadvantages

Many U.S. participants recognized the generally strong popular opposition in Mexico to foreign participation in natural resources, such as energy, and suggested that inclusion of the petroleum sector would be a source of conflict in negotiations.

Motor vehicles and parts

Advantages

Could increase the competitiveness of U.S. motor vehicle and auto parts companies through complementary production. In addition, such regional cooperation would provide a counterweight to other emerging trading groups in Europe and Asia.

Disadvantages

Representatives of U.S. labor voiced strong concern about job protection. Representatives of U.S. manufacturers expresed the view that unless rules of origin specifying domestic content and enviromental and safety regulations were carefully crafted, the benefits of a U.S.-Mexican FTA could accrue to other foreign manufacturers, particularly the Japanese.

Petrochemicals

Advantages

Would be advantageous for Mexican industry by lowering U.S. tariffs. Mexican and U.S. producers would benefit if certain consuming sectors of the Mexican domestic market were expanded as a result of the FTA. In addition, a regional industry in North America is perceived as a necessary counterweight to competition from other countries.

Disadvantages

Mexican industry officials were wary of import competition from U.S. producers and advocated a long transition period in order to allow time for adjustment. In addition, there was apprehension that liberalization of foreign investment under the FTA might result in foreign ownership of Mexican feedstock inputs.

Pharmaceuticals

Advantages

Would allow increased access to the Mexican market for U.S. companies and facilitate technology transfer to Mexican companies.

Disadvantages

U.S. industry spokesmen worry that FTA negotiations may slow the improvement of Mexico's patent law. As protection for intellectual property is seen as the primary sectoral barrier to U.S. investment in and trade with Mexico, any such slowdown is viewed as a significant disadvantage of FTA negotiations.

Services

Advantages

Would help expand and make the Mexican trucking fleet more efficient; could increase the quality and timeliness of shipping and lower the transportation costs to both Mexican and U.S. companies. An agreement that allows foreign participation in Mexican financial markets could provide access to lower-cost capital in Mexico. Opening the Mexican insurance industry would provide a lucrative market for U.S. insurance providers.

Disadvantages

U.S. trucking interests reported several possible disadvantages from too rapid an implementation of an FTA, including strong competition to U.S trucking firms in both U.S. and Mexican markets because of the wage differential. Mexican service industry analysts also expressed concern about competition from U.S. firms in the financial services sector and concluded that many Mexican companies would not survive FTA liberalization.

Steel

Advantages

Would help producers in both countries specialize, producing complementary products; demand for such "niche production" would be likely to increase in an expanded Mexican market. In addition, an increase in certain Mexican exports, such as slabs and directly reduced iron, may be beneficial to the United States industry.

Disadvantages

Mexican producers voiced concern about increased import penetration by competitive U.S. mills. Conversely, U.S. producers suggested that increased imports of Mexican steel products may adversely affect them by lowering prices. In addition, U.S. producers and consultants noted that Mexico may serve as a conduit to the U.S. market by other foreign suppliers such as Japan, if rules of origin are not strictly written and enforced.

Textiles and Apparel

Advantages

Would expand export markets for U.S. suppliers if, as suggested by certain U.S. industry spokesmen, there is a shift from production in the Far East to Mexico. Would also encourage national specialization and a more competitive North American industry vis-a-vis other trading blocs. From the Mexican perspective, the elimination or revision of U.S. textile quotas under an FTA agreement would stimulate foreign investment in Mexico's industry.

Disadvantages

U.S. labor representatives voiced strong concern that inclusion of this sector in an FTA would result in job losses for U.S. workers and could also contribute to exploitation of Mexican workers.

UNITED STATES-MEXICO FREE-TRADE AGREEMENT

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. CRANE. Mr. Speaker, in a June 27 speech before a group of Central and South American diplomats, President Bush expressed his desire to form a hemispherewide free trade area [FTA]. During his comments, the President stated that the United States is "prepared to negotiate with any interested nation in the region bilateral framework agreements to open markets and develop closer trade ties."

The United States-Canada Free Trade Agreement has proven so enormously successful, that it is not surprising that the President is looking to the south to expand trade ties in a similar fashion. In 1989, the first year of implementation, the exchange of goods and services between the two countries totaled approximately $220 billion, an increase of $30 billion over the previous year. Among other things, the success of the arrangement can be attributed to the geographic proximity of the two nations. Due to relatively inexpensive transportation, it would make sense to pursue FTA's with trading partners whose borders are easily accessible.

The United States-Canada FTA came close to being derailed because of many preconceived notions which have since proven to be ill-founded. The prevailing argument in Canada against the agreement almost cost Prime Minister Brian Mulroney his career. Many Canadians believed that the United States would take advantage of the openness of the Canadian market by seeking to impose American cultural standards on their country. Fortunately, this line of thinking did not carry the day, and the Canadians voted to support the agreement. Now that the FTA is underway, United States and Canadian business communities and governments, even some initially opposed to the FTA, are now actively engaged in reaping the benefits of the agreement and rarely does one hear complaints.

The fact that the United States and Mexico have taken the first steps toward negotiating a free trade agreement is a strong indication that the world will indeed witness the free flow of goods and services throughout the Western Hemisphere. While there is little question that the process will take time, I believe that if the United States and Mexico work together to dispel some of the more destructive myths currently circulating, the negotiations will move much smoother and the two counties will begin to reap the benefits of free trade much sooner than expected.

PREVAILING MYTH IN THE UNITED STATES

Many Americans in certain sectors of the economic and political community are under the illusion that an FTA will mean a loss of jobs to relatively inexpensive Mexican labor. There will no doubt be a short adjustment period as some United States firms take advantage of the low wages available in Mexico for the manufacture of less advanced products. However, this is not a negative aspect of the arrangement. As a result of increased employment, more capital will be available to Mexican consumers to purchase higher quality American goods, which will be available duty free. According to Luis Pazos, a professor of economic theory at the Universidad Nacional Autonoma de Mexico, "a free trade zone may raise the standard of living in Mexico to the point that by the year 2000 the projected Mexican population of more than 110,000,000 would become a more important market for the United States than the 30,000,000 persons projected to live in Canada." To meet what is expected to be a giant demand for quality goods in Mexico, more jobs requiring skilled labor will consequently be available to Americans and as a result, the standard of living in both counties will flourish.

The increase of employment in Mexico will also stem the flow of undocumented workers into the United States, as Mexican laborers will no longer have to leave their country to pursue a job. And while most Americans would perceive this as an outright advantage to the United States, Mexico's benefit from this fallout will be even greater. The Mexicans who head for the north in search of better opportunities tend to be those who possess a

high level of energy as well as an entrepreneurial spirit, and consequently are a great asset to their country.

PREVAILING MYTH IN MEXICO

While Americans are predominantly concerned over the effect an FTA will have on United States employment, the chief complaint heard in Mexico is that they will be unable to compete in a free market environment against the technological superiority of United States firms. However, access to United States technological sophistication will no doubt rub off on Mexican firms and eventually result in a more skilled and productive labor force. As a result, workers will be able to enjoy higher wages.

PREVAILING MYTH IN THE INTERNATIONAL COMMUNITY

There are many countries, especially among our Asian trading partners, who are worried that a hemispherewide free trade area will result in fortress America, much like what some Americans fear will happen after the European Community fully integrates in 1992. In his opening address before the Asia Pacific Economic Cooperation Ministerial meeting, Singapore Prime Minister Lee Kuan Yew warned of the dangers of regional trading blocs:

A de facto emergence of such [trading] blocs will mean a world fraught with conflicts. Asians will feel that they have been quarantined into the Japanese Yen bloc so that they can be excluded from the markets of prosperous Europeans and Americans, that the whites have changed the rules just as Asians have learned to compete and win under those rules. An economic division of the world on racial lines would add bitterness and animosity to the normal conflicts of interests between states.

The United States, Mexico, and Canada must work together to reassure our trading partners that we are in no way interested in forming a regional trading bloc. Rather, it is our goal to spur trade liberalization. A regional arrangement is not being viewed as an alternative to the multilateral approach, but rather is a stimulus to global free trade. Rather than idly sit by watching the enormous economic progress of nations engaged in free trade, hesitant nations will likely learn the value of joining progessive trade efforts and of contributing to improved trade discipline worldwide.

One way that the United States can dispel the myth that we somehow favor the concept of regional trading blocs is to offer to negotiate FTA's with any country that wishes to remove its own barriers to American imports in exchange for open United States markets. I believe that the United States should pursue agreements with the Republic of China on Taiwan and Singapore, both of whom have requested an FTA. In fact, I have sponsored legislation to this effect.

The principal reason for entering into a free trade agreement is the economic benefits it will provide to the manufacturers and consumers in the signatory countries. Open markets increase competition, eliminate inefficiency, and ultimately result in lower costs to consumers. Mexican President Carlos Salinas de Gortari has shown a profound understanding of these spectacular benefits by requesting such an arrangement with the United States. The Bush administration has shown equally good judgment by offering to negotiate FTA's with any country in the hemisphere that seeks one. If the United States and Mexico can successfully dispel some of the more dangerous myths that are currently held with respect to free trade agreements, a positive environment for pursuing additional agreements with other trading partners will surely emerge.

The above statement will be appearing in the October 1990 issue of the "Mexico-United States Institute" newsletter.

A NEW DECADE: MEXICO IN TRANSITION

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. DREIER of California. Mr. Speaker, 9 years ago, when I was a freshman Congressman from the Los Angeles area, BOB MICHEL, the House Republican leader asked me to participate in the 20th United States/Mexico Interparliamentary Conference.

As a newcomer, I wasn't certain what to expect. Clearly, Mexico was an important ally, and close neighbor, but how could two Nations with such diverse backgrounds and cultures hope to resolve their differences?

Well, after the first several hours of my first conference, I was convinced not only that our two countries had more in common than I had thought, but these conferences, unlike so many others that we have all attended, really could make a positive difference in relations between Mexico and the United States.

Looking back at our relationship during the 1980's, I see much to be proud of, as well as a number of remaining challenges. Regardless of our current differences, I am more convinced now than ever that we can and must move forward to address these issues. My experience during the past 9 years convinces me that this is entirely possible.

Let's take a closer look at our relationship as we enter the last decade of the 20th century. Mexico is our third largest trading partner. It is our most important source for petroleum. It is our fifth largest agricultural market.

The U.S. market accounts for one-half of all Mexican exports. 60 percent of imports into Mexico come from the United States. As you know, I am from the Los Angeles area. In 1987, California trade with Mexico totaled more than $3.6 billion. From 1984 to 1986, California's exports to Mexico increased by 14 percent, while imports grew by 32 percent.

Future progress promises to continue apace. Since joining GATT in 1986, the average Mexican tariff rate has fallen from 30 percent to around 10 percent. As a long time free marketeer, I believe that this is perhaps one of the greatest achievements of all.

All of this, however, seems to be clouded over by the recent controversary surrounding the abduction of Mexican Doctor Humerto Alvarez Machain, who has been charged in connection with the brutal murder of U.S. DEA agent Enrique Camarena.

The issue was raised again and again during Vice President QUAYLE's visit to Mexico in April, Mexican legislators have denounced the United States role in the incident, and the Mexican opposition has been up in arms.

I realize how sensitive the case is. But while I will not defend what happened, it should be made clear that the United States made numerous attempts to persuade Mexico to follow up on the case. Had Mexico addressed Dr. Alvarez's involvement in the Camarena case in a timely fashion, this controversy would never have occured.

In addition, the American public views this as a case of paramount importance, and public perception is extremely important to all of those of us who are elected officials.

Public perception also plays a role in decisions on business investment and vacation plans, both of which have an impact on Mexico's economic well-being.

Some concerns remain in other areas as well. The U.S. Office of National Drug Policy stated just this past February that, "While Mexican laws against drug trafficking are adequate, enforcement is less than satisfactory."

However, the fact is that we cannot go back in time. We should not allow our political differences to obstruct progress toward improving our economic ties.

Our two Presidents set a good example for us last October, when they were able to set aside their differences over the attempted Panama coup, and go ahead to sign a major and historic economic accord.

Indeed, President Salinas deserves a great deal of credit for this success. He is extremely well regarded by U.S. political leaders. His willingness to jail drug lords, indict corrupt union officials, and even to concede defeat in a key governorship race all impress us as the the marks of a true leader. Unlike Mikhail Gorbachev, his popularity abroad is apparently shared by his own people. His approval ratings have soared as high as 80 percent.

Salinas' economic policies have been bold, and, given the remarkable changes taking place in Eastern Europe, appear even more progressive than they did even 1 year ago.

For instance, the privatization of Mexico's telephone company, banking industry, and the Cananea copper mine reassure we Americans that his reforms today will result in expanded economic opportunity for Mexico's citizens of tomorrow. Nothing could improve relations between our 2 nations more than relieving Mexico's economic difficulties.

Mexico must also be commended for its success in diversifying its exports. Oil now has fallen to 35 percent of total exports, from 80 percent in 1982, and non-oil exports have doubled. Fortunately, with the softness of the oil market, many progressive Mexican leaders realized the importance of promoting a more diversified array of exports.

This brings me to a topic that I have mentioned in past speeches: The success of the 1,200 or so Maquiladora plants along the border with the United States. This is one of the sectors of the Mexican economy that has proven the most successful during the past decade. The system has expanded

even quicker than tourism, and now represents Mexico's second largest foreign exchange earner. The benefits of job creation has extended back across the Mexico-United States border as the system has made United States businesses more competitive as well. California, in particular, has benefited, which sits well with me.

I would also like to make a pitch for greater Mexican involvement in Latin America. With the downfall of the Sandinista regime in Nicaragua, and the possibility of a peaceful resolution to the civil war in El Salvador, we face the very real prospect of better relations in the entire region. However, in the past year Mexico has played only a minor role in the area.

I believe that Mexico, as the largest country in the region, has the ability to provide a major leadership role for the smaller countries of Latin America. In particular, expanding economic relations with Nicaragua, including the sale of energy supplies, bringing pressure to bear on the Marxist FMLN guerillas in El Salvador, and supporting the civilian government of Vincio Cerezo in Guatemala, would be particularly helpful.

The President has announced his intention to go ahead with the negotiation of a free trade agreement, and I support his efforts. This will bring substantial benefits to both the United States and Mexico, and will be extremely helpful in bringing our two countries closer together during the coming years.

In conclusion, the evolution of our relationship is not only inevitable, but healthy. Two quotations come to mind which sum up my thoughts on this subject:

Benjamin Disraeli in 1867 pointed out that: "In a progressive country, change is constant; change is inevitable."

Former British Prime Minister Harold Wilson once observed: "He who rejects change is the architect of decay. The only human institution which rejects progress is the cemetery."

The free trade agreement will help us manage the evolution of our important relationship.

UNITED STATES-MEXICAN TRADE AND THE FREE TRADE AGREEMENT

HON. JAMES M. INHOFE

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. INHOFE. Mr. Speaker, I believe that a free trade agreement [FTA] with Mexico would be financially beneficial to both the United States and Mexico. It would aid in the modernization and liberalization of the Mexican economy—leading to greater stability in our neighbor to the south. The obvious dedication on the part of the United States and Mexican Governments, at the highest levels, to negotiate for a FTA is highly encouraging.

Mexico and the United States already share a very close working relationship and their trade relationship is a very natural one, in part because the two countries share a very large border. Last year, trade between them reached about $50 billion. The United States is Mexico's main trading partner, receiving nearly 60 percent of all of its exports. Mexico for its part, is the United States' third largest trading partner, following Japan and Canada.

United States-Mexican trade has consistently increased during the past decade and the reasons for the growth include the good cross-border production sharing provisions that have been formed under the maquiladoras. The U.S. duties on the U.S. content of imported goods are suspended, and only duties on the foreign value added are applied. Meanwhile, Mexico suspends import fees on intermediate goods which will be later assembled and exported. In 1989, these maquiladoras employed nearly one-half of a million Mexican workers at almost 1,700 plants. While the United States provides the market for most of the maquiladora products, most of the intermediate goods—the manufactured components—originate in the United States.

For many years, the Mexican economy could be defined as highly protectionist and interventionist. The Government discouraged foreign ownership and investment, and carefully controlled a number of industries. They feared losing control to foreign powers and so implemented such protectionist measures as high tariffs, quotas, and import restrictions. However, with the recent changes in economic policy encouraged by President Salinas, it is clear that Mexico is working to remove these barriers. Many of the obstacles to foreign trade have been lifted and only modest tariffs remain. The maximum tariffs, for example, were decreased from 100 percent to only 20 percent.

Mexico's economy is made up largely of commerce and manufacturing. With regard to United States-Mexican trade, manufactures account for 80 percent of United States exports to Mexico and 74 percent of imports from there. In 1989, the top three United States exports to Mexico were auto parts, telecommunication equipment and parts and electrical switches. The top three imports from Mexico were crude petroleum, equipment for distributing electricity, and automobiles. Agriculture is also extremely important to the trade relationship. Mexico receives a large share of United States agricultural exports while at the same time is the second largest supplier of United States agricultural imports.

It should be clear then that increased trade between Mexico and the United States would be nothing less than mutually beneficial. It would enable Mexico to continue on its path to economic and therefore political stability. And a FTA would offer the United States huge potential markets for U.S. companies. A new United States business in Mexico would most likely require United States machinery and plants which would then be made in the United States and would employ our citizens.

Of course there will be limits on the trade. President Salinas himself has called for limited trade and he purposely made the distinction between open and free markets. The negotiations for a FTA will raise serious and legitimate concerns. I have been very active in working to protect glass producers from unfair competition relating to the generalized system of preferences [GSP] and the Uruguay round. As one of Oklahoma's major industries, the manufacturing of glassware and glass containers is crucial to Oklahoma's economic welfare and must not be put in any destabilizing position.

However, I am confident that a FTA that is just and equitable can and should be worked out. The ultimate FTA will be greatly agreeable to Mexico and to the United States and its citizens.

UNITED STATES-MEXICO FREE-TRADE AGREEMENT: PRIVATIZATION PROVIDES OPPORTUNITY FOR UNITED STATES INVESTMENT

HON. BOB LIVINGSTON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. LIVINGSTON. Mr. Speaker, the world is experiencing a dramatic time in history. The Soviet Union and Eastern Europe are turning toward free societies and free markets. The European Community is breaking down internal barriers to spur free trade and economic development. The world is becoming increasingly interdependent as businesses expand across borders and international trade escalates. These events indicate the efficiencies and benefits resulting from free markets and free trade.

Mexico is actively participating in the global transformation toward free markets to improve economic growth. The United States has the opportunity to encourage this transformation and to share in the benefits of open markets. A free trade agreement between the United States and Mexico holds out the prospect of increased economic growth for both countries.

The Salinas government has embarked on an extensive program of economic reform by reducing the Government's role in the economy. A large component of the reform is the privatization of government-controlled industries. By the end of 1989, about 650 Federally managed companies, or "parastatals" had been dismantled, consolidated, or sold. Of the 210 companies that have been sold, Mexican groups bought 91 percent and 9 percent were bought by foreigners or joint ventures.

According to the United States International Trade Commission, the Mexican Government has undertaken a major "Program of Deregulation." As part of this program, the Government has completed, or is in the process of preparing, deregulatory measures affecting most areas of the economy, including the financial system, insurance, standards for containers, agriculture, fishing, motor carriers, multimodal transportation, the petrochemical industry, refined petroleum products, rules regulating transfer of technology, telecom-

munications terminal equipment, customs brokers and commodities—sugar, coffee, and cocoa.

The Government of Mexico's decision to reduce the Government's participation in the management of industries opens up a number of opportunities for United States investors. For example, Aviacion, the country's largest air carrier, permitted participation by a number of new U.S. and other foreign investors. Also, the Mexican Government has outlined a plan for privatizing Mexico's 56 percent share of Telmex, the Government-controlled telephone monopoly.

Mexico's privatization efforts will provide profitable opportunities for United States investment. Privatization will improve the efficiency of the Mexican economy and provide healthy markets for United States exports. A free trade agreement will allow American businesses to take advantage of the investment opportunities and healthy export markets provided by Mexico's privatization and deregulation efforts. The competition from United States firms would create incentives for the Mexican Government to further privatize inefficient state-owned enterprises and for Mexican businessmen to channel capital and labor into more productive industries.

A free trade agreement would encourage Mexico's drive toward capitalism and solidify a democratic ally on our southern border. It would also contribute to creating the North American free trade area, stretching first from Canada to Mexico and eventually including the democratic countries of the Caribbean and Central America. This alliance would surpass the European Community and dominate Japan.

Both partners benefit from free trade agreements. Therefore, I urge my colleagues to cosponsor H.R. 4680, The Mexico-United States Trade Act, introduced by Representative KOLBE. Congress should support this effort to initiate negotiations for a trade agreement with Mexico that reduces and ultimately eliminates trade barriers.

FREE-TRADE AGREEMENT BETWEEN THE UNITED STATES AND MEXICO

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FIELDS. Mr. Speaker, I rise today to join my colleagues in support of the rapid conclusion of a free-trade agreement with Mexico. This is an excellent opportunity for America. One that must be actively pursued, not wasted.

The world is changing at light speed. In less than a year we have seen the destruction of the Berlin Wall and the reunification of Germany. Democracy has gained a foothold in Central America with a new government in Panama and the election of President Violeta Chamorro in Nicaragua. A year ago, few people would have predicted any of these, or that we would now have troops deployed in the Middle East.

We must do more than react to world changes. To retain our position in the world, and meet the responsibilities that accompany this position, the United States must plan to meet future changes. The United States must anticipate the future, and plan accordingly. A reactive government falls behind; 1992 will bring yet another new world order. It will bring EC 1992—or the final integration to form the European Community. This will create the world's largest commercial and trading unit, with 12 countries, 320 million people, an annual gross domestic product of over $4 trillion, exports of $680 billion, and imports of $720 billion. EC 1992 will present a new challenge for the United States. We must see it as it is—as an opportunity and a challenge.

This is only one of the many reasons my colleagues and I are presenting today to support our call for the timely conclusion of a free-trade agreement between the United States and Mexico. America must plan to confront the challenge of EC 1992. A free-trade agreement with Mexico combined with our free trade agreement with Canada and future proposals to include the entire Western Hemisphere will prepare the United States to be an active leader in the years to come.

IN SUPPORT OF NEGOTIATIONS FOR A UNITED STATES-MEXICO FREE-TRADE AGREEMENT

HON. BILL LOWERY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. LOWERY of California. Mr. Speaker, I want to join a number of my colleauges in expressing my support for President Bush's decisions to begin negotiations with President Salinas of Mexico toward a United States-Mexico Free-Trade Agreement.

First, to those that oppose or fear increased trade with Mexico, it must be remembered that the President has proposed negotiations with the Government of Mexico on this issue. The United States has not conceded any issue. Indeed, these negotiations should be conducted thoughtfully and carefully; but we should proceed with them.

As a lifelong resident of San Diego, CA, I have firsthhand experience of the problems and promise of close relations with our neighbors in Mexico. The problems are real, but the promise is great. Mexico can join the United States and Canada as a powerful unified market that can rival Europe or Asia. If we ignore this opportunity we run the risk of allowing Mexico to slip backward toward worsening poverty and, potentially, unrest. Domestic unrest in Mexico would be a potential disaster for our own Nation.

I would like to address in general terms some positive developments in Mexico that indicate that nation is ready to become a full and dynamic trading partner of the United States. In addition, I will describe the United States-Mexico maquiladora industry—a working example of how increased economic cooperation benefits both our nations.

Is Mexico ready for economic cooperation with the United States? Yes, Mexico is working to earn our respect and cooperation. During the last several years, President Salinas has orchestrated an ecomomc recovery comparable to the early stages of recovery in Korea and Japan. He has succeeded in cutting Mexico's former 150 percent inflation to less than 20 percent. The benefits of this drop are wide in breadth and deep in impact. The National Treasury bill rate has dropped to a manageable level and international faith in the peso is returning. The practical upshot of all of this is that in 2 years, the Salinas-headed government has become able to service the Mexican national debt, a debt which took 60 percent of Mexico's Federal spending in 1988. We should salute President Salinas for his skillful handlng of the Mexican economy thus far. Mexico is preparing to become an active, integrated and reliable participant in the world economy.

The maquiladora industry is an on-going, successful example of United States-Mexican economic cooperation that provides a preview of the benefits to be gained under a free-trade agreement. Maquiladoras, also known as the in-bond or twin plant industry, are production or assembly plants located in Mexico whose capital base is generally 100 percent foreign, and almost 60 percent American. United States companies send supplies, raw materials and equipment to assembly plants in Mexico without paying Mexican import duties. The products are assembled in Mexico and returned to the United States with duty paid only on the value added by the assembly. In essence, it is free trade between the United States and Mexico.

Twelve maquiladora plants were created in 1965 to help reduce employment in Northern Mexico. After some slow initial growth through the 1970's, over the last decade the maquila industry has grown to over 1,500 plants in Mexico resulting in jobs and economic benefits in both America and Mexico. According to the U.S. International Trade Commission, maquiladoras account for 440,000 jobs in Mexico. The U.S. Deprtment of Labor estimates that maquilas have produced over 75,000 American jobs. Maquiladora plants manufacture electric and electronic goods; textiles and apparel; furniture; and transportation equipment. I can speak from personal experience that maquilas have a positive economic impact for San Diego, CA, and our neighbors in Tijuana, Mexico.

Maquiladoras create jobs for Americans and Mexicans. In May 1988, the Department of Labor issued a report that found that maquilas are a plus for the economies of the United States and Mexico and that an elimination of the program would damage the United States economy by causing an increase in United States imports from other countries; increased United States prices; and reduce United States employment. We would lose jobs and productivity.

If the maquiladora industry disappeared, we would see a dramatic increase in illegal immigration to the United States. The maquilas and more free trade with Mexico will create jobs in Mexico. This will allow Mexican workers to stay in their nation and build an economically and politically healthy neighbor for the United States.

In producing a free trade agreement with Mexico, the United States could build on the successes of the maquiladora industry. New opportunities for American businesses will be established with greater markets for United States products. United States consumers will have access to Mexican products, and Mexicans will enjoy more American goods. Finally, as the maquiladora industry is demonstrating, free trade will mean more jobs on both sides of the border.

I urge my colleagues in the House to carefully examine the merits of a potential free trade agreement and to support legislation enabling the President to accomplish this worthwhile goal.

A TRIBUTE TO AUGUSTUS F. HAWKINS

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ROE. Mr. Speaker, it is with deepest respect that I take this opportunity to acknowledge the retirement of one of our most highly respected and diligent colleagues, Congressman AUGUSTUS F. HAWKINS of California, who has served this body with the greatest distinction for nearly 30 years. It is truly an honor and a privilege for me to have had the opportunity to work alongside AUGUSTUS HAWKINS during my 21 years here in the House.

Mr. Speaker, few Members of Congress have distinguished themselves both here in Washington and with their constituents the way AUGUSTUS HAWKINS has. As the chairman of the Education and Labor Committee, and as a tireless worker, he sponsored legislation to create jobs and insure civil rights for all citizens. His ability to gain bipartisan support on major legislation brought him the admiration of his peers and earned him an unparalleled reputation as a fair and honest man. His diligent work on behalf of our country has set a fine example for all Americans.

It is common knowledge here in the House that AUGUSTUS HAWKINS' efforts on behalf of his district made him deeply admired and respected by his constituents. At the same time he worked on many matters vital to the Nation as a whole, most notably title VII of the 1964 Civil Rights Act, which mandated fair employment practices and created the Equal Employment Opportunity Commission [EEOC]. AUGUSTUS HAWKINS was at his best serving the people back home, making sure he was accessible to all of his constituents during his 28 years in the House. Most certainly, the people of California's 29th District will be saddened by the retirement of such a highly esteemed and dedicated Representative.

As chairman of the Science, Space, and Technology Committee, I have had the pleasure of working closely and in harmony with Mr. HAWKINS and the Education and Labor Committee addressing our Nation's serious shortcomings in science education. Most recently, I had the opportunity to work with GUS on H.R. 996, the Excellence in Mathematics, Science, and Engineering Act of 1990, which passed the House today. This bill is a joint comprehensive effort to improve science education at all levels of instruction and to increase the numbers of students choosing careers in science and engineering with an emphasis on attracting greater numbers of women and minorities. This legislation expresses a commitment to excellence and a concern for the long-term prosperity of this Nation. It represents a fitting tribute to the vision of Chairman GUS HAWKINS.

Mr. Speaker, I am pleased to have participated in this special order to honor AUGUSTUS F. HAWKINS, chairman of the Education and Labor Committee. As Congress ends this long and difficult session, one can take heart in the strength and diligence shown to us by Congressman HAWKINS over the years. He is a gentleman in the finest sense of the word who has given so much to this institution and the people of this country. As we reflect on this past Congress and our efforts, I think that it is fitting to keep in mind the words of our good friend GUS HAWKINS "* * * if you believe in something, you work a long time."

TRIBUTE TO HON. AUGUSTUS HAWKINS

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. STOKES. Mr. Speaker, I want to pay tribute to the chairman of the Education and Labor Committee, our colleague and our friend, GUS HAWKINS. The adjournment of the 101st Congress will bring to a close a distinguished career which spans 56 years. The 29th Congressional District of California and the Nation have benefited from the selfless efforts and determination of this committed public servant.

There are few words that adequately describe GUS HAWKINS. When I came to Congress in 1968, he became not just a mentor, but he was a genuine and valued friend. GUS was always concerned about young members of Congress and he often took the time to counsel us. He was instrumental in helping us to understand the committee structure and legislative process. I fondly recall many conversations with GUS over the years. Whenever asked, he always presented an opinion that was thoughtful and fair.

Mr. Speaker, Chairman HAWKINS is often referred to as "a gentleman's gentleman." The description is remarkably accurate. A statesman of unique caliber, GUS has earned the respect and admiration of his peers. He is an articulate and eloquent orator, whose speeches on the House floor have often held us spellbound.

Few Members of Congress have achieved the legislative record of GUS HAWKINS. He leaves a shining record of accomplishment as chairman of the Education and Labor Committee; dean of the Congressional Black Caucus; and dean of the California congressional delegation. His record is a tribute to his mastery of the art of politics and his burning desire to bring about social change. The Hawkins legacy spans education, civil rights, and labor laws. Mention the Civil Rights Act of 1990; the Job Training Partnership Act; the Fair Labor Standards Act amendments; the Humphrey-Hawkins Employment Act; and the Child Development and Education Act; and you start to realize the magnitude and great heights this premiere legislator has achieved.

Mr. Speaker, I read with great interest GUS HAWKINS' personal view on public service. He said:

> The leadership belongs not to the loudest, not to those who beat the drums or blow the trumpets, but to those who day in and day out, in all seasons, work for the practical realization of a better world—those who have the stamina to persist and remain dedicated. To those belong the leadership.

It has been an honor and privilege to serve in the Congress with this great leader. GUS HAWKINS has worked tirelessly on behalf of his constituency and our Nation. He has been a friend; a mentor; a statesman; and a man of remarkable courage and ability. As we bring this legislative session to a close, we salute GUS HAWKINS. He has changed this institution and the world.

Mr. Speaker, I again thank my colleagues for this opportunity to honor my friend, GUS HAWKINS. My wife, Jay, and I wish he and Elsie well.

PAYING TRIBUTE TO REPRESENTATIVE AUGUSTUS HAWKINS

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PANETTA. Mr. Speaker, I rise today to take this opportunity to say a few words in paying a special tribute to my esteemed colleague from California, Representative AUGUSTUS HAWKINS, chairman of the House Education and Labor Committee, who will be retiring this year. Although I have not had the privilege of working with Mr. HAWKINS under his outstanding leadership on the Education and Labor Committee, I have had the distinct pleasure of working together with him on numerous other important issues that affect the State of California and this country.

I want to note that I share the gentleman's passionate and fervent interest in the field of civil rights, a field that he has championed since his early days in the Assembly of the California State Legislature. This is a subject that I feel particularly strongly about and, in fact, began my own career pursuing. Mr. HAWKINS has helped millions across this country in ensuring equal opportunity and equal treatment under the law.

His efforts began in the State of California with desegregation housing legislation, and continued throughout his tenure in Congress, which included the drafting of title VII of the Civil Rights Act of 1964, which created the Equal Employment Opportunity Commission, and the introduction of the Civil Rights Act of 1990. Mr. HAWKINS has spent his life addressing the continuing inequities regarding minorities and breaking down the barriers.

He has served as an inspiration by setting a high standard in pursuit of those goals and

dreams that should belong to all people in our great Nation. We are all grateful for his work. I know that he will continue to lead us in this fight long after this session has passed.

One special issue in this Congress Mr. HAWKINS focused on, among the many he has devoted endless time and energy toward, and was of special interest to me, was that of national service. Although admittedly originally hesitant about the idea, Mr. HAWKINS was responsible for the development and consideration of this comprehensive legislation in the House this session that encouraged volunteerism through school, and conservation and service corps. His skillful and careful leadership guided the bill to its successful consideration and ultimate passage. I was very pleased to be a part of that process, as this issue is one in which I have been involved with for over a decade. His tenacity and dedication on this once again illustrates his tireless commitment to issues affecting our youth, our children, our schools, our future. I want to personally thank Mr. HAWKINS for his tremendous contribution to this issue.

Mr. HAWKINS' pursuit of fairness and opportunity for all play a pivotal role in his determination, struggles and many successes. He has dedicated over 50 years of public service to helping people, and is one of the most fair, hard working gentleman in the history of Congress. The legacy is great. Mr. HAWKINS, you will truly be missed.

IN TRIBUTE TO RETIRING CONGRESSMAN GUS HAWKINS

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mrs. COLLINS. Mr. Speaker, I rise today to say goodbye to another retiring friend, our colleague, the Honorable GUS HAWKINS.

I first met GUS HAWKINS when my late husband, George Collins, became a Member of Congress. GUS was one of eight sitting black Members to welcome George to Washington and to the House. In the days preceding the formal establishment of the Congressional Black Caucus, those nine sitting Members, including George, banded together to form a support network for each other and to legislate, educate, and mediate on the issues of importance to black people. At that time, GUS was fourth in seniority among black Members and was widely respected and sought out for his advice. And today, some 20 years later, we still look to GUS for leadership.

Why do we look to GUS? Because GUS HAWKINS is more than a politician. He has transcended partisanship and demagogy and is a consummate statesman. He is a fine example of knowledge, skill, commitment, and coalition building that any Member—present or future—would do well to emulate.

In 56 years in public service, GUS HAWKINS has seen Members, political whims, and issues come and go. But he has steadfastly held onto his ideals and never lost sight of this goals. With the energy of people half his age, he is a powerful advocate for those whose interests are traditionally ignored: children, the poor, working people. He has always been interested in providing a level playing field—not an advantage, but equal footing—for those born, or burdened by the circumstances of life, with disadvantages. His many education initiatives were designed to try to get all children off to an equal start and maintain equality of education throughout.

I think one of the most striking things about GUS HAWKINS is his demeanor, it truly befits a man who wears the title of statesman. GUS is ever the gentleman, a model of decorum, whether he is delivering a chilling indictment of yet another misguided Bush administration education policy, or greeting an old colleague in the hall. And have you ever seen GUS talk with staff? He treats them with the utmost professional courtesy and respect whether they are his staff or that of other Members. The cordiality and kindness that he has extended to his staff is repaid in their loyalty: many of his staff have been with him for 10 or more years.

I am filled with mixed emotion as we end the 101st Congress. We just did a special order the other day to bid a fond farewell to our colleague, LINDY BOGGS. And today we stop to reflect on the career, contributions and our affection for GUS HAWKINS. In losing these two Members, we are losing more than just Representatives from Louisiana and California. We are losing two people who have devoted their lives to public service. Two people who have made a priority of the concerns of those less fortunate, the underrepresented masses, those in need of help and support from society and those whom society has ignored and forgotten.

And so, GUS HAWKINS, dean of the California delegation, dean of the Congressional Black Caucus, chairman of the Committee on Education and Labor, last of a quickly vanishing breed of true Democrat, first in our hearts—may God bless you with the best that retirement has to offer: good health, more time for your family and friends, more time to tend your cherished rose garden, and the good fortune to see the fruits of your years of labor.

UPON THE RETIREMENT OF GUS HAWKINS

HON. CLARENCE E. MILLER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MILLER of Ohio. Mr. Speaker, with the close of the 101st Congress this Chamber will lose to retirement one of the most effective legislators to have served here—GUS HAWKINS. GUS is a man of many dedicated causes, from civil rights for all Americans, to education, to critically important labor laws, and regulations.

He has always been a friend of the elderly and needy in our Nation, and his genuine concern for them was consistently reflected in legislation he sponsored and supported. As the chairman of the House Education and Labor Committee, Chairman HAWKINS carefully crafted legislation that made the workplace safer, the economy stronger, our laws fairer for the disadvantaged and minorities and full educational opportunities available to all seeking them.

I am proud to have served in this House with GUS and I wish to join with his many friends and colleagues to wish him the very best in retirement. He will be missed by us all.

TRIBUTE TO AUGUSTUS F. HAWKINS

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. TOWNS. Mr. Speaker, I rise this evening to pay tribute to one of this body's most distinguished chairmen, the gentleman from California, the Honorable AUGUSTUS F. HAWKINS.

The gentleman has elected to retire from this body after serving his California constituents for 28 years in the House of Representatives. His legislative accomplishments are a legend in this House from the Humphrey-Hawkins Full Employment Act to the creation of the Comprehensive Employment and Training Act Amendments which established the CETA program in the late 1970's. In recent years, as chairman of the House Education and Labor Committee, GUS HAWKINS has worked tirelessly to protect the rights of the working people and the disadvantaged in this society. As a trained economist, he recognized early on that economic policies were more than just numbers but they often made a difference in who survived, who prospered and who simply existed.

I am proud to have served with this true gentleman and committed fighter for those who are "the least of these" in our Nation. I wish the chairman well in his retirement and we will all be the better for having known AUGUSTUS FREEMAN HAWKINS.

TRIBUTE TO HON. AUGUSTUS HAWKINS

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. KILDEE. Mr. Speaker, I rise today to honor a man who has done so much to improve the quality of education, and the quality of life, for all of the citizens of our great Nation.

I want to wish GUS and his wonderful wife, Elsie, the best of health and happiness in the coming years.

But I am also deeply saddened that the House of Representatives is losing one of our country's great leaders in civil rights and education.

Mr. Speaker, it was 14 years ago that I came to the U.S. Congress as a progressive, idealistic, and certainly, a younger Democrat from the working town of Flint, MI.

I was pleased that my colleagues assigned me a seat on the House Education and Labor Committee.

It was an assignment I coveted because I knew I would be able to serve with great leaders like GUS HAWKINS.

And because of my seat on the Education and Labor Committee, I have had the honor and the privilege to spend a great deal of time with GUS HAWKINS—time to watch a master of the legislative process—time to hear the words of such a wise man—and time to work with him to improve the quality of education in our Nation's schools, and to protect the civil rights of all Americans.

Throughout his many years on the Education and Labor Committee, and his 8 years as chairman of that committee, GUS HAWKINS has done more than improve the education of the young, the old, and the handicapped, or enhance civil rights in our country.

GUS has also taken the time to educate the Members of this body so we can carry out the programs that he had worked so hard to make basic law.

Back in 1981, when many Members of this body were buckling to the Reagan budget cuts—cuts which gutted many of our Nation's domestic programs, I followed GUS HAWKINS as the only members of the Education and Labor Committee to reject the budget reconciliation instructions.

We voted against those draconian cuts in domestic programs because they went against everything we believed in. That vote was one of the most gratifying votes I have cast since I have been here.

This vote epitomized GUS HAWKINS' true belief in government, and it also reaffirmed his belief in his moral principles.

For over 28 years in the Congress, GUS HAWKINS has remained committed to his principles of equal opportunity for all people, regardless of their race, creed, color, or sex.

Mr. Speaker, it has been an honor and a privilege to have served in this body with GUS HAWKINS.

I know that I am a better person because of GUS HAWKINS, and I know that we will all miss him next year.

But, because of his foresight and wisdom, and because of his warmth and sensitivity, GUS HAWKINS and the programs he conceived, will continue to live on for many more years in this institution, and more importantly, in the better lives of our Nation's citizens.

AUGUSTUS F. HAWKINS

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FORD of Michigan. Mr. Speaker, I am honored to join in this well-deserved tribute to GUS HAWKINS. His achievements are awe-inspiring; his admirers are legion; his detractors almost nonexistent. That is the essence of the person we honor. GUS is a tireless worker for fairness and equality, a consummate coalition builder, and above all, a gentleman's gentleman.

That GUS has achieved so much is a recognition of his fortitude and diligence. In the face of overwhelming odds and the strongest of opposition, he can maintain his resolve and push toward his goal because he knows he is working to make life better. Because of GUS HAWKINS' ceaseless strivings the Nation is richer. His legacy to the Nation is a compendium of social advancement legislation, both State and Federal: Equal employment opportunity, job training; education; worker health and safety, and the furtherance of a full employment economy.

Millions of lives have been made better because of the efforts GUS made throughout his career. Most of the people will never realize the contribution he made to their success and happiness, or in some cases, to their survival. But we know of GUS' contribution, and it is immeasurable.

I have been privileged to serve with GUS for 26 years and to work side-by-side with him on some of the landmark legislation we passed in the Kennedy-Johnson era: title 7 of the Civil Rights Act, establishing the Equal Employment Opportunity Commission and equal access to job opportunities; comprehensive elementary, secondary, and higher education acts which helped States improve their educational systems and provided educational opportunities to the most disadvantaged of America's children; the Comprehensive Employment and Training Act with its seminal job training and remediation programs for the unemployed and underemployed; the Job Training Partnership Act.

If GUS has been an enthusiast for job training and equal access to job opportunities, he has been no less a zealot for education. He has worked diligently to broaden access to education, particularly for poor and underserved communities. He has been unflagging in his commitment to furthering education programs and in his willingness to test new and innovative concepts to improve the delivery of education. His has been a labor of love, and he in turn is loved by his colleagues and the students who have benefited from his labors.

I admire GUS for his deep concern for those less fortunate. I enjoyed working with him in the House and participating in field hearings and investigative sojourns. I have learned a great deal from his techniques and his forbearance in the face of formidable opposition. It has been a pleasure to have collaborated with such an astute politician, and I know I will find some of his strategies to be helpful in future legislative skirmishes. But, most of all, it has been my distinct pleasure to know and work with such a warm and gracious human being. This will be a less congenial place without GUS.

For having been such a courteous, yet effective legislator we all owe GUS a fond farewell, and best wishes for a fruitful and satisfying retirement. I will miss you, GUS. Thank you for all you have been as my colleague and friend.

TRIBUTE TO HON. AUGUSTUS HAWKINS

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. GAYDOS. Mr. Speaker, from the very creation of the U.S. House of Representatives, this Chamber has seen many distinguished men and women come and go. When the final bells ring at the end of this Congress, another extremely dedicated and respected Congressman will retire and walk through the doors of this Chamber for the last time. But like some of his peers before him, AUGUSTUS F. HAWKINS will be remembered for a very long time to come.

GUS' unwavering commitment to his principles, his ideals, and his sense of what is right is well known both inside and outside of these walls.

GUS has consistently remained a true gentleman even when faced with overwhelming opposition to his views, theoretical slaps in the face, outright snubs, and, yes, sometimes even name calling.

His steadfast commitment and gentlemanly approach to people opposed to his ideas did not just miraculously appear when he set foot in Washington, DC. GUS has served in public office for the past 56 years, half of which he spent as a member of the California State Assembly.

While he was a member of that body, GUS compiled such an impressive legislative record that he eventually assumed a very powerful position in the State assembly—chairman of the Rules Committee.

Just a few of the more than 100 laws he authored in the State assembly dealt with slum clearance and low-cost housing, workman's compensation for domestics, disability insurance, the Fair Housing Act, old age pension, child care centers, the Fair Employment Practice Act of 1959, and the 1961 legislation establishing the construction of the Los Angeles Sports Arena, the department of employment building at 15th and Broadway, and the law and medical schools at U.C.L.A.

For the past 28 years, GUS has fought strenuously in this Chamber—just as he did in California—for better education, increased job opportunities, and equal rights for all Americans.

As a result of winning many of these battles, some of his legislative accomplishments on the national level include the Juvenile Justice and Delinquency Act, the 1974 Community Service Act, title seven of the Civil Rights Act which established the Equal Employment Opportunity Commission, the Comprehensive Employment and Training Act [CETA], Youth Employment and Demonstration Projects Act, the Pregnancy Disability Act, the Full Employment and Balanced Growth Act—the Humphrey-Hawkins Act—the Job Training Partnership Act [JTPA], financial aid to traditional minority colleges, child nutrition amendments, the School Improvements Act, the Civil Rights Restoration Act, the Work Incentive Demonstration Program [WID] extension, Child Nutrition and School Lunch Reauthorization, Fair Labor Standards Act Amendments to raise the minimum wage, and Drug-Free Schools and Communities Act Amendments.

GUS and I have served together for the past 22 years on both the Committee on House Administration and the Committee on Education and Labor. During that time, I have watched him show his extraordinary leadership skills as chairman of the Committee on House Administration.

In his own words: "the leadership belongs not to the loudest, not to those who beat the drums or blow the trumpets, but to those who day in and day out, in all seasons, work for the practical realization of a better world—those who have the stamina to persist and to remain dedicated. To those belong the leadership."

I have a great deal of respect for GUS as a leader, a legislator, and as a person.

At the recent unveiling of GUS' portrait in the Committee on Education and Labor hearing room, Speaker FOLEY was asked to say a few words. He said something to the effect that when we call each other gentlemen and gentlewomen on the House floor sometimes our hearts really aren't in it, but GUS is, always has been, and always will be a true gentleman.

I wish GUS well in his retirement and I look forward to seeing him walk these same corridors, but in some new capacity.

So long, GUS, I'm glad I had the opportunity to serve beside you.

TRIBUTE TO AUGUSTUS HAWKINS

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FASCELL. Mr. Speaker, as we near the end of this legislative session it is indeed fitting that we recognize the career of the distinguished chairman of the Education and Labor Committee, AUGUSTUS F. HAWKINS. In his 28 years of service to the House of Representatives, he has distinguished himself by challenging the status quo and striving for economic opportunity for his constituents and the underprivileged of the United States.

With his retirement, Congress will lose one of its foremost champions of civil rights, a man whose desire for equality inspired him to seek progressive legislation aimed at promoting equal opportunity for all people. Before his election to the House in 1962, GUS had already represented his Los Angeles district in the California Assembly for 28 years where he established himself as a staunch supporter of economic and political equality.

He became the first black American from California in Congress when he was elected in 1962. In 1964, he led the fight for title VII of the Civil Rights Act prohibiting unfair employment practices. He displayed this same courage in his efforts to raise the minimum wage and his legislation on behalf of the Nation's unemployed. As chairman of the Education and Labor Committee, GUS HAWKINS succeeded in implementing important legislation that created new education programs providing for bilingual education and for remedial education for preschool and high school students.

Throughout his years of public service, GUS HAWKINS has had faith in the ability of the U.S. Congress to have a positive effect on the welfare of the less fortunate of the Nation. I join in saluting the outstanding career of GUS HAWKINS and in wishing him all the best in his retirement.

TRIBUTE TO AUGUSTUS F. HAWKINS

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. GEPHARDT. Mr. Speaker, I would like to recognize and commend my friend and colleague, the chairman of the Education and Labor Committee, AUGUSTUS F. HAWKINS, on his 28 years of distinguished service in the U.S. Congress. On behalf of the millions of individuals whose lives he has touched and improved through 56 years of public service, I wish to express my gratitude.

GUS has helped people from many walks of life—young and old, students, teachers, workers, and those struggling for their civil rights. Millions across the country have benefited from his many accomplishments and he has been more than a dedicated friend to all.

An area for which he deserves special recognition is his work for the children of this country, particularly disadvantaged children. His contributions include strengthening the child nutrition and school lunch programs, and the expansion and reauthorization of the Head Start Program, which has been appropriately renamed for him.

His monumental achievements reach into the lives of all Americans and are testimony to his commitment to principles and moral conviction, which he never surrendered in the fight for civil rights, education, and workers' rights. To GUS HAWKINS, we salute you.

TRIBUTE TO CHAIRMAN AUGUSTUS F. HAWKINS

HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MFUME. Mr. Speaker, I rise today in order to pay tribute to the Honorable AUGUSTUS F. HAWKINS, chairman of the Committee on Education and Labor who will step down at the end of this Congress after 27 stellar years in the House of Representatives.

I am sure that many current and former Members of Congress will concur with me that during his tenure in the House, Chairman HAWKINS distinguished himself as one of the most dynamic and effective leaders ever to grace the Halls of Congress.

Throughout a political career that has spanned more than 50 years, Chairman HAWKINS' commitment to serving America's youth goes without comparison. First elected to the California State Assembly in 1934, the first legislation enacted by the chairman gave recognition to the coordinating council movement to help youth.

Upon being elected to the 88th Congress, Chairman HAWKINS resumed his fight for equal education for America's children through his selection to the Education and Labor Committee. He coauthored the Humphrey/Hawkins Full Employment and Balanced Growth Act and the Comprehensive Employment and Training Act Amendments of 1978.

In 1982, Chairman HAWKINS authored the Job Training Partnership Act [JTPA] to replace the CETA program that former President Ronald Reagan abolished. In my district of Baltimore alone, JTPA has trained hundreds of unemployed and displaced workers.

Mr. Speaker, during my first term in office, the 100th Congress, it was an honor for me to join Chairman HAWKINS in his herculean fight to pass the Civil Rights Restoration Act and the School Improvement Act. During the 101st Congress I was further honored to receive an assignment to the Committee on Education and Labor Committee where I was able to observe first hand the chairman's parliamentary skills and sound leadership.

GUS HAWKINS will forever be remembered as a fair and competent chairman by Members from both sides of the aisle. I rise on this happy occasion to wish him and his lovely wife best wishes in their well earned retirement from public service.

REPRESENTATIVE AUGUSTUS HAWKINS

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. HORTON. Mr. Speaker, I rise to pay tribute to a man who has held elected office in seven decades and who has dedicated his life to securing a better way of life for the disadvantaged citizens of this country. I speak, of course, of the distinguished chairman of the Education and Labor Committee and the dean of the Congressional Black Caucus, the Honorable AUGUSTUS HAWKINS.

GUS and I began our service in this body together as freshman Members in the 88th Congress, and for this I feel a special sense of kinship with him. It is ironic that we both came to the Congress at the same time, and today both represent the 29th District, his in California and mine in New York. Indeed, we are the only two Members of the House representing a 29th District.

GUS brought to the House nearly three decades of experience as a member of the California Assembly, where he was instrumental in securing the passage of numerous housing bills as well as legislation establishing child care centers, an accomplishment he still refers to as one of his greatest achievements.

Having served that body for 28 years, the last 3 of those as chairman of the influential Rules Committee, GUS burst onto the national political scene by capturing 85 percent of the vote in his first bid for a seat in the House of Representatives. I might add, that despite several redistrictings, GUS has never received less than 80 percent of the vote in a general election. Quite a testament to his timeless appeal to the voters of south central Los Angeles.

In this body, GUS has been a tireless advocate for improving education in America as well as providing the disadvantaged with greater accessibility to the labor market. Entering Congress during the peak of the civil

rights movement, Gus helped to draft title VII of the Civil Rights Act of 1964, which created the Equal Employment Opportunity Commission. In the mid-seventies, Gus succeeded in moving the job training bill through Congress. In 1978, the Congress paid a tribute to Gus by naming the landmark employment bill of the 95th Congress after him. And in 1988, Gus succeeded in cultivating the support needed to pass the Civil Rights Restoration Act over the President's veto.

Despite the changing times, Gus has remained steadfast in his belief that the disadvantaged are entitled to equal opportunity. Not one for flamboyant grandstanding or counting press clippings, Gus has labored for 56 years in his typically calm and pragmatic style to gain support for his beliefs. It is for these years of tireless work and dedication as well as the bountiful legislation, which he has had a hand in enacting, that he should be commended.

Gus has served in this body with distinction for 28 years. He is everything an outstanding statesman should be—honest, principled, and dedicated. It has been my sincere privilege to have served with Gus for the better part of the last three decades.

When I look back on my years in this body, I will always recall Gus HAWKINS, a man with few equals in heart. His retirement is truly a loss for his constituents and this body. His presence will be dearly missed.

TRIBUTE TO AUGUSTUS HAWKINS

HON. FRANK ANNUNZIO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ANNUNZIO. Mr. Speaker, I rise to join my colleagues in the House of Representatives in paying tribute to my good friend, Congressman AUGUSTUS F. HAWKINS, the distinguished chairman of the House Education and Labor Committee, who is retiring after a long and dedicated career as a Member of the House of Representatives.

I served for many years with Gus on the House Administration Committee, and I am most grateful for the assistance and wise counsel he so often and so graciously extended to me. In 1984, I was honored to follow in his footsteps as chairman of this Committee, when he assumed the chairmanship of the House Education and Labor Committee. His professionalism, his even-handedness, and his legislative ability left an indelible imprint on the House Administration Committee and he set the highest standards for administration of the House.

As chairman of the House Education and Labor Committee, and the Subcommittee on Elementary, Secondary, and Vocational Education, he has dedicated himself to the betterment of the lives, benefits, and conditions of the working men and women in this country. His activities to safeguard the civil rights of all Americans have earned him both the respect and admiration of his colleagues in the House of Representatives.

Elected to Congress in 1962, for 28 years, Congressman HAWKINS has conscientiously represented his constituents, and also has been the architect of many comprehensive employment and civil rights laws during his tenure. He will be missed by all of us in the House of Representatives who have had an opportunity to know him and to work with him.

I extend to Gus HAWKINS my best wishes for continued success in all of his future endeavors, and for a healthy and happy retirement.

TRIBUTE TO HON. GUS HAWKINS

HON. NICK JOE RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. RAHALL. Mr. Speaker, I rise to pay tribute to the Honorable GUS HAWKINS, Member of Congress.

I have known Mr. HAWKINS and admired his work for the 14 years of my tenure in this body, but it was only in the past 2 years that I had the personal pleasure and privilege to serve as a temporary member of his Education and Labor Committee.

It is not often any of us have the opportunity to serve with a legend in his own time—and that is what GUS HAWKINS is—a legend.

What else would you call a man who has spent 56 years in public service, first in his California Legislature, and in the House of Representatives. His reputation had already been established when I joined this House. He is quiet spoken, well-spoken, and above all, he is fair. But do not think because of his soft-spokenness that he is not made of steel. He is. And he has proved it time and again with his tenacity, his ability to work with minority members on the committees on which he has served and chaired, and his ability to form consensus among all players—liberal, moderate, conservative—and get support for the legislative initiatives that were not just important to him, but were and still are, and will long remain, of importance to this Nation.

His work with the Black Caucus, and inherent in that activity his absolute commitment to civil rights for all—the disabled, minorities, women, hispanics, and the low-income, uneducated and undereducated, the unemployed in need of employment, additional job training, and those in search of an opportunity to become a professional in a chosen career through higher education—have made him a legend in his time. And as I have said already, he will remain legendary among his colleagues who remain behind upon his retirement, and for those who will come after him to this body to dedicate themselves to the public good.

There are millions of people in this country—men, women, and most of all, children, who owe him a debt of gratitude for the leadership he has shown throughout his career on their behalf.

Through him, we have expanded and improved education programs that fit every disadvantaged category—elementary, secondary, vocational, higher education. We have vastly improved Head Start programs; through his steerage, we have in law the Even Start Program; there are literacy training and education, science and math, and Magnet Schools programs for desegregation purposes.

Through GUS HAWKINS, we have the Humphrey-Hawkins Act, Job Training Partnerships, and the old CETA programs that preceded JTPA. We have improved labor standards and national labor relations laws that protect the working men and women in our Nation's work force.

Mr. HAWKINS was present at the creation of the 1964 Civil Rights Act, was a major player in the several years of struggle that went into the Civil Rights Restoration Act, an integral part of keeping any weakening amendments out of the Americans With Disabilities Act, and most certainly the leader in authoring and pushing through the Civil Rights Act of 1990. The fact that the President vetoed the Civil Rights Act is no reflection on GUS HAWKINS, but on the President.

GUS HAWKINS has been tireless in his work to get a child care bill through this Congress that would provide safe, quality, affordable care for their children—whether preschool or school-based or in family care settings. No one could have done more than he to carefully nuture and marshal all the resources at his command, to establish, once and for all, a national policy on child care. This effort he has made is the first serious, successful child care bill that has been before the Congress since 1974, when Richard Nixon vetoed a child care bill sent to him in that year, because he believed it would lead, as he put it, to the sovietization of our children. That was 2 years before I came to the House, and I don't know what he meant by it then, and I still don't know. It is my hope that before Congress adjourns that the child-care bill that has been so carefully crafted over such a long period of time, will be brought to this floor. It has been crafted with the involvement of every kind of expert that could be brought into the debate, who were brought in by Chairman HAWKINS, and it is practically impossible to imagine how one would write a better bill.

It is a further hope of mine that the Educational Excellence and Equity Act will be brought to this floor prior to Mr. HAWKINS' retirement, another star in his crown of achievement. It establishes and then the means to meet targeted educational excellence goals into the 21st century.

Mr. Speaker, I could continue with a very long litany of initiatives taken by my colleague, Mr. HAWKINS, most of them having been acted into law, with very few incidences when he didn't succeed in his endeavors to make this a better country to live in.

Mr. HAWKINS, I would like to take this opportunity to thank you for the many kindnesses you have extended to me and to my staff over the past 2 years when I was honored to serve on your Education and Labor Committee, as well as for your thoughtfulness and understanding in other areas of our work together in the House of Representatives.

I say God speed to you and Mrs. Hawkins, on whatever adventure you have set for yourselves in the future.

TRIBUTE TO HON. AUGUSTUS F. HAWKINS

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mrs. MINK. Mr. Speaker, I rise at this time to pay special tribute to the Honorable AUGUSTUS F. HAWKINS of California, a Member better known to us as GUS. It is with the deepest respect, greatest admiration, and heartfelt affection that I pay tribute to Congressman HAWKINS upon his retiring from this body after 28 years of service to the people of California's 29th Congressional District, to the State of California, and to the Nation as a whole.

Too often, Mr. Speaker, people say when someone retires that the retiree will be truly missed and that his shoes will be hard to fill. But I can say without hesitation that this time it is really true. Few Members of this House, past or present, can match the record of service and personal character of the gentleman from California. I am firmly convinced, Mr. Speaker, that the effects of what this man has accomplished for this Nation will be felt for decades to come. And many succeeding generations will owe AUGUSTUS F. HAWKINS a tremendous debt of gratitude that can never be fully repaid.

Mr. Speaker, during the 12-year period of my previous service in the U.S. House of Representatives, I served with the gentleman from California on the Education and Labor Committee. My admiration, respect, and affection for him established itself almost immediately. My respect, admiration, and affection for AUGUSTUS HAWKINS becomes even greater when I stop for a moment to think about his background. As an American of Japanese ancestry, I have some idea of what society can bring upon a person because of his or her race. Because of that, lesser individuals than GUS HAWKINS would have ruled out public service, a profession of helping others.

It takes tremendous strength of character in a person to overcome those kinds of experiences and devote himself to serving others. GUS HAWKINS is just that kind of person, a man who for 28 years in this House has been strength of character personified. Because of that, the American people are the better for it. It is the truth and it is not an overstatement, Mr. Speaker, when I say that this great Nation of ours would be far less great without AUGUSTUS HAWKINS' service in Congress.

Mr. Speaker, time does not permit me to even begin to cover the truly significant legislation that the gentleman from California has created and sheperded into law. The Washington Post newspaper was absolutely correct when it reported on October 24, 1990, that "the Hawkins legacy is a catalogue of successes in civil rights, education, and labor laws." My friend from California helped draft title VII of the Civil Rights Act of 1964, which created the Equal Employment Opportunity Commission. He also passed a job training bill during the Carter administration. And his landmark must surely be the Humphrey-Hawkins employment bill in 1978, which called for a national policy of reducing unemployment and inflation. It was AUGUSTUS HAWKINS who also played a key role in overriding the veto of the Civil Rights Restoration Act in 1988. And because of AUGUSTUS HAWKINS' efforts, a bill to raise the minimum wage was passed last year.

AUGUSTUS HAWKINS' retirement from public service becomes even more significant when one considers the fact that before he came to Congress he had been a legislator in the California Assembly for 28 years. The record he built at the California State capital rivals the accomplishments of the legislative record he developed in Washington. It includes such things as bills to end segregation in connection with housing, to make domestic workers part of the worker's compensation system, and the California Fair Employment and Practices Act.

Mr. Speaker, I am both sad and happy on this occasion. I am sad to see Congressman HAWKINS leave this body. He has contributed so much here. Leaving means that those kinds of contributions will come to an end, although I am sure that his lifelong devotion to serving others will continue. And I regret that our work together on the Education and Labor Committee will end.

While I am sad to see GUS HAWKINS leave us, Mr. Speaker, I am also happy to see that he has made this decision. If anyone deserves to begin enjoying the fruits of his labor and pursue other challenges and opportunities, it is my colleague from California. I am sure his friends and family will appreciate the time they will now have to share with him that service in Congress does not allow.

Mr. Speaker, I cannot tell you how thankful I am to my colleague from California for choosing to serve as a Member of Congress. As those of us in this body know, the sacrifices involved in serving in Congress are many and great. There is the physical and mental strain. Compared to other professions, the financial sacrifices can be significant. The toll that being away from home takes on friends and family can be tremendous. And of course there are those days where nobody seems to like you no matter what you do or how you vote.

I close, Mr. Speaker, by saying that the Honorable AUGUSTUS HAWKINS of California is one of the rare examples of individuals who achieved the difficult goal of excellence in serving the American people in the Congress of the United States. With all my heart I extend my sincere gratitude to Mr. HAWKINS for his service in this body, my sincere best wishes for a happy and productive future, and my hope that he returns to this Chamber as often as he can to visit us and provide us with his valuable advice and counsel.

TRIBUTE TO JOHN J. McNALLY, JR.

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. CONTE. Mr. Speaker, I rise to pay tribute to John J. McNally, Jr., a dear friend of mine who has served this country for more than three decades. Jack will retire on November 30th, and this country will lose one of its finest public servants.

My friendship with Jack began when I was a freshman Congressman and he had just come to Washington as staff assistant to President John F. Kennedy. Jack directed public relations, all presidential travel and the administrative and fiscal affairs of the White House. After the tragedy in Dallas, Jack was asked to stay on by President Lyndon B. Johnson.

In 1965, Jack left the White House and began his outstanding career at the Small Business Administration, as director of the economic development program for the New England area. At the same time, I joined the Committee on Small Business and over the years our friendship grew as I had the pleasure of working with Jack on many occasions. In 1970 Jack became the assistant to the regional director for the SBA and during the administration of President Gerald R. Ford, he was assigned to the White House to work on the Whip Inflation Now program. In 1976 Jack was appointed the SBA's chief advocate for the Northeastern United States.

Finally, in 1980 Jack became district director of the SBA for Massachusetts. For the last 10 years, Jack has supervised a loan portfolio of over $300 million and an organization of more than 75 professional employees and 400 volunteers, dedicated to aiding small businesses. He served as chairman of the first SBA performance standard review board in 1987, which set new standards for merit appraisals and compensation. Most recently, Jack served on President Bush's Thousand Points of Light Initiative and the Interagency Committee on Voluntarism.

Jack's contributions to small businesses are too numerous to list here. However, I would like to mention two projects that Jack and I worked on that meant a lot to me and the people of Western Massachusetts: the Southern Berkshire Investment Corp. and the Pittsfield Economic Revitalization Corp. Jack and I worked side by side on these important projects which are helping stimulate investment and growth in the economy of Western Massachusetts. Jack's energy and dedication to his work were a shining example and inspiration to all of us.

Mr. Speaker, let me say that Jack is more than just a dedicated civil servant. He is an outstanding family man who, with the help of his wife Irene, has raised six wonderful children. Jack has also been an inspiration to his community. Over the years, he has given freely of his time and energy to support important civic activities. He served as the president of the Chamber of Commerce in his hometown of Webster, MA and not surprisingly, was named its Man of the Year in 1975. He also serves on the board of directors of the Hubbard Regional Hospital and has been its chairman of the board for the past 3 years. Moreover, Jack is the author of a number of articles on community development and industrial programming and has lectured on these subjects at colleges and trade organizations throughout the Nation.

It will be hard to think of the SBA in Massachusetts without Jack at the helm. His career should be an example to us all, and a remind-

er that true public servants still exist. I am sure that my colleagues will join me in wishing Jack a long and happy retirement, and in expressing respect and admiration for an exemplary career in public service.

WAR POWERS—REPEAL OR REFORM?

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. STARK. Mr. Speaker, United States troops are not in Saudi Arabia to defend democracy. They are not in Saudi Arabia to defend our allies. They are not in Saudi Arabia to protect any treaty agreements. United States troops are in Saudi Arabia to protect "cheap oil." The United States is in a position where it has to protect "cheap oil" as a direct result of our lack of courage and resolve in implementing a sound and responsible energy policy. It is my hope that as the crisis in the Persian Gulf continues, and as Congress prepares to adjourn, we do not exhibit the same lack of courage and resolve in exercising the constitutional responsibility bestowed on this body.

With the abolition of the cold war world order comes a great challenge and an even greater responsibility. The United States must accept the fact that we now live in a "multipolar" world rather than a "bipolar" one, and take creative and courageous measures to make this world a more thoughtful and socially conscious one. The time is now for the United States to abandon its "superpower" status to become a "super responsible power."

A report has been prepared by the Progressive Policy Institute entitled "War Powers in a New Security Era: Restoring the Constitutionbal Balance." The authors advocate changes in the War Powers Resolution intended to reestablish "democratic control over the decision to commit U.S. troops to dangerous military missions around the world." Clearly, this is a direction which must be pursued in light of the situation in the Persian Gulf, and in light of the historical tension between the executive and legislative branches over the power to transfer this Nation from a state of peace to a state of war. We can no longer afford "Presidential privilege" in matters of national security as we did in Grenada and Panama. Congress must reasserts its authority in such matters and accept its constitutional obligation. In this context, a pressing question must be addressed: "War Powers—Repeal or Reform?"

This report encourages a progressive, reform-oriented approach to the War Powers Resolution. The authors contend that reform would restore a constitutional balance of responsibilities between Congress and the President, whereas repeal would constitute an abdication of constitutional responsibility by Congress. Regardless of how one chooses to address this issue, it is clear that the time has come for both sides to abandon rhetorical claims and commit themselves to reflection on the War Powers Resolution, rather than reflexive response to it.

In conclusion, it is my recommendation that anyone even remotely interested in the issues which are shaping the world in which we live ought to read this report. It raises important and challenging questions which cannot afford to go unanswered.

THE BUDGET RECONCILIATION CONFERENCE REPORT

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. COLEMAN of Texas. Mr. Speaker, I rise in support of the conference report. Although the product the conferees have brought us asks less of wealthier Americans than in my judgment it might have, and although it hits the middle income earners of this country harder than the package we passed off this floor 10 days ago, it is still far better than the summit plan. Under our present circumstances, that is reason enough to support this legislation.

There is another reason, however. While some Republicans have attempted to distance themselves from this entire budget process and from the President, the nominal head of their own party, the Congress as a whole does not have that luxury. We are sent here to get things done, to legislate. And this deficit, now estimated at more than $220 billion, requires action. It requires a legislative remedy. Those Republicans who have said they have no stake in governing have accused Democrats of wanting to raise taxes. This is simply foolish—no politician, Democrat or Republican, begs for the opportunity to raise taxes. Who excused any one of us from the responsibility of governing?

This is a responsible package. It locks in spending cuts in three areas of Government—defense, foreign aid, and domestic discretionary accounts. At the same time, over the next 5 years, it promises to raise $137 billion in taxes, $40 billion in this first year alone. The conference agreement also undertakes cost containment in a very difficult area—entitlements.

The summit package, negotiated in a back room without the proper consultation with the standing committees of the Congress, also attempted entitlement savings. But the result from the summit went much too far in one aspect of entitlements—Medicare. It was not only unfair, it was needlessly less fair than it easily could have been. It was miscalculated. The package we are debating tonight is, in my view sufficiently fairer in its treatment of older Americans that it merits the support of Members of the House.

My preference would have been to have imposed a surtax on those Americans who have profited from the tax policies of the 1980's. You have to begin to ask yourself if millionaires are actually so numerous a constituency that they should escape bearing some compensatory share of the tax burden. In my district, in west Texas, there are not so many millionaires that anyone need worry. More generally, the concept of a surtax, and of the excise taxes on luxury items contained in both the House and Senate versions of reconciliation legislation, is not vindictive. These provisions are not intended to be symptomatic of class warfare. They are simply an effort to obtain equilibrium again when it has been missing for so long.

Over the past 8 to 10 years, the Reagan and Bush administrations have insisted that we could build up our national defense to extravagant levels while cutting taxes—and that in undertaking these two projects simultaneously, we could avoid damaging the social "safety net." That was bad economics then and it is bad policy now.

In truth, we have marginalized thousands of American families with supply side, trickle-down policies, and we had better begin to make amends as soon as we possibly can. This restoration of minimal fairness comes at a cost. No one is enthused about excise taxes imposed on consumer goods like beer and cigarettes. But at with an extension of the Targeted Jobs Tax Credit. And we have offset some of the negatives in this package with extensions of good programs, like the exemption for mortgage revenue bonds, and credits for low-income rental housing. We have at last begun to meet an unmet need through the inclusion of a moderate, workable version of child care.

There are warts on this package. I, for one, will work to overhaul the Customs user fees in this report. I am similarly concerned that the reduction in itemized deductions may restrict charitable giving to the point where some valuable nonprofit institutions will no longer be able to function at all.

On balance, there is no alternative to adopting this conference report. The political stalemate has alienated too many of our constituents already. Our economy is precariously positioned as it is. Vote for this conference report.

LOUISVILLE PATRIOT HONORED WITH FLAG AWARD

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MAZZOLI. Mr. Speaker, I rise today to recognize a great patriot from my hometown of Louisville, KY, retired Army Capt. Virgil E. Carrithers, who recently, was honored with the New Constellation Award from the National Flag Foundation.

The New Constellation Award recognizes veterans who advocate the proper display of the respect for the Flag of the United States of America.

"The New Constellation" is a term coined by the Founding Father because they felt that the United States was "* * * a new constellation in the firmament of nations * * * a new constellation in the galaxy of governments * * * a new constellation in the relationship of man to government, of government to man, and of both to God".

Captain Carrithers is 93 years old—a spritely, lively veteran of World War I who reveres "Old Glory" with a passion which is both remarkable and encouraging. He has worked tirelessly in the Louisville and Jefferson County area to ensure that the rules and cus-

toms on the display of the flag of the United States are followed by and that full respect is paid to the flag by all Americans.

Mr. Speaker, I again congratulate Capt. Virgil E. Carrithers for receiving the New Constellation Award. He is an inspiration to us all.

I commend to the attention of my colleagues the following piece entitled, "Old Glory Speaks," which Captain Carrithers sent to me.

OLD GLORY SPEAKS

Hello! Remember me? Some people call me Old Glory. Others call me the Star Spangled Banner. But whatever they call me, I am your flag—the flag of the United States of America. Something has been bothering me and I want to talk it over with you because if concerns you and me.

I remember when people would line up on both sides of the street to watch a parade go by, and naturally I was leading it, proudly waving in the breeze. When your daddy saw me coming, he immediately took off his hat with his right hand and held it against his left shoulder so that his hand was over his heart. Remember? And you; I remember you, standing there as straight as a soldier. You didn't have a hat, but you were giving the right salute. Remember little sister? Not to be outdone, she was saluting the same as you—with right hand over her heart.

What happened? I'm still the same old flag. Oh, I have a few more stars than I used to have, and a lot of blood has been shed since those parades of long ago. But now I don't feel as proud as I used to. When I come down the street you just stand there with your hands in your pockets. You may give me a glance, then you look away. I see all the children running around and playing. They don't seem to know who I am. I saw a man take off his hat and look around, and when he didn't see anyone else with theirs off, he immediately put his back on.

Is it a sin to be patriotic anymore? Have you forgotten what I stand for and where I've been? Valley Forge, Bull Run, San Juan Hill, The Argonne, Iwo Jima, Korea, Vietnam? Take a look at the memorial honor rolls of those who gave their lives in order that this country might remain free—one nation under God. When you salute me, you are actually saluting them.

Well, it won't be long until I'll be coming down the street again, so when you see me, stand straight, give the right salute, and I'll salute you by waving back.

ANONYMOUS.

Distributed by V.E. Carrithers, Zachary Taylor Post 180, The American Legion, St. Matthews, Ky.

"CLAIM JUMPING": A CAUSE FOR CONCERN

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. TOWNS. Mr. Speaker, as the 101st Congress draws to a close, I would like to take a few moments to refocus the attention of my colleagues on an important consumer issue. This involves approximately 500 pre-1935 unlicensed hydroelectric power projects and the consumers of this electricity.

The threat is that the project owners of these pre-1935 projects may be subject to "claim jumping" should third parties attempt to use an unprecedented interpretation of regulatory authority by the Federal Energy Regulatory Commission [FERC] to take over these projects. The first such case occurred when a third party attempted to obtain a license from FERC on a pre-1935 project owned by Orange and Rockland Utilties.

As a result, H.R. 1069 was introduced by my colleague, NORMAN LENT, which would prevent these takeovers of nonjurisdictional projects. I was pleased to cosponsor this measure since I believe that Congress never intended for the FERC to require the licensing of pre-1935 projects which remain unimproved and located on nonnavigable waters. In my study of this issue, I could see no benefit from claim jumping ever accruing to consumers. In fact, in some cases consumers would likely pay more for the same electricity if these projects were subject to third party takeovers.

A similar bill, S. 635 unanimously passed the Senate in November of 1989. Our bill also has received bipartisan support and has been the subject of a hearing by the Energy and Power Subcommittee. As a result, FERC now seems more amenable to interpreting its jurisdiction of these projects in a manner more in keeping with what I believe Congress intended.

While I would have hoped we could have joined the Senate in enacting this measure into law, the press of other legislative business has not provided the necessary time to do so in this Congress. However, as a member of the subcommittee of jurisdiction, it is my intention to remain diligent on the issue and protect project owners from any future attempts by claim jumpers and to ensure that consumers are not unnecessarily subjected to higher electric costs.

SENATE AMENDMENTS TO H.R. 2570, ARIZONA WILDERNESS

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. VENTO. Mr. Speaker, the House earlier this year passed two bills dealing with the designation of wilderness in Arizona, both of which were sponsored by the distinguished chairman of the Interior Committee, Mr. UDALL.

These two bills were H.R. 2570, dealing with the designation of wilderness areas on public lands in Arizona managed by the Bureau of Land Management, or BLM, and H.R. 2571, designating wilderness within four existing Arizona units of the National Wildlife Refuge System.

The Senate combined these into a single bill, by adopting a substitute text for H.R. 2570, and has returned that bill to us. They have also adopted a number of other amendments. I am seeking to have the House concur in the Senate amendments, with some further amendments, and in doing so I also want to concur in and associate myself with the remarks of Chairman UDALL concerning the redundant and unnecessary nature of many of these Senate amendments.

Mr. Speaker, this is a very important bill. It is the first statewide wilderness bill dealing with public lands managed by BLM. Under section 603 of the Federal Land Policy and Management Act of 1976, BLM is required to review qualified BLM roadless areas and to make recommendations for the designation of wilderness. That review must be completed by 1991, so this is only the first of a number of BLM wilderness bills that the House may be called on to debate in the years ahead.

It also designates wilderness areas within four very important units of the National Wildlife Refuge System, the Imperial, Havasu, Kofa, and Cabeza Prieta refuges. This designation is essentially identical to administration recommendations that have been pending before the Congress for many years, and would essentially ratify as a matter of statutory law the management requirements that have been in effect because of those recommendations.

Besides combining the two House bills into a single measure, the Senate has made a number of other changes. Some of these relate to water rights. The Senate version of the legislation would not reserve a water right for Colorado River water for the wilderness area within either the Imperial or the Havasu Refuge. But, like the House bills, the Senate version would reserve a water right for each of the BLM wilderness areas and for the Gila Box Riparian National Conservation Area. We understand that this deletion of water rights provisions with respect to these two refuges was done in order to avoid any suggestion that the designation of these two wilderness areas would have an impact on management of the Colorado River.

Frankly, Mr. Speaker, it seemed clear to us that the House bill, which did reserve a water right for these two wilderness areas, would not have caused any such problems, especially since the boundaries of these two wilderness areas were carefully drawn to be above the high-water line of the river. But we are reluctantly prepared to accept the decision of the Senate to go further, especially since these wildernesses are within existing refuges which have already been withdrawn from the public domain and which will retain all water rights they already have for refuge—as opposed to wilderness—purposes.

The Senate has also added language stating that nothing in the bill is intended to supersede the law of the Colorado River as that body of law-consisting of laws, interstate compacts, and treaties—relates to the upper basin States of Colorado, Utah, Wyoming, and New Mexico. That Senate addition is superflous and unnecessary, because the House bills were not intended to affect that body of law, nor would they have done so. But in the interest of completing action on this important bill this year, we can accept it. For the same reason, we are prepared to accept other unnecessary and superfluous Senate language relating to the operation of Alamo Dam.

With the exceptions I have just noted, the Senate version of this Arizona wilderness bill deals with water rights in the same way as H.R. 2570 and H.R. 2571 as passed by the House. The provisions of those House-passed bills related to Federal reserved water rights are discussed in some detail in House Report 101-435, Part 1.

Another Senate amendment would make a technical amendment to Title V of the Arizona-Idaho Conservation Act of 1988, so as to enable the Secretary of the Interior to complete the acquisition of certain State-owned lands and interests as specified in that act. We are accepting this because it ties up a loose end and assists in these desirable acquisitions.

Other additions made by the Senate, however, are not acceptable in their present form, and we are proposing to either revise those or to delete them from this bill, and return the resulting package to the Senate, with the hope that they may be able to complete action on it promptly.

We are adding one item relating to the Take Pride in America bill earlier passed by the Senate, and also some other matters previously acted on by the House or Senate.

For example, we have included a title IV, relating to the Fort McDowell water rights settlement, which is identical to H.R. 5063, as passed by the House on October 1, 1990. Its provisions are also discussed in Senate Report 101-479 (accompanying S. 2900).

We are grouping as title V of our amendment provisions relating to three national park system areas in Texas.

Section 501 deals with San Antonio Missions, on which the House passed an identical bill on September 17, 1990, as explained in the House Report (101-710) on H.R. 4811. San Antonio Missions National Historical Park preserves a key part of this Nation's Hispanic heritage. The bill enlarges and clarifies the park's boundaries and increases its development ceiling so that a visitor center, needed as part of the Columbus quincentennial celebration, can be constructed.

Sections 502 through 504 are identical to H.R. 4878, a bill that would have established the Lake Meredith National Recreation Area. H.R. 4878 was first passed by the House as free-standing legislation on September 17, 1990, and was sent to the Senate for action. Its provisions were explained in House Report 101-711.

Title VI is identical to the House-passed bill H.R. 3863. It directs the Secretary of the Interior to prepare a study of alternatives for commemorating and interpreting the Underground Railroad, that migration towards freedom taken by African-Americans escaping their slavery. The interior committee's report of this bill, House Report 101-549, provides further explanation of it.

Title VII provides for a study of the Sudbury, Assabet, and Concord Rivers, in Massachusetts, for possible inclusion in the Wild and Scenic Rivers System. Its provision are the same as those of H.R. 4227, passed by the House on October 10, 1990, as discussed in House Report No. 101-745.

Title VIII includes private relief provisions. Section 801, dealing with Mr. Leroy W. Shebal of North Pole, Alaska, is similar to S. 620, as reported in the Senate on October 5, 1990 (See Senate Report 101-500); the rest of the title is identical to S. 267 as passed by the Senate on July 14, 1989 (see Senate Report 101-61).

Title IX, dealing with Camp Williams, Utah, is similar but not identical to H.R. 988, passed by the House on July 10, 1990 (See House Report 101-577).

Title X makes several amendments to title V of the Arizona-Idaho conservation Act of 1988 (P.L. 100-696; 102 State. 4571 ET SEQ).

The intent of title V of the Arizona-Idaho Conservation Act of 1988 was first, to satisfy the debt of the State of Arizona for State land taken by the bureau of reclamation for construction of the Central Arizona Project [CAP], and second, to provide for the acquisition of all State lands described in the act through exchange or eminent domain. The eminent domain authority was included because of the uncertainty under Arizona law whether the State would have exchange authority. The Arizona supreme court, in a subsequent decision, held that it did not.

The legislation identified six State areas (Black Canyon Corridor, Lake Pleasant, Catalina State Park, Arivaca Lake, Madera-Elephant Head and Buenos Aires National Wildlife Refuge) for acquisition and provides for the termination of several withdrawals on four Federal parcels to allow for disposal (Santa Rita Experimental Range, Red Mountain, and Fish and Wildlife Service's lands in the Havasu and Imperial National Wildlife Refuges).

Appraisals for the Central Arizona Project [CAP], Federal and State land areas reflect a Federal deficit of $26.5 million. In an effort to accomplish the intent of title V, the BLM and the State looked to section 28 of the State's enabling act to satisfy the cap debt, and looked at public lands outside those specifically identified in title V to compensate the State for lands to be taken by eminent domain.

The technical amendments in this part of the Arizona wilderness bill are intended to do the following:

(1) Clarify that title V of the Arizona-Idaho Conservation Act does not preclude the State's selection rights for Central Arizona Project [CAP] compensation under section 28 of the State's enabling act. Title V provides an additional authority, not the sole authority, for satisfying the CAP debt.

(2) Clarify that section 502(B) authorized compensation in the form of additional public lands determined by the Secretary of the Interior is to be equal value to lands taken from the State by eminent domain. This is not new exchange authority. It is strictly limited to the payment in public lands for the State lands described in title V that are taken by eminent domain.

(3) Clarify that section 507 lands can be used as compensation for State lands acquired under the Arizona-Idaho Act.

Title XI establishes in legislation the Take Pride in America Program within the Department of the Interior, to encourage public awareness of the appropriate use of and appreciation for our Nation's public lands and their natural and cultural resources. The program seeks to promote a conservation ethic in caring for these lands, facilities and resources. The Take Pride in America Program is also to conduct a National Awards Program. The Secretary may accept gifts to facilitate the Take Pride in America Program and is to provide administrative services for the program. The program is authorized to utilize volunteers much in the same way as they are utilized in the National Park System. The Secretary may distribute pamphlets and other such approprite items in order to promote the purposes.

Title XII contains important provisions dealing with the study of National Park boundaries as well as other issues that are directly related to the health and welfare of the National Park System. These provisions have their genesis in the language of title II of the House-passed H.R. 2482. I would refer Members to House Report 101-779 for a detailed explanation of that language. In short, title II directed the National Park Service to develop written criteria for the study of National Park boundaries and to make recommendations on any adjustments that may be necessary to achieve the purposes for which these park units were established and to promote their efficient management.

The language now before the House in title XII of H.R. 2570 is in keeping with the directives of the earlier House-passed legislation. But, after our working with interested Members of the Senate, the language has been expanded to include an ongoing review of certain other aspects of the National Park System as well. Concern had been expressed in the other body that we not focus exclusively on park boundary issues, but that we also address other current and future needs of the National Park System. I concurred with this and accordingly the language of title XII directs an ongoing process of review and recommendations for a wide range of important needs of the National Park System.

Implicit in these reviews and recommendations is the requirement that they fulfill the legislative directives of existing law, including the National Park Service Organic Act (16 USC 1-4), The Historic Sites, Buildings, and Antiquities Act (16 USC 1A-1 to 1A-7), and The Act of August 18, 1970, as well as the enabling acts establishing individual units of the National Park System. Title XII also contains a specific directive that this ongoing program be carried out with public input and consultation with affected Federal, State, and local agencies.

Let me briefly summarize some of the other main provisions of title XII.

Section 1204 directs the National Park Service to prepare a study of the Shenandoah Valley Civil War sites. The language in this section is nearly identical to that in H.R. 2582 (as explained in House Report 101-779). The Shenandoah Valley Study Act was initially introduced by Congressman JIM OLIN as H.R. 3513. It should help us better understand the significance of this Civil War arena and the best means to preserve and interpret that arena.

Mr. Speaker, there has been a great deal of enthusiasm and excitement for the establishment of a Civil War sites advisory commission. That excitement has increased with the recent public television series on the Civil War. I look forward to our understanding more about the historical resources of the Civil War and the various appropriate ways to protect them.

Section 1205 is nearly identical to H.R. 2582 as it passed the House of Representatives on October 10, 1990, and as described in House Report 101-779. I would note that

the study of historically significant sites and structures associated with the American Civil War is not limited to military resources. The war was won with the people, factories, farms, and resources of each side as well as through the military engagements as such. That larger context also needs consideration, recognition, and protection.

In 1928 the National Park Service outlined American history in order to provide a framework for making decisions about the preservation and interpretation of historic sites and resources. In the intervening six decades, scholarship in American history, archeology, and architecture has changed dramatically as additional research has brought new sources and questions. Vernacular architecture needs more emphasis, as does social history, including labor and African-American history. Because the thematic framework provides direction to various National Park Service activities, it is crucial that the framework reflect current scholarship. For this reason, the revision of the framework needs to be undertaken in coordination with the major scholarly and professional organizations. Mr. Speaker, I await this revision and expect it will provide all of us with a clearer understanding of our American past.

Sections 1211 and 1212 of the bill are identical to sections 301 and 302, respectively, of title III of H.R. 2582. H.R. 2582 was first passed by the House as free standing legislation on October 10, 1990, and was sent to the Senate. Its provisions were explained in House Report 101-779.

Recognizing the importance of park boundary issues, title XII directs that park boundary study criteria be developed within one year from enactment and be applied to subsequent boundary studies whether done separately or as part of a general management plan. My legislative effort has focused on park boundary issues recently because that has been the basis of many of the contentious issues that have been brought before the Congress. As I have noted before, it only makes sense to have a program that will develop, with public participation and congressional review, comprehensive and timely boundary information. This way Congress can better judge these matters, especially when we can identify and Act on issues before controversies arise or damage occurs.

Title XII is intended to provide quality, resource-based information on the needs of the National Park System. Such information and recommendations have been fragmented in the past. In essence, title XII sets in motion something that has been sorely lacking for a long time; namely a legislative program for the National Park System. Title XII does not preordain the results of that program, but it does recognize that there are serious issues facing the National Park System for which it is incumbent upon the Secretary of The Interior and the National Park Service, working with the Congress, to act upon and rectify.

Title XIII modifies Senate-passed language regarding the designation of the Clarks Fork Wild and Scenic River in the State of Wyoming. The river, which is located within the Shoshone National Forest, was studied pursuant to the provisions of the Wild and Scenic Rivers Act. Twenty-two point five miles of the river were found to contain the outstandingly remarkable values necessary for designation.

The legislation, as introduced and as included here, provides for designation of 20.5 miles of the Clarks Fork. This 2-mile decrease in length from what was recommended in the wild and scenic river study was done, as I understand it, to accommodate a proposed water resource development project that would be located downstream from the designated river segment. Beside adjusting the recommended mileage of the river segment, the Senate language also included provisions exempting downstream developments from being in conformance with The Wild and Scenic Rivers Act. This blanket exemption was a concern to myself and others because it would have permitted future downstream water developments to back up within and negatively impact on the designated river segment. I have been assured by members of the Wyoming delegation that this was not their intention. Accordingly, the Senate language has been modified, in agreement with the sponsors, to provide that downstream water developments may not intrude upon the designated Clarks Fork segment. This modified provision makes the bill language consistent with section 7 of The Wild and Scenic Rivers Act. As such, it sets no precedent from our longstanding policies concerning developments downstream from a designated wild and scenic river segment.

I also think it would be useful to comment concerning the part of this title that addresses water rights. The title recognizes the fact that under existing law inclusion of the Clarks Fork in the National Wild and Scenic River System reserves a water right, based on Federal law, to carry out the purpose of that designation. Being based on Federal law, that water right is not dependent upon or limited by State laws that limit the uses or quantities of water that may be appropriated.

This part of the bill also directs the Secretary of Agriculture to apply for the quantification of that Federal water right in accordance with the procedural requirements of the laws of the State of Wyoming. Existing Federal law—specifically, the McCarran amendment—subjects the United States to a binding State quantification of its Federal-law-based water rights only on certain well understood conditions.

Nothing in this title would amend or modify the well-established, limited waiver of Federal sovereign immunity set forth in the McCarran amendment.

It is not inconsistent with existing law or policy for the United States to act to voluntarily notify a State water rights agency concerning the quantity of water the United States believes necessary to fulfill a Federal water right. This title directs the Secretary of Agriculture to do just that, utilizing existing State procedures. The United States, however, will retain all its procedural options, including rights of appeal, to perfect and protect this Federal water right.

The notice of the State of the quantity claimed by the U.S. will aid the State in its administration of State water law applicable to the Clarks Fork. Conclusive, binding quantification of the Federal water right created by this legislation must, however, await a final adjudication, which could be in a Federal court.

In conclusion, Mr. Speaker, I want to commend the exemplary leadership on this bill of chairman, Mr. UDALL, and the hard work of other members of the Arizona delegation, here in the House and in the Senate as well. They have played an important part in the shaping of this important legislation. Thanks to their efforts and cooperation, we today have an opportunity to complete action on landmark legislation, legislation that I believe can be a model for future congressional decisions about designation of wilderness on public lands.

Enactment of H.R. 2570 as we are returning it to the Senate will be an important step toward protection of priceless resources and values.

PRESENTATIONS ON CAPITOL HILL BY "VARIETY PACK"—ACTORS WHO HAVE EXPERIENCED HOMELESSNESS

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. LANTOS. Mr. Speaker, the plight of the homeless is one of the great tragedies of our generation. In order to highlight this problem which faces communities throughout our Nation, the Select Committee on Hunger, Hill Staffers for the Hungry and Homeless, and my wife, Annette, and I recently sponsored some activities on Capitol Hill which centered around homelessness.

Events included a photographic exhibit on the homeless and a program featuring some very talented individuals who have known homelessness. Photographer Chris Keeley's exhibit, "Powerless Homeless" poignantly portrayed the many faces of the homeless. The vivid descriptions of the realities of being homeless by the actors from "Variety Pack" created even greater understanding and sympathy for those people trapped in this type of existence.

Variety Pack is a performing troupe comprised primarily of people who are homeless, drug addicted, and/or HIV positive. All material that they perform is based on authentic events and often is performed by the person who experienced them. They perform for various organizations at events throughout the Washington, DC, metropolitan area.

Nancy Wyatt is chairman of the board of Variety Pack and the producer/director who also scripts the actors' stories. A business manager at the Manassas campus of Northern Virginia Community College, she spends 40 to 60 hours a week doing volunteer work with the homeless, drug addicts and AIDs patients. Her work was recently recognized by her selection as a winner of the "One and Only Channel 9 Awards for Community Service." She is also a recipient of the American Jefferson Award, and one of the Virginians who received the Governor's Award for Volunteering Excellence.

Two members of the Variety Pack troupe performed at our event on Capitol Hill, Darryl Wallace and B.J. Norris. They dramatically touched the hearts and conscience of all of

us. Mr. Wallace currently lives in a shelter; Mr. Norris, who had been homeless for many years, recently moved into transitional housing.

Mr. Speaker, I want to share the dramatic stories related by these two performers. Nancy Wyatt in introducing the first monologue noted:

We, the people of the human race, are fascinating! We let our minds play tricks on us. We actually act as though the homeless people we see on the street somehow were born that way—as though they came into existence as full grown bums—and never had a house or family or job—and never will have a house or family or a job.

The truth is everyone you see had a mom. Everyone you see was a little kid once. Most of them had houses, families, and jobs. Listen to how a typical American suddenly can become homeless, when a series of events spirals him downward until he feels trapped in quicksand. Starving and ill, he tries desperately to claw his way back to "normality."

Darryl Wallace then performed the monologue, "Quicksand" about a homeless person whose whereabouts are unknown. Ms. Wyatt is the employer to whom that person came seeking work.

QUICKSAND

(By Nancy Wyatt)

Sometimes, I remember it like it happened yesterday. Sometimes, I can't believe it happened to me at all.

Hunger. That very word gives me chills! All of you can identify with having your stomach growl and being irritable until you get food.

What you don't know is what happens when there is no food, when the stomach quits growling and starts cramping, when the body loses control over all its functions, when the mind can focus only on food—eventually to the point of hallucination, when the emotions change from irritable to violent—then to despair—and finally to dazed apathy as the body grows weak.

I first became acquainted with hunger when I was a kid with too many brothers and sisters for mom to feed on her salary as a secretary. Some nights we went completely without supper. Other nights, we had only potatoes or bread and butter sandwiches. By evening, I couldn't concentrate on my homework or even sleep because of the gnawing hollowness in my gut.

Mom used to catch me sneaking into the kitchen in the middle of the night—trying to steal some crackers or milk. Imagine! Feeling guilty and thinking of yourself as stealing when you're just trying to get food in your own home!

I felt tired constantly and daydreamed in class. When you're always hungry, you can't pay attention. My teachers never did know what was happening, and they didn't try to find out! They just labeled me "dumb" and put me on a track for "the learning disabled."

Mom did the best she could though. You can't fight the system, and I don't blame her. But, I was real glad when she finally got married again, and we could eat better.

That was just a preview of what would happen to me later. I grew up in D.C., graduated from high school, started college, then got married and found a good government job. Everything was fine for a while—until I got "riffed" during the so-called "recession." It was more like a "depression" for me.

We couldn't live on my wife's salary. She's a practical nurse. My pride couldn't have taken that anyway. I searched and searched for jobs. As each frustrating day passed, my wife and I fought more and more. There was no money for a babysitter; so, when my wife worked days, I had to take care of our newborn baby girl, instead of going on interviews.

Time seemed to be an endless procession of coffee cups, want ads and phone calls, punctuated by the baby's cries for me to change her diapers and my wife's cries for me to change her life. I could handle the first, but not the second. So, my wife took our little girl and went back to North Carolina to live with her mother. When she did that, she hurt me real bad. I can't talk about it even now.

I was still shellshocked when, only two days later, I was evicted for not having the rent money. Icy fear shot through me when it became clear that I—I!, Darryl Wallace!—was gonna be out on the streets with a bunch of derelicts and bag ladies—with no job—not knowing where my next meal was coming from. Nothing—not even Viet Nam—ever made me feel that totally powerless—that scared. I was completely unable to figure out what to do.

I didn't even have a car to live in, so I just packed my gym bag with underwear, pictures of the baby, and an iron! I don't know where the hell I thought I was going to plug in an iron! In my turmoil, all I knew was that I had to look good enough to get a job.

The iron was heavy and I tossed it the next day! What little money I did have was used to buy food and newspapers, at first. But, the money disappeared so fast that soon I only got newspapers left around the metro; and I bought candy bars, instead of hamburgers, to keep hunger at bay.

I had headaches all the time. I was searching dumpsters for scraps and waiting outside of restaurants at night for when they throw away all that perfectly good food. My stomach would growl so loud that people would look at me, so I'd cough to cover up the sound. And, I thought I was gonna pass out all the time.

It was weird! The hungrier I got, the more my sense of smell increased. Not only did the aroma of Popeye's chicken drive me crazy from a block away, but I gagged at the smell of people's body odors, even perfume, and the exhaust from cars. Then, I would throw up or get the dry heaves—right there in public! My damn bowels were running, too. And, of course, the whole time, I'm trying to psych myself up to get a job, right!

I did get an interview once:

Hid my gym bag under a dumpster and prayed it would be there when I got back.

Tried to stand up straight and to keep my hands from shaking long enough to fill out the application.

Prayed I wouldn't vomit, or faint, or fart.

Tried so hard to smile, but kept imagining that I looked like a grinning skull on top of a scarecrow's body.

The woman was very nice, but seemed shaken by my appearance and was not at all fooled by my charade. When she said there were no openings, my great act fell apart. I could feel my expression crumble into tearful dejection. I could feel my body sag against the wall for support.

I pleaded to her with my eyes, "my God, woman, think of something! For Christ's sake, can't you see I'm starving? Can't you see I'm trying? I'm willing to work. I'll do any damn thing! Give me a chance! Give me some food! Help me! Please! Help me!"

She gently repeated there were no openings in my field. Even as she handed me a token dollar, I could feel the hallucinations starting up again. My stomach started churning, and I ran—stumbling and crying like a baby—into the street, where I retched—over and over again (pause) then, the diarrhea came. (pause) Man, I was totally—I mean totally—humiliated. People passed me like I had leprosy. I was stripped of every shred of human dignity! I was so ill and so embarrassed that all I wanted to do was die!

And, die I would have, if some other so-called bum hadn't come up to me and said, "Hey, man, I'm gonna try to get a bed at a shelter. Wanna come with me?" And, he gave me half a dried-up sandwich from some food line he'd been to, as we painfully made our way up the street to the shelter where I got the help I needed.

Mr. Speaker, Nancy Wyatt's introduction to B.J. Norris' monologue was equally impressive. She notes:

You may think work is terribly depressing at a shelter. The pain is almost unbearable. But, adversity brings out great beauty of spirit in people. Sure, we cry. But, we also laugh. Sure, we ask for help. But, we also share what we have. Sometimes we perform small acts of kindness for one another. Other times, we perform miracles! We are not just statistics!

B.J. Norris's monologue, "Statistics" then followed. It described some remarkable incidents which took place at the shelter where he lived during the majority of the time he was homeless.

STATISTICS

(By Nancy Wyatt)

Who says statistics don't lie?

There are either 240,000 or 3 million homeless people, depending on whose statistics you buy!

I have been homeless. And I've worked with homeless people for years now. Statistics? They are just a bunch of numbers designed to disguise reality.

Statistics don't tell you about Lou. White, middle-aged, bent, and balding, wearing a red sweatshirt to match the blood seeping through patchwork stitches on his face from the beating of the night before.

A homeless person, standing on the shelter steps thanking Mitch Snyder for helping the homeless and offering his only two dollars for the cause.

Mitch was smart enough to accept: To grant Lou dignity and the joy of doing something good. Lou's chest "swole up." He stood tall, and even smiled for a few fleeting seconds.

Statistics don't tell of patients in the infirmary, who eat a nourishing dinner every Wednesday courtesy of Vicki and Barry—volunteers, whose children frolic with the patients, bringing smiles to cracked lips and laughter to broken hearts.

One day, the men—like kids, themselves—huddled together in secret meetings—giggled—whispered—and pooled their few coins with their many talents.

The next Wednesday, Vicki and Barry were the honored guest, served a sumptuous home-cooked meal, under a canopy of balloons and crepe paper, crowned by a cake with candles, and surrounded by mushy cards.

As always, everything was preceded by a prayer thanking God for the many blessings he had bestowed on these homeless people!

Statistics! Statistics do not tell you about Graytop, the old man in his eighties who walked all the way from New York City to D.C. during the "housing now" march on Washington.

Graytop, who suffers from brain damage and sometimes cannot walk the two blocks from the store back to the shelter.

And, statistics don't tell you about the young pushers who see him slumped on the sidewalk near that store and carry him back to the safety of his bed.

Statistics don't tell you of our humor, how we laughed until we cried at the story of Dr. Bernadine Lacey, who masqueraded as a bag lady at a national conference on "The Provision of Health Care to the Homeless." She was refused admission to this conference at which she was the keynote speaker.

Statistics don't tell you we know how to love, too. What you see before you is a family. We were all strangers, alone in our thoughts and in our suffering.

Now, we are like one garden of many different and exotic flowers. Homelessness provided the common soil into which we were planted.

The water of our tears and the sunshine of our affection are bringing our souls into full blossom.

We are not afraid to touch each other—to know each other. The love we share transcends race, social class, personal history, sexual identity, religious identity. We enrich our own lives.

You, too, can learn to live, love and grow. Just leave the statistics to the statisticians and look, instead, into the hearts and minds of all humanity.

Some of the most beautiful flowers grow in the most out of the way places.

DEFENSE DEPARTMENT NEEDS TO IMPROVE MAIL SERVICE TO OUR TROOPS IN THE MIDDLE EAST

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MAZZOLI. Mr. Speaker, I have been contacted by a constituent in Louisville, KY, concerning long delays experienced by his son, now stationed in Saudi Arabia on Operation Desert Shield, in receiving mail from home.

When my constituent wrote, his son had yet to receive a single piece of mail from his family during his then over 1 month's deployment in Saudi Arabia. I have received other complaints from other constituents and heard similar concerns raised by my colleagues in Congress.

Mr. Speaker, our troops are enduring heat, hardship, boredom, and the sacrifice of being away from family, friends, and loved ones. The least the Government can do here is to ensure that our loyal men and women receive mail from home in a timely manner.

Mr. Speaker, I ask you to call on Defense Secretary Dick Cheney and all the service Chiefs of Staff and the Postmaster General to make all necessary arrangements to improve the mail service to the troops. Mail service needs to be a top priority of Operation Desert Shield.

BANKING LAW ENFORCEMENT

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. SCHUMER. Mr. Speaker, the purpose of title XXV of S. 3266 is to enhance the enforcement powers of the Department of Justice and the Federal financial institution regulatory agencies with respect to unlawful activities affecting federally insured financial institutions.

BACKGROUND

Last year, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 to address the burgeoning problems of the savings and loan industry. Since a year ago last August, when the legislation became effective, the losses from failed financial institutions have ballooned. Reports of criminal activity and grossly excessive behavior that led to the dramatic decline of the savings and loan industry have proliferated. Title XXV responds to the public outcry to put to justice those who defrauded the savings and loan industry by providing Federal regulating agencies, Federal prosecutors, and law enforcement agencies with additional tools to combat fraud and abuse affecting financial institutions.

Title XXV contains nine subtitles. Subtitle A enhances existing criminal penalties; creates new bank related offenses; bars a person convicted of specific banking offenses from participating in the affairs of a financial institution; enlarges the statute of limitations for criminal RICO violations where the predicate acts are bank fraud; provides a directive to the Sentencing Commission to promulgate guidelines for certain financial institution offenses involving losses in excess of $1 million; added predicate offenses affecting financial institutions to the money laundering statute; and expands restitution for victims of crimes.

Subtitle B of the legislation, which is aimed at protecting assets from wrongful disposition, expands the authority of the Attorney General, conservators, receivers or liquidating agents and Federal banking agencies to enjoin the dissipation of assets wrongfully obtained. Subtitle B also amends the Bankruptcy Code to prevent institution affiliated parties from using bankruptcy to evade commitments to maintain capital reserve requirements of a federally insured depository institution or evade other civil or cirminal liability to federal banking regulatory agencies.

Subtitle B further expands the power of conservators, receivers or liquidating agents to void fraudulent transfers; permits the Federal Deposit Insurance Corporation to limit or prohibit certain golden parachute and indemnification payments by regulation or order; expands the offenses covered by, and the property subject to forfeiture under, the civil forfeiture provision of title 18, United States Code; provides for civil and criminal forfeiture for fraud in the sale of assets by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation or the National Credit Union Administration. Subtitle B prohibits an individual who has been convicted of a major banking offense from purchasing assets of a failed institution in certain cirsumstances, and requires the promulgation of regulations to prohibit the sale of assets of failed institution by the Resolution Trust Corporation regarding to other specified persons. Finally this subtitle provides for expedited court consideration of certain claims brought under the Federal Deposit Insurance Act.

Subtitle C of the legislation provides for improved procedures for handling banking related cases by expanding the wiretap provision of title 18, United States Code, to permit the Department of Justice to use wiretaps to investigate specific financial institution related offenses; authorizes Federal banking agencies to request the assistance of foreign banking authorities in the course of an investigation; increases the statute of limitation period for certain civil money penalty actions; clarifies the subpoena authority of the Federal Deposit Insurance Corporation and gives new subpoena authority to the Resolution Trust Corporation and the National Credit Union Administration.

Subtitle D of the legislation provides for certain structural reforms to improve the Federal response to crimes affecting financial institutions. Subtitle D establishes within the Department of Justice a Financial Institutions Fraud Unit headed by a special counsel, authorizes interagency cooperation in financial institution cases, and provides for the maintenance of an executive level position and dedicated staff within the Resolution Trust Corporation to assist and advise the Corporation regarding enforcement actions against individuals affiliated with insured depository institutions.

Subtitle E of the legislation establishes reporting requirements for the Attorney General with respect to civil and criminal actions involving financial institutions. Additionally, the Director of the Administrative Office of the U.S. Courts is required to present Congress with statistical tables, annually, reflecting the case load resulting from the savings and loan crisis. Subtitle E further requires public disclosure of certain agency actions.

Subtitle F of the legislation establishes a national commission to investigate the causes of the savings and loan crisis and to make recommendations about addressing the problems confronting the industry. Subtitle F gives the commission the power, inter alia, to hold hearings and subpoena witnesses and evidence, and requires that the commission, within 9 months of the date of the election of the Chairperson, report to the President and Congress on its findings.

Subtitle G of the legislation authorizes appropriations for the Department of Justice for purposes of investigations, prosecutions and civil proceedings involving financial institutions. Subtitle G also authorizes appropriations for the Federal judiciary in order to respond to the increased demands that will result from the legislation.

Subtitle H provides for rewards to individuals who produce information leading to the conviction of persons involved in banking violations and a share in the civil recoveries from such violations. Furthermore, this subtitle permits individuals to bring actions on behalf of the Attorney General for civil money penalties

relating to banking law violations, subject to the approval of the Attorney General.

Subtitle I makes technical and miscellaneous amendments to title 18 of the United States Code and the Federal Deposit Insurance Act.

Title XXV is the product of negotiations between the House and Senate and has as its precursors, provisions in both the House and Senate omnibus crime bills and a separate banking enforcement bill that was reported by the House. On July 11, 1990, the Senate passed S. 1970, an omnibus crime bill that contained a title specifically addressing enforcement efforts involving the thrift industry, title XXXX. H.R. 5401, a bill that was introduced by Mr. BROOKS which I cosponsored, the Banking Law Enforcement Act of 1990, passed the House on July 31, 1990. On October 5, 1990, the House passed H.R. 5269, the Comprehensive Crime Control Act of 1990, with title XXI dealing with banking law enforcement. Title XXI was based on an amendment that I offered to H.R. 5269 and that was adopted by the Judiciary Committee on July 23, 1990.

SECTION-BY-SECTION ANALYSIS

Section 2500

Section 2500 provides that the short title of Title XXV may be cited as the "Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990."

SUBTITLE A—ENHANCED CRIMINAL PENALTIES

Subtitle A contains provisions that enhance existing criminal penalties and that establish new crimes.

Section 2501

Section 2501(a) of the legislation amends 18 U.S.C. ch. 47 (fraud and false statements) to add a new offense entitled "concealment of assets from a conservator, receiver, or liquidating agent of insured financial institution" (new 18 U.S.C. § 1032). New § 1032(1) makes it a felony for a person knowingly to conceal (or endeavor to conceal) an asset or property from the Federal Deposit Insurance Corporation (acting as conservator or receiver or in its corporate capacity with respect to an asset acquired or liability assumed under sections 11, 12, or 13 of the Federal Deposit Insurance Act), the Resolution Trust Corporation, the National Credit Union Administration (acting as conservator or liquidating agent, or a conservator appointed by the comptroller of the currency or the director of the Office of Thrift Supervision).[1] New section 1032(2) makes it a felony for a person corruptly to impede (or endeavor to impede) the functions of the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration or such appointed conservator.[2] New section 1032(3) makes it a felony for a person corruptly to place (or endeavor to place) an asset or property beyond the reach of the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, or such appointed conservator.[3]

The maximum penalty for a violation of the new offense is imprisonment for five years and a fine under title 18, United States Code.[4]

Section 2501(b) amends the table of sections for 18 U.S.C. ch. 47 to add an entry for the new offense.

Section 2502

Section 2502(a) of the legislation amends section 19(a) of the Federal Deposit Insurance Act to expand the prohibition on control of, or participation in the conduct of the affairs of, an insured depository institution. Revised section 19(a)(1) prohibits a person convicted of any criminal offense (Federal or State) involving dishonesty or breach of trust, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from serving as an institution-affiliated party, or owning, controlling, or otherwise participating in the affairs of an insured depository institution. Institution-affiliated party is defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. § 1813), and includes a director, officer, employee, controlling stockholder and agent for an insured depository institution. Revised Section 19(a)(1) authorizes the Federal Deposit Insurance Corporation to waive this prohibition.

Revised Section 19(a)(2) limits the authority of the Federal Deposit Insurance Corporation to waive the prohibition of section 19(a)(1) for a period of ten years if the person has been convicted of a violation of specified offenses. The offenses specified are so egregious as to warrant the conclusion that a person convicted of one or more of them unfit to participate in the affairs of, or own, or control an insured depository institution for at least ten years. This provision does, however, permit the Federal Deposit Insurance Corporation to petition upon a showing that the exception is in the interest of justice. Congress expects that this exception will be narrowly construed and will be sought in very limited instances.

The specified offenses to which the ten year prohibition applies are:

18 U.S.C. § 215(a) (relating to receipt of commissions or gifts for providing loans);

18 U.S.C. § 656 (relating to bank embezzlement);

18 U.S.C. § 657 (relating to thrift institution embezzlement);

18 U.S.C. § 1005 (relating to fraudulent bank entries);

18 U.S.C. § 1006 (relating to fraudulent federal credit institution entries);

18 U.S.C. § 1007 (relating to Federal Deposit Insurance transactions);

18 U.S.C. § 1008 (relating to Federal Savings and Loan Insurance Corporation transactions);

18 U.S.C. § 1014 (relating to fraudulent loan or credit);

18 U.S.C. § 1032 (relating to concealment of assets);

18 U.S.C. § 1341 (relating to mail fraud), if the offense affects a financial institution applications);

18 U.S.C. § 1343 (relating to wire fraud), if the offense affects a financial institution;

18 U.S.C. § 1344 (relating to bank fraud); and

18 U.S.C. § 1956 (relating to laundering of monetary instruments).

Section 2502(b) makes parallel changes in section 205(d) of the Federal Credit Union Insurance Act.

Section 2503

Section 2503(a) of the legislation amends 18 U.S.C. ch. 73 (obstruction of justice) to add a new crime entitled "obstructing examination of financial institution." The new offense makes it a felony corruptly to obstruct, or to attempt to obstruct, an examination of a financial institution by an agency of the United States with jurisdiction to conduct the examination.[5] The maximum penalty is imprisonment for five years and a fine under title 18, United States Code.[6]

Section 2503(b) of the legislation amends the table of sections for 18 U.S.C. ch. 73 to add an entry for the new offense.

Section 2504

Section 2504 of the legislation increases from 20 years to 30 years the maximum prison term that can be imposed for various financial-institution-related offenses. The offenses are:

18 U.S.C. § 215(a) (relating to receipt of commissions or gifts for providing loans);

18 U.S.C. § 656 (relating to bank embezzlement);

18 U.S.C. § 657 (relating to thrift institution embezzlement);

18 U.S.C. § 1005 (relating to fraudulent bank entries);

18 U.S.C. § 1006 (relating to fraudulent federal credit institution entries);

18 U.S.C. § 1007 (relating to Federal Deposit Insurance transactions);

18 U.S.C. § 1014 (relating to fraudulent loan or credit applications);

18 U.S.C. § 1341 (relating to mail fraud), but only if the offense affects a financial institution;

18 U.S.C. § 1343 (relating to wire fraud), but only if the offense affects a financial institution; and

18 U.S.C. § 1344 (relating to bank fraud).

Section 2505

Section 2505(a) of the legislation amends 18 U.S.C. § 3293, a statute of limitation provision for financial-institution-related offenses. As amended by section 2505(a), 18 U.S.C. § 3293 would require that a prosecution of a RICO offense be commenced within ten years after the commission of that offense, if the RICO violation is based upon a pattern of racketeering activity that involves bank fraud offenses under 18 U.S.C. § 1344 as the racketeering activity (predicate acts).

Section 2505(b) provides that the amendment to 18 U.S.C. 3293 made by section 2505(a) applies to a RICO offense committed before the date of enactment of section 2505(a), but only if the statute of limitation period applicable to that offense had not run as of that date of enactment.

Section 2506

Section 2506 of the legislation amends 18 U.S.C. § 1956, the money laundering offense, to add seven new predicate offenses to the definition of "specified unlawful activity." The seven new offenses are:

18 U.S.C. § 1005 (relating to fraudulent bank entries);

18 U.S.C. § 1006 (relating to fraudulent federal credit institution entries);

18 U.S.C. § 1007 (relating to Federal Deposit Insurance transactions);

18 U.S.C. § 1014 (relating to fraudulent loan or credit applications);

18 U.S.C. § 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institutions);

18 U.S.C. § 1341 (relating to mail fraud), but only if the offense affects a financial institution; and

18 U.S.C. § 1343 (relating to wire fraud), but only if the offense affects a financial institution.

Section 2507

Section 2507(a) of the legislation requires the United States Sentencing Commission to promulgate sentencing guidelines for certain financial-institution-related offenses that call for an offense level of not less than

24 if the defendant personally derives more than $1 million in gross receipts from the offense. For a first-time offender, a level 24 offense calls for a prison term of 51 to 63 months. The offenses covered are:

18 U.S.C. § 215(a) (relating to receipt of commissions or gifts for providing loans);

18 U.S.C. § 656 (relating to bank embezzlement);

18 U.S.C. § 657 (relating to thrift institution embezzlement);

18 U.S.C. § 1005 (relating to fraudulent bank entries);

18 U.S.C. § 1006 (relating to fraudulent federal credit institution entries);

18 U.S.C. § 1007 (relating to Federal Deposit Insurance transactions);

18 U.S.C. § 1014 (relating to fraudulent loan or credit applications);

18 U.S.C. § 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institutions);

18 U.S.C. § 1341 (relating to mail fraud), but only if the offense affects a financial institution;

18 U.S.C. § 1343 (relating to wire fraud), but only if the offense affects a financial institution; and

18 U.S.C. § 1344 (relating to bank fraud).

Section 2507(b) addresses the possibility that the guidelines may be amended by requiring the Sentencing Commission, if the guidelines are changes after the effective date of the legislation, to implement section 2507(a) to achieve a comparable result.

Section 2508

Section 2508 of the legislation amends 18 U.S.C. § 981, the civil forfeiture provision of title 18, United States Code. Section 2508 amends 18 U.S.C. § 981(e) to permit the Attorney General, with regard to property forfeited as proceeds traceable to any of eight financial-institution-related offenses, to restore that property to a victim of the offense. The eight financial institution offenses are: (1) 18 U.S.C. § 215 (relating to receipt of commissions or gifts for providing loans); (2) 18 U.S.C. § 656 (relating to bank embezzlement); (3) 18 U.S.C. § 657 (relating to thrift institution embezzlement); (4) 18 U.S.C. § 1005 (relating to fraudulent bank entries); (5) 18 U.S.C. § 1006 (relating to fraudulent federal credit institution entries); (6) 18 U.S.C. § 1007 (relating to Federal Deposit Insurance transactions); (7) 18 U.S.C. § 1014 (relating to fraudulent loan or credit applications); and (8) 18 U.S.C. § 1134 (relating to bank fraud).

Section 2509

Section 2509 of the legislation amends 18 U.S.C. § 3663(a), which authorizes the sentencing court to order a convicted defendant to make restitution to a victim of the offense for which the defendant has been convicted. Section 2509 adds to 18 U.S.C. § 3663(a) a provision defining the term "victim". The definition provides that, for the purposes of an offense that has as an element a scheme, a conspiracy, or a pattern of crime activity, "victim" means a person who is directly harmed by the offense.[7]

Section 2509 of the legislation also amends 18 U.S.C. § 3663(a) to permit the court to order restitution to the extent that the parties have agreed to restitution in a plea agreement.[8]

Section 2510

Section 2510(a) of the legislation amends 18 U.S.C. ch. 11 (bribery, graft, and conflicts of interest) to add a new offense targeted at a leader of a "continuing financial crimes enterprise" who grosses $5 million or more in a two year period. The new offense defines the term "continuing financial crimes enterprises" to mean a series of financial-institution-related offenses that are committed by at least four persons acting in concert. The financial-institution-related offenses specified are: 18 U.S.C. §§ 216, 656, 657, 1005, 1006, 1007, 1014, 1032 and 1344 and a violation of 18 U.S.C. §§ 1341 or 1343 if such violation affects a financial institution. The offense requires a minimum prison term of ten years, and the maximum may be "up to life imprisonment". The maximum fine is the greater of (1) $10 million if the defendant is an individual and $20 million if the defendant is an organization; or (2) twice the pecuniary gain derived from the offense or twice the pecuniary loss inflicted.[9]

Section 2510(b) amends the table of sections for 18 U.S.C. ch. 11 to add an entry for the new offense.

SUBTITLE B—PROTECTING ASSETS FROM WRONGFUL DISPOSITION

Subtitle B contains provisions that enhance the ability of the Justice Department and Federal bank regulatory agencies to prevent dissipation of property and assets.

Section 2521

Section 2521(a)(1) of the legislation amends section 11(d) of the Federal Deposit Insurance Act to add two new paragraphs authorizing the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to seek an attachment of assets. New paragraph (18) authorizes the Federal Deposit Insurance Corporation and the Resolution Trust Corporation in their capacities as conservator or receiver or the Federal Deposit Insurance Corporation in its corporate capacity with respect to any asset acquired or liability assumed by the Corporation under Sections 11, 12, or 13, to seek a court order to place under the control of a court appointed trustee the assets of a person.

New paragraph (19) provides that, in an action brought in federal court, the protections of the Federal Rules of Civil Procedure apply to a person whose assets the Federal Deposit Insurance Corporation or the Resolution Trust Corporation is seeking to attach. However, this provision waives the requirement of Rule 65 of the Federal Rules of Civil Procedure that a showing of irreparable or immediate injury is necessary prior to the Corporations' receiving a temporary restraining order. Congress still intends that the Corporation be required to make some showing of injury prior to obtaining relief. Congress is granting such relief from the more rigorous requirements of Rule 65 because the Federal Deposit Insurance Corporation and the Resolution Trust Corporation are in the position of protecting the depository insurance fund, i.e., the taxpayers' money.

Paragraph (19) also provides that if the proceeding is brought in state court, the protection of the Federal Rules of Civil Procedure will apply unless the court determines that state law protection will afford substantially similar due process protection.

Section 2521(a)(2) of the legislation amends Section 207(b)(2) of the Federal Credit Union Act to give the National Credit Union Administration authority that parallels the authority of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation under Section 11(d) of the Federal Deposit Insurance Act as amended by Section 2521(a)(1).

Section 2521(b)(1) of the legislation amends Section 8(i) of the Federal Deposit Insurance Act to add a new paragraph that permits an appropriate Federal banking agency, in connection with an agency enforcement action, to obtain, upon a prima facie showing, a restraining order in federal court to prohibit a person subject to such action from transferring, dissipating or otherwise disposing of any funds, asset, or other property. This section codifies the principle set forth in *Commodity Futures Trading Commission* v. *Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978), that an agency seeking to enforce the requirements of a remedial statute need make out no more than a prima facie case of illegality to obtain temporary relief. Congress intends that in granting such relief, the court afford all procedural rights and protections generally available to an adverse party in such actions.

Section 2521(b)(2) of the legislation expands 18 U.S.C. § 1345, which authorizes the Attorney General to bring a civil action to enjoin a violation of 18 U.S.C. ch. 63 (mail fraud), or 18 U.S.C. § 287 (false, fictitious, or fraudulent claims), 371 (conspiracy to commit offense or to defraud the United States), or 1001 (false statements). Section 2521 of the bill expands both the violations that give rise to a cause of action under 18 U.S.C. § 1345 and the remedy that can be obtained.

Section 2521(b)(2) expands 18 U.S.C. § 1345 to authorize the Attorney General to bring a civil action in Federal court if a person is committing or about to commit a banking law violation (as defined in 18 U.S.C. § 3322(d)).[10] The remedy provided is an order enjoining the violation.

Section 2521(b)(2) also expands 18 U.S.C. § 1345 to authorize the Attorney General to bring a civil action in federal court if a person is alienating or disposing of (or intends to alienate or dispose of) property obtained as a result of, or traceable to, a banking law violation. The remedy is an order enjoining that alienation or disposition, or a restraining order prohibiting any person from transferring, removing, dissipating, or disposing of the property (or property of equivalent value). The court is also authorized to appoint a temporary receiver to administer the restraining order.

Section 2522

Section 2522 of the legislation makes several changes in the Bankruptcy Code, title 11 United States Code, to close off the bankruptcy "escape hatch" for bank insider kingpins whose criminal misconduct has jeopardized the financial health of a federally insured depository institution. These changes prevent persons who breached fiduciary obligations from using bankruptcy proceedings to shield their illgotten gains. The bank insiders to whom these new provisions apply are termed "institution-affiliated parties," as that phrase is defined in section 3(u) of the Federal Deposit Insurance Act.

Congress has drawn these bankruptcy provisions very narrowly to address a very narrow class of debts. For example, in incorporating into the bankruptcy code the definition of "institution-affiliated party" as that term is used in Financial Institution Reform, Recovery and Enforcement Act with reference to section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(u)), Congress intends that such term and the related bankruptcy provisions be applied to punish only those persons who personally were involved in wrongful acts that jeopard-

ized the financial health of an insured depository institution.

It is not Congress' intent for the new bankruptcy provisions to be used by a federal depository institutions regulatory agency to seek to satisfy debts owed to depository institutions with assets of innocent persons who have had no personal involvement in any misconduct from which such debts arose. For example, if an innocent individual happens merely to have been affiliated at one time with a law firm or accounting firm which, through persons other than the innocent individual, committed one or more wrongful acts, the innocent individual should nevertheless receive the full protection of the bankruptcy laws; he should not be held vicariously liable for debts due to wrongful acts in which he did not directly participate and which he did not ratify.

Congress specifically approves the enunciation of this principle in Matter of Walker, 726 F.2d 452, 454 (8th Cir. 1984); *Anderson* v. *Anderson*, 29 B.R. 184, 191 (Bankr. N.D. Iowa 1983); and *Futscher* v. *Futscher*, 58 B.R. 14, 17 (Bankr. S.D. Ohio 1985). These cases are faithful to a fundamental tenet of bankruptcy, that an honest debtor should be relieved of the oppressive burden of his or her debts. *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 244 (1934).

Subsection (a) amends section 523(a) of the Bankruptcy Code to add two new descriptions of debts that individuals may not discharge—that is, may not extinguish—through a bankruptcy proceeding. New paragraph (11) describes debts arising from fraud or defalcation while acting in a fiduciary capacity, as reflected in certain final court judgments, voluntary consent orders, and unreviewable orders. Congress recognizes that there is a high degree of overlap between this new paragraph (11) and the existing paragraph (4) of section 523(a), which renders nondischargeable all debts "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." In enacting the new paragraph (11), Congress does not intend to change the current scope of section 523(a)(4); while, therefore, in essence, a subset of section 523(a)(4), new paragraph (11) lists specific contexts, more familiar to banking regulators, in which a finding of fiduciary fraud or defalcation may arise. Congress intends that the same degree of intentionality and specificity required for acts of fiduciary fraud or defalcation be shown before nondischargeability in bankruptcy attaches.

Further, Congress is aware that the case in re Garner, 881 F.2d 579 (8th Cir. 1989), is currently pending before the United States Supreme Court. The appeals court held in Garner that, because a state court judgment for fraud was based on a preponderance of the evidence, rather than on clear and convincing evidence as required for nondischargeability under section 523(a) of the Bankruptcy Code, the debtor in bankruptcy was not estopped from contesting nondischargeability of a debt for fraud based on the state court judgment. In no way does Congress intend, in making the changes to the Bankruptcy Code which are included in section 2522, to address the questions before the Court, to affect the Court's consideration of those questions, or to affect the disposition of that case. Any arguments to the contrary by the parties to the suit or other intervening parties should be rejected accordingly.

The second new paragraph added to section 523(a), paragraph (12), describes debts arising from malicious or reckless failure to fulfill a commitment to maintain the capital of a federally insured depository institution. These commitments, which relate to adequate capital reserves as a percentage of outstanding loans, are often entered into with a federal depository institutions regulatory agency by a person at the time the person acquires control of the institution. The new paragraph (12) will make debts for harm to an institution resulting from malicious or reckless failure to fulfill such a commitment nondischargeable. The new paragraph (12) makes clear, however, that it does not extend for the duration of any such commitment which would otherwise be terminated by an act of a federal depository institutions regulatory agency.

Another proposed new paragraph to section 523(a) would have described debts from criminal restitution. This proposed new paragraph was rejected as overlapping entirely with current section 523(a)(7), which the United States Supreme Court held in *Kelly* v. *Robinson*, 479 U.S. 36 (1986), made debts from criminal restitution nondischargeable. Congress intends not to disturb the Court's holding in Kelly.

Subsection (a) of section 2522 also adds a new subsection (e) to section 523, to make clear that an institution-affiliated party of an insured depository institution will be considered to be acting in a fiduciary capacity with respect to the depository institution, for purposes of existing section 523(a)(4) and new section 523(a)(11).

Subsection (a) also amends section 523(a)(c), which ordinarily requires a creditor seeking to press a claim in a bankruptcy case for certain types of nondischargeable debts to file a timely proof of claim and make a timely request for a hearing on the claim. Section 523(a)(3)(B) excuses a creditor from this requirement if the creditor did not receive notice of the bankruptcy case in time to file the proof of claim and request the hearing. The new provisions in section 523(c) apply only in the case of a federal depository institutions regulatory agency acting as conservator, receiver, or liquidating agent for an insured depository institution, or acting as successor to such conservator, receiver, or liquidating agent. In those cases, the agency will be excused under section 523(a)(3)(B) from the requirements of section 523(c) unless the conservator, receiver, or liquidating agent was appointed in reasonable time to have filed the proof of claim and requested the hearing.

Subsection (b) of section 2522 amends section 522(c) of the Bankruptcy Code to create a new exception to the exemptions provided generally in bankruptcy for certain property of the debtor. Currently, section 522(c) provides that the property exemptions described elsewhere in section 522 do not apply in the case of tax obligations, alimony and child support responsibilities, or security agreements in which the otherwise exempt property is pledged as collateral. The new exception would apply to certain debts owed by institution-affiliated parties to federal depository institutions regulatory agencies acting in their capacity as receiver, conservator, or liquidating agent. Specifically, the debts covered are debts for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny, as described in section 523(a)(4); and for willful and malicious injury to another entity or to the property of another entity, as described in section 523(a)(6). These acts represent the highest form of financial criminality against a federally insured depository institution by a person entrusted under the law with the care and safekeeping of the institution. A proposal to include all or some of the acts described in section 523(a)(2)—in particular, false pretenses, false representation, and actual fraud—was rejected based on a determination that, to the extent that a subclass of these section 523(a)(2) acts rose to the level of perniciousness which warranted voiding all of a debtor's exempt property protections, these acts would in large measure already be covered under section 523(a)(4) or 523(a)(6). Moreover, to the extent that such acts enumerated under section 523(a)(2) would not rise to the level of intentionality and specificity required under section 523(a)(4), then Congress never intended to include them in the scope of this provision in the first place.

Subsections (c) and (d) of section 2522 deal more broadly with the commitment to maintain the capital of an insured depository institution than does subsection (a). While the new paragraph 523(a)(12) created by subsection (a) would render nondischargeable a debt arising from failure to fulfill a commitment to maintain capital only if the failure was malicious or reckless, subsections (c) and (d) cover all failures to fulfill such commitments, regardless of underlying motive or context. The only limit to this obligation is that the new provisions do not extend for the duration of such commitments if they would otherwise be terminated by an act of a federal depository institutions regulatory agency.

Subsection (c) amends section 365 of the Bankruptcy Code to provide that the bankruptcy trustee's general discretion to accept or reject executory contracts entered into by the debtor will not apply, and the trustee will be deemed to have accepted such a commitment. This subsection also provides treatment under section 507 of the Bankruptcy Code, meaning that the debtor will pay such debt in full before making payments on debts to general unsecured creditors.

Subsection (d) amends section 507 of the Bankruptcy Code to add a new priority, ranked just behind the existing priorities, for allowed debts for failure to fulfill a commitment to maintain capital.

Subsection (e) of section 2522 amends the general definitions section of the Bankruptcy Code.

Section 2523

New subsection (k) is intended to provide the Federal Deposit Insurance Corporation with the necessary authority to prevent officers and directors of insured institutions or holding companies from voting themselves generous bonuses at the expense of the institution or company, and ultimately, perhaps, the Federal Deposit Insurance Corporation, as well as to prevent directors and officers from escaping personal liability for violations of law, by prohibiting institutions from paying their legal fees and fines in such actions.

Section 2523 of the legislation amends Section 18 of the Federal Deposit Insurance Act (12 U.S.C. § 1828) by adding a new subsection (k) that permits the Federal Deposit Insurance Corporation to prohibit or limit, by regulation or order, any golden parachute payment of indemnification payment. New subsection (k)(2) enumerates certain factors that the Corporation may consider in taking action with respect to these payments, although these factors are not exclusive. New subsection (k)(3) prohibits a depository institution or a depository institution holding company from prepaying the

salary or liability or legal expenses of an institution-affiliated party where the payment is made in contemplation of insolvency and with a view to, or has the result of, preventing the proper application of the assets of the institution to creditors, or preferring one creditor over another.

New subsection (k)(4) defines the term golden parachute, and specifically does not include any payment made pursuant to a retirement plan qualified under section 401 of the Internal Revenue Code of 1986 or other nondiscriminatory benefit plan, any payment made pursuant to deferred compensation plans deemed permissible by the Federal Deposit Insurance Corporation, or any death or disability payments. Although these three categories of payment are specifically excluded from the definition of "golden parachute payment," Congress does not intend to preclude the Federal Deposit Insurance Corporation from challenging such payments on the ground that they are not bona fide.

In addition, new (k)(5) subsection defines indemnification payment and liability or legal expense. Subject to the limits prescribed for indemnification payments, new (k)(6) expressly permits the institution or holding company to purchase directors' or officers' insurance or fidelity bonds.

Section 2523(b) of the legislation amends Section 206 of the Federal Credit Union Act to make changes parallel to the changes made by section 2525(a) of the legislation in section 18 of the Federal Deposit Insurance Act.

Section 2523 is not intended to limit or restrict the appropriate federal banking agencies from exercising existing authority to take certain actions including initiating cease and desist proceedings. For example, under 12 U.S.C. § 1818, each agency has the authority to take actions to limit the terms of, or prohibit an insured depository institution from entering into or making payments under any contracts, including but not limited to contracts between an insured depository insititution and an institution-affiliated party, that inter alia, constitute an unsafe or unsound banking practice. This legislation does not affect or alter that authority or any other authority the agencies may have under existing law and regulations.

Section 2524

Section 2524 of the legislation amends 18 U.S.C. § 981 (civil forfeiture) to expand the offenses covered by that section. Section 2524(1) adds 18 U.S.C. § 1032; 18 U.S.C. § 1341, but only if the offense affects a financial institution; and 18 U.S.C. § 1343, but only if the offense affects a financial institution. Section 2524(2) changes that provision and specifically amends 18 U.S.C. § 981(b) to give the Attorney General the authority to seize certain property. Section 2524 (3) and (4) amend 18 U.S.C. § 981 to expand the authority of the Attorney General to make forfeited property available to Federal financial insititution regulatory agencies and to financial institutions.

Section 2525

Section 2525(a) of the legislation amends 18 U.S.C. § 981 (civil forefeiture) to expand the property subject to forfeiture. Section 2525(a)(1) amends 10 U.S.C. § 981(a)(1) to add property that respresents, or is traceable to, the gross receipts obtained from any of six specified offenses, but only if the particular offense relates to the sale of an asset obtained or held by the Federal Deposit Insurance Corporation (as conservator or receiver) or the Resolution Trust Corporation. The six offenses are: (1) 18 U.S.C. § 666(a)(1) (relating to federal program fraud); (2) 18 U.S.C. § 1001 (relating to false statements); (3) 18 § U.S.C. § 1031 (relating to major fraud against the United States); (4) 18 U.S.C. § 1032 (relating to concealment of assets); (5) 18 U.S.C. § 1341 (relating to mail fraud); and (6) 18 U.S.C. § 1343 (relating to wire fraud). Section 2525(a)(1) also amends 18 U.S.C. § 981(a)(1) to provide that if one of these specified offenses is committed for the purpose of (1) executing or attempting to execute a scheme or artifice to defraud, or (2) obtaining money or property by means of false or fraudulent statements, then the property forfeitable includes all property—real or personal, tangible or intangible—that is obtained by means of the offense. Section 2525(a)(2) amends 18 U.S.C. § 981 to authorize the Attorney General to distribute property forfeited under the new language to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency.[1]

Section 2525(b) of the legislation amends 18 U.S.C. § 982 (criminal forfeiture) to require the forfeiture of property representing, or tracable to, the gross receipts of six specified offenses involving the sale of an asset obtained or held by the Resolution Trust Corporation or the Federal Deposit Insurance Corporation (as conservator or receiver). The specified offenses are: (1) 18 U.S.C. § 666(a)(1) (relating to federal program fraud); (2) 18 U.S.C. § 1001 (relating to false statements); (3) 18 U.S.C. § 1031 (relating to major fraud against the United States); (4) 18 U.S.C. § 1032 (relating to concealment of assets); (5) 18 U.S.C. § 1341 (relating to mail fraud); and (6) 18 U.S.C. § 1343 (relating to wire fraud). Section 2527(b) also amends 18 U.S.C. § 982 to provide that if the specified offense is committed for the purpose of (1) executing or attempting to execute a scheme or artifice to defraud, or (2) obtaining money or property by means of false or fraudulent statements, then the property forfeited includes all property—real or personal, tangible or intangible—that is obtained by means of the offense.

Section 2526

Section 2526(a) of the legislation amends section 11 of the Federal Deposit Insurance Act (12 U.S.C. § 1821) by adding a new subsection (p) to prohibit an individual who has been convicted of a specified major banking offense or conspiracy to commit such an offense from purchasing assets of a failed institution, where that individual is in default on loans or extensions of credit to that institution and where such loans, if not unpaid, will cause substantial loss to that institution or to the Federal Deposit Insurance Corporation or Resolution Trust Corporation, as conservator or receiver. The specific offenses are:

18 U.S.C. § 215(a) (relating to receipt of commissions or gifts for providing loans);

18 U.S.C. § 656 (relating to bank embezzlement);

18 U.S.C. § 657 (relating to thrift institution embezzlement);

18 U.S.C. § 1905 (relating to fraudulent bank entries);

18 U.S.C. § 1006 (relating to fraudulent federal credit institution entries);

18 U.S.C. § 1007 (relating to Federal Deposit Insurance transactions);

18 U.S.C. § 1008 (relating to Federal Savings and Loan Insurance Corporation transactions);

18 U.S.C. § 1014 (relating to fraudulent loan or credit);

18 U.S.C. § 1032 (relating to concealment of assets);

18 U.S.C. § 1341 (relating to mail fraud), if the offense affects a financial institution applications;

18 U.S.C. § 1343 (relating to wire fraud), if the offense affects a financial institution; and

18 U.S.C. § 1344 (relating to bank fraud).

This provision will prevent debtors, who have been convicted of a major banking offense, from profiting from their misdeeds by prohibiting such debtors from purchasing assets of an institution that failed, at least in part, as a result of their actions.

New subsection (p)(2) specifies, however, that the prohibitions above do not apply to the sale or transfer by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation of any asset of any insured depository institution to any individual if the sale or transfer resolves or settles obligations owed by the individual to an insured depository institution, the Federal Savings and Loan Insurance Corporation Resolution Fund, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation. This provision is the exception to the general prohibition and should be construed narrowly.

Section 2526(b) amends Section 207 of the Federal Credit Union Act to make appropriate changes that parallel the changes that section 2526(a) makes in section 11 of the Federal Deposit Insurance Act.

Section 2526(c) amends Section 21A(f) of the Federal Home Loan Bank Act (12 U.S.C. § 1441a(f)) and directs the Resolution Trust Corporation to promulgate regulations prohibiting the sale of assets by the Corporation of a failed institution to certain persons. New subsection (f)(1)(A) sets out those categories of persons who profited or engaged in wrongdoing at the expense of the failed institution, or otherwise seriously mismanaged the failed institution, to whom the sale of Corporation assets is prohibited. New subsection (f)(2) provides for an exemption from this prohibition for the settlement of claims by the Resolution Trust Corporation.

Section 2527

Section 2527 amends Section 11 of the Federal Deposit Insurance Act (12 U.S.C. § 1821) by adding a new subsection (q) to provide for expedited consideration of cases and appeals where those cases were brought by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser or any other person employed by or providing services to an insured depository institution. New subsection (q)(3) provides that, where the court makes a specific finding that the ends of justice would be served by not giving the Corporation's case such expedited consideration, the court may make necessary modifications to its schedule.

Section 2528

Section 2528(a) of the legislation amends section 11(d) of the Federal Deposit Insurance Act (12 U.S.C. § 1821(d)) by inserting a new paragraph (17) to provide the Federal Deposit Insurance Corporation or the Resolution Trust Corporation in its capacity as conservator or receiver, and any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision with specific authority to avoid

fraudulent transfers of assets by institution-affiliated parties and debtors of an institution. The transfer must have occurred within five years of the date of the appointment of the conservator or receiver. Paragraph (19)(B) establishes the rights of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation and any conservator to recover for the benefit of the insured depository institution the property transferred, or if a court orders, the value of the property at the time of the transfer. Paragraph (19)(C) limits the right of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation and the right of any conservator to recover assets from the transfer where the transferee has taken the property for value in good faith. Paragraph (19)(D) gives the Federal Deposit Insurance Corporation, the Resolution Trust Corporation and any conservator superior rights to the trustee or any other party (other than a Federal agency) in bankruptcy with respect to the property transferred.

Section 2528 of the legislation is intended to grant the Federal Deposit Insurance Corporation authority in addition to that already existing under Section 11(e)(3)(B) of the Federal Deposit Insurance Act (which grants the Corporation the authority to exercise any state law powers granted to a receiver or conservator to avoid fraudulent conveyances), and Section 11(c)(2)(B) of the Federal Deposit Insurance Act (which grants the Corporation the authority to avoid any fraudulent conveyance that could otherwise be avoided by a conservator or receiver for any Federal depository institution). Nor is Section 2528 intended to circumscribe any other authority of conservators appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision.

Section 2528(b) amends Section 207(b) of the Federal Credit Union Act to make changes parallel to the changes that section 2528(a) of the legislation makes in Section 11(d) of the Federal Depository Insurance Act.

SUBTITLE C—IMPROVED PROCEDURES FOR HANDLING BANKING-RELATED CASES

Subtitle C contains provisions to improve the way in which banking-related cases are investigated and extends the limitation period for civil actions under section 951 of the Financial Institution Reform, Recovery, and Enforcement Act.

Section 2531

Section 2531 of the legislation expands 18 U.S.C. § 2516 (authorization for interception of wire, oral, or electronic communication) to authorize the Justice Department to seek an order permitting use of a wiretap to investigate four financial institution-related offenses. The four offenses are:

18 U.S.C. § 215(a) (relating to receipt of commissions or gifts for providing loans);

18 U.S.C. § 1014 (relating to fraudulent loan or credit applications);

18 U.S.C. § 1032 (relating to concealment of assets);

18 U.S.C. § 1344 (relating to bank fraud).

These three offenses which deal with bribery, fraud, and false statements are analogous to offenses for which the Attorney General is presently authorized by 18 U.S.C. § 215 to seek a wiretap order. The Attorney General can now seek a wiretap order in investigating such offenses as bribery of public officials (18 U.S.C. § 201 and witnesses), bribery in sporting-contest (18 U.S.C. § 224), wire fraud (18 U.S.C. § 1343), mail fraud (18 U.S.C. § 1343), and computer fraud (18 U.S.C. § 1029). The Justice Department has indicated that the wiretap authority provided by the amendment in section 31 will materially aid in the investigation and prosecution of financal institution crimes.

Section 2531 (2) and (3) makes technical amendments to 18 U.S.C. § 2516 in order to correct clerical and typographical errors.

Section 2532

Section 2532 (a) and (b) of the legislation amends sections 8 and 11 of the Federal Deposit Insurance Act to permit Federal banking agencies, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation, in their corporate capacities and as conservator or receiver, to maintain a foreign office and to request the assistance of foreign banking authorities in connection with investigations, examinations, or enforcement actions and in tracing funds overseas. The agencies are also authorized to provide assistance to foreign banking authorities.

Section 2532 (a) and (b) of the legislation makes changes to section 206 and 207 of the Federal Credit Union Act, respectively, that parallel the changes made in section 8 and 11 of the Federal Deposit Insurance Act by section 2532 (a) and (b) of the legislation.

Section 2533

Section 2533 of the legislation amends section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to add a new subsection providing a period within which a civil action authorized by section 951 must be commenced.[12] Current law (28 U.S.C. § 2462) provides a five year period for such an action. New Section 951(g) extends that period to ten years from the date the cause of action accrues. The new provision will apply to any cause of action for which the present statute of limitation period has not run.

Section 2534

Section 2534(a) of the legislation amends section 11 of the Federal Deposit Insurance Act to allow the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to exercise all Federal Deposit Insurance Corporation enforcement powers, including subpoena authority, as conservator or receiver, for all purposes including determining any claim against an institution and collecting funds. This section also amends section 207 of the Federal Credit Union Act to give parallel subpoena authority to the National Credit Union Administration, as liquidating agent. Any such subpoenas issued pursuant to this section must be approved by the appropriate Board of Directors or their designees.

Under current law, the authority to issue subpoenas expires when an institution is declared insolvent or placed in conservator or receivership. The new authority will provide the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, and the National Credit Union Administration with a powerful tool in conducting closed institution investigations by giving them the ability to "follow the money" even after an institution fails.

SUBTITLE D—STRUCTURAL REFORMS TO IMPROVE THE FEDERAL RESPONSE TO CRIMES AFFECTING FINANCIAL INSTITUTIONS

Subtitle D codifies various measures recently taken by the Administration to maximize the response by the Department of Justice to crimes affecting financial institutions and enacts new measures to aid the Justice Department in combatting these crimes. Subtitle D establishes a Financial Institution Fraud Unit in the Department of Justice (to be headed by a Special Counsel), authorizes interagency cooperation in financial institution cases, and provides additional investigatory authority for the Secret Service.

Section 2536

Section 2536 of the legislation establishes the Financial Institutions Crime Unit within the Department of Justice, headed by a Special Counsel and located within the office of the Deputy Attorney General. This section provides that the Special Counsel is responsible and reports directly to the Deputy Attorney General. This section contains a sunset provision and therefore will terminate in five years.

Section 2537

Section 2537(a) provides for the President's appointment of the Special Counsel by and with the advice and consent of the Senate. Section 2537(b) sets forth the responsibilities of the Special Counsel, which include (1) supervising and coordinating investigations and prosecutions for crimes in and against the financial services industry; (2) ensuring that Federal law available to recover the proceeds of unlawful activities from such offenders are utilized to the fullest extent possible; and (3) ensuring that adequate resources are made available for the investigation and prosecution of financial institution fraud cases. On this last point, the Special Counsel is expected to communicate directly with both the Attorney General and the Director of the Office of Management and Budget on those resource needs, including those of the Federal Bureau of Investigation, United States Attorneys, and the Civil, Tax, and Criminal Divisions, and to be fully candid with the Congress on those needs.

Section 2538

Section 2538 authorizes the Attorney General to assign to the Financial Institution Fraud Unit the level and types of personnel necessary to provide an appropriate level of enforcement activity in this area.

Section 2539

Section 2539(a) requires the Attorney General to establish financial institution fraud task forces throughout the nation, as he deems necessary, to ensure that adequate resources are made available to investigate and prosecute crimes in and against financial institutions and to recover proceeds of unlawful activities from such offenders. Subsection (b) authorizes the Attorney General to designate how each task force shall be supervised and specifies the Special Counsel as the possible supervisor.

Section 2539(c) establishes a senior interagency group to assist in (1) identifying the most significant financial institution fraud cases, (2) allocating investigative and prosecutorial resources to them, (3) enhancing interagency coordination, and (4) accelerating the investigations and prosecutions of these matters. The Special Counsel will chair this interagency group, which shall include senior officials from the Federal bank regulatory agencies, the Resolution Trust Corporation, the Treasury Department, and components of the Justice Department, including, specifically, representatives from the Federal Bureau of Investigation, the Advisory Committee of United States Attorneys, and other relevant entities, including appropriate legal divisions within Justice. While this section mandates the inclusion of

senior officials from these agencies, it does not preclude the participation of officials from other interested agencies, including, for example, the Securities and Exchange Commission which is actively investigating securities fraud in failed financial institutions.

Section 2540

Section 2540 requires the Resolution Trust Corporation to maintain a senior position and dedicate staff, to assist and advise the Resolution Trust Corporation and other agencies in the pursuit of cases, civil claims, and administrative enforcement actions against institution-affiliated parties of insured depository institutions under Resolution Trust Corporation control. According to the Resolution Trust Corporation, this provision codifies the agency's existing practices. In addition, this section makes the Resolution Trust Corporation fully accountable to the Congress by requiring semiannual reports by such personnel on their coordinated pursuit of claims by all Federal bank regulatory agencies, the Justice Department, and the Securities and Exchange Commission.

SUBTITLE E—REPORTING REQUIREMENTS

Subtitle E mandates the Attorney General and the Director of the Administrative Office of the United States Courts to report to Congress on a regular basis regarding matters involving financial institutions.

The Committee expects that the increased resources for the Department of Justice will result in a heavier workload for the Federal Courts, particularly those courts in Texas and California.

Section 2546

Section 2546(a) requires the Attorney General to compile and report on comprehensive data on Federal civil and criminal enforcement cases and efforts concerning banking law offenses. The Attorney General must provide such data in a report to the Congress on a monthly basis and after December 31, 1991, on a quarterly basis. The report shall include the following data: (1) the nature and number of civil and criminal investigations, prosecutions, and related proceedings including civil and criminal forfeiture and civil penalty proceedings; (2) the number of such investigations, prosecutions, and related proceedings which are inactive but which have not been closed or declined and also unaddressed referrals alleging criminal misconduct covered under these offense provisions; (3) the number of such matters, closed, settled, or litigated to conclusion; and (4) the results achieved in them, including convictions and pretrial diversions, fines and penalties levied, restitution assessed and collected, and damages recovered.

Under subsection (b) this report shall (1) categorize data by types of financial institutions (such as failed/open by different types of institutions, e.g. national banks and credit unions), and appropriate dollar loss ranges; (2) disclose such data for each Federal judicial district; (3) describe the activities of the Financial Institution Fraud Unit; and (4) list (i) the number of institutions (failed/open) in which evidence of significant fraud, unlawful activity, insider abuse or serious misconduct has been alleged or uncovered—this specifically includes that civil misconduct discovered during the banking agency examination process and possibly remedial through formal or informal agency supervisory action and therefore this clause is not limited solely to criminal misconduct—(ii) the civil, criminal, and administrative (including banking agency) enforcement actions, (iii) the numbers and types of disposition in criminal matters, and (iv) the resources allocated.

The sponsors of the legislation are fully cognizant that, while the Federal Bureau of Investigation compiles much of this data, the Justice Department will have to improve and expand data collection efforts to compile and report on all of this data. The Congress believes that reporting this data is absolutely essential for Congressional oversight of the Attorney General's efforts concerning financial institutions fraud and embezzlement cases and of criminal justice resource needs. The Congress requires this information to determine the magnitude of criminal activity in the financial services industry, the progress of the Department of Justice in combating this activity, and the extent of unaddressed criminal referrals and inactive causes involving financial institutions due to inadequate resources or other causes. This report will enable the Congress to better assess the appropriate level of resources necessary to pursue investigations and prosecutions affecting financial institutions expeditiously and thoroughly in each of the 93 Federal judicial districts.

Section 2547

Section 2547 amends those provisions of the Federal Deposit Insurance and Federal Credit Union Acts that require public disclosure and publication of agency enforcement actions, promulgated in Public Law 101-73 (Financial Institution Reform, Recovery and Enforcement Act) and mandates the following *new* additional disclosures and procedures:

(1) In addition to final administrative enforcement orders, each Federal banking agency must now publish and make available to the public on a monthly basis any written agreement or other written statement for which a violation may be enforced by the agency, unless the banking agency determines that the publication would be contrary to the public interest. That public interest exemption should be considered on a case by case basis, with the following general exception. It is expected that "business plans" submitted by financial institutions detailing their proposed actions to meet capital requirements would be exempt under the public interest exception.

(2) Each such agency must hold administrative hearings in public, unless the agency determines in a specific case that holding the hearing would be contrary to the public interest, and then the agency must report on its decision not to hold a hearing on a quarterly basis to the Congress. This reverses the practice followed by the banking agencies that hearings were to be routinely closed to the public.

(3) Each agency must prepare a transcript of all testimony and other documentary evidence, and a transcript of public hearings will be available to the public in accordance with the Freedom of Information Act.

(4) Each agency must retain all informal enforcement agreements and other supervisory actions and supporting documents for at least 6 years and must keep a written report of any documents or parts of documents filed under seal in an administrative proceeding (so sealed pursuant to a finding that disclosure of the document would be contrary to the public interest).

This provision expressly indicates that nothing in this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress. This provision restates Congress' constitutional authority to obtain all of the above information, both public and private. For example, the banking agencies are expected to provide to the Congress and its committees and subcommittees, upon written request (e.g. a letter from the chairman or a ranking member of a subcommittee) all requested information which is not made public. This includes transcripts of non-public hearings and all documentary evidence specified in new subsection (u)(6) and (7), which would encompass records of supervisory actions in closed or insolvent institutions and any other documents placed under seal.

Section 2548

Section 2548 requires the Director of the Administrative Office of the United States Courts to provide annually to Congress statistical tables that reflect the business imposed on the Federal courts by the savings and loan crisis. These reports are intended to provide Congress with sufficient information to assess the new demands and burdens placed on the Federal courts by this crisis and to aid Congress in determining the need for additional resources by the courts in disposing of civil and criminal cases involving financial institutions.

SUBTITLE F—NATIONAL COMMISSION ON FINANCIAL INSTITUTION REFORM, RECOVERY AND ENFORCEMENT

Subtitle F establishes an eight member bipartisan commission to study the causes of the savings and loan crisis, make recommendations to improve the safety and soundness of insurance funds and to facilitate civil and criminal enforcement actions concerning financial institutions, and report on appropriate measures to avoid such problems in the financial services industry in the future. The Congress believes that the magnitude and seriousness of the savings and loan crisis requires a full and impartial review of the causes and consequences of that crisis by an independent commission. The Congress has endowed the commission with broad powers, including the authority to hold hearings and to subpoena witnesses and evidence, so that the commission has available all necessary information to file a meaningful and comprehensive report on its findings.

Section 2551

Section 2551 of the legislation establishes the National Commission on Financial Institution Reform, Recovery and Enforcement.

Section 2552

Section 2552 of the legislation sets forth the duties of the Commission, mainly, examining and identifying the origin and causes of the problems in the savings and loan industry that led to the enactment of Financial Institution Reform, Recovery and Enforcement Act, including consideration of the role of: state and federal regulations, supervision of savings and loans, relevant state and federal statutes, economic factors, fraud and abuse in the savings and loan industry and deposit insurance; recommending changes that will improve the safety and soundness of depository associations, the Federal deposit insurance fund, and other Federal insurance programs; facilitate civil and criminal enforcement actions regarding financial institutions, and prevent the recurrence of the problems identified in the savings and loan industry.

Section 2553

Section 2553 of the legislation provides for 8 members to serve on the Commission. Section 2553(a) provides that the President shall appoint two individuals; the Speaker of the House of Representatives shall appoint three individuals, one upon the recommendation of the minority leader of the House; the President pro tempore of the Senate shall appoint three individuals, two upon the recommendation of the majority leader of the Senate, and one upon the recommendation of the minority leader of the Senate.

Section 2553(b) prohibits a member, officer, or employee of the executive, legislative, and judicial branches of the federal government or of any state and local government from serving on the Commission.

Section 2553(c) provides that a member of the Commission is appointed to serve for the life of the Commission and that a vacancy is filled in the manner in which the original appointment was made. Section 2553(d) prohibits members of the Commission from receiving compensation for their services on the Commission and provides for travel expenses. Section 2553(e) provides that 5 members of the Commission constitutes a quorum, and that 3 members may hold a hearing. Section 2553(f) provides that the chair of the Commission is to be elected by the Commission from among the members. Section 2553(g) provides that the Commission shall meet at the call of the chair or of 5 members of the Commission. Section 2553(h) permits the Commission to vote by proxy.

Section 2554

Section 2554 of the legislation establishes the powers of the Commission, including the power to hold hearings, subpoena witnesses and evidence, administer oaths, request official data and administrative support services. Section 2554 (b) requires the Commission to notify in writing, not less than 21 days prior to the taking of testimony or receiving of evidence concerning a specific savings and loan, the Attorney General, the Director of the Office of Thrift Supervision, and the Chairperson of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation, the Commission's intention to take such testimony or receive such evidence. If the Attorney General, the Director, or the Chairperson determines and notifies the Commission that taking such testimony or receiving such evidence would impair, impede, or compromise a criminal, civil or administrative proceeding, the Commission may nevertheless proceed to take this testimony or receive this evidence upon an affirmative vote of no less than five of its members.

Section 2555

Section 2555 of the legislation provides for staffing of the Commission.

Section 2556

Section 2556 of the legislation requires the submission of the final report within nine months after the date of the election of the Chairperson.

Section 2557

Section 2557 of the legislation mandates the termination of the Commission 30 days after the submission of the final report.

Section 2558

Section 2558 of the legislation authorizes an appropriation of $1 million for the Commission.

SUBTITLE G—AUTHORIZATION

Subtitle G increases the authorizations for the Department of Justice and the Federal courts in order to handle the pressing demands on the criminal justice system resulting from the savings and loan crisis. Last year, the Financial Institutions Reform, Recovery and Enforcement Act authorized for fiscal years 1990 through 1992 the appropriation of $75 million for the Department of Justice for investigations, prosecutions and civil actions affecting financial institutions, and $10 million for the Federal courts to meet the demands resulting from that Act. Since the enactment of the Financial Institution Reform, Recovery and Enforcement Act last year, it has become apparent that these authorization levels are insufficient to meet the demands for personnel generated by the thrift crisis. Accordingly, the legislation increases the authorization levels to $162.5 million for the Department of Justice for fiscal years 1991 through 1993; $25 million for the Federal court system for fiscal year 1991; and $28 million for the Federal court system for fiscal years 1992 and 1993.

Section 2559

Section 2559 authorizes $162.5 million for the Department of Justice for each of fiscal years 1991 through 1993, for purposes of investigations, prosecutions, and civil proceedings involving financial institutions. The allocations correspond to the Senate's "Departments of Commerce, Justice, and State, the Judiciary, and related Agencies Appropriation Bill, 1991", as reported in Senate Report 101-515. While the subsequent Conference Report on this appropriation (House Report 101-909) reduced this amount by $3 million, the Congress decided to keep this authorization at the slightly higher level, and allocated the additional $3 million to the Federal Bureau of Investigation, to allow for an increased appropriation in future years. This is because the Federal Bureau of Investigation was allocated less (and the United States Attorneys were allocated substantially more) in the Conference Report than the Justice Department advised the House of Representatives these entities required. The House version of this legislation, H.R. 5401 had allocated the Federal Bureau of Investigation $100,000,000 to respond to an additional 1,000 unaddressed referrals alleging financial institution crimes, each involving losses of $100,000 or more, as of June 17, 1990.

Section 2559 additionally authorizes to be appropriated to the Federal court system $25 million in fiscal year 1991, and $28 million in fiscal years 1992 and 1993. These figures have been supplied by the Administrative Office of the United States Courts, and are based on an assessment of the work that will be performed by new assistant United States Attorneys assigned to prosecute savings and loan and bank cases. The Federal courts will feel an almost immediate impact from increased numbers of prosecutors, and will be allowed to respond by augmenting their own resources in the form of deputy clerks, automation, space and facilities, and other support activities. In short, the authorization will not only be appreciated by the overburdened Federal courts but it is necessary for an effective savings and loan reform bill.

SUBTITLE H—ACTIONS AGAINST PERSONS COMMITTING BANK FRAUD CRIMES

This subtitle provides for rewards to individuals filing declarations with the Attorney General regarding information leading to a criminal conviction of persons involved in banking law violations, and a share of assets with such individuals providing information leading to civil money penalties recovered by the federal government. Furthermore, Subtitle H permits a declarant to bring a suit for civil money penalties pursuant to Section 951 of the Financial Institution Reform, Recovery and Enforcement Act in certain circumstances approved by the Attorney General.

This subtitle originated in S. 1970 and has been revised to reflect concerns raised by House members about the desirability of permitting private litigants to sue persons involved in misconduct affecting a financial institution. Subtitle H now provides that an individual may bring an action on behalf of the United States subject to the approval of the Attorney General only under section 951 of the Financial Institution Reform, Recovery and Enforcement Act of 1989 for civil money penalties. The precursor to this subtitle permitted individuals to sue on behalf of the government in other types of civil actions. Additionally, Subtitle H provides that an attorney hired by the Attorney General to conduct such a suit may be paid by the federal government on a contingency basis only, and not on an hourly fee basis. House members believed that permitting fees to be paid on a contingency basis only would discourage the filing of frivolous suits. A declarant providing information resulting in a conviction of a person for a banking law violation is entitled under this subtitle to a reward from a special fund containing appropriated funds. Under the Senate's initial version, the fund was to be made up of fines obtained from convictions for banking law violations that would otherwise have gone into the Victims of Crime Fund, 42 U.S.C. § 10601. Certain House members expressed concern about tapping into funds that would otherwise have gone into the Victims of Crime Fund.

SUBTITLE I—TECHNICAL AND MISCELLANEOUS AMENDMENTS

Section 2597

Section 2597(a) addresses some technical problems arising from section 902 of the Financial Institution Reform, Recovery and Enforcement Act (Public Law 101-73). First, it adds the word "or remedy" in the cease and desist authority provisions of the banking statutes, authorizing any Federal banking agency to issue a C&D order to require a party to "take affirmative action or remedy to correct any conditions resulting from any violation or practice," clarifying the language.

Second, it corrects a minor mistake made in the Financial Institution Reform, Recovery and Enforcement Act. Section 1818(b)(4) of title 12 United States Code was amended by section 902(a)(1) of the Financial Institution Reform, Recovery and Enforcement Act to strike "subsections (c) through (f) and (h) through (n)," and insert instead "subsections (c) through (s) and subsection (u)", to reflect other changes in the enforcement provisions in the Federal Deposit Insurance Act. (This clause applies enforcement power to foreign banks and subsidiaries.) Unfortunately, subsection (f) was not in the previous Clause (4), so that the Financial Institution Reform, Recovery and Enforcement Act was striking one subsection not in the law. Consequently, the Law Revision Counsel refused to make the changes to the United States Code which were called for, even though Congress clearly intended to incorporate the new lan-

guage. While the public law provision would apply and would usually supersede this omission in the United States Code, keeping the previously terminated provisions in the United States Code would have been very confusing. Subsection 2569(a)(2) strikes the specific subsections necessary and corrects this problem.

Third, it clarifies language in 12 U.S.C. § 1818(c), the temporary C&D provisions in the Federal Deposit Insurance Act. The Congress intended in section 902(a)(2) of the Financial Institution Reform, Recovery and Enforcement Act to authorize temporary C&D orders to correct conditions by stating affirmative actions, including making restitution or providing reimbursement, restricting growth, and other actions which are specifically listed. However, the C&D provisions, the Financial Institution Reform, Recovery and Enforcement Act included the following language: Such order *may* include any requirement authorized under subsection (b)(6)(B)", which allows temporary C&D orders to "(B) restrict the growth of the institution". This language concerning subsection (b)(6)(B) was placed in the Financial Institution Reform, Recovery and Enforcement Act, in response to a request by one banking agency that this provision emphasize the importance of restricting growth by way of temporary C&Ds. Unfortunately, on August 3, 1990, the United States District Court (C.D. of California) held in the case of *Spiegel* v. *Office of Thrift Supervision* that by specifying this one type of affirmative action—restricting growth—there was a negative implication to limit temporary C&Ds to only this restriction and no other remedy or affirmative action. The court decided to disregard the "may include" language. In any event, it was never Congress' intention to limit temporary C&Ds to only growth restrictions, which would have substantially reduced the scope of temporary C&Ds. (At every juncture, Congress expanded the banking agencies' powers in the Financial Institution Reform, Recovery and Enforcement Act and the legislative history bears this out.) Accordingly, this subsection clarifies the banking agencies temporary C&D authority, to conform with congressional intent in passing the Financial Institution Reform, Recovery and Enforcement Act.

Section 2597(d) changes the statute of limitations of the civil penalty cases which the Attorney General is authorized to bring under section 951 of the Financial Institution Reform, Recovery and Enforcement Act, increasing it from five to ten years. This corresponds to the change in the criminal law statute of limitations for banking offenses, applying it to all violations occuring on or after August 10, 1984, five years prior to the enactment of the Financial Institution Reform, Recovery and Enforcement Act.

Section 2597 amends title 18 of the United States Code to cover branches and agencies of foreign banks and Edge and Agreement Corporations under the various provisions of title 18 that deal with financial institution crimes. During an ongoing federal investigation of a branch of a foreign bank by the Federal Reserve and the Justice Department, it was recognized that many provisions of title 18 that apply to United States banks do not apply to branches and agencies of foreign banks and Edge and Agreement Corporations even though they engage in international banking business in the United States under authority of the International Banking Act of 1978 or the Federal Reserve Act. The amendments correct this omission and include these banking offices under appropriate provisions of the criminal code.

FOOTNOTES

[1] The concealment must be "knowing." "An act is done 'knowingly' if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason." 1 E. Devitt & Co. Blackmar, Federal Jury Practice and Instructions § 14.04 (3d ed. 1977). A knowing standard of culpability is appropriate because the term "conceal" connotes a bad purpose or motive. *See* Random House Dictionary of the English Language 422 (2d unabridged ed. 1987) ("conceal" means "1. to hide . . . cover or keep from sight: *He concealed the gun under his coat.* 2. to keep secret; to prevent or avoid disclosing or divulging; to *conceal one's identity by using a false name*" (italics in original). It is therefore unnecessary to impose the corruptly standard that paragraphs (2) and (3) of new section 1032 impose. See nn. 2 and 3 infra.

Concealing an asset or property is the result of conduct, and conduct must be engaged in knowingly. See H.R. Rep. No. 1396, 96th Cong., 2d Sess. 30-36 (1980). The new offense, therefore, requires the prosecution to show that the defendant knew that the result of the defendant's conduct would be the proscribed concealment. The "endeavors to conceal" language reaches conduct that does not result in actual concealment. Where an endeavor is involved, the new offense requires the prosecution to show that the defendant's purpose was to bring about the proscribed concealment. *Cf.* W. LaFave & A. Scott, Criminal Law § 6.2 (2d ed. 1986) (crime of attempt requires "an intent to do an act or to bring about certain consequences that would in law amount to a crime").

[2] The impeding must be done "corruptly". The corruptly requirement means that the defendant's conduct must be engaged in "voluntarily and intentionally, and with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means. The motive to act corruptly is ordinarily a hope or expectation of either financial gain or other benefit to one's self, or some aid or profit or benefit to another." See 3 E. Devitt & C. Blackmar, Federal Jury Practice and Instructions § 34.08 (3d ed. 1978). See also H.R. Rep. No. 335, 99th Cong., 1st Sess. 6 n.24. (1985). A corruptly standard is appropriate because a person may engage in conduct that is otherwise lawful but that results in impeding the functions of the Corporation or Board. Such conduct should not be criminal unless engaged in with a bad purpose. An attorney who advises a client to declare bankruptcy, for example, may have thereby impeded the Corporation or Board, but rendering that advice should not be a crime unless that advice is rendered with a bad purpose.

Impeding the functions of the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the National Credit Union Administration is the result of conduct. The "endeavors to impede" language reaches conduct that does not result in an actual impeding. If an endeavor is prosecuted, the prosecution must show that the defendant's purpose was to bring about the proscribed impeding. *Cf.* W. Lafave & A. Scott, Criminal Law § 6.2 (2d ed. 1986) (crime of attempt requires "an intent to do an act or to bring about certain consequences that would in law amount to a crime").

[3] The placement of assets beyond the reach is the result of conduct, see H.R. Rep. No. 1396, 96th Cong., 2d Sess. 30-36 (1980), and must be done "corruptly." The corruptly requirement means that the defendant's conduct must be engaged in "voluntarily and intentionally, and with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means. The motive to act corruptly is ordinarily a hope or expectation of either financial gain or other benefit to one's self, or some aid or profit or benefit to another." See 3 E. Devitt & C. Blackmar, Federal Jury Practice and Instructions § 34.08 (3d ed. 1978). See also H.R. Rep. No. 335, 99th Cong., 1st Sess. 6 n. 24. (1985).

The "endeavors to place beyond the reach" language covers conduct that does not result in an actual placement beyond the reach. If the prosecution is for an endeavor, the prosecution must show that the defendant's purpose was to bring about the proscribed placing beyond the reach. *Cf.* W. LaFave & A. Scott, Criminal Law § 6.2 (2d ed. 1986) (crime of attempt requires "an intent to do an act or to bring about certain consequences that would in law amount to a crime").

[4] The maximum amount of the fine is determined under 18 U.S.C. § 3571 and would be the greater of (1) $250,000 for an individual or $500,000 for an organization; or (2) twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss inflicted.

[5] The requirement that the obstruction, or attempted obstruction, be done "corruptly" means that the conduct must be engaged in "voluntarily and intentionally, and with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means. The motive to act corruptly is ordinarily a hope or expectation of either financial gain or other benefit to one's self, or some aid or profit or benefit to another." See 3 E. Devitt & C. Blackmar, Federal Jury Practice and Instructions § 34.08 (3d ed. 1978). See also H.R. Rep. No. 335, 99th Cong., 1st Sess. 6 n. 24. (1985).

[6] The maximum amount of the fine is determined under 18 U.S.C. § 3571 and would be the greater of (1) $250,000 if the defendant is an individual and $500,000 if the defendant is an organization, or (2) twice the gross gain derived or twice the gross loss inflicted.

[7] The phrase "*directly* harmed by the defendant's criminal conduct" (italic added) precludes awarding restitution to a person harmed by an offense if the harm was tangential, derivative or remote. The use of "directly" precludes, for example, an argument that a person has been harmed by a financial institution offense that results in a payment from the insurance fund because, as a taxpayer, a part of that person's taxes go to the insurance fund.

[8] Rule 11(e) of the Federal Rules of Criminal Procedure regulates plea agreements.

[9] See 18 U.S.C § 3571.

[10] 18 U.S.C. § 3322(9d)(1) defines the term "banking law violation" to mean a violation of 18 U.S.C. § 215, 656, 657, 1005, 1006, 1007, 1014, or 1344, or of 18 U.S.C. § 1341, or 1343, but only if the violation affects a financial institution.

[11] The term "Federal financial institution regulatory agency" is defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act.

[12] Section 951 authorizes the Attorney General to bring a civil action to recover specified monetary penalties for a violation of 18 U.S.C. § 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 or 18 U.S.C. § 1341 or 1343, but only if the offense affects a federally insured financial institution.

IN TRIBUTE TO THE HONORABLE ARNOLD OLSEN

HON. DAN ROSTENKOWSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ROSTENKOWSKI. Mr. Speaker, it is my privilege to join with my colleagues in honoring the memory of our friend and former associate in the House of Representatives, the Honorable Arnold Olsen, a man for whom I have always had the highest respect.

Arnold Olsen was a man of many titles—attorney general of Montana, district judge, and Member of Congress. He had a long and impressive political career. There were ups and downs in Arnold's career, but he never abandoned his political and philosphical convictions. He knew how the political process worked, but did not let the process run him.

Arnold served in Congress for five terms. His tenure spanned the sixties—a time when environmental concerns first came alive. Arnold was on the forefront of this new issue—he advocated restrictions on the exporting of logs from the United States and worked to establish the Lincoln-Scapecoat Wilderness. His insight into politics and his intelligence and devotion to his various causes

brought him the regard and admiration of citizens all over this country—including the New York Times, which named Arnold, an outstanding Member of Congress.

Arnold's service was on the Committee on Public Works and Transportation and the Committee on Post Office and Civil Service, his terrific leadership in the areas of environmental preservation and his many other accomplishments.

My family joins me in expressing our heartfelt sympathy to Arnold's family. May he rest in peace.

TRIBUTE TO ARNOLD OLSEN

HON. J.J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PICKLE. Mr. Speaker, our colleague PAT WILLIAMS has informed me that Arnold Olsen passed away recently. I am sorry to hear that.

Arnold was a member of the 88th Club; that is, he came to Congress at the beginning of the 88th session in 1963. I was a member of that same class, and we have been very close friends over the years.

Each year in March our group has held a reunion, and Arnold made most of those sessions, on occasion coming all the way back from Montana.

During his tenure here, he was a very solid, stable, progressive Congressman, and we all held him in high esteem.

Arnold didn't make a lot of fiery speeches, but his strengths were notable. And, he influenced a lot of people by his simple solid American views.

As one of the 88th Club members, I am deeply saddened.

THE LATE ARNOLD OLSEN

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FORD of Michigan. Mr. Speaker, I join my colleagues in expressing my deep sorrow in the loss of a former colleague, Arnold Olsen of Montana.

Arnie represented the people of the western district of Montana from 1961 until 1971 here in the House of Representatives. In 1975, the Governor of Montana appointed him a judge of the second judicial district of Montana.

I had the pleasure of serving with Arnie on the Post Office and Civil Service Committee. We worked closely together and valued each other's opinions during the consideration of major postal rate legislation and the Postal Reform Act of 1970. As a matter of fact, he chaired the Subcommittee on Postal Rates, and was one of the most knowledgeable legislators on the postal ratemaking mechanism.

Also, Arnie was a champion for Federal and postal employees. He always had the concerns of the working man in mind during deliberations on pay, health benefits and retirement legislation. He was always on the front line for the Federal and postal employee.

Montana has truly lost a beloved son and I wish to extend to his family my deepest sympathy.

A TRIBUTE TO JUDGE ARNOLD OLSEN

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. YATRON. Mr. Speaker, I rise today in great sadness to pay tribute to my good friend and colleague, Judge Arnold Olsen. Judge Olsen, who represented western Montana for 10 years, passed away recently at the age of 73.

A native of Butte, MT, Judge Olsen was widely renowned as one of Montana's most hardworking Democratic leaders. He was an outstanding and dedicated Congressman, with a zeal to serve and represent his community. Indeed, he strived throughout his tenure in the House to defend and promote the interests of his constituents.

In addition to his work in the Congress, Judge Olsen served, at the age of 32, as the youngest attorney general in this history of Montana. During his tenure as attorney general he became widely acclaimed for bringing a virtual end to the gambling industry of Montana. During his second term as attorney general he won the Democratic nomination for the position of Governor of Montana. In 1975, he was appointed to the Montana First Judicial District bench and served in that office until this very month.

Mr. Speaker, with Arnold Olsen's passing, we have lost an impressive individual and a true leader. He championed the interests of his district and environmental issues. Arnold Olsen was a caring and compassionate man and a tremendous political leader and public servant. I extend my deepest sympathy to Judge Olsen's family.

ARNOLD OLSEN

HON. MORRIS K. UDALL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. UDALL. Mr. Speaker, I was saddened to learn of the death of our former colleague, Arnold Olsen of Montana.

As a five-term Member of this House, Arnold Olsen served with vigor, candor, and a conscientious attention to his district and to his State. He was a solid spokesman for his point of view, and a credit to the people who sent him to Washington.

Arnold and I shared common ground in some typically western battles on the floor. He was as good as his word and a good man to have on your side.

He began his career as the youngest attorney general in Montana history, and capped it after leaving this House with a 15-year career as a district judge in Butte.

Arnold Olsen was a good and a decent man, and a friend. My deepest sympathy goes to his family.

TRIBUTE TO ARNOLD OLSEN

HON. PAT WILLIAMS

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. WILLIAMS. Mr. Speaker, it is with sadness and a sense of loss that I share with the House the passing of a former colleague, Congressman and later Judge Arnold Olsen.

Congressman Olsen represented the western district in Montana, the district I now represent, in the halcyon days of the New Frontier, from 1960 until 1970. He was later appointed to a district judgeship in Montana. His court was in Butte, MT, which was his home and where he passed away.

Mr. Speaker, we will all miss Arnold Olsen. It has been said before, but it was never surer, this country is a better place because of Arnold Olsen.

HONORING JOSEPH F. ROMA

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ENGEL. Mr. Speaker, I rise today to join the Westchester County American Legion in honoring its immediate past commander, Joseph F. Roma, an honored veteran and community leader.

A life-long resident of Yonkers, Joseph Roma is well known as a man who cares deeply about his community and his country. He has organized many patriotic programs in his role as county commander and in his present post of commander of the St. Mary's Catholic War Veterans Post. He has won awards for his volunteer work in the American Association of Retired People. He has held a number of leadership positions in his 41 years as a member of the American Legion.

During World War II, Joseph Roma was awarded the American Theatre and European Theatre of Operation Medal. He participated in the Rhineland Campaign and received the Soldiers Medal for Valor. His military record is surpassed only by his record of community service.

We are proud to have a man like Joseph Roma in the Yonkers community. We thank him for all his efforts on behalf of his neighbors and his country, and we hope he can continue these activities for many years to come.

AVIATION NOISE PROVISIONS

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. OBERSTAR. Mr. Speaker, the House on October 27 passed a comprehensive Aviation Noise Policy as part of H.R. 5835, The Fiscal Year 1991 Budget Reconciliation Act. It is a good, strong bill that will reduce airport noise by accelerated phase-out of the noisiest airplanes, and will also assure the flying public a truly national aviation system.

Airport noise is one of the most complex, bitterly contested aspects of aviation today. Local citizens are demanding that their airports control airport noise through noise or access restrictions, at a time when more and more Americans are taking to the airways. Airlines are willing to invest in more new, quieter airplanes, but do not want to be confronted with a "patchwork" of local restrictions on aircraft operations that could disrupt the national aviation system. Airports are caught in the middle. Their efforts to expand capacity to reduce delays and accommodate the flying public more and more frequently meet with determined opposition from residents near airports.

The new passenger facility charges [PFC's], also included in the aviation provisions of reconciliation, will help provide the capital needed to expand our national airport capacity, but that expansion must also accommodate the needs of those residents living near airports, who will be impacted by increased flights.

The House Aviation Subcommittee which I Chair held 4 days of hearings on airport noise, lasting 50 hours, preparatory to taking up the issue in great detail next year. However, the Senate presented us with a very unbalanced proindustry aviation noise bill within the reconciliation package, and insisted that the House accept it without change as the price for all other aviation provisions, including the PRC's badly needed by airports.

This left us with the alternatives of either striking all the aviation-related provisions, or writing a balanced noise policy, one that takes into account the very real concerns of the people living near airports—who had been left out of the Senate negotiations with the industry and the administration. We chose the latter alternative and, I believe, succeeded.

Under the bill as passed, the Secretary of Transportation must issue regulations establishing a national noise policy by July 1, 1991.

PHASE-OUT OF STAGE 2 AIRPLANES

The bill requires that stage 2 aircraft, the oldest and noisiest aircraft, must be phased out by December 31, 1999. However, an airline may seek a waiver from this deadline if 85 percent of its fleet is stage 3 by July 1, 1999. In order to receive the waiver, the carrier must have a plan with firm orders for making all its aircraft stage 3 by December 31, 2003. The House conferees expect the airlines and DOT to make every effort to achieve the 1999 deadline to seeking or granting a waiver.

Mr. Speaker, these dates and percentages are important.

With no noise restrictions whatsoever, the Department of Transportation projects a national fleet of 1,011 stage 2 airplanes by the year 2000, or roughly 22 percent of the total 4,807-airplane fleet. With no mandated phase-out, numerous stage 2 aircraft will still be operating in 2010.

Even the industry concedes, however, that restrictions will have to be imposed prior to 2010. The Aviation System Capacity Task Force, representing the aviation industry, proposed at our hearing a total phase-out of stage 2 aircraft by 2003, and that individual airports be permitted to exclude all stage 2 aircraft after December 31, 1999.

The agreement struck between the House and the Senate will mean that the stage 2 fleet will be approximately 600 instead of 1,100 by the year 2000 and that it will be zero by 2003.

I ask the General Accounting Office to compute for me the cost to the airlines of phasing out stage 2 aircraft for the years 1999 and 20003. GAO responded:

Assuming that the airlines would either replace their aircraft or retrofit them using hush kits or re-engining (whichever costs less), the costs for the years 1999 and 2003 would be $2,265 million and $1,534 million, respectively. The difference between these two costs would be $731 million.

GAO assumes that the airlines would spread this $731 million over the 5-year period from 1995 to 2000, meaning $150 million in additional annual costs industry-wide during this period, in an industry whose annual operating expenses are $65 to $70 billion, or a 0.2 percent increase in operating expenses. This did not seem, to me, an exorbitant cost for bringing quite to communities 4 years earlier than what the industry and the Senate were proposing.

To assure that the airlines achieve the deadline, the House insisted that DOT establish a firm schedule for phase-out of stage 2, including interim compliance dates, taking into account the impact on competition, on small community air service, on new entrants to the airline industry, and the impact of aircraft noise on persons residing near airports.

Finally, no stage 2 aircraft imported to the contiguous United States after enactment can be flown unless it is hushkitted or re-engined to stage 3. This means that the stage 2 fleet will not be permitted to grow any larger than it is today.

LOCAL AIRPORT RESTRICTIONS ON STAGE 2

Any local noise restrictions which airports have put in place on or before October 1, 1990 are unaffected by this bill. Airports wishing to apply new restrictions after October 1, 1990, must publish an analysis of the costs and benefits of the restriction, a description of alternative restrictions, and a comparison of costs and benefits of restrictions and alternatives. The restriction would go into effect in 180 days. It needs no review or approval by DOT.

LOCAL AIRPORT RESTRICTIONS ON STAGE 3

Restrictions on stage 3 aircraft in place as of October 1, 1990, are unaffected by this bill. Restrictions on stage 3 aircraft proposed after October 1, 1990, must either be agreed to by the airport and air carrier or be approved by DOT. In approving a proposed restriction, DOT must find that it first, is reasonable, nonarbitrary, and nondiscriminatory; second, it does not create an undue burden on interstate or foreign commerce; third, it is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace; fourth, it does not conflict with any existing Federal statute or regulation; fifth, there has been an adequate opportunity for public comment with respect to the restriction; and sixth, it does not create an undue burden on the national aviation system.

Airports which impose unapproved restrictions after October 1, 1990 would become ineligible for funds from the Airport Improvement Program, and may not impose Passenger Facility Charges.

GENERAL AVIATION

Separate provisions govern stage 2 General Aviation aircraft of under 75,000 pounds.

LIABILITY

The Federal government would be liable for noise damages to the extent the damage was caused by its disapproval of a restriction.

SLOTS

DOT is required by July 1, 1991, to initiate a rulemaking to consider more efficient methods of allocating existing capacity at the four high-density airports—La Guardia, Kennedy, Washington National and O'Hare—in order to provide improved opportunities for operations by new entrant air carriers. This provision would not permit any increased flights into or out of these airports.

Mr. Speaker, the Airport Noise and Capacity Act has gone to the President to be signed into law as part of the budget reconciliation. I want to thank my House colleagues for their support in pressing for a balanced noise policy, and the 80 witnesses at our 4 days of noise hearings, for their invaluable help in fashioning a fair, balanced aviation noise policy.

HONORING OFFICER JOE CANATA OF HOLYOKE, MA

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. CONTE. Mr. Speaker, it is with great pleasure that I pay tribute today to a very special constituent of mine, Officer Joe Canata of the Holyoke Police Department. Mr. Canata, better known as Officer Joe, has been the leading force behind the Drug Awareness Rehabilitation Program [DARE] in Holyoke and the surrounding towns since he volunteered for and was assigned to DARE school in August 1987.

Officer Joe was appointed to the Holyoke Police Force in November 1970. For 9 years he walked the beat in Holyoke's toughest section, and during those years he come into prominence when he received the police department's highest honor, the Medal of Merit for saving a young boy's life when he accidentally hung himself. A short time later Officer Joe came to national attention when the people of that section of the city began a "Bring Back Joe" crusade when his supervi-

sors assigned him to another section of the city. This happened at a time when racial tension was high and when policemen were looked down upon. Officer Joe had gained such respect and affection of the people of that ward that their petition drive put Officer Joe back on the beat.

Since that time, Officer Joe's popularity has continued to grow because of his selfless dedication to the DARE Program. To attest to this fact he turned down a promotion to the rank of sergeant which would have meant a $13,000 raise which he certainly could have used since he had his three children in college.

Officer Joe is doing all the same things that all other DARE officers are doing—teaching, fund raising for t-shirts, pencils, buttons, et cetera, with DARE logos. He gives each student a binder notebook so they can hold all of their materials dealing with substance abuse. He continually gets press time for the program and he has a DARE graduation twice a year.

What makes Officer Joe stand out from the rest is that he is on call 24 hours a day, 7 days week, anyone can call him at his home or his office. He has office hours every day of the week, and he has an answering machine so he does not miss anybody. He has a DARE student of the month and hires a limousine to pick up the student at school and take him or her to lunch.

Schools are continually throwing him welcoming parties and hardly a month passes when he isn't asked to speak to parents groups and civic organizations, in and out of Holyoke. All of the DARE officers in Massachusetts are good; however Officer Joe has a natural ability to relate to young people. The students cannot wait to see him, to hug him and tell him they love him and also to present him with posters, photos, and cards of admiration.

It is certainly evident that Officer Joe enjoys both the affection and the respect of the entire community, through the many awards that adorn his office walls. Kind and caring, he is tireless in his efforts to serve the entire community. From the beginning of his career in public service, he chose to help, educate and in every way, assist people. His attitude has made him a positive force in this area. Another tribute to Officer Joe's success is that he is a people-oriented person who is easily approachable. His door is always open and he gives very generously of his time and talents to anyone in need. It comes as no surprise to those who know Officer Joe that he was recently honored by the State of Massachusetts by being chosen as the first recipient of the Massachusetts DARE Officer of the Year Award.

Besides being Holyoke's DARE officer, he has served as a mentor officer and trained over 140 DARE officers. Joe is a Vietnam Veteran, the president of the Save Our Students Organization [SOS], and he is the band leader for one of western Massachusetts most popular oldies bands, the Memories. Officer Joe is also a family man, he has been married for 23 years to his wife Connie, and he has three children, Karen, Joey, and Tony.

Mr. Speaker, the world could use a few more men like Joe Canata. I am proud that he is a member of my district and I thank him for his continued efforts against substance abuse to preserve this country's most valuable resource, its youth.

GOLDEN RULE; GOLDEN RIP-OFF

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. STARK. Mr. Speaker, every day I get letters from people around the Nation complaining about abuses in the health insurance field.

I don't usually put them in the RECORD, but there is one company that loves to lobby against Medigap regulation and Government "interference" in the health insurance market. They have even helped set up a senior lobbying front.

Thus it is interesting to note when this company fares very poorly in Consumer Union's report rating health insurance products.

It is also worth including the following letter I received today from a New Englander about her experience with Golden Rule Insurance Co. of Indianapolis, IN. I would entitle her letter, Golden Rip-off:

SEPTEMBER 22, 1990.

DEAR REPRESENTATIVE STARK, I came across an article in reading A.A.R.P. Bulletin. The title was "Dubious Mailings Deluge Homes" in the September issue.

I believe the Golden Rule Insurance Company of Indianapolis should be looked into.

In 1988 I took out a health insurance policy with this company. Due to a prior illness the company attached a two-year rider.

My quarterly payment was three hundred and fifty nine dollars. I made my payment in October of 1988. Two weeks before my January 1990 payment was due I received a letter from this company stating my January payment would be increased to six hundred and seventy seven dollars. I was devastated when I received this letter. It means I could not get the medical help I needed as I no longer could afford the almost double payment.

I am outraged to think this company is allowed to do business in this dubious way.

Hope something can be done to stop these kinds of people from selling insurance.

I am writing to you for your help. I have lost my coverage, but other people may not have to lose theirs.

Sincerely

———— ————.

P.S. Please note my coverage increased when rider was about to expire.

TO ACCOMPANY THE CONFERENCE REPORT ON S. 358

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. COLEMAN of Texas. Mr. Speaker, I rise in support of the conference report to S. 358/H.R. 4300, the Immigration Act of 1990 as amended by our action last evening. I would like to take this opportunity to thank the members of the Border, Hispanic and Black caucuses for helping to delete the provision in the bill that would establish a pilot project that could have very well led to the adoption of a national identification system. That provision was objectionable and repugnant enough to worth risking the defeat of the entire bill for this session of Congress and my friends from California, EDWARD R. ROYBAL and ESTEBAN EDWARD TORRES, and Texas, JOHN BRYANT, deserve special recognition for helping to sucessfully repel the effort to establish national identification cards.

Today I would like to achnowledge the distinguished chairman from Texas, Mr. BROOKS, for bringing the immigration reform package back today without the objectionable provision so that we will have some meaningful reform in the 101st Congress. Although the original legislation passed by this House was much better than what we are getting out of conference, I still find that the conference report represents an improvement over existing law and will, therefore support it.

Among the various provisions in this legislation that I support, I would like to specifically highlight for my colleagues those concerning family reunification, the authorization calling for an additional 1,000 Border Patrol agents and the conference report's language that should help keep faith with the Federal Government's commitment to local governmental units during the enactment of the 1986 immigration reform package. These components of our present bill are important enough to outweigh the negative aspects of the legislation.

First, the conference report reestablishes family reunification as the cornerstone of our Nation's immigration policy. Although I am concerned that family reunification provisions were reduced considerably from what was approved by the House, the conference report still provides for a permanent, though modest, increase in family-based immigration and for a temporary, special allocation of visas to facilitate the reunification of the newly legalized with their family members abroad.

I would remind my colleagues that, due to a long backlog of applications, permanent residents must wait a minimum of 22 months to be reunited with their spouses and children. To frustrate the ability of immigrants to be with their close family members would betray our core American values. Consequently, family reunification should continue to be a primary concern in our Nation's immigration law and that emphasis is maintained despite efforts to replace family-based immigration with skilled immigration. Although not perfect, the conference report strikes a reasonable compromise between family reunificaiton, diversity, and employment-based immigration.

Moreover, I would like to point out the bill authorizes an increase in the number of Border Patrol personnel by 1,000 in fiscal year 1991. In addition to stopping illegal immigration, the Border Patrol was involved in close to 5,000 narcotics seizures valued at over $1 billion in only the first 6 months of fiscal year 1989. Both missions of the Border Patrol are important and should continue to be supported by Congress and the Bush administration.

Moreover, Mr. ROYBAL and I have also been concerned about the need for the Federal Government to fulfill its commitment to

State and local governmental units when the Immigration Reform and Control Act of 1986 was passed. As Mr. BERMAN correctly stated during floor debate on October 2, 1990, "[W]e have large amounts of sums in that original appropriation that not only have not been spent, but are being held back from the States." Public hospitals, for example, are told State legalization impact assistance grant funds are to be the program of last resort and that they should collect what they can from patients and third party sources. Yet, if they bill patients, they are told that billed amounts are not eligible for reimbursement from SLIAG funds. This places public hospitals in a catch-22 situation and, therefore, the House conferees should be commended for attempting to clear up this important concern and congressional intent through language in the joint explanatory statement of the committee of conference.

Finally, although I come here today recommending passage of this legislation, I agree with Mr. BRYANT that the bill has a curious provision which would allow 10,000 people to enter this country based upon the fact that they are millionaires. This borders on selling our citizenship, and I would hope this policy will be reconsidered early in the next session of Congress.

A TRIBUTE TO CONGRESSMAN BILL NELSON OF FLORIDA

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MAZZOLI. Mr. Speaker, I rise today to bid farewell to a colleague and friend, Congressman BILL NELSON of Florida, who will be leaving Congress at the end of the session.

BILL has served in the Congress for 12 years, after serving in the Florida House of Representatives for 6 years. During his legislative career, BILL sought to enact sensible legislation to address the opportunities that came with Florida's growth in the 1970s and 1980s. This includes education and growth management issues.

As a member of the House, BILL became an expert on the Nation's space program. While chairman of the Space Science and Applications Subcommittee, BILL NELSON trained and flew aboard the space shuttle *Columbia* as a member of the crew. He also played a vital role in examining America's space program after the horrific *Challenger* explosion in 1986.

During his tenure in Congress, BILL served on the Budget Committee for his first three terms and then on the Banking, Finance and Urban Affairs Committee.

Mr. Speaker, I wish BILL NELSON and his wife, Grace, much health and happiness in the months and years ahead. He will be deeply missed by all.

HONG KONG ELECTION LAW: SUGGESTIONS FOR DEMOCRACY

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PORTER. Mr. Speaker, on September 15, 1991, for the first time the people of Hong Kong will go to the polls to vote for representatives of Hong Kong's legislative council (LegCo). The world will watch as the people of Hong Kong move toward a new era—Hong Kong people ruling Hong Kong.

Hong Kong is in the process of developing a system of campaign laws that will serve as the guidelines for the upcoming elections. The development of fair and stable election procedures prior to the Chinese taking control of Hong Kong in 1997 is essential to developing a foundation of democracy in Hong Kong that will guarantee the continuation of liberty into the 21st century and serve as an example of freedom for the rest of China.

Ms. Karen Muchin, a student at the John F. Kennedy School of Government at Harvard University, who observed the political situation in Hong Kong last summer, has recently released a series of recommendations on Hong Kong's election law. These recommendations are designed to simplify the election process for voters who have never before had an opportunity to participate in the electoral process and to ensure fair elections and equal representation for all citizens of Hong Kong.

Free and fair elections in Hong Kong in 1991 are an essential first step in ensuring that Hong Kong maintains the level of democracy and economic liberty it was promised under the 1984 Sino-British Joint Declaration on Hong Kong. A copy of the executive summary of Ms. Muchin's recommendations follows.

DEMOCRATIC ELECTIONS IN HONG KONG

THE IMPORTANCE OF ELECTION LAW: A COMPARATIVE STUDY

(Submitted by: Karen Muchin, Masters Degree candidate, Master in Public Policy, Harvard University, John F. Kennedy School of Government, September 1990)

EXECUTIVE SUMMARY: RECOMMENDATIONS

Fourteen recommendations are listed below. Since democratic elections are new to Hong Kong, it may not be possible to implement all the legislative changes proposed before the 1991 elections. It should be noted, however, that the Hong Kong Legislative Council has yet to commence debate over the extensive series of electoral provisions tabled by the Government on July 25, 1990. Many of the recommendations contained in this report could be adopted by the Council and in place well before the 1991 elections. In the author's view, the most urgent recommendations to implement for 1991 are Recommendations 1, 3, 5, 6, 7, 8, and 10. They have been marked by a double asterisk (**).

Chapter 1: Electoral District Boundaries

1. **Specific legislative criteria should control the division of electoral districts. Such criteria should mandate that electoral district populations be roughly equal in size, taking into account specific factors such as the maintenance of geographical and community integrity.—The division of electoral districts is subject to serious political abuse and gerrymandering. Detailed legislative criteria will minimize the potential that electoral boundaries will be drawn in such a way to favor certain groups or interests. Legislative criteria will also allow for judicial review of districting decisions.

2. An independent boundary commission should be established to divide boundaries subject to these legislative criteria.—Because of the tendency of the executive power to divide boundaries in a fashion politically favorable to it, an independent, multi-partisan boundary commission should be responsible for districting decisions.

Chapter 2: Voter Registration

3. **Voter registration should be automatic.—The Government should seek to have as many eligible voters registered as possible, for the higher the number of registered voters, the higher the number will be of persons who actually cast ballots. Since the Government already possesses all data necessary to register voters through the Registration of Persons Ordinance (name, age, I.D. card, address, and length of residence in Hong Kong), permanent residents should be automatically registered as voters.

4. If an automatic registration policy is not implemented, then voter registration should remain open until the last day of the candidate nomination period.—This policy, which is followed in Britain, will increase voter participation. Experience in other countries has demonstrated that many qualified electors do not choose to register until close to polling day.

5. **An overseas electors policy should be implemented so that eligible Hong Kong voters residing overseas can vote in legislative council elections.—Eligible voters should not be barred from one of their most basic civil rights by virtue of the fact that they are temporarily not in Hong Kong on voting day. Granting the right to vote to residents temporarily overseas will strengthen the commitment and personal ties of those persons to Hong Kong. These persons ought to be able to vote for the government leaders who will make decisions affecting themselves personally, their families and their businesses.

6. **Voting age should be 18 years of age.—The majority of democratic countries legally allow persons 18 years and older to vote, as does the People's Republic of China. Groups of young people have already petitioned the Hong Kong Government to lower the voting age, demonstrating their interest in participating in elections. The Government, also, has recently recognized persons 18 and older to be adults in most situations by lowering the legal age of majority.

Chapter 3: Election Day

7. All three levels of elections should be held on the same day.—Voter participation will rise and the Government will save money. A series of three elections over six months may cause people to lose interest and become cynical.

Chapter 4: The Ballot

8. **The ballot paper should allow for 6 English words and 12 Chinese characters stating the profession, title, or organizational affiliation of the candidate (including Independent).—This policy, which is practiced in Britain, will assist the voters in casting educated ballots, for many voters will recognize candidates as much by their title or organizational affiliation as by their name.

Chapter 5: Television and Radio Stations

9. **Television and radio stations should be required by law to grant all candidates time for free usage. The government should also initiate or sponsor public debates among the candidates.—Television is Hong Kong's most powerful and widely followed medium of communication. Television and radio broadcasts can play a significant role in educating voters about the candidates' positions and informing them of issues. By allowing candidates access to television and radio, voters will become more informed about the candidates and more involved in the political process.

10. **Television and radio stations should afford reasonable opportunity for the discussion of conflicting views on issues of public importance.—Hong Kong must devise appropriate legislation and standards to guide broadcasters and ensure that all candidates receive fair treatment. Unlike the press, television and radio are each monopolized by two stations. Candidate and interest groups have no legal access to this monopoly.

Chapter 6: Electoral Commission

11. An independent, nonpartisan electoral commission should be established to consider, administer, arbitrate, and publicize all electoral matters.—An independent electoral commission would help minimize the partisan nature of election law and procedure decision-making. Such an independent commission is particularly necessary in Hong Kong, given the different methods by which the Governor/Chief Executive and Legislative Council are chosen both before and after 1997.

Chapter 7: Election Expenses and Fundraising

12. The government should refund half the election expenses of candidates who receive greater than 20 percent of the votes.—This law—similar to laws in Canada and Australia—will relieve candidates from needing excessive funds and allow persons with differing financial means to run in the election. Allowing only partial reimbursement will minimize the costs to the Government and require candidates to demonstrate their level of serious support in the community.

13. No individual should be allowed to contribute more than $5,000 to any single candidate or more than $50,000 total. Candidates and parties should file all contributions received over $500.—Candidates will be prevented from raising campaign funds from a few constituencies and becoming beholden to these persons or specific interests.

14. Expense ceilings should be stated in the legislation or affirmatively approved by the legislature. If district populations differ in size by greater than 10 percent, then ceilings should be set at a specific amount plus an amount which varies according to district population. What constitutes an election expense should be statutorily defined.—It should be the responsibility of the Legislative Council rather than the executive branch to determine election expense ceilings. If Recommendation 1 of this report is not followed and districts differ greatly in size (see Appendix B), campaigning will be more expensive for those candidates from larger districts. Ceilings should thereby vary according to district population. Finally, statutory definition of what constitutes an election expense will alleviate confusion for the candidates and clarify the intent of the legislature for the judiciary.

PRESENTATION ON CAPITOL HILL BY "VOICES FROM THE STREET"—ACTORS WHO HAVE KNOWN HOMELESSNESS

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. LANTOS. Mr. Speaker, the plight of the homeless is one of the great tragedies of our generation. In order to highlight this problem which faces communities throughout our Nation, the Select Committee on Hunger, Hill staffers for the hungry and homeless, and my wife, Annette, and I recently sponsored some activities here on Capitol Hill which focused attention on the homeless.

Events included a photographic exhibit on the homeless and a program featuring some very talented individuals who have known homelessness. Photographer Chris Keeley's exhibit, "Powerless Homeless" poignantly portrayed the many faces of the homeless. As part of the program, Ella McCall from the performing group Voices from the Street give a short dramatic monologue about the plight of the homeless.

Voices from the Streets is a performing troupe comprised primarily of people who are homeless. The material that they perform is based in authentic events, and most often is performed by the very person who experienced them. Voices from the Streets began at the Federal City Shelter here in Washington, DC, in 1986. The homeless and formerly homeless individuals who make up the troupe have performed their touching stories before many audiences throughout this area, including a performance here on Capitol Hill 2 years ago. That performance inspired my wife, Annette, to work with homeless in my own congressional district in San Mateo, CA, in producing "Home Run," which dramatically conveyed the tragedy of homelessness in the bay area.

Suzanne Goldman is the author of the monologues and chairperson of Voices from the Streets. Karen Simon is the director of the troupe, and was with us on Capitol Hill, as was Carl Fennelly of the Community for Creative Non Violence, who also works with the group.

Mr. Speaker, I want to share with my colleagues the dramatic story related by Ella McCall. Ella is a social worker, and this monologue tells her own story.

THE SOCIAL WORKER'S STORY.

(By Suzanne Christman Goldman)

Love you Natasha. Love you Aeysha. Love you Tyrone. Love you Brian. Love you Shameeka.

Each day I say, "I love you" 700 times.

Each day I say, "gimme a big hug baby" 700 times.

Each day I say, "I believe in you" 700 times.

For me 700 of the most endangered children in the world are the children who live in the family shelter where I'm a social worker. How can I convert an old, mean cooking motel on a screeching thoroughfare into a sanctuary where a family can find peace from the war that poverty has waged?

How do I help people to survive in one crowded motel room when up to seven people have to share space that would drive one person crazy.

How do I help devastated babies and mothers and fathers feel like greeting each new day with a hopeful heart? How do I repair broken hearts and shattered dreams: These are challenges for which the text books give no answers—challenges unprecedented in American history.

So I respond by taking the Road Less Traveled. And I am guided by Jesus who said that, "Whatsoever you do for the least of my children you do for me."

Even though I'm the mother of seven children and my oldest is almost thirty, I still dream of what I really want to be when I—if I—grow up. I want to find out if I can go to school to learn to be a magic godmother to my shelter families.

If I were a magic godmother I would erase from their memories 200 years of being separate and unequal citizens.

If I were a magic godmother I would erase 200 years of a whole race feeling bad about themselves because bad comes from bad.

If I were a magic godmother I would tell my baby boys that being candidate for the President of the United States is what being a black man is all about.

If I were a magic godmother I would tell my baby girls that being an Olympic winner while studying to be a doctor is what being a black woman is all about.

But I don't have a wand that will create housing which would help my boys and girls learn and grow and prosper and dream. In a family shelter there isn't even the space for private tears. I don't have a magic wand to cure depression in a child. Can only say, "love you baby" and pray that I'll be able to find the family normal housing before it is too late for that baby.

I don't have a magic wand to help the mothers of these children who have lost everything from their former lives to their self-respect. To see your baby in pain when you can't make the pain go away is a terrible curse for a mother. Can only say, "love you and you got to keep yourself together for your babies."

I don't have a magic wand to keep the jackals of the drug world from addicting my mothers. No wand to keep them from bartering their lives and their checks and their health for a few chemical minutes free from the pain of failure. Can only say "I love you" and hope for a miracle.

I don't have a magic wand to make my little babies fall out-of-love with fancy sneakers, designer clothes and the toys advertised on T.V. For those who have so little, the rest of the worlds seems to have all the 'good stuff'. So . . . when the pusher comes crawling to recruit babies to carry his filth, he says, "Do you like these sneakers? Like this chain? You can have it all and more. It's real easy." Can't convince a child that drug trafficking is a sin against society because that child feels that society has turned it's back on him. Can't convince a child that drug trafficking is a sin against God because the child feels that God only loves children who aren't poor. Got no magic wand. Can only say I love you and pray for a miracle.

I don't have a magic wand to give my babies the knowledge that society cherishes them—that society values them . . . that society needs their brains and talents. So . . . when the jackal with his drugs goes knocking on the desperate doors of my 7, 9, and 10 year old babies and says, "When you take

this stuff, you gonna feel like Christmas everyday." How long can these children resist the temptation. I need nothing less than an army of God's angels to keep these babies safe. Got no magic wand. Can only say I love you. Can only beg, "Please don't put yourself in mortal peril. We've already buried four babies this year."

I've got no magic wand to make my babies want to go to school. These innocent little ones are ashamed of their address. "I'm hurting real bad, Ms. McCall. I wish I weren't alive." In their schools where peer approval is the kiss of life and disapproval the kiss of death, the other kids call them "dirty baby" punching them with their fists and their words.

Damn! My babies are just as smart and beautiful and good as other babies. They're braver than most and divinely forgiving of our trespasses against them. They've survived times that would try the soul of the strongest man and they're little kids. Can only say I love you and pray for a miracle.

Those who have not tasted the tears of my babies say, "Ella, you love those babies too much." No such thing as too much love. No such thing as too many hours at the shelter. No such thing as too many treats. The thieves called poverty, deprivation and drugs have already robbed them of a happy childhood. How can I rob them of my hugs. How can I deny them my kisses.

I think that I'll never learn professional detach. You see I was a mother myself when I was 14. I raised seven children alone. I was raped, abused and homeless just like the people I serve.

When I could find no light at the end of the tunnel, good folks with unconditional kindness said love you Ella. Love you Ellas gave me the push to get by GED. Love you Ella gave me the courage to earn my Bachelor's Degree from American University. Love you Ella gave me the self-belief to get my master's degree from Catholic University.

You can never say love you too much. My job as a human being is to say I love you until my last breath. There are hundreds of thousands of precious and irreplaceable resources in homeless shelters across this land. They are as endangered as any wilderness park, any river, any rare animal in America. When together we can say love you baby together we will begin to save that which is most precious in the eyes of the Lord.

CELEBRATING THE LEGACY OF DUKE ELLINGTON

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. DIXON. Mr. Speaker, I am pleased to join the Black American Heritage Foundation in commemorating the 25th anniversary of Duke Ellington's first Sacred Music Concert, held September 16, 1965, at Grace Episcopal Cathedral in San Francisco.

Born in the District of Columbia on April 29, 1899, Edward Kennedy (Duke) Ellington attended Armstrong High School, where he demonstrated an early talent for art and music. Though offered an art scholarship by the Pratt Institute while at Armstrong, Ellington opted to pursue his love of music, forming a band which performed original compositions at various Washington, DC functions, before moving to New York City in 1923.

In New York, Duke Ellington would achieve great fame as a bandleader, pianist and composer. Having completed successful engagements at Barron's nightclub in Harlem and then at the Kentucky Club in midtown Manhattan, the Ellington Orchestra achieved national prominence during a 5-year stint (1927–32) at Harlem's famed Cotton Club, where its performances were regularly broadcast over the CBS radio network. The Ellington reputation quickly spread across the Atlantic as the band toured Europe in 1933 and again in 1939. The Ellington band also appeared in several Hollywood films during the mid to late 1930's.

Over the years, Ellington would cultivate his musical gifts—largely independent of formal training—to become one of the 20th century's greatest composers irrespective of category, and a seminal figure in modern American music. Wary of the label "jazz" for its early associations with bordellos and speakeasies, Ellington presided over the maturation of "Negro music"—his label of preference—into America's foremost cultural achievement. Ever-conscious of the very deep African roots of "Negro music," Ellington developed many of the harmonic and rhythmic structures which comprise the basic foundations of modern jazz—providing rich fodder for the influential bebop revolution of the mid to late 1940's and early 1950's.

Ellington was both innovative and prolific, producing an enormous body of music in a broad range of styles, moods, textures, and formats. The Ellington canon consists of over 900 works including sacred music, compositions for motion pictures, plays, musical comedies and ballets, miniature concertos, symphonic works such as Harlem Suite (1950), and a large collection of popular song hits, including: "In My Solitude," "Take the A Train," "It Don't Mean a Thing," "Sophisticated Lady," "Satin Doll," "Don't Get Around Much Anymore," "Mood Indigo," "I Let a Song Go Out of My Heart," and "In a Sentimental Mood."

During the 1930's, Ellington became the first jazz composer to write extended compositions, with "Creole Rhapsody" and "Reminiscing in Tempo." In 1939, Ellington enlisted Billy Strayhorn as arranger and associate composer. The two collaborated on the great majority of compositions played by the Ellington orchestra from 1939 to 1967, when Strayhorn died.

Virtually all of Ellington's compositions were written expressly for his own orchestra, tailored to showcase the individual styles of his outstanding soloists, several of whom—most notably, saxophonist Johnny Hodges—achieved personal fame through their association with the Ellington orchestra. It was suggested by Ebony magazine writer Phyl Garland that Ellington's lack of formal training "enabled him to devise the daring innovations that came to mark his music—the strange modulations built upon lush melodies that ramble into unexpected places; the unorthodox construction of songs rivaled in their sensitivity only by the classical compositions of the French Impressionists; the bold use of dissonance in advance of the time that has earned for him the admiration of formal composers like Igor Stravinsky."

Ellington's immense contributions to American music earned him the Bronze Medal of the city of New York and the N.A.A.C.P.'s Spingarn Medal. In 1967 he received honorary degrees from Yale, Morgan State and Washington universities, and in 1970 he was awarded the Medal of Freedom by President Richard Nixon. Also that year, Ellington was inducted into the National Institute of Arts and Letters. He was awarded the Legion d'honneur by the Government of France in 1973. Duke Ellington died in New York in 1974 at the age of 75.

Ellington would no doubt be pleased today to see the resurgence in popularity of classical jazz music that began in the mid-1980's. Appropriately, the talented young vanguards of this movement approach their craft with a strong sense of history and a thorough appreciation of the contributions made by the pioneers of their art form. Among jazz musicians and listeners of all ages, there is no one figure in the history of jazz more revered or more thoroughly studied than Duke Ellington—testament to the enormity of Ellington's contribution to the development of America's classical music.

In the Nation's capital, the grand legacy of Duke Ellington is celebrated daily at the Duke Ellington School of the Arts where high school students with demonstrated talent absorb an enhanced curriculum featuring innovative programs in the performing and visual arts. It is with great pleasure that I ask you to join me today in applauding the Black American Heritage Foundation for its role in helping to preserve and promote the legacy of America's greatest composer through its commemoration of Duke Ellington's first Sacred Music Concert.

CLEAN AIR ACT AMENDMENTS OF 1990 (S. 1630)

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. WAXMAN. Mr. Speaker, as chairman of the Health and the Environment Subcommittee of the Committee on Energy and Commerce, which is the subcommittee with legislative jurisdiction over the Clean Air Act Amendments of 1990, I wish to clarify the legislative history of the Clean Air Act Amendments of 1990.

The clean air legislation (S. 1630) reflects a series of bipartisan compromises. These compromises are embodied primarily in the conference report on the clean air bill (S. 1630) and the statement of managers accompanying the conference report. To the extent that provisions in the conference report track provisions in the House-passed bill (H.R. 3030), the report of the Committee on Energy and Commerce is also an authoritative source of the legislative intent of the House. On the other hand, accurate legislative intent is not necessarily reflected in the commentary of individual House Members on S. 1630.

Last May, before H.R. 3030 went to the floor, JOHN DINGELL, the chairman of the Energy and Commerce Committee, NORM LENT, the ranking Republican on the Energy and Commerce Committee, and I agreed that we would not make statements in the CONGRESSIONAL RECORD that interpreted the House bill unless all three of us could agree that the statements fairly interpreted the House bill. We had agreements among us and most other members of the Energy and Commerce Committee on almost all of the clean air bill. We wanted to avoid a situation where each of us created legislative history with a different and conflicting interpretation. We recognized that this would cause plenty of confusion and very little illumination.

Congressmen DINGELL, LENT, and I adhered to this understanding. We agreed to a few colloquies to clarify certain parts of the legislation. Otherwise, we kept our remarks general. Most other members of the Energy and Commerce Committee adopted a similar approach. The result was that the House spoke with a single voice when it acted on H.R. 3030.

Congressmen DINGELL, LENT, and I entered into a similar agreement when we brought the conference report on S. 1630 to the floor. Our objective was the same: we did not want the House debate to deteriorate into a war of conflicting interpretations of agreed-upon legislative language. Thus, we again kept our remarks general, except for a few colloquies that we jointly agreed to include in the legislative record.

Unfortunately, other Members of the House have taken a different course, and the CONGRESSIONAL RECORD of October 26 contains several detailed statements of legislative intent by individual Members. For instance, Congressmen SHARP, the chairman of the Energy and Power Subcommittee, inserted a lengthy, one-sided interpretation of the reformulated gasoline provisions into the RECORD. These unilateral legislative histories do not reflect my understanding of S. 1630. Rather, these statements by individual Members interpreting the provisions of S. 1630 are just that—statements by individual Members. They do not reflect consensus interpretations of the House intent.

I cannot address all of the questions and problems raised by the unilateral legislative histories. However, I do wish to express my own views, as an individual member of the Conference Committee, on a few of the most serious misstatements.

REFORMULATED GASOLINE

One of the most important provisions of the clean air bill is the provision requiring reformulation of conventional gasoline. Unfortunately, Congressman SHARP has introduced a legislative history of this provision that does not reflect my understanding of the reformulated gasoline provision. I will comment on some of the most significant of my disagreements below.

Certification: Mr. SHARP contends that the certification process for reformulated gasoline establishes procedures comparable to section 211(f)(4), whereby fuel additives are deemed approved if EPA fails to act. Such procedures, however, were proposed during the conference and expressly rejected by the conferees.

The key difference between the certification process for reformulated gasoline and section 211(f)(4) is that EPA is required to approve or disapprove every petition for certification of reformulated gasoline. This is a mandatory duty, enforceable by citizen suit under section 304. If EPA fails to act on time, the petition for certification will be treated as granted for an interim period until EPA completes action on the petition. However, ultimately EPA must complete its action, and when it does, it must either approve or disapprove the petition based exclusively on whether the reformulated gasoline meets the statutory and regulatory requirements. There is absolutely no statutory basis for the contention that EPA can act to disapprove a petition that receives interim approval only for "extraordinarily compelling reasons."

Likewise, there is absolutely no statutory basis for the contention that an oil company that has had its petition denied can continue to sell uncertified gasoline until it can obtain new permits and investments and construct new facilities. The language of the legislation is clear: it is illegal to sell uncertified gasoline in a covered area. Moreover, an oil company that was allowed to continue to sell an uncertified gasoline would obtain an unfair advantage over its competitors.

Pooling/credits. The reformulated gasoline provision directs EPA to establish credit programs under which persons can trade oxygen, aromatic, and benzene credits. In each case, the program must ensure that the use of credits do not result in an average level of oxygen, aromatics, or benzene different from that which "would occur in the absence of using any such credits." The purpose is to ensure that the credits are environmentally neutral—that they do not work to increase aromatic or benzene levels or to reduce oxygen levels below what would occur without any credits.

The statutory language thus requires that EPA consider how refiners, blenders, and importers would act in the absence of a credit program. If EPA determined that refiners, blenders, and importers would overcontrol to build in a compliance cushion, EPA must ensure that the credit program does not erode this cushion. Otherwise, the credits would not be environmentally neutral. For instance, if EPA determined that the average refiner would, in the absence of credits, sell gasoline with a benzene content of 0.9 percent in order to preserve a margin for error, then EPA must ensure that the average benzene content of the fuel in the area remains 0.9 percent after implementation of the credit program.

Contrary to Mr. SHARP's statements, EPA cannot assume that in the absence of credits, each gallon of gasoline would exactly meet section 211(k)'s requirements—unless EPA determines that this is a realistic assumption. If such a simplistic approach were our intent, we would have said so directly, and not required EPA to detemine what oxygen, aromatic, and benzene levels would be in the absence of credits.

In addition, there is no statutory basis for the contention that pooling within a company could supersede EPA's pooling regulations. Just the opposite is the case: all fuel pooling must comply with the Federal regulations, regardless of whether it is intracompany or intercompany pooling. Nor is there any basis for the contention that the credit program necessarily entails averaging over time.

Harmonization. Congressman SHARP states that EPA must "harmonize" the reformulated gasoline provisions with other provisions, such as the fleet program, and require that no more than one reformulated gasoline be sold in any area. However, these provisions were rejected by the conferees and not included in the final legislation.

ANTIDUMPING

Mr. SHARP also makes several statements about the antidumping provisions that are unsupported by the legislation. There is no requirement that the antidumping regulations use as test vehicles the same model year 1990 baseline vehicles as are used in the reformulated gasoline regulations. In addition, the antidumping provisions do not include a credit program for gasoline sold in attainment areas.

Relationship to section 206. Section 206 of S. 1630, which adds a new subsection 202(1) to the Clean Air Act, requires EPA to set standards that reduce emissions of hazardous air pollutants from motor vehicles to the greatest degree achievable. Contrary to Mr. SHARP's statements, this provision has not been rendered irrelevant by the reformulated gasoline provision. For one thing, it applies to all hazardous air pollutants—not just the five pollutants defined as toxic in section 211(k). For another, it applies nationwide—not just in severe ozone nonattainment areas. The purpose of section 206 is to require additional reductions in emissions of hazardous air pollutants, beyond those required by the reformulated gasoline provisions, where such reductions are achievable.

TRANSPORTATION PLANNING

The Energy and Commerce Committee negotiated the transportation planning provisions of S. 1630 with the Public Works and Transportation Committee and the Senate Committee on Environment and Public Works. This was a highly successful negotiation, and one that produced sound policy. I commend the efforts of GLENN ANDERSON, the chairman of the Public Works Committee, on these provisions.

However, I cannot agree with the statement of Chairman ANDERSON that highway sanctions should be used only where a State has failed to comply with transportation planning requirements. Cutting off Federal highway funds is an effective sanction that can—and should in the appropriate situation—be used to insure compliance with clean air requirements that are unrelated to transportation issues.

For instance, title V of the bill provides that the highway sanction should be used if a State fails to submit an approvable permitting program, even though this failure may have nothing to do with transportation controls. The one exception to this requirement is that in the situation where the permitting failure relates to nonattainment pollutants, the offset sanction can be applied before the transportation sanction.

I also cannot agree that all resurfacing, restoring, or rehabilitating projects can proceed while the transportation sanction is in effect.

Highway projects that are genuinely safety projects can proceed. However, the Administrator and the Secretary of Transportation must be watchful to insure that this safety exception does not become a huge loophole. This would occur if all resurfacing, restoring, or rehabilitating projects were routinely exempted from the funding sanction, without a case-by-case determination that each project's principal purpose is safety.

HONORING MAURA A. CIRACO

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ENGEL. Mr. Speaker, I would like to add my voice to the those of the men and women of the Westchester County American Legion who are honoring their past madam president, Maura A. Ciraco.

As a member of the county committee for more than 41 years, Maura Ciraco has been a long-time advocate for veterans and for the local community. From her days in U.S.O during World War II to her recent organization of shows at veterans hospital, she has been an inspiration and delight to her fellow countrymen and neighbors.

The widow of Vito Ciraco, a life-long member of the American Legion, Maura is the proud mother of six children, two of whom are Vietnam veterans. She is the grandmother of 15 children and the great grandmother of 8. On top of all that, she is looked upon as a motherly figure by the veterans of Westchester County.

It is an honor to commend Maura Ciraco for a lifetime of dedication and to express my appreciation on behalf of the local community.

A CONGRESSIONAL SALUTE TO SOUTHERN CALIFORNIA GAS CO.

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ANDERSON. Mr. Speaker, I rise today to pay tribute to an outstanding company, Southern California Gas. On Friday November 9, 1990, this company will be honored for its many contributions to southern California.

The Southern California Gas Co. [SoCal] is the largest natural gas distribution utility in the United States serving more 15 million people between Fresno and the Mexican border. The gas company, as it is called, was founded in 1867 and has been supplying the energy needs of a broad base of consumers for over 123 years.

Although they are the best at what they do, I want to recognize the gas company for something other than their inate business sense. I want to take a look at this humanistic side. Over the years the gas compnay has focused on customer service, environmental concerns, and interest in the communities it serves. What sets SoCal apart from the rest, is this longstanding commitment to improving the quality of life in the communities it serves.

Because of the community's concerns with smog, air quality has become a major focus of the gas company and is the driving force for entry into the natural gas vehicle [NGV] market. This updated technology provides and alternative vehicle power which results in reduced emissions and a lessened dependency on foreign oil. Fleet and mass transportation customers are currently being encouraged to investigate the opportunities available for decreasing operating costs and meeting regional air quality standards.

Keeping in touch with the needs of the community has always been important to the gas company. Organizations like United Way benefit from company-sponsored employee and volunteer programs. Individual organizations also benefit through local contributions, employee volunteers, and leadership provided by key gas company personnel. These range from local day-care centers, chambers of commerce, boy's and girl's clubs and education facilities specializing in providing youth with workforce readiness skills. Commmunity service is just one way in which SoCal is different from other companies who are only interested in their profits.

To coincide with their upstanding reputation of community service, customer service has always been important to SoCal. Service from restoring a pilot light to a leak investigation are only a phone call away, at no charge. Customers have grown accustomed to this personalized form of service that seems to be disappearing in many other organizations. The gas company states that their greatest asset is their employees. The employees are highly trained, skilled, and motivated to serve. They provide the end result of the company motto, "Glad To Be of Service!"

I would like to take the time congratulate the Southern California Gas Co. for its many years of care and consideration for the people of California. My wife, Lee, joins me in wishing SoCal many more wonderful years to come.

TRIBUTE TO THE KONAWAENA HIGH SCHOOL WORLD SOLAR CHALLENGE TEAM

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mrs. MINK. Mr. Speaker, I rise today with great pride and pleasure to take note of the hard work and achievement of the students of Konawaena High School who are members of that school's team which will compete in "The World Solar Challenge," a 1,900-mile race of cars powered by solar energy from Darwin to Adelaide in Australia, to be held November 11-22. Konawaena High School is in my district on the island of Hawaii. These students have worked hard, mentally and physically, to become the only American high school team to compete in this event. They have this honor by virtue of winning "The Tour of the Sun" race, held at Kailua-Kona, HI. This honor is fitting testament to the students' intelligence, ingenuity, and hard work because they designed and built the solar-powered vehicle with which they won the race in Hawaii and hope to win the race in Australia. These young people richly deserve the community pride and encouragement—not the least of which was a parade in their honor—they have received and the coverage they will get from some 250 reporters representing news media from across the world as they compete against approximately 45 teams from 20 countries in "The World Solar Challenge." Great credit must also be given to the parents and teachers of these students, whose accomplishments thus far could not have been possible without their support.

Mr. Speaker, as a Member of Congress I often deal with the problems of Hawaii, the Nation and the world. Through the accomplishment of these young people I am gratified to be reminded that the vast majority of Hawaii's young people are among the best there is anywhere in the country and that America's young people are among the best in the world. Having won the opportunity to participate in this event, these young people have already brought great honor and recognition to themselves, their families, their State and the Nation. And win or lose, this competition will teach these students many valuable lessons that will last a lifetime. These young people will also leave a positive impression of Hawaii and her young people the world over.

Mr. Speaker, the student members of Konawaena High School's world solar challenge team traveling to Austrailia are: Dominique Amae, Melita Bunghanoy, Tammy Delatorre, Wayne Fukunaga, Adrianne Grace, Denetsosie Lewis, Leslie Lowe, Mandy McCasland, John Orr, Sarah Politz, and Sylvia Silva.

Mr. Speaker, the advisors, staff members, and adults accompanying the students are: William Woerner, head advisor; Geoffrey Van Kirk, advisor; Mary Beth Hilburn, teacher; Paul Hilburn, chaperon; and Wayne M. Fukunaga, chaperon.

Congratulations must also go to Konawaena High School Principal Mae Yamasaki, whose overall support and encouragement have played and continue to play a key role in this effort.

Mr. Speaker, I am sure that you and our colleagues in the U.S. House of Representatives join me in wishing the team the very best of luck.

THE CIVIL RIGHTS ACT

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. COLEMAN of Texas. Mr. Speaker, Congress has now twice addressed the issue of civil rights during the 101st Congress. The Civil Rights Act would have done many important things such as countering the six 1989 Supreme Court decisions and establish equality for racial, sexual, and religious victims of bias. We, in Congress, have all heard all these arguments and fully understand the importance of what this legislation would have accomplished. However, the President's veto of the bill, despite the many compromises, will set the clock back on civil rights in this coun-

try. Our Nation, as a result of the President's action, has taken a step down the road toward the vision of David Duke, the Republican candidate for Louisiana Governor and former KKK leader, rather than of Martin Luther King, Jr.

While I am proud of the accomplishment made in terms of civil rights for the disabled this session, I am saddened that we have now failed to do the same for racial, sexual, and religious minorities. Through his veto, I fear the President may have sent the mesage that it is fine to continue to discriminate against women, blacks, Hispanics, and religious minorities in subtle ways. People like David Duke are tougher to confront these days as they have shed their robes for pinstripe suits, but the racial intolerance and sexism remains. As my good friend from Texas, CRAIG WASHINGTON, said during floor debate on the Civil Rights Act, "The Congress must lead in this endeavor to ensure that we set a proper example for all of the world as to how people, from different backgrounds, with different religions, can come together, and work together, and live together, in peace and in harmony, and without discrimination."

Congress did its job. We voted on two occasions to ensure equal opportunity for all in our great Nation. Sadly, the President has failed us all in meeting that challenge. Consequently, I fear that the climate for intolerance remains despite numerous changes to the Civil Rights Act to insure it was not a quota bill. Has the word "quota" replaced the name "Willie Horton" as the code word of the Bush administration? I hope not. Will racial and sexual discrimination continue? I fear it will.

CONGRESS SHOULD COME BACK IF WAR BREAKS OUT

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MAZZOLI. Mr. Speaker, on the front page of the Washington Post, I read the rather disquieting comments of Secretary of Defense Cheney that an additional 100,000 United States troops may be relocated from Europe and deployed in the Persian Gulf.

As I said recently on the House floor, Mr. Speaker, I see clouds gathering on the horizon.

If the President determines that diplomatic and economic efforts cannot end Iraq's hold on Kuwaiti lands, then he should consult with Congress and the Nation before taking offensive military action.

Since the 101st Congress will soon adjourn and its Members scattered to the 50 States and the territories, consultations with Congress if the climate is changed regarding Iraq will be facilitated by the nature and wording of the sine die adjournment resolution.

The resolution providing for the sine die adjournment of the 101st Congress gives the Speaker of the House and the majority leader of the Senate, acting in consultation with the minority leaders of both Chambers, the authority to reconvene Congress in the event that would serve the national interest.

Mr. Speaker, no one wants war. I believe the Persian Gulf crisis can be resolved diplomatically and peacefully. If, however, we must move to a new level of action respecting Iraq before the 102d Congress convenes in January, the 101st Congress needs to stand by at readiness.

The nature of the adjournment resolution makes that possible.

And, I commend our congressional leaders for taking this appropriate action as part of the adjournment process.

ASBESTOS SCHOOL HAZARD ABATEMENT REAUTHORIZATION ACT

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PORTER. Mr. Speaker, I support S. 1893. This legislation is important for school districts subject to Federal asbestos cleanup mandates.

Page 3 of the committee report addresses EPA's policy of automatically rejecting the top 30 percent of asbestos assistance applications based on per capita income. Under this policy, the Waukegan school system in my district is ineligible for assistance even though the Federal Government has mandated a $20 million cleanup.

Mr. Speaker, without some Federal assistance, Waukegan will have to cut back on important education services and could exhaust its bonding authority.

The Senate report correctly states that financial need is not simply a function of income. Need is also measured by the total cost of the cleanup and the size of the tax base which must support the cleanup.

Waukegan cannot finance a $20 million cleanup on its own. The committee report encourages EPA to consider the magnitude of the Waukegan cleanup before deciding whether or not to assist with the cleanup.

Mr. Speaker, vote for S. 1893.

H.R. 3656

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. WALGREN. Mr. Speaker, I introduced the Gas Related Activities Act last June along with my colleagues Mr. ECKART, Mr. MURPHY, Mr. BLILEY, Mr. OXLEY, and Mr. RITTER.

This is vitally needed legislation. It will allow the three registered gas systems, Columbia Gas, National Fuel, and Consolidated Gas, to fully participate in the very competitive natural gas industry. Without this legislation, these companies would be subject to an overly narrow SEC interpretation of the functional relationship test under the Public Utility Holding Company Act. Contrary to FERC and State policies requiring nondiscriminatory arms-length transactions, the SEC's interpretation of section 11(b)(1) of PUHCA requires the registered gas companies to favor their affiliated gas utilites. The SEC's approach unnecessarily limits the companies' operations to the detriment of consumers. For example, under the SEC's interpretation of the functional relationship test, a registered gas company could be prohibited from entering a new market to provide lower cost gas to consumers of unaffiliated local distribution companies.

The Gas Related Activities Act solves in favor of competition the regulatory conflict between the SEC's narrow reading of PUHCA, on the one hand, and the procompetition policies of the FERC and the States, on the other. The bill provides that the acquisition by a registered gas company of natural gas transportation or storage activities is deemed to be functionally related. It provides similar treatment to the acquisition of exploration, marketing, and other gas supply related activities if the Commission determines that the acquisition is in the interest of consumers of the gas utilities owned by the registered gas systems or consumers of any subsidiary of the registered system, unless the acquisition would be detrimental to consumers of the system.

I would like to thank the gentleman from Massachusetts for outstanding efforts in support of this legislation.

EXPLANATION OF COKE OVEN PROVISIONS OF CLEAN AIR BILL

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. THOMAS A. LUKEN. Mr. Speaker, title III of the conference agreement amending the Clean Air Act contains several provisions specifically addressing coke oven batteries. Mr. ECKART one of the conferees centrally involved in fashioning these provisions, made a floor statement explaining them on October 26, 1990.

I rise to underscore my agreement with Mr. ECKART'S succinct summary of these provisions. His statement did a particularly good job of explaining the two track system which we have created for coke ovens, which is perhaps the central theme of these provisions. Under this two track system, operators of coke batteries may elect an extension track, which provides for compliance with very tough (and increasingly stringent) emission limitations on a specified schedule, and an extension of the so called residual risk standard until 2020. Operators not electing the extension track must comply with a modified version of the generic title III provisions, calling for compliance with MACT standards by December 31, 1995, and residual risk standards by 2003.

To make this two track system work, the Administrator is required to promulgate a number of standards for coke oven batteries in the first few years after an enactment of the Clean Air Act amendments. For batteries on the extension track, the administrator must promulgate MACT standards under Section 112(d)(8)(C) of the amendments, which must be complied with no later than 3 years after enactment, and promulgate what have come

to be known as the "LAER" standards, which must be complied with by January 1, 1998. These LAER standards will be very tough standards, because they must reflect the lowest emission rate achieved by a rebuilt or replacement battery at an existing coke oven plant. However, it is important to point out that the conference agreement provides for the establishment of different standards for new coke oven batteries that are not on the extension track. For these batteries, the Administrator is required to promulgate a new source MACT standard. In establishing this standard—which also must be promulgated by December 31, 1992—the Administrator is expressly required to evaluate the Jewel design Thompson nonrecovery ovens and other nonrecovery technologies, as a basis for the standards. The conference agreement distinguished between the LAER standard applicable in 1998 to batteries on the extension track and the new source MACT standard applicable to new coke oven batteries not on the extension track, for a sound policy reason: the conferees understood that the considerations applicable to fashioning emission standards for rebuilt or replacement batteries at existing coke oven plants electing the extension track were different from those applicable to new sources on the generic track, which would most likely be "greenfields" facilities. Moreover, we wanted to make it plain that we expected the Administrator to promulgate very tough, LAER-type standards for batteries on the extension track, but that the need to comply with these performance standards should not trigger the need to comply with new source MACT standards which are intended to apply in very different circumstances.

Another key feature of the two track system is a compliance schedule for both tracks that requires reductions on an aggressive schedule, while avoiding the risk of imposing inconsistent requirements and providing time for planning to assure efficient expenditure of capital resources. These policies are reflected in the decision of the conferees not to require sources on the extension track to comply with the MACT standards which batteries on the generic track must comply with by December 31, 1995. Instead, batteries on the extension track must comply with a different MACT standard at an earlier date, and institute a program to bring themselves into compliance with the 1998 LAER standards by January 1, 1998. Batteries on the generic track, on the other hand, must comply with the 1995 MACT standards and undertake a program to comply with residual risk standards not later than January 1, 2003. Similarly, at later stages of the program, batteries on the extension track must comply with revised LAER standards by 2010, while batteries on the generic track would have to comply with any revised MACT standard which the Administrator may establish, pursuant to the obligation to periodically review MACT standards.

Once again, Mr. Chairman, I want to congratulate Mr. ECKART for his succinct summary of these provisions. I think he is to be applauded for the care which he has taken in assisting the Congress to fashioning a creative solution to a very complicated problem.

TRIBUTE TO JOHN WILLIAM O'BEIRNE

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MANTON. Mr. Speaker, I wish to call to the attention of our colleagues the passing of a fine American and a constituent, John W. O'Beirne.

I first met John shortly after he had founded the American Foundation for Irish Heritage. Through that organization he hoped to bring new recognition to the accomplishments of Americans of Irish descent. His ultimate dream was to see the establishment of a museum here in the Nation's Capital to honor the Irish contribution to America.

Last year John approached me about the possibility of a congressional resolution to designate the month of March as Irish-American Heritage Month. I was pleased to introduce such a resolution along with my distinguished colleague Representative BRIAN DONNELLY. That resolution became law on October 12 of this year, as a result, for the first time in our history the month of March will be so designated. Unfortunately, my friend John O'Beirne did not live to see his dream fulfilled as he tragically succumbed to a heart attack early in September. He will be missed.

John O'Beirne was born in Elmhurst, Queens, on September 9, 1917. Both of his parents were Irish immigrants. John graduated from LaSalle Academy in New York City and then the New York College of Music. In 1941 he began a very distinguished 33-year career with the Federal Bureau of Investigation. He began with the Fingerprint Division and during World War II worked on various important espionage cases. In the 1950's he spent time training new agents at the FBI Academy in Quantico, VA. John then spent several years in the New York City field office, then moved to Washington and ended his FBI career working in headquarters.

After his retirement John kept more than busy working in the security field and also lending his talents to various charitable endeavors. John worked on investigative matters for the Retail Credit Corp., the Wackenhut Corp., as well as two congressional committees.

Mr. Speaker, John O'Beirne was as well known in the local community and the national Irish community as he was to those of us in Government. He was a founding member of the Bethesda-Chevy Chase Elks Lodge 2357, a member of the Friendly Sons of Saint Patrick Glee Club in New York, a member of the New York American Irish Historical Society, a member of the American Ireland Fund, a member of the Knights of Columbus, a director and chairman of advertising for the Washington, DC St. Patrick's Day Parade Committee, and of course founder and chairman of the American Foundation for Irish Heritge.

Mr. Speaker, it almost defies belief that one man was able to accomplish so much in only 72 years. John O'Beirne will be sorely missed. I call my colleagues attention to an editorial about John's life by the editors of the Irish Echo. I ask unanimous consent the editorial be reprinted in the RECORD at this point.

[From the Irish Echo, Sept. 19, 1990]

JOHN O'BEIRNE

John O'Beirne, who died on Sept. 5, was a remarkable man. A distinguished 30-year career in the FBI would have been enough alone to establish that fact. But there was much more to this man.

Extremely proud of his Irish heritage he involved himself in promoting and extolling that heritage in the Washington, D.C. area and far beyond.

He had a long affiliation with the Glee Club of the Friendly Sons of St. Patrick, was a member of the board of the Washington St. Patrick's Parade and a member of the American Ireland Fund.

But it was with the American Foundation for Irish Heritage that he was most successful in bringing to the attention of Americans of all backgrounds the many contributions of the Irish to our country.

Assisted by his colleagues in the foundation, John O'Beirne was responsible for getting the House of Representatives to designate March 1991 as "Irish American Heritage Month." This has never happened before and it took an enormous amount of work to accomplish.

Those who knew John O'Beirne were not surprised that he got that job done. He didn't just talk about his Irish heritage, he worked to promote it and he set an example for all of us to follow.

IN HONOR OF DR. LEONARD ELSTAD, FORMER PRESIDENT OF GALLAUDET COLLEGE

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ENGEL. Mr. Speaker, I rise to pay tribute to the late Dr. Leonard Elstad, the former president of Gallaudet College, who is being honored on November 15 by Gallaudet University for his efforts. I am well acquainted with the work of Dr. Elstad through his grandson, John Mills, who serves on my staff.

Dr. Elstad dedicated his entire career to educating the deaf and hearing impaired. He served as principal of the Kendall School for the Deaf on the Gallaudet campus, taught at the Wright Oral School for the Deaf, and was superintendent of the Minnesota State School for the Deaf. In 1945, Dr. Elstad was named the third president of Gallaudet College and served in this position until 1969.

Largely through Dr. Elstad's efforts, which included an $8.6 million building program, Gallaudet achieved its current status as a fully accredited liberal arts university. Gallaudet University is today the only liberal arts institution of higher education for the deaf in the entire world. It was also under Dr. Elstad's leadership that the model secondary school for the deaf was established on the Gallaudet campus.

In addition, Dr. Elstad was active in the Washington community serving as a senior warden of Epiphany Episcopal Church, president of the Washington Rotary Club, and chairman of the Anacostia District of National Capital Area Boy Scout Council.

I am pleased to pay tribute to Dr. Elstad because people with his dedication are rare. His achievements at Gallaudet are directly responsible for the many advances that deaf people have made in this country. Dr. Elstad will be missed by his family and friends, but his work to help the deaf will live forever.

A CONGRESSIONAL TRIBUTE TO JOHN C. WALLACE

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ANDERSON. Mr. Speaker, I rise today to congratulate Mr. John C. Wallace, who will be presented the "Distinguished Citizen Award" on November 1, 1990, by the Long Beach Area Council of the Boy Scouts of America. This award pays tribute to Mr. Wallace's service to the youth and the community of Long Beach, CA.

This gentleman is no stranger to service awards. In 1969 he was chosen as "Young Man of the Year" and in 1984 as "Man of the Year" by the National Long Beach Gas Association. Mr. Wallace was also presented the "Silver Beaver Award" in 1984 by the Long Beach Area Council Boy Scouts of America, the "Golden Man Award" in 1987 by the Long Beach Boys Club Foundation, and the "Charles A. Margaret-W. Pollak Award" in 1989 by the United Way. Currently, the Long Beach community is benefiting from Mr. Wallace's leadership as director of St. Mary's Hospital Foundation and his work with the Long Beach Rotary Club.

In addition to his personal success, Mr. Wallace also has an impressive professional background. He is the founder and investment advisor of Alpha+Capital Management, worked as a consultant for the Texas Eastern Corp., and served as chief executive officer for Petrolane, Inc.

Throughout his years of service and dedication, John Wallace has always put the young men and women of Long Beach first. Cicero wrote in 50 B.C. "The desires of youth show the future virtues of the man". I offer John Wallace as a testimony to Cicero's words for he is indeed a virtuous man. My wife, Lee, joins me in congratulating Mr. Wallace upon receiving this recognition. We wish Mr. Wallace and his wife, Alice; his daughter, Jane; and his sons, James, John, Bruce, Robert, Philip, Jeff, and Scott all the best in the years to come.

IN RECOGNITION OF THE SITE OF THE FIRST THANKSGIVING

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. COLEMAN of Texas. Mr. Speaker, I rise today in recognition of the first Thanksgiving celebration held by European colonist in my district near present day El Paso, TX. The event took place on April 30, 1598, 22 years before the Pilgrims first landed at Plymouth Rock.

Upon receiving a charter from the Spanish Viceroy to conquer and colonize New Mexico, Don Juan de Onate, one of the wealthiest men in Mexico, organized and led an expedition of 400 soldiers and settlers 270 women and children, and 7,000 head of livestock. They traveled from Santa Barbara, Mexico, through the Chihuahuan desert to a location on the banks of the Rio Grande, near the present town of San Elizario, a small community 20 miles from the city of El Paso. After 4 months of traveling in the desert without adequate food and water, the colonists came upon the waters of the Rio Grande on April 20, 1598, where they quenched their thirst and rested from their long journey.

On April 30, 1598, 10 days after the group of colonists first arrived to the area, a great Feast of Thanksgiving was held. At the Thanksgiving celebration, Don Juan de Onate assembled his soldiers and conducted the formal ceremony of la toma, claiming the land in the name of the King of Spain. The soldiers also presented a play written by a Spaniard depicting the arrival of missionaries. These and other events of de Onate's Thanksgiving celebration feast were recorded by the chronicler, Gaspar Perez de Villagra, who published his account in 1610.

Today I rise not to change history, but to pay tribute to Don Juan de Onate and his brave group of pioneers. In my district, thousands of people attend a reenactment of de Onate's Feast of Thanksgiving which is held every April by the Mission Trail Association. The yearly celebration features footsoldiers and horsemen in costumes with swords and helmets, horsedrawn carriages, food, and music. Next year, the Smithsonian will open an exhibit entitled "The Five Seeds of Change," documenting the introduction of corn, potato, sugar, horses, and diseases by the Old World into the New World. Finally, the Smithsonian has also invited the Mission Trail Association to recreate de Onate's feast of thanks on the Mall near the Washington monument.

We all have an obligation to promote our Nation's knowledge and understanding of the Hispanic spirit and tradition. The achievements and contributions of de Onate and his settlers, as well as those of other explorers, have helped to make the culture of the Southwest a rich and diverse one. With traditions from Spain, Central America, and the Aztec, Mayan, and Incan Indians, Hispanic Americans share a culture whose influence in our country dates back 500 years. Its influence can be seen in the art, architecture, language, music, and food throughout the Southwest and the rest of the nation.

As we get ready to celebrate our Nation's official Thanksgiving on the fourth Thursday of November, I urge my colleagues to remember an earlier feast of thanks that took place on the banks of the Rio Grande in 1598.

SUPPORT CONFERENCE REPORT ON HOUSING BILL

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MAZZOLI. Mr. Speaker, I was pleased to join with the majority of my colleagues in approving the conference report on H.R. 1180, the omnibus housing bill.

H.R. 1180 contains several worthwhile programs designed to promote homeownership for many Americans who, up to now, have been closed out of the market. There is, in particular, one new program authorized by H.R. 1180—the National Housing Trust Fund—which provides financial assistance to first-time homebuyers.

The Housing bill also includes the HOPE Homeownership Program, which provides planning and financial assistance to low-income individuals and single-families who reside in public housing to help them purchase their units.

Mr. Speaker, the lack of affordable housing for many Americans is unacceptable. By agreeing to the conference report, we have begun to solve the issues of affordable housing.

ENCOURAGING ECONOMIC STABILITY IN HONG KONG

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PORTER. Mr. Speaker, the United States must be made aware of the possible effects on the United States economy if the process of transferring Hong Kong to China results in economic and political unrest in Hong Kong. Today, we truly live in a global community and the future of Hong Kong is tied very closely to our own economic well-being.

Hong Kong serves as a major base for United States economic activity in Southeast Asia. If Hong Kong is destabilized by the prospect of Chinese takeover in 1997, American interests stand to lose as much as $7 billion in investments. Recent events in the Persian Gulf have been a pointed reminder of our dependence on the stability of other countries for domestic economic stability.

We have made a positive step toward ensuring stability for Hong Kong in the recent immigration bill. This bill contained three provisions designed to give confidence and reassurance to the people of Hong Kong. First, it raises the visa quota from 5,000 to 10,000 per year. Second, it creates a special quota for Hong Kong employees of United States firms. Last, it stipulates that these visas are exercisable at the holder's discretion any time until the year 2002, rather than the present 4 month deadline.

Although these measures will help stabilize Hong Kong, they are not enough. I included an amendment to H.R. 4939 which would pro-

vide that the President make granting of most favored nation status to China contingent on that government upholding the tenets of the Sino-British Joint Declaration. This amendment encourages the Chinese simply to keep the promises it made regarding the political and economic future of Hong Kong when this agreement was signed. It is in the long-term interests of the United States to ensure that Hong Kong remains a viable and vibrant entity that practices free enterprise as well as democracy.

I applaud our recent efforts, and encourage Members to continue to make the freedom of Hong Kong a top priority.

"POWERLESS HOMELESS"—PHOTOGRAPHER CHRIS KEELEY'S CAPITOL HILL ART EXHIBIT

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. LANTOS. Mr. Speaker, the plight of the homeless is one of the great tragedies of our generation. In order to highlight this problem which faces communities throughout our Nation, the Select Committee on Hunger, Hill Staffers for the Hungry and Homeless, and my wife, Annette, and I recently sponsored an outstanding photographic exhibit on the homeless in the Washington metroplitan area.

"Powerless Homeless" depicts the many faces of the homeless—men, women, children, families. These poignant portraits were on display in the Rotunda of the Cannon House Office Building here on Capitol Hill. These photographic portraits of the homeless and their comments about life represent a true triumph of the human spirit. Members of Congress and hundreds of visitors who viewed these vivid images of those stricken by this tragedy and read the accompanying quotations by those pictured were impressed and, I hope, moved to helpful action toward ending this growing national problem.

Chris Keeley is the outstanding young photographer responsible for this work which so dramatically captures the plight of the homeless in our area. Mr. Keeley has a Bachelor of Arts Degree from the Corcoran School of Art and has exhibited his work in numerous shows, both nationally and internationally.

Annette and I first became acquainted with his work when we were in Athens visiting with his parents, U.S. Ambassador to Greece Robert Keeley and Mrs. Louise Keeley. At that time, Mr. Keeley had an exhibit at the Pierides Gallery-Museum which documented drug addiction and was entitled, "Addict—Out of the Dark and Into the Light." Annette suggested that he prepare a similar exhibit documenting the plight of the homeless. The outstanding photographs on display in the Rotunda were a result of that request.

One of these photographic portraits has already won an award, and judging from their quality, more recognition will follow. The exhibit will go on to Berlin, Germany, where a situation affecting homeless people similar to that depicted here has become evident since the dismantling of the infamous wall.

Mr. Speaker, I commend Chris Keeley on his impressive work and hope that not only will his professional artistry continue to be recognized, but also that the homeless problem which it so skillfully depicts will become a tragedy of our past, not a continuing blight on our future.

H.R. 4808 THE SOLAR, WIND, WASTE AND GEOTHERMAL POWER PRODUCTION INCENTIVES ACT OF 1990

HON. PHILIP R. SHARP

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. SHARP. Mr. Speaker, this bill, H.R. 4808, was passed by the House on Tuesday, October 23. Since then a question has arisen concerning the intent of the bill with regard to solar, wind, and waste small power production facilities with power production capacities greater than 30 but no greater than 80 megawatts (MW).

As stated in the committee reports accompanying H.R. 4808 and S. 2415, the companion Senate bill, and explanations of subsequent amendments adopted by the House and Senate, the intent of H.R. 4808 is to remove entirely all size limitations applicable to solar, wind, waste and geothermal technologies which otherwise meet the requirements for qualifying status under the Public Utility Regulatory Policies Act of 1978 [PURPA]. This removal of size restrictions applies both to the requirements for qualifying as a small power production facility and for purposes of exemption from utility regulation under section 210(e) of PURPA.

The intent of this legislation is to include the broadest possible range of projects in the universe of solar, geothermal, wind and waste facilities which may benefit from the removal of size limitations. It would be illogical to read the statute as passed to create a gap such that certain solar, wind or waste facilities between 30 and 80 MW would only qualify for partial benefits under PURPA while larger facilities would qualify for full benefits.

I anticipate that the Federal Energy Regulatory Commission will carry out the intent of H.R. 4808 by using either its authority under section 4 of H.R. 4808 or its authority to issue orders on a case by case basis, to allow all qualifying small power production facilities using solar, wind or waste energy as a primary source of energy to qualify for the full range of exemptions provided in section 210(e) of PURPA.

A CIVIL RIGHTS CHAMP RETIRES FROM CONGRESS: AUGUSTUS (GUS) HAWKINS OF CALIFORNIA

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MAZZOLI. Mr. Speaker, I rise today to bid farewell to a special colleague who is retiring at the end of the 101st Congress, Congressman AUGUSTUS (GUS) HAWKINS of California.

GUS was born in Louisiana, but his father relocated the family to Los Angeles, CA, to give them more economic and educational opportunities. GUS graduated from the University of California at Los Angeles [UCLA] in 1932, not an easy accomplishment given the devastating effects of the Depression and a new environment.

Prior to his career in Congress, GUS served 28 years in the California State Assembly where he honed his legislative and parliamentary skills. At the State level, GUS began to focus on initiatives to help the less fortunate, including affordable housing, quality education and child care.

GUS was elected to the Congress in 1962 and was a veteran legislator and Member of the House Education and Labor Committee when I came to this body and to that committee in 1971.

I recall with pleasure GUS' many kindnesses to me and the sage device he gave to me.

GUS has been in the forefront of all the civil rights, education and labor legislation since he entered this body and even beforehand. His difficult and—as in the case of the Civil Rights Act Amendments of 1990—the sometimes disappointing battles have left no bitterness, or vindictiveness, or short temperedness in this decent gentleman of a legislator.

Mr. Speaker, GUS HAWKINS is a leader in the true sense. He leads by courage and by hard work. He also leads by decency and congeniality.

I wish GUS and his beloved wife, Elsie, health, happiness, and many wonderful, lazy days aboard La Mia in their richly deserved retirement.

VETO OF CIVIL RIGHTS ACT OF 1990

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. STOKES. Mr. Speaker, I rise to express my deep disappointment over the Presidential veto of the Civil Rights Act of 1990.

This is a sad day in the history of the struggle for civil rights. It is particularly distressing that at a time when other nations around the world are struggling to establish and maintain democratic institutions, here in the United States the President has vetoed legislation so basic to American justice and democracy.

In five civil rights cases handed down last term, the Supreme Court totally gutted the body of carefully constructed, long-settled employment discrimination law developed over a 20-year period. The Civil Rights Act of 1990 is necessary to restore the legal protections demolished by the Court, protections which made progress for racial, ethnic, and religious minorities and women possible. In effect, the Presidential veto of this vital, civil rights legislation has ratified the Supreme Court destruction of legal protections for minorities and women, and turned back the civil rights clock almost 25 years.

Earlier this year, President Bush announced his desire to sign a civil rights bill which addressed the issues raised by the Supreme Court employment discrimination decisions last term. For over a year, the Congress spent countless hours drafting and redrafting the language in the Civil Rights Act, in a painstaking effort to satisfy the administration's concerns regarding the bill. A few days ago, after the House voted to recommit the bill, seven new compromise amendments were added by the conference committee to meet the objections raised by the administration. However, President Bush has refused to make concessions.

Instead of focusing on the fact that employment discrimination does continue to occur in our Nation, Mr. Bush focused his attention on quotas which might occur if the Civil Rights Act were signed into law. The President repeatedly and erroneously asserted that employers would be forced to resort to hiring quotas to guard aganist costly lawsuits. However, the administration failed to produce one shred of evidence, and failed to acknowledge that there was no widespread resort to hiring quotas between the time the landmark employment discrimination case Griggs versus Duke Power Co. was decided in 1971 and 1989 when the Supreme Court changed the standards in discrimination cases, in the Wards Cover Packing Co. versus Atonio decision. In fact, the language in the bill was changed to specifically state that the bill should not be construed to encourage quotas.

Mr. Speaker, the veto has left us with a feeling that the quota argument was nothing more than a smokescreen. While the Congress was poised to reaffirm its commitment to the constitutional guarantee of equal justice under the law, it appears the administration was never really committed to this principle. Moreover, the veto suggests an intent on the part of the administration to erode many of the gains which took nearly two decades to accomplish as a result of the civil rights movement.

With his veto of the Civil Rights Act, the President has sent a signal to the American people that employers, regardless of their engagement in employment practices which exclude minorities and women, will have the advantage in court if challenged by a civil rights plaintiff. Mr. Bush has risen to the aid of potential wrongdoers, and has made it more difficult for the victims of systemic discrimination to win their cases. In fact, the President has helped make it easier for employers to discriminate and get away with it.

Mr. Speaker, there is nothing obscure about the Civil Rights Act. It simply suggests what should have been obvious to the President: the Congress intends to ensure that under no circumstances will discrimination in the workplace be tolerated in our society. The President will not easily be forgiven by the American people for making the tragic error of refusing to help relegate discrimination in the workplace to its rightful place—as a part of a closed chapter in our Nation's racially blemished history. It is a sad day for America when our President, who claims to support equality and justice for all, vetoes legislation essential to providing equality and justice for minorities and women.

WHY ENGLISH ONLY?

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. SERRANO. Mr. Speaker, today I rise to speak out against H.R. 4424, the Language of Government Act.

What is there to fear about multiculturalism? The Statue of Liberty reflects pride in our pluralism and our immigrant heritage. The Founding Fathers rejected the idea of an official language because they fully understood the implications of such an imposition. For 200 years America has prospered without an official language. Furthermore, the effect of this English-only proposal would be to exacerbate what is already a very tense and racially divided situation in this country.

Let us never forget that we are a nation of immigrants comprised of all races, nationalities, and languages. America was discovered and continues to be rediscovered by new immigrants. And one must never forget that it was immigrants speaking a variety of languages who toiled to make this country great. American citizens are unique in that we do not share a common race, religion, or ethnicity. We live together as a people, free to celebrate our varied ethnic traditions. Why, then, are some Americans ambivalent about immigrants, desirous of their labor, but fearful and resentful of their social impact?

How could a German, Haitian, Dominican, or a Korean enjoy his or her guarantee of the pursuit of happiness if English was the only acceptable mode of expression? More dramatically, how many Americans fought and died for this country without ever learning to speak English fluently?

Much of the protectionist attitude toward new immigrants is and has always been, based on the fear that different ethnic and nationality groups will not blend into the so-called melting pot. In reality there is no melting pot, no homogeneous American culture. That has always been a myth. Our society is more accurately described as a brilliant, very colorful mosaic. History has shown that today's immigrants, like their predecessors, will become tomorrow's accepted Americans, real Americans, so to speak, and are as certain to become part of the next generation of the Nation's leadership.

How can English be endangered when it is spoken by 96 percent of the population? Research has shown that minorities overwhelmingly lose their mother tongues by the second or third generation. Lacking empirical evidence, English-only advocates have relied on stereotypes in their argument that the so-called primacy of English is threatened in America today. Concerns about acculturation are often related to the question of whether new immigrants will learn English. Linguistic barriers do not effect behaviorial functions, threaten civil liberties, or equal opportunities for others. Why is having Americans who can speak two or more languages a threat? They are, in fact, an asset, very much in demand and all too few in number. In today's global economy and multinational instant communications, educators and business leaders agree that tragically all too few Americans are fluent in a second language.

Official English laws would be a handicap to the way American Government and private industry conduct their business. They would, if enforced literally, create serious problems. For example, if a citizen is arrested or hospitalized, is he or she to be denied a fair hearing or proper treatment because the English-only rule would prohibit the use of interpreters?

I recognize and support the need to retain and strengthen the full range of language assistance policies and programs, including bilingual assistance, so that all members of society may have an equal opportunity to exercise their rights and responsibilities in regard to the electoral process, education, the judicial process, social services, and health care.

To teach new immigrants English as quickly as possible is a very worthwhile goal.

But for that purpose, Federal enactment of an official national language is a total nonsequitur and would, if anything, prove to be a deterrent.

AMERICA IS BEING MADE AN ENERGY BEGGAR

HON. RON MARLENEE

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MARLENEE. Mr. Speaker, America is being made an energy beggar. An energy beggar created by a Congress cowering to the screams of environmentalist hysterics. Over half our oil now supplied by foreign countries? We're nearly on our knees to the rest of the world.

What proof? Unleaded gasoline selling at over a buck and half a gallon in my State of Montana and climbing higher. Prices soaring on the power of sheer fear alone. Fear our gas tanks will be sucked dry by the whims of some Middle East screwball!

But as this Congress prepares to adjourn, I stand before you to sound the alarm! To call for this Nation to rebuild its energy independence before it's too late.

I call for Congress to break the shackles of environmentalist hysteria that for too long have imprisoned America's vast energy resources.

I call for Congress to renounce its existing energy policy. A policy of moratoriums on offshore drilling. Of bans on exploration in the Rocky Mountain front. Of padlocks on the Arctic National Wildlife Refuge. Of vise-like controls on nuclear power that are strangling to death its future. Did this Congress ever see an environmenal bill it didn't like?

Mr. Speaker, this is energy we need for America's tomorrow. This is the energy that:

Heats the stove that bakes our apple pies.

Lights our Little League ball parks and our high school football fields.

Rolls the presses that print our children's school books.

Lights up our Christmas trees at Christmas.

Warms our churches and schools in the winter.

Runs the sewing machines that make our flags.

Powers the lumber mills that build the homes our grandchildren will sleep in.

Moves the farm machinery that plants crops, feeds cattle to put food on our tables.

America needs this energy.

What must we do?

Certainly, conservation must be part of the equation. But Congress must recognize that future supply is a bigger part of the equation.

That's why it's essential that Congress open the door to new exploration and development of our country's own abundant reserves of natural resources—applying environmental protection laws through eyes of common sense. Leasing must be revived in energy-rich areas like the Outer Continental Shelf, the Rocky Mountain front and the Arctic Wildlife Refuge coastal plain.

Congress also must repair tax policies that have contributed to the stagnation in oil and gas development. America's small drillers and operators have taken the hardest hit. Not long ago, this country had 62,000 independents in operation. Today, because they lack desperately needed capital, their numbers have dwindled to fewer than 1,000.

Needed taxation repairs include:

Establishment of a 10 percent tax credit for the cost of enhanced recovery techniques on existing wells, such as injecting steam into otherwise uneconomical oil and gas wells to boost production. Traditional oil recovery techniques leave 65 to 70 percent of the oil in the ground.

Restoration of the 27.5 percent depletion allowance for all oil/gas producers. Simply put, a depreciation formula that once again recognizes the fact that well reserves are steadily shrinking as production continues.

In addition, Congress should:

Impose an energy stabilization tariff. If we're going to have people exploring for oil we've got to give them some assurance of a floor price on crude oil.

Tariff revenues could be earmarked for energy conservation, further energy development, or Federal budget deficit reduction.

Alternative fuels should also be part of the energy mix.

Extension of the ethanol excise tax, which provides incentives for development and increased dependence on the ethanol energy industry, is one way to develop our alternative fuel resources.

Conservation efforts must be properly focused.

I propose enactment of measures that reward farmers, ranchers, timber harvesters and other major fuel users for improving consumption efficiency as opposed to simply cutting consumption.

This Congress must also improve our ability to rely on more conventional sources of energy.

For example, Congress should:

Eliminate deathknell restraints on nuclear power by reforming licensing procedures and adopting a national standard for nuclear plants; and

Strengthen Federal Government commitment to clean coal technology—technology that can be used to produce new, cleaner energy sources, including methane gas.

These are the actions we must take. This is the vision we must regain.

We must stand on our own.

I have fired the first shot and I urge my colleagues to forge ahead on this new course.

It's time to face up to reality, break the environmental gridlock, come back to sensibility and end America's energy enslavement to the rest of the world.

Come home America. Shed the clothes of a beggar. Come home to common sense and energy independence—today, for tomorrow's needs.

TRIBUTE TO WILLIAM A. MATTIA

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. CONTE. Mr. Speaker, I rise today to pay tribute to William A. Mattia, of Pittsfield, MA who has been named the Labor Man of the Year by the Berkshire Central Labor Council. This is indeed a great honor, as one worker is chosen from among the ranks of all the major unions throughout Berkshire County. I know I am joined by all the members of every union in Berkshire County when I offer to Bill my heartiest congratulations on a job well done.

After serving his country during World War II in both the Merchant Marine and the Army, Bill worked and toiled his fingers to the bone until he became a bricklayer. He has faithfully and tirelessly served his union, Local 20, Bricklayers, Plasterers, & Masons, since the 1950's, when he qualified to become a bricklayer. And even now, at 63 years young, Bill serves part time as a union officer.

Bill has for the last 25 years been the business manager for Local 20, Bricklayers, Plasterers, & Masons. Such a high level of dedication is difficult to find in any person, but in combination with his highly developed skills, Bill is, indeed, one in a million. He has also donated his valuable time as a past director of the Skyhawks Drum and Bugle Corps.

He has seen his art virtually disappear throughout the years, only to watch it begin to reappear as more and more people are realizing the importance, beauty, and structural integrity of brick and plaster. It is through the efforts of dedicated men such as Bill that this art, passed down from father to son, from generation to generation, will survive and flourish. In an age when things are increasingly being made by machines, it is refreshing to know that men like William Mattia still care enough to take the time to create with their own two hands, to put a much-needed human touch into a finished product.

Bill should indeed be proud of his achievements. Few people can boast of having served both country and fellow human. William Mattia, however, can. He not only served his country and served it well during the Second World War, he also served his fellow human being in all that he did for Local 20, Bricklayers, Plasterers, & Masons. I am proud to serve men like William A. Mattia in the U.S. Congress, and I offer him my most heartfelt congratulations and sincere thanks for years of dedication and service.

1990 FARM BILL

HON. JAMES T. WALSH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. WALSH. Mr. Speaker, I want to take this opportunity to extend my previous remarks on the 1990 farm bill. As a freshman on the Committee on Agriculture, I have learned so much about the agricultural industry, especially the dairy section of the law.

I have learned that for every farmer offering an opinion, one can find the equal number of different answers. This was especially apparent at the field hearing of the Subcommittee on Livestock, Dairy and Poultry I hosted in my district of Syracuse, NY, this past January.

We gave time to all sides to air their concerns, desires and opinions of the future of the dairy industry. I heard calls for a two-tier pricing system, assessments, a repeat of the whole herd buyout but no calls for price cuts. Fortunately, despite budget constraints, we were able to heed the words of my constituents and avoid direct price cuts.

In committee, we studied the two-tier pricing system for quite some time and for a while, it looked like the way to go. However, as industry folks had more time to examine the plan, it became apparent to my farmers that it would be more harmful than helpful. At that time, they approached me and requested that I offer the whole herd buyout again as the supply management option.

I offered the amendment in subcommitee but Members from other parts of the country did not want to see this program surface again. Although it was not successful, I am pleased that the option was given consideration as all options deserve a fair hearing.

Another part of the dairy title that was a positive change involved the California make allowance. This section was removed after a short duration in farm policy as Members of the House realized that the California program led us away from the market orientation that we are supposed to be headed for. As a new member of the committee, the argument that the cost of production in California is the highest in the country did not make sense to me as I have been presented with analysis that proves that New York-New England has the highest cost of production. It seems to me that if the northeast works within the national dairy policy, so should California. If the dairy program is to be a national one, then the rules should apply to all. I was pleased to work with Congressman GUNDERSON, OBEY, and BOEHLERT on this endeavor.

In the area of agricultural research, I offered an amendment to study the incidents of farm accidents and way to improve farm safety. After consulting with two physicians at the Bassett Hospital in Cooperstown, NY, I realized the lack of information available in this area.

After the data is collected in each State, it will be given to the Extension Service at the Department of Agriculture to help develop safety programs for farms throughout the country. The potential for loss of limbs and chemical poisoning is so great on the farm,

that I want to make every effort to reduce the chances of these incidences.

Forestry is another area of interest as the SUNY Environmental Science and Forestry School is located adjacent to Syracuse University in the 27th Congressional District of New York. I offered language to conduct a wood product engineering policy center to be located at SUNY-ESF. It is well established that this part of the country is rich in wood products and forestry resources and this resource should be tapped for its expertise. With this language in place, I hope that funding for the program will follow in the next few years.

One area of concern in the final version of the farm bill is in the area of nutritional services. The farm bill as passed on the floor of the House contained increases in funding for these crucial food programs. I was most disappointed to see that in order to meet our portion of the budget cuts for reconciliation, we were forced to give up these much needed increases and subsequently reach less needy children and families.

I am always painfully aware that for many students dependent on subsidized or free meals, the hot nutritious lunch they receive at school is the only decent meal they get each day. Numerous studies have articulated that a productive and learning student needs an adequate diet, including a substantive breakfast to get through the day.

I will work with my colleagues in the House to restore some of the previous funding levels so that our children may have a better chance to grow and learn.

On the environmental side, I was pleased to see a renewed effort on the part of the environmentalists to work with the farm community to make our farms cleaner and our food safer to eat. This union has been a long time in the works and each side has sacrificed to make this relationship a lasting one.

I have spent considerable time with both the environmental interests and the chemical producers to learn of their concerns about this new relationship. I am still learning about what is practical and what is not. Perhaps the next farm bill will refine the current provisions.

In closing, I must reaffirm my belief in our system of agriculture. I wince when I learn of attempts by some of my colleagues to dismantle our agriculture programs. We have the safest and most abundant food supply in the world and we should work to maintain this reputation. I am convinced after serving on the Committee on Agriculture for 2 years that this goal can be attained through a market orientation. We should continue to strive to make our agricultural products competitive in the world and work also to make our GATT policies as fair to our farmers as possible. I trust that Secretary Yeutter and Trade Ambassador Carla Hills will lead us in the right direction.

I look forward to continuing my work with my farm constituents and the agriculture industry.

BALTIMORE'S VULCAN BLAZERS

HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MFUME. Mr. Speaker, we often get caught up in the day-to-day operations of our cities and towns, and easily forget about the men and women who are responsible for the safety of them. I rise before this body to pay tribute to a special organization of African-American firefighters in my hometown of Baltimore.

Mr. Speaker, it is important to note that I have the utmost respect and admiration for all of the individuals in Baltimore who have chosen to put their lives on the line by protecting our citizenry from the hazards of fire. However, the black firemen in my congressional district take great pride in being the very best that they can be and have formed an organization to support and strengthen one another, as well as, to recognize the outstanding accomplishments of their peers. It is incumbent upon me to offer praise and encouragement for such comradery and dedication to public service.

The Vulcan Blazers became official in 1970 after being invited to join ranks with a similar group originating out of New York. Their main purpose was to upgrade the responsibility of black firefighters within the Department, to recruit more minorities into the fire service and to insure fair and equitable treatment for all. African Americans began entering the Baltimore City Fire Department in 1953. Since that time they have overcome many obstacles to compete with their white counterparts.

It is with a great sense of pride that I recognize the Vulcan Blazers as being more than just another organization. This courageous group of firefighters have reached out to their neighbors in the true spirit of community service.

They participate in civic activities throughout the city, including the "Adopt A School" program. They have adopted two area elementary schools and in forming this partnership, have dedicated themselves to assisting these schools in any way they can, with moral and financial support.

As role models, the Vulcan Blazers more than live up to their motto "Dedicated to the Community." They provide Thanksgiving and Christmas baskets to the needy, annual holiday luncheons and monthly entertainment for senior citizens, Halloween and Christmas parties for children and donations to other charitable causes. They are proud to serve, and we are proud of them.

The Vulcan Blazers are celebrating 20 years of existence. The members fondly give credit to their presidents, past and present, for the positive and progressive evolution of the organization. I too join in applauding these individuals for their exemplary leadership.

I firmly believe that the unceasing commitment demonstrated by the Vulcan Blazers can only serve to benefit and enhance the great city of Baltimore. Therefore, Mr. Speaker, it is without hesitation that I rise to recognize these black firefighters. Besides being courageous and committed, these special individuals have exercised patience and tenacity all in the name of public service.

When I think of the unsung heroes of my city, I think of the Vulcan Blazers, and I thank them on behalf of all the citizens of Baltimore.

ON BOARD VAPOR RECOVERY SYSTEMS—ARE THEY SAFE

HON. BOB CARR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. CARR. Mr. Speaker, highway safety experts point to the rising number of motor vehicle safety recalls involving existing emissions equipment as support for their position that there is a safety risk with onboard vapor recovery systems.

I am gratified that the conferees on the Clean Air Act have added some lead time to the provisions affecting vapor recovery systems. This additional lead time may be sufficient to enable DOT to conclude that the systems are safe. I hope that may be the case. However, we are not telling DOT how they must come out on the safety determination. I want to ensure that the record is clear that this congress does not want these systems on cars unless and until DOT can conclude that they are safe.

As Brian O'Neill, the president of the Insurance Institute for Highway Safety, told EPA,

A regulation requiring automobile fuel systems to become more complex doesn't make sense. Why choose an alternative that would have the horrible consequence of burning people in crashes?

The conferees have addressed the safety concerns by ensuring that the safety determination will be part of the record of any rulemaking to require these devices, if EPA proceeds to such a rule, and by adding some additional time for development and testing. However, if the conclusion of the experts is that the devices are stil not safe, then EPA must not ignore that conclusion.

Mr. Speaker, for the benefit of my colleagues, I ask that two letters on this subject be included in the RECORD at this point: One is from the National Safety Council and the other is from the American Medical Association, warning us of the dangers of these devices. I fully expect EPA to take into account these and other similar warnings during its consideration of this issue.

NATIONAL SAFETY COUNCIL,
January 16, 1990.

Hon. DANIEL P. MOYNIHAN,
Senate Committee on Environment and Public Works, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR MOYNIHAN: The National Safety Council, a not-for-profit, nongovernmental organization committed to advancing the public's health and safety, urges you to forward both the nation's environmental goals and its public safety and health goals as you consider amendments to the Clean Air Act.

The Safety Council understands that the Senate will vote on a proposal requiring that automobiles and light-duty trucks carry on-board controls to capture evaporative emission vapors released during refuel-

ing. The Safety Council fully supports additional efforts to reduce hydrocarbon and oxides of nitrogen levels in the atmosphere. We are determined to see those goals advanced in a way consistent with ensuring public and in this case passenger, safety and health.

The Council's Board of Directors in October 1987 adopted a policy aimed at ensuring that such on-board vapor emission controls be demonstrated to protect against increased incidents of death, illness, or injuries that could be associated with operation of those controls. Findings by the National Transportation Safety Board, the National Highway Traffic Safety Administration, and representatives of the insurance and product liability communities underscore our concerns. As a result, our position remains the same today: Environmental health and public safety go hand-in-hand, and advances in one field should not undermine goals in the other.

We cannot expect an agency with the jurisdictional concerns of the Environmental Protection Agency to adequately address the concerns of the highway and motor vehicle safety agencies. Nothing would greater undermine our citizens' strong commitment to improved environmental quality than concern that new control technologies actually could increase health risks. That possibility must be avoided. Accordingly, the National Safety Council urges you to support language requiring that EPA, in promulgating "on-board" control regulations, do so in consultation with the Secretary of Transportation concerning the safety of those controls. In that way, both our environmental and our motor vehicle safety goals can be achieved.

Please have your staff contact Mr. Bud Ward in the Safety Council's Washington office with any questions on this matter. He can be reached at 202/293-2270. Thank you.

Sincerely,

T.C. GILCHREST,
President.

AMERICAN MEDICAL ASSOCIATION,
Chicago, IL, March 5, 1990.

Hon. JAMIE L. WHITTEN,
House of Representatives,
Washington, DC.

DEAR MR. WHITTEN: I am writing to provide our opinion regarding onboard gasoline vapor recovery systems for automobiles. Staff members of the AMA's Science and Technology Group recently reviewed this matter and offer the following comments.

The part of this issue that the AMA can most authoritatively comment on concerns the measure of health risk due to individual and/or community exposures to gasoline vapors (most notably benzene and other aromatic hydrocarbons) and the likely impact of such fugitive vapors during refueling on atmospheric levels of ozone.

The degree of human risk of leukemia from gasoline-associated benzene appears to be overstated by the EPA. The amount of benzene in gasoline is roughly of the order of 5%; it is the sole aromatic of those in gasoline that is associated with leukemia in humans, and then only with long-term occupational exposures. The extent of the public's exposure to benzene in an outdoor environment during refueling is expected to be inconsequential; there is, therefore, no reason to believe that such minor, short-term exposures will be harmful to one's health. Station and tanker employees' exposures are of concern, which is all the more reason to control emissions prior to or at the pump.

There is still no general agreement on the long-term human health effects of low levels of ozone. A review article on this subject is enclosed. The EPA's efforts to reduce the causes of episodic levels of ozone in the nonattainment areas of the country should continue to be pursued; however, little is apt to be gained by the onboard control systems for those areas that are in compliance with the air standard.

The "on-vehicle" system seems to be an unnecessarily complicated way to control gasoline vapors that are emitted during the refueling process. One need not be an engineering genius to see the numerous points of system failure; eg, line rupture from both accidental and non-accidental occurrences, not to mention the results of neglected or incompetent maintenance. Auto emission controls are already too hopelessly complicated for simple maintenance, and this additional device begs for trouble.

In summary, we feel that vapor recovery systems placed in cars probably will increase the risk of fires if crashes occur. In accordance with good medical practice, such systems must be tested in laboratories and then in real life before they are mandated, and the safety of such systems should be a basic determinant of what eventually is mandated. The health benefits of having these systems in automobiles would be inconsequential, considering that the biomedical literature is not at all clear on the effects of greater exposures to benzene and ozone for longer periods of time. And finally, it is more logical to apply control systems to service stations than to tens of millions of vehicles on highways.

We appreciate having this opportunity to express our opinion to you and trust it will be helpful and informative.

Sincerely yours,

JAMES S. TODD, M.D.,
Acting Executive Vice President.

INTRODUCTION OF THE WETLANDS CONSERVATION AND MANAGEMENT ACT OF 1990

HON. W.J. (BILLY) TAUZIN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. TAUZIN. Mr. Speaker, today we are introducing the Wetlands Conservation and Management Act of 1990. I am joined in this effort by a bipartisan group of Members who share my goal of protecting this Nation's declining wetland treasure. Although this issue has only recently received broad national attention, I have been working since the mid-1970's to bring about legislation to protect our declining wetlands. I have introduced several other bills very similar to this one, but which do not have several of the key concepts contained in this bill.

No other State in the Nation has suffered wetlands losses comparable to the losses which have been experienced by my State of Louisiana and by my district. My district contains millions of acres of fragile marshes. My district also contains natural ridges enclosed by levees where our people live, work, and play. We have coexisted with our wetlands for over 200 years and are hopeful that our children will be able to continue this way of life. Most of these wetlands are owned by individuals, not government. Therefore, if we are to protect these wetlands, we must involve the owners of these lands in that effort by providing incentives for wetlands protection, while insuring that the constitutional rights of the landowners are also protected. I do not believe that any Member of this Congress would favor allowing our Government to take private property from any individual without just compensation. This bill seeks to address this difficult and complex issue.

This bill is the result of many meetings and discussions among Members of Congress from States with substantial wetland resources. We are from both parties, we are from north and south, east and west, and we represent districts with many diverse interests. Our one common concern is that all of us wish to protect wetlands, however, we are witnessing the enactment of new, far reaching wetlands policies by unelected individuals in the Federal bureaucracy without adequate opportunity for the public to participate in the process. We believe that the congressional role in setting national wetlands policy has been usurped by the bureaucracy with the assistance of the Federal courts. We believe that it is the role of this Congress to set wetlands policy for this country and that is what this bill does.

As many of you know, several months ago the U.S. Army Corps of Engineers adopted a new definition of wetlands. This new definition brought into the regulatory system millions of acres of land which was not previously classified as wetlands. Much of this land is dry, is already developed, and no longer serves environmental or ecological functions. The corps adopted this new definition without going through the rulemaking procedures required by the Administrative Procedures Act and without seeking public comment.

In addition to redefining the term "wetlands," the corps also adopted new policies regarding the terms and conditions for the granting of permits to conduct certain activities on wetlands as newly defined. These new policies required the corps to go through a sequence in deciding whether to issue a permit. This included deciding whether the project could be changed to mitigate the potential damage to the wetland. This included requiring the permit applicant to consider putting his project on another site. In those cases where the corps allowed the project to go forward, they mandated a mitigation project be constructed creating a new wetland on some other site. The corps adopted this new policy without seeking public comment also.

In practical terms for my district, which under the new definition is almost 100 percent wetlands, this means that when a community wishes to construct a school for a particular neighborhood, the corps would require the community to build the school elsewhere or require the school board to spend several thousand dollars creating new wetlands in a different area. This creates the absurd situation of requiring one local government to either build a school where no school is needed in another area or invest in wetlands creation in other areas of the State. This new policy as presently applied will mean the re-

distribution of wealth and resources from those areas surrounded by wetlands to those areas where no wetlands exists. For my district, this means economic stagnation and the loss of a tax base from which to derive funds for basic public services, such as schools, roads, medical care, and other infrastructure needs.

This bill seeks to address these issues by providing a new strict regulatory program to protect the true wetlands without unduly restricting the use of those lands which have some wetlands characteristics, but which have little or no wetlands values and functions. Wetland values and functions include use of the wetlands for wildlife habitat, fisheries propagation, hurricane protection barriers, water quality management, recreational activities, and flood protection. However, the bill contains new and creative solutions to many of the valid criticisms of the existing wetlands program.

Under our bill, wetlands which meet the scientific and technical criteria for wetlands will then be further classified into wetlands categories. The most valuable wetlands which require the greatest protections and where activities of man should be the most restricted will be classified as type A wetlands. Those wetlands which have many of the same values but which will tolerate some activities as long as mitigation is carried out will be classified as type B wetlands. Those wetlands which have little or no wetland values and which are already highly developed will be classified as type C wetlands. Type C wetlands meet the scientific test for wetlands, but they don't meet what many of us call the commonsense test for wetlands. Therefore, these wetlands will be subject to very little regulation.

One important feature of the legislation will be to provide for advanced mapping showing how land within a given area will be classified. This advanced mapping is intended to provide notice to potential landowners that they may be purchasing a wetland. It is a tragedy to hear a landowner tell of saving for or borrowing money for the purchase of property to be used for some important project, only to find out that the land cannot be developed or that a wetlands permit is required. The permit process is very time consuming and expensive and is frequently conditioned upon the construction of expensive wetlands mitigation projects.

One goal of the legislation is to ensure a greater role for the general public in the development of wetlands policy. Therefore, the corps must go through the rulemaking process in developing both the definition of wetlands and the permitting process. Also the public will be given an opportunity to comment on the advanced mapping. I believe a strong public involvement in this process will be one of the significant provisions of the bill.

Another concept of the legislation is to force our Government to come to terms with the impact of wetlands policy on private landowners. If the wetland is so valuable that it is classified as a type A wetland, the bill gives the owner of the land the option of seeking compensation from the Government under the takings clause of the U.S. Constitution. When land is classified as a type A wetland, it will be so well protected that it's use will be severely limited. Therefore, the value to the landowner is so diminished that it will constitute a taking of the property. Therefore, we believe that the landowner should, if he desires, be able to receive compensation in return for surrendering title to the land. This is not intended to be used to force landowners to leave their land. However, we must not allow our Government to expropriate lands for use as wetlands without compensating the landowner.

The bill continues those activities presently exempt from section 404, such as farming and continues the present policy of exempting prior converted croplands. It will also allow the delegation of the program to the States.

I hope other Members will join in the effort to develop a sensible and compassionate approach to protecting our Nation's wetlands. We believe this concept can achieve that goal and urge other Members to join us.

TRIBUTE TO MAJ. GEN. TREVOR HAMMOND

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FAZIO. Mr. Speaker, I rise today to pay tribute to Maj. Gen. Trevor A. Hammond, departing commander of the Sacramento Air Logistics Center, McClellan Air Force Base, CA. General Hammond has been promoted to lieutenant general and will be vice commander of Air Force Logistics Command, Wright-Patterson Air Force Base, OH.

During the past 2 years, General Hammond, with steadfast personal commitment, led the center toward increased productivity and efficiency; strongly advocating the concept and practice of total quality management.

He also unceasingly championed the necessity and future demand for high technology. He continually emphasized that need, not only for Sacramento ALC, but also because the defense effort must have those capabilities.

The clear and constant message has been that Sacramento ALC, with its outstanding high-technology work force and facilities and significant unique potential, should be recognized precisely for what it has become—a national defense asset.

The mission of the Sacramento Air Logistics Center is multifaceted. With worldwide logistics management responsibilities, the center provides maintenance, distribution, and contracting services essential to the Air Force and Department of Defense. Assigned aircraft include the F–111, A–10, A–7, F–15, T–37, and F–117 Stealth fighter. Other responsibilities cover 223 electronics systems, including the Cheyenne Mountain complex.

Perhaps the most exciting future mission is the center's designation as support center for the advanced tactical fighter [ATF]. The ATF will carry fighter aircraft technology into the 21st century.

Sacramento ALC is recognized as the Air Force's most advanced technological center. High-technology missions include advanced electronics, specialized computer software applications, and space responsibilities; all demanding the most sophisticated technology available. Some of the various high-tech capabilities include very high speed integrated circuits, fiber optics, advanced composites, computer software design and development, and a unique robotic nondestructive inspection system using neutron radiography for complete fighter-size aircraft.

His devotion to the service of his country is evident in his 35 years of Air Force service and his continuous efforts to better the conditions for enlisted members, officers, and civilian employees.

During his tenure, Sacramento ALC has received many honors and recognitions. Among these were the AFLC Commander's Facility Excellence Award and the Air Force's Gen. Thomas D. White Environmental Award. Of the many awards, these two especially reflect General Hammond's concern for people, both on base and in the civilian community.

As a timely recognition of General Hammond's commitment to quality, Sacramento ALC was recently notified by the Office of Management and Budget's Federal Quality Institute that the center has been selected as a recipient of the 1991 Quality Improvement Prototype Award. The award recognizes Federal organizations that achieve high standards of quality, efficiency and timeliness in the delivery of products and services. As the recipient, the center will serve as a model for the Government, demonstrating that an unswerving commitment to quality leads to better services and products.

This marks the first time that an Air Force organization has received that distinction.

The general has been a strong supporter of community relations, and has personally encouraged base people to participate and be a viable part of the community. His civic affiliations include serving on the boards of directors of the Sacramento Chapter of the American Red Cross, Sacramento Chamber of Commerce, Sacramento Safety Council, and the Sacramento Area United Way. He also is on the executive board of the Golden Eagle Council, Boy Scouts of America and on the advisory boards for Golden Gate University, Sacramento, and the Sacramento Area Council for Total Quality.

He and his wife, Mary, have two daughters, both residing in Sacramento, and are proud grandparents.

Mr. Speaker, I join General Hammond's colleagues from the Sacramento Air Logistics Center and McClellan Air Force Base, his family and his many friends in the civilian community in commending the general for his many accomplishments and the tremendous contributions he has made to the service of his country.

WORLD POPULATION AWARENESS WEEK

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. PORTER. Mr. Speaker, awareness of the consequences of overpopulation and the inaccessibility of voluntary family planning for

many women is the first step to addressing this problem. The rapidly increasing interdependence of the global community has made world overpopulation a problem of grave importance to all nations, whether or not they face overpopulation themselves. There are now over 5 billion living members of the human race, and world population is growing at the unprecedented rate of 87 million people a year. China alone reports a total of 1.13 billion citizens in its latest census released this week.

As our population increases, natural resources are put under a great strain. Rain forests are eliminated, air and water are polluted, urban slums grow, and maternal and child health declines in developing nations. It is clear that many serious problems caused by current rapid population growth could be ameliorated by increasing access to voluntary family planning. Much of the world still lacks successful family planning programs. There are many possibilities for improvement in Eastern Europe. Romania, for example, has had no system of family planning since the 1960's, and now is in need of modernization. In addition, large-scale population problems continue in sub-Saharan Africa as well.

The United States has long been a world leader in recognizing the right and necessity of people to control the size of their families. Over the past 25 years the U.S. Agency for International Development has spent more than $3.5 billion for assistance for population planning in developing countries. This year's foreign operations appropriations bill includes $250 million for population activities. In addition to financial aid,* there is a need for this pressing problem to be brought to the attention of the general populace. I support the declaration of World Population Awareness Week as a time set aside to consider the effects of rapid population growth on the world's health and economy.

CENSUS COUNTING NEEDS IMPROVEMENT

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MAZZOLI. Mr. Speaker, the chief executives of urban cities and counties make very plausible claims that their jurisdictions were significantly undercounted in the 1990 census.

The district which I am proud to represent in the Congress comprises the entire city of Louisville and large segments of Jefferson County. The area is largely urban, and Louisville Mayor Jerry Abramson and Jefferson County Judge/Executive Dave Armstrong each share the concerns expressed by their counterparts across the land: the population was undercounted in the census.

Mr. Speaker, every town, city, county and State deserves a fair census count. At stake is Federal money for important highway, health, social, and educational programs.

Mr. Speaker, I have added my name as a cosponsor of H.R. 5741—a bill introduced by my friend and colleague, the gentleman from Ohio [Mr. SAWYER]—which would direct the Census Bureau to use corrective statistical procedures to ensure that all State and local jurisdictions are accurately counted in the 1990 census.

Mr. Speaker, I hope the 102d Congress takes early and affirmative action on H.R. 5741. Without an accurate census count, our cities and towns will not receive their fair share of Federal funds. We cannot let this happen.

CONFERENCE AGREEMENT ON FOREIGN OPERATIONS APPROPRIATIONS FOR FISCAL YEAR 1991 (H.R. 5114)

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. COLEMAN of Texas. Mr. Speaker, I rise in support of the conference agreement on the Foreign Operations Appropriations Act. As the chairman of the subcommittee has said, these bills will never win popularity contests. Anyone can make the calculation that says, "Cut a billion off foreign aid and give it to my district." Particularly tonight, hours after passing reconciliation legislation, we had better be certain that we have kept spending in these accounts to a justifiable minimum. This report comes in costing less than last year's bill and less than the administration's request.

I support this agreement because I know that a lot of hard work and good intentions have gone into its making. I have reservations regarding the soundness of the outcome on the forgiveness of Egypt's foreign military sales debt, however.

When the House Committee on appropriations took up the Desert Shield supplemental bill in September, we expressly did not forgive Egypt's entire stock of debt. Through no fault of the committee, this has been handled very poorly. First, the administration leaked the story of President Bush's desire to forgive this debt on a wholesale basis, circumventing the Congress and recklessly raising expectations in Cairo. Second, there has obviously been very little thought given by the administration as to any range of options on providing economic relief and support to Egypt. The policy, apparently determined without any consultation with our subcommittee, is simply to wipe the slate clean.

I think we do need to buttress Egypt. I think we do owe gratitude to President Mubarak and his government. But there are unquestionably alternative measures we might have examined. We might have written down the debt, or we might have renegotiated the prevailing rates of interest while maintaining a waiver of the Brooke-Alexander amendment. The fact that we have gone whole hog is regretable, in my view, not because there is anything wrong with the goal of assisting an ally that is making an extraordinary sacrifice. It is regretable because of the timing and heavy-handedness of the proposal.

I signed the conference report because I do not think that this provision, by itself, should sink the agreement. There are sensible and innovative aspects to this conference agreement as well. The financial and strategic flexibility we offer to Israel is significant. The even-handedness of our approach to subscription in the multilateral development banks is commendable. The novel and affordable initiatives we have undertaken in an effort to sustain the economic and political transformation of Eastern Europe is important. Our increase in the Export-Import Bank accounts, the one institution in this bill which we can point to as a boon for U.S. industry and U.S. workers, is appropriate and necessary. In particular, the endorsement of AID's participation in debt-for-development exchanges in Mexico is one aspect of the report I enthusiastically support.

These are reasons to support this agreement. A "no" vote on this bill is always an easy vote, particularly right after a reconciliation bill and right before an election. But our involvement in Saudi Arabia should bring home to us that, like it or not, we do have interests and commitments abroad that we cannot abandon. I urge a "yes" vote on this report and commend the chairman and staff for the work they have done in bringing it back to the House.

CONGRESSMAN AUGUSTUS F. (GUS) HAWKINS

HON. E de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. DE LA GARZA. Mr. Speaker, my dear friend and colleague, GUS HAWKINS, has contributed so much to the humanity, fair thinking, and principles of this House of Representatives and to the Nation that I scarcely know where to begin my tribute to his service. I celebrate with him his retirement, but I wish he would remain.

He is a remarkable man who had a distinguished career long before being elected to the U.S. Congress in 1926. In the California State Assembly—to which he was first elected in 1934 and where he served for 28 continuous years—GUS HAWKINS sponsored landmark legislation which influenced that of the rest of the Nation.

A fair housing act, child care centers, a fair employment practice act, all were his brainchilds. In Los Angeles, there are monuments to his creativity: The Los Angeles Sports Arena, the Department of Employment Building, the Law and Medical Schools at UCLA, to name a few.

In California, because of GUS HAWKINS' efforts, blacks were appointed to positions as judges, members of the State Highway Patrol, State Commissioners, and supervisory positions in the U.S. Postal Service. Many of these positions went to blacks for the first time in California history.

In the U.S. House of Representatives this man was the coauthor of the Humphrey-Hawkins Full Employment and Balanced Growth Act. He was the author of the Pregnancy Disability and the Job Training Partnership Acts.

When GUS HAWKINS leaves this House he will not be forgotten. He has left a lantern of

humanity in the windows of our minds. I hope we will always use it as a beacon to guide us in what we do.

REMEMBERING BARBARA HAAS RAWSON

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Ms. OAKAR. Mr. Speaker, Cleveland, OH, recently lost one of its truly important civic and community leaders: Barbara Haas Rawson.

Throughout her life, she freely gave her time and energy to make her community and her world a better place to live. What sets apart certain people to be instilled with the passion and desire to devote their lives to the public good is not certain. But whatever it is, Barbara Haas Rawson had it.

After graduating from college, Barbara began her career in Washington, DC, at the Department of Agriculture and the Office of War Information. It was in Washington, Barbara met her beloved husband, Bob, who is similarly dedicated to the advancement of the common good.

While rasing her family, Barbara turned her considerable energy to volunteer activities with the League of Women Voters and as a leader in the Shaker Heights PTA. She also served as chair of the Shaker Heights Recreation Board.

Barbara was a woman of high personal integrity and was a life long proponent of excellence in government. In recognition of her abilities, she was appointed the first chair of the Ohio Ethics Commission.

When the Greater Cleveland Associated Foundation was formed in 1962, Barbara Haas Rawson was there to help shape its focus toward resolving Cleveland's urban problems. When it merged with the Cleveland Foundation in 1967, she became the foundation's assistant director and later served as its interim director.

While at the foundation, Barbara's years of community involvement and dedication to Cleveland helped to develop the Cleveland Foundation's programs to become a national model. Throughout those years, thousands and thousands of Greater Cleveland's neediest citizens benefited from the work she performed.

Although Barbara has been the recipient of numerous awards and honors, most often the people that received important, and in many cases life-saving, assistance never knew that behind the scenes, Barbara Haas Rawson was working diligently on their behalf.

The Distinguished Citizen Award from the National Civic League and the Citizen of the Year Award from the Citizens League of Greater Cleveland are eloquent testimony to our community's highest regard for Barbara Haas Rawson's unswerving dedication to improving the quality of life for so many people.

Barbara was a devoted wife, dedicated mother, loving sister, and an adoring grandmother. As a woman, she was an outstanding role model.

On a personal note, I recall years ago how helpful Barbara was in sustaining an arts program for children in Cleveland's near West Side. This program gave inner-city children of all backgrounds the opportunity to study music, drama, and art. Some of those same children are, today, teachers and performers in the arts. These early grants afforded the children wonderful opportunities and exposure to the cultural arts they might never have had. They, too, will miss Barbara.

Mr. Speaker, I respectfully ask you and my colleagues to join me in recognizing the remarkable accomplishments of one of Cleveland's most remarkable women. She is gone from us, but the goodness of her heart and the generosity of her spirit will live on forever. Nevertheless, Barbara Haas Rawson will be missed.

THE RECONCILIATION BILL DOES NOT PERMIT ANY INCREASE IN HOURLY FLIGHTS AT HIGH DENSITY AIRPORTS

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. OBERSTAR. Mr. Speaker, I am disturbed by suggestions that a rulemaking authorized by the aviation portions of the reconciliation bill could lead to increased hourly flights at the four high density airports—Chicago's O'Hare, Washington's National, and New York's La Guardia, and Kennedy. At these airports, hourly scheduled aircraft operations are limited by Federal law and regulation, to reduce congestion and limit noise.

The aviation section of the reconciliation bill directs a rulemaking proceeding to consider more efficient methods of allocating existing capacity at the high density airports. This means that the rulemaking may not consider increases in the hourly limits on scheduled operations imposed by the FAA's slot regulations, and in the case of National Airport, by law.

Despite this clear language in the reconciliation bill there have been suggestions that room for more daily flights at a high density airport could be created by relaxing the scheduling limit to allow more flights during popular morning and evening hours and fewer flights during other hours, so that the average would be the hourly cap on flights per hour. For example, at National Airport the hourly cap is 37 flights an hour. The suggested method of increasing capacity would be to have 39 slots for some hours and 35 for other hours, to maintain an average of 37 slots per hour.

Let me assure concerned citizens and my colleagues that this kind of juggling would not be permitted under the reconciliation bill. The FAA's regulations, 14 CFR part 93 subpart K, establish an hourly limit on scheduled flights at the high-density airports, La Guardia, O'Hare, Washington National, and Kennedy. The rulemaking directed by reconciliation does not contemplate any juggling which would permit these limits to be exceeded in any hour, even if this increase would be offset by a decrease in another hour.

Similarly, the rulemaking could not allow flights above the hourly cap to be scheduled on the assumption that delays and mechanical problems would create enough openings to allow the airport to maintain an average of the hourly flights authorized by the high density rule. The intent of the bill is that the hourly limit be adhered to at all times, not just on the average.

I hope there will be no further suggestions that the clear meaning and intent of the reconciliation bill can be subverted by averaging hourly operations.

TRIBUTE TO THE SIOUX CITY SYMPHONY ORCHESTRA

HON. FRED GRANDY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. GRANDY. Mr. Speaker, I rise today to pay tribute to the Sioux City Symphony Orchestra as it celebrates its 75th anniversary.

SIOUX CITY SYMPHONY ORCHESTRA DIAMOND JUBILEE

The Sioux City Symphony Orchestra, founded in 1915, is celebrating its 75th Anniversary, or Diamond Jubilee, this year. Serving the people in the tri-state area of Iowa, South Dakota, and Nebraska, the orchestra has proven to be a premier performing arts organization contributing significantly to the cultural enrichment and quality of life of the Siouxland region.

A special mention should be made of Mr. Leo Kucinski, a Polish-born violinist who became the conductor of the Orchestra in 1924 and held that position for the next 53 years. He took the Orchestra, then a small organization sponsored by Morningside College, to the status of community orchestra and before he retired, to the ranks of the very best of the Metropolitan orchestras in the U.S. Mr. Kucinski continues to be active in the musical life of the Siouxland region, and we salute him for his triumphs and successes with the Sioux City Symphony.

We also salute the 1990-91 Sioux City Orchestra. Under the musical direction of Thomas Lewis, the Orchestra has continued its musical growth and artistic achievements. The Symphony Association now supports and sponsors a Youth Symphony and Symphonette in addition to its education program, which includes Ensembles in the Schools and Concerts for Young People. The Symphony also maintains a very active Symphony Guild which contributes important human as well as financial resources to the Orchestra.

This Diamond Jubilee Season, the Symphony is offering nine subscription concerts which will feature innovative and exciting programming for the people of Siouxland. Two guest artists, in lieu of the usual one, will perform on five of the six Classical programs. The "All-Orchestra" program will be a tribute to Leo Kucinski. The ever-popular "Pops" series features the talents of Shirley Jones and Gary Morris, as well as a Holiday Concert in honor of the young people of Siouxland.

The highlight event of the Diamond Jubilee season will be a Gala Benefit with Itzhak Perlman, regarded by music lovers and critics alike as the greatest violinist in the world.

We hope that the members of Congress will help commemorate this milestone year of the Symphony. For an orchestra to thrive with the spirit of excellence that the Sioux City Symphony Orchestra has exhibited, is indeed a monumental accomplishment that we hope will be recognized by the Congress and people of the entire United States.

Respectfully submitted.

Dr. JOHN E. LUEBKE,
Executive Director.

TRIBUTE TO HON. AUGUSTUS F. HAWKINS

HON. GLENN POSHARD

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. POSHARD. Mr. Speaker, it has been a real privilege to serve under Chairman HAWKINS on the Committee on Education and Labor during my first term. While other members of our committee and this House can speak from longer personal experience with our distinguished chairman, his expert leadership and sterling character have been very evident to me during my 2 years in Congress.

Throughout the 101st Congress, Chairman HAWKINS has fought for the rights and basic human needs of those Americans so often overlooked. He has led the fight to increase the incomes of our citizens earning the minimum wage, to improve vocational and technical education, to protect citizens from unfair discrimination and abuse of their civil rights, to provide affordable, quality child care for working families, to expand the acclaimed Head Start Program, to provide food for pregnant women, infants, and schoolchildren. These are only a few highlights of his achievements over the last 2 years.

Chairman HAWKINS' service to the Nation, this House, and southern California goes back to 1963.

Chairman HAWKINS is a fair-minded and thoughtful legislator, and I would like to commend him for the courtesies he has extended to me. Over the past year and a half, I have been working on an educational funding proposal which has created some controversy. Although I know Chairman HAWKINS has some hesitations about it, he has met personally with me several times to talk about it and we have held a series of hearings on the issue. It is truly a testament to the great strength of his character that he was so helpful and patient with me during the consideration of the proposal. He made every effort to see that the issue was fully and fairly discussed and he made his services and those of his staff available to me.

I will always respect and admire Chairman HAWKINS for the opportunities he has provided me throughout this term and for the outstanding example he has set for me and my fellow freshmen on the Education and Labor Committee. All of his colleagues, the Nation, and the people of southern California respect and admire him for the service he has done for the Nation.

As Chairman HAWKINS himself said recently, "If you believe in something, you work a long time." Our devoted chairman's 56 years of public service are a long time, his beliefs are genuine and deeply rooted, and the United States of America has been fortunate that AUGUSTUS F. HAWKINS has spent his working life in Sacramento and Washington.

ADAMS FRUIT DECISION SPURS LIABILITY CRISIS

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. GOODLING. Mr. Speaker, the liability crisis in our country continues to explode. The Supreme Court in its Adams Fruit decision has recently contributed its own share by totally misinterpreting a key provision in the Migrant and Seasonal Agricultural Worker Protection Act [MSAWPA] and allowing workers to sue under that statute even after they have recovered workers' compensation benefits.

My colleagues will recall that MSAWPA was passed in 1982 as a bipartisan noncontroversial statute which was backed by the agricultural employers, that Reagan administration, and organized labor. I can tell you that that consensus never would have been achieved if the Adams Fruit decision had been foreseen.

The Adams Fruit decision is bad for our legal system, bad for employers, and, most importantly, bad for workers. It's bad for our legal system because it undermines the principle of exclusivity upon which our workers' compensation system rests. If you think the Federal courts are clogged now, just imagine what would happen if they were opened up to the whole area of workplace injuries. The courts used to handle those cases in the 19th century and they did such a lousy job that the workers' compensation system was developed to take their place.

Adams Fruit is bad for employers because it exposes them to massive liability for compensatory and punitive damages even though they have already paid into the workers' compensation system.

Finally, the decision is bad for workers because it removes any incentive for employers to provide workers' compensation coverage for them. In 14 States, farmworkers are only covered at the option of their employer. The decision removes any incentive to provide such coverage. In States where coverage is mandatory, pressure will be brought to convert to voluntary coverage.

When we passed MSAWPA in 1982, we thought we were providing incentives for coverage of farmworkers. Adams Fruit totally undermines that intent. In the short term, it provides farmworkers with an extra advantage over all other workers—for example the ability to both recover workers' compensation *and* sue for compensatory and punitive damages. But, in the long term, it puts farmworkers at a disadvantage by reducing workers' compensation coverage, thus taking away swift and sure relief for workplace injuries and leaving them with the crap shoot of private lawsuits.

Yet, clearly MSAWPA was intended to put farmworkers on an equal footing with other workers. As was stated by Prof. Arthur Larson, the Nation's foremost authority on workers' compensation, in criticizing the Adams Fruit decision:

It is difficult to believe that Congress meant to create a privileged class, the migrants, with rights superior to all other workers. Surely, it would be enough if migrants were treated just as well as others. It was the fact that they were not that inspired this legislation.

As one who worked many long and hard hours in 1981 and 1982 to achieve the MSAWPA consensus I intend to preserve it by pressing for early action next year by the Education and Labor Committee to overturn the Adams Fruit decision.

AN AMERICAN VETERAN

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. DINGELL. Mr. Speaker, in 1921, an American soldier—his name "known but to God"—was buried on a Virginia hillside overlooking the Potomac River and the city of Washington. The Arlington National Cemetery burial site of this unknown World War I soldier became the personification of dignity and reverence for America's veterans. This memorial gesture took place on November 11, and on this same day in 1990, at 11 o'clock, a wreath will be placed at this Tomb of the Unknown Soldier honoring over 1 million Americans who died for the cause of freedom.

On November 6 we exercised one of our most treasured rights, the right to vote. We owe deep thanks to every veteran for our ability to take this simple action of pulling the voting booth lever. America's veterans are one of our greatest assets, both in peacetime and war, fighting to protect the freedoms we cherish. We must fight to insure that they are honored both in spirit and in our actions. As a Congressman and veteran of World War II, I have fought long and hard to see that veterans are given the benefits and care they so richly deserve. This is a never-ending struggle, and I am proud to say that I was recently able to help obtain funds for a major hospital project in southeast Michigan.

On this Veterans Day, we can look across the world and see freedom and democracy emerging everywhere thanks to American veterans. We see the fruits of past victories in the fall of dictators, the ongoing struggle for liberty and justice, and the crumbling of the Berlin wall. If you know a veteran, I urge you to take a moment to call and say thank you. If you see one do the same. Remember that while Veterans Day is important, recognition for our defenders must take place every day and everywhere. We have an obligation to rededicate ourselves to the values which have made us strong throughout the years and recognize those who have shouldered our greatest burdens in difficult times.

Whatever you do, the choice is yours. Thanks to a veteran.

CONFERENCE REPORT ON S. 2470, THE WATER RESOURCES DEVELOPMENT ACT OF 1990

HON. WALTER B. JONES
OF NORTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. JONES of North Carolina. Mr. Speaker, I rise to discuss section 413 of the conference report on S. 2470, the Water Resources Development Act of 1990, which is a modification of the provision adopted by this body as section 43 of H.R. 5314.

As the Chairman of the Committee on Merchant Marine and Fisheries, I was appointed to the conference committee for certain sections within the jurisdiction of our committee.

In 1988, the Committee on Merchant Marine and Fisheries recommended and the Congress enacted Public Law 100-589 providing for a 3-year study to evaluate the reasons for the decline in the Atlantic Striped Bass population in the Roanoke River Basin and Albemarle Sound. This study will not be completed until November 1991. By law, the results of the study will then be presented to Congress, as well as the Secretary, for review.

Despite the fact that the study is still ongoing and the Fish and Wildlife Service [FWS] and the National Marine Fisheries Service [NMFS] recommended that construction of the proposed Lake Gaston water pipeline await completion of an environmental impact statement because of the potential harm the project may cause to the striped bass species in the Roanoke River Basin and Albemarle Sound, the Corps of Engineers and the city of Virginia Beach have ignored those recommendations, and the latter proposes to commence construction activities.

Section 413 requires that no later than January 1, 1992, the Secretary of the Army shall review the report mandated by section 5 of Public Law 100-589, and make a determination of the impact of the project contained in application 82-0747-06 on the Roanoke River Basin and Albemarle Sound Region and especially its striped bass population in light of the findings and recommendations in that report. This provision also requires the Secretary to take all appropriate action, including modification of the permit at issue, notwithstanding that construction of the project may have commenced.

The House version of section 413 prohibited construction of the project until completion of the report on the 3-year study. It also required the Secretary to review the report and to make a determination of the impact of the project in light of the study. The city of Virginia Beach contended, however, that it should be free to commence construction if it was prepared to take the risk that further environmental review may be required and that the permit may be modified by the Secretary.

The conference committee concluded that so long as Virginia Beach was willing to take the risk that the contested permit may be altered, the committee would not statutorily prohibit its commencement of construction. Thus, prohibition of construction was deleted and the obligations of the Secretary were strengthened to assure that the Secretary review the report and make findings with respect to the impact of the project in light of the report. The committee also required the Secretary to take all appropriate actions in light of the findings and recommendations of the report, including modifying or canceling the permit, notwithstanding that construction may have commenced. Any construction that might occur before the study's completion, therefore, shall not prejudice the Secretary's review and action based upon the report; all governmental actions that appropriately then flow from the report shall be taken as though there had been no construction. The conferees did not wish any construction which might occur before the report's results are available used in any way to color the review and determination requires by the Secretary or others.

Thus, the Secretary must be guided by the experts doing the report and the report's findings, conclusions and recommendations, and must take all appropriate actions within the context of the report. To assure that no undue delay occurs, the conference committee decided not to require any evidentiary or other protracted hearing by the Corps of Engineers. However, the determination of the Secretary remains reviewable by the courts pursuant to sections 702-706 of the Administrative Procedure Act, especially the judicial review provision of title 5, United States Code, section 702 and the scope of such review as set forth in title 5, United States Code, section 706.

Mr. Speaker, this provision is necessary to protect the prerogatives of Congress and ensure that the study and its recommendations are not rendered moot by the interim actions of the permit holder. Public Law 100-589 was enacted, in part, because of the views of the Fish and Wildlife Service and the National Marine Fisheries Service that this water diversion project could irreparably harm the striped bass species in the Roanoke River Basin and Albemarle Sound, an important economic resource for my State.

I would very much like to thank the chairman of the Public Works Committee, the gentleman from California [Mr. ANDERSON], and the chairman of the Water Resources Subcommittee, the gentleman from New York [Mr. NOWAK], for their support of this important environmental provision.

Also, I would like to acknowledge the efforts of my colleague from the Second District of North Carolina, Mr. VALENTINE, and my colleague from the Fifth District of Virginia, Mr. PAYNE, who cosponsored section 413 in the Public Works Committee. Both these gentlemen played an instrumental role in passing the original provision and were invaluable in maintaining it in the conference committee.

Finally, I ask that a letter on this subject from each of the aforementioned Federal agencies be included in the RECORD at this point.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, DC, February 13, 1990.

Re: State of North Carolina versus Hudson, No. 84-36-CIV-5 (E.D.N.C., Feb. 2, 1990).

WILLIAM M. COHEN, Esq.
Chief, General Litigation Section, Division of Land and Natural Resources, U.S. Department of Justice, Washington, DC.

DEAR MR. COHEN: After a review of the district court decision in the above-referenced case, I believe, after consultation with the U.S. Fish and Wildlife Service, that it is important to emphasize the Service's administrative judgment that:

In view of the significance of the impacts identified regarding the proposed activities, i.e., reallocation of the water supply in Kerr Reservoir and withdrawal of 60 mgd from the Roanoke System, the Service believes that preparation of an Environmental Impact Statement [by the Corps of Engineers] is appropriate.

Letter from James W. Pulliam, Jr., Regional Director, Region 4, U.S. Fish and Wildlife Service, to Col. J. J. Thomas, District Engineer, Army Corps of Engineers, at 4 (Aug. 5, 1988) (copy enclosed). This conclusion, which was submitted as part of the Service's statutorily-required report under the Fish and Wildlife Coordination Act, 16 U.S.C. §661 *et seq.*, was entitled to full and equal consideration by the Corps.

If an appeal is taken by any of the plaintiffs in the district court proceeding, the Service requests that any briefs submitted on behalf of the United States indicate that the Fish and Wildlife Service's Coordination Act Report on the Lake Gaston permit determined that the preparation of an environmental impact statement (EIS) was appropriate. I am informed that the Service continues to take the position that an EIS is appropriate for this project and that the Corps' proposed mitigation does not adequately compensate for the analytical flaws in the Corps' environmental assessmeent.

Thank you for your attention to the Service's request. Copies of that request to this office are also enclosed for your information. I appreciate the prompt efforts of Glen Goodsell of your staff in responding to our request for a copy of the district court opinion in this case.

Sincerely,

CHARLES P. RAYNOR,
Assistant Solicitor
Branch of Fish and Wildlife.

Enclosures.

DEPARTMENT OF COMMERCE,
Silver Spring, MD, December 20, 1989.

GLENN GOODSELL,
U.S. Department of Justice,
Washington, DC.

DEAR MR. GOODSELL: The continuing controversy, Civil Action No. 84-36-CIV-5, North Carolina versus Hudson has prompted reiteration of our basic position that the proposed withdrawal may cause significant harm to the striped base stocks in Roanoke River. The uncertainty surrounding the impacts of the withdrawal warrants an Environmental Impact Statement (EIS) to determine the impacts or new flow regimes on striped bass resources. Preliminary data obtained by a committee of representatives from industry, state and Federal agencies have recommended a flow regime beneficial to anadromous fishery resources and downstream users. Dr. Charles Mancoch of our Beaufort Laboratory and Dr. Roger Rulifson, East Carolina University edited an extensive committee report describing water flows necessary for striped bass and other downstream resources.

Implementation of the recommendations requires close coordination between a permanent committee, the Corps of Engineers (COE) and the Virginia Electric Power Company. The Supplemental Environmental Assessment (SEA) circulated by the COE was flawed because, it failed to consider: (a) the revised flow regime and (b) the cumulative impacts of existing and anticipated future

withdrawals for municipal, industrial and agricultural water uses.

The National Marine Fisheries Service (NMFS) has not had the opportunity to review any mitigation plan that would compensate for envisioned negative impacts caused to striped bass by this or future water withdrawal from the river. The offer by the City of Virginia Beach to use its storage in Kerr Reservoir is not considered a complete mitigation plan. Any mitigation plan that does not include the new flow regime cannot adequately address the requirements of the striped bass resource.

We are enclosing a copy of Chairman Jones' letter to us and our response to him. Please ensure that the court understands our position on this issue.

Sincerely,

JAMES E. DOUGLAS, Jr.
Acting Assistant Administrator for Fisheries.

MFUME ANNOUNCES VOTER ERROR

HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MFUME. Mr. Speaker, I take this time to announce that I inadvertently voted incorrectly on Saturday, October 20, 1990, on the House amendment to Senate amendment No. 18 on the HUD–VA appropriations bill for fiscal 1991.

That amendment to Senate amendment No. 18 would effectively transfer $54 million out of a fund for assisted housing programs into an account to fund 61 special projects around the Nation that in my opinion are unnecessary. These are essentially "Pork Barrel" programs that I vehemently oppose.

Mr. Speaker, I rushed to the floor of the House on the day of that vote from a meeting with several members of the Congressional Black Caucus who along with me were trying to save the Civil Rights Act of 1990. I voted using the electronic device and promptly left to go back to the strategy meeting believing I had voted no, when in fact I had voted aye. I did not realize the error until today when reading the October 28, 1990, edition of the Baltimore Sunday Sun's "Votes in Congress" summary.

Although the amendment passed by 88 votes and my vote would not have made a difference, I deeply regret the error and hereby apologize for making the mistake.

As someone who has worked all of his life for the development of assisted housing programs, this mistake is particularly upsetting to me.

While it is true that the HUD–VA appropriations bill would have provided $9.6 billion to fund the modernization of public housing, section 8 certificates, tenant relocation, public housing certificates, and the Nehemiah Housing Program, it should have been defeated and sent back to the conference committee with instructions to delete that portion dealing with the transfer of $54 million. I assume total responsibility for the error.

IN HONOR OF CONGRESSMAN BILL NELSON

HON. E de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. DE LA GARZA. Mr. Speaker, I would like to say a few words in tribute to my good friend and trusted colleague, BILL NELSON, who is retiring from the House at the end of this 101st Congress. It has been a honor and a privilege to work with him.

BILL NELSON has become an architect of our Nation's space policies. He has done this through hard work, as his chairmanship of the House Subcommittee on Space Science and Applications testifies. He has also done it by exhibiting great personal courage.

Five years ago BILL became the first Member of the House of Representatives to fly aboard a space shuttle. He trained with and became a member of the crew of the spaceship *Columbia.* He landed only 10 days before the launching of the *Challenger*, which blew up in midflight.

There's a historical coincidence to BILL's flight. It was launched from the Kennedy Space Center, only a few miles from the 160-acre plot that was homesteaded by his grandparents in 1915.

In addition to helping our Nation lead the world in space, BILL has been a leader in the less adventurous but equally vital area of bank deregulation. Everyone in this country has benefited from his backing of stronger protections for depositors and for credit card rate disclosures.

Although BILL NELSON is leaving the Congress, I do hope that he will stay in touch and continue to share with us his vision and wise counsel.

RELIEF FOR SMALL COMMUNITIES

HON. JIM OLIN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. OLIN. Mr. Speaker, I rise in strong support of the conference report on the Water Resources Development Act of 1990.

The bill includes two features that are very important to my district. The first is a $55 million authorization for construction of a flood control project in Buena Vista, VA. a small community that has been repeatedly damaged by floods during the past 20 years.

The second feature is possible relief for communities like Buena Vista which cannot afford to pay the required 25 percent of the total project cost for flood protection.

The bill directs the Army Corps of Engineers to evaluate a community's ability to pay its share of a project based on local economic data. Current law mandates the use of statewide economic data. Using local economic data could result in communities like Buena Vista getting a break on how much of these projects will have to be paid for out of local tax funds. These small communities do not have the same resources that larger, more prosperous communities have. They should not be excluded from providing protection to citizens against devastating floods because of this inability to pay 25 percent.

I want to thank the committee chairman, Mr. ANDERSON, and the subcommittee chairman, Mr. NOWAK, for their work on this legislation and for taking into consideration the needs of the smaller communities in America.

TRIBUTE TO JOHN J. McNALLY, JR.

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MAVROULES. Mr. Speaker, I wish to congratulate a fine gentleman on his upcoming retirement: John J. McNally, Jr. Mr. McNally is from the commonwealth of Massachusetts and will be leaving the Massachusetts district office of the U.S. Small Business Administration after a 14-year tenure. Mr. McNally, the District Director of the Small Business Administration for Massachusetts for the last 10 years, had the responsibility of supervising over 75 professional employees and more than 400 volunteers. He assumed this post after 4 years as the Chief Advocate for the Northeastern United States. He has been dedicated and committed to the development and growth of small business.

Prior to his work with the SBA, Mr. McNally served as a staff assistant to Presidents Kennedy and Johnson; scheduling their travel plans and managing the fiscal affairs of the White House. During President Ford's administration, he was the Director of the Whip Inflation Now Program.

John McNally has been an author of numerous articles, a lecturer to college and trade groups, chairman of the board of a regional hospital, a chamber of commerce president and the recipient of a number of awards and honors.

His career is one that is truly distinguished and I wish him the best as he and his wife begin their new life together in South Carolina.

SUPPORT H.R. 5922 AND BIOTECHNOLOGY RESEARCH

HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MFUME. Mr. Speaker, I rise today in support of H.R. 5922, the bill to authorize the Secretary of Commerce to conduct a marine biotechnology research, training, and technology transfer study program.

Mr. Speaker, I support a comprehensive assessment of America's marine biotechnology industry which this bill facilitates. Over the past year I have read how the Japanese have not only established an agency within one of their government ministries to research and develop this area, but have also sent technical teams here to study our progress.

A comprehensive assessment of America's marine biotechnology industry can provide critical data which will help America maintain its preeminent status as the world's leader in marine biotechnology.

Additionally, Mr. Speaker, I am of the opinion that America should also give serious consideration to the establishment of a marine biotechnology center. Such a center could serve as a clearing house of information and be the lead agency for this discipline. The establishment of the center would also serve to underscore our national commitment to strengthening America's commitment to the advancement of marine biotechnology.

TRIBUTE TO GUS HAWKINS

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ROYBAL. Mr. Speaker, today I would like to honor my longtime friend and colleague, GUS HAWKINS of California, who is retiring at the end of this session.

Chairman HAWKINS and I were both elected to the House of Representatives in 1962, and in the 28 years we have served together, I have seen very few members who could match his caring and compassion for the poor and middle class. Hundreds of thousands of American children have been given the opportunity to lead meaningful and productive lives thanks to the help of GUS HAWKINS. Programs like Head Start and the Job Corps would not have been as effective as they are without the leadership and support of GUS HAWKINS. He has spent more than half a century in public service, both in California and in Washington. In the 1930's GUS HAWKINS became one of the first minorities to gain a seat in the California Assembly, and set an inspiring example for young people like myself to follow.

Mr. Speaker, we may never know a more fair-minded and steadfast advocate of government support for those who need it most: the poor, the elderly, the disabled, and those unfortunate Americans who have suffered from the burden of discrimination. The idea that government should have the responsibility of helping the least fortunate members of our society has come under attack in the past decade, but GUS HAWKINS has remained a resolute champion of the downtrodden and forgotten segments of our society. Chairman HAWKINS, I salute you and your accomplishments, both in and out of government. Your leadership and sense of fairness will be sorely missed.

COASTAL ZONE MANAGEMENT PROVISIONS OF H.R. 5835—OMNIBUS RECONCILIATION BILL—SECTION 6217

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. STUDDS. Mr. Speaker, I would like to take a moment to clarify the intentions of the House and Senate conferees with respect to section 6217, establishing a new Coastal Nonpoint Pollution Control Program. This section is drawn largely from titles II and III of H.R. 2647, a bill to reauthorize the Coastal Zone Management Act [CZMA], as reported earlier this year by the Committee on Merchant Marine and Fisheries. A major difference is that section 6217 is drafted as a free-standing provision of law, rather than as amendments to the CZMA and the Clean Water Act [CWA].

The central purpose of section 6217 is to strengthen the links between Federal and State coastal zone management and water quality programs and to enhance State and local efforts to manage land use activities which degrade coastal waters and coastal habitats.

So-called nonpoint source pollution, caused by a variety of land use practices, is the leading cause of water quality degradation in many coastal water bodies. Section 6217(a) requires all coastal States to develop and implement a Coastal Nonprofit Pollution Control Program. Although the bill does not attempt to dictate who or what authorities within a State must meet this mandate, the conferees intend that State coastal zone management authorities and water pollution control agencies will have a dual and coequal role. In this respect, the division of responsibility at the State level will mirror that at the Federal level between the Environmental Protection Agency [EPA] and the National Oceanic and Atmospheric Administration [NOAA].

The purpose of the nonpoint pollution control program is to develop and implement land use management measures that are needed to protect and restore coastal waters. Several points should be made about the intention of the conferees with respect to these State programs:

First, the responsibility for developing and implementing land use management measures rests solely with the States, not with NOAA or EPA;

Second, the management measures are required—at a minimum—to conform to and comply with guidelines established by EPA, as provided under subsection (g);

Third, both the program and the management measures are to be integrated closely with other Clean Water Act and Coastal Zone Management Programs. Thus, the new program will not and ought not bear the full burden of restoring and maintaining coastal water quality, but will operate instead in conjunction with controls on point sources established under the Clean Water Act and associated State programs.

Section 6217(a)(2) outlines requirements for integrating the new program into existing programs. The requirements are needed because of the free-standing nature of the new program and the concomitant need to minimize unnecessary duplication or conflicts at the Federal, State, or local level. This provision is intended to strengthen the requirements for protecting coastal waters that now exist in section 319 of the Clean Water Act and in the Coastal Zone Management Program, as reflected in the implementation requirements in section 6217(c)(2).

Subsection (b) spells out the core requirements of the program. The first requirement is that States develop and implement management measures for the control of nonpoint sources of pollution in coastal waters generally. These management measures must—at a minimum—conform to the guidance developed by EPA pursuant to subsection (g).

The requirements that States develop and implement these management measures has been intentionally divorced from identified water quality problems because of the enormous difficulty of establishing cause and effect linkages between land use and water quality. The current water quality planning provisions and nonpoint source control provisions of the Clean Water Act suggest that States can only impose additional controls on nonpoint sources if they can demonstrate water quality problems. But the fact is that, with few exceptions, neither States nor EPA have the money or the time to create the complex monitoring programs that would be required to document a causal link between specific land use activities and specific water quality problems. Under the core program established in subsection (b), States will be able to concentrate their resources on developing and implementing measures that experts agree will reduce pollution significantly.

Subsection (b) also requires a second tier of pollution control efforts that are targeted to those coastal land uses that are recognized to cause or contribute to water quality problems generally. Paragraph (1) requires that the program identify land uses that may cause or contribute significantly to a failure to achieve or maintain water quality standards in coastal waters, or that foreseeably threaten coastal waters with increased pollution. The requirements of paragraph (1) are intended to mesh with and expand upon the basic obligation under the Clean Water Act for States to achieve and maintain water quality standards and designated uses. Where these standards or designated uses are not being achieved, paragraph (1) requires the imposition of additional management measures on land uses that contribute significantly to water quality degradation.

Paragraph (2) requires the identification of important coastal areas—as contrasted to individual land uses under paragraph (1)—that need additional measures to protect against anticipated pollution problems. Unlike paragraph (1), the imposition of additional management measures are not contingent upon identified water quality problems, and are to be established as a preventative step to avoid water quality problems that might otherwise develop.

For those land uses and critical areas identified in paragraphs (1) and (2), the subsection requires States to implement additional measures to achieve and maintain applicable water quality standards and to protect designated uses beyond those required in the core program. These additional measures will be developed by the individual States, tailored to the specific problems they must solve, and built upon technical guidance provided by EPA and NOAA.

Subsections (b) (4) and (5) provide for technical assistance and public participation under the program. Paragraph (6) outlines administrative mechanisms to be developed to im-

prove the intergration of the program with existing State programs associated with land use, point source pollution and habitat protection. No one particular mechanism is required by this paragraph, but the establishment of appropriate mechanisms to achieve the desired coordination is required.

Subsection (b)(7) requires those administering the program at the State level to recommend modifications to the inland boundary of the coastal zone if necessary to achieve the purpose of the CZMA and this program. Paragraph (7) is to be understood in conjunction with the review of the same issue by NOAA and EPA, as required by subsection (e).

Subsection (c) provides for the review and approval of the State programs by NOAA and EPA. The conferees expect that the Administrator of EPA and the Secretary of Commerce—the Secretary—will develop an explicit agreement on the appropriate division of agency responsibilities under this section. Recognizing EPA's role in controlling water pollution, the conferees expect the Administrator to assume the lead responsibility under the agreement for determining how the new program will mesh with existing point source controls and whether States are meeting their obligation to achieve water quality standards and protect designated uses.

The conferees expect that NOAA will assume primary responsibility for determining the appropriate role for state coastal zone management agencies in developing and implementing land use management measures. EPA would have the primary responsibility for assigning cooresponding roles for approved state nonpoint source management programs under section 319 of the Clean Water Act.

Subsection (c)(2) provides for the implementation of the new program through existing state nonpoint source pollution and coastal zone management programs. The requirement to make necessary changes in those programs exists despite the fact that this section does not amend either section 319 of the Clean Water Act or the Coastal Zone Management Act.

Subsection (c)(3) requires that certain assistance under the Coastal Zone Management Act and the Clean Water Act be withheld if a State does not meet the requirements of this section. The authority to withhold funds shall be exercised in accordance with the agreed allocation of responsibilities between the two agencies pursuant to subsection (c)(1) and shall reflect EPA and NOAA's traditional responsibilities for the Clean Water Act and the CZMA, respectively. The conferees expect that the Administrator and the Secretary to consult closely with each other and with State officials prior to exercising this authority.

Subsection (d) requires the Secretary and the EPA to provide technical assistance to states to develop and implement their Coastal Nonpoint Source Control Programs. This technical assistance would extend beyond the development of guidance under subsection (g) to assistance in developing and evaluating additional management measures that may be required of States under the program.

Subsection (e) requires the Secretary, in consultation with EPA, to review and make recommendations to States on the adequacy of the inland boundaries to their coastal zones. The conferees intend this requirement to be read in conjunction with the obligation of States to review the adequacy of their inland boundaries and propose appropriate modifications, as called for under subsection (b)(7).

Subsection (g) requires EPA, in consultation with the Secretary, the U.S. Fish and Wildlife Service and other Federal agencies, to develop and publish guidance specifying the minimum management measures that will apply to States Coastal Nonpoint Pollution Control Programs. The conferees intend that States, working from the guidance, will establish and implement in their programs the management measures provided for in that guidance.

Because State Coastal Zone Management Programs are expected to serve as a major conduit for implementing these management measures, the conferees fully expect that NOAA will play a major consultative role in developing the guidance under subsection (g) to ensure that State and local authorities will be able to implement the management measures called for by it.

Under this subsection, EPA will prepare guidance specifying management measures that could be used to control nonpoint sources of pollution that affect coastal waters. The conferees expect that EPA, in developing its guidance, will concentrate on the large nonpoint sources that are widely recognized as major contributors of water pollution and on which there is broad consensus on the appropriate management measures that must be developed and implemented. These measures might include, among others, use of buffer strips, setbacks, techniques for identifying and protecting critical coastal areas and habitats, soil erosion and sedimentation controls, and siting and design criteria for water-related uses such as marinas.

Conversely, the conferees also expect that EPA will not attempt to develop guidance for management measures that will unduly intrude upon the more intimate land use authorities properly exercised at the local level.

In one sense, subsection (g) directs EPA to develop the equivalent of technology-based controls for nonpoint sources, as it has done previously for point sources under the Clean Water Act. Those technology-based controls detail pollutant limits which apply to effluents discharged from industrial and municipal point sources. As defined in subsection (g)(5), the term "management measure" is patterned after the definition of "best available technology" under section 304(b)(2) of the Clean Water Act, which also speaks in terms of economic and technical achievability.

This does not mean, however, that the conferees expect guidance under this section to have the same level of specificity for nonpoint sources as were developed by EPA for effluent guidelines under the Clean Water Act. This is true because the ability of a particular management measure to deal with nonpoint source pollution from a particular site will be subject to a variety of factors too complex to address in a single set of simple, mechanical prescriptions developed at the Federal level. Thus, the conferees expect EPA in its guidance to offer States officials a number of options and to permit them considerable flexibility in selecting the management measures appropriate for their State. This flexibility is particularly important because States will, as previously mentioned, be required to demonstrate that they can implement management measures in conformity with the EPA guidance. It may be appropriate in certain circumstances for the guidance for particular management measures to apply regionally, rather than nationally, for those sources where regional differences are substantial and must be accounted for.

It is also important to emphasize that, unlike the EPA effluent guidelines for point sources, the nonpoint pollution management measures will not be directly or automatically applicable to categories of nonpoint sources as a matter of Federal law. Instead, these measures must be established under State law through the Coastal Nonpoint Pollution Control Program. This is reflected in a new section 306(d)(16) of the CZMA, provided for in section 6206 of this Act, which requires that State coastal zone programs shall provide for enforceable policies and mechanisms to implement the applicable management measures of this new program. In short, the management measures must be enforceable under State law.

Paragraph (3) of the subsection requires the Administrator, in consultation with the Secretary, to publish proposed guidance within 6 months after enactment of the section, and promulgate final guidance within 18 months. Since the guidance is a central part of the overall program, the conferees have tied the dates by which States must submit their programs to the date of promulgation of the guidance. The conferees are cognizant of the fact that by structuring the time requirements in this manner, delay by EPA could push back the entire effort. Accordingly, the conferees expect that, if a delay develops, an action would certainly lie under French law to compel the Administrator to act promptly. Of course, the sufficiency of the guidance would be fully reviewable under the Administrative Procedures Act.

The conferees recognize that the requirements of the new Coastal Nonpoint Pollution Control Program represents a substantial challenge to Federal and State authorities. Without doubt, the call for technology-based management measures on nonpoint sources is a substantial advance in the basic architecture of nonpoint source programs under the Clean Water Act. While these are similar in kind to the advances in 1972 that were made in controlling point sources, there remain important distinctions, as noted above. The conferees expect that EPA, NOAA and other Federal authorities will proceed firmly but cautiously in developing the technology-based guidance that will serve as the core of the program, and that a productive partnership will be developed both between EPA and NOAA, and between Federal and State authorities, as they move to meet these new challenges.

TRIBUTE TO DIANA BUCKLEY

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. MAVROULES. Mr. Speaker, I would like to take this opportunity to recognize the heroism of Diana Buckley, R.N. of Swampscott, MA. On October 16, 1990, Ms. Buckley saved the life of an 11-week-old baby named Sean Pare. Sean suffered a respiratory arrest nearby Massachusetts General Hospital in his parents' car. The father ran down the street back toward the hospital with the infant in his arms. Ms. Buckley identified herself as a nurse and assisted the father in performing CPR. She flagged down a passing police cruiser and continued resuscitating the baby until they reached the emergency room. Thanks to Ms. Buckley's skill and quick thinking, Sean was successfully resuscitated on arrival.

Ms. Buckley's actions in a crisis situation should serve as an example to us all.

SALUTE TO MY CONGRESSIONAL NOMINATION REVIEW BOARD

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. FAUNTROY. Mr. Speaker, In conjunction with Academy Day for the District of Columbia, amidst the flora and fauna of the Botanic Garden, I was privileged to pay special tribute to the members of my congressional nominations review board: Wesley Brown, the first black graduate of the U.S. Naval Academy, Class of 1949, and is a retired commander and engineer. A lecturer and world traveler, he is currently writing a book about his naval experiences and intriguing life. He serves as board chairman. H. Minton Francis, a 1944 graduate of the U.S. Military Academy and former executive director of the university-wide self study at Howard University, he served as a civilian aide to the Secretary of the Army and as trustee-at-large for the Association of Graduates for West Point. John Gheen, a retired colonel, is a 1954 graduate of West Point and is the executive director of the U.S. Soldiers' and Airmen's Home. George D. Iverson, the manager of the Washington office of a respected helicopter company, is a 1957 graduate of the U.S. Military Academy. Alfred Jones, a former member of the District of Columbia Board of Education is an educational specialist. Inez Lattimore, a former D.C. Public Schools administrator, has served as a professor at Bowie State and Coppin State Universities. Kerwin Miller, a lieutenant commander in the Reserve unit of the Navy, is an attorney, a volunteer graduate of the Naval Academy. Jonathan Mark is a lieutenant colonel who serves in the U.S. Air Force Reserve as an admission liaison officer for the U.S. Air Force Academy and Air Force Reserve Officer Training Corps. Florence Ridley is director of student services in the division of State services branch for the D.C. Public Schools. George R. Keys, Jr., an attorney, is a 1970 graduate of the U.S. Air Force Academy. Their individual talents are worthy of note, their collective capabilities could change the world.

Mr. Speaker, I ask my colleagues to join me in this salute to my congressional nominations review board.